

Campaign for Judicial Accountability and Judicial Reforms

14, Tower 2, Supreme Enclave, Mayur Vihar Phase- I New Delhi- 110 091

Tel: 9811137421, 9811818730;

[E-mail:judicialreforms@gmail.com](mailto:judicialreforms@gmail.com) Website: judicialreforms.org

Patrons: Justice V.R. Krishna Iyer, Justice P.B.Sawant, Justice H.Suresh, Shri Shanti Bhushan, Shri K.G. Kannabiran, Shri Ajit Bhattacharjea, Shri Prabhash Joshi, Prof. B.B.Pande, Admiral R.H. Tahiliani, Dr Bhaskar Rao, Ms. Arundhati Roy, Dr. Banwari Lal Sharma, Shri Pradip Prabhu, Prof Babu Mathew, Dr Baba Adhav, Ms. Kamini Jaiswal, Shri Mihir Desai, Shri Manoj Mitta

Working Committee: Prashant Bhushan, Venkatesh Sundaram, Indu Prakash Singh, Diwan Singh, D. Leena, Preeti Verma, Devvrat, Suchi Pande, Rohit Kumar Singh

3/8/07

PRESS RELEASE

WITHER JUDICIAL ACCOUNTABILITY? THE CASE OF JUSTICE SABHARWAL: DISQUIETING FACTS, DISTURBING IMPLICATIONS

The issue of accountability of the higher judiciary has long been troubling all sections of society. While the power of the higher judiciary has greatly increased over the years because of the poor popular perception of the political class, which the judiciary has used to enhance the scope of its actions, its accountability has been gradually reduced. The V. Ramaswami case showed the impracticality of impeachment as a remedy for judicial misconduct. Since then there has been a lot of talk of an independent National Judicial Commission for enforcing judicial accountability, but none has been constituted, in the teeth of the steadfast opposition of the Judiciary to any independent disciplinary body over them. Meanwhile the Supreme Court by judicial fiat has restrained even the registration of any FIR against a sitting judge, without the prior permission of the Chief Justice of India. All this, while a draconian Contempt law has been used to silence any public and media scrutiny of judicial misconduct. And now, there is an attempt to effectively insulate the judiciary from the Right to Information Act. However, the silver lining is that the Parliament has recently amended the Contempt of Courts Act to allow truth as a defence to a Contempt Action. It therefore becomes very important for all, particularly the media, to diligently investigate and truthfully expose cases of judicial misconduct.

The recent outburst of the Apex Court against the TV journalist Vijay Shekhar on his sting operation to show the reckless and corrupt manner in which arrest warrants can be obtained from the Gujarat Courts only strengthen the public perception that the Judiciary will try to use its powers of contempt to hide the rot within the judiciary. This must be stoutly resisted by the media and Civil Society. If we allow ourselves to

be intimidated by such tactics, we will be guilty of allowing an unaccountable judicial dictatorship to flourish within our republic. No court will use its power of contempt in such cases if the media and civil society stand up together against it.

The Campaign for Judicial Accountability and Reforms was set up by a National People's Convention held at Delhi in March this year. The object is to Organize Civil Society, who are the real consumers of justice to take up a Campaign for Judicial Accountability and Reforms. It was set up after a painful realization that neither successive governments nor the judiciary have been serious about repairing the decrepit judicial system, nor about introducing any real accountability for the higher judiciary. We realized that nothing substantial would be done unless there is a strong and vocal campaign by the common people of this country who are the real stakeholders in the system of justice. Our campaign is a small beginning to highlight issues involving systemic problems with the judiciary as well as individual cases of judicial misconduct. We have set up a website of the Campaign which has sections on judicial reforms, Judge Watch, Judgement Watch etc. Several case studies of past instances of judicial misconduct are put up on the website. We now present a very recent and serious case study of such misconduct which took place at the very highest levels of the judiciary.

On 16th February 2006, the then Chief Justice of India, Y.K. Sabharwal passed a detailed order setting into motion the process of sealing of properties in designated residential areas of Delhi which were being used for commercial purposes. In the drive that followed to implement the order, thousands of premises being used for commercial purposes such as shops and offices, many of which had been functioning for decades, were sealed, forcing them to buy or rent premises in shopping malls and commercial complexes. This sealing went on relentlessly under the continuous supervision of Chief Justice Sabharwal's bench, monitored and directed by a Court appointed monitoring committee.

The Court's orders were ostensibly made to implement the rule of law as embodied by the Delhi Master Plan 2001, which had designated the land use of those areas as residential. There were however two ways of implementing the rule of law in such circumstances. Either order sealing of residential premises put to commercial use, or order the authorities to alter the master plan and change the land use of areas which were essentially being used for commercial activity for a long period of time. In fact, the government did come up with a new master plan of 2021 which allowed mixed use and commercial activity in many of the areas

which were designated as residential. Despite this new master plan which took away the *raison de etre* of the sealing orders, the court ordered the sealing to continue even in such areas on the basis that their owners had given undertakings that they would stop the commercial activity by 30th June/30th September 2006. The court said that they could not be permitted to “violate” their undertaking, despite the fact that the new master plan permitted them to use their premises for commercial purposes.

The courts orders created havoc and panic in the city and many questioned the excessive zeal with which the court supervised and monitored the sealing drive. More than a lakh shops and commercial establishments were shut down during the time and were forced to shift to shopping malls and commercial complexes. The prices of shops and offices in the shopping malls and commercial complexes doubled and tripled almost overnight making many people question whether the sealing drive was being undertaken for the benefit of the Mall and Commercial complex developers. All this is a matter of public record. What is not publicly known is that during this time that these orders were being made by Justice Sabharwal, his two sons, Chetan and Nitin who until then had small export import businesses, had entered into partnerships with big Mall and Commercial complex developers and had become big Commercial complex developers themselves.

Here are the facts, which have been dug out essentially from documents filed by Chetan and Nitin Sabharwal with the Department of Company affairs. Till 2004, the Sabharwals owned 3 companies ostensibly doing small time export import business, whose profits were in lakhs. These were named, Pawan Impex, Sabs exports and Sug exports. Interestingly, their registered offices were at the Sabharwals’ family home at 3/81 Punjabi Bagh. In January 2004 they were shifted to Justice Sabharwal’s official residence at 6 Moti Lal Nehru Marg. Could it be a coincidence that on 7th May 2004, Justice Sabharwal had ordered the sealing of properties where industries had been running in residential areas? Obviously, a strict implementation of his order would have required the sealing of his Punjabi Bagh residence, but his official residence could hardly be sealed. However, on 23rd October 2004, the promoter of one of the biggest developers of shopping malls and commercial complexes (Kabul Chawla of the BPTP group) was inducted in Pawan Impex as a 50% shareholder and Director. On the same day, the registered office of Pawan Impex was shifted back to 3/81 Punjabi Bagh. Soon thereafter, on 12/2/05, Kabul Chawla’s wife, Anjali Chawla was also inducted as Director.

On 8/4/05, Chetan and Nitin set up another company, Harpawan Constructors, this time with the object of constructing Commercial complexes. On 25/10/05, Purshottam Bagheria, another big builder of Delhi was inducted as a partner in this new enterprise. Soon after entering into partnership with the Sabharwals, Bagheria soon went on to announce his plans to develop “Square 1 Mall”, in Saket which was touted as one of the largest and most luxurious Malls in Delhi.

By 16th February 2006, when then Chief Justice Sabharwal passed the tough order setting in motion the sealing of commercial establishments operating in residential areas of Delhi, his sons were well on their way to entering the business of Malls and commercial complexes in a big way, having sewn up partnerships with two of the biggest Commercial estate developers in Delhi. This Commercial complex development business of the Sabharwals really took off thereafter. On 21/6/06, the share capital of Pawan Impex was increased from Rs. 1 lakh to Rs. 3 Crores. Immediately thereafter, on 30/9/06, the Chawlas of BPTP developers invested Rs.1.5 Crores (50%) in the company. On 22/8/06, Pawan Impex was given a loan of 28 Crores by the Union Bank of India, Connaught Place. The loan was secured by Mortgaging the “plant, machinery and other assets” lying at plot Nos A 3, 4, & 5 in Sector 125, Noida. There is no plant or machinery at these plots. Instead, a huge I.T. park (5 lac Sq Ft, worth hundreds of crores) is being constructed there by BPTP. When questioned about this, the General Manager of the Union Bank asserted that the Sabharwals had matched this by putting in 28 Crores of their own. When questioned further about this, he explained that this consisted of 3 crores of Share Capital, 7 Crores of unsecured loans! And 18 crores of “projected income from prospective buyers!” If every bank were as liberal to give loans on the security of projected income from prospective buyers, we would have had non performing assets of several lakh crores.

Interestingly, these 3 huge plots of 12,000 Sq. Metres in a prime sector of Noida were allotted to Pawan Impex on 29 Dec 2004 by the Mulayam Singh/Amar Singh government of U.P. at a rate of only Rs. 3,700/sq Metre, when the market price of commercial land here was at least Rs. 30,000/sq Metre at that time). This is itself a largesse of at least 30 Crores. These are however not the only plots in Noida allotted to the Sabharwals. Another huge commercial plot of 12,000 sq metres (plot 12A, in Sector 68, which appears to have been carved out later as an afterthought) was allotted to the other Sabharwal Company, Sabs exports, as recently as 10 November 2006, at a price of 4000 Rs/sq metre, when the market price of commercial plots there was at least 10 times as much. This meant a largesse of another 50 Crores! But these are not the only

plots allotted at throwaway prices to the Sabharwals. Sabs exports was earlier on 6, Nov 2000 allotted another 3 plots (C103, 104 and 105) of 800 Sq M each in Sector 63 at a rate of Rs. 2,100 each, when the market price was several times that. They also appear to have other plots in Sector 8 Noida, where they have recently constructed a fancy factory and Office Complex. This is on top of the allotment of a House Plot in the fancy Sector 44 of Noida to Justice Sabharwal's daughter in law, Sheeba Sabharwal in 2005. This was part of the infamous Noida allotment scam, where the media exposed that most allotments were made to V.I.P.s in a supposed draw of lots. Embarrassed by this exposure, the allotments had to be cancelled by the U.P. Government. Curiously, the CBI investigation into the allotments ordered by the Allahabad High Court was immediately stayed by Justice B.P. Singh of the Supreme Court. In this context, it is also very significant that the publication of the infamous Amar Singh tapes, which showed him involved in various crimes and sleaze was stayed by Justice Sabharwal himself on the matter being merely mentioned before him.

Thus, from owning small time export import firms till 2004, the Sabharwals in just two years time, got into the business of developing Commercial complexes and appear to be rolling in money. All this happened during the time when Justice Sabharwal was a senior judge and then Chief Justice, dealing with the sealing cases and passing orders which directly stood to benefit his sons and their partners. In this context, it is noteworthy that the Sabharwal sons Chetan and Nitin, have recently in March 2007, purchased a 1150 sq Yard bungalow, (B-9 Maharani Bagh, from the heirs of former Law Minister Jagannath Kaushal) for a stated consideration of Rs.16 Crores!

The IT Dept has finally woken up and has send a notice on 28th May 2007 to Pawan Impex seeking details of their business activities, accounts, assets, sources of funds etc. The matter however is more serious than that. The conduct of Justice Sabharwal and his sons appear to involve offences and misdemeanors beyond the Income Tax Act. In the first place, it was totally improper on his part to have heard the sealing case and passed orders in it, since his sons clearly stood to benefit from his orders. His orders are against the principles of natural justice, which say that no judge can hear a case in which he is personally interested. There was a serious conflict of interest in this case which renders his orders a nullity. It is in fact arguable that his dealing with this case in such circumstances involves an offence under the Prevention of Corruption Act.

In any case, the connections between the Mall and commercial complex developers need to be thoroughly probed, particularly to see how and to what extent they funded the activities and acquisition of assets of the Sabharwals. The acquisition of the entire assets of the Sabharwals needs to be thoroughly examined to see whether their acquisition can be legitimately explained. And the allotment of all the several plots to the companies or relatives of Justice Sabharwal needs to be investigated to see if undue favour was shown to them and if so whether there was any quid pro quo in terms of judicial orders.

We are conscious of and acknowledge the fact that Justice Sabharwal was a very competent judge, who during his tenure as a judge, issued some very exemplary orders on many issues. But that cannot absolve him from the misconduct highlighted above.

The facts thrown up in this case have very disturbing implications about the integrity of our judiciary in the highest places. It is bound to shake public confidence. Only a thorough investigation with full transparency will satisfy the public conscience. We call upon all the authorities including the government and the judiciary to ensure that a transparent, thorough and credible investigation into all the above aspects takes place and the full facts are placed before the people of this country.

This case also underlines the need for a National Judicial Commission (which is independent of the executive and the judiciary) with an investigative machinery under its control, which can investigate complaints against judges and take disciplinary action and initiate criminal action against them. The Campaign for Judicial Accountability and Reforms calls upon all sections of society to put pressure on Parliament and the government to bring a suitable Constitutional Amendment Bill for this purpose.