



Vedanta case: SC judge clarifies on bias charge

Can judges hear matter of companies they hold shares in? The Supreme Court says yes, but only if litigants fail to raise any objection to the hearing of a case by a judge who happens to be a shareholder of the company embroiled in the litigation, said Justice SH Kapadia on Monday, adding that the matter then cannot be raised later.

Justice Kapadia, likely to succeed Justice KG Balakrishnan as the next Chief Justice of India, made this observation while hearing entry tax matters involving various companies. All these entry tax matters will be heard by a Constitutional Bench, of which he is a part.

As part of the apex court's Forest Bench, he had heard a petition challenging mining of hills in Orissa by Sterlite Industries and had disclosed that he was a shareholder of the company. However, no one had then objected to his being part of the bench.

By a November 2007 verdict the Forest Bench had barred Britain's Vedanta Resources from mining bauxite in forested hills of Orissa but left the scope open for the project by asking Vedanta's Indian arm, Sterlite Industries, to come back with a fresh proposal on safeguarding the rights of local tribal population through a new investment firm.

"If anyone has even a single objection, please raise it," he said on Monday, adding, no lawyer was responding to the allegations raised in newspapers against him.

He said that under a 1999 Resolution passed in the Chief Justices Conference, if a judge is holding shares in a company involved in litigation before him, he should disclose it.

But if no objections were raised, it would be presumed that the parties have no problem.

"Thereafter any party won't be allowed to allege that fraud has been played. This is too serious. Nobody objected during the proceedings, which went on for four weeks," he said.

Agreeing with Justice Kapadia, senior counsel Harish Salve, a retainer for Vedanta, said that he had shares in Sterlite. "But after you (Forest Bench) said that there was no problem, I continued with the matter."

Supreme Court advocate Prashant Bhushan had raised the issue in an interview published in *Tehelka* magazine recently, saying judges must not hear cases where he/she has a conflict of interest.

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