
Confused signals

K. Vivek Reddy Posted online: Saturday , Nov 07, 2009 at 0329 hrs

If it is reasonable to think that a Supreme Court justice can be bought so cheap, the nation is in deeper trouble than I had imagined.” The recent recusal by Justice Raveendran from the RIL-RNRL case reminds one of the stirring words of Justice Antonin Scalia. He refused to recuse himself in a case where the former Vice-President Dick Cheney’s actions were being questioned, although he had earlier gone on a duck-hunting trip with a group which included Cheney.

There has been a spate of recusals from the Indian Supreme Court. What is puzzling is that Justice Raveendran, whose judgements reflect a rare combination of depth and simplicity, has in the same case and within few days offered two different standards for recusal of a judge. At the beginning of the RIL-RNRL dispute, Raveendran offered to recuse himself since he held shares in RIL and RNRL and counsel did not object to his presence. Within a few days after the hearing commenced, Raveendran recused himself because his daughter was working in a law firm which was advising (as opposed to the daughter herself) RIL in a global acquisition completely unrelated to the dispute before the court. And to add to the confusion, Justice Kapadia offered to recuse himself on account of holding shares in Sterlite when a case related to that company came up before him, while Justice Katju recused himself since his wife held shares in RIL when the RIL-NTPC dispute came up before him.

When faced with a conflict of interest what standard should judges across the country follow? Should judges recuse, or should they offer to recuse? The Supreme Court precedent and past history offer a clear guide.

The Supreme Court from its inception has consistently made a distinction between pecuniary and non-pecuniary interest. In case of a pecuniary interest, the judge has to automatically recuse himself and no further inquiry is required; once a judge has an interest in the outcome of the case, he is no longer an independent adjudicator. But in case of a non-pecuniary interest, the judge should recuse if there is a reasonable ground to believe that he will be biased on account of it. (Manak Lal v. Prem Chand, AIR 1957 SC 425)

Raveendran’s recusals are indeed ironical; he has offered to recuse when he ought to have recused on account of his pecuniary interest and actually recused himself when the non-pecuniary interest did not create any reasonable basis to attribute bias.

The Court’s history offers a useful guide. In 1964, Chief Justice P.B. Gajendragadkar was presiding over a bench examining the validity of the quantum of compensation paid for a land acquisition. Purushottam Trikamdass, the lion of the Bar, speaking for the landowners, asserted that Chief Justice Gajendragadkar should not hear the case since he had a pecuniary interest in the subject-matter, because he was a member of a co-operative society for which the land was being acquired. The Chief Justice asked the Attorney General C.K. Dattary whether he should recuse, and Dattary told the Chief Justice that he should. The Chief Justice reconstituted the Bench headed by Justice Subba Rao which declared the actions of the government unconstitutional.

The Supreme Court’s 1997 resolution titled “Restatement of Values of Judicial Life” — mandating a judge to disclose his shareholding interest and proceed with hearing the case only if there is no objection from the parties — does not accurately restate the legal position and should be revised for several reasons.

First, it is inconsistent with the law laid down by the Supreme Court. Holding shares in a company is a clear case of pecuniary interest, and the SC itself right from 1952 has affirmed that a pecuniary interest, however small, automatically disqualifies the judge. Even if a judge has a majority or a significant shareholding in a company, the 1997 Resolution allows the judge to proceed if counsel does not have any objection. The law declared by the SC is binding and prevails over a resolution.

Second, the resolution relies upon waiver by the counsel to shield the judge from any imputation of bias. When discretionary powers of judges have tremendously increased over the years, trusting counsel who routinely appear before the same judges in several cases day in and day out to object to their participation in one case is not exactly an ideal mechanism.

Raveendran's final recusal from the bench raises a larger question. Should a judge recuse merely because a party before the Court is a client of the law firm which employs a relative, irrespective of whether the relative is actually involved in advising the client? By this standard, any judge who has a relative working in a leading law firm would be barred from hearing any case of that firm. While Raveendran's offer of recusal diluted the recusal standard in case of pecuniary interest, Raveendran's recusal has over-extended the standard in case of non-pecuniary interest.

The writer practices in the AP High Court

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