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'Petitioners didn't have say on Kapadia presence'

Manoj Mitta TNN 13 October 2009, 01:46am IST

NEW DELHI: Supreme Court judge S H Kapadia's clarification on why he had decided a case involving a company in which he had shares has fuelled a conflict of interest controversy.

This is because his remarks last week in the court raised fresh questions about the manner in which he had substituted one Vedanta group company with another to take over a bauxite mining and aluminium refinery project in Orissa.

Responding to a conflict-of-interest allegation made against him by advocate Prashant Bhushan for the orders he had passed in the Vedanta case in 2007 and 2008, Kapadia cited two reasons for handing over the project to Sterlite Industries despite having shares in it.

One, that he had disclosed his interest in the court right at the outset, and two, that none of the parties concerned had objected to his presence on the special forest bench headed by Chief Justice of India. Justice Kapadia's explanation however glossed over the fact that he did not have the consent of any of the three parties who had initiated the challenge to the Vedanta project.

The consent of the three original petitioners, Biswajit Mohanty, Prafulla Samantra and Academy of Mountain Environics, was surely more important than that of the other parties who were anyway in favour of the project.

"Though we were the only aggrieved parties, none of us three petitioners got an opportunity to raise objections to Justice Kapadia's continuance on the bench," Samantra told TOI. This anomaly arose because, in keeping with the procedure followed by the forest bench, the petitioners were not made parties to the Supreme Court proceedings.

They had been parties only to the proceedings before the Central Empowered Committee (CEC), which subsequently recommended to the SC that the Centre's approval to the refinery project be revoked.

Thus, the only parties that could be said to have given their consent to Justice Kapadia's continuance on the bench were Vedanta Alumina Ltd (project proponent), Orissa Mining Corporation (the mining lease holder), the Orissa government (which is the promoter of the project), the Centre's environment ministry (which granted the approval to the refinery), and the

CEC (which is a creature of the court and was represented by amicus curiae).

Equally significant, the petitioners also contested the claim that Justice Kapadia had made the disclosure of his interest right at the outset.

For, in a case that had been dragging on since May 3, 2005, the judge made the disclosure of his shares in Sterlite only on October 26, 2007 when he was exploring the possibility of transferring the project to that listed company in preference to the unlisted Vedanta Aluminium. That also happened to be the last hearing of the case before Justice Kapadia delivered the first of his two verdicts in the Vedanta case on behalf of the forest bench on November 23, 2007.

Given the fact that the disclosure was made towards the end of the proceedings and given the denial of opportunity to the petitioners to raise objections, Justice Kapadia seems to have complied with the conflict-of-interest safeguard more in letter than in spirit.

Clause 11 of the Restatement of Judicial Values adopted by the SC judges in 1997 says: "A judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised."

Another major reason the conflict of interest controversy has not died down is the discovery of other Sterlite cases decided by Justice Kapadia. For instance, on March 19, 2007, a bench headed by Justice Kapadia upheld an appeal filed by Sterlite against Chennai's commissioner of customs.

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