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To,

The Editor
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Sub : Publication of interview with Sri Prashant Bushan on Niyamgiri Mining Leace matter under title : "Half of the last 16 Chief Justices were corrupt"

Sir,

I read the above item. There is an incidental remark in the last paragraph of the above item, as though Justice Kapadia of the Supreme Court should not have heard the above matter. In fact, Justice Kapadia openly disclosed the fact that he was having some shares in Sterlite, a listed company, and clearly indicated to the parties that if anyone of them had reservation in his hearing the matter, he would recuse himself. No one objected, and everyone impliedly wanted him to continue to deal with the matter. Only then he dealt with the matter.

According to the Code of Conduct for Judges, a judge has to disclose whether he has any share or other interests etc. in any of the parties and if any party even faintly objects to his dealing with the matter after such disclosure he should not deal with the matter.

According to my understanding of what happened, Justice Kapadia complied with this requirement of the code of conduct and that was all expected of him to do.

The mere fact that a judge holds some shares in a company will not per se automatically disqualify him, unless he has sizable controlling interest in the company by holding huge quantity of shares or if his wife or son or daughter or such close relative is a Director in it.

Most of the citizens having legitimately-earned-income, if any excess is left with them, will invariably invest in shares or in Govt. Bonds, or in fixed deposits in Banks etc. Such investments do not disqualify a Judge to deal with that company or the Bank as a Judge. Then, since all of us deposit our savings in some Nationalized or RBI recognized Banks and we get interest-income therefrom, we will all be disqualified to handle their cases as judges. This proposition is a little too much. Such remote interest as a small investor will not disqualify a judge. The judges of Supreme Court are having Chevrolet Optra cars. Are all of them disqualified to deal with any case pertaining to General Motors? Their small investment in shares is almost like this only. Such remote interest is inconsequential.

Moreover Justice Kapadia is a gem of a person. He is known for his impeccable integrity. He hailed from a very ordinary background. By the dint of his calibre, hardwork and scrupulous honesty he rose upto this level as a self-made man.

It would not be correct or fair to cast aspersions on the basis of this small, little thing particularly when he had complied with the requirements of the code of conduct in fairly disclosing his share-holding interest. If anyone wanted him to recuse himself, that person should have indicated it to him, since the very purpose of disclosure is to give that right to object. If there was a whisper of objection, a man of his calibre and integrity would have recused himself in a few seconds.

After allowing him to deal with the matter inspite of his voluntary disclosure of his share-holding-interest at the beginning of the case, after taking a chance before him, one can

not hurl this kind of allegation particularly after a judgment is given.

To cast aspersions on such a person of integrity and transparency after the case is over is not in the interests of our Judicial System. If people still have some faith in any institution in our country, it is our Judiciary. Of course, I am the one who raised my voice against growing corruption in Judiciary over three years back, when I was the President of the SCBA at that time, too. Of course there is rampant corruption in judiciary. Corruption has to be curbed. There can not be two opinions on this.

But if we cast slightest aspersion against good judges that may undermine the faith of the people in the Judicial System itself, which has to be avoided. The most surprising this is, the write-up does not even divulge the fact that Justice Kapadia openly disclosed his interest as a share-holder and wanted to know whether he could proceed with the matter. The write-up should have disclosed that Justice Kapadia did comply with the code of conduct, which he was expected to follow. I know certainly that my friend Shri Prashant would have surely said this too. But in the print, it is missing.

I have all appreciation for Tehalka for its bold and dynamic journalism. I have great admiration for my friend Sri Prashant for his endeavors to weed out corruption in judiciary. My only apprehension is, even by mistake, we should not cast aspersion against good people. The write-up while it mentioned about 8 Chief Justices being corrupt, and while it listed the names of a few Judges (viz. Justice Sabharwal, Justice Vijendra Jain, Justice V. Ramaswami, Justice Bhalla etc.), in the same breath, it refers to Justice Kapadia, in the last paragraph giving an impression as though he belongs to this class, which is wholly wrong. The author of this para knows that Justice Kapadia does not belong to that category at all. According to me, there are some more judges falling in the category mentioned by my friend Prashant. But Justice Kapadia known for his integrity does not fall in this

category at all. It may be open to one to say that the present code of conduct for Judges is inadequate and that even with slightest interest, a judge should have been disqualified to handle a case. But that will be going to extremes. All the judges are having Govt. accommodation, all of them are having telephones and cell-phones. These remote interests will not disqualify a judge. If Justice Kapadia has any controlling interest in the company by his huge-share holding, then I am sure that he would have recused himself even going beyond the code of conduct.

The write-up, in my view, should have, while mentioning about Justice Kapadia hearing Vedanta case also disclosed :

“What is the Code of Conduct required of him to follow?

“Whether he made a disclosure as per that Code? and

“Whether there was any whisper of objection by anyone to the hearing of the case by him?

If these 3 aspects had been discussed in the write-up without which it is really incomplete, no aspersion would have been cast against Justice Kapadia in the write-up at all or the attempted aspersion even otherwise would have paled into insignificance.

(M.N. KRISHNAMANI)
PRESIDENT, SUPREME COURT BAR ASSOCIATION

NB: I request the Editor Tehalka to publish this letter so that the people know that whatever was required of Justice Kapadia, he did exactly that.

Mr. Prashant Bhushan's Rejoinder

"Apropos Mr. Krishnamani's letter, I wish to clarify that my complaint against Justice Kapadia's actions in the Sterlite/Vedanta case was not that he had acted corruptly in a financial sense, but that having shares in Sterlite and still deciding its case involved him in a conflict of interest. His disclosure of his shareholding was not made to invite objections to his remaining on the bench, but in the context of Sterlite as opposed to Vedanta being a publicly listed company. Moreover, it was made in the hearing of November 2007 though he had heard the case from 2005. Most importantly, the only lawyers represented in the case were those of Vedanta Alumina Ltd (the project proponent), Orissa Mining Corporation (the mining lease holder), the Orissa government (the promoter of the project), the Centre's environment ministry (which granted the approval to the refinery), and the junior Amicus Curiae, Uday Lalit (since the senior Amicus, Mr. Harish Salve had a retainer from Vedanta). The only lawyer who could have objected to Justice Kapadia's hearing the matter was Sanjay Parikh who was representing the tribals in a connected writ petition. He was however prevented from speaking by Justice Pasayat on the bench, on three occasions when he tried to get up to speak. He was told in no uncertain terms that the Amicus could take care of the interests of the tribals and he would not be separately heard. In these circumstances, it is not proper to use the "code of conduct" to justify Justice Kapadia's hearing of the Sterlite/Vedanta case. Moreover, this internal code of conduct framed in a Chief Justice's conference, is faulty in this respect and in conflict with settled Indian and International law which says that any judge having any financial interest in a case must recuse himself from the case. There is no question of hearing it, whether or not the lawyers give their consent. Lawyers, who have to appear before the same judges every day are reluctant to object to a judge hearing a case, even if they feel that there is a significant conflict of interest.

However, I would again clarify that I do not bracket Justice Kapadia with judges who have been financially corrupt or who have committed other serious misconduct.

Prashant Bhushan"