

JUSTICE SABHARWAL'S DEFENCE BECOMES MURKIER: STIFLING PUBLIC EXPOSURE BY USING CONTEMPT POWERS

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Justice Sabharwal finally broke his silence in a signed piece in the Times of India. His defence proceeds by ignoring and sidestepping the inconvenient and emphasizing the irrelevant if it can evoke sympathy. To examine the adequacy of his defence, we need to see his defence against the gravamen of each charge against him.

Charge No. 1.

That his son's companies had shifted their registered offices to his official residence.

Justice Sabharwal's response:

That as soon as he came to know he ordered his son's to shift it back.

Our Rejoinder:

This is False. In April 2007, in a recorded interview with the Midday reporter M.K. Tayal he feigned total ignorance of the shifting of the offices to his official residence. In fact, the registered offices were shifted back from his official residence to his Punjabi Bagh residence exactly on the day that the BPTP mall developers became his sons partners, making it very risky to continue at his official residence. Copies of the document showing the date of induction of Kabul Chawla, the promoter and owner of BPTP in Pawan Impex Pvt. Ltd., one of the companies of Justice Sabharwal's sons, and Form no. 18 showing the shifting of the registered office from the official residence of Justice Sabharwal to his family residence on 23rd October 2004.

Charge No. 2:

That he called for and dealt with the sealing of commercial property case in March 2005, though it was not assigned to him. It is only the Chief Justice who can assign pending cases to various judges. He was not the CJI at that time.

Justice Sabharwal's response:

Justice Sabharwal does not answer this charge.

Charge No. 3.

That he did this exactly around the time that his sons got into partnerships with Mall and commercial complex developers, who stood to benefit from his sealing orders. The chain of events is as follows:

On 23rd October 2004, Kabul Chawla, the promoter of one of the biggest developers of shopping malls and commercial complexes, was inducted in Pawan Impex as a 50% shareholder and Director. On 12.02.2005, Kabul Chawla's wife, Anjali Chawla was also inducted as Director of Pawan Impex. On 17th March 2005, Justice Sabharwal ordered that the case dealing with the sealing of commercial establishments should also be heard along with the writ of M.C. Mehta, which was being heard by him. On 8th April 2005, Chetan Sabharwal and Nitin Sabharwal, two sons of Justice Sabharwal, set up another company, Harpawan Constructors, with the object of constructing Commercial complexes. On 25th October 2005, Purshottam Bagheria, one of the big builders on shopping malls and commercial complexes of Delhi was inducted as a partner in

Harpwan Constructors. On 16th February 2006, Justice Y. K. Sabharwal, who by that time had become the Chief Justice of India, passed a detailed order in the aforementioned case setting into motion the demolition and sealing in Delhi.

Justice Sabharwal's response:

That they were his sons friends. That Harpawan Constructors which was set up by his sons with the Mall developer Purshottam Bagheria did not do any business. In fact the courts under him got Bagheria's 1 MG road mall demolished. That his sons are not developing shopping malls but only an IT Park.

Our Rejoinder:

If so many Mall and commercial complex developers were his sons' close friends, then he should not have dealt with the case anyway since that creates an immediate conflict of interest. Moreover, why should they go into partnership with these developers who stood to benefit from Justice Sabharwal's orders, and that too exactly at the time when he seizes control of the sealing of commercial property case and starts dealing with it. He says that the company set up by his sons in partnership with Bagheria has not done any business. If so, why was this new company set up for developing commercial complexes in partnership with this builder? In an interview with ZNews Justice Sabharwal claims credit for the judiciary under him ordering the demolition of the illegal 1 MG road mall owned by Bagheria. But then why do his sons enter into partnerships with such an illegal builder whose buildings have had to be demolished by the Judiciary? And immediately after this partnership with the Sabharwals, Bagheria went on to announce the construction of "Square 1 mall" in Saket as the most fashionable mall in India. And all the fashion designers who had their shops and outlets at 1 MG road went on to buy space in the Square I mall. What is important to note here is that Bagheria and his partners at 1 MG road had already parted with all the space on 1 MG road. The demolition thus hurt the designers and others who had bought shops there, but did not hurt Bagheria who may have in fact benefited from it by clearing the land of his tenants and getting them to buy space at his new malls at Saket and elsewhere.

An IT park is also a commercial complex like any other. Many commercial establishments sealed were IT centres and BPOs which were forced to buy space in IT parks like that being constructed by his sons and their partners.

Charge No. 4.

That the Union Bank of India gave a loan of 28 crores to his sons' company Pavan Impex on a collateral of plant and machinery and other moveables at the site of their proposed IT Park, which were non-existent.

Justice Sabharwal's response:

That his sons' had a credit facility of 75 crores.

Our Rejoinder:

If that were the case, what was the need for mortgaging non-existent assets for obtaining this loan? Moreover, the Banks' senior manager is on record saying that the loan was given on the basis of projected sales to prospective customers.

Charge No. 5.

That because of the obvious conflict of interest, he could not have dealt with this case.

Justice Sabharwal's response:

That his orders have never benefited his sons.

Our Rejoinder:

His orders of sealing lakhs of commercial properties clearly forced those establishments to buy or rent space in commercial complexes like those that his sons' company was constructing; and shopping malls etc that their friends and partners were constructing. There was a clear conflict of interest and his orders have clearly benefited his sons and their partners.

Charge No. 6.

That a large number of industrial and commercial plots were allotted in Noida by the UP government to his sons' companies, at prices far below the market price. In particular several huge plots were allotted between December 2004 and November 2006 by the Mulayam Singh/Amar Singh government, while he was dealing with Amar Singh's tapes case, and had stayed the publication of those tapes on the behest of Amar Singh.

Justice Sabharwal's response:

That some of the plots were allotted by earlier different governments. That the prices were not far below the market price. That the allotments were made in the normal course to his sons who were entrepreneurs and were providing employment to hundreds of people in Noida.

Our Rejoinder:

Even if one were to look at only the last two allotments of 12,000 metres each made in December 2004 and November 2006, made by the Mulayam Singh/Amar Singh governments, it is obvious that the allotments are definitely not in the normal course. Consider the allotment to Pawan Impex. The company has Nil turnover and Nil business (as declared in their application) on the date of application on 30/12/04. The very next day they receive a letter from Noida Authority asking them to come for an interview within 4 days on 5/11/04. On that day the authority notes that they want 12,000 sq. M in Sector 125 or Sector 132. The minutes note that because the work of development of Sector 125 is not complete and because in sector 132 the plot size available is only upto 11,000 sq metres, the matter is deferred for the next meeting. In the next meeting on 13/12/04, though Sector 125 is still not developed, a decision is taken to allot them a 12,000 Sq. metre plot in Sector 125 for a BPO. All this without a word about how and why a company with nil business is worthy of being allotted one of the largest plots of 12,000 sq. meters. The previous application of M/s Softedge Solutions Pvt. Ltd for an IT park is rejected on the ground that they could not satisfactorily answer questions about their previous experience in IT and their technical tie up. But Pawan Impex represented by Chetan Sabharwal with Nil business, no previous track record in IT and no technical tie up sails through with no questions asked. All in the normal course, of course! Justice Sabharwal says that the allotment price of Rs. 3,700/sq M was not below the market price. The current circle rate in Sector 125 is Rs. 11,000/sq metre and the market price is over Rs. 30,000/sq meter there.

Similarly, the huge plot of 3 acres, No. 12 A in Sector 68 allotted to Sabs Exports in November 2006 at a throw away price of Rs. 4000 per square meter is also not in the normal course and was similarly made within days of application and a bogus interview, without any other system. Today, within 10 months of allotment, even the circle rate of plots in Sector 68 is Rs. 8,000 per sq. meter and the market rate is Rs. 20-22,000 per sq. meter. Moreover this allotment has been made at a time when he was dealing with Amar Singh's tapes case and had stayed the publication of the tapes.

Charge No. 7.

That his sons have purchased a 1150 square meter house in Maharani Bagh, New Delhi in March 2007 for a consideration of 15.46 crores. The source of money for this is

unexplained and in the sale deed they seek to conceal their relationship with Justice Sabharwal by writing his name as Yogesh Kumar and giving their factory address instead of the residential address.

Justice Sabharwal's response:

That 90 percent of the money for the purchase of this house was from four banks; that his sons concealed his full name in the sale deed in order to avoid taking advantage of their association with him.

Our Rejoinder:

Banks do not normally advance loans of 90% of the value of a property on its security. Otherwise they would end up holding inadequate security if the property prices fall by even 15%. If they have done so in this case, it is either because of an undue favour as in the case of the loan of 28 Crores to Pawan Impex, or they valued the property higher than the declared purchase price. His explanation for concealing his name in the sale deed is hilarious and unbelievable since his sons did not hesitate to use his official residence as the registered office of their companies. Moreover, this was in a registered sale deed with a private party, where there was no occasion for taking any advantage by using his name.

It is therefore clear that Justice Sabharwal is guilty of serious judicial misconduct and appears to be prima facie guilty of offences under the prevention of Corruption Act which need to be investigated. It is also significant that highly respected former Judges of Supreme Court of India like Justice V. R. Krishna Iyer, Justice P. B. Sawant, Justice J.S. Verma etc. have all called for a thorough investigation into this matter. This is imperative and could be done by a panel of retired Judges and other eminent members of civil society. We call upon the Chief Justice of India to constitute such an inquiry panel and request Justice Sabharwal to co-operate with it.

Silencing exposure of judicial corruption by contempt

Meanwhile the Delhi High Court has held the staff of Mid-day guilty of contempt of Court for publishing some of the above allegations in their newspaper in May this year. This is despite the fact that they had pleaded that the allegations were all true and based on unimpeachable, authentic and verifiable documents obtained essentially from the website of the Department of Company Affairs. However, without examining Mid-day's defence of truth, the High Court held them guilty on the basis that "*The nature of the revelations and the context in which they appear, though purporting to single out former Chief Justice of India, tarnishes the image of the Supreme Court. It tends to erode the confidence of the general public in the institution itself. The Supreme Court sits in divisions and every order is of a Bench. By imputing motive to its presiding member automatically sends a signal that the other members were dummies or were party to fulfill the ulterior design.*" It may be noted that Midday's allegations were only against Justice Sabharwal and they had not even mentioned any other judge in their reports.

We regard this view of the Court as highly pernicious, which would mean that even truthful exposure of corruption in the judiciary would not be permitted. This view will make a mockery of the basic principles of our democratic republic, which is founded on the premise that the people are, the real masters and all public servants including the judiciary are working on their behalf and are accountable to them. It would also render irrelevant the amendment in the Contempt of Courts Act by which truth was made a valid defence. A statement signed by several eminent persons in this regard is being issued today and the Campaign for Judicial Accountability and Reforms also fully endorses that Statement.