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Matters of Policy: It is in the public interest to monitor judicial conduct

LAW AND BEHOLD!

A.G. Noorani

'It cannot be stated sufficiently strongly that the public life of persons in authority must never admit of such charges being even framed against them. If they can be made, then an inquiry whether to establish them or to clear the name of the person charged, is called for.' What was sauce for Bihar's Chief Minister K.B. Sahay is sauce also for the former Chief Justice of India Y K. Sabharwal under CJI M. Hidayatullah's ruling. The charges are specific. Public interest mandates an enquiry A CM is subject to checks. A CM to none. That is the heart of the Mid-Day case. A citizen's right to publicise charges on the strength of documents and demand a probe. Mid-Day published on May 2, 2007, a report alleging that Justice Sabharwal "who nearly demolished half of Delhi to stop commercialisation of residential areas, had three commercial companies owned by his sons running from his official residence at 6, Motilal Nehru Place in New Delhi". It reproduced his denial of knowledge. The writers Vitusha Oberoi and M.K. Tayal [Editor and City Editor respectively] sought his explanations. "When questioned if the shifting of the registered office (of the companies from Punjabi Bagh residence) to Motilal Nehru Place was legal, Justice Sabharwal hung up."

Further reports appeared on May 18, 19 and 23. Pleas for probes by lawyers and others were published on May 19. Anand said, "If it's true he should be brought to book and must be prosecuted. This man demolished the whole of Delhi." However, on May 21, Anand placed before the Delhi High Court a copy of the issue of May 18 in which was published: "he alleged that a scandalous article maligning the former Chief Justice of India and tending to lower the image of the judiciary". Justices R.S. Sodhi and B.N. Chaturvedi issued showcause notices to the writers and to the printer and publisher S.K. Akhtar On May 25, Anand filed a copy of the issue of May 19 which carried a cartoon by M. Irfan Khan. They pleaded 'truth in the public interest', a defence explicitly permissible under an amendment to the Contempt of Courts Act; the reports were based on documents available on the website of the Registrar of Companies; Sabharwal was no longer in office; Sabharwal should not have sat on the bench which passed sealing orders on businesses which benefited his sons who invested in malls. On September 11, the court held the four guilty of contempt of court and sentenced them to four months imprisonment on September 21. There was justified uproar at the result. Mid-Day's reports said less than did a press release of August 3, issued by the Campaign for Judicial Accountability and Reforms, with 15 annexures of supporting documents. Its patrons comprise judges like Justice V R. Krishna Iyer, lawyers like Shanti Bhushan and public figures like Arudhati Roy and Admiral R.H. Tahiliani. It was entitled 'Whither judicial accountability? The case of Justice Sabharwal. Disquieting facts, disturbing implications'. Its criticisms are valid. "While the power of higher judiciary has greatly increased... Its accountability has been gradually reduced... A draconian contempt law has been used to silence any public and media scrutiny of judicial misconduct." It sets out succinctly facts regarding the sealing orders and the "havoc and panic" they caused. "Many questioned the excessive zeal with which the Court supervised and monitored the sealing drive. More than a lakh shops and commercial establishments were shut down... and were forced to shift to shopping malls and commercial complexes... The prices of shops and offices in ... malls doubled and tripled almost overnight making many people question

whether the sealing drive was being undertaken for the benefit of mall and commercial complex developers. All this is a matter of public record. What is not publicly known is that during this time that these orders were being made by Justice Sabharwal, his two sons Chetan and Nitin, who until then had small export import business, had entered into partnerships with big mall and commercial complex developers and had become big commercial complex developers themselves." It adds, "From owning small time export import firms till 2004, the Sabharwals in just two years time, got into the business of developing commercial complexes and appear to be rolling in money All this happened during the time when Justice Sabharwal was a senior judge and then Chief Justice, dealing with the sealing cases and passing orders, which directly stood to benefit his sons and their partners." All it asks for is "a thorough investigation with full transparency" and a National Judicial Commission with power to "investigate complaints against judges and take appropriate action". No such body exists even in a case of a brazen corruption. The impeachment process and the in-house mechanism are shams. The Government of India Act, 1935, provided for inquiry by the Federal Court. Justice S.E Sinha of the Allahabad High Court was removed from office in 1949 for 'judicial misconduct'. The court propounded a good test. Sinha's judgements in two cases "were of such a nature as to induce a belief in the mind of the public that they were actuated by corrupt motives". Public criticism is the only check on judicial conduct. In 1952, a bench of five of the Supreme Court's most distinguished judges ruled: "The article in question is a scurrilous attack on the integrity and honesty of a judicial officer, specific instances have been given where the officer is alleged to have taken bribes or behaved with impropriety to litigants who did not satisfy his dishonest demands. If the allegations were true, obviously it would be to the benefit of public to bring those matters into light." Truth was accepted as a defence. In 1993, a bench of three judges held it was not, without referring to the ruling by a larger bench. So much for judicial discipline. In its wake, a series of rulings on contempt followed, each against the citizens; most notably in Arundhati Roy's cases in 1999 and 2001 in unjudicial language. In 1969 Lord Salmon said, "If

there is a just cause for challenging the integrity of a judge... it could not be contempt of court to do so. Indeed it would be a public duty to bring the relevant facts to light". Instead, it has expanded its own power flouting constitutional limitation and built a fence for its own protection. In 1991, the court directed that no criminal case should be registered against judges of the High Court or the Supreme Court "unless the CJI is consulted in the matter". If he holds that it is not a fit case for proceeding under the Prevention of Corruption Act, "the case shall not be registered". Dissenting, two judges pointed out that it was for Parliament not the Court, to issue the fiat in "a naked usurpation of legislative power in a virgin field". This is particularly true of its rulings on appointment to itself and to High Courts, which give it a decisive voice flouting the Constitution.



OFF WITH THEIR HEADS! From *Alice in Wonderland* by John Tenniel