

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORM

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Dated: January 6, 2008

To
The Hon'ble the Chief Justice of India,
Supreme Court of India,
Tilak Marg,
New Delhi

Dear Sir,

SUB. : RESPONSE TO THE DEFENCE OF MR. ASHWINI KUMAR MATA IN THE MATTER REGARDING HIS
APPOINTMENT AS JUDGE OF THE HON'BLE DELHI HIGH COURT

On November 7, 2008, the Campaign for Judicial Accountability and Reform had made a representation to the Collegium of this Hon'ble Court and to that of the High Court of Delhi regarding the proposed appointment of one Shri Ashwini Kumar Mata, Senior Advocate, Delhi High Court, as a Judge of the Hon'ble High Court.(hereinafter referred to as "**the Representation**")

In our representation we had pointed out certain disturbing facts, borne out by documentary evidence, which *prima facie* demonstrated Shri Mata's involvement in the commission of several acts of misconduct including forgery, fabrication of documents, cheating and corruption to illegally take possession and get ownership of a property situated in Safdarjung Enclave, New Delhi.

The evidence obtained by us, and annexed to the Representation, indicated Mr.Mata's complicity in the forgery of an agreement to sell which he subsequently utilised, in the absence of a sale deed, for the mutation of the property in his name. He did this despite the fact that the presence of a Sale Deed is absolutely essential for the mutation of property by the MCD, in collusion with corrupt officials within the MCD.

Pursuant to the inspection of files and documents in the MCD in 2003, Mr Joshi discovered the fraud perpetrated upon him by Mr. Mata apparently acting in collusion with the builder. Consequently Mr. Joshi filed a complaint before the Economic Offences Wing (EOW) of the Delhi Police, however, the EOW failed to register an FIR into the matter and Mr.Mata used his influence to avoid the filing of an FIR till Mr. Joshi moved an application before the Chief Judicial Magistrate under Section 156 (3) of the Criminal Procedure Code,1906, in which the CMM directed the EOW, Delhi Police to file an FIR.

Following this, in a bid to pressurise the owner, Mr. Mata referred certain disputes relating to the property to arbitration before a close aide, Mr. Vijay K Sondhi, Advocate and Partner, Luthra and Luthra Law Offices, who passed an ex-parte award ordering status quo to be maintained with respect to the entire building including those parts that were not within the purview of the alleged Agreement to sell and hence not a subject matter for arbitration.

It was subsequently discovered that the builder's father, who held a General Power of Attorney with respect to the property in favour of Mr. Joshi, had executed a fresh GPA in favour of Mr. Vijay Sondhi, the arbitrator and nominee of Mr. Mata. Mr. Sondhi, having an interest in the said property, and being the nominee of Mr. Ashwini Kumar Mata did not disclose this material fact to the parties before initiating arbitration proceedings with respect to the said property.

In view of the aforementioned facts and circumstances of the matter, all of which were duly supported by documentary evidence annexed to the representation dated November 7, 2008, it appears that Mr. Mata seems to have committed at least the following three serious acts of misconduct. Firstly, Mr. Mata got forged the signature of Mr. Joshi on the agreement to sell. Secondly, he fraudulently, and in collusion with the officials and members of the MCD, effected the mutation of the property in his favour, on the basis of fabricated documents and in the absence of a Sale Deed. Thirdly, he appointed his own nominee and power of attorney holder in respect of the property, Mr. Vijay Sondhi as sole arbitrator and subsequently attempted to use the illegal arbitral proceedings for his own unlawful gain and for the unlawful loss to others.

Consequent to the Representation, Shri Mata met the Hon'ble Chief Justice of the High Court at Delhi and presented his defence to the allegations raised against him. He has apparently stated that the Charge Sheet filed by the Police, in the case filed against him, had exonerated him. He further is said to have stated that he had no role to play in the forgery which had been carried out by the Builder. He explained away the presence of two inconsistent copies of the Sale Agreement (both of which he had relied upon, one before the MCD for mutation and another before the Arbitrator for obtaining the ex parte status quo order) stating that the same had been executed in counter parts so that one original could be kept with him and the other retained by the builder. He also stated, with reference to the mutation of the property, that it was in the usual course of things that properties were mutated merely on the basis of an agreement to sell and without the Sale Deed. With reference to the Arbitration before Mr. Sondhi, he claimed that the property had been the subject matter of an earlier Arbitration in which an award was passed in his favour and hence he had a valid right over the property, despite the fact that that arbitration did not involve the owner and was only between Mr. Mata and the builder.

I wish to bring to your notice the following facts and circumstances which lead to the inescapable conclusion that the forgery of the owner's signature was done at the instance of Mr. Mata and why his defence does not hold water.

1. The Stamp Paper of Rs.10 on which the Agreement is executed was bought in the name of Mrs. Firoza Mata, Shri Mata's wife.
2. Mr. Mata's explanation for executing two counterparts of the Agreement so that one original could stay with him while the other with the builder, does not explain the reason why there are different witnesses in both the Agreements and why one bears the forged signatures of Mr.Joshi while the other does not. It is also pertinent to note that all the aforementioned facts along with the fact that the print and margins of both agreements are different makes it reasonable to assume that both were not executed as counterparts.
3. The witnesses in both agreements are different. In the first Agreement, Mr. Prem Ballabh Nangain and Mr. S. K. Das signed as witnesses however neither witness provided his address in the document. In the second Agreement Mr. Surinder Yadav and Mr. Prem Ballabh Nangain signed as witnesses and provided their complete address. All the witnesses to the Agreement are Shri Mata's people and are, or were, employees of Luthra and Luthra Law offices, New Delhi, in which Mr. Vijay Sondhi is a partner, at the point of time when the documents were executed. Mr. Vijay Sondhi has also been named the sole arbitrator in the Sale agreement despite him being a close friend of Mr. Mata, obviously by Mr. Mata himself.
4. Neither document is registered.
5. Mr. Mata filed both agreements. One with the MCD for mutation of the property and the other with Mr. Vijay Sondhi in the course of the arbitration initiated by him against the builder, Mr. Girish Chopra on November 10, 2003. It is therefore evident that Mr. Mata was in possession of both agreements and was therefore obviously aware of the inconsistencies therein.
6. Had the builder forged the Agreements he would have forged both counterparts rather than just one. It is also reasonable to assume that the builder would have retained atleast one of the copies in accordance with the stated reason for executing the Agreement in counterparts.
7. The forged agreement was recovered by the Police from Shri Mata's residence.

Mr. Mata also placed reliance on the charge sheet of the Police, dated November 12, 2008 which found that he was innocent. The Charge Sheet was filed pursuant to the FIR registered by the Police on a complaint made by Shri N.K.Joshi to the Economic Offences Wing, Crime Branch, New Delhi (hereinafter referred to as "**the Charge Sheet**"). Certain facts and inconsistencies in the Charge Sheet that raise doubts about its integrity are as follows:

1. The Charge Sheet seems to have been hurriedly filed soon after our representation to the Hon'ble Chief Justice of the High Court of Delhi regarding the appointment of Shri Mata, so much so that the Police did not even wait for the forensic report of the handwriting expert examining the documents. This is evident from page 14 of the Charge Sheet.

2. The Charge Sheet has not come to any finding regarding who forged the signatures of the owner in the document.
3. The Charge Sheet states that Shri Mata claimed that the Agreement was executed by Shri G.L.Chopra in counterparts so that both parties could retain an original of the Agreement, which is absurd as explained above.
4. The MCD states that the forged agreement to sell was filed by Shri Mata "to get assessment finalised separately and mutation in their favour for realisation of property taxes only". Shri Mata, however, also submitted the copy of the Agreement that does not bear the signatures of Mr.Joshi for conversion of the property to freehold to the MCD thereby showing that he was in possession of both counterparts, contrary to the stated intent for having executed the Agreement in counterparts in the first place.
5. Both Mr. Surinder Yadav and Prem Ballabh Nangain confirmed that two sets of originals were prepared, despite there being different witnesses to both documents, a forgery in one of them and the apparent difference in typeface.
6. The Charge Sheet goes into a host of irrelevant matters and is filed on an irrelevant basis. It makes much of how Mr. Joshi got a copy of the mutation documents from the MCD rather going into the substance of the complaint and investigating the illegalities complained of.

The MCD seems to have stated that mutation is often affected only on the basis of an Agreement to sell. This is patently illegal in the absence of a Sale Deed especially when it was clear from the agreement that the full consideration had not been paid for the property. Furthermore the General Power of Attorney executed by Mr. N.K.Joshi in favour of the builder's father, Mr. G.L.Chopra stated clearly that the builder could only sell his share of the property after the construction of the building till the first and second floors and servants quarters was complete and the share of Mr. N.K.Joshi handed over to him. It is but reasonable to assume that Mr.Mata, being a senior lawyer and having relied on the aforementioned Power of Attorney before the MCD, would have checked whether the terms contingent to the Power of Attorney had been fulfilled and whether his title over the property was unencumbered, with the owner, Mr. N.K.Joshi.

Another fact that points to the culpability of Shri Mata is the appointment of Mr. Vijay Sondhi as sole arbitrator in the agreement to sell. Mr. Vijay Sondhi is admittedly a close friend of Mr. Mata who even represented Mr. Mata before the MCD. Furthermore, Mr. Sondhi also held, in favour of Mr. Mata, the Power of Attorney of Shri G.L.Chopra who in turn held the Power of Attorney of Mr.N.K.Joshi. It was therefore Mr.Sondhi's statutory duty to disclose his interest in the matter before presiding as sole Arbitrator. In fact, as sole Arbitrator, despite Mr. N.K.Joshi's objection to the arbitration proceedings, Mr.Sondhi went as far as passing an ex parte order of status quo on December 19, 2003, even with respect to the ground and third floor of the property which was clearly not the subject matter of the arbitration between the builder and Shri Mata.

In view of the aforementioned facts and circumstances of the matter, it appears that Mr. Mata seems to have been intimately involved in the commission of at least the following three misdemeanours. Firstly, Mr. Mata got forged the signature of Mr. Joshi on the agreement to sell. Secondly, he fraudulently, and in collusion with the officials and members of the MCD, effected the mutation of the property in his favour, on the basis of fabricated documents and in the absence of a Sale Deed. Thirdly, he appointed his own nominee and power of attorney holder in respect of the property, Mr Vijay Sondhi as sole arbitrator and subsequently attempted to use the illegal arbitral proceedings for his own unlawful gain and for the unlawful loss to others.

I submit that in matters regarding the appointment of Judges, especially to the higher judiciary, it is advisable to err on the side of caution as, once appointed, it is virtually impossible to have a Judge removed. This has become evident from the recent case of Justice Soumitro Sen in which no action has been taken despite a recommendation by your Lordship for his impeachment, and several other cases.

In light of the aforementioned facts we therefore request you not to recommend the appointment of Mr.Mata as a judge of the Hon'ble High Court of Delhi.

With warm regards.

(Prashant BHUSHAN)

For The Campaign for Judicial Accountability and Reforms

Encl:

Copy of the Charge Sheet dated November 12, 2008

Copy of the Sale Agreement dated November 23, 2000 submitted to the MCD

Copy of the Sale Agreement dated November 23, 2000 submitted to the Arbitrator

Copy to:

Hon'ble Justice B.N.Agrawal

Hon'ble Justice A. Pasayat

Hon'ble Justice S.B. Sinha

Hon'ble Justice S.H. Kapadia

Hon'ble Justice D. Bhandari

Hon'ble Justice D.K. Jain

Hon'ble Justice M. Katju

Hon'ble Justice M. K. Sarma

Prime Minister of India

Union Minister for Law and Justice

Speaker Lok Sabha