

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND JUDICIAL REFORMS

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PRESS RELEASE

On 28/3/05, the then additional S.P. of Noida wrote to the District Magistrate of Noida that during his investigation into the criminal activities of Moti Goel, a leader of a land Mafia of U.P., it had come to his knowledge that Mr. Goel had sold land in Noida, through power of attorney, to some people including one Renu Bhalla. He recommended a proper investigation into the land transactions by a revenue official. The then Dist. Magistrate marked the matter for inquiry to the SDM, Noida. (Annexure A).

On 21/6/05 and 30/9/05, the SDM of Noida wrote letters to the DM that a land Mafia led by a notorious criminal, Moti Goel, was operating in Noida, which was grabbing public land in connivance with public officials and then selling parts of it to influential persons at very low prices to buy their influence. He cited the example of Renu Bhalla who happens to be the wife of Justice Jagdish Bhalla, then a senior judge of the Lucknow Bench of the Allahabad High Court, who had purchased 7,200 sq Meters of land from this Mafia at a price of Rs. 5 lacs, when the market price of the land was supposed to have been over Rs. 7 crores, and even the circle rate was well over the purchase price. (Annexure B)

When these facts came to the notice of the Committee on Judicial Accountability, its members wrote to the then Chief Justice on 12/7/06 bringing these facts to his knowledge. Copies of the letters of the Addl S.P., the A.D.M. and the sale deeds were also sent to the Chief Justice. (Annexure C) The COJA pointed out that these facts, *prima facie*, indicated serious misconduct on the part of the Judge since the said sale at this unconscionably low price could only have been made by the sellers in order to purchase the influence of the judge. This was particularly significant because they had several civil and criminal cases pending against them in various courts of U.P. which Justice Bhalla may have been in a position to influence. COJA therefore requested the Chief Justice to have a thorough investigation made into the matter by an investigating agency under their control.

On 7th July, 2006, Justice Bhalla ordered the constitution of a special bench, well after court hours, to hear a case of Reliance Infocomm in which his own son, Aarohi Bhalla was the counsel. This was despite the fact that the Lucknow Bench did not have territorial jurisdiction to hear this case, since it concerned Noida, which

was within the territorial jurisdiction of the Allahabad bench. Nevertheless, this bench proceeded to hear and dispose off, the yet to be numbered, petition at a midnight hearing by issuing an order in favour of Justice Bhalla's son's clients.

On learning these facts, COJA sent another communication to the then Chief Justice dated 28/7/06, bringing these facts to his notice, and seeking an investigation and action into this as well, including immediate transfer of the Judge. (Annexure D)

However no action was taken by the then Chief Justice on either of these complaints. On 1/11/06, COJA therefore wrote to the Chief Justice seeking his consent for registering an FIR on the matter of purchase of land in Noida in the name of Justice Bhalla's wife, so that at least a police investigation could be made in this matter which *prima facie* appeared to constitute an offence under the Prevention of Corruption Act. This was required since the Supreme Court had decreed in the Veeraswami case in 1991 that no FIR can be registered against any sitting judge without the consent of the Chief Justice of India. (Annexure E)

However, not only was no action taken on this complaint, but the Supreme Court collegium (with some dissensions) on 14/12/06, recommended his promotion as the Chief Justice of Kerala. On coming to know of this, Mr. Shanti Bhushan immediately wrote to the President, the Prime Minister etc. calling upon them to initiate impeachment proceedings against Justice Bhalla. (Annexure F)

That thereafter, on coming to know that two judges of the Supreme Court who were from Allahabad, who needed to be consulted in the matter of appointment of Justice Bhalla as Chief Justice, were not consulted, COJA again wrote to the President vide letter dated 3/2/07 informing him of this and asking him to send the matter back to the collegium for completing the process of consultation. (Annexure G)

Meanwhile Justice Balakrishnan became the Chief Justice of India. Vide letter dated 20/3/07, Mr. Shanti Bhushan wrote to him as well about the lack of consultation of the judges from Allahabad in the recommendation for appointment of Justice Bhalla as Chief Justice of Kerala. He again requested the Chief Justice to meet senior members of COJA to discuss the matter. (Annexure H)

Though no impeachment proceedings were initiated, the then President returned the recommendation of Justice Bhalla's appointment, as Chief Justice, to the Government for reconsideration, which was then returned by the PM to the Chief Justice. Since the recommendation of the collegium was not unanimous and therefore not binding on the government, that proposal was dropped.

However, soon thereafter a new proposal was initiated for transferring Justice Bhalla to Chhatisgarh. This proposal was accepted and Justice Bhalla was transferred as puisne judge of Chattisgarh. However, immediately on his reaching

there, he was appointed as acting Chief Justice of Chhatisgarh by a notification issued by the Law Ministry. As soon as this became known, Mr. Shanti Bhushan again wrote to the President on 12/4/07, pointing out that a person who had been found unfit to be appointed a Chief Justice must not be allowed to remain Acting Chief Justice, in which capacity he discharges all the functions of the regular Chief Justice. (Annexure I). However, Justice Bhalla has functioned as the acting Chief Justice of Chhatisgarh for the last 7 months.

Recently, it has been learnt that Justice Bhalla has been recommended by the collegium to be promoted and appointed as the regular Chief Justice of the Uttarakhand High Court. It has been learnt that this recommendation has been made by the Chief Justice of India despite the strong dissent of the Senior-most puisne judge of the Supreme Court.

It is in such circumstances that we are constrained to bring these facts to the notice of the people of the country by this press release. The above facts bring to light a distressing state of affairs in the judiciary, wherein, despite the existence of serious charges of Misconduct against a senior judge of the High Court, made by responsible persons on the basis of documentary evidence, not only is no inquiry or investigation made, but he is repeatedly recommended for appointment as the Chief Justice of various High Courts. This is despite the strong dissent by a senior judge of the collegium as well as the refusal of assent by the President to the initial recommendation for appointment as Chief Justice. And this without even consulting some of the judges from Allahabad who needed to be consulted in the matter. This indicates that the Code of Conduct which is said to have been adopted in the Chief Justice's Conference in 1999, and which envisages an in house inquiry by a judges committee into such charges against sitting judges is non functional. It also indicates serious problems in the working of the system of judicial appointments and transfers. Also, no permission is given by the Chief Justice for even registering an FIR in the matter, so that at least a normal criminal investigation could take place on a charge which is *prima facie* an offence under the Prevention of Corruption Act.

In such circumstances, since all other attempts for an independent investigation into the facts have failed, there is no option left except for Members of Parliament to initiate a motion which may lead to the ultimate removal (impeachment) of the Judge under the Judges Inquiry Act, 1968. Members of Parliament are the only persons qualified to initiate such a motion. The motion will have to be signed by 100 M.P.s of the Lok Sabha, or 50 M.P.s of the Rajya Sabha. On admission of the motion a 3 member Inquiry Committee would then be constituted by the Speaker, Lok Sabha / Chairman, Rajya Sabha, to inquire into the charges. This committee will consist only of Judges / Jurists; they will frame definite charges against the concerned Judge on the basis of which an investigation will be held. The person against whom the charges are made would then get a full opportunity in the investigation proceedings to defend himself before his peers. At the conclusion of the investigation the Committee will submit its report to the Speaker / Chairman stating the findings on each of the charges, after which the

report will be laid before the House. If the Report of the Committee contains a finding that the Judge is not guilty of any misbehaviour then the motion shall lapse, otherwise the motion, together with the report of the Committee will be taken up for consideration by the House or Houses of Parliament in which it is pending and then proceeded with under the Constitutional Provisions relating to impeachment.

We Therefore urge all Hon'ble Members of Parliament, cutting across party lines to sign the motion for initiation of Proceedings under the Judges Inquiry Act, 1968. By doing so they would initiate (there is now no other way) the necessary statutory Inquiry into the conduct of the Judge in question; by signing the motion the Members of Parliament will not be prejudging anything, much less the Judge's guilt or innocence. They will only be setting in motion (on the basis of existing data set out above) an investigation proceedings which would lead ultimately either to impeachment or exoneration of the Judge of charges on misbehaviour. By signing the motion the Hon'ble members will be affirming their firm commitment to maintaining and upholding the rule of law and the Constitution.

RAM JETHMALANI

SHANTI BHUSHAN

FALI S. NARIMAN