

This is the text of the letter written by Chief Justice of India, K.G.Balakrishnan to Prime Minister Manmohan Singh recommending removal of Mr. Justice Soumitra Sen, Judge of the Calcutta High Court.

Dear Prime Minister,

I write this to recommend that the proceedings contemplated by Article 217(1) read with Article 124(4) of the Constitution be initiated for removal of Mr. Justice Soumitra Sen, Judge, Calcutta High Court.

2. Mr. Justice Soumitra Sen was a practising advocate of Calcutta High Court before he was appointed as a Judge of that High Court, with effect from December 3, 2003. In Civil Suit No. 8 of 1983, filed by Steel Authority of India Limited against Shipping Corporation of India Limited and Ors., Calcutta High Court vide order dated April 30, 1984 appointed him as a Receiver to make an inventory of certain goods which had been imported and then rejected by Steel Authority of India Limited and to sell those goods and hold the sale proceeds to the credit of the Suit. After preparation of inventory and sale of the goods, the Receiver was directed to deduct 5 % of the sale price towards his remuneration, keep the balance in a separate bank account in a bank of his choice and to hold the same free from lien or encumbrances, subject to further orders of the Court.

3. Justice Soumitra Sen was also appointed as a Special Officer by Calcutta High Court in another case (an Appeal arising out of C.P. No. 226 of 1996). In that case (C.P. No. 226 of 1996), the High Court had directed payment of Rs. 70,00,000/- to the workers of Calcutta Fans, a company in liquidation and Mr. Justice Soumitra Sen, then a practising Advocate, was appointed as a Special Officer to disburse that amount to the workers, S.B. Account No. 01SLP0013400 was opened by him for that purpose and the amount of Rs. 70,00,000/- meant for disbursement for workers was deposited in that account on February 7, 1997. A sum of Rs. 25,00,000/- from Special Officer's account was invested by Justice Soumitra Sen with a company M/s. Lynx India Ltd., which, later on went into liquidation.

4. On March 7, 2002, Steel Authority of India Limited (Plaintiff) wrote a letter to the Receiver asking him to furnish information and detailed particulars about the sale proceeds received by him and the amount of interest which had accrued thereon. The Receiver did not supply the information sought by the Plaintiff. Thereupon, the Plaintiffs filed an application (GA No. 875/2003) for direction to the Receiver to handover the sale proceeds and render true and faithful account of all the moneys held by him. No affidavit was, however, filed by the Receiver inspite of the notice being served on him. When the application came-up for hearing before a Single Judge of the Calcutta High Court, the Receiver, who, by that time been elevated to the Calcutta High Court, did not come forward to assist the Court either by filing an affidavit or by giving information through any lawyer or recognized agent, despite service of the copy of the application on him.

5. The High Court, then proceeded to summon the purchaser of goods as well as various bank officials and vide order dated 10th April, 2006 noted that the Receiver had collected in all, a sum of Rs.33,22,800/- from the purchaser of goods and the amount thus collected had been kept by the Receiver in S.B. A/c No. 01SLPO632800 with Standard & Chartered Bank (erstwhile ANZ Grindlays Bank) and Account No. 9902 with Allahabad Bank, Stephen House Branch, Calcutta and was later on withdrawn and diverted by him. Drafts amounting to Rs. 28,72,800/- were encashed in Account No. 01SLPO632800 with Standard & Chartered Bank and drafts of Rs. 4,50,000/- were encashed in Account No. 9902 of Allahabad Bank. The High Court found that Demand Drafts amounting to Rs. 28,72,800/- were encashed in S.B. Account No. 01SLPO632800 with Standard Chartered Bank. On April 19, 1995 and May 6, 1995 a sum of Rs. 8,73,968/- was withdrawn from S.B. Account No. 01SLPO632800 to invest in an FDR, which, later on, along with accrued interest (total amounting to Rs. 10,91,011.49) was brought back by encashment on 22nd May, 1997. Another sum of Rs. 11,92,909.92 was also brought back in that account on 22nd May, 1997. A sum of Rs. 22,83,000/- was transferred, on the instructions of the Receiver, from that account to S.B. A/c No. 01SLP0813400 (the account opened by him as Special Officer in case of Calcutta Fans) in the same bank on 22nd May, 1997.

6. The entire amount in the bank accounts was gradually withdrawn by the Receiver so as to reduce the balance to Rs. 811.56 in S.B. A/c No. 01SLP0813400 and Rs. 2,340.08 in S.B. A/c No. 01SLPO632800 as on May 31, 1999. Both the Accounts were closed on March 22, 2000 and May 21, 2002 respectively.

7. The learned Single Judge of Calcutta High Court concluded that the Receiver had converted and appropriated, prima facie, the said amount, lying in his custody, without authority of the Court and the act & conduct of the erstwhile Receiver was nothing short of criminal misappropriation. The learned Judge noted that the Receiver having been entrusted with the money by the Court and being an Officer of the Court, was required to keep it in a S.B. Account and ought not to have withdrawn the same without specific leave of the Court. The Court felt that the Receiver had betrayed the trust and confidence reposed in him by the Court and therefore had to make good of the losses suffered for his act.

8. The learned Judge, after adjustment of the amount deposited by the Receiver during the pendency of the application, directed him to deposit Rs. 52,46,454/- which included interest on the amount appropriated by him. Pursuant to the above-referred order of Calcutta High Court, Justice Soumitra Sen (the erstwhile Receiver) deposited money in terms of the Order of the Court. In all, a total sum of Rs. 57,65,204/- was deposited by him.

9. Reports appeared in newspapers concerning the conduct of Justice Soumitra Sen in the above-noted matter. The then Chief Justice of Calcutta High Court withdrew judicial work from him and wrote a letter dated 25th November, 2006 to my learned predecessor bringing the matter to his notice for appropriate action.

10. On 1st July, 2007 I sought a comprehensive report from the Chief Justice of Calcutta High Court along with his views about Justice Soumitra Sen. On 12th July, 2007 Justice Soumitra Sen called on me, on advice of his Chief Justice and verbally explained his conduct. He sent his report to me on 20th August, 2007.

11. After depositing the money, Justice Soumitra Sen filed an application bearing No. GA 3763 of 2006 praying for recalling/withdrawing/deleting the observations made against him in the order dated 10th April, 2006. The application was dismissed by the learned Single Judge of the High Court, vide order dated 31st July, 2007. An Appeal was filed by the mother of Justice Soumitra Sen challenging the order of the learned Single Judge dated 31st July, 2007. Vide order dated 25th September 2007 a Division Bench of Calcutta High Court noted that the erstwhile Receiver had complied with direction of the Court by depositing the entire amount, besides a substantial amount towards interest. The Division Bench felt that the scope and ambit of the application No. GA 875/2003, filed by Steel Authority of India Limited, did not contemplate any enquiry into the personal accounts of erstwhile Receiver. The Division Bench noted that the parties to the Suit never made any allegation of misappropriation by the Receiver and that the Receiver had never refused to discharge his obligation to refund the money held by him. The Division Bench did not find any material to say that the erstwhile Receiver utilised any amount for his personal gain and felt that the observations/remarks against the erstwhile Receiver were uncalled for and unwarranted. The Division Bench was of the view that the learned Single Judge had travelled beyond the scope and ambit of the application filed by the Plaintiff. The Division Bench directed the Department to delete all The observations made against the erstwhile Receiver in the order passed by the learned Single Judge on 10th April, 2006.

12. On 10th September, 2007 I had asked Justice Soumitra Sen to furnish his fresh and final response to the judicial observations made against him. After seeking more time for this purpose he furnished his response on 28th September, 2007 requesting that he may be allowed to resume duties in view of the order of the Division Bench of Calcutta High Court.

13. Since I felt that a deeper probe was required to be made into the allegations made against Justice Soumitra Sen, to bring the matter to a logical conclusion, I constituted a three Member Committee consisting of Justice A.P. Shah (Chief Justice, Madras High Court), Justice A.K. Patnaik (Chief Justice, High Court of Madhya Pradesh) and Justice R.M. Lodha (Judge, Rajasthan High Court), as envisaged in the 'In-House Procedure' adopted by Supreme Court and various High Courts, to conduct a fact finding enquiry, wherein the Judge concerned would be entitled to appear and have his say in the proceedings.

14. The Committee submitted its report dated 1st February, 2008, after calling for relevant records and considering the submission made by Justice Soumitra Sen, who appeared in-person before the Committee. The Committee inter alia concluded that:

(a) Shri Soumitra Sen did not have honest intention right from the year 1993 since he mixed the money received as a Receiver and his personal money and converted Receiver's money to his own use:

(b) There has been misappropriation (at least temporary) of the sale proceeds since:

i. he received Rs. 24,57,000/- between 25th February 1993 to 10th January, 1995 but the balance in the Account No. 01SLPO632800 on 28th February, 1995 was only Rs.8,83,963.05.

ii. a sum of Rs. 22,83,000/- was transferred by him from that account to Account No. 01SLPO813400 and, thereafter, almost entire amount was withdrawn in a couple of months reducing the balance to the bare minimum of Rs. 811.56, thus, diverting the entire sale proceeds for his own use and with dishonest intention.

c) he gave false explanation to the court that an amount of Rs. 25,00,000/- was invested from the account where the sale proceeds were kept, whereas, in fact, the amount of Rs. 25,00,000/- was withdrawn from Special Officer's Account No. 01SLPO813400 and not from 01SLPO632800, in which the sale proceeds were deposited;

d) mere monetary recompense under the compulsion of judicial order does not obliterate breach of trust and misappropriation of Receiver's funds for his personal gain;

e) the conduct of Shri Soumitra Sen had brought disrepute to the high judicial office and dishonour to the institution of judiciary, undermining the faith and confidence reposed by the public in the administration of justice.

In the opinion of the Committee misconduct disclosed is so serious that it calls for initiation of proceedings for his removal.

15. A copy of the Report dated 6th February, 2008 of the Committee was forwarded by me to Justice Soumitra Sen and in terms of the In-House procedure, he was advised to resign or seek voluntary retirement. Thereupon, Justice Soumitra Sen made a detailed representation dated 25th February, 2008 seeking reconsideration of the decision of his removal and sought a personal hearing. On 16th March, 2008 a Collegium consisting of myself, Justice B.N. Agrawal and Justice Ashok Bhan (Seniormost Judges of Supreme Court) gave a hearing to Justice Soumitra Sen and reiterated the advice given to him to submit his resignation or seek voluntary retirement on or before 2nd April, 2008. However, vide his letter dated 26th March, 2008 Justice Soumitra Sen expressed his inability to tender resignation or seek voluntary retirement.

In view of the foregoing, it is requested that proceedings for removal of Justice Soumitra Sen be initiated in accordance with the procedure prescribed in the Constitution.

With warm regards,

Yours sincerely

(K.G. Balakrishnan)

Hon'ble Dr. Manmohan Singh,
Prime Minister of India,
7, Race Course Road,
New Delhi-110011.