

Printed from

THE TIMES OF INDIA

CJI didn't make judge's defence public

14 Mar 2009, 0419 hrs IST, Manoj Mitta, TNN

NEW DELHI: While recommending the impeachment of Calcutta HC judge Soumitra Sen on the basis of an in-house probe, CJI K G Balakrishnan admitted in his letter to the Prime Minister last year that the affected judge had made a "detailed representation" seeking reconsideration of the decision. Justice Balakrishnan, however, did not disclose Justice Sen's representation dated February 25, 2008.

TOI had obtained a copy of this 33-page document, which may have a vital bearing on the notice of impeachment submitted last month by 58 Opposition MPs in Rajya Sabha. At any rate, this might well have been a major reason why law minister H R Bhardwaj said in Lok Sabha that he did not see any merit in the CJI's move against Justice Sen.

All that Justice Balakrishnan had divulged in his August 2008 letter to Manmohan Singh was the findings of the three-judge in-house committee headed by Justice A P Shah. TOI uncovered Justice Sen's defence on each of the findings, which held him guilty of "misconduct" in his earlier avatar as a lawyer who had allegedly misappropriated huge amounts in two high court cases where he had been appointed as a receiver and special officer, respectively. Excerpts:

Committee's finding: "Soumitra Sen did not have honest intention right from the year 1983 since he mixed the money received as a receiver and his personal money and converted receiver's money to his own use."

Sen's defence: "In spite of knowing that the drafts issued by the purchaser were in my personal name and that I had no option but to encash the same in an account standing in my name, the enquiry committee has held that the private money and trust money has been interchangeably used... Since I was to keep the purchase consideration in a separate account, the need to withdraw the same arose." Sen was, however, silent on why he chose to invest Rs 25 lakh as fixed deposits with a little known company that went into liquidation, Lynx India, rather than a well established bank.

Committee's finding: "There has been misappropriation (at least temporary) of the sale proceeds" since there was a substantial depletion of money in the accounts under his control.

Sen's defence: "There is not an iota of evidence to suggest that I have withdrawn any amount from any account for my personal benefit. Mere suspicion is not enough to hold a person guilty of a very serious criminal charge of misappropriation unless it is backed up with adequate evidence beyond reasonable doubt." He backed this assertion with a clean chit he got from a two-judge bench of the high court overruling an adverse order from a single-judge bench.

Sen also lamented that the committee had "picked up" some portion of his written arguments to accuse him of perjury. "If any one has any semblance of human feelings he would understand my predicament and my state of mind at that point of time. I was almost like a mad dog hounded by all, and at the same time I was expected to keep my sanity intact and answer all intricate questions of accounting relying upon my memory."

Committee's finding: "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. 01 SLP O813400 and not from 01 SLP O632800, in which the sale proceeds were deposited."

Sen's defence: "I fail to understand as to why this issue of deposit of Rs 25 lakhs is being blown out of proportion... There was no embargo upon me with regard to dealing with the money... The transfer of money from one account for creation of fixed deposit and another account for payment of workers' dues do not constitute misappropriation. At best it can be case of mishandling of account."

Committee's finding: "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."

Sen's defence: "As a receiver, I could not have handed over the money without a direction from court. It was not even possible for me to hand over the amount as there was a controversy with regard to the quantum received by me towards consideration."

Committee's finding: "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."

Sen's defence: "A judgment of a court cannot be treated as a complaint. Even if the allegations made by the single judge against me are treated as a complaint, such allegations as on date do not exist in the eyes of law in view of the judgment of the division bench. If those allegations do not exist, then the question of starting an enquiry under the in house procedure could not have arisen."

Powered by Indiatimes

[About Us](#) | [Advertise with Us](#) | [Careers @ TL](#) | [Terms of Use](#) | [Privacy Policy](#) | [Feedback](#) | [Sitemap](#)

Copyright © 2009 Bennett Coleman & Co. Ltd. All rights reserved. For reprint rights: [Times Syndication Service](#)

This site is best viewed with Internet Explorer 6.0 or higher; Firefox 2.0 or higher at a minimum screen resolution of 1024x768