

Dushyant Dave

Senior Advocate

To,

Date:16.08.2019

Hon'be The Chief Justice of India and
Hon'ble Judges of the Supreme Court of India
Tilak Marg
New Delhi - 110 001.

Respected Lordships,

Namaskar!

- 1) On 12th January, 2018 addressing a Press Conference, four Hon'ble Judges of the Supreme Court declared, *"...administration of the Supreme Court is not in order and many things which are less than desirable have happened in the last few months..."*. In a seven page letter addressed to the then Chief Justice of India, the Justices had stated, *"...It is too well settled in the jurisprudence of this country that the chief justice is only first amongst the equals -- nothing more or nothing less"*. The letter reads,

"It is with great anguish and concern that we have thought it proper to address this letter to you so as to highlight certain judicial orders passed by this court which has adversely affected the overall functioning of the justice delivering system...There have been instances where cases having far reaching

consequences for the nation and the institution have been assigned by the Chief Justices of this court selectively to the benches 'of their preference' without any rationale basis for such assignment. This must be guarded against at all costs".

My Lord, The Chief Justice, even went to the extent of justifying the Press Conference and the letter by stating, "*It is a discharge of debt to the nation which we have done*".

- 2) Unfortunately, far from improved administration in the Supreme Court, situation has worsened. Cases having far reaching consequences for the nation and the institution and cases involving political overtones, have been systematically assigned to the benches of "preference" without any rationale basis for such assignment. Since, October 2018, far from guarding against the same "at all costs" the allocation of matters and Constitution of Benches, have left a lot to be desired. It is not necessary to illustrate the list of such cases except to say that they are far too many.

- 3) But, the Chief Justice of India surprised the entire legal fraternity when he constituted Benches for the Summer Vacation for 2019 which included besides himself, Hon'ble Justice Mr. Arun Mishra, from amongst the senior most of the judges. This was surprising because generally, if never,

Senior Judges did not sit on Vacation Benches. Whatever, may have been the justification, it has at least resulted in shocking outcome in few matters heard during Summer Vacation.

4) In one such matter, Bench comprising of Hon'ble Mr. Justice Arun Mishra and Hon'ble Mr. Justice MR Shah took up Civil Appeal No. 9023 of 2018 (*Parsa Kenta Collieries Ltd. versus Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*) on 21.05.2019;

- i) Without matter having been ordered to be heard during summer vacation by any regular bench,
- ii) Without there being any urgency in the matter whatsoever.

Parsa Kenta Collieries Ltd. is a part of the Adani Group.

The Appeal arose out of SLP (C) No. 18586 of 2018 in which Leave was granted only on 24.08.2018 by Bench comprising of Hon'ble Mr. Justice Nariman and Hon'ble Justice Malhotra.

On 8th April, 2019 notice published by Registrar Judicial (I) and (II), bearing No. F.05/Judl.I/2019 stated that during Summer Vacation, Regular hearing matters will be taken up "as per guidelines and norms approved by the Hon'ble The Chief Justice of India". By circular of Additional Registrar

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dated 09.05.2019, "cases which were to be listed during Summer Vacation 2019 as per directions of Hon'ble Court" was published.

Surprisingly this Civil Appeal was included at Serial No. 441 at the end, with a remark "in the month of May 2019". Totally different from remarks in rest of the matters. Now, it is unclear if this matter falls within "guidelines and norms approved by Hon'ble Chief Justice of India". But one thing is clear that it was not a matter which was directed to be listed during Summer Vacation 2019 "as per directions of Hon'ble Court" as per available Court record on website". In fact order dated 14.3.2019 of Registrar, Mr. R.K. Goel, shows matter was not ready for hearing and was to be listed "before he Hon'ble Court as per rules". So who ordered it to be listed and why is a very serious question. How was it listed on 21.05.2019 as Item No. 120 in the list issued on 17.05.2019 is another mystery.

Without any proper justification, the bench took up the matter on 21.05.2019 and passed following order:

"Heard the arguments of Mr. Ranjit Kumar, Ld. Senior Counsel appearing for the appellant.

List tomorrow i.e. Wednesday, the 22nd May, 2019 for further arguments."

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On 22.05.2019, the Court heard the matter and passed the following order:

"Heard Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant and Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the respondent.

Arguments concluded.

Judgment reserved."

I am informed that other Counsels appearing in the matter were neither informed nor their consent was obtained for the same.

Did the Bench inquire into its urgency? Seems not. Did the Bench take up other matters for hearing which were older and urgent? Seems unclear.

Ultimately, by Judgment and Order pronounced on 29.05.2019, the Civil Appeal was partly allowed.

- 5) Again, on 23.05.2019, the same bench entertained mentioning of an early hearing application (I.A No. 83095) of 2019 in C.A. No. 11133 of 2011 (*M/s Adani Power (Mundra) Ltd. Versus Gujarat Electricity Regulatory Commission and Ors.*) and following order was passed:

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"List the main matter tomorrow i.e. 24.05.2019 for hearing".

On 24.05.2019, the Court passed following order:

"Heard Mr. Gopal Jain, Ld. Senior Counsel appearing for the appellant and Mr. M.G. Ramachandran, learned Senior Counsel appearing for the respondent.

Hearing concluded.

Judgment reserved."

Last time this matter came for effective hearing was on 01.02.2017 before Hon'ble Mr. Justice Chelameswar and Hon'ble Mr. Justice Sapre when it was adjourned with following order:

"As prayed for, list the matters next week".

For some reasons, it was never listed thereafter, before any bench.

The application for early hearing should not have been therefore entertained during vacation as it did not fall within the ambit of circulars dated 29 April, 2019 bearing F.NO. 14/Jul./2019 and 07.03.2019 bearing F.No.4/Judl/2019 issued by the Secretary General.

I have been told by Mr. M.G. Ramachandran, that request was made on behalf of the Advocate-on-Record for the Respondent, not to take up the matter during vacation on 23.05.2019, on account of non-availability of the AOR as also the Senior Counsel briefed in the matter. Even on 24.05.2019, the Junior Advocate from office of AOR stood up to re-iterate the request, although out of abundant caution, Mr. MG Ramachandran Senior Advocate was briefed, but the bench did not pay any heed to the request made by the Junior Advocate and proceeded to hear the matter straightaway.

- 6) I am told that the total benefit to this Corporate Client from these two judgments will run into thousands of Crores.
- 7) Clearly, hearing and disposal of these two (2) appeals have been done in complete contravention of the settled practice of the Supreme Court as also its established Procedure. Both these matters were listed, taken up and heard without any justification, and in hurry and in an improper manner. As a result, besides causing grave injury to public interest and public revenue, it has caused immense damage to the image of the Supreme Court and the administration of Justice. It is disturbing that the Supreme Court of India should take up regular matters of a large corporate house during summer vacation in such a cavalier fashion and decide them

in it's favour. It raises very serious and disturbing question as to whether the Registry had sought concurrence from the Hon'ble Chief Justice for listing such matters and if not whether the Registry became party to such listing in violation of it's own Practice and Procedure. But most of all, why were the two matters listed before the Bench presided by Hon'ble Mr. Justice Arun Mishra when other benches were available during May 2019 vacation?

And why did this Bench take up the same?

- 8) Surely, large Corporate Litigants are not entitled to Justice for the Asking.
- 9) It may not be out of place to mention that same group's two earlier matters have been allowed by Judgments rendered by Hon'ble Mr. Justice Arun Mishra speaking for the Court. On 29.01.2019, C.A. No. 1261 of 2019 (*Adani Gas Limited & Anr. Versus Union of India*), arising from SLP (C) No. 21986 of 2015 was decided. This Special Leave Petition first came up before the Court on 10.08.2015 and after that it appeared before diverse benches on innumerable occasions between 2017 and 2018 and ultimately was listed before Hon'ble Mr. Justice Arun Mishra and Hon'ble Mr. Justice Navin Sinha on 04.07.2018, although Coram Members of the previous benches including Hon'ble Mr. Justice Abhay Manohar Sapre were available. The roster of the work for cases published on

02.07.2018 discloses that “Appeals against orders of statutory bodies“ (which the above matter was) were assigned to the bench of Hon’ble Mr. Justice A.K. Sikri and the Bench presided by Hon’ble Mr. Justice Arun Mishra did not have the subject category anywhere near the said matter.

So, how did the matter reach there is another serious question to be looked into.

- 10) On 29th May, 2018, C.A. No 415 of 2007 (*Tata Power Company Ltd. Versus Adani Electricity Mumbai Ltd.*), was decided, dismissing appeals of Tata Power by directing that “*the amount which is payable to Reliance Energy Ltd., deposited or secured by way of bank guarantee by TPC as per order dated 07.02.2007 along with interest lying with the Registrar of this Court as per agreement of the Counsel for Reliance Energy Limited and Adani Electricity Mumbai Limited be paid to Adani Electricity Mumbai Limited*”. Incidentally, it was only in August 2018, that Adani Limited had completed acquisition of Reliance Infra’s Power Business.

Handbook of Practice and Procedure published by Supreme Court shows that matters ought to have been listed before available Coram Judge from previous Benches. Why was this practice not followed is a mystery. Did Registry play foul in this regard?

- 11) My Lords, I am not in any manner commenting on the merits or otherwise of the Judgments referred above. Nor am I suggesting anything other than procedural violations which resulted in these matters being taken up by the Benches presided by Hon'ble Mr. Justice Arun Mishra. To say the least, such listings appear to be extremely unjustified as per established practice and procedure followed by this Hon'ble Court. As a matter of fact, in SMW (C) No. 1 of 2019 (*"In Re: Matter of Great Public Importance Touching upon the Independence of Judiciary"*), Bench presided by Hon'ble Mr. Justice Arun Mishra, passed an order on 24.04.2019, observing; .

"Considering the seriousness of the allegations as the system has absolutely no place for such fixers, we cannot leave the matter at that. It becomes our responsibility to keep this Institution clean as well as to ensure that the image of this Institution is not tarnished by such allegations to undertake the probe in the matter."

What should a Citizen make out of all these?

- 12) In the past too, during the tenure of Hon'ble the Chief Justice K.N Singh, several matters of a corporate house, were heard and decided by the Bench presided by him in a

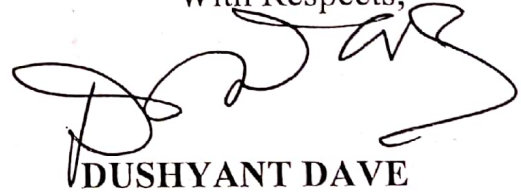
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questionable manner giving relief to it. Following outcry from the bar and the then Attorney General, the then Chief Justice of India, Hon'ble Mr. Justice H.J. Kania, acted swiftly and decisively to recall those judgments. This restored the image and reputation of the Supreme Court besides sub serving rule of law.

- 13) My Lords, being an officer of the Court, I deem it my duty to draw your Lordships attention to the above happenings. I do hope and trust that you would look into the matter and take corrective steps as deemed appropriate to protect this institution.

With Respects,



DUSHYANT DAVE

Senior Advocate

Supreme Court of India

DISCLAIMER:

I must inform your Lordships that I have appeared as a lawyer for Adani group companies over the years including before Rajasthan HC in *Parsa Kenta Collieries Ltd. versus Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*