

DUSHYANT DAVE
SENIOR ADVOCATE

11th February 2015

To,

Shri H.L. Dattu

Hon'ble the Chief Justice of India

And

His companion Hon'ble Justices of the Collegium

Dear Sirs,

In furtherance to my letter dated 6th February 2015 I would like to invite your kind attention to the following events supported by judicial record which do raise extremely discomfoting questions about the judicial conduct of Chief Justice Mohit Shah. These have been brought to my notice now but I would sincerely request you to consider the same forthwith before any irreparable damage is caused to the Highest Court.

A Writ Petition being Special Civil Application No.24233/2007 was filed in the Gujarat High Court by Essar Oil Ltd. and Ors. vs. State of Gujarat and Ors. seeking benefit of sales tax and other exemptions amounting to approximately ten thousand crores in respect of Essar's Oil Refinery.

The Bench presided by Mr. Jus. Mohit Shah had issued notice in the said matter on 20.9.2007. On 21.1.2008 the same Bench issued "Rule" and made it returnable on 19.2.2008 that is for final hearing.

It appears that in the meanwhile on 13.2.2008 that is before 19.2.2008, the roster for allocation of matters changed and the subject matter of the above Writ Petition was to be heard and decided by the Bench presided by then Chief Justice Mr. Y.R.Meena and Mr. Jus. J.C.Upadhaya.

The Writ Petition would have come before the new Bench in ordinary course on 19.2.2008, the date fixed for final hearing. However on 18.2.2008 it was notified that the Bench presided by Jus. Meena would not be available and therefore naturally all the matters including the above Writ Petition would not be taken up.

Taking advantage of the absence of the Chief Justice and to take the Writ Petition back to the Court of Mr. Jus. Mohit Shah, Civil Application No.1828/2008 was filed on 18.2.2008 by Essar Oil Ltd. The said application was mentioned (since it was not listed) before the Bench presided by Mr. Jus. Mohit Shah on 19.2.2008.

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However the main Writ Petition SCA no. 24233/2007 was not on board before that Bench as it was not even notified.

What happened on that day reflects sorry state of affairs in the judicial system and reflects directly on the conduct of Mr. Jus. Mohit Shah which is described succinctly in an Affidavit filed by Mr. Uday Hudlikar, Joint General Manger (Legal) of Essar Oil Ltd. dated 29.2.2008 filed in the said proceedings. (copy enclosed and paragraph 3, 4, 5, 6 & 8 be kindly perused).

This Affidavit was necessitated because apparently the Writ Petition was coming up for final hearing before the Bench presided by Chief Justice Meena on 29.2.2008 and therefore it was necessary to prevent any fresh hearing.

Apparently to overcome the difficulty then realized to the effect that the Writ Petition was disposed on 19.2.2008 even though it was not listed and could not be listed since it was already notified before another Court, Bench presided by Mr. Jus. Mohit Shah, passed an Order dated 28.2.2008 disposing in Civil Application No. 1828/2008 and directed that the main Writ Petition be placed for final hearing before appropriate Bench. This Order appears to be an afterthought and was to overcome the embarrassment on account of the fact that though main Writ Petition was not fixed on 19.2.2008, it was purportedly heard and decided by dictating a judgment in open Court.

On 29.2.2008 the Bench preside by Chief Justice Meena passed an Order in view of the Affidavit of Mr. Hudlikar stating that Writ Petition was indeed disposed off on 19.2.2008, which was also the stand of the Ld. Advocate of Essar, inter-alia, observing,

“But there is no such judgment dated 19.2.2008 on the file. On the contrary, a copy of the oral Order dated 28.2.2008 passed on the Civil Application No. 1828/2008 in SCA No. 24233/2007 is found on record.... ..

It appears from the record that the main matter i.e. Special Civil Application No. 24233/2007 was not listed for hearing on 19.2.2008.”

The Court therefore directed that to reconcile the controversy on account of inconsistency of facts pointed out by the Ld. Adv of Essar Oil the Court would like to see what was the true position and therefore listed the matter on 12.3.2008.”

On 12.3.2008 the matter was adjourned and came up again on 2.4.2008 before the Bench of Chief Justice Meena who after recording all these events sent the matter back to the Court of Jus. Mohit Shah by directing as under:

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“Ld. Sr. Adv. Shri Nanavati submits that the Order which was dictated in open Court on disposal of the petition, should be given effect and petition should not be heard a fresh again as the petition was already disposed on 19.2.2008.

Whether the petition was disposed of finally on 19.2.2008 or not, that concerned Bench consisting of Hon’ble Mr. Jus. M.S. Shah and Hon’ble Ravi R Tripathi knows it better. Therefore, to avoid further controversy, we deem it proper that the matter be placed the same Bench on 4.4.2008 to pass appropriate Orders after hearing both the parties.

List it on 4.4.2008.”

On 4.4.2008 was the matter was adjourned and ultimately by a judgment and Order dated 22.4.2008 the Writ Petition was allowed by the Division Bench presided by Mr. Jus. Mohit Shah and directed that Essar Oil ltd. be given the benefit of tax exemptions.

This judgment was carried in appeal to the Hon’ble Supreme Court of India by State of Gujarat & Ors. in CA No. 599/2012 which was decided on January 17th,2012 (2013 3 SCC 522), allowing the appeal and the judgment of Gujarat High Court was set aside.

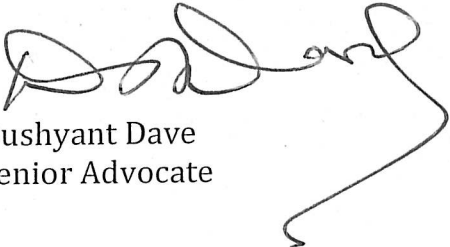
The serious questions that arise on account of above disturbing events are:

- (1) Why was Essar Oil Ltd. so keen to have its Writ Petition heard by the Bench presided by Mr. Jus. Mohit Shah only as evidenced by its attempt to take the matter to that Court by filing a CA No.1828/2008 which was mentioned on 19.2.2008, although the Writ Petition according to roaster was to be heard by the Bench presided by Chief Justice Meena with effect from 13.2.2008.
- (2) What actually happened on 19.2.2008 before the Court of Court presided by Mohit Shah is not only intriguing but shocking since on the one hand High Court record do not show any judgment and Order disposing off the Writ Petition while Essar filed an Affidavit on 28.2.2008 in the Writ Petition categorically stating that Writ Petition was heard and disposed of by a judgment delivered in open Court on 19.2.2008, which fact was repeated by Essar’s Senior Advocate before the Court on 29.2.2008 and 2.4.2008.
- (3) Clearly the Order purportedly passed on 28.2.2008 in CA No. 1828/2008 was an afterthought because as claimed in the Affidavit of Essar’s Legal Manager judgment was not only pronounced but in fact on the same day was intimated by Essar to its Directors and Financial Institutions and was duly published in local newspapers (see para 6 of

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- his Affidavit). Further according to him certified copy of the said judgment dated 19/2/2008 was already applied for on 25.2.2008".
- (4) If Writ Petition 24233/2007 was itself not listed on 19.2.2008 and could not be listed on account of change of roster before Bench presided by Mr. Jus. Mohit Shah, how was it heard and disposed off?
 - (5) How was then the High Court record fabricated and or tempered with to show that no judgment was delivered on 19.2.2008 and instead the civil application no.1828/2008 was shown to have been disposed off only and that to by Order dated 28.2.2008?
 - (6) Why is it that Chief Justice Meena did not take any action on the administrative side about the episode showing serious lapses by the Registry?

I therefore request you in view of this material to reconsider and recall, if the Collegium has indeed taken any decision to recommend the name of Chief Justice Mr. Mohit Shah for being elevated to the Supreme Court of India in the interests of the entire Judiciary and the dignity of the Supreme Court of India.


Dushyant Dave
Senior Advocate

Enclosed:

- (1) Order of Gujarat High Court dated 20.9.2007.
- (2) Order of Gujarat High Court dated 21.1.2008.
- (3) Affidavit of Uday Hudlikar , GM of Essar
- (4) Order of Gujarat High Court dated 28.2.2008 in CA 1828/2008
- (5) Order of Gujarat High Court dated 29.2.200
- (6)
- (7).0008
- (8) Order of Gujarat High Court dated 2.4.2008
- (9) Judgment and Order of the Gujarat High Court dated 22.4.2008