

DUSHYANT DAVE
SENIOR ADVOCATE

6th February 2015

To,
Hon'ble The Chief Justice of India
And
Companion Hon'ble Judges of the Collegium
of the Supreme Court of India

Respected
2nd Dear Chief Justice

I write to you with deep anguish in view of the reports appearing in the Newspapers today about the meeting of the Collegium to consider possible appointments to the Supreme Court of India.

I must begin this letter by acknowledging that presently the Collegium commands universal respect. The legal fraternity has high hopes from You.

I invite your kind attention to the judgment of the Constitutional Bench of this Hon'ble Court in Supreme Court Advocate-on-Record Association v. Union of India, (1993) 4 SCC 441 which has empowered you to make appointments and transfers in the Higher Judiciary. I would particularly like to invite your kind attention to a majority judgment rendered by the Hon'ble Justice Mr. J.S. Verma which administers with the following caution;

*"O, it is excellent,
To have a giant strength;
But it is tyrannous,
To use it like a giant." (See Para 437)*

The very foundation of the judgment and exercise of powers by Your Lordship is expressed in the following words;

"It is well known that the appointment of the superior judges is from amongst persons of mature age with known background and reputation in the legal profession... It is, therefore, time that all the Constitutional functionaries involved in the process of appointment of superior judges should be fully alive to the serious implications of their

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Constitutional obligation and zealous in its discharge in order to ensure that the no doubtful appointment can be made. This is not difficult to achieve.” (See Para 431)

It is further required as a condition precedent as to who should be considered and appointed to the Highest Judiciary in the following clear words;

“The constitutional purpose to be served by these provisions is to select the best from amongst those available for appointment as Judges of the superior judiciary, after consultation with those functionaries who are best suited to make the selection. It is obvious that only those persons should be considered fit for appointment as Judges of the superior judiciary who combine the attributes essential for making an able, independent and fearless judge. Several attributes together combine to constitute such a personality. Legal expertise, ability to handle cases, proper personal conduct and ethical behaviour, firmness and fearlessness are obvious essential attributes of a person suitable for appointment as a superior Judge. The initial appointment of Judges in the High Courts is made from the Bar and the subordinate judiciary. Appointment to the Supreme Court is mainly from amongst High Court Judges, and on occasion directly from the Bar. The arena of performance of those men are the courts, it is, therefore, obvious that the maximum opportunity for adjudging their ability and traits, is in the courts and, therefore, the Judges are best suited to assess their true worth and fitness for appointment as judges. This is obviously the reason for introducing the requirement of consultation with the Chief Justice of India in the matter of appointment of all Judges, and with the Chief Justice of the High Court in the case of appointment of a Judge in a High Court. Even the personal traits of the members of the Bar and the Judges are quite often fully known to the Chief Justice of India and the Chief Justice of the High Court who get such information from various sources.” (See Para 462)

Best selection from amongst those available is the fundamental requirement. Independence and Fearlessness are essential attributes.

However, legal expertise or the ability to write good judgments is not the sole criteria. Proper personal conduct is of equal if not greater importance. Personal traits of the Judges are equally relevant.

Yet, it is being rumored that the Collegium is likely to consider the case of Chief Justice Mr. Mohit S. Shah.

Sirs, presently there are many outstanding Judges available in various High Courts' including Hon'ble Chief Justices with legal Ability, Fearlessness and impeccable personal conduct. Some of them left large and lucrative legal practices to become Judges and have been waiting in the wings for being elevated. I need not name them because they are well known to Your Lordships as also the entire Legal Community.

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It is well known that Chief Justice Mr. Mohit S. Shah has been considered by the Collegium on more than one occasion and rejected on account of, amongst other things, serious and improper personal conduct and personal traits. His conduct was wholly unbecoming of a Judge and affected both his "professional duties" as a Judge and administrator (as a puny Judge, as a Collegium member and as the acting Chief Justice). But most of all this lowered the image of the Judiciary of Gujarat to a great extent. Thus, Chief Justice Mr. Mohit S. Shah forfeited his right to be considered for Higher Judiciary long ago on account of his own conduct.

I believe there was enough material against him on various counts when his case was considered and rejected by the previous Collegiums. I would request that such material be made public in larger good of the Judiciary and the Nation.

Reconsideration of the Chief Justice Mr. Mohit S. Shah case would not only be contrary to the Constitutional Bench judgment, which binds you as well, but would be grossly improper and will seriously impact the reputation and goodwill of the Hon'ble Supreme Court of India. Chief Justice Shah's case does not call for reconsideration on any count.

There is one more disturbing fact that I must bring to Your kind notice. In CBI v. Amitbhai Anil Chandra Shah, (2012) 10 SCC 545, this Hon'ble Court while granting bail to Mr. Amit Shah in Sohrabuddin trial had while transferring cases from Gujarat to Mumbai in Maharashtra observed as under;

"In another decision in Ravindra Pal Singh v. Santosh Kumar Jaiswal and others, this Court directed for transfer of the case outside State because some of the accused in a case of fake encounter were policemen. The case in hand has far stronger reasons for being transferred outside the State. We, accordingly, direct for the transfer of Special Case No.05/2010 pending in the court of Additional Chief Metropolitan Magistrate, CBI, Court Room No.2, Mirzapur, Ahmedabad titled CBI versus D.G. Vanzara & Others to the court of CBI, Bombay. The Registrar General of the Gujarat High Court is directed to collect the entire record of the case from the court of Additional Chief Metropolitan Magistrate, CBI, Room No.2, Mirzapur, Ahmedabad and to transmit it to the Registry of the Bombay High Court from where it would be sent to a CBI court as may be decided by the Administrative Committee of the High Court. The Administrative Committee would assign the case to a court where the trial may be concluded judiciously, in accordance with law, and without any delay. The Administrative Committee would also ensure that the trial should be conducted from beginning to end by the same officer." (See Para 39)

Yet, the Hon'ble Bombay High Court, of which Justice Mr. Mohit S. Shah is the Chief Justice, did not follow this specific mandamus. This Hon'ble Court had observed in

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Assistant Collector of Central Excise v. Dunlop India and Anr., (1985) 1 SCC 260 as under;

"It is needless to add that in India under Art. 141 of the Constitution the law declared by the Supreme Court shall be binding on all courts within the territory of India and under Art. 144 all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court." (See Para 6)

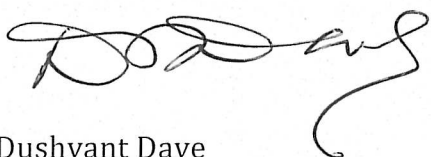
As a result, the Learned Trial Judge was changed on one pretext or the other three or four times without seeking leave of this Hon'ble Court. Ultimately, what happened is well known. I am not on merits of a Judicial Order that may have been passed in favor of Mr. Amit Shah, but on the act of commission or omission on the part of Chief Justice Mr. Mohit S. Shah as Head of the Bombay High Court. Any reconsideration at this stage of his case would perhaps raise serious and justifiable doubts in the minds of right thinking citizens. It is one thing for the political establishment to reward a Judge by offering him the Governorship but it is entirely different for the Collegium to do so. I respectfully request that this ought to be avoided in larger interests of the Judiciary.

I may kindly invite your attention to the concluding mandate of the Constitutional Bench which directs that;

"The process of appointment of Judges to the Supreme Court and the High Courts is an integrated 'participatory consultative process' for selecting the best and most suitable persons available for appointment; and all the constitutional functionaries must perform this duty collectively with a view primarily to reach an agreed decision, sub-serving the constitutional purpose, so that the occasion of primary does not arise." (See Para 486)

Sirs, the future of the Hon'ble Supreme Court of India is in your hands.

Thanking you,



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