

**THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

WP No. 20293 of 2019

(LOKENDRA GURJAR Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Dated: 20/03/2023

Shri Uday Kumar – Advocate for the petitioner.

Shri Ashish Anand Barnard, learned Additional A.G. for the respondents/State.

Shri Uday Kumar, learned counsel is heard on I.A. No.1873/2023 filed by petitioner.

The said I.A. seeks direction of this Court to place this matter before Hon'ble the Chief Justice for constitution of Special Bench comprising of members, who neither belong to OBC nor to unreserved category.

It is contended by learned counsel for petitioner that these bunch of petitions have either been filed by OBC category candidates or by unreserved category candidates. The former is by petitioners belonging to OBC category desiring enhancement in reservation to OBC category from 14 to 27% in public service. While the latter is by petitioners belonging to unreserved category assailing this enhancement.

Learned counsel for petitioner, Shri Uday Kumar contends that justice in the matter can be rendered only when it is heard by Neutral Special Bench comprising of members, who neither belong to OBC category nor to unreserved category.

Shri Uday Kumar, learned counsel for the petitioner has made various submissions alleging bias against this Bench, but the same are not backed by averments in I.A. No.1873/2023 and thus are being ignored.

The allegations contained in said I.A. are essentially generic in nature

where certain observations made in the celebrated case of *Indra Sawhney & others vs. Union of India & others*, reported in *1992 Suppl.(3) SCC 217*, the extract of debates of Constituent Assembly and the judgment in the case of *State of W.B. & Others vs. Shivananda Pathak & Others (1998) 5 SCC 513* are pressed into service. Moreover the contents of said I.A. do not relate to any personal allegation against the members of this Bench, except contending by implication that this Bench comprises of Judges belonging to unreserved category and, therefore, may not render justice while deciding this issue which partly relates to unreserved category.

The extract of debate of Constituent Assembly are matters of common knowledge, which cannot be cited in support of prayer for constitution of Neutral Special Bench and thus, the same are of no avail to the petitioner.

The decision in *Shivananda Pathak* (supra) is also of no avail to the petitioner since in the said case, the Apex Court had interfered with the Division Bench judgment rendered by Calcutta High Court on the ground that learned Judge presiding over the Division Bench of Calcutta High Court had earlier taken a particular judicial view qua the cause raised in Division Bench and as such became a Judge of his own cause. In the instant case, there is no such judicial order cited by the petitioner to indicate that this Bench has taken a particular view as regards the issue involved herein.

In the conspectus of above discussion, this Court is of the firm view that I.A. for constitution of Neutral Special Bench is nothing but an attempt to browbeat the members of this Bench and also to delay the proceedings.

Before parting, to highlight the concept of recusal it would be appropriate to reproduce hereinbelow the relevant extract of the celebrated judgment, of the Constitution Bench of Apex Court in *Supreme Court Advocates-on-record Association & Another vs. Union of India (Recusal Matter) (2016) 5 SCC 808* popularly known as NJAC verdict:-

“The nature of the judicial function involves the performance of difficult and at times unpleasant tasks. Judicial officers are nonetheless required to ‘administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law’. To this end they must resist all manner of pressure, regardless of where it comes from. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself.

(Para 76)

A Judge of the Supreme Court or the High Court, while assuming office, takes an oath as prescribed under Schedule III to the Constitution of India, that:

“... I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill will and that I will uphold the Constitution and the laws.”

Called upon to discharge the duties of the office without fear or favour, affection or ill will, it is only desirable, if not proper, that a Judge, for any unavoidable reason like some pecuniary interest, affinity or adversity with the parties in the case, direct or indirect interest in the outcome of the litigation, family directly involved in litigation on the same issue elsewhere, the Judge being aware that he or someone in his immediate family has an interest, financial or otherwise that could have a substantial bearing as a consequence of the decision in the litigation, etc., to recuse himself from the adjudication of a particular matter. No doubt, these examples are not exhaustive.

(Para 68 & 69)

The simple question which is always to be asked is, whether the adjudication by the Judge concerned, would cause a reasonable doubt in the mind of a reasonably informed litigant and fair-minded public, on correct facts, as to his impartiality or raise the likelihood of bias. Mere possibility of such a feeling is not enough. There must exist circumstances where a reasonable and fair-minded man would think it probable or

likely that the Judge would be prejudiced against a litigant. There may be situations where mischievous litigants wanting to avoid a Judge may be because he is known to them to be very strong and thus making an attempt for forum shopping by raising baseless submissions on conflict of interest. The reasonableness of the apprehension must be assessed in the light of the oath of office he has taken as Judge to administer justice without fear or favour, affection or ill will and his ability to carry out the oath by reason of his training and experience whereby he is in a position to disabuse his mind of any irrelevant personal belief or predisposition or unwarranted apprehensions of his image in public or difficulty in deciding a controversial issue, particularly when the same is highly sensitive. (Para 71 and 73 to 75)

57..... In my considered view, the prayer for my recusal is not well founded. If I were to accede to the prayer for my recusal. I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office to uphold the Constitution and the laws. My decision to continue to be a part of the Bench, flows from the oath which I took, at the time of my elevation to this Court."

What comes out loud and clear from the above discussion is that a Judge is not supposed to recuse merely for the asking of a litigant or lawyer. Deciding the cause as per oath is the rule while recusal is a rare exception.

Shri Uday Kumar, learned counsel for petitioner has not pointed out any personal bias suffered by any of the members of this Bench in respect of the issue involved herein. Thus, recusal by any one of us in the given facts and circumstances would defy the oath taken for rendering justice without

fear or favour, affection or ill will.

It may not be out of place to mention here that the same counsel Shri Uday Kumar while representing a different litigant in one of the connected matters i.e. WP. No.5901/2019 had preferred I.A. 9727/2021, which after due consideration was rejected by a Coordinate Bench of this Court criticizing the prayer for recusal by order dated 25.10.2021, relevant extract of which is reproduced below:-

“In the present application (I.A. No.9727/2021), various statements have been made, which are unacceptable to this Court. We do not intend to reproduce the same since it may not be appropriate. Every single counsel appearing in this case has suggested initiation of proceedings for contempt against the intervenor as well as his counsel. They contend that such pleadings cannot be made. It is unbecoming of a counsel to do so.

However, having considered the same, we are of the view that an appropriate order is called for. The manner and the tenor of the application is unacceptable. The contents border on contempt in scandalizing or lowering the authority of the Court. Reckless allegations have been made by the intervenor. Keeping in mind the contents of the application, we do not think it appropriate that such intervenor should be permitted in this case. Such an intervenor would cause damage to the institution. Therefore, it would be just and appropriate that they should not be encouraged to do such things. Consequently, the order dated 08.01.2021 allowing the I.A. No.10854/2019 is recalled. Resultantly, the I.A. No.9727/2021 shall stand dismissed.”

Consequently, this Court has no manner of doubt that I.A. No.1873/2023 is another attempt to browbeat this Court, to undermine the majesty of justice and cause interference in the administration of justice.

We may add that there is no material or real and live apprehension of bias in the mind of any of the two members of this Bench, as wrongly projected by learned counsel Shri Uday Kumar. Thus, we are bound by our oath to adjudicate the cause herein without fear or favour, affection or ill will.

Accordingly, I.A. No.1873/2023 stands **dismissed**.

List alongwith WP. No.5901/2019.

(Sheel Nagu)
Judge

(Virender Singh)
Judge

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