

357 *Re. Premature Retirement SRAVANA 9, 1914 (SAKA) Re. Judgement of Bombay High Court dt. 9.7.92 on irregularities in allotment of land to Govt. Empl. Coop. Housing Society in Maharashtra*

[English]

SHRIBASUDEB ACHARIA (Bankura): Sir, a statement from the Prime Minister should come. (Interruptions)

SHRISRIKANTA JENA (Cuttack): Sir, before going to any other subject the main issue before the House should be settled. The issue is whether the PMO is involved in this interference with the CBI enquiry or not. That is the main issue. Let the prime Minister come to this House and explain about it. (Interruptions)

MR. SPEAKER: Shri Ram Kapse, what is your point of order?

[Translation]

SHRIGEORGE FERNANDES: You will again say the same thing if are raise this issue tomorrow and Shri Atalji will again complain.

MR. SPEAKER: You please do whatever you like. I can give direction according to the rule. I have said that we are going to discuss the scam.

[English]

The matter is before the Government and the Government has taken a stand on that.

SHRI GEORGE FERNANDES: The Government cannot take any stand on anything. The Government's only stand is to suppress the entire investigation. (Interruptions)

MR. SPEAKER: Please, let us not give a wrong impression outside. It is not correct.

(Interruptions)

[Translation]

SHRIGEORGE FERNANDES: You are repeatedly saying no, your actions show that you want to suppress the investigation.

SHRI NITISH KUMAR: Mr. Speaker, Sir, what about Question Hour?

[English]

MR. SPEAKER: On Monday at 11 O'Clock you will have the Question Hour.

(Interruptions)

RE. JUDGEMENT OF BOMBAY HIGH COURT DATED 9.7.92 ON IRREGULARITIES IN ALLOTMENT OF LAND TO THE GOVERNMENT EMPLOYEES CO-OPERATIVE HOUSING SOCIETY IN MAHARASHTRA

[English]

MR. SPEAKER: Shri Kapse, be brief.

[Translation]

SHRI GEORGE FERNANDES: (Muzaffarpur): I am on a point of order. Today in the morning I have given notice of a motion seeking to censure the Defence Minister under Rule 184 on the same subject on which you are calling Shri Ram Babu.

MR. SPEAKER: I have not received.

SHRI GEORGE FERNANDES: I have submitted it at 9.30 a.m. in the office.

MR. SPEAKER: I have not received.

SHRI GEORGE FERNANDES: It is not my mistake.

MR. SPEAKER: Please tell me.

SHRI GEORGE FERNANDES: This has happened with me second time.

[English]

MR. SPEAKER: I expect the notices to be given to the office as well as to the concerned Minister. Have you given the notice to the concerned Minister?

[Translation]

SHRI GEORGE FERNANDES: I have given notice of a Censure Motion under Rule 184.

[English]

MR. SPEAKER: If you are raising any matter against any Minister, you are expected to give a notice to him also.

SHRI GEORGE FERNANDES: I am not raising a matter against any Minister. I have give a motion under rule 184. It is a censure motion. I am required to give a notice to the Secretary-General and I have conformed to the rules.

MR. SPEAKER: You please quote the rules. I will give you the ruling.

SHRI GEORGE FERNANDES: I have give a notice under rule 184 and rule 187 says:

"The Speaker shall decide whether a motion or a part thereof is or is not admissible under these rules and may disallow any motion"

MR. SPEAKER: I have not received that notice.

SHRI GEORGE FERNANDES: I will read it out to you. It says:

"Sir,

I give notice of the following motion under rule 184 to censure Mr. Sharad Pawar, Minister of Defence.

That having considered the judgment of Justice K. Sukunaran and Justice Dr. B.P. Saraf, Judges of the Bombay High Court in Writ Petition No. 1754 of 1989 preferred by Bal Kalyani, a pre-primary school and also a trust, registered C/o Smt. Sushilla Advarekar, Shri Madhukarrao Chaudhri, President, Bal Kalyani Trust (presently Speaker of Maharashtra Assembly); Shri Chan-

drashekar Prabhu, Vice-President, Bal Kalyani Trust; Smt. Sushila Advarekar (Ex. MP); and Shri B.J. Sukhtankar, Honorary General Secretary, Bal Kalyani Trust versus State of Maharashtra, dated July 9, 1992 which has indicted Mr. Sharad Pawar, the then Chief Minister of Maharashtra in the matter of allocation of certain land to a cooperative society of IAS and other officers and charged him with *mala fides* in the performance of his duties and thus acting against his oath of office by the constitution, and further condemned him for resiling from the solemn duty of preserving the State property and ensuring compliance with the legal provisions by throwing to the winds all basic principles;

"this House hereby records its deep indignation against the conduct of Mr. Sharad Pawar as Chief Minister and calls for his resignation."

MR. SPEAKER: My ruling is, I would expect such matters to be given to the Speaker well in time so that the Speaker would be in a position to apply his mind and come to a conclusion. This is one. Secondly, you have referred to something which can be treated as a defamatory matter and rule 353 applies here. Rule 353 expects that a notice of this kind will be given to the Speaker as well as to the concerned Minister and the concerned Minister is given the opportunity to look into the matter and be ready to respond to this matter. As these two things are not fulfilled, I am not allowing this matter.

SHRI GEORGE FERNANDES: The motion under rule 184 is not covered by rule 353. I have not said anything defamatory. Every word here is from the High Court judgement. Can the High Court judgement be termed as defamatory? How can the High Court judgement be termed as defamatory? Rule 353 does not attract this motion under rule 184.

MR. SPEAKER: You know that once I have given a ruling, you do not challenge it. You can convince me in the chamber, not here. Shri Kapse to speak now.

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SHRI GEORGE FERNANDES: Rule 184 is not qualified by rule 353.

SHRI VILAS MUTEMWAR (Chimur): Sir, this should be expunged.

MR. SPEAKER: Let me deal with it. I cannot talk to both the sides at a time. We are all colleagues here and we would be very circumspect and very careful in saying things against one another. I would expect that this courtesy will be shown to each one of us.

13.00 hrs.

SHRI MRUTYUNJAYA NAYAK (Phulbani): On a point of order. That should be expunged.

MR. SPEAKER: I will take care of that. I am not allowing many people to say. One gentleman can say whatever he wants to say on this point.

SHRI RAM KAPSE (Thane): I have given notice under rule 353 and I want to raise the matter arising out of the Writ Petition. The judgement was delivered on 9th of July, 1992. Actually Mr. George Fernandes has referred to Writ Petition No. 1754 of 1989. Actually, there are two Writ Petitions clubbed together. Another Writ Petition is No. 2085 of 1989 filed by Save Bombay Committee, a duly registered public trust and Mr. Kisan Mehta against the State of Maharashtra and others.

I will stick to the judgement while speaking about Mr. Sharad Pawar as far as the allotment of land in Bombay is concerned. I will first refer to a sentence on page 69 of the judgement:

"When the nation is facing a crisis in values, those who were entrusted in the solemn duty of preserving the State property and ensuring compliance with the legal provisions chose to throw to the winds all basic principles."

These are harsh strictures delivered by the learned Judges, hon. Shri Sukumaran and hon. Shri Saraf while delivering judgment in Writ petition No. 1754 of 1989 and Writ petition No. 2085 of 1989. The judgement was delivered on 9th of July, 1992."

The judges have strongly criticised the nexus between the politicians and bureaucrats which has vitiated the proper functioning of the Government and protection of the weaker sections. There was a pre-primary school run just to remember Mr. Tendulkar who wrote the biography of Mahatma Gandhi and the land was allotted to them. The judgement is about the transfer of that land. This we should keep in mind.

Today I am placing before the House the damning judgement given by the learned judges about the political masters who were running Maharashtra State on 30.8.1988 when the order was issued by the Government through which the Angarika Society formed by the IAS officers was allotted a prime land on the Malabar Hill with astonishing speed violating various Government guidelines and involving demolition of a school for weaker sections of the society.

Mr. Sharad Pawar is indicted by the learned Judges for being guilty of having failed in his duties as Chief Minister of Maharashtra. He had a special responsibility to intensely scrutinise the allotment of a land to the society formed under the leadership of a Revenue Secretary and recommended by the Revenue Minister who have a responsibility to see to it that the interests of the State and the people to be guarded.

This was a clear case where self-interest of IAS officers was involved and therefore demanded all the more thorough examination but the Chief Minister, when he was expected to protect the Government guidelines, decided to keep a mum.

[Translation] "Maunam Sammati Lakshnam"

which means silence is half consent and did not review the irrelevant note of the Revenue Minister and, therefore, according to the hon. judges, he is guilty of non-application of mind where application of mind was a must.

According to the judges, "the political administration set to themselves a wrong direction and strayed along irrelevantly". The entire transaction is vitiated by *mala fides*, says the judgement.

"It started illegally; continued illegally and ultimately culminated in an illegal order" the judges observed. Who is finally responsible for all the irregularity, the illegalities and the *mala fides*? Surely not the bureaucrats because the verdict of the High Court says that it was done at the instance of the bureaucrats but by whom?

It was by the then Chief Minister of Maharashtra and today our Defence Minister. A transaction ends with the CM's signature and if the transaction is vitiated by *mala fides*, the CM is accused of *mala fides* and no person against whom charges have been raised and held valid by the court can continue in any office. Imagine a Defence Minister of India against whom charges of *mala fides* have been proved in the High Court, would be responsible for the country's security. In continued case of illegality, who does own responsibility, the person who puts up the file or the person who signs it? Would the allotment have been made if the CM had not put his signature? The answer is 'No'. If this is so, then who can be held responsible for the illegality? The then CM and the present Defence Minister. The court has ruled the matter should have gone before the Finance Department for concurrence whose responsibility was to see that the necessary procedure was followed. It was the CM's responsibility. He has failed to fulfil it.

He just kept mum. He did not write a word. He did not discuss and there is no nothing on the file, complete absence of mind. He could have ruled that the matter was not placed before the cabinet and so, as

such, it was an irregular practice. Whose responsibility is it to place the matter before the Cabinet? It was the duty of the Chief Minister to ensure that the procedures were followed.

He did not make all those queries and just signed on 30th August, 1988. To say that non-application of minds leads to constitutional invalidity and hon. Shri Sharad Pawar has been found guilty of non-application of minds, it means that he has been found guilty of aiding and abetting in an act which leads to constitutional invalidity. Moreover, the judgement goes further to state the importance of application of minds.

In any case of allotment of land, the bureaucracy is expected to apply its mind for the executive in such cases and where it involved others, even in such cases. It does not absolve the Chief Minister from the crime of non-application of mind. But the CM knows that in this particular case, the bureaucrats stand to gain pecuniary advantage and hence the possibility cannot be ignored that they may not process the file by going by the rules. This case, therefore, warranted more critical application of mind, at least some queries had to be asked, like whether the legal opinion had been sought or whether the Finance Department had to be consulted. Moreover, the note from the Secretary, PWD was clear that no procedures had been followed and that there was no isolated plot and that the said land was not available for disposal. Though the file had all these notings, it is highly unlikely that the hon. Shri Sharad Pawar who had the experience of being the Chief Minister earlier would sign without due consideration.

The consideration must be something else. That is for the House to decide.

[Translation]

SHRI DATTA MEGHE (Nagpur): Mr. Speaker, Sir, the decision of the Court as quoted by the hon. member is not correct. The decision of High Court is totally different. The High Court did not say this thing in its

judgement. In its decision the High Court did not hold responsible the then Chief Minister Shri Pawar. Therefore, the statement given by the hon. Member is wrong. (Interruptions)

[English]

SHRI VILAS MUTTEMWAR: It is an unauthorised judgement.

(Interruptions)

MR. SPEAKER: We can avoid innuendoes. As per the rules, we avoid the innuendoes.

(Interruptions)

SHRI RAM KAPSE: We avoid that. But the point is: Should I not reply to that? (Interruptions)

MR. SPEAKER: No. I said that as per the rules, we avoid the innuendoes.

(Interruptions)

[Translation]

SHRI DATTA MEGHE: Shri Sharad Pawar is about to make a statement....(Interruptions)

[English]

SHRI SOMNATH CHATTERJEE (Bolpur): How do you know? (Interruptions)

SHRI RAM KAPSE: I would like to ask the hon. Speaker whether all the interruptions have been expunged. If they are to remain there, I would like to reply to them.

MR. SPEAKER: You please follow your own line.

(Interruptions)

SHRI RAM KAPSE: Whatever I have quoted, it is from the judgement. I have never said a word about Vasaivirar scandal. I have not said a word about all those 285 plots. I

have not said anything. (Interruptions) I have not said anything about the cases which are to follow. I have not said about it. I have read the judgement. (Interruptions)

SHRI CHANDRA SHEKHAR (Ballia): Mr. Speaker, Sir, the hon. Member is making a statement that he has quoted everything from the judgement. But he has mentioned the name of Shri Sharad Pawar concerning all the paras, whatever has been mentioned in the judgement. So, he should understand the difference between the two. His own interpretation of the judgement is one thing and quoting from the judgement is altogether a different thing because, here, he is not censuring the officer. He is censuring the hon. Defence Minister. So, the only portion where the censure is against the Defence Minister should be quoted. That is what I expect because the confusion will be there that whatever he has read, all of it is concerning the Defence Minister. (Interruptions)

SHRI RAM KAPSE: I would like to reply.

SHRI RAM NAIK (Bombay North): Sir, I am on a point of order.

MR. SPEAKER: Yes, what is your point of order?

SHRI RAM NAIK: Shri Chandra Shekhar has raised a point of order.

The judgement is very clear. It is on page No. 63. I quote:

"In the present case, what is disturbing is not a revision of the opinion, but the absence thereof. The Chief Minister did not express any opinion whatsoever. The opinion expressed by the Revenue Minister was, with great respect, on aspects, which were irrelevant in relation to the crucial question. The points on which the mind had to be applied and the opinion expressed, as noted earlier, had been totally missed.

We are satisfied, having regard to the peculiar situation of this case, the order is irredeemably vitiated for non-application of mind as well."

This is what is contained therein. (*Interruptions*)

SHRI RAM KAPSE: I would like to reply to it and on that point he should be censured. (*Interruptions*)

SHRI CHANDRA SHEKHAR: If Chief Ministers can be censured on this point, I do not think any Chief Minister or any Prime Minister will continue. (*Interruptions*)

MR. SPEAKER: Let me say. Please, you hear me again.

SHRI RAM KAPSE: Just a minute. Before you give the ruling, please listen to me because he has given advice to me.

MR. SPEAKER: I am not giving a ruling. I am asking a question. Is this written in the judgement? Or, is this the interpretation of the judgement?

SHRI RAM KAPSE: I have read extensively from the judgement. (*Interruptions*)

SOME HON. MEMBERS: No.

[*Translation*]

SHRI MADAN LAL KHURANA: He has read the final order signed by the hon. Minister on 30th. This order is a Malafide order. Mind has not been applied in it.

[*English*]

SHRI CHANDRA SHEKHAR: Mr. Speaker, Sir, I have raised a point of order. Here, in this House, we are entitled to censure Shri Sharad Pawar.

MR. SPEAKER: This is not a point of order. I have not allowed that.

SHRI CHANDRA SHEKHAR: We can ask a question about his conduct. We are not discussing the judgement of the High Court. We are not discussing the conduct of the officers. He has read from the whole judgement. From that, an impression will go that the Judges have said all this about Shri Sharad Pawar's behaviour. I have read that judgement thoroughly. The only sentence is that Shri Sharad Pawar did not apply his mind or express his opinion; he did not give any opinion. In the context, the opinion was that of a Revenue Secretary, the opinion was that of a Revenue Minister, and the Chief Minister just initialled, This is the fault that he has committed. On that if he wants to censure, he is well within his right. But he should not give a wrong impression that all the judgment is against him. (*Interruptions*)

SHRI RAM KAPSE: You have asked me a question and he has given me the advice and I would like to reply to that. (*Interruptions*)

MR. SPEAKER: I will repeat my question so that you can be very clear and help me also. I would like to know: What you are saying now is the part of the judgment or your interpretation.

SHRI RAM KAPSE: I have read from the... (*Interruptions*)

MR. SPEAKER: This side of discussion will not help me.

(*Interruptions*)

MR. SPEAKER: You please sit down and let him reply.

(*Interruptions*)

MR. SPEAKER: What Shri Chandra Shekharji has been saying, I find some substance in it. Your interpretation should not be such as to mislead the House or outsiders also. If it is written in the judgment, you are entitled to quote it. If it is not written

In the judgment, you are not entitled to take sentence from here and sentence from there and put an interpretation to it. Whatever is against him, you can quote it. But please do not bring other things against him which are not written.

SHRI RAM KAPSE: I have quoted from the judgement in the beginning. I told like that I am quoting from the judgment. Even on the page number... (*Interruptions*)

SHRI CHANDRA SHEKHAR: Mr. Speaker, Sir, the point is limited. We are discussing the conduct of Shri Sharad Pawar as the Chief Minister who happens to be the Defence Minister today. Judgment pertaining to the role of Shri Sharad Pawar as the Chief Minister should be brought before the House here and he should limit his speech. All other things he has said is irrelevant and that should be deleted. (*Interruptions*)

[*Translation*]

SHRI NITISH KUMAR: There is nothing like censure in it.

MR. SPEAKER: There is no censure in it.

(*Interruptions*)

[*English*]

SHRI RAM KAPSE: I have quote from the judgment one para on page 69, then another para from page number 63. I will read it for the benefit of the House.

MR. SPEAKER: No, no.

(*Interruptions*)

SHRI RAM KAPSE: It says:

"In the present case, what is disturbing is not a revision of the opinion, but the absence thereof. The Chief Minister did not express any opinion whatsoever. The opinion expressed) by the

Revenue Minister was, with great respect, on aspects, which were irrelevant in relation to the crucial question. The points on which the mind had to be applied and the opinion expressed, as noted earlier, had been totally missed."

(*Interruptions*)

SHRI CHANDRA SHEKHAR: That remark is about the Revenue Minister and not about the Chief Minister. (*Interruptions*)

SHRI CHANDRA JEET YADAV (Azamgarh): I have a point of order. In my opinion, this is a serious matter.....(*Interruptions*)

All right I will speak in Hindi. It is not a question of any member of this House whether he is from treasury benches or from the opposition. If you allow any member to interpret any judgement according to his will and it goes in the record. It has also been said that the Defence Minister of the Country is not capable of discharging his duties as a Defence Minister because the High Court has given a judgement against him. All these things are a serious matter because a judgement has gone against him. It is related to the fundamental rights of a member. To deliver such a long speech on any issue in the House and to interpret the judgement of the High Court according to his will, all these things should not go in the records, otherwise these things will come in the knowledge of press. Only the matter relating to the judgement should go on records.

[*English*]

MR. SPEAKER: My ruling is in this case only the statement made by the hon. Judge in the judgment pertaining to the Minister is relevant and everything else is not relevant.

SHRI RAM KAPSE: Mr. Speaker, Sir, there are two paragraphs in the relevant judgment which are about the Chief Minister. And I read from page number 63, "In the present Case...and all that". That is relevant

according to your ruling. Another thing is on page number 69, which says:

"When the nation is facing a crisis in values those who were entrusted in the solemn duty of preserving State property and ensuring compliance with the legal provisions goes to throw to the winds all basic principles. The Revenue Secretary who should have functioned as a watch-dog in keeping vigil over the assets of the State, engineered a decision of allotment of a valuable plot of Government land in favour of a group including himself. The Court cannot consistent with its Constitutional obligation permit such action to go unnoticed or unchecked. We have no hesitation to quash the allotment of land for the various reasons indicated above."

* Then the reasons have been given.
(Interruptions)

SHRI DATTA MEGHE (Nagpur): It is concerned with the Revenue Secretary and not with the Chief Minister.

MR. SPEAKER: Shri Kapse, please make it brief. It is not necessary that you should interpret the entire thing. You had enough time.

SHRI RAM KAPSE: The relevant problems which were discussed are: Whether it was an isolated plot and it was decided that it was not an isolated plot; whether there was a malafide and it was decided that it was malafide; it was questioned whether the Finance's concurrence was taken and it was decided that it was not taken; then, it was asked by the Judge whether there was malafide and it was decided that it was a malafide. Again, it was asked whether the application of mind on the part of the Chief Minister was there and it was decided that it was not there.

On all the four counts, the judgment says that it is viciated. So, the whole allotment of the land is viciated according to the Court. The real problem is, the whole thing was done at the instance of the bureaucracy — the Revenue Secretary. But, at the instance by whom? By their political masters and that was written in so many words in the judgment. And the political masters are the Chief Minister and the Revenue Minister. that is, it was done at the instance of the bureaucracy by somebody, by political masters and that was part of the court judgment. And, therefore, I demand the resignation of Shri Sharad Pawar, the Defence Minister of India.

[Translation]

SHRI MADANLAL KHURANA: There is an affidavit given by the Revenue Secretary in which it has been stated that the file has not been sent to him. The file was sent directly to the Revenue Minister and to the Chief Minister... (Interruptions)

13..27 hrs.

PERSONAL EXPLANATION BY MINISTER

Matter Raised by Shri Ram Kapse MP regarding judgement of Bombay High Court dated 9.7.1992 on irregularities in Allotment of land to the government Employees Co-operative Housing Societies in Maharashtra during was Chief Minister ship.

[English]

THE MINISTER OF DEFENCE (SHRI SHARAD PAWAR): Mr. Speaker Sir, in pursuance of the policy in vogue in Maharashtra State regarding allotment of land to the Government Employees Co-Operative Housing Societies, the Chief Promoter of Angarika Cooperative Housing Society Ltd., applied for allotment of a plot of land on 25th July, 1986. the application was processed by the Revenue Department and the Collector of Bombay and was submitted to the government for allotment of plot bearing C.S. No. 211 (Part) of Malabar Hill, Bombay.