Before Rajesh Bindal & Harinder Singh Sidhu, JJ.

KANWAL JIT SINGH BAJWA AND OTHERS—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CM No.13745 of 2016

In

CWP No. 1056 of 2016

November 04, 2016

Constitution of India, 1950—Art. 226, 235—Superior Judicial Service of the State of Punjab—Inter se seniority—Requiring the Bench to recuse from hearing the cases—Judges participating in the Full Court meeting—Voting an agenda in Full Court—Decision under Art. 235 is collective and binding on all Judges—Under Art. 226 Judge speaks for the High Court—Recusal cannot be sought merely on the grounds of member attending Full Court—Application dismissed being misconceived.

Held that, if the grounds raised by the applicants seeking the bench to recuse from hearing the case are considered on the touch stone of enunciation of law, as referred to above, it can safely be opined that the application being totally misconceived deserves to be dismissed.

(Para 32)

Further held that, there is no personal bias alleged against the Bench. Case has been specially assigned to the Bench vide order passed on administrative side after another Bench recused from hearing the same. If application is accepted, it will start a wrong practice and set a bad precedent as recusal by a Judge on the application of the party has to be justified on legal grounds.

(Para 33)

Further held that, the application is accordingly dismissed being misconceived.

(Para 34)

D.S. Patwalia, Senior Advocate with Sehaj Bir Singh, Advocate, *for the petitioners* (in CWP No. 1056 of 2016).

Puneet Gupta, Advocate, *for the petitioners,* (in CWP No. 2335 of 2016) and for the respondents No. 18 & 19 (in CWPs No.

1056, 1057, 1209, 1983 of 2016).

Karanvir Singh Khehar, Advocate, *for the petitioners* in CWP No. 1057 of 2016.

S.S. Swaich, Advocate, *for the petitioner* in CWP No. 1209 of 2016.

R. K. Chopra, Senior Advocate with Ekta Arora, Advocate, *for the petitioners* in CWP No. 1983 of 2016.

Vikas Chatrath, Advocate, for respondent No. 2 (High Court).

Sumeet Mahajan, Sr. Advocate with Amit Kohar, Advocate, for respondents No.6 & 10 (in CWP No.1056 of 2016) for respondent Nos.2 & 5 (in CWP No.2335 of 2016).

Rajiv Atma Ram, Sr. Advocate with Ranjit Singh Kalra, Advocate, for respondent No.9.

Raj Kumar, Advocate, for respondent No. 20 (in CWP No. 1056 of 2016) and for respondent No. 13 (in CWP No. 2335 of 2016).

Ankita Bajaj, Advocate for Amar Vivek, Advocate, for respondent nos. 16 and 17.

Anupam Gupta, Senior Advocate with Gautam Pathania, Advocate, for respondents No.21, 22 & 24 (in CWP Nos.1056,1057 and 1209 of 2016).

K.K. Saini, Advocate, for Tarunveer Vashist, Advocate, for respondent No.23 (in CWP No. 1056 of 2016) for respondent No. 16 (in CWP No. 2335 of 2016).

S.S. Rangi, Advocate, for respondents No. 16 & 17 in CWPs No. 1056, 1057, 1209, & 1983 of 2016) and for respondents No. 10 and 11 in CWP No. 2335 of 2016).

Vijay Pal, Advocate, for respondents No. 5, 10 and 15 in CWP No. 21544 of 2016 for respondents No. 6 and 9 in CWP No. 2335 of 2016 and for respondents No. 5, 11 and 15 in CWP No. 1057 of 2016.

RAJESH BINDAL & HARINDER SINGH SIDHU, JJ.

(1) This court has been called upon to decide an application filed by none else than members of the Superior Judicial Service in the State of Punjab, who are serving as District & Sessions Judges/Additional District & Sessions Judges, praying to the Bench to

recuse from hearing the case.

(2) The matter was listed before this bench after it was assigned vide order dated 11.8.2016 passed on administrative side, after Ajay Kumar Mittal, J. recused from hearing the case.

(3) The application has been filed by Kishore Kumar, Paramjit Singh, Harpal Singh, Amrinder Singh Grewal, Harpreet Kaur Randhawa, Ramesh Kumari and Kuldeep Kumar Kareer, who have been arrayed as respondents 5, 6, 8, 9, 10, 11 and 15, respectively in the writ petition.

(4) The dispute in the bunch of petitions pending before this Court pertains to inter-se seniority of the members of Superior Judicial Service. Amongst the officers are direct recruits, regular promotees and those coming by way of accelerated promotion. Inter-se seniority of the officers was determined by a Committee constituted by Hon'ble the Chief Justice. Recommendations thereof were accepted in the Full Court meeting held on 22.12.2015.

(5) The members of the service, who were affected by the Full Court decision, are either the petitioners or the respondents in the writ petitions.

(6) Though all the applicants, who have filed the present application, are represented by senior counsels in the main writ petitions, but still the application duly supported by their affidavits has been filed by them in person. Copy thereof was supplied only to the counsel for the petitioners and in the office of Advocate General, Punjab. Other counsels were not supplied the copy thereof.

(7) When the application was taken up for hearing, there was none present to press the application. The counsels, who are otherwise representing the applicants, were present in court. They stated that they have no knowledge about the filing of the application. They do not even have a copy thereof.

(8) As the application has been filed on judicial side requiring the Bench to recuse from hearing the cases, even if the applicants are not present in support of the application, in our view, the same deserves to be decided on merits.

(9) As no arguments were addressed by the applicants in support of the application, we have to consider whatever is pleaded. Relevant paras 2 to 5 of the application are extracted below:

"2. That the subject matter of the present writ petition as well as connected matters is the inter-se seniority of the parties which was considered by the Hon'ble Committee comprising three Hon'ble Judges of this Hon'ble Court which submitted its report dated 11.8.2015. The said report was put up before the Full Bench of this Hon'ble Court for approval, but as some Hon'ble Judges objected to it, the matter was duly considered in the Hon'ble Full Court by cast of votes.

3. That as the Hon'ble Judges participating in the meeting have considered the report dated 11.8.2015 of the Hon'ble Committee headed by Hon'ble Mr. Justice Surya Kant, and had voted for or against the report after having applied mind to it, it was deemed appropriate that the matter be heard by a Hon'ble Bench comprising Hon'ble Judges who had not participated in the process of consideration of the report dated 11.8.2015 and had not voted either for or against the said report in the Hon'ble Full Court meeting held on 22.12.2015, a representation in this regard was submitted before the Hon'ble Chief Justice on 20.10.2016.

4. That after considering the representation, Hon'ble the Chief Justice was of the view that as the matter is already pending before this Hon'ble Bench, it was for the Bench to decide whether to hear or recuse, and put up the matter before the Hon'ble Chief Justice for further directions. A copy of the application along with the endorsement of the Hon'ble Chief Justice there upon dated 20.10.2016 is attached as Annexure A- 1, while the endorsement is reads thus:

> "Constitution of the Bench cannot be done at this stage while the matter is pending before Bench. Only if the Bench recuses itself can a Bench be constituted in my administrative capacity. Any application for recusal must be made on the judicial side before the Bench. Sd/- 20.10.16".

5. That in this view of the matter, the indulgence of this Hon'ble Court is sought not to hear the writ petition/s on account of the Hon'ble Judges having already applied mind to the report dated 11.8.2015 of the Hon'ble Committee headed by the Hon'ble Mr. Justice Surya Kant while

considering the same and voting for or against it in the meeting of the Hon'ble Full Court held on 22.10.2015."

(10) The main contention raised in the application is that when the matter was put in the Full Court, some of the Judges objected to the report. The matter was considered by cast of votes. As the Judges, who had participated in the Full Court meeting, had voted either for or against the report after applying mind, the matter deserves to be heard by a Bench comprising of the Judges, who were not present in the Full Court meeting. In the application filed before Hon'ble the Chief Justice, it was also mentioned that some of the Judges in the Full Court did not participate in the process of voting. The applicants made a representation to Hon'ble the Chief Justice for entrusting the matter to a Bench comprising of the Judges, who either did not attend meeting of the Full Court or did not participate in the process of voting. On that application, Hon'ble the Chief Justice appended his note dated 20.10.2016, which forms part of the application already extracted above.

(11) Before the contentions raised by learned counsel appearing for the parties are noticed and considered, to put the record straight, learned counsel appearing for the High Court was asked to ascertain as to whether there was any voting in the Full Court with reference to the resolution of the Full Court under challenge. Mr. Vikas Chatrath, learned counsel appearing for the High Court, on verification from the record, stated that the record does not suggest that there was any voting. The report of the Committee, as was put before the Full Court in the agenda was accepted. Meaning thereby, in the application filed by the applicants before Hon'ble the Chief Justice and even before this court, which is supported by affidavits of all the applicants, wrong facts regarding voting on the agenda have been mentioned. Such type of mis-statement on affidavit cannot be appreciated, especially from the members of Superior Judicial Service, who had to act responsibly.

(12) Mr. D. S. Patwalia, learned senior counsel appearing for the non-applicants/petitioners in CWP No. 1056 of 2016, vehemently opposed the application stating that in the writ petition filed by him, notice of motion was issued on 19.1.2016. The applicants appeared for the first time on 4.2.2016. Thereafter, the matter was listed before different Benches including this Bench on number of occasions. The Judges comprising the Benches were also members of the Full Court meeting held on 22.12.2015, but no apprehension was ever raised. It is only when the pleadings were complete and the arguments were to be

heard that such an application was filed just with a view to scandalise the court. It is not only misconduct, but amounts to bench-hunting. The applicants clearly know who are the Judges, who were not present in the Full Court meeting held on 22.12.2015.

(13) He further submitted that on request of learned counsel for the parties that inter-se seniority dispute between the members of the Superior Judicial Service is settled early, short dates were being given. On 19.10.2016, the matter was adjourned for 22.10.2016 and from 22.10.2016, it was adjourned for today for arguments. The urgency to the applicants started on 19.10.2016 only as on 20.10.2016, the applicants met Hon'ble the Chief Justice and when their request was not entertained, immediately filed this application. In fact, the applicants are sole beneficiaries in the report in the sense that other two categories of officers, namely, the direct recruits and those from accelerated promotion quota are aggrieved against their placement in the seniority. Their effort is to delay the process. In fact, the petitioners could be aggrieved as in the Full Court, the matter was decided against them, but still the petitioners as well as other respondents in the writ petition have no apprehension as is perceived by the applicants. They have full faith in the Bench.

(14) It was further argued that the facts stated by the applicants in the application filed before Hon'ble the Chief Justice and before this court regarding voting in the Full Court being incorrect, it amounts to contempt. It is interference in the administration of justice. In case, the applicants do not have faith in the Judges of this Court, they could file application before Hon'ble the Supreme Court for transfer of the case from this court to any other High Court. If on principle, the ground sought to be made by the applicants for recusal is accepted and when all the Judges of the court attend Full Court meeting, it will not be possible for Hon'ble the Chief Justice to constitute a Bench. Even otherwise, all Judges of the Court are bound by Full Court decision even if not present in meeting.

(15) Mr. Puneet Gupta, learned counsel appearing for the petitioners in CWP No. 2335 of 2016 and for respondents No. 18 and 19 in CWP Nos. 1056, 1057, 1209 and 1983 of 2016, submitted that the applicants have in fact misconducted themselves by stating wrong facts in the application filed before Hon'ble the Chief Justice and before this court. While referring to a Division Bench judgment of this Court in ***Mukesh Rao*** *versus* ***The High Court of Punjab and Haryana***

and others[1], it was submitted that identical application filed by an officer, who was terminated in view of Full Court decision, during his probation, was rejected. Special Leave to Appeal (C) No. 9322 of 2013—***Mukesh Rao*** *versus* ***High Court of Punjab and Haryana and another***, against the above judgment was dismissed by Hon'ble the Supreme Court on 24.9.2014. He further submitted that even his clients have no objection to hearing of the case by the Bench.

(16) Mr. Karanvir Singh Khehar, learned counsel appearing for the petitioners in CWP No. 1057 of 2016, submitted that the only effort of the applicants is to avoid this Bench for the reasons best known to them. The effort of the applicants is to delay the proceedings. Initially, they delayed filing of replies to the petitions. When the case was ripe for arguments, present application was filed. Seeing the conduct of the applicants, the decision of the Full Court granting seniority to the applicants deserves to be stayed.

(17) Mr. S. S. Swaich, learned counsel appearing for the petitioner in CWP No. 1209 of 2016, while referring to a judgment of Hon'ble the Supreme Court in ***Madan Mohan Choudhary*** *versus* ***State of Bihar and others***[2], submitted that the Judges while sitting in robes on judicial side are never prejudiced by any decision taken on the administrative side. They quash their own administrative decisions in exercise of their power of judicial review and do maintain majesty and independence of the judicial system. The apprehension, as expressed by the applicants, is ill-founded. There are numerous judgments where the Full Court decisions have been set aside by Single Judges, who were even Member of the Full Court, while examining the matter on judicial side and many were upheld. The applicants have not alleged any personal bias against the Bench.

(18) Mr. Anupam Gupta, learned senior counsel appearing for respondents No. 21, 22 and 24 in CWP Nos. 1056, 1057 and 1209 of 2016, submitted that if the prayer made by the applicants is allowed, it will set a bad precedent. All the High Courts will be debarred from hearing the cases of Judicial Officers and the employees, as at some stage or other, their cases must have been considered by the Judges. Filing of application with mis- statement of fact regarding voting and merely on the ground that members of the Bench, being part of the Full Court, should recuse from hearing the case, evidently the applicants,

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[1] 2013(2) RCR (Civil) 1

[2] AIR 1999 SC 1018

who though are senior Judicial Officers, were not aware of the settled position of law. They should have thought of hundred times before indulging in this type of exercise. It violates judicial discipline and smacks of impropriety. Every party has a right to contest the case and even file an application for recusal by a bench, but on legal grounds and not for oblique motive, namely, bench-hunting. The application deserves to be ignored and matter heard on merits. If the applicants were feeling so strong about the grounds raised by them in the application, they should have appeared in court to propound the cause. Even their counsels also did not advice them to file such an application. It is evident from the fact that none of them even have copy of the application. That establishes a fact that the application has been filed with ulterior motive, which deserves to be deprecated strongly. If prayer of the applicants is accepted, it will amount to choosing a bench as per the desire of the applicants. Constitution of benches is the sole discretion of Hon'ble the Chief Justice, which cannot be tinkered with. He further submitted that Hon'ble the Supreme Court in recent judgments in ***Subrata Roy Sahara*** *versus* ***Union of India and others***[3] and ***Supreme Court Advocates-on-Record-Association and another*** *versus* ***Union of India***[4] had the occasion to deal with the applications filed by the parties for recusal of a Judge from hearing the case. The same were rejected.

(19) Mr. Sumeet Mahajan, learned senior counsel, not appearing in support of the application, though representing applicants-Paramjit Singh and Harpreet Kaur Randhawa (respondents No. 6 and 10 in CWP No. 1056 of 2016 and respondents No. 2 and 5 in CWP No. 2335 of 2016), submitted that vide application, the applicants have merely given a suggestion. It is for the court to consider the same.

(20) Heard learned counsel for the parties present in court.

(21) After going through the application and hearing learned counsels appearing in court, we thought over the matter. One opinion could be to leave the matter as it is and when one of the party is apprehending bias by the Bench, recuse from hearing the same and refer the matter to Hon'ble the Chief Justice for constituting another Bench. But after pondering over the matter again and again, we thought that in the given circumstances, this course would not be proper. There are two reasons. Firstly, here the applicants are members of Superior

[3] (2014) 8 SCC 470
[4] (2016) 5 SCC 1

Judicial Service, presently serving as District & Sessions Judges/Additional District & Sessions Judges and they are lacking faith in judicial system on ill-founded facts. Such a course would have given wrong signal to the society. And secondly, it would give a tool in the hands of unscrupulous litigants to use this plea to avoid any bench. Hence, we decided to deal with the issue raised in the application though there was none to press the same, when listed in court. The applicants, who could appear before Hon'ble the Chief Justice, when application was made to him, chose to remain absent during court hearing.

(22) The decision pertaining to the seniority of the members of Punjab Superior Judicial Service was taken by the Full Court in its meeting held on 22.12.2015, wherein the report of the committee was accepted. The decision of the Full Court reads as under:

> "4. Consideration of the report dated 11.8.2015 of Hon'ble Recruitment/Promotion Committee (Superior Judicial Service) comprising Hon'ble Mr. Justice Surya Kant, Hon'ble Mr. Justice T. P. S. Mann and Hon'ble Mrs. Justice Daya Chaudhary in the matters regarding:-
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> (i) Fixation of inter-se seniority of the officers who were promoted/absorbed/appointed under rule 7 of Punjab Superior Judicial Service Rules, 2007.
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> (ii) Representation dated 24.4.2015 submitted by Sh. Amrinder Singh Shergill & 11 other Judicial Officers for grant of permission to intervene and to make submissions in the ongoing seniority dispute amongst various members of Punjab Superior Judicial Service.
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> Resolved that the report of the Committee be accepted."

The above referred resolution of the Full Court shows that decision was unanimous and not with voting.

(23) There are three sources of recruitment to Superior Judicial Service – (i) by promotion; (ii) by direct recruitment and (iii) by accelerated promotion by way of limited competitive examination.

(24) First writ petition was filed by members of the Superior Judicial Service from direct recruitment quota, challenging the seniority list, as circulated on 24.12.2015, in pursuance to the decision taken in the Full Court meeting held on 22.12.2015. The writ petition was listed on 19.1.2016, on which date notice of motion was issued for

4.2.2016 with *dasti* process. The applicants were represented through their counsels on the next date of hearing, namely, 4.2.2016. Thereafter, the matter was listed before different Benches including this Bench for 8 dates of hearing. The Judges constituting the Benches were members of the Full Court, which accepted the report of the Committee. No apprehension was raised at any stage, though the ground sought to be made in the application is that the Judges, who were members of the Full Court, should not hear the case. The objection should have been raised at the very initial stage. It was raised only when the pleadings were complete and the matter was to be heard.

(25) There are two grounds raised in the application praying for recusal by the Bench to hear the case, namely, (i) that members of the Bench participated in the Full Court, in which the issue of seniority was decided and (ii) there was voting on the agenda in the Full Court, in which some of the Judges cast their votes either in favour or against the agenda and some did not participate in the process of voting. In the application, no personal bias has been imputed against the members of the Bench.

(26) As far as ground No. (i) is concerned, an identical issue was considered by a Division Bench of this Court in ***Mukesh Rao's*** *case (supra)*, where application for recusal of the Bench from hearing the case was filed by the petitioner therein on the ground that members of the Bench were also members of the Full Court, which recommended action against the petitioner therein. The Bench after considering the law laid down by Hon'ble the Supreme Court in various judgments opined as under:

> "69. Therefore, when the High Court discharges its administrative functions under Article 235 of the Constitution of India, the decision is taken collectively, which is binding on all Judges, who may not be present in the meeting on the said date. It is the decision of the High Court taken in the meeting conducted as per the Rules. Whereas, while exercising jurisdiction under Article 226 of the Constitution of India, though a Judge may sit singly or in Division Bench, but the Judge speaks for the High Court.
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> 70. In view of the above, we hold:-
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> (i) That the maxims i.e. nemo judex in causa sua; nemo debet esse judex in propria sua causa; and aliquis non debet esse judex in propria causa, quia non potest esse

judex et pars, that 'no man ought to be a judge in his own cause, because he cannot act as a judge and at the same time be a party' though are parts of principles of natural justice, but such principles of natural justice are subject to statutory exceptions;

(ii) That the administrative decision under Article 235 of the Constitution if taken by a Committee or Delegate of Hon'ble the Chief Justice or of the Full Court, it is a decision of the Full Court binding on all Judges, who may not be present in the meeting in which such decision was taken including the Judges, who came to be appointed subsequently;

(iii) That the administrative decision taken by the High Court under Article 235 of the Constitution is subject to power of judicial review conferred on the High Court under Article 226 of the Constitution and such power has to be exercised in terms of distribution of work at the sole discretion of Hon'ble the Chief Justice being master of the roster;

(iv) That there cannot be any direction to Hon'ble the Chief Justice to frame roster in such a manner so as to exclude Judges who have participated administratively, from exercising powers of judicial review;

(v) That the Judges, when take a decision administratively in exercise of powers under Article 235 of the Constitution, have no personal interest, but are discharging constitutional obligation so as to maintain independence of subordinate judiciary; and

(vi) That there cannot be any principle of law that the Judges, who were Members of the Committee, be it a Disciplinary Committee, Administrative Committee or the Full Court should recuse themselves from hearing of the writ petition except the Judge, who has conducted an enquiry as an Enquiry Officer against any judicial officer. Such Judge alone will stand disqualified from exercising the powers of judicial review as it is his findings as a quasi judicial Tribunal, which are to be tested on the touch-stone of principles of law, as are applicable to such proceedings."

(27) Special Leave Petition against the aforesaid judgment was dismissed by Hon'ble the Supreme Court, vide order dated 24.9.2014, passed in Special Leave to Appeal (C) No. 9322 of 2013—***Mukesh Rao*** *versus* ***High Court of Punjab and Haryana and another.***

(28) In view of the aforesaid judgment of this court, in our view, recusal from the Bench cannot be sought merely on the ground that members of the Bench attended the Full Court meeting, resolution passed wherein is under challenge in the writ petitions.

(29) As far as issue No. (ii) is concerned, in our opinion, the same has no legs to stand. It is the creation of the applicants themselves. The applicants claimed that there was voting on the agenda in which some Judges in the Full Court voted in favour, whereas some voted against the agenda and some did not cast their vote. The fact was verified from the counsel appearing for the High Court, who stated in clear terms after verifying from record that there was no voting on the agenda. The resolution was unanimous, which has already been extracted in para No. 22 above. Hence, even ground No. (ii), on which recusal by the Bench has been prayed for cannot be legally sustained. The applicants should have acted responsibly while making these allegations in the application, which is supported by their individual affidavits.

(30) As parties to a case with high stakes never stop using all possible means to scuttle hearing of case, the issue came up for hearing before Hon'ble the Supreme Court in ***Subrata Roy Sahara's*** *case (supra)*. In this case, recusal of the bench hearing the case was sought on the plea of bias. The same was rejected while observing that if the effort is aimed at bench-hunting or bench-hopping or bench avoiding, the same should not be allowed. Succumbing to any such pressure would tantamount to not fulfilling the oath of office. Relevant paras thereof are extracted below:

> "8. It is therefore, that we informed learned Senior counsel, that we would hear the matter. It seems that our determination to hear the matter marked to us by Hon'ble the Chief Justice, was not palatable to some of the learned counsel for the petitioner. For, Mr. Ram Jethmalani, learned Senior Counsel, was now more forthright. He told us, that we should not hear the matter, because "his client" had apprehensions of prejudice. He would, however, not spell out the basis for such apprehension. Dr. Rajeev Dhawan, came out all guns blazing, in support of his colleague, by

posing a query: Has the Court made a mistake, serious enough, giving rise to a presumption of bias "… even if it is not there …"? It was difficult to understand what he meant. But seriously, in the manner Dr. Rajeev Dhawan had addressed the Court, it sounded like an insinuation. Mr. Ram Jethmalani joined in to inform us, that the Bar (those sitting on the side he represented) was shell-shocked, that an order violating the petitioner's rights under Article 21 of the Constitution of India, had been passed, and it did not seem to cause any concern to us. The petitioner had been taken into judicial custody, we were told, without affording him any opportunity of hearing.

Learned counsel asked the Bench, to accept its mistake in ordering the arrest and detention of the petitioner, and acknowledge the "human error" committed by the Court, while passing the impugned order dated 4.3.2014. Dr. Rajeev Dhawan, then informed the Court, that "… moments come in the profession, though rarely, when we tell the Judges of the Supreme Court, that you have committed a terrible terrible mistake, by passing an order which has violated the civil liberties of our client. … that the order passed is void …". And moments later, referring to the order, he said, "… it is a draconian order …" The seriousness of the submissions apart, none of them, even remotely, demonstrated "bias".

9. But Mr. C.A. Sundaram, another Senior Counsel representing the petitioner, distanced himself from the above submissions. He informed the Court, "… I am not invoking the doctrine of bias, as has been alleged …" We are of the view, that a genuine plea of bias alone, could have caused us to withdraw from the matter, and require it to be heard by some other Bench. Detailed submissions on the allegations constituting bias, were addressed well after proceedings had gone on for a few weeks, the same have been dealt with separately (under heading VIII, "Whether the impugned order dated 4.3.2014, is vitiated on account of bias?"). Based on the submissions advanced by learned counsel, we could not persuade ourselves in accepting the prayer for recusal.

10. We have recorded the above narration, lest we are

accused of not correctly depicting the submissions, as they were canvassed before us. In our understanding, the oath of our office, required us to go ahead with the hearing. And not to be overawed by such submissions. In our view, not hearing the matter, would constitute an act in breach of our oath of office, which mandates us to perform the duties of our office, to the best of our ability, without fear or favour, affection or ill will.

11. This is certainly not the first time, when solicitation for recusal has been sought by learned counsel. Such a recorded peremptory prayer, was made by Mr. R.K. Anand, an eminent Senior Advocate, before the High Court of Delhi, seeking the recusal of Mr. Justice Manmohan Sarin from hearing his personal case. Mr. Justice Manmohan Sarin while declining the request made by Mr. R.K. Anand, observed as under:

> "The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting / Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office."

The above determination of the High Court of Delhi was assailed before this Court in R.K. Anand v. Delhi High Court, (2009) 8 SCC 106. The determination of the High Court whereby Mr. Justice Manmohan Sarin declined to withdraw from the hearing of the case came to be upheld, with the following observations:

> "263. The above passage, in our view, correctly sums up what should be the Court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an `inconvenient' judge or to

> obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice."
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> In fact, the observations of the High Court of Delhi and those of this Court reflected, exactly how it felt, when learned counsel addressed the Court, at the commencement of the hearing. If it was learned counsel's posturing antics, aimed at bench-hunting or bench-hopping (or should we say, bench- avoiding), we would not allow that. Affronts, jibes and carefully and consciously planned snubs could not deter us, from discharging our onerous responsibility. We could at any time, during the course of hearing, walk out and make way, for another Bench to decide the matter, if ever we felt that, that would be the righteous course to follow. Whether or not, it would be better for another Bench to hear this case, will emerge from the conclusions, we will draw, in the course of the present determination."

(31) The issue regarding recusal by a Judge from hearing a case on an application filed by a litigant party was considered by Hon'ble the Supreme Court recently in ***Supreme Court Advocates-on-Record Association and another's*** *case (supra)* and it was opined that a Judge can himself recuse from hearing a case entrusted to the Bench by Hon'ble the Chief Justice but recusal on the asking of the party should never be acceded to unless justified. If prayer of a litigating party is accepted on non- justifiable grounds, the same would amount to breach of oath of office. In this case, recusal of one of the Hon'ble Judge constituting the Bench was sought on the ground of conflict of interest. The request was declined. Relevant paras from the judgments are extracted below:

> "17. Despite the factual position noticed above, I wish to record, that it is not their persuasion or exhortation, which made me take a final call on the matter. The decision to remain a member of the reconstituted Bench was mine, and mine alone. The choice that I made, was not of the heart, but that of the head. The choice was made by posing two questions to myself. Firstly, whether a Judge hearing a matter should recuse, even though the prayer for recusal is found to be unjustified and unwarranted? Secondly, whether I would stand true to the oath of my office, if I recused from hearing the matters?

18. The reason that was pointed out against me, for seeking my recusal was, that I was a part of the 1+4 collegium. But that, should have been a disqualification for Anil R. Dave, J. as well. When he commenced hearing of the matters, and till 7.4.2015, he suffered the same alleged disqualification. Yet, the objection raised against me, was not raised against him. When confronted, Mr. Fali S. Nariman vociferously contested, that he had not sought the recusal of Anil R. Dave, J.. He supported his assertion with proof. One wonders, why did he not seek the recusal of Anil R. Dave, J.? There is no doubt about the fact, that I have been a member of the 1+4 collegium, and it is likely that I would also shortly become a Member of the NJAC, if the present challenge raised by the petitioners was not to succeed. I would therefore remain a part of the selection procedure, irrespective of the process which prevails. That however is the position with reference to four of us (on the instant five-Judge Bench). Besides me, my colleagues on the Bench – J. Chelameswar, Madan B. Lokur and Kurian Joseph, JJ. would in due course be a part of the collegium (if the writ- petitioners before this Court were to succeed), or alternatively, would be a part of the NJAC (if the writ-petitioners were to fail). In such eventuality, the averment of conflict of interest, ought to have been raised not only against me, but also against my three colleagues. But, that was not the manner in which the issue has been canvassed. 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."
>
> [Emphasis supplied]

(32) If the grounds raised by the applicants seeking the bench to recuse from hearing the case are considered on the touch stone of enunciation of law, as referred to above, it can safely be opined that the application being totally misconceived deserves to be dismissed.

(33) There is no personal bias alleged against the Bench. Case has been specially assigned to the Bench vide order passed on administrative side after another Bench recused from hearing the same. If application is accepted, it will start a wrong practice and set a bad precedent as recusal by a Judge on the application of the party has to be justified on legal grounds.

(34) The application is accordingly dismissed being misconceived.

A. Aggarwal