

MONDAY, NOVEMBER 25, 2002

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9/20/02 - Court

AN ERROR OF JUDGMENT

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THE RESIGNATION OF Justice K. Venkataswami from his twin posts is a result of the widespread misgivings about the propriety of his being appointed as Chairman of the Authority of Advance Rulings (Customs and Excise) at a time when he was the head of the Tehelka Commission of Inquiry. The retired Supreme Court Judge was clearly stung by the criticism that it was wholly inappropriate to assign a sinecure to someone vested with a probe of such enormous sensitivity, one that deals with the possible involvement of those in power and other senior politicians in crooked and shady defence procurement deals. Justice Venkataswami's resignation from the Tehelka Commission of Inquiry has placed a question mark over the future of this significant probe that, at the very least, is likely to be delayed by his decision to step down. As political charges and counter-charges are traded over what or who was responsible for this state of affairs, there is one inescapable fact that needs to be underlined. Namely, that such a situation would have never come to pass if the Centre had acted with foresight and prudence before appointing him to the Advance Rulings Authority.

It was only natural that Justice Venkataswami's appointment to this sinecure would be viewed with extreme reservation. At a time when the Tehelka probe was in progress, it is hard to see why he had to be accommodated in a new post. The attractions of heading the Advance Rulings Authority, which essentially involves giving binding rulings on customs and excise issues that are of concern to foreign investors, are obvious; the position comes with a regular salary and a guaranteed tenure until late 2004. Rather than foresee the natural and legitimate fears and misgivings that would ensue from this appointment, the Centre chose to pretend as if it had no hand in the matter. The Centre's defence was that its role was limited to writing a letter to the Chief Justice in September

2001, requesting him to nominate a retired Supreme Court Judge to the post. And that it was in January this year that the then Chief Justice of India, S.P. Bharucha, nominated Justice Venkataswami, a recommendation which was approved by the Union Cabinet, resulting in his appointment a few months ago. The argument that the Union Government's role was limited to the formal appointment after the nomination by the Chief Justice is not very convincing, given the practice of informal consultations on such issues. Even if one assumes for the sake of argument that the Centre was ambivalent about his appointment, shouldn't it have foreseen that it would raise grave concerns about propriety? Why did it fail to inform the Chief Justice of the misgivings that would be caused by the appointment at the time when a highly sensitive inquiry was on?

It is important to stress that such misgivings were unrelated to Justice Venkataswami's character; they did not stem from doubts over his integrity, his fairness or his ability to cope with his twin assignments as head of the Tehelka probe and chairman of a quasi-judicial body. Rather, they stemmed from the failure to recognise that parcelling out sinecures to retired judges is an extremely delicate matter. It must be done in a manner that not only is transparent but leaves no room for any misgiving whatsoever. The dramatis personae — the former Chief Justice, the Union Government and Justice Venkataswami himself — were oblivious to the questions of propriety that the appointment would raise, or felt that the judicial aura surrounding the appointment and his own personal reputation would insulate it from any controversy. In either case, it was an unfortunate error of judgment which has dragged a highly regarded judge of unimpeachable integrity into the morass of a bitter political dispute and in the process derailed the Tehelka probe for the moment.

25 NOV 2002

THE HINDU

Tehelka judge quits, says Opp unfair

STATESMAN NEWS SERVICE

NEW DELHI, Nov. 23. — Mr Justice K Venkataswami resigned from the chairmanship of Tehelka inquiry commission today, in protest against “unjustified and unfair” Opposition criticism of his other appointment as chairman, Authority for Advance Rulings for Customs and Central Excise.

He resigned from the second post too.

Government spokespersons said he sent his resignation letter to Prime Minister Mr Atal Behari Vajpayee and finance minister Mr Jaswant Singh this evening.

Yesterday, the Congress and other Opposition parties had raised the matter in Parliament. Mr Justice Venkataswami is learnt to said that he resigned because he had never sought the second appointment.

His resignations from both posts

today, sources said, is to re-emphasise the point that he accepted the second remit only because the then Chief Justice, Mr SP Bharucha, had recommended his name. Mr Justice Venkataswami's was appointed as Tehelka inquiry chief also on a Chief Justice's recommendation.

BJP spokesman Mr Arun Jaitley criticised the Opposition for “questioning the integrity of the head of the Tehelka inquiry panel”.

Mr Jaitley said that in effect the Congress had questioned the authority of the then Chief Justice. “If this is not stopped, no judge will be ready to take such appointments.”

BJP general secretary Mr Mukhtar Abbas Naqvi said Mr Justice Venkataswami “is a responsible and impartial person who was left with little option in these circumstances.”

The Congress demanded a joint

parliamentary committee to probe the Tehelka issue. It has vowed to “intensify” its attack against defence minister Mr George Fernandes.

Officials said the future procedural course of the Tehelka inquiry will be “looked into”. The inquiry was in the last stages.

Among the unfinished matters is the question whether the Tehelka operation was aimed at manipulating the stock market. Tehelka's defence deals story was released soon after the 2001 Union budget, which had lifted market activity. After the Tehelka “expose”, the market tanked. And the government has alleged that the operation was aimed at letting some people earn profit from such volatility.

The government had told the commission that it could not submit all the relevant documents on this aspect since investigations were still on.

**NCP men torch former
CM Narayan Rane's
house in Kankavli in
south Maharashtra after
a party leader was
killed in a clash**

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Advani defends Kalyan before Liberhan panel

HT Correspondent

New Delhi, January 28

THE 1984 anti-Sikh riots were a greater shame for the country than the demolition of the "disputed structure" at Ayodhya, L K Advani has said.

Deposing before the Liberhan Commission, Advani today drew parallels between the two incidents to defend his former party colleague and then Chief Minister of Uttar Pradesh, Kalyan Singh, on the question of deployment of Central forces to prevent the demolition.

The Home Minister admitted that the UP Government had failed to keep Kalyan's commitment before the Supreme Court and the National Integration Council. But Advani said that while in the Ayodhya case, the Chief Minister had owned responsibility and resigned, the political leadership went scot-free after the 1984 carnage.

Asked whether administrative neglect spurred the kar sevaks to demolish the Babri masjid, Advani conceded that some people in the administration "did not mind" the demolition. But such officials were less guilty than those who permitted the killings of Sikhs in Delhi, he said.

Advani faced some uncomfortable moments when the Commission's counsel Anupam Gupta cited an UP Intelligence report to counter his claim that he did not address the kar sevaks on December 6. But the Commission disallowed the question following objections by Advani's team of lawyers.

Asked if he, as Home Minister, envisaged deployment of Central forces in States to tackle serious situations without the local Government's consent, Advani pointed to the Centre's proposal for setting up a federal investigating agency which has not found a positive response from certain CMs.



L K ADVANI

Advani was in a spot when asked whether he would classify the Babri demolition as a federal crime. "I do not think the concept of federal crime has been conceived for a situation of this kind where there is a kind of dissonance between the Centre and the State. The concept of federal crimes is related to terrorism." Reiterating that December 6, 1992, was the saddest day in his life, Advani felt the demolition represented the "collective failure" of the State Government and leaders of the (Ayodhya) movement.

Cong stand: The Congress on Monday came out in total opposition to handing over of the undisputed land to the Ram Janmabhoomi Trust at Ayodhya, saying that a decision in the matter could only be taken after the dispute is finally settled in a court of law.

Party spokesman S Jaipal Reddy also said that Congress had postponed a meeting with VHP leaders that had been scheduled for January 24, in view of the Parishad's Chetawani Yatra and the Uttar Pradesh Assembly polls.

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