IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 584 OF 2014

Commissioner of Income Tax-24 … Appellant
Vs
Shri M.H. Patel ... Respondent

WITH
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1590 OF 2017

Pomela Bali Prasad … Petitioner
Vs
1 Mr. Manubhai Hargovind Patel & Ors. … Respondents

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION

IPA NO. 147 OF 2017
IN INCOME TAX APPEAL NO. 584 OF 2014

Commissioner of Income Tax-24 … Appellant
Vs
Shri M.H. Patel ... Respondent

Mr. Charanjeet Chanderpal with Ms. Namita Shirke for the Appellant/Petitioner.

Mr. M.H. Patel, the Respondent – petitioner-in-person - present.

CORAM : S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

WEDNESDAY, 6TH SEPTEMBER, 2017

P.C. :

1 When this Income Tax Appeal as also the Criminal Writ Petition was on our Board on 4th September, 2017, and on prior dates, the respondent – party-in-person raised a specific objection. That objection is as follows.

2 He submits that he has no faith in the impartiality or integrity of one of us (S.C. Dharmadhikari, J.) and he has specifically requested the Hon'ble The Chief Justice to assign this matter to a Bench, other than the one presided over by Justice S.C. Dharmadhikari. He would, therefore, submit that this written objection being on record, at least one of us should recuse himself from hearing the cases any further.

3 We have perused the written note put on record by the respondent appearing in person. We have very sympathetically and patiently heard him even on his objection that the Bench presided over by one of us should not take up the matter. It is unfortunate that we have to pass an order and when a party-in-person or any other litigant insists on a recusal and in this

manner. In the case of *Subrata Roy Sahara vs. Union of India & Ors*. reported in *AIR 2014 SC 3241*, the Hon'ble Supreme Court of India speaking through Justice J.S. Khehar has held, after approving the view taken by the High Court of Delhi, that a party cannot insist on a Judge recusing himself. This is a new trend emerging when Judges are challenged in the manner that has been repeatedly noted by the Hon'ble Supreme Court. A mere inconvenient question or a query and which is raised during the course of appreciation and appraisal of the legal and factual issues in a matter at hand and particularly in the nature of appeal should not result in a litigant being taken aback or, if taken aback, responding in this manner. His Lordship held as under :-

> *"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. 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 : 2009 AIR SCW 6876). 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:

"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." (Emphasis is ours)

11. 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.

... ...

14. One of the reasons for retaining the instant petition for hearing with ourselves was, that we had heard eminent Senior Counsel engaged by the two companies exclusively for over three weeks during the summer vacation of 2012. We had been taken through thousands of pages of pleadings. We had the occasion to watch the demeanour and defences adopted by the two companies and the contemnors from time to time, from close quarters. Writing the judgment, had occupied the entire remaining period of the summer vacation of 2012, as also, about two months of further time. The judgment dated 31.8.2012 runs into 269 printed pages. Both of us had rendered separate judgments, concurring with one another, on each aspect of the matter. During the course of writing the judgment, we had the occasion to minutely examine numerous communications,

exchanged between the rival parties. That too had resulted in a different kind of understanding, about the controversy. For any other Bench to understand the nuances of the controversy determined through our order dated 31.8.2012, would require prolonged hearing of the matter. Months of time, just in the same manner as we had taken while passing the order dated 31.8.2012, would have to be spent again. Possibly the submissions made by the learned counsel seeking our recusal, was consciously aimed at the above objective. Was this the reason for the theatrics, of some of the learned Senior Counsel? Difficult to say for sure. But deep within, don't we all understand? It was also for the sake of saving precious time of this Court, that we decided to bear the brunt and the rhetoric, of some of the learned Senior Counsel representing the petitioner. We are therefore satisfied, that it would not be better, for another Bench to hear this case.

II *<u>Must judicial orders be obeyed at all costs</u>?*

Can a judicial order be disregarded, if the person concerned feels, that the order is wholly illegal and void?"

4 The Hon'ble Supreme Court of India has clarified that when a Judge takes oath of office and in terms, prescribed by the constitution, implicit in that is there is no ill will, much less any

enmity and when a Judge is supposed to decide a case impartially, he has to be strict. Such strictness is demanded by the very office to which a person is appointed as a Judge. Eventually, it is a constitutional office and the institution of judiciary is above all. The law is applicable to all, rich or poor, men or women. Thus, to all citizens cutting across their religion, caste, creed, race and sex. Therefore, it is the constitution and the laws, which a Judge is obliged to uphold and while upholding them, he has to invite the wrath of litigants and advocates frequently.

5 The trend, which is now increasing, of Judges being called upon to recuse themselves, therefore, has to be deprecated and discouraged. It must be nipped in the bud. His Lordship the Hon'ble Mr. Justice Khehar once again pronounced in The Recusal order in NJAC case *Supreme Court Advocates-on-Record Association and another vs. Union of India Writ Petition (Civil) No.13 of 2015*, decided on October 16, 2015, that :-

> *"... ... ... 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 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 part of the Bench, flows from the oath which I took, at the time of my elevation to this Court."*

6 A view has already been taken by our Court also and in a reported decision in the case of *Ganesh Ramkisan Bairagi vs. Parwatabai Tukaram Appa Landge & Ors.* reported in *2016 (4) ABR 699*, Hon'ble Mr. Justice R.K. Deshpande had this to observe and hold:-

> *"14 Again, at this stage, Shri. V. V. Bhangde, the learned counsel for the appellant/defendant No. 2, submits that the office be given direction not to list the matters in which he is appearing for any of the parties before this Court. In other words, he submits that I should recuse from taking up the matters wherein Shri. V. V. Bhangde is appearing for any of the parties. The submission shocks my conscience, particularly when it suddenly came from a regular*

practitioner from this Court, who was being looked at as an experienced and responsible officer of the Court. The entire arguments in this matter went on smoothly, patiently and with interest. After conclusion of the arguments, both the learned counsel were asked as to whether they intend to make any additional submissions, and thereafter the dictation commenced as per the usual practice. I need not delve upon any further and I refrain from making any comments against Shri. V. V. Bhangde. However, the increasing trend need to be commented upon; so as to caution the lawyers and the litigants about the consequences of it, which can be avoided.

15. A lawyer has his own choice of appearing before the Court presided over by a particular Judge to conduct the matter. If his matter is listed before the Court where he does not want to appear, he is at liberty return such matter and/or fees to his client and can ask him to engage some other lawyer or he may refuse to accept the matter if he has not already filed his vakalatnama. A judge may also recuse himself from taking up the matters of the lawyers with whom he is closely related or where his conscience does not permit him to take up the matters of some lawyers. In these situations, there may not be any problem either with a Judge or a lawyer, but where the Court passed an order against a particular lawyer not to appear in his Court, it takes a colour of penalty or punishment to such a lawyer,

which may result in taking some disciplinary action against him by the Bar Council of India or of State, which issued him a Stand of Practice. Such a stage by a Court maybe construed of black-listing of a lawyer. Seldom, such event occurs, and the Courts also normally avoid it.

16. A tendency has started growing amongst lawyers to dictate a Judge to recuse from taking up his matters when the decision goes against his client or his wavelength does not match with the Judge or he does not find comfort in conducting the matter or for some such reasons. This is an insult personally to a Judge. Such reactions are normally experienced when the lawyers take heavy fees from their clients with an assurance to bring the result of the cases in their favour or to impress upon the clients sitting in the court room during the course of hearing, the boldness which he possesses to browbeat the Court. If a lawyer exercises his choice of not conducting the matter, he loses his client and fees, which he does not want to do. If a Judge accedes to such demand of a lawyer for recusal, the effect is threefold (i) the confidence of a lawyer to browbeat the Court is boosted (ii) a lawyer gets rid of the Court where he finds discomfort in conducting the matter, and (iii) it creates an additional source of income for him, from the other lawyers and the litigants, who do not want their matters listed or dealt with by such a Judge. This promotes the practice of Bench hunting. No

system of justice can tolerate such practice by a lawyer and the same is required to be curbed and deprecated.

17. Recently, in the judgment, which I have delivered in Civil Revision Application No. 26 of 2016 on 6-6-2016 (Satish Mahadeorao Uke v. The Registrar, High Court of Bombay, Bench at Nagpur, Nagpur). I have observed in para 25 thereof as under:

> *"25. A Judge may recuse at his own choice from a case entrusted to him by the Chief Justice and it would be a matter of his own choosing. But recusal at the asking of the litigating party, unless justified, must never be acceded to. This is what the Apex Court has held recently in NJAC case instituted by the Supreme Court Advocates on Record Association and Another v. Union of India, reported in 2015 (11) SCALE 1 : (2015 AIR SCW 5457). The question of recusal is normally decided by a Judge on the basis of his personal or private interest in the subject-matter of the litigation, his intimacy with the party/parties to a lis before him, his perception about conflict of interest in taking up the matter, and his own conscience. Such decision does not depend upon the dictates of lawyers or litigants. ... ..."*

18. Recusal to take the matters to be conducted by some lawyers, is a matter of Judge's own choosing and it cannot be at the dictates of the lawyers. What a Judge has to see is that he performs his duty of deciding the matters before him without fear or favour, affection or ill will. He has to keep in mind the principle that the justice should not only be done, but it must appear to have been done. The decision of recusal to take the matters of lawyers, depends upon the Judge's personal relations or intimacy with such lawyers, and his own conscience to decide a case by observing the oath which he has taken while occupying the position as a Judge. Ultimately, a Judge is also a human being and the Judges come from different strata of the Society, having their own views, ideas, angle or perception, based on the varied individual experience in life, which may or may not match with each others or with some lawyers or litigants. However, this cannot be a reason to avoid conducting the matters listed before such a Judge or the Judges. Once the constitutional authority of a Judge or the Judges to adjudicate the matters is accepted, it cannot be lowered down by asking him or them to recuse to hear and decide the matter.

19. To prevent a Judge or the Judges from performing his or their duties in this fashion causes distraction of attention in the judicial proceedings, which amounts to interference in the course of justice. Merely because a lawyer, litigant or public at

large feels that the approach adopted or a decision is wrong, the authority or the force of the decision does not get eroded. A wrong decision in the matter is equally enforceable like a correct decision. If the Constitution and the laws provide a remedy to get such decision corrected in a higher forum, such a remedy can be availed. Even a wrong decision becomes final, binding and enforceable like a correct decision, if there is no remedy available. The lawyers, litigants or public at large cannot run away from such decision and they have to be cautioned about the authority of the Courts."

7 We respectfully concur with the views expressed by the learned single Judge of this Court as they accord with the principle laid down by the Hon'ble Supreme Court.

8 We have noted from the record that this is not the first time the respondent has made such a request. The respondent was also a party litigant before the Income Tax Appellate Tribunal at Mumbai. With great pain and anguish the Tribunal has held that the respondent made an application and in which allegations were made of lack of faith and trust even in Members of the Tribunal. Some of them had to recuse themselves

from the proceedings. The proceedings, therefore, dragged endlessly. Sometimes we must remind ourselves that such ploys or tactics are adopted by litigants so as to delay the obvious. If the delay is to their benefit, then, they can go to any extent so as not to invite an adverse order or anything contrary to their interest. It is that perception which is entertained by the litigants and that is how for a favourable verdict, they resort to every tactic in the book or even impermissible in law or unknown to fairness, equity and justice. The Hon'ble Supreme Court has referred to them extensively in the foregoing paragraphs which we have reproduced from the judgment.

9 In such circumstances we do not think that the litigant who is appearing in person before us can be given an opportunity to dictate to the Court and to any judicial officer as to who should be the Judge / presiding Judge to whom his cases should be assigned and who should preside over any Division Bench. It is the prerogative of the Hon'ble the Chief Justice and it is he/she who decides how the judicial work should be assigned. Once the Chief Justice assigns judicial work to a Bench, then, it is not unless there is a power exercised otherwise, open to a

litigant to call upon the Judges to recuse themselves from judicial work in this manner.

10 Pertinently, the respondent party-in-person has not stated anything by which one can conclude that there is a reasonable apprehension of bias and prejudice. This party-in-person has had no occasion in the past to argue any of the cases in person before one of us (S.C. Dharmadhikari, J.). Yet, he makes a request and as above. This has, therefore, taken us by surprise. The allegations of bias and apprehension of injustice having no basis, but vague and general statements being made in the application, all the more we are disinclined to grant the request. The request for recusal is, therefore, refused.

11 The reliance placed by the party-in-person which, in all fairness, we must notice is on two judgments of the Hon'ble Supreme Court of India. The first one is in the case of *K. Veerswami vs. Union of India & Ors., (1991) SCC (3) 655*. That was a landmark decision where a Presiding Officer, particularly a Judge of a Court of law was called upon to answer a charge of bribery and corruption and to face prosecution under the

Prevention of Corruption Act. Challenging the very authority to summon him as an accused and to face the charge of bribery and corruption, the primary argument considered was whether a Judge and particularly of the High Court, can be subjected to such an act.

12 In negating that contention and emphasizing the role of a Judge in administration of justice that in the paragraphs relied upon the observations therein have been made.

12 We do not see how, torn from the context, these apply and straight away to the application of the present nature made before us. The recent judgment delivered in the case of *Kanachur Islamic Education Trust (Registered) vs. Union of India & Anr*. Writ Petition (Civil) No. 468 of 2017 decided on 30th August, 2017, is also distinguishable on facts. There the Hon'ble Supreme Court was concerned with the objection of the educational institution to the decision of the hearing committee / Central Government and the order dated 1st August, 2017. That was challenged also on the ground that it is not in accordance with the principles of natural justice, fairness and equity. A reasonable

opportunity of hearing has been denied. In dealing with such a contention and issue, the observations in paragraph 19 have been made. These observations, heavily relied upon, would apply to cases of the nature noted by the Hon'ble Supreme Court. We have never refused to hear the respondent appearing in person and we hold no malice or ill will against him. We understand his plight for multiple proceedings are instituted and in the highest court of the State against him. Sometimes, oblivious of the powers of the court, faced with intricacies and issues of law and interpretation of legal provisions, out of sheer desperation and frustration, parties make allegations. So long as the court does not exhibit any extreme feelings nor treats the litigants disdainfully by refusing to them a fair reasonable opportunity of hearing, we do not see any reason for them to complain. It is not the court which drags them into legal proceedings nor summons them to answer any allegation or charge merely to derive some pleasure. The embarrassment and harassment faced by litigants allegedly is not, as in this case, because of any act of the court. It is the respondent who raised a jurisdictional issue before the Tribunal and, therefore, the Tribunal felt it was its bounden duty to deal with all contentions. Hence none of the judgments relied upon by

the respondent have any application to the grievance before us.

13 We have heard Mr. Chanderpal appearing in support of this Appeal preferred by the Revenue. We have also perused the order under challenge.

14 The party-in-person would submit that unless the original records are called for and particularly the subject document, it would not be proper for this Court to express any opinion, one way or the other.

15 More often than not, litigants who are appearing in person do not realise either the restrictions or limitations on judicial power or the ambit and scope of a particular provision like Section 260A of the Income Tax Act, 1961. On par with section 100 of the Code of Civil Procedure, 1908, this section enables the Court to admit an appeal if that raises a substantial question of law.

16 Inviting our attention to section 292B of the Income Tax Act, 1961 and the specific paragraphs of the order under

challenge, it is submitted by Mr. Chanderpal that there was no jurisdictional error and the assumption on the part of the Tribunal is incorrect. In that regard, our attention was invited to paragraphs 15 and 16 of the order under challenge.

17 Having carefully perused them, we are of the view that at the stage of admission, there is no necessity for calling the original records and proceedings. The Appeal, squarely raising a substantial question of law is, therefore, admitted. It is admitted on the following substantial question of law :

> *"(1) On the facts and circumstances of the case and in law the Hon'ble I.T.A.T. erred in holding that the assessment was bad in law when it had itself in its order held that there was a typographical error while taking approval in the sense that the year was wrongly mentioned as Asst. Year 2001-2002 instead of 2000-2001 ignoring that the mistake is remedial in view of section 292B of the Income Tax Act and does not render the assessment illegal and null and void ?"*

18 The Registrar (Judicial) / Registrar, High Court, Original Side, Bombay to ensure that the original record in

relation to this Appeal is summoned from the Tribunal and offered for inspection of the parties. This paper-book is treated sufficient for the purpose of admission of this Appeal. However, the Registry must further ensure preparation of complete paper-book in accordance with the Rules. The Registry, in the first instance, must send intimation of admission of this Appeal, enclosing therewith a copy of this order so as to enable the Tribunal to act accordingly.

20 Since a Criminal Writ Petition is tagged alongwith the Income Tax Appeal, but the respondent appearing in person is not ready for arguments today, purely to accommodate him, we post the said Criminal Writ Petition and another Criminal Writ Petition, which is stated to be tagged, but a formal order and direction of the Hon'ble Chief Justice is awaited.

21 Stand over to 9th October, 2017.

PRAKASH D. NAIK, J. ***S. C. DHARMADHIKARI, J.***