सत्यमेव जयते

MOTION FOR REMOVAL OF MR. JUSTICE SOUMITRA SEN, JUDGE, CALCUTTA HIGH COURT

RAJYA SABHA SECRETARIAT
NEW DELHI
OCTOBER, 2011

PREFACE

17 August, 2011 was a historic day in the Rajya Sabha. On this day, for the first time in the history of Rajya Sabha and only the second case in the history of Indian Parliament, a Motion for the removal of a Judge of High Court was formally moved, discussed and finally voted on 18 August, 2011.

The removal proceedings against a Judge of the High Court or Supreme Court is, no doubt, a very serious matter. The constitutional scheme of separation of powers between the Legislature, the Judiciary and the Executive envisages autonomy of these three organs of the State. However, there are provisions in the Constitution which enable the Parliament to exercise its constitutional mandate to remove a Judge of the High Court or Supreme Court from his office on the grounds of proven misbehaviour or incapacity.

The process of removal of a judge of a High Court or the Supreme Court is quite laborious and lengthy. The constitutional and statutory safeguards ensure that Judges discharge their duties without fear or favour in pursuit of delivery of justice. The present compilation aims at making the readers fully acquainted not only with the process for the removal of Judge of the High Court/Supreme Court but also with the nitty-gritty of issues involved in the case.

It is hoped that the compilation will be useful to the readers interested in this particular field of knowledge.

NEW DELHI;
October, 2011.

V. K. AGNIHOTRI
Secretary-General
Rajya Sabha

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CHRONOLOGY OF EVENTS IN JUSTICE SOUMITRA SEN'S CASE

1.	Notice of motion given by Shri Sitaram Yechury and other Members (total 57)	:	20.02.2009
2.	Admission of motion by the Chairman, Rajya Sabha	:	27.02.2009
3.	Date of constitution of 'Inquiry Committee' by Hon'ble Chairman & date of Notification in the Gazette	:	20.03.2009

The Committee comprised:

(i) Justice D.K. Jain, Judge, Supreme Court of India

(ii) Justice T.S. Thakur, Chief Justice, Punjab & Haryana High Court

(iii) Shri Fali S. Nariman, distinguished jurist and Sr. Advocate, Supreme Court of India

4.	First reconstitution of the Committee due to the resignation of Justice D.K. Jain, Judge, Supreme Court of India. Justice B. Sudarshan Reddy was nominated in his place	:	25.06.2009
5.	Second reconstitution of the Committee due to elevation of Justice T.S. Thakur to the Supreme Court of India. Justice Mukul Mudgal, Chief Justice, Punjab & Haryana High Court was nominated in his place	:	16.12.2009
6.	Forwarding of draft Charges and draft statement of grounds to Justice Soumitra Sen by the Committee	:	05.02.1010
7.	*Issue of Statutory notice by the Committee to Justice Soumitra Sen	:	04.03.2010
8.	Presentation of Report by the Committee to the Chairman, Rajya Sabha	:	10.09.2010

*As per the Judges (Inquiry) Rules, 1969, the Committee was required to submit its report within 3 months after issuance of statutory notice, *i.e*. upto 4 June, 2010. However, the Committee sought two extension, first upto 5 August, 2010 and second, upto 5 October, 2010 to submit its report to the Chairman, Rajya Sabha.

9.	Laying of Report (Vol. I & Vol. II) along with copy of evidence tendered before the Committee and documents exhibited before the Committee, in Rajya Sabha and in Lok Sabha	:	10.11.2010
10.	Forwarding a copy of the Report of the Committee to Justice Sen	:	11.11.2010
11.	Reply of Justice Sen on finding of the Report of the Committee	:	18.01.2011
12.	Circulation of reply of Justice Sen to all Members of Rajya Sabha	:	21.02.2011
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17.	Adoption of the Motion and the Address to the President	:	18.08.2011
18.	Result of Division	:	Ayes: 189 No: 16
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20.	Listing of Motions and the Address to the President in Lok Sabha	:	05.09.2011 (Not taken up in view of the resignation of Justice Sen)

NOTICE OF MOTION

To

The Chairman
Rajya Sabha
New Delhi

Dated the 20th February, 2009

Dear Sir,

Sub: Motion for the removal of Justice Soumitra Sen of the Calcutta High Court under Art. 217 read with Art. 124 of the Constitution of India.

This House resolves to pass the motion for the impeachment of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:

1. Misappropriation of large sums of money which he received in his capacity as receiver appointed by the High Court of Calcutta.

2. Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta.

A copy of the letter by the Hon'ble Chief Justice of India addressed to the Prime Minister of India, recommending his impeachment is annexed herewith.

Signed by:

1. Sitaram Yechury
2. .....
3. .....

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.

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57. .....

ANNEXURE

The text of the letter written by Chief Justice of India, K.G. Balakrishnan to Prime Minister Manmohan Singh recommending removal of Mr. Justice Soumitra Sen, Judge of the Calcutta High Court.

Dated: 4 August, 2008

Dear Prime Minister,

I write this to recommend that the proceedings contemplated by Article 217(1) read with Article 124(4) of the Constitution be initiated for removal of Mr. Justice Soumitra Sen, Judge, Calcutta High Court.

2. Mr. Justice Soumitra Sen was a practising advocate of Calcutta High Court before he was appointed as a Judge of that High Court, with effect from December 3, 2003. In Civil Suit No. 8 of 1983, filed by Steel Authority of India Limited against Shipping Corporation of India Limited and Ors., Calcutta High Court *vide* order dated April 30, 1984 appointed him as a Receiver to make an inventory of certain goods which had been imported and then rejected by Steel Authority of India Limited and to sell those goods and hold the sale proceeds to the credit of the Suit. After preparation of inventory and sale of the goods, the Receiver was directed to deduct 5% of the sale price towards his remuneration, keep the balance in a separate bank account in a bank of his choice and to hold the same free from lien or encumbrances, subject to further orders of the Court.

3. Justice Soumitra Sen was also appointed as a Special Officer by Calcutta High Court in another case (an Appeal arising out of C.P. No. 226 of 1996). In that case (C.P. No. 226 of 1996), the High Court had directed payment of Rs. 70,00,000/- to the workers of Calcutta Fans, a company in liquidation and Mr. Justice Soumitra Sen, then a practising Advocate, was appointed as a Special Officer to disburse that amount to the workers, S.B. Account No. 01SLP0013400 was opened by him for that purpose and the amount of Rs. 70,00,000/- meant for disbursement for workers was deposited in that account on February 7, 1997. A sum of Rs. 25,00,000/- from Special Officer's account was invested by Justice Soumitra Sen with a company M/s. Lynx India Ltd., which, later on went into liquidation.

4. On March 7, 2002, Steel Authority of India Limited (Plaintiff) wrote a letter to the Receiver asking him to furnish information and detailed particulars about the sale proceeds received by him and the amount of interest which had accrued thereon. The Receiver did not supply the information sought by the Plaintiff. Thereupon, the Plaintiffs filed an application (GA No. 875/2003) for

direction to the Receiver to handover the sale proceeds and render true and faithful account of all the moneys held by him. No affidavit was, however, filed by the Receiver inspite of the notice being served on him. When the application came-up for hearing before a Single Judge of the Calcutta High Court, the Receiver, who, by that time been elevated to the Calcutta High Court, did not come forward to assist the Court either by filing an affidavit or by giving information through any lawyer or recognised agent, despite service of the copy of the application on him.

5. The High Court, then proceeded to summon the purchaser of goods as well as various bank officials and *vide* order dated April 10, 2006 noted that the Receiver had collected in all, a sum of Rs. 33,22,800/- from the purchaser of goods and the amount thus collected had been kept by the Receiver in S.B. A/c No. 01SLP0632800 with Standard & Chartered Bank (erstwhile ANZ Grindlays Bank) and Account No. 9902 with Allahabad Bank, Stephen House Branch, Calcutta and was later on withdrawn and diverted by him. Drafts amounting to Rs. 28,72,800/- were encashed in Account No. 01SLP0632800 with Standard & Chartered Bank and drafts of Rs. 4,50,000/- were encashed in Account No. 9902 of Allahabad Bank. The High Court found that Demand Drafts amounting to Rs. 28,72,800/- were encashed in S.B. Account No. 01SLP0632800 with Standard Chartered Bank. On April 19, 1995 and May 6, 1995 a sum of Rs. 8,73,968/- was withdrawn from S.B. Account No. 01SLP0632800 to invest in an FDR, which, later on, along with accrued interest (total amounting to Rs. 10,91,011.49) was brought back by encashment on May 22, 1997. Another sum of Rs. 11,92,909.92 was also brought back in that account on May 22, 1997. A sum of Rs. 22,83,000/- was transferred, on the instructions of the Receiver, from that account to S.B. A/c No. 01SLP0813400 (the account opened by him as Special Officer in case of Calcutta Fans) in the same bank on May 22, 1997.

6. The entire amount in the bank accounts was gradually withdrawn by the Receiver so as to reduce the balance to Rs. 811.56 in S.B. A/c No. 01SLP0813400 and Rs. 2,340.08 in S.B. A/c No. 01SLP0632800 as on May 31, 1999. Both the Accounts were closed on March 22, 2000 and May 21, 2002 respectively.

7. The learned Single Judge of Calcutta High Court concluded that the Receiver had converted and appropriated, *prima facie*, the said amount, lying in his custody, without authority of the Court and the act & conduct of the erstwhile Receiver was nothing short of criminal misappropriation. The learned Judge noted that the Receiver having been entrusted with the money by the Court and being an Officer of the Court, was required to keep it in a S.B. Account and ought not to have withdrawn the same without specific leave of the Court. The Court felt

that the Receiver had betrayed the trust and confidence reposed in him by the Court and therefore had to make good of the losses suffered for his act.

8. The learned Judge, after adjustment of the amount deposited by the Receiver during the pendency of the application, directed him to deposit Rs. 52,46,454/- which included interest on the amount appropriated by him. Pursuant to the above-referred order of Calcutta High Court, Justice Soumitra Sen (the erstwhile Receiver) deposited money in terms of the Order of the Court. In all, a total sum of Rs. 57,65,204/- was deposited by him.

9. Reports appeared in newspapers concerning the conduct of Justice Soumitra Sen in the above-noted matter. The then Chief Justice of Calcutta High Court withdrew judicial work from him and wrote a letter dated November 25, 2006 to my learned predecessor bringing the matter to his notice for appropriate action.

10. On July 1, 2007 I sought a comprehensive report from the Chief Justice of Calcutta High Court along with his views about Justice Soumitra Sen. On July 12, 2007 Justice Soumitra Sen called on me, on advice of his Chief Justice and verbally explained his conduct. He sent his report to me on August 20, 2007.

11. After depositing the money, Justice Soumitra Sen filed an application bearing No. GA 3763 of 2006 praying for recalling/withdrawing/deleting the observations made against him in the order dated April 10, 2006. The application was dismissed by the learned Single Judge of the High Court, *vide* order dated July 31, 2007. An Appeal was filed by the mother of Justice Soumitra Sen challenging the order of the learned Single Judge dated July 31, 2007. *Vide* order dated September 25, 2007 a Division Bench of Calcutta High Court noted that the erstwhile Receiver had complied with direction of the Court by depositing the entire amount, besides a substantial amount towards interest. The Division Bench felt that the scope and ambit of the application No. GA 875/2003, filed by Steel Authority of India Limited, did not contemplate any enquiry into the personal accounts of erstwhile Receiver. The Division Bench noted that the parties to the Suit never made any allegation of misappropriation by the Receiver and that the Receiver had never refused to discharge his obligation to refund the money held by him. The Division Bench did not find any material to say that the erstwhile Receiver utilised any amount for his personal gain and felt that the observations/ remarks against the erstwhile Receiver were uncalled for and unwarranted. The Division Bench was of the view that the learned Single Judge had travelled beyond the scope and ambit of the application filed by the Plaintiff. The Division Bench directed the Department to delete all the observations made against the erstwhile Receiver in the order passed by the learned Single Judge on April 10, 2006.

12. On 10 September, 2007 I had asked Justice Soumitra Sen to furnish his fresh and final response to the judicial observations made against him. After seeking more time for this purpose he furnished his response on 28 September, 2007 requesting that he may be allowed to resume duties in view of the order of the Division Bench of Calcutta High Court.

13. Since I felt that a deeper probe was required to be made into the allegations made against Justice Soumitra Sen, to bring the matter to a logical conclusion, I constituted a three Member Committee consisting of Justice A.P. Shah (Chief Justice, Madras High Court), Justice A.K. Patnaik (Chief Justice, High Court of Madhya Pradesh) and Justice R.M. Lodha (Judge, Rajasthan High Court), as envisaged in the 'In-House Procedure' adopted by Supreme Court and various High Courts, to conduct a fact finding enquiry, wherein the Judge concerned would be entitled to appear and have his say in the proceedings.

14. The Committee submitted its report dated 1 February, 2008, after calling for relevant records and considering the submission made by Justice Soumitra Sen, who appeared in-person before the Committee. The Committee *inter-alia* concluded that:

(a) Shri Soumitra Sen did not have honest intention right from the year 1993 since he mixed the money received as a Receiver and his personal money and converted Receiver's money to his own use:

(b) There has been misappropriation (at least temporary) of the sale proceeds since:

(i) he received Rs. 24,57,000/- between 25 February, 1993 to 10 January, 1995 but the balance in the Account No. 01SLPO632800 on 28 February, 1995 was only Rs. 8,83,963.05.

(ii) a sum of Rs. 22,83,000/- was transferred by him from that account to Account No. 01SLPO813400 and, thereafter, almost entire amount was withdrawn in a couple of months reducing the balance to the bare minimum of Rs. 811.56, thus, diverting the entire sale proceeds for his own use and with dishonest intention.

(c) he gave false explanation to the Court that an amount of Rs. 25,00,000/- was invested from the account where the sale proceeds were kept, whereas, in fact, the amount of Rs. 25,00,000/- was withdrawn from Special Officer's Account No. 01SLPO813400 and not from 01SLPO632800, in which the sale proceeds were deposited;

(d) mere monetary recompense under the compulsion of judicial order does not obliterate breach of trust and misappropriation of Receiver's funds for his personal gain;

(e) the conduct of Shri Soumitra Sen had brought disrepute to the high judicial office and dishonour to the institution of judiciary, undermining the faith and confidence reposed by the public in the administration of justice.

In the opinion of the Committee misconduct disclosed is so serious that it calls for initiation of proceedings for his removal.

15. A copy of the Report dated 6 February, 2008 of the Committee was forwarded by me to Justice Soumitra Sen and in terms of the In-House procedure, he was advised to resign or seek voluntary retirement. Thereupon, Justice Soumitra Sen made a detailed representation dated 25 February, 2008 seeking reconsideration of the decision of his removal and sought a personal hearing. On 16 March, 2008 a Collegium consisting of myself, Justice B.N. Agrawal and Justice Ashok Bhan (Seniormost Judges of Supreme Court) gave a hearing to Justice Soumitra Sen and reiterated the advice given to him to submit his resignation or seek voluntary retirement on or before 2 April, 2008. However, *vide* his letter dated 26 March, 2008 Justice Soumitra Sen expressed his inability to tender resignation or seek voluntary retirement.

In view of the foregoing, it is requested that proceedings for removal of Justice Soumitra Sen be initiated in accordance with the procedure prescribed in the Constitution.

With warm regards,

Yours sincerely

-Sd/-

(K.G. Balakrishnan)

Hon'ble Dr. Manmohan Singh,
Prime Minister of India,
7, Race Course Road,
New Delhi-110011.

NAMES OF MEMBERS OF RAJYA SABHA WHO WERE SIGNATORIES TO THE NOTICE OF MOTION

Sl. No.	Name of Member
1	2
1.	Shri Sitaram Yechury
2.	Shri Mohammed Amin
3.	Shri Prasanta Chatterjee
4.	Smt. Brinda Karat
5.	Shri Matilal Sarkar
6.	Shri T.K. Rangarajan
7.	Shri Tapan Kumar Sen
8.	Shri Tarini Kanta Roy
9.	Shri Moinul Hassan
10.	Shri Penumalli Madhu
11.	Shri K. Chandran Pillai
12.	Shri Saman Pathak
13.	Shri Shyamal Chakraborty
14.	Shri Satish Chandra Misra
15.	Shri Brijesh Pathak
16.	Shri Munquad Ali
17.	Shri D. Raja
18.	Shri R.C. Singh
19.	Shri Syed Azeez Pasha
20.	Dr. Barun Mukherji

1	2
21.	Shri Abani Roy
22.	Dr. V. Maitreyan
23.	Shri Digvijay Singh
24.	Shri S. Anbalagan
25.	Dr. K. Malaisamy
26.	Shri N.R. Govindarajar
27.	Shri N. Balaganga
28.	Shri A. Elavarasan
29.	Shri P.R. Rajan
30.	Shri Sharad Yadav
31.	Dr. Ejaz Ali
32.	Shri Shivanand Tiwari
33.	Shri Ali Anwar Ansari
34.	Shri Mahendra Sahni
35.	Shri M.V. Mysura Reddy
36.	Shri K.E. Ismail
37.	Dr. Bimal Jalan
38.	Shri Kumar Deepak Das
39.	Shri Birendra Prasad Baishya
40.	Shri A. Vijayaraghavan
41.	Shri Manohar Joshi
42.	Shri Bharatkumar Raut

1	2
43.	Shri Arun Jaitley
44.	Shri Tariq Anwar
45.	Dr. Janardhan Waghmare
46.	Shri Ahmad Sayeed Malihabadi
47.	Smt. Sushma Swaraj
48.	Shri S.S. Ahluwalia
49.	Shri Jaswant Singh
50.	Shri Bhagat Singh Koshyari
51.	Shri Rajiv Pratap Rudy
52.	Shri Raghunandan Sharma
53.	Shri Prabhat Jha
54.	Shri Suryakantbhai Acharya
55.	Shri Shreegopal Vyas
56.	Shri Bhagirathi Majhi
57.	Shri Krishan Lal Balmiki

RAJYA SABHA

PARLIAMENTARY BULLETIN

Part II

Nos.: 45898-45900] **Friday, February 27, 2009**

No.: 45898 *Legislative Section*

Motion received under article 217 read with article 124 (4) of the Constitution

The Chairman has, under Section 3 of the Judges (Inquiry) Act, 1968, admitted the following Motion received from Shri Sitaram Yechury and other Members (total fifty-seven) the notice of which was given under article 217 read with article 124 (4) of the Constitution of India:

> "This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:
>
> (i) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and
>
> (ii) Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta."

The Motion shall be kept pending till further action prescribed in the Judges (Inquiry) Act, 1968 and the rules made thereunder is taken.

रजिस्ट्री सं. डी.एल.–33004/99 REGD. NO.D.L.-33004/99

सत्यमेव जयते

भारत का राजपत्र

THE GAZETTE OF INDIA

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

Part II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 488] नई दिल्ली, शुक्रवार, मार्च 20, 2009/फाल्गुन 29, 1930

No. 488] New Delhi, Friday, March 20, 2009/Phalguna 29, 1930

राज्य सभा सचिवालय

अधिसूचना

नई दिल्ली, 20 मार्च, 2009

का.आ. 790(अ).—न्यायाधीश (जांच) अधिनियम, 1968 की धारा 3 की उप–धारा (2) के अधीन राज्य सभा के सभापति ने, कलकत्ता उच्च न्यायालय के न्यायमूर्ति सौमित्र सेन को पद से हटाये जाने के अनुरोध के आधारों की जांच करने के प्रयोजनार्थ एक समिति का गठन किया है जिसमें निम्नलिखित तीन सदस्य होंगे:–

1. माननीय न्यायमूर्ति डी.के. जैन, भारत का उच्चतम न्यायालय;
2. माननीय न्यायमूर्ति टी.एस. ठाकुर, पंजाब और हरियाणा उच्च न्यायालय के मुख्य न्यायाधीश; तथा
3. श्री फाली एस. नारीमन, वरिष्ठ अधिवक्ता, भारत का उच्चतम न्यायालय

[सं. आर.एस. 8/2/2009–एल]

विवेक कुमार अग्निहोत्री, महासचिव

RAJYA SABHA SECRETARIAT

NOTIFICATION

New Delhi, the 20th March, 2009

S.O. 790(E).—Under sub-section (2) of Section 3 of the Judges (Inquiry) Act, 1968, the Chairman, Rajya Sabha, has constituted, for the purpose of making an investigation into the grounds on which the removal of Justice Soumitra Sen of the Calcutta High Court is prayed for, a Committee consisting of the following three Members:—

1. Hon'ble Justice D.K. Jain, Supreme Court of India;
2. Hon'ble Justice T.S. Thakur, Chief Justice of the Punjab and Haryana High Court; and
3. Shri Fali S. Nariman, Senior Advocate, Supreme Court of India.

[No. RS.8/2/2009-L]

V.K. AGNIHOTRI, Secy.-General

1085 GI/2009

Printed by the Manager, Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-1 10054

रजिस्ट्री सं. डी.एल.–33004/99 REGD. NO.D.L.-33004/99

सत्यमेव जयते

भारत का राजपत्र

THE GAZETTE OF INDIA

असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उपखण्ड (ii)
Part II—Section 3—Sub-section (ii)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 974] नई दिल्ली, बृहस्पतिवार, जून 25, 2009 / आषाढ़ 4, 1931
No. 974] New Delhi, Thursday, June 25, 2009/Asadha 4, 1931

राज्य सभा सचिवालय
अधिसूचना

नई दिल्ली, 25 जून, 2009

का.आ. 1547(अ).—न्यायाधीश (जांच) अधिनियम, 1968 की धारा 3 की उप–धारा (2) के अधीन दिनांक 20 मार्च, 2009 की समसंख्यक अधिसूचना में आंशिक आशोधन करते हुए राज्य सभा के सभापति ने, कलकत्ता उच्च न्यायालय के न्यायमूर्ति सौमित्र सेन को पद से हटाये जाने के अनुरोध के आधारों की जांच करने के प्रयोजनार्थ गठित समिति का पुनर्गठन किया है जिसमें निम्नलिखित तीन सदस्य होंगेः–

1. माननीय न्यायमूर्ति बी. सुदर्शन रेड्डी, भारत का उच्चतम न्यायालय;
2. माननीय न्यायमूर्ति टी.एस. ठाकुर, पंजाब और हरियाणा उच्च न्यायालय के मुख्य न्यायाधीश; तथा
3. श्री फाली एस. नारीमन, वरिष्ठ अधिवक्ता, भारत का उच्चतम न्यायालय

[सं. आर.एस. 8/2/2009–एल]
विवेक कुमार अग्निहोत्री, महासचिव

RAJYA SABHA SECRETARIAT
NOTIFICATION

New Delhi, the 25th June, 2009

S.O. 1547(E).—In partial modification of the Notification of even No. dated the 20th March, 2009, under sub-section (2) of Section 3 of the Judges (Inquiry) Act, 1968, the Chairman, Rajya Sabha has reconstituted, for the purpose of making an investigation into the grounds on which the removal of Justice Soumitra Sen of the Calcutta High Court is prayed for, a Committee consisting of the following three Members:—

1. Hon'ble Justice B. Sudershan Reddy, Supreme Court of India;
2. Hon'ble Justice T.S. Thakur, Chief Justice of the Punjab and Haryana High Court; and
3. Shri Fali S. Nariman, Senior Advocate, Supreme Court of India.

[No. RS.8/2/2009-L]
V.K. AGNIHOTRI, Secy.-General

2333 GI/2009

Printed by the Manager , Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-1 10054

रजिस्ट्री सं. डी.एल.–33004/99 REGD. NO.D.L.-33004/99

सत्यमेव जयते

भारत का राजपत्र

THE GAZETTE OF INDIA

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

Part II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 2154] नई दिल्ली, बुधवार, दिसम्बर 16, 2009/अग्रहायण 25, 1931

No. 2154] New Delhi, W ednesday , December 16, 2009/Agrahayana 25, 1931

राज्य सभा सचिवालय
अधिसूचना

नई दिल्ली, 16 दिसम्बर, 2009

का.आ. 3241(अ).—न्यायाधीश (जांच) अधिनियम, 1968 की धारा 3 की उप–धारा (2) के अधीन दिनांक 25 जून, 2009 की समसंख्यक अधिसूचना के आंशिक आशोधन में राज्य सभा के सभापति ने, कलकत्ता उच्च न्यायालय के न्यायमूर्ति सौमित्र सेन को पद से हटाये जाने के अनुरोध के आधारों की जांच करने के प्रयोजनार्थ एक समिति का गठन किया है जिसमें निम्नलिखित तीन सदस्य होंगे:–

1. माननीय न्यायमूर्ति बी. सुदर्शन रेड्डी, भारत का उच्चतम न्यायालय;
2. माननीय न्यायमूर्ति मुकुल मुदगल, पंजाब और हरियाणा उच्च न्यायालय के मुख्य न्यायाधीश; तथा
3. श्री फाली एस. नारीमन, वरिष्ठ अधिवक्ता, भारत का उच्चतम न्यायालय

[फा. सं. आर.एस. 8/2/2009–एल]

विवेक कुमार अग्निहोत्री, महासचिव

RAJYA SABHA SECRETARIAT
NOTIFICATION

New Delhi, the 16th December, 2009

S.O. 3241(E).—In partial modification of the Notification of even No. dated the 25th June, 2009, under sub-section (2) of Section 3 of the Judges (Inquiry) Act, 1968, the Chairman, Rajya Sabha has reconstituted, for the purpose of making an investigation into the grounds on which the removal of Justice Soumitra Sen of the Calcutta High Court is prayed for, a Committee consisting of the following three Members:—

1. Hon'ble Justice B. Sudershan Reddy, Supreme Court of India;
2. Hon'ble Justice Mukul Mudgal, Chief Justice of the Punjab and Haryana High Court; and
3. Shri Fali S. Nariman, Senior Advocate, Supreme Court of India.

[F. No. RS.8/2/2009-L]

V.K. AGNIHOTRI, Secy.-General

4625 GI/2009

Printed by the Manager , Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-1 10054

REPORT OF THE JUDGES INQUIRY COMMITTEE (VOL. I)

REPORT OF THE INQUIRY COMMITTEE CONSTITUTED UNDER SUB-SECTION (2) OF SECTION 3 OF THE JUDGES INQUIRY ACT, 1968

I. Introduction:

Having concluded its investigation into the grounds on which the removal of Justice Soumitra Sen of the Calcutta High Court had been sought, the Inquiry Committee - as (re)constituted by Rajya Sabha Notification dated 16.12.2009 - submits its Report under Section 4(2) of the Judges (Inquiries) Act, 1968 ("the 1968 Act"). Section 4(2) of the 1968 Act reads as follows:

> "At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit."

This Report contains the Committee's observations on the whole case, a brief account of the proceedings of the Inquiry Committee, and a detailed assessment of the facts investigated, along with the findings on each of the two definite charges framed.

II. Inquiry Committee's Observations on the whole case:

The general observations of the Committee that go to the heart of the entire case: are in respect of two matters:

(1) The submission that during the investigation into the conduct of Justice Soumitra Sen, he had the right to remain silent.

(2) Whether the grounds of misconduct with which Justice Soumitra Sen has been charged; would if proved, amount to "misbehaviour" under Article 124(4) read with Article 217(1) proviso (b).

Re: (1) the submission that during the investigation into the conduct of Justice Soumitra Sen, he had the right to remain silent.

The investigation has raised at the threshold a significant question in relation to inquiries directed to be made into the conduct of a Judge under the 1968

Act: *viz.* as to whether a Judge whose conduct is under investigation under the 1968 Act (pursuant to a motion admitted in one of the two Houses of Parliament) has the right to remain silent.

Justice Soumitra Sen was served with definite charges on the basis of which the investigation into the two acts of misconduct (set out in the Motion) were proposed to be held *viz.*

> "1. Misappropriation of large sums of money, which he had received in his capacity as Receiver appointed by the High Court of Calcutta; and
>
> 2. Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta."

He entered appearance through advocates, and filed a written statement defending on merits the definite charges framed; advocates were engaged by him to appear and argue his case before the Inquiry Committee both on facts and law. It was his contention (in the current investigation into his conduct) that the moneys that he had received (Rs. 33,22,800) as sale-proceeds of the goods of which he had been appointed Receiver (by the Calcutta High Court) - in Suit 8 of 1983 (Steel Authority of India Ltd. *Vs*. Shipping Corporation of India and others) - had been "entirely invested" in a company called Lynx India Ltd. which had later gone into liquidation, and that no part of the amount had been misappropriated by him; after he was appointed a Judge of the Calcutta High Court on 3 December, 2003 he went about covering up his defalcations: first, by not co-operating at all with the Court that was making inquiries about the whereabouts of the sale-proceeds (Rs. 33,22,800) of which he had been appointed a Receiver; then adamantly refusing to furnish information, though requested by the Court; refraining from attendances at hearings, even through a representative or Advocate; and when, after a couple of years the Single Judge investigating into the matter (at the instance of the plaintiff in Suit 8 of 1983) made unfavourable remarks against him and directed him (Justice Soumitra Sen) to pay up the entire amount received by way of sale-proceeds with interest, paying up the same in instalments, without demur and without protest; it was only after the full amount was repaid that Justice Soumitra Sen applied to the Calcutta High Court for deletion of the remarks made against him by the Single Judge (in his order dated 10 April, 2006) supporting this application with an affidavit filed on his behalf by his mother as constituted attorney; in this affidavit he falsely represented to the Calcutta High Court that the money received by way of sale proceeds of goods (Rs. 33,22,800) had been invested (to earn more interest) in a company called Lynx India Ltd. which had gone into liquidation in the year 1999-2000, and attributed this reason for

the loss of moneys. This reason - proven in the present proceedings to be untrue and false - influenced a Division Bench of the Calcutta High Court (in its judgment dated 25 September, 2007) to expunge the Single Judge's remarks against Justice Soumitra Sen. When queried in this investigation about the contradictions as disclosed in the documentary evidence led in the case and the assertions made in the Written Statement of Defence, it was submitted on behalf of Justice Soumitra Sen (who chose to remain personally absent throughout the proceedings) - that he had the right to remain silent, that the specific charges as framed had to be "*proved* to the hilt" and "*proved* without any reasonable doubt".

In the considered view of the Inquiry Committee the submission that Justice Soumitra Sen had the right to remain silent (in the facts and circumstances of the present case) is untenable and fallacious: for the following reasons:

(a) The proceedings for the investigation into the conduct of a Judge under the 1968 Act (and the 1969 Rules) are not criminal proceedings against the concerned Judge; the Judge whose conduct is under inquiry is not a person who is to be visited either with conviction, sentence or fine; nor is the Inquiry Committee, appointed under the 1968 Act empowered to make any such recommendation. Besides, the Judge in respect of whose conduct an inquiry is ordered under the 1968 Act is not a person "accused of any offence", and no fundamental right of his under Article 20(3) of the Constitution of India would be infringed by his giving evidence during an investigation into his conduct. On the contrary, the 1969 Rules (Rule 4(1)) contemplate the Inquiry Committee giving to the Judge whose conduct is under investigation "an opportunity of adducing evidence ..."

(b) The Notice to be issued in Form-I of the 1969 Rules (framed under the 1968 Act) is similar to the notice prescribed in Form-I in Appendix B to the Code of Civil Procedure 1908 (summons for disposal of a civil suit). Contrasted with this Notice is the summons to an accused person prescribed under the Code of Criminal Procedure 1973. Form-I in the Second Schedule of the 1973 Code describes the noticee as the "accused", he is required to attend and answer to "the offence charged", in person or by pleader as the case may be, before the concerned Magistrate.

(c) Unlike a criminal trial, under the 1968 Act (and 1969 Rules), the Judge into whose conduct an investigation is directed is to be given

an opportunity of filing his Written Statement of Defence - something not heard of or permitted in a criminal trial. Whereas the right to silence in a criminal trial protects the person "accused" from giving any evidence on his own behalf, that may incriminate him, in the statutory notice (in Form-I) prescribed under the 1969 Rules, the Judge concerned is required to produce "all the witnesses upon whose evidence and all the documents upon which, he intends to rely in support of his defence."

(d) In proceedings for offences under the Penal Code unless an accused person appears - pleading guilty or not guilty - he cannot be tried. But under Rule 8 of the 1969 Rules - if the Judge does not appear, (before the Inquiry Committee) on proof of service on him of the notice referred to in rule 5, the Inquiry Committee is empowered to proceed with the inquiry *in the absence of the Judge:* this is because the concerned Judge in a proceeding under the Judge's Inquiry Act 1968 is not regarded as a person who is accused of any offence.

(e) The proceedings before an Inquiry Committee appointed under the 1968 Act are not at all comparable to electoral offences under the provisions of election laws; and the ratio laid down in cases decided under election laws do not apply to cases under the Judges Inquiry Act 1968: simply because proceedings for removal of Judges are "sui generis and are not civil or criminal in nature"[1]; since their purpose is to inquire into judicial conduct in order to maintain and uphold proper standards of judicial behaviour. In some Judgments of the Supreme Court of India,[2] proceedings that are not strictly criminal in nature (such as electoral offences and offences in the nature of contempt of court) have been regarded as "quasi-criminal". Even if proceedings for removal of a Judge under the 1968 Act be so characterised, the adverb *"quasi"* means "as if: almost as if it were; analogous to". In legal phraseology the term "quasi" is used to indicate that one subject resembles another, with which it is compared, but only *"in certain characteristics, though there are intrinsic and material differences between them"[3].* The phrase "quasi-criminal" is not to be equated with "criminal": the material difference in an inquiry into the conduct of a Judge under the 1969 Act (and the 1969 Rules) is that when he, the Judge, files a Written Statement of Defence he is in the same position as a defendant in a civil suit except that the charge framed against him must be

"proved" - not on a balance of probabilities but beyond reasonable doubt.

(f) That in an inquiry under the 1968 Act, the specific charges framed have to be "*proved* to the hilt" (or "*proved* beyond reasonable doubt") does not lead to the inference that the Judge concerned has the *right to remain silent:* A fact is said to be proved - when the investigating authority either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. As to when and how a fact is said to be *proved* depends on the circumstances of the case and the entirety of the evidence, both positive and negative.

During the present investigation the documentary evidence (both positive and negative) has clearly revealed the following:

(i) that the Receiver's two accounts (with ANZ Grindlays Bank Church Lane Branch, Kolkata and Allahabad Bank Stephen House Branch, Kolkata) which were in the name of Soumitra Sen, were opened and operated by him alone; it was in these two accounts that the sale proceeds of goods of which Soumitra Sen was appointed Receiver (*viz.* the aggregate sum of Rs. 33,22,800) had been deposited;

(ii) that from neither of these two Bank accounts any monies have been shown to be withdrawn in order to be invested with Lynx India Ltd; on the contrary, it was from a *third Bank account* opened with ANZ Grindlays Bank Church Lane Branch, by Soumitra Sen (also in his name) that a sum of Rs. 25 lacs is shown as transferred to Lynx India Ltd. on 27 February, 1997 from out of separate funds (*viz*. Rs.70 lacs) entrusted to Soumitra Sen in an entirely different proceeding (in the Calcutta High Court) in respect of an entirely different Company in liquidation (*viz*. Calcutta Fans (1995) Pvt. Ltd.); the said sum of Rs. 70 lacs being entrusted to Soumitra Sen by orders of the Calcutta High Court for payment of dues to workers of Calcutta Fans (1995) Pvt. Ltd. in liquidation. It has been also proved that the cheque no. 624079 for Rs. 25 lacs drawn by Soumitra Sen was from this *third* account, and paid to M/s. Lynx India Ltd. - and not paid from out of either of the Receiver's two accounts;

(iii) on 22 May, 1997, pursuant to letters written by Soumitra Sen (handwritten letters dated 22.5.1997) to the Bank Manager of ANZ

Grindlays Bank a request was made for transfer of a sum of "about Rs. 22 lacs" (from out of the ANZ Grindlays Bank Receiver's Account) into this third account of Soumitra Sen in the same Bank, which was avowedly in violation of the orders of the Calcutta High Court appointing Soumitra Sen as Receiver: monies representing sale proceeds (Rs. 33,22,800/-) deposited in the two bank accounts were to be held and not parted with or disposed of without permission of the Calcutta High Court. After the transfer of the sum of "about Rs. 22 lacs" was effected pursuant to Soumitra Sen's written request to the Bank, the funds so transferred into this third account were utilised by Soumitra Sen for making large disbursements by way of cheques drawn by Soumitra Sen, including a large number of bearer cheques in favour of individuals, who have never been identified, in the present proceedings as "workers" of Calcutta Fans (1995) Pvt., Ltd.;

(iv) that from the Receiver's account in the Allahabad Bank Stephen House Branch (as also from the ANZ Grindlays Bank Receiver's Account) there have been shown large disbursements by way of cheques - including a large number of bearer/self-drawn cheques - all issued and signed by Soumitra Sen: for what purpose has not been explained;

(v) that no permission was sought or taken by Soumitra Sen from the Court which appointed him as Receiver for withdrawal of monies from either of the Receiver's two Accounts, nor were any accounts filed by Soumitra Sen as Receiver in the Calcutta High Court (despite half-yearly accounts being required to be filed under original side Rules (Chapter 21) of Calcutta High Court and specifically directed to be so filed by order dated 30 April, 1984) - no accounts were filed with the Court either before or at any time after Soumitra Sen was appointed a Judge;

(vi) in the Allahabad Bank Receiver's Account the Balance on 29 March, 1994 was Rs. 3215, and at the end of 2008/2009 the balance was 'NIL'. The ANZ Grindlay's Receiver's Account was closed on 22 March, 2000 with a nil balance.

Obviously, this alarming state of affairs called for an explanation: The only explanation on record was in Justice Soumitra Sen's signed (but not sworn) Written Statement of Defence in which he had asserted that the entire sum of Rs. 33,22,800 had been invested by him with

a company called "Lynx India Ltd" which went into liquidation in 1999-2000: an assertion disproved by evidence, oral and documentary, brought on record. Justice Soumitra Sen chose not to personally attend any part of the proceedings of the Inquiry Committee, his counsel maintaining that he had "a right to remain silent"; Counsel appearing for him could not offer (on his behalf) any explanation for the depletion of funds in the Receiver's two accounts. In the opinion of the Inquiry Committee, neither in law, nor in the facts and circumstances of this case, does Justice Soumitra Sen have the right to remain silent, as was claimed on his behalf. And the inescapable inference from the want of any explanation whatever about the whereabouts of the sum of Rs. 33,22,800 (or any part thereof) is that Justice Soumitra Sen had no convincing explanation to give.

Conclusion

A Judge charged with misconduct amounting to "misbehaviour" may choose not to appear at all before the Inquiry Committee; the Committee may then proceed with the inquiry (under Rule 8 of the 1969 Rules) *in the absence* of *the Judge.* But once the Judge expresses his intention to participate in the Inquiry proceedings (as in the present case) by asking for time, seeking adjournments, filing a written statement of defence and engaging Advocates to appear and argue the case on his behalf, the Judge (particularly because he is in the position of a Judge) has a duty to cooperate in the inquiry, and to remain present for questioning (not necessarily on oath) whether by Advocates appointed to assist the Committee or by the Inquiry Committee itself. This in no way detracts from duty of the Inquiry Committee to hold him guilty of the definite charges framed *only* if such charges are proved beyond reasonable doubt, by oral and/or documentary evidence brought on record.

Re: (2) Whether the grounds of misconduct with which Justice Soumitra Sen has been charged; would if proved, amount to "misbehaviour" under Article 124(4) read with Article 217(1) proviso (b).

In the opinion of the Inquiry Committee the grounds of misconduct as set out in the Motion, when proved, would amount to "misbehaviour" under Article 124(4) read with Proviso (b) to Article 217(1).

The word "misbehaviour", in the context of Judges of the High Courts in India, was first introduced in proviso (b) to Section 200(2) of the Government of India Act, 1935. Under the 1935 Act it was initially the Privy Council and later, the

Federal Court of India that had to report to India's Governor-General when charges were made of "misbehaviour" against a Judge of a High Court. In the report of the Federal Court in respect of Charges made against Justice S.P. Sinha a Judge of the High Court of Judicature at Allahabad, one of the charges made by the Governor-General against that Judge were: "that Mr. Justice S.P. Sinha has been guilty of conduct outside the Court which is unworthy of and unbecoming of the holder of such a High Office", which was then particularised. Since this charge was not substantiated against that Judge by evidence, it was held to have been not established.[4] But the charge, as there framed, has tersely but correctly described the scope and ambit of the word "misbehaviour" *viz*. guilty of such conduct whether inside or outside the Court that is "unworthy of and unbecoming of the holder of such a High Office". The same word "misbehaviour" now occurs in the Constitution of India 1950 in Article 124(4) - when read in the context of Proviso (b) to Article 217(1) - These provisions state that a Judge of the High Court shall not be removed from his office except on the grounds of "proved-misbehaviour". The prefix "proved" only means proved to the satisfaction of the requisite majority of the appropriate House of Parliament, if so recommended by the Inquiry Committee. The words "proved misbehaviour" in Article 124(4) have not been defined. Advisedly so: because the phrase "proved misbehaviour" means such "behaviour" which, when proved, is not befitting of a Judge of the High Court. A Judge of the High Court is placed on a higher pedestal in our Constitution simply because Judges of High Courts (like Judges of the Supreme Court) have functions and wield powers of life and death over citizens and inhabitants of this country, such as are not wielded by any other public body or authority. It is a power coupled with a duty, on the part of the Judge, to act honourably at all times whether in court or out of court. Citation of case-law is superfluous, because the categories of "misbehaviour" are never closed.

In interpreting Articles 124(4) and (5) and the provisions of the Judges (Inquiry) Act 1968 and when considering any question relating to the removal of a Judge of the Higher Judiciary from his office, it must not be forgotten that it was to secure to the people of India a fearless arid independent judiciary that the Judges of the Superior Courts were granted a special position in the Constitution with complete immunity from premature removal from office except by the cumbersome process prescribed in Articles 124(4) and (5), read with the law enacted by Parliament (the Judge's Inquiry Act 1968).

The very vastness of the powers vested in the Higher Judiciary and the extraordinary immunity granted to Judges of the High Courts (and of the Supreme Court) require, that Judges should be fearless and independent and that they should adopt a high standard of rectitude so as to inspire confidence

in members of the public who seek redress before them. While it is necessary to protect the Judges from motivated and malicious attacks it is also necessary to protect the fair image of the institution of the Judiciary from such of those Judges who choose to conduct themselves in a manner that would tarnish this image. The word "misbehaviour" after all is, the antithesis of "good behaviour": it is a breach of the condition subsequent, upon which the guarantee of a fixed judicial tenure rests. High Judicial office is essentially a public trust, and it is the right of the people (through its representatives in Parliament) to revoke this trust - but only when there is "proved misbehaviour".

The conduct of Justice Soumitra Sen as a Receiver when he was an Advocate, and his series of acts and omissions, as well as his conduct, after he was appointed a Judge: such as giving of false explanations to cover up his completely unauthorised withdrawals from the Receiver's two accounts, swearing of an affidavit in Court (through his constituted attorney, his mother) as to that which he knew to be false and which he (Justice Sen) never believed to be true - are matters that bring dishonour and disrepute to the Higher Judiciary; they are such as to shake the faith and confidence which the public reposes in the Higher Judiciary. Monetary recompense or restitution does not render an act or omission any the less "misbehaviour" especially when restitution was made (as in the present case) only when the Judge had been found out, and after he was directed by the Court that appointed him Receiver to repay the entire amount of the sale-proceeds received by him together with interest.

III. Appointment of the present Inquiry Committee and a brief account of the proceedings:

(1) On 20 February, 2009, 58 Members of the Rajya Sabha gave Notice to the Hon'ble Chairman of a Motion for the removal of Justice Soumitra Sen, (a Judge of the Calcutta High Court), under Article 217 (1) (c) - read with Article 124 (4) - of the Constitution of India 1950 - on the following two grounds namely:

1. Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and

2. Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta.

(2) On the said motion being admitted under Section 3(2) of the 1968 Act, the

Chairman, Rajya Sabha constituted a Committee - "for the purpose of making an investigation into the grounds on which the removal of Justice Soumitra Sen of the Calcutta High Court is prayed for" - The Committee as then constituted consisted of the following: viz. Hon'ble Justice D.K. Jain, Supreme Court of India, Hon'ble Justice T.S. Thakur, Chief Justice of the Punjab & Haryana High Court and Shri Fali S. Nariman, Senior Advocate, Supreme Court of India, (Rajya Sabha Notification dated 20 March, 2009): the Committee constituted under Section 3(2) of the 1968 Act has been described in the Judges Inquiry 1969 Rules ("the 1969 Rules") as "the Inquiry Committee".

(3) On 25 June, 2009, in partial modification of the Notification dated 20 March, 2009 under sub-Section 2 of Section 3 of the 1968 Act, the Chairman, Rajya Sabha, reconstituted the Inquiry Committee by appointing (i) Hon'ble Justice B. Sudershan Reddy, Supreme Court of India; (ii) Hon'ble Justice T.S. Thakur, Chief Justice of the Punjab and Haryana High Court; and (iii) Shri Fali S. Nariman, Senior Advocate, Supreme Court (Rajya Sabha Notification dated 25 June, 2009). Being the member chosen under clause (a) of subsection (2) of section 3 of the 1968 Act, Justice B. Sudershan Reddy was, and has continued thereafter to act as, "Presiding Officer of the Inquiry Committee" (Rule 3 of the 1969 Rules).

(4) By Notification dated 11 August, 2009 the Hon'ble Chairman, Rajya Sabha appointed Shri Ajoy Sinha, retired Member (Legal) Authority for Advance Rulings (Income Tax), as Secretary to the Inquiry Committee constituted under Section 3 of the 1968 Act. The Government of India by Notification dated 26 October, 2009 appointed Mr. Sidharth Luthra, Senior Advocate and Mr. Siddharth Aggarwal, Jr. Advocate to "assist the Committee" (*i.e*. "to conduct the case against the Judge" as mentioned in Section 3(9) of the 1968 Act).

(5) One of the members of the Inquiry Committee (Justice T.S. Thakur), was appointed a Judge of the Supreme Court of India on 17 November, 2009, and the Committee had to be reconstituted once again: by Rajya Sabha Notification dated 16 December, 2009 the name of "Hon'ble Justice Mukul Mudgal, Chief Justice of Punjab and Haryana High Court" was substituted for the name of "Hon'ble Mr. Justice T.S. Thakur".

(6) Upon considering its Terms of Reference, the Inquiry Committee, as finally re-constituted, framed *draft* charges along with a *draft* statement of grounds. On 5 February, 2010 it forwarded them to Justice Soumitra Sen, in order to enable him to have an opportunity (if he so wished) to object to the framing of *definite charges.* But, by his Advocate's letter dated 23 February, 2010, the Judge

contended that under the 1968 Act, no investigation was called for before *definite* charges were framed, and before a reasonable opportunity was given to him of presenting a Written Statement of Defence.

(7) Hence the following Notice (dated 4 March, 2010) - a notice prescribed in statutory Form-I of the 1969 Rules - was then issued by the Presiding Officer, of the Inquiry Committee - It is reproduced below in full:

"Dated 4th March 2010

To

Shri Soumitra Sen,
Judge, High Court of Calcutta at Kolkata,
High Court of Calcutta,
Kolkata.

Whereas a motion for presenting an address to the President praying for your removal from your office as a Judge of the High Court of Calcutta at Kolkata has been admitted by the Chairman of the Council of States;

And whereas the Chairman has constituted an Inquiry Committee with me, a Judge of the Supreme Court of India, as the presiding officer thereof for the purpose of making an investigation into the grounds on which your removal has been prayed for;

And whereas the Inquiry Committee has framed charges against you on the basis of which investigation is proposed to be held;

You are hereby requested to appear before the said Committee in person, or by a pleader duly instructed and able to answer all material questions relating to the Inquiry, on the 25th day of March, 2010 at 4.30 'O' clock in the afternoon to answer the charges;

As the day fixed for your appearance is appointed for the final disposal of the charges levelled against you, you are requested to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Please take notice that in the event of any default in your appearance on the day aforementioned, the investigation into the grounds on which your removal

has been prayed for shall be made in your absence.

Given under my hand this 4th day of March 2010.

(____sd/-_____)

(Signature)
Presiding Officer
Inquiry Committee

Enclosures:

1. A copy of the charges framed under sub-section (2) of section 3 of the Act.
2. Statement of grounds on which each charge is based."

The charges with particulars along with a statement of the grounds in support, were got served on Justice Soumitra Sen alongwith the Notice dated 4 March, 2010. Documents in support of the charges and the grounds were also forwarded to Justice Soumitra Sen. In Charge I ("Misappropriation") - after setting out the particulars of that charge (in paragraphs 1 to 12), it was finally stated in paragraph 13 as follows:

> "13. You have committed misappropriation of property, and the same constitutes 'Misbehaviour' under Article 124(4) r/w Art. 217 of the Constitution of India."

In Charge II ("Making false statements") after setting out particulars of that charge (in paragraphs 14 to 24), it was stated, in paragraph 25, as follows:

> "You, during a judicial proceeding while holding the office of Judge of the Court, intentionally gave false evidence, which constitutes 'Misbehaviour' under Article 124(4) read with Article 217 of the Constitution of India."

(8) Subsequently a request was made by the Judge that the date mentioned in the Notice for his appearance be postponed, and that four weeks more time be given to him, after inspection of documents, to present his Written Statement of Defence. This was granted but the Judge was informed (by letter dated 19 March, 2010) that he should appear before the Committee at 11.30 a.m. on 17 April, 2010 and file his Written Statement of Defence by that date.

(9) Justice Soumitra Sen did not personally appear before the Inquiry Committee on 17 April, 2010, but in a letter dated 26 March, 2010 he requested for another extension of time for filing the written statement (of defence): *"by*

at least 8 *weeks."* By letter dated 26 April, 2010 the Judge was informed that unless his written statement of defence was filed *positively* by the extended date 3 May, 2010 the Inquiry Committee would proceed further in the matter "on the basis that you have nothing to say in respect of the specific charges framed against you."

(10) Meanwhile, after the Notice dated 4 March, 2010 had been served on the Judge, along with definite charges, (and supporting grounds) some additional documents were received from Allahabad Bank Stephen House Branch Calcutta and from the Standard Chartered Bank Church Lane, Kolkata (formerly ANZ Grindlays Bank Church Lane, Kolkata). Copies of the first set of documents (relied upon by Advocates appointed to assist the Committee under Section 3(9) of the 1968 Act) had already been forwarded to Justice Soumitra Sen. All documents with the Committee were inspected by him and copies of the additional documents received from Kolkata, were also forwarded to Justice Soumitra Sen: The Judge was given inspection of these and all other documents, *viz.* of the complete record with the Inquiry Committee. Shri Subhash Bhattacharya Advocate for Justice Soumitra Sen, *vide* letter dated 20 April, 2010 addressed to the Secretary of the Inquiry Committee placed on record that inspection of the documents had been completed, and that *"fullest cooperation has been given by your office."*

(11) Ultimately on 3 May, 2010 a document titled "Reply to the Charges" was received by the Inquiry Committee - it was in the form of a signed letter addressed by the Justice Soumitra Sen to the Presiding Officer of the Inquiry Committee - which was taken on record as his Written Statement of Defence, under section 3(4) of the 1968 Act, and the Judge was so informed by letter dated 13 May, 2010. Since in his Written Statement of defence, Justice Soumitra Sen denied that he was guilty of the misbehavior specified in the charges framed under Section 3(3), the Inquiry Committee proceeded with the inquiry in accordance with Rule 7(2) of the 1969 Rules.

(12) The venue for the recording of evidence was initially fixed in Kolkata, where all witnesses were located. Witnesses had been summoned to produce all relevant documents (including statements of accounts, banks drafts etc.) with different Banks, and documents in the Registry of the Calcutta High Court, and with other authorities. But on a specific written request made (on 19 May, 2010) on behalf of the Judge (by his Advocate) the Venue was shifted to New Delhi for examination of witnesses, and for production and proof of all relevant documents that had been summoned.

(13) By a communication dated 1 June, 2010, Justice Soumitra Sen was provided with a list of witnesses (to be called by Advocates assisting the Inquiry Committee) along with copy of a list of relevant documents to be produced/

proved by such witnesses; the Judge was informed that the venue for the hearings would be at Vigyan Bhawan Annexe, New Delhi on 24 June, 25 June, and 26 June, 2010. Justice Soumitra Sen's Advocate (by letter dated 4 June, 2010) then requested for yet another adjournment of the hearing "at least till 5 July, 2010". But this request was declined, and the Judge was informed that the Inquiry Committee would adhere to dates previously intimated (*viz*. 24, 25 and 26 June). The Judge was also informed (by letter dated 18 June, 2010) that if he wished to file a further written statement with regard to the additional documents furnished to him, he could do so before 24 June, 2010. However no further or additional written statement was filed by or on behalf of Justice Soumitra Sen.

(14) On the first day fixed for hearing of evidence at New Delhi (*viz.* 24 June, 2010) the appearances of Counsel were recorded: *viz*. (i) Mr. Sidharth Luthra, Senior Advocate with Mr. Siddharth Aggarwal, Jr. Advocate appeared as Advocates appointed to assist the Inquiry Committee (in terms of the Notification dated 26 October, 2009) and (ii) Mr. Shekhar Naphade, Senior Advocate, with Advocate Chinmoy Khaledkar (along with Advocates: Ms. Neha S. Verma, Shri Manoj, Shri Subhasis Chakraborty, Shri Subhas Bhattacharyya, Shri Soumik Ghoshal and Ms. Aparna Sinha), appeared as Advocates for Justice Soumitra Sen: Justice Soumitra Sen did not personally attend the hearing on 24 June, 2010. At the hearing on 24 June, 2010 five witnesses mentioned in the list previously supplied to Justice Soumitra Sen (for producing/ proving the documents that had been previously summoned from various bodies and authorities in Kolkata) were examined by Senior Advocate appointed to assist Committee. The evidence of each of the witnesses examined by the Inquiry Committee was taken down in writing under the personal directions and superintendence of the Presiding Officer. After each of the witnesses were so examined and their evidence on oath recorded, and relevant documents exhibited, Senior Advocate for Justice Soumitra Sen asked each of them a few questions in cross-examination but did not question the authenticity or contents of any of the documents produced by any of them. At the hearing on the afternoon of 24 June, 2010 Senior Advocate Mr. Shekhar Naphade appearing for Justice Soumitra Sen stated (and this is so recorded in the minutes) that:

> *"there was neither any evidence to be adduced nor any documents to be produced on behalf of the Respondent" (i.e. Justice Soumitra Sen).*

On a specific query from the Inquiry Committee, Senior Advocate for Justice Soumitra Sen (Respondent) also stated that he did not wish to examine "the Respondent" (Justice Soumitra Sen) and record his statement. It was then

directed that the date and time of further proceedings in the matter (*viz.* oral arguments) would be duly intimated to all concerned in due course. The further hearings scheduled for 25 and 26 June, 2010 (for the purpose of taking of evidence) were thus no longer necessary. The Judge was then informed (by letter dated 7 July, 2010) that the dates fixed for oral arguments would be at the same venue on Sunday 18 July, 2010 (for the whole day) and Monday 19 July, 2010 from 2 p.m. onwards thereafter till the arguments had concluded. At the hearings on 18 and 19 July, 2010 (as at the previous hearing for recording of evidence on 24 June, 2010) the same set of Advocates were present and addressed oral arguments. Justice Soumitra Sen himself was not personally present. About a week after the close of arguments, Advocates appointed to assist the Committee and Advocates for Justice Soumitra Sen submitted brief written arguments.

IV. The Facts: Investigation into the conduct of Soumitra Sen and an assessment by the Inquiry Committee of the facts brought on the record of this case:

The investigation by the Inquiry Committee into the entire *conduct* of Soumitra Sen in relation to the two grounds of misconduct - *viz*. (i) of misappropriation of large sums of money, which he had received as Receiver appointed by the Calcutta High Court; and (ii) misrepresentation of facts before the Calcutta High Court with regard to the misappropriation of money - covers a long period from 30 April, 1984 to December, 2006; in between, on 12 December, 2003, Soumitra Sen, till then an Advocate of the Calcutta High Court, was appointed a Judge of that Court. The relevant facts relating to this conduct as brought on record of this investigation are for convenience (and only for convenience) divided into two periods of time - although there is a common thread of continuity between them: *viz.*

(1) Conduct of Soumitra Sen, Advocate between 30 April, 1984 upto 3 December, 2003; and

(2) Conduct of Soumitra Sen, Judge, after 3 December, 2003.

(1) Conduct of Soumitra Sen, Advocate between 30 April, 1984 upto 3 December, 2003

(a) In an interlocutory application for appointment of a Receiver in Suit No. 8 of 1983 (Steel Authority of India Ltd. *Vs*. Shipping Corporation of India Ltd. and Others) an Order dated 30 April, 1984 was passed by Justice R.N. Pyne of the Calcutta High Court. By this order Mr. Soumitra Sen, Advocate was appointed as Receiver over *"the*

rejected goods lying in cover shed no. 1 of the Coke Oven Refractory stores of Bokaro Steel Plant mentioned in paragraph 19 *of the petition",* with power to him to get in and collect the outstanding debts and claims due in respect of the said goods, together with all the powers provided for in Order XL Rule 1 Clause (d) of the Code of Civil Procedure, 1908"[5]. It was further specifically ordered that the Receiver should file, and submit for passing, his half yearly accounts in the office of the Registrar of the High Court; Such accounts to be made out as at the end of the months of June and December in every year and be filed during the months of July and January next respectively, and that the same when filed be passed before one of the Judges of the High Court; It was also ordered *inter alia* that the Receiver should sell the said goods either to the best purchaser or purchasers that could be got for the same or by private treaty after due advertisement being published about such sale. It was further ordered *inter alia* that "the parties herein be at liberty to mention before this court for fixation of final remuneration of the Receiver after the sale was completed" and "for obtaining other directions for appropriate investment of the sale proceeds". By a later Order dated 11 July, 1985[6] it was clarified that Mr. Soumitra Sen was to act as Receiver without furnishing security.

(b) Before 20 January, 1993, a substantial part of the goods were sold by Mr. Soumitra Sen as Receiver appointed in Suit No. 8 of 1983. By an order dated 20 January, 1993[7] passed by a Single Judge of the Calcutta High Court (in Suit No. 8 of 1983) it was then ordered that:

> *"as and when the purchase price is paid the learned receiver shall therefrom deduct 5% thereof as his remuneration and shall keep the balance in a separate account in a bank of his choice and branch of his choice and hold the same free from lien or encumbrances subject to further orders* of *the Court. " (Emphasis supplied).*

(c) As acknowledged in his Written Statement of Defence (filed with the Inquiry Committee on 3 May, 2010), Soumitra Sen had received, between 1/4/1993 and 1/6/1995 as Receiver, a total sum of Rs. 33,22,800/- being the sale proceeds of a large portion of the goods of which he had been appointed as Receiver. But the obligation of filing and passing of half yearly accounts that was imposed on him by the order dated 30 April, 1984[8] - and under the Calcutta High Court

Original Side Rules - was at no time observed or complied with: neither during the entire period when he remained an Advocate nor thereafter after he was appointed Judge.

(d) Several documents from proper custody were brought on record by evidence of the witnesses called to produce them (*viz*. CW1 Assistant Registrar, Calcutta High Court, Original Side, and CW2 Chief Manager, State Bank of India (Service Branch), CW4 (Manager Credit of Allahabad Bank, Stephen House Branch), and CW5 (Manager, Internal Services, Standard Chartered Bank, 19, Netaji Subhas Road, Branch, (formerly ANZ Grindlays Bank).

(e) The evidence oral and documentary has established that not one but two separate accounts, were opened by Soumitra Sen as Receiver, each in his own name: *viz.* (i) firstly Savings Account No. 01SLP0632800 was got opened on 4 March, 1993 by Soumitra Sen, with the ANZ Grindlays Bank, Church Lane Branch, Calcutta, (for convenience and for ease of identity hereinafter referred to as "ANZ Grindlays Bank *Receiver's* Account")[9]; (ii) secondly, Savings Account No. 9902 was got opened on 24 March, 1993 by Soumitra Sen, with the Allahabad Bank, Stephen House Branch, Calcutta.[10] (for convenience and for ease of identity hereinafter referred to as "the Allahabad Bank *Receiver's* Account"). Both these accounts, so opened, were Accounts of Soumitra Sen as Receiver: they are collectively referred to as "the Receiver's two Accounts".

(f) As disclosed in evidence, a total sum aggregating to Rs. 33,22,800, being the sale proceeds of goods (of which Soumitra Sen was appointed Receiver) were brought into the Receiver's two Accounts between 24 March, 1993 and 5 May, 1995 as stated below:

(i) in the ANZ Grindlays Bank Receiver's account an aggregate sum of Rs. 28,54,800 was got deposited: through the proceeds of 18 original Demand Drafts issued in the name of Soumitra Sen by the State Bank of India (at the instance of the purchaser of the goods); the originals of these Demand Drafts have been produced in evidence along with a statement (deposed to CW2 Mr. Satyalal Mondal, Chief Manager, State Bank of India, Service Branch, Kolkata), showing that the proceeds of the 18 demand drafts were deposited into the ANZ Grindlays Bank Receiver's account.[11]

(ii) in the Allahabad Bank Receiver's Account an aggregate sum

of Rs 4,68,000 was deposited in tranches of Rs 4,50,000 and Rs. 18,000: the former amount by two Demand Drafts issued in the name of Soumitra Sen by the State Bank of India and latter by two Bankers cheques (by Bank of Madurai later taken over by ICICI Bank) also in the name of Soumitra Sen[12]: as evidenced by CW2 Chief Manager SBI, (Service Branch) Kolkata and by the statement of account produced by witness CW4 (Manager (Credit) of the Allahabad Bank Stephen House Branch).

(g) In the Written Statement of Defence filed on May 3, 2010 signed by "Justice Soumitra Sen" it was categorically asserted -

(i) "that there was no occasion to return the money (Rs. 33,12,800) since.....

(d) the entire sale consideration was invested in Fixed Deposit in Lynx India Private Limited which went into liquidation in the year 1999-2000 long after the amount representing the sale consideration was invested (paragraph 7(d))"; and

(ii) that "at no point of time any monies were ever used for personal gains or were temporarily or permanently misappropriated". (Paragraph 5)

(h) If the aforesaid assertions made by Justice Soumitra Sen in his Written Statement of Defence (filed with the Inquiry Committee on 3rd May 2010) had been corroborated by the documentary evidence brought on record during the investigation, further investigation may have become unnecessary: since, despite apparent non-compliance, and positive infractions, of Court Orders - such as, not keeping the amounts in one account but in two accounts, not "holding" (*i.e*. keeping) the same in those accounts subject (only) to orders of the Court, not taking permission of the Court for parting with the sale-proceeds (Rs. 33,22,800), whether by way of investment or otherwise - there would have been factually no "wrongful appropriation" of moneys from the Receiver's two accounts.

(i) However the documentary evidence led before the Inquiry Committee clearly reveals that: neither the entire nor any part of the sale consideration received by Soumitra Sen for the sale of the goods (*i.e.* a sum of Rs. 33,22,800) were invested by Soumitra Sen

(as Receiver) in Lynx India Limited; on the contrary the documentary evidence brought on record[13] shows that a sum of Rs. 25 lakhs was deposited with Lynx India Ltd. - not from out of either of the Receiver's two Accounts (the "ANZ Grindlays Bank Receiver's Account or the Allahabad Bank Receiver's Account), but from an altogether different (third) Account which had been got opened by Soumitra Sen in his own name (opened by him for the first time on 6 February, 1997)[14] - also with the ANZ Grindlays Bank, Church Lane Branch, Calcutta, (*viz*. Account No. 01SLP0813400: for convenience and for ease of identification hereinafter referred to as the "400 Account"). It was only from this "400 Account" (and not from either of the Receiver's two Accounts) that a sum of Rs. 25 lacs was deposited on 27 February, 1997 with Lynx India Ltd[15]; and this amount of Rs. 25 lacs was paid out of separate funds (Rs. 70 lacs) received by Soumitra Sen - not from out of sale proceeds of goods of which he had been appointed Receiver by order dated 30 April, 1984 - but received by him from a different source in an entirely different capacity and in, an entirely different proceeding: a proceeding in which he, Soumitra Sen, as Special Officer, had been entrusted by separate orders passed by the Calcutta High Court in a different proceeding with a specific sum of Rs. 70 lakhs by the Official Liquidator of the High Court of Calcutta Fans (1995) Pvt. Ltd., (in liquidation) "for distribution to workers".[16]

(j) During the investigation, by the Inquiry Committee CW-3, authorised representative of the Official liquidator of the Calcutta High Court was summoned and produced an Application Form dated 27 February, 1997 signed by Soumitra Sen which gave the number of the cheque - cheque No. 624079 - drawn by Soumitra Sen on the 400 account of ANZ Grindlays Bank; the proceeds of this cheque no:624079 were utilized for making five separate applications of rupees five lakhs each in respect of which five separate fixed deposits (bearing Nos. 11349, 11350, 11351, 11352 and 11353)[17] were issued by Lynx India Ltd., in favour of "Soumitra Sen": as stated above Cheque No. 624079 for Rs. 25 lacs was drawn by Soumitra Sen on the 400 Account of ANZ Grindlays Bank, not from either of the Receiver's two Accounts: as is evident from the Bank statement of the 400 Account produced by the CW-5 - Manager, Internal Service, Standard Chartered Bank (the successor of the ANZ Grindlays Bank).

(k) Apart from the sum of Rs. 25 lacs shown as deposited with Lynx India Ltd. from out of the 400 Account (non-Receiver account) no further sum has been shown as deposited / invested with Lynx India Ltd. from out of either of the Receiver's two Accounts. The following Bank Statements of the Receiver's two Accounts have been produced in evidence: *viz.* (i) Re: Account No. 9902, Allahabad Bank, Stephen House Branch, in the name of Soumitra Sen from its inception *i.e*. 24 March, 1993 till 2009; 18 there is no entry showing any payment to Lynx India Ltd., and (ii) Account No: 01SLP0632800 in ANZ Grindlays Bank, Church Lane Branch, from 28 February, 1995 till the time the account is shown as closed on 22 March, 2000;[19] there is no entry throughout this period (from 28 February, 1995 upto its closing) showing any payment to Lynx India Ltd. As to the period prior to 28 February, 1995, there could have been no payment to Lynx India Ltd. from out of this Receiver's Account No: 01SLP0632800 since it was the positive case of Soumitra Sen that it was only after 30 April, 1995, (when amounts were paid in by the purchaser of the goods sold by him as Receiver) that fixed Deposits with Lynx were created - this was so stated in Justice Sen's letter dated 25 February, 2008 addressed to the Chief Justice of India (put in as an annexure to Justice Soumitra Sen's Written Statement of Defence).

(l) There is thus abundant evidence brought on record of this investigation which establishes that the assertion in the Written Statement of Defence filed before the Inquiry Committee on 3 May, 2010 that *"the entire sale consideration was invested in Fixed Deposits with Lynx India Ltd..."* is not true.

(m) Justice Soumitra Sen gave no evidence before the Inquiry Committee, nor made any statement, nor even personally attended any of the hearings to enable the Inquiry Committee to be assured from Justice Soumitra Sen himself: as to how Rs. 33,22,800 was actually invested and where and how this amount had been expended; apparent and obvious contradictions between the Bank Statements exhibited in the case and his (Soumitra Sen) previous assertions in his Written Statement of Defence - *viz*. that the entire sum of Rs. 33,22,800 had been invested in Lynx India Ltd., which went into liquidation in the year 1999-2000 - did call for an explanation: these were facts in Justice Soumitra Sen's personal and special knowledge - But by refusing to attend or personally participate in the proceedings before the Inquiry Committee, he

Justice Soumitra Sen, denied himself the opportunity of giving an explanation (if he had any). It is axiomatic, and an almost universal rule of evidence (see for instance Section 106 of the Indian Evidence Act 1872) that when any fact, is pre-eminently and exceptionally within the knowledge of any person the burden of proving that fact is upon him.[20]

(n) Absent any convincing explanation to the contrary, it stands established from the documents brought on record in this investigation that the investment with Lynx India Ltd., was not from out of the funds of Rs. 33,22,800/- (being the sale consideration of the goods of which Soumitra Sen was appointed Receiver) but from out of a sum of Rs. 70 lakhs entrusted to Soumitra Sen as Special Officer by the Official Liquidator of Calcutta Fans (1995) Pvt. Ltd., (in liquidation) - by orders of the Calcutta High Court dated 20 January, 1997 and 30 January, 1997[21] in an entirely different proceeding *viz*. in Calcutta Fans Workers Employees Union *vs*. Official Liquidator - "Appeal *No:*_____/1996 in C.P. No: 226/1996" (in the Calcutta High Court).

(o) It now remains to consider whether the further assertion in Justice Soumitra Sen's Written Statement of Defence[22] *viz. that "at no point of time any monies were ever used for personal gains or were temporarily or permanently misappropriated" is true or false.* The investigation into this assertion reveals not only that there have been transfers of large sums from the Receiver's two accounts; first to the 400 Account (non-Receiver Account) - without any authority or permission of the Court appointing Soumitra Sen as Receiver - and then disbursements therefrom of several lacs of rupees from out of the 400 account (again without any authority or permission of the Court appointing Soumitra Sen as Receiver) Particulars of this diversion are, briefly set out below :

(i) on 6 March, 1995 Soumitra Sen got issued a Term Deposit issued (in his own name from out of funds in the ANZ Grindlays Bank Receiver's Account for a principal sum of Rs. 8,73,968/-, and on 4 December, 1995 out of the same ANZ Grindlays Bank Receiver's account Soumitra Sen got issued (again in his own name), a second Term Deposit for a principal sum of Rs. 9,80,000/-. The term-deposit sheets for each of these two Term Deposit Receipts (brought on record in these proceedings) show that each of the said two amounts

of Rs. 8,73,968 and Rs. 9,80,000 had, by May 1997, stood increased (as a result of accumulated interest) to (i) Rs. 10,91,011.49p[23] (*i.e*. Rs. 8,73,968 plus interest) and (ii) Rs. 11,32,999.92.[24] (*i.e*. Rs. 9 ,80,000 plus interest): aggregating in all to Rs. 22,24,011.41.

(ii) the documents brought on record, through witnesses from the Banks, also reveal that by a handwritten letter bearing date 22 May, 1997,[25] on the printed letter head of "Soumitra Sen", and signed by him (addressed to the Manager, ANZ Grindlays Bank) a request was made to encash the "approximate sum of Rs. 22 lakhs" and to deposit the same "in my other account", *"as I need this money urgently as lot* of *payments will have to be disbursed very soon".* The said documents brought on record also show that by another letter also dated 22 May, 1997[26] addressed to the ANZ Grindlays Bank - (and also signed by Soumitra Sen) - the Manager was requested to debit the ANZ Grindlays Bank Receiver Account and to transfer "a sum of 22,93,000 to my ANZ Saving 400 Account[27] (which was a non-receiver account). Since the total available balance in the ANZ Grindlays Bank Receiver's Account was only Rs. 22,84,000/- (the figure noted at the foot of the letter dated 22 May, 1997 addressed by Soumitra Sen to the Bank Manager) the Bank debited the account with a sum of only Rs. 22,83,000 and credited Rs. 22,83,000 to the "400 Account" which was the non-Receiver's account in the name of Soumitra Sen.

(iii) witness CW5 being Manager, Internal Services, Standard Chartered Bank, Kolkata (successor to ANZ Grindlays's Bank) produced the transfer entries so made, which had been requested in Justice Soumitra Sen's two letters dated 22 May, 1997 (exhibited in this proceedings)[28]. In Cross-Examination of CW-5 Counsel for Justice Soumitra Sen did not suggest to the witness that the two letters were not written or signed by Soumitra Sen nor did Counsel dispute in cross-examination the authenticity of either of these letters nor the transfer entries in the bank accounts nor the vouchers / transfer instructions.[29]

(iv) the stated need for *"this money (Rs.* 22,83,*000) urgently as lot of payments will have to be disbursed very soon"* (so stated in Soumitra Sen's handwritten letter of 22 May, 1997[30] to the

Bank Manager) itself shows that part of the sale-proceeds of goods (Rs. 33,22,800) was utilised for purposes other than those contemplated in the orders appointing Soumitra Sen as Receiver - If money was urgently required for payment to workers in connection with a different case: that of Calcutta Fans (1995) Pvt. Ltd. (in liquidation) (as the letter dated 22/5/1997 headed "Re: 01SLP/063/800" suggests), and funds from the Receiver's account were got transferred for that purpose, then this itself showed a misapplication of funds held by Soumitra Sen as Receiver of the sale proceeds of the goods in Suit No. 8 of 1983. He (Soumitra Sen) was not authorised, nor did he even seek permission of the Court, to utilise monies held in either of the Receiver's two Accounts for purposes of paying workers of Calcutta Fan Ltd. Soumitra Sen had been appointed by a separate order[31] of the Calcutta Court in a distinct and separate proceeding as "Special Officer" and as such Special Officer he had been specifically entrusted with a separate sum of Rs. 70 lacs for the specific purpose (of paying workers).

(v) but this is not all. After the transfer of a sum of Rs. 22,83,800/- from out of the ANZ Grindlays Bank Receiver's account (which admittedly represented part of the sale proceeds (Rs. 33,22,000) of the goods (and interest there on) being the subject matter of Suit 8 No: 1983) - into the 400 Account (non-Receiver Account in the name of Soumitra Sen), there are large disbursements (from out of the 400 account) from 22 May, 1997 to 01 July, 1997: effected by issuing and getting encashed in all 45 cheques,[32] each of them signed by Soumitra Sen (each of the cheques are exhibited in evidence): 18[33] of such cheques are shown to be bearer cheques aggregating to Rs. 9.57 lakhs (app.) - *i.e*. cheques bearing the legend "Pay to ____ or Bearer". In his signed - but unsworn - Written Statement of Defence Soumitra Sen's explanation (in paragraph 47) is that these disbursements were *towards payment of worker's dues .... pursuant to a Division Bench order dated 20-01-1997."* But this particular Division Bench Order (of 20.01.1997)[34] was passed not in Suit No. 8 of 1983 or in any interlocutory application in that Suit, but in an entirely different proceeding *viz*. in CP No. 226/1996 *Calcutta Fan Worker's Employees Union and Others Vs. Official Liquidator and Others*, which had no connection whatever with Suit 8

of 1983; worker's dues were to be paid from out of the Rs. 70 lacs got credited by the Official Liquidator (from separate funds in his hands) in the non-Receiver's account - the 400 account - for that specific purpose.

Besides, in the course of this investigation, there was no list of "workers" produced (by or on behalf of Justice Soumitra Sen) to whom cheques (Exhibits C-219 to 233, Exhibit C-258 to Exhibit C-262) could be said to have been issued, so as to establish even *prima-facie* (by comparison with the names on the cheques brought on record and exhibited) that the names tallied with the names of "identified workmen".

(vi) all of which clearly shows a diversion from out of the ANZ Grindlays Bank Receiver's Account of a sum as large as Rs. 22,83,000 - first on 22 May, 1997 to the "400 Account (the non-Receiver's Account (opened by Soumitra Sen in his own name), and then by disbursements made from, out of this sum of Rs. 22,83,000 deposited in the non-Receiver's Account (the 400 Account) to various persons and parties, which include an aggregate sum of Rs. 9.57 lakhs (app.) representing the proceeds of 18[35] bearer cheques (in different names) all signed by Soumitra Sen and showing on the face of each such cheque a Bank Stamp - with the endorsement of "Date" "Cash paid" and address of the Branch of the bank from which "cash" was paid.

(vii) in the Allahabad Bank Receivers Account also between 24 March, 1993 and 29 March, 1994 a sum of Rs. 4,68,000 of Receiver's funds are shown to be withdrawn and disbursed, withdrawals were through cheques signed by Soumitra Sen: so that on 29 March, 1994 only Rs. 3215 remained in this account. Five cheques (4 bearer cheques and one A/c Payee cheque)[36] aggregating to Rs. 1,39,514 which are exhibited and shown as signed by Soumitra Sen: are in the name of third parties from out of Receivers Funds: [unexplained by (or on behalf of) Soumitra Sen]. Similarly in the ANZ Grindlays Bank Receivers Account the statement of account as from 28 February, 1995 shows a sum of only Rs. 8,83,963.05p. (on 28 February, 1995) although by that date an aggregate sum as large as Rs. 19,89,000, out of sale consideration of the goods of which Sen was appointed Receiver, had been already

deposited in this account. This difference too has not been explained or accounted for. Even after 28 February, 1995 till 5 May, 1995 sums aggregating to Rs. 8,65,000 were deposited. Later on, eleven self-withdrawal-cheques (*i.e*. withdrawals by Soumitra Sen) and two payments (by cheque) to "S.C. Sarkar & Sons" and three payments towards some credit card dues were made.[37] There is no explanation about any of these entries. Ultimately in the Allahabad Bank Receiver's Account - the balance as on 31 May, 2008 is shown as "nil";[38] and in the ANZ Grindlays Bank Receiver's Account, the ultimate balance as on 22 March, 2000 is also shown as "Nil"[39]: the account being shown as closed.

(p) In the assessment of the Inquiry Committee the positive case made by Justice Soumitra Sen in his Written Statement of Defence as to how the sale proceeds of the goods of which he was appointed receiver were appropriated/invested is proven to be untrue - The assertion in the Written Statement of Defence that *"at no point of time any monies were ever used for personal gains or were temporarily or permanently misappropriated"* is shown to be false.

(q) Even if the signed Written Statement of Defence - not being on oath - be disregarded, especially since Justice Soumitra Sen himself did not appear personally before the Inquiry Committee to affirm its contents as true, even then, it is apparent from the aforesaid evidence brought on record that there has been a large scale diversion / conversion of the funds (sale-proceeds of Rs. 33,22,800) in the hands of the Receiver in breach of and in violation of the orders of the Court appointing Soumitra Sen as Receiver - a diversion / conversion of funds for purposes which were totally unauthorised and remain unexplained.

(2) Conduct of Justice Soumitra Sen in relation to the events recited above after December 3, 2003

All that is stated above took place during the period when Soumitra Sen Receiver was an Advocate. The assessment of the Inquiry Committee is that as Advocate - and as officer of the High Court of Calcutta - Soumitra Sen's conduct (his various acts and omissions prior to 3 December, 2003) was wrongful and not expected of an Advocate: an officer of the High Court. But his conduct - in relation to matters concerning the moneys received during his Receivership - after he was appointed a Judge was deplorable: in no way befitting a High Court Judge. It was an attempt also to cover-up not only his

infractions of orders of the Calcutta High Court but also, by the making of false statements, it revealed an attempt also to cover up the large-scale defalcations of Receiver's funds - details of which are set out below:

(a) After he was appointed a Judge on 3 December, 2003 no application was made by him for his discharge as Receiver, nor has he been at any time, discharged of his duties as Receiver. By order dated 3 August, 2004[40] (in Application No: GA875/2003)[41]; - an application filed by the plaintiff (Steel Authority of India) in Suit No:8 of 1983 - the Calcutta High Court had appointed another advocate (Mr. Soumen Bose) as Receiver, not of the sale proceeds of goods that had been sold by the erstwhile Receiver; but as Receiver for sale of a small portion of the remaining goods unsold (*i.e*. 4.311 metric tonnes); which had not been thus far sold by the "erstwhile Receiver" (*i.e*. by Soumitra Sen).[42]

(b) After his elevation as a Judge (in December 2003) Justice Soumitra Sen did not seek any permission from the Court, which appointed him Receiver- even *ex-post-facto* - to ratify or approve of his dealings with the sale-proceeds under his Receivership, nor did he file any application informing the Court as to what had happened to those funds.

(c) It is the admitted position on record that no accounts whatever have been filed in the Calcutta High Court as directed by the Order dated 30 April, 1984[43] appointing Soumitra Sen as receiver (also required by Ch. XXI of the Calcutta High Court Original Side Rules). As a matter of fact in one of the orders passed by the Single Judge of the Calcutta High Court dealing with Suit No. 8 of 1983 it appears that the Presiding Judge made specific inquiries with the Registry of the Calcutta High Court as to the filing/non-filing of Receiver's accounts by Soumitra Sen, and that Inquiry resulted in a Report dated 20 July, 2005[44] filed by the Accounts Department of the Calcutta High Court (so recorded in Court Order dated 21st July 2005)[45] that *"no accounts has been filed by the erstwhile Receiver in the aforesaid suit though collections have been made....."*

(d) As to the sale proceeds of Rs. 33,22,800 that had already been paid over to the erstwhile Receiver Mr. Soumitra Sen, *the events that took place after Soumitra Sen, was appointed a Judge of the Calcutta High Court,* show a complete lack of consciousness by the Judge of his position and responsibility as a Judge of the Calcutta

High Court. The conduct of the Judge was at first to avoid saying anything to the Court that had previously appointed him as Receiver, and to avoid and evade all attempts by the Court to obtain information from him; and then, when that was no longer possible, to make a positive misstatement to the Court - and that too on sworn affidavit (of his mother, on his behalf, as constituted attorney) on the basis of which, treating it as true, a Division Bench of the High Court of Calcutta passed judgment dated 25 September, 2007[46] in favour of Soumitra Sen. All these somewhat sordid events are all brought on record of the present proceedings and are, briefly set out below:

(i) that before Soumitra Sen became a Judge, a letter dated 7 March, 2002[47] was addressed by plaintiff's Advocate (advocate for the Steel Authority of India in Suit No: 8 of 1983) calling upon Soumitra Sen to furnish the Accounts in respect of sale proceeds of the goods sold by him as Receiver. (In his Written Statement of Defence filed on 3 May, 2010 Justice Sen states that he did not personally receive this letter). On the strength of there being no response, to this letter of 7 March, 2002, the plaintiff (Steel Authority of India in Suit 8 of 1983) moved the Court by filing an application GA 875/03[48] on 27 February, 2003 for an order *inter-alia* for rendition of accounts and deposit of the sale proceeds in Court.

(ii) after being served with specific Orders dated 7 March, 2005[49] and 3 May, 2005[50] passed in G.A. 875/2003 *(in Suit* 8 *of* 1983) after Sen had became a Judge on 3 December, 2003 - he was requested by the Court "to swear an affidavit either by himself or through any authorised agent as he may think fit and to state what steps he had taken and how much amount he had received on account of sale in terms of the Order of this Court"; he was also required to state on affidavit "in which Bank or Branch the sales proceeds has been deposited" and required to "annex the copy of the receipts of deposits or send in a sealed cover all documents and passbook, if any, to the Registrar, Original Side Calcutta High Court who in his turn, shall produce the same before this Court on the next date of hearing" - despite this specific and detailed order: Justice Soumitra Sen simply ignored it - he did not comply. No affidavit was filed by Justice Sen in GA875/2003 nor did he make any statement, nor did he choose to appear before the Court at the hearing of application No. GA 875/2003 - either through

Counsel or by any other representative: nor was it then his contention (as it is now) that his appointment as a Judge in December 2003 was itself an affirmation of good conduct as Receiver prior to 3 December, 2003: since the appointment must have been made after full knowledge by all the authorities concerned about his dealings as Receiver. Such an implausible argument now made in the present proceedings is an argument that requires only to be stated in order to be rejected.

(iii) by the Order dated 17 May, 05[51] a Judge of the Calcutta High Court after being satisfied that the copy of the Application No. GA875 of 2003 had been duly served on Justice Soumitra Sen, put on record (of GA875/2003) the affidavit[52] of the purchaser of the goods, (of which Soumitra Sen had been appointed receiver) in respect of particulars of payment for the price of goods sold and delivered, and recorded that a sum of Rs. 33,22,800/- had been paid to the Receiver on various dates commencing from 25 February, 1993 upto 30 April, 1995; the same order stated that a copy of the affidavit of the purchaser should be supplied to the erstwhile Receiver and "it would be open to the Receiver to file an affidavit if so advised either by himself or authorised agent dealing with statements and averments made by the petitioner (the plaintiff Steel Authority of India) as well as the purchaser". In response, no such affidavit was filed. Since the order of 17 May, 2005 was 'shown to have been served[53] on Justice Soumitra Sen; as the Single Judge noted: "inspite of service none appeared to say anything about this matter." The Single Judge then proceeded to record that: "this Court has no option but to make an inquiry as to what happened to payments said to have been received by the erstwhile Receiver."

(iv) the proceedings in GA 875 of 2003 then dragged on till 10 April, 2006 (the relevant orders have been brought on record). Justice Soumitra Sen did not comply with any of the orders dated 7 March, 2005[54], 3 May, 2005[55], and 17 May, 2005[56] (passed in GA 875/2003) by filing an affidavit nor by making any statement to the court; nor did he even appear through Counsel or otherwise, (in GA 875/2003) on any of the following dates of hearings *viz*. 30 June, 2005[57], 21 July, 2005[58], 26 July, 2005[59], 7 September, 2005[60], 4 October, 2005[61], 12 December, 2005[62], 9 January 2006[63],

1 February, 2006[64], 15 February, 2006[65] and 1 March, 2006[66] - All this ultimately led the Single Judge of the Calcutta High Court (who was in seisin of GA 875 of 2003) to direct (by Order dated 10 April, 2006[67]) Justice Soumitra Sen to pay up Rs. 52,46,454 being the sum of money assessed as the amount which ought to have been in his hands as Receiver: (*viz*. Rs. 33,22,800, plus 5% interest thereon upto 1 April, 2003, and 9 percent interest on the principal sum from 2 Arpil, 2003 till 1 April, 2006 - after adjusting an amount of Rs. 5 lakhs already paid by Soumitra Sen to plaintiffs Advocate, and after deducting Receiver's remuneration). Without any protest on the part of Justice Soumitra Sen, this order was complied with - not questioned or challenged by him in appeal or in any other proceeding. Without demur, Justice Soumitra Sen in compliance with the Order dated 10 April, 2006 made a part payment of Rs. 40 lakhs on 27 June, 2006 and 15 September, 2006 (from what source it is not revealed) and then sought more time for depositing the balance by moving application GA 2968/06[68].

(v) the Application, GA2968/2006, dated 14 September, 2006 was the first application made on his behalf as Receiver after Soumitra Sen became a Judge in December 2003; it was moved not in his own name but in the name of his mother as his constituted attorney. Its significance for the present purpose lies in the fact that no mention whatever was made in this application as to how the money received by the Receiver (Soumitra Sen) had been dealt with or invested. This application merely sought time for paying the balance of over Rs. 12 lakhs - in this application it was submitted *"that in the event this Hon'ble Court permits the said Receiver to deposit the remaining balance amount within* 2 *weeks after the long vacation of this Hon'ble Court it will be helpful for the erstwhile Receiver."* In the application no grievance was made about the adverse comments of the Single Judge about Justice Soumitra Sen's conduct in his Order dated 10 April, 2006. The Single Judge who heard GA2968/2006 granted Justice Soumitra Sen the time he had requested; the balance payment was then made by Justice Soumitra Sen on 21 November, 2006 - again without protest, and not even "without prejudice": no explanation being offered as to from what source this further large sum was paid. The order of 10 April, 2006 was accepted and acted upon.

(vi) after he had fully complied with the Order dated 10 April, 2006[69] directing payment of the entire adjudged sum of Rs. 52,46,454.00, and after having taken advantage of the further order of the Single Judge extending time for payment as requested by Sen, on 15 December, 2006, it was for the first time that Justice Soumitra Sen got filed through his constituted attorney (his mother) another interlocutory application GA 3763 of 2006[70] in Suit No. 8 of 1983 - for expunging of adverse comments and prejudicial remarks made by the Single Judge of Calcutta High Court in his previous Order dated 10 April, 2006 - as stated above this was after having accepted and acted on the order dated 10 April, 2006 by paying back the entire sum of Rs. 52,46,454.00 as directed by the Judge. Even in this application Justice Soumitra Sen did not question the Single Judge's order dated 10 April, 2006[71] directing him to pay Rs. 52,46,454/-, nor did he dispute his personal liability to repay the amounts received by him as Receiver nor did he question the assessment of the quantum (fixed by the High Court) that had to be repaid. However a significant feature of this Application GA No. 3763/06[72] dated 15 December, 2006 was that it was supported by an affidavit dated 13 December, 2006[73] of the mother, of Justice Soumitra Sen, in which affidavit in paragraph 6 it was stated (on behalf of Justice Sen) *for the first time* that the sale proceeds (Rs. 33,22,800) received by him *"were deposited in the Bank Accounts but were subsequently invested in a public limited Company, viz. Lynx India Ltd. (now in liquidation) in order to earn more interest". (sic)* GA 3763/2006 was finally disposed off on 31 July, 2007[74] by the Single Judge of Calcutta High Court by recording due compliance of his previous Order passed on 10 April, 2006[75] *viz*. of that payment of Rs. 52,46,454/- made by the erstwhile Receiver. However the Single Judge declined to expunge any remarks / observations contained in his previous Order passed on 10 April, 2006. It is this Order dated 31 July, 2007 (refusing to expunge adverse remarks in the order dated 10 April, 2006) that was challenged by Justice Soumitra Sen - again through his mother as constituted Attorney by filing Memorandum of Appeal APOT 462/07 (later numbered as APO 415/07).[76] In Ground XIII of the Memorandum of Appeal dated 29 August, 2007 filed on behalf of Justice Soumitra Sen (through his mother as

constituted attorney): - against the judgment (dated 31 July, 2007) of the Single Judge - it was stated as follows:

"XIII. FOR THAT the Learned Judge failed to appreciate that all the investments made by the erstwhile Receiver in the company were by way of cheques drawn on ANZ Grindlays Bank, Account No. 01SLP0156800 maintained in the personal name of the erstwhile Receiver. *This would be borne out from the documents disclosed by the Official liquidator as also from the documents exhibited by the Standard Chartered Bank. This has also been stated in the notes submitted on behalf of the petitioner*."(Emphasis supplied)*.

(vii) the Division Bench of the Calcutta High Court in its judgment dated 25 September, 2007[77] allowed the appeal and directed the expunging of all comments and observations made in the Order dated 10 April, 2006 of which the expungment was sought, and held that the Single Judge had acted without jurisdiction in making such comments. The Division Bench[78] - *after referring to the explanation given on behalf of Justice Soumitra Sen* (in the affidavit dated 13 December, 2006), and obviously conscious of the further statements made in Ground XIII of the Memorandum of Appeal (quoted above) went on to say:

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* "When the Account Opening form of ANZ Grindlays Bank Church Lane Branch, Account No: 01SLP0156800 was got produced in examination in chief through witness CW-5, Manager (Internal Services Standard Chartered Bank, formerly ANZ Grindlays Bank), in cross-examination Counsel for the Justice Soumitra Sen (Respondent) put it to him (CW-5) that the account opening form of OSLP0156800 was not the account of the respondent (Justice Soumitra Sen), and elicited from him the answer "Probably not". CW-5 said, in further cross-examination, that the "signature and the address mentioned is not matching with that of the respondent." (Soumitra Sen); the Account number mentioned in Ground XIII was thus admittedly not the account of Soumitra Sen who had been appointed Receiver of the goods but it was an account of a person with the same name "Soumitra Sen" who was Sales Promoter of Food Specialities Ltd. (See Exhibits C-304, C-303, & C-301)"! The Account number of ANZ Grindlays Bank Church Lane Branch opened in the name of the Respondent "Soumitra Sen" was No:01SLP0632800; a different number from Account No: 01SLP0156800 of an entirely different person also having the same name: "Soumitra Sen". By characterising this Account No: 01SLP0156800 as "an account in the personal name of the erstwhile Receiver" which it was not, the statement in Ground XIII was obviously false and misleading: even if the number of the account had been given as 01SLP0632800, the statements made in Ground XIII would still have been incorrect and misleading.

> *"There was no evidence of any kind to show that the said erstwhile Receiver had done anything benefiting himself. On the contrary, the records showed, the money had been deposited with a finance company by the erstwhile Receiver, but as the company was wound up the money could not be recovered ....*
> " *and that "there was no misappropriation of any kind by the said erstwhile Receiver."*

The Division Bench then concluded:

> *"The findings of the learned Single Judge are based without any material of any kind. It is not understood how a finding of breach of trust, criminal or otherwise, could be made not it is also understood how any comment could be made that there was any misappropriation. The Order of learned Single Judge is entirely without jurisdiction and not supported by the facts on record".*

V. Events subsequent to the judgment (order dated 25 September, 2007 of the Division Bench of the Calcutta High Court in APOT 462 of 2007 (also AP0415 of 2007):

Despite the exoneration by the Division Bench of the Calcutta High Court of Justice Soumitra Sen his conduct tantamount to "misappropriation" of funds of which he had taken charge of as Receiver, 58 members of the Rajya Sabha (as already mentioned) gave Notice of a Motion in the Rajya Sabha - initiating the process for removal of Justice Soumitra Sen as Judge of the Calcutta High Court. The Motion having been admitted on 27 February, 2009 by the Hon'ble Chairman, the present (re-constituted) Inquiry Committee was entrusted with the task of investigating and making its Report on definite charges arising out of the misconduct of Justice Soumitra Sen set out in the Motion. During this investigation Counsel for the Justice Sen relied, very strongly, on the judgment dated 25 September, 2007[79] of the Division Bench of the Calcutta High Court to contend that the entire proceedings under the 1968 Act were without jurisdiction, and that no proceedings could be taken against Justice Soumitra Sen as long as this Division Bench judgment had not been recalled or set aside; that its findings were binding on this Inquiry Committee. This, along with some other contentions raised, must now be dealt with.

VI. Remaining contentions and submissions made on behalf of Justice Soumitra Sen:

It was *inter-alia* contended on behalf of Justice Soumitra Sen as follows:

(1) A Receiver appointed by a High Court is answerable to the Court which appoints him and no one else and therefore the Inquiry Committee could not inquire into the conduct of the Receiver.

(2) No action against the Receiver appointed by a High Court could be instituted or taken without leave of that Court which appointed him the Receiver.

(3) That the Calcutta High Court, subject only to the Appellate jurisdiction of the Supreme Court, is the sole and exclusive authority to prepare, maintain and preserve its own record, an inquiry into the *records* of the High Court (which would include its judgments) was impermissible by anybody or any authority whatever other than the High Court itself (or the Supreme Court of India).

(4) Non-filing of accounts by a Receiver was a matter to be investigated into and adjudged by the Court that appointed the Receiver and no conclusions could be drawn that were adverse to Justice Soumitra Sen on the basis of his not having submitted any accounts - as directed in the order appointing him as a Receiver dated 30 April, 1984.

(5) That at the time of "elevation" of Soumitra Sen as Judge of the Calcutta High Court his appointment as receiver was known to the Calcutta High Court Judges and therefore it is reasonable to presume that the Judges of the Supreme Court were also aware of the same and that the Government and the President of India were also aware of this fact: therefore his appointment by the President of India as Judge could not be set at naught "unless the charges against him are proved beyond reasonable doubt."

In the opinion of the Committee none of these contentions merit serious consideration for the following reasons:

(A) As regards the first three contentions - **Re: (1), (2) and (3)** mentioned above:-

(i) as already mentioned, the proceedings before this Inquiry Committee are taken pursuant to the provisions of the Judges Inquiry Act, 1968 and the Notification issued thereunder. The Motion of 58 members of the Rajya Sabha admitted by the Hon'ble Chairman records as under:

> *"Motion received under article 217 read with article 124(4) of the Constitution.*

The Chairman has, under Section 3 of the Judges (Inquiry) Act, 1968, admitted the following Motion received from Shri Sitaram Yechury and other Members (total fifty-seven) the notice of which was given under article 217 read with article 124(4) of the Constitution of India:-

"This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:

(i) misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and

(ii) misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta."

The Motion shall be kept pending till further action prescribed in the Judges (Inquiry) Act, 1968 and the rules made thereunder is taken.

(ii) the Proceedings before the Rajya Sabha (even assuming that they could have been challenged elsewhere) have not been so challenged by or on behalf of Justice Soumitra Sen - either before any appropriate Court or before any other authority. This Inquiry Committee appointed by Notification dated 16 December, 2009 must proceed on the basis that the Motion (which has been kept pending) is valid. Contentions (1), (2) and (3) above are in the teeth of the Motion admitted in the Rajya Sabha, and any contention which in effect questions the very admission of the Motion by the Chairman of the Rajya Sabha is beyond consideration of the Inquiry Committee. When Parliament speaks by Legislation or by Resolution or by Motion, no one has the authority to question it - certainly not a Committee constituted in pursuance of that Motion.

(iii) where a party files a suit against a receiver in his capacity as a receiver he cannot do so without leave of the court that appointed the receiver; but it cannot be lawfully contended that a Resolution or Motion in Parliament, or in one of its Houses, requires leave of any Court: it is the sole and exclusive right and privilege of Parliament to institute or not institute proceedings for the removal of a High Court Judge and it is the sole and exclusive right and privilege of the Presiding Officer of either House of Parliament to

admit a Motion with respect to "misconduct" alleged against a Judge whether in respect of his duties as a receiver or otherwise.

(iv) the fact that the Calcutta High Court is a "Court of Record" cannot be gainsaid, but the investigation before the Inquiry Committee is not into the "records of the High Court" as was sought to be argued. The judgment dated 25 September, 2007[80] of the Division Bench of the Calcutta High Court which has been relied upon by Justice Soumitra Sen is not a judgment *in rem* but a judgment *inter-parties*: it exonerates the Judge from all adverse remarks and criticism made by the Single Judge in his judgment dated 10 April, 2006[81]; the finding in the judgment of the Division Bench of the Calcutta High Court that there has been no "misappropriation" by Justice Sen is a finding that may be binding on the parties in Suit No. 8 of 1983; but no more. It cannot and does not exonerate the Judge from being proceeded with in Parliament under proviso (b) of Article 217 (1) read with Article 124(4). The observations in the judgment dated 25 September, 2007 of the Division Bench of the Calcutta High Court to the effect that there was no misappropriation of receiver funds by Justice Soumitra Sen was, after considering the uncontested affidavit filed on his behalf by his mother (set out above) which categorically asserted that the entire sum received by him from the sale of goods (Rs. 33,22,800/-) was invested in Lynx India Ltd., and that that company had gone into liquidation a couple of years later: this statement (alongwith the further misleading and false statements in Ground XIII of the Memorandum of Appeal quoted above: were material misrepresentations made by and on behalf of Justice Soumitra Sen before the Division Bench of the High Court of Calcutta. The finding by the Division Bench in its judgment dated 25 July, 2007 that Justice Soumitra Sen was not guilty of any misappropriation was made on a totally erroneous premise induced by false representations made on behalf of Justice Soumitra Sen.

(v) the records of the Calcutta High Court in the form of the judgment of the Division Bench remain intact, they are not in any way affected by the Motion before the Rajya Sabha nor by the Report of this Inquiry Committee. The foundation of the charge against Justice Soumitra Sen is one of conduct amounting to "misbehaviour", which was not the subject matter of consideration before the Division Bench of the High Court of Calcutta.

(B) Re: (4) - The submission in contention (4) set out above is untenable. That Soumitra Sen as receiver did not submit any accounts whether when he was an advocate or after he became a Judge, and thus violated the order appointing him as receiver, is a clear instance of "misconduct" tantamount to "misbehaviour" especially since Justice Soumitra Sen used his position as a Judge of the High Court by filing an affidavit of his mother (as his own constituted attorney) making the (mis)statement that he had invested the entire sum of Rs. 33,22,800/- with Lynx India Ltd.,) which is proven to be a false statement. This affidavit was made in proceedings for expunging adverse remarks made by the Single Judge in his previous judgment dated 10.4.2006; this affidavit was relied upon by Justice Sen *inter-alia* before the Division Bench of High Court and it was by relying on this affidavit - affirmed again in ground XIII in the Memorandum of Appeal (quoted above) - that the entire amount of Rs. 33,22,800/- had been invested in Lynx India Ltd. Which had thereafter gone into liquidation - that the Division Bench (on a misrepresentation by Justice Sen - obviously not known at the time by the Division Bench to be a misrepresentation) concluded that there was in fact no misappropriation of any of the Receiver's funds by Soumitra Sen.

(C) Re: (5) Contention No. 5 above is untenable. A Resolution for the removal of a Judge under proviso (b) to Article 217 (1), read with Article 124 (4), has nothing whatever to do with his appointment as a Judge; it is because he had already been appointed as Judge that these Articles would come into play if the ground for his removal (*viz*. "proved misbehaviour") so warrant.

VII. Acknowledgements:

Before recording findings on the charges, it remains to acknowledge, not as a matter of form - but in earnest and with sincerity - the role of the advocates appearing on both sides of the case. Their role and conduct was exemplary: the Inquiry Committee is indebted to Senior Advocate Mr. Siddharth Luthra and the Advocates assisting him, the Committee is also indebted to Senior Advocate Mr. Shekhar Naphade, and the Advocates assisting him - for the hard work that they have put into the case. Each of them have fully co-operated with the Committee in the course of the entire proceedings: during evidence and at the time of arguments. Mr. A. Sinha, Secretary appointed to the Inquiry Committee has rendered yeoman service in ensuring timely attendance of witnesses from Kolkata and production of records, preparing the bundles of Exhibits, and in most efficiently performing the other manifold duties of his office. The Inquiry Committee also wishes to acknowledge its grateful thanks to the entire Staff who have worked tirelessly throughout these proceedings whom the Committee desires to mention by name: *viz.* Shri Pramod K. Goel,

Executive Officer; Shri Jayanta Kumar Ruje, Assistant; as well as other members of the Staff *viz*. Shri Manoranjan Gouda, P.A.; Kumari Jugnu Khan, Mohammad Ajmal Khan, Shri Sajjan Lal, Shri Prabhati Lal, and Shri Surendra Kumar.

VIII. Findings of the Inquiry Committee:

Charge I	**Findings**
MISAPPROPRIATION (*i.e*. misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta)	Duly proved - as set out in Part IV of the Report.
Charge II	**Findings**
Making False Statement–Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta	Duly proved - as set out in Part IV of this Report.

In view of the findings on Charge I and Charge II above, the Inquiry Committee is of the opinion that Justice Soumitra Sen of the Calcutta High Court is guilty of "misbehaviour" under Article 124(4), read with proviso (b) to Article 217(1) of the Constitution of India.

Presiding Officer
(Justice B. Sudershan Reddy)
Judge, Supreme Court of India

Member
(Justice Mukul Mudgal)
Chief Justice of Punjab &
Haryana High Court

Member
(Fali S. Nariman)
Senior Advocate,
Supreme Court of India

ANNOTATIONS - EXHIBITS WITH REFERENCE TO THE TEXT OF THE REPORT

1. Corpus Juris Secundum (Vol. 48A) page-614.

   > *"As* a *general rule, disciplinary or removal proceedings relating to Judges are suigenerie and are not civil or criminal in nature; and their purpose is to inquire into judicial conduct and thereby maintain standards* of *judicial fitness."*

2. Delhi Judicial Services Association *Vs.* State of Gujarat - AIR 1991 S.C. 2176 paras - 12 and 13; Devi Prasad *Vs*. Maluram Singhani and others 1969(3) SCC 595 (3J) at para-8 page-602; Razik Ram *Vs*. Ch. Jaswant Singh Chauhan 1975 (4) SCC 769 at para-15 page-776.

3. Black's Law Dictionary, 6th Edition, (1990) page-1245.

4. From the Report of Federal Court of India (in the Archives) in respect of charges against Mr. Justice S.P. Sinha, a Judge of the High Court of Judicature at Allahabad upon a reference made under Section 220(2)(b) of the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947 and the India (Provisional Constitution) Amendment Order, 1948 - an extract from the Report has been annexed to a Report of the Inquiry Committee under the Judges Inquiry Act, 1968 - *See* Annexure-F p-85 to 91 of Volume-2 (1992) in regard to investigation and proof of the misbehaviour alleged against Mr. Justice V. Ramaswami, Judge, Supreme Court of India.

5. Exhibit C-10.

6. Exhibit C-32.

7. Exhibit C-37.

8. Exhibit C-10.

9. Exhibit C-67+C-69.

10. Exhibit C-63, Exhibit C-143, C-144, Exhibit C-153, Exhibit C-154 & C-59.

11. Exhibit C-85 to C-102, Exhibit C-58 and C-103.

12. Exhibit C-83 and C-84, Exhibit C-154, Exhibit C-58, C-145, Exhibit C-31 and C-54.

13. Exhibit C-70 and Exhibit C-68, C-109, C-130, C-132, C-134, C-136.

14. Exhibit C-68 and C-70.

15. Exhibit C-70 Entry No. 6, Cheque No. 624079; Five applications forms of Lynx India Ltd Exhibit C-109, C-130, C-132, Exhibit C-134, Exhibit C-136 Term deposits Exhibit C-111, Exhibit C-112, C-115, C-116 Receipts Exhibit C-110, Exhibit C-129, Exhibit C-131, Exhibit C-133, Exhibit C-135.

16. Exhibit C-39 and C-40.

17. Exhibit C-110, C-111, C-112, C-115 and C-116.

18. Exhibit C-63, C-143, C-144 to C-147, C-153 and C-154.

19. Exhibit C-69.

20. Section 106 of Evidence Act which reads as under:

    106: Burden of proving facts especially within knowledge.

    "When any fact is especially within the knowledge of *any person, the burden* of *proving that fact is upon him."*

21. Exhibit C-39 and C-40.

22. Para-5 page-2 of Written Statement of defence.

23. Exhibit C-295.

24. Exhibit C-294.

25. Exhibit C-293.

26. Exhibit C-265.

27. Exhibit C-265, C-266 and C-267.

28. Exhibit C-293 and C-265.

29. Exhibit C-265, C-266, C-267.

30. Exhibit C-293.

31. Exhibit C-39 and C-40.

32. Exhibit C-213 to C-262.

33. Exhibit C-219 to 227; Exhibit 230 to 233; Exhibit 258 to 262.

34. Exhibit C-39.

35. Exhibit C-219 to C-227, C-230 to C-233, C-258 to C-262.

36. Exhibit C-148 to C-152.

37. Exhibit C-275 to C-279, C-297 and C-299, C-280 to C-282, Exhibit C-285, C-286, C-288, Exhibit C-283, C-284, C-273.

38. Exhibit C-63, C-143, C-153, C-154.

39. Exhibit C-69.

40. Exhibit C-33.

41. Exhibit C-43.

42. Exhibit C-10 and C-39 and C-40

43. Exhibit C-10 and C-34.

44. Exhibit C-79

45. Exhibit C-15.

46. Exhibit C-53.

47. Part of Exhibit C-43.

48. Exhibit C-43.

49. Exhibit C-11.

50. Exhibit C-12.

51. Exhibit C-13.

52. Exhibit C-54.

53. Affidavit Exhibit C-56, C-57, C-13.

54. Exhibit C-11.

55. Exhibit C-12.

56. Exhibit C-13.

57. Exhibit C-14.
58. Exhibit C-15.
59. Exhibit C-16.
60. Exhibit C-17.
61. Exhibit C-18.
62. Exhibit C-21.
63. Exhibit C-22.
64. Exhibit C-23.
65. Exhibit C-24.
66. Exhibit C-25.
67. Exhibit C-41.
68. Exhibit C-44, C-45 and C-46.
69. Exhibit C-41.
70. Exhibit C-48.
71. Exhibit C-41.
72. Exhibit C-48 and C-49.
73. Exhibit C-48.
74. Exhibit C-42.
75. Exhibit C-41.
76. Exhibit C-51 and C-52.
77. Exhibit C-53.
78. Exhibit C-53.
79. Exhibit C-53.
80. Exhibit C-53.
81. Exhibit C-41.

REPORT OF THE JUDGES INQUIRY COMMITTEE (VOL. II)

RAJYA SABHA

PARLIAMENTARY BULLETIN

Part II

Nos.: 45898-45900] **Friday, February 27, 2009**

No.: 45898 *Legislative Section*

Motion received under article 217 read with article 124 (4) of the Constitution

The Chairman has, under Section 3 of the Judges (Inquiry) Act, 1968, admitted the following Motion received from Shri Sitaram Yechury and other Members (total fifty-seven) the notice of which was given under article 217 read with article 124 (4) of the Constitution of India:

> "This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:
>
> (i) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and
>
> (ii) Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta."

The Motion shall be kept pending till further action prescribed in the Judges (Inquiry) Act, 1968 and the rules made thereunder is taken.

रजिस्ट्री सं. डी.एल.–33004/99 REGD. NO.D.L.-33004/99

सत्यमेव जयते

भारत का राजपत्र

THE GAZETTE OF INDIA

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

Part II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 2154] नई दिल्ली, बुधवार, दिसम्बर 16, 2009/अग्रहायण 25, 1931

No. 2154] New Delhi, Wednesday, December 16, 2009/Agrahayana 25, 1931

राज्य सभा सचिवालय
अधिसूचना

नई दिल्ली, 16 दिसम्बर, 2009

का.आ. 3241(अ).—न्यायाधीश (जांच) अधिनियम, 1968 की धारा 3 की उप–धारा (2) के अधीन दिनांक 25 जून, 2009 की समसंख्यक अधिसूचना के आंशिक आशोधन में राज्य सभा के सभापति ने, कलकत्ता उच्च न्यायालय के न्यायमूर्ति सौमित्र सेन को पद से हटाये जाने के अनुरोध के आधारों की जांच करने के प्रयोजनार्थ एक समिति का पुनर्गठन किया है जिसमें निम्नलिखित तीन सदस्य होंगेः–

1. माननीय न्यायमूर्ति बी. सुदर्शन रेड्डी, भारत का उच्चतम न्यायालय;
2. माननीय न्यायमूर्ति मुकुल मुदगल, पंजाब और हरियाणा उच्च न्यायालय के मुख्य न्यायाधीश; तथा
3. श्री फाली एस. नारीमन, वरिष्ठ अधिवक्ता, भारत का उच्चतम न्यायालय।

[फा. सं. आर.एस. 8/2/2009–एल]

विवेक कुमार अग्निहोत्री, महासचिव

RAJYA SABHA SECRETARIAT
NOTIFICATION

New Delhi, the 16th December, 2009

S.O. 3241(E).—In partial modification of the Notification of even No. dated the 25th June, 2009, under sub-section (2) of Section 3 of the Judges (Inquiry) Act, 1968, the Chairman, Rajya Sabha has reconstituted, for the purpose of making an investigation into the grounds on which the removal of Justice Soumitra Sen of the Calcutta High Court is prayed for, a Committee consisting of the following three Members:—

1. Hon'ble Justice B. Sudershan Reddy, Supreme Court of India;
2. Hon'ble Justice Mukul Mudgal, Chief Justice of the Punjab and Haryana High Court; and
3. Shri Fali S. Nariman, Senior Advocate, Supreme Court of India.

[F. No. R.S. 8/2/2009-L]

V.K. AGNIHOTRI, Secy.-General

4625 GI/2009

Printed by the Manager, Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054

F.No. 20(2)/2010-JIC

भारतीय संसद

PARLIAMENT OF INDIA

राज्य सभा सचिवालय

RAJYA SABHA SECRETARIAT

(न्यायाधीश जाँच समिति)

(JUDGES INQUIRY COMMITTEE)

विज्ञान भवन सौध,
Vigyan Bhawan Annexe,
नई दिल्ली – 110011
New Delhi-110011

Dated the 4th March, 2010

To

Shri Soumitra Sen

Judge, High Court of Calcutta at Kolkata,

High Court of Calcutta

Kolkata.

Whereas a motion for presenting an address to the President praying for your removal from your office as a Judge of the High Court of Calcutta at Kolkata has been admitted by the Chairman of the Council of States;

And whereas the Chairman has constituted an Inquiry Committee with me a Judge of the Supreme Court of India, as the presiding officer thereof for the purpose of making an investigation into the grounds on which your removal has been prayed for;

And whereas the Inquiry Committee has framed charges against you on the basis of which investigation is proposed to be held;

You are hereby requested to appear before the said Committee in person, or by a pleader duly instructed and able to answer all material questions relating to the inquiry, on the 25th day of March, 2010 at 4.30 'O' clock in the afternoon to answer the charges;

फोन / Telephone: 011-23062725/23002864 फैक्स / Fax: 011-23062643

As the day fixed for your appearance is appointed for the final disposal of the charges leveled against you, you are requested to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Please take notice that in the event of any default in your appearance on the day aforementioned, the investigation into the grounds on which your removal has been prayed for shall be made in your absence.

Given under my hand this 4th day of March 2010.

Presiding Officer,

Inquiry Committee.

Enclosures:

1. A copy of the charges framed under sub-section(2) of section 3 of the Act.

2. Statement of grounds on which each charge is based.

STATEMENT OF GROUNDS IN SUPPORT OF CHARGES AGAINST MR. JUSTICE SOUMITRA SEN, JUDGE, CALCUTTA HIGH COURT

A. APPOINTMENT AS RECEIVER

1. You (whilst practising as an Advocate) had been appointed as Receiver in Civil Suit No. 8 of 1983 entitled "Steel Authority of India Limited *Vs.* Shipping Corporation of India Limited & Others" by the Hon'ble High Court at Calcutta (hereinafter referred to as "the Court"), *vide* order dated 30 April, 1984 on specified terms and conditions for conducting the auction-sale of specified quantity of Periclase Spinel Bricks (hereinafter referred to as "the Goods").

2. In terms of the said order, you were vested with all powers provided for in Order XL Rule 1 Clause (d) of the Code of Civil Procedure. You were also directed to take possession of the Goods together with specified documents and papers. It was further ordered that you were to file and submit for passing half yearly accounts in the office of the Registrar of the Court for being passed before one of the Judges of the Court. It was further directed that you were to make a complete inventory of the Goods at the time of taking possession thereof.

3. Your appointment as Receiver was under the Original Side Rules of the Court (hereinafter referred to as "the Rules"), specifically Chapter XXI thereof pertaining to 'Receivers' and Order XL of the Code of Civil Procedure, 1908 and that you were bound to comply with the same.

4. That the order dated 30 April, 1984 in Civil Suit No. 8 of 1983 was modified by means of order dated 11 July, 1985 in Civil Suit No. 8 of 1983 to the extent that you, as the Receiver, were permitted to act without furnishing security for the Goods.

B. RECEIVERSHIP OVER MONIES

5. By means of order dated 20 January, 1993 in Civil Suit No. 8 of 1983, you, as the Receiver, were directed to complete the sale and deliver the goods, within a period of four months upon receipt of the entire price (such monies are referred to as "sale consideration").

6. You, as the Receiver, were specifically directed *vide* Order dated 20 January, 1993 to keep the sale consideration (post deduction of 5% towards your remuneration as Receiver) in a separate account in a Bank and Branch

of your choice, and to hold the same free from lien or encumbrances and subject to the further orders of the Court.

C. ACCOUNTS MAINTAINED BY YOU

7. That during the period from February 1993 to December 2002, you maintained the following bank accounts:

Account Number/Details	Bank	Branch	Name	Status
9902	Allahabad Bank	Stephen House Branch	Soumitra Sen	Opened on 24.03.1993
01SLP0156800	ANZ/Standard Chartered Bank	Church Lane Branch	Soumitra Sen	Closed on 21.12.1995
01SLP2089500	ANZ/Standard Chartered Bank	Church Lane Branch	S. Sen - Recv. Suit - 105-1983	Closed on 08.01.1996
01SLP0632800	ANZ/Standard Chartered Bank	Church Lane Branch	Soumitra Sen	Closed on 22.03.2000
01SLP0813400 (19497273)	ANZ/Standard Chartered Bank	Church Lane Branch	Soumitra Sen - Spcl. Officer	Closed on 21.05.2002
31534345 (33610064527)	ANZ/Standard Chartered Bank	Church Lane Branch	Anuradha Sen/ Soumitra Sen	Opened on 09.03.2000 and still active

8. December 1996 onwards, some amounts appear to have been deposited by you with M/s Lynx India Limited (a company incorporated under the provisions of the Indian Companies Act, 1956 having its registered office at 12-C, Chakraberia Road (North), Ground Floor, Kolkata 700 020).

D. RECEIPT OF MONIES

9. You, as Receiver, received the sale consideration amounting to Rs. 33,22,800/- (Rupees Thirty Three Lacs Twenty Two Thousand and Eight

Hundred Only) in respect of the goods sold by you. The sale consideration was received under 22 demand drafts, between 25 February, 1993 to 30 April, 1995 from the purchaser (M/s SBO Industrial Supplier) in your name.

No.	Instrument Number and Date	Issuing Bank	Amount
1	2	3	4
1.	Demand Draft No. 305122 dated 25.02.1993	State Bank of India	Rs. 2,25,000/-
2.	Demand Draft No. 305125 dated 27.02.1993	State Bank of India	Rs. 2,25,000/-
3.	Pay Order No. 002432 dated 10.03.1993	Bank of Madurai	Rs. 9,000/-
4.	Pay Order No. 002433 dated 10.3.1993	Bank of Madurai	Rs. 9,000/-
5.	Demand Draft No. 435344 dated 3.04.1993	State Bank of India	Rs. 2,34,000/-
6.	Demand Draft No. 305171 dated 19.06.1993	State Bank of India	Rs. 2,34,000/-
7.	Demand Draft No. 305217 dated 3.08.1993	State Bank of India	Rs. 2,34,000/-
8.	Demand Draft No. 305245 dated 5.10.1993	State Bank of India, Service Branch, Kolkata	Rs. 2,34,000/-

1	2	3	4
9.	Demand Draft No. 305343 dated 18.03.1994	State Bank of India	Rs. 2,00,000
10.	Demand Draft No. 572726 dated 18.03.1994	State Bank of India	Rs. 34,000/
11.	Demand Draft No. 305348 dated 30.03.1994	State Bank of India	Rs. 2,34,000/-
12.	Demand Draft No. 305449 dated 7.06.1994	State Bank of India	Rs. 3,51,000/-
13.	Demand Draft No. 305889 dated 10.01.1995	State Bank of India	Rs. 2,25,000/-
14.	Demand Draft No. 922278 dated 10.01.1995	State Bank of India	Rs. 9,000/-
15.	Demand Draft No. 473169 dated 13.04.1995	State Bank of India	Rs. 2,25,000/-
16.	Demand Draft No. 923990 dated 13.04.1995	State Bank of India	Rs. 9,000/-
17.	Demand Draft No. 473222 dated 29.04.1995	State Bank of India	Rs. 1,57,500/-
18.	Demand Draft No. 924245 dated 29.04.1995	State Bank of India	Rs. 6,300/-

1	2	3	4
19.	Demand Draft No. 341406 dated 29.04.1995	State Bank of India	Rs. 2,25,000/-
20.	Demand Draft No. 368155 dated 29.04.1995	State Bank of India	Rs. 9,000/-
21.	Demand Draft No. 151429 dated 29.04,.1995	State Bank of India	Rs. 2,25,000/-
22.	Demand Draft No. 263398 dated 29.04.1995	State Bank of India	Rs. 9,000/-

11. Of the 22 demand drafts received by you, 20 demand drafts (amounting to Rs. 33,04,800/-) were drawn on State Bank of India, Service Branch, Calcutta (now Kolkata) and 2 (amounting to Rs. 18,000/-) were drawn on Bank of Madurai (since merged with M/s ICICI Bank).

E. MISAPPROPRIATION IN ALLAHABAD BANK ACCOUNT

12. Demand Drafts bearing No. 305122 dated 25 February, 1993 and No. 305125 dated 27 February, 1993 for Rs. 2,25,000/- each drawn on SBI were deposited and encashed in S/B Account No. 9902 with Allahabad Bank, Stephen House Calcutta (now Kolkata) [Account in the name of "Soumitra Sen"], by you/on your behalf on 24 March, 1993.

13. The said portion of the sale consideration deposited in Account No. 9902 maintained with Allahabad Bank, Stephen House Branch was withdrawn, disbursed and dealt with contrary to directions of law such that the balance in the said account was reduced to Rs. 3,215/- as on 29 March, 1994. You misappropriated and/or converted to your own use the sum of approximately Rs. 4,25,000/- (Deposits made in this account less your remuneration less the Account Balance), in violation of the orders of the Single Judge in CS No. 8/ 2003 and applicable provisions of law.

F. MISAPPROPRIATION IN ANZ GRINDLAYS ACCOUNTS

14. You opened Bank Account No. 01 SLP0632800 with ANZ Grindlays (now

known as Standard Chartered Bank), Church Lane Branch, Calcutta (now Kolkata) in or around March 1993.

15. As on 28 February,1995 you had received a sum of Rs. 24,57,000/- out of the total sale consideration. As on 28 February, 1995, although a sum of Rs. 19,89,000/- of the sale consideration had been deposited by you in Account No. 01SLP0632800 maintained by you with ANZ Grindlays Bank (subsequently Standard Chartered Bank), Church Lane Branch, the total balance in the said account was only a sum of Rs. 8,83,963.05p. At the same point in time, the account balance in Account No. 9902 maintained with Allahabad Bank, Stephen House Branch was negligible (approximately Rs. 5,000/-).

16. That after February 1995, you received the remaining sale consideration amounting to Rs. 8,65,800/- and the same was credited in Account No. 01 SLP0632800 maintained by you with ANZ Grindlays Bank (subsequently Standard Chartered Bank), Church Lane Branch on 19 April, 1995 and 6 May, 1995.

17. As on 10 June,1996 you had received the entire sale consideration of goods sold by you as Receiver amounting to Rs. 33,22,800/-. Of this, your remuneration (calculable @ 5%) was approximately Rs. 1,66,140/-. However, the balances in your Bank Accounts were as under:

Account Number/Details	**Bank**	**Balance (INR)**	**Comments**
1	2	3	4
9902	Allahabad Bank	5,439	
01SLP0156800	ANZ/Standard Chartered Bank	Nil	Closed on 21.12.1995
01SLP2089500	ANZ/Standard Chartered Bank	Nil	Closed on 08.01.1996
01SLP0632800	ANZ/Standard Chartered Bank	18,77,691.01	8,73,968/- (Term Dep) 9,80,0001- (Term Dep) 23,723.01 (Cash Bal)

1	2	3	4
01SLP0813400	ANZ/Standard Chartered Bank	Nil	Account not opened as yet
31534345 (33610064527)	ANZ/Standard Chartered Bank	Nil	Account not opened as yet
TOTAL		18,83,130.01	

18. As such on 10 June, 1996, while you had received a sum of Rs. 33,22,800/- as sale consideration from sale of the goods under your Receivership, you had misappropriated and/or converted to your own use at least Rs. 12,50,000/- (Sale Consideration less the Total Balance in Banks less your Remuneration) of such amount received by you, in violation of the orders in Civil Suit No. 8/2003 and applicable provisions of law.

G. EVENTS OF 1997

19. That *vide* Order dated 20 January, 1997 passed by a Division Bench of the Court in an Appeal arising from CP No. 226 of 1996 entitled "Calcutta Fan Workers' Employees' Union and Others *Vs*. Official Liquidator and Others" you were appointed as a Special Officer by the Court to receive and disburse an amount of Rs. 70 lacs to the various claimants in those proceedings. As Special Officer, you were directed to make such disbursements after being satisfied about the identity of the claimants and for the said purpose, a cheque for Rs. 70 lacs was handed over to you in those proceedings.

20. In February 1997, you opened a new Savings Bank Account bearing No. 01 SLP0813400 with ANZ Grindlays Bank, Church Lane Branch (subsequently Standard Chartered Bank) in the name of "Soumitra Sen-Spcl. Officer" (hereinafter referred to as "Special Officer Account"). On 7 February, 1997 a sum of Rs. 70,00,000/- (Rupees Seventy Lacs Only) was deposited in the said account.

21. By about 22 May, 1997 the substantial portion of the Special Officer funds had been disbursed by you and only a sum of Rs. 2,41,411.10p remained in the said account. You had not intermingled any other funds into Savings Bank Account No. 01 SLP0813400 with ANZ Grindlays Bank, Church Lane Branch (subsequently Standard Chartered Bank) till May 1997.

22. As on 22 May, 1997, there were two Fixed Deposits linked with/arising out of funds from Savings Bank Account No. 01SLP632800 with ANZ Grindlays

Bank, Church Lane Branch (subsequently Standard Chartered Bank) for principal sums of Rs. 8,73,968/- and Rs. 9,80,000/-.

23. You submitted a letter dated 22 May, 1997 to ANZ Grindlays Bank, Church Lane Branch (subsequently Standard Chartered Bank) giving instructions to break the Fixed Deposits arising out of Savings Bank Account No. 01SLP0632800 since the money was 'needed urgently' in order to make certain payments. Two fixed deposits were broken and amounts (the principal along with accrued interest) credited to your account No. 01 SLP0632800. The account balance in this Account thus stood at Rs. 22,84,468.23p.

24. Further, on 22 May, 1997 itself you gave instructions to ANZ Grindlays Bank, Church Lane Branch (subsequently Standard Chartered Bank) to debit a sum of Rs. 22,83,000/- from Account No. 01SLP0632800 to Account No. 01SLP0813400 (Special Officer Account). As such, a sum of Rs. 22,83,000/- was transferred from Account No. 01SLP0632800 to the Special Officer Account (Account No. 01SLP0813400). As on 22 May, 1997 the account balance in Account No. 01SLP0632800 was reduced to Rs. 1,468.23p only and that in the Special Officer Account was enhanced to Rs. 25,73,738.66p only.

25. Over the period 22 May, 1997 till 1 July, 1997 a series of disbursements were made by you out of the Special Officer Account and as on 1 July, 1997 the balance in the Special Officer Account had been reduced to Rs. 19,934.66p only. In this manner, the sale consideration of the goods was disbursed, disposed of and dealt with between 22 May, 1997 and 1 July, 1997 and you misappropriated and/or converted to your own use approximately Rs. 22,00,000/- of the monies In your possession [sale consideration and accrued interest], in violation of the directions of law.

26. That the portion of the sale consideration and accrued interest illegally transferred by you from Savings Bank Account No. 01SLP0632800, ANZ Grindlays Bank, Church Lane Branch (subsequently Standard Chartered Bank) to the Special Officer Account was misappropriated and/or converted to your own use between 22 May, 1997 and 1 July, 1997.

27. That the portion of sale consideration and accrued interest thereon obtained by you as Receiver continued to be misappropriated and/or converted to your own use even at the time of and subsequent to your appointment as a Judge of the Court on 3 December, 2003.

H. ATTENDANT CIRCUMSTANCES

28. You were obliged, by means of Order dated 30 April, 1984, the Rules and the provisions of the Civil Procedure Code, to file and submit for passing half yearly accounts in the office of the Registrar of the Court, pertaining to the amounts under your receivership and were to specifically show *inter-alia* what the balance in hand was at each stage. That you did not, at any stage (including after being appointed as a Judge of the Hon'ble Calcutta High Court on 3 December, 2003) file any accounts in compliance with the said Order dated 30 April, 1984, the applicable Rules and the provisions of the Code of Civil Procedure 1908.

29. By means of order dated 20 January, 1993 you were directed to keep the sale consideration in a bank account. The choice of branch and bank had been left to you. You unauthorisedly dealt with the funds by disbursing/withdrawing them out of such bank accounts in which they had been deposited.

30. By means of order dated 20 January, 1993 you were directed to keep the sale consideration in a 'separate' bank account. You allowed intermingling of funds and did not adhere to the direction to maintain the separation of the sale consideration from any other funds, thereby misappropriating and/or converting to your own use, the sale consideration.

31. That you did not take any permission of the Court for dealing with, disbursing or disposing of the sale consideration and the accrued interest in any manner whatsoever, or to intermingle them with your personal funds or to remove the same from Bank Accounts or in any other manner deal with the sale consideration and the accrued interest contrary to the stipulations in the orders dated 30 April, 1984 and 20 January, 1993, Chapter XXI of the Rules, and the mandate of law.

32. That you failed to provide accounts even to the Plaintiff despite a letter dated 7 March, 2002 in this regard sent by the Plaintiff and received by you. By means of the said letter, you were requested by the Plaintiff to provide to them the details of the amounts deposited by you, the details of such deposits and the interest accrued thereon.

33. At the time of your appointment as a Judge of the Court, or at any time thereafter, you did not take any steps to seek discharge from Receivership or for return of amounts, or for furnishing any accounts in respect thereof and continued to misappropriate/utilise the funds contrary to the directions of law.

34. The Plaintiff instituted GA 875 of 2003 in CS 8 of 1993 seeking various relief including directions that:-

(a) Receiver be directed to render true and faithful accounts of all monies presently being held by him;

(b) Receiver be directed to hand over all the sale proceeds so far received from the sale of the goods to the Plaintiff.

35. By means of order dated 7 March, 2005, the Court directed that a copy of the order dated 7 March, 2005 along with the Notice of Motion as well as the Petition be served upon you. You were requested to swear an affidavit either yourself or through any authorised agent to state the steps that had been taken by you and the amount that had been received on account of the sale of the goods. You were also directed to state in which bank or branch the sale proceeds had been deposited. The said order, Notice of Motion and the Petition (GA 875 of 2003) were served upon you consequent to the order of the Court dated 3 May, 2005.

36. However, despite service of notice and request/direction of Court in GA No. 875 of 2003 in Civil Suit 8 of 1983, by means of orders including those dated 3 May, 2005 and 17 May, 2005 passed in GA 875 of 2003 in CS 8 of 1983, you (whilst holding office as a Judge of the Court) did not furnish any particulars regarding the whereabouts of the sale consideration and the accrued interest, which led the Court to pass a Judgment dated 10 April, 2006.

37. Subsequently, while holding office as a Judge of the Court, you offered an explanation by means of applications, memorandum of appeal, affidavits, written notes etc. that the sale consideration had been deposited with M/s Lynx India Ltd. This explanation is found to be false and forms the subject matter of the second charge framed against you.

38. At no stage even after being elevated as a Judge of the Court, have you even offered an explanation or accounted for the whereabouts and/or the method and manner of utilisation of the interest accrued on the sale consideration from the date of deposit in your bank accounts till alleged deposits being made with M/s Lynx India Ltd.

39. That you did not return any funds till called upon by the Court to do so by means of order dated 10 April, 2006.

40. It is thus evident that you unauthorisedly, and in contravention of judicial orders, Rules and directions of law, misappropriated and/or converted to your

own use, large sums of money (from the sale consideration and the accrued interest) received in your capacity as a Receiver and thereby committed Misappropriation of Property which constitutes 'Misbehaviour' under Article 124(4) read with Article 217 of the Constitution of India.

I. MISREPRESENTATIONS AND FALSE STATEMENTS

41. On 10 April, 2006, Ld. Single Judge of the Court passed a detailed Order in GA No. 875 of 2003 in Civil Suit No. 8 of 1983 directing you to deposit a sum of Rs. 52,46,454/- for the time being. In the said order, the Ld. Single Judge of the Court made certain observations regarding your conduct (hereinafter referred to as "Observations").

42. That on 18 May, 2006 you, while holding office as a Judge of the Court, appeared (through counsel) before the Ld. Single Judge of the Court in GA 875 of 2003 and sought time to make deposit of funds towards the satisfaction of the order passed by the Ld. Single Judge of the Court. You (through your constituted attorney) filed GA No. 2968 of 2006 praying therein that time to deposit the balance amount in terms of judgment and order dated 10 April, 2006 be extended. The Court *vide* order dated 15 September, 2006 in GA No. 2968 of 2006 while disposing of the application also granted leave to mention your name in the body of the petition (being GA No. 2968 of 2006), the verification portion and in the affidavit of competency, which changes were carried out by hand by your duly authorised counsel, Sh. Subhasis Chakraborty on 15 September, 2006.

43. A total sum of Rs. 52,46,454/- came to be deposited in Court by you through your counsel on various dates.

44. The Court *vide* order dated 20 September, 2006 in GA 875 of 2003 directed your counsel, Mr. Subhasis Chakraborty to swear an affidavit enclosing the relevant documents to show that you had deposited the sum of Rs. 40,00,000/- in the account of your counsel and that your counsel had obtained Pay Orders to make payment on your behalf. The Court further directed that your constituted Attorney also file an affidavit corroborating the facts stated by your counsel in his affidavit.

45. Your counsel, Mr. Subhasis Chakraborty filed Affidavit dated 10 November, 2006 in GA 875 of 2003 stating therein that he had been instructed to act as an Advocate-on-Record on your behalf in Civil Suit 8 of 1983. Mr. Subhasis Chakraborty further stated that pursuant to orders passed by the Court, you handed over to Mr. Subhasis Chakraborty a sum of Rs. 20,00,000/- on 27 June, 2006 and a sum of Rs. 20,00,000/- on 4 September, 2006.

Mr. Subhasis Chakraborty further stated that pursuant to instructions received by him, he prepared drafts from the Standard Chartered Bank, Church Lane Branch, Kolkata by depositing the said sum of Rs. 40,00,000/- in his account and deposited the said drafts before the Registrar, Original Side of the Court.

46. In the meanwhile, by means of Order dated 10 November, 2006 the Court took Affidavit dated 11 November, 2006 filed by your Counsel Mr. Subhasis Chakraborty on record. The Court, *vide* the said order dated 10 November, 2006, noted that your constituted Attorney had not filed an affidavit in terms of Order dated 20 September, 2006 passed by the Court in GA No. 875 of 2003 and directed you to file an affidavit explaining how the sale consideration was dealt with after the same was withdrawn without permission of the Court. It was observed that it would be ideal (if so advised), if the source of funds was disclosed in the said affidavit in order that the Court be assured that the withdrawn money had not been utilised gainfully and profitably. In the event that the sale consideration had been utilised or invested in some other place, then the returns from such utilisation and investment were directed to be disclosed. It appears that you did not file any affidavit in compliance of the said order.

47. When the matter (Civil Suit No. 8 of 1983) came up for hearing on 8 December, 2006 you, through your counsel requested for time to file an affidavit to place on record some new facts, which time was granted.

48. You (through your constituted attorney), while holding office as a Judge of the Court, proceeded to file GA 3763 of 2006 in Civil Suit No. 8 of 1983 before the Ld. Single Judge seeking *inter-alia*, recording of compliance with Order dated 10 April, 2006 and for recalling/withdrawing/deleting the Observations, supported by an affidavit of your constituted attorney acting under your instructions.

49. In GA 3763 of 2006 in Civil Suit No. 8 of 1983, you, through your constituted attorney (being your mother, Smt Sumitra Sen) stated on affidavit that the sale consideration from sale of goods received by you by means of 22 drafts, were deposited in Bank accounts but were subsequently invested in a public limited company, namely M/s Lynx India Limited (now in liquidation) in order to earn more interest. The very same stand was taken in the affidavit dated 13 December, 2006 filed under your instructions and on your behalf (through your Constituted Attorney).

50. To further support these pleas during the hearing of GA 3763 of 2006 in Civil Suit No. 8 of 1983 and to provide correlation between the sale consideration and the amounts lying invested with Lynx India Limited, 'Written Notes' were submitted to the Court on your behalf which were taken on the

Court's record on 25 April, 2007. In the said Written Notes, you (through your counsel) took a stand that the sale consideration of Rs. 33,22,800/- was a part of the total funds (amounting to Rs. 34,39,000/-) lying deposited with M/s Lynx India Limited.

51. In the 'Written Notes' submitted, you (through your counsel) further contended that no part of the sale proceeds was ever utilised or even touched by you; and relying upon the documents enclosed with the Report of the Official Liquidator dated February 07, 2007 you (through your counsel) further stated (in the Written Notes) that you had deposited the entire sale consideration with Lynx India Limited.

52. GA 3763 of 2006 in Civil Suit No. 8 of 1983 came to be disposed of by means of order dated 31 July, 2007 passed by the Ld. Single Judge of the Court.

53. Aggrieved by the order dated 31 July, 2007, you (through your constituted attorney) preferred an appeal challenging the said order before the Division Bench of the Court, which came to be numbered as APO 415 of 2007. An application being GA 2865 of 2007 was also filed by you.

54. In the said Memorandum of Appeal and GA 2865 of 2007 and affidavit of your constituted attorney acting under your instructions, it was contended that the entire money received by you from the purchaser of goods as sale consideration was kept in a Fixed Deposit. Further you (through your constituted attorney) again placed reliance on the Written Notes submitted before the Ld. Single Judge (and taken on the Court's record on 25 April, 2007) in order to establish a correlation between the withdrawal of funds and deposit with Lynx India Limited. You (through your constituted attorney) further contended that:-

(a) all investments made by you in Lynx India Limited were by cheques drawn on Account No. 01SLP0156800 maintained in your personal name with ANZ Grindlays Bank.

(b) there was absolutely no time gap between withdrawal of amount from your accounts and deposit with Lynx India Limited.

55. It was additionally stated by you (through your constituted attorney), while holding office as a Judge of the Court, in GA 2865 of 2007 that the moneys received by you were in fact utilized by you for no purpose other than for making fixed deposits with Lynx India Limited and that no part of such deposits were encashed or withdrawn by you.

56. You (through your constituted attorney) stated that you had deposited a total sum of Rs. 39,39,000/- with M/s Lynx India Ltd. It was further stated by you (through your constituted attorney) that a sum of Rs. 5,00,000/- which had been withdrawn from M/s Lynx India Ltd. was your personal funds.

57. The statements made by your constituted attorney and counsel (on your behalf and under your instructions) in the various pleadings, applications, memorandum of appeal, affidavits, Written Notes etc. as set out above were false to your knowledge. All such statements were made during the period when you were a Judge of the Court:-

(a) No deposits were made by you with M/s Lynx India Ltd. prior to December, 1996. By March, 1994, the sale consideration deposited in the SIB Account No. 9902 maintained with Allahabad Bank, Stephen House Branch, Kolkata had already been withdrawn/ disbursed/dealt with by you in such a way that the balance in the said account was negligible. As such a sum of Rs. 4,50,000/- (approximately) of the sale consideration could under no circumstances be deposited with M/s Lynx India Ltd. (post December, 1996).

(b) No deposits were made by you with M/s Lynx India Ltd. prior to December, 1996. Of the sale consideration, a sum of Rs. 28,54,800/- had been deposited in SIB Account No. 01SLP0632800 maintained with ANZ Grindlays Bank, (subsequently Standard Chartered Bank), Church Lane Branch, Kolkata. By 10 June, 1996, this amount had already been withdrawn/disbursed/dealt with in such a way that the balance in the said account was only a sum of Rs. 18,83,130.01/- (inclusive of accrued interest). Even making allowance for withdrawal of your remuneration, a further sum of Rs. 8,00,000/- (approximately) of the sale consideration was not, and could not have been deposited with M/s Lynx India Ltd. (post December, 1996).

(c) Portion of the sale consideration and accrued interest amounting to Rs. 22,83,000/- had been transferred by you from SIB Account No. 01SLP0632800 maintained with ANZ Grindlays Bank (subsequently Standard Chartered Bank), Church Lane Branch, Kolkata to the Special Officer Account on 22 May, 1997. This amount was then utilised by you for withdrawing/disbursing/dealing with in such a manner that as on 1 July, 1997 only a sum of Rs. 20,000/- (approximately) was the balance in the Special Officer

Account. Thus, Rs. 22,00,000/- (approximately) of the sale consideration and the accrued interest was utilised by you between 22 May, 1997 and 1 July, 1997. No deposits were made with M/s Lynx India Ltd during this period and as such this portion of the sale consideration and the accrued interest was not, and could not have been used for creating fixed deposits with M/s Lynx India Ltd.

(d) You deposited a sum of Rs. 25,00,000/- with M/s Lynx India Ltd. by means of Cheque No. 624079 drawn out of the Special Officer Account on 27.02.1997. This was converted to five deposits of Rs. 5,00,000/- each. As on that date, there had been no intermingling of funds in the Special Officer Account or transfer of funds from any other account to the Special Officer Account. Hence, the deposit of at least Rs. 25,00,000/- in M/s Lynx India Limited is relatable only to funds received by you in CP No. 226/1996 and not from the sale consideration as claimed by you.

(e) The statement that the deposits in Lynx India Limited were by means of cheques drawn on Account No. 01SLP0156800 is false. At least Rs. 25,00,000/- had been deposited in Lynx India Limited from the funds available in the Special Officer Account. Further, the said Account bearing No. 01SLP0156800 had been closed by you on 21 December, 1995, prior to any deposits being made with Lynx India Limited.

(f) The statement that there was no time gap between withdrawal of sale consideration from your accounts and depositing the same with Lynx India Limited is false. There is no correlation between the sale consideration and the accrued interest with the deposits made with Lynx India Limited.

(g) The statement that Rs. 5,00,000/- withdrawn by you from out of the deposits made with M/s Lynx India Ltd. were your personal funds is false. The said Rs. 5,00,000/- withdrawn from the deposits made with M/s Lynx India Ltd. was on account of premature cancellation of Fixed Deposit Receipt bearing No. 11351 dated 7 March, 1997. This deposit was part of the deposits made *vide* Cheque No. 624079 dated 26 February, 1997 (for a total sum of Rs. 25,00,000/-) drawn on the Special Officer Account. As on that date, the only funds available in the Special Officer Account were those that had been entrusted to you by the Court in CP No. 226/1996 for disbursement

to workmen. As such the Rs. 5,00,000/- withdrawn by you from M/s Lynx India Ltd. did not represent your personal funds.

58. The pleadings, applications, memorandum of appeal, affidavits and written notes filed before the Court in proceedings in and arising from Civil Suit 8 of 1983 and APO 415 of 2007 were submitted on your behalf, under your authority and under your instructions. You were legally bound by an oath and/or by an express provision of law to state the truth and/or bound by law to make a declaration upon any subject and have made statements that are false, and which you knew or believed to be false, or did not believe to be true.

59. That you were a Judge of the Court during the period when you gave such false statements, misrepresentations and false evidence in judicial proceedings before the Court.

60. You misrepresented facts with regard to the misappropriation of funds before the Court. You, during a judicial proceeding, intentionally gave false evidence, which constitutes 'Misbehaviour' under Article 124 (4) read with Article 217 of the Constitution of India.

Dated 03.05.2010

To

The Secretary,
Judges Inquiry Committee,
Rajya Sabha Secretariat,
Vigyan Bhawan Annexe,
New Delhi-110011.

Re-Submission of Written Statements of Defence.

Dear Sir,

Enclosed please find six copies of the written statement of defence along with seven Annexures, enclosed therein together with six sets of Volume V & VI containing several order and communications, which shall be relied upon at the time of hearing.

Please acknowledge the same.

Thanking you.

Your sincerely,

sd/-
(Justice Soumitra Sen)

Date: 03 May 2010

To

The Presiding Officer,
Judges Inquiry Committee,
Rajya Sabha Secretariat,
Vigyan Bhawan Annexe,
New Delhi-110011.

Sub: Reply to the Charges.

Dear Sir,

This is in response to your letter dated 5th February, 2010 received by me on 9th February, 2010, wherein I have been asked to revert to Committee in writing dealing with the charges along with statements of ground.

Before I proceed to deal with the charges and the statement of grounds I would like to raise certain preliminary objection to the instant inquiry, which are required to be adjudicated and/or decided first before proceeding with the matter.

PRELIMINARY OBJECTIONS

1. The Impeachment process initiated against me is outside the scope and ambit of Article 124 (4) of the Constitution of India.

(a) All alleged acts of misconduct was prior to my elevation as Judge of the Hon'ble Calcutta High Court.

(b) There is no "proved misbehaviour or incapacity" as is the mandate of Section 124 (4) of the Constitution of India.

REPLY ON MERITS

2. The scope and ambit of order dated 20.1.1993 was absolutely specific and clear.

3. At no point of time I have traversed beyond the scope of order dated 20.1.1993.

4. Despite the fact that the Learned Court embarked on a Personal inquiry with regard to my accounts which was clearly without jurisdiction and without

any basis whatsoever. However every single observation of, the Learned Court was met with, answered and the entire monies were paid back along with interest as was directed by the Learned Court.

5. At no point of time any monies were ever used for personal gains or were temporarily or permanently misappropriated.

6. I have never made any false statement before the High Court.

7. It is stated that there was no occasion to return the money since:-

(a) The mandate of the orders was to complete the process of Sale and when I was elevated the Sale was incomplete.

(b) Application seeking direction from the Court to complete the sale and to handover the sale proceed and for Accounts was not pressed by the concerned parties though the same was affirmed on 7 February, 2003, filed on 10 March, 2003. However it was moved before the Hon'ble Court only on 16 July, 2004, *i.e*. after my elevation.

(c) When I was elevated the sale was incomplete. No order was passed by the Court discharging me from receivership until 3 August, 2004.

(d) The entire sale consideration was invested In the fixed deposit with the Lynx India Private Limited which went into Liquidation in the year 1999-2000, long after the amount representing the sale consideration was invested.

(e) For the first time the court passed an order dated 10 April, 2006 directing me to return the entire sale consideration with interest.

8. I immediately complied with the order passed by the court and paid/ deposited the amount of Rs. 52,46,454/- + Rs. 5,00,000/- inclusive of interest when the amount of sale was Rs. 33,22,800/- and after adjusting the remuneration of 5% the balance amount was Rs. 31,56,660/-.

9. Finally the Division Bench of the Calcutta High Court *vide* order dated 25 September, 2007 quashed and set aside the orders dated 10 April, 2006 and 31 July, 2007 and set aside/expunged all the Observations made by the single Judge. The Division Bench has categorically held that there was no misappropriation either temporary or permanent or any part. It also held that I did not make any false statement during the course of event before the Court.

10. It was the unilateral observation of the Single Judge which gave rise to an inquiry against me and has culminated in setting up this Committee. However since Division Bench Judgments and orders dated 25 September, 2007 has attaining finality since then, there is no occasion to make this allegation against me.

FACTS LEADING TO THE FORMULATION OF OBJECTION

11. The actual genesis of the entire matter starts with the judgment passed by the learned Single Judge of the Calcutta High Court dated 10 April, 2006. All other relevant facts would appear from a list of dates, copy of which is annexed hereto as Annexure "A".

12. After the judgment was passed the Hon'ble Chief Justice of India by his letter dated 10 September, 2006 asked me to submit a fresh and final response to the adverse judicial observations leading to complaints making allegations of judicial misconduct and impropriety. At no point of time, the learned Single Judge in his judgment dated 10 April, 2006 has made any observation regarding my alleged judicial misconduct or impropriety nor any complaints were made against me by any one whatsoever at any given point of time.

13. My response dated 28 September, 2007 was accompanied by the judgment dated 25 September, 2007 passed by the Hon'ble Division Bench of the High Court at Calcutta. On 3 December, 2007, the Hon'ble Chief Justice of India wrote a letter that His Lordship was proposing to constitute a three-member committee to institute an enquiry in the backdrop of the adverse judicial observation made in the judgments of the learned Single Judge of the Calcutta High Court.

14. I would like to raise the following Issues, as a preliminary objection:-

(a) From the letter dated 5 February, 2010 it appears that there are two motions moved before the Rajya Sabha for impeachment. The first ground cannot be the subject matter of impeachment, as it is clearly outside the scope and ambit of Article 124(4) of the Constitution of India read with the relevant provisions of the Judges (Inquiry) Act, 1968. The preamble to the Judges (Inquiry) Act clearly states as follows:-

"An Act to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a judge of the Supreme Court or a High court and for the presentation of an address by the members of Parliament to the President and for matters connected therewith."

15. Past actions of a judge long prior to his elevation cannot be the subject matter of impeachment. If past actions are brought within the ambit of Article 124(4) read with the provisions of the Judges (Inquiry) Act, it will make a mockery of the selection process of a judge of a High Court or the Supreme Court.

16. The constitutional mandate does not permit impeachment process to be initiated against a judge after his elevation for alleged acts of misconduct prior to his elevation which is itself passes through several level of scrutiny including police verification etc. This safeguard has been provided in our constitution in order to maintain dignity and' independence of the judiciary. If past action of a judge long prior to his elevation is permitted to be raised as an issue or ground for impeachment, then anyone with a personal agenda of his own can rake up irrelevant past issues and harass a judge of a High Court or Supreme Court mustering enough political cloud to move a motion for impeachment.

17. The whole object and purpose of the Article 124(4) read with Judges (Inquiry) Act is to ensure prevention of corruption and malpractice and incapability in discharge of judicial function and for no other reasons.

18. It appears that a In-house Committee can be constituted to institute an enquiry only if there is a complaint against a judge on two issues:–

(a) *Allegations against* a *judge pertaining* to *the discharge of his judicial functions;*

(b) *Conduct and behaviour of the judge outside the Court.*

19. In my case from what has been stated hereinbefore with reference to the letters of the Hon'ble Chief Justice of India, it is clear, without any doubt, that there was no complaint against me at any given point of time and the only reason to constitute an In-house Committee to institute an enquiry was the adverse judicial observation made in the judgment of the learned Single Judge of the Calcutta High Court.

20. In absence of any complaints against me and in absence of any adverse judicial observation against me on the given date, the In house Committee could not have proceeded with the matter.

21. The then Chief Justice of Calcutta High Court, the Hon'ble Justice V.S. Sirpurkar dated 25 November, 2006 wrote a letter to the then Chief Justice of India. While making observation based upon the finding of the learned Single Judge, His Lordship in the said letter had clearly stated that even as on that

date there was no complaint against me by anyone. The relevant portion of said letter is quoted as under:-

> *"Though there has been no complaint made by anybody against Sri Sen. I deem it proper to place all these facts before your Lordship to take an appropriate action in the matter".*

22. Having regard to the provisions of Article 124(4) of the Constitution of India and the provisions of Judges (Inquiry) Act, it is clear that the power of impeachment of a judge of a High Court or Supreme Court is vested with the Parliament and not with the judiciary.

23. Rajya Sabha did not perform an independent constitutional function as required under the Constitution of India to initiate impeachment proceedings. As there were no third party complaints against me at any given point of time and as the adverse judicial observations of the learned Single Judge having been expunged from the record of the case by the Hon'ble Division Bench, it is apparent that the members of Parliament have acted merely at the instance of the Hon'ble Chief Justice of India when His Lordship wrote a letter to the Prime Minister of India seeking my impeachment.

24. This entire procedure is contrary to the spirit and purpose of the Constitution of India. **It is significant to mention that even the parties to the proceeding which culminated into the judgment of, the learned Single Judge did not make any complaint against me either in the petition or otherwise, on the contrary** all the parties including the petitioner and the respondent have categorically stated before the learned Single Judge as well as before the Division that they do not wish to contest the proceeding by filing any affidavit as they do not have any complaint against me.

25. By a letter dated 17 March, 2008, the Hon'ble Chief Justice of India wrote to me that my explanation has failed to convince His Lordship and some of his colleagues and, therefore, I was asked to submit my resignation or seek voluntary retirement on or before 2 April, 2008 failing which they would proceed in the matter and take such steps as may be deemed appropriate in public interest and for better administration and justice.

26. The procedure adopted in this instant case by the Hon'ble Chief Justice of India and the subsequent actions taken by some of the members of the Rajya Sabha is a clear departure from the established procedure of law and clearly against the spirit and purpose of the Constitution of India.

27. Under the Judges (Inquiry) Act, the appointment of the members of the Committee is to be made either by the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha as the case may be.

28. It appears from the various documents relied upon by the Committee in forming grounds in support of charges, there are several depositions of witnesses which have been relied upon. These depositions were taken by the Single Judge. Apart from the fact that the Single Judge had no authority to examine witnesses without any suit or proceedings filed against me for which under the Civil Procedure Code, 1908, leave is required to be obtained, such depositions were taken behind my back without affording any opportunity to me to cross-examine such witnesses.

INCORRECT PROCEDURE ADOPTED BY THE SINGLE JUDGE AND CONSEQUENTIAL INJUSTICE METED OUT TO ME

29. If we look into the judgment of the Single Judge, we will find that in the first judgment dated 10 April, 2006 the Single Judge has justified the inquiry made against me by holding that I did not come forward to give any explanation in spite of repeated opportunity. The expression **repeated opportunity** has a different connotation in the eye of law and even in common parlance it means more than once.

30. Moreover, when a court does not wish to grant any further time to a party to the proceeding, it should be clearly stated that time fixed was peremptory or that a last chance was being afforded.

31. I, accordingly, moved a recalling application giving my explanation after going through various documents called for by the Single Judge. He observed that he **"neither believed me nor disbelieved me and disposed of the application by giving opportunity to file a fresh petition with proper materials."**

32. It is, therefore, obvious, that the Single Judge when faced with the materials on record could not come to a positive finding of guilt on my part or otherwise my recalling application should have been rejected and dismissed and not disposed of with an opportunity to file a fresh petition with further materials. It is needless to mention here that the Division Bench after going through the same materials on record has accepted my explanation and the interpretation of the materials on record made by my Counsel.

33. The Single Judge gave direction to serve copies of petition and orders to the Department which were not necessary at all, knowing fully well that at

the material point of time as a Judge, I was regularly attending court and was discharging my judicial function.

34. My Chamber in the High Court premises and my residential address is known to all. Even a common litigant gets a better opportunity of presenting his case before a court of law than what was afforded to me before passing the judgment dated 10 April, 2006.

35. The application filed by the plaintiff which resulted in the said judgement dated 10 April, 2006 was filed sometime in the month of March, 2003, almost 9 months before my elevation which I came to know in November, 2003 when I requested the plaintiff's advocate to take necessary steps for my discharge and obtain an order with regard to repayment of the amount held by me as a Receiver.

36. The said application which was for similar reliefs was heard for the first time on **3 August, 2004** by another Single Judge who discharged me from further acting as a Receiver and appointed another Receiver in my place and stead.

37. However, no direction to pay the amount held by me as a Receiver was passed nor the copy of the said order was ever served upon me. It is significant to mention here that the application of the plaintiff was also not served upon me until the time hereinafter mentioned.

38. The concerned Single Judge heard the matter for the first time on 15 February, 2005 **when it was treated as part heard without any prayer being made by any of the parties to the said proceeding and directed the entire matter to be kept in a sealed cover and no direction to serve a copy of the application was passed.**

39. On 7 March, 2005 the Single Judge for the first time gave a direction to serve a copy of the application along with notice of motion to me **as the copy of the application was not served upon me earlier.** It is obvious that at that juncture I was not even asked to appear before the court but the Single Judge in his order dated 7 March, 2005 directed that the copy of the application be served upon the purchaser who had purchased the materials almost over a decade ago.

40. If I may say so with utmost respect and humility the Single Judge had by that time **already made up his mind as to what orders he will pass and all that was done in court like serving of copies of order, carrying out investigation etc. were all a means for the end.**

41. The order dated 7 March, 2005 contained direction upon me to file affidavit giving details of purchase consideration. **The said order also was not served upon me.** This will be apparent from the fact that by another order dated 3 May, 2005 Single Judge gave further direction for service to be made through the advocate on record of the plaintiff as the earlier order dated 7 March, 2005 was not served upon me.

42. On 17 May, 2005, the Single Judge passed another order wherein direction was given to serve copy of the affidavit filed by the purchaser upon me **and if so advised** deal with the averments contained in the petition filed by the plaintiff and the affidavit filed by the purchaser. As there was no allegation by the plaintiff and I was not disputing the fact that I received monies as stated by the purchaser as a Receiver towards purchase consideration, **I was advised not to file any affidavit as nothing was required to be controverted.**

43. By an order dated 30 June, 2005, the Single Judge gave detailed direction for conducting an investigation on the incorrect basis that in spite of **repeated opportunity** I have not come forward to give any explanation before the court.

44. It is significant to point out here that at that stage I did not even appoint an advocate to appear on my behalf because I did not even know as to what are the directions which have been passed by the Court from time to time.

45. Subsequent thereto various orders were passed which are dated 21 July, 2005, 26 July, 2005, 7 September, 2005, 7 October, 2005, 21 November, 2005 and 1 October, 2006. None of these orders were served upon me. Witnesses were brought under subpoena and questions were put by the learned Single Judge himself, as if it was a trial of a suit or trial on evidence being conducted by the Single Judge but unfortunately I was not even informed about the same nor any opportunity given to me to cross examine such witnesses.

46. I, therefore, wish to conclude by saying that the finding against me by the Single Judge that in spite of **repeated opportunity** I did not come forward to give an explanation and therefore he had no other option but to conduct self-investigation in court.

THE CHARGES ARE ANSWERED AS UNDER

1. Misappropriation

2. Making False Statements

MISAPPROPRIATION

47. Primarily the Single Judge came to the conclusion of misappropriation of money held by me as a Receiver on the fact that after having deposited Rs. 25 lacs to Lynx from account No. 01SLP0813400 (hereinafter referred to as 400 account) I deposited Rs. 22 lacs and odd from 400 account and thereafter systematically withdrew the same to an undisclosed place thereby reducing to a mere sum os Rs. 811.56. Unfortunately, my explanation that these withdrawals were towards payment of workers' dues pursuant to a Division Bench order dated 20 January, 1997 passed by Hon'ble Mr. Justice Umesh Chandra Banerjee and Hon'ble Mr. Justice Sidheshwar Narayan was totally ignored by the Single Judge and also the In-house Committee and apparently by this Committee too.

48. For the first time evidence of such withdrawals have been produced which in spite of my best effort I could not produce earlier. Copies of the cheques disclosed in pages 521 to 581 in Vol. I and pages 1575 to 1607 in Vol. III, if produced before the Single Judge it would have reversed his finding on the said issue and would have cleared his doubt that these were not secret undisclosed withdrawals by me for my personal benefit but genuine payments made to genuine workers.

49. Whatever the amount and whoever the workers were quantified and identified by the union were placed before me I had issued the cheques and everybody has received his payment. Therefore, the finding of misappropriation by the Single Judge on this issue is clearly controverted by evidence on record disclosed for the first time in his proceeding. **I fail to understand how this Committee could call for these cheques whereas the learned Single Judge, in spite of being told that the withdrawals are not personal withdrawals but payment to workers, had deliberately not directed the Bank to produce the copies of the cheques whereas all other documents had been called for.**

50. Such vital piece of evidence were absent before the learned Single Judge, before the Division Bench and before the In-house Committee, which I am sure if shown would have at least come to a different conclusion with regard to the misappropriation based on the said withdrawals.

51. Though this Committee constituted under the Judges (Inquiry) Act is conducting an independent inquiry but the materials on record relied upon by this Committee appears to be almost all that where before the earlier proceedings except the ones that has been referred to hereinbefore. All throughout I submitted and have always **maintained** that I have never withdrawn a single penny from 400 account or from any other account for my

personal benefit. This is for the first time evidence has come forward to establish my contention that withdrawals in account no. 400 were not for my personal benefit in any manner whatsoever.

52. With regard to the first charge I say that after the specific order of' the Division Bench being a judicial order which has attained finality and it holds the fields today. A careful reading of the order of the Division Bench will make it abundantly clear that the finding of the learned Single Judge regarding misappropriation has been set aside by the Division Bench. However, the charge of alleged misappropriation is factually incorrect and is based on surmises and conjectures the relevant portion of the said judgement is set out as follows *"As discussed hereinabove, we do not find any material and/or ingredient for arriving at the conclusion that the erstwhile Receiver had committed breach of trust and/or misappropriated the money* or *utilised the money held by him for personal gain which was unfortunately observed by the Learned Single Judge...."*

53. The whole object and purpose of inquiry by the Single Judge was to see whether the amount of Rs. 33,22,800/- less 5% was kept by me in Lynx or not as was stated by me. My entire endeavour was also in prove the same. The purchase consideration which I received was Rs. 33,22,800/- less 5% and the question is at the time when court is directing repayment whether that amount was found to be intact or not.

54. The problem that I have faced in dealing with the money and maintaining the account was primarily due to the uncertainty in the nature of the order dated 20 April, 1993. The said order did not give me any specific direction to open a Receiver's account. Neither the court gave any direction to keep the money in any specific interest bearing account but the choice was left to me.

55. Because of the nature of such an order the purchaser issued drafts in my personal name and capacity and not as a Receiver. Therefore, I had no option but to encash those in an account standing in my name. The learned Single Judge and the In-house committee have held that I enchased around Rs. 4,50,000/- in Allahabad Bank and, thereafter, all encashment were done from an account maintained with the Standard Chartered Bank, Church Lane Branch bearing account No. 01SLP0632800 (hereinafter referred as 800 account).

56. The opening balance of the 800 account as on 28 February, 1995 shows only Rs. 8,83,963.05. Therefore, by 28 February, 1995 and commencement from March, 1993, I should have received approximately Rs. 22 lacs. Therefore,

there is a shortfall and which gave rise to the presumption of misappropriation. The present Committee is seeking to split the same by withdrawals from Allahabad Bank and from Standard Chartered Bank separately. It is significant to know that the extract of ledger of the Allahabad Bank disclosed in page 1493 of the Volume 3 all the documents relied upon by this Committee have come to light for the first time.

57. In fact Allahabad Bank has earlier written a letter that documents prior to 1995 are not available with them as the Bank has subsequently been computerised. In any event, I have all along stated that Rs. 33,22,800/- less 5% was kept with Lynx and my endeavour was to prove the same.

58. From the statement of account of Standard Chartered Bank, disclosed in this proceeding relating to 800 accounts it will appear that the major withdrawals were only towards creation of fixed deposit commencing from March, 1995.

59. The reduction of the amount in 800 account is clearly not due to personal withdrawals as it is apparent that fixed deposits were created and were kept lying there until it was encashed and deposited in the 400 account.

60. Prior thereto from the 400 account Rs. 25 lacs was deposited in Lynx on 26 February, 1997. From the number of fixed deposit receipts standing in my name produced by the Official Liquidator, it is clear that there was about Rs. 39,39,000/- deposited with Lynx.

61. There is no evidence whatsoever of any other deposit in Lynx after 1997. Therefore, the amount in addition to Rs. 25 lacs to constitute a total sum of Rs. 33,22,800/- less 5% was deposited in Lynx earlier. Therefore, the withdrawal either from Allahabad Bank or from the 800 account does not constitute misappropriation nor does it contradict my stand that a sum of Rs. 33,22,800/- less 5% was in fact deposited with Lynx.

62. There are statements of account of 800 account disclosed in this proceeding which would clearly show that apart from major withdrawals of Rs. 8,83,963.05 and Rs. 9,80,000.00 there are no major personal withdrawal. These two withdrawals are also not for personal gain as these withdrawals were made for the purpose of creating a fixed deposit with the same Bank.

63. The present Committee has completely ignored the fact that from the 400 account there were no personal withdrawals of any kind. Series of cheques which have now been produced would clearly establish my consistent stand that all withdrawals from 400 account were made towards labour payment as

per direction of the order of the Division Bench 20 January, 1997 passed by Hon'ble Mr. Justice Umesh Chandra Banerjee and Hon'ble Mr. Justice Sidheshwar Narayan.

64. Therefore, finding of this Committee that the disbursement from the 400 account and reducing the amount to only Rs. 19,934.66 amounts to misappropriation is clearly contrary to records and erroneous.

65. It is significant to point out here that the order dated 20 January, 1993 does not give any direction upon me to keep the amount in any interest bearing account. Even parties to the proceeding did not claim any interest on the principal sum of the purchase consideration. Therefore, to what extent interest would be paid was a matter of adjudication by the court at the time of repayment. The finding of the Division Bench to this effect may be noted....."*Grievance not made in the petition could not be considered by the learned Judge. The learned Single Judge, in the present case, considered a point which was not raised in the petition and most unfortunately ignored the fact that both the plaintiff - Steel Authority of India and the other respondent. Shipping Corporation of India Limited did not raise any grievance against the erstwhile Receiver nor even claim any interest from the erstwhile Receiver although the Learned Single Judge of his own issued direction upon the said erstwhile Receiver* to *make payment of the huge sum of Rs. 24,27,404/- towards the interest".*

> *"In the present case, the learned Single Judge totally ignored the pleadings of the parties travelled beyond the scope and ambit of the application filed by the plaintiff by issuing several directions upon different parties including the Official Liquidator attached to this court apart from the erstwhile Receiver and realised huge amount from the said erstwhile Receiver towards the interest even in absence of any claim made by any party".*

66. It matters little as to whether the amount kept in Lynx came from 800 accounts or from the 400 account. I was to separate the total purchase consideration of Rs. 33,22,800/- less 5% and it is without any dispute that such amount was found to be deposited with Lynx and was never reduced from the said total quantum at any given point of time.

67. Therefore, the question of misappropriating any amount for my personal use and benefit cannot and does not arise. I reiterate with great deal of conviction that from all my accounts which have been disclosed it will not appear that any amount has been deposited in Lynx after 1997 and the only

deposit made in Lynx in 1997 was of Rs. 25 lacs. But the aggregate sum of fixed deposit receipts produced by the Official Liquidator is Rs. 39,39,000/-.

68. The only corollary and conclusion which can be drawn that the remaining amount of purchase consideration which is alleged to have been withdrawn and misappropriated by me was indeed to have been withdrawn and misappropriated by me was indeed deposited in Lynx for the purpose of creating of fixed deposit and there is no other contrary evidence on record to contradict my said statement.

69. Since there was no transaction whatsoever in the accounts where drafts were encashed after 1997 and that the amount of Rs. 33,22,800/- less 5% was indeed found to have deposited in Lynx and continued to remain throughout until 2006, question of my misappropriating the same after appointment as a judge cannot and does not arise.

70. The amounts that were deposited In Lynx or the amounts held by me as a Receiver were pursuant to direction of court and holding the same under direction of court cannot amount to misappropriation.

71. In order to establish misappropriation, a transaction has to be shown which indicates withdrawal of money for personal use and benefit.

72. After 1997 there was no transaction whatsoever. The charge with regard to misappropriation of property and which constitutes under Article 124[4] read with Article 217 of the Constitution of India is on the face of it is incorrect.

73. The learned Single Judge as well as the In-house Committee has never alleged misappropriation, if any, after my elevation. It seems that this Committee is enlarging the scope of the motion itself. The first motion admitted by the Chairman of the Rajya Sabha clearly states misappropriation as a Receiver. The Committee can not enlarge the scope of the motion admitted by the Rajya Sabha and give a different complexion to it altogether.

74. The provision of the Judges (Inquiry) Act requires investigation on the basis of the motion admitted by the Parliament. I dare say with utmost respect and humility that the Committee is not authorised in law to come to their own independent finding by enlarging or digressing from the scope and ambit of the motion admitted in the Parliament. The first motion is which was admitted by the Rajya Sabha which is quoted as under:-

> *"Misappropriation of large sum of money which he received in his capacity as Receiver appointed by the High Court at Calcutta."*

75. Therefore, the said charge that I have committed misappropriation of a property after my elevation as a judge and the same constitutes misbehaviour under Article 124(4) read with Article 217 of the Constitution of India is misconceived.

76. I was to keep Rs. 33, 22,800/- less 5% being the sum representing the purchase consideration. Since the court did not direct earlier to keep the money in any interest bearing account, the question of payment of interest would only arise at the time of repayment and would depend upon the adjudication by the court.

77. Therefore, question of mis-utilising the principal or any interest accrued thereon by me also cannot and does not arise.

78. It is significant to point out here 'that the plaintiff being aware of the said fact did not claim any interest in their petition and only the principal sum of Rs. 33.22,800/- less 5% was asked to be returned to them.

CHARGES OF MAKING FALSE STATEMENT

79. With regard to the charge no. 2 *i.e*. making false statement, I beg to state that from the facts, as revealed hereinbefore, it will appear that none of the evidence collected by the Single Judge was before me to enable me to give an appropriate explanation.

80. In fact, the Single Judge has proceeded to conduct an inquiry without any prayer to that effect or complaint against me in that regard, which was not made known to me and it, would also appear from record that specific orders were suppressed from me.

81. Therefore, when the recalling application being G.A. No. 3763 of 2005 was filed on my behalf the statements contained therein were all based upon my memory of transaction which took place over a decade ago.

82. All that I remembered at that material point of time that the amount of Rs. 33,22,800 less 5% representing the purchase consideration was lying deposited with Lynx. If the averments and the statements are read in their true perspective, it will only mean that my endeavour was to establish the said fact that a sum of Rs. 33, 22,800/- less 5% representing the purchase consideration was lying deposited with Lynx and this fact has been proved beyond doubt from the fixed deposit receipts produced by the Official Liquidator.

83. It is significant to point out here that no written notes were filed before the Division Bench. The notes which were filed before the Single Judge for explaining the accounts submitted by the Official Liquidator became a part of the trial court's records and pleadings which were before the Division Bench. The written notes which are being strongly relied upon by the Committee in order to establish making false statements were filed before the Single. Judge primarily to show the erroneous calculation made by the Official Liquidator. Furthermore, the written notes' filed before the Court are always prepared by the lawyers in support of their submissions and cannot constitute a statement far less "false statements" by a party to the-proceeding. A counsel appearing on behalf of a party to the proceeding is entitled to make submissions and make his own interpretation on the basis of record and it is for the court to consider the same to accept or reject it. It is also significant that the parties never raised any objection to such "written note on argument".

84. I say that it pains me a great deal when I see that a portion of the written notes is being relied upon in support of the charge of making false representation by me whereas other portion, where I have clearly stated that the statements made therein are purely based on memory in absence of record, is being totally ignored.

85. It is an established position in law that when a document is relied upon, it has to be relied upon in its totality and part and portion thereof cannot be used against anyone.

86. If a part or portion is accepted then the other part and portion of the same document will also be accepted and relied upon.

87. At the cost of repetition, I say that, since the order dated 20 January, 1993 does not give direction of keeping the money in any specific account and the order dated 20 January, 1997 (Hon'ble Justice Umesh Chandra Banerjee) does not even direct me to open any account, it matters little from where the total purchase consideration of Rs. 33,22,800/- less 5% was deposited with Lynx.

88. It is clear from the accounts that the withdrawals from the 400 account after deposit of Rs. 25 lacs with Lynx were towards labour payment in terms of the order of the Division Bench dated 20 January, 1997 and the other withdrawal from 800 account was for the purpose of creation of fixed deposit and, thereafter, encashment of the same and deposit to the 400 account.

89. If the continuity of the money trail is taken into account, my interpretation that the amount of Rs. 33,22,800/- less 5% representing the purchase

consideration has been deposited in Lynx is not incorrect and does not amount to making false representation.

90. Moreover, interpretation of the documents as made on my behalf by my counsel has been accepted by the Division Bench and, therefore, it requires no further elaboration.

91. It is incorrect to allege that my first deposit with Lynx India was made only December, 1996. As far as the documents that were available before the Single Judge the only document relating to deposit in Lynx was the application form indicating deposit to Lynx is of February, 1997 and the amount is Rs. 25 lacs.

92. The said application form indicates the cheque number which clearly tallies with the cheque number mentioned in the 800 account for the corresponding period and for the corresponding sum.

93. There is no evidence of deposit of the remaining Rs. 14,39,000/- which was already lying deposited with Lynx before 1997. In fact, the only evidence of deposit of money in Lynx available is Rs. 25 lacs that too in the year 1997. Therefore, my contention that deposits were made in Lynx prior to 1997 cannot be contradicted and that the earlier withdrawals either from the Allahabad Bank or from the Standard Chartered Bank were towards creation of fixed deposit with the Lynx and Standard Chartered Bank cannot also be contradicted.

94. If I had the passbooks (No passbook is given by Standard Chartered Bank) or cheque books or counter foils of 1993 onwards which unfortunately I did not preserve, I could have definitely proved my contention by direct evidence but under the facts and circumstances, I am trying to establish that fact by way of circumstantial evidence.

ALLEGATION OF NOT TAKING STEP TO OBTAIN DISCHARGE AS A RECEIVER

95. I would like to draw the attention of this Committee to the order dated 3 August, 2004 passed in this proceeding whereby I was discharged and a new Receiver was appointed in my place and stead. (at page 1619 of paper Book Part V). In any view of the matter I do not understand how this specific charge can be framed against me on the basis of motion admitted by the Chairman of Rajya Sabha, as, not taking any step to seek discharge or not returning amounts or furnishing any accounts in respect thereof does not amount to misappropriation.

96. There, is no requirement in law for a Receiver to seek discharge or for return of amounts. In the instant case, the facts are rather peculiar. The plaintiff filed the application for return of money sometime in the month of March, 2003, 9 months before my elevation which fact as I have already stated, was disclosed only in the month of November, 2003 when I inquired and requested the plaintiffs advocate for taking necessary steps for my discharge and for obtaining direction from the court to enable me to pay the amount.

97. It will appear from the prayers prayed for in the application filed by the plaintiff that they had specifically sought for return of the amount held by me towards purchase consideration which is the principal sum and not with any interest accrued thereon, the prayers are set out as under:-

> "(a) Leave be given to serve a copy of this application upon SBD Industries Supplier:
>
> (b) SBD Industrial Supplier be directed to lift the balance quantity of 4.311 M.T. of Periclase Spinnel Bricks upon payment of the price within a fortnight from the date of the Order be made herein;
>
> (c) Alternatively the Receiver be directed to sell the balance quantity 4.311 M.T. of Periclase Spinnel Bricks lying in the stores of the Bokaro Steel Plant of the petitioner by public auction or private treaty and to make over the net sale proceed to the petitioner towards pro tanto satisfaction of its dues against the defendants;
>
> (d) The Receiver be directed to hand over all the sale proceeds so far received from the sale of the Periclase Spinnel Bricks to the petitioner - towards and in pro tanto satisfaction of the petitioner's claim in the suit and be further directed to pay entire sale proceeds after disposal of the entire lot;
>
> (e) The Receiver be directed to render true and faithful accounts of all moneys presently being held by him in terms of the order dated;
>
> (f) Such further or other order or orders be passed and/or direction or directions be given as to this Hon'ble Court may seem fit and proper".

98. Because of delay in the judicial process, the relevant order was passed for the first time on 3 August, 2004 after some months of my elevation and at the first instance the court discharged me, but unfortunately no direction was given to return the money held by me towards purchase consideration. The

said order was not served upon me at any point of time and I was able to obtain the same only when certified copies of all orders were subsequently obtained by me.

99. A Receiver cannot return money unless there is a specific direction to that effect. Furthermore, the order dated 20 January, 1993 clearly directs me to hold the same until further order from the court. Since the application filed by the plaintiff was pending in court with a specific prayer asking for return of money, there was no occasion for me to personally to go to court and seek similar order. I reasonably expected that the court would pass order on the application of the plaintiff and I would comply with the same.

ALLEGATION OF NON FURNISHING OF ACCOUNT

100. Prior to 10 April, 2006 in spite of several orders being passed by the court, no direction whatsoever was given to me to return of any amount. As soon as a specific direction was given after adjudicating the interest that I was liable to pay, I paid the same within the time allowed by the court. The Single Judge did not raise any issue with regard to my personally not taking discharge. Accordingly this issue was never raised, argued or explained on my behalf either before the Single Judge or before the Division Bench.

101. As far as furnishing of accounts is concerned, when the court discharged me on 3 August, 2004 from further acting as a Receiver by appointing another person in my place and stead without giving any direction, for filing of accounts, the court, dispensed me from the requirement of filing of accounts. Moreover as a usual practice accounts are normally filed by Receiver where there are cases of management and administration of amounts held by Receiver meaning thereby that there are series of disbursement or series of deposits of unquantified amounts.

102. In this case total amount received by me is not in dispute and the amount directed to be paid by the court was also not disputed by any of the parties to the proceeding. Therefore, furnishing of accounts was a mere formality which, was dispensed with by the court. The accounts are required to be filed by the Receiver during his tenure as a Receiver but not after his discharge and when he is no longer acting as a Receiver.

103. I was discharged on 3 August, 2004 without any direction to file any accounts. Furthermore, the Single Judge also in his orders dated 10 April, 2006 and 31 July, 2007 did not give any direction upon me to file any accounts. In fact the application of the plaintiff stood practically disposed of by granting almost all the orders as prayed for, I, therefore, say that I have not committed

any offence as is sought to be made out in the proposed charges by not filing of accounts.

104. As far as the amount of accrued interest remaining in my possession, I say with utmost conviction that it was kept under my possession and custody until directed by judicial order to hand over the same.

105. If I had parted with the possession of the amount without any appropriate order to that effect, I would have committed contempt of the order dated 20 January, 1993. I have not been able to appreciate the proposed charge by this Committee that I was required under judicial orders to account for the amount. There was no such direction upon me at least to my knowledge and as far as the provision of law governing the receivership.

106. I have already given my explanation, with regard to the demand made by the plaintiff by letter dated 7 March, 2002, I say that the said letter was not received by me. In any view of the matter it is an admitted position that last of the payments of the purchaser was made on 30 April, 1995 and the plaintiff wrote a letter for the first time on 7 March, 2002 after almost 7 years from the date of such deposit.

107. With regard to the intermingling the sale consideration with other monies and removing the sale consideration from bank account for otherwise dealing with the sale consideration in breach of the direction of law applicable to receivership, I respectfully submit that I am *to* comply with the directions given by court. I have already stated that since there was no specific direction upon me to open a receiver's account, I had no other option but to encash the drafts given by the purchaser in an account held by me in my personal capacity. Furthermore; in terms of the order dated 20 January, 1993, I was to keep the amount in a separate account of my choice. That exercise of choice according to my interpretation and understanding, keeping of the exact amount would arise only after the entire payment has been made by the purchaser.

108. It is clear from the accounts as disclosed in this proceeding that as soon as a substantial amount was deposited it was withdrawn and made into a fixed deposit so as to prevent intermingling and also to avoid complications which I personally faced. It is true that I did not make fixed deposit of each draft as soon as they were encashed but it will appear that I did not allow the bulk of the money to remain in my account as the purchase consideration after having accumulated for a few months were withdrawn and made into a fixed deposit. The period prior to February, 1995 is clearly explained by the fact that such amounts were already lying with Lynx which, therefore, belies the charge of intermingling.

109. The charge of misappropriation and/or converting to my own use of the sale consideration and the accrued interest or that it continued even subsequent to my appointment as a judge to the court is extremely unfortunate contrary to records.

110. As far as the question of interest is concerned, I was under no obligation to keep money in any interest bearing account.

111. Furthermore, there is not an iota of evidence to prove that I have utilised any part of the sale consideration or interest accrued thereon for my own personal use.

112. Once the court has adjudicated the interest payable on the principal sum, the question of misappropriating the accrued interest cannot and does not arise. The necessity of adjudicating interest by the Single Judge arose as the order dated 20 January, 1993 does not contain any specific direction as to which interest bearing account I shall keep the amount of sale consideration.

113. This fact has also been found to be correct by the Hon'ble Division Bench, *inter alia* stating that...."*Grievance not made in the petition could not be considered by the learned Judge. The learned Single Judge, in the present case, considered a point which was not raised in the petition and most unfortunately ignored the fact that both the plaintiff - Steel Authority of India and the other respondent - Shipping Corporation of India Limited did not raise any grievance against the erstwhile Receiver nor even claim any interest from the erstwhile Receiver although the Learned Single Judge of his own issued direction upon the said erstwhile Receiver to make payment of the huge sum of Rs. 24,27,404/ - towards the interest".*

114. Under the orders of the Hon'ble Court I had two distinct responsibilities:-

(a) To distribute Rs. 70 lacs.

(b) To keep a sum of Rs. 33, 22,800/- less 5% separated.

115. Both these duties have been discharged by me without any doubt and the total entire quantum of Rs. 70 lacs plus Rs. 33, 22,800/- less 5% has been accounted for. Therefore, I do not understand how there can be any allegation of misappropriation or making false statement as alleged.

116. Written notes filed on my behalf by the counsel explaining the materials on record and giving their own interpretation does not amount to giving false evidence. If the written notes are looked at, it will appear that it is not even signed.

117. Therefore under no stretch of imagination it amounts to any evidence before court of law far less false evidence.

118. Moreover, the statements contained in the written notes will clearly indicate that it was only an endeavour to explain the report as well as exhibits filed by the Official Liquidator and for no other purpose.

119. It was submitted on behalf of the Official Liquidator before the Single Judge that total sum of Rs. 78,24,946.20 was lying deposited with the Lynx in my name. Initially, I was completely taken aback by the said report submitted by the said Official Liquidator as I never had this much sum of money which I would be able to invest in Lynx after meeting my day to day expenses required to maintain my family.

120. After careful scrutiny of the report of the Official Liquidator and the exhibits submitted before the court it appeared that the Official Liquidator has added fixed deposit receipts twice over when they were reissued after renewals because the same fixed deposit receipts having same number were calculated twice over by the Official Liquidator thereby covering the sum to almost double. This was the only and specific purpose for filing the note and for no other purpose. This would also appear from the heading of the note which is as follows:

> *"Written notes on the report filed by the learned Official Liquidator as well as the exhibits filed before the Hon'ble Court at the time of hearing."*

121. The written notes were not filed to establish my interpretation of the materials on record that the amount of Rs. 33, 22,800/- less 5% representing purchase consideration was deposited in Lynx from 800 A/C and therefore it is wholly irrelevant as to whether the amount of Rs. 33,22,800/- less 5% in Lynx was constituted by deposits partly from 800 account and partly 400 account or wholly from 800 account or not.

ANSWER TO THE GROUND IN SUPPORT OF CHARGES

122. With regard to the statement of grounds in support of charges, I with due respect and humility say that large part of such grounds is beyond the scope of the motion admitted before the Rajya Sabha. No motion was admitted with regard to my alleged non-compliance of rules or provisions of law as a Receiver but it is restricted only to alleged misappropriation. I do not understand as to how the statement of grounds in support of charges with regard to alleged violation of Code of Civil Procedure and the Original Side Rules is germane.

123. I reiterate that having been discharged from further acting as Receiver on 30 August, 2004, the court actually dispensed with my requirement of filing any accounts.

124. The procedure of filing accounts in the Original Side Rules of the High Court is that after an account is filed by a Receiver the Registrar, Original Side publishes a cause list with heading "Receiver's Account" and parties to the proceedings are notified about the same.

125. Thereafter, the parties are required to appear and give their comments. If none of the parties raise any objection, the accounts are accepted.

126. Therefore, in order to file accounts one has to continue as a Receiver and a person who has been discharged as a Receiver cannot file Receiver's account because as on that date he is no longer a Receiver.

127. Since the order dated 30 August, 2004 discharged me from further acting as a Receiver, I was under no obligation to file any accounts and the court also did not ask me to file any accounts prior to discharge thereby dispensing with the requirement of filing of accounts.

128. Chapter XXI Rule 3 of the Original Side Rules is quoted hereunder:

> *"Rule-3 - the party obtaining the order of appointment shall within one week from filing of the order file an office copy thereof in the Accounts Department of the Registrar's Office, whereupon an entry shall be made in the register, to be kept for the purpose, all the contents of such order and the particulars of the name of such Receiver, and conditions if any, under which he has been appointed, and the dates on which he is required by the order to file his accounts."*

129. Before proceeding further in this matter, I would like to humbly request the Committee to find out from the parties meaning thereby the plaintiff as to whether this part of the Rule of Chapter XXI of the Original Side of the High Court at Calcutta has been complied with or not. Moreover, it is clear from the order dated 20th January, 1993 or the previous order passed in this proceedings that there was no direction upon me to file any accounts. Accounts are required to be filed where the Receiver is required to incur certain expenses.

130. Order 40 Clause D of the civil procedure code has been relied upon in the statement of grounds in support of charges. Careful reading of order 40 Rule 1(d) clearly indicates that it applies in cases where a Receiver has been

appointed over a property or an estate which requires realisation, management, protection, preservation and improvement of the property, collection of rents and profits thereof etc. Therefore, clause 1(d) applies in cases of such Receivers who are appointed for management and administration of a property where there are large scale dealings and day to day monetary transaction and where expenses are incurred for preservation and protection and improvement of the property.

131. In the instant case, the issue is only keeping a quantified sum of money to be held until further order of the court meaning thereby as and when court will pass subsequent order, the Receiver will hand over the same. Therefore, in my respectful submission neither the provisions of the Original Side Rules or Civil Procedure Code apply in this case.

ANSWER TO THE ATTENDANT CIRCUMSTANCES

132. The observation of this Committee as attendant circumstances with regard to my not taking any step to discharge the receivership or for return of money or for furnishing of accounts in respect thereof or continued to misappropriate or utilise the fund contrary to the directions of law is without any basis and is also beyond the scope of the proceedings which was initiated in the Calcutta High Court. Neither any law nor established procedure has been shown to me on that account which I have allegedly violated.

133. The allegation contained in the attendant circumstances that I continued to misappropriate or utilise the fund even after my elevation, is highly unfortunate. It is not only contrary to records.

134. Records clearly show that the amount of fixed deposit of around Rs. 39 lakhs approximately was lying deposited in Lynx since 1997 and that amount was never reduced from Rs. 33,22,800/- less 5% at any given point of time. If I have not utilised any part or portion thereof since 1997, I do not know how an allegation can be made that I had continued to misappropriate the same even after my elevation. With a very heavy heart and great deal of anguish, I submit that this allegation has been made in a drastic manner and it seems to be an attempt to foist some amount of misbehaviour on me after my elevation.

135. My bank records up to date were disclosed in 2006. From the said accounts it will clearly appear that after 1997, there has been not one single credit entry into my account from Lynx and the amount of Rs. 33,22,800/- less 5% representing the purchase consideration continued to remain deposited under fixed deposit receipt with Lynx.

136. Another charge contained in the attendant circumstances regarding my not returning any fund until called upon by the court to do so by means of the order dated 10 April 2006. I say with utmost respect and humility that this charge could not have been made at all, if proper appreciation of law and facts had been made. No Receiver can hand over any money without specific direction of court.

137. The order dated 20 January, 1993 directs me to hold the money until further order of the court. It is on record that before 10 April, 2006, there is not a single order passed by any court directing me to pay the amount.

138. Furthermore, I reiterate the facts relating to my alleged nondisclosure of facts before the court or not replying to the letter of the plaintiff dated 7 March, 2002 allegedly received by me.

139. It seems that the issues seems to have been pre-judged without giving due consideration to the mitigating circumstances and the difficulties faced by a junior advocate as a receiver.

140. These are significant facts which clearly go to show the injustice caused to me and that I have become a victim of circumstances.

141. The court is a mere custodian of the monies which belong to the parties. It is for the parties to raise complaint with regard to its mis-utilisation. In the instant case, the parties did not even ask for return of money with interest because they were fully aware of the fact that by reason of the nature of the order dated 20 January, 1993 they are not even entitled to ask for it but since I had deposited the money on various interest bearing accounts I thought that it was my moral responsibility to pay back with interest but it was impossible to quantify the rate of interest as it varied from time to time.

142. The rate of interest on fixed deposit with banks had come down drastically and the rate of interest promised by Lynx is no longer relevant after its winding up. Under these circumstances, I left the matter for adjudication by the court and the court adjudicated the same. In fact, the interest allowed by the court is almost penal in nature because interest has been calculated on a cumulative basis from one period to another and at a rate much higher than the Bank rate prevailing at the relevant point of time.

143. I, therefore, submit that the money belongs to the parties. It has not yet been adjudicated in the suit filed by the plaintiff as to who would be entitled to get the money but, however, none of the parties to the suit had any grievance

against me in any manner whatsoever with regard to keeping the money in fixed deposit or handling the same in the manner as disclosed in this proceeding. The court by itself cannot raise an issue *suo motto* with regard to the alleged mis-utilisation of accrued interest when the parties do not have any issue with regard to the same.

144. I respectfully state and submit that since the total corpus of Rs. 33,22,800/- less 5% representing the purchase consideration was to be kept, my only responsibility lay with regard thereto. At the time of return of the money whether or not it would be returned with accrued interest was a matter of adjudication. Therefore, to allege that there has been mis-utilisation of accrued interest prior to return of money is completely misplaced, uncalled for and out of context.

145. In the instant case, the Single Judge in his order dated 10 April, 2006 while directing me to pay nearly Rs. 58 lacs without even a prayer for repayment with interest, passed an order of injunction on all my personal properties both movable and immovable.

146. The movable property includes the cars standing in my name which were purchased in 2004 after my elevation with bank loan.

147. An order of injunction is passed by a court only upon a prayer being made by a party but from the petition filed by the plaintiff it would be apparent that they have not prayed for such an order.

148. In order to pass an order of injunction under Order 39 of the CPC a court is required to justify why such an order is passed. Without any reason being given as to why an order of injunction is passed, it is invalid in the eye of law in particular by reason of the decision of the Supreme Court reported in 1993(3) SCC page 161 (Shiv Kumar Chadda *Vs.* Delhi Municipal Corporation).

149. It is significant to mention here that when the order of injunction was passed, I was no longer a receiver, appointed by the court as I was already discharged by order dated 3 August, 2004.

150. At internal page 6 of the judgment dated 10 April, 2006 last paragraph the learned Judge has commented that the letter dated 7 March, 2002 written by the plaintiff was received by me which is contrary to records. It is also recorded by the Learned Single Judge that in spite of receipt of the same, no information was supplied and no step was taken by me.

151. The Learned Single Judge at page 7 in continuation of the last paragraph at page 6 has commented that it is not clear as to why the application was not moved earlier than 16 July, 2004 in spite of **affirming the same on 27 February, 2003** filing the application on 10 March, 2003. It is commented at that stage "no affidavit was filed by the erstwhile receiver in spite of notice being served."

152. This observation is, factually, incorrect as would be evident from the affidavit of service filed by the plaintiff that the petition was served upon me for the first time on 11 May, 2005.

153. I would, like to respectfully state and submit the aforesaid contention constitutes misbehaviour as contemplated under Article 124(4) of the Constitution of India read with the Judges (Inquiry) Act.

154. I respectfully and humbly request this Committee to render justice to me as I am entitled under the Constitution of this country and as a member of the higher judiciary who has an unblemished record of conduct as a judge.

155. No one except for a party to the proceeding is entitled to be served the order unless specifically directed. A Receiver is not a party to the proceeding. The Single Judge being aware of such a position in Law gave specific direction of certain orders being served upon me as a Receiver, Subsequent thereto there is no order which gives such direction. That all those orders would never reach me as they were never served upon me.

156. At the material point of time ANZ Grindlays Bank, now Standard Chartered Bank had undergone a complete overhaul of their accounting system which became completely computerised. As a result the numbers of digits of the Account Numbers were changed and existing accounts were given different account numbers having increased digits.

157. In order to find out the actual state of affairs regarding my opening and closure of account I had sent my Advocate, to cause an inspection from the record of the Bank, when he was informed that no details with regard to my account can be given to him by reason of an order and/or direction given by the "Higher Authority".

158. Without any judicial order no bank can refuse to furnish details of a customers account, this is against all banking norms and Reserve Bank of India Regulations.

159. In any event without specific knowledge and information with regard to opening and closing of various accounts as relied upon by this Committee it would amount to a miscarriage of justice, if I am not allowed the information as sought for by me.

PARAGRAPH-WISE DEALING OF CHARGES ALONG WITH THE GROUNDS IN SUPPORT THEREOF AS ALSO THE ATTENDANT CIRCUMSTANCES

160. Without prejudice to the aforesaid and strongly relying thereon, I now proceed to deal with the charges along with the grounds in support thereof as also the attendant circumstances.

161. With regard to charge one (misappropriation), the statements contained in paragraphs 3, 4, 5, 6 and 7 are matters of record. I, however, deny that any sum was misappropriated or converted to my own use, in particular, the sum of Rs. 4.25 lacs less 5%. Mere withdrawal of amount from the bank does not constitute misappropriation. Unless it is proved that there was any dishonest intention on my part and that I have put the said amount to my own use, the charge of misappropriation is untenable in law and or in facts. In this context, I reiterate that it has been proved beyond doubt that the total amount of money representing the purchase consideration less 5% being my remuneration was all alone kept deposited with Lynx. Therefore, the question of misappropriation of any amount cannot and does not arise.

162. With further reference to paragraphs 3, 4, 5, 6 and 7, I deny that I have misappropriated and/or converted to my own use a further sum of Rs. 8.25 lacs. At the cost of repetition, I say that mere withdrawal of money does not constitute misappropriation.

163. With reference to paragraph 8, I deny that by making series of disbursement from 22 May, 1997 till 1 July, 1997 from the 400 Account, I have misappropriated and/or converted to my own use, amount of Rs. 22 lacs together with accrued interest. I reiterate that the series of disbursement made from 400 accounts was towards labour payment in terms of the Division Bench order.

164. The transfer of the amount from 800 to 400 accounts has already been explained by me. Due to the confusion at the end of the bank, my request was scored out and the 400 account was put in. At this juncture after such a long passage of time, it is not possible to remember as to the circumstances leading to the said request made to the bank. Since as on the date of transfer of the money to the Lynx from 400 account sufficient amount of money was

already lying in fixed deposit with the Standard Chartered Bank, no additional or personal benefit was derived by me by depositing money in Lynx from 400 account which could have duly been deposited by encashing the fixed deposit out of the 800 account.

165. In any event none of these deposits were towards withdrawing any money for my personal benefit. From the statement of account of the 800 account, it is clear that two term deposits were created - one of 6 March, 1995 for a sum of Rs. 8,73,968/- and another term deposit was created on 4 December, 1995 for a sum of Rs. 9.80 lacs. From the further documents submitted by this Committee being Volume 4 at page 1677, there appears to be a copy of a fixed deposit dated 6 March, 1997. It appears from the said document that the said fixed deposit was created on 6 March, 1996 for a sum of Rs. 9,64,967.24. The total amount of the said two fixed deposits which were subsequently transferred to 400 account was Rs. 22,84,459/-. The date of such transfer was 22 May, 1997.

166. It is not understood as to whether the term deposit disclosed at page 1677 is same to that of the term deposit mentioned in the statement of account at page 413 or 417 of Volume 1 because the figures mentioned in the term deposit is different. Moreover the term deposit mentioned at page 1677 appears to have been created on 6 March, 1996 for a sum of Rs. 9,64,967/- which is totally different from the figure, of the term deposit mentioned at pages 413 and 417. Moreover, the term deposit mentioned at page 417 from the 800 account the figure is Rs. 9.80 lacs whereas the term deposit mentioned at page 1677 is of an amount of Rs. 9,64,967.24 as on 6 March. If the fixed deposit created in 1995 was not encashed until 1997, it is not understood as to how on 6 March, 1996 lesser figure is shown to have been created in fixed deposit. I, therefore, presume that the fixed deposit mentioned at page 1677 is different from the fixed deposit mentioned at pages 413 and 417 respectively of the paper books.

167. With further reference to paragraph 8 I say that the copy of the fixed deposit receipt disclosed at page 1681 tallies with the date of creation of the fixed deposit mentioned in the statement of account at page 417 *i.e.* 4 December, 1995. The amount of fixed deposit also tallies with the debit entry in the statement of account i.e. 9.80 lacs. From the copy of the fixed deposit it is clear that the date on which such term deposit is created is clearly mentioned at the bottom of the copy of the fixed deposit itself. Surprisingly, though at page 1677 it is mentioned that the term deposit was created on 6 March, 1996, the actual entry of creation of fixed deposit in the statement of account mentioned at page 413 is 6 March, 1995 and the figures appearing at page 1677 and at page 413 are different.

168. Under these circumstances, I humbly state and submit that neither the series of disbursement nor the transfer of the amount from 800 to 400 account constitute any wrongful action on my part far less misappropriation. Under what circumstances this Committee has framed the charge that I have misappropriated and/or converted the said amount is still not very, clear to me. From all the accounts disclosed there is not a single entry from which it can be proved that I have withdrawn any amount for my personal gain and/or has converted to my own use. It appears that the charges are purely based on surmises and conjecture without any specific proof of either misappropriation or conversion. It is needless to mention that mere withdrawal of money does not constitute misappropriation unless there is proof dishonest intention and user of the said amount towards my own use and personal gain. I have clearly stated and have given evidence that disbursement from the 400 account were all towards labour payment.

169. With regard to paragraph 9, I do not understand as to how the said issue can be framed as a charge or can form a part of the charge no. 1 that is misappropriation. I have already given my answer with regard to alleged not taking any steps towards my discharge or for return of amounts or for furnishing of any account in respect thereof. I say that I was not aware that there was any legal or procedural requirement on my part to seek discharge from receivership or to take any personal step towards return of money. The application filed by the plaintiff was for the same purpose and was to be heard within a short time. I thought that the said application would be heard and disposed of with appropriate orders and it was not necessary for me to personally go and approach the Court for similar direction. It is significant to mention here that I was relieved from further acting as a receivership on 3 August, 2004 but unfortunately the said order did not contain any direction to pay nor was the order served upon me and, therefore, I was completely unaware as to the proceedings that were going on in the Court.

170. In order to return the money held as a Receiver, a direction from the Court is required. It matters a little as to who approaches the Court. In this case, the plaintiff had already approached the Court in March, 2003 long before my elevation. I reasonably expected that the Court would pass necessary order directing return of money.

171. With regard to non-furnishing of accounts, I have given my answer earlier and I reiterate the same herein in seriatim. I humbly state and submit that the charge as mentioned in paragraph 9 under reply does not come within the ambit of the Motion admitted in Rajya Sabha. I further submit that the proceedings before the Court which had culminated into the judgment and

orders, passed by the Single Judge, there was no issue or discussion as to whether I should have taken any steps to seek my discharge or return of the amount prior to my elevation or thereafter. In any event, the said charge is totally outside the scope and ambit of article 124(4) of the Constitution of India read with the provisions of Judges Inquiry Act which had been framed to prevent corruption and incapacity of a judge. Alleged impropriety or a better action expected out of a judge cannot be the subject matter of Article 124(4) of the Constitution of India.

172. With reference to paragraph 10 of charge 1, I deny that I continued to misappropriate or utilised the sale consideration or accrued interest in my position as a Receiver even at the time and subsequent to my appointment as a judge on 3 December, 2003. Until and unless a specific order is passed to hand over the money, I was duty bound under orders of Court to keep the amount in my possession. If I had handed over the money without any order of the Court, I would have actually committed contempt of the order dated 20 January, 1993. Moreover, keeping the money in my possession *per se* does not amount to misappropriation. Event not accounting for the same also does not amount to misappropriation. In any event, I have already stated as to the circumstances leading to the letter written by the plaintiff on 7 March, 2002 and the orders passed by the Single Judge on 3 May, 2005 and 17 May, 2005.

173. At the cost of repetition, I say that it will appear from the letter dated 7 March, 2002 that the letter was not received by me personally. Moreover, not answering a letter written by the plaintiffs Advocate does not amount to misappropriation or utilisation of sale consideration, or accrued, interest thereon. The order dated 3 May, 2005 does not contain any direction, the order dated 17 May, 2005 which was served upon me and I have given my explanation with regard thereto which I reiterate in seriatim.

174. With further reference to paragraph 10, I say that my personal accounts have been disclosed up to 2006. There is not a single entry which can show that until 2006 I have utilised any part of the purchase consideration. All transactions relating to the said purchase consideration practically ended in 1977. After the fixed deposits that were created with Lynx, it continued to remain there. Therefore, the charge contained in paragraph 10 that I have continued to misappropriate or utilise the sale consideration with accrued interest even at the time of and subsequent to my appointment as a judge on 3 December, 2003 is wholly incorrect. .

175. With further reference to paragraph 10, I submit that the alleged failure to account for despite alleged specific demand made by the plaintiff *vide* letter

dated 7 March, 2002 or by orders dated 3 May, 2005 and 17 May, 2005 passed by the Single Judge does not amount to misappropriation far less an issue which can come within the ambit of Article 124(4) of the Constitution of India.

176. With reference to paragraphs 11, 12 and 13 I deny that I have intermingled the sale consideration with other monies or removed the sale consideration from bank accounts or otherwise dealt with the sale consideration in breach of direction or law applicable to the Receivership as alleged or at all. I reiterate that since the drafts given by the purchase were in my personal name they were encashed in accounts standing in my name. From the copies of the account disclosed in this proceeding it will appear that after the drafts were encashed, fixed deposit receipts were created in the bank itself. The records of Lynx clearly establishes the fact that the fixed deposit receipts were also created there apart from fixed deposits that were created in the Standard Chartered Bank. The drafts were encashed in an account and thereafter withdrawn for the purpose of making fixed deposits, which does not amount to intermingling of the sale consideration. The removal of amounts from the bank was for the purpose of creation of fixed deposit and for no other purpose. This has also been established not only from the fixed deposit receipts issued by the ANZ Grindlays Bank (now known as Standard Chartered Bank) and also fixed deposit receipts disclosed from the records of the Official Liquidator of Lynx. Two fixed deposit receipts have been, disclosed in **Volume IV** of the documents supplied to me subsequently and the same are at **Pages 1677** and **1681.** From the fixed-deposit receipt contain in Page 1677 dated 6 March, 1997 it will appear that the said fixed deposit was created and/or placed on 6 March, 1996 for a sum of Rs. 9,64,697.24p. The statement of accounts disclosed in this proceeding contained in **Page 417 of Volume I** of the documents relied upon by the Committee there is no debit entry on 6 March, 1996. The actual debit entry is for a sum of Rs. 8,73,968/- dated 6 March, 1995. Neither the date of the entry or the amount mentioned in the fixed deposit receipt at Page 1677 corresponds to the actual entry mentioned in the statement of accounts. There appears to be a clear anomaly in this regard.

177. With further reference to paragraphs 11, I deny that any amount of the sale consideration has been dealt with by me in breach of any directions of law applicable to Receivership. I submit with utmost respect and humility that this charge appears to be rather fanciful in nature. The correct position of the accounts has not been considered at all. The only direction upon me with regard to keeping of the amount is contained in the order dated 20 January, 1993. Under the said order I had the liberty to keep the money at a place of my choice. There are clear evidence in this proceedings as to show that total purchase consideration of Rs. 31,56,660/- has been kept deposited in Lynx throughout.

Therefore, the question of committing any breach of any directions of law applicable to Receivership cannot and does not arise.

178. It is further submitted that my duty to act as Receiver ended after the order dated 3 August, 2004 when I was replaced by another Receiver without any direction either to pay or to submit any accounts. Furthermore, the order dated 10 April, 2006 though contains diverse observations against me, and there is no direction whatsoever to submit any account. On the contrary the total amount was quantified by the Court and direction was given to me to pay the same. There is no observation whatsoever by the Single Judge with regard to alleged non-filing of accounts. I failed to appreciate as to how this charge either relates to charge of misappropriation or can be a subject matter in issue under Article 124(4) of the Constitution of India as neither the charge nor the consequence thereof comes within the ambit of Article 124(4) of the Constitution of India.

179. With reference to paragraph 12, it is denied that I have misappropriated and/or converted to my own use the sale consideration or the agreed interest or that such misappropriation existed or continued even subsequent to my appointment as a Judge of the Court. I say that this charge is not only malicious in nature but also have been made extremely recklessly without giving due regard to the facts and understanding of the case. The charge of misappropriation itself is without any basis and till date there is not an iota of proof or evidence of misappropriation. The charge has remained in the realm of assumption and/or surmise and conjunctures. Under Article 124(4) a Judge can be removed on the ground of **'proved misbehaviour'** or 'incapacity as a judge' and not otherwise. All allegations pertaining to the charge relate long prior to my elevation. The charge that I have continued to misappropriate subsequent to my appointment as a Judge as has been made in desperation only, to bring this entire inquiry within the ambit of Article 124(4) and to continue with this enquiry under the Judges Inquiry Act, 1968. All my accounts until 2006 have been disclosed before the Learned Single Judge commencement from 1995 and some occasions even prior thereto. There is not a single credit entry into my account, which can show that I have made any personal use of sale consideration. After 1997 when the entire sale consideration was found to have been kept in Lynx there was not a single transaction whatsoever from my account showing alleged misappropriation. After December, 2003 when I was elevated, the accounts disclosed in this proceeding would also show that there has not been one single debit entry or credit entry which can correlate or link the other transactions with the purchase consideration.

180. With further reference to paragraph 13, it is denied and disputed that I have committed misappropriation of property or the same constitutes misbehaviour under Article 124(4) read with Article 217 of the Constitution of India as alleged or at all. I would like to point out that a very important word contained in Article 124(4) has been deliberately left out. The language used in Article 124(4) is **'proved misbehaviour'** and not simply 'misbehaviour' as has been used in paragraph 13. From the charges itself I say that there is nothing which can substantiate the alleged charge of misbehaviour or 'proved misbehaviour'.

181. With reference Charge II (Making False Statements) contained in paragraphs 14 to 25, I submit that the entire exercise before the Learned Single Judge was to establish that a sum of Rs. 31,56,660/- representing the purchase consideration was kept deposited. According to my understanding and interpretation my obligation under orders of Court was to keep a sum of Rs. 31,56,660/- representing the purchase consideration separate. The trail of money deposit in Lynx does not contradict my contention that a sum of Rs. 31,56,660/- representing the purchase consideration was kept in Lynx. The amount of Rs. 31,56,660/- representing the purchase consideration required to be kept by me as a specific sum does not have any identification either from any account nor does it contain any colour, stamp of any nature whatsoever. Therefore, it is of no importance as to from which account the money was deposited in Lynx. After such long passage of time in absence of the specific documents, accounts, Cheque books, pass books, counter foils etc. in my possession it is not possible for me to remember the exact nature of the transactions or the requirement thereof. The only fact which I remember and was relevant to me was that the amount of Rs. 31,56,660/- representing the purchase consideration was kept deposit in Lynx and the statements made before the Court was purely from memory and this has been specifically stated in the written notes filed before the Single Judge. Neither in the pleadings in the petition filed by the plaintiff nor the issues before the Court was with regard to the source of deposit in Lynx but whether the amount of Rs. 31,56,660/- representing the purchase consideration was found to be deposit or not, which I have established without any iota of doubt. Therefore, I submit that no false statements were made by me at any point of time. Moreover, the Division Bench has accepted my contentions and has clearly held that there is no question of any misappropriation of any amount by me. This is a clear and specific finding in respect of the aforesaid.

182. With particular reference to paragraph 14 of Charge II (Making False Statements), I deny that the sum of Rs. 12,50,000/- of the sale consideration or agreed interest thereon have been misappropriated even as

on 10 June, 1996 for the reasons as alleged or at all. It is denied and disputed that first deposit with Lynx India Ltd. was made by me only on December 19, 1996. The only evidence to deposit in the form of an application for creating fixed deposit is on 26 February, 1997 for a sum of Rs. 25,00,000/-. It has been proved beyond the doubt that the total amount found to have been deposited in Lynx was Rs. 31,56,660/-. Therefore, it is proved beyond doubt that a sum of Rs.14,39,000/- was deposited in Lynx long prior to 26 February, 1997 and in fact, such deposit was made-even before 28 November, 1995 since the statement of account disclose contained in **Page 413 of Volume I** commences from 28 February, 1995 and there is no debit entry in the said account till 21 April, 1999 showing another deposit to Lynx. Therefore, my specific statements that there has been no misappropriation far less the amount of Rs. 12,50,000/- since Rs. 14,39,000/- was deposited in Lynx. Prior to 28 February, 1995 cannot be contradicted in any manner whatsoever. Furthermore, the charge of alleged misappropriation of Rs. 12,50,000/- is also based on assumption without any specific proof. Mere withdrawal of amount does not constitute misappropriation. It is clear from the nature of charges framed against me that the charges itself are devoid of any proof and is purely based on assumption. Such serious allegation of misappropriation has to be proved beyond reasonable doubt in absence of statement of accounts from 1993-1995 from ANZ Grindlays Bank (now Standard Chartered Bank), it is impossible to allege misappropriation far less prove the same against me. Whereas on the contrary circumstantial evidence clearly suggests that the total amount of purchase consideration as was required to be kept by me was all along in Lynx.

183. With particular reference to paragraph 15 of Charge II (Making False Statements), I submit that the order dated 10 April, 2006 (as would appear from **Page No. 1793 of Volume V**) was available as signed copy on and from 19 May, 2006 from the Department. Even before obtaining the signed copy on 18 May, 2006 my Learned Advocate-on-Record appeared before the Court and expressed desire to deposit a sum less than Rs. 20 lacs, which was duly done. Consequently when the matter appeared my Learned Advocate made submission to deposit a sum of rupees not less than 15 lacs. However, the actual deposit was made for a sum of Rs. 20 lacs, which was recorded in order dated 8 September, 2006. Therefore, by 8 September, 2006 a sum of Rs. 45 lacs was also deposited, which far exceeds the principal sum of Rs. 31,56,660/- prior to seeking of extension. It is submitted that subsequent thereto there was a personal inconvenience in my family as one of my uncle fell seriously ill whose children stay abroad. I became preoccupied with his illness and he ultimately expire sometime in the end of October and the

responsibility of observing the 'Sradh' ceremony came over me as I was the only one who took part in his cremation as a member of the family. Under these circumstances an extension was sought for to pay the remaining amount and such extension was duly granted by the Court and the remaining amount was paid within the extended time.

184. With particular reference to paragraph 19 of Charge II (Making False Statements), it is denied that Rs. 22,00,000/- of the sale consideration and the agreed interest thereon was withdrawn, disbursed or utilized by me between 22 May, 1997 and 1 July, 1997. It is surprising that such charges have been made without looking into the accounts and the evidence staring on the face of the record. All the cheques which has been disclosed by this Committee regarding withdrawals and/or disbursement of this sum of Rs. 22,00,000/- withdrawn from 800 account and deposited in 400 account were towards payment to workers in terms of the Division Bench order dated 20 January, 1997. Not a single paisa was withdrawn by me for my personal use nor any credit entry from 400 account to 800 account has been found. I reiterate that a sum of Rs. 25,00,000/- was deposited in Lynx on 25 February, 1997. Therefore, the statements contained in paragraph 19 that no deposit in Lynx was made between 22 May, 1997 and 1 July, 1998 is on the face of it, incorrect.

185. With particular reference to paragraphs 20 and 21 of Charge II (Making False Statements), it is stated that the deposit of Rs. 25, 00,000/- from 400 account and subsequent deposit of Rs. 22 lacs from 800 account to 400 account constitutes the money trail in clear and specific terms. Furthermore, neither the deposit of Rs. 25, 00,000- from 400 account to Lynx nor the deposit of Rs. 22,00,000/- from 800 to 400 account and its subsequent withdrawal was for any personal gain. It is denied that the statement made by me that deposits in Lynx were made by me by cheques drawn on account from 800 is false as alleged or at all. I have clearly stated - that since no documents were available with me, my only endeavour was to establish deposit of Rs. 31,56,660/- in Lynx. My only endeavour was to establish that I have not personally utilized any amount and that the amount as directed by the Court was kept deposited. All other questions become inconsequential as far as my interpretation and/or understanding of the facts and circumstances of this case.

186. With particular reference to paragraph 22 of Charge II (Making False Statements), it is denied that the withdrawal of Rs. 5, 00,000/- from the Lynx was from my personal fund is false as alleged or at all. The only responsibility and duty cast upon me was to keep a sum of Rs. 31,56,660/- deposited and/or separated. The excess amount found in Lynx was my personal fund.

Moreover, the Court have quantified amount payable by me and paid by me, all other questions become irrelevant and/or is of no consequence as on date.

187. With particular reference to paragraph 23 of Charge II (Making False Statements), it is denied that I have made any statements that are false or which I knew or believe to be false or did not believe to be true as alleged or at all. My specific statement contained in the written notes filed before the Hon'ble Judge was only for the purpose of explaining the anomaly in the accounts disclosed by the Official Liquidator and which contains specific statement that all that was stated by me was based upon memory of transaction which took place long prior thereto. Without taking into consideration of the same, such allegations of misrepresentation of facts are uncalled for. In any event of the matter, the Division Bench after having considered all materials of record have come to a definite conclusion and finding that the allegations of misappropriation is unfounded. Therefore, the question of misrepresentation of facts before the Court cannot and does not arise and in view of the specific directions of the Division Bench expunging the adverse comments made against me, the allegations of misappropriation and misrepresentation of facts cannot be made in any manner whatsoever. It is significant to point out that no new facts were placed before the Division Bench than those already before the Single Judge.

188. With particular reference to paragraphs 24 and 25 of Charge II (Making False Statements), it is denied that I have made any false statements or made misrepresentation of facts or gave false evidence while I was a Judge of the Court as alleged or at all. It is denied that during the judicial proceeding or while holding the office of Judge of the Court intentionally gave false facts which constitute misbehaviour under Article 124(4) read with Article 217 of the Constitution of India as alleged or at all. I would like to point out that when litigation was conducted against me or when the litigation was conducted by me, it was not done in the capacity of a Judge, but in the capacity of a litigant. My actions were not in course of discharge of my .judicial functions. Therefore, the allegations itself does not come within the purview of "proved misbehaviour" as contained in Article 124(4) read with Article 217 of the Constitution of India. Significantly, my interpretation of facts of this case have been accepted by the Division Bench which has given me a complete clean chit and have directed diverse judicial observance made by the Single Judge be deleted from the records of the case.

189. With regard to Statement of Ground in support of charges, it is stated as under:-

A. Appointment of Receiver:

190. With reference to paragraphs 1 to 11 are all matters of record and save what appears there from all allegations contrary thereto and/or inconsistent therewith are denied and disputed.

191. With reference to paragraphs E alleging misappropriation in Allahabad Bank account contained in paragraphs 12 and 13, it is submitted that mere withdrawal of the amount does not constitutes misappropriation. There is not an iota of proof with regard to disbursement or dealing with the same as there was no direction to the contrary which prohibited me from withdrawing the amount. Since the choice of keeping the purchase consideration by me was left to me totally, I was free in law to withdraw the amount from Allahabad Bank. Unless it may be specifically shown by specific evidence that I have disbursed or dealt with the same for my own personal use, the allegation of transfer of said amount from Allahabad Bank is untenable in facts and/or in law. I have already stated that the choice given to me by order dated 20 January, 1993 by the Court to hold the money does not commence with the first deposit. Since 22 drafts were given to me my choice of keeping money separately commences only when the entire purchase consideration is paid. The order dated 20 January, 1993 specifically directs me to keep the entire sale consideration after deducting 5% towards remuneration and not any part thereof. It is only after 29 April, 1995 when the last payment was made, I was under an obligation to keep the money separately and it will appear from records of this case and also clearly established that I have fulfilled my obligations under the said order. Moreover, the delivery of goods to the purchase was made from the Bokaro Steel Plant. Though it was under my possession as a Receiver in order to facilitate delivery from a very high security area an employ of Steel Authority of India was employed as Manager under me. Under the order dated 20 January, 1993 the purchaser was given liberty to lift the materials in lots and a time period of four months was fixed. However, the plaintiff use to issue the delivery challans from Bokaro Steel Plant which was brought to me in Kolkata for counter signing which continued from 1993 till 1995. Neither the plaintiff nor the defendants nor the purchasers raised any objection with regard thereto.

192. With reference to paragraphs E alleging misappropriation in Allahabad Bank account contained in paragraphs 12 and 13, it is denied that I had misappropriated or converted to my own a sum of Rs. 4,25,000/- in violation of the orders of the Single Judge in C.S. No. 8 of 2003 or applicable provisions of law. I submit that the said allegations are contrary to the established principles relating to misappropriation. Furthermore, conversion of amount to

my own use requires proof and evidence thereof. Such serious allegation cannot be made merely on the basis of assumption of withdrawal. Proof of conversion is an essential ingredient to substantiate the charge of misappropriation. Till date there is not an iota of evidence to establish that I have either misappropriated or converted any amount to my own use.

193. With reference to paragraphs E alleging misappropriation in Allahabad Bank account contained in paragraphs 12 and 13, it is submitted that apart from alleging withdrawals no explanation has been given as to the two amounts shown as creation of fixed deposit, one dated 24 March, 1993 and other dated 21 July, 1993. There is no evidence disclosed from Allahabad Bank with regard to creation of fixed deposit or encashment thereof. It appears that on 24 March, 1993 a sum of Rs. 4,46,000/- was deposited in fixed deposit. On 19 July, 1993, a sum of Rs. 4,58,837/- was credited from fixed deposit. However, there is no evidence on record to show as to whether such fixed deposit was directed to be encahsed. I, therefore, submit that the evidence relating to accounts disclosed in this proceedings are not only full of anomalies and are also incomplete and partly incorrect, therefore, to rely on the same and to make specific allegation of misappropriation is unfortunate, totally uncalled for, contrary to records and/or unjust.

194. With reference Charge II (Misappropriation in ANZ Grindlays Account) contained in paragraphs 14, 15 and 16, I deny that the shortfall in the opening balance as on 28 February, 1995 constitutes misappropriation or the amount maintained in Allahabad Bank being negligible also constitutes misappropriation as alleged or at all. I say that there is no contrary evidence to contradict my contention that by that time substantial amount of fixed deposits was already created in Lynx for the reasons as stated hereinbefore.

195. With reference Charge II (Misappropriation in ANZ Grindlays Account) contained in paragraph 17, it is submitted that apart from the 800 accounts, the other accounts in Standard Chartered Bank are of no relevance whatsoever. Furthermore, without specific information from the bank as to the date of opening of the accounts and the account opening forms and the letter of request for closure of the accounts, it is impossible for me to make specific comments with regard thereto. My Advocate's letter dated 24 March 2010 and 6 April 2010 written to the bank seeking such information, copies whereof are annexed hereto and collectively marked with the letter "D", which has remained unanswered till date.

196. With reference Charge II (Misappropriation in ANZ Grindlays Account) contained in paragraph 18, it is denied and disputed that I have misappropriated at least a sum of Rs. 12,50,000/- for the reasons alleged or at all. I have given

factually correct explanation with regard to the alleged misappropriation of Rs. 12,50,000/- hereinabove and I reiterate the same in seriatim.

197. With reference paragraph G under the heading 'Events of 1999' contained in paragraphs 19, 20, 21, 22, 23, 24 and 25, I say that the statements contained therein are mostly matters of record and save what appears there from allegations contrary thereto and/or inconsistent therewith are denied and disputed. It is however, significant to mention herein that under the Division Bench order dated 20 January, 1997 my only responsibility was to distribute Rs. 70 lacs to the workers who were to be identified by the Union. There is no direction in the said order even to open an account. The account was opened by me only to facilitate disbursement. The nomenclature given as a 'Special Officer' is only for the reason as no savings bank account in the same branch under the same name can be opened. Since 400 account was opened by me on my own without any direction of Court, it cannot be termed as account opened under orders of Court. It is significant to point out that it was when my Advocate took inspection of the documents in the office of this Committee on 19 April, 2010 it was found from the original letter dated 22 May, 1998 disclosed in Page No. 1683 of Volume IV and also at several other places the scoring out and/or underlying appeared in the original is of a different ink and the scoring out portion is also not signed by me. It is, therefore, very difficult to explain the circumstances under which the amount was transferred from 400 account to Lynx since as on that date fixed deposits worth more than Rs. 22 lacs was already lying in Standard Chartered Bank. No special benefit whatsoever has accrued to me personally by transferring the sum of Rs. 25 lacs from 400 account of Lynx and instead the sum of Rs. 22 lacs and more lying in fixed deposit with Standard Chartered Bank.

198. With reference paragraph G under the heading 'Events of 1999' contained in paragraphs 24 and 25, I say that while framing the charges due regard to the actual facts and the evidence on record has been totally ignored and has been done in a mechanical manner and exhibits blind adopting of the observation made by in-house committee earlier. The entire evidence on record has been completely ignored. The reduction of the amount in the 400 account by making series of disbursement does not amount to misappropriation and/or conversion to my own use of approximately Rs. 22,00,000/- as alleged or at all. Such withdrawals or disbursements have been done in compliance with the directions given by the Division Bench contained in the order dated 20 January, 1993.

199. With reference paragraph G under the heading 'Events of 1999' contained in paragraphs 26 and 27, the amount of sale consideration or

accrued interest have been transferred illegally by me from 800 account or was misappropriated and/or converted to my own use on 22 May, 1997 or 1 July, 1997 as alleged or at all. The disbursement in the 400 account between 22 May, 1997 and 1 July, 1997 are all towards making workers' payment and not a single paisa have been used by me for my personal gain. Therefore, the entire allegation of misappropriation is without any basis and have been made without due regard to the evidence on record.

200. With reference paragraph G under the heading 'Events of 1999' contained in paragraph 27, it is denied and disputed that the portion of sale consideration that accrued interest obtained by me as Receiver continued to be misappropriated and/or converted to my own use even at the time and subsequent to my appointment as a Judge of the Court on 3 December, 2003. These allegations are without any basis and are purely based on surmise and conjecture and even contrary to records and evidence on record.

201. With reference paragraph H, under the heading 'Attendant Circumstances' contained in paragraph paragraphs 28, 29, 30, 31, 32 and 33, I repeat what has been stated hereinabove and deny that there was any obligation upon me under the signed copy of the order dated 30 April, 1984 served upon me and as quoted by the plaintiff in its application affirmed on 7 February, 2003 or under the provisions of the Civil Procedure Code to file a separate half-yearly accounts in the office of the Registrar of Record pertaining to the amount under my Receivership or were to specifically to show, *inter alia,* what the balance in hand at each stage or that I did not any stage including after my appointment as Judge of the High Court on 3 December, 2003 filed any accounts in compliance with the said order dated 30 April, 1984 or the applicable rules or provisions of the Code of Civil Procedure, 1908 as alleged or at all.

202. The signed copy of the order dated 30 April, 1984 served upon me does not contain any direction for filing of account. Even in the order dated 20 January, 1993 there is no direction given to file accounts. From the records of this case produced so far it is clear that the certified copy of the order dated 30 April, 1984 was never served upon me. I call upon the plaintiffs to produce the copy of the letter under cover of which the said order was served upon me in order to act in terms of the Order.

203. From both the certified copy of the order disclosed by this Committee at page 145 of Volume I and the signed copy quoted by the plaintiff in their application at paragraph 11 at page 179 of Volume I, there is a clear direction upon the Receiver to act on a signed copy of the Order and not the Certified copy of the said order. Furthermore from the certified copy of the order relied

upon by this Committee it appears that there was no direction whatsoever as to how the sale proceeds were to be invested. The plaintiff was given the liberty to seek appropriate direction for investment.

204. From the certified copy of the order disclosed and relied upon by this Committee it is clear that the certified copy was ready for delivery and obtained on or after 28 February, 1985. It is unbelievable that after obtaining the order dated 30 April, 1984 the plaintiff will wait till 28 February, 1985 to serve the same upon me as receiver. The question therefore which arises is what order was served upon me to act as a receiver. If the certified copy was not served it has no relevance and the question of its compliance also cannot and does not arise.

205. It is significant to note that the terms of the signed copy of the order dated 30 April, 1984 and the terms of the certified copy of the said order are at a great variance. Under the established practice and procedure then prevailing in the original side of the Calcutta High Court, all orders passed in the original side were recorded in the minute book prepared by the recording officer of the concerned court. Signed copies were delivered on the basis of the minutes. The signed copy and the minutes were required to be identical. Parties applying for certified copy were required to compare the same before the Registrar Original Side before the order is drawn up and completed and delivered to the parties after settlement.

206. Having regard to the procedure as discussed above it is not understood as to how can the signed copy of the order and the certified copy of the order can be at such variance with one another.

207. It is on record that the plaintiff has not obtained any such direction and the only direction upon me to deal with the purchase consideration is contained in the order dated 20 January, 1993.

208. I have already given explanation with regard to alleged non-compliance of the Original Side Rules and the provisions of the Code of Civil Procedure, 1908 which I reiterate herein in seriatim. In any event, I say that these alleged attendant circumstances does not constitute a function or action which can come within the ambit of Article 124(4) read with Article 217 of the Constitution of India. It appear from the manner in which the attendant circumstances have been, formulated the solemn provisions of Article 124(4) read with Article 217 of the Constitution of India for the purpose for which such provisions engrafted in the Constitution of India is sought to be diluted in an extremely cursory manner.

209. It is denied that I had dealt with the funds by distributing or withdrawing them out of the bank account, which had been deposited. The withdrawals all been made to create fixed deposits and for no other purpose. It is denied that I have allegedly intermingled all funds or did not adhere to the direction to maintain the separation of the sale consideration from any other funds thereby misappropriating and/or converting to my own use the sale consideration as alleged or at all. I have already stated that the choice to keep the same separated would arise only after the entire purchase consideration is paid and not prior thereto. As and when substantial sum of money accrued in the bank, fixed deposits were created so as to prevent intermingling but the circumstances were beyond my control which permitted me to deposit the fixed deposits in an account standing in my name only for the purpose of encashment as by nature of the direction contained in the order dated 20 January, 1993. I was prevented from opening any Receiver's account, which would have solved all my problems. It is unfortunate that the mitigating circumstances leading to the complication in handling of accounts have been completely disregarded and allegations are being made against me though I have tried my utmost to keep the sanctity of the orders. I submit that there is not an iota of evidence showing misappropriation or conversion to my own use the sale consideration or any part thereof.

210. In particular reference to paragraph 31 of paragraph H under the heading 'Attendant Circumstances', I submit that the order dated 20 January, 1993 did not cast any embargo upon me in any manner whatsoever. The language is of the widest amplitude a restrictive meaning is now sought to be given in the form of attendant circumstances. I had absolute liberty to withdraw money and to create fixed deposits. Even in 1993 fixed deposits were created in Allahabad Bank. There is no contrary evidence to contradict my contention that fixed deposits were created in Lynx long prior to 6 March, 1995. Creation of fixed deposits does not amount to violation of the orders passed in this case or any part of Chapter 21 of the Original Side Rules or any other provisions of law. It is denied and disputed that I have failed to provide accounts even to the plaintiff despite a letter dated 7 March, 2002 in this regard sent by the plaintiff or received by me as alleged or at all. From the letter itself it will appear that my signature on the said letter does not appear.

211. With reference to paragraph 33 in particularly of paragraph H under the heading 'Attendant Circumstances', I submit that I was not aware of any procedure, rules or law or convention that I have to seek discharge from Receiver, at the time of appointment as a Judge of the Court. Particularly, in view of the fact when an application was already pending filed by the plaintiffs with regard to return of amount which would consequently result in my

discharge. It is stated that the alleged failure to take steps to discharge as a Receiver or return of amount or furnishing of accounts constitutes misappropriation. Unless Court gives a specific direction the amount held by a Receiver cannot be given to anyone as I was bound by the order dated 20 January, 1993 to hold money until further orders. It is denied that I have continued to misappropriate or utilize funds contrary to direction of law. It is evidence on record in these proceedings that amount representing the purchase consideration continued to remain deposited in Lynx and was not utilised by me in any manner whatsoever.

212. With reference to paragraph 35 in particular of paragraph H under the heading 'Attendant Circumstances', it is submitted that order of 7 March, 2005 was only served upon me in the month of May 2005. Consequent to the order of 3 May, 2005 service was effected and a further was given on 17 May, 2005 to file an affidavit, if so advised, dealing with only "the petition filed by the plaintiff and the affidavit filed by the purchaser". It is well-established principles of law that subsequent directions are required to be complied with. The Court was perfectly aware that order dated 7 March, 2005 was not served upon me and it was only served pursuant to the order dated 3 May, 2005. Even in those circumstances on 17 May, 2005 the Court did not give any specific direction for disclosure of any particulars. It is, therefore, understood that the Court wanted only the 17 May, 2005 order to be complied with.

213. With reference to paragraphs 38, 39 and 40 of paragraph H under the heading 'Attendant Circumstances', I deny each and every allegation as if the same are specifically set out herein and denied in seriatim. I also reiterate what has been stated hereinabove, with regard to the contents of the said paragraphs under reference.

214. With reference to paragraph 39 in particular of paragraph H under the heading 'Attendant Circumstances', I submit that the statements contained I paragraph under reference have been made without any understanding of the correct position of law. With regard to the principles of Receivership read with the order dated 20 January, 1993 no Receiver can return any fund until called upon by the Court to do so. It is significant to note here that until 10 April, 2006 there have been no directions upon me to return any amount.

215. With reference paragraph I under the heading 'Misrepresentation and false Statements' as contained in paragraph paragraphs 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56, are all matters of record and save what appears there from I deny each and every allegation which is contrary thereto and/or inconsistent therewith. It is submitted that written notes

submitted before the Single Judge was not in order to establish any co-relation between the withdrawal of funds and deposit with Lynx, but was to point out the anomalies contained in the report filed by the Official Liquidator (which would appear from **Page 132 of Volume III.**) In fact, the heading of the written notes is a clear indication of the same.

216. With reference to paragraph 39 in particular of paragraph I under the heading 'Misrepresentation and false Statements', it is denied that no deposit was made in Lynx at least prior to December, 1996. There is no evidence on record to substantiate the same. There are fixed deposit receipts of Lynx even in 1999. It is an admitted position that no amount has been debited in 1999 from any of my accounts. There is no corresponding debit entry. Therefore, fixed deposit receipts shown in 1996 also do not establish that no deposits were made prior thereto. In any event, there is no evidence of deposit in Lynx apart from Rs. 25,00,000/- accompanied by an application form together with Cheque numbers, but it is an admitted position that in there was an aggregate deposit of Rs. 39,39,000/- in Lynx.

217. The allegations contained in paragraphs 57(a) to (g) of paragraph I under the heading 'Misrepresentation and false Statements' are repetitive in nature and denied by me specifically as if the same are set out in seriatim. It is further submitted that my obligation to distribute Rs. 70,00,000/- to the workers have been fully performed. Till date not a single worker has come forward with any complaint of not having received his legitimate dues. Therefore, after having disbursed the entire amount as directed by the Division Bench by the order dated 20 January, 1997 amount withdrawn by me from Lynx after having set apart the amount of Rs. 31,39,000/- representing the purchase consideration was certainly permissible and does not contradict the fact that amount was my personal fund.

218. The allegations contained in paragraphs 58, 59 and 60 of paragraph I under the heading 'Misrepresentation and false Statements', I deny and dispute that I have made any false statements which I believe to be false or shown believed to be true as alleged or at all. In litigation I am entitled to make my own interpretation on the basis of the facts and circumstances and it does not amount to making false statements or misrepresentation. Conducting litigation before the Court of Law by me was not in the capacity of a Judge or in discharge of my judicial functions. It is incorrect to allege that I have made false statements or misstatements or false evidence in judicial proceedings before the Court. Curiously enough the Courts before which such statements have been made have not been made any observations or allegations that I have given any false statement or made any misrepresentation before, the judicial

forum. On the contrary the Division Bench had accepted my contention had come to the specific finding that there is no misappropriation on my part.

219. I have never even once committed any act of judicial impropriety nor there any allegation against me with regard thereto. Even my conduct and behaviour as a judge outside the court as is understood has been impeccable and without blemish. In spite thereof, I have been victimised.

220. I, therefore, humbly request the members of this Hon'ble Committee to put an end to this unspeakable mental agony and harassment that I and my family have been subjected and to take such steps that would ensure that I may be allowed to resume my judicial function and discharge, my duties as a judge.

221. In these circumstances, I humbly state and submit that the proceedings be dropped and/or dismissed as against me and accept the verdict of the Division Bench so that the confidence and belief in the judicial system is established.

Thanking you.

Yours sincerely

(Justice Soumitra Sen)

ANNEXURE-"A"

LIST OF EVENTS FILED ON BEHALF OF THE HON'BLE MR. JUSTICE SOUMITRA SEN

Sl. No.	Date	Particulars	Corresponding pages from documents supplied by Commission	Corresponding pages from documents prepared on behalf of Justice Soumitra Sen as Volume V & Volume VI
1	2	3	4	5
1.	30.04.1984	Mr. Soumitra Sen, as an Advocate appointed as Receiver in Suit No. 8 of 1983 (SAIL Vs Shipping) (hereinafter referred to as the said suit)	Page 145 to 155 of Volume-I	
2.	20.01.1993	By an order Justice A.N. Ray directed the receiver to keep the sale proceeds after deducting 5 per cent towards remuneration, in a separate account in a bank & branch of his choice and to hold the same free from lien or encum-brances until further orders	Page 195 of Volume I	Page 1689 of Volume V
3.	01.04.1993 to 01.06.1995	Receiver received the sale consideration for a total sum of Rs.33, 22,800/- deducting his 5 per cent remuneration of Volume II Rs. 1,66,140/-.	Page 653 to 655 of Volume II	

1	2	3	4	5
4.	1996	After accumulating the entire sale proceed Receiver kept the entire money in separate Fixed Deposits in Standard Chartered Bank (the then ANZ Grindleys Bank) and thereafter transferred the same to Lynx India Limited, a company authorised by R.B.I. to receive Fixed Deposit.		
5.	20.01.1997	Justice Umesh Chandra Banerjee and Justice Sidheshwar Narayan in another matter were pleased to direct the Receiver to hold a sum of Rs. 70 lakhs for distribution amongst the workers. Receiver deposited the said amount in the Standard Chartered Bank in an account bearing No. 01SLP0813400 (hereinafter referred to 400 accounts).	Page 157 to 167 of Volume I	
6.	14.05.1997 to 06.08.1997	(Receiver issued several Account Payee cheques to the workers.	Page 521 to 581 of Volume I & Page 1575 to 1707 of Volume III	
7.	26.02.1997	Receiver deposited Rs. 25 lakhs to the Lynx India by a cheque bearing	Page 921 of Volume II	

1	2	3	4	5
		No. 624079 of the Standard Chartered Bank.		
8.	27.02.2003	Plaintiff filed an inter-locutory application being G.A. No. 875 of 2003 *inter-alia* praying for an order directing the Receiver to handover the entire sale proceeds and also to render true & faithful accounts lying with the Receiver.	Page 171 to 199 of Volume I	
9.	03.12.2003	Receiver was elevated as a Judge of the Calcutta High Court.		
10.	03.08.2004	Said application being G.A No. 875 of 2003 was taken up for hearing for first time by the Hon'ble Mr. Justice Subhro Kamal Mukherjee and his Lordship was pleased to appoint a new Receiver discharging the erstwhile Receiver without any direction of refund of money lying with the erstwhile Receiver or furnishing of accounts.		Page 1691 to 1693 of Volume V
11.	15.02.2005	Matter appeared before Justice Sengupta for the first time and his Lordship treated the matter as heard in part.		Page 1695 of Volume V

1	2	3	4	5
12.	07.03.2005	Justice Sengupta passed an order directing the plaintiff to serve the copy of the notice of motion as well as the said application to the erstwhile Receiver and also requesting the erstwhile Receiver to swear an affidavit stating what steps he had taken and how much amount he has received in terms of the order of this Court and also to state the name of the bank where the sale proceeds has been deposited.		Page 1699 to 1701 of Volume V
13.	11.05.2005	Copy of the Application and Copies of the orders dated 07.03.2005 and 03.05.2005 were served upon erstwhile Receiver.	page 247 and relevant portion is at page 251 of Volume I	
14.	17.05.2005	Since the earlier order could not be served upon erstwhile Receiver Justice Sengupta further passed a direction to serve a copy of the application and also directed the erstwhile Receiver to file an affidavit dealing with the statements and/or averments made by the petitioner and the purchaser.		Page 1707 to 1709 of Volume V

1	2	3	4	5
15.	09.06.2005	Copy of the order dated 17.05.2005 and the copy of the affidavit of purchaser were served upon erstwhile Receiver.	Starts from page 251 and relevant portion is at page 253 of Volume I	
16.	30.06.2005	Hon'ble Mr. Justice Sengupta passed an order for making an enquiry as to what happened to the payment received by the erstwhile Receiver. It is pertinent to mention that said order of enquiry was directed not to be served upon the erstwhile Receiver.		Page 1711 to 1717 of Volume V
17.	21.07.2005	Accounts department of High Court filed report stating that no account was filed by erstwhile Receiver. Chief Manager of SBI intimated that the particulars of the records cannot be supplied.		Pages 1719 to 1721 1723 to 1727 1729 to 1733 1735 to 1737 1745 to 1747 and 1749
	26.07.2005	26.07.05 - Learned Single Judge directed the Bank officer to be present in court as the manager of the Bank expressed his inability to produce the old record and also directed the purchaser to be present personally, with relevant original		page 1753 to 1755 of Volume V

1	2	3	4	5
		documents and also expressed anxiety as to whether the erstwhile Receiver realised the money or not.		
	07.09.2005	07.09.2005 - Learned Single Judge on his own started making enquiry and also made several allegations against the erstwhile Receiver.		
	04.10.2005	04.10.2005 - Manager Standard Chartered Bank filed report stating that they are unable to supply any record prior to 1996 as the same has been destroyed. Manager Allahabad Bank was directed to be present.		
	21.11.2005	21.11.2005 - The persons those who are not party to the suit have been made to depose before the Court and formed an adverse opinion against Justice Sen.		
	12.12.2005	12.12.05 - Officers of the Standard Chartered Bank and Allahabad Bank were directed to be present with all information and documents.		

1	2	3	4	5
	15.02.2006	15.2.06 - Officer of the Allahabad Bank failed to produce any document relating to withdrawal of Rs. 4,53,000/- and he was directed to swear an affidavit.		
18.	01.11.2005	Erstwhile Receiver deposited a sum of Rs. 5 lakhs	Page 1433 of Volume III	Page 1793 of Volume IV
19.	10.04.2006	Hon'ble Justice Sengupta passed a detailed order directing erstwhile Receiver to pay a sum of Rs. 52,46,454/ after adjusting the said sum of Rs. 5 lakhs. The erstwhile Receiver and /or his agent, and/ or representative was injuncted from transferring, alienating, disposing of or dealing with right, title and interest in moveable and immovable properties lying at his disposal, save and except in usual course of business, though he was discharged on 03.08.2004.	Page 617 to 558 of Volume II	Page 1757 to 1797 of Volume V
20.	27.06.2006 and 05.09.2006	A sum of Rs. 40 lakhs has been paid by the erstwhile Receiver.	Page 789 of Volume II	
21.	14.09.2006	On behalf of erstwhile Receiver the constituted	Page 659 to 683 of Volume II	

1	2	3	4	5
		Attorney filed an application for extension of time to deposit the balance amount.		
22.	20.09.2006	Hon'ble Justice Sengupta directed the Advocate on Record of the erstwhile Receiver to file an affidavit stating that the amount paid on behalf of the erstwhile Receiver was received by him from the erstwhile Receiver.	Page 705 to 733 of Volume II	
23.	10.11.2006	Hon'ble Justice Sengupta was pleased to pass an order granting extension of time to pay the balance amount for a period of two weeks, and was also pleased to direct to file an affidavit explaining how the money was dealt with and also stating the source as to the fact that the withdrawn money has not been utilized gainfully and profitably.	Page 735 of Volume II	
24.	17.11.2006	Publication made in the local newspapers.		
25.	21.11.2006	Learned Advocate on Record of erstwhile Receiver by a letter deposited the remaining balance amount	Page 789 to 791 of Volume II	

1	2	3	4	5
		of Rs.12 46,454/- before the Registrar.		
26.	13.12.2006	An application on behalf of erstwhile Receiver was filed for recalling the order dated 10.04.2006.	Page 741 to 860 of Volume II	
27.	15.12.2006 to 10.05.2007	Several orders were passed by Hon'ble Justice Sengupta including direction upon the Official Liquidator to produce documents.		Page 1821 to 1835 of Volume V
28.	31.07.2007	Application being G.A. No. 3763 of 2006 for recalling of the order dated 10.4.2006 was disposed of recording that the Hon'ble Justice Sengupta neither disbelieved nor believed the explanation sought to be given the erstwhile Receiver and also granting liberty to take step under law if fresh and relevant authenti-cated materials are available.	Page 977 to 999 of Volume II	
29.	28.08.2007	An appeal being APOT No. 462 of 2007 and an application being G.A. No. 2865 of 2007 was filed on behalf of the erstwhile Receiver.	Page 1003 to 1440 of Volume II	

1	2	3	4	5
30.	29.08.2007	The Appeal and the Application appeared before the Hon'ble Mr. Justice Pinaki Chandra Ghosh and Hon'ble Mr. Justice Sankar Prasad Mitra and their Lordships were pleased to release the matter for their personal ground and thereafter application for assignment was made and the Appeal and the Application was assigned before the Hon'ble Justice Pranab Kumar Chattopadhyay and Hon'ble Justice Kalidas Mukherjee.		
31.	25.09.2007	Hon'ble Justice Pranab Kumar Chattopadhyay and Hon'ble Justice Kalidas Mukherjee were pleased to set-aside the impugned judgement dated 31.07.2007 and also expunged the observ-ation made in the order dated 10.4.2006.	Page 1441 to 1478 of Volume II	
32.	03.12.2007	Hon'ble Chief Justice of India was pleased to intimate the Hon'ble Mr. Justice Soumitra Sen that a three member committee in terms of the in house procedure has been constituted.		Page 1917 of Volume VI

1	2	3	4	5
33.	06.02.2008	Hon'ble Chief Justice of India by a letter served the report of the Inquiry Committee and also advised Justice Soumitra Sen to resign or seek voluntary retirement.		Page 1919 of Volume VI
34.	25.02.2008	In reply to, the said letter Justice Soumitra Sen made a detailed representation of 33 pages requesting C.J.I, to reconsider his decision.		Page 1921 to 1985 of Volume VI
35.	16.03.2008	Justice Soumitra Sen was directed to appear before the Hon'ble Chief Justice of India, Hon'ble Justice B.N. Agarwal & Hon'ble Justice Bhan at the chamber of the Hon'ble Chief Justice of India when Justice Soumitra Hon'ble Chief Justice of India was directed to submit resignation or to take V.R.S. on or before 02.04.2008 filing which they would proceed further.		
36.	17.03.2008	Hon'ble Chief Justice of India by a Letter recorded the proceed-ing and communicated the same to Justice Soumitra Sen.		Page 1987 of Volume VI

1	2	3	4	5
37.	26.03.2008	Justice Soumitra made a further representation in reply to the said letter dated 17.03.2008.		Page 1989 to 1993 of Volume VI
38.	27.02.2009	The 58 members of the Rajya Sabha moved a motion asking impeachment of Justice Soumitra Sen on the basis of die letter written by Hon'ble Chief Justice of India to the Hon'ble Prime Minister.		Page 1687 of Volume IV
39.	27.03.2009	Ld. Advocate of Justice Sen wrote a letter to the Hon'ble Chairman of the Rajya Sabha requesting him to follow the mandatory require-ments of the statute, with regard to form-ation of the Enquiry Committee.		Page 1995 to 2009 of Volume VI
40.	28.03.2009	Ld. Advocate of Justice Sen by a letter requested the Hon'ble Speaker of Lok Sabha to supply a copy of the Rules of the Joint Committee and the names of the 15 members of the said Committee in terms of Section 7 of the Judges Inquiry Act 1968 along with the Gazette Notification.		Page to 2011 of Volume VI

1	2	3	4	5
41.	30.03.2009	Ld. Advocate of Justice Sen raised preliminary objection before the Hon'ble Chairman of Rajya Sabha with regard to formation of the Inquiry Committee by the Hon'ble Chief Justice of India.		Page 2015 to 2025 of Volume VI
42.	17.04.2009	Ld. Advocate of Justice Sen made another representation before the Hon'ble Chairman of Rajya Sabha raising preliminary objection with regard to exercising simultaneous function of the Hon'ble Chief Justice of India in dual capacity (Adminis-tration & Judicial) wherein in one hand he became the complainant and on the other hand he decided a Committee of his choice to decide complaint.		Page 2027 to 2043 of Volume VI
43.	27.05.2009	Mr. R.S. Misra, Director of Lok Sabha Secretariat by a letter furnished the names of the Chairman and members of the Committee constituted under the Judges (Inquiry) Act, 1968 and the Rules of the Committee.		Page 2045 of Volume VI

1	2	3	4	5
44.	11.06.2009	Ld. Advocate of Justice Sen made another representation before the Hon'ble Chairman of Rajya Sabha with regard to appointment of Mr. Fali Nariman as a member of the Inquiry Committee as he openly made a statement in the Print and other Media against Justice Sen.		Page 2047 of Volume VI
45.	05.02.2010	The Secretary of the Inquiry Committee wrote a letter to Justice Soumitra Sen enclosing draft charges (containing 1608 pages) and also requested him to give a reply within 26.02.2010.		Page 2049 to 2103 of Volume VI
46.	18.02.2010	The Ld. Advocate for Justice Soumitra Sen prayed for inspection of certain documents and also prayed for extension of time to file the reply.		Page 2105 to 2109 of Volume VI
47.	23.02.2010	Learned Advocate of Justice Soumitra Sen further raised preliminary objection with regard to formation of Inquiry Committee as the same is beyond the scope of Judges Inquiry Act, 1968 and the Rules framed there-under.		Page 2111 to 2123 of Volume VI

1	2	3	4	5
48.	04.03.2010	The Secretary of Judges Inquiry Committee issued formal notice in terms of the Rule 5(1) of the Judges Inquiry Rules 1969 and also allowed Justice Sen to take inspection. The Secretary of Judges Inquiry Committee also enclosed the Rules as framed under Section 7 of Judges (Inquiry) Act 1968, the Gazette Notification constituting the present Committee and the Parliamentary Bulletin dated 27.02.2009 of the Rajya Sabha relating to admission of the motion.		Page 2125 to 2145 of Volume VI
49.	04.03.2010	The Presiding Officer wrote a letter to Justice Sen intimating that a hearing will be held on 25.03.2010 at 4.30 P.M enclosing the final Charges which is identical to the Draft Charges. No chance was given to file the written statement of defence.		Page 2147 to 2199 of Volume VI
50.	05.03.2010	Mr. S.K. Tripathi, Joint Director of Rajya Sabha Secretariat, wrote a letter to the Ld. Advocate of Justice		Page 2201 of Volume VI

1	2	3	4	5
		Sen enclosing a copy each of the Judges (Inquiry) Rules 1969 and Rajya Sabha Parliamentary Bulletin, Part II dated 26.03.1969 regarding constitution of the joint Committee		
51.	09.03.2010	Justice Soumitra Sen wrote a letter to the Presiding Officer of the Inquiry Committee praying for adjournment of the date of hearing.		
52.	16.03.2010	A Fresh set of document as Volume IV was sent		
53.	19.03.2010	Committee extended the date of hearing till 17.04.2010		
54.	24.03.2010	Leaned Advocate of Justice Sen wrote a letter to the Manager of the Standard Chartered Bank asking certain information pertaining to the documents annexed in the Volume IV		
55.	29.03.2010	Learned Advocate of Justice Sen also made an application under right to information Act 2005 before the Deputy Registrar		

1	2	3	4	5
		(administration) Public Information Office, Appellate Side, High Court, Calcutta as to whether the resolution taken by the Hon'ble Supreme Court of India dated 15.12.1999, with regard to the Formation of In House Committee has been adopted by the Hon'ble High Court, Calcutta, or not		
56.	06.04.2010	Learned Advocate of Justice Sen further requested the Manager of the Bank to intimate regarding the information sought in his letter dated 25.03.2010		
57.	07.04.2010	Date of filling written statement of defence fixed on 03.05.2010		
58.	19.04.2010	Inspection of documents was permitted to be made by the office of the Judges Inquiry Committee.		
59.	26.04.2010	In reply to the information sought for under right to information Act the Deputy Registrar (Administration), Public Information Officer, Appellate Side, High Court, Calcutta by letter being Ref. No. 3938-GS		

1	2	3	4	5
		intimated the Advocate of Justice Sen that the matter of Resolution taken by the Hon'ble Apex Court dated 18.12.1999 with regard to formation of the "In House Committee" is still pending before the Hon'ble Full Court for decision"		

COMMITTEE CONSTITUTED UNDER THE JUDGES INQUIRY ACT, 1968

MINUTES

The first meeting of the Committee was held on 22 August, 2009, at 11.00 A.M. in Committee Room 'A' Parliament House Annexe, New Delhi. The following Hon'ble Members attended the meeting :

1. Hon'ble Justice B. Sudarshan Reddy - Presiding Officer
2. Hon'ble Justice T.S. Thakur - Member
3. Shri Fali S. Nariman - Member

Initiating the discussion, the Hon'ble Presiding Officer apprised the Hon'ble Member's about the efforts made so far to arrange suitable accommodation for the Committee, appointment of officers and staff and engagement of an advocate to assist the Committee. The Hon'ble Members also deliberated about summoning of the relevant records for the purpose of the enquiry. The Committee took the following decisions :-

1. The Secretary of the Committee shall re-assess the staff requirements of the Committee and take up the same with the Secretary-General, Rajya Sabha.

2. The Secretary shall also re-assess the space requirement and take up the same with the Secretary-General, Rajya Sabha.

3. Shri Siddharath Luthra, Advocate shall be requested to indicate his terms and conditions of engagement for the consideration of the Committee.

4. The Secretary shall take up with the concerned quarters the matter relating to securing of the entire original documents that were considered by the in-house Committee of the Supreme Court headed by Hon'ble Justice A.P. Shah, the Chief Justice of Delhi High Court.

5. The Secretary shall also take up the matter with the Registrar-General of the Calcutta High Court to request the Hon'ble Chief Justice thereof to make available the entire original record relating to the appointment of Hon'ble Justice Soumitra Sen of Calcutta High

Court as the Receiver which were placed before the Single Judge Bench as well as the Division Bench in Civil Suit No. 8 of 1983.

The meeting ended with a vote of thanks to the Chair.

(A. Sinha)
Secretary

24 August, 2009

JUDGES INQUIRY COMMITTEE

MINUTES

The Second Meeting of the Committee was held at 11.00 A.M. on Sunday, the 13 September, 2009 in Committee Room 'A', Parliament House Annexe, New Delhi. The following Hon'ble Members attended, the meeting:

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Shri Fali S. Nariman - Member

The Hon'ble Members perused and discussed the records so far received from the Registry of the Supreme Court and the Registry of Calcutta High Court. It was decided to call for some more records and information from the Calcutta High Court. It was also decided to summon relevant documents from the concerned Banks.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
15 September, 2009 Secretary

JUDGES INQUIRY COMMITTEE

MINUTES

The 3rd Meeting of the Committee was held at 11.00 A.M on 9 January, 2010 in Room No. 331-A, Vigyan Bhawan Annexe, New Delhi. The following Hon'ble Members attended the meeting:

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

The Hon'ble Members considered the draft proposed charges against Hon'ble Justice Soumitra Sen, along with the statement of grounds in support of the charges. After deliberations, it was decided to suitably modify the draft. It was further decided that the revised draft proposed charges along with the statement of grounds may be placed before the Committee in its next meeting.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
18 January, 2010 Secretary

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 4th Meeting of the Committee was held at 4.15 P.M. on 27 January, 2010 in Room No. 331-A, Vigyan Bhawan Annexe, New Delhi. The following Hon'ble Members attended the meeting:

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

The Hon'ble Members considered the revised draft proposed charges and the revised statement of grounds in support of the charges, against Hon'ble Justice Soumitra Sen. After deliberations, both the drafts were approved with some modifications. The Hon'ble Members also perused, the draft letter along with which the drafit charges and the draft statement of grounds shall be sent to Hon'ble Justice Soumitra Sen, and approved the same with some changes. The Committee, desired photocopies of the relied upon documents to be made, expeditiously, and required the Secretary to forward the draft charges and the draft grounds, along with photocopies of relied upon documents at the earliest, to Hon'ble Justice Soumitra Sen.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
2 January, 2010 Secretary

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 5th Meeting of the Committee was held at 11.30 A.M on 3 March, 2010 in Room No. 331-A, Vigyan Bhawan Annexe, New Delhi. The following Hon'ble Members attended the meeting:

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

The Hon'ble Members considered the letter dated 18 February, 2010 of Shri Subhas Bhattacharyya, Advocate, the counsel of Justice Soumitra Sen. After deliberations the Hon'ble Members resolved that the Inquiry Committee may issue notice to Justice Soumitra Sen in terms section 5 of the Judges (Inquiry) Act, 1968 and the Rules made thereunder.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
5 March, 2010 Secretary

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 6th Meeting of the Committee was held at 10.00 A.M on 4 April, 2010 in Room No. 331-A, Vigyan Bhawan Annexe, New Delhi, wherein the following Hon'ble Members were present:

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

The Committee carefully considered the letter dated 26 March, 2010 of Justice Soumitra Sen along with its enclosures. The Committee was of the view that the filing of written statement of defence by Justice Sen cannot be linked to proposed inspection of documents. As such the Committee did not agree to his request for extension of time by eight weeks. The Committee decided that only three weeks time may be given to him for filing his written statement of defence. It was decided that Justice Sen must file his written statement on or before 3 May, 2010, failing which the matter would be proceeded *ex-parte*. The Committee also felt that Justice Sen may carry out inspection of the relied upon documents any time after fixing a date with the Secretary of the Committee.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
7 April, 2010 Secretary

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 7th Meeting of the Committee was held at 4.00 P.M on 10 May, 2010 in Room No. 331-A, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting.

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

The Committee perused the document titled 'REPLY TO THE CHARGES', along with its enclosures, sent by Justice Soumitra Sen *vide* his letter dated 3 May, 2010 addressed to the Secretary of the Committee. On careful examination of the same, the Committee decided not to amend the charges which it has framed under Section 3(3) of the Judges (Inquiry) Act, 1968. The Committee decided to take on record Justice Soumitra Sen's 'REPLY TO THE CHARGES' as his written statement of defence under section 3(8) of the Act and to proceed with the inquiry under rule 7(2) of the Judges (Inquiry) Rules, 1969.

In view of the request made by Shri Subhas Bhattacharyya, Advocate representing Justice Soumitra Sen, *vide* his letter dated 20 April, 2010 addressed to the Secretary of the Committee, it was decided that hearing in the matter would be held at Kolkata on 24 and 25 June, 2010, and if so required, on 26 June, 2010 also.

It was also decided that the Hon'ble Members of the Committee shall hold a meeting at 4.00 P.M. on 23 June, 2010 at Kolkata.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
14 May, 2010 Secretary

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 8th Meeting of the Committee was held at 4.00 P.M. on 29 May, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting:

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

Hon'ble Members perused the letter dated 19 May, 2010 of the Counsel of Justice Soumitra Sen and considered the request made therein to shift the venue of hearing to New Delhi and to grant further extension of time. After deliberations, the Committee decided to partly accept his request and to hold its sitting, as far as possible, in New Delhi.

The Committee observed that due to repeated requests for adjournment made by Justice Sen, the Committee has not so far been able to commence hearings. As it will now not be possible for the Committee to conclude the inquiry and make its Report by the due date of 5 June, 2010, it had to seek extension of time for two months from the Chairman, Rajya Sabha. In case the Committee continues to grant extensions, it will not be able to conclude the inquiry and make its Report, even within the extended time which is up to 5 August, 2010. In view of this the Committee decided not to grant any further extension of time to Justice Soumitra Sen and to stick to the dates for recording of evidence already fixed by it.

The Committee accordingly decided to hold proceedings for recording of evidence at New Delhi on 24, 25 and 26 June, 2010.

(A. Sinha)
2 June, 2010 Secretary

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 9th Meeting of the Committee was held at 11.30 AM on 23 June, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting :

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

Hon'ble Members perused the Paper Books, containing the charges and the documents on the basis of which the charges have been drawn, and the written statement of defence of Mr Justice Soumitra Sen and the documents relied upon by him. Hon'ble Members also reviewed the preparations made in connection with the proceedings for recording of evidence, which is scheduled to be held on 24, 25 and 26 June, 2010.

The meeting ended with a vote of thanks to the Chair.

(A. Sinha)
23 June, 2010 Secretary

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 10th Meeting of the Committee was held at 4.15 P.M on 6 July, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting.

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer.
2. Hon'ble Justice Mukul Mudgal - Member.
3. Shri Fali S. Nariman - Member.

The Hon'ble Members perused the Exhibits and held discussion about them. It was decided that the arguments of the parties will be heard on 18 and 19 July, 2010 in Committee Room 'D', Vigyan Bhawan Annexe, New Delhi. The Hon'ble Members also decided to hold their next meeting at 4 P.M. on 12 July, 2010.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
9 July, 2010 Secretary

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 11th Meeting of the Committee was held at 4.00 P.M. on 12 July, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting:

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

The Hon'ble Members perused the case papers and held discussion about the legal issues involved in the matter. They were also apprised of the steps taken and preparation being made in connection with hearing of arguments on 18 and 19 July, 2010.

The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
14 July, 2010 Secretary

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 12th Meeting of the Committee was held at 4.30 P.M. on 2 August, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting:

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

The Hon'ble Members met and discussed the case. The Meeting ended with a vote of thanks to the Chair.

(A. Sinha)
9 August, 2010 Secretary

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 13th Meeting of the Committee was held at 4.15 PM on 25 August, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting :

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

The Hon'ble Members met and discussed the draft report, it was decided that the next meeting of the Committee will be held on 31 August, 2010 at 4.15 P.M.

The meeting ended with a vote of thanks to the Chair.

(A. Sinha)
25 August, 2010 Secretary

1. Hon'ble Justice B. Sudershan Reddy - Presiding Officer
2. Hon'ble Justice Mukul Mudgal - Member
3. Shri Fali S. Nariman - Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 14th Meeting of the Committee was held at 4.15 P.M. on 31 August, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting :

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

The Hon'ble Members met and further discussed the draft report. It was decided that the next meeting of the Committee will be held on 7 September, 2010 at 4.15 P.M.

The meeting ended with a vote of thanks to the Chair.

(A. Sinha)
31 August, 2010 Secretary

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

JUDGES INQUIRY COMMITTEE

MINUTES

The 15th Meeting of the Committee was held at 4.15 P.M. on 7 September, 2010 in Room No. 331, Vigyan Bhawan Annexe, New Delhi. The following Members attended the Meeting :

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

The Hon'ble Members met and finalized the Report. They also decided to hand over the Report personally to the Chairman, Rajya Sabha on 10 September, 2010.

The meeting ended with a vote of thanks to the Chair.

(A. Sinha)
Secretary

7 September, 2010

1.	Hon'ble Justice B. Sudershan Reddy	-	Presiding Officer
2.	Hon'ble Justice Mukul Mudgal	-	Member
3.	Shri Fali S. Nariman	-	Member

JUDGES INQUIRY COMMITTEE

RECORD OF PROCEEDINGS

In the Matter of Rajya Sabha Motion under article 217 read with article 124(4) of the Constitution of India - Notified *vide* Parliamentary Bulletin No. 45898 dated 27 February, 2009

CORAM:	Hon'ble Mr Justice B. Sudershan Reddy	-	Presiding Officer
	Hon'ble Mr Justice Mukul Mudgal	-	Member
	Shri Fali Nariman, Senior Advocate	-	Member

Counsel for the Committee	-	Shri Sidharth Luthra, Senior Advocate Shri Siddharth Aggarwal, Advocate
Counsel for the Respondent	-	Shri Shekhar Naphade, Senior Advocate Shri Chinmoy Khaladkar, Advocate Ms. Neha S. Verma, Advocate Shri, Manoj, Advocate Shri Subhasis Chakraborty, Advocate Shri Subhas Bhattacharyya, Advocate Shri Soumik Ghoshal, Advocate Ms. Aparna Sinha, Advocate

24.06.2010
(Forenoon)

PROCEEDINGS

Shri Sidharth Luthra, Senior Counsel of the Committee examined S/Shri Tapas Kumar Mallik, Assistant Registrar, Calcutta High Court (CW1), Satyalal Mondal, Chief Manager, State Bank of India (CW2), Atchtaramaiah, Deputy Official Liquidator, Calcutta High Court (CW3), and Shwetang Rukhaiyar, Manager (Credit), Allahabad Bank (CW4), and through them exhibit Nos. C1 to C154 were marked. Shri Shekhar Naphde, Senior Advocate of the Respondent cross examined CW1, CW2, CW3 and CW4. The proceedings were adjourned at 1 P.M. and shall be resumed at 2 P.M.

A. Sinha
Secretary

JUDGES INQUIRY COMMITTEE

RECORD OF PROCEEDINGS

In the Matter of Rajya Sabha Motion under article 217 read with article 124(4) of the Constitution of India - Notified *vide* Parliamentary Bulletin No. 45898 dated 27 February, 2009

CORAM:	Hon'ble Mr Justice B. Sudershan Reddy	- Presiding Officer
	Hon'ble Mr Justice Mukul Mudgal	- Member
	Shri Fali Nariman, Senior Advocate	- Member

Counsel for the Committee - Shri Sidharth Luthra, Senior Advocate
Shri Siddharth Aggarwal, Advocate

Counsel for the Respondent - Shri Shekhar Naphade, Senior Advocate
Shri Chinmoy Khaladkar, Advocate
Ms. Neha S. Verma, Advocate
Shri Manoj, Advocate
Shri Subhasis Chakraborty, Advocate
Shri Subhas Bhattacharyya, Advocate
Shri Soumik Ghoshal, Advocate
Ms. Aparna Sinha, Advocate

24.06.2010
(Afternoon)

PROCEEDINGS

The proceedings resumed at 2 P.M. Shri Arindam Sarkar, Manager, Internal Services, Standard Chartered Bank (CW 5), was examined by the Senior Counsel of the Committee, and through him exhibit Nos. CI55 to C308 were marked. Shri Shekhar Naphade, Senior Counsel of the Respondent cross examined CW5. Shri Shekhar Naphade submitted that there was neither any evidence to be adduced nor any documents to be produced on behalf of the Respondent. On a query from the Committee, the Senior Counsel for the Respondent stated that he did not wish to examine his client and record his statement. The date and time of further proceedings in the matter shall be duly intimated to all the Counsels in due course.

A. Sinha
Secretary

JUDGES INQUIRY COMMITTEE

RECORD OF PROCEEDINGS

In the Matter of Rajya Sabha Motion under article 217 read with article 124(4) of the Constitution of India - Notified *vide* Parliamentary Bulletin No. 45898 dated 27 February, 2009.

CORAM:	Hon'ble Mr Justice B. Sudershan Reddy	-	Presiding Officer
	Hon'ble Mr Justice Mukul Mudgal	-	Member
	Shri Fali Nariman, Senior Advocate	-	Member

Counsel for the Committee	-	Shri Sidharth Luthra, Senior Advocate Shri Siddharth Aggarwal, Advocate
Counsel for the Respondent	-	Shri Shekhar Naphade, Senior Advocate Shri Chinmoy Khaladkar, Advocate Ms. Neha S. Verma, Advocate Shri Manoj, Advocate Shri Subhasis Chakraborty, Advocate Shri Subhas Bhattacharyya, Advocate Shri Soumik Ghoshal, Advocate Ms. Aparna Sinha, Advocate

18.07.2010
(Forenoon)

PROCEEDINGS

Shri Sidharth Luthra, Senior Counsel of the Committee commenced his oral argument at 10 A.M. and was on his legs until the proceedings were adjourned at 1 P.M.

A. Sinha
Secretary

JUDGES INQUIRY COMMITTEE

RECORD OF PROCEEDINGS

In the Matter of Rajya Sabha Motion under article 217 read with article 124(4) of the Constitution of India - Notified *vide* Parliamentary Bulletin No. 45898 dated 27 February, 2009.

CORAM :	Hon'ble Mr Justice B. Sudershan Reddy	-	Presiding Officer
	Hon'ble Mr Justice Mukul Mudgal	-	Member
	Shri Fali Nariman, Senior Advocate	-	Member

Counsel for the Committee - Shri Sidharth Luthra, Senior Advocate
Shri Siddharth Aggarwal, Advocate

Counsel for the Respondent - Shri Shekhar Naphade, Senior Advocate
Shri Chinmoy Khaladkar, Advocate
Ms. Neha S. Verma, Advocate
Shri Manoj, Advocate
Shri Subhasis Chakraborty, Advocate
Shri Subhas Bhattacharyya, Advocate
Shri Soumik Ghoshal, Advocate
Ms. Aparna Sinha, Advocate

18.07.2010
(Afternoon)

PROCEEDINGS

The Senior Counsel of the Committee resumed his oral arguments at 2 P.M. and concluded the same at 7.30 P.M.

A. Sinha
Secretary

JUDGES INQUIRY COMMITTEE

RECORD OF PROCEEDINGS

In the Matter of Rajya Sabha Motion under article 217 read with article 124(4) of the Constitution of India - Notified *vide* Parliamentary Bulletin No. 45898 dated 27 February, 2009 .

CORAM:	Hon'ble Mr Justice B. Sudershan Reddy	-	Presiding Officer
	Hon'ble Mr Justice Mukul Mudgal	-	Member
	Shri Fali Nariman, Senior Advocate	-	Member

Counsel for the Committee - Shri Sidharth Luthra, Senior Advocate
Shri Siddharth Aggarwal, Advocate

Counsel for the Respondent - Shri Shekhar Naphade, Senior Advocate
Shri Chinmoy Khaladkar, Advocate
Ms. Neha S. Verma, Advocate
Shri Manoj, Advocate
Shri Subhasis Chakraborty, Advocate
Shri Subhas Bhattacharyya, Advocate
Shri Soumik Ghoshal, Advocate
Ms. Aparna Sinha, Advocate

19.07.2010
(Afternoon)

PROCEEDINGS

Shri Shekhar Naphade, Senior Advocate of the Respondent commenced his oral argument at 2 P.M. and concluded the same at 5.45 P.M.

A. Sinha
Secretary

JUDGES INQUIRY COMMITTEE

RECORD OF PROCEEDINGS

In the Matter of Rajya Sabha Motion under article 217 read with article 124(4) of the Constitution of India - Notified *vide* Parliamentary Bulletin No. 45898 dated 27 February, 2009.

CORAM:	Hon'ble Mr Justice B. Sudershan Reddy	-	Presiding Officer
	Hon'ble Mr Justice Mukul Mudgal	-	Member
	Shri Fali Nariman, Senior Advocate	-	Member

Counsel for the Committee	-	Shri Sidharth Luthra, Senior Advocate
		Shri Siddharth Aggarwal, Advocate
Counsel for the Respondent	-	Shri Shekhar Naphade, Senior Advocate
		Shri Chinmoy Khaladkar, Advocate
		Ms. Neha S. Verma, Advocate
		Shri Manoj, Advocate
		Shri Subhasis Chakraborty, Advocate
		Shri Subhas Bhattacharyya, Advocate
		Shri Soumik Ghoshal, Advocate
		Ms. Aparna Sinha, Advocate

20.07.2010
(Afternoon)

PROCEEDINGS

Shri Sidharth Luthra, Senior Advocate of the Committee commenced his reply argument at 4.15 P.M. and concluded the same at 6.40 P.M.

A. Sinha
Secretary

RAJYA SABHA

REVISED LIST OF BUSINESS

Wednesday, 10 November, 2010

REPORT OF THE INQUIRY COMMITTEE UNDER THE JUDGES (INQUIRY) ACT, 1968

SECRETARY-GENERAL to lay on the Table, the following documents, under sub-section (3) of Section 4 of the Judges (Inquiry) Act, 1968, read with rules 9 and 10 of the Judges (Inquiry) Rules, 1969:—

(i) Report, Volume I (in English and Hindi) and Volume II of the Inquiry Committee appointed under the Judges (Inquiry) Act, 1968, in respect of Mr. Justice Soumitra Sen, Judge, Calcutta High Court; and

(ii) A copy each of evidence of witnesses tendered before the Inquiry Committee and documents exhibited during the inquiry.

REPLY OF MR. JUSTICE SOUMITRA SEN TO THE REPORT

REPLY OF JUSTICE SOUMITRA SEN TO THE MOTION RECEIVED UNDER ARTICLE 217 READ WITH ARTICLE 124(4) OF THE CONSTITUTION

The march of time has witnesseth thousands all over the world wrongly persecuted in the name of justice and/or upholding the Rule of Law. Regimes, monarchies, republics and governments have successively repressed, crucified and condemned and executed countless persons on the mere pretense of a trial whose inevitable outcome as predetermined was to hold the accused **GUILTY** of the charges against him. To defend oneself in such hostile environs was an empty exercise since the verdict was already reserved even before the trials commenced. The Rule of Law was conveniently **bent** if not **denied** to serve such prosecution in the name of cleansing the society of its perceived evil and corruption.

The present case is one which has the potential of a titanic tug-of-war between the **Judiciary** and the **Legislature** reminiscent of the **'L' Affaire Dreyfus.** Alfred Dreyfus was a Captain in the French Army, who in the year 1894 was wrongly accused of treason for selling military secrets to Germany and was convicted and sentenced to life imprisonment at Devils Island. The legal proceedings were based on insufficient evidence and were highly irregular, but public opinion and French Press led by its virulent anti-Semitic section welcomed the verdict. However, in 1906 the Civilian Court of Appeal cleared Drefyus and reversed all charges against him and he was finally reinstated in the Army. This affair had resulted in the separation of the Church and State in 1905 and had virtually divided the French nation into two.

The instant reply seeks to address the multiple improprieties, irregularities and infractions committed in the matter of my **"prosecution"** similar to that in the Drefyus case culminating in the instant impeachment proceedings and which wrongful acts cry out from every bone and sinew of the entire proceeding with the **hope** that upon going through this reply the Hon'ble Members of both the Houses would at last be apprised of my **"true story"** so as to enable them to vote **out** such injustice being meted out to me.

I.0 PRELIMINARY OBJECTIONS

A. CONDUCT AND ROLE OF JUDICIARY

1.1 The present impeachment proceedings against me have been initiated as a result of the **direct initiative** taken by the former Hon'ble Chief Justice of India Sri K.G. Balakrishnan, the former Hon'ble Chief Justice of Calcutta High

Court Sri V.S. Sirpurkar, and Hon'ble Justice Kalyan Jyoti Sengupta of the Calcutta High Court **in spite** of there being a Judgment and Order of the Hon'ble Division Bench of the Calcutta High Court (Justice Pranab Kumar Chattopadhyay and Justice Kalidas Mukherjee) dated 25 September, 2007 exonerating me of all allegations levelled against me by the Hon'ble Justice Kalyan Jyoti Sengupta (hereinafter referred to as the Ld. Single Judge) in C.S. 8 of 1983 and the said Judgment and Order of the Division Bench has attained finality in view of no appeal being preferred from it to the Hon'ble Supreme Court.

1.2 The Ld. Single Judge presiding over C.S. 8 on 1983 by a **private communication** to the then Hon'ble Chief Justice of the Calcutta High Court Sri V.S. Sirpurkar made allegations against me after passing Orders against me as Receiver in C.S. 8 of 1983. This private communication by the Learned Single Judge led to formation of an adverse opinion by the Hon'ble Justice V.S. Sirpurkar against me on the basis whereof the said Hon'ble Justice V.S. Sirpurkar wrote a letter to the then Hon'ble Chief Justice of India dated 25 November, 2006 informing him of the allegations against me and his opinion and/or views regarding such allegations without giving me any opportunity to explain the allegations made against me by the Ld. Single Judge in his private communication. Incidentally, it was specifically stated by the Hon'ble Justice V.S. Sirpurkar in the letter dated 25 November, 2006 that **no complaints were received against Justice Sen from any quarters.**

1.3 The then Chief Justice of India Sri K.G. Balakrishnan chose to ignore the reasoned Order dated 25 September, 2007 passed by the Hon'ble Division Bench and relied upon the observations passed by the Ld. Single Judge in his Order dated 10 April, 2006 passed in C.S. 8 of 1983 for the purpose of initiating his own inquiry by way of constitution of a 3 Judge Committee in accordance with the "In-House Procedure" (hereinafter referred to as the "In-House Committee") adopted by the Supreme Court to enquire into charges and/or allegations against Judges, but abstained from giving any reasons for his such decision.

1.4 A Judgment passed by a competent court of law is binding on the parties and all others and cannot be ignored by any authority or body of persons, including Judges of the Hon'ble Supreme Court, operating within the Constitution and legal framework of the country.

1.5 The action of the then Chief Justice of India regarding constitution of the In-House Committee by ignoring the Judgment passed by the Hon'ble Division Bench of the Calcutta High Court dated 25 September, 2007 in my favour has set an **extremely bad and unfortunate precedent** as this has brought to the fore the lack of respect and confidence of the then Chief Justice of India in the very judiciary of he was the head.

1.6 The initiation of an inquiry into the charges and/or allegations against me by constituting a 3 Judge In-House Committee is further bad in view of parallel judicial proceedings pending before the Hon'ble High Court at Calcutta involving the same allegations against me at the time of constitution of such Committee by the then Chief Justice of India **as the Report of the Committee on In-House Procedure laying down the mode and manner of dealing with a complaint about a Judge of the High Court or Supreme Court does not envisage holding of a *parallel enquiry* into the allegations against a sitting Judge of a High Court by the Chief Justice of India by constituting a fact finding enquiry committee when a judicial proceeding in a competent Court of Law is continuing prior to making such complaint, involving the allegations made against the Judge as contained in the complaint.**

1.7 If no such judicial proceeding involving the allegations against me would be pending and a complaint would be received by the Chief Justice of India with respect to any such allegation, then only it would be appropriate for the Chief Justice of India to embark upon the process of fact finding enquiry by constituting a 3 Judge In-House Committee as laid down in the "In-House Procedure" *provided* the concerned High Court has adopted the full court resolution of the Supreme Court, as every High Court is independent and *not subject to administrative control* of the Supreme Court. The setting up of the Committee by the Chief Justice of India is therefore completely bad, illegal, unconstitutional and in abuse of the powers vested in the Chief Justice of India to constitute a 3 judge Committee as laid down in the Report of the Committee on "In-House Procedure".

1.8 ***Furthermore, it has been wrongly stated in the letter of the then Chief Justice of India written*** me dated 10 September, 2007 that the "In-House Procedure" adopted by the Supreme Court by a resolution passed in its meeting held on 15 December, 1999 has been adopted by all High Courts including the Calcutta High Court as well when it is clear from the Letter dated 26 April, 2010 of the Dy. Registrar (Administration) and Public Information Officer High Court, Appellate Side Calcutta in response to a query under the RTI Act, 2005 that the matter of resolution taken by the Hon'ble Apex Court dated 15 December, 1999 with regard to formation of "In-House Committee" ***was still pending before the Hon'ble Full Court for decision.*** In this connection a photocopy of the said letter dated 10 September, 2007 written by the then Hon'ble Chief Justice of India and the letter dated 29 March, 2010 written by my Advocate on record as well as the letter dated 26 April, 2010 written by the Deputy Registrar (Administration) and Public Information Officer, High Court, Appellate Side, Calcutta are for the sake of brevity not reproduced herein but are enclosed

separately and the contents of the same may be treated as incorporated in this reply.

1.9 On the basis of the Report of the "In-House Committee" dated 1 February, 2008 holding me guilty of the allegations of misconduct and recommending initiation of proceedings of my removal, the then Chief Justice of India Sri K.G. Balakrishnan wrote to the Prime Minister of India requesting him to initiate proceedings for my removal when under Article 217 of the Constitution of India the President of India is the appointing authority of a Judge of a High Court and there is ***no letter on record from the then Chief Justice of India to the President of India on this subject.***

1.10 The formation and inquiry held by the 3 Judge Committee constituted by the then Chief Justice of India Sri K.G. Balakrishnan was not under any statute nor under the Constitution.

1.11 The 3 Judge "In-House Committee" not only went into the merits of the matter but also called for initiation of impeachment proceedings against me on the basis of which the then Chief Justice of India Sri K.G. Balakrishnan wrote to the Prime Minister requesting him to initiate proceedings for my removal in accordance with the procedure prescribed in Parliament. Significantly two of the Hon'ble Judges of the In-House Committee were elevated to the Supreme Court during the tenure of Justice K.G. Balakrishnan one of whom was elevated after superceding several High Court Chief Justices.

1.12 According to Article 124(4) read with Article 217(1)(b) of the Constitution of India and Sec.3 of the Judges (Inquiry) Act, 1968 the impeachment proceedings against a Judge of a High Court is to be initiated only by members of either or both Houses of the Parliament ***and not*** at the instance of the Executive headed by the President ***and followed*** by the Prime Minister and his cabinet or by the judiciary headed by the Chief Justice of India.

1.13 The initiative taken by the then Chief Justice of India and all other concerned Judges of the Supreme Court and the High Court for initiation of impeachment proceedings and the letter written by the Chief Justice of India to the Prime Minister to initiate the impeachment proceedings against me is ***thus ultra vires*** the provisions of the Constitution of India and the Judges (Inquiry) Act, 1968.

1.14 The Chief Justice of India and his colleagues in the Judiciary having ***already arrived*** at the conclusion of misconduct committed by me and having thereafter giving me a veiled threat by his letter dated 17 March, 2009 to the

effect that appropriate action shall be taken against me if I do not resign on my own and upon me not retiring, having written to the Prime Minister (Executive) to initiate impeachment proceedings against me, has become the ***"prosecutor"*** in the instant impeachment proceedings and has thereby rendered the entire investigation conducted by the Committee constituted by the Chairman, Rajya Sabha under the Judges (Inquiry) Act into a **mere formality** as two of the members of such Inquiry Committee are members of higher judiciary who cannot be expected to ever go against a decision already specifically taken by the then Chief Justice of India. More over the members of the Inquiry committee have been selected by the then Chief Justice of India, K.G. Balakrishnan, for their appointment by the Chairman of Rajya Sabha. This is in complete violation of all known principles of justice, fair play and good conscience. Justice K.G. Balakrishnan having openly initiating the move' for impeachment should have distanced himself from the process of formation of the committee. If a Judge had taken part in a judicial process where he is interested he would have been held guilty of bias.

1.15 The then Chief Justice of India K.G. Balakrishnan has thus acted beyond his jurisdiction and has encroached upon the domain of the Legislature resulting in vitiation of all steps taken by the Chairman, Rajya Sabha under Article 124 (4) of the Constitution of India and the provisions of the Judges (Inquiry) Act, 1968.

B. CONDUCT OF THE LEGISLATORS AND DEFECTS IN CONSTITUTION OF THE INQUIRY COMMITTEE:–

1.16 The motion received by the Chairman of the Rajya Sabha from Sri Sitaram Yechury and 57 other members did not specify any fixed or definite sum of money alleged to have been misappropriated by me and as such was vague.

1.17 Apart from the two Judges in the Committee formed under the Judges (Inquiry) Act already having a biased mind on account of being subordinates of the **"Prosecutor"** Chief Justice of India, the other member of the Committee, the distinguished Jurist Sri Fali S. Nariman had already expressed his opinion supporting the action of the Chief Justice of India and welcoming the move for my impeachment of before the press thereby revealing his predetermined and biased mind even before commencement of the investigation into the allegations against me by the Committee.

1.18 Requests made by me to the Chairman, Rajya Sabha to replace Sri Fali S. Nariman with some other distinguished jurist was ignored. The Inquiry was thus vitiated at the very onset on the ground of being biased.

1.19 The mandatory requirement under Section 3 sub Section 3 of the Judges Inquiry Act 1968 has not been followed.

(a) Under **Section 3 sub Section 3 of the Judges Inquiry Act 1968,** the Chairman or the Speaker as the case may be is required to consider materials before them prior to admitting or rejecting the motion, brought before the concerned House.

(b) In the instant case admitedly the only material before the Rajya Sabha was the letter written by the then Chief Justice of India to the Hon'ble Prime Minister of India, in which he significantly did not include my detailed reply to the report of the In House Committee.

(c) The letter of the then Chief Justice of India recommending my impeachment is clearly based upon the findings of the In House Committee.

(d) The findings of the In House Committee are based upon the Single Bench Judgment, which had **no existence** at that material point of time because of the Division Bench Judgment.

(e) Therefore, since the sub-stratum of the recommendation of the then Chief Justice of India is invalid in the eye of Law the motion moved before Rajya Sabha based upon such recommendation is also invalid in the eye of Law as well as in facts.

(f) Furthermore under the In House procedure itself a committee can only be formed **only** when there is **complaint** against a Judge in the **public domain** with regard to his judicial functions. In the instant case even as on date **there is no complaint** against me of any judicial misconduct, which is evident from the letter of the then Chief Justice of Calcutta High Court dated 25 November, 2006. Therefore, the provisions of the In House procedure clearly does not apply in my case as the In House procedure is only applicable in case of any complaint against any Judge while functioning as a Judge and not otherwise.

(g) Even a cursory reading of the Single Bench Judgment will make it clear that neither there was any issue nor any finding with regard to my conduct as a Judge. The entire matter before the Single Judge relates to my alleged acts of impropriety as an Advocate.

(h) Unfortunately the then Chief Justice of India for reasons best known to him enlarged the scope of enquiry and wrongfully and illegally concluded the alleged acts to be an Act of Judicial Misconduct which has an entirely different legal implication and connotation.

(i) Therefore in view what has been stated herein above the recommendation of the then Chief Justice of India and the motion moved before the Rajya Sabha on the basis thereof is wrongful illegal and contrary to established Principles of Law and based upon biased and/or incorrect appreciation of facts.

C. PROCEEDINGS INITIATED BY THE COMMITTEE WRONGLY

1.20 Surprisingly, the Judges (Inquiry) Committee under the Act, though is only a fact finding Committed appointed for the purpose of investigating into the correctness of the charges brought by the Members of the Parliament, the Committee proceeded in the manner as if it is the prosecution and I am an accused. I do not know under what provisions of law the Committee can appoint a lawyer to act as a prosecutor in the course of investigation. The said lawyer in course of hearing appearing on behalf of the Committee, desparately wanted to cross-examine me as if the **Committee is the prosecution** and the **Lawyer is the Lawyer of the prosecution.** This aspect is totally beyond the object and scope of the investigation required to be carried out under the Judges (Inquiry) Act.

2.0 BACKGROUND

2.1 I was admitted at the Bar and enrolled myself as an Advocate of the Calcutta High Court on 13 February, 1984. I primarily practiced in the Original Side of the Calcutta High Court. I was elevated as a Judge of the Calcutta High Court on 3 December, 2003. As a Judge, I tried to give a patient hearing to the junior lawyers and never misbehaved with any of them. To the best of my knowledge there were no adverse comments made against me by any Bar Association or Lawyers body till such time I was discharging my judicial duties.

2.2 By an order dated 30 April, 1984 I was appointed as a "Receiver" in Suit No. 8 of 1983 (Steel Authority of India Ltd. *v.* Shipping Corporation of India), hereinafter referred to as 'the said suit', and by an order dated 20 January, 1993 I was directed as Receiver to keep the sale proceeds from the sale of the materials which was the subject matter of the dispute in the said suit, namely, 4311 M.T. of Periclass Spinnel Bricks in a **separate** account in a bank and/or branch of my choice and hold the same free from lien and/or

encumbrances until further orders after deducting 5% towards my remuneration. I kept the entire amount received from time to time **without deducting any amount on account of my remuneration which I was entitled to till such time I was directed to do so under the Order dated 10 April, 2006.**

2.3 Between 1 April, 1993 and 1 June, 1995 I, as Receiver received a sum of Rs. 33,22,800/- by twenty-two separate demand drafts. The said amounts were kept in a separate fixed deposit in the Standard Chartered Bank (then ANZ Grindlays Bank), Church Road Branch, Kolkata in my personal name since there was no direction by the High Court to open up a Receiver's account. Furthermore, all drafts issued by the Purchaser were in my personal name, Therefore, I had no option but to encash those in an account held in my name. The decision as regards the interest bearing account where such deposit was to be kept was left to my choice.

2.4 In another matter (Calcutta Fan), a Division Bench of the Calcutta High Court by the Order dated 20 January, 1997 directed me as Receiver in that matter to distribute a sum of Rs. 70,00,000/- (Rupees seventy lacs) amongst the workers without any direction to open any specific account which amount was, however, deposited in an account with Standard Chartered Bank, Church Road Branch, Kolkata bearing No. OSLPO 813400, to facilitated distribution, hereinafter referred to as 'the 400 account'. Between 14 May, 1997 and 16 July, 1997 I, as the Receiver issued several account payee cheques to workers in terms of the order passed by the Division Bench.

2.5 On 26 July, 1997, I deposited Rs. 25,00,000/- with "Lynx India" by a cheque bearing No. 624079 from my Account No. 400 of the Standard Chartered Bank. However, during this period neither of the parties in Suit No. 8 of 1983 took any steps for claiming the said sums and the moneys had to remain with me since there was no order from the Court to return the said money to anybody.

2.6 It was only on 27 February, 2003 that the plaintiff in the said suit filed an interlocutory application being G.A. No. 875 of 2003 praying for a direction on the Receiver to handover the entire sale proceeds. Strangely enough the said application was not moved until 3 August, 2004 when a new Receiver was appointed **in lieu and stead of me** by the Learned Single Judge of the Calcutta High Court after discharging me, however, **without any direction for refund of the monies** lying with me **or for furnishing of accounts.** It is also surprising to note that the copy of the said application being G.A. No. 875 of 2003 was handed over only in May, 2005 to me by which time the matter had appeared in the list of Justice Kalyan Jyoti Sengupta and **treated as "Part Heard'** on the very first date by Order dated 15 February, 2005 without any prayer made

by any of the parties to the litigation After several directions the application was finally served on me on May, 2005.

2.7 By order dated 17 May, 2005 the Learned Single Judge directed me either by **"himself"** or through my **"authorized agent"** to file an affidavit to the purchaser's affidavit and to application filed by the plaintiff, if so advised, which was a separate affidavit and different from G.A. No. 875 of 2003.

2.8 I was advised not to file any affidavit because I did not dispute the factum of Rs. 33,22,800/- received from the purchaser by 22 separate demand drafts commencing from 25 February, 1993 and till 30 April, 1995. **Significantly the Order dated 17 May, 2005 also did not direct me to refund the monies lying with me.**

2.9 Despite no such direction being contained in the order dated 17 May, 2005 calling upon me to make payment of the amounts lying with me, the Learned Single Judge merely because I had by this time been elevated as a Judge of the Calcutta High Court and had chosen not to file an affidavit since I felt that the statements made in the purchaser's affidavit correctly recorded the amounts received by me and, therefore, there was no need for any rebuttal and further there was no direction on me for refund of such moneys, *suo moto* proposed an enquiry to be held to allegedly ascertain as to what happened to the payments being said to have been received by me. The Officer-in-Charge of the State Bank of India, Service Branch, Calcutta was also directed to submit a report stating whether the aforesaid 22 demand drafts, details whereof were set out in the said order were encashed or not and in whose account or the bank the same were paid. **Interestingly, the copy of the said Order dated 30 June, 2005 was specifically directed not to be served on any other person excepting the Registrar, Vigilance, Accounts Department of the Calcutta High Court and the Branch Manager of the State Bank of India, meaning thereby I was never served with a copy of the said order.**

Why the Learned Single Judge chose to suspect my motives and conduct a fishing and a roving enquiry behind my back without any materials on record being there is inexplicable. **May be it was a premeditated decision** for reasons best known to the Learned Judge.

2.10 The report of the Chief Manager of State Bank of India which was subsequently served on the Registrar, Vigilance and Protocol, Calcutta High Court was directed to be kept in a sealed cover by Order dated 21 July, 2005 of the Learned Single Judge, and was not served upon me.

2.11 In the subsequent order dated 26 July, 2005 the Learned Single Judge frowned upon the report filed by the Chief Manager, State Bank of India wherein it was stated that because the records were old in nature and the Branch was under the process of computerization, it was difficult to trace the same readily but serious efforts were made to trace the same.

2.12 The Learned Single Judge whilst directing Mr. C.M. Agarwal being the purchaser to be personally present on the next date of hearing and bring all the original documents expressed that **"It was the anxiety of the Court to retrieve the money if realized" without even considering the fact that no directions were given even in the said order on the Receiver to make payment of such money.**

Furthermore, it is curious that before passing any order to serve upon me, the Single Judge had issued a Sabpeona upon the purchaser to come before the Court to file an affidavit disclosing the number of drafts and the amounts thereby issued to me towards purchase consideration. The purchaser is not a party to the litigation, there was no occasion to direct the purchaser to appear before the Court when no direction was issued either to the plaintiff or to the defendant who are parties to the litigation to disclose the amount of purchase consideration. Such directions issued by the Learned Judge is clearly indicative of the fact that the 10th April Order was a foregone conclusion and the Learned Single Judge had already decided to pass such orders and proceeded to carry out the investigation only as a means to justify the ends. If a Court is biased in a matter or has any personal interest, such Court according to the principles of probity should release such matter and allow other Judges to take up. Following observations are being made by me only to show that the Learned Judge whilst making such adverse comments in the said judgement and order had a closed mindset. The copy of the said order dated 26 July, 2005 was, however, not directed to be served upon me nor was the same served by any of the parties and consequently I was totally unaware of the proceedings which were being conducted by the Learned Single Judge.

2.13 In the subsequent order dated 7 September, 2005 the Learned Single Judge upon obtaining the particulars of the encashment of the said 22 drafts and finding the same being encashed through three several bank accounts in the name of Soumitra Sen, Advocate directed the managers of the banks, namely, Branch Manager of Allahabad Bank, Stephen House Branch, Kolkata Branch Manager of Standard Chartered Bank, Church Lane Branch, Kolkata to furnish information whether any account was maintained or is being maintained by me and produce a bank statement of such accounts from 1 April, 1993 till date in a sealed cover on the next date of hearing and if the

accounts were closed the date of closure of such accounts was also to be given. **Even a copy of this order was specifically directed not to be served upon me by the Learned Single Judge and the inquiry process being carried out behind my back and without my knowledge.** It is clearly apparent that the Learned Single Judge on his own accord had commenced an enquiry in my personal bank accounts without there being any charges against me which thus was completely without jurisdiction. **Even then the Learned Single Judge never directed me to make payment of the said sum with interest.** Therefore, the question arises as to whether without calling upon me to pay the amounts at first whether it was permissible for the Learned Single Judge on his **perceived notion** of alleged misappropriation to embark on such fishing and roving enquiry.

2.14 As would be apparent from the order dated 4 October, 2005 passed by the Learned Single Judge that in absence of the desired information as recorded in the earlier order dated 7 September, 2005 being not placed before the Learned Single Judge and for reasons which were recited in the said order dated 4 October, 2005, the Branch Manager, Allahabad Bank was directed to remain personally present on 7 October, 2005 to explain as to why appropriate action would not be taken against him for not carrying out the order.

2.15 In the order dated 7 May, 2005 the Learned Single Judge sought for the assistance of the State Bank of India for bringing on record the documents pertaining to the encashment of the demand drafts to co-relate as to whether those were deposited in the Allahabad Bank or not. It was then brought to the notice of the Learned Single Judge by the Learned Counsel appearing on behalf of Steel Authority of India Ltd. that I had paid a sum of Rs. 5,00,000/- in cash to Mr. Kanchan Roy, Advocate-on-Record of SAIL. This fact being made known to the Court, the Learned Single Judge directed that the Branch Manager, Standard Chartered Bank, Stephen House Branch shall **"cause the currency notes to be verified whether the same were genuine or not and if they were found to be genuine the same should be invested in a short term fixed deposit....."**

2.16 These directions were most uncalled for and clearly exposes the mindset of the Learned Single Judge, who appears to have single mindedly chartered this fishing inquiry without **"causing service of various orders passed by him from time-to-time to me"** and even without calling upon me to repay the balance sum of money. He went to the extent of suspecting the genuineness of the currency notes given by me as if I was capable of giving counterfeit currency as a sitting Judge. His mindset is an example of presence of mental bias against me. This order too like in the previous occasions was

directed to be withheld from me for reasons best known to the Learned Single Judge.

2.17 Subsequent orders dated 25 November, 2005, 12 December, 2005, 1 February, 2006 and 15 February, 2006 were passed by the Learned Single Judge whereby it appears that directions were passed for production of records of my various bank accounts and those upon being furnished were directed to kept with the Registrar, though copies of such orders were also like in the past **not served** on me.

2.18 Finally, on 10 April, 2006, the Learned Single Judge passed elaborate orders wrongly and erroneously recording that **"the erstwhile Receiver was not available easily to obey the directions of the Court" whilst conveniently forgetting the strict orders passed by him repeatedly to specifically ensure that orders were not to be not served on me."** The question, therefore, arises as to whether my mere non-response in the matter of filing of an affidavit as directed by order dated 7 May, 2005 was the **sole reason** to deprive me of the right to know and keep abreast with the subsequent course of such **"investigation"** which amounted to denial of an opportunity of defending myself or was there a **sinister conspiracy** against me? Or it amounts to **"non-cooperation in spite of repeated opportunity"** as alleged by the Judge.

2.19 Without intending to rely the order dated 10 April, 2006 which by reason of the Hon'ble Division Bench's Order dated 25 September, 2007 stood quashed expunged and deleted from the records. In the Order dated 10 April, 2006 the following observations of the Learned Single Judge are relevant. It has been recorded by him in portions of the said judgements *inter alia*, as under :

I. "From the record I do not find that there has been any effort on the part of the petitioner to know about receipt of sale proceeds and the amount lying in the hands of the Receiver. Only on 7 March, 2002 after the aforesaid order was passed on 20 January, 1993, a letter was written to the said Receiver Soumitra Sen asking him to furnish information and detailed particulars about the sale proceeds received by him and the amount of interest accrued thereon. The said letter was received by the said Receiver but in spite of the receipt of the same no information was supplied and no step was taken."

Fact remains that such letter was never received by me. The initials purported to be shown as a mark of receipt in the letter dated 7 February, 2002 is not mine. Consequently, therefore, I had no occasion to reply to the same. It is further strange that despite holding that the petitioners had made no efforts to know about the receipt of the sale proceeds and the amounts lying in my hand, no comments were made against the petitioner and on the contrary on the basis of **mere suspicion and conjectures** had launched such elaborate enquiry in my personal financial affairs without even having the decorum to cause service of such various orders on me being his **fellow Judge.**

II. The Learned Single Judge further proceeded to record, *inter alia,* that "In spite of service of notice and repeated opportunity being given by passing several orders the Receiver has not come forward to assist the Court in any manner by filing affidavit or informing through any Lawyer or any recognized agent and to tell the Court about the fate and existence of the sale proceeds received by him."

This finding is clearly contrary to his earlier directions which specifically recorded that the orders (save the one passed on 7 May, 2005) were not served on me. Such observations, therefore, are clearly uncharitable and contrary to the records and disclose the closed mindset and gross abuse of the process of law on the part of the Learned Single Judge.

III. In the said order dated 10 April, 2005 the Learned Single Judge thereafter proceeded to wrongfully record the purported mis-utilization of the sale proceeds by me and the transfers of such sums to various accounts from time to time.

This aspect of the matter would be dealt with by me subsequently but suffice to say that such findings are clearly erroneous and distorted.

IV. After reciting such facts the Learned Judge proceeded to hold that I had committed **"breach of trust"** and **"appropriated, if not misappropriated *prima facie* the amount without authority of the Court"** lying in my custody and had not come forward to explain the whereabouts of the said amount of sale proceeds received by me. "The act and conduct of the erstwhile Receiver was apparently nothing short of criminal misappropriation."

V. The Learned Judge further held that "The Receiver was not authorized to deal with money the way he has done and the fact of conversion of amount apparently for his **own gain** which was entrusted with him would be borne out by the fact that he had deposited a sum of Rs. 5,00,000/- in cash after this .application was made and several orders were passed....."

VI. After making such adverse and unwarranted findings against me, for the first time, the Learned Court directed me to pay back Rs. 31,39,560/- together with interest @ 5% per annum on average from the respective date of encashment of demand drafts after deducting my remuneration. The Learned Judge in the process after calculating the interest payable directed that a sum of Rs. 52,46,454/- was payable by me together with interest @ 9% per annum calculated upto 1 April, 2006. The Learned Single Judge also held that "The Court is unable to trace the amount of encashment of the demand drafts made through the Bank of Madurai, unless the Receiver divulges the same. He did not do so. It is therefore presumed he has appropriated if not misappropriated the amount of Rs. 18,000/-".

This finding is also clearly erroneous and the Learned Judge overlooked the fact that the same was accounted for by me.

VII. The judgement dated 10 April, 2006 leaves several questions unanswered. Firstly, attempts have been made to show that I was not cooperating or assisting the Court despite several opportunities being given to me. The records, however, as would be evident from the preceding paragraphs show otherwise. I was never apprised of any court orders except on one occasion prior to 10 April, 2006 and I was never called upon to repay the said sums which were lying with me.

VIII. Till the order dated 10 April, 2004 and even after the voluntary payment of Rs. 5,00,000/- by me there was no direction passed by the Court upon me as Receiver to repay the said money.

IX. Even though the Learned Single Judge held that by allegedly transferring the said funds from different accounts and by way of making payment of a part of the sale consideration by cash, the Learned Judge was guilty of misappropriation and criminal breach of trust under Section 405 of the Indian Penal Code, **no finding of**

dishonest use or dishonest conversion of such funds for my personal use was arrived at by the Learned Single Judge.

X. It is strange that while proceeding to condemn a Receiver of having misappropriated the funds lying in his hands **yet** the Court proceeded to grant me opportunity to take the remuneration which was directed to be paid to him. This is clearly contrary to the adverse observations against me by the Learned Single Judge.

XI. I upon receipt of the entirety of the sale proceeds had deposited the whole of the sale proceeds without deducting my remuneration despite a direction being there to that effect.

XII. It is essential whilst framing a charge of **"criminal breach of trust"** or **"misappropriation"** that an element of **"mens rea"** or **"dishonest intention"** should appear from the action of the accused person, which significantly has been lost sight of nor arrived at by the Learned Single Judge.

XIII. For the first time in the body of the order dated 10 April, 2006 a specific direction for causing service of plain copy of the said order upon me was made by the Learned Single Judge. On the next date of hearing, *i.e.* on 18 May, 2006 Advocate on my behalf appeared and undertook to make payment of a sum of Rs. 20,00,000/- at the first instance without prejudice to the rights of the parties which was directed to be kept in fixed account if and when paid.

2.20 From time to time thereafter and upon several dates being extended by 19 November, 2006 I had paid the entire sum by way of demand drafts excepting the said sum of Rs. 5,00,000/- which were earlier paid by cash to Mr. Kanchan Roy, Advocate, in favour of the Registrar, Original Side of the Calcutta High Court as directed.

2.21 After making full payment, an application being G.A. No. 3763 of 2006 was filed by me seeking expunging of the adverse comments made against me in the order dated 10 April, 2006. This application was in addition to the earlier application filed by me seeking condonation of delay in making payments and the reasons for the same, which was earlier disposed of by the Learned Single Judge by granting me time.

2.22 By an order dated 31 July, 2007 the interlocutory application being G.A. No. 3763 of 2006 filed by me was **"disposed of".** The said order once again purports to wrongly record that "despite repeated opportunities being granted

to Justice Sen to appear earlier none had come forward to defend him". **The Learned Judge perhaps lost sight of his directions passed in his earlier orders to ensure that no copy of the orders after 7 May, 2005 was served on me.** I was never provided with a second opportunity nor was I ever called upon to make payment of the said sums, which was one of the prayers in G.A. No. 875 of 2003. However, it has been contended by the Learned Single Judge that at that stage **"his anxiety"** was to find and recover the amount of the sale proceeds and did not think in terms of initiating criminal proceeding so the agony of the Receiver of criminal proceedings of being initiated was **misplaced.**

2.23 It is stated that the simplest way would have been to direct me to deposit all sums due and accrued in my hand till that date as was prayed for by the plaintiff and only if despite such specific directions for refund of the sums I had failed and neglected to do so could the question of initiation of any inquiry could have arisen. Why **I was not directed to make payment of** the said sum of money lying with me and/or in my account until 10 April, 2006? It is judicially **settled that till such time I as a Receiver am not directed to return the sum lying with me, I cannot on my own return the same.**

2.24 The Learned Single Judge in the order dated 31 July, 2007 whilst analyzing the financial transactions pertaining to the instant matter was himself unsure whether to disbelieve or believe the explanation sought to be given by me in that context but whilst proceeding to specifically record payment of the entire sums which was quantified by the Learned Single Judge expressed his inability to expunge the remarks on the ground that **"the judgement has been satisfied".**

It is stated that such a ground for not expunging the adverse remarks is legally unsustainable.

2.25 It is unfortunate to note that the then Hon'ble Chief Justice of India in his letter dated 4 August, 2009 to the Hon'ble Prime Minister of India whilst commenting upon the order dated 31 July, 2007 deliberately erroneously recorded that the said application was **"dismissed"** whilst no such dismissal of the application had taken place and on the contrary the said application was **"disposed of"** on the directions and terms and conditions more fully contained in the said order dated 31 July, 2007. The Hon'ble Chief of India ought to have appreciated the difference between the disposal of an application with certain directions and dismissal of the same.

2.26 In any event of the matter I preferred an appeal against the order dated 31 July, 2007 before the Division Bench of the Calcutta High Court, whereupon

submissions were advanced, documents were filed and the written notes of submissions was filed on my behalf filed before the Learned Single Judge were also made part of the records. The Division Bench upon hearing the parties and on going through the records of the entire case which were placed before it had come to the following important findings:

(a) The erstwhile Receiver was never directed by the Learned Single Judge to make any payment, prior to the order dated 10 April, 2006;

(b) The respondent Nos. 1 and 2, namely, Steel Authority of India Ltd. And Shipping Corporation of India had never made any complaint against me and on the contrary submitted before the Learned Single Judge that they had no grievance against me;

(c) The question of breach of trust did not arise since I had not failed to deposit the amount held by me pursuant to the direction of the Court;

(d) In absence of any evidence on record and on definite and specific finding of the fact and especially in absence of the fact that nobody made any allegation against me regarding misappropriation of any money out of the sale proceeds retained by me, the case of misappropriation could not be made out;

(e) The plaintiff in the suit never raised any question in respect of my conduct and function also did not claim any amount towards interest;

(f) The Learned Single Judge on his own passed various orders from time to time in connection with the application filed on behalf of the plaintiff and also in the application subsequently filed on my behalf in order to **"examine the conduct of the Receiver even in absence of any allegation made by the parties"**;

(g) I never failed to comply and/or discharge my obligation to refund the money after being so directed by the Learned Single Judge;

(h) I had never utilized any amount for my personal gain or benefit;

(i) Records examined showed the money had been deposited with a finance company by me and the said fact was corroborated by the Official Liquidator's report;

(j) The Learned Single Judge in passing the said order dated 10 April, 2006 travelled beyond the scope of the pleadings and the claims of the parties inasmuch as G.A. No. 875 of 2003 never called for an inquiry into my personal accounts and the Learned Single Judge single handedly undertook such a venture;

(k) The allegations which formed the basis of the order dated 10 April, 2006 were not even raised in the petition and contrary, both Steel Authority of India Ltd. and the Shipping Corporation of India Ltd. did not raise any grievance against me nor claimed any interest from the me but the Learned Single Judge on his own directed me to make payment of interest for the sum of Rs. 24,27,404/- which was ultimately paid by me and which fact was also acknowledged in the order dated 31 July, 2007 by the Learned Single Judge;

(l) The Learned Single Judge in passing the order dated 10 April, 2006 travelled beyond the scope of the pleadings which was impermissible in view of the judgement of the Hon'ble Supreme Court in **Debnarayan Halder *v.* Anushree Haider (Smt.) as reported in (2003)11 SCC 303**.

2.27 After coming to the aforesaid findings the Division Bench held "The Learned Single Judge committed serious error in travelling beyond the scope of pleading made several unwarranted and uncalled for remarks which seriously affected my **"reputation".** The findings of the Learned Single Judge were passed without any material of any kind. It is not understood how a finding of breach of trust, criminal or otherwise, could be made nor it is understood how any comment could be made that there was any misappropriation. The order of the Single Judge is entirely without jurisdiction and hot supported by facts on record."

2.28 The Division Bench further proceeded to hold :

> "The Learned Single Judge has repeatedly resorted to conjectures and surmises and has recorded serious and dishonest finding against the erstwhile Receiver. The findings are very serious in nature and **no court of law can possibly approve the same.**
>
> *"...We do not approve the findings of the Learned Single Judge regarding conduct of the erstwhile Receiver including, the observations and/or remarks made against the erstwhile Receiver as recorded in the order dated 10 April, 2006.*

> *In our opinion the Learned Single Judge had no scope and/or occasion to record the aforesaid unfortunate' remarks in respect of erstwhile Receiver in the order dated 10 April, 2006.*

As discussed hereinabove we do not find any material and/or ingredients for arriving at the conclusion that the erstwhile Receiver had committed breach of trust and/or misappropriated the money or utilized the money held by him for personal gain which was unfortunately observed by the Learned Single Judge. The erstwhile Receiver had already suffered serious prejudice in view of the aforesaid uncalled for and unwarranted observations and the remarks of the Single Judge as recorded in the order dated 10 July, 2006.....

> *We, however, want to put an end to the aforesaid injustice and therefore, we **"set aside"** and **"quash"** the findings of the Learned Single Judge in respect of the erstwhile Receiver and further direct that all the observations and remarks made against the erstwhile Receiver as recorded in the order dated 10 April 2006.....Stand **"expunged"** an **"deleted".***

The appeal was disposed with the aforesaid directions."

2.29 The said order dated 25 September, 2007 which was passed by the Division Bench of the Calcutta High Court was made in exercise of judicial authority vested in the Court.

2.30 The said judgement and order has not been appealed against by either the plaintiff or the defendant, or the Official Liquidator or the High Court till date and therefore, stands final. It cannot be said as has been contended that it is a **"judgement in personam" and not "in rem".** In any event of the matter by reason of the "quashing" and "expunging" of the aforesaid remarks from the order dated 10th April, 2006 it would be deemed that such adverse observations of the Learned Single Judge which went about questioning my **conduct** as a Receiver were never in existence since they stood quashed.

(1992)3 SCC Page 1 (Shree Chamundi Mopeds Ltd. *vs.* Church of South India Trust Association CSI Cinod Secretariat Madras.

2.31 Ordinarily the matter should have rested there, but it appears that disregarding and/or ignoring the findings of the Division Bench, the then Chief Justice of India in his **"administrative capacity"** sought explanation from me and which explanations were properly furnished. I had repeatedly brought to the notice of His Lordship about the order of the Division Bench dated

25 September, 2007 wherein all adverse allegations made against my purported conduct as an erstwhile Receiver were quashed and/or expunged and therefore, did not exist.

2.32 Disbelieving my explanation and further treating the judgement of the Division Bench of the Calcutta High Court **with disdain** and **without any respect to its findings** formed an In-House Inquiry Committee in terms of the In-House procedure which was allegedly adopted **by all High Courts excluding Calcutta High Court** to look into the allegations of misconduct and misappropriation made against me. This fact was made known to me by the then Chief Justice of India's letter dated 10 September, 2007 wherein the Hon'ble Chief Justice of India (Retired) had clearly admitted that the process for proposing to hold inquiry was passed on the **"alleged adverse remarks"** and **"observations"** which had been made by the Learned Single Judge in the order dated 10 April, 2006. The letter also recorded that the In-House Procedure framed by the Supreme Court, **"was adopted"** by all High Courts **including the Calcutta High Court.**

2.33 Subsequent inquiries by my Advocate-on-Record under the Right to Information Act, 2005 clearly revealed from a letter of the Deputy Registrar (Administration) and Public Information Officer, High Court, Appellate Side, Calcutta dated 26 April, 2010 that **"the matter of resolution taken by the Hon'ble High Court dated 15 December, 2009 with regard to the formation of 'In-House Committee' is still pending before the Hon'ble Full Court for decision".**

2.34 It is now clear that the then Chief Justice of India despite knowing that such "In-House House Procedure" **had not been adopted** by the Hon'ble Calcutta High Court for reasons best known to him made an **incorrect statement;** which brings us to the larger issue, namely, whether the Chief Justice of India acting in his administrative capacity could direct an enquiry by an "In-House Committee" in respect of the subject matter of enquiry, namely, alleged misconduct of the erstwhile Receiver as also his alleged misconduct as a Judge of the Calcutta High Court at a point of time when the Division Bench of the Calcutta High Court in its judicial side had exonerated me and further whether the In-House Committee could be constituted to probe into the false and non-existant allegations which were based on observations of the Learned Single Judge as contained in the order dated 10 April, 2006 which however stood quashed and/or expunged by the time when the In-House Committee was formed and further in absence of any complaint being entertained by either Chief Justice of the Calcutta High Court or the then Chief Justice of India or by the In-House Committee.

2.35 The constitutions of the In-House Committee to inquire into the alleged/ imaginary complaint was wholly without jurisdiction for the following reasons :

(a) The In-House Committee procedure for formation of such In-House Committee was not adopted by the Full Court of the Calcutta High Court and therefore, a judge of the Calcutta High Court could not be subjected to an enquiry in terms of such In-House procedure;

(b) Without prejudice to the above and assuming though not admitting that even otherwise the Committee could have gone into such allegations, the condition precedent for assumption of jurisdiction to look into such allegations was the existence of any valid complaint which was however was absent in my case. As such since the formation of an In-House Committee was on the basis of the alleged adverse findings contained in the order dated 10 April, 2010 which stood **quashed** and **expunged** by the time In-House Committee was actually formed in or about 3 December, 2007, the same was thus illegally and invalidly constituted. The In-House Committee could not have been directed in absence of any fresh allegations against me to go into any non-existant complaints/ allegations. The In-House Committee can only look into the complaints regarding the conduct of a **"Judge"** but not is past conduct as an advocate. Therefore, the enquiry by the In-House Committee was wholly without jurisdiction.

(c) Whether the In-House Committee constituted by the then Chief Justice of India not being either a statutory or a constitutional body but merely an administrative body could sit in judgement over a judicial order passed by the Division Bench of the Calcutta High Court and comment upon the same and whether its finding could supercede the observations and findings of the Division Bench and if so whether the same tantamouts to unauthorized and illegal encroachment of the Judiciary's powers by the Executive without any authority of law and/or in violation of the Rule of Law. It is humbly submitted that the very act of seeking to sideline or dump the order of a Division Bench of Calcutta High Court through the process of an In-House Committee is wholly illegal, without or in excess of jurisdiction and/or in **breach of basic structure of Constitution** which guarantees the independence of judiciary and judicial orders which cannot be questioned by any administrative of a non-statutory

body and any comment on the same falls within the mischief of the Contempt of Courts Act, 1971. The sanctity of a judicial order which has attained finality cannot and/or ought not to be trampled and/or loosely interfered with since the same would lead to a wholly unwarranted confrontation between judiciary and executive.

(d) In fact the Executive does not have the authority to override and/or supercede any validly passed judicial order and it is only and only in exercise of legislative powers of the Parliament or the State Legislature by a Validating Act or otherwise, can Legislature seek to overreach and/or nullify the effect of the judicial order. A Judicial Order **is not subservient to any Executive action.**

(e) In the case of **Mohd. Ahmed Khan *v.* Shah Bano Begum, reported in AIR 1985 SC 945** a five judges Bench of the Supreme Court held that **"divorced Muslim women have still the right to claim maintenance under Section 125 of Code of Criminal Procedure 1973",** and that there was no conflict between the provisions of Section 125 of the Cr. P.C and the Muslim Personal Law. The said case, which was popularly known as Shah Bano Case, created a furore amongst the Muslim Community of India, who agitated strongly against the decision **on the ground** that it sought to abrogate the Principles of Muslim Law with regard to maintenance to a divorced Muslim wife. In the wake of the protests made against the said decision the Parliament passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, which Act was a compromise between the provisions of Section 125 Cr. P.C and the Muslim Personal Law. In fact the statement of objects and reasons of the Act records the fact that the decision in Shah Bano case had created some controversy and it has became necessary to specify the rights to which a Muslim divorced woman is entitled at the time of divorce and to protect her interests.

(f) This example which is only indicative clearly exemplifies that under our constitutional frame work a judgement of a High Court or the Supreme Court can **only** be nullified or rendered ineffective by appropriate legislation and not in the manner as is being done in my case regarding the Division Bench Order dated 25 September, 2007.

2.36 It is interesting to note that even otherwise the In-House Committee is only empowered to go into the complaints or allegations against a Judge pertaining to **discharge of his judicial functions** or with regard to **conduct and behaviour outside the Court.**

2.37 In my case, there was no complaint filed by any aggrieved party in C.S. No. 8 of 1983 or was there any other independent complaint against me save and except the remarks made by the Learned Single Judge in the order dated 10 April, 2006 which were however **quashed** by the Division Bench. It is also inexplicable that the then Chief Justice of the Hon'ble Calcutta High Court in his letter dated 2 November, 2006 addressed to the then Hon'ble Chief Justice of India had admitted that **"There had been no complaint made by anybody against Justice Sen."**

2.38 The In-House- Committee's report dated 1 February, 2008 contains multiple instances of factual discrepancies and glaring errors of fact which go to the root of the findings and its conclusion, thereby rendering it severely vulnerable and no reasonable person could on the basis of such report come to a finding that–

(a) "Shri Soumitra Sen did not have the **honest intention** right from the year 1993 when he started getting the sale proceeds .....";

(b) "That there has been misappropriation "at least temporary" of the sale proceeds.....";

(c) "The (temporary) misappropriation of the entire sale proceeds as noticed above; the false explanation to the Court that an amount of Rs. 25,00,000/- was invested from the account where the sale proceeds were kept; his dealing with the two accounts *viz*., 01SLP0632800 and O1SLP0813400 and **"eloquent silence"** on his part until he was asked by judicial order to deposit the amount of sale proceeds show **"fraudulent conduct"** of Shri Soumitra Sen;

(d) "The explanation of Shri Soumitra Sen in his written submission that after having deposited the demand drafts of the sale proceeds in his savings bank account, he invested the amount of Rs. 25, 00,000/- with M/s. Lynx India Ltd. is palpably false".

(e) "Mere monetary recompense under the compulsion of judicial order does not obliterate breach of trust and misappropriation of Receiver's fund for his personal gain";

(f) "The conduct (or lack of it) of Sri Soumitra Sen as noticed above has brought disrepute to the high judicial office and dishonour to the institution of judiciary and undermines the faith and confidence reposed by the public in the administration of justice".

2.39 The aforesaid conclusions have been based on total misappreciation of the extant facts and total non-consideration of relevant materials on record and erroneously collating and analyzing of the documents, records and facts and the inference reached by the In-House Committee lacks judicial credibility. However, such factual aspects of the matter is being dealt with thoroughly elsewhere in this reply. The purported report of the In-House Committee is a bundle of half-truths and is perverse.

2.40 Sad to say, the In-House Committee in its zest to adversely comment upon my conduct overlooked and/or has not adverted to the specific defences taken by me in my reply to such Committee. The vital aspect of its lack of jurisdiction to go into such matter, especially when there was no complaint on the basis whereof such In-House Committee could have assumed jurisdiction and further, in absence of any resolution adopting such In-House Procedure by the Full Court of the Calcutta High Court, went to the root of the jurisdiction of the In-House Committee but were *conveniently ignored*. It was the *duty* of the In-House Committee, as it is also in cases of Courts, to at first satisfy itself that it has the jurisdiction to inquire or adjudicate any matter even in absence of no such plea taken by any party or otherwise. I in my reply to the Committee had specifically taken such a plea.

2.41 The then Chief Justice of India by his letter dated 6 February, 2008 informed me the decision and the recommendation of the In-House Committee to the effect that they had found "misconduct" against me serious enough to ensure proceedings for my removal and on the basis of such purported recommendation the then Chief Justice of India called upon me to either to resign or to seek voluntary retirement. Question thus arises whether such Committee had any power to recommend initiation of proceedings for my removal when it was not even a **"Statutory authority"** leave aside being a **"Constitutional authority"** and thereby in this manner usurp the Constitutional mandate reserved for the Parliament alone?

2.42 I by my letter dated 25 February, 2008 furnished an elaborate reply to the aforesaid letter of the then Chief Justice of India and called upon him to reconsider such a decision. In particular I highlighted several discrepancies between the findings of the Division Bench and the Inquiry Committee as also otherwise (detailed reference to the same can be made from Volumes VII), and

upon receipt of such reply I was called for a personal hearing before the then Chief Justice of India and I apprised my position before the then Chief Justice of India in presence of Justice B.N. Agarwal (Retired) and Justice Ashok Bhan (Retired) of the Hon'ble Supreme Court.

2.43 In the meeting before the then Chief Justice of India and the aforesaid two Hon'ble Judges it was **"strongly"** conveyed to me that in the event **I failed to resign, 'further inquiries'** would be taken up and made by some other agencies before the matter was sent to the Parliament **were they meaning** the Central Bureau of Investigation? It then dawned on me that the Central Bureau of Investigation could also be arm-twisted to investigate into any matter at the instance of the personal whims of the highest echelons of the Judiciary also **even in absence of any judicial order.**

2.44 Which thus leads to the question as stated in my letter dated 26 March, 2008 addressed to the then Chief Justice of India that any further investigation into my alleged misconduct over and above the enquiry Committee's report leads to the inevitable conclusion that the said Report was not **"conclusive"** and therefore, any forceful decision to be obtained from me to **"resign"** on the basis of such report was uncalled for. **No reply to this letter containing such specific statement was ever given by the then Chief Justice of India. Why?**

2.45 After a long hiatus since my letter dated 26 March, 2008 and during which time I continued to be denied allocation of judicial duties, the then Chief Justice of India by his letter dated 4 August, 2009 recommended to the Hon'ble Prime Minister of India for initiation of proceedings contemplated under Article 217(1) read with Article 124(4) of the Constitution of India. The said letter addressed to the Hon'ble Prime Minister of India contains repetition of the multiple factual errors and discrepancies which despite being pointed out several times earlier by me were repeatedly ignored and/or not taken into consideration which thereby casts a grave doubt in the minds of the people as to whether or not the entire proceedings were **pre-meditated** and/or **stage managed**. Were such distortions of facts **deliberate**?

2.46 It appears that even before any finding or otherwise could be made into my alleged conduct, solely based on media reports and without any corroboration I was denied any further judicial duty from November, 2006 onwards. The said letter to the Hon'ble Prime Minister also wrongly recorded that G.A. No. 3763 of 2006 filed by me was **"dismissed"** but on the contrary the same was **"disposed of"** with Liberty to approach the court once again with certain observations. Even though there was a brief reference to the

Division Bench's order dated 25 September, 2007, the Hon'ble Prime Minister of India **was not informed** that such judgement and order passed by the Division Bench of the Calcutta High Court had attained finality in **absence** of any **"further challenge"** to the same and that finding of the Hon'ble Division Bench which exonerated me of all the alleged charges of misconduct, criminal breach of trust or misappropriation (temporary or otherwise) could not be assailed and/or form the basis of an independent **"administrative probe"** at the **instance** of the then Chief Justice of India acting in his **administrative capacity** in absence of any fresh charges of the like, against me. The recommendation which was made by the then Chief Justice of India to the Hon'ble Prime Minister of India was thus made **on erroneous factual and legal premises** which was not expected from the august Office of the then Hon'ble Chief Justice of India.

2.47 What is more significant is that the said letter dated 4 August, 2009 does not even refer to my detailed and elaborate reply as contained in my letter dated **25 February, 2008** addressed to the then Chief Justice of India after I was served with a copy of the In-House Committee's report. On a cursory reading of the said letter dated 4 August, 2009 it would clearly reveal that the Hon'ble Prime Minister of India was not made aware of the contents of my detailed letter dated 25 February, 2008, as such, the Hon'ble Prime Minister was unaware of my defence to the report of the In-House Committee as also against the decision of the then Chief Justice of India recommending the initiation of proceedings for my impeachment. It is hard to fathom as to why such a vital document, which would explain facts from my point of view was withheld from the Hon'ble Prime Minister of India. Would I be wrong in assuming that the **die had already been cast for my impeachment?**

2.48 Thereafter from various newspaper and media reports, it became increasingly evident that impeachment proceedings would be initiated against me. At this stage I would only comment that media reports presently have quite an impact in the decisions of the Executive who dares to defy the media. It professes to be the **watchdog** of peoples' liabilities. Occasionally they overstep their mandate. Upon such reports being published, several letters from time to time were written by my Advocate-on-Record to you and the Hon'ble Speaker of the Lok Sabha on 27 February, 2008, 28 March, 2009, 30 March, 2009, and 17 April, 2009. In the letter dated 27 March, 2009 at paragraphs 14, 15, 16 and 17 thereof my Advocate-on-Record made the following statements :

> "14. Under Section 3 of the Judges (Enquiry) Act, 1969 admission of a motion for impeachment is not automatic. Once

a notice is given in the Council of States, then the Chairman may after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him either admit the motion or refuse to admit the same. Therefore, it is clear that the mandate of the Statute is an independent application of mind by the Chairman before refusing or admitting the motion.

15. In the instant case, as we have come to know from the newspaper reports, that the M.P.'s motion only accompanied the recommendations of the CJI. From the newspaper report dated 14/15 March, 2008 it is clear that the CJI had admitted, that my client detailed reply to the report of the committee was not even mentioned. Therefore, the M.P.'s were not favoured with our side of the story neither you had the opportunity to look into all materials as is required under Section 3, before admitting the motion.

16. The motion was presented on the last day of the session of the Parliament and was perhaps the last motion. Therefore, a vital question arises here is whether you have the opportunity of exercising your independent mind before admitting the motion, or whether you had any other materials before you except the recommendation of the CJI, as is required under the Act.

17. In the light of the statement made above, if the mandatory requirements of the statute have not been adhered to, then the formation of the enquiry committee by you is unconstitutional and should be withdrawn."

2.49 In the letter dated 11 June, 2009 addressed to Your Excellency, my Advocate-on-Record upon acknowledging the fact that Your Excellency had constituted a Committee under the Judges (Enquiry) Act, 1968 requested that **"under no circumstances Shri Fali S. Nariman can be a part of the said Committee as he has openly in print and media spoken against my client and has already expressed his opinion in favour of impeachment of my client. My client has serious apprehension about the biasness of Mr. Nariman in the matter and I also feel that his presence in the Committee will go against the spirit and purpose of the Constitution of India."**

No reply was received to the above letter, which raises important issue with regard to the impartiality and functioning of the Judges (Enquiry) Committee.

2.50 On 5 February, 2010 I was informed that on 27 February, 2009 a motion under Article 217 read with Article 124(4) of the Constitution was admitted by Your Excellency which read as under :

"This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following **two** grounds of misconduct:

(i) Misappropriation of large sums of money which he had received in his capacity as Receiver appointed by the High Court of Calcutta; and

(ii) Misrepresented facts with regard to misappropriation of money before the High Court of Calcutta.

The motion shall be kept pending till further action prescribed under the Judges (Enquiry) Act, 1968 and Rules made there under is taken."

2.51 It was further informed that the Committee was constituted under sub-section (2) of Section 3 of the Judges (Enquiry) Act, 1968 for making investigation into the grounds referred to in the above-mentioned motion. The Committee after examining the matter before it had framed out a **"draft"** charges along with a **"draft"** statement of grounds under which the investigation is proposed to be held under the said Act. I was called upon to peruse the same and revert back to the Committee in writing on or before 26 February, 2010 to enable the Committee to proceed further in accordance with the Judges (Enquiry) Act, 1968 and the Rules made there under.

2.52 By a letter dated 23 February, 2010 which was in furtherance to the earlier letter dated 18 February, 2010 certain important legal issues were raised by my Advocate-on-Record which went to the root of the admission of the motion in the House and the fact that the first charge did not pertain to my capacity as a Judge of the High Court and further that only **"draft charges"** were formulated instead of **"definite charges"** as was warranted in the said Act. Moreover, the **minutes of the meeting** in which the Committee was appointed had to deliberate upon framing of the proposed charges were also sought for in the said letter. It is stated that the Committee exceeded its jurisdiction in formulating the charges against me since the same was beyond the scope of the motion which was admitted by Your Excellency.

2.53 On 4 March, 2010 a letter was written by the Presiding Officer of the Judges (Inquiry) Committee informing me that the said Committee had framed charges on the basis of which **"investigation"** was proposed to be held. However, there was no reply to the legal issues raised in the letter dated 23 February, 2010.

2.54 It is stated that initially the Judges (Inquiry) Committee comprised of Justice Sudharshan Reddy, as the Presiding Officer and the Hon'ble Justice T.S. Thakur and Shri Fali S. Nariman, Eminent Jurist and Senior Advocate. Later on Justice Thakur was replaced by Justice Mukul Mudgal, Chief Justice of Punjab and Haryana High Court, since Justice Thakur was elevated to the Hon'ble Supreme Court.

2.55 Despite the "apprehension" expressed by me in my letter dated 11 June, 2009 to the effect that I had "apprehension of biasness in the event of Fali S. Nariman having continued to remain in the Committee on the ground of having made pro-impeachment remarks in print and other media even before his appointment", such apprehension was not taken into consideration by the authorities. Such pro-hearing opinions of Shri Fali S. Nariman, therefore, gave rise to serious apprehension of bias in my mind.

2.56 It is humbly submitted that as is well settled that one of the two elements of principles of natural justice is the "rule against biasness".

2.57 As per Black's Law Dictionary 'Bias' is "a condition of mind, which sways judgement and renders judge unable to exercise his functions impartially in a particular case."

> "A predisposition to decide for and against one party, without proper regard to the true merits of the disputes is bias."
> **(AIR 1988 SC 2231) (Secretary to the Government of India *v.* Manuswami Mudaliar)**

2.58 The test for determination of bias is not actual bias but whether there was a **"real likelihood of bias"** and if there is so the Judge should not sit in adjudication.

2.59 Therefore, when an apprehension was voiced by me to the appointment of Shri Fali S. Nariman in the Committee constituted under Section 3 of the Judges (Inquiry) Act, 1968, the same ought not to have been ignored even without considering the merits of such statements and in failing to do so the constitution of the Committee, the framing of charges, the proceedings before it and its final report cannot be legally sustained.

2.60 The Committee thereafter from time to time heard the matter first on 24 June, 2010 and thereafter between the periods commencing from 18 July, 2010 to 20 July, 2010. The hearing concluded on 20 July, 2010. In course of proceedings written notes of submissions were filed by me and at the end of, the proceedings written arguments were also submitted by me through my Learned Counsel. Such written submissions are for the sake of brevity not reproduced herein but the same is relied on and the same is at pages 24 to 136 of Volume II of the Report and the written arguments filed on my behalf, which raises important Constitutional issues, are enclosed separately (without list of statutes and judgements relied upon by me) and the contents of the same may be treated as incorporated in this reply. Appropriate reference shall be made, if necessary.

2.61 The report of the Judges (Inquiry) Committee constituted by Your Excellency was submitted by the Committee on 10 September, 2010. The said report concludes holding me guilty on both charges on the grounds more fully stated in the said report.

3.0 LEGAL SUBMISSIONS

JURISDICTIONAL ISSUES

3.1 The first of the two motions, which was admitted by the Your Excellency, namely, "misappropriation of large sums of money which he had received in his capacity as Receiver appointed by the High Court at Calcutta". From the wording of the said motion it is *ex-facie* clear that the motion as it has been worded seeks to deliberate whether in my capacity as **"Receiver"** appointed by the High Court, Calcutta, I had misappropriated large sums of money which I had received in my such capacity. Clearly, therefore, the issue of alleged misappropriation during the period when I was a Judge of th.e Calcutta High Court **was and/or is not the subject matter of the motion** and/or was **consciously omitted** at the time of its admission in the Rajya Sabha. However, the Committee whilst finalizing the charges against me had recorded that **I had continued to misappropriate and/or utilize the sale consideration and accrued interest in my possession as "Receiver" even at the time of, and subsequent appointment as a Judge of the Court on 3rd December, 2003 at several places.** Such findings/charges, therefore, are wholly **outside** the admission and scope of the first motion which was admitted since the same relates to alleged misappropriation in my capacity as **"Receiver"** appointed by the Calcutta High Court and the same does not relate to the period when I was appointed as a Judge of the Calcutta High Court. The Committee,

therefore, in framing such charges had clearly overstepped its jurisdiction in its zeal to **somehow or the other** adversely comment on my conduct.

3.2 It is to be borne in mind that the word **"misappropriation"** implies existence of **"mensrea"** and/or **"criminality of mind"** and **"dishonest intention".** Even though the purported report of the In-House Committee for reasons which are **"inexplicable"** on the basis of the facts and circumstances before it had come to a conclusion that I **"dishonestly"** misappropriated such sums and/or **"dishonestly"** converted the same for my own use, **strangely enough** the statement of charges against me does not contain any such allegation. Even in the report filed by the In-House Committee, there is no whisper of either of **"dishonest intention"** or **"mensrea"** or criminal intent on my part. These are the essential ingredients for offence under Section 403 and 405 of the Indian Penal Code, which is conspicuously absent in my case.

3.3 "Misappropriation" is a term is generally associated with the Criminal Law. All acts of alleged **conversion** of property or **use of** property contrary to a particular direction could not be termed to be **"misappropriation"** unless it is associated with **"dishonest intention"** or **"criminal intent".** An act of careless blending of entrusted property with one's own property cannot always be termed as misappropriation and on the contrary found to be acts of negligence.

3.4 As stated hereinabove neither in the motion admitted in the Hon'ble Lok Sabha nor the statement of motion of charges or the statement of grounds in support of charges against me was there any allegation of any dishonest intention on my part even in my capacity as a Receiver. Therefore, the essential ingredients or elements of misappropriation as is generally perceived is conspicuously absent and/or has been consciously omitted and therefore on this preliminary ground and shorn of all other attendant facts and legalities the charge of **"misappropriation"** against me cannot be sustained.

3.5 The Judges (Inquiry) Act cannot be extended to investigate into the conduct of a **"Judge"** prior to his elevation. A Receiver being appointed by a High Court, as such his actions cannot be investigated and/or scrutinized either by the In-House Committee by the Committee constituted under Section 3 of the said Act. A Receiver is only answerable to the Court which has appointed him and it is only a finding of the particular Court appointing him can a charge of misappropriation be levelled against him. In this case no such charge was either levelled against me by the Single Judge or by the Division Bench of the Calcutta High Court.

3.6 Past actions of a Judge long prior to his elevation cannot be the subject matter of impeachment. If past actions are brought within the ambit of Article 124(4) read with the provisions of the Judges (Inquiry) Act, it will make a mockery of the selection process of a Judge of a High Court or Supreme Court.

3.7 The constitutional mandate does not permit impeachment process to be initiated against a Judge after his elevation for alleged acts of misconduct prior to his elevation which it itself passes through several levels of scrutiny including police verification etc. This safeguard has been provided in our constitution in order to maintain dignity and independence of the judiciary. If past action of a judge long prior to his elevation is permitted to be raised as an issue or ground for impeachment, then anyone with a personal agenda of his own can rake up irrelevant past issues and harass a Judge of a High Court or Supreme Court mustering enough political clout to move a motion for impeachment.

3.8 The whole object and purpose of the Article 124(4) read with Judges (Inquiry) Act is to ensure prevention of corruption and malpractice and incapability in discharge of judicial function and for no other reasons.

3.9 The Committee in its report dated 10 September, 2010 has **consciously assessed** my conduct in two phases; one which is prior to my elevation before 3 December, 2003 as Judge of the Calcutta High Court and the other thereafter.

3.10 It is stated with humility that my alleged conduct and the alleged act of misappropriation prior to my elevation as a Judge is wholly outside the realm of jurisdiction of the said Committee or even of the In-House Committee appointed by the then Chief Justice of India. Therefore, in order to somehow bring the charges under the purview of the said Judges (Inquiry) Act my alleged conduct post-my elevation as a Judge of the Calcutta High Court was also sought to be investigated into. Such investigation, however, is not contemplated in the motion as admitted in the Upper House and therefore, such motion cannot but fail since the motion as formed and which has been admitted does not warrant any investigation by the Committee into my alleged conduct post-my elevation as a Judge of the Calcutta High Court on the charges of alleged misappropriation. Moreover, it is reiterated that in absence of any finding of **"dishonest intention"** or **"mensrea"** in the matter of alleged misappropriation or alleged conversion of funds into my own use, the charge of misappropriation cannot be sustained which leads one to the next motion.

3.11 The second motion which has been admitted by the Hon'ble Chairman of the Rajya Sabha is that I had misrepresented facts with regard to misappropriation of moneys before the High Court at Calcutta. Without going

into the merits and the factual aspects leading, to the said motion at this stage, it is humbly stated that any allegation of making false statements before the Calcutta High Court can only be decided in the backdrop of a **legally permissible investigation** being conducted in the matter of **"misappropriation of moneys".** In other words when there cannot be any investigation in the matter of alleged misappropriation of money by reason of the fact (a) that the charge of alleged misappropriation of money by me in my capacity as Receiver appointed by the Calcutta High Court is beyond jurisdiction of the Committee set up under Section 3 of the Judges (Inquiry) Act, 1968; and (b) no investigation was warranted under the first motion to inquire/ investigate as to whether such alleged acts of misconduct continued at a point of time after I was elevated as a Judge of the Calcutta High Court, therefore the question whether I had made false statements or misrepresented facts about such **'misappropriation'** before the Calcutta High Court is equally beyond the scope of any investigation because the two motions are **'intrinsically linked'** and the second motion has no **'independent legs'** to stand on. If the charges on the first motion cannot be investigated into in the first place the question as to whether or not I had misrepresented before the Calcutta High Court with regard to such misappropriation also cannot be decided because the Committee cannot test the falsity or otherwise of any statement made by me when the subject matter of the same is outside its jurisdiction. The alleged act of misrepresentation has to be adjudged in the backdrop as to whether or not there has been a misappropriation in the first place. If such an investigation of misappropriation is not permissible and/or is without jurisdiction, the question whether any misrepresentation had been made or not is an empty exercise.

3.12 Therefore, in the above conspectus of facts the legal position which emerges is that–

(a) The first motion of alleged misappropriation by me of money received by me in the capacity as a Receiver appointed by the Calcutta High Court cannot on the face of it be a subject matter of an investigation by the Judges (Inquiry) Committee since the actions of a Receiver is outside the scrutiny of the Judges (Inquiry) Committee and further the motion as it has been admitted does not empower the Committee to look into my alleged conduct after my elevation as a Judge of the Calcutta High Court;

(b) In the event the allegations pertaining to the first motion cannot be investigated and consequently, therefore, any finding on the same would be without and/or in excess of jurisdiction of such Committee,

the second charge of misrepresentation with regard to misappropriation is equally unsustainable because to try me on a charge of misrepresentation qua misappropriation, there is to be a legal finding regarding misappropriation of money by a Committee and/or authority which has the legal capacity and competence to undertake such investigation which admittedly on the face of it the instant Committee does not. In any event the question of misappropriation cannot and does not arise under any stretch of imagination for the simple reasons as follows :

(i) There were no transactions in the bank account concerning the purchase consideration after 1997;

(ii) The Lynx India (now in Liquidation) went into liquidation in the year 2000. After liquidation the Official Liquidator in terms of the Companies Act, 1956 is in possession of all the assets of the company including the fixed deposit receipts which were found in original in the custody of the Official Liquidator;

(iii) The police authorities have also seized large number of documents of Lynx.

Under these circumstances question of misappropriating any amount after 1997 or even after 2000 is a legal and a factual impossibility. It is needless to mention that I was elevated only in the year 2003.

(c) When rightly or wrongly the report of the In-House Committee contained a finding of dishonest misappropriation of money by me and dishonest conversion of the sum for my own use, significantly, however, the statement of imputation of the charges and grounds in support thereof as also the motion admitted by the Hon'ble Chairman does not contain any such allegation. In other words that the appointment of the Judges (Inquiry) Committee and the investigation being made afresh by such Committee is without any advertence to the finding of the In-House Committee's report to the aforesaid effect and therefore was given.

4.0 ROLE OF THE THEN CHIEF JUSTICE IN THE ENTIRE EPISODE

4.1 The In-House Committee was not constituted by the Chief Justice either under the provisions of any **statute** or under any **constitutional provisions.** The then Hon'ble Chief Justice of India adopted such In-House procedure,

which was not ratified by the Calcutta High Court **to look into certain complaints** against me on the basis of the aforesaid judgment of the Single Bench of the Calcutta High Court which had found me **'guilty'** of certain acts of misconduct allegedly committed at a time when I had not been appointed as a Judge and there was no **'complaint'** whatsoever against me about alleged misconduct or incapacity qua a Judge of the High Court.

4.2 Importantly by a letter dated 17 March, 2008 the then Hon'ble Chief Justice of India wrote to me that my explanation had not convinced the Judges of the Supreme Court who were in the Committee and I was asked to submit my **'resignation'** or **'seek voluntary retirement'** on or about April, 2009. In that letter of the then Chief Justice of India, it was specified that "as already made clear to you yesterday, if you fail to act upon this advice and to intimate the same to me within the time prescribed above, **we would** proceed further and take **such steps** (emphasis supplied) as may be deemed appropriate in public interest and for better administration of justice. It is thus clear that the then Chief Justice of India and some of his colleagues had decided about my alleged misconduct and that **we would** take steps deemed appropriate in the matter." Thus, after such decision the whole issue became closed matter and clearly what the Learned Judges meant that they would take appropriate action, which could only be initiation of impeachment proceedings.

4.3 It is unfortunate that at no point of time the Learned Judges of the Supreme Court, formally or informally, did even take note of the judgment of the Division Bench of the Calcutta High Court on the appeal filed by me, which set aside all the findings of the Single Judge. The Division Bench set aside and quashed the findings of the Single Judge and further directed that the observations/remarks made against me in my capacity as the erstwhile Receiver as recorded in the order dated 10 April, 2006 by the Learned Single Judge should be expunged and/or deleted.

4.4 It is important to note that the Learned Single Judge as well as the Division Bench of the Calcutta High Court were both concerned that my conduct, not in my capacity as Judge but only as Receiver appointed by the Court before I was appointed as a Judge. The decision of the Hon'ble Judges of the Supreme Court and the finding, even if primarily relying on the decision of the Single Judge without considering the judgment, of the Division Bench in the same proceeding, is a disturbing feature, which can shake the conscience of any right, believing citizen. In fact, in the article published in the 'Times of India', Kolkata on 26 February, 2009 under the heading **'Unpopular Free Speech'** Sri Avishek Singhvi, a distinguished Lawyer whilst citing my example, had

written "the simple point is that in the last several months of this debate, civil society, the media and the judiciary **has not even discussed the existence of a detailed judgment of the Division Bench of the Calcutta High Court which appears to have exonerated Justice Sen of any wrong doing in the very same transaction and with respect to the same allegations.** It was also stated in the said article **"No one has spoken up or asked the question as to how any proceedings against Sen by the Apex Court or any other institution can proceed without that detailed judicial order of the Division Bench being at least challenged judicially and reversed by the Apex Court. Is this happening, irrespective of merits, it is an unpopular view of articulate?"**

4.5 It is not known whether any body or person or authority including Judges of the Supreme Court who can ignore the judgment of a competent court of law which, not having been set aside judicially, is binding on the parties and all others and cannot be ignored by any authority whatsoever, which operated within the Constitution and legal framework of our country. It is inexplicable how a proceeding can be initiated on the basis of a Single Judge's judgment, which has been set aside by a competent Division Bench, which has become final and binding on all. In fact the Judges Inquiry Committee has clearly erred in holding that the judgment of the Division Bench operated qua parties and was not **"a judgment in rem".** Clearly the legal position is just the reverse.

4.6 The records of the proceedings and the consequences of events which followed leaves no room for any doubt of any ordinary person that the whole initiative for initiating the impeachment proceedings **has been taken by the then Chief Justice of India and some of his brother Judges,** who had gone into the matter without apparently giving any opportunity to me except on the question of punishment and communications addressed to me, which clearly indicates that he and some of the Learned Judges had taken a decision which was intended to be formalized by giving a personal hearing to me which was meant not to satisfy the Learned Judges of the Supreme Court, as was clearly indicated by the then Chief Justice of India in his letter dated 17 March, 2008. In fact the Learned Judges went into the merits of the matter and took the surprising step of directing the executive to start impeachment proceedings. Obviously any person would be under an illusion that in as much as the then Chief Justice of India and some of his colleagues had already found me guilty of the alleged misbehaviour committed before I became a judge, no further question could arise about my guilt of which an impeachment proceedings could only be found by the Enquiry Committee after due investigation. **It is**

hard to fathom any person who in India would question a decision taken at the topmost echelons of the judicial world.

4.7 The Constitutional framework of Article 124(4) provides that an action taken against a Judge **must come** and **can only come** from the members either of the Lok Sabha or Rajya Sabha and **certainly not** at the instance of the Executive or the Judiciary. The letter dated 17 March, 2009 of the then Chief Justice of India clearly shows that **the initiative** for **initiating impeachment proceedings against me** had been **taken** by no lesser than a person than by the then Hon'ble Chief Justice of India. It has appeared in the press (which has not been controverted) that he had initiated the move for my impeachment. The Learned Chief Justice had also written to the Hon'ble Prime Minister in the matter and thereby coaxing the Executive at its highest level to take a **follow up action** on his decision in the matter. The irresistible conclusion appears to be the then Hon'ble Chief Justice of India and few of his collegues had **already decided on my fate** and had **pronounced me** guilty of alleged misbehaviour for which it was a fit case for my removal and therefore, **wanted me to resign or take voluntary retirement.** In such circumstances constitution of the Judges Inquiry Committee is nothing **but a mere formality** when my death warrant had already been signed, especially in view of the fact that the Committee of Judges in all probability would not ever go against the decision which was specifically taken by the then Chief Justice of India and who himself had initiated the move of impeachment and who realizing that he lacks in constitutional authority to do so had goaded the Government as it were to initiate impeachment move. The impeachment move, therefore, is a consequence of my refusal to resign despite being called upon to do so which amounts to **"appropriate action"** having been taken against me by the then Chief Justice and his brother Judges. The chances of any Committee of Judges coming to a contrary finding to a decision taken by the Chief Justice of the Country is extremely remote.

4.8 It is under these circumstances that an important legal question emerges, *i.e.* despite the Learned Single Judge's judgment being set aside by the Division Bench of the Calcutta High Court and which order has attained finality and is to be respected even by the Hon'ble Supreme Court since no appeal has been preferred there from, could the same form the basis for taking action against me, specially when there is not even an iota of allegation against me of corruption or any judicial impropriety or misbehaviour or of my incapacity as a Judge. It is not understood as to on what grounds I could be impeached when the proceedings for impeachment can only be taken within the parameters of Article 124(4) of the Constitution of India which speaks only of misbehaviour and incapacity of Judge, which is not so in the present case.

5.0 FACTUAL ISSUES

A. CHARGES OF MISAPPROPRIATION

5.1 The facts narrated hereinabove would clearly support my following contentions.

(i) The Learned Single Judge embarked on a personal inquiry with regard to my bank Accounts, which is wholly without jurisdiction and without basis whatsoever. Such observations of the Learned Single Judge as recorded in the order dated 10 April, 2006, were, however, was set aside, quashed and expunged by the Hon'ble Division Bench of the Calcutta High Court 25 September, 2007.

(ii) The entire money was paid back along with interest as was directed by the Learned Court and at no point of time any money was ever used for my personal gains or were temporarily or permanently misappropriated.

(iii) I had never made any false statement before the High Court or in any other proceedings.

(iv) Primarily the Single Judge came to the conclusion of misappropriation of money held by me as a Receiver on the basis that after having deposited Rs. 25 lacs to Lynx from account No. O1SLP0813400 I deposited Rs. 22 lacs and odd from 400 account and thereafter systematically withdrew the same to an undisclosed place thereby reducing to a mere sum of Rs. 811.56. Unfortunately, my explanation that these withdrawals were towards payment of workers' dues pursuant to a Division Bench order dated 20 January, 1997 passed by Hon'ble Mr. Justice Umesh Chandra Banerjee and Hon'ble Mr. Justice Sidheshwar Narayan was totally ignored by the Single Judge and also the In-house Committee and apparently by this Committee too.

(v) For the first time evidence of such withdrawals have been produced which in spite of my best effort I could not produce earlier. Copies of the cheques disclosed in pages 521 to 581 in Vol. I and pages 1575 to 1607 in Vol. Ill, if produced before the Single Judge it would have reversed his finding on the said issue and would have cleared his doubt that these were not secret undisclosed, withdrawals by me for my personal benefit but genuine payments made to genuine workers.

(vi) Whatever the amount and whoever the workers were quantified and identified by the union were placed before me. I had issued the cheques and everybody has received his payment. Therefore, the finding of misappropriation by the Single Judge on this issue is clearly controverted by evidence on record disclosed for the first time in this proceeding. **I fail to understand how this Committee could call for these cheques whereas the learned Single Judge, in spite of being told that the withdrawals are not personal withdrawals but payment to workers, had deliberately not directed the Bank to produce the copies of the cheques whereas all other documents had been called for.**

(vii) Such vital piece of evidence were absent before the learned Single Judge and before the In-house Committee, which I am sure if shown would have at least come to a different conclusion with regard to the misappropriation based on the said withdrawals.

(viii) Though this Committee constituted under the Judges (Inquiry) Act is allegedly conducting an **'independent'** inquiry but the materials on record relied upon by this Committee appears to be almost all that were before the earlier proceedings except the ones that has been referred to hereinbefore. All throughout I submitted and have always **maintained** that I have never withdrawn a single penny from 400 account or from any other account for my personal benefit. **This is for the first time evidence has come forward to establish my contention that withdrawals in account no. 400 were not for my personal benefit in any manner whatsoever.**

(ix) The whole object and purpose of inquiry by the Single Judge was to see whether the amount of Rs. 33,22,800/- less 5% was kept by me in Lynx or not as was stated by me. My entire endeavour was also to prove the same. The purchase consideration which I received was Rs. 33,22,800/- less 5% and the question is at the time when court is directing repayment whether that amount was found to be intact or not.

(x) The problem that I have faced in dealing with the money and maintaining the account was primarily due to the uncertainty in the nature of the order dated 20 April, 1993. The said order did not give me any specific direction to open a Receiver's account. Neither the court gave any direction to keep the money in any specific interest bearing account but the choice was left to me.

(xi) Because of the nature of such an order the purchaser issued drafts in my personal name and capacity and not as a Receiver. Therefore, I had no option but to encash those in an account standing in my name. The learned Single Judge and the In-house Committee have held that I encashed around Rs. 4,50,000/- in Allahabad Bank and thereafter all encashment were done from an account maintained with the Standard Chartered Bank, Church Lane Branch bearing account No. O1SLP0632800.

(xii) The opening balance of the 800 account as on 28 February, 1995 shows only **Rs. 8,83,963.05.** Therefore by 28 February, 1995 and commencing from March, 1993, I should have received approximately Rs. 22,00,000/-. Therefore there is a shortfall and which gave rise to the presumption of misappropriation. The present Committee is seeking to split the same by withdrawals from Allahabad Bank and from Standard Chartered Bank separately. It is significant to know that the extract of ledger of the Allahabad Bank disclosed in page 1493 of the Volume 3 all the documents relied upon by this Committee have come to light for the first time.

(xiii) In fact Allahabad Bank has earlier written a letter that documents prior to 1995 are not available with them as the Bank has subsequently been computerised. In any event, I have all along stated that Rs. 33,22,800/- less 5% was kept with Lynx and my endeavour was to prove the same.

(xiv) From the statement of account of Standard Chartered Bank, disclosed in this proceeding relating to 800 account it will appear that the major withdrawals were only towards creation of fixed deposit commencing from March, 1995.

(xv) The reduction of the amount in 800 account is **clearly not due to personal withdrawals** as it is apparent that fixed deposits were created and were kept lying there until it was encashed and deposited in the 400 account.

(xvi) Prior thereto from the 400 account Rs. 25 lacs were deposited in Lynx on 26 February, 1997. From the number of fixed deposit receipts standing in my name produced by the Official Liquidator, it is clear that there was about Rs. 39,39,000/- deposited with Lynx. The figure of Rs.39,39,000/- was arrived at on the basis of analysis of the report filed by the Official Liquidator which contained several

incorrectness and/or lacunas. It is an admitted position as recorded by the Learned Single Judge which was accepted by the Division Bench as also by the In-House Committee and the present Committee that a sum of **Rs. 70,25,147/-** together with interest was found lying in the fixed deposit with Lynx since 1999. Under these circumstances by a simple arithmetical calculation it can be concluded without any doubt that at least Rs. 15,00,000/- was deposited in the year 1993. Therefore, the question of misappropriating any amount out of the purchase consideration by me cannot and does not arise. In spite of such fact being placed before the present Committee, the Committee has deliberately with a preconceived notion choose to ignore the same.

(xvii) It is significant to point out herein that during the course of cross-examination of the Official Liquidator by my Counsel before the Committee, it was clearly admitted by the Official Liquidator that no document in Lynx other than those produced were available before the Official Liquidator. It was also admitted that large number of documents of Lynx (now in Liquidation) has been seized by the police authorities and that the Official Liquidator does not have any seizure list of the documents seized by the police authorities.

(xviii) The only document showing deposit in Lynx produced by the Official Liquidator is the application form for deposit of Rs.25,00,000/- in the year 1997. Admittedly the amount found to be deposited with Lynx in 1999 together with interest was **Rs. 70,25,147/-.** Therefore, **the one and only presumption** is that the remaining amount after deducting the Rs. 25,00,000/- deposited in 1997 was deposited prior to 1997.

(xix) Furthermore since only part documents relating to the deposits were produced by the Official Liquidator, **the automatic presumption** is that if all the documents were produced it would clearly establish the fact that deposits were duly made in Lynx from 1993 onwards and that there was no question of any misappropriation of the said sums.

(xx) The Official Liquidator in cross-examination has also clearly admitted that no effort was made by the Official Liquidator, though in law the Official Liquidator is in custody of the company in liquidation, *i.e.*, Lynx India, for retrieving the documents from the police authorities.

(xxi) Therefore, the **Standard of proof** required for impeaching the High Court Judge has not been satisfied in the instant case and the Committee has clearly proceeded on the basis of adverse presumption without any material documents before it and/or in absence of all documents of Lynx pertaining to the relevant periods, *i.e*. 1993, 1994, 1995 and 1996.

(xxii) Therefore, **the findings of the Committee** with regard to the alleged misappropriation are clearly **perverse** and **a product of non-application of mind or extreme bias against me.**

(xxiii) There is no evidence whatsoever of any other deposit in Lynx after 1997. Therefore, the amount in addition Rs. 25.00,000/- to constitute a total sum of Rs. 33,22,800/- less 5% was deposited in Lynx earlier. Therefore, the withdrawal either from Allahabad Bank or from the 800 account does not constitute misappropriation nor does it contradict my stand that a sum of Rs. 33,22,800/- less 5% was in fact deposited with Lynx.

(xxiv) There are statements of account of 800 account disclosed in this proceeding which would clearly show-that apart from major withdrawals of Rs. 8,83,963.05 and Rs. 9,80,000.00 there are no major personal withdrawal. These two withdrawals are also not for personal gain as these withdrawals were made for the purpose of creating a fixed deposit with the same Bank

(xxv) The present Committee has completely ignored the fact that from the 400 account there were no personal withdrawals of any kind. Series of cheques which have now been produced would clearly establish my consistent stand that all withdrawals from 400 account were made towards labour payment as per direction of the order of the Division Bench 20 January 1997 passed by Hon'ble Mr. Justice Umesh Chandra Banerjee and Hon'ble Mr. Justice Sidheshwar Narayan.

(xxvi) Therefore finding of this Committee that the disbursement from the 400 account and reducing the amount to only Rs. 19,934.66 amounts to misappropriation is clearly contrary to records and erroneous.

(xxvii) It matters little as to whether the amount kept in Lynx came from 800 accounts or from the 400 account. I was to separate the total purchase consideration of Rs. 33,22,800/- less 5% and it is without

any dispute that such amount was found to be deposited with Lynx and was never reduced from the said total quantum at any given point of time.

(xxviii) Therefore, the question of misappropriating any amount, for my personal use and benefit cannot and does not arise. I reiterate with great deal of conviction that from all my accounts which have been disclosed it will not appear that any amount has been deposited in Lynx after 1997 and the only deposit made in Lynx to 1997 was of Rs. 25 lacs. But the aggregate sum of fixed deposit receipts produced by the Official Liquidator is **Rs. 70,25,147/-.**

(xxix) The only corollary and conclusion which can be drawn that the remaining amount of purchase consideration which is alleged to have been withdrawn and misappropriated by me was indeed deposited in Lynx for the purpose of creating of fixed deposit and there is no other contrary evidence on record to contradict my said statement.

(xxx) Since there was no transaction whatsoever in the accounts where drafts were encashed after 1997 and that, the amount of Rs. 33,22,800/- less 5% was indeed found to have deposited, in Lynx and continued to remain throughout until 2006, question of my misappropriation the same after appointment as a judge cannot and does not arise.

(xxxi) The amounts that were deposited in Lynx or the amounts held by me as a Receiver were pursuant to direction of court and holding the same under direction of court cannot amount to misappropriation.

(xxxii) In order to establish misappropriation, a transaction has to be shown which indicates withdrawal of money for personal use and benefit with a dishonest intention.

(xxxiii) After 1997 there was no transaction whatsoever. The charge with regard to misappropriation of property and which constitutes under Article 124[4] read with Article 217 of the Constitution of India is on the face of it is incorrect.

(xxxiv) The learned Single Judge as well as the In-house Committee has never alleged misappropriation, if any, after my elevation. It seems that this Committee is enlarging the scope of the motion itself. The

first motion admitted by the Chairman of the Rajya Sabha clearly states misappropriation as a Receiver. The Committee cannot enlarge the scope of the motion admitted by the Rajya Sabha and give a different complexion to it altogether.

(xxxv) The provision of the Judges (Inquiry) Act requires investigation on the basis of the motion admitted by the Parliament. I dare say with utmost respect and humility that the Committee is not authorised in law to come to their own independent finding by enlarging or digressing from the scope and ambit of the motion admitted in the Parliament. The first motion which was admitted by the Rajya Sabha which is quoted as under:

"Misappropriation of large sum of money which he received in his capacity as Receiver appointed by the High Court at Calcutta.".

(xxxvi) Therefore, the said charge that I have committed misappropriation of a property after my elevation as a judge and the same constitutes misbehaviour under Article 124(4) read with Article 217 of the Constitution of India is misconceived and erroneous.

(xxxvii) I was to keep Rs. 33,22,800/- less 5% being the sum representing the purchase consideration. Since the court did not direct me earlier to keep the money in any interest bearing account, the question of payment of interest would only arise at the time of repayment and would depend upon the adjudication by the court.

(xxxviii) Therefore question of mis-utilizing the principal or any interest, accrued thereon by me also cannot and does not arise.

(xxxix) It is significant to point out here that the plaintiff being aware of the said fact did not claim any interest in their petition and only the principal sum of Rs. 33,22,800/- less 5% was asked to be returned to them.

B. CHARGES OF MAKING FALSE STATEMENT

5.2 (i) With regard to the charge no. 2 *i.e*. making false , statement, I beg to state that from the facts, as revealed hereinbefore, it will appear that none of the evidence collected by the Single Judge was before me to enable me to give an appropriate explanation.

(ii) In fact, the Single Judge has proceeded to conduct an inquiry without any prayer to that effect or complaint against me in that

regard, which was not made known to me and it, would also appear from record that specific orders were suppressed from me.

(iii) Therefore, when the recalling application being G.A. No. 3763 of 2005 was filed on my behalf the statements contained therein were **all based upon my memory of the transactions, which took place over a decade ago.**

(iv) All that I remembered at that material point of time that the amount of Rs. 33,22,800/- less 5% representing the purchase consideration **was lying deposited with Lynx.** If the averments and the statements are read in their true perspective, it will only mean that my endeavour was to establish the said fact that a sum of Rs. 33,22,800/- less 5% representing the purchase consideration was lying deposited with Lynx and this fact has been proved beyond doubt from the fixed deposit receipts produced by the Official Liquidator.

(v) It is significant to point out here that **no written notes were filed before the Division Bench.** The notes which were filed before the Single Judge for explaining the accounts submitted by the Official Liquidator became a part of the trial court's records and pleadings which were before the Division Bench. The written notes which are being strongly relied upon by the Committee in order to establish making false statements were filed before the Single Judge primarily to show the erroneous calculation made by the Official Liquidator. **Furthermore, the written notes filed before the Court are always prepared by the lawyers in support of their submissions and cannot constitute a statement far less "false statements" by a party to the proceeding.** A counsel appearing on behalf of a party to the proceeding is entitled to make submissions and make his own interpretation on the basis of record and it is for the court to consider whether to accept or reject it. It is also significant that the parties never raised any objection to such "written notes on argument".

(vi) I say that it pains me a great deal when I see that a portion of the written notes is being relied upon in support of the charge of making false representation by me whereas other portion, where I have clearly stated that the statements made therein are purely based on memory in absence of record, is being **totally ignored.**

(vii) It is an established position in law that when a document is relied upon, it has to be relied upon in its totality and part and portion thereof cannot be used against anyone.

(viii) If a part or portion is accepted then the other part and portion of the same document will also be accepted and relied upon.

(ix) At the cost of repetition, I say that since the order dated 20 January, 1993 does not give any direction of keeping the money in any specific account and the order dated 20.01.1997 (Hon'ble Justice Umesh Chandra Banerjee) does not even direct me to open any account, it matters little from where the total purchase consideration of Rs. 33,22,800/- less 5% was deposited with Lynx.

(x) It is clear from the accounts that the withdrawals from the 400 account after deposit of Rs. 25 lacs with Lynx were towards labour payment in terms of the order of the Division Bench dated 20 January, 1997 and the other withdrawal from 800 account was for the purpose of creation of fixed deposit and thereafter encashment of the same and deposit to the 400 account.

(xi) If the continuity of the money trail is taken into account, my interpretation that the amount of Rs. 33,22,800/- less 5% representing the purchase consideration has been deposited in Lynx is **not incorrect and does not amount to making false representation.**

(xii) Moreover, interpretation of the documents as made on my behalf by my counsel has been accepted by the Division Bench and, therefore, it **requires no further elaboration.**

(xiii) It is incorrect to allege that my first deposit with Lynx India was made only December, 1996. As far as the documents that were available before the Single Judge the only document relating to deposit in Lynx was the application form indicating deposit to Lynx is of February, 1997 and the amount is Rs. 25,00,000/-.

(xiv) The said application form indicates the cheque number, which clearly tallies with the cheque number mentioned in the 800 account for the corresponding period and for the corresponding sum.

(xv) There is no evidence of deposit of the remaining Rs. 14,39,000/- which was already lying deposited with Lynx before 1997. In fact,

the only evidence of deposit of money in Lynx available is Rs. 25,00,000/- that too in the year 1997. Therefore, my contention that deposits were made in Lynx prior to 1997 cannot be contradicted and that the earlier withdrawals either from the Allahabad Bank or from the Standard Chartered Bank were towards creation of fixed deposit with the Lynx and Standard Chartered Bank cannot also be contradicted.

(xvi) If I had the passbooks (No passbook is given by Standard Chartered Bank) or cheque books or counter foils of 1993 onwards which unfortunately I did not preserve, I could have definitely proved my contention by direct evidence but under the facts and circumstances, I am trying to establish that fact by way of circumstantial evidence.

6.0 PARAWISE REPLY

6.1 It is stated that the Inquiry Committee was unduly influenced by the fact that I had chosen to remain silent and not appeared in person before the said Committee. However, through my Learned Advocates, I rendered all sorts of cooperation, which was also recorded by the Committee at the conclusion of its report. The Committee ought not to have laboured on as to whether I should have appeared in person or I should have opened my mouth so long as the Committee was assisted by my Learned Counsel. In fact, in the letter dated 4 March, 2010 issued by the Presiding Officer of the Inquiry Committee, I was requested to appear before the said Committee in person or by a Pleader duly instructed and able to answer all material questions relating to the enquiry on the date fixed for hearing. It does not appear from any portion of the said report that the Advocates who were instructed by me to appear on my behalf had failed to answer any material questions related to the inquiry. Even before discussion of the facts on merits the Committee came to a conclusion that the affidavit filed by my mother contained false representation to the effect that monies received by way of sale proceeds of goods had been invested to earn more interest in a company called Lynx India Ltd., which had gone into liquidation in the year 1999-2000 and attributed this reason for loss of money. It is not known on what basis this reasoning was proven in the present proceedings to be **untrue** and **false** which **'influenced'** the Division Bench of the Calcutta High Court in its judgment dated 25 September, 2007 to expunge the Single Judge's remarks against me. The Committee perhaps lost sight of the Learned Single Judge's order which itself recorded that monies were deposited in Lynx India and that fact could not be said to be false which could have otherwise influenced the judgment of the Calcutta High Court.

6.2 The Inquiry Committee harboured under the wrong impression that I ought to have appeared before it for being examined. I had no documents to prove. I had not relied on any documents. All documents were produced by the Bank and the Official Liquidator and the High Court and therefore, the onus of proving the same fully lay on them. Even otherwise the Committee despite being empowered under Section 5 under the Judge's (Inquiry) Act, 1968 did not choose to issue any summons to me to be examined. When I was represented by competent Advocates who had answered all relevant queries of the Committee, it is unlikely that my presence in the proceedings could have changed the decision of the Committee.

6.3 Rule 11 of the Judges (Inquiry) Rules, 1969 clearly stipulates that every Judge whose removal motion has been admitted shall have the right to represent and be defended by a legal person of his choice.

6.4 It seems that failure of the Committee to break my silence (though I was all along represented by my Lawyers) had clouded the judgment of the Committee which materially affected its findings and the conclusion of the Committee that my right of silence was **"untenable"** and **"fallacious"** is not warranted under Law, especially when under the Judges (Inquiry) Rules, 1969 I had a right to be defended by a Lawyer of my choice and moreover despite having power to summon me under Section 5 of the Judges (Inquiry) Act, 1968, the Committee did not choose to do so. It does not behove the Committee that my silence ought to have been adversely commented upon by the Committee or give rise to the presumption against me. It has been alleged that my Learned Advocates had failed to answer the questions of the Committee. The findings of the Committee with regard to the said monies and the banking transactions referred to in the report clearly suggest total non-application of mind on the part of the Committee. Times without number the Committee in its report has adverted to the fact that I had not chosen to personally attend any part of the proceedings of the Inquiry Committee which suggests that the single minded focus of the Committee was directed to ensure my personal presence only and in this process to attempt to humiliate me and cause further loss of my reputation and push my family to the brink of ruination.

6.5 The Committee has in its finding held "Neither in law nor in the facts and circumstances of this case does Justice Sen had the right to remain silent, as was claimed on his behalf. And the irresistible inference in the want of any explanation whatsoever about the whereabouts of the sum of Rs. 33,22,800/- (or any part thereof) is that Justice Soumitra Sen had no convenient explanation to give."

6.6 The aforesaid opinion is not warranted in view of the provisions of Section 3 of the Act and Rule 11 of the Rules and further the Committee has perhaps overlooked the elaborate explanation given by me in the written arguments and subsequently .written submission submitted by my Counsel and merely because I did not personally choose to appear the same **"ought not to have been the anvil"** on which any **"test"** with regard to my explanation should have been considered. The factual discrepancies and errors of the Inquiry Committee in this aspect has been explained by me in the preceding paragraphs which for the sake of brevity are not repeated here but are treated to be incorporated herein.

6.7 As stated hereinabove, the Committee had sought to investigate into my conduct as Receiver as also my alleged conduct after I was appointed as a Judge, namely, giving a false explanation to cover up my unauthorized withdrawals from the Receiver's two accounts, swearing an affidavit through my mother as constituted attorney as both of which I knew to be false and which I never believed to be true are matters which bring dishonour and disrepute to higher judiciary. It observed that **"they are such issues to shake the faith and confidence which public repose in the higher judiciary".**

6.8 I once again reiterate and emphasise that the Committee acted beyond its jurisdiction since any investigation into the my conduct prior to my elevation was beyond the ambit of the Judges (Inquiry) Act, 1968 and in absence of any inquiry being statutorily permitted in so far as my acts prior to my elevation as Judge are concerned, the question of testing the falsity or otherwise of any statement made in a Court of Law in absence of any such backdrop is equally wholly in excess and/or without jurisdiction.

6.9 The entire contentions of the Committee as contained in Part II of its report and the adverse comments made by it without any factual or legal basis clearly drives home the point that the Committee was probably determined to hold me **'somehow guilty'** of any acts of misconduct (even though in the facts of the present case) the same was legally improbable if not impossible so as to present this August House with an adverse finding containing totally a distorted version of the entire facts and ignoring the law governing the field, especially when it simply seeks to disregard the findings of the Division Bench of the Calcutta High Court which too went into all these allegations and found me **'not guilty'.** The question, therefore, which arises is whether the findings of the Division Bench of the Calcutta High Court by reason of not being appealed against and having reached finality was a sufficient testimony of my innocence or whether I would once again have to prove my innocence before the Committee which obviously

did not have the authority and/or jurisdiction to judge my aforesaid actions in the teeth of the order of the Division Bench.

6.10 The fact remains that initially a draft charge was forwarded to me by letter dated 5 February, 2010 and upon perusal of the such draft charge I had replied to the Committee that an inquiry or investigation could be made **only** in the event of framing of **definite** charges. Subsequently, it appears that without any further investigation on the basis of the draft charges the same was **'converted'** into a **'definite'** charge to launch the present investigation. The question, therefore, remains to be answered as to why in first place a draft charge was forwarded and the same without any further finding and/or investigation was translated into a **'definite charge'.** It is inconceivable that such a Judicial Committee comprising of legal luminaries would from the very inception of the proceedings conduct itself in such a lackadaisical manner so as to raise serious questions as regards its **'impartiality** and **'motives'.**

6.11 As stated hereinabove, the Committee in Part IV of its report had bifurcated my **'conduct'** into two separate periods, one before elevation as a Judge upto December, 2003 and the other after my elevation on and from 3rd December, 2003. Such investigation into the conduct of a Receiver prior to my elevation is not warranted under the provisions of Article 124(4) of the Constitution of India or under the Judges (Inquiry) Act, 1968. In causing such bifurcation the Committee practically for all purposes **admitted** and acknowledged that in order to **"prove to the hilt"** my alleged acts of misconduct, the same was not possible until my .actions as Receiver could at first be investigated into, but the same in the teeth of the Division Bench's order dated 25 September, 2008 was impermissible since no statutory body could supercede and/or question any judicial order passed by a competent High Court, and not even the Parliament in the absence of any legislation could obliterate the effect of the Division Bench's order. The scope of the purported investigation by the Committee was the same as was embarked by the Learned Single Judge and therefore **operated on the same field.** The findings and observations of the Learned Single Judge having been quashed by the Division Bench against which no appeal was preferred therefore, could not be the subject matter of any further inquiry either by the In-House Committee appointed by the then Chief Justice of India or by the present Judges (Inquiry) Committee constituted under the Judges (Inquiry) Act, 1968.

6.12 The Inquiry Committee at para I of part IV at Page 17 of its report has observed, *inter alia,* "It was further specifically ordered that the Receiver should file and submit for passing his half yearly accounts to the Registrar of the High Court. Such accounts to be made out at the end of months of June and December every year and filed for the months of January to June and July to

December respectively and that the same when filed be passed before the one of the Judges before the High Court....."

6.13 Such a finding is again not borne out by the evidence on record. In the course of hearing it was stated that only the signed copy of the order was supplied to me where no such direction was made and the copy of the minutes of the order and the signed copy of the minutes are totally different. This contradiction, however, despite being pointed out by the Learned Counsel appearing on my behalf was not taken into consideration by the Committee.

6.14 In so far as subparagraphs (g) to (q) of Para 1 of Part IV of the report is concerned, it is stated that the allegations that there was abundant evidence brought on records which established assertions in the written statement of defence that the entire sale consideration was invested in a fixed deposit with Lynx India is not true is a finding which is **'wholly perverse'** as would be evident from the statements made hereinbefore.

6.15 The finding that there was clear diversion of funds from the accounts of the Grindlay's Bank is equally perverse and exposes clear non-application of mind on the part of the Inquiry Committee. It is once again reiterated that no Receiver's account which was opened by me in so far as the Suit No. 8 of 1983 is concerned.

6.16 The Committee has laid emphasis on an handwritten letter dated 22 May, 1997 signed by me and addressed to the Manager, ANZ Grindlays Bank with a request to encash approximately Rs. 22,00,000/- and deposit the same in my other account as I needed this money urgently as lot of payments would be disbursed very soon. The Committee failed to appreciate that these payments as would be evident from the records were made, in respect of another matter (Calcutta Fan) in which directions were given to me by the Division Bench to pay off the workers dues.

6.17 It matters little that the order was passed in a different proceeding since in that proceeding being C.A. No. 226/1886 (Calcutta Fan Workers' Employees Union & Ors.-*vs.*-Official Liquidator & Ors.) I was directed to deposit a sum of Rs.70,00,000/- for the purpose of disbursing the same to the workers and till date there is no complain from any worker. The workers were identified by the. Secretary of the Union.

6.18 It is hard to digest the fact that the Inquiry Committee has thought it fit to record that no list of workers was produced by me to whom the cheques had been issued. Frankly speaking it is not known as to whether such an inquiry could be contemplated by the Inquiry Committed since it pertains to an entirely

different judicial proceeding. The Committee could not have expected me to produce the workers' list before it since such records were very old and not preserved by me. However, there was no allegation by the worker's union in the said proceedings about any non-payment of their dues by me even till date. This was not even argued by the Learned Lawyer of the prosecution/ Committee.

6.19 At page 26 at paragraph 2 of its Report the Inquiry Committee has observed, *inter alia*, "All that is stated above took place during the period when Soumitra Sen, Receiver was an Advocate." The assessment of the Inquiry Committee is that as Advocate — and as officer of the High Court of Calcutta — Soumitra Sen's conduct, his various acts and omission prior to 3 December, 2003 was wrongful and not expected as an Advocate; an officer of the High Court.

6.20 This investigation into my alleged conduct as **'Receiver'** is wholly unauthorized and also encroaches upon the jurisdiction of the High Court since the Division Bench of High Court has not found any misconduct on my part and, therefore, this observation amounts to **'contempt on the face'** of the order of the Division Bench dated 25 September, 2007. To put it mildly the Committee was acting as an Appellate Court over the Division Bench's order which clearly is unfathomable and if such finding is to be encouraged, it will be an **'unholy precedent'** by which judicial orders of the High Courts or even the Supreme Court can be made **'impotent'** at the whims and caprices of any administrative or statutory or any quasi judicial body with impunity. Clearly the Inquiry Committee had no business to go into my action, which had been given clean slate by the Division Bench of the Calcutta High Court.

6.21 In the same paragraph the Inquiry Committee further proceeds to hold as under :–

> "But his conduct—in relation to matters concerning monies received during his Receivership,—after he was appointed as a Judge was deplorable—in no way befitting a High Court Judge. It was an attempt also to cover up not his infractions of the orders of the Calcutta High Court, but also, by making false statement, it revealed an attempt also to cover up the large scale defalcations of funds"—details of which have been set out in the said paragraph.

6.22 The aforesaid comments further brutally exposes the fact that the Committee over stepped its jurisdiction in making such unwarranted and

insinuating comments against me, especially when the motion which has been admitted in the Hon'ble Rajya Sabha pertains only to my alleged acts of **'misappropriation'** as **'Receiver'** and **not as a Judge** of the Calcutta High Court. There is no authenticity in the allegation of my making any false statement to cover up such alleged defalcation. **Defalcation** implies a fraudulent conduct, which can be associated with dishonest intention. The Inquiry Committee whilst using such **forensic expressions,** however, has failed to arrive at any conclusion that there was any element of fraud involved or any dishonest intention, which is the **essence** of proving a charge of misappropriation/ defalcation. In absence of any such finding of fraudulent conduct the user of the word 'Defalcation' clearly suggests that the Committee was conducting the proceedings in a **preconceived manner** only for the purpose of making an adverse finding against me without any sustainable legal basis. More so, in view of the fact that it had no authority and/or jurisdiction to inquire into my alleged conduct or misconduct during my days as Receiver of the Calcutta High Court. The Committee as it appears, unilaterally took up the mantel of championing its fight against perceived misconducts and **left no stone unturned** to make an adverse finding against me even at the cost of overstepping its jurisdiction, distorting facts and/or disregarding vital evidence in my favour and in particular the Division Bench's order of the Calcutta High Court.

6.23 At subparagraph (a) at Page 27 of the report, the Committee has observed that I had not at any time been discharged of my duties as Receiver. **This is wholly incorrect.**

6.24 In the order dated 3 August, 2004 the Learned Single Judge of the Calcutta High Court had appointed another Receiver Mr. Soumen Bose instead and in place of me to sell 4311 M.T. of Periclass Spinnel Bricks. The subsequent order also dated 15 February, 2005 records that "The present Receiver shall complete the sale so far as the left out materials are concerned." Therefore, to observe that I was not discharged as Receiver at any point of time clearly shows the lack of application of mind of the Committee to the facts of the case Such factual discrepancies gives rise to a genuine apprehension that the Committee was **deliberately distorting facts** or ignoring the same with a perverted mindset and present a wholly distorted version to the ultimate seat of power that is the Parliament of this Country.

6.25 At subparagraph (b) at Page 27 of the report, the Committee has observed that after I had been elevated I did not seek any permission from the Court which appointed me as Receiver even ex-post or ratify or approve my dealings with

the sale proceeds under my Receivership nor did I file any application informing the Court as to what had happened with those funds. Clearly the Committee appears to have forgotten the relevant laws governing the field.

6.26 There is no requirement in law for a Receiver to seek discharge or for return of amounts. In the instant case, the facts are rather peculiar. The plaintiff filed the application for return of money sometime in the month of March, 2003, 9 months before my elevation which fact as I have already stated, was disclosed only in the month of November, 2003 when I inquired and requested the plaintiffs advocate for taking necessary steps for my discharge and for obtaining direction from the court to enable me to pay the amount. Copy of the application was however served only in May, 2005 after my elevation pursuant to directions of the Learned Single Judge.

6.27 It will appear from the reliefs prayed for in the application filed by the plaintiff that they had specifically sought for return of the amount held by me towards purchase consideration which is the principal sum and not with any interest accrued thereon, the prayers are set out as under:

(a) Leave be given to serve a copy of this application upon SBD Industries Supplier.

(b) SBD Industrial Supplier be directed to lift the balance quantity of 4.311 M.T. of Periclase Spinnel Bricks upon payment of the price within a fortnight from the date of the Order be made herein.

(c) Alternatively the Receiver be directed to sell the balance quantity 4.311 M.T. of Periclase Spinnel Bricks lying in the stores of the Bokaro Steel Plant of the petitioner by public auction or private treaty and to make over the net sale proceed to the petitioner towards protanto satisfaction of its dues against the defendants.

(d) The Receiver be directed to hand over all the sale proceeds so far received from the sale of the Periclase Spinnel Bricks to the petitioner towards and in protanto satisfaction of the petitioner's claim in the suit and be further directed to pay entire sale proceeds after disposal of the entire lot.

(e) The Receiver be directed to render true and faithful accounts of all moneys presently being held by him in terms of the order dated.

(f) Such further or other order or orders be passed and/or direction or directions be given as to this Hon'ble Court may seem fit and proper".

6.28 Because of delay in the judicial process, the relevant order was passed for the first time on 3 August, 2004 after some months of my elevation and at the first instance the court discharged me, but unfortunately no direction was given to return the money held by me towards purchase consideration. The said order was not served upon me at any point of time and I was able to obtain the same only when certified copies of all orders were subsequently obtained by me.

6.29 A Receiver cannot return money unless there is a specific direction to that effect. Furthermore, the order dated 20 January, 1993 clearly directs me to hold the same until further order from the court. Since the application filed by the plaintiff was pending in court with a specific prayer asking for return of money, there was no occasion for me to personally go to court and seek similar order. **I reasonably expected that the court would pass order on the application of the plaintiff and I would comply with the same.**

6.30 At subparagraph (c) at Page 27 of the report, it has been recorded by the Committee "it is the admitted position on record that no accounts whatsoever have been filed in the Calcutta High Court as directed by the order dated 30 April, 1984.

6.31 Prior to 10 April, 2006 in spite of several orders being passed by the court, no direction whatsoever was given to me to return any amount. As soon as a specific direction was given after adjudicating the interest that I was liable to pay, I paid the same within the time allowed by the court. The Single Judge did not raise any issue with regard to my personally not taking discharge. Accordingly this issue was never raised, argued or explained on my behalf either before the Single Judge or before the Division Bench.

6.32 As far as furnishing of accounts is concerned, when the court discharged me on 3 August, 2004 from further acting as a Receiver by appointing another person in my place and stead without giving any direction for filing of accounts, the court dispensed me from the requirement of filing of accounts. Moreover as a usual practice accounts are normally filed by Receiver where there are cases of management and administration of amounts held by Receiver meaning thereby that there are series of disbursement or series of deposits of unquantified amounts.

6.33 In this case total amount received by me is **not in dispute** and the amount, directed to be paid by the court was also **not disputed** by any of the parties to the proceeding. Therefore, furnishing of accounts was a mere formality, which was dispensed with by the court. The accounts are required to be filed by the

Receiver during his tenure as a Receiver but not after his discharge and when he is no longer acting as a Receiver.

6.34 Order 40, Rule 3 of the Code of Civil Procedure lays down the following duties of the Receiver:

(a) To furnish such security as the Court thinks fit.

(b) To submit accounts of such periods and in such forms as the court directs.

(c) Pay the amount due from him as the court directs.

(d) He is responsible for any loss occasioned by willful default or gross negligence.

6.35 Order 40, Rule 4 lays down that where a Receiver fails to submit accounts of such period and in such form as directed by the court or to pay the amount due from him as the court directs, or causes loss for his willful default or gross negligence, the court can direct attachment of his property and sell the same and apply the proceeds to make good any amount found to be due from him or any loss occasioned by him.

6.36 Whenever the Receiver is guilty of misfeasance or malfeasance, it is the duty of the court to call him to account and in a proper case it has the undoubted right to order the summary removal. [Woodroffe on Receiver, Chapter VI, page 261].

6.37 Chapter 21 of the Calcutta High Court (O.S) Rules supplement the provisions of Code of Civil Procedure regarding the Receiver. In the present case what was served on me is a signed copy dated 20 January, 1993, which did not contain any direction regarding furnishing security and periodical filing accounts. The certified copy, which is now on record refers to furnishing the security and filing the six-monthly accounts. There is no evidence to show that certified copy of the order dated 25 September, 2007 was ever served on me. Without prejudice to the above contention and in the alternative it is further submitted as follows.

6.38 Rule 4 of Chapter 21 of the Calcutta High Court (O.S) Rules requires a Receiver to furnish a security bond. I was appointed as Receiver by order dated 30 April, 1984 and I was never asked to furnish any security bond or security in any other form. If the court had thought that the action of the Receiver of not furnishing such security constitutes a default or misconduct, the court would

have taken appropriate proceedings within the reasonable time of appointment. This only means that there was no grievance or complaint as regards me not furnishing the security bond.

6.39 Rule 15 of the Calcutta High Court (O.S) Rules lays down that unless ordered otherwise, the order appointing a Receiver shall contain a direction that the Receiver shall file and submit for passing half-yearly accounts in the office of the Registrar and that such accounts are to be made at the end of months of June and December every year and are required to be filed in the months of July and January respectively. The Rule also further lays down that the Judge may direct the Receiver to file annual accounts which have then been made up to 31 December every year and be filed in the succeeding month of January.

6.40 Rule 24 of the Calcutta High Court (O.S) Rules lays down that if a Receiver neglects to file his accounts or to pass the same or to pay the balance or any part thereof as ordered, the matter shall be reported by the officer and the Registrar on the application of any of the parties interested, intimate to the Judge such neglect and the Judge may from time to time when the accounts of such Receiver are produced to be examined and passed, not only disallow the Receiver's remuneration but also charge with interest @ 6% per annum on the balance, if any, so neglected to be paid by him during the time the same shall appear to have remained in the hands of such Receiver.

6.41 Rule 25 lays down that where any Receiver fails to file any accounts or to pass such accounts or to make any payment or commits a default otherwise, the Receiver can be discharged by the court.

6.42 I was appointed as a Receiver in the year 1984 *i.e.* by order dated 30 April, 1984. Till 2003, neither the Hon'ble Calcutta High Court nor any of the parties required me to render any accounts. For the first time, on 27 February, 2003 an application was made by the plaintiff seeking directions for accounts and sale of the remaining goods and handing over sale proceeds. Despite the aforesaid statutory matrix, for about 19 years nobody sought accounts which is a clear indication that in Calcutta High Court a practice had developed of not giving periodical accounts to the Court. Had there been no such practice, the Court would have called upon me to render accounts much earlier and would have taken action against me of terminating my receivership or any other suitable action that the Court would have considered necessary in the facts of the case.

6.43 The witness Mr. Tapas Kumar Malik, Assistant Registrar of Calcutta High Court (Original Side) who was examined on behalf of the Committee, admitted that he has not worked in the Accounts Department and that Accounts

Department takes care of Receiver's accounts. There is no material on record to show that any notice was issued to me as a Receiver on account of alleged default of not filing six-monthly account for passing it. The Accounts Department has not produced any of its records showing that any notice was issued to me for not filing and passing six-monthly accounts. This again shows that nobody had any grievance or complaint about non-filing of accounts periodically.

6.44 It is also to be noted that no party to the proceedings has alleged that I as the Receiver had misappropriated any amount received by me in my capacity as a Receiver. It is also not in dispute that I had invested the money in Lynx India Limited, which went into liquidation. Nobody had objected to my handling the funds received by me as a Receiver.

6.45 The overall picture that emerges is this that the office of the Registrar of the Calcutta High Court (Original Side) or the Accounts Department or the parties concerned never asked for six-monthly accounts and never made any inquiries at the relevant time about the handling of funds by me. This means that the Calcutta High Court had accepted that I had not committed any default on account of my alleged failure to submit six-monthly accounts.

6.46 In subparagraph (d) at page 28 of the report, the Committee has come to a conclusion that I had avoided and evaded all attempts to obtain information from me and then when that was no longer possible, to make a positive misstatement to the Court and that too on swearing affidavit by **my mother** (since deceased) on my behalf as constituted attorney on the basis of which treating it as true a Division Bench of the Calcutta High Court passed the judgement dated 25 September, 2007 my in favour. **All these sordid** events were brought on record of the present proceedings, which have been set out in the subsequent paragraphs of the Report.

6.47 The Committee despite possessing the records of all orders passed by the Learned Single Judge prior to 10 April, 2006 only adverted to the said order dated 10 April, 2006 without considering the fact that as it would evident from the preceding paragraphs none of the earlier orders were caused to be served on me excepting the order dated 7 May, 2005 which shows that I had no occasion to know that the Learned Single Judge *suo moto* and unilaterally on his own embarked into a personal probe of my accounts which was not permitted and the same was without **jurisdiction.**

6.48 The observations of the Committee in subparagraph (d) (ii) of the report, that despite the order dated 7 March, 2005 and 3 May, 2005 passed by the Learned Single Judge I did not file any affidavit and I simply ignored it is equally

erroneous and factually incorrect. The said two orders were for the first time served upon me after 3 May, 2005 and which fact was recorded in the subsequent order dated 17 May, 2005 passed by the Learned Single Judge. Therefore, it is yet another instance of total lack of appreciation of factual matrix of the entire case by the said Committee. The Committee has also lost sight of the fact that the subsequent orders were specifically directed not to be served on me and therefore, I had no occasion to know about the course of such proceedings.

6.49 As stated earlier in this reply, the direction of the Learned Single Judge as contained in the order dated 30 June, 2005 to the effect that in view of my non-appearance and non-supply of information the Court had no option but to make an inquiry into what happened to the payments said to have been received by me on several dates in the shape of demand drafts is uncalled for inasmuch as the Learned Single Judge save to the extent of making a solitary direction for filing affidavits had never called upon me to deposit the sums which had been received by me. It is strange that without any such directions for repayment of sums being passed **how such adverse inference could be deduced by the Learned Single Judge unless those were actuated by other reasons.**

6.50 It is also strange that when an inquiry was sought to be made, the Learned Judge sought to **keep me in the dark** by directing the Registrar (Vigilance), Calcutta High Court to ensure that the copy of the said order dated 30 June, 2005 be not served on me. This fact has been duly ignored by the Committee in its report.

6.51 If one looks into the order dated 10 April, 2006 of the Single Judge, one will find that, the Single Judge has justified the **'enquiry'** made against me by holding that I did not come forward to give any explanation in spite of repeated opportunity. The expression repeated opportunity has a different connotation in the eye of law and even in common parlance it means more than once.

6.52 Moreover, when a court does not wish to grant any further time to a party to the proceeding, it should be clearly stated that time fixed was peremptory or that a last chance was being afforded.

6.53 I, accordingly, moved a recalling application giving my explanation after going through various documents called for by the Single Judge. He **"neither believed me nor disbelieved me" and disposed of the application by giving opportunity to file a fresh petition with proper materials.**

6.54 It is, therefore, obvious that the Learned Single Judge when faced with the materials on record could not come to a positive finding of guilt on my part or otherwise ray recalling application should have been rejected and dismissed and not disposed of with an opportunity to file a fresh petition with further materials. It is needless to mention here that the Division Bench after going through the same materials on record has accepted my explanation and the interpretation of the materials on record made by my Counsel.

6.55 The Single Judge gave direction to serve copies of petition and orders to the Department which were not necessary at all, knowing fully well that at the material point of time as a Judge, I was regularly attending court and was discharging my judicial function.

6.56 My Chamber in the High Court premises and my residential address is known to all. Even a common litigant, gets a better opportunity of presenting his case before a court of law than what was afforded to me before passing the judgment dated 10 April, 2006.

6.57 The concerned Single Judge heard the matter for the first time on 15 February, 2005 **when it was treated as 'part heard' without any prayer being made by any of the parties to the said proceeding and directed the entire matter to be kept in a sealed cover and no direction to serve a copy of the application was passed. Why this sudden interest** in the matter so far as to make it **'part heard'** on the very first day itself?

6.58 On 7 March, 2005 the Single Judge for the first time gave a direction to serve a copy of the application along with notice of motion to me **as the copy of the application was not served upon me earlier.** It is obvious that at that juncture I was not even asked to appear before the court but the Single Judge in his order dated 7 March, 2005 directed that the copy of the application be served upon the purchaser who had purchased the materials almost over a decade ago.

6.59 If I may say so with utmost respect and humility the Single Judge had by that time **already made up his mind as to what orders he will pass and all that was done in court like serving of copies of order, carrying out investigation etc. were all a means for the end.**

6.60 The order dated 7 March, 2005 contained direction upon me to file affidavit giving details of purchase consideration. **The said order also was not served upon me.** This will be apparent from the fact that by another order dated 3 May, 2005 Single Judge gave further direction for service to be made through

the advocate on record of the plaintiff as the earlier order dated 7 March, 2005 was not served upon me.

6.61 On 17 May, 2005, the Single Judge passed another order wherein direction was given to serve copy of the affidavit filed by the purchaser upon me **and if so advised** deal with the averments contained in the petition filed by the plaintiff and the affidavit filed by the purchaser. As there was no allegation by the plaintiff and I was not disputing the fact that I received money as stated by the purchaser as a Receiver towards sale consideration, **I was advised not to file any affidavit as nothing was required to be controverted.**

6.62 By an order dated 30 June, 2005, the Learned Single Judge gave detailed direction for conducting an investigation on the incorrect basis that in spite of **'repeated opportunity',** I have not come forward to give any explanation before the court.

6.63 It is significant to point out here that at that stage I did not even appoint an advocate to appear on my behalf because I did not even know as to what were the directions which had been passed by the Court from time to time.

6.64 Subsequent thereto various orders were passed which are dated 21 July, 2005, 26 July, 2005, 7 September, 2005, 7 October, 2005, 21 November, 2005 and 1 October, 2006. **None of these orders were served upon me.** Witnesses were brought under subpoena and questions were put by the learned Single Judge himself, as if it was a trial of a suit or trial on evidence being conducted by the Single Judge but unfortunately I was not even informed about the same nor any opportunity given to me to cross examine such witnesses.

6.65 I, therefore, wish to conclude this issue by saying that the finding against me by the Single Judge that in spite of repeated opportunity I did not come forward to give an explanation and therefore he had no other option but to conduct self-investigation in court is clearly perverse and contrary to the records. Sadly enough, the Inquiry Committee **also fell in the same error.**

6.66 In subparagraphs (d)(v) of the report, the Committee has also **'frowned'** upon the fact that I had made no grievance about the adverse comments made by the Learned Single Judge in the order dated 10th April, 2006 before making the entire payments again **'without protest'** and not even **'without prejudice'** and further without offering any explanation to show as to from what **'source of funds'** those large sums were paid and thus the order dated 10 April, 2006, was **'acted upon'.**

6.67 The finding of the Committee, as above, is rather strange. At no point of time I had disputed the quantum of the purchase consideration since the money was lying with me as a Receiver. It is not only my moral obligation as also my legal duty to return the same as per direction of the Court. My grievance was only with regard to the fact that the Learned Single Judge while directing return of the money also made adverse observations against me. Therefore, the question of payment money under protest cannot and does not arise.

6.68 The observation of the Committee that I should have paid the amount "without protest" or **"without prejudice"** gives rise to a corollary that the Committee is suggesting that I should not pay. Kindly appreciate my predicament. I am being held guilty for not paying even without any direction of Court and also been held guilty for paying back the money in terms of the directions of the Court. If this is not gross injustice and abuse of process of law, I do not know that could constitute miscarriage of justice. With utmost respect and humility I am constrained to say that the Hon'ble Members of the Committee are raising such issues in desperation only to cause as much prejudice as possible against me in the eye of public so that their decision to impeach me becomes successful, which process was set in motion by a person no less than the former Chief Justice of India for reasons best known to him.

6.69 It is submitted with humility that this observation of the Committee is also unwarranted and uncalled for and seeks to **'overreach'** the order of the Division of the Calcutta High Court dated 25 September, 2007 since the Division Bench had not only **'entertained'** the appeal but had also **'quashed'** and **'expunged'** such adverse remarks made against me. The observation of the Committee clearly suggests that the order of the Division Bench has been treated with utmost disdain and the Committee has acted extra **judicially** in this matter which is clearly beyond the scope of its power and authority. I had made the payments only after the same were quantified and **in order** to show my bona fide I had earlier paid Rs. 5 lacs. **Yes, I could have paid the moneys under "protest" and/or "without prejudice".** I did not do so only to **maintain the highest judicial decorum** and **dignity.** It would not behove me as a Sitting Judge of the Calcutta High Court to question the quantum of such amounts directed to be paid for the first time. I had no intention of challenging the quantum of such sums.

6.70 But to suggest that I by paying off the said sum had **'acted upon'** such order is to say the least **'preposterous'** and indicative of extreme bias against me. I by merely paying the said amount had certainly not accepted the adverse findings against me - as any righteous person would not have. My desire was that I should come to Court only after complying with the direction for making

payments so as to prove my bona fides. If such a direction had been passed earlier in the year 2005 itself, I would have immediately complied with the same. **How could the Learned Single Judge** contemplate the since I had not filed my affidavit, as such I was shy of disclosing facts or even making payments especially since in the first place there was no direction for making payments of the said sums.

6.71 In fact in such cases, usually directions are passed at the first instance on the Receivers to pay all sums, which are lying in his hand to the concerned party. Why was such **a direction not made in my case in the first place?** What was so special in my case that an **'inquiry'** had to be ordered behind my back even without a direction for making payments.

6.72 The Committee has harped on Ground No. XIII of memorandum of Appeal in A.P.O.T. No. 432 of 2007, which is under:

> *"XIII. FOR THAT the Learned Judge failed to appreciate that all the investments made by the erstwhile Receiver in the company were by way of cheques drawn on ANZ Grindlays Bank, Account No 01SLP0156800 maintained in the personal name of the erstwhile Receiver. This would be borne out from the documents disclosed, by the Official Liquidator as also from the documents exhibited by the Standard Chartered Bank. This has also been stated in the notes submitted on behalf of the petitioner."*

6.73 In this context it is stated that the case of a misstatement being made by me in my affidavits qua the said ground is totally erroneous and misplaced. I had no records of the bank statements prior to 1996 as it was not possible for me to retain the same for over 10-12 years. At the point of time when I was supplied with the document bearing Serial No. 9 being letter written to the Registrar, Vigilance-Protocol, High Court, Calcutta issued by the Manager of the Standard Chartered Bank, Church Lane Branch, the bank account being 01SLP0156800 in the name of 'Soumitra Sen' was shown to have been closed on 21 December, 1995. Another bank account being 01SLP0632800 also in the name of **'Soumitra Sen'** was shown to have been closed on 23 February, 2000.

6.74 In absence of any records it was not possible for me to exactly recall which of the two accounts were actually in my name. Subsequently, it transpired from the documents supplied by the Judges Inquiry Committee that the Account No. 01SLP156800 was in the name of another Soumitra Sen who resided at

Ballygaunge Place having a profession of Sales Promotion. This bona fide mistake on my part was quite natural in absence of records being retained by me and it is to be borne in mind that the appeal was filed very hurriedly and at that stage I had by reason of such adverse comments being made was in a state of mental agony and trauma and consequently could not properly apply my mind to the said appeal and had left it at discretion of my Counsel and consequently, therefore, there was a bona fide mistake in not citing correct account number. In fact the concerned Bank Manager had also apologized for making such a mistake. In any event of the matter being a Judge of the High Court I was quite conscious at least of the fact that even my constituted attorney, **my mother** who was representing me should not make any incorrect statement. The recording of the account number in Ground No. XIII is a bonafide mistake both on the part of my lawyers who did not have the time to cross check the same in absence of proper records and it is only after I received the additional documents from the Judges Inquiry Committee that this **'mistake'** was actually revealed. Therefore, I had no opportunity or occasion to rectify this error at an earlier stage.

6.75 It is preposterous to suggest or allege that such statement was false or false to my knowledge and belief and deliberately made. What benefit would I gain if I had deliberately made a false statement? The basis on which the Committee has come to a conclusion that I had made a false statement knowing fully well that the same was false was based on sheer surmises and conjectures especially having regard to the fact that I was handicapped by lack of relevant records and therefore, I could not recall the events which took place over the last 10 years and as such I could not correctly recall the exact figures and/or numbers of the bank account which I had operated over 10 years back.

6.76 In any event the Division Bench of the Calcutta High Court was not **'influence or induced'** by this ground alone in passing the judgment dated 25 September, 2007. The fact remains that the cheque was paid through Account No. 01SLP632800. It hardly, therefore, makes any difference as to whether the statements regarding the account was incorrect or not. The anxiety of the Division Bench was to ascertain as to whether investments were made by me or not. Before the Division Bench it is nobody's case that no investments were made by me.

6.77 Importantly the charge which has been levied against me as would appear from paragraph 54(a) of the statements and grounds in support of the charges states that "All investments made by you in Lynx India Ltd. were by cheques drawn No. 01SLP0156800 maintained in your personal name with ANZ Grindlays Bank." As stated herein above the said Bank Account was not in my name but

in the name of another gentleman with the same name. As such on the basis of the aforesaid charge **no investigation** could be made against me.

6.78 The contentions of paragraph V of the report of the Committee, is clearly contumacious and insinuating which has lowered the dignity, majesty and prestige of the Calcutta High Court and the same amounts to wrongful and unfair criticism of a judgment delivered by the Division Bench which has attained finality. In the teeth of the Division Bench's order it was not open to a statutory committee to make such disparaging remarks about the Division Bench's findings in order to **somehow prove** that I was guilty of misappropriation. Even in this paragraph the Committee has failed to come to any finding that there was any dishonest intention or dishonest conversion of the said funds by me.

6.79 With regard to the finding of the Committee as appearing in Para A of Part VI of the report, the Committee has probably lost sight of the fact that even the Parliament **except** by way of an appropriate legislation cannot question the correctness or otherwise of a judicial order passed by the High Court. If the contrary was to be true then even the orders of the Supreme Court of India would not be immune from such attacks. It is not understood that under the present Constitutional framework, the Committee could come to a finding that the Members of the Rajya Sabha had the **"overriding"** and/or **"empowering authority"** to move a resolution in respect of a subject matter over which the Calcutta High Court had exonerated me. If this is the correct view point then I am afraid that it will lead to a **Constitutional anarchy and/ or crisis.**

6.80 For example if charges of corruption are alleged against a Minister in office and which charges are also being investigated by either a High Court or Supreme Court, it is quite possible that the Minister may be forced to resign, due to political pressure. However, if he is subsequently exonerated by the court and cleared of all charges he may be once again appointed as such Minister. In such a case his exoneration by a Court will more often then not be cited as the ground for his reinstatement. Such examples are galore now a days. Therefore, it is axiomatic that different standards apply with regard to treatment of judicial orders in case of Politicians and that of **Judges.** This is sheer hypocrisy. Such an opportunity is not, however, available for a Judge either of the High Court or Supreme Court since once he is impeached, the chance of him being reinstated in office may be extremely difficult since that in a sense would mean that Supreme Court would have to exonerate him of the charges on which he has been impeached thereby leading to a constitutional flash point between the Judiciary and the Parliament. Therefore, to contend that the Committee had no

right to question the admission of motion by the Chairman of the Rajya Sabha or the same was beyond the consideration of the Inquiry Committee tantamounts to **abdication** of its functions and responsibilities since the Judges Inquiry Committee is **not powerless** to comment upon the legality or otherwise of the motions which have been admitted by the Rajya Sabha or the Lok Sabha, as the case may be.

6.81 The Committee in its eagerness to appease the powers-that may be, has held that the Parliament has "the exclusive right and privilege" through its Presiding Officer with respect to misconduct alleged against a Judge in respect of his duties as a Receiver or otherwise **even** when such alleged misconduct pertains to a period long prior to the elevation of a Judge and despite the said Judge being exonerated from charges of misappropriation or misconduct. This observation might be **music to the ears** of the Members of the Legislators, but the consequence of the same will have a catastrophic effect in the relationship between the Judiciary and the Legislature.

6.82 It is to be borne in mind that my case is unique in the sense that unlike in the case of Justice Ramaswamy which impeachment motion had being heard by the Joint Houses of the Parliament, no order of any court of law, High Court or Supreme Court, like the one passed by the Division Bench of the Calcutta High Court on 25 September, 2007 in my favour, had been passed exonerating him of the charges of financial irregularities which were alleged to have been committed by Justice Ramaswamy. Therefore, the Parliament in such proceedings had no occasion to go into the question whether any judicial order passed by the High Court or the Supreme Court governing the same field being the subject matter of any resolution by the Parliament could be ignored or nullified without any appropriate legislation.

6.83 In this context, the Committee at subparagraph (iv) of Part A of Part VI of the Report has held that investigation before the Inquiry Committee is not **'into the records'** of the High Court and that the judgment dated 25 September, 2007 is not a judgment in rem, but a judgment **'inter-parties'** and that this finding is binding only on the parties in Suit No. 8 of 1983 **but 'no more'** and **'certainly does not'** exonerate the Judge from being proceeded with in Parliament under proviso (b) of Article 217(1) read with Article 124(4). The finding is legally absurd for the reasons already stated above and thus not repeated here. "The finding by the Division Bench in its Judgment dated 25 September, 2007 that Justice Sen was not guilty of any misappropriation was made on a totally erroneous premise **induced** by false representation made on behalf of Soumitra Sen". Assuming though not admitting that such a judgment was obtained by **'inducement'** nevertheless it is not for the Judges

Inquiry Committee to comment on the same and hold that it was passed on **'inducement'.** Could any statutory body make such an inference? So long as judgement is not reversed or set aside by a Supreme Court it had a binding value. If judgments of the High Court are treated in such a manner by the Committee then tomorrow every other statutory bodies, tribunals, commissions or committees **would be similarly emboldened** to criticize and/or ignore a Supreme Court or High Court judgement. The Committee, as it appears, was motivated, actuated and instructed to pass an adverse finding whether such adverse findings withstood the scrutiny of law or not.

6.84 In fact, several contentions raised by me and the submissions made by my Learned Advocates have not been considered by the Committee. The Committee has solely sought to focus on the issue of alleged misappropriation overlooking the fact that it was totally impotent to investigate into such finding leave alone pass any judgment or recommendation when the order of the Division Bench of the Calcutta High Court was staring at its face. In fact, it appears from the report of the Committee that it was an exact replica of the Learned Single Judge's orders. Times without number it has relied upon the said Single Judge's order. It was **totally influenced** and **hypnotized** by such order even through the adverse comments and findings in such order was no longer in existence by dint of the same being quashed.

6.85 Article 215 of the Constitution of India clearly lays down that the High Court is a Court of Record. As a Court of Record, the High Court has some regal and sovereign powers of the State. A Receiver appointed by the Calcutta High Court is by a Court of Record. A Receiver appointed by the court is an officer of the court and he is not an agent or trustee of a party on whose instance his appointment has been made [*Halsburys Laws of England,* para 808, page 407].

6.86 On Law of Receivers Woodroffe at, Chapter V, page 240 states that a Receiver is an officer of the court. The Hon'ble Supreme Court and the various High Courts have clearly recognized that a Receiver is an officer of the court. Any action against the Receiver, therefore, has an impact on the powers and jurisdiction of the court, which appointed him. In case of any misconduct by the Receiver appointed by the Calcutta High Court, it is only the Calcutta High Court, which alone can deal with the Receiver. Any action either in civil court or in criminal court or in any other Forum against the Receiver has a direct impact and interference with the powers and jurisdiction of the Calcutta High Court. It is the Calcutta High Court alone, which can decide what action should be set in motion against him. This is a part of its powers and jurisdiction not only as a court appointing him but also as a constitutional court being a court

of record. The Receiver's actions and the orders of the court regarding the Receiver constitute an integral part of the record of the High Court. It is the exclusive prerogative of the Calcutta High Court to decide what action should be taken against him. **Any other authority however high it may be, cannot interfere with the aforesaid prerogative of the Calcutta High Court.**

6.87 It is not in dispute in the instant case that the Calcutta High Court has not granted leave and/or has not recommended any action against the Receiver. It is not in dispute that the Division Bench of the Calcutta High Court in Appeal No. APOT No.462/2007 (APO No.415/2007) by judgement dated 25 September, 2007 has clearly held that I in my capacity as Receiver had not committed any act of criminal breach of trust or any other offence or misconduct. This judgement of the Division Bench of the High Court becomes a part of the record of the High Court and any authority, save and except the Hon'ble Supreme Court in exercise of its appellate powers, which **tends to interfere** with such records by holding or by recording conclusions and findings **contrary** to the findings of the Division Bench of the Calcutta High Court, is interfering not only with the administration of justice but is interfering with the record of the Calcutta High Court. There is a clear **constitutional bar** for such interference. It is not in dispute that the judgement of the Division Bench of the Calcutta High Court has not been challenged in the Hon'ble Supreme Court.

6.88 It is further submitted that even Article 121 of the Constitution of India limits the powers of the Parliament as regards the proceedings before the High Court. Article 121 at the first blush does seem to suggest that the conduct of a High Court Judge can be discussed in Parliament for the purpose of presenting a motion to the President in respect of his impeachment and, therefore, the present proceedings against me are not hit by Article 121 of the Constitution of India but a deeper examination would indicate that what in substance before the Committee, is the conduct of a Receiver and his conduct has been a subject matter of the record of the court which includes the judgement of the Division Bench of the Calcutta High Court dated 25 September, 2007.

6.89 It is further submitted that any inquiry into the conduct of a Receiver by any authority other than the Calcutta High Court, which appointed him, is an inquiry into the record of the High Court. The Calcutta High Court, subject to the appellate jurisdiction of the Supreme Court, is the sole and the exclusive authority to prepare, maintain and preserve its records. The inquiry made by the Calcutta High Court as regards the conduct of the Receiver has resulted into Receiver being exonerated and any attempt by any other authority, save and except the Supreme Court in its appellate jurisdiction, cannot interfere with

such record and establish that the High Court's record on that score is not free from blemish and/or that it is erroneous.

6.90 The Calcutta High Court is a Court of Record on account of provisions of Article 215 of the Constitution of India. In the case of **Supreme Court Bar Association *v.* Union of India, (1998) 4 SCC 409,** the Supreme Court has dealt with the concept of Court of Record with reference to the provisions of Article 129 and 215 of the Constitution of India. While dealing with the same, the Apex Court has quoted with approval passages from different Law Lexicons relating to a Court of Record. The relevant paragraphs are paragraphs 9 to 14 and the said paragraphs are as follows:

> 9. To appreciate the submissions raised at the Bar, let us first notice Article 129 of the Constitution, it reads:
>
> "129. The Supreme Court to be a court of record.- The Supreme Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself."
>
> 10. The article on its plain language vests this Court with all the powers of a court of record including the power to punish for contempt of itself.
>
> 11. The expression court of record has not been defined in the Constitution of India. Article 129 however, declares the Supreme Court to be a court of record, while Article 215 declares a High Court also to be a court of record.
>
> 12. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish the contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.
>
> 13. According to **Jowitt's Dictionary of English Laws First Edn. (p. 526)** a court of record has been defined as:
>
> ***"A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority."***

14. Wharton's Law Lexicon explains a court of record as:

> "Record, courts of, those judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and super eminent authority that their truth is not to be called in question. Courts of record are of two classes - superior and inferior. Superior courts of record include the House of Lords, the Judicial Committee, the Court of appeal, the High Court, and a few others. The Mayor's Court of London, the County Courts, Coroner's Courts and others are inferior courts of record, of which the Country Courts are the most important. Every superior court of record has authority to fine and imprison for contempt of its authority; an inferior court of record can only commit for contempts committed in open court, in *facie curiae* (emphasis provided)."

6.91 In the case of **Delhi Judicial Service Association *v.* State of Gujarat (1991) 4 SCC 406,** the Apex Court again dealt with the concept of court of record. In paragraph 19 on pages 437 to 438, the Apex Court has dealt with this concept and has quoted with approval passages from various authorities. The said paragraph clearly indicates that the record of the court of record is conclusive evidence of that which is recorded therein. Part of the said paragraph reads as follows:

> "19. Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define "Court of Record". The expression is well recognized in juridical world. In Jowitt's Dictionary of English Law, "Court of Record" is defined as:
>
> > "A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial testimony, and which has power to fine and imprison for contempt of its authority."

6.92 The Division Bench of the Calcutta High Court has in crystal clear terms laid down that the allegation of misappropriation made against me is without

any substance. The record maintained by the High Court as regards my Receivership has culminated in the aforesaid judgment and order of the Division Bench. The said judgment is, therefore, **conclusive evidence** of what is stated therein *i.e.* I am not guilty of the charge of misappropriation.

6.93 The contentions of the findings of the Committee in Part A of Part VI of the report to the effect that my conduct amounting to alleged misbehaviour was not the subject matter of consideration of the Division Bench of the High Court of Calcutta is totally erroneous and contrary to the facts on record. The Division Bench of the Calcutta High Court at several pages as observed, *inter alia*, as follows :

> *"The Learned Single Judge on his own passed various orders from time to time in connection with the application filed on behalf of the plaintiff and also in the application subsequently filed on behalf of the erstwhile Receiver in order to examine the* **conduct** *of the said Receiver even in absence of any allegation by the parties herein.*
>
> *The parties to the suit, namely, the respondent Nos. 1 and 2 herein never made any allegation regarding misappropriation of amount retained by the erstwhile Receiver."*
>
> *At another place the Division Bench proceeded to hold as under:-*
>
> *"Observation of the Learned Single Judge regarding betrayal of the trust and confidence of this Court by the erstwhile Receiver is not based on proper materials on record since the said erstwhile Receiver in compliance with the directions of this Court not only deposited the entire sale proceeds retained by him pursuant to the earlier direction of this Hon'ble Court but also paid a Substantial amount as adjudged by the Learned Single Judge towards interest although the plaintiff never claimed any interest from the Receiver.....*
>
> *We also did not find any materials wherefrom it may be said that the erstwhile Receiver utilized any amount for personal gain.*

The Division Bench further held and observed as follows:

"We do not approve the findings of the Learned Single Judge regarding the **conduct** *of the erstwhile Receiver including the observations and/or remarks made against the said erstwhile Receiver as recorded in the order dated 10 April, 2006. In our opinion the Learned Single Judge had no scope and/or occasion to record the aforesaid unfortunate remarks in respect of erstwhile Receiver in the order dated 10th April, 2006.*

6.94 These findings of the Division Bench of the Calcutta High Court **proves beyond the shadow of any doubt** that my conduct and my alleged act of misappropriation were examined **both** by the Single Judge and the Division Bench of the Calcutta High Court and thus to contend that my conduct was not the **subject matter** of consideration before the Division Bench of the Calcutta High Court implies that the members of the Committee proceeded in a **preconceived** and **prejudged** manner and came to such a perverse finding.

6.95 With regard to Part B of Part VI of the said report, it is stated that the said Committee has clearly ignored the records of the case and erred in coming to a conclusion that I had not invested any sums in Lynx India or that the same is proven to be a false statement.

6.96 The Committee further had observed "That the Division Bench (on a misrepresentation by Justice Sen—obviously not known at the time the Division Bench to be a misrepresentation) concluded that there was in fact no misappropriation of any Receiver's fund by Soumitra Sen."

6.97 The aforesaid finding of the Inquiry Committee is clearly contrary to the finding of the Division Bench, which had not been persuaded by Ground No. XIII to the Memorandum of Appeal alone as was relied upon by the Committee in order to buttress its aforesaid incorrect finding. The Division Bench held "On the contrary, the records showed, the money has been deposited with a finance company by the erstwhile Receiver, but as the company was wound up the money could not be recovered. Further from the records produced by the Official Liquidator it has been established that the money was deposited by the said erstwhile Receiver.

6.98 Even in the order of the Learned Judge dated 31 July, 2008, the Learned Single Judge held "Now coming to the aspect of investment in Lynx, I find from

the document; annexed to the report of the Official Liquidator that on the following dates amounts **were invested** by the erstwhile Receiver:–

FDR No. 23053 dated 22.06.1999	Rs. 5,98,000/-
FDR No. 11349 dated 07.03.1997	Rs. 5,00,000/-
(Cheque No. 624079)	
FDR No. 17089 dated 27.02.1997	Rs. 5,00,000/-
FDR No. 11351 dated 27.02.1997	Rs. 5,00,000/-
(Premature receipt)	
FDR No. 17088 dated 27.02.1997	Rs. 5,00,000/-
FDR No. 11353 dated 07.03.1997	Rs. 5,00,000/-
FDR No. 22653 dated 28.02.1999	Rs. 4,46,000/-
FDR No. 22652 dated 28.02.1999	Rs. 5,98,000/-
FDR No. 22554 dated 24.03.1999	Rs. 3,93,000/-
FDR No. 22651 dated 28.02.1999	Rs. 5,98,000/-
FDR No. 11350 dated 07.03.1997	Rs. 5,00,000/-
FDR No. 11352 dated 27.02.1997	Rs. 5,00,000/-
FDR No. 11353 dated 07.03.1997	Rs. 5,00,000/-
FDR No. 20883 dated 03.12.1998	Rs. 58,000/-

Showing receipt of payment of interest as against few of the fixed deposits by the Receiver.

28.02.2000 22653	73,233.20
.28.02.2000 22652	98,191.60
28.02.2000 22654	64,530.60
28.02.2000 22651	98,191.60
	3,34,147.00

6.99 Therefore, even when the Learned Single Judge of the Calcutta High Court had himself recorded a finding that I had deposited sums on various dates in Lynx India how could the Committee come to a conclusion that I had **induced** the Division Bench or had made a misrepresentation before the Division Bench with **regard to the amount invested in Lynx India Ltd.** The Committee perhaps in its anxiety to prove me guilty had not even bothered to take these aforesaid facts into consideration, which, therefore, demonstrates a closed mind and bias on their part against me.

6.100 With regard to Part C of Part VI of the report, the aforesaid facts would clearly demonstrates that since the very inception of launching of an inquiry into my personal accounts as Receiver appointed by the Calcutta High Court in the said suit, the various orders passed from time to time by the Learned Single Judge, the illegal constitution of an In-House Committee by the then Chief Justice of India, without any complaint being made against me, the biased and distorted finding of the In-House Committee against me, the active role of the then Chief Justice of India in **forcing** the Executive to commence impeachment proceedings against me, the resolution adopted by the Upper House which the Members of this August House, the formation of the Judges (Inquiry) Committee consisting of a member who had prior to his such appointment had expressed his views in media in favour of my impeachment and despite the same being pointed out, being not removed from the Committee and ultimately the report of the Committee dated 10 September, 2010 which is a product of a complete distortion of facts and shows lack of rudimentary legal knowledge regarding the law governing the field clearly suggests that these proceedings have been continued for the purpose of **securing** my impeachment and thereby put a lid over the other more glaring and important acts of judicial misdeamoners affecting public interest which have surfaced for quite sometime in the past but for inexplicable reasons being brushed under the carpet.

6.101 The Committee has very conveniently refrained from addressing the larger issues raised by me through my Learned Counsel in course of the proceedings, may be, perhaps they knew that they had no answers to such core issues raised by me and therefore avoided a finding on the same and concentrating only on the charges of my alleged misbehaviour and my allegedly making false statements, both of which has not been proved even **prima facie** —leave alone **"to the hilt"** and thereby the report of the Committee does not appear to be worth the paper on which it was written on. The Committee has not made any convincing observations as to whether or not the Parliament or itself could ignore and nullify the order of the Division Bench of the Calcutta High Court in such a

manner as it has so done or whether the role of the then Chief Justice of India was befitting his high office. It has resorted to several instances of **conjectures** and **guess work** and has discovered imaginary acts of misappropriation solely because it was **mandated** to come to an adverse finding against me. Therefore, to expect an unbiased, fair and correct report from this Committee is an **utopia.**

7.0 CONCLUSION

To conclude, I would humbly appeal to the Hon'ble Chairman of the Upper House of India that a grave injustice has been caused to me and my family members and I have been reduced to a social pariah for no conscious or unconscious act of either misappropriation by me or committing any conscious or unconscious act of making any false statement deliberately on oath.

Chronology of events as narrated by me hereinabove would prove beyond doubt that the Learned Single Judge entered into a (mis) adventure on his own without having any authority and/or jurisdiction to do so to inquire into my personal accounts and making disparaging comments on my alleged misconduct even without directing me to make payments of the money lying with me at any time before the order dated 10 April 2006.

The order of the Division Bench of the Calcutta High Court which has been severely maligned and criticized both the In-House Committee and by the present Committee and disdainfully ignored by the then Chief Justice of India as also the then Chief Justices of the Calcutta High Court can only lead to the inevitable conclusion question that even judicial orders are not immune from political, executive and legislative interference and can be rendered nugatory by adverse media trial.

This trend if encouraged would rip apart the last Constitutional pillar of strength, which the people of India are clinging on to as it is their only saviour against the apathy and misdoings of the executives and administration. It will not only **compromise** with independence of the judiciary which is an **avowed basic structure of our Constitution,** but, will also shake the confidence of the Judges to pass judgements which may not find favour with certain powerful sections of administration and the executive for fear of reprisals. If a judgement of a Division Bench of the High Court is sought to be made **impotent** in such an unconstitutional manner for sake of political expediency the Indian Judiciary will not be able to rear its head any longer if the impeachment motion is sought to be laid before the Council of State or before the House of the People for consideration and the same will inevitably signify that the judiciary despite of its chest thumping would be ultimately subservient to the Legislature. Do the people of India deserve that?

In the land of Dreyfus, the Rule of Law was honoured and the judgement of the Court of Appeal exonerating Dreyfus was given the respect it deserved—namely it led to the reinstatement of Dreyfus. Would it be too much to expect from our Constitutional authorities and Hon'ble Members of both the Houses to uphold the Rule of Law and respect the sanctity of the Division Bench's order exonerating me and thereby drop this impeachment proceedings.

I leave it to Your Excellency for the rest.

Sd/-
(Soumitra Sen)

CONFIDENTIAL

K.G. Balakrishnan
Chief Justice of India

5, Krishna Menon Marg,
New Delhi-110011

September 10, 2007

Dear Justice Sen,

The Chief Justice of the Calcutta High Court has apprised me, in detail, about the developments which have taken place pursuant to the passing of the judgments/orders dated 10th April, 2006 and 31st July, 2007 in C.S. No. 8 of 1983 wherein adverse observations have been made against you. A copy each of the said two judgments/orders is enclosed for your ready reference.

Although your written response dated 23.11.2006 submitted to the then Chief Justice of Calcutta High Court is already on record and subsequently, on advice of your Chief Justice, you have orally explained your conduct when you visited my residence on 12th July, 2007, in the light of the recent order dated 31st July, 2007 you are requested to submit your fresh and final response to the aforesaid adverse judicial observations leading to complaint/s making allegations of judicial misconduct and impropriety.

In these circumstances, it is proposed to hold an enquiry - in terms of the In-House Procedure adopted by all the High Courts including the Calcutta High Court - into the allegations of misconduct and impropriety made against you.

Please note that if your response does not reach me within 15 days of the receipt of this letter, I shall have no hesitation to proceed ahead in the matter, assuming that you have nothing more to add to what is already on record.

Yours sincerely,

(K.G. Balakrishnan)

End: As above

Hon'ble Mr. Justice Soumitra Sen
Judge, Calcutta High Court
Kolkata -700 001

To

The Deputy Registrar (Administration)
Public Information Officer
Appellate Side
High Court
Calcutta

1. Name of the Applicants : Subhas Bhattacharyya, Advocate

2. Address : 7B, Kiran Sankar Roy Road, Kolkata-700001

3. Particulars of Information :

Whether the resolution taken by the Hon'ble Supreme Court of India dated 15 December, 1999, with regard to the formation of In-House Committee has been adopted by the Hon'ble High Court, Calcutta.

4. **Concerned Department:** : Hon'ble High Court, Calcutta

i) Particulars of information required

Details of the information required

Whether the resolution taken by the Hon'ble Supreme Court of India dated 15 December, 1999, with regard to the In-House Committee has been adopted by the Hon'ble High Court, Calcutta. If yes, kindly furnish the particulars of such resolution with date.

ii) Period of which information asked for : Since 1990

5. I the undersigned herein state that the information sought do not fall within the restrictions contained in Section 6 of the Act and to the best of my knowledge it pertains to your office.

6. A fee of Rs. 20/- has been deposited in the office of the Competent Authority by submitting a Non Judicial stamp of Rs. 20/- dated 10 January, 2010.

(Subhas Bhattacharyya)
Applicant

Place : Calcutta
Date : 25.03.2010

From: Deputy Registrar (Administration) & Public Information Officer High Court, Appellate Side, Calcutta

To,

Sri Subhas Bhattacharyya
Advocate
7B, Kiran Shankar Roy Road
Kolkata-700001

Kolkata, Dated the 26th April, 2010

Re: Your application dated 25.3.2010 under the Right to Information Act, 2005

Sir

With reference to your application dated 25.3.2010 I am directed to inform you that the matter of the resolution taken by the Hon'ble Apex Court dated 15.12.1999 with regard to the formation of "In-House Committee", is still pending before the Hon'ble Full Court for decision.

Yours faithfully,

Deputy-Registrar (Administration)
&
Public Information Officer
High Court, Appellate Side
Calcutta

I. THE RECEIVER IS ANSWERABLE TO THE COURT WHICH APPOINTS HIM AND TO NO ONE ELSE AND THEREFORE THE HON'BLE COMMITTEE CANNOT ENQUIRE INTO THE CONDUCT OF THE RECEIVER

1. A receiver is answerable only to the Court which appoints him and to no one else and, therefore, the Hon'ble Committee cannot enquire into the conduct of the Respondent in his capacity as the Receiver. In case the Receiver violates the directions of the Court and/or does not render accounts and/or otherwise commits a misconduct while discharging his duties as a Receiver, the Court appointing him can take any of the following actions:

i. terminate his Receivership;

ii. call upon him to render accounts;

iii. take action in contempt;

iv. sanction his prosecution in case he has committed any criminal offence while discharging his duties.

What action should be taken against a Receiver in a given case is a matter wholly and exclusively within the powers, authority and jurisdiction of the court which appoints him. If any other authority or court including a criminal court wants to proceed against a Receiver for any of his acts of omission or commission in discharge of his duties, must obtain the leave of the court which has appointed him. The aforesaid proposition derives support from the following:

2. A Receiver is only amenable for his acts and accountable to the Court which appoints him. His amenability to the court appointing him arises from his being an officer of the court. Out of this rule that the Receiver is amenable only to the court which appoints him, what emerges is that all persons desiring to enforce any claim against the Receiver must first obtain the leave of the court. A Receiver's duty is to obey the order of the court appointing him. If he does not he can be proceeded against in contempt proceedings. *[*See *Woodroffe on Receiver, Chapter V, page 240].*

3. The power to terminate the authority of the Receiver flows naturally and as a necessary consequence from the power to create and such power can be exercised by the court at any stage of the litigation. This power to remove is a necessary adjunct of the power of appointment and is to be exercised by the court when the Receiver is guilty of an abuse of his authority or is guilty of

misconduct in discharge of his duties and functions. *[*See *Woodroffe on Receiver, Chapter VI, page 256].*

4. The court's power of removal of a Receiver may in a proper case direct his removal and may enforce such conditions in connection therewith as the court may deem just and proper. The court's power is not limited in the matter of time for removal of the Receiver, but may act there upon whenever it deems fit and proper at any stage of litigation. [See *Woodroffe on Receiver, Chapter VI, page 257].*

II. NO ACTION AGAINST A RECEIVER WITHOUT THE LEAVE OF THE COURT

1. According to *Halsbury Laws of England, paragraph 891, page 452,* bringing an action against the Receiver without the leave of the court that appointed him, amounts to contempt of the court. In the present case admittedly no leave of the Calcutta High Court is obtained for enquiring into the conduct of the Respondent.

2. In the case of *W.R. Pink v. Calcutta Municipal Corporation, 7 CWN 706*, the question arose whether a Receiver could be prosecuted for violation of provisions of the Municipal Act. In that case the Receiver was appointed in respect of certain property in Calcutta. The Municipal Magistrate imposed fine on the Receiver on the ground that he failed to take steps to close certain service areas and to make certain structural alterations in the premises in respect of which he was appointed as the Receiver. The proceedings against the Receiver were taken without the leave of the court. The order of the Municipal Magistrate imposing fine on the Receiver was quashed by the Calcutta High Court and the court, *inter-alia*, held that a Receiver cannot be made a party to any suit or the proceedings without the leave of the court appointing him. In coming to that conclusion, the Calcutta High Court relied upon its own earlier judgment in the case of *Dunne v. Kumar Chandra Kishore, 7 CWN 390.*

3. A similar preposition has been laid down by the Hon'ble Supreme Court in the case of *Everest Coal Company (P) Ltd. v. State of Bihar and Ors. (1978) 1 SCC 12.* In paragraph 4 on page 14 and 15 of the judgement, the Hon'ble Supreme Court has held as follows:

> *"Instead of leaving the matter 'astrologically' vague and futuristically fluid, we shall state the legal position and settle the proposition governing this and similar situations. When a Court puts a receiver in possession of property, the property*

> *comes under court custody, the receiver being merely an officer or agent of the Court. Any obstruction or interference with the court's possession sounds in contempt of that court. Any legal action in respect of that property is in a sense such an interference and invites the contempt penalty of likely invalidation of the suit or other proceedings. But, if either before starting the action or during its continuance, the party takes the leave of the court, the sin is absolved and the proceeding may continue to a conclusion on the merits."*

4. In the case reported as *Kanhaiyalal v. Dr. D.R. Banaji & Ors. (1958) SCR page 333*, a Receiver was appointed in respect of certain property. The property in question was sold by Revenue officials on account of non-payment of the land revenue. Before selling the property, no notice was given to the Receiver. The leave of the court was also not taken prior to the sale. After the sale was confirmed by the Revenue officials, the Receiver applied for a review of the order to the concerned Revenue Officer who declined to set aside the same. The Receiver, therefore, filed a suit and challenged the sale. The auction-purchaser contended that the grounds for setting aside the same are specified in Section 157 of the Land Revenue Code and these grounds are either irregularity or mistake in publishing proclamation sale or conducting the sale, and the suits based on other grounds are not within the prohibition. This argument was negatived by the Hon'ble Supreme Court. The Hon'ble Supreme Court held at pages 339 & 340 as follows:

> *"The general rule that property in custodial legis through its duly appointed Receiver is exempt from judicial process except to the extent that the leave of that court has been obtained, is based on a very sound reason of public policy, namely, that there should be no conflict of jurisdiction between different courts. If a court has exercised its power to appoint a Receiver of a certain property, it has done so with a view to preserving the property for the benefit of the rightful owner as judicially determined. If other courts or Tribunals of co-ordinate or exclusive jurisdiction were to permit proceedings to go on independently of the court which has placed the custody of the property in the hands of the Receiver, there was a likelihood of confusion in the administration of justice and a possible conflict of jurisdiction. The courts represent the majesty of law, and naturally, therefore, would not do anything to weaken the rule of law, or to permit any proceedings which may have the effect of putting any party in jeopardy for*

> *contempt of court for taking recourse to unauthorized legal proceedings. It is on that very sound principle that the rule is based. Of course, if any court which is holding the property in custodial legis through a Receiver or otherwise, is moved to grant permission for taking legal proceedings in respect of that property, the court ordinarily would grant such permission if considerations of justice require it."*

With special reference to the provisions of the ground of challenging the revenue sale, the Hon'ble Court on page 345 and 346 held as follows:

> *"Thus, if the leave of the Bombay High Court had been taken to initiate proceedings under the Code, for the realization of Government revenue, or if the Receiver had been served with the notice of demand, it would have been his bounden duty to pay up the arrears of land revenue and to continue paying Government demands in respect, of the property in his charge, in order to conserve it for the benefit of the parties which were before the court in the mortgage suit. If such a step had been taken, and if the Receiver, in spite of notice, had allowed the auction-sale to be held for non-payment of Government demands, the sale would have been valid and subject only to such proceedings as are contemplated under ss. 155 and 156 of the Code. In that case, there would have been no conflict of jurisdiction and, therefore, no question of infringing the sound principle discussed above. But, the absence of the leave of the court and of the necessary notice to the Receiver, makes all the difference between a valid and an illegal sale."*

5. In the case reported as *Santok Chand & Anr. v. Sugan Chand Manawat & Anr., AIR 1919 (Cal.) 647* the question arose before the Calcutta High Court whether a Receiver can be prosecuted for alleged criminal breach of trust without the leave of the court. The party to the suit in which the Receiver was appointed complained of Receiver having committed criminal breach of trust and filed a complaint before the Magistrate without obtaining the leave of the court by which the Receiver was appointed. The Division Bench of the Calcutta High Court held as follows on page 649:

> *"It must be borne in mind, (and this is point which the learned Magistrate seems to have overlooked) that the jute in question was entrusted to Santok Chand not by the defendants but by the Court in whose possession and custody it undoubtedly*

came. The defendants had only an indirect interest in the property contingent upon the fulfilment of certain conditions. It was not open, therefore, to Sugan Chand to commence proceedings against Santok Chand for criminal breach of trust without first obtaining the leave of the court which held the property. The principle which guided the court of Chancery in England in dealing with cases where an officer of the court was charged with misconduct in executing its orders was clearly laid down by Lord Brougham in Aston v. *Heron (1). He said (at p. 395):*

> *"The two descriptions of cases to which I have adverted these where the jurisdiction of the Court is disputed directly by resistance or indirectly by obstruction and those where complaint is only made of the irregular or oppressive, and, therefore, illegal execution of its unquestioned decrees do neither of them accurately embrace the facts of the present case although they furnish a principle which exhausts the whole subject, and which, therefore, rules the present case as well as all others. That principle is that in the first class of cases those where the jurisdiction is disputed the court has no choice but must at all events and at once draw the whole matter over to its own cognizance; but that in the other class where admitting the court's authority redress is only sought for irregularity or excess in performance of its orders and generally speaking wherever the jurisdiction is not denied or resisted the court has an indisputable right to assume the exclusive jurisdiction, but may if it think fit on the circumstances being specially brought before it permit other courts to proceed for punishment or redress."*

"*The High Courts in this country may we think adopt that principle for their guidance applying it to the present case (which falls within the 2nd class of cases alluded to by the Lord Chancellor) if the defendants had any cause of complaint as to the delivery of the jute by the plaintiffs under the order of this court it was clearly their duty to bring the matter to the notice of this court, and let it decide what course should be followed. It was a right of this court to be so informed in order that it might exercise the discretion which it undoubtedly possessed of dealing with the matter itself or sending it for*

> *disposal to the Magistrate's Court. If the matter had been investigated by this court it could have determined after hearing both parties whether any irregularity had been or was being committed by its officer the receiver and if that were the case whether an award of pecuniary compensation would suffice or whether the receiver should be prosecuted criminally. All this was prevented by the defendant Sugan Chand rushing to the police court."*

6. In 1962 KLT 25, *Vasudevan Namboodiri* v. *Gopala Pillai*, the Kerala High Court considered a very moot question of law. In that case a Receiver was appointed in respect of certain properties and after taking accounts, it was found that the Receiver was liable to pay certain amounts. Accordingly, the court passed an order directing the Receiver to pay the amount. Receiver did not pay the amount and, therefore, the person entitled to the amount took out an application u/s 51 of the CPC for arrest and detention of the Receiver. The Kerala High Court held that the only mode of enforcing the obligation of the Receiver is the one contained in Order 40, Rule 4 which, *inter alia*, refers to attachment of his property and sale of the same or from the security furnished by him and, therefore, he cannot be detained in a civil prison u/s 51 of the CPC.

III. HIGH COURT IS COURT OF RECORD

1. Article 215 of the Constitution of India clearly lays down that the High Court is a court of record. As a court of record, the High Court has some legal and sovereign powers of the State. A Receiver appointed by the Calcutta High Court is appointed by a court of record. A Receiver appointed by the court is an officer of the court and he is not agent or trustee of a party on whose instance his appointment has been made. *[*See *Halsbury Laws of England, para 808, page 407].*

2. *Woodroffe also, Chapter V, page 240* states that a Receiver is an officer of the court. The Hon'ble Supreme Court and the various High Courts have clearly recognized that a Receiver is an officer of the court. Any action against the Receiver, therefore, has an impact on the powers and jurisdiction of the court which appointed him. In case of any misconduct by the Receiver appointed by the Calcutta High Court, it is only the Calcutta High Court which alone can deal with the Receiver. Any action either in civil court or in criminal court or in any other Forum against the Receiver has a direct impact and interference with the powers and jurisdiction of the Calcutta High Court. It is the Calcutta High Court alone which can decide what action should be set in motion against him. This is a part of its powers and jurisdiction not only as a

court appointing him but also as a constitutional court being a court of record. The Receiver's actions and the orders of the court regarding the Receiver constitute an integral part of the record of the High Court. It is the exclusive prerogative of the Calcutta High Court to decide what action should be taken against him. Any other authority, however, high it may be, cannot interfere with the aforesaid prerogative of the Calcutta High Court. It is not in dispute in the instant case that the Calcutta High Court has not granted leave and/or has not recommended any action against the Receiver. It is not in dispute that the Division Bench of the Calcutta High Court in Appeal No. APOT No.462/2007 (APO No.415/2007) by judgment dated 25 September, 2007 has clearly held that the respondent in his capacity as Receiver has not committed any act of criminal breach of trust or any other offence or misconduct. This judgment of the Division Bench of the High Court becomes a part of the record of the High Court and any authority, save and except the Hon'ble Supreme Court in exercise of its appellate powers, which tends to interfere with such records by holding or by recording conclusions and findings contrary to the findings of the Division Bench of the Calcutta High Court, is interfering not only with the administration of justice but is interfering with the record of the Calcutta High Court. There is a clear constitutional bar for such interference. It is not in dispute that the judgement of the Division Bench of the Calcutta High Court has not been challenged in the Hon'ble Supreme Court.

3. It is further submitted that even Article 121 of the Constitution of India limits the powers of the Parliament as regards the proceedings before the High Court. Article 121 at the first blush does seem to suggest that the conduct of a High Court Judge can be discussed in Parliament for the purpose of presenting a motion to the President in respect of his impeachment and, therefore, the present proceedings against the respondent are not hit by Article 121 of the Constitution of India but a deeper examination would indicate that what in substance before the Committee, is the conduct of a Receiver and his conduct has been a subject matter of the record of the court which includes the judgement of the Division Bench of the Calcutta High Court dated 25 September, 2007.

4. It is further submitted that any inquiry into the conduct of a Receiver by any authority other than the Calcutta High Court which appointed him, is an inquiry into the record of the High Court. The Calcutta High Court, subject to the appellate jurisdiction of the Supreme Court, is the sole and the exclusive authority to prepare, maintain and preserve its records. The inquiry made by the Calcutta High Court as regards the conduct of the Receiver has resulted into Receiver being exonerated and any attempt by any other authority, save and except the Supreme Court in its appellate jurisdiction, cannot interfere with such record and establish that the High Court's record on that score is not free from blemish and/or that it is erroneous.

5. The Calcutta High Court is a Court of Record on account of provisions of Article 215 of the Constitution of India. In the case of *Supreme Court Bar Association* v. *Union of India, (1998) 4 SCC 409*, the Supreme Court has dealt with the concept of Court of Record with reference to the provisions of Article 129 and 215 of the Constitution of India. While dealing with the same, the Apex Court has quoted with approval passages from different Law Lexicons relating to a Court of Record. The relevant paragraphs are paragraphs 9 to 15 and the said paragraphs are as follows:

> *"9. To appreciate the submissions raised at the Bar, let us first notice Article 129 of the Constitution, it reads:*
>
> *"129. The Supreme Court to be a court of record. The Supreme Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself."*
>
> *10. The article on its plain language vests this Court with all the powers of a court of record including the power to punish for contempt of itself.*
>
> *11. The expression court of record has not been defined in the Constitution of India. Article 129 however, declares the Supreme Court to be a court of record, while Article 215 declares a High Court also to be a court of record.*
>
> *12. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish the contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.*
>
> *13. According to* Jowitt's Dictionary of English Law, First Edn. (p. 526) *a court of record has been defined as:*
>
> *"A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority."*
>
> *14. Wharton's Law Lexicon explains a court of record as:*

"Record, courts of, those judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority that their truth is not to be called in question. Courts of record are of two classes - superior and inferior. Superior courts of record include the House of Lords, the Judicial Committee, the Court of appeal, the High Court, and a few others. The Mayor's Court of London, the County Courts, Coroner's Courts and other are inferior courts of record, of which the Country Courts are the most important. Every superior court of record has authority to fine and imprison for contempt of its authority; an inferior court of record can only commit for contempts committed in open court, in facie curiae." (emphasis provided)

15. Nigel Lowe and Brenda Sufrin in their treatise on the Law of Contempt (Third Edn.) (Butterworths 1996), while dealing with the jurisdiction and powers of a court of record in respect of criminal contempt say:

"The contempt jurisdiction of courts of record forms part of their inherent jurisdiction.

The power that courts of record enjoy to punish contempts is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being:

"The authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner."

Such a power is not derived from statute nor truly from the common law but instead flows from the very concept of a court of law.

* * * * *

All courts of record have an inherent jurisdiction to punish contempts committed in their face but the inherent power to punish contempts committed outside the court resides exclusively in superior courts of record.

* * * * *

> *"Superior courts of record have an inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior courts."*

6. In the case of *Delhi Judicial Service Association* v. *State of Gujarat (1991) 4 SCC 406,* the Apex Court again dealt with the concept of court of record. In paragraph 19 on pages 437 to 438, the Apex Court has dealt with this concept and has quoted with approval passages from various authorities. The said paragraph clearly indicates that the record of the court of record is conclusive evidence of that which is recorded therein. The said paragraph reads as follows:

> *"19. Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define "Court of Record". The expression is well recognized in juridical world. In* Jowitt's Dictionary of English Law, *"Court of Record" is defined as:*
>
> > *"A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial testimony, and which has power to fine and imprison for contempt of its authority."*
> >
> > *In* Wharton's Law Lexicon*, Court of Record is defined as:*
> >
> > *"Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts - and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded."*

In Words and Phrases (Permanent Edition, Vol. 10, page 429) "Court of Record" is defined as under:

> *"Court of record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the "record" of the court, and are of such high and super eminent authority that their truth is not to be questioned."*

Halsbury's Laws of England, 4th Edn., Vol. 10, para 709, page 319, states:

> *"Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be courts of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record - The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein."*

7. The Division Bench of the Calcutta High Court has in crystal clear terms laid down that the allegation of misappropriation made against the respondent is without any substance. The record maintained by the High Court as regards the Receivership of the respondent has culminated in the aforesaid judgment and order of the Division Bench. The said judgment is, therefore, conclusive evidence of what is stated therein *i.e.* respondent herein is not-guilty of the charge of misappropriation.

8. As stated herein above, the Division Bench of the High Court has clearly held that the respondent is not guilty of misappropriation. If any action is to be taken against the respondent, then not only the leave of the High Court is to be obtained but the record of the High Court holding that the respondent is not guilty of misappropriation will have to be corrected. Such correction can only be made by the High Court either in *Sui Juris* proceedings or on the application of any aggrieved party. This power of the High Court as court of record is unfettered. In the case of *M.M. Thomas* v*. State of Kerala (2000) 1 SCC 666*, in paragraphs 14 to 17, the Apex Court has dealt with this power of the High Court, as follows:

> *"14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is*

undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar Vs. State of Maharashtra a nine-Judge Bench of this Court has recognized the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record.

15. In Halsbury's Laws of England *(4th Edn., Vol. 10, para 713) it is stated thus:*

"The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of actions, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular action."

(Though the above reference is to English courts the principle would squarely apply to the superior courts in India also.)

16. Referring to the said passage and relying on the decision of this Court in Naresh Shridhar Mirajkar a two-Judge Bench of this Court in M.V. Elisabeth v. *Harwan Investment & Trading (P) Ltd. has observed thus: (AIR Headnote)-*

"The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction..."

> *17. If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the fact of the record."*

9. The importance of High Court being a court of record is recognized by Constitution Bench of the Hon'ble Supreme Court in the case of Naresh S. Mirajkar v. State of Maharashtra, 1966 (3) SCR 744 on page 771 of the report, it is held as follows:

> *"There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Art. 215, shall have all powers of such a Court of Record including the power to punish contempt of itself. One distinguishing characteristic of such superior courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. 1 of 1964 (1965) 1 SCR 413 at p. 499. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and, as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsbury's Laws of England where it is observed that "prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court". If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by*

a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."

IV. ACCOUNTS

1. Order 40, Rule 3 lays down the following duties of the Receiver:

   a. *To furnish such security as the Court thinks fit.*

   b. *To submit accounts of such periods and in such forms as the Court directs.*

   c. *Pay the amount due from him as the Court directs.*

   d. *He is responsible for any loss occasioned by willful default or gross negligence.*

2. Order 40, Rule 4 lays down that where a Receiver fails to submit accounts of such period and in such form as directed by the Court or to pay the amount due from him as the Court directs, or causes loss for his willful default or gross negligence, the Court can direct attachment of his property and sell the same and apply the proceeds to make good any amount found to be due from him or any loss occasioned by him.

3. Whenever the Receiver is guilty of misfeasance or malfeasance, it is the duty of the Court to call him to account and in a proper case it has the undoubted right to order the summary removal. [See *Woodroffe on Receiver, Chapter VI, page 261*].

4. Chapter 21 of the Calcutta High Court (O.S.) Rules supplement the provisions of Code of Civil Procedure regarding the Receiver. In the present case what was served on the Respondent is a signed copy dated 20 January, 1993 which did not contain any direction regarding furnishing security and periodical filing accounts. The certified copy which is now on record refers to furnishing the security and filing the six-monthly accounts. There is no evidence to show that certified copy of the order dated 25 September, 2007 was ever served on the respondent. Without prejudice to the above contention and in the alternative it is further submitted as follows.

5. Rule 4 of Chapter 21 of the Calcutta High Court (O.S.) Rules requires a Receiver to furnish a security bond. The respondent was appointed as Receiver by order dated 30 April, 1984 and he was never asked to furnish any security

bond or security in any other form. If the Court had thought that the action of the Receiver of not furnishing such security constitutes a default or misconduct, the court would have taken appropriate proceedings within the reasonable time of his appointment. This only means that there was no grievance or complaint as regards respondent not furnishing the security bond.

6. Rule 15 of the Calcutta High Court (O.S.) Rules lays down that unless ordered otherwise, the order appointing a Receiver shall contain a direction that the Receiver shall file and submit for passing half-yearly accounts in the office of the Registrar and that such accounts are to be made at the end of months of June and December every year and are required to be filed in the months of July and January respectively. The Rule also further lays down that the Judge may direct the Receiver to file annual accounts which have then been made up to 31 December every year and be filed in the succeeding month of January.

7. Rule 24 of the Calcutta High Court (O.S.) Rules lays down that if a Receiver neglects to file his accounts or to pass the same or to pay the balance or any part thereof as ordered, the matter shall be reported by the officer and the Registrar on the application of any of the parties interested, intimate to the Judge such neglect and the Judge may from time to time when the accounts of such Receiver are produced to be examined and passed, not only disallow the Receiver's remuneration but also charge with interest @ 6% per annum on the balance, if any, so neglected to be paid by him during the time the same shall appear to have remained in the hands of such Receiver.

8. Rule 25 lays down that where any Receiver fails to file any accounts or to pass such accounts or to make any payment or commits a default otherwise, the Receiver can be discharged by the Court.

9. The Respondent was appointed as a Receiver in the year 1984 *i.e*. by order dated 30 April, 1984. Till 2003, neither the Hon'ble Calcutta High Court nor any of the parties required the respondent to render any accounts. For the first time, on 27 February, 2003 an application was made by the plaintiff seeking directions for accounts and sale of the remaining goods and handing over sale proceeds. Despite the aforesaid statutory matrix, for about 19 years nobody sought accounts which is a clear indication that in Calcutta High Court a practice had developed of not giving periodical accounts to the Court. Had there been no such practice, the Court would have called upon the respondent to render accounts much earlier and would have taken action against the respondent of terminating his receivership or any other suitable action that the Court would have considered necessary in the facts of the case.

10. The witness Mr. Tapas Kumar Malik, Assistant Registrar of Calcutta High Court (Original Side) who was examined on behalf of the petitioner, admitted that he has not worked in the Accounts Department and that Accounts Department takes care of Receiver's accounts. There is no material on record to show that any notice was issued to the respondent as a Receiver on account of alleged default of not filing six-monthly account for passing it. The Accounts Department has not produced any of its records showing that any notice was issued to the respondent for not filing and passing six-monthly accounts. This again shows that nobody had any grievance or complaint about non filing of accounts periodically.

11. It is also to be noted that no party to the proceedings has alleged that the respondent as the Receiver had misappropriated any amount received by him, in his capacity as a Receiver. It is also not in dispute that the respondent had invested some money in Lynx India Limited which went into liquidation. Nobody had objected to the respondent's handling the funds received by him as a Receiver.

12. The overall picture that emerges is this that the office of the Registrar of the Calcutta High Court (Original Side) or the Accounts Department or the parties concerned never asked for six-monthly accounts and never made any inquiries at the relevant time about the handling of funds by the respondent. This means that the Calcutta High Court had accepted that the respondent has not committed any default on account of his failure to submit six-monthly accounts.

13. At the rejoinder stage, it was contended that the application being G.A. No.875 of 2003 filed by Steel Authority of India did not contain any allegation of misappropriation. It is true that the plaintiff did not make any allegation of misappropriation, but the learned Single Judge held that there is misappropriation and in fact the same was recorded in judgement dated 10 April, 2006 in Volume II being Exhibit C-51 at page 779, paragraph 2.

14. The Manager of the different banks were summoned and examined and the records of Official Liquidator were also tallied and as such it is not correct to suggest that the Court did not come to any finding on misappropriation. It is not possible to ignore the Division Bench judgement by suggesting that the application and the Single Bench judgement did not have any issue regarding misappropriation.

15. The sequence of events in this case cannot be ignored. That the whole thing started from the Single Bench judgement is proved beyond doubt from

the fact that the then Hon'ble Chief Justice of India in his letter dated 10 September, 2007 clearly stated that the in-house committee was proposed to be constituted because of the adverse observation of the Single Judge with regard to misappropriation.

16. The second charge is misrepresentation of facts relating to misappropriation clinches the issue that misappropriation of money was the issue before the single judge which led to the present proceeding. The charge of misrepresentation of facts can only be in relation to misappropriation of money as alleged. Once that charge fails the second charge cannot survive.

17. It is also significant that even after coming to the conclusion that the Receiver is guilty of misappropriation the learned Single Judge duly allowed the Receiver to take his remuneration and prayer (d) for filing of accounts was not allowed. Therefore, it can be concluded that filing the accounts by the Receiver was dispensed with by the Court as no order was passed in spite of the specific prayer to that effect.

18. It is an admitted position that, the Official Liquidator submitted a report dated 7 February, 2009 and annexure B-10 to the said gives details of investments made by the Respondent in Lynx India Ltd. The amount is more than Rs. 78 lakhs which is inclusive of warrant cheques. But, the learned Single Judge in the judgement reduced the figure approximately to 71 lakhs.

19. As per the submission of the prosecution only Rs. 25 lakhs were deposited in the year 1997 and Rs. 5 lakhs was withdrawn. So, therefore, only Rs.20 lakhs was deposited in the year 1997 and that cannot become Rs. 71 lakhs in the year 1999, even calculating the rate of interest as 18.25% per annum. By any simple mathematics it can be proved that there were early deposits, which have taken the figure up to Rs. 71 lakhs.

20. Out of Rs. 33 lakhs, 5% were allowed as remuneration *i.e*. Rs. 31 lakhs and Rs. 5 lakhs were paid to the Advocate of the plaintiff in 2006. The balance was Rs. 26 lakhs and the Court ordered the Receiver to pay Rs. 52 lakhs after calculation.

21. The record produced by the Official Liquidator clearly show that diverse amounts were invested by the respondent in Lynx India. The respondent has also submitted a calculation at the time of hearing indicating that the diverse amounts were invested in Lynx India and a statement showing as to how the amount was kept in Lynx India was submitted. The said statement was prepared on the basis of the findings of the learned Single Judge. The said

statement is only a calculation and made on the basis of the findings of the learned Single Judge in order dated 31 July, 2007 (Exh. C-42).

22. Mere failure to produce accounts cannot give rise to an inference of misappropriation. The plaintiff had made a specific prayer for accounts. The said prayer was not granted by order dated 3 August, 2004 passed by Mr. Justice Mukherji and also by order dated 10 April, 2006 of Mr. Justice Sen Gupta. The clear result of a prayer not being granted is that the filing of accounts was no longer necessary and the respondent was discharged as a Receiver without filing of the accounts. As stated herein above that it is only the court that appoints him can call upon him to submit the accounts and as that court has not chosen to do so, no other authority can call upon the respondent to do so.

23. It is submitted that non filing of the accounts is beyond the scope of the present enquiry and no conclusions adverse to the respondent can be drawn on the basis of he not having submitted the accounts. In this context, it also must be noted that by order dated 10 April, 2006, the respondent was called upon to pay Rs.52.46 lakhs to the plaintiff and it is an admitted position that the respondent has paid the said amount. In fact, the respondent has paid Rs. 57.46 lakhs. Therefore, there is no question of the respondent having defaulted in making payment to the plaintiff. The plaintiff has not complained that the amount that he has received is less than what is due. A Receiver is not an agent or a trustee of the plaintiff but is only an officer of the Court.

24. In this context it also must be noted that when the learned Single Judge started holding enquiry as regards the receivership of the respondent and specially when the bank witnesses were summoned, no notice of the same was given to the respondent and no opportunity was given to the respondent to cross examine the bank witnesses. The proceedings, therefore, before the learned Single Judge were held in breach of principles of natural justice. On the basis of the evidence of the bank witnesses adverse inferences are drawn against the respondent and the proceedings before the learned Single Judge stood vitiated on account of breach of principles of natural justice. The respondent learnt about the proceedings before the learned Single Judge much later as the learned Single Judge by order dated 10 April, 2006 had directed that further orders of the courts are not to be served on the receiver. In this context, it is also to be noted that the application made by the plaintiff for accounts etc. contained a reference of a letter dated 7 March, 2002 allegedly addressed by the plaintiff's advocate to the respondent. No acknowledgment of the respondent is produced. It is a specific contention of the respondent that this letter was not served on him.

25. In the instant case, the court after examining the entire matter and documents quantified the specific sum to be paid by the respondent to the plaintiff. Since the court took upon itself the burden of quantifying the amount payable by the respondent to the plaintiff, the question of receiver-respondent not filing the accounts has lost its significance.

26. Lynx is a non-banking financial company. Section 58A of the Companies Act empowers the Central Government in consultation with the Reserve Bank of India (RBI) to prescribe limits up to which and the conditions subject to which a company can accept deposits or invite members of the public for depositing any amount with the company. In exercise of that power, the Central Government has framed rules which are known as Companies (Acceptance of Deposits) Rules, 1975. Section 58(7)(b) lays down that the provisions of the said section shall not apply to such classes of financial companies as the Central Government may, in consultation with RBI, specify in that behalf. In exercise of that power the Central Government has exempted non-banking financial companies from the operation of the provisions of the said Section 58A by Notification dated 18 September, 1975.

27. Rule 1(3) of the Companies (Acceptance of Deposits) Rules, 1975 lays down that the said rule shall apply to such companies as are not banking companies and are not financial companies. Therefore, the non-banking financial companies are not covered by the said rules.

28. In respect of non-banking financial companies, RBI had issued directions in exercise of power under section 45K of the RBI Act in 1977. The said directions are now replaced by 1998 directions.

29. The provisions of Chapter IIIB of the RBI Act confer substantial powers of controlling and monitoring the affairs of non-banking financial companies. Every non-banking financial company has to register with the RBI under section 45-IA of the Act and while granting registration, the RBI has to satisfy itself as regards the following conditions:

i. That the non-banking financial company shall be in a position to pay its present or future depositors in full as and when their claims accrue;

ii. That the affairs of the non-banking financial company are not likely to be conducted in a manner detrimental to the interest of the depositors;

iii. That the non-banking financial company has adequate , capital structure and earning prospects, etc.

30. The registration of a non-banking financial company is liable to be cancelled if it fails to comply with the provisions of the Act and the directions of the RBI. The investments to be made by non-banking financial companies, the reserve funds that they have to maintain, the prospects of the non-banking financial company or the advertisements soliciting deposits are subject to the control and supervision of the RBI.

31. Under Section 45 JA, RBI has power to determine policy matters of non-banking financial company and issue directions in that behalf. Under Section 45K, RBI has power to collect information from the non-banking financial company and to give directions. Similarly, under section 45L, RBI has power to call for information and give directions that the non-banking financial companies have to submit a report to the RBI. The RBI can also issue instructions to the auditors of the non-banking financial company, and last but not the least, the RBI has power to issue directions to any non-banking financial company prohibiting it from accepting any deposits and alienating its property. Even the winding up of a non-banking financial company is at the initiative of the RBI Section 45N of the Act empowers RBI to carry out inspection of the records of any non-banking financial company.

32. As stated herein above, in exercise of powers under the provisions of RBI Act, the RBI has issued directions in 1998 and the said directions in Clause 16, *inter alia*, require any non-banking financial company to maintain a register of depositors giving all particulars about the deposits, including name and address of the depositor, date and amount of deposit, duration and the due date of deposit and the interest/premium payable, the date of claim made by the depositor, repayment etc. etc.

33. In view of the aforesaid provisions contained in the RBI Act and the directions issued by the RBI in 1977 and 1998, it was reasonable to assume for the respondent that the investments in Lynx by way of deposits can be a safe investment. If the entire record of Lynx is perused and specially the register maintained under Clause 16 of the RBI directions, it will be established that respondent has not misappropriated the funds. Unfortunately, the entire record of Lynx is not available. The most important piece of evidence is the register of deposits which would clearly show the investments made by the Respondent and their details. Unfortunately, the Official Liquidator does not have the said register.

34. **PRESERVATION OF RECORDS: NBFC**

Provisions relating to preservation of records of NBFC Companies:

Clause 16 of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, (w.e.f. 31.1.98) directs NBFC companies to keep register(s) of deposit *inter alia* containing name, date of deposit, interest accrued on deposit, date of repayment of each depositor.

For the sake of convenience, Clause 16 is reproduced herein below.

> (16) Register for deposit - (i) Every non-banking financial company shall keep one or more registers in respect of all deposits in which shall be entered separately in the case of each depositor, the following particulars, namely-

(a) Name and address of the depositors,

(b) Date and amount of each deposit,

(c) Duration and the due date of each deposit,

(d) Date and amount of accrued interest or premium on each deposit,

(e) Date of claim made by the depositor,

(f) Date and amount of each repayment, whether of principal, interest or premium,

(g) The reasons for delay in repayment beyond five working days, and

(h) Any other particulars relating to the deposit.

The branch in respect of the deposit accounts opened by that branch of the company and a consolidated register for all the branches taken together at the registered office of the company and shall be preserved in good order for **a period of not less than eight calendar years following the financial year in which the latest entry is made of the repayment or renewal of any deposit of which particulars are contained in the register:**

Provided that, if the company keeps the books of account referred to in sub-section (I) of section 209 of the Companies Act, 1956 (1 of 1956) at any place other than its registered office in accordance with the proviso to that sub-section, it shall be deemed to be sufficient compliance with this clause if the

register aforesaid is kept at such other place, subject to the condition that the company delivers to the Reserve Bank of India, a copy of the notice filed with the Register of Companies under the proviso to the said sub-section within seven days of such filing.

Besides complying with Clause 16 of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, NBFC is also required to keep the statutory books of accounts and other documents in compliance with the Companies Act, 1956 such as Register of members, Investments etc.

35. **OFFICIAL LIQUIDATOR' REPORT**

(i) In the Report dated 7 February, 2007 (at Page 1173-1177) filed by the Official Liquidator in the Hon'ble Calcutta High Court, it is submitted that the records pertaining to financial affairs of the Company (Lynx India Limited) had been seized by the State Police Authority for the purpose of investigation and that the Official Liquidator had already issued letter to the competent police authority, communicating the direction of the Hon'ble Company Court, with request to hand over the records. It was also submitted by the OL that the report dated 7 February, 2007 was being filed in compliance of order dated 31 January, 2007 and without taking into consideration the contents of record under custody of the police authority.

(ii) Thus, it is evident from the above that the said OL's Report, filed in compliance of the High Court Order, was based on incomplete evidence as all the records pertaining to the company had not been obtained from the police authorities. Subsequent thereto, there is no evidence to the effect that OL had obtained further documents from the police authorities.

(iii) No further Report has been filed by the OL.

(iv) Cross examination of Deputy OL during cross-examination on 26 June, 2010 before the COMMITTEE also substantiates the position that the OL has not received any records from the Police after the above Report.

(v) OL's Report in respect of Lynx is only for the period 7 March, 1997 to 28 February, 2000. Even for the aforesaid period, it is inconclusive and cannot be completely relied upon to prove the charges.

However, the Annexure to the said Report, as reproduced by the Single Judge in his order dated 31 July, 2007 (Exhibit C-42 @ 303-332) Pages 977-999), shows that an amount of Rs. 70,25,147 (at page 321 of Exhibit C-42) was lying deposited in Lynx.

(vi) From the discussions aforesaid, it is clear that the record in respect of Lynx, which is with the OL, is incomplete. The best evidence about the amounts invested by Respondent/Receiver in Fixed Deposits with Lynx, from time to time, could be seen only from the Register of Deposits which is compulsorily required to be maintained under Directions of RBI and also from the Books of Accounts for the relevant period which is required to be maintained under the Companies Act. Admittedly, neither the Register nor the Books of Accounts for the period 1993-1995 has been produced by the OL before the Calcutta High Court under directions of Learned Single Judge. OL has also not produced such records before the COMMITTEE in these proceedings. In the absence of such records, no conclusion can be drawn that the Respondent has committed any misconduct or default. The necessity for furnishing of the relevant record before the COMMITTEE is quite apparent. In the absence of such record, charge of misappropriation cannot be proved and, in any event, cannot be proved beyond any reasonable doubt.

36. **CONCLUSION**

(i) It is evident from the above that the said OL's Report, filed in compliance of the High Court Order, that it was based on incomplete evidence as all the records pertaining to the company had not been obtained from the police authorities. Subsequent thereto, there is no evidence to the effect that OL had obtained further documents from the police authorities.

(ii) No further Report has been filed by the OL.

(iii) Cross examination of Deputy OL during cross-examination on 26 June, 2010 before the Committee also substantiates the position that the OL has not received any records from the Police after the above Report.

(iv) OL's Report in respect of Lynx is only for the period 7 March, 1997 to 28 February, 2000. Even for the aforesaid period, it is inconclusive and cannot be completely relied upon to prove the charges.

However, the Annexure to the said Report, as reproduced by the Single Judge in his order dated 31 July, 2007 (Exhibit C-42 @ 303-332 Pages 977-999), shows that an amount of Rs. 70,25,147 (at page 321 of Exhibit C-42) was lying deposited in Lynx.

(v) It is, thus, clear that the record in respect of Lynx, which is with the OL, is incomplete. The best evidence about the amounts invested by Respondent/Receiver in Fixed Deposits with Lynx, from time to time, could be seen only from the Register of Deposits which is compulsorily required to be maintained under directions of RBI and also from the Books of Accounts for the relevant period which is required to be maintained under the Companies Act. Admittedly, neither the Register nor the Books of Accounts for the period 1993-1995 has been produced by the OL before the Calcutta High Court under directions of Learned Single Judge. OL has also not produced such records before the Committee in these proceedings. In the absence of such records, no conclusion can be drawn that the Respondent has committed any misconduct or default. The necessity for furnishing of the relevant record before the Committee is quite apparent. In the absence of such record, charge of misappropriation cannot be proved and, in any event, cannot be proved beyond any reasonable doubt.

37. PROVISIONS PERTAINING TO PRESERVATION OF BANKING RECORDS (INCLUDING PRESERVATION AND DESTRUCTION OF RECORDS)

Insofar as the preservation of banking records is concerned, Section 45Y of the Banking Regulation Act, 1949, is the governing provision, which states that the Central Government may after consultation with RBI and publication in Official Gazette make rules specifying the periods for which a bank shall *inter alia* preserve its books and other documents.

Vide Notification No. S.O. 265(E), dated 29 March, 1985, the Banking Companies (Period of Preservation of Records) Rules, 1985, came into effect.

The said 1985 Rules prescribe the nature of books of accounts and documents to be preserved for a period of five years and eight years respectively. However, upon perusal of the list of various categories of books and documents required to be preserved under the said Rules, it is pertinent to state that nowhere it has been prescribed that a bank is required to maintain or preserve a record of the destroyed documents.

For the sake of convenience, Section 45Y of the Banking Regulation Act, 1949, and the Banking Companies (Period of Preservation of Records) Rules, 1985, are reproduced herein below:

38. **THE BANKING REGULATION ACT, 1949 - S. 45Y**

PROVISIONS RELATING TO CERTAIN OPERATIONS OF BANKING COMPANIES

(45Y). Power of Central Govemment to make rules for the preservation of the records - The Central Government may, after consultation with the Reserve Bank and by notification in the Official Gazette, make rules specifying the periods for which—

(a) A banking company shall preserve its books, accounts and other documents; and

(b) A banking company shall preserve and keep with itself different instruments paid by it.

39. **THE BANKING COMPANIES (PERIOD OF PRESERVATION OF RECORDS) RULES, 1985**

Notification No. S.O. 265(E), dated 29 March, 1985 - In exercise of the powers conferred by Section 45Y of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, after consultation with the Reserve Bank of India, hereby makes the following rules, namely :

R.1. Short title and commencement. - (1) These rules may be called the Banking Companies (Period of Preservation of Record) Rules, 1985.

(2) They shall come into force on the date of their publication in the Official Gazette.

R. 2. Every banking company shall preserve, in good order, its books, accounts and other documents mentioned below, relating to a period not less than five years immediately preceding the current calendar year.

Ledgers and Registers:

(1) Cheque Book Registers

(2) Delivery Order Registers

(3) Demand Liability Registers

(4) Demand Remittances Dispatched Registers

(5) Demand Remittances Received Registers

(6) Vault Registers

Records other than Registers:

(1) Telegraphic Transfer Confirmations

(2) Telegrams and Telegram Confirmations

R. 3. Every banking company shall preserve, in good order, its books, accounts and other documents mentioned below, **relating to a period of not less than eight years** immediately preceding the current calendar year.

Ledgers and Registers:

(1) All personal ledgers

(2) Loans and Advance Registers and Ledgers

(3) Call, Short or Fixed Deposit Registers or Ledgers

(4) F.D. Interest Registers

(5) Draft T.T. and Mail Transfer Registers

(6) Remittance Registers

(7) Bills Registers

(8) Clearing Registers

(9) Demand Loan liability Registers

(10) Draft and Mail Transfer Advises Dispatched Registers

(11) Draft and Mail Transfer Advices Received Registers

(12) Draft payable Registers

(13) Drawing Power Registers

(14) Stock Registers of Goods Pledged

(15) Stock and Share Registers

(16) Government Securities Registers or Ledgers

(17) Registers Showing Collection of Dividends and Interest on Securities on Behalf of Constituents

(18) Registers or Ledgers of bank's own Investments

(19) Branch Ledgers

(20) Overdrafts and Loan Registers

(21) Safe Custody Registers

(22) Equitable Mortgage Registers

(23) Trust Registers

(24) Clean cash Books

Records other than Registers:

(1) Bank Cash Scrolls

(2) Bank Transfer Scrolls

(3) Remittance Schedule

(4) Paid cheques

(5) Paying in slips

(6) Voucher relating to DDs, TTs, MTs, Fixed Deposits, Call Deposits, Cash credits and other deposit and loan accounts including vouchers relating to payment to nominees.

(7) Account opening forms, inventories prepared in respect of articles in safe custody and safety locker and nomination forms.

(8) Standing Instructions regarding Current Accounts

(9) Applications for TTs, DDs, MTs, and other Remittances

(10) Applications for Overdrafts, Loans and Advances

(11) Press-copy books.

> R. 4. Notwithstanding anything contained in rules 2 and 3, the Reserve Bank may, having regard to the factors specified in sub-section (1) of Section 35-A, by an order in writing, direct any banking company to preserve any of the books, accounts or other documents mentioned in those rules, **for a period longer than the period specified for their preservation, in the said rules.**

It is also relevant to add that Section 2 of the Banking Regulation Act states that the said Act is not in derogation of the Companies Act, meaning whereby that relevant provisions of Companies Act *vis-a-vis* preservation of records (such as Books of accounts etc.), would also be applicable to the Banking Companies.

Thus provisions of Companies Act particularly Section 209(4A) are required to be complied with.

40. **CONCLUSION**

The record in respect of Standard Chartered Bank is clearly incomplete. No documents have been produced for the period 1993 to 1995. Admittedly, those documents for the period 1993-1995 were produced neither before the Calcutta High Court nor before the Committee in these proceedings. In the absence of such records, no conclusion can be drawn that the Respondent has committed any misconduct or default. Hence, charge of misappropriation cannot be proved and, in any event, cannot be proved beyond any reasonable doubt.

41. **CIRCUMSTANCES CREATING DOUBT**

A. Official Liquidator' Report

i. In the Report dated 7 February, 2007 (at Exhibit No. C-78, pages 1827 -1902) filed by the Official Liquidator in the Hon'ble Calcutta High Court, it is submitted that the records pertaining to financial affairs of the Company (Lynx India Limited) had been seized by the

State Police Authority for the purpose of investigation and that the Official Liquidator had already issued letter to the competent police authority, communicating the direction of the Hon'ble Company Court, with request to hand over the records. It was also submitted by the OL that the report dated 7 February, 2007 was being filed in compliance of order dated 31 January, 2007 and without taking into consideration the contents of record under custody of the police authority.

ii. Thus, it is evident from the above that the said OL's Report, filed in compliance of the High Court Order, was based on incomplete evidence as all the records pertaining to the company had not been obtained from the police authorities. Subsequent thereto, there is no evidence to the effect that OL had obtained further documents from the police authorities.

iii. No further Report has been filed by the OL.

iv. Cross examination of Deputy OL during cross-examination on 26 June, 2010 before the COMMITTEE also substantiates the position that the OL has not received any records from the Police after the above Report.

v. Hence, such a report which is based on incomplete documents cannot be relied upon, particularly to "prove charge muchless beyond reasonable doubt".

B. Documents of Lynx

i. The documents annexed to the OL's Report evidencing receipts of Fixed Deposits with Lynx India Ltd. and other documents annexed to the OL's Report show that 4 Interest warrants of Rs. 73,233 (Pg.1521), Rs. 98191.6 (Pg.1527), Rs. 64530.6 (Pg.1533) and Rs. 98191(Pg.1537) [those 4 cheques are Exhibits C-118 (page 1981) Exhibits C-121 (page 1987) Exhibits C-124 (page 1993) Exhibits C-127 (page 1999)] - amounting to a sum of Rs. 3,34,147/- have been issued by Lynx India Ltd. in favour of Soumitra Sen *vide* UBI cheques dated 28 February, 2000. Since Lynx India Ltd. had already gone into liquidation in 2000, the said interest warrant could never have been issued by OL. Therefore, there is no question of the said interest amount having been received by Justice Sen. Hence, these documents create a misleading picture.

It may be relevant to note that under Section 45MC (4) of RBI Act, all provisions of Companies Act relating to winding up of a company shall apply to winding up proceeding of NBFC initiated by RBI. Under section 536 of the Companies Act, any disposition of the property of the company made after commencement of the winding up shall be void. The date of presentation of the petition is the commencement of winding up.

ii. OL's Report in respect of Lynx is only for the period 7 March, 1997 to 28 February, 2000. Even for the aforesaid period, it is inconclusive and cannot be completely relied upon to prove the charges. However, the Annexure to the said Report, as reproduced by the Single Judge in his order dated 31 July, 2007 **[Exhibit C-42@ page 302-332]** (Page 977-999), shows that an amount of Rs. 70,25,147 **[Page 321 of Exhibit C-42]** (page 991) was lying deposited in Lynx.

iii. From the discussions under Para A and B above, it is clear that the record in respect of Lynx, which is with the OL is incomplete. The best evidence about the amounts invested by Respondent/Receiver in Fixed Deposits with Lynx, from time to time, could be seen only from the Register of Deposits which is compulsorily required to be maintained under Directions of RBI and also from the Books of Accounts for the relevant period which is required to be maintained under the Companies Act. Admittedly, neither the Register nor the Books of Accounts for the period 1993-1995 has been produced by the OL before the Calcutta High Court under directions of Learned Single Judge. OL has also not produced such records before the Committee in these proceedings. In the absence of such records, no conclusion can be drawn that the Respondent has committed any misconduct or default. The necessity for furnishing of the relevant record before the Committee is quite apparent. In the absence of such record, charge of misappropriation cannot be proved and, in any event, cannot be proved beyond any reasonable doubt.

C. Documents of Banks

i. *Vide* an undated letter **(Exhibit C-76, Page 1817-1818),** Standard Chartered Bank has provided the present status of five accounts maintained by Mr. Soumitra Sen. Ironically one such a/c bearing No.01SLP0156800 belongs to one Mr. Soumitra Sen who happens to be Sales Promoter of Food Specialities Ltd. having his address

at 20-E, Ballygunge Terrace, Calcutta-700029 **[Exhibit C-304 @ page 2409]** (see Page 2243). This fact became evident at a much belated stage when Additional Documents were filed as Volume VII (Pages 2213-2253) under cover of letter dated 29 May, 2010, issued by Secretary of the Judges Inquiry Committee.

ii. The said undated letter referred to in Para 1 above also states that statement prior to 1995 have been destroyed as per RBI Guidelines (page 339, Vol I). Since there is no record of bank statements prior to the year 1995, certain vital links in money trail has been lost forever and, under such circumstances, charges against Justice Sen cannot be proved beyond reasonable doubt.

iii. The record in respect of Standard Chartered Bank is clearly incomplete. No documents have been produced for the period 1993 to 1995. Admittedly, those documents for the period 1993-1995 were produced neither before the Calcutta High Court nor before the Committee in these proceedings. In the absence of such records, no conclusion can be drawn that the Respondent has committed any misconduct or default. Hence, charge of misappropriation cannot be proved and, in any event, cannot be proved beyond any reasonable doubt.

iv. Relevant provisions of the **Banker's Books of Evidence Act, 1891,** are reproduced below:

Section 2(8)- "certified copy" *means when the books of a bank*

(a) are maintained in written form, a copy of any entry in-such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such books is still in the custody of the bank, and where the copy was obtained by mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy has been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

(b) consists of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A.]

[(c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A.]

Section 2A - Conditions in the printout

A printout of entry or a copy of printout referred to in subsection (8) of section 2 shall be accompanied by the following, namely: -

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and

(b) a certificate by a person in-charge of computer system containing a brief descriptions of the computer system and the particulars of-

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the system; and any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and behalf, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.

Section 4 - Mode of proof of entries in bankers' books

Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

v. In AIR 1962 Cal 325 at 336, the Calcutta High Court held that the books were not certified according to the Bankers' Books Evidence Act for the reason that the Certificate did not have the following written at the foot of such copy:

"that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and Ordinary course of business, and that such book is still in the custody of the Bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title."

In the instant case also, the certificate which is appended to the banking documents relied upon do not observe most of these restrictions. It is therefore, not certified under the Bankers' Books Evidence Act.

vi. It is further submitted that even it was assumed that those documents were relevant and admissible under Section 34 of the Evidence Act, they could be, in view of the plain language of that Section, used only as corroborative evidence, but in absence of any independent evidence to prove the payments alleged therein the documents were of no avail to the prosecution. In (1998) 3 SCC 410, [1998] 1 SCR 1153, CBI *V*. V.C. Shukla & Ors., the Hon'ble Supreme Court held:

> *"From a plain reading of the Section, it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section, it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed."*

In AIR 1967 SC 1058 [1967] 1 SCR 898, C. Goswami *V.* The Gauhati Bank Ltd.,

> *"But no person can be charged with liability on the basis of mere entries whether the entries produced are the original entries or copies under s. 4 of the Bankers' Books Evidence Act."*

vii. Further, it is to be noted that not even a single credit entry in any of the Bank Statements, whether of Allahabad Bank or of Standard Chartered Bank, has been shown, evidencing misappropriation of any part of sale proceeds by Justice Sen.

viii. Mere intermingling of funds between two bank accounts and transfer to Lynx India Ltd. cannot be sufficient to prove the charge of misappropriation of sale proceeds against Justice Sen.

ix. Disbursements made from 22 May, 1997, till 1 July, 1997, from the 400 A/c was towards payments of workers dues pursuant to order dated 20.1.1997 [See **Exhibit C-212,** Page 2217-2219] (Page 1565-1567 of Vol. III)]. Amount of Rs. 22,70,454/- was disbursed by the erstwhile Receiver during 14 May, 1997 to 12 June, 1997, evidenced by the copies of cheques issued to workers annexed at Pages 1675 to 1607 in Volume IV-[**Exhibit C-213,** Page 2221 to **Exhibit C-262,**

Page 2319). Hence, it counteracts the charge of misappropriation of the above amount.

D. Witnesses before Judges Inquiry Committee.

i. None of the persons who were associated with the inquiry conducted by the Single Judge against Justice Sen and who had adduced documents and deposed affidavits were called as witness before the Committee to depose. It may be noted that the Committee is relying upon the same documents and records of the Calcutta High Court.

ii. Smt. Anjana Guha of Allahabad Bank, who had filed Affidavits (**Exhibit C-63,** Page 1587-1592) and deposed (**Exhibit C-64,** Page 1593-1604) during the course of inquiry before the Single Judge was not called to depose before the Committee. Even those Affidavit and Deposition do not state whether she was working in Allahabad Bank at the relevant period of time when the concerned transactions took place.

iii. In place of Anjana Guha, Shwetang Rukhsaria of Allahabad Bank was called to depose, who could only verify the signature of Anjana Guha. Mr. Rukhsaria in his examination deposed that he had been working in Allahabad bank for only one year and seven months. Clearly he has no personal knowledge of the concerned transactions.

iv. Similar was the case of Standard Chartered Bank, Mr. Arindam Sarkar, who deposed as witness on behalf of Stan Chart Bank had no first hand knowledge of the transactions. Prabir Das of Standard Chartered Bank, who had produced the documents and deposed on 12 December, 2005 (**Exhibit C-65,** Page 1605-1612) and on 9 January, 2006 (**Exhibit C-66,** Page 1613-1616) before the Calcutta High Court, did not appear before the Committee.

v. Further, as noted above, the accounts produced by both the Banks are not in accordance with the provisions with the Banker's Books of Evidence Act, 1891. From the above provisions, it is manifest that those books of account cannot be looked into. If at all they can be looked into, its evidentiary value will only be *prima facie.* [See **Sec. 4 r/w Section 2(8) and Sec. 2A** of Banker's Books of Evidence Act, 1891]

vi. The Assistant Registrar of Calcutta High Court, who has been deputed by the Registrar (OS) to depose before the Committee, stated during

his cross-examination that Accounts Department takes care of Receiver's account subject to fulfillment of Original Side Rules and that Exhibit C-79 (wherein it is stated that the erstwhile Receiver had not filed the accounts) was the report of the Calcutta High Court's Accounts Department. However, he was unable to throw any light on the basis on which Report was made as he was admittedly not associated with the preparation of the said Report nor with the High Court's Accounts Department ever.

vii. PK Acharjee, Official Liquidator, who had submitted the above Report before the High Court, also did not depose before the Committee. Instead, Mr. Achyuthramaiah, Deputy OL, was called as witness.

viii. Thus, the witnesses before the Committee were ignoramus and not competent to prove the documents relied upon. Hence, the contents of the document have no evidentiary value and, thus, are not proved.

V STANDARD OF PROOF

1. In the present impeachment proceedings a Judge of the High Court who is a constitutional functionary is proposed to be removed from that office by process of impeachment under Article 124 read with Article 217(1)(b) of the Constitution of India for a *proved misconduct*. The question which arises is what should be the standard of proof. Is mere suspicion enough or the standard of proof is as in the case of a civil matter or is it as high as in a criminal matter. It is submitted that the standard of proof must be as high as in the criminal case and a person occupying an office of a constitutional post cannot be removed on a mere suspicion or merely on the ground of probability. It is submitted that the alleged misconduct must be proved beyond a shadow of doubt. The Hon'ble Supreme Court in several judgments relating to election petitions challenging the election of returned candidates to Parliament or to the State Legislature has consistently held that the alleged corrupt practice allegedly committed by a returned candidate must be established beyond a reasonable doubt and that the standard of proof is as high as in the criminal case. The basic reason behind this is that a peoples' mandate which is a democratic mandate cannot be set at naught lightly.

2. Similarly, the process of appointing the High Court Judge is preceded by all relevant inquiries regarding competence, integrity, etc. and that he is appointed in consultation with the Chief Justice of the High Court and other puisne Judges of the High Court and also in consultation with the Chief Justice of India and other puisne Judges of the Supreme Court. On the basis of such

recommendations, the Central Government decides to appoint a person as a High Court Judge and requests the President to issue the necessary warrant. Even at the stage of the matter pending before the President it is open to the President to make appropriate inquiries and then issue the warrant. In appropriate cases the President may send back the proposal as it often happens in the recent years. The point to be emphasized is that the selection of a High Court Judge is through a very detailed procedure involving high constitutional functionaries and, therefore, their decision to appoint a High Court Judge cannot be lightly set at naught by impeaching the Judge.

3. In the present case, it is not in dispute that at the time of elevation of the respondent, his appointment as a Receiver was known to the Calcutta High Court Judges and, therefore, it is reasonable to presume that the Judges of the Supreme Court were also aware of the same and that the Government and the President also were aware of this fact. The respondent was elevated in December, 2003 while he was still a Receiver. He was Receiver for 19 years and, therefore, whether he has committed a default or not is also a question which is deemed to have been examined by high constitutional functionaries and, therefore, his appointment by the Hon'ble President as per the prescribed procedure cannot be set at naught unless the charges against him are proved *beyond a reasonable doubt.*

4. It is respectfully submitted that the petitioner has failed to establish a case of misappropriation against the respondent not only beyond reasonable doubt, but has failed to bring on record any cogent material to hold that the respondent who was appointed as Receiver in the year 1984 has misappropriated either temporarily or permanently any sums/monies which he received as a Receiver.

5. In the case of *Sarojini Ramaswamy v. Union of India (1992) 4 SCC page 509*, the Hon'ble Supreme Court in *paragraph 140 on pages 601 and 602* has, *inter-alia*, held that the Committee (*i.e*. the Committee appointed under the Judges Inquiry Act, 1968) has no other function except to adjudicate upon the dispute of "*proved guilt, proved guilty or not guilty*". The Committee must apply the standard of proof beyond reasonable doubt and make a finding that the misbehavior or incapacity of the Judge has been proved.

6. In the case of *Devi Prasad v. Maluram Singhani & Ors. reported as 1969 (3) SCC 595 (SC),* the Hon'ble Supreme Court in its judgment in *paragraph 8 of page 602* has held that it must be remembered that the proceedings involving proof of corrupt practices are of a *quasi criminal nature* and it must

be proved beyond doubt and that all the necessary facts which would establish the commission of corrupt practice must be proved beyond doubt.

7. In the case of *Ch. Razik Ram v. Ch. Jaswant Singh Chouhan & Ors. 1975 (4) SCC page 769,* the Hon'ble Supreme Court in *paragraph* 15 while dealing with the *standard of proof* in an election petition, held that the trial of an election petition being in the nature of an accusation bearing the indelible stamp of *quasi criminal action*, the standard of proof is the same as in the criminal trial. The respondent against whom the charge of corrupt practice is leveled is proved to be innocent unless proved guilty. A grave and heavy onus rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. The Hon'ble Court has further observed that in a civil case, a mere preponderance of probability may be an adequate basis of the decision, but in an election petition and in criminal matters a far higher degree of assurance and judicial certitude is required for conviction and, therefore, charge of corrupt practice cannot be established by mere balance of probabilities and if after due consideration of evidence the court is left with a reasonable doubt, it must hold that the corrupt practice is not proved.

8. In the case of *S.N. Balakrishnan v. George Fernandes, 1969 (3) SCC page 238,* the Hon'ble Supreme Court has held that the trial of an election petition is made in accordance with the Civil Procedure Code, yet the corrupt practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate.

9. Section 33 of the Evidence Act provides that in certain situations evidence of witness given in a previous proceeding may be admitted as evidence in a letter proceeding subject to requirements of the section itself.

10. The general rule of evidence is that it must be direct, and hence section 33 being an exception to the said rule must be construed in the strictest sense before it is applied in a given situation.

11. In order to be able to get the benefit of the aforesaid section, it must be clearly established by the party placing reliance thereupon that:-

* the witness is dead, or

* the witness cannot be found, or

* the witness is incapable of giving evidence, or

* the witness is being kept out way by the adverse party, or

* the presence of the witness cannot be obtained without delay or expense.

12. Hence, before this section can be invoked the aforesaid conditions must be both pleaded and established. Therefore, it the prosecution has neither pleaded nor established that the requirements of the section are satisfied in the facts of the case, it cannot seek to rely upon the said section or derive benefit thereunder.

13. The Hon'ble Bombay High Court while interpreting section 33 in *Mr. Padam Chandra Singh & Ors. v. Dr. Praful B. Desai and Ors.* reported in (2008)110 Bom LR 795 held:

> *"15. The depositions are in general admissible only after proof that the persons who made them cannot be produced before the Court to give evidence. It is only in cases where the production of the primary evidence is beyond the party's power that secondary evidence of oral testimony is admissible.*
>
> *16. It is an elementary right of a litigant in civil suit that a witness, who is to testify against him, should give his evidence before the Court trying the case, the adverse party gets an opportunity to cross-examine.....the court has the opportunity of seeing the witness and observing his demeanour and can, thus, form a better opinion as to his reliability rather than reading a statement or deposition given by that witness in a previous judicial proceeding or in an early stage of the same judicial proceeding.*
>
> *17. Where a statute i.e. the Evidence Act, makes provision for exceptional cases where it is impossible for the witness to be before the Court, the court is expected to be careful to see* that the conditions on which the statute permits previous evidence given by the witness to be read are strictly complied with. Previous statement of a witness not appearing in Court cannot be taken on record under section 33 without strict proof of the conditions justifying it before taking it on record."

> *10. It has been held by the privy Council in the case of Chainchal Singh v. Emperor, reported in AIR 1946 PC I, as regards section 33 that:*
>
> *"4. Where it is desired to have recourse to this section on the ground that a witnesses incapable of giving evidence that fact must be proved, and proved strictly. It is an elementary right of an accused person or a litigant in a civil suit that a witness who is to testify against him should give his evidence before the court trying the case which then has the opportunity of seeing the witness and observing his demeanour and can thus form a far better opinion as to his reliability than is possible from reading a statement or deposition. It is necessary that provision should be made for exceptional cases where it is impossible for the witness to be before the court, and it is only by a statutory provision that this can be achieved. But the court must be careful to see that the conditions on which the statute permits previous evidence given by the witness to be read are strictly proved. In a civil case a party can if he chooses waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence."*

14. Even when in a given case the main part of the section is satisfied (which is not satisfied in the present case), the section requires 3 prerequisites (by way of provisos) to be established before the evidence of the earlier proceeding can be admitted, namely:

* The first proceeding must be between same parties;

* The adverse party in the previous proceeding must have an opportunity to cross-examine the said witness;

* And the questions in issue were substantially the same as in the first proceeding.

15. The Hon'ble Supreme Court in the case of *Sashi Jena v. Khadal Swain rep*orted in (2004) 4 SCC 236 *has held that to attract section 33 of the Evidence Act,* the three prerequisite mentioned in the section must be satisfied to attract the section and if any one of the prerequisites is not satisfied the said section will not be attracted.

16. The Hon'ble Supreme Court in the case of V.M. Matthew *v.* V.S. Sharma reported in (1995) 6 SCC 122 while discussing section 33 stated that "the proviso

(to section 33) lays down the acid test that the statement of a particular witness should have been tested by both parties by examination and cross examination in order to make it admissible in later proceedings."

17. In view of the above, it is submitted:

* The prosecution in the present case is heavily relying upon the depositions and affidavits made before the learned Single Judge. The witnesses who gave the depositions and the affidavits have not been produced before this Committee.

* However, in terms of the requirement of the main part of section 33 itself, the Prosecution has neither pleaded nor proved that direct evidence of such witness could not be produced on account of the circumstances mentioned in the said section.

* In fact, the prosecution has not even sought to rely upon section 33 to support the admissibility of the evidence sought to be produced by it, let alone seeking to establish that the conditions and prerequisites of the said section have been satisfied.

* The witnesses that were produced before the Committee could only prove the factum of the said affidavits being tendered and depositions being given before the Ld. Single Judge; they were, however, not competent to prove the truth and other contents of the affidavits or the depositions.

* In the proceedings before the Ld. Single Judge, the Respondent i.e. Hon'ble Mr. Justice Soumitra Sen was admittedly not a party.

* He was not a party and he did not have a chance to cross-examine the witnesses before the Ld. Single Judge.

* As none of the conditions required to be satisfied u/s 33 are fulfilled (either of the main part or the provisos), the evidence is not admissible before the High Power Committee.

* The evidence led by the prosecution before this committee is not direct evidence and hence is not admissible. It cannot also be admitted under section 33 because it has neither been pleaded by the prosecution nor have they been able to establish that conditions enumerated in the said section are satisfied.

18. In the instant case mere non submission/non filing of the accounts by the Receiver (which is an irregularity) would not point out towards the conclusion that there was an (intentional) misappropriation on his part.

19. Mere non-filing of the accounts would not lead to the conclusion of Mens Rea being evident in the instant transaction.

20. It has been held in the case of *Abdula v. State* reported in (1980) 3 SCC 110 and in the case of *Changa Reddy v. State of A.P.* reported in (1996) 10 SCC 193, that mere violation of rules and procedure does not amount to an offence. In the instant case the lapse on the part of the Receiver in not filing/ submitting the account does not amount to any offence especially there is no evidence of Mens Rea.

21. The circumstance relied upon by the prosecution do not lead to the irresistible conclusion that the circumstances are compatible only with the hypothesis of the guilt of the receiver. The acts of omission and commission, which are attributed to the Receiver, by themselves, do not establish the commission of the offence alleged against him. The aforesaid acts may give rise to suspicion, howsoever strong it may be, cannot take the place of the proof. In the instant proceedings the burden of proving the same lies on the prosecution.

22. In the case of *Ranjit Singh v. State of Maharashtra* reported in (2005) 5 SCC 294, the law as laid down in the aforesaid cases has been approved and it has been held that merely not following the rules or irregularities or lapses or violation of provisions and rules would not automatically result in commission of an offence. The prosecution will have to establish the essential ingredients of the offence which is Mens Rea.

23. In the instant case there is no allegation of fraud, misappropriation, criminal breach of trust against the Receiver either by the plaintiff or by the defendant. In such circumstances there is no question of Mens Rea which would lead towards an inescapable conclusion of commission of an offence.

VI. ARTICLE 20(3)

It is not in dispute that in the present proceedings, a specific allegation of misappropriation is made against the respondent. This allegation clearly has

criminal connotation. The proceedings before this Committee, therefore, clearly partake of criminal character and, as such, the basic notions of criminal law adumbrated herein below are applicable:

1. There is a presumption of innocence in favour of the respondent;

2. The entire onus of establishing the charge of misappropriation is on the other side;

3. The respondent has a right to maintain silence. This right not only flows out of Article 20(3) of the Constitution of India, but also from the basic principles of criminal law. Article 20(3) reads as follows:

> *"No person accused of any offence shall be compelled to be a witness against himself."*
>
> The wording of Article 20(3) of the Constitution of India can be compared to the 5th Amendment of the U.S. Constitution. The 5th Amendment reads as follows:
>
> *"No person... ... shall be compelled in any criminal case to be a witness against himself"*

4. Article 20(3) of the Indian Constitution does not refer to a criminal case. All that Article 20(3) lays down is that a person accused of an offence has the protection of that article. Therefore, the sweep of Article 20(3) of the Indian Constitution is much wider than the 5th Amendment of American Constitution. By judicial interpretation, the American Supreme Court has given a very wide connotation to the 5th Amendment. The privilege against self-incrimination has been held to apply to witnesses as well as parties in proceedings both of civil and criminal nature and it covers documentary evidence and oral evidence and extends to all disclosures, including answers which by themselves support criminal conviction or furnishing a link in the chain of evidence needed for conviction.

5. The other side has repeatedly invoked the provisions of Section 106 of the Evidence Act on the ground that once it is admitted by the respondent that he has received the amount in question, it is for him to explain how the same has been dealt with. This argument is misplaced as it ignores a basic principle that where the allegations are of a criminal nature, the onus is on the one who makes the allegation and it is only after all the ingredients of the alleged offence are established then only under section 106 of the Evidence Act the onus shifts. The respondent remaining silent cannot be a substitute for the evidence to be

produced by the Petitioner whether the Respondent has misappropriated funds or not can also be established on the basis of the record required to be maintained by Lynx about deposits made by the Respondent.

6. The case of the respondent has been throughout that the monies received by him are invested in Lynx India. Whether the monies are invested in Lynx India or not can be easily established from the records of Lynx India, therefore, the other side also has access to the information in the form of records maintained by Lynx India. The failure of the other side to do so cannot be held against the respondent by taking recourse to provisions of Section 106 of the Evidence Act. As has been pointed out that under relevant directives of the RBI Act, Lynx India which is a non-banking financial company has to maintain a register of depositors giving the following details:

> *"(16) Register of deposit:*
>
> *(i) Every non-banking financial company shall keep one or more registers in respect of all deposits in which shall be entered separately in the case of each depositor the following particulars, namely -*
>
> *(a) Name and address of the depositor;*
>
> *(b) Date and amount of each deposit;*
>
> *(c) Duration and the due date of each deposit;*
>
> *(d) Date and amount of accrued interest or premium on each deposit;*
>
> *(e) Date of claim made by the depositor;*
>
> *(f) Date and amount of each repayment, whether of principal, interest or premium;*
>
> *(g) The reasons for delay in repayment beyond five working days;*
>
> *(h) Any other particulars relating to the deposit."*

7. Unfortunately, this register is not on the record of the Official Liquidator who has been appointed in respect of Lynx India which is in liquidation. The representative of the Official Liquidator has admitted in his evidence before this Committee that some record of the Lynx India is lying with the Calcutta

Police and the Official Liquidator has not been able to retrieve the same. This register would establish when the deposits were made by the respondent and when they matured and what is the interest that is earned and whether the amounts deposited were re-invested or not. The report and the information submitted by the Official Liquidator clearly shows that in 1999 a sum of approx. Rs. 66 lacs was to the credit of the respondent as per the record available with the Official Liquidator.

8. In view of these circumstances, the argument based on Section 106 of the Evidence Act is totally misconceived. In this connection, the attention of the Hon'ble Committee is drawn to the judgment of the Apex Court in the case of Shambhu Nath Mehra *v*. State of Ajmer, reported as (1956) S.C.R. 199 at 205. In that case, S.N. Mehra who was clerk in the office of the Divisional Engineer Telegraphs, Ajmer was convicted of offences under Sections 420 IPC and (2) of the Prevention of Corruption Act, 1947. The substance of the allegation was that he obtained a sum totalling to about Rupees 23 and 12 Anna from the Government as T.A. for two journeys. The money represents the 2nd Class Railway fare. The allegation against him was that either he did not travel at all or if he did, he did not pay the fare. In this context, Section 106 of the Evidence Act was pressed into service and the burden was placed on him to establish that in fact he did travel and that he spent the amount in question. The Apex Court held on page 205 of the report that from the registers and books of the Railway and of the Department the prosecutor was in a position to know and prove the official movements of the employee concerned and this information was as much within the knowledge of the accused and also the prosecution. The prosecutor has sought to charge him on the ground that the accused was unable to produce a ticket and also was not in a position to give any explanation for the same. In this context and with reference to Section 106 of the Evidence Act, the Apex Court observed as follows on page 204:

> *"Illustration (b) to section 106 has obvious reference to a very special type of case, namely to offences under sections 112 and 113 of the Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass, etc. Now if a passenger is seen in a railway carriage, or at the ticket barrier, and is unable to produce a ticket or explain his presence, it would obviously be impossible in most cases for the railway to prove, or even with due diligence to find out, where he came from and where he is going and whether or not he purchased a ticket. On the other hand, it would be comparatively simple for the passenger either to produce his pass or ticket or, in the case of loss or*

of some other valid explanation, to set it out; and so far as proof is concerned, it would be easier for him to prove the substance of his explanation than for the State to establish its falsity.

We recognize that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."

VII. SECTION 106 OF EVIDENCE ACT

1. In the case of *Ambalal v. Union of India & Ors. (1961) 1 SCR 933,* the question of onus under section 106 of the Evidence Act arose before the Constitution Bench of five Judges of the Apex Court. In the said case, the Customs authorities recovered 10 articles from the house of the appellant which were in the nature of silver slabs, pieces of gold bullion, etc. The Customs authorities held that the goods were imported by the appellant into India in contravention of Import-Export Control Act read with the Sea Customs Act and the Land Customs Act, after the Customs barrier was raised against Pakistan in March, 1948.

2. The contention of the appellant was, that 5 articles had been brought by him in India from Pakistan in 1947 after partition and that with respect to the other 5 articles he was the bonafide purchaser thereof. There was no evidence adduced by the Customs authorities to establish that the goods were smuggled into India after raising of the Customs barrier in March, 1948 and the onus was sought to be put on the appellant for proving the import of the goods. The onus was sought to be shifted on the appellant by reason of Section 178A of the Sea Customs Act and Section 5 of the Land Customs Act, along with Section 106 of the Evidence Act.

3. The Apex Court rejected the application of Section 178A to the said case on the ground that Section 178A was inserted in 1955 and was prospective in nature, whereas the confiscation order was passed in 1952. As regards Section 5 of the Land Customs Act, the Court held that the application of this section is conditioned by the legal requirement to obtain a permit for passage of goods and, therefore, the same also was not relevant. With regard to the application under section 106 of the Evidence Act, the Apex Court held that the onus was on the Customs authorities to prove that the goods were brought into India after the Customs barrier was established in March, 1948. The Apex Court observed that under this Section, only a fact which is especially within the knowledge of a person has to be proved by him, the said Section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts.

4. The Apex Court held that, in case Section 106 of Evidence Act is to be applied, then by analogy the fundamental principles of criminal jurisprudence must equally be invoked. If so, it follows that the onus to prove the case against the appellant is on the Customs authorities and they failed to discharge that burden.

RAJYA SABHA

Parliamentary Bulletin

PART-II

No. 48696 **TUESDAY, AUGUST 09, 2011**

Legislative Section

NO-DAY-YET-NAMED MOTIONS LIST NO. 3

Motion admitted under rule 170

BY SHRI SITARAM YECHURY
SHRI PRASANTA CHATTERJEE
SHRI ARUN JAITLEY:

86. "This House do consider the Report of Inquiry Committee in regard to investigation and proof of the misbehaviour alleged against Shri Soumitra Sen, Judge, High Court of Calcutta which was laid on the table of the House on 10 November, 2010."

V.K. AGNIHOTRI
Secretary-General

RAJYA SABHA

REVISED LIST OF BUSINESS

Wednesday, 17 August, 2011

ΨMOTIONS

*A *Motion for presenting an Address under article 217 read with clause (4) of article 124 of the Constitution*

SHRI SITARAM YECHURY
SHRI PRASANTA CHATTERJEE
SHRI ARUN JAITLEY to move the following motion:—

"This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:—

(1) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and

(2) Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta."

*B. *Motion for considering the Report of the Inquiry Committee constituted to investigate into the grounds on which removal of Shri Soumitra Sen, Judge, Calcutta High Court was prayed for*

SHRI SITARAM YECHURY
SHRI PRASANTA CHATTERJEE
SHRI ARUN JAITLEY to move the following motion:—

"This House do consider the Report of the Inquiry Committee in regard to investigation and proof of the misbehaviour alleged against Shri Soumitra Sen, Judge, High Court of Calcutta which was laid on the Table of the House on the 10th November, 2010."

%C. ADDRESS TO THE PRESIDENT UNDER CLAUSE (4) OF ARTICLE 124 OF THE CONSTITUTION

"WHEREAS a notice was given of a motion for presenting an address to the President praying for the removal of Shri Soumitra Sen, from his

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Ψ At 3-00 P.M.

* Items at A and B to be taken up together.

% Item at C to be put to the vote together with Motion at Item A.

office as a Judge of the High Court at Calcutta by fifty-seven members of the Council of States (as specified in the Annexure 'A' attached herewith#);

AND WHEREAS the said motion was admitted by the Chairman of the Council of States;

AND WHEREAS an Inquiry Committee consisting of—

(a) Shri B. Sudershan Reddy, a Judge of the Supreme Court of India;

(b) Shri Mukul Mudgal, Chief Justice of the High Court of Punjab and Haryana at Chandigarh; and

(c) Shri Fali S. Nariman, a distinguished jurist, was appointed by the Chairman of the Council of States for the purpose of making an investigation into the grounds on which the removal of the said Shri Soumitra Sen from his office as a Judge of the High Court at Calcutta has been prayed for,

AND WHEREAS the said Inquiry Committee has, after an investigation made by it, submitted a report containing a finding to the effect that Shri Soumitra Sen is guilty of the misbehaviour specified in such report (a copy of which is enclosed and marked as Annexure 'B')@;

AND WHEREAS the motion afore-mentioned, having been adopted by the Council of States in accordance with the provisions of clause (4) of article 124 of the Constitution of India, the misbehaviour of the said Shri Soumitra Sen is deemed, under sub-section (3) of Section 6 of the Judges (Inquiry) Act, 1968, to have been proved;

NOW, THEREFORE, the Council of States requests the President to pass an order for the removal of the said Shri Soumitra Sen from his office as a Judge of the High Court at Calcutta."

NEW DELHI; **V.K. AGNIHOTRI**

16 August, 2011 *Secretary-General*

See Item A above.

@ The Report of the Inquiry Committee was laid on the Table of the House on the 10 November, 2010.

PROCEEDINGS OF THE RAJYA SABHA DATED THE 17 AUGUST, 2011 AND 18 AUGUST, 2011

OBSERVATION BY THE CHAIRMAN

MR. CHAIRMAN: Hon. Members, the House will now take up the Motion for presenting an Address to the President for removal of Justice Soumitra Sen, Judge, High Court of Calcutta from his office together with the Motion for considering the Report of the Inquiry Committee constituted to investigate into the grounds on which removal of Justice Soumitra Sen, Judge, Calcutta High Court was prayed for.

Before calling the mover to move the Motion, I wish to inform the Members the procedure that I propose to follow.

After the motions are moved and the mover of the motion has spoken, I shall call Justice Soumitra Sen to present his defence. After the presentation, Justice Sen shall withdraw.

The House will then proceed to consider the motion and Members will participate in the discussion on the motion.

I would urge upon the Members to make precise and short speeches restricting themselves broadly to the findings of the Inquiry Committee, as contained in its Report. I also seek cooperation of the Members in maintaining the dignity of the House during the presentation of Justice Soumitra Sen to the House in keeping with the solemnity of the occasion.

After all the Members have spoken, the mover will reply to the discussion. Thereafter, I shall put the Motion for presenting an Address to the President received under article 217 read with clause (4) of the article 124 of the Constitution, and, the Address to the President together to the vote of the House in terms of Rule 16(4) of the Judges Inquiry Rules, 1969.

I may inform the Members that the Motion and the Address are required to be adopted by a majority of the total membership of the House, and, by a majority of not less than two-thirds of the Members of the House present and voting in terms of clause (4) of article 124 of the Constitution, and, presented to the President in the same Session.

The matter pertaining to the removal of a Judge is very serious, and, may be dealt with in a careful and sound manner.

I request the Members not to repeat the points and not to bring in any extraneous matter while speaking on the Motion. Since the time allowed for discussion is four hours, excluding the ninety minutes time, which is the time

allotted to the Judge for his defence, I would urge the Members to restrict themselves to the facts mentioned in the Judges Inquiry Committee Report and the reply of the Judge. Both the documents have been circulated to the Members on 10th November, 2010, and, on 21st February, 2011, respectively. Marshal.

MARSHAL: Yes, Sir.

MR. CHAIRMAN: Is Justice Soumitra Sen in attendance?

MARSHAL: Yes, Sir.

MR. CHAIRMAN: Bring him to the Bar of the House.

(Justice Soumitra Sen was then brought to the Bar of the House)

MOTION FOR PRESENTING AN ADDRESS UNDER ARTICLE 217 READ WITH CLAUSE (4) OF ARTICLE 124 OF THE CONSTITUTION TO THE PRESIDENT FOR REMOVAL FROM OFFICE OF JUSTICE SOUMITRA SEN OF THE CALCUTTA HIGH COURT;

AND

MOTION FOR CONSIDERING THE REPORT OF THE INQUIRY COMMITTEE CONSTITUTED TO INVESTIGATE INTO THE GROUNDS ON WHICH REMOVAL OF SHRI SOUMITRA SEN, JUDGE, CALCUTTA HIGH COURT WAS PRAYED FOR.

MR. CHAIRMAN: Shri Yechury may now move the motions and speak.

SHRI SITARAM YECHURY (WEST BENGAL): Thank you, Mr. Chairman, Sir.

I rise, Mr. Chairman, Sir, to move these motions in response to the call of duty to my country and my Constitution. Particularly, I rise at a time when waves of protests are taking place all across the country on the issue of corruption at high places. But, I think, though by accident and not by design, these motions are conning up for debate before us in this august House very fortuitously and it is happening at a time when the Parliament can also exercise its will and resolve of fighting corruption in high places. And it is in that context I rise to

move these motions, as you have mentioned, fully conscious of the solemnity of the occasion. I also rise with a deep sense of anguish to move these motions. I shall return to these aspects a little later. Let me first move these motions.

Sir I beg to move the following motion:

> This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct :
>
> (iii) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and
>
> (iv) Misrepresented facts with regard to misappropriation of money before the High Court of Calcutta.

Sir, I also move the following motion:

This House do consider the Report of the Inquiry Committee in regard to investigation and proof of the misbehaviour alleged against Shri Soumitra Sen, Judge, High Court of Calcutta which was laid on the Table of the House on the 10th November, 2010.

Sir, as I have said, I moved these motions fully conscious of the solemnity of the occasion. This arises from the fact that it is for the first time that this august House is considering the invocation of our Constitutional provisions for the adoption of such motions. This has not happened in our history so far.

Sir, I also wish to categorically state that by moving this motion we are not moving against the judiciary as a whole which we hold in the highest of esteem. This is not a motion questioning the integrity of the judiciary. This is a motion against one Judge who has been found to have indulged in conduct that constitutes the definition of misbehaviour within the meaning of our Constitution. It thus makes this Judge unsuitable to occupy the exalted office of a Judge of a High Court. Individual acts of misbehaviour can't find refuge, Mr. Chairman, Sir, behind the integrity of the judiciary as a whole. The issue is one of infallibility and, therefore, the integrity of one individual Judge and not the integrity of the judiciary as a whole. This motion is, therefore, moved, as I have said, not to question the integrity but to strengthen that very integrity of our judiciary from being besmirched by one act of a single Judge.

Mr. Chairman, Sir, our Constitution very rightly provides the judiciary with a very important position and role. People's faith in the independence and integrity of our judiciary is a very crucial element in the functioning and maturing of our democracy. It would be a very sad day if this faith of the people is undermined due to the acts of conduct of an individual member. The judiciary is held in high esteem by both the people and the system as it dispenses with justice and is one of the important organs of our State. The Judges are correctly assumed to be people of character, honesty and integrity who discharge their duties and functions without fear or favour in the spirit of upholding justice. It is, therefore, a call of duty to the nation to correct any aberration that may lead to the undermining of this faith. I have moved this motion in response to this call of duty.

As I have said, Sir, I moved these motions also with a deep sense of anguish. There is no sense of frivolity or elafiah, neither is there any sense of vindictiveness or retribution. These motions are, therefore, moved with full sanction of our Constitution and in accordance with these provisions.

Sir, my grandfather retired as a Judge of the Andhra Pradesh High Court when I was eight years old and I learnt at that time that a Judge is not a Judge only in the court, but a Judge is a Judge everywhere else in the society and that his acts, inside or outside the court, are reflection on the judiciary as a whole. I think this spirit has been contained in the Inquiry Report to which, Sir, you wanted us to confine. When the Inquiry Report comments on the character of a judge, both inside and outside the court—I read from this; in order to establish the charge — that since these acts of misbehaviour were committed when Justice Soumitra Sen was not a member of the Bench or not a judge, therefore, they cannot be applicable, that I think is untenable on these grounds. I quote from the Inquiry Committee Report. It says, "A judge of the High Court is placed on a high pedestal in our Constitution simply because Judges of High Courts like Judges of the Supreme Court have functions and wield powers of life and death over citizens and inhabitants of this country, such as are not wielded by any other public body or authority. It is a power coupled with a duty, on the part of the Judge to act honourably at all times whether in court or out of court. Citation of case law is superfluous because the categories of 'misbehaviour' are never closed. In interpreting Articles 124 (4) and (5) and the provisions of the Judges (Inquiry) Act, 1968 and when considering any question relating to the removal of a Judge of the higher Judiciary from his office, it must not be forgotten that it was to secure to the people of India a fearless and independent judiciary that the Judges of Superior Courts were granted a special position in the Constitution with complete immunity from premature removal from the office except by the cumbersome process

prescribed in Articles 124 (4) and (5) read with the law enacted by Parliament, the Judges Inquiry Act, 1968.

The very vastness of the powers vested in the Higher Judiciary and the extraordinary immunity granted to Judges of the High Courts and of the Supreme Court require that Judges should be fearless and independent and that they should adopt a high standard of rectitude so as to inspire confidence in members of the public who seek redress before them. While it is necessary to protect the Judges from motivated and malicious attacks, it is also necessary to protect the fair image of the institution of the Judiciary from such of those Judges who choose to conduct themselves in a manner that would tarnish this image. The word 'misbehaviour' after all is the antithesis of 'good behaviour'. It is a breach of the condition subsequent upon which the guarantee of a fixed judicial tenure rests. High judicial office is essentially a public trust and it is the right of the people through its representatives in the Parliament to revoke this trust but only when there is 'proved misbehaviour'."

This, Sir, is what I think the Inquiry Committee has proven in its report that it submitted to you which has been laid on the Table of the House.

The Constitution also provides specific provisions which are essential, as I said, for the independence of the Judiciary, but also for safeguards in the process of the removal of a judge. These provisions, in my opinion, are aimed at strengthening the independence of the Judiciary rather than undermining it. The provisions for removal, however, are the most stringent and come into effect only in the case of 'proved misbehaviour'.

I think, this hon. House must refresh itself with strict safeguards that have been provided by the Constitution in order to ensure that no particular member of the Judiciary is moved against in a spirit of vendetta or vindictiveness. These are: (1) At least 50 Members of the Rajya Sabha or 100 Members of the Lok Sabha must bring a motion in either House; (2) The hon. Chairman or the hon. Speaker will apply his or her mind before admitting the motion; (3) Once admitted, the Chairman or the Speaker will constitute a high level inquiry committee under the Judges Inquiry Act; the concerned judge will have full opportunity for defence before this Committee; (4) If the Committee does not find the judge guilty, then the matter ends there with no scope of any parliamentary or judicial review. It is only when the Committee finds the concerned judge guilty, will the matter come up before the Parliament; (5) The Parliament cannot decide the matter by a simple majority; a two-thirds majority is required. The concerned judge will have the opportunity to make his defence once again before the Parliament, in that House where it is moved. Sixthly,

both the Houses of Parliament will have to decide, by two-thirds of majority, separately and within the same Session of Parliament. Finally, even after his removal by the President of India, following the decision, when we adopt these Motions today, taken up by both the Houses, the Judge in question, in accordance with the Supreme Court's directives, can seek redress from the Supreme Court by way of a judicial review. Thus, Mr. Chairman, Sir, there is very little ground to apprehend that justice will not be done to these safeguards. Therefore, as far as the present case is concerned, we have reached the fifth stage.

The Report of the Inquiry Committee has been laid before Parliament, on the 10th of September, as I have said, and the Report, unambiguously upholds these charges. I quote: "Whether the grounds of misconduct, which Justice Soumitra Sen has been charged with, if proved, amount to misbehaviour under article 124 (4) read with article 217 (1) of proviso (b). In the opinion of the Committee, the grounds of misconduct, as set out in the Motion, when proved, would amount to misbehaviour under the relevant articles. Then, it proceeds to establish this unambiguously. Sir, since you have told us about the paucity of time, I do not want to go through a long quotation of the Inquiry Committee. But it enlightens us how this entire concept of misbehaviour had come in the Act of 1935, in the Constituent Assembly Debates, and how, under the present constitutional provisions, both the charges against Justice Soumitra Sen have been held to be valid and unambiguously held to be correct. I quote: "in view of the findings on Charge I and Charge II above, the Inquiry Committee is of the opinion that Justice Soumitra Sen of Calcutta High Court is guilty of misbehaviour under article 124 read with proviso (b) to article 127 (1) of the Constitution of India." So, after this, I think, the matter needs to be treated as closed. And the Inquiry Committee has, actually, provided us with all the defence. However, since you have referred to the defence of Justice Soumitra Sen as well, I would like to refer to one of .the aspects that he has referred to in his defence. In his defence to the reply to the Motion submitted to the hon. Chairman by myself and 57 others, Justice Soumitra Sen invokes, from French history, the Dreyfus Affair. Then, he proceeds to say, "The march of time has witnessed thousands, all over the world, wrongly persecuted in the name of justice and for upholding the rule of law." He then proceeds to cast aspersions on the then Chief Justice of India, whose letter to the Prime Minister, seeking removal of Justice Soumitra Sen, was appended to our Motion, and other members of the highest judiciary who have either pronounced or opined against him, to try and establish that "the verdict was already reserved even before the trials commenced." Now, the invocation of Dreyfus Affair, I think, is thoroughly inappropriate. The Dreyfus Affair, all of us will know, was brought into public domain by the famous French intellectual and writer, Emile Zola. It

was brought about at a time when the entire battle was taking place in Europe over the formation of the nation States. It was brought about at a time when secularism and separation of the Church from the State was a big affair in the history of Europe. And, at that point of time, somebody caught in the crossfire cannot be treated as an example of somebody being wronged, and abstracted from this history, I think, it will be completely out of context to have brought this in here. But it is from this process of evolution of human civilization, you have the French Philosopher, Charles Montesquieu, who laid down the benchmark, in a modern democracy, for checks and balances between these three important organs, namely, the Executive, the Legislature and the Judiciary. And, it is on that basis that our Constitution has also been drawn up. And, while working out the mechanics of the three wings to play a joint participatory role in our Constitution, we define the centrality of the will of the people. The Preamble begins by saying, "We, the people". This centrality of the will of the people, is expressed through its elected representatives from Parliament, and this centrality is supreme in our constitutional scheme of things. And it is with this supremacy today that we are taking up this matter. And I wish, instead of quoting the Dreyfus Affair, we would have rather recollected what we stand for today, on the basis of what law, and whether these laws are being violated.

But if, at all, you want to go back into history, Sir, I think it is more appropriate to recollect the debate in the British Parliament on the Censure Motion against Robert Clive when he was charged with amassing huge amounts of money after the Battle of Plassey and the loot of Kolkata. And, Sir, Thomas Babington Macaulay, the same Macaulay who is known for his infamous minute on education in colonial India, notes, Clive at that time was trying to justify what he did to the rapacious loot of Kolkata by saying that this was a city waiting to be taken. People welcomed me with both extended hands, one laden with gold, the other laden with gems and jewellery, and, then, justifying his loot, he goes on to say, and it is in the House of Commons Records, Sir, "By God, Mr. Chairman, at this moment, I stand astonished at my own moderation". Now, according to the law of the land, at that point of time you have violated that law and you have committed acts of misbehaviour. You judge yourself from the moment of the law of the time.

Let us not go back into history and draw parallels which are not applicable. Or, for that matter, Sir, if you really want to go back into history, let us go back to the history of impeachment of Warren Hastings.

For seven long years the House of Lords heard the case of Warren Hastings after the House of Commons had impeached him. Edmond Burke in one of

his most memorable orations, when he introduced this case to the House of Lords, in fact, defines judges there. It was a brilliant definition, Sir, of what the role of a Judge was in those times. This is 11 scores of years ago, more than two centuries ago. Therefore, there is a time-lag and difference. Where we affirm faith in our Constitution, the faith was affirmed in God then. So, do not misunderstand then when this quotation is given. Burke says in that oration of his recommending the impeachment of Warren Hastings, "Law and arbitrary power are in eternal enmity". And, then, he proceeds to say, "Judges are guided and governed by the eternal laws of justice to which we are all subject. We may bite our chains if we will, but we shall be made to know ourselves and be taught that man is born to be governed by law and that he who substitutes will in the place of law is an enemy of God."

So, what we are talking about is: do we, in accordance with the law of the land as it exists today, the Constitution of the Republic of India and its provisions, find Justice Soumitra Sen guilty of the two charges that we have made?

Sir, even though the proceedings against Clive were not passed because of the times, he committed suicide before he was exonerated. Edmund Burke's plea to the Lordships to impeach Warren Hastings was, "in the name of the people of India whose laws and rights and liberties he has subverted, whose properties he destroyed, whose country he has laid waste and desolate, he needs to be impeached". 'This is why he needs to be impeached' is what Edmond Burke argued. But that precisely was what British colonialism wanted to continue in India. For 190 years, it continued that loot and plunder. And, therefore, impeaching him would not have served their political objective. Therefore, after seven long years, as Macaulay says, "The fatigue of time took over and Hastings was allowed to retreat".

But drawing from this history, Sir, in the instant case that we are discussing now, as I said, all the provisions of the Constitution have been scrupulously adhered to, all the matters of contention have been unambiguously disposed of by the duly constituted Inquiry Committee. I have established these points earlier, Sir. But since the labour of argument of Justice Sen's reply has been that the motion moved by me and 57 other hon. colleagues does not contain any specific amounts of money that have been misappropriated.

Yes, Sir, the Motion does not contain; the Motion was appended with the letter of the then Chief Justice of India to the hon. Prime Minister where the entire case was argued. And, in order to avoid repetition, all the charges that are contained in his letter, we appended that letter. We appended that letter not

as a recommendation that you should accept, our Motion. We appended that letter because it contains all the facts which need not be repeated. If the contention is that these facts are not there, I think, that is wrong. If you permit me, I can read out from the letter of the then Chief Justice of India which details all these charges, which Justice Soumitra Sen now today contends are not correct against him. But, all these have been detailed.

Sir, I will take about 5-7 minutes, I may be permitted to read. It says, "On 10th September, 2007, I had asked Justice Soumitra Sen to furnish his fresh and final response to the judicial observations made against him. After seeking more time for this purpose, he furnished his response on 28th September, 2007 requesting that he may be allowed to resume duties in view of the order of the Division Bench of the Calcutta High Court. Since I felt that a proper probe was required to be made into the allegations to bring the matter to a logical conclusion, I constituted a three-member committee consisting of Justice A.P. Shah, the then Chief Justice of the Madras High Court, Justice A.K. Patnaik, the then Chief Justice of the High Court of Madhya Pradesh and Justice R.N. Lodha, Judge of the Rajasthan High Court. The in-house procedure adopted by the Supreme Court and various High Courts is as envisaged in this procedure to conduct a fact-finding inquiry. The committee submitted its report on such and such date, etc., etc." Then, it concluded by saying, I will read out the main charges: "(1) Shri Soumitra Sen did not have honest intentions right from the year 1993. Since he mixed the money received as a receiver and his personal money and converted receiver's money to his own use, there has been a misappropriation at least temporarily of the sale proceeds, (a) He received Rs.24,57,000 between 25th February, 1993 to 10th January, 1995. But, the balance in his account number so and so and dated so and so was only Rs.8,83,963.05. (b) Further, a sum of Rs. 22,83,000 was then transferred by him into so and so account number, name so and so, and the entire amount was withdrawn in a couple of months reducing the balance to a bare minimum of Rs.811, diverting the sale proceeds for his own use with dishonest intentions, (c) He gave false explanation to the court that an amount of Rs. 25 lakhs was invested from the account where the sale proceeds were kept whereas in fact the amount of Rs.25 lakhs was withdrawn from Special Officer's account number so and so and not from the account number so and so in which the sale proceeds were deposited, (d) Mere monetary deposit under the compulsion of judicial orders does not obliterate breach of trust and misappropriation of receiver's funds for personal gain, (e) The conduct of Shri Soumitra Sen has brought disrepute to the high judicial office and dishonour by the institution of judiciary undermining the faith and confidence reposed by the public in the administration of justice." Then, he goes on to say, "A detailed representation was made by Justice Soumitra Sen on 25th February, 2008 and

a collegium consisting of himself, that is, Chief Justice of India, Justice B.N. Aggarwal and Justice Ashok Bahl, seniormost judges of the Supreme Court, gave a hearing to Shri Soumitra Sen and reiterated the advice given to him to submit his resignation or seek voluntary retirement on or before 2nd April, 2008. However, vide his letter dated 26th March, 2008, Justice Soumitra Sen expressed his inability to tender resignation or seek voluntary retirement."

So, the charges, Sir, are very specific and an in-house inquiry committee consisting of two Chief Justices and a justice of a High Court has gone into it and established it. A collegium of judges of seniormost judges of the Supreme Court has re-established them. Now, the Inquiry Committee constituted by your hon. self has, once again, unambiguously established it. So, I do not think there is any degree of ambiguity on the veracity of these charges. Since they stand established by three separate, independent and duly constituted authorities, I think, this is a matter that should be accepted by us as the final issue that these charges have been now proved, Sir.

But, therefore, in this view, I feel that there is no other option but for us to proceed with these Motions. I say that, as 1 have said earlier, with a sense of call of duty to my country and the Constitution, fully conscious of the solemnity of the occasion and that we are exercising our right in the Constitution, and with a deep sense of anguish that we have to move against a judge, and that in order to strengthen the integrity and safeguard the institution of our Judiciary, in that light, therefore, Sir, I think we should proceed. But, finally, Sir, I would like to appeal and go back to the speech of Edmund Burke in the House of Lords when he finally makes the appeal to the Lordships and I quote, "My Lords, if you must fall, you may so fall. But if you stand, and stand, I trust you will, may you stand as unimpeached in honour as in power. May you stand not as a substitute for virtue, but as an ornament of virtue, as a security for virtue. May you stand as a sacred temple for the perpetual residence of inviolable justice." And this, Sir, is the inviolable justice that this House today represents when it converts itself into a Bar, when it takes up these Constitutional provisions, it is the temple of inviolable justice. And, therefore, Sir, a sacred temple for the perpetual residence of inviolable justice, that is what this House must be, Sir. Justice and temple are used in the terms that Pandit Nehru used after Independence when he talked of our important public sector constructions as the temples of modern India. These are the temples of modern India that our Republic created. Sir, I say this with all honour at my command and all the commitment at my command that the Republic that was founded in India, I was born after that, Sir, both after the Independence and the Republic, but the Republic that was founded was a far-reaching vision in modern civilisation and society. Way back, more than six decades ago, we

had given universal adult franchise in our country, which was then considered absolutely abnormal and unusual. We must recollect, Sir, okay, when the President of USA comes and signs in our Golden Book in our Central Hall, all of us are very happy, when he says, "Greetings from the oldest democracy to the largest democracy". But, Sir, remember, the African Americans in the USA had the universal right to vote granted to them one year after President Obama was born. One year after he was born, they were given the universal right to vote. We gave it way back in 1950, Sir. That is the faith that we had in our people, we have in our people. And that is the faith, Sir, that has to be exercised in our constitutional scheme of things through the elected representatives, and it is that faith that today unfortunately is being questioned by some quarters that this august Parliament is not competent or not capable enough to deal with corruption in high places, and, therefore, it cannot and will not move against corruption in high places. Therefore, we must set the precedent. We must give that confidence to the people of India. We owe it to the people of India that we will take action on these Motions precisely in order to strengthen our Republic and it is for strengthening of our Republic, Sir, I would now commend these Motions for adoption by this House, and commend them to make sure that we convey not only to the people of India but also to the people of the world and modern human civilisation that the Indian Parliament is a sacred temple, it is the perpetual residence of an inviolable justice. And this has to be established, Sir. With this appeal, I commend these Motions for your consideration and adoption. Thank you, Sir.

THE QUESTIONS WERE PROPOSED

MR. CHAIRMAN: Motions moved. Mr. Justice Sen, you may present your defence in relation to the findings of the Inquiry Committee, as contained in its Report which was laid on the Table of the Rajya Sabha on the 10th of November, 2010, and a copy of which was sent to you by the Rajya Sabha Secretariat *vide* their letter dated 11th of November, 2010. You may address the House for about one hour and thirty minutes.

JUSTICE SOUMITRA SEN: I am grateful, Mr. Chairman, Sir. I am also extremely grateful to hon. Members of the House for giving me this opportunity for presenting my defence. I am also grateful to Mr. Yechury when he began his moving of the motion by saying that 'this is a motion for a larger interest and not as against me personally.' I am extremely grateful to you. We are all now in a very crucial stage where the issue of corruption has come up. Everybody wants that there should not be corruption in high places. There cannot be any dispute to this proposition. The hon. Members of this House, you are elected Members of the people, in effect you are my elected

representatives also. Therefore, I have come to you to seek justice on certain very fundamental issues not only on questions of law but on questions of facts. It seems that the concept of presumption of innocence has now been reversed into a concept of presumption of guilt. The moment somebody is alleged to have committed some offence, it is presumed to be true. But, Mr. Chairman, Sir, I will prove from the facts as revealed from the Inquiry Committee itself that there has been no misappropriation in fact and in law. The language used in article 124 (4) is 'proven misbehaviour'. The question of 'proven misbehaviour' means to be proved beyond reasonable doubts, not on the basis of presumption or on the basis of probability. Hon. Members, it has been suggested in the Inquiry Report that since that proceedings before the Judges Inquiry Committee is not in the nature of the criminal proceedings, presumption or probability is enough. But at the same time and at the same place, it has been suggested that proof has to be beyond reasonable doubt, meaning thereby if I have to prove something, I have to prove it beyond reasonable doubt and if charges are proved against me, it can go by way of probability. There cannot be different stand with regard to proof on a matter of facts. Mr. Chairman, Sir, and the Members of this august House, the motions that have been moved are two in number, one is misappropriation of large sums of money which I received in my capacity as a receiver appointed by the High Court of Calcutta, therefore, misappropriation of money as a receiver not as a Judge, and secondly, misrepresentation of facts with regard to misappropriation of money before the Calcutta High Court. Both the motions are inexplicably connected. If I can demonstrate on the basis of the facts and evidence that there has been no misappropriation at all, the second motion automatically fails. Hon. Members, in accordance with the Judges Inquiry Act under section 3, before admission of a motion materials before the House are to be discussed because it presupposes that frivolous motions against Judges may or may not be admitted. So, before the admission stage, there is certain factual material basis to be examined independently by the Legislature. The power conferred to impeach a Judge of High Court or Supreme Court is absolutely on the Legislature. The Constitution has consciously excluded the Judiciary and the Executive to perform any such function of impeachment. Mr. Chairman, Sir, and the hon. Members of the House, I say this with conviction that after my elevation on 3rd of December, 2003, till November 2006, there has been no complaint against my integrity, my honesty in the public domain. Therefore, what is the substance and how could this motion come about? It is apparent that the Motion came about by reason of a letter written by our former Chief Justice to the hon. Prime Minister. Please don't take me amiss. I am not casting aspersions on anyone. I belong to an august institution which I respect. But, if I can demonstrate before you that there has been an abuse of power in an administrative side by a person holding high office, then, I am sure this House

will think twice. In this letter, if you kindly come to a point where he has said, that after the Division Bench judgment, Justice Balakrishnan, hon. Former Chief Justice of India thought that a deeper probe is necessary in order to arrive at a logical conclusion to the allegations. Pausing here for a moment, whose allegation is Justice Balakrishnan talking about? Nobody has alleged anything against me. In the judicial proceeding in which the 10th April order was passed, the parties did not raise any allegation against me. There is a letter written by our, the then Chief Justice of our Court dated 26th of November. In spite of this judgment, the letter in the last line says, 'However, there is no complaint against Justice Sen. The allegation, if any, is in the form of the adverse observations of a single judge and subsequently substituted by the In House Committee'. In this context, I would like to draw your kind attention to a letter dated 10th September, 2007. That is at page 148 of my reply. I believe the Members have got it. May I proceed?

MR. CHAIRMAN: Please.

JUSTICE SOUMITRA SEN: Although you have written response, prior to that kindly read the first paragraph. 'The Chief Justice of Calcutta High Court has apprised me in detail about the developments which have taken place pursuant to passing of the judgments dated 10th April, 2006 and 31st July, 2007 wherein adverse observations have been made against you. A copy of the two judgments is enclosed for your ready reference. Although your written response dated 23rd November 2006 submitted to the then Chief Justice of Calcutta High Court is already on record and subsequently on advice of your Chief Justice, you have orally explained your conduct when you visited my residence on 12th of July, 2007. In the light of the recent order dated 31st July, 2007, you are requested to submit your fresh and final response to the aforesaid adverse judicial observation leading to complaints making allegations of judicial misconduct and impropriety'. Pausing here for a moment, these two judgments arise out of an application filed in a suit between parties *inter se* where there are even private parties. The suit is filed in the year 1983 and is still pending disposal. No final decision has yet been made. In that suit, an application was filed in the month of March 2003, nine months before my elevation with only the prayers which is normally prayed for return of money. Hon. Chairman, Sir, and hon. Members, we will search the petition in vain with regard to a whisper of an allegation against my conduct as a receiver. The money belongs to third parties. They want it back. They have no complaint against me. On the contrary, before the High Court, when the proceedings went on, none of the parties contested it. They have clearly said they have no allegation against me and they do not wish to contest the proceeding by filing an application. Then, it is whose allegation? The proceeding before the learned single judge was purely

to examine the conduct of a receiver. There was no question of examining the conduct of a judge. Therefore, the statement made in this letter that allegation of judicial misconduct and impropriety, with utmost and humility, is not correct. My conduct, as a Judge, was never in question, was never in examination before a Single Judge; it was the conduct of a Receiver.

Now, kindly come to the next paragraph. It says, 'In these circumstances, it is proposed to hold an enquiry in terms of in-house procedure adopted by all the High Courts, including the Calcutta High Court into the allegation of misconduct and impropriety made against you.' Hon. Chairman and the Members of this House, I would like to draw your attention to certain very relevant facts which may seem that I am casting aspersions. It is not an aspersion; it is a matter of fact. Under the Constitution, the Supreme Court and the High Court are in two different Chapters. The power and duty of Supreme Court and High Court are duly circumscribed. I say this with conviction that the Supreme Court does not have administrative control over the High Courts and they are independent in nature. This is in order to create a dichotomy in furtherance of our Constitutional mandate that India is a Quasi Federal State. Therefore, the learned former Chief Justice of India was allied with the situation that the procedure adopted by the Supreme Court out of and full house —full court — reference is not binding on a High Court, unless it is adopted. Therefore, the expression 'adopted by all the High Courts, including Calcutta High Court', is incorrect. Had I known that these statements are not correct, I would have challenged the constitution of the In-House Committee, because, by that time, when it was constituted, the Division Bench has passed an order completely exonerating me from all the charges. I agree with Mr. Yechury when he said that people in high office should be absolutely clean. There is no doubt about it. But, when a judicial proceeding has taken place and certain allegations are made against me in a judicial proceeding and when I win in the ultimate judicial proceeding will I be still held guilty of the same charges?

Now, the mind of Justice K.G. Balakrishnan is clearly expressed when he writes that in spite of a Division Bench judgment, I want a deeper probe. He wants a deeper probe into a judicial order which he is bound by it in his administrative capacity. Today, Supreme Court is saying that it is all powerful. Why did they not bring the judgment to Supreme Court and set it aside on the judicial side? If they are all powerful, they can do that. You allow the Judgment to attain a stage of finality; nobody prefers an appeal. I cannot prefer an appeal, because I have won in that matter. Today, it is being said that I cannot take shelter under a judicial verdict. Therefore, how a person is acquitted by judicial process can again be held guilty in a non-judicial process?

Now, with regard to the adoption, I would like to make one submission. This was a situation which really confuses me, because I did not know about any such resolution being passed by the Calcutta High Court during my tenure. I continued to enquire from Judges in the past and the present whether there is any such resolution. Everybody said that they do not know. I do not have the infrastructure to go and search all the High Courts in the country to find out whether any such adoption took place. So, I filed an application under the Right to Information Act before the Calcutta High Court. A competent officer under the RTI Act of the Calcutta High Court has said, categorically, that there has been no such adoption. I have annexed it. Is this not a misrepresentation of facts by a person sitting in high office? Is that not a corruption? And, you are holding me guilty of corruption when I have been cleared by everybody by a judicial process. So, you are trying to hold me guilty by a non-judicial process because you have already determined what to do—to catch hold of this fellow and hang him in order to show that the Judiciary is being cleaned. I am the sacrificial lamb. The real issues are swept under the carpet. I have got three instances how the real issues of corruption were dealt by him. We all know about the Provident Fund Scam of the Allahabad High Court. A key witness died inside a jail under mysterious circumstances. What has been done? A briefcase containing rupees fifteen lakhs was found outside a Judge's chamber. The CBI wanted to prosecute. The sanction to prosecute was refused by Justice K.G. Balakrishnan. Is this the way that one Judge should be treated as against the other? I definitely say one wrong does not make the other right. But, I am not wrong. I will prove it that I am not wrong. Hon. Member, Yechury, referred to the question of diversion of funds from one account to the other. It is said that rupees twenty-two lakhs went from one account to another and secretly reduced to make it eight hundred and eleven; therefore, there is diversion.

Hon. Chairman, Sir, I will prove it from records that this distribution has been made to the workers of a closed factory, pursuant to a Division Bench's order. The cheques are before the Judge Enquiry Committee. Seventy-nine account payee cheques have been disclosed. Payment of over rupees fifty-one lakhs was made through account payee cheques out of that money. Is it anybody's case that I had opened seventy-nine fictitious accounts? About forty-seven were bearer cheques. So, more than 120 cheques were issued. All for my personal gain! And, this is the allegation of diversion of funds! And, this money was distributed, pursuant to a Division Bench's Order, to the members of the CITU union of a closed factory. Mr. Yechury, Sir, it is your Union. You can easily call up the Kolkata Office and find out whether they have received the money or not. Find out the presumption of innocence on my part. Find out the identity of one person. Where is the question of misappropriation? The clear evidence

has been bypassed. And, that evidence has been taken as the touchstone of the allegation of misappropriation by diversion of funds. If this is held, Mr. Chairman, Sir, the gravest of injustice will be done. A truthful transaction will be buried forever as untruthful. Also see the question of probability. The factory was closed for fifteen years. The money had been distributed in 1997. Has a single worker come forward to complain? The nature of unionism in Bengal is known. If I had taken one *naya paisa,* I would not be standing here and talking to you today. I would have been hanged. The Union has not come and complained that they have not received the money. The workers have not come here and complained that they have not received the money. But a single Judge says that this is the diversion of funds. It is a unique case! If I pay, I am held guilty; If I don't pay, I am held guilty! Heads I win, tails you lose. Is it justice? So, after making a misrepresentation to me, an In-House Committee is constituted three months after the Division Bench's order. Now, kindly see one more thing. Now, please see the letter of 10th September, 2007, I am again referring to it. It says, 'Allegations against you of judicial misconduct and impropriety in the judgements of the single judge..." So, the presumption is that I am going to make an inquiry on to the allegations existing as on that date. I was asked to give a final response to this letter. By that time the time came to give the reply, the Division Bench had already passed a detailed judgement. Allegations against me were expunged from records of the case and were deleted. They do not exist in the eye of law. So, if the original allegations do not exist, then, what is being inquired into? Whose allegations are being inquired into by the in-house Committee? Is it the personal allegation of the former Chief Justice of India? Is he not satisfied with the Division Bench judgement? Does not the Division Bench judgement apply to him in his administrative capacity? I dare say, please don't take me amiss; even a district judge's order is binding on everyone unless it is set aside by a higher judicial forum. I am not trying to take shelter behind a judicial order. I will clear the conscience of this House that there has been no misappropriation at all.

Now, many will ask this question. Even if you have not done this, then, how could this high-powered committee hold investigation against you? With due respect, Mr. Chairman, Sir, the decision was made long time ago to hold me guilty. It is apparent from the letter written to the hon. Prime Minister that after the Division Bench order, the hon. Chief Justice of India wanted to look into the allegations and to reach a logical conclusion. Whose allegations are they and what is the logical conclusion? What has happened in the meantime is only a means to an end. But this is now the real fact, Sir.

The Judges' Enquiry Committee has devoted a lot of time on the issue of my silence. According to them, two central issues arise which are supposed to

be the heart of the entire case. “One, the submission that during investigation into the conduct of Justice Soumitra Sen, he had the right to remain silent.” It is at page 2 of the report. I am told, Mr. Chairman, Sir, that the report which has been circulated in the House is not what was given to me by the Rajya Sabha. So, there may be a variance with regard to pagination. Therefore, kindly permit me. We got this today at around 12.40 p.m. So, I will be relying upon the report which was given to me while I was in Kolkata because my preparation is based on that.

Therefore, kindly allow me to read it for the benefit of the House. It says, “The submission that during the investigation into the conduct of Justice Soumitra Sen, he had the right to remain silent.” Mr. Chairman, Sir, in my respectful submission, this is a clear indication of a state of bias. If I was not here and my lawyer was arguing today, was I silent? Is the appearance of my lawyer not my appearance? When did I remain silent? There is a strong allegation against me that I have been avoiding court. I will demonstrate before you how *mala fide* that submission and that finding is. You will be surprised to know that the trial judge proceeded to investigate against me by suppressing orders. There is a clear direction in an order that these orders which pertain to investigation behind my back into my personal bank account shall not be served upon me. I will draw your kind attention to those orders. Now, the rules of Judges Inquiry Act, 1969, give me an opportunity—these are statutory rules—that I can appear by myself or through my counsel. Therefore, appearance through a counsel is also my appearance. The notice issued to me by Rajya Sabha clearly says that I can either appear by myself or through my lawyer. That notice is in conformity with the rules. Even then, it is alleged that, because I, personally, did not appear before the Judges Inquiry Committee, I chose to remain silent. Firstly, I have nothing to prove. Witnesses have been produced by the Judges Inquiry Committee. When a committee produces witness in support of its case, it becomes a witness for the prosecution. I am only to disprove it. I have never said that I did not receive the money. I have never ever said that I cannot give it back or should I not give it back. There is a common perception and it has been said in the Judges Inquiry Report and also the in-House Committee that I was compelled to pay until the court ordered. Mr. Chairman, Sir, let me first point out to you what the law is. A Receiver cannot hand over any money to anybody unless the court directs, because his custody alleges. The first order for return of money came on 10th of April, 2006 and I was appointed in 1984. There was no demand, no order, in the meantime. It is alleged that I have not given back and I was compelled to give it back. The 1993 order, which directs sale, categorically, records that I am to hold the money until further orders. Mr. Chairman, Sir, what was my duty in respect of both the accounts? One is, distribution of Rs.70,00,000/- to

the workers and the other is to keep Rs.33,22,800/- after I have completed the sale. There is an order dated 3rd August, 2004. When the application came up for the first time before another learned single judge, I was discharged from further acting as a Receiver. This is not adverted to anywhere, but without any direction to pay. Kindly look at my predicament. Then, the 10th April order was passed. Before that, the application, which was filed, contains another prayer which will, actually, establish what I am trying to say here. First prayer is of return of money and the next prayer is to complete the sale, because the purchaser did not even lift the materials within time. So, my obligation under 1993 order to segregate the entire sale proceeds did not arise until the sale was complete. There has been a further direction in 2004, directing the Receiver to sell the balance quantity. There are some amounts still lying. So, when the total corpus came to me, I thought of keeping it apart. But to say that I have always said that Rs.33,22,800/- was invested from this account at a time only after 1995 would be incorrect, because I did not receive Rs.33,22,800/- in the year 1993, not even in the year 1994; it became this corpus only after 1995. You will be surprised to know that when the court called for records, the bank came and said, "We don't have accounts from 1993 to 1995." And, this is the vital period in which the alleged misappropriation has been supposed to take place. In absence of the bank accounts, presumption is drawn. The question is: Where did the money go? I have always been saying that the money was invested there.

After the 10th April order, when I filed the recalling application, in the judgment, the Judge records that 'the total amount of money found in possession or the fixed deposit receipts found in the hands of the official liquidator amounts to over Rs. 70 lakhs.' The fixed deposit receipts are still lying in their custody untouched, unencashed. So, if in 1999, between 1997 and 1999, Rs. 71 lakhs of fixed deposits is found, where is the question of misappropriation? It is a clear evidence of fact that there has been no further deposit, except for Rs. 25 lakhs after 1997. Then, by what arithmetical magic, Rs. 25 lakhs becomes Rs. 71 lakhs within two years? Is it not evidence enough that money was duly invested between 1993 and 1995? When the bank account is not there for the last 15 years, when direct evidence is not available, am I not supposed to take advantage of the circumstantial evidence? On the contrary, these are not circumstantial evidence. The fixed deposit receipts in its physical form are still lying. The company had gone into liquidation. I could have taken shelter behind the Companies Act and said that 'you sell the assets of the company, realize money and the balance shortfall I will pay.' I did not do so. Is that a crime? The official liquidator is still in possession and custody of the assets and liabilities of the company. There is no direction anywhere that you take steps in accordance with the Companies Act. The only person guilty here is

'Soumitra Sen' because it is easy to showcase him as a cleansing of the Judiciary.

I am actually a victim of an abuse of process by person in high office. Kindly don't treat me emissor. I have decided to come whatever the outcome may be, and I wish that the Members of this august House would actually decide the matter purely on questions of fact in law. Merely because the hon. Chief Justice of India had already formed an opinion, that cannot go against me. In fact, right from the beginning, there has been misrepresentation of facts.

I will point out another very vital misrepresentation of fact. In the letter written to the hon. Prime Minister, it is mentioned that the learned Judge has dismissed my second application. I am sure, many hon. Members here are eminent jurists, legal luminaries in their field. They will be able to understand what is the difference between an application being dismissed and an application being disposed of with liberty to apply afresh. On my application, recalling application, when the facts were brought before the learned Judge, the learned Judge was undecided. There is a clear recording of fact that he neither believes me nor disbelieves me. The Judge did not disbelieve me when the real facts were brought to him. In spite of this fact, the Judge gives me a liberty to come before him once again with fresh materials. That application is still pending. The suit is pending for last 27 years. Money is still lying undistributed in the High Court. The High Court is seized of the matter. I have still the liberty to go to High Court with the fresh material and say that 'your earlier opinion was wrong, and I am being held guilty of misappropriation and impeachment proceedings are going on against me.' Is there a single allegation of dishonesty, corruption in my judicial functioning? Have I passed a single order for extraneous consideration? Are my sons and daughters or my brothers and brother-in-law guilty of amassing wealth, abusing my position? Am I guilty of laundering? No. The entire thing starts from a judicial process and it is ended with a Division Bench order.

Nothing else can continue. Therefore, to say that a Judge should be honest in all respects is absolutely a correct proposition, there cannot be an image tarnished, because tarnishing the image of a Judge is tarnishing the image of the judiciary. But, if he becomes a victim of abuse of power, then, hon. Members, you may kindly decide in accordance with your conscience whether such abuse should continue or not. If a High Court Judge with a constitutional authority can be treated in this manner, imagine the plight of the common man. They will be squished like a fly. I am not fighting here for my position alone. I will tell you, why. After I filed the reply to the in-House Committee Report, I got a telephone call from the Chief Justice's residence to meet him personally.

There is no official record of that meeting with the other superior Judges there; you would search in vain; there is no official communication to me. When I went there and met him in his drawing room, I found two other Judges. That is being communicated as a hearing given to me. Is the direction upon a Judge to resign so informal, so petty, that the only issue discussed was my resignation? Interestingly, VRS was offered. Now, have you ever seen an organization or an institution where an employee charged with defalcation of funds is rewarded with a VRS? I would have gone back happy with quite a few lakhs of money because I had a long tenure of service left, and I still have a long tenure of service left. So, first, carrot; the stick is coming later; it is an offer of VRS. Next, 'you resign and if you resign, we shall ensure that you get a good post in some public sector undertaking'. I am willing to say this, standing here, before this august House, openly. I challenge anybody to dispute it. Then, 'if I do not take any of the options, I will be further investigated by an Inspector of CBI and, if necessary, third degree will be applied to me'. I was interrogated. Then, I wrote to the Chief Justice of India that 'if you want a further agency to inquire, then how can you ask me to resign on the basis of a report that is already before you?' Then it is inconclusive. If that is conclusive, then what is the need to have further investigation by another agency? It is not a statement of facts that I am saying. I have put it on record. I have written a letter that is uncontroverted till date. Is this the way a high judicial authority shall function in an administrative manner? I would have had no issues if the judgement of the Division Bench had been set aside by a higher judicial forum. I would have never been here. I have exhausted my remedies in accordance with law, and I have succeeded. I repeat, I am not taking shelter behind a judicial order. I am trying to clear the conscience of the House that there has been no misappropriation at all.

With regard to misrepresentation, something very interesting will emerge. The Judges Inquiry Committee holds me guilty of misrepresentation on an account number. They say that you have given this account number, but the money has actually not gone from this account. Therefore, you are guilty of misrepresentation of facts. The chargesheet has been prepared on the basis of this account number. The charge of misrepresentation is based on this account number by the Judges Inquiry Committee itself. But when the account-opening form was brought, it was found that it was some other Soumitra Sen; father's name is different, signature is different, profession is different and address is different.

So, an impeachment Motion is going on in this House with a chargesheet with a wrong Account Number, and I am being held guilty of putting that Account Number. You will be surprised to know what is that Account Number and how

did it come into being. It was supplied by the learned Single Judge that this is the account, money was withdrawn and closed, therefore, misappropriation. They say, substitute this by "800 Account", it will be wrong. I say if you substitute it by "400 Account", it will be right because money indeed go from the "400 Account". What did I say all along that Rs.32,33,000, or whatever the figure is, is available irrespective of from which account it has come. My duty is to keep that money safe. Even after the winding up orders and even after the company not paying, I have paid back from my own pocket Rs.57 lakhs. I did not take shelter behind the Companies Act because I thought it was my moral responsibility to pay back the money of the parties. They did not pray for interest. The Court granted interest of Rs.24 lakhs. Who has benefited and who is prejudiced? Only the parties have benefited; I am prejudiced. And I am being held liable for impeachment for wrong-doing. This is unique. I will show that. Since this record is not before you, I will place it. What is my ground? Kindly see what is the ground on which the second Motion fully stands. The entire second Motion is based on this one ground. If I may say so with utmost respect and humility, a very huge constitutional requirement and necessity of impeachment of a judge has been so flimsily framed. I had told before the Division Bench for that the learned Judge failed to appreciate that all the investments made by the Receiver in the company by way of cheques drawn on ANZ Grindlays Bank Account No.OISLP56800. In evidence, the bank's official has come with the Account Opening Form. When my senior counsel cross-examined him, he said, 'Probably not his account.' Answer was very skeptic. So, further question was asked. Is this signature his? No. What do I have to prove? I say, a great eulogy has been given to my senior lawyer by the Judges Enquiry Committee for doing a commendable job. I say, my senior counsels who appeared before the Judges Enquiry Committee have demolished their case altogether. They have no witness to prove anything. Kindly don't take this matter in the light that simply because allegations are made, it has to be accepted, a clean judiciary is to be shown, therefore, throw him out.

There is a preponderance of evidence. There is a constitutional requirement of proof. That cannot be taken away. Now I read out the evidence. I put it to you Exhibit C-304 which is annexed to the letter dated 2nd of March. Exhibit 296, Account Opening Form in OISLP156800 is not the Account of the Respondent. Answer is, 'Probably not'. Did you verify the records in the High Court of Calcutta that this Account Number 56800 pertains to the Respondent? The documents in the High Court were produced by Shri Prabir Kumar Das, the then Manager of the Bank. Shri Prabir Kumar Das is in service, still avoiding not interested in giving the right answer. I have verified as to whether this account bearing OISLP56800 belongs to the respondent. On verification, I

found that the signature and the address mentioned are not matching with that of the respondent. And, this is the account number put in the charge-sheet before the Judges Inquiry Committee. It took one-and-a-half years for the Judges Inquiry Committee to enquire. What did they enquire? A great deal of certificate has been given to their lawyer for rendering excellent assistance. This is the assistance rendered. They are too anxious to hold me guilty; they are too anxious to hold me guilty. Therefore, kindly put a blinder in your eye and believe what former CJI said; don't see anything else. Again, I repeat, if the allegation of diversion of funds, which they say, is believed and this Motion proceeds on that basis, it will be the gravest of injustice ever. The dues of the workers have been fully paid. On the contrary, they have been paid one lakh rupees more; whatever interest accrued in the account was paid to them. I have worked in that matter without remuneration because I thought taking remuneration out of poor workers' fund was not moral. The entire work was done freebie. I was the appearing counsel in that matter. The Court reposed trust in me and appointed me as the Special Officer.

Now, with regard to merger of funds, Mr. Yechury began by saying that I have put money in my own account and there has been a merger of funds. It has been repeatedly said that this is Receiver's Account. With due respect, Chairman, Sir, the expression 'Receiver's Account' has a separation connotation in banking parlance as well as in law. It has to be opened by an order of Court. Today, if I go and ask the bank to open a Receiver's Account, they will not open a Receiver's Account. At least, that is the procedure in Kolkata. You may find it out. In the 1993 Order, which directs me to sell and keep the money, there is no direction to open the account. The choice was left to me, 'bank and branch of his choice'. So, what wrong have I committed? The fixed deposit receipts were given from a period from 1993 March onwards till 1995 May - 22 drafts in two-and-a-half years. Is it possible for a junior advocate to run 22 times in 22 different courts and encash them? The drafts are before you, Sir. See the drafts. Drafts are in the name of Soumitra Sen, Advocate; not Soumitra Sen, Receiver. So, where do I encash them? Wherever I encash them, it becomes my personal account. Encashment had to be done to deliver materials to the purchaser. It was a conscious decision I took. As a Receiver, I took a decision. It may or may not be right. But, that is not misappropriation. It may be alleged against me that I could have handled the accounts in a better way. Agreed. As an Advocate, there may have been some indiscretion on my part, as a junior Advocate having seven-eight years of practice. But, that does not constitute misappropriation. I will go back from this House, even if you hold me guilty, and I will scream from the rooftop in the rest of my life that I have not misappropriated. That is my personal conviction.

And the substratum of the allegations of misappropriation based on diversion of funds is demolished by the cheques themselves. The High Court does not produce the entire bunch of cheques. I have calculated it myself from the statement of account which was before the Judge. The High Court *one* set - one Judge disbelieves me, two Judges believe me. Now comes the question of Justice Balakrishnan. He disbelieves me, again in spite of a Judicial Order. Where do I go? Where do I seek justice? If the man assuming the highest post in the Judiciary has already formed an opinion of guilt, then everything else is a consequence thereof.

Mr. Chairman, Sir, the accounts are all before you. The question is of misappropriation. The misappropriation amounts only when it can be proved that I have utilized it for my personal gain. Mere transfer of money from one account to another is not misappropriation. Where is the evidence today that I have misappropriated it personally? Is there any credit entry into my accounts from these that I have misappropriated? Is it possible for me to create 79 fictitious accounts and obtain money from them? I say, the bearer cheques which were issued to the workers, some of them bore illegible signature of an illiterate man, and, some bore thumb impression. You take my thumb impression. Take my thumb impression and match it with those cheques whether I have gone behind somebody's back and withdrawn the money or not. A fair transaction, an honest transaction is sought to be presented in such a prejudicial manner, which is alleging diversion of funds. Unless you can prove diversion of funds, you cannot prove misappropriation, and, if you cannot prove misappropriation, there is no question of misrepresentation of facts either. It is said, I dare say, and, I do not know whether it is possible to say, that my statement before the Division Bench influenced the Judges; as if, insinuation is that, I got the order by influencing the Judge. Is it not at the same time casting aspersions on the Judges themselves who passed the order? I will read out the Division Bench Judgement, and, from that you kindly appreciate whether there is an iota of indication whether I influenced the Judges or not, and, I think, the Judgement is before you. Come to Exhibit Volume III, page 1441. Kindly come to the first portion where the prayer in the petition which resulted in the 10th April order containing adverse inference is set out. Kindly see. "Receiver be directed to hand over all the sale proceeds so far received — sale proceeds, no interest — from the sale of the Periclase Spinnel Bricks to the petitioner towards and in pro tanto satisfaction of the petitioner's claim in the suit and be further directed to pay entire sale proceeds after disposal of the entire lot. Receiver be directed to render true and faithful accounts of all moneys presently held by him in terms of the order." So, order is required to be passed to furnish accounts.

Now, in this case, when the first application was filed, the logic, the explanation of the Judge to proceed with an independent inquiry behind my back is that I have not approached the Court in spite of repeated opportunities. Please note it very carefully. From my little knowledge of English language, I think, repeated means, at least, more than once. In a court of law, when a person does not follow a direction, sometimes, times are given, and, sometimes it is mentioned that time is pre-empted, and, no further time will be granted. This august House will be surprised to know that the application which was filed in the month of March, 2003 was served upon me for the first time in the month of May, 2005. By that time, several orders had been passed. No copies were served upon me. In the month of March, the Judge passes an order, which was not served upon me until May, that you give details, particulars as to the money. In May, another order is passed in modification of that earlier order. Sugar-coated. Perhaps the trap was laid for the first time that you may file an affidavit, so advised, on what, on the application of the plaintiff and the affidavit of the purchaser. In a proceeding in a court of law, you file an affidavit when you controvert the allegations, when you contest the proceedings.

Here, I am not controverting anything from this application because there is not a whisper of allegation against me. Why should I controvert? In fact, I wanted this application to be allowed so that I am relieved from the burden. Then, in the month of June, the Judge proceeds to hold an enquiry against me. Official liquidator called, registered a vigilance call, bank called, my personal account investigated under a microscope and a specific direction was given in that order that I shall not be served with that order. Is this a fair procedure to be adopted in a court of law? Even a common litigant gets a better chance. You will be surprised to know that subsequent orders have been passed deliberately suppressing it, and today there is an allegation that I did not approach the court, I did not cooperate. In order to dispel that doubt, I am here today. I did not allow anyone to argue lest it is said that he is a person who avoids. I am not a person who avoids; I am not a quitter. I did not quit from the drawing room of the CJI. What shall I quit from? Therefore, once this application was taken up, the presumption is, and he writes in the judgement that because of repeated opportunity given, and because I did not approach the court, he is compelled to make an investigation against me. And, in the findings, based upon those withdrawals which I said, in fact, I have cried horse, that these payments are not my personal withdrawals, these are labour payments, he says this is a diversion of fund to an unknown place and, therefore, misappropriation. Without any order or prayer for interest, he passes an order for interest of nearly twenty five lakh rupees. You will be surprised, on the one hand, direction is given for payment and on the other hand, an order of injunction is passed. In my house property, in my bank account, in

my moveable properties, all the assets that I have personally have been injuncted. Is this fun going on? On the one hand you say for payment, on the other hand, you are passing an order for injunction. This order of injunction is clear violation of Chadha's law, clear violation of Order 38, Rule 5 of the Civil Procedure Code, clear violation of Order 39, Rules 1 & 2.

There has to be an apprehension, there has to be a prayer for an *ad interim* order of injunction. Where the parties did not pray for an *ad interim* order of injunction—the prayers are set out here; you will search in vain for an order of injunction—why did the Judge pass an order of injunction against my personal property? Because I am a Judge again in the High Court, he has a special interest in the matter? The application which came out for the first time before him, without any prayers being made by anyone, he put it as 'part heard'. Till date it is 'part heard' before the same single Judge. There is a specific order that the papers and documents relating to this matter shall be kept in a sealed cover, will not go down to the department. I sent my juniors for inspection. I could not get inspection. It was kept in the Judge's chamber. The order was passed on 10th April 2006, and when I almost pay the money, entire text of the Judge comes out in the newspaper. How did it come out of the sealed cover? Kindly, hon. Members, look into the facts before holding me guilty. When he says that I did not approach and he is compelled to make an enquiry against me, after making the full payment, I go with a recalling application. I will just read out one order passed by the single Judge. "This matter will appear once again on 25th July 2005. Let a xerox copy of the order dated 30th June be made available to the learned advocate on record, Mr. Chatterjee. Report shall once again be kept in a sealed cover by the officer of this court". I am not making a statement from the air. These are on record. So, when I go before the Single Judge with all the facts that this is your wrong conception, these payments are labour payments, you have yourself recorded seventy one lakhs of investment, then how can you allege misappropriation? Twenty five lakhs by magic cannot become seventy one lakhs in two years' time. Investments must have been made earlier. When there is no evidence, no bank accounts from 1993-1995 is established, how can you make a presumption? Is it not based on pure surmises and conjectures? When faced with all this, what will the judge do? The judge says, "I neither believe him nor disbelieve him." So, at least, he does not believe me, but he does not disbelieve me either. Therefore, he says come to court once again with fresh material. This is a mockery; a total anarchy is going on. And when I establish all this before the Division Bench, the former Chief Justice of India says, "He wants a deeper probe." He disregards the Order of the Division Bench. What is the special suspicion on me? Why? Whose money have I usurped? The money belongs to third party. They never came to me and said that I had

misappropriated the money. The real interested parties, whose money it is, do not make an allegation. It is the headache of the Single Judge.

On what evidence did the Judges Inquiry Committee proceed? The official Liquidator said, "We have no record after 1997 and before 1997." The police authorities have seized many documents from this finance company. There is no panchnama. The bank says, 'There is no account.' Neither the account opening form nor the application on which I said that investments were made was available. And the account on which the matter proceeded is not my account at all. And you hold me guilty of misappropriation. I have said that investments in truncated form were definitely made. It is impossible for a person to remember all the nitty-gritty of the account number. Even if I close my account, I won't be able to remember 56800368002176. I don't think anybody remembers this. It begins with 01SLP and ends with 800. Both are same. Both end with 800; both start with 01SLP. This mistake of fact, which actually emanated from the court, is the ground to hold me guilty of misleading the Division Bench. There is no other charge.

After the Order of the 31st July, when the court held 'it neither disbelieves me nor believes me,' I moved the Appeal Court. I may take a little of your time to place the judgement of the Division Bench. Kindly permit me to do so.

The Learned Single Judge passed an Order in the aforesaid application filed on the 10th of April 2006 directing the erstwhile Receiver to deposit a sum of Rs.52,46,454 with the Registrar, Original Side of this Court, within a period of one month from the date of receipt of the copy of the Order. In the said Order, it was also mentioned that in default of payment of the aforesaid amount, court will initiate proceedings for recovery of the same.

Now pausing here for a moment, the Single Judge passes an Order directing payment to be made within a period of time, and then passes an Order restraining me to pay. My bank account was sealed. Is it the intention of the Learned Judge that I fail to comply with his direction, so that further orders can be passed against me? The erstwhile Receiver deposited the said amount of Rs.52,46,454 with the Registrar, Original Side of this Court, in compliance with the aforesaid direction. This is the observation of the Division Bench passed by the Learned Single Judge. In the Order, as a matter of fact, it's said that the erstwhile Receiver deposited the aforesaid amount in addition to Rs.5,00,000 which was deposited earlier.

So, altogether, it becomes almost Rs.58 lakhs. So, the parties who are entitled to almost Rs.32 lakhs have got Rs.58 lakhs. Is it an act of a person who has

misappropriated the money when the fixed deposit receipts are available and there is no encashment of them? After depositing the aforesaid money, an application was filed on behalf of the erstwhile receiver as recorded on the 10th of April, particularly those indicated, for deletion of the adverse remarks. After going through the order of 15th December 2006, we find—now, this is very significant—the advocate represented the parties before the court. It did not go *ex parte*. The parties were there. What did the party say? They said, "We have no allegation against the receiver. As far as our money is concerned, we have no allegation against his conduct." Then, whose allegation is it? Have I taken bribe? Have I misappropriated Government funds? Have I misused my position by buying properties for myself by misusing Government funds? No. It is the money of the private party who has no allegation against me and the rest of the country is interested to know what I have done with the money. It is submitted on instructions by Mr. Kanchan Roy, learned advocate appearing for the plaintiff Steel Authority of India Limited that his client does not want to file any affidavit either in support or in opposition to the present application. Right from the trial court, nobody contested and I can tell you that was a real heartburn for the learned Judge. He, in fact, insisted upon the parties to file an affidavit. They said, "No, we are not interested." So, if the parties, who are really interested in money, do not file affidavit, is it non-cooperation on my part not to file an affidavit by a modified order? And, thereafter, you suppress that order and carry on investigation behind my back. Who has actually abused the process of law? Is it me? Will this House not see how the whole thing was conducted? It is necessary, Mr. Chairman, Sir, that in every proceedings, every trial, there has to be a fairness in procedure. Even an apprehension of bias vitiates the proceedings. That is established law. If anybody has a special interest in me, he should not judge me. Justice K.G. Balakrishnan by writing that letter has become accuser, prosecutor and the Judge. How can that be? He, on one hand, alleges guilt and he constitutes the in-house committee. This is not a fair procedure. Which Judge in this country today has guts to defy the highest person holding the highest office? Where shall I get trial? Where shall I get justice? I will get justice from this House and I am confident I will get.

Now, I will skip over the first few pages because these are all repetitive and very technical in nature. I will read from page 5 of the judgment. Mr. Anindya Mitra, learned senior counsel representing the appellant, submits that the erstwhile receiver was never directed by the learned Single Judge to make any payment prior to the order of 10th of April 2006 wherein the said learned Single Judge has made certain observations and remarks against the erstwhile receiver. Mr. Mitra submits that the aforesaid remarks were not necessary for deciding the matter. Mr. Mitra further submits that the erstwhile receiver never

disputed his obligation to pay the money pursuant to the directions of the hon. Court. Learned senior counsel for the appellant specifically submits that possible claimants, namely, 1 and 2 herein, never made any complaint against the erstwhile receiver; on the contrary, submitted before the Single Judge that they had no grievance against the receiver. This is the recording of finding of fact by the Division Bench.

Referring to the remarks and observations made by the learned single Judge and recorded in the order dated 10th April, Mr. Mitra submits the learned single Judge had no reason to observe that the erstwhile receiver has committed a breach of trust. This is the finding of the Division Bench, a judiciary order. Today, you say you disregard the judicial order because he holds a high office. He has to be like a saint covered with a halo so that whenever he goes people will bow down to him. Is that the test of morality of a Judge? The test which is said in 124/4, has proof for misbehaviour. What have I done as a Judge? All these actions you are talking about are ten years before my elevation. Am I not a victim of circumstances?

Now, I will read the portion where he says—I will not read out the submission made by the Counsel, it is not necessary—I will go with the findings. The objectionable remarks and observations of the learned single Judge recorded in the order dated 10th April, 2006 have been summarized in Annexure 'B', application filed in connection with 'B'. On behalf of the erstwhile decision, on examination of the orders passed by the learned single Judge, from time to time, including the order dated 10th April, 2006, and the judgement order dated 31st July, 2007, we are satisfied that the erstwhile receiver never disobeyed any direction passed by the learned single Judge regarding payment and the refund of the money as was held by him in person to the order of court. So, the Division Bench comes to a finding based on record that I have never committed any wrong on the matter of returning the money.

Undisputedly the application being G.A.No.875 of 2003 was filed in connection with CS No.8 of 1983. Kindly note the date, 1983, today we are in the 2011. So, the suit is still pending. The parties are still awaiting the disposal of the money. We do not even know who will get the money. Misappropriation is alleged against me and I am sought to be impeached. This is anarchy; and complete misuse of power. With utmost respect and humility I submit kindly do not permit this. On the contrary, ensure that people in high office do not misuse their power and make easy target of easy victims. The English language is very interesting. It says 'sacrificial lamb'; it does not say 'sacrificial ram' because lamb is easy to catch.

Undisputedly the application being GA No.875 of the 2003 was filed in connection with the CS No.8 of 1983 on behalf of the plaintiff for issuing a direction upon the receiver to hand over all the sale proceeds. So far, receipt from the sale of material in question to the plaintiff towards prudent satisfaction of the claim of the petition, the claimant is the plaintiff, it will be decided finally in the suit who will get it. Money is still held by the Registrar of the Kolkata High Court till nine years. After the disposal of the entire lot, kindly note here for a moment, as I said earlier, in 1993 order, the obligation arises only upon completion of sale for segregation. The sale is still not complete. It is not known how much money will come. It is still not known what sort of directions the court will give.

Therefore, the matter is still *sub judice.* According to Rule 169 of the Parliamentary rules, when a matter is still *sub judice,* it should not be discussed in the House. Rule 169 of the Parliamentary Rules also says that abstract questions of law cannot be decided by the House. This judgement decides on certain questions of law. You will also have to decide whether the Division Bench judgement can be negated, can be rendered nugatory by a non-judicial body. You will have to finally take that call. If that is permitted, it will result in judicial anarchy. Anybody and everybody will say, 'I will not follow a Division Bench judgment. I will not follow a judgment because you have obtained it by misleading of facts or you have obtained it by bribing the Judge.' And, then, probe starts, without setting aside the judgment in a judicial forum! Our Constitution debars this. There is a hierarchy of Judiciary, right from the District Court level. We follow that. As I said, a District Judge's order will have to be followed by a Supreme Court Judge in his administrative side. He cannot defy it. That is the law. If High Court Judges are treated like this by the Judiciary itself, then I dare say 'common man will never get justice.' That is the call I am putting on to the House; prevent this. There is a tendency of misusing of power. Kindly prevent this. I have become a victim of that. Kindly prevent this.

In the said application, the plaintiff never raised any question in respect of the conduct and functioning of the erstwhile receiver, and also did not claim any amount towards interest. The learned Single Judge, on his own, passed various orders, from time to time, in connection with the application filed on behalf of the plaintiff, and also in the application subsequently filed on behalf of the erstwhile receiver. In order to examine the conduct of the receiver, even in absence of any allegation made by the parties, the parties to the suit, namely the Respondent Nos. I and II herein, never made any allegation regarding misappropriation of amount. This is the misappropriation with regard to diversion of funds, which I have paid to the workers, undisputedly paid to the workers. No worker has come forward today to allege 'that I have not received

my dues.' And this is the transaction which you say 'diversion of funds resulting in misappropriation'. Unheard of! The said erstwhile receiver also never refused to discharge his obligation to refund the money held by him. As a matter of fact, the learned Single Judge, by the Order, dated 10th of April, directed the erstwhile receiver to deposit this sum, even in addition to five lakhs, which was deposited earlier. See the observation of the learned Single Judge regarding betrayal of trust. Because it was held, kindly see the gravity of the allegations made in the 10th April Order. He alleges that 'I betrayed the trust, therefore, attracting penal provisions under the IPC.' To this extent, the Judge has gone, without any charge being made against me by anyone! Is it an independent charge of the Judge against another Judge? See the observation of the learned Single Judge. This is the finding of the Division Bench. Kindly note for a moment, think that I am taking shelter behind this judgment.

My conscience is clear, and I will try to clear your conscience on facts and evidence. The observation of the learned Single Judge regarding betrayal of the trust and confidence of this Court by the erstwhile receiver is not based upon proper materials on record. Since the erstwhile receiver, in compliance with the direction of the Court, not only deposited the entire sale proceeds retained by him, pursuant to the earlier direction of this hon. Court, but also paid a substantial amount, as alleged by the learned Single Judge, towards the interest to the plaintiff, never claimed any interest by the receiver. We also do not find two Judges of the Division Bench saying this, 'We do not find any material where from it can be said that the erstwhile receiver utilised any amount for his personal gain.' This is a binding observation on all. Can it be reopened in a non-judicial forum by setting up an In-House Committee? The foundation/formation of the In-House Committee is a misrepresentation of fact on me. The Calcutta High Court has never adopted that resolution. Therefore, the In-House Committee is not applicable on a Calcutta High Court Judge. And whose allegation? At that time, when the Committee was formed, the allegation has been disposed of by this Division Bench order, deleted from the record. Even then the former Chief Justice of India proceeds to hold an inquiry into the allegation. Whose allegation?

Now, pausing here for a moment, I will draw the attention of this hon. House, Mr. Chairman, Sir, to the fact that the procedure for forming the In-House Committee was pursuant to a Full Court Resolution of the Supreme Court in 1999. This procedure was not in favour to me before the Committee was formed. Is it a fair procedure? In every investigation the procedure of formation of the Inquiry Committee is furnished to allow the person to know in what form it has to be done. The procedure came after the Report, along with the Report holding me guilty. When I go through the procedure, I find that the prerequisite

for holding an inquiry is a complaint. A detailed procedure has been laid as to what happens when a person makes a complaint of corruption or bribery against a Judge. If an allegation is made directly to the Chief Justice of that High Court, a procedure is laid; if an allegation is made directly to the Chief Justice of India, a procedure is laid. Who has raised a complaint against me? How could that procedure be adopted? The prerequisite of the procedure, the substratum, the foundation was not there on the day when the In-House Committee was constituted, irrespective of the fact that all allegations have been withdrawn by the Division Bench. There is a procedural irregularity; there is a violation of the order of the court; there is complete unconstitutionality and there is absolute anarchy. That is the Report which is being relied upon by the hon. Members and which is appended to the motion.

The letter of the hon. Chief Justice of India is nothing but a reproduction of the findings of the In-House Committee. I think, I don't know, in the Rajya Sabha, I have a right, I have a privilege, to make certain submissions. It is significant to note that out of the three Judges, two have been brought to the Supreme Court within three months after giving the Report against me. You make your own conclusions. I don't have to say. The third Judge who was not brought made public his displeasure in his retirement speech that he was overlooked. So, our house which the judiciary wants to clean found only one person to be cleaned. I had said earlier, "don't push me; I will expose", because my conscience is clear. I don't live in a glass house that you can throw stones at. I started from a small town. I was brought up in Assam. I don't have any father, mother and brother in the judiciary. Today this position has come to me because of my hard work. My honesty and integrity throughout my career was untarnished. Is it because I have a long career that this has been done to me? I am forthright. You can't touch me. Examine everything, all my assets; open my locker and find out. Therefore, I am not afraid to speak the truth. I appeal to you, the Members of this House, the elected representatives, to do justice.

This is the finding of the Division Bench. "The erstwhile Receiver to hand over all the sale proceeds so far received from the sale of materials". They said, "The erstwhile Receiver has no occasion to submit any explanation or to file any objection to the said application". The Division Bench observed in its earlier order and said that I had no occasion to give an explanation. As the said erstwhile Receiver was well aware of his obligation to refund the amount held by him immediately after issuance of necessary direction by the court, as a matter of fact — please note this carefully — such a direction was issued by the Learned Single Judge only on 10th of April, 2006 and the same order which directs payments holds me guilty of misappropriation.

I could have understood if you gave a direction for payment. If I do not pay, hold an inquiry; hold me guilty of misappropriation; draw an adverse inference. But in the same order, where you give direction, you hold me guilty of misappropriation and then pass an order of injunction on my bank accounts so that I am prevented from paying, without any person paying for such interim order. This is mockery of a judicial process. This is what has been relied upon by the In-House Committee, by the hon. CJI and the Judges Inquiry Committee. This conception that this is an independent inquiry, with due respect, Mr. Chairman, Sir, was prejudged long back because when the hon. CJI writes to the hon. Prime Minister saying that my allegation should reach a logical conclusion, then I have no hope of getting justice from that process. I can only get justice here.

MR. CHAIRMAN: Justice Sen, you are coming to the end of the time allotted to you.

JUSTICE SOUMITRA SEN: Sir, give me a little more time. I will read the judgement of the Division Bench. (*Interruptions*). I will not unnecessarily take your time.

MR. CHAIRMAN: Okay. That is all right. Please proceed.

JUSTICE SOUMITRA SEN: In the aforesaid circumstances, we fail to understand how the aforesaid, uncalled for, unwarranted observations/remarks could be made against the erstwhile receiver even prior to issuing any direction for payment. This is the order of the Division Bench. This is the finding that a court cannot hold a person guilty of misappropriation without giving him an opportunity to pay. You don't give me an opportunity to pay and in the same order hold me guilty based on presumptions. And when I come with facts, you say, "I can neither believe you nor disbelieve you; you come once again with proper materials". How will I go to the learned single judge who has already become blind in his eye? He will never listen to me. Therefore, I had to go to the Division Bench.

It is difficult to fathom — kindly see the observation of the Division Bench — the reason for such inquiry. But it is significant that even after going through the personal bank accounts — kindly appreciate one thing that my bank accounts were put under a microscope from 1993 till 2006, even after I was a judge — not a single entry was found which was suspicious. All that is credited into my bank account is my salary that I received as a judge. There is not a single entry kept from the finance company; after the encashment of some FDRs, I have taken away the money. The only withdrawals they talk about are

the withdrawals to the workers. That is the ground for holding me guilty of misappropriation. I told them that it was very easy to find out the identity of this person. The Judges Inquiry Committee said, "Unidentified persons", casting an insinuation as if I was saying something fictitious and they were not believing. Is it so difficult to find out the identity of persons who have been paid by account payee cheques? The Judges Inquiry Committee had all the power in the world to call for evidence and records, which they have done so. Couldn't they ask the paying bank to bring the accounts and examine the identity of the persons? Then the whole thing would have gone. But the whole thing is 'I don't want to believe'. If that is the approach that 'I don't want to believe you', no matter whatever I say, you will not believe me.

Now kindly appreciate one thing. Witnesses were called from Kolkata. Who came and gave evidence? They were bank officials, official liquidator, Registrar, etc. Was it not the duty of the Judges Inquiry Committee to call the Director of the company in liquidation and ask whether what I was saying was correct or not? Call the Directors and find out from them as to what I am saying is wrong or not. Call for the bank accounts and find out whether the distribution was to the workers or not. This is the basis of corruption against me. During the three little years that I was able to function as a Judge, nobody raised a finger against me, towards my judicial conduct. My integrity was never in question. My honesty was never in question. Now, transactions ten years prior to my appointment are put under a scanner. This is the way it has been done, and I am here today before you, before this august House, defending an Impeachment Motion.

In fact, I am grateful because I have not been able to say all these before. I have been put under a CAT. I did not want to go to the media and become a spectacle and a media trial. I wanted an opportunity to come at the right place to say the truth because I know this is where I will be able to say what I want to say, irrespective of what you decide. But to go to the judiciary and say is a futile exercise. The decision was made long ago. Now, kindly see what the Division Bench has to say. "In the aforesaid circumstances, we fail to understand how the unfortunate, uncalled for, and unwarranted observations and remarks could be made against an erstwhile receiver, even prior to issuance of any directions to the erstwhile receiver for depositing the accounts." This is the law that you draw an adverse inference on failure to pay. But adverse inference is drawn even before that. "The application filed by the Respondent No.1 being G.A. No.875 of 2003, that is, the plaintiff's application was merely an application for handing over the amount lying with the receiver. The scope and ambit of the said application did not contemplate any inquiry into the personal accounts of the erstwhile receiver." It is again a

finding of the Division Bench. “With respect, the learned single Judge committed a serious error in making a detailed inquiry into the personal affairs and bank accounts of the erstwhile receiver.” This is again the observation of the Division Bench. Now, this is not liked, and therefore, the second inquiry of a non-judicial nature.

If a judgement is not liked, you can bypass it. Gloss it over. Don’t hold it binding, with the ground that you have a higher responsibility to look for. But if your image is tarnished deliberately, what do you do? Don’t you not defend it? And, in defending it, if I have come here and say certain things, that is not tarnishing the image of the judiciary. This is unfortunate that it is being said that the moment an allegation is made, the image of the judiciary is tarnished. I have not tarnished the image of the judiciary. The other people are responsible for tarnishing the image of the judiciary by making me a victim and compelling me to come here and speak like this. I do not get a special desire and happiness to say all these things. It is unfortunate that where I am today is because of the judiciary. I have to say this also. There is no pleasure in it, like, Shri Sitaram Yechury said, he is also extremely distressed, that he does not derive any pleasure in moving this Motion against me in this House, but that he wants that the issue of corruption should be settled. But is this an issue of corruption in the higher judiciary, or, are real issues to be glossed over? Make me a show-case. But, in any event, there was neither any ground nor any reason to embark upon, practically, a State trial, when the subject matter of application being G.A. No. 875 of 2003 was merely for issuance of a direction upon the purchaser to lift the balance materials.

In the alternative, it was a direction upon the Receiver to sell the balance quantity. It appears that witnesses were examined. Even after all this, there was no evidence of any kind to show that the erstwhile Receiver had done anything benefiting himself. That is the finding of the Division Bench on record. Can anybody contradict it today? It is a judicial finding. On the contrary, the record showed that the money has been deposited with the finance company by the erstwhile Receiver but as the company was wound up the money could not be recovered. It is seventy-one lakhs in fixed deposits. I asked this question to myself: If I receive a one thousand rupee note from anybody and I am supposed to give it back after six months, is it necessary to give back that thousand rupee note or is it possible that I can give ten hundred rupee notes? This is what is being said. Where is the purchaser’s money? Your thirty-two lakhs do not constitute that money. Money has no colour. I had two bank accounts. I took a step which may not be proper but it does not constitute misappropriation. I will never accept this.

I had written to the Chief Justice that he can hold me guilty of mishandling of accounts, being inexperienced, having wrong judgment, having made an error of judgment but if you say I have misappropriated it, I will never accept it. He ought to have got the message then what kind of a person I was. You don't charge me on things which I have not done. I will never accept it.

Now, there is one thing which is very interesting. They have said here, "I have continued to misappropriate after I have become a Judge". This is being done only to bring me within the ambit of article 124 read with 217. The company went into liquidation in the year 1999. The last transaction is of 1997. The assets and liabilities of the wound up company are in possession and custody of the Official Liquidator since 2000. I was elevated in 2003. How could I misappropriate? This is the wildest of imagination. How can one imagine that I have misappropriated money after my elevation? How can it be held?

Now, another allegation has been made that you have given certain written notes. And the Division Bench has believed only that! There are two people sitting there only... to believe me, and in the same court when such adverse remarks have already been made against me. So, if I had such friends in the Bench, I would not be here today.

After going through the written notes submitted on behalf of the Receiver on the report filed by the Official Liquidator, the court came to an independent finding. Kindly note this very carefully. The Official Liquidator had given a report to the Single Judge giving him totality of the amount. It was a mere calculation; there was some lacuna. My notes were only to point out that lacuna. There was no argument made. Also, when you read the judgment, read it as a whole! Don't take a portion and hold me guilty. Going through the written note submitted on behalf of the erstwhile Receiver on the note filed by the Official Liquidator as well as Exhibits, the court went through the records of the Trial Court and came to an independent finding. It is a judicial finding. What is the finding? We find that the erstwhile Receiver had deposited the entire amount received by him from the respective purchasers. Can anybody else hold it otherwise? Is this judgment a product of inference, as is being suggested? It is also being suggested that this judgment is not binding on the Judges Inquiry because this is a judgment *in personam,* not *in rem.* We all know that a judgment *in rem* is a judgment which decides a proposition of law with fine spots.

In this judgment, there are propositions of law which have been decided as to whether an application can be allowed without averments, as to whether without prayers orders can be made. Assuming that this is a judgment in *rem,* what is

the issue here? The issue is misappropriation of money between parties *inter se*. If the parties cannot raise this issue of misappropriation between themselves, can a third party raise this issue? This is a fantastic logic that this judgment is a judgment *in personam,* it just does not bind the Parliamentary Committee. This is a judicial order. 'Settling the issue of misappropriation for all times to come' cannot be raised once again. I have established from the fact; because, if I have to take you to this bunch of evidence, the detailed bank account, all the fixed deposit details, it will take four days. But I am trying to finish within the time.

MR. CHAIRMAN: Please do conclude, we are running short of time.

JUSTICE SOUMITRA SEN: Well, Sir. The hon. Members may please take the trouble of going through the Division Bench order and then decide. I have also raised a point under rule 169, this is not a technical point, that a *sub judice* matter cannot be discussed. This matter is still *sub judice* in the High Court at Calcutta. The application is still pending. The liberty given to me is still alive.

Mr. Chairman, Sir, as I have said, ultimately it will have to be decided in this House whether after a Division Bench order a nonjudicial body can set it aside. That is an abstract proposition of law which you will have to decide.

I think, I have taken enough of your time. Sir, in such a situation, as you can quite appreciate, I am defending my life, the very existence before you. Before deciding it, kindly decide in accordance with your conscience, apply your independent mind and then decide on merit. I am grateful to you, Sir.

MR. CHAIRMAN: Thank you very much, Justice Sen. You may now withdraw from the House.

(JUSTICE SOUMITRA SEN THEN WITHDREW)

MR. CHAIRMAN: The Motions and the Address to the President under Clause 4 of Article 124 of the Constitution are now open for discussion. Any Member wishing to speak may do so, after which the mover will speak. Now, the hon. Leader of the Opposition.

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): Mr. Chairman, Sir, today is an occasion which is both sad and historic. We have all assembled here in an alternative capacity of Parliament where we perform a function where we decide the fate of a man who has conventionally been deciding the fate of others. Though this is a political House, it performs a judicial function. We have had an opportunity to hear the mover of the Motion, Shri Sitaram Yechury

articulating his point of view in support of the Motion. We have also, at length, heard the learned judge who is sought to be impeached.

Sir, we are conscious of the fact that the power of impeachment is intended to be exercised in the rarest of the rare cases. The power of impeachment of a holder of a Constitutional office is an authority or jurisdiction given to us to remove a man in order to save the dignity of his office.

The Office gets precedence over the man who occupies it. And if we find that the man is guilty of any misdemeanor, in the case of a judge, a proven misconduct or incapacity, we impeach him so that we can ensure that the dignity of the Office of judge that he occupies can be maintained. This power, Sir, is both punitive and also a deterrent power. We regulate the exercise of this power by article 124(4) in the case of a judge of a Supreme Court and read with it article 217 in the case of a judge of a High Court. The two grounds on which a judge, in either case, can be impeached is either proven misbehaviour or incapacity. In this case, Mr. Yechury's Motion is confined to the first ground, *i.e.,* proven misbehaviour.

Sir, when these articles were being drafted by the Constituent Assembly, Shri Gopalaswamy Iyengar had expressed the hope that, perhaps, these powers would never be used. He espoused the confidence that, at least, in his lifetime it will never be used. His prophesy was partly correct because it was not used in his lifetime. Virtually, we have made two efforts in the past. One at the pre-Constitution stage, when a judge of the Allahabad High Court was sought to be impeached. He resigned before the Impeachment Motion could go through. There was a second occasion in 1993, where the Motion fell in the other House because of want of quorum itself.

Sir, before I deal with what the learned Judge has presented before us, a few words about the kind of system which we have adopted in this country. We, perhaps, have adopted some of the soundest principles for running Indian Democracy. We are a Parliamentary Democracy where different shades of opinion are represented. We have an independent Judiciary. We have the concept of separation of powers. And this power of removal of a judge is given to the legislative body, a political sovereign, which conducts an inquiry in accordance with the Judges Inquiry Act, where there is a pre-dominant participation of judges and on their recommendations decides whether to remove a judge or not to remove a judge. Sir, originally, when we devised the concept of independence of Judiciary, world over, the whole mankind was conscious of the fact that to judge the fate of ordinary humans is normally a divine function. But we bestowed this power with an ordinary human being in

the hope that this ordinary human being would almost be perfect. He would be free from all collateral considerations; he would have a high level of scholarship; he would have the utmost integrity and, therefore, we were convinced that this function could be performed by the Judiciary and that itself would safeguard the rule of law and adjudicate fairly disputes between ordinary people.

Sir, as times have passed by, there are too many whispers and too many aberrations which we are confronted with. It is only a very rare case which comes to this House for consideration. And, therefore, Sir, we are now living in a changed time where the level of vigilance and the standards of probity will also have to be higher. The judges will also have to realise that Judiciary is no longer an institution which lives on ivory towers. Judges, like most of us here and others holding constitutional offices or high offices, also now live in glass houses. And, therefore, whether it is public or it is the media or it is the litigant or it is the Bar, they eventually become the best judges of judges. Their conduct is also going to be watched and watched very closely. This is not to say that we can make unfounded allegations against a Judge because a Judge in ordinary circumstances speaks only through his judgments and he is not able to defend himself.

Therefore, we have to be very cautious about every word that we say as right to speak, both inside and outside this House that Judges and the Judiciary is an institution which cannot be thrown to the wolfs. It cannot be made an object of unfounded allegations but it will also like other institutions have to stand by the scrutiny of all times. When, Sir, a Judge is sought to be impeached through a procedure, what are really the standards we expect from the Judge?' Do we expect from a Judge to resort to every technicality which is available to him? Do we expect a Judge to say that 'I will not enter the box so that I cannot be questioned; there are hard facts which I will not be able to answer?" Or, do we expect a Judge to be a role model as a litigant and then candidly states every question that is put to him because system cannot suffer for a Judge who is stigmatised? A Judge who is stigmatised can really never be in a position to represent the face of rule of law in India and be a Judge as far as others in the society are concerned. Therefore, Sir, when a Judge says, 'I will not appear myself and answer the questions, or, that first that prove the allegations against me and let me see how much you have in your pocket against me, only then I will let you know what my response is', that is not the case of an ideal Judge facing an inquiry.

It has been repeatedly said and we hear rightly so these days that holders of high offices must be like Caesar's wife, they must be above suspicion. Caesar divorced his second wife because he suspected her of an illicit relationship. Even

though the charge was not fully proved, he went through divorce because he said, 'Caesar's wife, considering the position she is in, must be 'unsuspectable'. So, a Judge cannot really say, 'first prove an allegation against me beyond reasonable doubt and only then I will come up and tell you whether I have an answer to give or not.' A Judge by his very character must be 'unsuspectable'. His position must be such that nobody can point a finger to him. We have, Sir, heard the presentation of the learned Judge at length. Sir, I have had an opportunity to read the entire record which the Secretariat has served and distributed to the Members. At times I got an impression whether the facts which I have read are similar to the facts which I was hearing from the learned Judge.

Sir, when we were young lawyers we were all trained that if in a given case you are strong on facts, you bang the facts first. If you are weak on facts but strong on law, you bang the law. And, if you are weak on the both, then you bang the desk, at least, you will appear to be confident. I was wondering what the facts are. The facts are in a very narrow compass. One does not have to go into a complicated circle of facts in order to determine that there are many other cases in the Judiciary where people are accountable. Of course, there are other cases in the Judiciary also where the persons should be accountable. In the matter of probity or lack of probity, there is no right of equality. There are other people who have committed offences while being Judge and got away with it is no ground available to any Judge to say that 'I must also get away from this offence.' In the matter of violation of law there is no article 14. Article 14, the Right to Equality, applies in the matter of application of law not in the matter of violation of law. Therefore, to discredit other Judges and say, 'well, there are others like this and, therefore, I must get away' is never an argument available to any citizen, least of all, to a Judge.

What are the facts as are apparent from the Report of the Inquiry Committee and the entire records which the Secretariat has served? I heard large discussions about workmen being paid and all workmen have signed, I found that this case has nothing to do with any workman. The charge has nothing to do with the workman. The case in a nutshell is that Steel Authority of India, a public sector company brought certain goods. The goods were to be brought through the shipping route by the Shipping Corporation of India and there was a supplier. There was a dispute over those goods and its qualities. The-Steel Authority of India moved the Calcutta High Court and the Calcutta High Court on 30th April, 1984 appointed the then Mr. Soumitra Sen, an advocate as a receiver. The Calcutta High Court said, 'Take charge of these goods. You can then make an inventory of the goods. Depending on the direction of the court, you can sell these goods.' Mr. Sen takes charge of these goods and he keeps the goods in his custody. Nothing happens. There was a direction of the Calcutta

High Court that what you do to these goods and the moneys you recover, every six months, please file a return with the Calcutta High Court. From 1984 till 2006, 18 years have passed, not once is the return filed. Nothing very seriously happened till 1993. On 20th January, 1993, the Calcutta High Court says, 'What has happened to these goods? Please sell them. You are entitled as your fee to five per cent of whatever is your sale value and whatever you sell, open a bank account, keep it in that bank account and the court will decide what is to be done with this money', and the court says, 'don't create any encumbrances on this money or on the goods. You can't use it for any other purpose.'

Over the period of time, the goods are slowly sold and finally an approximate sum of Rs. 33,22,800 is received against these goods. Goods are sold over different periods of time. Mr. Sen, as he then was, opens two bank accounts, one account in the ANZ Grindlays Bank and the other account in the Allahabad Bank. He deposits Rs. 4,68,000 in Allahabad Bank and the balance of about Rs. 28 lakhs in the ANZ Grindlays Bank which later merged and became the Standard Chartered Bank. What does he do with these moneys? Now, these moneys are to be kept in these accounts. They will earn interest and eventually, whoever succeeds in the case will get these moneys. So, what does he do with the money lying in the Allahabad Bank? That is the reason, the judges' Inquiry Committee said, 'He claimed a right of silence.' Obviously, his advocate could not come and answer. He only argued on law. If he had appeared and the Inquiry Committee had asked him these questions, 'how come this money was lying in these accounts which were for the benefit of the court?' You are the receiver of the court and the court would give it to a winning party. He first cuts out cheques from these accounts, gives four cheques in the names of private individuals who are known to him, who have nothing to do with this case.

One Subroto Mukherjee, Biresh Pratap Choudhary, Somnath Ray, K.L. Yadav, one Jai Guru Enterprises gets that money. Other amounts of money, his visa, credit card bills are debited to it. There is a well known law book publisher, S.C. Sarkar and Company. So, law books are purchased. The moneys go from that account. While this was happening and this was the entire rigmarole that the presentation today was getting into, another judge of the Calcutta High Court appoints him as a special officer in the case of one Calcutta Fans. That case has nothing to do with this case. He is paid Rs. 70 lakhs so that workmen of Calcutta banks could be paid. He opens another bank account and puts the Rs. 70 lakhs there. Of this Rs. 70 lakhs, he quietly withdraws Rs. 25 lakhs and makes a deposit in the name of one company, Links-India. Obviously, this Rs. 25 lakhs has gone there. So, the money is shortfall of workmen in the second case. The second case has nothing to do with this impeachment

proceeding. When he is paying the workmen, he realized that he is short of money because M/s Links India went into liquidation soon after he deposited the money. So, what he does is, he removed Rs. 22 lakhs from the SAIL's money, which is lying in the other account, and deposited in the Calcutta Fans Case. As a result of which only Rs. 800 and odd are left in this account. Well, this is a serious issue to ponder over which I deal with it in a little later.

In February, 2003, the SAIL moved the court and said, 'We have not got any accounts. We have not got our money. What has happened to our money? This case is pending for over 19 years.' And, the weakness of our system is, since Judges appoint Judges in this country, the Government has a very marginal role.

In December, 2003, he was elevated to a Judge. Now, the first thing that should have struck him when he becomes a Judge was that he was a Receiver in some cases and he got somebody else's money and he has to clear that first. He has already misappropriated that money for some alternative purpose. He just keeps quite and keeps sitting on it. So, during his tenure, as a Judge from 2003 onwards, this misappropriation for 'alternative' purpose continues. When he does not answer the advocate of the Steel Authority of India, it moved the Calcutta High Court. The Calcutta High Court issues notice to him repeatedly, 'please file an affidavit and tell us...'—by this time he is a Judge—'...as to what have you done with this money?' When he does not respond, the Judge, who was being put across as a villain of the peace, comes up and then makes enquiries. He calls people from the Registry and he calls people from banks and tries to trace out where this money has gone. After all, this money was put in trust with the court and the court keeps its trust in him. He was holding it for the benefit of some other parties. He has utilized it and misappropriated it for some other purpose. Now, if he goes back to court as a Judge, he has to tell the Judge that my Visa Credit Card bills paid from this account, from other account I paid to the workmen and that deficit I compensated from this account, my books' bills, my self cheques—there are a large number of self cheques which all enquiries revealed—are paid from this account. So, what he does is: He does not file any Affidavit or response to the court. The court, finally, delivers a judgment. He has paid back to SAIL Rs. 5 lakhs. With regard to the balance amount, with interest, the court then passes a decree against him saying that Rs. 52,46,454 be paid. In three installments he paid Rs. 40 lakhs. Now, he is a Judge. He has not voluntarily paid for three years. Only on a coercive direction of the court he pays Rs. 40 lakhs. Then, he asks his mother to move an application before the Calcutta High Court praying for giving some more time to pay the balance amount. So, the Calcutta High Court says, 'first tell us as to what happened to this money in the meanwhile.' So,

the court is told, 'I have put this money in M/s Links India and that money got lost because M/s Links India went into liquidation.' But, you never put this money in M/s Links India. You put some other money into M/s Links India. Why are you confusing the two? And, Sir, that is where the misrepresentation comes in. So, the court passes a judgment by giving him time and makes some adverse remarks against him.

When these adverse remarks are reported in newspapers, the Chief Justice of Calcutta High Court writes to the Chief Justice of India, saying that this case has come to notice and this is a conduct unbecoming of a Judge. Sir, 10th September, 2007 —by this time he has paid the entire amount—the Chief Justice of India calls him and says, 'how do you explain this conduct?' He says, 'give me some more time.' So, the Chief Justice fairly says, 'Please take some more time, but explain to me your conduct in this case, because it is unbecoming of a Judge.' He goes back, files an appeal through his mother again before the Division Bench, after taking time. The appeal comes up before the Division Bench. It is not a very happy commentary either on Judges or on lawyers. As the appeal comes on day one—now, one brother Judge is getting into trouble; he has to explain to the Chief Justice of India—they asked the advocate of the Steel Authority of India and the buyer of the goods if he has no objection if they set aside this judgement, at least, the observations against him. So, on a concession made by a party, those parts of the observations were all set aside. And, those advocates get up and say that they have no objection you can set aside the observations. And, collusively, on that concession, the Division Bench passes an order. He goes back to the Chief Justice and says, "You had asked me for an explanation. Now, I have a very good judgement from the Division Bench which has set aside, by this method, the strictures against me." So, the Supreme Court was legitimately concerned as to what you do. So, the Chief Justice of India asked two very eminent Chief Justices of High Courts, and a Judge. All of them were men of proven integrity. The Chief Justice A.P. Shah, the Chief Justice Patnayak, and the Justice R.M. Lodha, men of great reputation, said, "This is an in-house mechanism". Now, the learned Judge, today, says that the in-house mechanism is extra constitutional. Obviously, the Constitution does not provide for any in-house mechanism. Impeachment is a near-impossible procedure. So, the in-house mechanism is: Let the Judiciary, in the first instance, look into the allegation itself and *prima facie* see whether any unfounded allegation is being made or it is a serious allegation. So, the three judges repeatedly call him. He gets a detailed hearing from them. He puts up his defense. They asked him what he did with this money all this while, both, when you were an advocate and from 2003 to 2006, when you were a Judge. There is a continuing running threat. But, as a Judge, are you expected to misappropriate the money and keep to

yourself the misappropriated money; and, then, not share with anybody where you kept this money? It is only when there is a coercive order of a court that you decide to return the money.

Now, you say, "Since I have returned the money my sins are all washed off." Section 403 of the Indian Penal Code, Mr. Jethmalani knows Criminal Law better than most of us, talks regarding misappropriation of money. Even a temporary misappropriation of money is a misappropriation of money. The fact that I stole this money or I misappropriated this money and when I got caught I returned it with interest does not wash off your crime. In any case, what is the level of probity that we expect from a person who is going to judge the rest of the society? The standard of proof may be beyond reasonable doubt, but a Judge is expected to act with probity and not in this manner. After the inquiry holds him guilty—that is the procedure they follow, so that the dirty linen of Judiciary is not washed in public—the three senior most Judges of the Supreme Court call him and ask him to submit his resignation because *prima facie* there is a serious material against him. Now, should this be interpreted as some kind of belinious act or a conspiracy? They have gone through a procedure. The Chief Justice of the High Court said, *"Prima facie* the allegations appear true and serious." The inquiry said that the charges were serious. And, since he does not agree to resign, fifty-eight Members of Parliament submit a motion, for his removal, to the hon. Chairman. The hon. Chairman constitutes a Committee, which comprises, under the Judges Inquiry Act, of a sitting Judge of the Supreme Court, Justice Reddy, a Chief Justice of a High Court, who got changed in between Justice Mudgil, and the third has to be a Jurist, Mr. Fali S. Nariman. He appears through an advocate. The first thing he does is, raises an allegation of bias against Mr. Nariman. He, then, appears before the Inquiry through his advocate and says, "I will not enter the witness box". Obviously, he would have had to answer where these moneys were from 1993 to 2003, and from 2003 to 2006. He did not enter the witness box. That's what they referred to his right of silence. So, the Judges' Inquiry Committee has to do a fishing inquiry. They have to call bankers. They have to call various people and then find out that these were two separate transactions. The Kolkata fans case, which is payment of workers' dues, had nothing to do with this misappropriation. He only made good of the shortfall from here by putting the monies into that account. And, then, it has written a detailed finding holding him guilty of proven misconduct. I have just recollected this fact because the manner in which some of the facts have been given are really made out as though it is a different case between the paper circulated to us, what we have understood and what the learned judge was really arguing. In a nutshell, Sir, the misconduct is this. The first misconduct, which is a proven misconduct is, that you misappropriated the monies. The misappropriation started when you

were an advocate. It continued after your elevation. You kept the monies and allowed them to remain misappropriated. You didn't cooperate with the Judicial institution in telling them the truth. Finally, when there were a compulsion of a judicial order, you claim it to be a virtue that now, at least, I have returned the entire money with interest. The second fact is this. Why did you misrepresent the facts? Even today, Sir, when he seeks indulgence from this hon. House, did we once hear him tell us where the money of the Steel Authority case went? All we were told was this money was used for some fixed deposits, this went to workmen, this has been honourably paid, etc. This money had nothing to do with workmen. It was some other Kolkata Fan's case. He kept misleading the in-house inquiry, the judges' inquiry, even today, the House that I honestly deposited the money. The impression which any person who has not read the record would get is, that I deposited this money with a company and that company went into liquidation. So, I was good enough to take my own money and pay it back with interest. That is the case being made out.

Sir, having said this, on both counts, the *prima facie* opinion of the Chief Justice of the High Court, the firm opinion of the Judges' Inquiry Committee, which is the in-house Inquiry Committee, and, then, the opinion of senior three-judges of the Supreme Court to ask him to submit his resignation so that things don't come to such a pass. It has happened in the past. It may be extra-constitutional. It is the in-house persuasive method which the Judiciary has. And, then, comes, finally, the statutory constitutional procedure. Again, there was an inquiry by three eminent people. All findings come to a unanimous conclusion that, 'Yes, you did misappropriate money, and you did misrepresent the facts by not telling the truth. This case had nothing to do with Lynx India. You were using some other monies in Lynx India.' What business did you have even in that case to put the workers' money into Lynx India; a company which was on the verge of liquidation? You only made good of the shortfall in this case and put it into Lynx India. Is there any reason, is there any extraordinary argument that we must disagree with all these reports of all these experts and, then, come to a finding that the learned judge has not committed a misconduct or a proven misbehaviour? Sir, from the beginning to the end, it smacks of an abuse of a process both as an advocate and as a judge. And when it smacks of abuse of a procedure, are we being guided by the opinion of a former Chief Justice of India? He may have his own grievances against the former Chief Justice of India. That is not an issue today. Can he today seriously contend that the *sub—judice* rule must apply to the impeachment jurisdiction of Parliament? The misconduct of a judge; of this judge, is not pending before any court. We are relying on independent evidence which was even held back from the single-judge Division Bench and elsewhere.....which came up for

the first time before the Judges Inquiry Committee, which was appointed by the Chairperson. This House, in exercise of its Constitutional jurisdiction to remove a judge, will look at the kind of evidence which has come out. And, then, to say, in a single day hearing, as soon as I filed an appeal, on basis of concessions of two advocates, I managed to get a judgement; therefore, all my sins are washed off. Sir, we are not relying on any judgement in the course of this impeachment proceeding against him; we are relying on the Report of the Judges Inquiry Act. Judgements which are obtained in this manner by concessions between parties may be binding between those parties. That is why, the Committee appointed by the hon. Chairman rightly says that these are judgements *in personam, inter se* the parties; these are not judgements on an issue, concerned with larger public interest, dealing with the misconduct of a judge. Therefore, they will not be binding, as far as this House is concerned, as far as the misconduct of a judge is concerned. This House is not moving on a presumption of guilt.

In fact, a full opportunity has been provided by the Inquiry Committee, by this House. We start with the presumption of innocence, but when the facts, which are prejudicial, come before us, then, this House, *prima facie* comes to an opinion, and then, if the Motion is passed, comes to an opinion that the Judge, in question, really should not hold such a high office. He is a judge who stands stigmatized by repeated reports and those reports have a strong basis on the face of it. Those facts are borne out by the fact that monies have been diverted for collateral purposes. There may be other problems with the judicial institutions, which the Judiciary or the Legislature will seek to correct. But, then, Sir, these are not issues on which the judge can say, "I need the benefit of any doubt". Because no doubt has been cast on any of the findings which the Inquiry Reports, placed before us, have, really, revealed. I, therefore, strongly support the Motion, moved by Shri Sitaram Yechury, for the fact that an Address be sent to the President supporting the fact that this judge is unfit to be in the Office of Judge. There is a case of proven misbehaviour against him; therefore, the judge be removed from office. Having said this, Sir, a few observations that....

SHRI M. VENKAIAH NAIDU (KARNATAKA): Mr. Chairman, Sir, we can continue it tomorrow.

SHRI S.S. AHLUWALLA (JHARKHAND): Sir, today, there is a function at six o'clock. We all have to attend that.

MR. CHAIRMAN: Mr. Jaitley, do you wish to conclude or would you take more time?

SHRI ARUN JAITLEY: Sir, I will take 15-20 minutes tomorrow morning.

MR. CHAIRMAN: All right. The House is, then, adjourned to meet at 11 o'clock tomorrow morning.

The House then adjourned at fifty-three minutes past five of the clock till eleven of the clock on Thursday, the 18th August, 2011.

The House re-assembled after lunch at two of the clock,

MR. CHAIRMAN IN THE CHAIR.

MOTION FOR PRESENTING AN ADDRESS UNDER ARTICLE 217 READ WITH CLAUSE (4) OF ARTICLE 124 OF THE CONSTITUTION TO THE PRESIDENT FOR REMOVAL FROM OFFICE OF JUSTICE SOUMITRA SEN OF THE CALCUTTA HIGH COURT;

AND

MOTION FOR CONSIDERING THE REPORT OF THE INQUIRY COMMITTEE CONSTITUTED TO INVESTIGATE INTO THE GROUNDS ON WHICH REMOVAL OF SHRI SOUMITRA SEN, JUDGE, CALCUTTA HIGH COURT WAS PRAYED FOR;

AND

MOTION FOR ADDRESS TO THE PRESIDENT UNDER CLAUSE (4) OF ARTICLE 124 OF THE CONSTITUTION (CONTD.)

MR. CHAIRMAN: We shall now resume discussion on the Motion that could not be finished yesterday. The hon. Leader of Opposition.

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): Mr. Chairman, Sir, yesterday, after some initial observations with regard to the bar being raised on issues of probity when it comes to Constitutional functionaries like the Judges, I had dealt with at length what the learned Judge had to say in his defence when he appeared before the House yesterday.

In a nutshell, so as to maintain the continuity, if I can just repeat two or three sentences, the case against the Judge is that from his tenure as an Advocate-Receiver to his tenure as a Judge, there is a thread of continuity where he

never rendered accounts for monies which came into his possession as Receiver. He created, on his own admission, encumbrances. And I was trying to build up a case that he even misappropriated those funds. And, that is the case the Inquiry Committee has established and the in-House Judges Committee has established. This misappropriation spilled over into his tenure as a Judge. He became a Judge on 3rd December, 2003. It is only in 2006, when the Court passed an Order against him, that he had to then repay it under a coercive threat of a Court Order.

The second limb of the charge against him is that before various authorities, whether it was the Court, the in-House Committee, or the Inquiry Committee, he misrepresented the facts. He misled them, and this entire misrepresentation was during his tenure as a Judge. A Judge is expected to be candid. A Judge is expected to be a role model litigant. A Judge does not come up and say, 'I invested this money erroneously, by an error of judgement, in Lynx India. The money got lost because of insolvency', when the fact is that he did not, from the monies, in this case, of Steel Authority of India, invest any monies in Lynx India.

Sir, since the House had adjourned yesterday for continuing this debate today, I got a further opportunity to read the entire evidence which came up before the Committee set up under The Judges Inquiry Act by the hon. Chairman. And, I must say that even when the learned Judge was here yesterday, and he made a very persuasive presentation, some of the facts that he stated—and I say this with a sense of responsibility—were not merely a continuation of this exercise to mislead the entire enquiry process, and earlier, the judicial process; when he appeared before this House, the entire basis of his defence, on the basis of documents admittedly before the inquiry which the hon. Chairman appointed, was completely at variance. The truth was something else. I will refer to three illustrations of this fact.

The hon. Judge says, "The Committee that the hon. Chairman appointed mentioned that the Judge was a holder of a particular account whereas the account belonged to some other Soumitra Sen, and that he was being hanged because the Committee attributed a bank account to him which was in the name of some other Soumitra Sen. When all of us heard this, we were actually surprised that how the Committee could commit such a patent error on the face of it. I checked up the entire evidence. When the charge was made against him that you obtained moneys by sale of goods in the Steel Authority case, you usurped those moneys; you misappropriated those moneys. On the contrary, from some other case of Calcutta Fans where you were a Special

Officer, you invested those moneys in a company called Lynx India. The Committee or any other litigant did not make this charge of this account against him. This judge, in the first instance, through his mother went to a single judge of the Calcutta High Court and he told the single judge of the Calcutta High Court, "Well I had kept this money in Account No.O1SLP0156800 and this money was invested in Lynx India."

Through his mother he filed a written note. This account number that he himself gave was the account of the other Soumitra Sen. And that written note—I hold in my hand the relevant extract—is before the Inquiry Committee. The Calcutta High Court never had an opportunity to see it. Even the in-house inquiry did not get it. It's only the Inquiry Committee appointed by the hon. Chairman that obtained this by directing the bank to come here. Not only this, when we challenged the order of the Division Bench at two places—and I will read it and those familiar with court proceedings will appreciate that this is in form of grounds of appeal and an interim application—he makes the same observation. "For the learned judge failed to appreciate that all investments made by the erstwhile Receiver in the company were by way of cheques drawn on ANZ Grindlays Bank from bank Account No.01SLP0156800." His defence was that from this account he made the investments in Lynx. So, both the High Court and everybody called for this account and they found that from this account no investments had been made. Twice he told the Division Bench this. After he told the Division Bench this and the single judge did not accept his case and they found that from this account no moneys had been paid to Lynx, the matter came up for inquiry under the Judges (Inquiry) Act. They charged him not for holding this account; but you say that from this account you paid moneys to Lynx, unfortunately, from this account no money has been paid. The copy of the charge is then given to him. He doesn't correct the error. The charge is then given to him. The charge doesn't say that you hold this account. The charge says from this account also no money has been paid to Lynx. So, the defence is false. When he comes up before the inquiry Committee, he files a detailed reply. Even in the reply, he doesn't say that this belongs to some other Soumitra Sen. It is only when the bank official comes his counsel now very conveniently puts a question to him, 'Well this account doesn't belong to my client, it belongs to somebody else'. So, the bank rightly says, 'Yes, it belongs to somebody else.' So, the Inquiry Committee says, 'You yourself put up a false account from which you had made the payments and when it is found out that this is not the real account, they get the account opening form. The account opening form is of one Soumitra Sen who is an employee of Food Specialities Ltd. So, you passed off his account as your account in the pleadings.' So, the Inquiry Committee holds against him from these moneys of sale or this account you have not paid any money. Now what does he do when he appears before

us? He comes here and says, 'Look so casual and vindictive was this Inquiry Committee that they foisted a false account on me.' Sorry, the truth is otherwise. You passed off a false account as your account. When the bank was called, they detected this fraud and the Committee has, therefore, given a finding against you.

So, the first point on which he tried literally to rubbish the procedure of the inquiry was by saying that a false account is foisted on me. The second fact—and we can check up the record—is when he says, "The accounts were materially operated between 1993 and 1995. No bank statements are available, and I am being hanged without the bank statement showing expenditure." This worried me a little, Sir. So, I went and checked back the record at night, and from the evidence, which the Committee appointed by the hon. Chairman, I found that before the High Court, he never brought the bank statement. Obviously, he himself had to show the bank statement of expenditure. But, the inquiry appointed by the hon. Chairman directed one of the banks to come and show the statement. So, the bank filed the ledger. So, second falsehood where he misled the House yesterday was, "bank statements are not available". The bank statements are available. They are exhibited in the inquiry appointed by the hon. Chairman. What does the bank statement say? I am just holding the statement of Allahabad Bank where I had mentioned yesterday that some Rs.4,68,000 was deposited. From 24th March, 1993 onwards, by cash, and mostly by cash, some payments by cheque, he withdraws the money. And, Rs.4,68,000, on 8th March, 1996, within two years, becomes Rs.5,378. No money given to any workmen; no money given to Lynx India; all cash and cheque withdrawals for himself. Till date, he has not explained what did he do with this money. It's only in 2006, ten years later, when he got caught, he says, "Okay, I will pay with interest". So, this House was again misled yesterday by saying that bank statements are not here. Bank statements are available. I hold them in my hand.

The third thing he said yesterday where he tried to mislead us, "Even if you hold me guilty and remove me, I will still shout from rooftops that I did not misappropriate the money.". Well, you may have a great determination or a pathological conviction that you have not misused the money, but the best proof is : how were the cheques cut out from this account? The cheques can't lie; individuals can. On the inquiry appointed by the hon. Chairman, what do the cheques show? I am holding zerox copies of the cheques which are on the record of the inquiry. The same names as I mentioned yesterday -cheques in favour of one K.L. Yadav, one Guru Enterprises, one Subroto Mukherjee, Prashed Prasad Chaudhary, Ram Nath Roy and the same names which I had mentioned yesterday. Now, who are these people? These are not workmen.

What is the second set of cheques? Now, regarding the second set of cheques, the record is with me. It is in Committee's record. Any Member can borrow the record from me. All these cheques are cut out 'self' and cash withdrawn. You can shout from rooftops that you did not withdraw this money, but these cheques and this misappropriation will hang like an albatross around your neck even when you are shouting from rooftops. These are all self withdrawals. These are all withdrawals in favour of a company, S.C. Sarkar and Company, the bookseller, publishers that I mentioned. And, then, there are cheques towards ANZ Grindlays Bank card number so and so which is for VISA credit card. These are exactly the same facts I had given yesterday. Now, you use the money, you utilise the money which is really custodial, as he says, in his possession, which is case property. He holds it as a trustee. And, when he holds it as a trustee, he not only misuses this money, misappropriates this money, but in 2003 when he becomes the Judge, he does not tell the Court that I should now be discharged. He continues this misappropriation. The misappropriation continues to 2006. And, the second limb of his offence is when he is called before Courts, when he is called before an in-House inquiry, when he is called before the inquiry appointed by the hon. Chairman, he tells them, "I made some wrongful investments. There must have been an error of judgement on my part, but there is no misappropriation."

Self cheques, credit card cheques, book publisher's cheques, cheques in favour of some other unknown gentleman! And, both the inquiries, the inquiry appointed by the Chief Justice of India, and, the inquiry appointed by the Chairperson of the Rajya Sabha, have come to a finding that this was a case of misappropriation.

He says that I eventually went and returned the money. I mentioned this yesterday, and, some of us who are familiar with this branch, know that the first explanation, in fact, that is the only explanation, to breach of trust deals with a situation when, as a trustee, you hold money which is to be used for a particular purpose. The explanation to section 403 of the IPC states that a dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

So, any kind of misappropriation, even if it is for a temporary period, in this case, this period stretches to almost more than ten years, is a misappropriation. And, as a Judge, between 2003 to 2006, not only he continues the misappropriation but also misrepresents to every authority, and, he tells to every authority which is constituted, "well, these were some honest, bonafide investments, which got lost, and, therefore, I paid back after ten years with interest".

Can we afford to have a Judge whose conduct is of this manner? The plea that he raises is that since the main suit is pending, the issue is *sub judice.* The issue of Justice Sen's misconduct or proven misbehaviour within the meaning of article 124 and article 217 is not pending in any court. In fact, that is the sole jurisdiction of this House. He then says, "I did not claim a right of silence". The summons issued to him under the Judges Inquiry Act say, "you can appear in person and through counsel but be prepared to answer all the questions". So, his counsel appears, and, it is a clever strategy that he does not appear himself nor offer himself as a witness. He is the best available person who can tell us and produce his accounts. What would a Judge do? He will be candid and say, this is how I spent the money. It was an error of judgement. I compensate the loss caused. He does not appear because these cheques would be confronted to him, the accounts would be confronted to him, and, he will have no answers to give.

So, the second limb of the charge on which he is held guilty is his misconduct during his tenure as a Judge, both continuing the misappropriation and stating incorrect, inaccurate facts. So, on each of these grounds, two different bodies have come to a conclusion, and, in all fairness, we are not really bound by what the in-house inquiry has said; we are not even bound by what the then Chief Justice's letter to the Prime Minister contains. There may be many cases of a grosser impropriety, of which evidence, unfortunately, may not be forthcoming. Therefore, we have to consider how we strengthen the system that even those cases do not go unchecked. But is that a ground that because many people who have committed similar or larger offences have got away, therefore, why pick me up, why single me out? Can we afford to have a Judge whose conduct smacks of this kind of a proven misconduct? Therefore, when an opportunity has come, where a committee of two very eminent Judges and one very eminent jurist has come to a finding, is there anything extraordinary in his presentation saying that they have violated the procedures, or, the substantive facts are incorrect, that we should really consider not accepting the committee's recommendation?

And, therefore, I concluded yesterday, and, I am reaffirming that, I support Mr. Sitaram Yechury's motion that this is a fit case of proven misconduct where the Judge concerned must be removed from office, and, the Address to the President should be so recommended by this hon. House.

Sir, I would now like to make just a few observations. The first thing that comes to our mind is—and this has nothing to do with this particular case—that even in 2003, when this misconduct was continuing, how come such persons get to be appointed? It really seriously means that we have to revisit that process.

Originally, when the Constitution was framed, we had a system where Judges were appointed by the Executive Government in consultation with the Chief Justice of India. Ordinarily, the Government would be bound by the Chief Justice's advice. In 1993, that system got changed by a judicial interpretation and the advice of the Chief Justice of India was binding on the Executive Government. That is the position today. Today, even though the Government is a part of the consultation process, it can refer back the case once, but effectively, our experience has been, this was the experience when the NDA Government was in power, this is the experience of the present Government, that we are living in a system where Judges appoint Judges. The Government, at best, has only a very marginal say. There is no other process by which there is any kind of a participation in the process of appointment of Judges. Sir, both the pre-1993 system and the post-1993 system had several handicaps. The best in this country are not willing to become Judges. We have to seriously consider why. At times, the selection process, where only Judges appoint Judges and the process is a non-transparent process, will always create situations where rumours in the corridors of the court and those who are close observers of the judicial process will be far too many. It was unthinkable once upon a time; it is not unthinkable today. That is why whereas, on the one hand, I suggested that vigilance has to increase, at the same time, we think of an alternative. My suggestion to the alternative is, I am not going into the details but a two-fold alternative. We should seriously consider a system which is being debated about setting up a National Judicial Commission. The National Judicial Commission must have Judges. It must have the participation of the Executive. It can also have participation of the people selected by a collegium of some eminent citizens. It can't only remain the domain of the Judges. Therefore, public interest has to be protected in the matter of appointment of competent Judges, in the matter of appointment of Judges who are men of integrity, men of scholarship. Not only this, the criteria for appointment today does not exist. Is it today the discretion of the collegium? Collegium is also a system of sharing the spoils. When the High Courts recommend, members of the collegium share the spoils. This is an impression which close observers have. Therefore, the discretion whether the collegium system continues or we have a National Judicial Commission must also be now statutorily regulated so that arbitrariness can be avoided. After all, there has to be some objective criteria. Except elected offices, there is no other appointment which is made where there is no threshold criteria for entry. What is your academic qualification? How bright were you during your academic days? What is your experience as a lawyer? If you are a Judge, how many judgements have you written? How many have been set aside? How many have been upheld? How many juniors have you trained? How many cases have you argued? How many cases have been

reported which you have argued? Have you got laws laid down? Have you written papers on legal subjects? These are all objective criteria. One cannot disregard them and say I pick up a name out of my hat and appoint him because I am in the collegium. Therefore, we need, I am glad the hon. Prime Minister himself is here, a system where this should be seriously reviewed.

Secondly, Sir, the matter of Judges judging Judges and nobody else participating in this is also an issue which requires a serious review and which requires to be referred to, in my opinion, the same National Judicial Commission.

The third issue is this. When appointments are made we have to seriously consider how the institution functions, whether it functions without any pressures. Today, whether it is politicised appointments or it is appointments which lack credibility or it is subsequent lack of accountability or biases on account of relatives, biases on account of religion,, caste, and personal relationship, these are all areas where accountability and vigilance norms have to be improved and increased, so that the independence of the institution can seriously be preserved.

Sir, I have always believed that we must seriously consider this larger issue of almost every retiring judge, barring a few honourable exceptions, holding a belief that he is entitled to a job after retirement. Jobs have been provided in certain statutes; they are created by certain judicial orders. Therefore, search for a job on the eve of retirement begins, as a result of which there is a serious doubt which is raised that retirement eve judgements at times get influenced by the desire to get a job after retirement.

Therefore, I think when there is a Bill pending with regard to increasing the retirement age from 62 to 65 in the case of High Court Judges, we should correspondingly think of increasing the strength of judges, even increasing the facilities, remuneration and pension available, but putting a stop to this practice of everybody being entitled to a job after retirement. The desire of a job after retirement is now becoming a serious threat to judicial independence.

Lastly, Sir, it is just a brief comment. I have said in the very beginning that the separation of powers is one of the basic features of our Constitution. At times it's argued that the separation of powers is threatened because Governments of the day don't want an independent judiciary. They want to influence the independence of judiciary. So the theories like committed judges, judges with the social philosophy were all propounded at one point in time. Those are now ideas of the past.

Separation of powers requires that every institution works in its own spheres. And if every institution works in its own spheres, it has to lay down the *lakshman rekha* of its own jurisdiction. But why is it necessary to lay down *lakshman rekha* of its own jurisdiction? What happens if one steps into the other's domain? And I must candidly confess that this attempt to encroach upon the *lakshman rekha* is neither coming from governments of the day in the Centre or the States nor is it coming from the Executive or the Legislature. Some serious sidestepping is coming from the judicial institution itself. Therefore, we require a certain element of judicial statesmanship; we require a certain legislative vision so that we can maintain this separation of powers. Otherwise, what should be the economic philosophy of India? What should be our economic policy? Whether we go to the post-91 policy of liberalisation or we go to State controls is the matter entirely for the Executive. Courts cannot say that this is neoliberalism which is creating problems. Courts cannot have an ideology. The only ideology that courts can have is commitment to the rule of law and what law is made by Parliament. Courts cannot tell this to the Government.

There was an incident in the past when a terrorist group was holed up in Kashmir and courts asked our security agencies how many calories were to be fed to the terrorists, because they have a right under Article 21 carrying a gun in their own hands. How Maosim is to be fought or insurgency in the North-East is to be fought, we have gone through these debates in this House. That is the domain of the Government. The Government has to decide the policy. Courts cannot decide that policy. What should be the land acquisition policy? The Government is seriously contemplating a new Land Acquisition Act. What should be the quantum of relief and rehabilitation? These are all area for the government to decide.

I recently came across a fact that a Pakistani prisoner should be released. There may be some space for compassion in any civilised society.

But, whether the Government of India wants to release the Pakistani prisoner or it wants to exchange for another Indian prisoner in Pakistan, is a matter of the foreign policy or the security policy of the Government of India. We have not handed over the management of India's foreign policy to the Supreme Court of India and, therefore, how the Pakistani prisoner is to be treated–released or otherwise–is entirely in the domain of the Government of India. Now, these are all examples of recent past that I am mentioning where the space or line of separation of powers itself gets obliterated and the encroachment, in most cases, is neither coming from the Legislative nor the Executive. Therefore, we need a serious introspection and I, therefore, said that we need a judicial

vision, a legislative statesmanship and *vice-versa* in this country so that the correct balance of separation of powers can itself be maintained.

Finally, Sir, we were dealing with the case of a delinquent Judge. I am of the clear opinion after going through the reasoning of the Inquiry Committee; detailed reasoning has been given; it's a very well written report which is substantiated by huge number of documents. The conduct of the Judge leaves much to be desired - his conduct as a receiver, his conduct as a Judge, his conduct in the course of inquiry and finally—though not a ground for impeachment, but a ground on the basis of which we must make our own assessment - the kind of statement he made yesterday. I think, this is a case which should leave none of us in doubt that it's a fit case for removal of this Judge and we must so make a recommendation of the Address to the President of India. Thank you.

DR. E.M. SUDARSANA NATCHIAPPAN (TAMIL NADU): Thank you, Sir. I support the Motion for presenting an Address under article 217 read with clause (4) of article 124 of the Constitution followed by the Motion for considering the Report of the Inquiry Committee constituted to investigate into the grounds on which removal of Shri Soumitra Sen, Judge, Calcutta High Court was prayed for and Address to the President under clause (4) of article 124 of the Constitution.

Sir, we respect the judiciary in all quarters. We never mention the name of any individual Judge or any action of the Judges or any of the courts. We are following the system of separation of power and more so, under the leadership of Dr. Manmohan Singhji, the Government always obliges and respects the orders and directions of the Supreme Court, the High Courts and all the courts. But, yesterday, we felt very sorry after hearing an eloquent speech of a Judge, who is a sitting Judge, where he attacked the judiciary to the maximum. We can even see that the words he used were never used in the record of the Parliament. Never as a politician or as a Member of Parliament, we used the word 'prejudice'; we never used the word 'pre-judge'; we never used the words 'they don't have any power'; we never said that Order 39 or Order 40 of CPC says that they cannot ask anything from the receiver. We never said like that. We oblige that they have got separate jurisdiction. We have our own jurisdiction. We are doing our job; they are doing their job. That was the nature of the speech that we had in Parliament yesterday.

Sir, really, it is a historic day that now we are discussing the issue which was initiated by the judiciary. It is not initiated by any Member of Parliament except the procedure. Under the Judges Inquiry Act 1968, there is a procedure that you have to come forward with a petition or complaint against the sitting Judge

of the High Court or the Supreme Court with the signature of 50 or above Members of Rajya Sabha or 100 Members from Lok Sabha. That procedure alone is followed by our side and we initiated this procedure only on the basis of the judicial aspect. The hon. Chief Justice of India had made a request to the President, requesting initiation of these proceedings against a sitting Judge of the Calcutta High Court.

For that I am just quoting from the report of the Inquiry Committee, Volume-ll, page 65, item No.9, "On 03-12-2003 Receiver was elevated as a Judge of the Calcutta High Court" This is a date very important for us. From that date onwards our jurisdiction starts to discuss on this matter. Then, he cites 20 events which have happened before the single Judge of the Calcutta High Court where it was dealing with a Receiver's petition, how the Receiver has not properly acted and how he has not produced the accounts. In spite of the repeated summons were issued to him, he did not appear before the court. He did not give proper answers to the court. Events according to him, have been given on pages 65, 66, 67 and 68.

Finally, Sir, on the 19th item, on 10-04-2006, hon. Justice Sengupta passed a detailed order, directing the erstwhile Receiver to pay a sum of Rs.52,46,454/- after adjusting the said sum of Rs. Five lakhs. The erstwhile Receiver and/or his agent, and/or representative was injuncted from transferring, alienating, diposing of or dealing with right, title and interest in moveable and immovable properties ling at his disposal, save and except in usual course of business, though he was discharged on 03-08-2004.

Sir, it is a very pathetic situation. A Judge, who has assumed a position of a Judge, was continuing as a Receiver also for more than eight months. If he was really feeling that he was elevated to a Judge of High court, the entire lite of the people, the entire judicial system were in his hands, he should also feel that when the warrant of appointment had come from the President of India, he should have relinquished from the Receivership, he should have deposited the amount in the court and he should have given accounts to the court and then he should have assumed the position of the Judge of the High Court. He has never done it. From the dates of events, he has just passed on the case as a Judge while we are discussing on his misbehaviour and misappropriation only during the period he was a Judge. He was questioning how could you deal with the person, Receiver, how could you question the Receiver, only the court could do so. Further he quoted order 40 of the Civil Procedure Code. As a Judge he continued himself as a Receiver also for more than three years, that is, till he was relieved. Eight months after the single Judge decided the case on the basis of a petition, he was removed from the Receivership and

somebody else was appointed in that place. Subsequently, the proceedings continued for four years. And for four years he was representing the matter through various agents and Advocates. Finally, when the clear order was given by the Single Judge in 2007, he came forward to deposit the entire amount. He paid the first installment of Rs. 40 lakhs. Then, he paid the rest of the amount on 27.06.2006.

I am quoting from page 69 of the report. On his own submission a sum of Rs.40 lakhs has been paid by the erstwhile Receiver. Then, on behalf of erstwhile Receiver the constituted Attorney filed an application for extension of time to deposit the balance amount. This matter was considered by the court when he was also a sitting Judge of the same Calcutta High Court.

Then the pitiable position was, on 17-11-2006 a publication was issued, in the local newspaper.

A publication on this issue was made in the local newspaper. Then, the Chief Justice of that particular High Court, Calcutta, Chief Justice V.S. Sirpurkar, wrote a letter to the Chief Justice of India on 25.11.2006. This I am placing from his own submission, given on page number 3 of the reply, which is given before the Inquiry Committee. I am reading it from page number 3, para 1.2:

> "This private communication by the Learned Single Judge led to the formation of an adverse opinion by the Hon'ble Justice V.S. Sirpurkar against me on the basis whereof he said, Hon'ble Justice V.S. Sirpurkar wrote a letter to the then Hon'ble Chief Justice of India dated 25.11.06 informing him of the allegations against me and his opinion and/or his views."

In that way, it goes on, Sir. Therefore, this is a *suo motu* proceeding which started with the Chief Justice of a particular High Court and it goes to the Chief Justice of India. Then, subsequently, he started to work on. The Judge—he is also a sitting Judge in the same Court—started working on and paid the rest of the amount on 21.11.2006. The Learned Advocate on record of erstwhile Receiver by a letter deposited the remaining balance amount of Rs.12,46,454/- before the Registrar. Then the Single Judge orders, on 31.7.2007, the application being G.A. No. so and so, for recalling the order, dated so and so. In that way, he lifted the injunction imposed on him. Till 31.7.2007, the Judge has never challenged the order of the Single Judge. He has never gone to this Division Bench. He has never gone in for any other review or revision or any proceedings. He has never gone for that. He has never challenged it. He

accepted it. But, subsequently, when he finds out that Justice Sirpurkar has initiated the proceedings through the Chief Justice of India, then only he files a petition before the Division Bench; that is on 25.9.2007. Hon'ble Justice Pranab Kumar Chattopadhyay and Hon. Justice Kalidas Mukherjee were pleased to re-set aside the impugned judgment on 31.7.2007. Sir, repeatedly, he was telling us, "We have to rely upon this judgment.' Sir, nobody who has got small knowledge of law can accept when the initiated proceeding is already on. Whatever thing had happened anywhere, that will not be counted. Already, a Single Judge has passed an order; that was obeyed by the particular person; he paid the deposit. That means, he accepted every misappropriation, mishandling, everything. It was accepted. Then where is the position for citing another Division Bench judgment on which he has initiated afterwards, through his mother and other persons, that this order is wrong and, therefore, you expunge the portion which has commented upon the Receiver who was a erstwhile Receiver, and, therefore, he initiated that proceedings? Therefore, we cannot look into the Division Bench judgment at all. It cannot be a binding. He was telling us, "You want to take away the proceedings of the Division Bench judgment and you don't want to obey the Judge's order. Sir, the Judge's order is not a judgment *in rem.* It is not a judgment for the whole world. He has not produced any particular thing. It was a judgment in a particular person *per se.* That particular person is going to get a relief by that order. If that is so, it is not binding upon anybody. And more so, Sir, he challenged every position afterwards. Sir, being a Judge of the High Court, he should understand how the proceedings of the law have come up, how the Supreme Court has evolved a new system of correcting themselves within their own peer group and how they came out. In 1968, we enacted the law. In 1993, they took their own power of appointing themselves as Judges, and within three years, a lot of complaints started coming. Therefore, many cases have come to light and one of the cases is Ravichandran Iyer *vs.* Justice Bhattacharya. In that judgement, Justice Ramaswamy and another Judge have passed a judgment saying that the time has come; therefore, we have to rectify ourselves by way of creating an in-house system.

By this system we have come forward with a new convention.

Sir, I am just citing from the 21st Report of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Judges (Inquiry) Bill, 2006. It is on page 9, paragraph 10 and I quote:

> "10.0. In 1997 the Supreme Court of India passed two resolutions dealing with Judicial Accountability *viz* Restatement

of Values of Judicial Life and in-House procedure within the Judiciary. The Restatement of Values of Judicial Life Resolution was adopted in the full court meeting of the Supreme Court on May 7, 1997 which included the following:

'That an in-House procedure should be devised by the Hon'ble Chief Justice of India to take suitable remedial action against the Judges who by their acts of omission or commission do not follow the universally accepted values of Judicial Life including those indicated in the Restatement of Values of Judicial Life'.

The in-House procedure is essentially meant for disciplining the Judges, against whom complaints of judicial misconduct and misbehaviour were received. The in-House procedure rests on the premise that there may be complaints casting reflection on the independence and integrity of a Judge which is bound to have a prejudicial effect on the image of the higher judiciary. In the in-House procedure, a complaint against a judge is dealt with at an appropriate level within the institution. It is examined by his peers and no outside agency is involved, thus the independence of judiciary is maintained".

This was actually made on the basis of an observation of the Supreme Court in C. Ravichandran Iyer *vs.* Justice A.M. Bhattacharjee and others case. The Law and Justice Department Standing Committee had sent the Bill to all the High Court Judges. That was the first time that the Judges (Inquiry) Bill was sent to the High Court Judges. A full court of ten or eleven High Courts were convened by the High Courts and all of them replied in certain ways. They supported the in-House system. They supported the amendment to insert the provision. They opposed certain provisions. This is the kind of reply given by the full court of every High Court. That was a new history which was created during that period. At that time they cited a full Court decision of the Allahabad High Court, as they replied to the request of the Standing Committee. They cited the Ravichandran Iyer's case. I am just reading out that portion on page 134:

"The Apex Court itself has laid down that the Chief Justice of a High Court has ample power to deal with any Judge who misconduct himself. Self-regulation by Judiciary is the method which has been emphasized by the Apex Court. The in-House remedy for restoring the confidence of the

> people against errant behaviour or misconduct by any Judge has functioned quite effectively.
>
> The Chief Justice of India being head of the Judicial fraternity does not lack means and power to discipline the Judges. The gap between proved misbehaviour and bad behaviour inconsistent with high office can only be disciplined by self-regulation through an in-House procedure as laid down by the Apex Court in C. Ravichandran Iyer's case".

This is the position of the Supreme Court. How can a sitting Judge criticise and say that the Chief Justice of India had made his own effort and he had prejudged everything? He also commented that the in-House procedure is not at all correct because there was no resolution passed by Calcutta High Court. Sir, all of us very well know that an annual conference of Chief Justices of all High Courts is convened. The hon. Prime Minister also attends that meeting. At that time the Chief Justices of all High Courts come. They make certain procedure for themselves. They make their own resolution. They follow that resolution. That is the convention that we are following in India. It is happening every year. They are making resolutions and they are acting upon them. But he challenged even that. He challenged each and every system and institution. We can't tolerate this just like that. He challenges in-House proceedings. He challenges the Chief Justice of India. He challenges the Judges who were Members of the in-House proceedings.

He says that two judges were elevated as the Supreme Court Judge and another judge was not elevated. These are all the things which he has mentioned. Even we have never mentioned these things in this House. This is the first time when we have heard this from a sitting High Court Judge in this Upper House.

Sir, I have gone through each and every part of the evidence before the Committee. This Committee was constituted by the hon. Chairman only after the CJI was convinced after the in-House proceedings that there was misbehaviour and misappropriation and he recommended it to the President of India. On the basis of that, hon. Members of this House took this initiative and that initiation has led to the provision of appointing a new Committee. That Committee was also challenged by him. He questions as to what is the right of the Committee to look into receiver's activities; they have got no right on that. He was saying like this. We are not saying who should be appointed as a receiver; we are not asking as to how he was appointed; we are also not asking whether he was doing the work properly or not. No, we are not doing

that job. We are trying to find out after being a Judge of the High Court what is his conduct; what misappropriation he has done. From his own submission, we can find out how he misappropriated. As I have submitted earlier, he admitted that by way of submitting to the Court's order he paid the amount after four years, after he became a judge of the same Court. That means after four years he comes out and deposits the amount. He says, "I deposited the amount twice; I have deposited all the money in the Lynx India Co. which has liquidated. Therefore, the matter is over." He wants to tell one part of the story. This is like the Shakespeare drama. 'Iron was eaten away by the rat'. That is the story he wants to tell. Subsequently, he says, "No, no, even then I paid from my own pocket; I deposited around Rs. 50 lakhs." Why did you deposit the money? If you have not misappropriated the money in the last 14 years, why did you deposit the money? He deposits the money and he does not challenge the order. Then he comes forward and says that it was purely on a prejudicial matter.

Sir, I would like to talk about another thing. He has even come to a conclusion that the selection process was poor. On page 61, para 3.6, in his reply to the Committee, he says, "Past actions of a Judge long prior to his elevation, cannot be the subject matter of impeachment. If past actions are brought within the ambit of Article 124 (4) read with the provisions of the Judges Inquiry Act, it will make a mockery of the selection process of a Judge of the High Court or the Supreme Court". Here I would like to submit one proposition. After 1993, the procedure which is being followed by the judges is totally different. They never consult the Executive. Previously, before 1993, the procedure was like this: The local Chief Minister, through the Governor, will give a list of names, who have got good background and good reputation. That will then be considered by the Chief Justice of the High Court. Then he will make his remark on that and then send it to the Ministry of Law and Justice. The Ministry of Law and Justice, through its apparatus, as the department was looked after by Home Secretary will find out as to what is the background of that particular nominee. Then they will compile a report on the basis of his background and that is then submitted to the Chief Justice of India. The Chief Justice of India will consider it and finally he will take his decision and then it will be forwarded to the President of India for issuing the warrant of appointment.

That was the procedure followed before 1993. Sir, the Constitution never says as to who has to appoint a judge. It is the President's will. At the same time, the settled provision, which was followed till 1993, was the will of the people, the will of the local federal Government, the will of the elected representatives. The Chief Minister represents the whole State, and, therefore, his will was to be considered. So, it was routed through him. But they have to find out whether they come within the purview of the judicial system. Therefore, the Chief Justice

of that particular High Court made the recommendation. And, finally, they have to find out whether he is a person of integrity, whether he is having the national spirit and whether he will abide by the Constitution. These are all the things which will be considered by the Union Government. Then, it will go to the Chief Justice of India, and it will then go to the President. But, after 1993, they have been totally misled by the Judgement which was rendered by a Bench. Before that, in the Committee on Personnel, Public Grievances and Pensions, Law and Justice, the former Chief Justice of India, Justice R.S. Pathak, former Chief Justice of India, Justice P.N. Bhagwati, and former Chief Justice of India, Justice Ranganath Mishra, all of them deposed before the Committee. I would like to read out the 21st Report of the Committee. On Page No.27, it says: While taking stock of the impact of the post-1993 situation, the former Chief Justice of India, Justice P.N. Bhagwati, stated as follows: "Ask any lawyer, standard has gone down. Why? It is because of the mode of appointment. When the Supreme Court gave its Judgement that the appointment should be in the hands of the judiciary, the Government should be bound by it, and it should end with the judiciary, namely, the Chief Justice and first four Judges, everyone thought, perhaps, at least, some people thought, but I never thought myself that this would improve the appointment or quality of appointment of judges." Also, the former Chief Justice and Judge of the International Court of Justice, Shri R.S. Pathak, says, "So far as the collegium is concerned, I must frankly confess that I have serious reservations about it. In regard to the old practice that we used to follow in appointment of judges, although this is not a matter really for today's deliberations, in my Judgement in S.P. Gupta's case, you will find that I thought we were quite happy with the old system provided it worked out *bona fide."* The former Chief Justice of India, Justice Ranganath Misra, summed up on the issue of appointment of Judges as under:-"I had made a reference, as a Judge or as a Chief Justice, to a larger Bench of the Court to find out how this process will be worked out. It was sent to a Nine-Judge Bench. It was a larger Bench. We wanted a decision from the Supreme Court on the question. It was not a matter which was to go beyond a point and decide how the vacancies of the Judges would be filled up. There was a wrong thing, probably, in my own way. I consider that the referring Bench had said that all other questions were closed and that was the only issue to be discussed by the larger Bench." And it goes on like that. Therefore, all the former Chief Justices of India, very reputed persons at the international level, they have come forward to say that post-1993 situation is bad enough. This particular occasion we can prove it. If, really, this particular appointment was a transparent one, it was known to the Judges of the Calcutta High Court, it was known to the advocates of the Calcutta High Court, it was known to the people of Calcutta because the fate of the State is to be decided by that particular judge when the case comes before him, then, they would have come forward and said,

"Sir, he has already cheated up to Rs.35 lakhs. Therefore, he should not be appointed as a judge."

3.00 P.M.

They will come out and they will tell the concerned people that this Judge has created a bad precedent. He swallowed the money in the past ten years. He has not placed the accounts before the court. He has not obeyed the orders of the court. Even if we accepted it for the sake of argument that he had deposited the money, the Lynx India Limited was not ordered to deposit by way of the order of the Court; it was done by him. That is the misappropriation. He accepted it in his own reply that he had deposited money. Where is the order for that? No court had ordered that but he had done it. Therefore, such persons are not needed in the Judiciary. And such persons can never be appointed if proper procedures are followed.

Therefore, Sir, my submission is that these proceedings are very clear. The Inquiry Committee has gone through each and every aspect of the case. Sir, he had even challenged these proceedings as 'criminal proceedings'. He wanted his innocence to be proved beyond doubt, it wasn't and it was very clearly explained in the Inquiry Committee Report (Volume I) at page 3, "The proceedings for the investigation into the conduct of a Judge under the 1968 Act are not criminal proceedings against the concerned Judge; the Judge whose conduct is under inquiry is not a person who is to be visited either with conviction, sentence or fine; nor is the Inquiry Committee, appointed under the 1968 Act, empowered to make any such recommendations. Besides, the Judge in respect of whose conduct an inquiry is ordered under the 1968 Act is not a person 'accused of any offence' and no fundamental right of his under article 20(3) of the Constitution of India would be infringed by his giving evidence during an investigation into his conduct...". Sir, he avoided appearing before the Committee at every stage and he challenged the veracity of the Committee. And finally, he went on to say if he did not get justice from the Inquiry Committee, he would go to the rooftop and tell the world that he has not done anything. Such was his position. He misused his eloquence and, that too, at a place where he is not supposed to. Therefore, I finally submit that the impeachment proceedings should go on.

Sir, finally, the Judiciary has to be clear in its mind. This is one of the cases, one of the test cases, where they have been challenged. We have not challenged them. No politician has challenged them. No parliamentarian has challenged them. But their own people have challenged them. It is high time they had reviewed their own position. They should not cross the *Lakshman*

Rekha. This is how we have to work. This is the way in which the Parliament is working. This is the way in which the Executive is working. Therefore, we have to coexist and we have to protect the Constitution. Thank you, Sir.

SHRI SATISH CHANDRA MISRA (UTTAR PRADESH): Sir, while agreeing on certain issues which both the speakers before me, especially the Leader of the Opposition, have stated, in respect of the role of the Judiciary and the way the Judiciary is now encroaching into the area of the Legislature and the Executive, with great respect, I disagree on certain other issues.

Hon. Chairman, Sir, the Parliament, Judiciary and the Press, the media, are the safeguards of justice and liberty and they embody the pillars and the spirit of the Constitution. But, unfortunately, today, the credibility of all these pillars is being openly questioned now.

Sir, as junior lawyers we were always taught by our seniors that while arguing cases in the court we should not see who the Judge is, we should not see the face of the Judge and start arguing but we should see the files and the merit of the case that we have. Similarly, at a certain point of time, most of the hon. Judges also conducted themselves with great dignity and did not see the faces of lawyers during the court proceedings. But they used to see the cases on merits — what was the case which a lawyer was presenting before the hon. Judge.

But, Sir, today the situation is largely changed and it is unfortunate. Today, in the corridors of courts, and otherwise, when the lawyers are talking to litigants, they are not concerned to know how much law the lawyers know with respect to the matter or how expert he is in the law. But, now the question usually put to the lawyer is whether he knows the judge or not. So, that is the unfortunate situation which has now reached which, of course, requires serious consideration.

Sir, earlier we always had hon. Judges, who used to function in a manner that it was not their job to make the law, but it was the job of the Parliament or the Legislature. But, today what the courts say is not what the Legislature says or what the Act or the Constitution says, but, it is a matter of fact; now the judges instead of discovering the law, stating the law and applying the law, not making the law, forgetting the judicial review part, have started framing the law which is what the hon. Leader of the Opposition has elaborated in detail with respect to the separation of powers — getting into the field where the separation of power is now given a go-bye, which is not correct.

Sir, before coming to the issue of the impeachment and on merits of impeachment which is before us, I would like to say that there are certain issues which the hon. Leader of the Opposition has spoken, and the other colleague has spoken, on the appointment of judges. It was said that in the appointment of the hon. judges, there is a detailed procedure. The judges have taken on themselves the appointment of judges, post-1993, and that is why the denigration in the system has been found today. The Executive or other authorities have no role to play now. Sir, I beg to disagree on this because I know that the judge whom we are impeaching today was appointed at a time when we had one of the finest and most eminent Law Ministers; the appointment was done in the year 2003. (Interruption) In 2003, we had Shri Arun Jaitley as the Law Minister. The appointment was made at that time. The scrutiny was also made at that time by him in his capacity as the Law Minister. And, I, as an individual, say before the House that I know that the scrutiny that was done was not a scrutiny which was here and there; but it was a detailed scrutiny. Why I say this? Because I know this. I myself was one of the persons who got scrutinized by him. That is why I am saying this, with great respect.

(INTERRUPTION)

SHRI SITARAM YECHURY (WEST BENGAL): That is why you were not appointed.

SHRI SATISH CHANDRA MISRA: I am coming to that. Sir, everybody knows; in my family, my father was a judge, he retired as the Chief Justice; my uncle was a High Court judge; my elder brother was a High Court judge, he retired as a High Court judge. But, Sir, when I was called upon by the hon. Chief Justice to give the consent, with folded hands I requested and said, “No, I am not the person who is fit to sit on that seat.” But, then, I was asked from various sources; when the collegium members were asked to force me that I should give my consent. One of the hon. judges who was in the collegium is presently a judge in the hon. Supreme Court and the other retired as the Chief Justice.

Then, ultimately, Sir, I had given my consent, in spite of the advice given by my father that I should think it several times, but I was asked to give my consent and I gave my consent. After the consent was given, the collegium met, it cleared the name. The process followed. It went to the Chief Minister. The Chief Minister cleared it. Then, it came to Delhi. In the meantime, when it was being scrutinised in the Law Ministry, at that point of time, the Chief Minister was changed. A new Chief Minister came. Of course, from the same party. But, then, suddenly, a letter was written to the Law Ministry by the Chief Minister

saying, “Look here, I have certain reservations for this gentleman, and one more gentleman who was there also for different reasons”. The reason for this was, ‘that we have found out that when he was the Chairman, Bar Council of U.P. and the Secretary of the Bar Association, he had led a big agitation of the lawyers because the jurisdiction of the Lucknow was being taken away by the Allahabad Bench. So, there was the agitation and he participated in that’. This was number one. Number two was, ‘that kindly find out, according to an information, he is not an advocate’. I had already become a Senior Advocate by that time. The full court had designated me as a Senior Advocate. But why I was not an advocate was, because it was said, ‘that he has several houses; he has several buildings; he has a building in Noida; he has a building in Nainital; he has a building in Lucknow, and he is getting rent from those buildings. Though he is the highest income-tax payer amongst the lawyers in the State, but kindly scrutinise whether he is actually an advocate or something else or a builder’. So, this letter went. When it went to Law Minister of course, it was looked into, and the matter was forwarded to the collegium. Then, I wrote a letter saying, “Kindly do not consider my name, if all this is being done and I don’t want to be considered”. But the scrutiny was done. The scrutiny was done at that level and this intervention was there. As such an intervention was there and thus to say that ‘no intervention’ is done, is not correct. In spite of the fact the allegation was there that you are not an advocate, the fact was, I was not in politics; I was purely a lawyer. At that point of time, I was always engaged by the parties which were in the opposition. Those parties which were not in power used to engage me for their cases. The Bhartiya Janata Party which was there in the opposition had engaged me to challenge the President’s rule, I had argued it before the Division Bench and before the full Bench and had won, and strictures were passed against the Presidential Proclamation, but still I was not a lawyer! So, this was the scrutiny which was done.

SHRI RAVI SHANKAR PRASAD (BIHAR): You are better here.

SHRI SATISH CHANDRA MISRA: No, I am thankful. I thank the hon. Chief Minister who was in this House earlier. The day I took oath, I said, “Because of you I am here”. Today, I get this opportunity to see whether a High Court judge should be impeached or not. This is the irony of the fate which is there. Therefore, to say that the appointment of the judges is purely by the judges, Sir, so far as I am concerned, I do not agree to that because I personally know these facts for that purpose.

SHRI SITARAM YECHURY: We are glad that you are here with us now.

SHRI SATISH CHANDRA MISRA: I thanked him for that.

Sir, now coming to the matter which is before us today, i.e., the Impeachment Motion, though the time has been allotted, I have seen the time, but I have made a written request, the time is at your discretion, that the time may be extended because I would be speaking, probably, a bit differently.

MR. CHAIRMAN: Please do economize.

SHRI SATISH CHANDRA MISRA: If I have to stand up and say, "I agree to the proposal, then, I can sit down straightway and I will not require any time". But this is a serious issue, Sir, where we have to consider the Motion with respect to impeachment of a sitting hon. judge. Therefore, we have to look into the background not only the facts and merits of the case but also the background with respect to what is the scope of article 124 and what is misbehaviour within its meaning how an act is considered as misbehaviour? All these aspects will have to be looked into, and, then, we have to see whether it falls into that category or not.

And whether it is a case where under impeachment we should accept the Resolution and remove the Judge. I also do not agree to what the hon. learned speaker spoke before me that the hon. Judge when he was standing yesterday and he was making his submissions as accused and did not speak, properly. He had every right. A person who is coming, who is being charged that you have to be removed. A right to defend has been given to him which has also been considered by the hon. Supreme Court in Constitutional Bench judgments holding that he has full right to defend. If it is not given, then, of course, it will be violation and the entire action of this House is likely to be struck down even if it is passed. Therefore, he has every right to defend and once he is in the defence he has the right to say that these are the facts which have been ignored or which have not been looked into and which should be seen. Therefore, for this purpose, I would refer to what was said by the Committee which was appointed in the case of Justice Ramaswamy, the in-House Committee Report I one paragraph what they said at that point in time was: "The immunity of Judges is not for the protection of a malicious or a corrupt but for public in whose interest it is that Judges should be at liberty to exercise their functions with independence and without fear of consequences. However, the standards of ethical and intellectual rectitude expected of Judges are directly proportional to the exalted Constitutional protection that they deserve to enjoy. The country is entitled to be most exacting in its prescription of the standards of rectitude in judicial conduct. What might be pardonable in the case of an ordinary citizen or officer might in the case of a Judge look indeed unpardonable. His morals are not the standards of marked place but is the punctilio of a higher code."

Sir, in *V. Ramaswami vs. Union of India* while considering the matter the hon. Supreme Court had observed : "The Judge of the Supreme Court as well as the Judge of High Court is a Constitutional functionary and to maintain the independence of Judiciary and to enable the Judge to effectively discharge his duties as a Judge and to maintain the rule of law even in respect of the *lis* against the Central Government or the State Government, the Judge is made totally independent of the control and influence of the Executive by mandatorily embodying in article 124 or article 217 that a Judge can only be removed from his office in the manner provided in clause 4 and 5 of article 124. Thus a Judge either of a High Court or the Supreme Court is independent of the control of the executive while deciding cases between the parties including the Central Government, State Governments uninfluenced by the State in any manner whatsoever. It is beyond any pale of doubt. There is no master and servant relationship or employer and employee relationship between the Judge of a High Court and the President of India in whom the Executive power of the Union of India is vested under the provisions of article 53 of the Constitution. The President has not been given the sole power or the exclusive power to remove a Judge either of the Supreme Court or High Court from his office though the President appoints the Judge by warrant under his hand and seal after consultations with such of the Judges of the Supreme Court or High Court in the States as he may deem necessary for the purpose and in the case of appointment of a Judge of the High Court, the President appoints the Judge by warrant but still the only mode of removal of a Judge from his office is on the ground of proved misbehaviour...." The word is 'proved misbehaviour' "..or incapacity as laid down in clauses 4 and 5 of article 124." Here we are on the question of proved misbehaviour; we are not on the question of incapacity with respect to the hon. Judge. Sir, under article 124 of the Constitution action for removal of a Judge is only on proved misbehaviour. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct, as opposed to good conduct.

Sir, the word 'misbehaviour' has found place under Article 124. The scope of Article 124 was considered, again, in the case of Krishna Swamy in 1992. Sir, Krishna Swami was a Member of Parliament and belongs to this House. He was also an advocate. He had filed his petition before the hon. Supreme Court. A Constitution Bench had considered the matter and then it had considered the scope of Article 124 and it said in para 60, "The Committee as Judicial authority adopts the procedure of a trial of a civil suit under the Code of Civil Procedure; it is not inquisitorial but adversary to search for the truth or falsity of the charges by taking evidence during the investigation like a trial of a civil suit and it should be the duty of the advocate and the learned Judge or his counsel to prove/disprove if burden of proof rests on the Judge, as a fact by

adduction of evidence or the affirmation or negation or disproof of the imputation under investigation. The word 'investigation' is to discover and collect the evidence to prove the charge as a fact or disproved. The Evidence Act defined the words 'proved' and 'disproved' as and when after considering the matters before it, the court either believes the fact to exist or not to exist or its existence is so probable/non-existence is probable and the test of acceptance or non-acceptance by a prudent man placed in the circumstances of particular case was adopted. The consideration of the evidence is like a criminal case..."—hon. Chairman, Sir, this is very important—"...as the finding would be 'guilty' or 'non-guilty' of misbehaviour under Section 6 of the Act. The test of proof is 'proof beyond reasonable doubt."

So, it is like a criminal case. It has to be either proved guilty or non-guilty. And, it has to be 'beyond a reasonable doubt.' If there is any doubt, you cannot prove him guilty. It has to be completely 'beyond a reasonable doubt.'' That is the aspect which has been referred to in this judgment.

Sir, with respect to definition of 'misbehaviour', the same has further been discussed in the same judgment. It says in para 71, "Every act or conduct or even error of judgment or negligent acts by higher judiciary *per se* does not amount to misbehaviour. Willful abuse of judicial office, willful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of *mens rea* by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the judge or willful abuse of the office would be misbehaviour. Misbehaviour would extend to conduct of the judge in or beyond the execution of judicial office. Even the administrative actions or omissions too need accompaniment of *mens rea.* The holder of the office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society." So, now, after going through this, we have to find out what the evidence is and what the charges are. The charges, to which a reference was made, are two. The first one is misappropriation of large sums of money which he received in his capacity as a Receiver appointed by the High Court of Calcutta. The second charge is, making false statements, misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta. Now, the question is what is the finding? Before coming to the findings, a question arises. We have to see whether the misbehaviour is proved as a Judge or we have to see whether misbehaviour is proved as a lawyer. I was only thinking that if my name had been cleared I would have been standing here for the behaviour as a lawyer either today or on some other day. But, is that the jurisdiction and scope under Article 124? We have to see this. We have to look into what the

hon. Supreme Court had said. It says 'proven misbehaviour' in the capacity of a Judge. Or, when he was a student or when he was in university or when he was an advocate, he did certain acts which, according to you, were not akin to what an advocate is expected to do, you prove him guilty and oust him from the position of Judge. That is not permissible under this. But, here, a reference is made. He did properly reply to these charges yesterday. It will have to be seen whether an act, as an advocate, would be a ground for his ousting as a Judge. It is not a case of a person committing murder which remained hidden or involved in dacoity or some other thing which remained hidden earlier and erupted suddenly.

He was a lawyer in that court from where the name was recommended. It was known that he was 'Receiver'; and, he was functioning as a Receiver when he was appointed. Now, the question is whether that becomes a ground for his removal as a Judge which was before having been appointed as a Judge. For this purpose, I would like to refer to the findings of the Inquiry Report. Did the Inquiry Committee go into all those questions and all those grounds that were raised by him in his explanation? We find a very sketchy and short-inquiry report, which deals, very precisely, with the issues and it appears that the conclusion was already in the mind that he has to be held guilty, which ultimately comes out in the report. Up to page 22 of the report, which deal with respect to inquiry it is all with respect to the conduct as an advocate. After hearing the judge, I thought he had a case. But after hearing the hon. Leader of the Opposition, I thought he had no case at all and we were just made to hear something having no foce for two hours. But, then, I thought that I should go deep into the Inquiry Committee's report and see what it says. Kindly see what the findings say. It says that it is diversion of funds; it is misapplication of funds, so far as the first charge is concerned, as an advocate. It does not say 'misappropriation of funds'. Now, it can be said that since it is misapplication of funds, since it is diversion of funds, therefore, it is a 'misappropriation'. Sir, 'misappropriation' to the understanding of common man, to the understanding of a layman would be that if I had been given some money or some property or anything in trust to me to keep it with myself till required to be returned; and, when I am supposed to return it, I don't return it and I misappropriate even that money, then, it would of course be misappropriation. (*Interruptions*) Yes, diversion. (*Interruptions*) It is said that there is diversion from one account to another account. That is the finding. Now, if it is transferred from this account to that account, it would not become misappropriation. Since reference has been made, I would like to refer to one of the paragraphs of the report, which says that when it was asked to make the payment, when he was directed to give the payment, he immediately paid that. He did not protest. That is the charge. That is the allegation. For arriving at the conclusion that he is guilty,

his action of making payment of the entire money with full interest is taken in the report. And, it is said that it means he was guilty. So, this is not the right ground to hold him guilty. Had he taken the money himself, it would have been alright. The second most important thing is that the entire findings with respect to second charge and also the first charge are based through and through only on the basis of the hon. Single Judge order. It says that the hon. Single Judge said this and the hon. Single Judge said that, completely overlooking the Division Bench Order which sets aside single Judge order. It was looked in the manner in which, probably, the Committee wanted to look it. It completely over looked that this entire charge is demolished by the Division Bench. To say that when he was called by CIT, thereafter, he went back and filed an appeal and got it the single Judge order set aside will not demolish the existence of Division Bench order...(*Interruptions*)

MR. CHAIRMAN: Conclude please.

SHRI SATISH CHANDRA MISRA: I am just going to conclude. But...(*Interruptions*)

MR. CHAIRMAN: Your extended time is over.

SHRI SATISH CHANDRA MISRA: Sir, I had sought time for this purpose only. Please give me some more time. If the appellate order completely exonerates him from the misappropriation and says that there is no misappropriation, why was this order not challenged in the Supreme Court? Why didn't anybody else go to the Supreme Court? Why didn't anybody else or any of the parties go to the Supreme Court to say that the Division Bench had joined with him? Who else has been charged for this offence? Conspiracy cannot be single-handed. There have to be two minds and two people. There is no charge on anybody else with respect to this. It is like casting an aspersion on the Division Bench also to say that he obtained the orders. Therefore, my submission at the end is this. Charge number one says, 'It is duly proved.' It is not proved. The charge was about misappropriation of large sums of money which he received in his capacity as a Receiver. There is no misappropriation. Simply say at the end of the Report that it is duly proved is not correct. And the inquiry Committee's finding on this issue cannot be blindly accepted.

The second charge is about making false statements. It is said that the statements made by the mother in the affidavit were false. There is no misappropriation from this, and there is no proven misbehaviour.

I would only conclude by saying that I do not agree with the Motion which has been proposed. I feel that it should be rejected. I think all of us should not be

swayed and conclude that we have to remove him come what may. We should look into the facts of the case. Each one of us have got the material. It is the duty of each one of us that we should tread very cautiously in this field. We should apply our minds. Thank you very much.

MR. CHAIRMAN: Before I call the next speaker, may I remind the hon. Members that the time allotted for this debate is four hours. Therefore, a certain time-discipline has to be maintained.

SHRI ARUN JAITLEY: We are glad Mr. Misra did not become a judge. ...(*Interruptions*)...

SHRI SITARAM YECHURY: Sir, do these four hours include today's timings or is yesterday's time also included in this?

MR. CHAIRMAN: I think there was no ambiguity about it. Today's timing is 2 hours 56 minutes....(*Interruptions*)....We will try to accommodate, but I do request everyone to maintain time-discipline because we have a process to go through at the end of it....(*Interruptions*)....No; there is a set procedure. Mr. N.K. Singh, please go ahead.

SHRI N.K. SINGH (BIHAR): Sir, it is an immense privilege to participate in this very important debate. One must feel somewhat handicapped considering that one is speaking after three very eminent lawyers who have already spoken at great length. My preceding speaker was Mr. Satish Chandra Misra. The first non-legal luminary, so to say, given with very ordinary discipline, I would beg to submit before this House eight points for your consideration.

First and foremost, clearly one is reminded of what an eminent jurist , Arthur Schlesinger had said. He said, "The genius of an impeachment proceeding lies in the fact that it punishes the man without punishing the office." This is precisely what this House intends to do through this very important Motion moved by my senior esteemed colleague, Mr. Yechury. Sir, yesterday, when I heard with careful attention the defence made by Justice Sen, I got three distinct impressions which I must share with this House. First and foremost, the impression which I got was that he sought to create a false hiatus between the sovereignty of Parliament seeking to bring it in conflict with the higher Judiciary. He repeatedly quoted what has been happening by the higher judicial functions as if to say that we would really stand up to the underdog in which he claimed to place himself in that position. I do believe, Sir, that for the reasons that I am going to give, that was a false hiatus, and a somewhat misleading thing.

My third important point, Sir, is that in his entire defence, he sought to create straw-enemies and straw-allegations which he then started to destroy. What was that? For instance, Sir, kindly look at page 74 of his written reply where he mentions about the fact that an order passed; and he says, 'Unfortunately, my explanation that these withdrawals were towards payment of workers' dues pursuant to a Division Bench order...' Sir, it was nobody's case. Nobody had alleged that he was being held responsible for the payment or the delay in the payment of workers' dues. So, to demolish something which was initially never leveled against him is like creating straw-enemies to be able to then answer that in his own way.

Similarly, Sir, I think that in the Inquiry Commission's Report, he has clearly sought to alter the meaning of misappropriation. My esteemed colleague, Mr. Misra, has dealt greatly with the meaning of what he believes is misappropriation. As a Trustee, Sir, it is clearly understood that the money which he received was to be held in Trust. That Trust enjoined upon him a responsibility that he could not divert the proceeds of that Trust into some other account. For instance, he could not use it for his personal purposes, no matter whether he reimburses it subsequently or not. As a Trustee, Sir, there are certain obligations which are cast upon him and therefore, any attempt in his defence to alter the meaning of misappropriation, in my view, is flawed.

Also, Sir, his suggestion in his defence yesterday—and that is my next point—on biases and predilections of successive high judicial authorities and by successive inquires which were held, in my view, did not seem to be borne out, considering that he himself had not cooperated with any of the processes. If you look, Sir, at the successive adjournments which he sought, where he failed to appear himself personally, where he really appeared through his attorney and sometimes really giving petitions in the name of his mother, in my view, suggests that the suggestion of bias and predilection looks to be flawed.

My next point really, Sir, is about the credibility and the integrity of the processes and procedures which you have followed before these judicial findings were reached. I believe that nothing which he has said in his defence casts any doubt on the procedures and credibilities. I agree, Sir, that a Judge is not supposed to know anything about the facts of life until they have been presented to him in evidence, and, as has been said by very eminent jurists all over the world, explained to him at least three times. Indeed, Sir, they were explained to him more than three times. Sir, the findings which have been received in this, clearly, are findings in two parts. One, as very rightly pointed out by my esteemed colleague, Mr. Misra, is regarding his conduct as an

advocate. As an advocate, he knows better than I do that you are enjoined upon as an Advocate to follow the Advocates Act. What did his conduct mean? What he did under the Advocates Act? Report comes to the conclusion that his conduct was most unbecoming of an advocate. There is a Part II which then deals with his conduct as a Judge. Therefore, Sir, in the findings which have been reached, in the concluding paragraph, in part 8 of the Inquiry Committee Report, the misappropriation is duly proved. This is in two parts, in his conduct as an Advocate and in his conduct really as a Judge.

Sir, I go to my last point which is about some of the broader issues. This Impeachment Motion has enabled this House to deliberate, for the first time, on the area of stalled judicial reforms. Sir, India is seeking to become a major economic power. It is seeking to achieve over 8 per cent rate of growth. Whether we go to John Rawls Theory of justice which really wants to seek an explanation that inequalities and certain kinds of economic deprivation can only be tolerated if it benefits all sections of society.

And we must ask ourselves this important question whether our present judicial system is adequate to meet India's changing economic realities. In terms of improving, and the Prime Minister knows it better than anyone else, in choosing our climate of investment, on transfer of properties, on mergers, on pricing and a whole host of things and addressing it in a manner which really would enable this country to grow. Is our judicial system equipped for a system which is managing rapid economic changes, Sir, while maintaining the social cohesiveness of a social order with a nine per cent rate of growth? Indeed, Sir, as has been very rightly pointed out by the hon. Leader of Opposition, this Impeachment Motion has given us an invaluable opportunity to consider some of these things beyond narrow partisan confines.

Sir, I strongly believe in the appointment of a National Judicial Commission and the demarcation of responsibilities between the three functions. Indeed, many of us were shocked and I am sure many of us would have been shocked when certain judicial pronouncements were made which questioned the Parliament, which questioned, for instance, whether it was necessary to attend Parliament, which questioned the integrity of this very vital organ, which is the over-arching organ of our Constitution. Many of us were so appalled, many of us were ashamed to be part of a process when it was being pronounced, and certain aspersions were being cast on Parliament, and we were mute spectators. Indeed, If we do not consider this opportunity to think about major issues of judicial reforms, setting up a Judicial Commission, a better demarcation of responsibilities, a better examining of whether our present judicial system equips us to deal with rapid economic growth, with issues of

poverty and inequalities, we will miss, Sir, a very important opportunity. I, therefore, support this Motion. I support it because I do believe that in the end, if we do not maintain justice, justice will not maintain us. This was a very important saying by Francis Bacon in 1615 at the impeachment of the then Attorney General in the House of Commons. You must be reminded of this. We must be reminded also that how easy it is to judge rightly after one sees what evil comes from judging wrongly. We must judge rightly. We must exercise the sovereignty of this House. We must not allow this valuable opportunity to slip away.

I support this Motion and I support also the opportunity of this Motion to bring about a kind of qualitative change in the way in which the demarcation of powers between the three important organs enshrined in our Constitution can be restored and a measure of dignity and respect for each of these organs which the Constitution defines.

MR. CHAIRMAN: Thank you for your precision. Mr. Tiruchi Siva.

SHRI TIRUCHI SIVA (TAMIL NADU): Sir, I rise to support the Motion moved by Shri Sitaram Yechury.

Sir, Francis Bacon once said, “The place of justice is a hallowed place, and therefore, not only the Bench but also the foot-space and the confines and the purpose thereof ought to be preserved without scandal or corruption.”

Sir, we are proud that we have a long-standing tradition of sustaining an independent judiciary which has safeguarded our democracy and Constitution. The Indian judiciary which has got its own tradition is considered to be one of the pillars of democracy and it is duty-bound to uphold the moral values and ethics to secure the trust of the people. The trust in the judiciary by the people of this country and the Constitution is so immense that the day that trust is breached, it is the breach of trust of the people of India and the Constitution.

Sir, it is to be understood that however carefully the institutional forms may be constructed, the final analysis mostly depends upon the actual behaviour and the accountability of the individuals concerned. What is ‘accountability’? The Oxford dictionary says, one who is responsible for one’s own actions and decisions and is expected to explain when asked for. So, accountability is an inevitable and indispensable part of democracy. No public functionary or no public institution is exempt of this accountability, Sir.

Sir, the judicial accountability may not be on the same lines of the accountability of the Legislature or the accountability of the Executive. But they are also not

above scrutiny. Sir, when the faith of the people in the quality, integrity and efficiency of the Government institutions starts eroding, we have a responsibility. The check and balance system comes in between. When we find the breach of trust by the judiciary, the only remedy available is that of the impeachment brought in the Parliament. Sir, in the long history of our Parliament the first impeachment which was brought in the other House fell through, but this is the first ever case—the case of Justice Soumitra Sen. When we surveyed the pages of the Constituent Assembly, there was near unanimity in bringing the impeachment. Only one Member of the Assembly, Shri R.K. Sidhwa, from Central Province had cautioned on 24th May, 1949 while participating in the debate of the Constituent Assembly that if two-thirds majority of the two Houses sitting together want a judge to be removed it would be quite possible that no judge would be ever dismissed for an act of wrong-doing. This is the only observation, only caution, given by one Member. Otherwise, there was unanimity. And, we have experienced that. Even this one case is being criticized and evaluated and there were difference of views which cannot be disputed. This is very essential. The case of Justice Soumitra Sen also puts forward a strong case for judicial reformation in the country. Sir, the method of selection of judges, as earlier spoken by my colleagues here, to the High Courts and to the Supreme Court by the collegium should have to be reconsidered. The Legislature movement towards constitutional amendment in these lines is the need of the hour. Sir, may I quote Dr. Babasaheb Ambedkar in the Constituent Assembly regarding this? In fact, the question as to whether the appointment of judges requires the concurrence of the Chief Justice was seriously debated in the Constituent Assembly. Dr. Ambedkar responded to the said suggestion in the following words: "With regard to the question of concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgement. I personally feel no doubt that the Chief Justice is a very eminent person. But after all, the Chief Justice is a man with all failings, all the sentiments and all the prejudices which we as common people have; and I think to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I, therefore, think that that is also a dangerous proposition." That is the observation made by Dr. Babasaheb Ambedkar, not mine. Now, the Government's approval of the Judicial Accountability Bill is a positive step to check the discrepancies of the higher judiciary and to ensure necessary action to be taken. In this context, I support the Motion moved by my colleague, Shri Yechury. Yesterday, we heard Justice Sen's defence argument. He was eloquent as everyone appreciated. I would like to submit some of the observations, through you, to this august House. In what authority he went to that extent? There are two things. One is

that the findings of the Committee appointed by you clearly say that there was a large-scale diversion of funds and such diversion was in violation of the orders of the High Court; the purpose for such diversion remains unexplained. Justice Soumitra Sen was appointed as High Court Judge on 3rd December, 2003. The Committee noted that Justice Sen's actions were an attempt to cover up the large-scale defalcation of Receiver's fund. Sir, out of the two grounds of misconduct, the second is misrepresentation of facts with regard to the misappropriation of money before High Court of Calcutta.

Sir, this is what Justice Soumitra Sen said in reply to the motion received under article 217, read with article 124(4) of the Constitution, to the Rajya Sabha. Sir, I will quote. He himself contradicts. At one place, he says, "The respondent was appointed as a Receiver in the year 1984 by Order dated 30.4.1984. Till 2003, neither the hon. Calcutta High Court nor any of the parties required the respondent to render any accounts. For the first time, on 27.2.2003, an application was made by the plaintiff seeking directions for accounts and sale of the remaining goods and handing over sale proceeds. Despite the aforesaid statutory matrix, for about 19 years, nobody sought accounts, which is a clear indication that in Calcutta High Court, a practice had developed of not giving periodical accounts to the Court." He himself says again, "Rule 15 of the Calcutta High Court OS Rules lays down that unless ordered otherwise, the order appointing a Receiver shall contain a direction that the Receiver shall file and submit for passing half-yearly accounts in the Office of the Registrar and that such accounts have to be made at the end of months June and December every year and are required to be filed in the months of July and January respectively." So, at one place, he says that in the Calcutta High Court, there is no practice of giving periodical accounts to the Court. On the other hand, the rule 15 of the Calcutta High Court clearly says that he has to maintain accounts and give every six months. Then, I come to the second most important point. I am having the synopsis of yesterday's debate. He has clearly observed that the sale is still not complete. Therefore, the matter is still *sub judice* and it should not be discussed in the House. Sir, nowadays, it has become a fashion to question the sovereignty and the authority of the House. Sir, he says that it cannot be discussed in the House. But, Sir, we are empowered by the Constitution under article 124, clause (4) and clause (5) that we can impeach; we can take the case of a Judge under the provisions of this article. Article 124(5) states, "Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)." Sir, while submitting before the Judges Inquiry Committee, he very clearly says that a Receiver is answerable only to the Court which appoints him and to no one else, and, therefore, the hon. Committee cannot enquire into the conduct of

the respondent in its capacity as the Receiver. So, he questions the authority of the Inquiry Committee. He questions the authority of the Parliament even when the Constitution has empowered the Parliament. I second my colleague, Shri N.K. Singh's observation that it is our foremost duty to uphold the sovereignty and authority of the Parliament.

MR. CHAIRMAN: Would you please conclude?

SHRI TIRUCHI SIVA: Sir, I would like to conclude by quoting hon. Justice J.S. Verma who said, "The existence of power must be accompanied by accountability. Erosion of credibility in the public mind resulting from any internal danger is the greatest latent threat to the independence of the Judiciary. Eternal vigilance to guard against any latent internal danger is necessary lest we suffer from self-inflicted moral wounds." Mr. Yechury, before he moved this motion, said that it is not a motion against the Judiciary; it is only a motion against the misbehaviour of one Judge. On these grounds, and on the arguments that we have placed, Sir, I support the motion moved by Mr. Yechury.

DR. YOGENDRA P. TRIVEDI (MAHARASHTRA): Thank you, Sir. Mr. Arun Jaitley told us that this is rarest of the rare event. I agree with him. Here are so many legal luminaries giving their best, putting their viewpoint in a scintillating manner with eloquence and then is the catch word, all that they are doing is without charging any fees. That is the rarest of the rare event. I was hearing with rapt attention to Shri Sitaram Yechury when he referred to the trial of Robert Clive and Warren Hastings...

He quoted from the oration of Edmond Burke. I also looked into what happened at that trial, and, I would like to quote another eminent jurist who addressed the House of Lords. His name is Sheridan, and, in my opinion, Sheridan even excelled Burke in certain respects, and, this is what he said while the trial of Warren Hastings was there. He said, "Not a hair shall be plucked from head to the ground unless legal guilt is established by legal proof." This is what Sheridan said. Mr. Yechury made out a very spirited and detailed account of what has happened. There was also a very spirited reply by Justice Soumitra Sen. He made out four points, which have to be examined because this House today is acting in the capacity both as jury as well as judge. So, let us look at what was the defence of Justice Sen. He said that he had collected the money as a receiver when he was a lawyer. A struggling laywer; I can understand. He is in command of some money, which he put in here and there; for the time being, he parked the money somewhere. He parked the money with Lynx India Private Limited, which later went into liquidation. I am little surprised because according to my knowledge, Lynx India Private Limited is still a very

living corporation. It has large properties in the city of Mumbai. The building in which I am staying in Mumbai, there also, it has a very valuable flat running into quite a few crores of rupees. So, it is not a dead company. It is Lynx India Private Limited. Then, he said, later on, he returned the money. He gave it to the workers, and, thereafter, returned the money. This is his first submission. The second thing which he said was that there is a difference between his role as a Receiver and later as a Judge. He says that as a judge, he has an impeccable career, and, none of his judgement was doubted, and, he has been an excellent and ideal judge.

Later, he talked about *res judicata* and referred to the Division Bench judgement, which has been referred to earlier, and, which is at page 31 of the Inquiry Report. Lastly, he said, and, this is something, which I did not expect from a Judge, that there are others who have done similar crimes and they have all escaped. Mr. Arun Jaitley, thereafter, took us through the facts. I believe that more than law, facts are more important. According to me, facts are like arguments of God. So, we must examine the facts very minutely. How the moneys were parked with Lynx India is mentioned at page 16. For what reason, the moneys were parked with a private limited company, and not with an established undertaking, not with a public sector company, not with a big corporation. We do not know for what reasons it was done. Later, thereafter, moneys were disbursed at various places, and, probably trying to get a soft corner from Mr. Yechury, he said that moneys were given to workers. It is a very humanitarian job, but whose money? It was not his personal money. It was the money which was deposited with him on escrow account, which he was holding as a trustee, and, first of all, that money was given to the workers, as he says, and, later, thereafter, it was returned to the court as per the directions of the court, but at what stage? Much after he became the Judge. He became the Judge in 2003, and, moneys were returned sometime later in 2005 after the court's order.

4.00 P.M.

This is the catch. If the moneys would have been returned before he became a judge, it was understandable. He could say, "I was a struggling lawyer. I was in possession of money which I might have misused or mismanaged. Now, I want to start a new career. So, I want to atone for my sins or whatever it may be and I am returning the money". But he did not do it. There was no atonement. There was no repentance. There was no *pashchataap.* But he continued to keep the money even after he became a Judge. That means it becomes a continuing offence. The " offence which was committed earlier, he continued with the offence later also. He did not try to wriggle out of it. He

could have returned the money saying 'sorry, I did it during those days when I was just a young lawyer'. What does this indicate? It indicates that this gentleman who came here, he lacks the basic streak. He is not a man of conviction; he is a man of convenience. When the convenience ran against him, he returned the money. He could have done it the moment he became a Judge. There is something like atonement; there is something like repentance which can absolve a man from any crime. But he did not do that. We know that past always haunts a man, and one has to get rid of that past in a very graceful manner. Otherwise, what happens? We should not only see that justice is done, but, as Justice Vivian Bose, in that famous judgement of *beedi* supply company has said, 'Justice should not only be done, but it should be seemed to be done'. The same probity which we expect from all sections of the society, including the politicians, we require from the Judges. An ideal Judge is the one who was in Maharashtra, Mr. Javadekar you will bear me out, Justice Ram Shastri, who stood before the Peshwas, did not allow the Peshwas elephant to go further. He said, "I will not allow that to happen". This is the type of ideal Judge which we want. Our judges should be sea-green incorruptible. The argument that some culprits have gone scot-free should not have come from a Judge. One cannot say that because hundreds of murderers have gone scot-free, the murderer who is proved to be guilty before me should also be let off. It is not the argument of a Judge. After hearing Justice Sen, after hearing Mr. Yechury, after hearing Mr. Arun Jaitley, after hearing all the other eminent lawyers here, who just argued their case without charging fees, I have come to the conclusion that it is the rarest of the rare case. I support the Resolution and would not mind that in future also we should be ready and if more such cases come, we should be able to tackle them. Thank you.

श्री किशोर कुमार मोहन्ती (उड़ीसा): सभापति महोदय, आज इस सदन में जो Motion आया है, मैं उसे support करता हूँ और मैं चाहूँगा कि यह सदन अच्छी तरह से इस पर चर्चा करते हुए एक ऐसी सहमति पर पहुँचे, जिसे आने वाले कल में तवारीख याद रखे।

सर, आज सारे भारतवर्ष में जो हल्ला मचा हुआ है, वह एक ही चीज के ऊपर मचा हुआ है वह है curruption. इसी corruption के ऊपर आज इस सदन में हम एक ऐसी चर्चा कर रहे हैं, जो एक न्यायाधीश के ऊपर है। यह अपने आप में एक बहुत बड़ी चीज है। इस सदन की गरिमा को बचाने के लिए हम सबको अच्छी तरह से सोच विचार कर इस कदम को उठाना है। जब मैंने सभी को सुना और मैंने रिपोर्ट देखी, तो मुझे ऐसा लगा कि कहीं पर जब वे एक वकील के तौर पर एक रिसीवर बने थे, तभी से उनकी मंशा में कहीं–न–कहीं खोट था।

महोदय, सौमित्र सेन जी को हाई कोर्ट ने 30.4.1984 को रिसीवर नियुक्त किया था। उस समय कलकत्ता हाई कोर्ट में इन्हें एडवोकेट के रूप में appoint किया गया था और 12.03.2003 को ये जब बने, लेकिन इसी बीच 27.02.2003 में एक केस, GA875–2003 फाइल हुआ था, जिसमें रिसीवर के रूप में टोटल account और proceeding देने के लिए हाई कोर्ट ने इनको कहा था। एक बात यह है कि 03.08.2004 को, जब कि ये जज बन चुके थे, हाई कोर्ट ने एक proceeding में कहा था कि एक और रिसीवर appoint किया जाए, तब तक ये रिसीवर भी थे। 03.08.2004 से पहले ये वहां पर रिसीवर भी थे और जज भी थे, क्योंकि दूसरा रिसीवर 03.08.2004 को appoint किया गया था। ये 03.12.2003 में जज के लिए योग्य हो चुके थे और इसके बाद ये वहां पर जज होते हुए भी रिसीवर थे, तो ये कैसे कहते हैं कि मैंने गलती नहीं की।

महोदय, मेरे पास एक और प्वाइंट है कि इन्होंने तब तक पैसा रिटर्न नहीं किया, जब तक कि हाई कोर्ट ने इन्हें पैसा रिटर्न करने के लिए नहीं कहा। 2006 में कोर्ट ने कहा कि आप पैसा वापस कीजिए, तब जाकर इन्होंने पैसा वापस किया। अभी एक साथी कह रहे थे कि अगर इनकी मंशा अच्छी होती, तो ये जज बनने से पहले ही मजदूरों का पैसा वापस कर देते। अगर इनके दिल में कोई खोट नहीं था, तो 2006 में कोर्ट के द्वारा कहने के बाद इन्होंने पैसा क्यों वापस किया, इससे पहले क्यों नहीं किया? जब सरकार किसी को नौकरी देती है, तो वह थाने से उसके चरित्र के बारे में enquiry करवाती है और थाना से उसके चरित्र के बारे में लिखित रूप में प्रमाण पत्र मांगती है। चरित्र प्रमाण–पत्र मिलने के बाद ही उसको नौकरी दी जाती है, लेकिन मेरी समझ में यह नहीं आया कि जो पैसा मजदूरों पर खर्च करने के लिए इन्हें दिया गया था, उसको इन्होंने अपने दूसरे account में रख लिया और इतना करप्शन करने के बाद भी इनको जज कैसे नियुक्त किया गया?

महोदय, मेरा कहना यह है जजों के appointment का जो प्रोसेस है, इसको ठीक करने के लिए हम लोगों को एक Autonomous Judicial Commission बैठाने की जरूरत है, क्योंकि हम लोग देख रहे हैं कि जब courts के कोरिडोर में बातचीत चलती है, तो वहां पर भाई–भतीजावाद बहुत चलता है। वहां मुंह देखा–देखी बहुत चलता है कि यह जज हमारे क्लब का मेम्बर है या यह हमारा दोस्त है, इसलिए इनके लड़के को जज बना दो। इस संबंध में हम जानते हैं, क्योंकि ओडिशा से एक ऐसे ही जज थे, जिनको वहां के एक जज के प्रेशर के कारण हाई कोर्ट में आने नहीं दिया गया। सौमित्र सेन कह रहे थे कि जिन–जिन को सुप्रीम कोर्ट का जज नियुक्त किया गया, उनके कुछ स्वार्थ हैं, इसलिए वे मेरे विरुद्ध बोले, लेकिन हम जानते हैं कि उनमें ओडिशा के एक ऐसे भी जज थे, जिनके बारे में हम लोग जानते हैं कि वे एक सच्चे जज थे और बहुत अच्छे जज थे,

उनके ऊपर भी ये आरोप लगाए हैं। जब ये सुप्रीम कोर्ट के जज के ऊपर आरोप लगा रहे हैं, तो इससे हम लोगों को समझ लेना चाहिए कि इनकी मंशा कितनी अच्छी है।

महोदय, मैं यह कहना चाहूंगा कि हाई कोर्ट में जो system of appointment of Judges है, उसमें कुछ बदलाव लाना जरूरी है। आज थोड़ी–थोड़ी चीज के लिए संविधान को बदलने की आवाज उठने लगी है, हमारे संविधान में बदलाव लाने के लिए आवाज उठ रही है। सदन में हमारे काम करने की जो शैली है, उस पर आवाज उठने लगी है। आज लाखों–करोड़ों लोग हमारे खिलाफ, करप्शन के खिलाफ, हमारे काम के खिलाफ सड़कों पर candle लेकर आंदोलन कर रहे हैं। अगर हम लोग आज यह नहीं देखेंगे कि हमारे जजों का जो कर्त्तव्य है, वे लोग उसको सही तरीके से निभा रहे हैं या नहीं निभा रहे हैं, तो ये लोग हमको माफ नहीं करेंगे। हम आज इस सदन में इसको discussion के लिए लाए हैं।

यह इम्पीचमेंट मोशन एक जज के विरुद्ध आया है, लेकिन यह जज अकेला जज नहीं है, ऐसे कई जजेज हैं जो करप्शन में डूबे हुए हैं। ऐसी कई अदालतें हैं, जहाँ आदमी अपना हक नहीं पाता है। उनका जजमेंट उसके विरुद्ध जा रहा है। ऐसे जजमेंट्स को रोकने के लिए न्यायपालिका में परिवर्तन लाना जरूरी है। हमारे अपोजिशन के लीडर कह रहे थे कि Autonomous Judicial Commission बिठाना जरूरी है। अगर उसके जरिये जजेज अप्वाइंट होंगे, तो हम जरूर कुछ अच्छे जज पा सकेंगे, जो निर्भीक भाव से और अच्छे तरीके से जजमेंट दे सकेंगे तथा हर एक आदमी अपना हक पा सकेगा। यही कहते हुए मैं अपनी बात समाप्त करता हूँ।

श्री मोहन सिंह (उत्तर प्रदेश): सभापति महोदय, मैं श्री सीताराम येचुरी द्वारा रखे गये महाभियोग के प्रस्ताव का समर्थन करने के लिए खड़ा हुआ हूँ। दसवीं लोक सभा में जब 1993 में सुप्रीम कोर्ट के जज के खिलाफ इम्पीचमेंट मोशन आया था, उस लोक सभा का मैं साक्षी हूँ। कपिल सिब्बल साहब ने अपने ढाई घंटे के भाषण में उनके ऊपर लगे आरोपों की जबर्दस्त सफाई दी, लेकिन हाउस का कोई दुर्भाग्य था, क्योंकि जाँच करने वाली जो कमेटी बनी थी, उसके एक मैम्बर पी.वी. सामंत साहब थे। इसलिए एक राज्य के प्रतिनिधि सांसद समझते थे कि इम्पीचमेंट होना चाहिए। चूंकि रामास्वामी के खिलाफ इम्पीचमेंट मोशन था, इसलिए एक राज्य के संसद सदस्य चाहते थे कि यह इम्पीचमेंट मोशन न हो। सरकारी पार्टी प्रांतीयता के झगड़े में फँस गयी, इसलिए उस मोशन के पक्ष या विपक्ष में सरकारी पार्टी ने कोई व्हिप जारी नहीं किया। नतीजा यह हुआ कि दो दिनों के बहस के बाद संसद के भीतर वोट के समय जो रिक्वायर्ड नम्बर्स होने चाहिए थे, वे लोक सभा में नहीं जुट पाये और वह प्रस्ताव गिर गया।

मैं समझता था कि राज्य सभा में सौमित्र सेन को कोई अधिवक्ता नहीं मिलेगा, लेकिन जब हाई कोर्ट की प्रैक्टिस खत्म हो जाती है, तो अपनी प्रैक्टिस का अभ्यास जारी रखने के लिए वह सिलसिला राज्य सभा में जारी रखना चाहिए, इसलिए आदरणीय मिश्रा जी उनकी वकालत के लिए यहाँ खड़े हो गये। मैं उनको धन्यवाद देता हूँ। मुझे खुशी हुई, लेकिन जिस तरह कल सौमित्र सेन ने तथ्यों को दबाया, उसी तरह पौने दो घंटे के भाषण में मिश्रा जी ने भी लिखित दस्तावेज में दिये हुए तथ्यों को बहुत होशियारी के साथ दबाने का काम किया।

सौमित्र सेन ने तीन बातें कहीं। एक तो उनकी समीक्षा के लिए चीफ जस्टिस ऑफ इंडिया के घर पर जाँच करने वाले जो जज साहेबान थे, उन्होंने उनको बुलाया और इस बात का प्रलोभन दिया कि यदि आप त्याग–पत्र दे दें, तो आपको किसी प्राइवेट कम्पनी में अच्छी सर्विस दी जा सकती है। अब यह एक ऐसा आरोप है कि चार लोग एक कमरे में बैठे हैं, हाई कोर्ट का जो व्यक्ति जज हो, वह इस तरह के hearsay को इतने बड़े सदन के सामने रखे, जिसकी पुष्टि का कोई आधार हम लोगों के पास न हो। मैं समझता हूँ कि इस तरह का false evidence प्रस्तुत करना ही इम्पीचमेंट के लिए काफी है, ऐसा मैं आग्रह करना चाहता हूँ।

दूसरी बात उन्होंने यह कही कि बहुत सारे जजों ने ऐसा किया और उनको उस समय चीफ जस्टिस ऑफ इंडिया ने छोड़ दिया। उन्होंने चंडीगढ़ के एक जज का हवाला दिया। उन्होंने इलाहाबाद हाई कोर्ट के जजों, जो प्रॉविडेंट फंड के misappropriation में फँसे हैं, का भी हवाला दिया कि उनको छोड़ दिया गया। यह भी तथ्यों से परे है। सच्चाई यह है कि इलाहाबाद हाई कोर्ट के जजेज और जो डिस्ट्रिक्ट जज थे, उन्होंने अपने पद से त्याग–पत्र दे दिया। सीबीआई ने उनके खिलाफ जाँच की। उनके खिलाफ डिस्ट्रिक्ट कोर्ट में चार्जशीट दाखिल की गयी और डिस्ट्रिक्ट जज ने उन जजों को जमानत पर छोड़ा है।

यह स्थिति है और यही स्थिति चंडीगढ़ हाईकोर्ट के जज के बारे में है कि सी.बी.आई. उन की जांच कर रही है। मैं समझता हूँ कि किसी जज के लिए यह safest course था, यदि उनकी जांच सी.बी.आई. करती। यदि उनके खिलाफ कोई criminal proceedings जारी होती तो उनको संविधान के impeachment motion के जरिए सजा हो सकती थी। यदि पार्लियामेंट उनके खिलाफ कोई कार्यवाही करेगी तो किसी तरह के criminal procedure से उनके विरुद्ध कार्यवाही करने से पूरी बचत है। इसलिए उन्होंने बहुत आसान तरीका सोचा कि हम इस पार्लियामेंट के जरिए ही अपने को impeach करवा लें और उस तरीके के तहत जैसा कि रिपोर्ट में कहा गया है कि वह कमेटी के सामने आते ही नहीं थे, अपने किसी वकील को भेजते ही नहीं थे और इस के बारे में कहते थे

कि एक महीने का समय दो, दो महीने का समय दो। सर, जो जजेज इंक्वायरी के लिए बैठे थे, उनका कहना है कि इस तरह अपने को छिपाकर रखना यह माना जाएगा कि आप तथ्यों से बचना चाहते हैं और दोष को स्वीकार करना चाहते हैं। महोदय, यहां पर बड़ी मार्मिक व्याख्या की गयी कि wishful misbehaviour की परिभाषा क्या है? मैं ऐसा समझता हूं और संविधान विशेषज्ञ इस बात को कहते हैं कि संविधान की धाराएं in letter and spirit, उन की मंशा और उस की भाषा–दोनों को जोड़कर पढ़ी जाती हैं। यदि संविधान में ऐसा लिखा गया है तो misbehaviour की जो मंशा है, उस मंशा पर जाने की हम को कोशिश करनी चाहिए। महोदय, हमारे क्षेत्र में एक वीडियो कंपनी का ऑफिस था। उसका दफ्तर shift हुआ और एक महीने तक कुल ढाई सौ रुपया उसने अपनी जेब में रख लिया। उसको कंपनी के सी.डी.ओ. ने suspend कर दिया। उसने हाई कोर्ट में याचिका दाखिल की तो हाई कोर्ट ने कहा कि तुम को इंचार्ज की हैसियत से उस पैसे को या तो सेफ में या बैंक में रखना चाहिए था। इस राशि को जेब में रखना अपवंचन है, अमानत में खयानत है और उस आदमी की नौकरी ढाई सौ रुपए के कारण चली गयी। महोदय, यहां तो मामला इतना बड़ा है। अभी मिश्रा जी ने कहा कि "वकील की हैसयित से।" लेकिन यह वकील की हैसियत से नहीं है, वकील की हैसियत से तो कोई केस नहीं हुआ। जब वह जज नियुक्त हुए तो उनके खिलाफ याचिका दायर हुई कि वह ट्रस्टी के रूप में इस पैसे को अपने खाते के अंदर लिए हुए हैं–जज रहते हुए और एक मामले में ट्रस्टी रहते हुए दोनों पलड़ों के ऊपर एक साथ थे। इसे misbehaviour के रूप में स्वीकार किया जाए या नहीं किया जाए?

महोदय, अभी एक मामला सुप्रीम कोर्ट के सामने आया। हिंदुस्तान की सरकार ने एक व्यक्ति को हिंदुस्तान का मुख्य सतर्कता आयुक्त नियुक्त किया गया। उसको हटाने की कोई व्यवस्था नहीं थी। वह सुप्रीम कोर्ट में कहता रहा कि हम को हटाने की कोई व्यवस्था नहीं है। महोदय, मामला यह था कि एक राज्य के सचिव की हैसियत से पामोलिन का आयात करने पर उस के ऊपर कुछ आरोप लगे। उसकी कुछ इंक्वायरी भी नहीं हुई, उसके कुछ तथ्य भी सामने नहीं आए, लेकिन सुप्रीम कोर्ट ने कहा कि जिस पद पर आप बैठे हैं, वह पद सब की समीक्षा के लिए है। इसलिए आप का पद किसी भी तरह के संदेह से परे होना चाहिए। आप पर आरोप सिद्ध हुए या नहीं हुए, आप दागी थी, इसलिए इस पद पर रहने के हकदार नहीं हैं। महोदय, मैं ऐसा समझता हूं कि हाईकोर्ट के जज की पोस्ट किसी भी हालत में Chief Vigilance Commissioner से कम नहीं, उससे बड़ी हुआ करती है। ऐसी हालत में misbehaviour की एक तार्किक व्याख्या करके उसकी परिभाषा को बदलने का कोई मतलब नहीं। उसकी मंशा पर हमको जाना चाहिए। महोदय, मंशा इस बात की बतलाती है कि जज का आचरण ऐसा हो जिस पर किसी तरह के संदेह की गुंजाइश न रहे। यदि अधिवक्ता के रूप में ही आपने ऐसा किया तो आपकी जज की नियुक्ति ही मैं समझता हूँ गलत है।

महोदय, आप बार–बार घड़ी देख रहे हैं। मुझे बहुत सारी बातें कहनी थीं, एक बात यहां नेता विरोधी दल की ओर से बहुत गंभीर कही गयी। महोदय, पिछले कई वर्षों से मैं हाई कोर्ट/सुप्रीम कोर्ट के जजमेंट्स को पढ़ता हूं। पिछले कई वर्षों से सुप्रीम कोर्ट ने judicial verdict बहुत ही कम दिए वहीं administrative verdict बहुत से दिए हैं। अभी तीन दिन पहले उन्होंने कहा कि संविधान बड़ा है, संसद बड़ी नहीं है। तो हम जानना चाहते हैं कि संविधान ही यदि सर्वोच्च है, तो सुप्रीम कोर्ट उससे भी सर्वोच्च है?

सुप्रीम कोर्ट, हाई कोर्ट और संसद इन सबकी लक्ष्मण रेखा सुप्रीम कोर्ट ने ही 1964 में तय की थी। जब उत्तर प्रदेश का एक मामला आया–न्यायपालिका बनाम विधायिका, तो उसमें उन्होंने दोनों की लक्ष्मण रेखा को पारिभाषित किया। मैं ऐसा समझता हूं कि विगत कई महीनों और कई वर्षों से हिंदुस्तान की जुडिशियरी उस लक्ष्मण रेखा का निरंतर उल्लंघन कर रही है और इस संबंध में सारी परिभाषाएं दी जा रही हैं कि जुडिशियरी सर्वश्रेष्ठ है तथा संसद और कार्यपालिका उसके बहुत नीचे हैं। सच्चाई यह है कि भारत का संविधान दर्ज करते समय हमारे संविधान निर्माताओं ने खुद लिखा है कि "हम, भारत के लोग,..... ...भारत के संविधान को अपने ऊपर आत्मार्पित करते हैं।" भारत के लोग सर्वोच्च हैं, इसमें कोई दो रायें नहीं हैं, लेकिन वे लोग 5 साल के लिए अपनी संप्रभुता को संसद सदस्य के रूप में हमें दे देते हैं, हमें सांसद के रूप में delegated power है। 5 साल के लिए जनता की संप्रभुता संसद में निहित हो जाती है, मेरे हिसाब से यह संसद की परिभाषा है।

सभापति जी, लोक सभा में 3 दिनों तक बड़ी जबर्दस्त बहस हुई थी–न्यायपालिका बनाम संसद, इस पर 3 दिनों की बहस हुई। अगर राज्य सभा में भी ऐसी बहस हो, तो मैं समझता हूं कि उसके कुछ सार्थक परिणाम निकल सकते हैं। इन्हीं शब्दों के साथ, मैं यह निवेदन करता हूं कि या तो आप इस impeachment को पास करिए, नहीं तो आजादी के बाद जो एक ऐसी धारा हमारे संविधान में है, जिसको हमारे संविधान निर्माताओं ने incorporate किया था, उस धारा को निकालकर फेंक दीजिए। इतने वर्ष बीतने के बाद भी इसका इस्तेमाल संसद ने आज तक नहीं किया है, यदि संसद इसका इस्तेमाल नहीं करती, तो इस धारा को संविधान से निकालकर फेंक दिया जाए, इसकी कोई जरूरत नहीं है। यदि यह धारा है, तो इसका एकाध बार इस्तेमाल करके हमको यह बताना चाहिए कि भारत की संसद, न्यायपालिका के भ्रष्टाचार को खत्म करने के लिए कटिबद्ध है, प्रतिबद्ध है। इन्हीं शब्दों के साथ मैं इस मोशन का समर्थन करता हूं।

SHRI D. RAJA (TAMIL NADU): Sir, I rise to support the Motion moved by my comrade, Shri Sitaram Yechury. Sir, it is a historic defining moment in the life of our Parliament. We do not come across impeachment motions to remove a judge quite often. The first impeachment motion was taken up in the Ninth Lok

Sabha. The then Speaker, Shri Rabi Ray, admitted that impeachment motion against Justice Ramaswamy. How that impeachment motion fell through, my hon. colleague just now explained and I do not want to go into the details. This is the second impeachment motion. Both the motions are to impeach a sitting judge on the grounds of corruption.

Sir, right since the days of our struggle for Independence, the national leadership of the country has been stressing on the need for a judicial system based on probity and integrity. Sir, I would like to quote Mahatma Gandhi, the Father of the Nation, who led the non-cooperation movement, who asked people to violate laws even at that point of time. Mahatma Gandhi, in the year 1929 had said on the judge indictment, "Justice is practically unobtainable in the so-called course of justice in India." Then, Mahatma Gandhi goes on to stress on it in the year 1931. On 6th August, 1931, Mahatma Gandhi wrote, "What we must aim at is an incorruptible, impartial and able judiciary right from the bottom."

These are the words of Mahatma Gandhi. Now, we are discussing how to impeach, how to remove a judge. Yesterday, we heard Justice Sen. With due respect for his eloquence, I must point out the Justice himself admitted that he had mishandled the funds. He used the words, "mishandling of the funds. Inexperience of that person at that particular point of time, and money has no colour". These are the words he used while defending his case. He went on to point out, "Mr. K.G. Balakrishnan, the then Chief Justice acted as accuser, prosecutor and judge. If K.G. Balakrishnan can be let off, why not I?" That is how he posed the issue. Sir, money has no colour. Does he think corruption has some colour? Does he think corruption has some bias, some caste basis or religious basis? What does he mean? So, yesterday, the entire defence of Justice Sen was not convincing at all. In fact, it has thoroughly exposed him.

Sir, the Inquiry Committee appointed by you identified two charges. Charge number one, misappropriation. Charge number two, making false statements. They said, "Duly proved as set out in Part IV-of the Report." It is duly proved as set out in Part IV of this Report. I do not know how my colleague, Shri Satish Chandra Misra could not see through these findings of the Inquiry Committee. The Inquiry Committee consisted of Justice Sudershan Reddy, Justice Mukul Mudgal and Shri Fali S. Nariman, very eminent lawyer and we all adore him for his commitment and integrity. Sir, this is the problem.

Sir, I am not a lawyer like Shri Arun Jaitley or Shri Sudarsana Natchiappan or some others, but as a political activist, how I look at the issue. The judge, when he was an advocate or when he was a judge, he had misbehaved, misconducted himself, and it has been proved. There are evidences and he must

frankly admit it. Instead of that, he is questioning the sovereignty of Parliament also by saying, “How Parliament can discuss a *sub judice* matter?” Sir, here, I must say what Pandit Jawaharlal Nehru once said, “ No Supreme Court or Judiciary can stand in judgement over the sovereign will of Parliament representing the will of entire community.” This is what Pandit Jawaharlal Nehru had said, Sir. So, I think, it is a clear case, and there is no need to further examine various facts; there is no need to’ further analyse various facts, evidences and this Parliament, this Rajya Sabha can come to a unanimous understanding to impeach Justice Sen and remove him. That will go a long way in the history; that will go a long way in the life of our Parliament. This Parliament is not a talking shop. This Parliament means commitment; this Parliament means sincere, dedicated work for the country in upholding the Constitution.

Sir, here, I would like to come to the other larger issue. The larger issue is, Shri Arun Jaitley has also spoken on this—the powers of the Executive, the Legislature and the Judiciary. How this will have to be seen? Sir, here, we understand there should be a balance. But the point here is, we do not have a National Judicial Commission. We have been asking the Government to come forward to set up a National Judicial Commission. Why do we demand a National Judicial Commission? Accountability and transparency should become the hallmarks of the process of appointment of judges to the High Courts and the Supreme Court.

This can be achieved only by providing for an independent authority which is accountable to the Parliament exercising the power of selection to appoint Judges to these courts. Whether the Government, at least, now is prepared to set up a Judicial Commission and when the whole nation is agitated on the issue of corruption, I do not think the Government can delay on this issue further. Sir, if we have to draw lessons from some other countries I can refer to the Constitution of South Africa, how South Africa has evolved a mechanism to appoint Judges, even to remove Judges. I suggest to the Government, at least, you must be aware of the Constitution of South Africa which has a fair workable mechanism of appointing Judges, removing Judges. We can try such a mechanism. The point here is that we need at this point of time a Judicial Commission.

MR. CHAIRMAN: Please conclude.

SHRI D. RAJA: Sir, I am concluding...(*Interruptions*)...Sir, all Judges are not like Justice Kapadia. It is Justice Kapadia who said ‘integrity is the only asset which I have got. Integrity is my asset.’ I quote Justice Kapadia. All Justices

cannot be Kapadias and are not Kapadias. That is why when the issue was discussed in the Constituent Assembly and later also, I quote what Sardar Patel had said. Sardar Patel...

MR. CHAIRMAN: Please conclude...(*Interruptions*)...

SHRI D. RAJA: Sir, I am concluding...(*Interruptions*)...I will conclude by only quoting Sardar Patel and Dr. Ambedkar...(*Interruptions*)...Sardar Patel in his letter on 8th December, 1947 addressed to the Governor-General of India regarding dealing with the procedure for filling up vacancies in High Courts to the following effect: "Purity of motives not the monopoly of the Chief Justice nor nepotism and jobbery the vices of politicians only." Sardar Patel wrote this in 1947, Sir.

MR. CHAIRMAN: Thank you, Mr. Raja.

SHRI D. RAJA: Then I quote Dr. Ambedkar. He also in the same way talked about, 'who are our Chief Justices: Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have.' They are not super human beings. They come from the same society. Sir, that is why Thomas Jefferson once quoted, 'our judges are as honest as other men and not more so.'

MR. CHAIRMAN: Thank you very much.

SHRI D. RAJA: That is why we need a Judicial Commission...(*Interruptions*)...I am finishing, Sir...(*Interruptions*)...You have rightly asked because it was Karl Marx who said that every one should be equal and people should have their basic needs and no question of exploitation and no question of discrimination, no question of...

MR. CHAIRMAN: Thank you, Mr. Raja.

SHRI D. RAJA: This is what Karl Marx said, Sir. On the basis of this, I strongly support the motion moved by Shri Sitaram Yechury and this impeachment motion should be accepted by the entire House unanimously and we should see that Justice Sen is removed. That is my request. Thank you.

SHRI PAUL MANOJ PANDIAN (TAMIL NADU): Mr. Chairman, Sir, I thank you for giving me this opportunity to speak on this historic motion. Sir, since I have been allotted only four minutes, I would like to submit to you only four points. The first point is with regard to the admissibility of this motion which was questioned. Whether this motion can be taken up by this august House was the first query of Mr. Sen. Mr. Chairman, Sir, I would only invite your attention

to rule 238 of our Rules of Procedure where it is mentioned about the Members' rights that while speaking a Member shall not refer to any matter of fact on which judicial decision is pending. Admittedly, there is no judicial decision pending with regard to the impeachment of justice Sen.

(MR. DEPUTY CHAIRMAN IN THE CHAIR)

Further they referred to the charge against another member. And finally clause 5 - due to paucity of time- 'reflect upon the conduct of persons in high authority, unless the discussion is based on a substantive motion drawn in proper terms.' Sir, explanation is also given, the words 'persons in high authority' mean persons whose conduct, in the opinion of the Chairman can only be discussed on a substantive motion drawn in proper terms under the Constitution or such other persons whose conduct in the opinion of the Chairman should be discussed on a substantive motion drawn in terms to be approved by him.' This is a substantive motion admitted by the Chairman and in terms of article 124 and 217 and in terms of the Judges Inquiry Act, 1968. Therefore, Sir, this august House is supreme to discuss a motion against Justice Sen irrespective of any judgment of any Division Bench or any court. That is my first submission, Sir.

My second submission, Sir, is that Mr. Sen was referring to the judgment of the Division Bench stating that he had been exonerated of the charges. Sir, I would only refer that the In-House Committee went into the allegations against Justice Sen. The Inquiry Committee which went into the allegations against Mr. Sen had examined five witnesses, had examined documents, had conducted a thorough inquiry and had conducted a trial. Mr. Sen did not offer to give any explanation before the Committees. Sir, it is the contention of Mr. Justice Sen that the principles that apply to an election petition must apply to his case. Sir, I would submit that the principle in the election petition with regard to corrupt practices when the initial evidence is established, a *prima facie* case is established by the petitioner, thereafter, the burden shifts on the other party who has to rebut the evidence. In the absence of rebuttal of evidence adverse inference has to be drawn. In this case since the guilt of Justice Sen during the inquiry, by adequate evidence, was established, it was Justice Sen who had to go personally, offer an explanation to get exonerated before the Committee which he has not done. Therefore, Sir, it cannot be a case that the Division Bench judgment will help him, support him. Even otherwise the Division Bench has not gone into the same facts, the same evidence and the same witnesses, and, therefore, there cannot be protection for Justice Sen. Sir, if the same facts, if the same evidence and the same

documents are scrutinized and full trial is conducted by the Division Bench, then there can be a case stating that it was considered by the Division Bench.

My third point is, even in ordinary cases where Government servants are acquitted of criminal charges, courts have upheld judicial principles that the departmental proceedings will continue. Sir, on the same principles the misconduct has been established and now we are initiating action under the Judges Inquiry Act by virtue of article 124, clause 5, wherein the Parliament is empowered to make a law to make an inquiry with regard to the conduct of a judge. This is in pursuance of an Act of Parliament, pursuant to a Constitutional provision, Sir. Therefore, the action, despite the Division Bench Judgment, can be maintained against Justice Sen in accordance with this principle.

My fourth point would be that he has stated that...(*Interruptions*)...He has stated that the order of the Division Bench had exonerated him and therefore, that must be taken into account. Sir, the only ground on which the Division Bench went into this whole issue was ground No. 8 which was referred to by the mother of Justice Sen. It had not gone into any other issue, Mr. Deputy Chairman, Sir. Finally, Can a non-judicial body decide this issue, which is settled by a Division Bench? Sir, the Parliament is supreme. The Constitution provides for the removal of a judge. The Constitution provides for the enactment of a law by way of Judges Inquiry Act. The entire proceedings have been gone into and endorsed by the In-House Committee, thereafter endorsed by the Judicial Inquiry Committee and all the facts have been clearly established by the Leader of the Opposition. Therefore, keeping in view the above legal propositions, I support the Motion moved by Mr. Yechury. I request that the Motion be passed unanimously.

SHRI H.K. DUA (NOMINATED): Mr. Deputy Chairman, Sir, I rise to support the Motion moved by Shri Sitaram Yechury, and very ably and clinically supported by Shri Arun Jaitley, Dr. Natchiappan and other legal luminaries. The House, for two days, has witnessed a unique debate where I find there is a cross-section of opponent views converging on one issue. This kind of consensus, which if available on many other issues of national concern, will be helpful. Sir, yesterday, it was a sad time, however, for the House to see a Judge standing in the dock before the House for doing what he should not have done. None of us here is drawing any pleasure to get an opportunity to punish a Judge for straying from the righteous path. I wish Justice Sen, now a respondent before the House almost an accused had resigned from his job as soon as it came to be established that he had indulged himself with public money for private gain. The Chief Justice of India had, after due deliberations with his colleagues, advised him that he, in his own interest, better sent in

his papers and say good bye to the Bench. But Justice Sen, for reasons known to him, would not listen to a reasonable advice even from the Chief Justice of India. If he had resigned, he would have saved this House the pain of impeaching a Judge. If this House decides to impeach Justice Sen, as it should, this will be the first of its kind for the Rajya Sabha. And, none of us, sitting here, is really enjoying the authority to remove a Judge given to Parliament under the Constitution. All of us believe that there should have been no need to use this authority, but we have to do it. None of us, sitting here, is keen to go through the experience that will set historic precedent for the future. I hope another opportunity of this kind does not arise. But the way our institutions are declining, although I am not very sure. The process for removal of a Judge itself by impeachment is, indeed, painful for the House. It is unpleasant. But, we have to carry this out. It is our duty to do so to save the Judiciary from someone who has frittered away his right to sit on the august Bench of the Calcutta High Court. Justice Sen, yesterday, told us that he had committed no fault while being on the Bench and that the charges against him pertained to the period before he was appointed a Judge. Sir, the real question is that of the integrity of a Judge. And, integrity has no cut-off date. A judge is supposed to have integrity even to qualify for being appointed a Judge. Integrity cannot be acquired only when the oath of office is taken and the Judge sits on the Bench. That is the real question. And, Justice Sen has given no evidence that integrity has not been compromised by him before he was appointed.

I will come to this point later again. Why care was not exercised by the collegium of the Supreme Court which selected him as a judge? This point was made by many Members, led by Shri Arun Jaitley and by Mr. Natchiappan also. Sir, the case for the removal of Justice Sen is absolutely sound and valid for impeachment. There were allegations which tended to suggest that Justice Sen had kept public money with himself and used it for private gain. He was advised by his friends at the Bar and the Bench that he better resign as a judge. Mr. Sen, would not listen. Mr. Deputy Chairman, Sir, May be, he thought that his conscience was clear. But, Sir, we all know, how flexible conscience has become these days. The elasticity of conscience of many people leads to greed and most often to untruth and the kind of complications which this House is sorting out today.

Mr. Deputy Chairman, Sir, despite the advice, he continued to serve on the Bench. He must have thought he could get away with it. That could be the reason. Otherwise, I don't see why any sensible person in that position would not take that advice. He would have known what later consequences could be. He was denied work, but, even then he would not take the message that he was needed

no longer.

Sir, this House has taken up the issue after much thought and a great deal of care. We, in this House, don't want to interfere with the independence of the Judiciary. And I will be the last man who would suggest interference with anything that falls in the Judicial domain. It was the Chief Justice of India who wrote to the Prime Minister in the year 2008 seeking his intervention to initiate impeachment proceedings against Mr. Sen, a sitting judge of the Calcutta High Court. The CJI gave detailed information about Justice Sen's misdoings or misconduct, or the word, 'misbehaviour' that is being used during the debate when he was appointed Receiver in the case called the Steel Authority of India *versus* the Shipping Corporation of India way back in 1983. The CJI also appointed an in-House committee of judges to inquire into the allegations and came to the conclusion that Justice Sen is not the kind of a judge who should adorn the Bench. Hence, the CJI's letter to the Prime Minister seeking Justice Sen's removal under article 124 (4) of the Constitution. The matter later fell in the lap of the Chairman of the Council of the States, which has assembled here today to decide Justice Sen's fate. Our Chairman is known for following the letter and spirit of law. He appointed a Committee comprising of Justice B. Sudershan Reddy of the Supreme Court, Justice Mukul Mudgal, Chief Justice of Punjab and Haryana High Court and Mr. Fali Nariman. They are all men of great integrity and calibre. Mr. Nariman, incidentally, sat on these benches where some of us are sitting now. The Committee has spent considerable time and effort and came to well thought out two conclusions. One, that Mr. Sen is duly proved guilty of misappropriation of large sums of money which he received as a Receiver appointed by the High Court of Calcutta. Two, that Justice Sen is duly proved guilty of making false statements by misrepresenting facts with regard to misappropriation of money before the Calcutta High Court. I won't go into the details or the background in which they have come to these conclusions. Legal luminaries in the House have already gone into these. So, I would not like to take more time of House, but point out that no one is supposed to speak nothing but the truth to the court. Justice Sen did not choose this simple course either. I wouldn't go into the details of the Committee's Report. Other Members have already gone into it. The Committee was meticulous in its approach. It also gave enough opportunities to Justice Sen but he thought it below his dignity to personally explain to the Committee as to why he did what he should not have done.

Sir, this House needs only to go by the Report of Justice Sudershan Reddy, Justice Mudgal and Mr. Fali Nariman. There is no need for further investigation or cross examination of Justice Sen. Sir, yesterday, Justice Sen had about 100 minutes of opportunity to present his case, with which I was not fully

convinced.

I would commend to the House the Motion before it that an Address be sent to President that Justice Sen be removed.

Having said this, I would like to draw the attention of the House to just one disturbing aspect of the case, and, Sir, this is very important. Although others have touched on this issue, this is indeed very important. And This House will have to take up again this question after disposing off this Motion of Impeachment. How did Justice Sen get elevated to the Bench of the Calcutta High Court while he, as a receiver, had the temerity to misappropriate large sums of money and also tell untruths to the court? His selection as a Judge of the High Court shows that a drastic review of the present system of selection of Judges by the collegium has become urgent. Sir, I hope this House will have an early opportunity to discuss the entire system of appointment of Judges to the higher Judiciary. The present system is totally unsatisfactory and unacceptable to the people. Sir, the way Judges are appointed by the collegium, if you talk privately to the people who practise law or people who have been Judges horrendous stories of the selection process come to be known. The Collegium consists of a few people which are said to be the senior most Judges of the Supreme Court. We often hear that if there are 7 posts, they will divide two each and possibly Chief Justice will get one extra. I am told that influences are brought to prevail upon them, bargaining takes place and much else. There have been allegations of favouritism also. One hears all that. I won't go more on this except to ask; do we know or anybody in the country knows what are the criteria for the selection of Judges. The Delhi High Court came with a Judgment laying down criteria for nursery school admissions. That was some years ago. Delhi University has now the criteria where you require 100 per cent marks for getting admission in some colleges.. Do our Judges ever get 100 per cent marks in the selection of judges to the Supreme Court and High Courts? I would like to ask: Have criteria been spelt out like the criteria for nursery school children in Delhi?

Sir, the people have the right to know what makes a good Judge. Often in the districts, in the State Capital where most High Courts are located, the people are disappointed with the state of the Judiciary at this time. They are also disappointed with Parliament; they are also disappointed with the Executive, but *Kachahri* is the last hope of the people. If it suffers the loss of faith, if the people stop believing the *Kachahri,* then, I am sure, the country suffers a lot.

With that I end my speech with a plea that this Motion should be passed.

DR. BHARATKUMAR RAUT (MAHARASHTRA): Thank you, Sir, for having given me this opportunity.

Today, Sir, is a historic day in the history of this House. It is because when this House is voting for impeaching a sitting Judge of the High Court, for the first time, outside this House and in the nation, the people have awakened to the struggle to eradicate corruption from public life. So, this is definitely a historic day.

Sir, I am morally bound to support the Impeachment Motion because I am one of those 58 signatories who have demanded the impeachment. Therefore, I will be supporting it. However, since I am not a legal luminary, I have not studied or practised law, I am a bit ignorant. I only fear that often in the legal and intellectual battles, the first casualty is of the truth. So, I am a bit skeptical.

Yesterday, let me confess, I was a bit confused after hearing the emotional speech by Justice Sen and I was wondering whether we were living up to our responsibility of being the custodians of the faith of this nation or whether we were just making an innocent man a scapegoat. But, after hearing the speeches of the hon. Leader of Opposition and later speakers, I am convinced that Justice Sen seems to be guilty and needs to be impeached. So, I support the motion.

However, I would like to bring it to your notice, Sir, that some questions still remain unanswered and I would request, rather I would pray, for those who speak later, particularly, Shri Sitaram Yechuryji, to reply to these queries.

Sir, Justice Sen said that he was exonerated by the Division Bench. I do not know how it was. But the Division Bench has exonerated him. Is the CJI empowered to question the validity of the Division Bench of a High Court when there was no appeal pending before the Supreme Court? Can he take action *suo motu* and question the verdict given by a Division Bench? I would like to know that.

Then, a point which has also been touched upon by some hon. Members, is that Justice Sen—I am taking it with a pinch of salt but still I am mentioning it—claimed that the then CJI had called him to his residence and in the presence of two other Judges offered him VRS and a good posting. Is that true? Sir, it is the responsibility of this House now to either prove the guilt of Justice Sen, or, if there is some iota of truth in what he has said, to find out whether the CJI is empowered, morally or legally, to offer VRS to a person who, in CJI's opinion was guilty of corruption. Can you offer the Judge a lucrative position in an informal chat? We need to know; the nation needs to

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know and somebody has to give the answers. Otherwise, we should institute a probe into this aspect. But I don't know by which method we can do it.

Sir, it means a corrupt Judge can be rehabilitated if he resigns from his position. Is that the law? I would like to know if any law permits that.

The third thing, Sir, is about what Justice Sen talked about the wrong account. He explained in detail about how he was being hanged because of a wrong account and the hon. Leader of Opposition has torn into his arguments. Now, the question is, if there was a wrong account, it amounts to a bogus account, a fake account, a *benami* account. Do our banks allow the operation of such *benami* accounts? If a bank account is to be opened by a man like me, I need my photograph, my ration card and then only I can open an account. How can one Soumitra Sen with a different father's name open an account and operate? Has any committee checked with the bank officers as to how they open such an account? If this fraud could be unearthed, there could be thousands and lakhs of such *benami* accounts which are being operated all over the country. What are we going to do about it?

Fourthly, Justice Sen said that he had made payments to the workers? I go by his word that he has made payments to the workers. Is it not our responsibility to ensure and to bring the truth to the fore that he had not made that payment to the workers? If he had made payments to the workers, there must be cheques, there must be receipts. Have you traced those people to whom he claims to have made the payments?

How can we say that he has not made the payment, or, how can we believe that he has made the payment? There is a nexus which has to be proved. We cannot leave these loose ends left when we pass the impeachment. The last point which I would like to bring to your notice is that, as Mr. H.K. Duaji and others have also mentioned, he was a practising advocate when this crime was committed. After that, he is made a judge. Judge-making is a process which goes on for some months. When I was a working journalist, at that time I was made a special executive magistrate by the Government. The job of a special executive magistrate is to sign true copies of secondary school certificates and birth certificates. Even then Police came to my house to verify my validity, my address and my पूरा चरित्र। You appoint a person as a judge who is guilty of fraud, who is guilty of corruption and who is taking away workers' money. If you appoint him as a judge, it is a grave injustice to the people of India because a sitting High Court Judge plays with my life and death. He has

the power to hang me; he has the power to send me to life imprisonment. If a guilty man, sitting as a judge, exercises this power, where do I go? As a common citizen, I don't have the right to come to you and impeach the judge. How do I do? Sir, this entire process of appointment of judges through collegium, I think, needs to have a relook. किसी का मामा, किसी का चाचा या किसी को बेटा they should not become judges. A judge should be made strictly on merit. Corruption in the process of judge making is rampant.

MR. DEPUTY CHAIRMAN: Please conclude....

DR. BHARATKUMAR RAUT: Sir, I am supporting the Motion with reservation that unless we come to the final conclusion and bring the entire truth to the nation, we cannot hang only one person. By hanging one person, we cannot cleanse the system. To cleanse the system, sending one person out is not enough. This process, if it has started now, should go to its logical end. Thank you.

SHRI KUMAR DEEPAK DAS (ASSAM): Sir, I am here to support the Motion moved by hon. Member, Shri Sitaram Yechury. In fact, I am one of the Members who signed this Motion for the impeachment of Justice Soumitra Sen for his involvement in financial misappropriation before he was appointed as judge. We want a fearless, independent and non-controversial judiciary. It should be incorruptible and impartial. Sir, fair image of the judiciary is a must. Sir, we have taken this step as essential in the interest of the Republic to strengthen the judiciary as well as to stop the corruption in the higher places. Sir, a member of the higher judiciary can be removed from his service only through the process of impeachment under Article 124(4) on the ground of proven misbehaviour. A three-members Committee was constituted by the hon. Chairman to look into the complaint and determine whether it is a case fit for initiating the process of impeachment. The Inquiry Committee after examining all the pros and cons came to conclusion that Justice Soumitra Sen is guilty of misbehaviour under Article 124(4) read with proviso (b) of Article 217(1) of the Constitution of India.

Sir, before this impeachment motion, we have the example of impeachment of Justice V. Ramaswamy who faced impeachment in 1991 in the Lok Sabha. That attempt failed due to the absence of a political consensus. We must agree that dismissal of a Judge is too serious an issue to be determined by political consideration. Again, we must have to examine whether the Parliament can discuss the correctness of any judicial order, and if the Parliament sits on judgment, would it create a constitutional crisis? Sir, as there is no other way to punish errant Judges, the present Government is bringing a new law to

punish errant Judges. We are eagerly waiting for such steps in this direction. But, the big question has been raised by some hon. Members that how Justice Soumitra Sen was selected a Judge. Yesterday, Justice Sen, in his defence, spoke for long. Sir, there is an urgent need of more transparent procedure on what should be the provisions for selecting a Judge. Sir, I would cite an example. In Guwahati High Court, in the years of 90s when I joined as a young lawyer, I found that one Judge,*.

MR. DEPUTY CHAIRMAN: Don't take the names.

SHRI KUMAR DEEPAK DAS: He was appointed as a Judge and he had to go for oath-taking ceremony. But, in the meantime, the. Bar Association of Guwahati High Court came to know that this person, who was selected as the Justice of Guwahati High Court, did not have the qualification that was required to become a Judge. In the High Court, one of our senior colleagues filed a *quo warranto* petition. At that time, Justice Sangma had passed an order and stayed the matter and that was appealed in the Supreme Court. That was held right. But, I want to say that the transparency in the procedure of selection of Judges has to be further examined. We have to look into the provisions for selecting a Judge. I just want to give an example of an hon. High Court Judge who has recently given an opinion that 25 per cent of the superior Judges are corrupt. This is horrible. So, we need a transparent procedure and a Judicial Commission on this so that all these factors can be examined and appropriate action can be taken. With these few words, I again support this motion of impeachment and I thank you for giving me time to give my observations.

श्री राजनीति प्रसाद (बिहार): सर, सब से पहले तो मैं श्री सीताराम येचुरी जी को धन्यवाद देना चाहता हूं जिन्होंने इस ऐतिहासिक पृष्ठभूमि में हम लोगों की गवाही दर्ज करायी।

सर, यह केवल impeachment of a judge का मामला नहीं है बल्कि हमारा ध्यान आज पूरे देश में व्याप्त Judiciary की हालत की ओर खींचता है। सर, मैं इस impeachment का समर्थन करता हूं। इस impeachment के बारे में मुझे यही कहना है कि अगर आप सोचते हैं कि आज की Judiciary 50 साल पहले वाली Judiciary है, तो वह गलत होगा।

क्योंकि अगर हम किसी कोर्ट में जाते हैं, बाहर के कोर्ट में जाते हैं, तो सबसे पहले यह सोचते हैं कि कौन सा आदमी पहचान वाला है। हम यह नहीं पूछते हैं कि कौन जज है, बल्कि यह पूछते हैं कि कौन सा वकील पहचान वाला है और उसी को हम लेते हैं।

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* Not recorded.

यह गजब बात है कि हम लोग जज को नहीं देखते हैं, बल्कि वकील को देखते हैं कि वह किस जज का favourable आदमी है और कौन क्या करने वाला है? हमारे हिंदुस्तान के कई जज हैं, जिनके बारे में कहा जाता है कि यहां किसी particular lawyer की चलती है। मैं किसी जज का नाम नहीं लेना चाहता हूं, लेकिन यह चलता है, क्योंकि अगर उसके दादा भी जज हैं, तो वह पूरी lineage में आता है। दादा, बेटा, पोता, नाती, नातिन–इन सभी को जज बनाने का काम होता है। यह देश कैसे चलेगा? इसलिए इसके बारे में हमें विचार करना चाहिए। आदमी का जो बुरा कर्म होता है और अच्छा कर्म होता है, वह साए की तरह उसके साथ चलता है। इसलिए जजों को किसी भी तरह से doubtful नहीं होना चाहिए। मैं यह कहना चाहता हूं कि–virtues are solemn to life but vices are the way of life. हम लोग यह कहते जरूर हैं, लेकिन करते नहीं।

उपसभापति जी, जजों को कैसा होना चाहिए और कैसा नहीं, आप इसके बारे में जरूर विचार करिए। आप सोच रहे हैं कि जज लोग बिल्कुल छनकर आते हैं, लेकिन ऐसा बिल्कुल नहीं है। यहां कई लोगों ने कहा है कि 2003 में जो जज बहाल हुए–सेन साहब, इन पर 1984 में ही मामला दर्ज हो गया था, वहां से defalcation चल रहा था, क्या आपने इसको देखा नहीं, आपने उसको महसूस नहीं किया? जब एक खलासी का appointment होता है, तो पुलिस का verification होता है कि यह चोर तो नहीं है, बेईमान तो नहीं है, बदमाश तो नहीं है, इस पर 107 का मुकदमा चला या नहीं चला, इस पर 307 का मुकदमा चला या नहीं चला? आप एक जज को बहाल कर रहे हैं, जिनके बारे में पहले से एक केस pending है, उनके defalcation का केस pending है और आपने इसे देखा नहीं, उनको बहाल कर दिया। जब वे बहाल हो गए, तो अपने उनसे कहा कि आपने 1984 में defalcation किया और आप पैसा खा गए। यह पैसा खाने वाली बात तो पहले भी थी। जब वे 2003 में जज appoint हुए, तो आपने इन चीजों को क्यों नहीं देखा।

श्री तारिक अनवर (महाराष्ट्र): आप किससे बोल रहे हैं?

श्री राजनीति प्रसाद: मैं चेयर को address कर रहा हूं, लेकिन आदमी इधर–उधर भी देखेगा। मैं कहता हूं कि अब जुडिशियल कमीशन बनाने का वक्त आ गया है। जब एक चपरासी का appointment होता है, तो आप इंटरव्यू लेते हैं, उसको इंटरव्यू के लिए बुलाते हैं। इसलिए मैं कहना चाहता हूं कि आप जुडिशियल कमीशन बनाइए, इससे अच्छे जज आएंगे और उनका इंटरव्यू होगा। अगर आप जुडिशियल कमीशन नहीं बनाएंगे, तो फिर वही होगा कि किसका बेटा जज बना है, किसका बच्चा जज बनकर आया है, वही चलेगा।

उपसभापति जी, 1993 तक एक नियम था कि जजों की नियुक्ति में चीफ–मिनिस्टर का भी consent लिया जाता था, लेकिन अब वह व्यवस्था खत्म हो गई, collegium में चली गई, अब consent वगैरह कुछ नहीं होता। अब सीधे यह देखा जाता है कि वह आदमी कौन से खानदान का है? अगर उसका खानदान ठीक है, तो चलिए, जरा इसका bio-data निकालिए। उस bio-data से अगर यह पता चलता है कि इनके परिवार में पहले कभी कोई जज नहीं था, तो वह आदमी कभी जज नहीं बन सकता है। कभी–कभी exceptionally कोई आदमी जज बन जाता है, दिखाने के लिए बना दिया जाता है। इसलिए मैं कहना चाहता हूं कि हमें इस सिस्टम को बदलना पड़ेगा। हम अगर सिस्टम को नहीं बदलेंगे, तो यह चलता रहेगा और जुडिशियरी में करप्शन prevail करता रहेगा। इसलिए मैं चाहता हूं कि आज हम लोग इस बात पर विचार करें कि कैसे हमारा जुडिशियल सिस्टम ठीक होगा? इन्हीं शब्दों के साथ मैं आपको धन्यवाद देता हूं।

SHRI RAM JETHMALANI (RAJASTHAN): Mr. Deputy Chairman, Sir, a patient two days' wait is justified when today we are on the point of reversing a somewhat unpleasant precedent that we set up nearly 11 years ago. I can see that the House is in almost full attendance and I can see that the Motion will be carried by the requisite majority required by the Constitution. I fully support it. But, Sir, instinctively, whenever I see a dissenter, I start respecting him. Ultimately, it is dissent which keeps democracy going, and I found a great dissenter right here in my neighbourhood. Sir, I admire his bravery; I admire the use of his legal talent. But I wish he had reserved these for a better occasion. Sir, if he had cared only to go through the report of these three Judges, he would have realised that they knew as much law as we all know. They perhaps knew better. They did not rest content with finding this gentleman. I will call him Respondent. I refuse to call him learned Judge as some people have called him. This Respondent is not convicted because he misbehaved as a Receiver. Of course, his misbehaviour started when he was a Receiver. The first misbehaviour was that he has produced before you this whole document of an explanation of his conduct. Read this document. Not at one place does he say that I am a trustee, that I was a trustee of the funds which came into my possession. Sir, every child knows, and I don't wish to take you through authorities, but here is a small little line from a famous dictionary, Black's Law Dictionary, which everybody knows about, "A Receiver is a fiduciary of the court". Means, he is a trustee of the court. He is a trustee of the court; he is a trustee of the parties and he is also a trustee of the property or the fund entrusted to him. This property came into his hands as a trustee. But, Sir, he ceased to be a Receiver when he became a Judge. His Receivership came to an end but the trust which was attached to the property which was in his hands did not come to an end until the trust became extinguished and the

property got purged of the character of a trust property. If he has realised that I have now ceased to be a Receiver, it was his duty to walk up to the court and say, "I am now becoming a Judge. Please relieve me of this trust property which has been in my hands and here is that property. Take charge of it". Sir, he did not do this. He thought that when he has become a Judge, all people surrounding him will turn into sycophants and will forget the rupees fifty two lakhs which he had pocketed. But, unfortunately for him, there was a fellow Judge in the High Court itself who did not become a sycophant and he carried on an investigation into the trust property which was in his hands. Sir, look at this explanation. At page 31, he propounds a doctrine and I want you to hear this doctrine. "It is judicially settled that till such time I, as a Receiver, am not directed to return the sum lying with me, I cannot on my own return the same". In other words, he is telling you to accept the proposition that even though he ceased to be a Receiver and it was his duty to go and give an account of the property which he received as a Receiver to the court which appointed him a Receiver, he is not bound to do anything of that kind until he is asked to do so.

In other words, the trust property becomes personal property and I can deal with it as I like. Sir, this receiver lawyer should have known that as a trustee he is bound by the provisions of the Indian Trust Act. The Indian Trust Act has an express provision, Section 20, which deals with investments. A trustee can invest trust property in seven specified investments which are permitted under that Section and if you invest in any unauthorized deal, that itself renders you liable for a prosecution for criminal breach of trust. The law does not permit a trustee because the law says, "in these seven ones and no other"—so clear is the law—and yet he went and invested this property in a private financial business which is not a Government authorized entity in which he could have put this money. He claims that that entity became insolvent, went into liquidation, and he thought that everybody would forget about that money.

Sir, now for Mr. Mishra's bravery. If you had read this Report and if you had come up to page 22—because I don't blame anybody for losing patience after you read the 22nd page—at page 22, the Report starts dealing with his misbehaviour as a judge. I am reading the last paragraph on page 22. It says, "All that is stated above took place during the period when Sen, the receiver, was an advocate. The assessment of the Inquiry Committee is that as an advocate and as an officer of the High Court of Calcutta, Sen's conduct was wrongful and not expected of an advocate. But his conduct in relation to matters concerning the moneys received during his receivership after he was appointed a judge was deplorable, in no way befitting a High Court Judge". From here starts their dealing with this misbehaviour as a judge of the High Court. I regret to say that if there was a more vigilant method of appointment of judges, this

man did not deserve to be appointed, but having been appointed, he has no business to stay as a judge for even one day. And this House will be committing a *hara-kiri* of its judicial functions, if you don't rise to the occasion and see that not only this judge goes, but other judges who similarly misbehave do not occupy judicial offices for a day longer.

Sir, there was a reference to his eloquence. Eloquence is, doubtless, a quality which people should possess. I must tell you that I have never heard Shri Mohan Singh speak, but today I was so impressed while I was hearing your Hindi eloquence, I said, I hope before I die, I will one day be able to deliver a speech like you. But, Sir, eloquence has nothing to do with moral sense; eloquence has nothing to do with the quickened conscience. Eloquence is often the property of the biggest cheats and charlatans. After all, unless you know this glib talking art, you will not be able to cheat people and it is not a matter of surprise that today the glib talkers are at the top of the world and people who can't speak are not.

This gentleman gave a demonstration of his eloquent deception. But why did he not appear before those three Judges which were inquiring into his conduct? Because he is afraid of answering questions. I wanted to ask questions while he stood there. In three questions I would have demolished his eloquence and he would have faltered, he would have fallen down here right in this House and would not have been able to go back.

You can speak as much untruth as you like so long as there is no risk of interrogation and cross-examination. That is why, in the court of law, we do not believe a witness who has not submitted himself to cross-examination. Examination, in itself, is useless unless it has survived the filter of cross-examination, and, cross-examination by people who would know how to cross-examine. Before every judicial authority where he could be questioned, he did not get up and answer. To those three Judges, who were holding an inquiry, when they called him, he said, "I am pleading the Fifth Amendment." Fifth Amendment is not meant for crooks like this. Fifth Amendment is meant for illiterate accused who, by answering questions, might implicate themselves in offences which they have not committed. That, of course, is the origin of the rule. Now, Fifth Amendment is a Constitutional right. But that right is available in a prosecution for a criminal offence. This Judge was not being prosecuted for a criminal offence. He was being prosecuted for his ability and for his qualifications of being a judge and continuing to remain a judge of the High Court. He is not going to be sentenced to imprisonment. So, Sir, don't be impressed by the kind of eloquence. He becomes eloquent wherever he cannot be questioned.

The next question is that he has paid Rs. 52 lakhs. He paid that amount of Rs. 52 lakhs, while that single judge caught hold of him and asked, "Where is that money which you got as receiver? You have not given it." So, he paid that money. Sir, my fellow Members in this House tell me outside, "The man has paid Rs. 52 lakhs. So, why not let him go?" Please understand what he got by paying those Rs. 52 lakhs at that late stage! He should thank his stars for that. But he is an ungrateful man. He eats and gobbles up the hand which feeds him. These brother judges, who, unfortunately, continue to practice some kind of trade unionism to save their brother judges, have saved him from being prosecuted and punished for a serious offence of criminal breach of trust, punishable under Section 409 of the Indian Penal Code, where the maximum punishment is life imprisonment and imprisonment which may extend to ten years. But, by paying off that money which he had pocketed,—though, of course, I am sure, his poor mother made some contribution to that money—he has earned his freedom from jail. And, I assure you that if he had been prosecuted, he would have been in jail for, at least, five or ten years. He has earned that freedom by that money. Therefore, please do not entertain any sympathy for this man, that this man has paid Rs. 52 lakhs, and we should let him go. This is not settlement of a civil dispute. He was guilty of a non-compoundable offence under which you can pay millions and millions but you cannot compound that offence. It is only an extenuating circumstance on the question of punishment. But that extenuation value he has already got out of that money because he has escaped the whole prosecution under Section 409, and the ignominy which he would have gone through, which his family would have gone through, as a result of prosecution, and, ultimately, appealing to the Court to give him a lighter sentence, because he has paid off. So, I would like to tell my friends that this is a case in which we are dealing with a judge who ought not to have been made a judge, if there were better methods of appointment, and who, fortunately, has been caught as a result of another vigilant judge. He talks of the Division Bench. If a single Judge had no jurisdiction to go into matters in which he went into, what was the Division Bench doing? The Division Bench merely said, "All right, you have paid this money." Therefore, again, out of that true trade unionism and a little sense of mercy, they said, "We will remove that remark which the single Judge has made. We will expunge that remark." That judgement was a bad judgement, and that judgement is a judgement which was, certainly, considered by the Chief Justice to whom a complaint went from the Chief Justice of the Calcutta High Court.

Sir, that Chief Justice of India may be somewhat controversial, but so far as this Judge is concerned, this Chief Justice helped him. He gave him an extra hearing. He gave him a hearing in his house. He listened to him and then he said, 'I would give you an extra-Constitutional opportunity to establish your

innocence', and gave him that in-House Committee of Judges who sat and listened to this man and said that 'you seem to be a hypocrite'. You don't give him any mercy, and it says, 'You face the consequences of the conduct in which you have indulged.'

So, Sir, this is not a matter in which the House can take a lenient view. Let us settle a good precedent today so that Judges who are of the same mould of mind as this Judge realize that the Parliament of this country will rise to the occasion and not do things which we have done in the past. Of course, this is not an occasion to enter into a debate about the appointment of an extra-judicial commission; we may do that some other time. But today, I hope that even Mr. Misra would withdraw his dissent and the decision shall be unanimous. Thank you.

SHRI RAVI SHANKAR PRASAD: Sir, I am extremely grateful to you for giving me this limited time. I have to make very few points.

(MR. CHAIRMAN IN THE CHAIR)

What is Justice Soumitra Sen's conduct as a Judge? He became the Receiver in the 80s; got the sale proceeds in the early 90s. He became the Judge in December, 2003. The first thing that was required to do was to submit to the court that 'I do not want to be named the Receiver any further'. He did not do so. For the whole of 2004 and for the whole of 2005, he did not submit any account. When the Single Judge issued him a show cause notice, he did not reply. The notice was given thrice. Most importantly, Sir, when a final order was passed asking him to pay Rs. 33 lakhs with an interest of Rs. 55 lakhs, he went and prayed for more time. He made a part-payment.

A question has been asked about the Division Bench. The Division Bench relies upon his affidavit but in the inquiry conducted by your committee it has been found that it was a case of misrepresentation. He said that he had invested in Lynx India Limited but that was not a fact. He did not invest this received amount of the Receiver. It is a case of misconduct as a lawyer; it is a case of continued misconduct and misrepresentation as a Judge.

Therefore, Sir, I request that this impeachment has to succeed.

I have to make only one more point at the end. What is the authority of a Judge? Is it the source of law? Is it the power of contempt? Or, is it something more? Sir, we have seen Additional District Judges giving capital punishment and, after their retirements, moving around in their *mohallas,* with all the mafiosi whom they had awarded punishments never dared to challenge them. We have

rarely heard a District Judge or a retired Additional District Judge ever getting threatened or any revenge being taken against them by those criminals who had been given conviction by them. Why is it so? It is the moral authority of a Judge. This is a great tribute to our Judiciary and our rule of law that the moral authority of a Judge is the most important authority and, for that, integrity is very important. If that integrity is found to be wavering, it is time to take action.

I will conclude, Sir, with what the hon. Leader of the Opposition has stated. There is a need for a lot of improvement in judicial appointments. This whole case of appointments by the collegium is a kind of Constitutional appropriation by the judges from the Executive and the Constitution. This is not permissible. This needs to change, Sir.

There is one thing more which is very important in the present context. Yes, judges' activism in probity, in the fight against corruption is okay, but all over the country we see that judges are taking away power by appointing committees — MCD should work like this; this committee should work like this. Sorry, Me Lords, this is not your function. May be, the authority is not functioning properly, but for that you are not the authority. Let the democratic process, the rule of the law and parliamentary accountability set right the course. That is important.

With these words, I fully support the Motion which Mr. Yechury has moved. Thank you, Sir.

SHRI SITARAM YECHURY: Mr. Chairman, Sir, we are reaching conclusion of a historic debate on the Motions that I had moved which is on the brink of creating history, not only in the history of Parliament but, I think, also in the history of our democracy. As I said at the outset, Sir, I had moved these Motions, not as an indictment or a reflection of our opinion of the Judiciary as a whole, but I had moved these Motions in order to strengthen the independence of the Judiciary, in order to establish the integrity of the Judiciary which was getting besmirched by the acts of one particular individual and, while moving these Motions, I had said that we are doing this with no jubilation or elation, neither vindictiveness nor vendetta, but we are invoking legitimate Constitutional provisions to ensure that the sanctity of our Constitution, is maintained and the supremacy or the centrality of our Constitution, which is the sovereignty of the people, is established through their elected representatives, that is the Parliament. In doing so, I think, we have today, in a sense, also reflected the general mood that is there in the country. We have seen the waves of protests against corruption at high places. We have seen the concern and the actual disgust that many in our country are reflecting in

their own ways against this sort of corruption; and, in the midst of that, the Parliament rising to the occasion and saying that we will invoke our Constitution, we will invoke the supremacy of the Parliament in order to ensure that corruption in high places will be checked and when anything wrong is brought before us, we will act to correct it. That, I think, is a very important element today to convey to the country and our people—the will and resolve of this House in tackling corruption at high places. I think, this is something the debate has established. That is why, Sir, I am truly impressed with the richness of the debate and this only further strengthens my own confidence that when the occasion demands, this august House has risen to the occasion, and has risen to the occasion in a splendid manner with no acrimony or personal attacks. We have discussed an issue as serious as this and on the merits of it; it is a matter to note we have the Leader of the House, the hon. Prime Minister, sitting through the entire debate; we had the hon. Leader of the Opposition not only being present but also contributing richly to the content of this debate which was shared by all, cutting across the political-lines. I think, the richness of the debate also naturally transcended the limited purpose of the Motions. It is only natural, Sir. It naturally transcended the barriers of these Motions in talking of the separation of powers between the Legislature, the Executive and the Judiciary. It talked of the issues of separation of these powers, what should be the role of the Judiciary, how the appointments should be done and I am very glad that these issues have been brought into public domain and in the discussion of the Parliament so that in the coming days we should address them in all seriousness and, if time permits, I will return to that shortly.

But, Sir, there have been some questions that have been raised. Notably, my distinguished friend and colleague, Shri Satish Chandra Misra, who of course told me personally and he apologised for saying that he opposed the Motions. I said, "What is the debate if there were no dissent?" Like Ram had said, I must thank Shri Ram Jethmalani; I must dare say—Sir, I do not want to use this—but who else will come to the defence of Sita Ram but Ram? In that sense, he has made my job much easier by taking up some of these matters. But, Sir, an important question has been raised by Shri Misra and also by my distinguished colleagues, Shri Bharat Singh Raut and others, on the question of the word and the concept of misbehaviour. Now, the question of what was the role of Shri Soumitra Sen after he became a judge? That has been answered by Shri Jethmalani and I do not want to repeat it.

And, Shri Ravi Shankar Prasad has answered some of the other issues. I do not want to repeat only for the sake of time, and also respecting the reminding that Mr. Ahluwalia has done about the Iftar and the timing of it, I don't want to

go into all those aspects of it. But there is the word 'misbehaviour'. Sir, the Inquiry Committee that you had established actually goes into the genealogy of this particular word, which due to paucity of time, I did not read out at the time of introducing the Motions, but I will read out now. It is a short passage. It says, I quote, "The word 'misbehaviour' in the context of the judges of the High Courts in India was first introduced in proviso (b) to Section 202 of the Government of India Act, 1935." Under the 1935 Act, it was initially the Privy Council and later the Federal Court of India that had to report to India's Governor General when charges were made of misbehaviour against a judge of a High Court. In the Report of the Federal Court in respect of charges made against Justice S.P. Sinha, a judge of the High Court of Allahabad, one of the charges made by the Governor General against the judge were, "That Justice S.P. Sinha has been guilty of conduct outside the court, which is unworthy of and unbecoming of the holder of such a high office," which was then particularized. Since this charge was not substantiated against the Judge by evidence, it was held to have been not established. But the charge as they framed has tersely but correctly described the scope and ambit of the word 'misbehaviour', namely, guilty of such conduct whether inside or outside the court, i.e., "Unworthy and unbecoming of the holder of such a high office." The same word 'misbehaviour' now occurs in the Constitution of India in article 124(4) when read in context with proviso (b) to Article 217(1). These provisions state that a judge of the High Court shall not be removed from his office except on the grounds of proved misbehaviour. The prefix 'proved' only means proved to the satisfaction of the requisite majority of the appropriate House of the Parliament, if so recommended by the Inquiry Committee. The words 'proved misbehaviour' in Article 124 have not been defined. Advisedly so because the phrase 'proved misbehaviour' means such behaviour which, when proved, is not befitting of a judge of the High Court."

Sir, the entire discussion we have had in the last two days here has only proved that there is a misbehaviour on the part of Shri Soumitra Sen. And since this is now being proved in my opinion and contention, which we will decide upon through a vote subsequently, that this has been proved in a House of Parliament on the basis of this discussion that we have had, after giving all the time required, in fact, we extended the time required for Justice Soumitra Sen to make his defence, if after that we come to that conclusion, Sir, that is the meaning of proved misbehaviour. And that proving we have to do. Are we convinced about that proving? That is what we have to stand up to, and that is what we have to do, Sir, and that is the issue that is there. But with regard to the other thing, Mr. Jethmalani answered it, about the role of Mr. Soumitra Sen after he became a judge, and, in fact, he just quoted the introductory

paragraph, but if you just go through the Inquiry Committee Report, Sir, there are, at least, four major sections and, at least, seven sub-sections where the Inquiry Committee has established, after becoming a judge, the misbehaviour of Mr. Soumitra Sen. This is all there on record from pages 22 to 26, and I do not want to take time reading them out, and it is all there on record, and as part of the evidence that we have. So, today, it is not a question of our passing judgement or discussing about Mr. Soumitra Sen as an advocate and not as a judge. And, also, as I said, when I was moving the Motion, it is no longer tenable to say that these charges were made against Mr. Soumitra Sen before he became a judge, therefore, the Judges Inquiry Act does not apply to him since it was not when he was a judge. That has also been established under law, that it is not the question of what is established on the issue of misbehaviour that I have just quoted to you; it is not a question of when you are a judge or when you are not; it is not a question whether you are doing it in the court or you are doing it outside. But the question is whether your behaviour will cast aspersions not only on your character and integrity but the character and integrity of the entire Judiciary. You are liable to be drawn under this section. Mr. Bharatkumar Raut has also raised the issue of the Division Bench. Mr. Ravi Shankar Prasad has referred to it. But, let me just take up this matter on behalf of what the Inquiry Committee has said. Mr. Jethmalani also answered it that and, of course, Mr. Arun Jaitley, answered it in the morning. We also exposed that and I am not repeating that deliberately. When Mr. Soumitra Sen also made a lot of false and misleading statements here with—claims—authenticated documents, I would want him to authenticate and place the same before the House and make them the property of the House. I will come as to why I am saying this subsequently before I conclude this reply. But, I would only request the hon. Leader of the Opposition to do so.

Sir, this what the Inquiry Committee has said on the Division Bench. It says, "The observation in the judgment dated 25 September, 2007, of the Division Bench of the Calcutta High Court to the effect that there was no misappropriation of Receiver funds by Justice Soumitra Sen was, after considering the uncontested Affidavit filed on his behalf by his mother which categorically asserted that the entire sum received by him from the sale of goods i.e., Rs. 33,22,800 was invested in M/s Lynx India Limited and that the company has gone into liquidation a couple of years later. This statement, along with further misleading and false statements, in Ground 13 of the Memorandum of Appeal that they have appended to this Report were material misrepresentation made by and on behalf of Justice Soumitra Sen before the Division Bench of the High Court of Calcutta. The finding by the Division Bench in its judgment of 25 July, 2007, that Justice Soumitra Sen was not guilty of

any misappropriation was made on a totally erroneous premise induced by the false representation made on behalf of Justice Soumitra Sen." Sir, I don't think you require a greater clarity than this. Therefore, what was the misbehaviour or what was misappropriation that was done has to be understood.

Sir, Mr. Jethmalani has referred to Section 403 of IPC. What was the deal? Why did he pay the money back when he was asked to pay back? It is only to escape imprisonment. Sir, the questions were raised on the question of misappropriation. Is diversion a misappropriation? Is using that money temporarily for some purpose constitutes misappropriation? We have heard the labours of Mr. Soumitra Sen yesterday when he said, 'you tell me one paisa that is there in my account. Have I made any money at all from holding this money? So, therefore, there is no misappropriation that I have committed.' But, Sir, what is the definition of 'misappropriation' under Section 403 of IPC? Section 403 of IPC says, 'Whoever dishonestly misappropriates or..."—please underline—"...converts to his own.....shall be punishable with imprisonment... It clearly says if a person 'coverts to his own use.' Then it goes on to clarify in the explanation, "A dishonest misappropriation for a time only is a misappropriation within the meaning of this section." So, whether it is for a short time or whether it is for personal use only to be returned even if you are a fiduciary and a trustee. If money is deposited with me, I cannot borrow that money even temporarily. Sir, even temporarily I cannot borrow that money for my personal use and return back that money. I may be very honest and return back that money. But, the very act of borrowing that money makes me guilty of misappropriation. That is the Indian law. Our laws are very clear—it is both the acts of omission and commission. You cannot say, 'I don't have any money that I have put in my bank accounts and, therefore, I am not guilty.' But, your acts of omission that have led to such acts of guilt are actually breach of law. Therefore, on all these counts—whatever matters that we have discussed earlier—he is guilty. In 1984 he was appointed as Receiver and the matter finally settled in 2006. In 2002, SAIL asked for the accounts as to what happened to that money. He does not reply immediately. Yesterday he was telling us in a much laboured manner. In the whole two hours of his presentation, there was only one mention about SAIL and that one mention came in terms of reference to the learned counsel of the SAIL. When the whole case of misappropriation centers around the money of dispute between SAIL and the SCIL, he was made the trustee of it and for that there is no reference. But, he, of course, asked me to go back to my workers and find out if they have been paid. I am grateful if that had happened. Sometimes, justice can be done by these courts also and by such Judges. If the workers have been paid, it is good. But, that is not the issue. The issue is, who gave you the right of Rs. 70 lakhs given to you to pay to the workers to divest Rs. 25 lakhs of that

and invest in a private company which was going into liquidation? Is there any scam involved in this? That needs to be investigated, Sir. You have divested Rs. 25 lakhs of money that was meant and set aside for wages and compensation to the workers to be invested in a private company which goes bust, within a couple of years! Was it done with knowledge that it is going to go into liquidation? What is the feedback there? That also needs to be investigated today, Sir. So, these are various issues which have come up. They all have come on record now. We all came to know how fictitious accounts have been recorded, how cheques have been issued for the payment of Credit Cards. Therefore, keeping this in mind, as I mentioned, the case, according to me, is a closed case.

Finally, the point I want to make is, the labour behind the entire argument yesterday was that there was a great conspiracy against him. What is the conspiracy? You have the Chief Justice of India. You have noted Judges like Justice A.P. Shaw, Justice A.K. Patnaik and Justice R.M. Lodha. Have they all conspired against Justice Soumitra Sen? You have the Chief Justice Justice B.N. Agarwal and Justice Ashok Bhan. They are all the senior most Judges. Do you mean to say that they have conspired against Mr. Sen? And, now, do you mean to say that Justice Sudarshan Reddy, Shri Mukul Mudgal and Fali Nariman have all conspired against Mr. Sen. We have had the pleasure of knowing Mr. Nariman. I mean, he was four colleague here. We have known his uprightness here. To question the integrity of such people and to say that all of them have collided in a great conspiracy to prosecute Mr. Soumitra Sen is a great conspiracy theory that has been woven yesterday and that conspiracy theory needs to be broken.

Therefore, Sir, finally, I think, the issues that have been raised by the hon. Leader of the Opposition echoed by many other hon. Members here on the larger issues connected with Judiciary, Executive and the Legislature, this Motion today has to be adopted and should be used as the trigger for us to continue with these discussions, so that we, as parties—CPI (M) has always been asking and continues to ask even now—have to ask for establishment of the National Judicial Commission along with the Lokpal. We think that both should go together. And, these are the issues, finally, we have to take up, because our constitutional scheme of things talks of judicial review, not judicial activism. And, that is where, Sir, the hon. Judges will interpret the law. But, unfortunately, the power to make law lies with Parliament and that is the supremacy. And, it is that supremacy we should uphold.

Finally, Sir, let me quote what Pandit Jawaharlal Nehru has said during the Constituent Assembly debates. He said, 'No Supreme Court and no judiciary

can stand in judgment over the sovereign will of the Parliament representing the will of the entire community. If we go wrong here and there, it..."—the Judiciary—"...can point it out. But, in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. Ultimately, the fact remains that the Legislature must be supreme and must not be interfered with by the court of law in measures of social reform." So, this is something which we will have to uphold.

I thank all those who participated, and, through you, urge that the Motions that I have moved yesterday be accepted.

I, therefore, recommend, once again, that these Motions be accepted by the House.

MR. CHAIRMAN: I shall now put the Motions, moved by Shri Sitaram Yechury, for presenting an Address to the President for removal of Justice Soumitra Sen, Judge, High Court of Calcutta, from his office, along with the Address to the President, under clause (4) of Article 124 of the Constitution, to the vote of the House.

As I have informed earlier, the Motions, along with the Address are required to be adopted by a special majority. The question is:

> "This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct :-
>
> (1) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and
>
> (2) Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta."-

The Address shall be as follows:

> "Whereas a notice was given of a motion for presenting an address to the President praying for the removal of Shri Soumitra Sen, from his office as a Judge of the High Court at Calcutta by fifty-seven members of the Council of States (as specified in Annexure 'A' attached herewith).

AND WHEREAS the said motion was admitted by the Chairman of the Council of States;

AND WHEREAS an Inquiry Committee consisting of —

(a) Shri B. Sudershan Reddy, a Judge of the Supreme Court of India;

(b) Shri Mukul Mudgal, Chief Justice of the High Court of Punjab and Haryana at Chandigarh; and

(c) Shri Fali S. Nariman, a distinguished jurist, was appointed by the Chairman of the Council of States for the purpose of making an investigation into the grounds on which the removal of the said Shri Soumitra Sen from his office as a Judge of the High Court at Calcutta has been prayed for;

AND WHEREAS the said Inquiry Committee has, after an investigation made by it, submitted a report containing a finding to the effect that Shri Soumitra Sen is guilty of the misbehaviour specified in such report (a copy of which is enclosed and marked as Annexure 'B');

AND WHEREAS the motion afore-mentioned, having been adopted by the Council of States in accordance with the provisions of clause (4) of article 124 of the Constitution of India, the misbehaviour of the said Shri Soumitra Sen is deemed, under sub-section (3) of section 6 of the Judges (Inquiry) Act, 1968, to have been proved;

NOW, THEREFORE, the Council of States requests the President to pass an order for the removal of the said Shri Soumitra Sen from his office as a Judge of the High Court at Calcutta."

Under clause (4) of Article 124 of the Constitution the Motion and the Address will have to be adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members of the House present and voting.

6.00 P.M.

THE HOUSE DIVIDED.

MR. CHAIRMAN: Subject to correction: Ayes :189, Noes : 16

AYES-186

Achuthan, Shri M.P.
Adik, Shri Govindrao
Agarwal, Shri Ramdas
Ahluwalia, Shri S.S.
Aiyar, Shri Mani Shankar
Akhtar, Shri Javed
Alvi, Shri Raashid
Amin, Shri Mohammed
Anand Sharma, Shri
Antony, Shri A.K.
Apte, Shri Balavant Alias Bal
Ashk Ali Tak, Shri
Ashwani Kumar, Shri
Azad, Shri Ghulam Nabi
Badnore, Shri V.P.
Baidya, Shrimati Jharna Das
Baishya, Shri Birendra Prasad
Balaganga, Shri N.
Balagopal, Shri K.N.
Batra, Shri Shadi Lal
Behera, Shri Shashi Bhusan
Benegal, Shri Shyam
Bernard, Shri A.W. Rabi
Bhartia, Shrimati Shobhana
Budania, Shri Narendra
Chakraborty, Shri Shyamal
Chatterjee, Shri Prasanta
Chaturvedi, Shri Satyavrat
Chowdary, Shri Y.S.
Daimary, Shri Biswajit
Dalwai, Shri Husain
Das, Shri Kumar Deepak
Dave, Shri Anil Madhav
Deora, Shri Murli
Deshmukh, Shri Vilasrao Dagadojirao
Dua, Shri H.K.
Dwivedi, Shri Janardan
Elavarasan, Shri A.
Faruque, Shrimati Naznin
Fernandes, Shri Oscar
Gill, Dr. M.S.
Gnanadesikan, Shri B.S.
Goyal, Shri Piyush
Gujaral, Shri Naresh
Gupta, Shri Prem Chand
Hashmi, Shri Parvez
Hema Malini, Shrimati
Husain, Shri Jabir
Ismail, Shri K.E.
Jain, Shri Ishwarlal Shankarlal
Jain, Shri Meghraj
Jaitley, Shri Arun
Javadekar, Shri Prakash
Jayashree, Shrimati B.

Jethmalani, Shri Ram
Jha, Shri Prabhat
Jinnah, Shri A.A.
Jois, Shri M. Rama
Joshi, Dr. Manohar
Kalita, Shri Bhubaneswar
Karan Singh, Dr.
Karat, Shrimati Brinda
Katiyar, Shri Vinay
Keishing, Shri Rishang
Kesari, Shri Narayan Singh
Khan, Shri K. Rahman
Khan, Shri Mohd. Ali
Khanna, Shri Avinash Rai
Khuntia, Shri Rama Chandra
Kidwai, Shrimati Mohsina
Kore, Dr. Prabhakar
Koshyari, Shri Bhagat Singh
Krishna, Shri S.M.
Kshatriya, Prof. Alka Balram
Kurien, Prof. P.J.
Kushwaha, Shri Upendra
Lad, Shri Anil H.
Lepcha, Shri O.T.
Madani, Shri Mahmood A.
Maitreyan, Dr. V.
Malihabadi, Shri Ahmad Saeed
Mangala Kisan, Shri
Mathur, Shri Om Prakash
Mishra, Shri Kalraj
Mitra, Dr. Chandan
Mohanty, Shri Kishore Kumar
Mohapatra, Shri Pyarimohan
Mohite Patil, Shri Ranjitsinh Vijaysinh
Moinul Hassan, Shri
Mukherji, Dr. Barun
Mukut Mithi, Shri
Mungekar, Dr. Bhalchandra
Naidu, Shri M. Venkaiah
Naik, Shri Pravin
Naik, Shri Shantaram
Nandi Yelaiah, Shri
Naqvi, Shri Mukhtar Abbas
Natarajan, Shrimati Jayanthi
Natchiappan, Dr. E.M. Sudarsana
Pande, Shri Avinash
Pandian, Shri Paul Manoj
Pany, Shri Rudra Narayan
Parida, Shri Baishnab
Parmar, Shri Bharatsinh Prabhatsinh
Pasha, Shri Syed Azeez
Paswan, Shri Ram Vilas
Patel, Shri Ahmed
Patel, Shri Kanjibhai
Patel, Shri Surendra Motilal
Pilania, Dr. Gyan Prakash
Pradhan, Shrimati Renubala
Prasad, Shri Rajniti

Prasad, Shri Ravi Shankar
Punj, Shri Balbir
Rai, Shrimati Kusum
Raja, Shri D.
Rajeeve, Shri P.
Ram Prakash, Dr.
Ramalingam, Dr. K.P.
Ramesh, Shri Jairam
Rangarajan, Shri T.K.
Rao, Dr. K.V.P. Ramachandra
Rashtrapal, Shri Praveen
Ratna Bai, Shrimati T.
Raut, Dr. Bharatkumar
Raut, Shri Sanjay
Ravi, Shri Vayalar
Rebello, Ms. Mabel
Reddy, Shri G. Sanjeeva
Reddy, Shri M.V. Mysura
Reddy, Dr. T. Subbarami
Roy, Shri Tarini Kanta
Rudy, Shri Rajiv Pratap
Rupala, Shri Parshottam Khodabhai
Rupani, Shri Vijaykumar
Sadho, Dr. Vijaylaxmi
Sahani, Prof. Anil Kumar
Sahu, Shri Dhiraj Prasad
Sai, Shri Nand Kumar
Sangma, Shri Thomas
Seelam, Shri Jesudasu
Seema, Dr. T.N.
Selvaganapathi, Shri T.M.
Sen, Shri Tapan Kumar
Shanappa, Shri K.B.
Shanta Kumar, Shri
Sharma, Shri Raghunandan
Sharma, Shri Satish
Shukla, Shri Rajeev
Singh, Shri Amar
Singh, Shri Birender
Singh, Shri Ishwar
Singh, Shri Jai Prakash Narayan
Singh, Dr. Manmohan
Singh, Shrimati Maya
Singh, Shri Mohan
Singh, Shri N.K.
Singh, Shri R.C.
Singh, Shri Shivpratap
Singhvi, Dr. Abhishek Manu
Siva, Shri Tiruchi
Solanki, Shri Kaptan Singh
Soni, Shrimati Ambika
Sood, Shrimati Bimla Kashyap
Soz, Prof. Saif-ud-Din
Stanley, Shrimati Vasanthi
Swaminathan, Prof. M.S.
Tariq Anwar, Shri
Tarun Vijay, Shri
Thakor, Shri Natuji Halaji

Thakur, Dr. C.P.	Vasan, Shri G.K.
Thakur, Dr. Prabha	Verma, Shri Vikram
Thakur, Shrimati Vipolve	Vora, Shri Motilal
Thangavelu, Shri S.	Vyas, Shri Shreegopal
Tiriya, Ms. Sushila	Waghmare, Dr. Janardhan
Tiwari, Shri Shivanand	Yadav, Shri Ram Kripal
Trivedi, Dr. Yogendra P.	Yadav, Shri Veer Pal Singh
Uikey, Miss Anusuiya	Yechury, Shri Sitaram

NOES-16

Agrawal, Shri Naresh Chandra	Kashyap, Shri Narendra Kumar
Ali, Shri Munquad	Kureel, Shri Pramod
Ansari, Shri Salim	Misra, Shri Satish Chandra
Baghel, Prof. S.P. Singh	Pathak, Shri Brajesh
Ganga Charan, Shri	Rajan, Shri Ambeth
Jai Prakash, Shri	Rajaram, Shri
Jugul Kishore, Shri	Saini, Shri Rajpal Singh
Karimpuri, Shri Avtar Singh	Singh, Shri Veer

The Motions and the Address are adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members of the House present and voting.

MR. CHAIRMAN: The House stands adjourned till 11 a.m. on Friday, the 19th of August, 2011.

The House then adjourned at ten minutes past six of the clock till eleven of the clock on Friday, the 19 August, 2011.

RELEVANT EXTRACTS FROM THE CONSTITUTION OF INDIA AND STATUTORY PROVISIONS

I

EXTRACTS FROM THE CONSTITUTION OF INDIA

124. Establishment and Constitution of Supreme Court—(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven[1] other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office in the manner provided in clause (4).

[2][(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

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1. Now "twenty-five", *vide.* Act 22 of 1986.
2. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 2.

Explanation I—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

217. Appointment and conditions of the office of a Judge of a High Court—(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and [1][shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of [2](sixty—two years)]:

Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

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1. Subs, by s. 12, *ibid,* for "shall hold office until he attains the age of sixty years."
2. Subs, by the Constitution (Fifteenth Amendment) Act, 1963, s. 4, for "sixty years".

(b) a Judge may, be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) a person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court[1]**** or of two or more such Courts in succession;[2]***

Explanation—For the purposes of this clause—

[3][(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;]

[4][(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person [5][has held judicial office or the office of a member of a tribunal or any post, under the Union or a Stale, requiring special knowledge of law] after he became an advocate;]

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1. The words "in any State specified in the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.
2. The word "or" and sub-cl. (c) were ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 36 (w.e.f. 3.1.1977) and omitted by the Constitution (Forty-fourth Amendment) Act, 1978, s. 28 (w.e.f. 20.6.1979).
3. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 28 (w.e.f. 20.6.1979).
4. Cl. (a) re-lettered as cl. (aa) by s. 28, *ibid,* (w.e.f. 20.6.1979).
5. Subs, by the Constitution (Forty-second Amendment) Act, 1976, s. 36, for "has held judicial office" (w.e.f. 3.1.1977).

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

[1][(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.]

218. Application of certain provisions relating to Supreme Court to High Courts—The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

1. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 4 (with retrospective effect).

II

THE JUDGES (INQUIRY) ACT, 1968

(51 OF 1968)

An Act to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Judges (Inquiry) Act, 1968.

(2) It shall come into force on such date* as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Chairman" means the Chairman of the Council of States;

(b) "Committee" means a Committee constituted under section 3;

(c) "Judge" means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of India and the Chief Justice of a High Court;

(d) "Prescribed" means prescribed by rules made under this Act;

(e) "Speaker" means the Speaker of the House of the People.

3. *Investigation into misbehaviour or incapacity of Judge by Committee.*—(1) If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—

(a) in the case of a notice given in the House of the People, by not less than one hundred members of that House;

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* 1-1-1969, *vide* Notification No. GSR. 35, dt. 1-1-1969, Gazette of India, Extraordinary, Pt. II, Sec 3, sub-section (i), p. 5.

(b) in the case of a notice given in the Council of States, by not less than fifty members of that Council;

then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him, either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker, or, as the case may be, the Chairman shall keep the motion pending and constitute, as soon as may be, for the purpose of making an investigation, into the grounds en which the removal of a Judge is prayed for, a Committee consisting of three members of whom—

(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court;

(b) one shall be chosen from among the Chief Justices of the High Courts; and

(c) one shall be a person who is, in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist:

Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman:

Provided further that where notices of a motion as aforesaid are given in the Houses of Parliament on different dates, *the notice which is given later shall stand rejected.*

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a statement of the grounds on which each such charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Committee.

(5) Where it is alleged that the Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation

is denied, the Committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose by the Speaker or, as the case may be, the Chairman or, where the Committee is constituted jointly by the Speaker and the Chairman, by both of them, for the purpose and the Judge shall submit himself to such medical examination within the time specified in this behalf by the Committee.

(6) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the Committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

(7) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, the Board shall submit a report to the Committee stating therein the examination which the Judge has refused to undergo, and the Committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion referred to in sub-section (1).

(8) The Committee may, after considering the written statement of the Judge and the medical report, if any, amend the charges framed under sub-section (3) and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written statement of defence.

(9) The Central Government may, if required by the Speaker or the Chairman, or both, as the case may be, appoint an advocate to conduct the case against the Judge.

4. *Report of Committee.*—(1) Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation and shall give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being heard in his defence.

(2) At the conclusion of the investigation, die Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit.

(3) The Speaker or the Chairman, or, where the Committee has been constituted jointly by the Speaker and the Chairman, both of them, shall cause the report submitted under sub-section (2) to be laid, as soon as may be, respectively before the House of the People and the Council of, States.

5. *Powers of Committee.*—For the purpose of making any investigation under this Act, the Committee shall have the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on oath;

(d) issuing commissions for the examination of witnesses or documents;

(e) such other matters as may be prescribed.

6. *Consideration of report and procedure for presentation of an address for removal of Judge.*—(1) If the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall not be proceeded with.

(2) If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of section 3 shall, together with the report of the Committee be taken up for consideration by the House or the Houses of Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124, or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted.

7. *Power to make rules.*—(1) There shall be constituted a Joint Committee of both Houses of Parliament in accordance with the provisions hereinafter contained for the purpose of making rules to carry out the purposes of this Act.

(2) The Joint Committee shall consist of fifteen members of whom ten shall be nominated by the Speaker and five shall be nominated by the Chairman.

(3) The Joint Committee shall elect its own Chairman and shall have power to regulate its own procedure.

(4) Without prejudice to the generality of the provisions of sub-section (1), the Joint Committee may make rules to provide for the following among other matters, namely:—

(a) the manner of transmission of a motion adopted in one House to the other House of Parliament;

(b) the manner of-presentation of an address to the President for the removal of a Judge;

(c) the travelling and other allowances payable to the members of the Committee and the witnesses who may be required to attend such Committee;

(d) the facilities which may be accorded to the Judge for defending himself;

(e) any other matter which has to be, or may be, provided for by rules or in respect of which provision is, in the opinion of the Joint Committee, necessary.

(5) Any rules made under this section shall not take effect until they are approved and confirmed both by the Speaker and the Chairman and are published in the Official Gazette, and such publication of the rules shall be conclusive proof that they have been duly made.

III

THE JUDGES (INQUIRY) RULES, 1969

*G.S.R. 2168.—In exercise of the powers conferred by sub-section (4) of section 7 of the Judges (Inquiry) Act, 1968 (51 of 1968), the Joint Committee constituted under sub-section (1) of that section, hereby makes the following rules, the same having been approved and confirmed by the Chairman of the Council of States and the Speaker of the House of the People, as required by sub-section (5) of that section, namely:—

1. *Short title and commencement.*—(1) These rules may be called the Judges (Inquiry) Rules, 1969.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. *Definition.*—In these rules, unless the context otherwise requires,—

(a) "Act" means the Judges (Inquiry) Act, 1968 (51 of 1968);

(b) "Constitution" means the Constitution of India;

(c) "Form" means the form specified in the Schedule;

(d) "Inquiry Committee" means the Committee constituted under subsection (2) of section 3;

(e) "motion" means the motion admitted under sub-section (1) of section 3;

(f) "section" means a section of the Act;

(g) Words and expressions not defined herein but defined in the Act have the meanings respectively assigned to them in the Act.

3. *Presiding Officer.*—The member chosen under clause (a) of sub-section (2) of section 3 shall preside over the meetings of the Inquiry Committee, or, in his absence, the member chosen under clause (b) of sub-section (2) of section 3 shall preside over the meetings of the Inquiry Committee.

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* Published in the Gazette of India Extraordinary, Pt.II, Sec. 3, Sub-section (i), dt. 8-9-1969, pp. 617-23.

4. *Quorum.*—(1) Two members of the Inquiry Committee present at a meeting of the Inquiry Committee shall be the quorum for such meeting.

(2) No meeting of the Inquiry Committee shall be held unless a quorum is present.

5. *Service on the Judge of the charges framed against him.*—(1) The Inquiry Committee shall issue a notice, by registered post acknowledgement due, to the Judge in Form I and shall enclose with the said notice—

(a) a copy of the charges framed by it under sub-section (3) of section 3, and

(b) the statement of the grounds on which each such charge is based.

(2) If the notice referred to in sub-rule (1) is accepted by the Judge, the Inquiry Committee shall file with its records the postal acknowledgement, or where the postal acknowledgement has not been received back, the registration receipt granted by postal authorities.

(3) If the Judge concerned omits or refuses to accept the notice referred to in sub-rule (1), or, if he is not found at his last known address, the Inquiry Committee may order the publication, in such manner as it may think fit, of a notice requiring the Judge to appear at a specified time and place to answer the charges framed against him.

6. *Objection to charges.*—When the Judge appears, he may object in writing to the sufficiency of the charges framed against him and if the objection is sustained by the majority of the members of the Inquiry Committee, the Inquiry Committee may amend the charges and give the Judge a reasonable opportunity of presenting a fresh written statement of defence.

7. Plea of Judge.—(1) If the Judge admits that he is guilty of the misbehaviour, or suffers from the incapacity, specified in the charges framed against him under sub-section (3) of section 3, the Inquiry Committee shall record such admission and may state its findings on each of the charges in accordance with such admission.

(2) If the Judge denies that he is guilty of the misbehaviour or suffers from the incapacity, specified in the charges framed against him under subsection (3) of section 3, or if he refuses, or omits, or is unable, to plead or desires that the inquiry should be made, the Inquiry Committee shall proceed with the inquiry.

8. Effect of non-appearance.—If the Judge does not appear, on proof of service on him of the notice referred to in rule 5, or, upon publication of such notice, the Inquiry Committee may proceed with the inquiry in the absence of the Judge.

9. Report of the Inquiry Committee.—(1) Where the members of the Inquiry Committee are not unanimous, the report submitted by the Inquiry Committee under section 4 shall be in accordance with the findings of the majority of the members thereof.

(2) The presiding officer of the Inquiry Committee shall—

(a) cause its report to be prepared in duplicate,

(b) authenticate each copy of the report by putting his signature thereon, and

(c) forward, within a period of three months from the date on which a copy of the charges framed under sub-section (3) of section 3 is served upon the Judge, or, where no such service is made, from the date of publication of the notice referred to in sub-rule (3) of rule 5, the authenticated copies of the report to the Speaker or Chairman by whom the Committee was constituted, or where the Committee was constituted jointly by them, to both of them:

Provided that the Speaker or Chairman, or both of them (where the Committee was constituted jointly by them), may, for sufficient cause, extend the time within which the Inquiry Committee shall submit its report.

(3) A copy of the report of the Inquiry Committee, authenticated in the manner specified in sub-rule (2), shall be laid before each House of Parliament.

(4) Where the majority of the members of the Inquiry Committee makes a finding to the effect that the Judge is guilty of a misbehaviour or that he suffers from an incapacity, but the third member thereof makes a finding to the contrary, the presiding officer of the Inquiry Committee shall authenticate, in the manner specified in sub-rule (2), the finding made by such third member, in duplicate and shall forward the same along with the report submitted by him under section 4.

(5) An authenticated copy of the finding made by third member, referred to in sub-rule (4), shall also be laid before each House of Parliament.

(6) Where the majority of the members of the Inquiry Committee makes a finding to the effect that the Judge is not guilty of any misbehaviour or that he does not suffer from any incapacity, and the third member thereof makes a finding to the contrary, the Inquiry Committee shall not disclose the finding made by such third member to Parliament or to any other authority, body or person.

10. *Recording of evidence*-(1) The evidence of each witness examined by the Inquiry Committee shall be taken down in writing under the personal direction and superintendence of the presiding officer thereof and the provisions of the Code of Civil Procedure. 1908 (5 of 1908), shall, so far as may be, apply to the examination of any witness by the Inquiry Committee.

(2) A copy of the evidence, oral and documentary, received by the Inquiry Committee shall be laid before each House of Parliament along with the report laid before it under section 4.

11. *Facilities to be accorded to a Judge for his defence*-—(1) Every Judge for whose removal a motion has been admitted shall have a right to consult, and to be defended by, a legal practitioner of his choice.

(2) If the report of the Inquiry Committee contains a finding that the Judge referred to in sub-rule (1) is not guilty of any misbehaviour or does not suffer from any incapacity, then the Central Government shall reimburse such Judge to the extent of such part of the costs of his defence as the Inquiry Committee may recommend.

12. *Travelling and other allowances.*—(1) A member of the Inquiry Committee shall be entitled to travelling allowances for the journey from his usual place of residence to, and from, the place where any meeting of the Inquiry Committee is held and shall also be entitled to daily allowances in respect of tours undertaken by him in connection with any meeting of the Inquiry Committee.

(2) The travelling and daily allowances referred to in sub-rule (1) shall be payable at the rates admissible,—

(a) in the case of a member referred to in clause (a) of sub-section (2) of section 3, to a Judge of the Supreme Court;

(b) in the case of a member referred to in clause (b) of sub-section (2) of section 3, to a Judge of a High Court; and

(c) in the case of a member referred to in clause (c) of sub-section (2) of section 3, to a Judge of a High Court.

13. *Travelling and daily allowances to witnesses.*—(1) Every witness who is summoned to give evidence, or to produce a document or thing before the Inquiry Committee, shall be paid travelling and daily allowances at such rates as the Inquiry Committee may determine.

(2) In determining the rates of travelling and daily allowances under sub-rule (1), the Inquiry Committee shall have regard to the rates at which travelling and daily allowances are payable to witnesses who are summoned to give evidence or to produce documents before a civil court in the State or Union Territory in which the witness gives evidence or produces any document or thing before the Inquiry Committee.

14. Central Government to bear travelling and other allowances.—The travelling and other allowances referred to in rules 12 and 13 shall be borne by the Central Government.

15. Cost of medical examination etc.—The costs of the medical examination of a Judge, made under sub-section (5) of section 3, shall be borne by the Central Government.

16. Adoption, passing and transmission of address.—(1) Where the Inquiry Committee, or the majority of the members thereof, makes a finding to the effect that the Judge is guilty of any misbehaviour or that the Judge suffers from an incapacity, the Secretary of the House of the People or the Council of States, as the case may be, shall prepare, in duplicate, an address in Form II.

(2) A copy of the motion admitted under sub-section (1) of section 3 shall be reproduced as an Annexure to such address.

(3) The Speaker, or in his absence the Deputy Speaker, or the Chairman, or in his absence the Deputy Chairman, as the case may be, shall fix a day for the consideration by the House of the People or the Council of States, as the case may be, of the address prepared under sub-rule (1), and such day shall be so fixed that the address may be supported by both Houses of Parliament in the same session.

(4) The address, prepared under sub-rule (1), and the motion, shall be put to vote together in each House of Parliament.

(5) If the address referred to in sub-rule (1) is supported by a majority of the total membership of the House of the People or the Council of States, as the case may be, and by a majority of not less than two-thirds of the members of that House present and voting, the address shall be transmitted, as

expeditiously as possible, to the other House of Parliament with a message to the effect that the address has been so supported.

(6) The Secretary of the House of the People or the Council of States, as the case may be, in which the address is so supported, shall, before transmitting the address to the other House, make the following certificate on the top of the address, namely:—

> "Certified that at a sitting of the House of the People/ Council of States held on the....., the under-mentioned address was supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting at such sitting.
> Secretary"

(7) When the message referred to in sub-rule (5) is received by the House of the People or the Council of States, as the case may be, the Speaker, or in his absence the Deputy Speaker, or the Chairman, or in his absence the Deputy Chairman, as the case may be, shall fix a day for the consideration of the address which has been supported by the other House and such day shall be so fixed that the address may be supported by both Houses of Parliament in the same session.

17. *Presentation of address to the President.*—(1) When the address is supported by each House of Parliament by the majorities specified in clause (4) of article 124 of the Constitution, the Speaker, or in his absence, the Deputy Speaker, and the Chairman, or in his absence, the Deputy Chairman, shall separately prepare, in duplicate, the address as supported by both Houses of Parliament, and shall separately authenticate the same by appending thereon a certificate to the following effect, namely:—

> "Certified that at a sitting of the House of the People/ Council of States held on the....., the address specified above was supported by the House of the People/Council of States by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting at such sitting."

(2) A copy of the address, as authenticated in the manner specified in sub-rule (1), shall be separately presented by the—

(a) Speaker, or in his absence, the Deputy Speaker,

(b) Chairman, or in his absence, the Deputy Chairman, to the President as expeditiously as possible, and, in any case, before the expiry of the session in which the address is so supported.

(3) The duplicate copy of the authenticated address shall be kept in the House of the People or the Council of States, as the case may be, for its record.

THE SCHEDULE

[*See* rule 2(c)]

FORM I

[*See* rule 5(1)]

To

Shri.....

Judge, Supreme Court of India/High Court at.....

WHEREAS a motion for presenting an address to the President praying for your removal from your office as a Judge of the Supreme Court/High Court at.....has been admitted by the Speaker of the House of the People/ Chairman of the Council of States;

AND WHEREAS the Speaker or the Chairman, or both, has/have constituted an Inquiry Committee with me, a Judge of the Supreme Court of India, as the presiding officer thereof for the purpose of making an investigation into the grounds on which your removal has been prayed for;

AND WHEREAS the Inquiry Committee has framed charges against you on the basis of which investigation is proposed to be held;

You are hereby requested to appear before the said Committee in person, or by a pleader duly instructed and able to answer all material questions relating to the inquiry, on the.....day of.....at.....O'clock in the forenoon/afternoon to answer the charges;

As the day fixed for your appearance is appointed for the final disposal of the charges levelled against you, you are requested to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Please take notice that in the event of any default in your appearance on the day afore-mentioned, the investigation into the grounds on which your removal has been prayed for shall be made in your absence.

Given under my hand this day.....

Presiding Officer,
Inquiry Committee.

Enclosures:—

1. A copy of the charges framed under sub-section (3) of section 3 of the Act.

2. Statement of grounds on which each charge is based.

NOTE.— *Strike out the words which are not applicable.*

FORM II

[*See* rule 16(1)]

WHEREAS a notice was given of a motion for presenting an address to the President praying for the removal of Shri.....from his office as a Judge of the Supreme Court of India/High Court at .....by..... members of the House of the People/Council of States/both Houses of Parliament (as specified in the Annexure 'A' attached herewith);

AND WHEREAS the said motion was admitted by the Speaker of the House of the People/Chairman of the Council of States/both by the Speaker of the House of the People and the Chairman of the Council of States;

AND WHEREAS an Inquiry Committee consisting of—

(a) Shri....., a Judge of the Supreme Court of India,

(b) Shri....., Chief Justice of the High Court at....., and

(c) Shri....., a distinguished jurist,

was appointed by the Speaker of the House of the People/Chairman of the Council of States/ both by the Speaker of the House of the People and the Chairman of the Council of States, for the purpose of making an investigation into the grounds on which the removal of the said Shri.....from his

office as a Judge of the Supreme Court of India/ High Court at .....has been prayed for;

AND WHEREAS the said Inquiry Committee has, after an investigation made by it, submitted a report containing a finding to the effect that Shri.....is guilty of the misbehaviour/suffers from the incapacity specified in such report (a copy of which is enclosed and marked as Annexure 'B');

AND WHEREAS the motion afore-mentioned, having been adopted by the House of the People/Council of States in accordance with the provisions of clause (4) of article 124 of the Constitution of India, the misbehaviour/incapacity of the said Shri.....is deemed, under sub- section (3) of section 6 of the Judges (Inquiry) Act, 1968, to have been proved;

NOW, THEREFORE, the House of the People/Council of States requests the President to pass an order for the removal of the said Shri.....from his office as a Judge of the Supreme Court of India/High Court at.....

Speaker/Deputy Speaker of the House of the People Chairman/Deputy Chairman of the Council of States

NOTE.—*Strike out the words which are not applicable.*

ANNEXURE 'A'

[See rule 16(2)]

[A copy of the motion should be reproduced here]

ANNEXURE 'B'

[A copy of the report of the Inquiry Committee should be enclosed and marked as Annexure 'B']