

SUPREME COURT ASSERTS AS CONSCIENCE KEEPER OF THE CONSTITUTION OF INDIA (2014). By Justice S.N. Aggarwal, Universal Law Publishing Co.,C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033.Pp lv + 490. Price Rs.695/-.

THE BOOK¹ under review is a compilation of twenty landmark judgments of the Supreme Court of India carefully assorted by the author. As per confession of the author this book is the fruit of blessings of his spiritual preceptor Sudhanshu Ji Maharaj. However, after wading through the bulky compendium the reviewer feels that there has been a deeper motivation for him to undertake this labour of love, though it might have been induced by his Guru. In the very beginning the author introduces the reader to Gopinath Bardoloi, the then Chief Minister of Assam, who died in harness on 6.8.1950, almost penniless and without providing for his widow and school/college going children. At the instance of Jairamdas Doulatram, the then Governor of Assam, Jawahar Lal Nehru, Prime Minister of India, made a contribution of Rs.5,000/- to the bereaved family. Some scholarships were given to the children and a small pension for the family was arranged. It is the steep fall in the moral values among the politicians from Bardoloi to the present crop of politicians which motivated the author for the present venture. Another value dear to the heart of the author appears to be the independence of judiciary. This he has demonstrated by reproducing correspondence between Sardar Patel, Jawahar Lal Nehru and Harilal J. Kania J, first Chief Justice of India. In a report prepared during the inquiry against Shiva Prasad Sinha J of Allahabad High Court, some comments about the conduct of Nehru were made by the then Federal Court of India. A born democrat and holding independence of judiciary in high esteem, Nehru was piqued over these comments, which he wanted to explain to Kania J as undeserved. Though the correspondence remained inconclusive yet it shows in ample measure how sacrosanct the independence of judiciary was to Nehru.

Analysis of all these twenty judgments would require a full-sized book. Therefore, for paucity of space it would be possible to make only a passing reference to them.

The anthology begins with *Bihar Assembly Dissolution* case.² Some of the judgments deal with the vengeful attitude of the then health minister to oust P. Venugopal³ from

1 Justice S.N. Aggarwal, *Supreme Court Asserts As Conscience Keeper of The Constitution of India* (2014).

2 *Rameshwar Prasad v. Union of India*, AIR 2006 SC 980.

3 *P. Venugopal v. Union of India*, AIR 2008 SC (Supp.) 969.

the office of the Director of All India Institute of Medical Sciences, New Delhi, the illegal manner in which P.J. Thomas was appointed as Chief Vigilance Commissioner of Government of India,⁴ and the infamous *Black Money* case.⁵ In this judgment, the Supreme Court in addition to issuing some directions and orders also constituted a Special Investigation Team (SIT) headed by two former judges of Supreme Court and including top bureaucrats. As usual the Union of India filed an application under article 141 of the Constitution read with order XLVII rule 6 of the Supreme Court Rules, 1966 seeking modification of the aforesaid order dated 4.7.2011 of the Supreme Court. Though the Government of India fought tooth and nail against the constitution of SIT, yet it is heartening to note that with the regime change, it has finally decided to constitute the SIT (as reported in the Times of India issue dated May 28, 2014). Stormy petrel of Indian politics, Subramanian Swamy filed an application to the Prime Minister for giving permission to prosecute Minister C&IT, for causing loss to the nation worth thousands of crores of rupees. This application remained pending in the PMO for more than 16 months. Thereafter a reply was received by him from the Department of Personnel that CBI had already registered the case. Swamy filed writ petition in the Delhi High Court, which was dismissed. Hence he filed an appeal in the Supreme Court of India, which was allowed. In the judgment⁶ in this case the Supreme Court has issued detailed guidelines for sanction to be granted within three months for prosecution of public servants under the Prevention of Corruption Act. Credit for bringing to light the humongous 2G scam also goes to Subramanian Swamy. His writ petition relating to 2G scam was allowed by a single judge of Delhi High Court. The appeal filed against it by Union of India was dismissed by division bench. Therefore, the Union of India came to Supreme Court with an SLP. Almost simultaneously two writ petitions were filed in the Supreme Court by some good intentioned citizens by challenging the whole process adopted by the Ministry of Telecommunication in the allocation of spectrums. The writ petitions filed in the Supreme Court were accepted and the appeal filed by Union of India was dismissed. The spectrums illegally granted were cancelled and the beneficiaries of these licenses at the cost of nation were burdened with costs.⁷

Since the case relating to 2G scam was of great public importance in which one of the ministers of Government of India was involved and the national loss was in lakhs of crores of rupees and since the proper presentation of the case before the special court set up for this purpose was required, therefore, an application was filed before

4 *Centre for PIL v Union of India*, AIR 2011 SC 1267.

5 *Ram Jethmalani v. Union of India* (2011) 8 SCC 1.

6 *Dr. Subramanian Swamy v. Dr. Manmohan Singh* (2012) 3 SCC 64.

7 *Centre for Public Interest Litigation v. Union of India*, AIR 2012 SC 3725.

the Supreme Court of India for appointment of special public prosecutor in this case. Judgment in this case is included in the anthology. Vide this judgment⁸ in this case, Supreme Court appointed U.U. Lalit, senior advocate as special public prosecutor (in exercise of its powers under article 136 and article 142) in the special court trying 2G scam case. This direction is perhaps unprecedented. The court further held and directed that no other court would stay or impede trial of the 2G scam case. Piqued at these orders Shahid Balwa, one of the accused being prosecuted in the 2G scam case, filed writ petition before the Supreme Court, *inter-alia*, challenging the legality and constitutionality of the orders dated 11.4.2011 and 4.11.2011 in Civil Appeal No.10660 of 2010 passed by the Supreme Court appointing U.U. Lalit as special public prosecutor in the trial of 2G scam case and restraining all other courts from granting stay or impeding the progress in the trial of the 2G scam case. Attack by Shahid Balwa on these orders of Supreme Court was rebuffed⁹ and it was held that the order for trial of the case on day to day basis, or its conclusion by a specific date is not interference in trial.

Pride of place in this anthology goes to the judgment in *Re: Special Reference No.1 of 2012*¹⁰ This special reference under article 143 (1) of the Constitution arose from the judgment of the Supreme Court in *Centre for PIL v. Union of India*,¹¹ by which the spectrum licences illegally granted were cancelled and among others a direction was issued that the fresh licences for 2G spectrum be granted by auction. In *special reference No.1 of 2012* the President of India referred in all 8 questions to the Supreme Court for consideration and report thereon. Most important question among them is question No.1, which reads as under:-

Q. No.1: Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?

The judgment in the 2G scam case left an impression that auction was the only permissible mode of allocation of natural resources of the nation. However after exhaustive study of the case law and the constitutional provisions, especially of articles 14 and 39(b), the Supreme Court ruled that the disposal of natural resources of the nation by methods other than auction was also permissible. However common good as used in article 39(b) was to be ensured. Taking a realistic view of the matter, the Supreme Court ruled that mandatory auction may be contrary to the economic logic

8 *Centre for PIL v. Union of India* (2012) 3 SCC 117.

9 Writ Petition (C) No.548 of 2012 with Writ Petitions (C) No.550, 551, 552 of 2012; 17 of 2013 *et al.*

10 (2012) 10 SCC 1.

11 AIR 2012 SC 3725.

as well. But it stressed that means adopted for the disposal of the natural resources must not be arbitrary or unfair. In conclusion in para No.150 of the report the Supreme Court answered the reference by stating that “our answer to the first set of five questions is that auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances”.

As observed by the Supreme Court, the answers to the question No.2 to 8 would have a direct bearing on the mode of alienation of spectrum and since the Union of India was not questioning the correctness of the judgment in 2G case, so the Supreme Court declined to answer these questions. The presidential reference was answered accordingly.

Verily this judgment can be termed as land mark and path breaking and it lays clear guidelines for the Government of India to be followed in future for disposal of nation’s natural resources.

In *Lilly Thomas*,¹² the Supreme Court declared sub-section 4 of section 8 of the Representation of the People Act, 1951 as *ultra vires* the Constitution. The result was that on the very conviction and sentence to imprisonment for the offences enumerated in section 8 sub-sections (1), (2) and (3) the incumbent Member of Parliament or the state legislature, would immediately lose his membership of the House. Of course this ruling has been made prospective insofar as the legislatures or the parliamentarians who had already filed appeals against their conviction and sentence are not covered by this ruling. Thankfully, this ruling goes a long way in trying to break nexus between the criminals and politicians. Abortive attempt of the Union of India to get *Lilly Thomas* reviewed, has been noted by the author ¹³in the book.

Chief Election Commissioner v. Jan Chaudhary (Peoples Watch),¹⁴ gave to the nation a short-lived rule that a person in jail or police custody could not contest election to the Parliament or State Assembly. The author has appended a note thus: ¹⁵

It was reported in almost all the newspapers dated 20-11-2013 (Wednesday) that the review petition (against Jan Chaudhary) was dismissed by the Supreme Court as infructuous in the light of the amendment brought about in Parliament in the Representation of the People Act, 1951 after the passing of the judgment by the Supreme Court on 10-7-2013. It was also ordered that liberty was granted to challenge the amendment by separate legal proceedings.

12 *Lilly Thomas v. Union of India* (2013) 7 SCC 653.

13 *Supra* note 1 at 391.

14 (2013) 7 SCC 507.

15 *Supra* note 1 at 395.

In *Resurgence India v. Election Commission of India*,¹⁶ *People's Union for Civil Liberties v. Union of India*¹⁷ and *Dr. Subramanian Swamy v. Election Commission of India*,¹⁸ the Supreme Court has given a number of directions for ensuring transparency and confidentiality in the election process. Last two judgments in the anthology are the *Union of India v. National Federation of the Blind*¹⁹ and *T.S.R. Subramanian v. Union of India*.²⁰ In the former, court came to the help of the disabled and so it found it necessary to issue a number of directions to the Union of India, states and their instrumentalities to ensure that their rights are duly protected. In *T.S.R. Subramanian* the Supreme Court, *inter-alia*, ruled that civil servants must work transparently in public interest befitting their constitutional oath. It also directed centre/states to constitute Civil Services Boards (CSB) consisting of high rank serving officers and that Parliament must enact law for setting up CSBs. It also directed that the orders from the superiors should be in writing and that the civil servants must work only on written orders, and that the oral orders given by superiors must be recorded.

These twenty judgments and others of their ilk put in bold relief the process of judicialization which is fast taking place in our constitutional system. From the "Author's Note(s)" scattered throughout the book and general tenor of his comments, the author appears to believe that all ills of the society can be addressed by the Supreme Court. However, some jurists are of the view that it may not always be possible. One eminent jurist²¹ is of the view that "the society adapts very quickly to new turns of legal evolution: it puts pressure on the courts to reveal the exact scope of their latest decisions. To that extent case law has a kind of self-propelling effect. One decision can provoke a series of decisions of similar or nearly similar cases; and the consequences of the series of decisions may have an impact that can in no way be compared to that of the initial decision. At a certain point, however, the court may put a stop to such a seemingly continuous expansion of their area of interference. There is a stage where they become aware that political institutions may be better equipped to solve certain social (and also economic) problems, and that a way should be found to lead such problems to those very institutions." Can India be an exception?

Title of the book tends to take an idealistic view of the Supreme Court, which brings to mind another brilliant anthology with sub-title *Essays in Honour of the Supreme Court of India*, edited by B.N. Kirpal, Ashok H. Desi *et al.* Perceptively the title of the

16 JT 2013 (12) SCC 462.

17 JT 2013 (13) SCC 133.

18 JT 2013 (13) SC 312.

19 (Civil Appeal No.9096 of 2013 arising out of SLP(C) No.7541 of 2009).

20 JT 2013 (14) SC 124.

21 Tim Koopmans, *Courts and Political Interests* 272 (Cambridge University Press, 2003).

book is *Supreme But Not Infallible*. Perhaps a more realistic assessment. This said, one respectfully agrees with Lord Templeman that “The work of Supreme Court of India in protecting the people of India from oppression and in upholding the rule of law demands respect and admiration”.²²

The merit of the book under review is that the learned author has taken great pains to add meticulous annotations to the text of the judgments. Before introducing the readers to a judgment in the anthology, the author appends “Author’s Note” at its beginning. As the judgment unfolds its facts, the arguments advanced by the counsel for the parties and the reasoning adopted by the court, the author at every turn adds annotation with a view to help the reader to find the direction in which judgment is proceeding. This enhances the value and utility of the book especially for layman, who may not be initiated into the intricacies of the lawyers’ law and the lawyers’ reasoning. At places the author enlivens the text with witty remarks, for example,²³ while commenting on NOTA, he gives a hypothetical example of a case where a candidate gets only 1000 votes while other voters (obviously more than 1000) have exercised NOTA. On the sly the author puts a query whether the candidate securing 1000 votes would be declared elected? This begs clarification from the apex court. The book, though an anthology, in itself is well planned and well executed. Get up is excellent and price reasonable. Copious annotations supplied by author enhance the lucidity of this book which shall be found useful equally by the law practitioners, law researchers, law students and lay readers alike.

Beant Singh Bedi

22 “Supreme Court and the Constitution” in B.N. Kirpal, Ashok H. Desai *et al* (ed.), *Essays in Honour of the Supreme Court of India* (Oxford India Paper Backs – sixth impression 2013).

23 *Supra* note 1 at 428.

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