

FULL COURT REFERENCE

FAREWELL TO HON'BLE MR. JUSTICE A.P. SHAH, CHIEF JUSTICE OF THE HIGH COURT OF DELHI: FEBRUARY 11, 2010

MY LORD THE HON'BLE CHIEF JUSTICE, YOUR LORDSHIPS, JUSTICE KANAN, MRS. SWATI SHAH AND OTHER FAMILY MEMBERS OF HON'BLE MR. JUSTICE SHAH, MR. VED PRAKASH SHARMA, CHAIRMAN, BAR COUNCIL OF DELHI, MR. D. K. SHARMA, MR. KIRTI UPPAL AND OTHER OFFICE BEARERS AND EXECUTIVE MEMBERS OF THE DELHI HIGH COURT BAR ASSOCIATION, OFFICE BEARERS OF OTHER BAR ASSOCIATIONS, STANDING COUNSEL FOR THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF NCT OF DELHI, RESPECTED SENIOR MEMBERS, MY COLLEAGUES AT THE BAR, LADIES AND GENTLEMEN:

I had had the privilege of addressing you before also, to bid farewell to Chief Justices and Justices of this Hon'ble Court. But this time I carry a disturbing feeling of loss, which I seldom felt before. Today we are bidding farewell to a Chief Justice who has endeared us; who remained every inch a justice and chief justice though.

Destiny played its romance disfavoured your Lordship and favouring us. Disfavour, because your Lordship was not called to the Apex Court, which you richly deserved. Favour to us because, we have been able to have your Lordship with us till now.

When I say every inch a justice and chief justice, I mean every inch your Lordship worked hard and struggled to give the right decision in every case that came before you. Whether won or lost, every lawyer left your Court with the feeling that the case was considered fully and fairly. An eminent scholar and an astute judge, yet friendly and down to earth you are. That is how and why your Lordship became dear to us. When Fali S. Nariman, the senior advocate and eminent jurist who needs no introduction, openly said that *"I have always been of the firm opinion that he is a role-model for all judges. The fact that Justice A.P. Shah is not yet in the Supreme Court is a God-send to the judges and lawyers of the Delhi High Court but it is a matter of disappointment for the rest*

of us who have known him personally and this is only because of the vagaries of our present system of judicial appointments,” what I said get elaborated to the hilt - that destiny played its romance to your Lordship’s disfavour and to our favour.

I would like to go back to the scene when your Lordship was bidding farewell to the Madras High Court. At that farewell function, your Lordship said *“the working efficiency of the judiciary depended on the people manning it and their capacity to generate confidence in the people who waited for receiving the service.”* The sense is not new, but the practice is a much neglected and more forgotten episode. The simplest things are perhaps the hardest to follow. Generating confidence in the people who wait for receiving service is the crux. Your Lordship did not fail in bringing it out during your tenure here also, as you did in Mumbai and Chennai. You preached what you could practice. There was no divorcement of theory from practice.

We are now passing through a time when the higher judiciary is caught in a whirlwind – is hoist with its own petard. If we contrast the situation with your Lordship’s words that *working efficiency of the judiciary depended on the people manning it*, the sense transpires sharp and clear.

Your Lordship answered the tests of time with your bold rulings. They drew only bouquets. The judgment in Secretary General, Supreme Court of India v. Subhash Chandra Aggarwal, which is a landmark one, rightly emphasized that disclosures about financial assets are part of judicial accountability, that it should be seen as an essential ingredient of contemporary accepted behaviour and established convention (paragraph No. 86). The fragility of defence that the 1997 and 1999 Resolutions would not have any binding effect and that would not be in the nature of law, is exposed and explained with pragmatic wisdom and a pedagogic resilience that *“such an argument would mean that individual Judges will simply declare that they are not bound by any of the resolutions of the Court and they are free to act according to their whim. Such a position is wholly untenable and unacceptable for the proper functioning of the judiciary as a self-regulatory independent mechanism of State, accountable to the people and to the Constitution of India”* (paragraph No.90). The judgment has a beautiful epilogue, spread in paragraphs 121 and 122. Your Lordship unhesitatingly added that *“Democracy expects openness and openness is concomitant of free society”*. When you conclude the sentence with the marvellous phrase coined by US Justice Louis Brandeis, which refers to the benefits of openness and

transparency, that “*Sunlight is the best disinfectant,*” the whole nation listens. What comes from the depth of truth has the quality and power of entering hearts deeply. That is why Tagore prayed his country to awake into that heaven of freedom, where words come out from the depth of truth. Freedom sans truth is dangerous. Anything without truth is dangerous and/or useless. That is why truth stands prominent in all our value systems and religious teachings. The judgment registers feeling of people enunciated in the Constitution, beyond logical and quantitative proofs.

I must add that a common man felt happy reading the daring move of the judges asserting transparency. We hear and see liberty and rights being misinterpreted and misused to serve regionalism and separatist tendencies. When we fail to balance the contrasting pulls and push in society, disequilibrium will be the result.

Another landmark judgment delivered by your Lordship in the recent past is that in *NAZ Foundation v. Government of NCT of Delhi*. This judgment has decriminalized Section 377 of the IPC, by declaring that Section 377 IPC, insofar it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. Winston Churchill’s words that “*humanity, not legality, is the quintessence and conscience of the court’s functionality,*” find expression here. This judgment has attained popularity in India and abroad.

Just a casual search over the internet would reveal pages and pages of comments and acclaim. One comment reads “*Architect of HC gay order known for bold rulings.*” Yes, as I said before, your Lordship is known for your decisions. Justice has to be powerful and power just. Your Lordship’s rulings helped provide fans and toilet doors for prisoners, low-floor buses and railway station ramps for the disabled and freedom of expression for creative artists. During your Lordship’s less than three year stint in Madras High Court as its Chief Justice three institutions – prisons, juvenile homes and government observation homes for women saw meaningful reforms. Alongwith a companion judge, your Lordship formed a committee to oversee their working and then followed it up with a whole lot of recommendations. The result – prisons in Tamil Nadu now have ceiling fans and a decent diet protocol. So is the innovative introduction of low-floor buses in Tamil Nadu, fitted with lifts to help the disabled use public transport.

During your Lordship’s tenure in Mumbai as the Acting Chief Justice of Bombay High Court, your verdict opened up a new world to over 30 toddlers living with their mothers in Byculla jail, who

never stepped out of prison. The order directed the State Government to provide space in the prison complex for an Anganwadi, furniture for play school and appoint teachers as well. This is not merely an innovation, but a revolutionary innovation. Scanning the journals, one can easily find your Lordship's judgments which would remain a living testimony to your erudition, ability, skill, passion and commitment.

Landmark judgments, E-Courts, Mediation Centre, and Arbitration Centre etc., witness your Lordship's passion for rendering justice and adopting innovative measures to fulfill the task. Without your initiative and drive, some of the things - our mediation movement and arbitration centre would not have happened so quickly. The memorandum signed between the Arbitration Centre and ASSOCHAM would remain a milestone in spreading dispute resolution beyond courts.

Retirement is not a nice thing to happen. But good professionals never retire. The field of law is still there for your Lordship with its magnificent arms stretched out to welcome you. Time cannot be understood purely in a quantitative manner. It is also a question of quality. Time can pass quickly or slowly, depending on the circumstances. Time is also the most democratic resource in the world. We all have the same amount of time at our disposal, but how we make use of it varies greatly. Many people desire eternal life without knowing how to get through the weekend. In your Lordship's case the approximately two decades spent as an Hon'ble Judge, has been well-spent, much for the benefit of your fellow men. Justice Krishna Iyer while speaking about judicial review and judges, said: *"Some judges are somnolesent while arguments are going on. Some do not have the ability to control order in the court and cacophony prevails. Some 'Lordships' do not attend court punctually or even at all. There are brethren who draw 200 litres of petrol every month as perk without using them thereby making illicit income without paying tax with a proprietariat and exotic bias. It is not an exception to find judges. Some do write judgments within a reasonable time and yet others do not pronounce judgments **at all** and retire merrily drawing their salary. Their perks are plentiful but their performance perfunctory."* But here is a Judge, who remained every inch a judge in its true sense and by any yardstick, who added glory to the institution he worked and in fact, lived for. When a plea for information on total number of cases, pending for judgment after conclusion of arguments in the last three years was made, the Apex Court had to grope for answers and has yet to find the same in numerical terms. This Hon'ble Court headed by your Lordship, had

neither any hesitation nor any difficulty to answer the same with mathematical accuracy. That is determination, and administration reflecting responsibility.

Life is a time continuum along which we constantly move, from the day we are born until the day we die. There is no dress rehearsal for life. We only get one chance to live – now. The past exists in our memory; the present exists in our minds; and the future in our vision, according to Saint Augustine. Your Lordship leaves us physically from the position of Chief Justice, but giving us your vision, of how good a High Court should and can be. You made us dream big, keep high ambitions and deeper commitments and follow them with hard work. You gave example in ample measure that ideals and values are not meant to be preached, but practiced always. Yes, an ounce of practice is better than a pound of preachment. We will endeavor to live upto your dreams. The power of patience, the art of listening and the skill of understanding were in you, in abundance.

When we speak of eminent people who did only public good, the more we say, the more will remain to be said. If I go on doing that, this farewell episode would lose its charm and nascence. As unheard melodies are said to be sweeter, let me say that unsaid things about your Lordship are yet nicer.

From the core of our hearts, Sir, we wish you the very best – a long and healthy life filled with more creative output and fulfilment. You are respected and loved by us and will be remembered fondly and with the respect due to a judge who has dedicated nearly two decades of his life to serving the courts. We hope we too would remain in your thoughts.

Adieu Sir, Adieu.

Thank you.

A.S. Chandhiok
February 11, 2010.