

25th June 2014

Respected Chief Justice,

I have felt deeply honoured and moved by your request and persuasion to be a Judge of the Supreme Court. I have felt very proud that the members of the Collegium have participated in this powerful invitation. When I received this august invitation from the Court, I felt duty bound to answer in the positive to what I thought (and still think) was a divine calling. I accepted it in that spirit.

I must add that to invite a leading member of the Bar, and his appointment to the Court, must engender expectations of positive conduct and contribution. I have always believed that the Executive Government would so perceive and understand. Clearly, this is not the case. The recent weeks have witnessed some serious constitutional aberrations.

Over the past two weeks quite a few media reports have voiced the Union Government's reservations about my appointment. These reports speak of alleged adverse reports against me by the Intelligence Bureau and the CBI. I must say that these media reports are malicious insinuations based on half-truths, and appear to be a result of carefully planted leaks aimed at generating doubts in the minds of the Collegium and of the public as to the suitability and propriety of appointing me as a judge of the Supreme Court.

I am fully conscious that my independence as a lawyer is causing apprehensions that I will not toe the line of the Government. This factor has been decisive in refusing to appoint me. I have no illusions that this is so. I find it strange that no newspaper even spoke of my work over 34 years. The very fact that the Executive Government has not acknowledged my work, is sufficiently indicative of the true nature of its intentions.

I must, therefore, take this opportunity to clarify the allegations made in these news reports. I may add that on 15th May 2014, the Intelligence Bureau had given me a clean chit.

The IB has sought my advice on sensitive matters of national security for over 25 years (including during the previous NDA regime). In fact the then Deputy Prime Minister, Shri L. K. Advani, used to treat me with so much courtesy. The CBI has also consulted me on numerous occasions (before, during, and after my tenure as Law Officer) and I continued to have been its lead lawyer even after my resignation from the post of Solicitor General. Among the various matters in which I have led the State and the CBI are the Parliament Attack case, the Bombay Blasts appeals, and in the matter of the confirmation of the death penalty to Ajmal Kasab. One wonders why the CBI would repeatedly engage me as lead counsel over the past 20 years if there was any doubt. I have reliably learnt that the Ministry of Law & Justice initiated an inquiry after 15th May 2014, with a clear mandate to find something to describe me as unsuitable.

Further, media reports have alleged that I had convened a meeting between CBI's officers and the counsel for a person who was a suspect at the time in the 2G case. This is factually incorrect. CBI officers never met with Mr. T. R. Andhyarujina (senior advocate) at my home or office in connection with the 2G case, or even otherwise. I must add that I had asked officers of the CBI, within the course of a briefing conference in the matter, to tell me whether their investigation had revealed anything against the former Telecom Minister, so that an incorrect stand might not be taken before the Court. This meeting was conducted separately. I may add that I had advised the then Prime Minister, subsequently, to allow an investigation by the CBI into the conduct of the then Minister, notwithstanding the disposal of the Writ Petition relating to arbitrary allotments. The Prime Minister accepted my advice.

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That I was motivated by the highest sense of assisting the Supreme Court in the matter may be seen from the fact that I had written to the CBI and the then Union Minister for Law and Justice about this and kept them apprised of the happenings in the matter. After this matter had been misrepresented and misreported by a certain English daily, the Court had chastised the reporter in question. Incidentally, any misunderstanding on this issue disappeared with the visit of the Director, CBI to my office, who sought my guidance in all important matters. I am enclosing a copy of a letter I wrote to Mr. Aroon Purie of India Today magazine in response to a story in that magazine pertaining to my involvement in certain aspects of the 2G case. I trust this will suitably clarify the issue.

I am certain (and I am certain that the Collegium will discover as much) that the relevant records would corroborate the above-said position.

Further, I, as Solicitor General, handed over the tapes of recorded conversations of Ms. Nira Radia in the Supreme Court. I may add that Ms. Radia had consulted me years prior to my being appointed Additional Solicitor General, when one of her children had been abducted, and I had no contact with her during my tenure as Law Officer (2005-2011). Allegations have also been made that I used Ms. Radia's offices to get a swimming pool membership. The correct facts are that I had been advised by my physician at the time to get more exercise by swimming. Since the Talkatora Swimming Complex (which I used to frequent at the time) was undergoing repairs, I had requested Mr. Parag P. Tripathi (then ASG), if he could arrange a membership for me at a swimming pool. After sometime I was contacted by the Taj Hotel's management in this regard.

I feel that I must also address here another issue being raised by the media as to why the Government considers me unsuitable for the post of judge. As you are aware, I assisted the Supreme Court between 2007 and 2011 as *amicus curiae* in the matters of *Rubabbuddin Sheikh v. State of Gujarat* [(2007) 4 SCC 404, (2009) 17 SCC 653 and (2010) 9 SCC 171] and *Narmada Bai v. State of Gujarat* [(2011) 5 SCC 79]. Both were *habeas corpus* petitions, the background to which was widely reported in the press over an extended period of time. My actions as *amicus* in the matter were greatly appreciated by the Supreme Court, and this was possible only because of the standards of integrity that I maintain in professional life and my undying respect for the Court. It appears that I am now being targeted because of this very independence and integrity.

As far as the Rubabbuddin Sheikh case is concerned, I would like you to know the correct facts. I was sitting in Court waiting for a matter, which was lower down in the list. The Bench consisted of Justices Tarun Chatterjee and Dalveer Bhandari. It was Justice Dalveer Bhandari who along with Justice Tarun Chatterjee requested me to appear as *amicus curiae* in the matter. I readily accepted the request, which is consistent with the duties of the office of a Law Officer. I found that the petition contained a reference to a letter, which had been written by the Petitioner to the Chief Justice of India, sometime ago. I went to the registry, found out the record, and, found that there was also a reply from the Gujarat police, which had certain annexures which annexures indicated the commission of a murder. Therefore, I recommended to the court, in a sealed cover, that a notice might be issued to the State of Gujarat to explain the disappearance of the said Sohrabuddin. In the first instance, I may add that I also insisted upon the production of Kausarbi by way of an ad-interim writ of habeas corpus at which stage the learned Counsel appearing for the State of Gujarat conceded in the Court that the said Kausarbi had also been killed and cremated! Even then, as a mark of respect for the law and order machinery within the State of Gujarat, I requested a Special Investigating Team, headed by Smt. Geeta Johri, to undertake the investigation into the case. It was during the

investigation of Ms. Geeta Johri that a critical eyewitness, one Mr. Tulsiram Prajapati, was mysteriously liquidated. Then I pleaded for the transfer of the case to the CBI. Even after the CBI had taken over the case, I realized that having regard to various political factors, the investigation may neither be fair nor truthful. I had brought out many anomalies, even of the CBI Report, to the attention of the Supreme Court on many occasions. I may add, that I have never met Mr. Amit Shah and I have only seen his photographs in the newspapers recently. I may also add that, in the course of the hearing of the bail application of Shri Amit Shah, I had said that his liberty should not be infringed and he may be allowed to be enlarged on bail but remain outside the State of Gujarat. This is only to indicate that I had no personal vengeance or any kind of grudge against the said Mr. Amit Shah.

Incidentally, I may add that the present Additional Solicitor General, Shri Tushar Mehta, who was then the Additional Advocate General of the State of Gujarat, had called upon me and expressed certain apprehensions that I must not act out of any political motivation in the matter. I must say, in fairness to Mr. Tushar Mehta, that after my interaction with him, he realised the considerations which prompt me to act in any matter, whether as Solicitor General of India (an office which I think is far beyond any political affiliation) and also my value systems and systems of examination, and he was satisfied that I would act objectively at all stages. I may add, in fairness to the Counsel for the State of Gujarat, Mr. Tushar Mehta and Mr. Ranjit Kumar (whom, I am very happy to know, is the new Solicitor General of India – a classmate of mine) and also Shri Ram Jethmalani, Learned Senior Advocate for Shri Amit Shah, always understood the way in which I was conducting myself and would appreciate the way I would put forward facts. I have never felt that they had any misgivings in the matter. However, I conducted myself not to earn any approbation of my fellow Counsel but to do what is right. This is only an incidental circumstance to show that I had no personal motivation at all.

I may add that I have never met Shri Narendra Modi in my life, except once, that too when I was the Solicitor General of India (a period the memory of which I hope will be forgotten by me with time!!!).

My wife had accompanied me to the dinner of Chief Justices and the Chief Ministers and I was introduced to Shri Narendra Modi, who appeared to have heard of me from before, and greeted me with a measure of respect. Incidentally, I mentioned that my wife was born in Mithapur in the State of Gujarat. Shri Narendra Modi very decently asked both of us to come to the State of Gujarat and be his guest of honour. I may add that my wife and I very rarely accept such invitations, and did not avail of any such hospitality. Apart from this meeting with Shri Modi, I never had any interaction with him and it would not be proper on my part to say anything else.

I do not consider that the Executive Government is entitled to judge my character after having seen me in public and professional domain for over 34 years. The fact that such attempts could be made discloses not only a falling standard in constitutionalism, but obviously one encouraged by certain accommodative participants. My character and integrity do not need to be proved every morning. As long as persons like Justices Krishna Iyer and Venkatachaliah stand by me, I do not need to seek further fortifications.

I may add that I also do not want my elevation to be the subject matter of any kind of politicization. Incidentally, I may add that the principal ground on which I resigned as Solicitor General, that law officers are not civil servants governed by the rules to the proviso of Article 309 of the Constitution, has never been addressed.

For a lawyer who has seen the Supreme Court since he was only five years old, it is important to feel that all participating Constitutional functionaries share the criterion of merit. I may add that I have acted strictly according to my conscience at all times as a lawyer and have trained over 125 juniors in the same vein. The standards I have maintained in my professional life have been noticed and praised by many, including one of your predecessors, Justice S. H.

Kapadia, as well as by the former Minister for Law & Justice, Dr. Veerappa Moily. I am enclosing some of these letters for your reference.

I do not wish to be placed in any position of embarrassment, having lived a life of professional dignity and honour. I may add that while I accepted the invitation, I suspended all professional work, including overseas commitments (some of which are academic), and awaited governmental processes to be complete.

While the expression of reservations by certain quarters are unjustified, I would be hesitant to join the Court amidst such speculation. In fact, the events of the past few weeks have raised serious doubts in my mind as to the ability of the Executive Government to appreciate and respect the independence, integrity, and glory of the judicial institution. I do not expect this attitude to improve with time.

You had informed me that you would discuss any queries pertaining to the above issues or otherwise when you returned to Delhi on 28th June. I promised that I would wait till the 28th of June to meet with you and express my desire to withdraw. I told you that my wife and family are undergoing agony at what was a wholly unnecessary experience. I assumed that I would be treated on par with the other nominees for elevation. However, having regard to what has transpired in the matter of segregation of names, of which I was never informed, I will have to withdraw from my silence to await your return to Delhi on the 28th of June.

I am dismayed at reports that the file forwarded by the Court to the Government recommending four names for elevation (including mine), has been 'segregated' and the names of three candidates (not including mine) have been 'cleared' by the Government as well as by the Hon'ble President of India and that warrants have been issued for their appointment. I further understand that this segregation has been carried out without the file being sent back to the Collegium for reconsideration. In fact, I have now reliably learnt that no file was sent seeking reconsideration and that such segregation

and appointments have been made outside your knowledge and also without the active consent of the Collegium. If my understanding is correct, then the aforesaid three appointments appear to be against the framework prescribed by the Constitution and by the Supreme Court in various pronouncements.

If I continue to be a judge-in-waiting, the validity of these appointments is bound to come under a cloud. The three appointees have been my friends over so many years. The least I owe them is that I withdraw. I am, however, unable to dispel the sense of unease that the Judiciary has failed to assert its independence by respecting likes and dislikes of the Executive. While harmony between different organs of the State is a desirable feature, the functionality of each organ is meant to have different, defining characteristics. I am more than willing to step out, but I trust you and your colleagues will undertake suitable introspection. I certainly protest against a very carefully orchestrated drama to overcome a recommendation. I, however, fully forgive all those involved.

Under the circumstances, I withdraw my consent to be appointed a Judge of the Supreme Court, and request you to proceed on that basis, so that I may resume my position at the Bar, from where, I now feel, I will be able to better assist the institution than from within. I request you to communicate the same to the Executive Government. However, I intend to repudiate these outrageous allegations (inspired, as I came to know, by constituents of high authority). The Court owes me, in the very least, a clear statement of confidence, although my personal character is not dependant on the outcome of such willingness. It is an act of closure, which a Court of Justice owes to its own members. By failing to do it, the Court will sink into quicksand.

It is needless to say that I bear no negative feelings against any specific individual, in this regard. As you would agree, the profession teaches such positive spiritual traits.

I wish you and your colleagues a great time ahead in the new term. I value the badge of honour without any diminution, despite the short time that I have held it. I thank you for your kind support in these last few weeks of great uncertainty.

The self-imposed ban on my work, from 8th May 2014, stands lifted. However, as you are aware, since I had made certain transitional arrangements awaiting judicial appointment, I would have to undertake, necessarily, personal and spiritual processes to re-enter as a lawyer. This is necessary, lest any feeling of anger, distress, or disappointment should suddenly invade the conscious mind while performing my duties as a lawyer.

I may add that I will be addressing the media to dispel allegations. However, I will be certainly sensitive to the dignity of the Court, where I was asked to preside and head. It is an honour not to be forgotten.

In accordance with the highest traditions, when such events occur, i.e., when a lawyer invited to the Bench does not get to become a Judge, as a mark of respect, he ceases to practice in that court, till the incumbent Chief Justice demits office. I shall, therefore, be resuming work at the Supreme Court only thereafter. I will, of course, miss your lovely presence. May God bless you in your best endeavours!

With very warm personal regards and my best wishes,

Truly,
Gopal Subramaniam
(Gopal Subramaniam)

Encl: As above

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