

Judgment misread By Gautam Pingle

Letters to the Editor

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The reaction in the media on the the Supreme Court decision is somewhat confusing for the readers who have not been following the case. In Gujarat, the term of the last Lokayukta in Gujarat had ended in 2003 but the State government recommended his successor only in 2006.

When the Gujarat Council of Ministers finalised the name of the retired Judge KR Vyas in consultation with the Gujarat Chief Justice and recommended his name for appointment to the then Governor Naval Kishore Sharma, he sat on the file for three years. He only returned it to the government only in 2009 after Vyas had been appointed Chairman of Maharashtra Human Rights Commission. For three years, the government did nothing and, when it did, for another three years the Governor did nothing to fill this critical post!

The Council of Ministers later suggested names twice but found itself being stonewalled by judicial delays or non-cooperation from Governor Beniwal. She along with forces anti-sympathetic to Chief Minister Narendra Modi have been trying to get a candidate to 'fix' Modi. Modi, on the other hand, has been trying to get if not a sympathetic, at least an objective, Judge appointed.

Justice Mehta was appointed to the post without the Constitutional requirement of 'advice of the council of ministers'. This was the contention of not only the Gujarat Government but also senior counsel Soli Sorabjee. Appearing for National Council for Civil Liberties he told a bench headed by Justice B S Chauhan that "the Governor has acted in breach of the law laid down by the Supreme Court and in opposition to or defiance of the ministerial advice." The Governor claimed it was not necessary to do so in this case!

Oddly, the Court agreed with the contention that the Governor was in error but upheld the appointment nonetheless saying that in this case, Governor Beniwal had consulted the Chief Justice in 2011. But the Chief Justice is not the Council of Ministers-- strange are the ways justice works!

The Supreme Court also admonished the Gujarat High Court Bench for passing inappropriate and injudicious remarks and expunged the same. The Gujarat Governments contention was also that Justice Mehta was inappropriate for the post as he had been active in playing the role of an informal Judge at an informal court organized by an NGO in Ahmedabad to highlight the injustice by Gujarat Government to the Muslim victims of 2002 riots. The whole case has been politicised and a key post in the governance structure has become a plaything of party politics and judicial confusion and compromise.

Whatever one's preferences, this does not reflect well on the political and the judicial systems. It is a pity that none of the actors in this drama have come out shining.

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