

FĀKRUDDIN

A

v.

THE PRINCIPAL, CONSOLIDATION TRAINING INSTITUTE
AND ORS.

MAY 10, 1995

B

[R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

Judicial propriety—Writ petition decided by a Bench—One of the Judges was counsel to the opposite party, before his elevation—Even after pointing out this fact, he chose to decide the case—Neither justified nor healthy for the institution—Merits of the case is immaterial—Should have been referred to some other Bench—Order set aside and matter remitted back to the High Court.

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In this Appeal, the dispute related to allotment of 'Chaks' in consolidation proceedings. However the dispute did not raise any question of title. The High Court dismissed the Writ petition. Hence this appeal.

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Disposing of the appeal and setting aside the High Court's order, this Court

HELD : 1. The disputes related to allotment of 'Chaks' in consolidation proceedings. Such a dispute does not raise any question of title. No exception, therefore, could be taken to the order passed by the High Court dismissing the writ petition in limine. But what has compelled this Court to interfere with the order of the High Court is that it was decided by a Bench of which one of the judges was a counsel for the respondents before his elevation. It may happen at times that a judge who had appeared for a party before his elevation may have forgotten about it. An order passed in ignorance of such factual error may not be taken notice of. But where it was specifically pointed out, and the Judge was apprised of it, yet he chose to decide the case, such an act with party to judge is neither justified nor healthy for the institution. The result of the decision is immaterial. May be that another Bench hearing the case may have come to same conclusion. [390-H, 391-A-C]

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2. It is not the correctness or otherwise of the order but the sense of justice, the public glare in which a judge is exposed every moment which

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- A** is more important. A decision of a case one or other way may effect an individual but a decision by a judge who had appeared for one of the parties irrespective of the stakes, the result and the consequences is of much significance from a social point of view. Therefore, irrespective of the merits of the case the order passed by the High Court is set aside and the matter is remitted back to the High Court for deciding it afresh on merits in accordance with law. Any observation made in this order shall not be taken as deciding the rights of parties. [391-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5791 of 1995.

- C** From the Judgment and Order dated 2.11.90 of the Patna High Court in C.W.J.C. No. 4498 of 1990.

H.L. Srivastava, S.M. Rai, B.M. Sharma and T.N. Singh for the Appellant.

- D** B.B. Singh for the Respondents.

The following Order of the Court was delivered :

Leave granted.

- E** Justice should not only be done but seem to be done. That is the basic structure on which confidence and faith in the institution rests. The Judiciary from the bottom in the hierarchy to the apex at the top commands respect because of its impartiality and objectivity. When a judge directs a case to be listed before another Court or Bench, as he knows one or the other party, it is not because any statutory law precludes him from hearing and deciding it but the propriety is practised and observed to exclude even the remotest possibility of any misgiving or doubt about the impartiality of the judge as even if he is just and fair and his decision is correct yet it may not be satisfying.

- G** What happened in this case is not only unfortunate but to compound it further the learned Judge even when apprised that he was the counsel for the respondent when he was at the bar did not observe that minimum norm which is expected to be observed even by quasi-judicial authorities.

- H** The dispute related to allotment of 'Chaks' in consolidation proceed-

ings. Such a dispute does not raise any question of title. No exception, A
therefore, could be taken to the order passed by the High Court dismissing
the writ petition in limine. But what has compelled us to interfere with the
order of the High Court is that it was decided by a Bench of which one of
the judges was a counsel for the respondents before his elevation. It may
happen at times that a judge who had appeared for a party before his B
elevation may have forgotten about it. An order passed in ignorance of
such factual error may not be taken notice of. But where it was specifically
pointed out, as claimed in the Special Leave Petition, that the learned
Judge was appraised of it and yet he chose to decide the case, is neither
justified nor healthy for the institution. The result of the decision is C
immaterial. May be that another Bench hearing the case may have come
to same conclusion. In fact this court might have refused to interfere with
the order relating to allotment of 'Chakas' but it is not the correctness or
otherwise of the order but the sense of justice, the public glare in which a
judge is exposed every moment which is more important. A decision of a D
case one or other way may affect an individual but a decision by a judge
who had appeared for one of the parties irrespective of the stakes, the
result and the consequences is of much significance from a social point of
view. Therefore, irrespective of the merits of the case we set aside the order
passed by the High Court and remit the case back to the High Court for
deciding it afresh/on merits in accordance with law. Any observation made
in this order shall not be taken as deciding the rights of parties. E

The appeal is disposed of accordingly. No Costs.

G.N.

Appeal disposed of.