

**MOTION FOR PRESENTING AN ADDRESS UNDER ARTICLE 217 READ WITH CLAUSE (4) OF
ARTICLE 124 OF THE CONSTITUTION TO THE PRESIDENT FOR REMOVAL FROM OFFICE OF
JUSTICE SOUMITRA SEN
OF THE CALCUTTA HIGH COURT.**

AND

**MOTION FOR CONSIDERING THE REPORT OF THE INQUIRY COMMITTEE CONSTITUTED TO
INVESTIGATE INTO THE GROUNDS ON WHICH REMOVAL OF SHRI SOUMITRA SEN, JUDGE
CALCUTTA HIGH
COURT WAS PRAYED FOR.**

MR. CHAIRMAN: Shri Yechury may now move the motions and speak.

SHRI SITARAM YECHURY (West Bengal): Thank you, Mr. Chairman, Sir.

I rise, Mr. Chairman, Sir, to move these motions in response to the call of duty to my country and my Constitution. Particularly, I rise at a time when waves of protests are taking place all across the country on there issue of corruption at high places. But, I think, though by accident and not by design, these motions are coming up for debate before us in this august House very fortuitously and it is happening at a time when the Parliament can also exercise its will and resolve of fighting corruption in high places. And it is in that context I rise to move these motions, as you have mentioned, fully conscious of the solemnity of the occasion. I also rise with a deep sense of anguish to move these motions. I shall return to these aspects a little later. Let me first move these motions.

Sir I beg to move the following motion:

This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:

- (iii) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and
- (iv) Misrepresented facts with regard to misappropriation of money before the High Court of Calcutta.

Sir, I also move the following motion:

This House do consider the Report of the Inquiry Committee in regard to investigation and proof of the misbehaviour alleged against Shri Soumitra Sen, Judge, High Court of Calcutta which was laid on the Table of the House on the 10th November, 2010.

Sir, as I have said, I moved these motions fully conscious of the solemnity of the occasion. This arises from the fact that it is for the first time that this august House is considering the invocation of our Constitutional provisions for the adoption of such motions. This has not happened in our history so far.

Sir, I also wish to categorically state that by moving this motion we are not moving against the judiciary as a whole which we hold in the highest of esteem. This is not a motion questioning the integrity of the judiciary. This is a motion against one Judge who has been found to have indulged in conduct that constitutes the definition of misbehaviour within the meaning of our Constitution. It thus makes this Judge unsuitable to occupy the exalted office of a Judge of a High Court. Individual acts of misbehaviour can't find refuge, Mr. Chairman, Sir, behind the integrity of the judiciary as a whole. The issue is one of infallibility and, therefore, the integrity of one individual Judge and not the integrity of the judiciary as a whole. This motion is, therefore, moved, as I have said, not to question the integrity but to strengthen that very integrity of our judiciary from being besmirched by one act of a single Judge.

Mr. Chairman, Sir, our Constitution very rightly provides the judiciary with a very important position and role. People's faith in the independence and integrity of our judiciary is a very crucial element in the functioning and maturing of our democracy. It would be a very sad day if this faith of the people is undermined due to the acts of conduct of an individual member. The judiciary is held in high esteem by both the people and the system as it dispenses with justice and is one of the important organs of our State. The Judges are correctly assumed to be people of character, honesty and integrity who discharge their duties and functions without fear or favour in the spirit of upholding justice. It is, therefore, a call of duty to the nation to correct any aberration that may lead to the undermining of this faith. I have moved this motion in response to this call of duty.

As I have said, Sir, I moved these motions also with a deep sense of anguish. There is no sense of frivolity or elation, neither is there any sense of vindictiveness or retribution. These motions are, therefore, moved with full sanction of our Constitution and in accordance with these provisions.

Sir, my grandfather retired as a Judge of the Andhra Pradesh High Court when I was eight years old and I learnt at that time that a Judge is not a Judge only in the court, but a Judge is a Judge everywhere else in the society and that his acts, inside or outside the court, are reflection on the judiciary as a whole. I think this spirit has been contained in the Inquiry Report to which, Sir, you wanted us to confine. When the Inquiry Report comments on the character of a judge, both inside and outside the court - I read from this; in order to establish the charge - that since these acts of misbehaviour were committed when Justice Soumitra Sen was not a member of the Bench or not a judge, therefore, they cannot be applicable, that I think is untenable on these grounds. I quote from the Inquiry Committee Report. It says, "A judge of the High Court is placed on a high pedestal in our Constitution simply because Judges of High Courts like Judges of the Supreme Court have functions and wield powers of life and death over citizens and inhabitants of this country, such as are not wielded by any other public body or authority. It is a power coupled with a duty, on the part of the Judge to act honourably at all times whether in court or out of court. Citation of case law is superfluous because the categories of 'misbehaviour' are never closed. In interpreting Articles 124 (4) and (5) and the provisions of the Judges (Inquiry) Act, 1968 and when considering any question relating to the removal of a Judge of the higher Judiciary from his office, it must not be forgotten that it was to secure to the people of India a fearless and independent judiciary that the Judges of Superior Courts were granted a special position in the Constitution with complete immunity from premature removal from the office except by the cumbersome process prescribed in Articles 124 (4) and (5) read with the law enacted by Parliament, the Judges Inquiry Act, 1968.

The very vastness of the powers vested in the Higher Judiciary and the extraordinary immunity granted to Judges of the High Courts and of the Supreme Court require that Judges should be fearless and independent and that they should adopt a high standard of rectitude so as to inspire confidence in members of the public who seek redress before them. While it is necessary to protect the Judges from motivated and malicious attacks, it is also necessary to protect the fair image of the institution of the Judiciary from such of those Judges who choose to conduct themselves in a manner that would tarnish this image. The word 'misbehaviour' after all is the antithesis of 'good behaviour'. It

is a breach of the condition subsequent upon which the guarantee of a fixed judicial tenure rests. High judicial office is essentially a public trust and it is the right of the people through its representatives in the Parliament to revoke this trust but only when there is 'proved misbehaviour'."

This, Sir, is what I think the Inquiry Committee has proven in its report that it submitted to you which has been laid on the Table of the House.

The Constitution also provides specific provisions which are essential, as I said, for the independence of the Judiciary, but also for safeguards in the process of the removal of a judge. These provisions, in my opinion, are aimed at strengthening the independence of the Judiciary rather than undermining it. The provisions for removal, however, are the most stringent and come into effect only in the case of 'proved misbehaviour'.

I think, this hon. House must refresh itself with strict safeguards that have been provided by the Constitution in order to ensure that no particular member of the Judiciary is moved against in a spirit of vendetta or vindictiveness. These are: (1) At least 50 Members of the Rajya Sabha or 100 Members of the Lok Sabha must bring a motion in either House; (2) The hon. Chairman or the hon. Speaker will apply his or her mind before admitting the motion; (3) Once admitted, the Chairman or the Speaker will constitute a high level inquiry committee under the Judges Inquiry Act; the concerned judge will have full opportunity for defence before this Committee; (4) If the Committee does not find the judge guilty, then the matter ends there with no scope of any parliamentary or judicial review. It is only when the Committee finds the concerned judge guilty, will the matter come up before the Parliament; (5) The Parliament cannot decide the matter by a simple majority; a two-thirds majority is required. The concerned judge will have the opportunity to make his defence once again before the Parliament, in that House where it is moved. Sixthly, both the Houses of Parliament will have to decide, by two-thirds of majority, separately and within the same Session of Parliament. Finally, even after his removal by the President of India, following the decision, when we adopt these Motions today, taken up by both the Houses, the Judge in question, in accordance with the Supreme Court's directives, can seek redress from the Supreme Court by way of a judicial review.

Thus, Mr. Chairman, Sir, there is very little ground to apprehend that justice will not be done to these safeguards. Therefore, as far as the present case is concerned, we have reached the fifth stage.

The Report of the Inquiry Committee has been laid before Parliament, on the 10th of September, as I have said, and the Report, unambiguously upholds these charges. I quote: "Whether the grounds of misconduct, which Justice Soumitra Sen has been charged with, if proved, amount to misbehaviour under article 124 (4) read with article 217 (1) of proviso (b). In the opinion of the Committee, the grounds of misconduct, as set out in the Motion, when proved, would amount to misbehaviour under the relevant articles. Then, it proceeds to establish this unambiguously. Sir, since you have told us about the paucity of time, I do not want to go through a long quotation of the Inquiry Committee. But it enlightens us how this entire concept of misbehaviour had come in the Act of 1935, in the Constituent Assembly Debates, and how, under the present constitutional provisions, both the charges against Justice Soumitra Sen have been held to be valid and unambiguously held to be correct. I quote: "In view of the findings on Charge I and Charge II above, the Inquiry Committee is of the opinion that Justice Soumitra Sen of Calcutta High Court is guilty of misbehaviour under article 124 read with proviso (b) to article 127 (1) of the Constitution of India." So, after this, I think, the matter needs to be treated as closed. And the Inquiry Committee has, actually, provided us with all the defence. However, since you have referred to the defence of Justice Soumitra Sen as well, I would like to refer to one of the aspects that he has referred to in his defence. In his defence to the reply to the Motion submitted to the hon. Chairman by myself and 57 others, Justice Soumitra Sen invokes, from French history, the Dreyfus Affair. Then, he proceeds to say, "The march of time has witnessed thousands, all over the world, wrongly persecuted in the name of justice and for upholding the rule of law." He then proceeds to cast aspersions on the then Chief Justice of India, whose letter to the Prime Minister, seeking removal of Justice Soumitra Sen, was appended to our Motion, and other members of the highest judiciary who have either pronounced or opined against him, to try and establish that "the verdict was already reserved even before the trials commenced." Now, the invocation of Dreyfus Affair, I think, is thoroughly inappropriate. The Dreyfus Affair, all of us will know, was brought into public domain by the famous French intellectual and writer, Emile Zola. It was brought about at a time when the entire battle was taking place in Europe over the formation of the

nation States. It was brought about at a time when secularism and separation of the Church from the State was a big affair in the history of Europe. And, at that point of time, somebody caught in the crossfire cannot be treated as an example of somebody being wronged and abstracted from this history, I think, it will be completely out of context to have brought this in here. But it is from this process of evolution of human civilization, you have the French Philosopher, Charles Montesquieu, who laid down the benchmark, in a modern democracy, for checks and balances between these three important organs, namely, the Executive, the Legislature and the Judiciary. And, it is on that basis that our Constitution has also been drawn up. And, while working out the mechanics of the three wings to play a joint participatory role in our Constitution, we define the centrality of the will of the people." The Preamble begins by saying, "We, the people". This centrality of the will of the people, is expressed through its elected representatives from Parliament, and this centrality is supreme in our constitutional scheme of things. And it is with this supremacy today that we are taking up this matter. And I wish, instead of quoting the Dreyfus Affair, we would have rather recollected what we stand for today, on the basis of what law, and whether these laws are being violated.

But if, at all, you want to go back into history, Sir, I think it is more appropriate to recollect the debate in the British Parliament on the Censure Motion against Robert Clive when he was charged with amassing huge amounts of money after the Battle of Plassey and the loot of Kolkata. And, Sir, Thomas Babington Macaulay, the same Macaulay who is known for his infamous minute on education in colonial India, notes, Clive at that time was trying to justify what he did to the rapacious loot of Kolkata by saying that this was a city waiting to be taken. People welcomed me with both extended hands, one laden with gold, the other laden with gems and jewellery, and, then, justifying his loot, he goes on to say, and it is in the House of Commons Records, Sir, "By God, Mr. Chairman, at this moment, I stand astonished at my own moderation". Now, according to the law of the land, at that point of time you have violated that law and you have committed acts of misbehaviour. You judge yourself from the moment of the law of the time.

Let us not go back into history and draw parallels which are not applicable. Or, for that matter, Sir, if you really want to go back into history, let us go back to the history of impeachment of Warren Hastings.

For seven long years the House of Lords heard the case of Warren Hastings after the House of Commons had impeached him. Edmond Burke in one of his most memorable orations, when he introduced this case to the House of Lords, in fact, defines judges there. It was a brilliant definition, Sir, of what the role of a Judge was in those times. This is 11 scores of years ago, more than two centuries ago. Therefore, there is a time-lag and difference. Where we affirm faith in our Constitution, the faith was affirmed in God then. So, do not misunderstand then when this quotation is given. Burke says in that oration of his recommending the impeachment of Warren Hastings, "Law and arbitrary power are in eternal enmity". And, then, he proceeds to say, "Judges are guided and governed by the eternal laws of justice to which we are all subject. We may bite our chains if we will, but we shall be made to know ourselves and be taught that man is born to be governed by law and that he who substitutes will in the place of law is an enemy of God."

So, what we are talking about is: do we, in accordance with the law of the land as it exists today, the Constitution of the Republic of India and its provisions, find Justice Soumitra Sen guilty of the two charges that we have made?

Sir, even though the proceedings against Clive were not passed because of the times, he committed suicide before he was exonerated. Edmund Burke's plea to the Lordships to impeach Warren Hastings was, "in the name of the people of India whose laws and rights and liberties he has subverted, whose properties he destroyed, whose country he has laid waste and desolate, he needs to be impeached". 'This is why he needs to be impeached' is what Edmond Burke argued. But that precisely was what British colonialism wanted to continue in India. For 190 years, it continued that loot and plunder. And, therefore, impeaching him would not have served their political objective. Therefore, after seven long years, as Macaulay says, "The fatigue of time took over and Hastings was allowed to retreat".

But drawing from this history, Sir, in the instant case that we are discussing now, as I said, all the provisions of the Constitution have been scrupulously adhered to, all the matters of contention have been unambiguously disposed of by the duly constituted Inquiry Committee. I have established these points earlier, Sir. But since the labour of argument of Justice Sen's reply has been that the

motion moved by me and 57 other hon. colleagues does not contain any specific amounts of money that have been misappropriated.

Yes, Sir, the Motion does not contain; the Motion was appended with the letter of the then Chief Justice of India to the hon. Prime Minister where the entire case was argued. And, in order to avoid repetition, all the charges that are contained in his letter, we appended that letter. We appended that letter not as a recommendation that you should accept, our Motion. We appended that letter because it contains all the facts which need not be repeated. If the contention is that these facts are not there, I think, that is wrong. If you permit me, I can read out from the letter of the then Chief Justice of India which details all these charges, which Justice Soumitra Sen now today contends are not correct against him. But, all these have been detailed.

Sir, I will take about 5-7 minutes, I may be permitted to read. It says, "On 10th September, 2007, I had asked Justice Soumitra Sen to furnish his fresh and final response to the judicial observations made against him. After seeking more time for this purpose, he furnished his response on 28th September, 2007 requesting that he may be allowed to resume duties in view of the order of the Division Bench of the Calcutta High Court. Since I felt that a proper probe was required to be made into the allegations to bring the matter to a logical conclusion, I constituted a three-member committee consisting of Justice A.P. Shah, the then Chief Justice of the Madras High Court, Justice A.K. Patnaik, the then Chief Justice of the High Court of Madhya Pradesh and Justice R.N. Lodha, Judge of the Rajasthan High Court. The in-house procedure adopted by the Supreme Court and various High Courts is as envisaged in this procedure to conduct a fact-finding inquiry. The committee submitted its report on such and such date, etc., etc." Then, it concluded by saying, I will read out the main charges: "(1) Shri Soumitra Sen did not have honest intentions right from the year 1993. Since he mixed the money received as a receiver and his personal money and converted receiver's money to his own use, there has been a misappropriation at least temporarily of the sale proceeds, (a) He received Rs. 24,57,000 between 25th February, 1993 to 10th January, 1995. But, the balance in his account number so and so and dated so and so was only Rs.8,83,963.05. (b) Further, a sum of Rs. 22,83,000 was then transferred by him into so and so account number, name so and so, and the entire amount was withdrawn in a couple of months reducing the balance to a

bare minimum of Rs. 811, diverting the sale proceeds for his own use with dishonest intentions, (c) He gave false explanation to the court that an amount of Rs. 25 lakhs was invested from the account where the sale proceeds were kept whereas in fact the amount of Rs.25 lakhs was withdrawn from Special Officer's account number so and so and not from the account number so and so in which the sale proceeds were deposited, (d) Mere monetary deposit under the compulsion of judicial orders does not obliterate breach of trust and misappropriation of receiver's funds for personal gain, (e) The conduct of Shri Soumitra Sen has brought disrepute to the high judicial office and dishonour by the institution of judiciary undermining the faith and confidence reposed by the public in the administration of justice." Then, he goes on to say, "A detailed representation was made by Justice Soumitra Sen on 25th February, 2008 and a collegium consisting of himself, that is, Chief Justice of India, Justice B.N. Aggarwal and Justice Ashok Bahl, seniormost judges of the Supreme Court, gave a hearing to Shri Soumitra Sen and reiterated the advice given to him to submit his resignation or seek voluntary retirement on or before 2nd April, 2008. However, vide his letter dated 26th March, 2008, Justice Soumitra Sen expressed his inability to tender resignation or seek voluntary retirement."

So, the charges, Sir, are very specific and an in-house inquiry committee consisting of two Chief Justices and a justice of a High Court has gone into it and established it. A collegium of judges of seniormost judges of the Supreme Court has re-established them. Now, the Inquiry Committee constituted by your hon. self has, once again, unambiguously established it. So, I do not think there is any degree of ambiguity on the veracity of these charges. Since they stand established by three separate, independent and duly constituted authorities, I think, this is a matter that should be accepted by us as the final issue that these charges have been now proved, Sir.

But, therefore, in this view, I feel that there is no other option but for us to proceed with these Motions. I say that, as I have said earlier, with a sense of call of duty to my country and the Constitution, fully conscious of the solemnity of the occasion and that we are exercising our right in the Constitution, and with a deep sense of anguish that we have to move against a judge, and that in order to strengthen the integrity and safeguard the institution of our Judiciary, in that light, therefore, Sir, I think we should proceed. But, finally, Sir, I would like to appeal and go back to the speech of Edmund Burke in the House of Lords when he finally makes the appeal to the Lordship and I quote,

"My Lords, if you must fall, you may so fall. But if you stand, and stand, I trust you will, may you stand as unimpeached in honour as in power. May you stand not as a substitute for virtue, but as an ornament of virtue, as a security for virtue. May you stand as a sacred temple for the perpetual residence of inviolable justice." And this, Sir, is the inviolable justice that this House today represents when it converts itself into a Bar, when it takes up these Constitutional provisions, it is the temple of inviolable justice. And, therefore, Sir, a sacred temple for the perpetual residence of inviolable justice, that is what this House must be, Sir. Justice and temple are used in the terms that Pandit Nehru used after Independence when he talked of our important public sector constructions as the temples of modern India. These are the temples of modern India that our Republic created. Sir, I say this with all honour at my command and all the commitment at my command that the Republic that was founded in India, I was born after that, Sir, both after the Independence and the Republic, but the Republic that was founded was a far-reaching vision in modern civilisation and society. Way back, more than six decades ago, we had given universal adult franchise in our country, which was then considered absolutely abnormal and unusual. We must recollect, Sir, okay, when the President of USA comes and signs in our Golden Book in our Central Hall, all of us are very happy, when he says, "Greetings from the oldest democracy to the largest democracy". But, Sir, remember, the African Americans in the USA had the universal right to vote granted to them one year after President Obama was born. One year after he was born, they were given the universal right to vote. We gave it way back in 1950, Sir. That is the faith that we had in our people, we have in our people. And that is the faith, Sir, that has to be exercised in our constitutional scheme of things through the elected representatives, and it is that faith that today unfortunately is being questioned by some quarters that this august Parliament is not competent or not capable enough to deal with corruption in high places, and, therefore, it cannot and will not move against corruption in high places. Therefore, we must set the precedent. We must give that confidence to the people of India. We owe it to the people of India that we will take action on these Motions precisely in order to strengthen our Republic and it is for

strengthening of our Republic, Sir, I would now commend these Motions for adoption by this House, and commend them to make sure that we convey not only to the people of India but also to the people of the world and modern human civilisation that the Indian Parliament is a sacred temple, it is the perpetual residence of an inviolable justice. And this has to be established, Sir. With this appeal, I commend these Motions for your consideration and adoption. Thank you, Sir.

The questions were proposed.

MR. CHAIRMAN: Motions moved. Mr. Justice Sen, you may present your defence in relation to the findings of the Inquiry Committee, as contained in its Report which was laid on the Table of the Rajya Sabha on the 10th of November, 2010, and a copy of which was sent to you by the Rajya Sabha Secretariat vide their letter dated 11th of November, 2010. You may address the House for about one hour and thirty minutes.

JUSTICE SOUMITRA SEN: I am grateful, Mr. Chairman, Sir. I am also extremely grateful to hon. Members of the House for giving me this opportunity for presenting my defence. I am also grateful to Mr. Yechury when he began his moving of the motion by saying that 'this is a motion for a larger interest and not as against me personally.' I am extremely grateful to you. We are all now in a very crucial stage where the issue of corruption has come up. Everybody wants that there should not be corruption in high places. There cannot be any dispute to this proposition. The hon. Members of this House, you are elected Members of the people, in effect you are my elected representatives also. Therefore, I have come to you to seek justice on certain very fundamental issues not only on questions of law but on questions of facts. It seems that the concept of presumption of innocence has now been reversed into a concept of presumption of guilt. The moment somebody is alleged to have committed some offence, it is presumed to be true. But, Mr. Chairman, Sir, I will prove from the facts as revealed from the Inquiry Committee itself that there has been no misappropriation in fact and in law. The language used in article 124 (4) is 'proven misbehaviour'. The question of 'proven misbehaviour' means to be proved beyond reasonable doubts, not on the basis of presumption or on the basis of probability. Hon. Members, it has been suggested in the Inquiry Report that since that proceedings before the Judges Inquiry Committee is not in the nature of the criminal proceedings, presumption or probability is enough. But at the same time and at the same place, it has been

suggested that proof has to be beyond reasonable doubt, meaning thereby if I have to prove something, I have to prove it beyond reasonable doubt and if charges are proved against me, it can go by way of probability. There cannot be different stand with regard to proof on a matter of facts. Mr. Chairman, Sir, and the Members of this august House, the motions that have been moved are two in number, one is misappropriation of large sums of money which I received in my capacity as a receiver appointed by the High Court of Calcutta, therefore, misappropriation of money as a receiver not as a Judge, and secondly, misrepresentation of facts with regard to misappropriation of money before the Calcutta High Court. Both the motions are inexplicably connected. If I can demonstrate on the basis of the facts and evidence that there has been no misappropriation at all, the second motion automatically fails. Hon. Members, in accordance with the Judges Inquiry Act under section 3, before admission of a motion materials before the House are to be discussed because it presupposes that frivolous motions against Judges may or may not be admitted. So, before the admission stage, there is certain factual material basis to be examined independently by the Legislature. The power conferred to impeach a Judge of High Court or Supreme Court is absolutely on the Legislature. The Constitution has consciously excluded the Judiciary and the Executive to perform any such function of impeachment. Mr. Chairman, Sir, and the hon. Members of the House, I say this with conviction that after my elevation on 3rd of December, 2003, till November 2006, there has been no complaint against my integrity, my honesty in the public domain. Therefore, what is the substance and how could this motion come about?

It is apparent that the Motion came about by reason of a letter written by our former Chief Justice to the hon. Prime Minister. Please don't take me amiss. I am not casting aspersions on anyone. I belong to an august institution which I respect. But, if I can demonstrate before you that there has been an abuse of power in an administrative side by a person holding high office, then, I am sure this House will think twice. In this letter, if you kindly come to a point where he has said, that after the Division Bench judgment, Justice Balakrishnan, hon. Former Chief Justice of India thought that a deeper probe is necessary in order to arrive at a logical conclusion to the allegations. Pausing here for a moment, whose allegation is Justice Balakrishnan talking about? Nobody has alleged anything against me. In the judicial proceeding in which the 10th April order was passed, the parties

did not raise any allegation against me. There is a letter written by our, the then Chief Justice of our Court dated 26th of November. In spite of this judgment, the letter in the last line says, 'However, there is no complaint against Justice Sen. The allegation, if any, is in the form of the adverse observations of a single judge and subsequently substituted by the In House Committee'. In this context, I would like to draw your kind attention to a letter dated 10th September, 2007. That is at page 148 of my reply. I believe the Members have got it. May I proceed?

MR. CHAIRMAN: Please.

JUSTICE SOUMITRA SEN: Although you have written response, prior to that kindly read the first paragraph. The Chief Justice of Calcutta High Court has apprised me in detail about the developments which have taken place pursuant to passing of the judgments dated 10th April, 2006 and 31st July, 2007 wherein adverse observations have been made against you. A copy of the two judgments is enclosed for your ready reference. Although your written response dated 23rd November, 2006 submitted to the then Chief Justice of Calcutta High Court is already on record and subsequently on advice of your Chief Justice, you have orally explained your conduct when you visited my residence on 12th of July, 2007. In the light of the recent order dated 31st July, 2007, you are requested to submit your fresh and final response to the aforesaid adverse judicial observation leading to complaints making allegations of judicial misconduct and impropriety'. Pausing here for a moment, these two judgments arise out of an application filed in a suit between parties inter se where there are even private parties. The suit is filed in the year 1983 and is still pending disposal. No final decision has yet been made. In that suit, an application was filed in the month of March 2003, nine months before my elevation with only the prayers which is normally prayed for return of money. Hon. Chairman, Sir, and hon. Members, we will search the petition in vain with regard to a whisper of an allegation against my conduct as a receiver. The money belongs to third parties. They want it back. They have no complaint against me. On the contrary, before the High Court, when the proceedings went on, none of the parties contested it. They have clearly said they have no allegation against me and they do not wish to contest the proceeding by filing an application. Then, it is whose allegation?

The proceeding before the learned single judge was purely to examine the conduct of a receiver. There was no question of examining the conduct of a judge. Therefore, the statement made in this letter that allegation of judicial misconduct and impropriety, with utmost and humility, is not correct. My conduct, as a Judge, was never in question, was never in examination before a Single Judge; it was the conduct of a Receiver.

Now, kindly come to the next paragraph. It says, 'In these circumstances, it is proposed to hold an enquiry in terms of in-house procedure adopted by all the High Courts, including the Calcutta High Court into the allegation of misconduct and impropriety made against you.' Hon. Chairman and the Members of this House, I would like to draw your attention to certain very relevant facts which may seem that I am casting aspersions. It is not an aspersion; it is a matter of fact. Under the Constitution, the Supreme Court and the High Court are in two different Chapters. The power and duty of Supreme Court and High Court are duly circumscribed. I say this with conviction that the Supreme Court does not have administrative control over the High Courts and they are independent in nature. This is in order to create a dichotomy in furtherance of our Constitutional mandate that India is a Quasi Federal State. Therefore, the learned former Chief Justice of India was allied with the situation that the procedure adopted by the Supreme Court out of and full house - full court - reference is not binding on a High Court, unless it is adopted. Therefore, the expression 'adopted by all the High Courts, including Calcutta High Court', is incorrect. Had I known that these statements are not correct, I would have challenged the constitution of the In-House Committee, because, by that time, when it was constituted, the Division Bench has passed an order completely exonerating me from all the charges. I agree with Mr. Yechury when he said that people in high office should be absolutely clean. There is no doubt about it. But, when a judicial proceeding has taken place and certain allegations are made against me in a judicial proceeding and when I win in the ultimate judicial proceeding will I be still held guilty of the same charges?

Now, the mind of Justice K.G. Balakrishnan is clearly expressed when he rights that in spite of a Division Bench judgment, I want a deeper probe. He wants a deeper probe into a judicial order which he is bound by it in his administrative capacity. Today, Supreme Court is saying that it is all powerful. Why did they not bring the judgment to Supreme Court and set it aside on the judicial side?

If they are all powerful, they can do that. You allow the Judgment to attain a stage of finality; nobody prefers an appeal. I cannot prefer an appeal, because I have won in that matter. Today, it is being said that I cannot take shelter under a judicial verdict. Therefore, how a person is acquitted by judicial process can again be held guilty in a non-judicial process?

Now, with regard to the adoption, I would like to make one submission. This was a situation which really confuses me, because I did not know about any such resolution being passed by the Calcutta High Court during my tenure. I continued to enquire from Judges in the past and the present whether there is any such resolution. Everybody said that they do not know. I do not have the infrastructure to go and search all the High Courts in the country to find out whether any such adoption took place. So, I filed an application under the Right to Information Act before the Calcutta High Court. A competent officer under the RTI Act of the Calcutta High Court has said, categorically, that there has been no such adoption. I have annexed it. Is this not a misrepresentation of facts by a person sitting in high office? Is that not a corruption? And, you are holding me guilty of corruption when I have been cleared by everybody by a judicial process. So, you are trying to hold me guilty by a non-judicial process because you have already determined what to do - to catch hold of this fellow and hang him in order to show that the Judiciary is being cleaned. I am the sacrificial lamb. The real issues are swept under the carpet. I have got three instances how the real issues of corruption were dealt by him. We all know about the Provident Fund Scam of the Allahabad High Court. A key witness died inside a jail under mysterious circumstances. What has been done? A briefcase containing rupees fifteen lakhs was found outside a Judge's chamber. The CBI wanted to prosecute. The sanction to prosecute was refused by Justice K.G. Balakrishnan. Is this the way that one Judge should be treated as against the other? I definitely say one wrong does not make the other right. But, I am not wrong. I will prove it that I am not wrong. Hon. Member, Yechury, referred to the question of diversion of funds from one account to the other. It is said that rupees twenty-two lakhs went from one account to another and secretly reduced to make it eight hundred and eleven; therefore, there is diversion.

Hon. Chairman, Sir, I will prove it from records that this distribution has been made to the workers of a closed factory, pursuant to a Division Bench's order. The cheques are before the Judge Enquiry Committee. Seventy-nine account payee cheques have been disclosed. Payment of over

rupees fifty-one lakhs was made through account payee cheques out of that money. Is it anybody's case that I had opened seventy-nine fictitious accounts? About forty-seven were bearer cheques. So, more than 120 cheques were issued. All for my personal gain! And, this is the allegation of diversion of funds! And, this money was distributed, pursuant to a Division Bench's Order, to the members of the CITU union of a closed factory. Mr. Yechury, Sir, it is your Union. You can easily call up the Kolkata Office and find out whether they have received the money or not. Find out the presumption of innocence on my part. Find out the identity of one person. Where is the question of misappropriation? The clear evidence has been bypassed. And, that evidence has been taken as the touchstone of the allegation of misappropriation by diversion of funds. If this is held, Mr. Chairman, Sir, the gravest of injustice will be done. A truthful transaction will be buried forever as untruthful. Also see the question of probability. The factory was closed for fifteen years. The money had been distributed in 1997. Has a single worker come forward to complain? The nature of unionism in Bengal is known. If I had taken one naya paisa, I would not be standing here and talking to you today. I would have been hanged. The Union has not come and complained that they have not received the money. The workers have not come here and complained that they have not received the money. But a single Judge says that this is the diversion of funds. It is a unique case! If I pay, I am held guilty; If I don't pay, I am held guilty! Heads I win, tails you lose. Is it justice? So, after making a misrepresentation to me, an In-House Committee is constituted three months after the Division Bench's order. Now, kindly see one more thing. Now, please see the letter of 10th September, 2007, I am again referring to it. It says, 'Allegations against you of judicial misconduct and impropriety in the judgements of the single judge...' So, the presumption is that I am going to make an inquiry on to the allegations existing as on that date. I was asked to give a final response to this letter. By that time the time came to give the reply, the Division Bench had already passed a detailed judgement. Allegations against me were expunged from records of the case and were deleted. They do not exist in the eye of law. So, if the original allegations do not exist, then, what is being inquired into? Whose allegations are being inquired into by the in-house Committee? Is it the personal allegation of the former Chief Justice of India? Is he not satisfied with the Division Bench judgement? Does not the

Division Bench judgement apply to him in his administrative capacity? I dare say, please don't take me amiss; even a district judge's order is binding on everyone unless it is set aside by a higher judicial forum. I am not trying to take shelter behind a judicial order. I will clear the conscience of this House that there has been no misappropriation at all.

Now, many will ask this question. Even if you have not done this, then, how could this high-powered committee hold investigation against you? With due respect, Mr. Chairman, Sir, the decision was made long time ago to hold me guilty. It is apparent from the letter written to the hon. Prime Minister that after the Division Bench order, the hon. Chief Justice of India wanted to look into the allegations and to reach a logical conclusion. Whose allegations are they and what is the logical conclusion? What has happened in the meantime is only a means to an end. But this is now the real fact, Sir.

The Judges 'Enquiry Committee' has devoted a lot of time on the issue of my silence. According to them, two central issues arise which are supposed to be the heart of the entire case. "One, the submission that during investigation into the conduct of Justice Soumitra Sen, he had the right to remain silent." It is at page 2 of the report. I am told, Mr. Chairman, Sir, that the report which has been circulated in the House is not what was given to me by the Rajya Sabha. So, there may be a variance with regard to pagination. Therefore, kindly permit me. We got this today at around 12.40 p.m. So, I will be relying upon the report which was given to me while I was in Kolkata because my preparation is based on that.

Therefore, kindly allow me to read it for the benefit of the House. It says, "The submission that during the investigation into the conduct of Justice Soumitra Sen, he had the right to remain silent." Mr. Chairman, Sir, in my respectful submission, this is a clear indication of a state of bias. If I was not here and my lawyer was arguing today, was I silent? Is the appearance of my lawyer not my appearance? When did I remain silent? There is a strong allegation against me that I have been avoiding court. I will demonstrate before you how mala fide that submission and that finding is. You will be surprised to know that the trial judge proceeded to investigate against me by suppressing orders. There is a clear direction in an order that these orders which pertain to investigation behind my back into my personal bank account shall not be served upon me. I will draw your kind attention to those orders.

4.00 P.M.

Now, the rules of Judges Inquiry Act, 1969, give me an opportunity - these are statutory rules - that I can appear by myself or through my counsel. Therefore, appearance through a counsel is also my appearance. The notice issued to me by Rajya Sabha clearly says that I can either appear by myself or through my lawyer. That notice is in conformity with the rules. Even then, it is alleged that, because I, personally, did not appear before the Judges Inquiry Committee, I chose to remain silent. Firstly, I have nothing to prove. Witnesses have been produced by the Judges Inquiry Committee. When a committee produces witness in support of its case, it becomes a witness for the prosecution. I am only to disprove it. I have never said that I did not receive the money. I have never ever said that I cannot give it back or should I not give it back. There is a common perception and it has been said in the Judges Inquiry Report and also the in-House Committee that I was compelled to pay until the court ordered. Mr. Chairman, Sir, let me first point out to you what the law is. A Receiver cannot hand over any money to anybody unless the court directs, because his custody alleges. The first order for return of money came on 10th of April, 2006 and I was appointed in 1984. There was no demand, no order, in the meantime. It is alleged that I have not given back and I was compelled to give it back. The 1993 order, which directs sale, categorically, records that I am to hold the money until further orders. Mr. Chairman, Sir, what was my duty in respect of both the accounts? One is, distribution of Rs.70,00,000/- to the workers and the other is to keep Rs.33,22,800/- after I have completed the sale. There is an order dated 3rd August, 2004. When the application came up for the first time before another learned single judge, I was discharged from further acting as a Receiver. This is not adverted to anywhere, but without any direction to pay. Kindly look at my predicament. Then, the 10 April order was passed. Before that, the application, which was filed, contains another prayer which will, actually, establish what I am trying to say here. First prayer is of return of money and the next prayer is to complete the sale, because the purchaser did not even lift the materials within time. So, my obligation under 1993 order to segregate the entire sale proceeds did not arise until the sale was complete. There has been a further direction in 2004, directing the Receiver to sell the balance quantity. There are some amounts still lying. So, when the total corpus came to me, I thought of keeping it apart. But to say that I have always said that

Rs.33,22,800/- was invested from this account at a time only after 1995 would be incorrect, because I did not receive Rs. 33,22,800/- in the year 1993, not even in the year 1994; it became this corpus only after 1995. You will be surprised to know that when the court called for records, the bank came and said, "We don't have accounts from 1993 to 1995." And, this is the vital period in which the alleged misappropriation has been supposed to take place. In absence of the bank accounts, presumption is drawn. The question is: Where did the money go? I have always been saying that the money was invested there.

After the 10th April order, when I filed the recalling application, in the judgment, the Judge records that 'the total amount of money found in possession or the fixed deposit receipts found in the hands of the official liquidator amounts to over Rs. 70 lakhs.' The fixed deposit receipts are still lying in their custody untouched, unencashed. So, if in 1999, between 1997 and 1999, Rs. 71 lakhs of fixed deposits is found, where is the question of misappropriation? It is a clear evidence of fact that there has been no further deposit, except for Rs. 25 lakhs after 1997. Then, by what arithmetical magic, Rs. 25 lakhs becomes Rs. 71 lakhs within two years? Is it not evidence enough that money was duly invested between 1993 and 1995? When the bank account is not there for the last 15 years, when direct evidence is not available, am I not supposed to take advantage of the circumstantial evidence? On the contrary, these are not circumstantial evidence. The fixed deposit receipts in its physical form are still lying. The company had gone into liquidation. I could have taken shelter behind the Companies Act and said that 'you sell the assets of the company, realize money and the balance shortfall I will pay.' I did not do so. Is that a crime? The official liquidator is still in possession and custody of the assets and liabilities of the company. There is no direction anywhere that you take steps in accordance with the Companies Act. The only person guilty here is 'Soumitra Sen' because it is easy to showcase him as a cleansing of the Judiciary.

I am actually a victim of an abuse of process by person in high office. Kindly don't treat me emitter. I have decided to come whatever the outcome may be, and I wish that the Members of this august House would actually decide the matter purely on questions of fact in law. Merely because the hon. Chief Justice of India had already formed an opinion, that cannot go against me. In fact, right from the beginning, there has been misrepresentation of facts.

I will point out another very vital misrepresentation of fact. In the letter written to the hon. Prime Minister, it is mentioned that the learned Judge has dismissed my second application. I am sure, many hon. Members here are eminent jurists, legal luminaries in their field. They will be able to understand what is the difference between an application being dismissed and an application being disposed of with liberty to apply afresh. On my application, recalling application, when the facts were brought before the learned Judge, the learned Judge was undecided. There is a clear recording of fact that he neither believes me nor disbelieves me. The Judge did not disbelieve me when the real facts were brought to him. In spite of this fact, the Judge gives me a liberty to come before him once again with fresh materials. That application is still pending. The suit is pending for last 27 years. Money is still lying undistributed in the High Court. The High Court is seized of the matter. I have still the liberty to go to High Court with the fresh material and say that 'your earlier opinion was wrong, and I am being held guilty of misappropriation and impeachment proceedings are going on against me.' Is there a single allegation of dishonesty, corruption in my judicial functioning? Have I passed a single order for extraneous consideration? Are my sons and daughters or my brothers and brother-in-law guilty of amassing wealth, abusing my position? Am I guilty of laundering? No. The entire thing starts from a judicial process and it is ended with a Division Bench order.

Nothing else can continue. Therefore, to say that a Judge should be honest in all respects is absolutely a correct proposition. There cannot be an image tarnished, because tarnishing the image of a Judge is tarnishing the image of the judiciary. But, if he becomes a victim of abuse of power, then, hon. Members, you may kindly decide in accordance with your conscience whether such abuse should continue or not. If a High Court Judge with a constitutional authority can be treated in this manner, imagine the plight of the common man. They will be squished like a fly. I am not fighting here for my position alone. I will tell you, why. After I filed the reply to the in-House Committee Report, I got a telephone call from the Chief Justice's residence to meet him personally. There is no official record of that meeting with the other superior Judges there; you would search in vain; there is no official communication to me. When I went there and met him in his drawing room, I found two other Judges. That is being communicated as a hearing given to me. Is the direction upon a Judge to resign so informal, so petty, that the only issue discussed was my resignation? Interestingly, VRS

was offered. Now, have you ever seen an organization or an institution where an employee charged with defalcation of funds is rewarded with a VRS? I would have gone back happy with quite a few lakhs of money because I had a long tenure of service left, and I still have a long tenure of service left. So, first, carrot; the stick is coming later; it is an offer of VRS. Next, 'you resign and if you resign, we shall ensure that you get a good post in some public sector undertaking'. I am willing to say this, standing here, before this august House, openly. I challenge anybody to dispute it. Then, 'if I do not take any of the options, I will be further investigated by an Inspector of CBI and, if necessary, third degree will be applied to me'. I was interrogated. Then, I wrote to the Chief Justice of India that 'if you want a further agency to inquire, then how can you ask me to resign on the basis of a report that is already before you?' Then it is inconclusive. If that is conclusive, then what is the need to have further investigation by another agency? It is not a statement of facts that I am saying. I have put it on record. I have written a letter that is uncontroverted till date. Is this the way a high judicial authority shall function in an administrative manner? I would have had no issues if the judgement of the Division Bench had been set aside by a higher judicial forum. I would have never been here. I have exhausted my remedies in accordance with law, and I have succeeded. I repeat, I am not taking shelter behind a judicial order. I am trying to clear the conscience of the House that there has been no misappropriation at all.

With regard to misrepresentation, something very interesting will emerge. The Judges Inquiry Committee holds me guilty of misrepresentation on an account number. They say that you have given this account number, but the money has actually not gone from this account. Therefore, you are guilty of misrepresentation of facts. The chargesheet has been prepared on the basis of this account number. The charge of misrepresentation is based on this account number by The Judges Inquiry Committee itself. But when the account-opening form was brought, it was found that it was some other Soumitra Sen; father's name is different, signature is different, profession is different and address is different.

So, an impeachment Motion is going on in this House with a chargesheet with a wrong Account Number, and I am being held guilty of putting that Account Number. You will be surprised to know what is that Account Number and how did it come into being. It was supplied by the learned Single Judge that this is the account, money was withdrawn and closed, therefore,

misappropriation. They say, substitute this by "800 Account", it will be wrong. I say if you substitute it by "400 Account", it will be right because money indeed go from the "400 Account". What did I say all along that Rs.32,33,000, or whatever the figure is, is available irrespective of from which account it has come. My duty is to keep that money safe. Even after the winding up orders and even after the company not paying, I have paid back from my own pocket Rs.57 lakhs. I did not take shelter behind the Companies Act because I thought it was my moral responsibility to pay back the money of the parties. They did not pray for interest. The Court granted interest of Rs.24 lakhs. Who has benefited and who is prejudiced? Only the parties have benefited; I am prejudiced. And I am being held liable for impeachment for wrong-doing. This is unique. I will show that. Since this record is not before you, I will place it. What is my ground? Kindly see what is the ground on which the second Motion fully stands. The entire second Motion is based on this one ground. If I may say so with utmost respect and humility, a very huge constitutional requirement and necessity of impeachment of a judge has been so flimsily framed. I had told before the Division Bench for that the learned Judge failed to appreciate that all the investments made by the Receiver in the company by way of cheques drawn on ANZ Grindlays Bank Account No.OISLP56800. In evidence, the bank's official has come with the Account Opening Form. When my senior counsel cross-examined him, he said, 'Probably not his account.' Answer was very skeptic. So, further question was asked. Is this signature his? No. What do I have to prove? I say, a great eulogy has been given to my senior lawyer by the Judges Enquiry Committee for doing a commendable job. I say, my senior counsels who appeared before the Judges Enquiry Committee have demolished their case altogether. They have no witness to prove anything. Kindly don't take this matter in the light that simply because allegations are made, it has to be accepted, a clean judiciary is to be shown, therefore, throw him out.

There is a preponderance of evidence. There is a constitutional requirement of proof. That cannot be taken away. Now I read out the evidence. I put it to you Exhibit C-304 which is annexed to the letter dated 2nd of March. Exhibit 296, Account Opening Form in OISLP156800 is not the Account of the Respondent. Answer is, 'Probably not'. Did you verify the records in the High Court of Calcutta that this Account Number 56800 pertains to the Respondent? The documents in the High Court were

produced by Shri Prabir Kumar Das, the then Manager of the Bank. Shri Prabir Kumar Das is in service, still avoiding not interested in giving the right answer. I have verified as to whether this account bearing OISLP56800 belongs to the respondent. On verification, I found that the signature and the address mentioned are not matching with that of the respondent. And, this is the account number put in the charge-sheet before the Judges Inquiry Committee. It took one-and-a-half years for the Judges Inquiry Committee to enquire. What did they enquire? A great deal of certificate has been given to their lawyer for rendering excellent assistance. This is the assistance rendered. They are too anxious to hold me guilty; they are too anxious to hold me guilty. Therefore, kindly put a blinder in your eye and believe what former CJI said; don't see anything else. Again, I repeat, if the allegation of diversion of funds, which they say, is believed and this Motion proceeds on that basis, it will be the gravest of injustice ever. The dues of the workers have been fully paid. On the contrary, they have been paid one lakh rupees more; whatever interest accrued in the account was paid to them. I have worked in that matter without remuneration because I thought taking remuneration out of poor workers' fund was not moral. The entire work was done freebie. I was the appearing counsel in that matter. The Court reposed trust in me and appointed me as the Special Officer.

Now, with regard to merger of funds, Mr. Yechury began by saying that I have put money in my own account and there has been a merger of funds. It has been repeatedly said that this is Receiver's Account. With due respect, Chairman, Sir, the expression 'Receiver's Account' has a separation connotation in banking parlance as well as in law. It has to be opened by an order of Court. Today, if I go and ask the bank to open a Receiver's Account, they will not open a Receiver's Account. At least, that is the procedure in Kolkata. You may find it out. In the 1993 Order, which directs me to sell and keep the money, there is no direction to open the account. The choice was left to me, 'bank and branch of his choice'. So, what wrong have I committed? The fixed deposit receipts were given from a period from 1993 March onwards till 1995 May - 22 drafts in two-and-a-half years. Is it possible for a junior advocate to run 22 times in 22 different courts and encash them? The drafts are before you, Sir. See the drafts. Drafts are in the name of Soumitra Sen, Advocate; not Soumitra Sen, Receiver. So, where do I encash them? Wherever I encash them, it becomes my personal account. Encashment had to be done to deliver materials to the purchaser. It was a

conscious decision I took. As a Receiver, I took a decision. It may or may not be right. But, that is not misappropriation. It may be alleged against me that I could have handled the accounts in a better way. Agreed. As an Advocate, there may have been some indiscretion on my part, as a junior Advocate having seven-eight years of practice. But, that does not constitute misappropriation. I will go back from this House, even if you hold me guilty, and I will scream from the rooftop in the rest of my life that I have not misappropriated. That is my personal conviction. And the substratum of the allegations of misappropriation based on diversion of funds is demolished by the cheques themselves. The High Court does not produce the entire bunch of cheques. I have calculated it myself from the statement of account which was before the Judge. The High Court one set - one Judge disbelieves me, two Judges believe me. Now comes the question of Justice Balakrishnan. He disbelieves me, again in spite of a Judicial Order. Where do I go? Where do I seek justice? If the man assuming the highest post in the Judiciary has already formed an opinion of guilt, then everything else is a consequence thereof.

Mr. Chairman, Sir, the accounts are all before you. The question is of misappropriation. The misappropriation amounts only when it can be proved that I have utilized it for my personal gain. Mere transfer of money from one account to another is not misappropriation. Where is the evidence today that I have misappropriated it personally? Is there any credit entry into my accounts from these that I have misappropriated? Is it possible for me to create 79 fictitious accounts and obtain money from them? I say, the bearer cheques which were issued to the workers, some of them bore illegible signature of an illiterate man, and, some bore thumb impression. You take my thumb impression. Take my thumb impression and match it with those cheques whether I have gone behind somebody's back and withdrawn the money or not. A fair transaction, an honest transaction is sought to be presented in such a prejudicial manner, which is alleging diversion of funds. Unless you can prove diversion of funds, you cannot prove misappropriation, and, if you cannot prove misappropriation, there is no question of misrepresentation of facts either. It is said, I dare say, and, I do not know whether it is possible to say, that my statement before the Division Bench influenced the Judges; as if, insinuation is that, I got the order by influencing the Judge. Is it not at the same time casting aspersions on the Judges themselves who passed the order? I will read out the Division

Bench Judgement, and, from that you kindly appreciate whether there is an iota of indication whether I influenced the Judges or not, and, I think, the Judgement is before you. Come to Exhibit Volume III, page 1441. Kindly come to the first portion where the prayer in the petition which resulted in the 10th April order containing adverse inference is set out. Kindly see. "Receiver be directed to hand over all the sale proceeds so far received - sale proceeds, no interest - from the sale of the Periclase Spinnel Bricks to the petitioner towards and in pro tanto satisfaction of the petitioner's claim in the suit and be further directed to pay entire sale proceeds after disposal of the entire lot. Receiver be directed to render true and faithful accounts of all moneys presently held by him in terms of the order." So, order is required to be passed to furnish accounts.

Now, in this case, when the first application was filed, the logic, the explanation of the Judge to proceed with an independent inquiry behind my back is that I have not approached the Court in spite of repeated opportunities. Please note it very carefully. From my little knowledge of English language, I think, repeated means, at least, more than once. In a court of law, when a person does not follow a direction, sometimes, times are given, and, sometimes it is mentioned that time is pre-empted, and, no further time will be granted. This august House will be surprised to know that the application which was filed in the month of March, 2003 was served upon me for the first time in the month of May, 2005. By that time, several orders had been passed. No copies were served upon me. In the month of March, the Judge passes an order, which was not served upon me until May, that you give details, particulars as to the money. In May, another order is passed in modification of that earlier order. Sugar-coated. Perhaps the trap was laid for the first time that you may file an affidavit, so advised, on what, on the application of the plaintiff and the affidavit of the purchaser. In a proceeding in a court of law, you file an affidavit when you controvert the allegations, when you contest the proceedings. Here, I am not controverting anything from this application because there is not a whisper of allegation against me. Why should I controvert? in fact, I wanted this application to be allowed so that I am relieved from the burden. Then, in the month of June, the Judge proceeds to hold an enquiry against me. Official liquidator called, registered a vigilance call, bank called, my personal account investigated under a microscope and a specific direction was given in that order that I shall not be served with that order. Is this a fair procedure to be adopted in a court of law?

Even a common litigant gets a better chance. You will be surprised to know that subsequent orders have been passed deliberately suppressing it, and today there is an allegation that I did not approach the court, I did not cooperate. In order to dispel that doubt, I am here today. I did not allow anyone to argue lest it is said that he is a person who avoids. I am not a person who avoids; I am not a quitter. I did not quit from the drawing room of the CJI. What shall I quit from? Therefore, once this application was taken up, the presumption is, and he writes in the judgement that because of repeated opportunity given, and because I did not approach the court, he is compelled to make an investigation against me. And, in the findings, based upon those withdrawals which I said, in fact, I have cried horse, that these payments are not my personal withdrawals, these are labour payments, he says this is a diversion of fund to an unknown place and, therefore, misappropriation. Without any order or prayer for interest, he passes an order for interest of nearly twenty five lakh rupees. You will be surprised, on the one hand, direction is given for payment and on the other hand, an order of injunction is passed. In my house property, in my bank account, in my moveable properties, all the assets that I have personally have been enjoined. Is this fun going on? On the one hand you say for payment, on the other hand, you are passing an order for injunction. This order of injunction is clear violation of Chadha's law, clear violation of Order 38, Rule 5 of the Civil Procedure Code, clear violation of Order 39, Rules 1 & 2.

There has to be an apprehension, there has to be a prayer for an *ad interim* order of injunction. Where the parties did not pray for an *ad interim* order of injunction - the prayers are set out here; you will search in vain for an order of injunction - why did the Judge pass an order of injunction against my personal property? Because I am a Judge again in the High Court, he has a special interest in the matter? The application which came out for the first time before him, without any prayers being made by anyone, he put it as 'part heard'. Till date it is 'part heard' before the same single Judge. There is a specific order that the papers and documents relating to this matter shall be kept in a sealed cover, will not go down to the department. I sent my juniors for inspection. I could not get inspection. It was kept in the Judge's chamber. The order was passed on 10th April 2006, and when I almost pay the money, entire text of the Judge comes out in the newspaper. How did it come out of the sealed cover? Kindly, hon. Members, look into the facts before holding me guilty. When he says that I did

not approach and he is compelled to make an enquiry against me, after making the full payment, I go with a recalling application. I will just read out one order passed by the single Judge. "This matter will appear once again on 25th July 2005. Let a xerox copy of the order dated 30th June be made available to the learned advocate on record, Mr. Chatterjee. Report shall once again be kept in a sealed cover by the officer of this court". I am not making a statement from the air. These are on record. So, when I go before the Single Judge with all the facts that this is your wrong conception, these payments are labour payments, you have yourself recorded seventy one lakhs of investment, then how can you allege misappropriation? Twenty five lakhs by magic cannot become seventy one lakhs in two years' time. Investments must have been made earlier. When there is no evidence, no bank accounts from 1993-1995 is established, how can you make a presumption? Is it not based on pure surmises and conjectures? When faced with all this, what will the judge do? The judge says, "I neither believe him nor disbelieve him." So, at least, he does not believe me, but he does not disbelieve me either. Therefore, he says come to court once again with fresh material. This is a mockery; a total anarchy is going on. And when I establish all this before the Division Bench, the former Chief Justice of India says, "He wants a deeper probe." He disregards the Order of the Division Bench. What is the special suspicion on me? Why? Whose money have I usurped? The money belongs to third party. They never came to me and said that I had misappropriated the money. The real interested parties, whose money it is, do not make an allegation. It is the headache of the Single Judge.

On what evidence did the Judges Inquiry Committee proceed? The official Liquidator said, "We have no record after 1997 and before 1997." The police authorities have seized many documents from this finance company. There is no panchnama. The bank says, 'There is no account.' Neither the account opening form nor the application on which I said that investments were made was available. And the account on which the matter proceeded is not my account at all. And you hold me guilty of misappropriation. I have said that investments in truncated form were definitely made. It is impossible for a person to remember all the nitty-gritty of the account number. Even if I close my account, I won't be able to remember 56800368002176. I don't think anybody remembers

this. It begins with 01SLP and ends with 800. Both are same. Both end with 800; both start with 01SLP. This mistake of fact, which actually emanated from the court, is the ground to hold me guilty of misleading the Division Bench. There is no other charge.

After the Order of the 31st July, when the court held 'it neither disbelieves me nor believes me,' I moved the Appeal Court. I may take a little of your time to place the judgement of the Division Bench. Kindly permit me to do so.

The Learned Single Judge passed an Order in the aforesaid application filed on the 10th of April 2006 directing the erstwhile Receiver to deposit a sum of Rs.52,46,454 with the Registrar, Original Side of this Court, within a period of one month from the date of receipt of the copy of the Order. In the said Order, it was also mentioned that in default of payment of the aforesaid amount, court will initiate proceedings for recovery of the same.

Now pausing here for a moment, the Single Judge passes an Order directing payment to be made within a period of time, and then passes an Order restraining me to pay. My bank account was sealed. Is it the intention of the Learned Judge that I fail to comply with his direction, so that further orders can be passed against me? The erstwhile Receiver deposited the said amount of Rs.52,46,454 with the Registrar, Original Side of this Court, in compliance with the aforesaid direction. This is the observation of the Division Bench passed by the Learned Single Judge. In the Order, as a matter of fact, it's said that the erstwhile Receiver deposited the aforesaid amount in addition to Rs.5,00,000 which was deposited earlier.

So, altogether, it becomes almost Rs.58 lakhs. So, the parties who are entitled to almost Rs.32 lakhs have got Rs.58 lakhs. Is it an act of a person who has misappropriated the money when the fixed deposit receipts are available and there is no encashment of them? After depositing the aforesaid money, an application was filed on behalf of the erstwhile receiver as recorded on the 10th of April, particularly those indicated, for deletion of the adverse remarks. After going through the order of 15th December 2006, we find - now, this is very significant - the advocate represented the parties before the court. It did not go ex parte. The parties were there. What did the party say? They said, "We have no allegation against the receiver. As far as our money is concerned, we have no

allegation against his conduct." Then, whose allegation is. it? Have I taken bribe? Have I misappropriated Government funds? Have I misused my position by buying properties for myself by misusing Government funds? No. It is the money of the private party who has no allegation against me and the rest of the country is interested to know what I have done with the money. It is submitted on instructions by Mr. Kanchan Roy, learned advocate appearing for the plaintiff Steel Authority of India Limited that his client does not want to file any affidavit either in support or in opposition to the present application. Right from the trial court, nobody contested and I can tell you that was a real heartburn for the learned Judge. He, in fact, insisted upon the parties to file an affidavit. They said, "No, we are not interested." So, if the parties, who are really interested in money, do not file affidavit, is it non-cooperation on my part not to file an affidavit by a modified order? And, thereafter, you suppress that order and carry on investigation behind my back. Who has actually abused the process of law? Is it me? Will this House not see how the whole thing was conducted? It is necessary, Mr. Chairman, Sir, that in every proceedings, every trial, there has to be a fairness in procedure. Even an apprehension of bias vitiates the proceedings. That is established law. If anybody has a special interest in me, he should not judge me. Justice K.G. Balakrishnan by writing that letter has become accuser, prosecutor and the Judge. How can that be? He, on one hand, alleges guilt and he constitutes the in-house committee. This is not a fair procedure. Which Judge in this country today has guts to defy the highest person holding the highest office? Where shall I get trial? Where shall I get justice? I will get justice from this House and I am confident I will get.

Now, I will skip over the first few pages because these are all repetitive and very technical in nature. I will read from page 5 of the judgment. Mr. Anindya Mitra, learned senior counsel representing the appellant, submits that the erstwhile receiver was never directed by the learned Single Judge to make any payment prior to the order of 10th of April 2006 wherein the said learned Single Judge has made certain observations and remarks against the erstwhile receiver. Mr. Mitra submits that the aforesaid remarks were not necessary for deciding the matter. Mr. Mitra further submits that the erstwhile receiver never disputed his obligation to pay the money pursuant to the directions of the hon. Court. Learned senior counsel for the appellant specifically submits that possible claimants, namely, 1 and 2 herein, never made any complaint against the erstwhile receiver; on the contrary, submitted before the Single Judge that they had no grievance against the receiver. This is the recording of finding of fact by the Division Bench.

Referring to the remarks and observations made by the learned single Judge and recorded in the order dated 10th April, Mr. Mitra submits the learned single Judge had no reason to observe that the erstwhile receiver has committed a breach of trust. This is the finding of the Division Bench, a judiciary order. Today, you say you disregard the judicial order because he holds a high office. He has to be like a saint covered with a halo so that whenever he goes people will bow down to him. Is that the test of morality of a Judge? The test which is said in 124/4, has proof for misbehaviour. What have I done as a Judge? All these actions you are talking about are ten years before my elevation. Am I not a victim of circumstances?

Now, I will read the portion where he says - I will not read out the submission made by the Counsel, it is not necessary - I will go with the findings. The objectionable remarks and observations of the learned single Judge recorded in the order dated 10th April, 2006 have been summarized in Annexure 'B', application filed in connection with 'B'. On behalf of the erstwhile decision, on examination of the orders passed by the learned single Judge, from time to time, including the order dated 10th April, 2006, and the judgement order dated 31st July, 2007, we are satisfied that the erstwhile receiver never disobeyed any direction passed by the learned single Judge regarding payment and the refund of the money as was held by him in person to the order of court. So, the Division Bench comes to a finding based on record that I have never committed any wrong on the matter of returning the money.

Undisputedly the application being G.A.No.875 of 2003 was filed in connection with CS No.8 of 1983. Kindly note the date, 1983, today we are in the 2011. So, the suit is still pending. The parties are still awaiting the disposal of the money. We do not even know who will get the money. Misappropriation is alleged against me and I am sought to be impeached. This is anarchy; and complete misuse of power. With utmost respect and humility I submit kindly do not permit this. On the contrary, ensure that people in high office do not misuse their power and make easy target of easy victims. The English language is very interesting. It says 'sacrificial lamb'; it does not say 'sacrificial ram' because lamb is easy to catch.

Undisputedly the application being GA No.875 of the 2003 was filed in connection with the OS No.8 of 1983 on behalf of the plaintiff for issuing a direction upon the receiver to hand over all the sale proceeds. So far, receipt from the sale of material in question to the plaintiff towards prudent

satisfaction of the claim of the petition, the claimant is the plaintiff, it will be decided finally in the suit who will get it. Money is still held by the Registrar of the Kolkata High Court till nine years. After the disposal of the entire lot, kindly note here for a moment, as I said earlier, in 1993 order, the obligation arises only upon completion of sale for segregation. The sale is still not complete. It is not known how much money will come. It is still not known what sort of directions the court will give.

Therefore, the matter is still sub judice. According to Rule 169 of the Parliamentary rules, when a matter is still sub judice, it should not be discussed in the House. Rule 169 of the Parliamentary Rules also says that abstract questions of law cannot be decided by the House. This judgement decides on certain questions of law. You will also have to decide whether the Division Bench judgement can be negated, can be rendered nugatory by a non-judicial body. You will have to finally take that call. If that is permitted, it will result in judicial anarchy. Anybody and everybody will say, 'I will not follow a Division Bench judgment. I will not follow a Judgment because you have obtained it by misleading of facts or you have obtained it by bribing the Judge.' And, then, probe starts, without setting aside the judgment in a judicial forum! Our Constitution debars this. There is a hierarchy of Judiciary, right from the District Court level. We follow that. As I said, a District Judge's order will have to be followed by a Supreme Court Judge in his administrative side. He cannot defy it. That is the law. If High Court Judges are treated like this by the Judiciary itself, then I dare say 'common man will never get justice.' That is the call I am putting on to the House; prevent this. There is a tendency of misusing of power. Kindly prevent this. I have become a victim of that. Kindly prevent this.

In the said application, the plaintiff never raised any question in respect of the conduct and functioning of the erstwhile receiver, and also did not claim any amount towards interest. The learned Single Judge, on his own, passed various orders, from time to time, in connection with the application filed on behalf of the plaintiff, and also in the application subsequently filed on behalf of the erstwhile receiver. In order to examine the conduct of the receiver, even in absence of any allegation made by the parties, the parties to the suit, namely the Respondent Nos. I and II herein, never made any allegation regarding misappropriation of amount. This is the misappropriation with

regard to diversion of funds, which I have paid to the workers, undisputedly paid to the workers. No worker has come forward today to allege 'that I have not received my dues.' And this is the transaction which you say 'diversion of funds resulting in misappropriation'. Unheard of! The said erstwhile receiver also never refused to discharge his obligation to refund the money held by him. As a matter of fact, the learned Single Judge, by the Order, dated 10th of April, directed the erstwhile receiver to deposit this sum, even in addition to five lakhs, which was deposited earlier. See the observation of the learned Single Judge regarding betrayal of trust. Because it was held, kindly see the gravity of the allegations made in the 10th April Order. He alleges that 'I betrayed the trust, therefore, attracting penal provisions under the IPC' To this extent, the Judge has gone, without any charge being made against me by anyone! Is it an independent charge of the Judge against another Judge? See the observation of the learned Single Judge. This is the finding of the Division Bench. Kindly not, for a moment, think that I am taking shelter behind this judgment.

My conscience is clear, and I will try to clear your conscience on facts and evidence. The observation of the learned Single Judge regarding betrayal of the trust and confidence of this Court by the erstwhile receiver is not based upon proper materials on record. Since the erstwhile receiver, in compliance with the direction of the Court, not only deposited the entire sale proceeds retained by him, pursuant to the earlier direction of this hon. Court, but also paid a substantial amount, as alleged by the learned Single Judge, towards the interest to the plaintiff, never claimed any interest by the receiver. We also do not find two Judges of the Division Bench saying this, 'We do not find any material where from it can be said that the erstwhile receiver utilised any amount for his personal gain.' This is a binding observation on all. Can it be reopened in a non-judicial forum by setting up an In-House Committee? The foundation/formation of the In-House Committee is a misrepresentation of fact on me. The Calcutta High Court has never adopted that resolution. Therefore, the In-House Committee is not applicable on a Calcutta High Court Judge. And whose allegation At that time, when the Committee was formed, the allegation has been disposed of by this Division Bench order, deleted from the record. Even then the former Chief Justice of India proceeds to hold an inquiry into the allegation. Whose allegation?

Now, pausing here for a moment, I will draw the attention of this hon. House, Mr. Chairman, Sir, to the fact that the procedure for forming the In-House Committee was pursuant to a Full Court Resolution of the Supreme Court in 1999. This procedure was not in favour to me before the Committee was formed. Is it a fair procedure? In every investigation the procedure of formation of the Inquiry Committee is furnished to allow the person to know in what form it has to be done. The procedure came after the Report, along with the Report holding me guilty. When I go through the procedure, I find that the prerequisite for holding an inquiry is a complaint. A detailed procedure has been laid as to what happens when a person makes a complaint of corruption or bribery against a Judge. If an allegation is made directly to the Chief Justice of that High Court, a procedure is laid; if an allegation is made directly to the Chief Justice of India, a procedure is laid. Who has raised a complaint against me? How could that procedure be adopted? The prerequisite of the procedure, the substratum, the foundation was not there on the day when the In-House Committee was constituted, irrespective of the fact that all allegations have been withdrawn by the Division Bench. There is a procedural irregularity; there is a violation of the order of the court; there is complete unconstitutionality and there is absolute anarchy. That is the Report which is being relied upon by the hon. Members and which is appended to the motion.

The letter of the hon. Chief Justice of India is nothing but a reproduction of the findings of the In-House Committee. I think, I don't know, in the Rajya Sabha, I have a right, I have a privilege, to make certain submissions. It is significant to note that out of the three Judges, two have been brought to the Supreme Court within three months after giving the Report against me. You make your own conclusions. I don't have to say. The third Judge who was not brought made public his displeasure in his retirement speech that he was overlooked. So, our house which the judiciary wants to clean found only one person to be cleaned. I had said earlier, "don't push me; I will expose", because my conscience is clear. I don't live in a glass house that you can throw stones at. I started from a small town. I was brought up in Assam. I don't have any father, mother and brother in the judiciary. Today this position has come to me because of my hard work. My honesty and integrity throughout my career was untarnished. Is it because I have a long career that this has been done to me? I am forthright. You can't touch me. Examine everything, all my assets; open my locker and find out. Therefore, I am not afraid to speak the truth. I appeal to you, the Members of this House, the elected representatives, to do justice.

5.00 P.M.

This is the finding of the Division Bench. "The erstwhile Receiver to hand over all the sale proceeds so far received from the sale of materials". They said, "The erstwhile Receiver has no occasion to submit any explanation or to file any objection to the said application". The Division Bench observed in its earlier order and said that I had no occasion to give an explanation. As the said erstwhile Receiver was well aware of his obligation to refund the amount held by him immediately after issuance of necessary direction by the court, as a matter of fact - please note this carefully - such a direction was issued by the Learned Single Judge only on 10th of April, 2006 and the same order which directs payments holds me guilty of misappropriation.

I could have understood if you gave a direction for payment. If I do not pay, hold an inquiry; hold me guilty of misappropriation; draw an adverse inference. But in the same order, where you give direction, you hold me guilty of misappropriation and then pass an order of injunction on my bank accounts so that I am prevented from paying, without any person paying for such interim order. This is mockery of a judicial process. This is what has been relied upon by the In-House Committee, by the hon. CJI and the Judges Inquiry Committee. This conception that this is an independent inquiry, with due respect, Mr. Chairman, Sir, was prejudged long back because when the hon. CJI writes to the hon. Prime Minister saying that my allegation should reach a logical conclusion, then I have no hope of getting justice from that process. I can only get justice here.

MR. CHAIRMAN: Justice Sen, you are coming to the end of the time allotted to you.

JUSTICE SOUMITRA SEN: Sir, give me a little more time. I will read the judgement of the Division Bench. ...*(Interruptions)*... I will not unnecessarily take your time.

MR. CHAIRMAN: Okay. That is all right. Please proceed.

JUSTICE SOUMITRA SEN: In the aforesaid circumstances, we fail to understand how the aforesaid, uncalled for, unwarranted observations/remarks could be made against the erstwhile receiver even prior to issuing any direction for payment. This is the order of the Division Bench. This is the finding that a court cannot hold a person guilty of misappropriation without giving him an

opportunity to pay. You don't give me an opportunity to pay and in the same order hold me guilty based on presumptions. And when I come with facts, you say, "I can neither believe you nor disbelieve you; you come once again with proper materials". How will I go to the learned single judge who has already become blind in his eye? He will never listen to me. Therefore, I had to go to the Division Bench.

It is difficult to fathom — kindly see the observation of the Division Bench — the reason for such inquiry. But it is significant that even after going through the personal bank accounts — kindly appreciate one thing that my bank accounts were put under a microscope from 1993 till 2006, even after I was a judge — not a single entry was found which was suspicious. All that is credited into my bank account is my salary that I received as a judge. There is not a single entry kept from the finance company; after the encashment of some FDRs, I have taken away the money. The only withdrawals they talk about are the withdrawals to the workers. That is the ground for holding me guilty of misappropriation. I told them that it was very easy to find out the identity of this person. The Judges Inquiry Committee said, "Unidentified persons", casting an insinuation as if I was saying something fictitious and they were not believing. Is it so difficult to find out the identity of persons who have been paid by account payee cheques? The Judges Inquiry Committee had all the power in the world to call for evidence and records, which they have done so. Couldn't they ask the paying bank to bring the accounts and examine the identity of the persons? Then the whole thing would have gone. But the whole thing is 'I don't want to believe'. If that is the approach that 'I don't want to believe you', no matter whatever I say, you will not believe me.

Now kindly appreciate one thing. Witnesses were called from Kolkata. Who came and gave evidence? They were bank officials, official liquidator, Registrar, etc. Was it not the duty of the Judges Inquiry Committee to call the Director of the company in liquidation and ask whether what I was saying was correct or not? Call the Directors and find out from them as to what I am saying is wrong or not. Call for the bank accounts and find out whether the distribution was to the workers or not. This is the basis of corruption against me. During the three little years that I was able to function as a Judge, nobody raised a finger against me, towards my judicial conduct. My integrity was never

in question. My honesty was never in question. Now, transactions ten years prior to my appointment are put under a scanner. This is the way it has been done, and I am here today before you, before this august House, defending an Impeachment Motions.

In fact, I am grateful because I have not been able to say all these before. I have been put under a CAT. I did not want to go to the media and become a spectacle and a media trial. I wanted an opportunity to come at the right place to say the truth because I know this is where I will be able to say what I want to say, irrespective of what you decide. But to go to the judiciary and say is a futile exercise. The decision was made long ago. Now, kindly see what the Division Bench has to say. "In the aforesaid circumstances, we fail to understand how the unfortunate, uncalled for, and unwarranted observations and remarks could be made against an erstwhile receiver, even prior to issuance of any directions to the erstwhile receiver for depositing the accounts." This is the law that you draw an adverse inference on failure to pay. But adverse inference is drawn even before that. "The application filed by the Respondent No.1 being G.A. No.875 of 2003, that is, the plaintiff's application was merely an application for handing over the amount lying with the receiver. The scope and ambit of the said application did not contemplate any inquiry into the personal accounts of the erstwhile receiver." It is again a finding of the Division Bench. "With respect, the learned single Judge committed a serious error in making a detailed inquiry into the personal affairs and bank accounts of the erstwhile receiver." This is again the observation of the Division Bench. Now, this is not liked, and therefore, the second inquiry of a non-judicial nature.

If a judgement is not liked, you can bypass it. Gloss it over. Don't hold it binding, with the ground that you have a higher responsibility to look for. But if your image is tarnished deliberately, what do you do? Don't you not defend it? And, in defending it, if I have come here and say certain things, that is not tarnishing the image of the judiciary. This is unfortunate that it is being said that the moment an allegation is made, the image of the judiciary is tarnished. I have not tarnished the image of the judiciary. The other people are responsible for tarnishing the image of the judiciary by making me a victim and compelling me to come here and speak like this. I do not get a special desire and happiness to say all these things. It is unfortunate that where I am today is because of the judiciary. I have to say this also. There is no pleasure in it, like, Shri Sitaram Yechury said, he is also extremely

distressed, that he does not derive any pleasure in moving this Motion against me in this House, but that he wants that the issue of corruption should be settled. But is this an issue of corruption in the higher judiciary, or, are real issues to be glossed over? Make me a show-case. But, in any event, there was neither any ground nor any reason to embark upon, practically, a State trial, when the subject matter of application being G.A. No. 875 of 2003 was merely for issuance of a direction upon the purchaser to lift the balance materials.

In the alternative, it was a direction upon the Receiver to sell the balance quantity. It appears that witnesses were examined. Even after all this, there was no evidence of any kind to show that the erstwhile Receiver had done anything benefiting himself. That is the finding of the Division Bench on record. Can anybody contradict it today? It is a judicial finding. On the contrary, the record showed that the money has been deposited with the finance company by the erstwhile Receiver but as the company was wound up the money could not be recovered. It is seventy-one lakhs in fixed deposits. I asked this question to myself: If I receive a one thousand rupee note from anybody and I am supposed to give it back after six months, is it necessary to give back that thousand rupee note or is it possible that I can give ten hundred rupee notes? This is what is being said. Where is the purchaser's money? Your thirty-two lakhs do not constitute that money. Money has no colour. I had two bank accounts. I took a step which may not be proper but it does not constitute misappropriation. I will never accept this.

I had written to the Chief Justice that he can hold me guilty of mishandling of accounts, being inexperienced, having wrong judgment, having made an error of judgment but if you say I have misappropriated it, I will never accept it. He ought to have got the message then what kind of a person I was. You don't charge me on things which I have not done. I will never accept it.

Now, there is one thing which is very interesting. They have said here, "I have continued to misappropriate after I have become a Judge". This is being done only to bring me within the ambit of article 124 read with 217. The company went into liquidation in the year 1999. The last transaction is of 1997. The assets and liabilities of the wound up company are in possession and custody of the Official Liquidator since 2000. I was elevated in 2003. How could I misappropriate? This is the wildest

of imagination. How can one imagine that I have misappropriated money after my elevation? How can it be held?

Now, another allegation has been made that you have given certain written notes. And the Division Bench has believed only that! There are two people sitting there only... to believe me, and in the same court when such adverse remarks have already been made against me. So, if I had such friends in the Bench, I would not be here today.

After going through the written notes submitted on behalf of the Receiver on the report filed by the Official Liquidator, the court came to an independent finding. Kindly note this very carefully. The Official Liquidator had given a report to the Single Judge giving him totality of the amount. It was a mere calculation; there was some lacuna. My notes were only to point out that lacuna. There was no argument made. Also, when you read the judgment, read it as a whole! Don't take a portion and hold me guilty. Going through the written note submitted on behalf of the erstwhile Receiver on the note filed by the Official Liquidator as well as Exhibits, the court went through the records of the Trial Court and came to an independent finding. It is a judicial finding. What is the finding? We find that the erstwhile Receiver had deposited the entire amount received by him from the respective purchasers. Can anybody else hold it otherwise? Is this judgment a product of inference, as is being suggested? It is also being suggested that this judgment is not binding on the Judges Inquiry because this is a judgment *in personam*, not *in rem*. We all know that a judgment *in rem* is a judgment which decides a proposition of law with fine spots.

In this judgment, there are propositions of law which have been decided as to whether an application can be allowed without averments, as to whether without prayers orders can be made. Assuming that this is a judgment *in rem*, what is the issue here? The issue is misappropriation of money between parties *inter se*. If the parties cannot raise this issue of misappropriation between themselves, can a third party raise this issue? This is a fantastic logic that this judgment is a judgment *in personam*, it just does not bind the Parliamentary Committee. This is a judicial order. 'Settling the issue of misappropriation for all times to come' cannot be raised once again. I have

established from the fact; because, if I have to take you to this bunch of evidence, the detailed bank account, all the fixed deposit details, it will take four days. But I am trying to finish within the time.

MR. CHAIRMAN: Please do conclude, we are running short of time.

JUSTICE SOUMITRA SEN: Well, Sir. The hon. Members may please take the trouble of going through the Division Bench order and then decide. I have also raised a point under rule 169, this is not a technical point, that a *sub judice* matter cannot be discussed. This matter is still *sub judice* in the High Court at Calcutta. The application is still pending. The liberty given to me is still alive.

Mr. Chairman, Sir, as I have said, ultimately it will have to be decided in this House whether after a Division Bench order a non-judicial body can set it aside. That is an abstract proposition of law which you will have to decide.

I think, I have taken enough of your time. Sir, in such a situation, as you can quite appreciate, I am defending my life, the very existence before you. Before deciding it, kindly decide in accordance with your conscience, apply your independent mind and then decide on merit. I am grateful to you, Sir.

MR. CHAIRMAN: Thank you very much, Justice Sen. You may now withdraw from the House.

(Justice Soumitra Sen then withdrew)

MR. CHAIRMAN: The Motions and the Address to the President under Clause 4 of Article 124 of the Constitution are now open for discussion. Any Member wishing to speak may do so, after which the mover will speak. Now, the hon. Leader of the Opposition.

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): Mr. Chairman, Sir, today is an occasion which is both sad and historic. We have all assembled here in an alternative capacity of Parliament where we perform a function where we decide the fate of a man who has conventionally been deciding the fate of others. Though this is a political House, it performs a judicial function. We have had an opportunity to hear the mover of the Motion, Shri Sitaram Yechury articulating his point of view in support of the Motion. We have also, at length, heard the learned judge who is sought to be impeached.

Sir, we are conscious of the fact that the power of impeachment is intended to be exercised in the rarest of the rare cases. The power of impeachment of a holder of a Constitutional office is an authority or jurisdiction given to us to remove a man in order to save the dignity of his office.

The Office gets precedence over the man who occupies it. And if we find that the man is guilty of any misdemeanor, in the case of a judge, a proven misconduct or incapacity, we impeach him so that we can ensure that the dignity of the Office of judge that he occupies can be maintained. This power, Sir, is both punitive and also a deterrent power. We regulate the exercise of this power by article 124(4) in the case of a judge of a Supreme Court and read with it article 217 in the case of a judge of a High Court. The two grounds on which a judge, in either case, can be impeached is either proven misbehaviour or incapacity. In this case, Mr. Yechury's Motion is confined to the first ground, i.e., proven misbehaviour.

Sir, when these articles were being drafted by the Constituent Assembly, Shri Gopalaswamy Iyengar had expressed the hope that, perhaps, these powers would never be used. He espoused the confidence that, at least, in his lifetime it will never be used. His prophesy was partly correct because it was not used in his lifetime. Virtually, we have made two efforts in the past. One at the pre-Constitution stage, when a judge of the Allahabad High Court was sought to be impeached. He resigned before the Impeachment Motion could go through. There was a second occasion in 1993, where the Motion fell in the other House because of want of quorum itself.

Sir, before I deal with what the learned Judge has presented before us, a few words about the kind of system which we have adopted in this country. We, perhaps, have adopted some of the soundest principles for running Indian Democracy. We are a Parliamentary Democracy where different shades of opinion are represented. We have an independent Judiciary. We have the concept of separation of powers. And this power of removal of a judge is given to the legislative body, a political sovereign, which conducts an inquiry in accordance with the Judges Inquiry Act, where there is a pre-dominant participation of judges and on their recommendations decides whether to remove a judge or not to remove a judge. Sir, originally, when we devised the concept of independence of Judiciary, world over, the whole mankind was conscious of the fact that to judge

the fate of ordinary humans is normally a divine function. But we bestowed this power with an ordinary human being in the hope that this ordinary human being would almost be perfect. He would be free from all collateral considerations; he would have a high level of scholarship; he would have the utmost integrity and, therefore, we were convinced that this function could be performed by the Judiciary and that itself would safeguard the rule of law and adjudicate fairly disputes between ordinary people.

Sir, as times have passed by, there are too many whispers and too many aberrations which we are confronted with. It is only a very rare case which comes to this House for consideration. And, therefore, Sir, we are now living in a changed time where the level of vigilance and the standards of probity will also have to be higher. The judges will also have to realise that Judiciary is no longer an institution which lives on ivory towers. Judges, like most of us here and others holding constitutional offices or high offices, also now live in glass houses. And, therefore, whether it is public or it is the media or it is the litigant or it is the Bar, they eventually become the best judges of judges.

Their conduct is also going to be watched and watched very closely. This is not to say that we can make unfounded allegations against a Judge because a Judge in ordinary circumstances speaks only through his judgments and he is not able to defend himself.

Therefore, we have to be very cautious about every word that we say as right to speak, both inside and outside this House that Judges and the Judiciary is an institution which cannot be thrown to the wolves. It cannot be made an object of unfounded allegations but it will also like other institutions have to stand by the scrutiny of all times. When, Sir, a Judge is sought to be impeached through a procedure, what are really the standards we expect from the Judge? Do we expect from a Judge to resort to every technicality which is available to him? Do we expect a Judge to say that 'I will not enter the box so that I cannot be questioned; there are hard facts which I will not be able to answer?' Or, do we expect a Judge to be a role model as a litigant and then candidly states every question that is put to him because system cannot suffer for a Judge who is stigmatised? A Judge who is stigmatised can really never be in a position to represent the face of rule of law in India and be a Judge as far as others in the society are concerned. Therefore, Sir, when a Judge says, 'I will not

appear myself and answer the questions, or, that first that prove the allegations against me and let me see how much you have in your pocket against me, only then I will let you know what my response is', that is not the case of an ideal Judge facing an inquiry.

It has been repeatedly said and we hear rightly so these days that holders of high offices must be like Caesar's wife, they must be above suspicion. Caesar divorced his second wife because he suspected her of an illicit relationship. Even though the charge was not fully proved, he went through divorce because he said, 'Caesar's wife, considering the position she is in, must be 'unsuspectable'. So, a Judge cannot really say, 'first prove an allegation against me beyond reasonable doubt and only then I will come up and tell you whether I have an answer to give or not.' A Judge by his very character must be 'unsuspectable'. His position must be such that nobody can point a finger to him. We have, Sir, heard the presentation of the learned Judge at length. Sir, I have had an opportunity to read the entire record which the Secretariat has served and distributed to the Members. At times I got an impression whether the facts which I have read are similar to the facts which I was hearing from the learned Judge.

Sir, when we were young lawyers we were all trained that if in a given case you are strong on facts, you bang the facts first. If you are weak on facts but strong on law, you bang the law. And, if you are weak on the both, then you bang the desk, at least, you will appear to be confident. I was wondering what the facts are. The facts are in a very narrow compass. One does not have to go into a complicated circle of facts in order to determine that there are many other cases in the Judiciary where people are accountable. Of course, there are other cases in the Judiciary also where the persons should be accountable. In the matter of probity or lack of probity, there is no right of equality. There are other people who have committed offences while being Judge and got away with it is no ground available to any Judge to say that 'I must also get away from this offence.' In the matter of violation of law there is no article 14. Article 14, the Right to Equality, applies in the matter of application of law not in the matter of violation of law. Therefore, to discredit other Judges and say, 'well, there are others like this and, therefore, I must get away is never an argument available to any citizen, least of all, to a Judge.

What are the facts as are apparent from the Report of the Inquiry Committee and the entire records which the Secretariat has served? I heard large discussions about workmen being paid and all workmen have signed, I found that this case has nothing to do with any workman. The charge has nothing to do with the workman. The case in a nutshell is that Steel Authority of India, a public sector company brought certain goods. The goods were to be brought through the shipping route by the Shipping Corporation of India and there was a supplier. There was a dispute over those goods and its qualities. The Steel Authority of India moved the Calcutta High Court and the Calcutta High Court on 30th April, 1984 appointed the then Mr. Soumitra Sen, an advocate as a receiver. The Calcutta High Court said, 'Take charge of these goods. You can then make an inventory of the goods. Depending on the direction of the court, you can sell these goods.' Mr. Sen takes charge of these goods and he keeps the goods in his custody. Nothing happens. There was a direction of the Calcutta High Court that what you do to these goods and the moneys you recover, every six months, please file a return with the Calcutta High Court. From 1984 till 2006, 18 years have passed, not once is the return filed. Nothing very seriously happened till 1993. On 20th January, 1993, the Calcutta High Court says, 'What has happened to these goods? Please sell them. You are entitled as your fee to five per cent of whatever is your sale value and whatever you sell, open a bank account, keep it in that bank account and the court will decide what is to be done with this money', and the court says, 'don't create any encumbrances on this money or on the goods. You can't use it for any other purpose.

Over the period of time, the goods are slowly sold and finally an approximate sum of Rs. 33,22,800 is received against these goods. Goods are sold over different periods of time. Mr. Sen, as he then was, opens two bank accounts, one account in the ANZ Grindlays Bank and the other account in the Allahabad Bank. He deposits Rs. 4,68,000 in Allahabad Bank and the balance of about Rs. 28 lakhs in the ANZ Grindlays Bank which later merged and became the Standard Chartered Bank. What does he do with these moneys? Now, these moneys are to be kept in these accounts. They will earn interest and eventually, whoever succeeds in the case will get these moneys. So, what does he do with the money lying in the Allahabad Bank? That is the reason, the judges' Inquiry Committee said, 'He claimed a right of silence.' Obviously, his advocate could not

come and answer. He only argued on law. If he had appeared and the Inquiry Committee had asked him these questions, 'how come this money was lying in these accounts which were for the benefit of the court?' You are the receiver of the court and the court would give it to a winning party. He first cuts out cheques from these accounts, gives four cheques in the names of private individuals who are known to him, who have nothing to do with this case.

One Subroto Mukherjee, Biresh Pratap Choudhary, Somnath Ray, K.L. Yadav, one Jai Guru Enterprises gets that money. Other amounts of money, his visa, credit card bills are debited to it. There is a well known law book publisher, S. C. Sarkar and Company. So, law books are purchased. The moneys go from that account. While this was happening and this was the entire rigmarole that the presentation today was getting into, another judge of the Calcutta High Court appoints him as a special officer in the case of one Calcutta Fans. That case has nothing to do with this case. He is paid Rs. 70 lakhs so that workmen of Calcutta banks could be paid. He opens another bank account and puts the Rs. 70 lakhs there. Of this Rs. 70, he quietly withdraws Rs. 25 and makes a deposit in the name of one company, Links-India. Obviously, this Rs. 25 lakhs has gone there. So, the money is shortfall of workmen in the second case. The second case has nothing to do with this impeachment proceeding. When he is paying the workmen, he realized that he is short of money because M/s Links India went into liquidation soon after he deposited the money. So, what he does is, he removed Rs. 22 lakhs from the SAIL's money, which is lying in the other account, and deposited in the Calcutta Fans Case. As a result of which only Rs. 800 and odd are left in this account. Well, this is a serious issue to ponder over which I deal with it in a little later.

In February, 2003, the SAIL moved the court and said, 'We have not got any accounts. We have not got our money. What has happened to our money? This case is pending for over 19 years.' And, the weakness of our system is, since Judges appoint Judges in this country, the Government has a very marginal role.

In December, 2003, he was elevated to a Judge. Now, the first thing that should have struck him when he becomes a Judge was that he was a Receiver in some cases and he got somebody

else's money and he has to clear that first. He has already misappropriated that money for some alternative purpose. He just keeps quite and keeps sitting on it. So, during his tenure, as a Judge from 2003 onwards, this misappropriation for 'alternative' purpose continues. When he does not answer the advocate of the Steel Authority of India, it moved the Calcutta High Court. The Calcutta High Court issues notice to him repeatedly, 'please file an affidavit and tell us...' - by this time he is a Judge '...as to what have you done with this money?' When he does not respond, the Judge, who was being put across as a villain of the piece, comes up and then makes enquiries. He calls people from the Registry and he calls people from banks and tries to trace out where this money has gone. After all, this money was put in trust with the court and the court keeps its trust in him. He was holding it for the benefit of some other parties. He has utilized it and misappropriated it for some other purpose. Now, if he goes back to court as a Judge, he has to tell the Judge that my Visa Credit Card bills paid from this account, from other account I paid to the workmen and that deficit I compensated from this account, my books' bills, my self cheques - there are a large number of self cheques which all enquiries revealed — are paid from this account. So, what he does is: He does not file any Affidavit or response to the court. The court, finally, delivers a judgment. He has paid back to SAIL Rs. 5 lakhs. With regard to the balance amount, with interest, the court then passes a decree against him saying that Rs. 52,46,454 be paid. In three installments he paid Rs. 40 lakhs. Now, he is a Judge. He has not voluntarily paid for three years. Only on a coercive direction of the court he pays Rs. 40 lakhs. Then, he asks his mother to move an application before the Calcutta High Court praying for giving some more time to pay the balance amount. So, the Calcutta High Court says, 'first tell us as to what happened to this money in the meanwhile.' So, the court is told, 'I have put this money in M/s Links India and that money got lost because M/s Links India went into liquidation.' But, you never put this money in M/s Links India. You put some other money into M/s Links India. Why are you confusing the two? And, Sir, that is where the misrepresentation comes in. So, the court passes a judgment by giving him time and makes some adverse remarks against him.

When these adverse remarks are reported in newspapers, the Chief Justice of Calcutta High Court writes to the Chief Justice of India, saying that this case has come to notice and this is a

conduct unbecoming of a Judge. Sir, 10th September, 2007 - by this time he has paid the entire amount - the Chief Justice of India calls him and says, 'how do you explain this conduct?' He says, 'give me some more time.' So, the Chief Justice fairly says, 'Please take some more time, but explain to me your conduct in this case, because it is unbecoming of a Judge.' He goes back, files an appeal - through his mother again before the Division Bench, after taking time. The appeal comes up before the Division Bench. It is not a very happy commentary either on Judges or on lawyers. As the appeal comes on day one - now, one brother Judge is getting into trouble; he has to explain to the Chief Justice of India - they asked the advocate of the Steel Authority of India and the buyer of the goods if he has no objection if they set aside this judgement, at least, the observations against him. So, on a concession made by a party, those parts of the observations were all set aside. And, those advocates get up and say that they have no objection you can set aside the observations. And, collusively, on that concession, the Division Bench passes an order. He goes back to the Chief Justice and says, "You had asked me for an explanation. Now, I have a very good judgement from the Division Bench which has set aside, by this method, the strictures against me." So, the Supreme Court was legitimately concerned as to what you do. So, the Chief Justice of India asked two very eminent Chief Justices of High Courts, and a Judge. All of them were men of proven integrity. The Chief Justice A.P. Shah, the Chief Justice Patnayak, and the Justice R.M. Lodha, men of great reputation, said, "This is an in-house mechanism". Now, the learned Judge, today, says that the in-house mechanism is extra constitutional. Obviously, the Constitution does not provide for any in-house mechanism. Impeachment is a near-impossible procedure. So, the in-house mechanism is: Let the Judiciary, in the first instance, look into the allegation itself and *prima facie* see whether any unfounded allegation is being made or it is a serious allegation. So, the three judges repeatedly call him. He gets a detailed hearing from them. He puts up his defense. They asked him what he did with this money all this while, both, when you were an advocate and from 2003 to 2006, when you were a Judge. There is a continuing running threat. But, as a Judge, are you expected to misappropriate the money and keep to yourself the misappropriated money; and, then, not share with anybody where

you kept this money? It is only when there is a coercive order of a court that you decide to return the money.

Now, you say, "Since I have returned the money my sins are all washed off." - Section 403 of the Indian Penal Code, Mr. Jethmalani knows Criminal Law better than most of us, talks regarding misappropriation of money. Even a temporary misappropriation of money is a misappropriation of money. The fact that I stole this money or I misappropriated this money and when I got caught I returned it with interest does not wash off your crime. In any case, what is the level of probity that we expect from a person who is going to judge the rest of the society? The standard of proof may be beyond reasonable doubt, but a Judge is expected to act with probity and not in this manner. After the inquiry holds him guilty that is the procedure they follow, so that the dirty linen of Judiciary is not washed in public - the three senior most Judges of the Supreme Court call him and ask him to submit his resignation because *prima facie* there is a serious material against him. Now, should this be interpreted as some kind of belinious act or a conspiracy? They have gone through a procedure. The Chief Justice of the High Court said, "*Prima facie* the allegations appear true and serious." The inquiry said that the charges were serious. And, since he does not agree to resign, fifty-eight Members of Parliament submit a motion, for his removal, to the hon. Chairman. The hon. Chairman constitutes a Committee, which comprises, under the Judges Inquiry Act, of a sitting Judge of the Supreme Court, Justice Reddy, a Chief Justice of a High Court, who got changed in between Justice Mudgil, and the third has to be a Jurist, Mr. Fali S. Nariman. He appears through an advocate. The first thing he does is, raises an allegation of bias against Mr. Nariman. He, then, appears before the Inquiry through his advocate and says, "I will not enter the witness box". Obviously, he would have had to answer where these moneys were from 1993 to 2003, and from 2003 to 2006. He did not enter the witness box. That's what they referred to his right of silence. So, the Judges' Inquiry Committee has to do a fishing inquiry. They have to call bankers. They have to call various people and then find out that these were two separate transactions. The Kolkata fans case, which is payment of workers' dues, had nothing to do with this misappropriation. He only made good of the shortfall from here by putting the monies into that account. And, then, it has written a detailed finding holding him guilty of proven misconduct. I have just recollected this fact because the manner in which some of the facts

have been given are really made out as though it is a different case between the paper circulated to us, what we have understood and what the learned judge was really arguing. In a nutshell, Sir, the misconduct is this. The first misconduct, which is a proven misconduct is, that you misappropriated the monies. The misappropriation started when you were an advocate. It continued after your elevation. You kept the monies and allowed them to remain misappropriated. You didn't cooperate with the Judicial institution in telling them the truth. Finally, when there were a compulsion of a judicial order, you claim it to be a virtue that now, at least, I have returned the entire money with interest. The second fact is this. Why did you misrepresent the facts? Even today, Sir, when he seeks indulgence from this hon. House, did we once hear him tell us where the money of the Steel Authority case went? All we were told was this money was used for some fixed deposits, this went to workmen, this has been honourably paid, etc. This money had nothing to do with workmen. It was some other Kolkata Fan's case. He kept misleading the in-house inquiry, the judges' inquiry, even today, the House that I honestly deposited the money. The impression which any person who has not read the record would get is, that I deposited this money with a company and that company went into liquidation. So, I was good enough to take my own money and pay it back with interest. That is the case being made out.

Sir, having said this, on both counts, the *prima facie* opinion of the Chief Justice of the High Court, the firm opinion of the Judges' Inquiry Committee, which is the in-house Inquiry Committee, and, then, the opinion of senior three-judges of the Supreme Court to ask him to submit his resignation so that things don't come to such a pass. It has happened in the past. It may be extra-constitutional. It is the in-house persuasive method which the Judiciary has. And, then, comes, finally, the statutory constitutional procedure. Again, there was an inquiry by three eminent people. All findings come to a unanimous conclusion that, 'Yes, you did misappropriate money, and you did misrepresent the facts by not telling the truth. This case had nothing to do with Lynx India. You were using some other monies in Lynx India.' What business did you have even in that case to put the workers' money into Lynx India; a company which was on the verge of liquidation? You only made good of the shortfall in this case and put it into Lynx India. Is there any reason, is there any extraordinary argument that we must disagree with all these reports of all these experts and, then, come to a finding that the learned judge has not committed a misconduct or a proven misbehaviour?

Sir, from the beginning to the end, it smacks of an abuse of a process both as an advocate and as a judge. And when it smacks of abuse of a procedure, are we being guided by the opinion of a former Chief Justice of India? He may have his own grievances against the former Chief Justice of India. That is not an issue today. Can he today seriously contend that the sub-judice rule must apply to the impeachment jurisdiction of Parliament? The misconduct of a judge; of this judge, is not pending before any court. We are relying on independent evidence which was even held back from the single-judge Division Bench and elsewhere. ...which came up for the first time before the Judges Inquiry Committee, which was appointed by the Chairperson. This House, in exercise of its Constitutional jurisdiction to remove a judge, will look at the kind of evidence which has come out. And, then, to say, in a single day hearing, as soon as I filed an appeal, on basis of concessions of two advocates, I managed to get a judgement; therefore, all my sins are washed off. Sir, we are not relying on any judgement in the course of this impeachment proceeding against him; we are relying on the Report of the Judges Inquiry Act. Judgements which are obtained in this manner by concessions between parties may be binding between those parties. That is why, the Committee appointed by the hon. Chairman rightly says that these are judgements in *personam*, *inter se* the parties; these are not judgements on an issue, concerned with larger public interest, dealing with the misconduct of a judge. Therefore, they will not be binding, as far as this House is concerned, as far as the misconduct of a judge is concerned. This House is not moving on a presumption of guilt.

In fact, a full opportunity has been provided by the Inquiry Committee, by this House. We start with the presumption of innocence, but when the facts, which are prejudicial, come before us, then, this House, *prima facie* comes to an opinion, and then, if the Motion is passed, comes to an opinion that the Judge, in question, really should not hold such a high office. He is a judge who stands stigmatized by repeated reports and those reports have a strong basis on the face of it. Those facts are borne out by the fact that monies have been diverted for collateral purposes. There may be other problems with the judicial institutions, which the Judiciary or the Legislature will seek to correct. But, then, Sir, these are not issues on which the judge can say, "I need the benefit of any doubt". Because no doubt has been cast on any of the findings which the Inquiry Reports, placed before us, have, really, revealed. I, therefore, strongly support the Motion, moved by Shri Sitaram Yechury, for

the fact that an Address be sent to the President supporting the fact that this judge is unfit to be in the Office of Judge. There is a case of proven misbehaviour against him; therefore, the judge be removed from office. Having said this, Sir, a few observations that....

SHRI M. VENKAIAH NAIDU (Karnataka): Mr. Chairman, Sir, we can continue it tomorrow.

SHRI S.S. AHLUWALIA (Jharkhand): Sir, today, there is a function at six o'clock. We all have to attend that.

MR. CHAIRMAN: Mr. Jaitley, do you wish to conclude or would you take more time?

SHRI ARUN JAITLEY: Sir, I will take 15-20 minutes tomorrow morning.

MR. CHAIRMAN: All right. The House is, then, adjourned to meet at 11 o'clock tomorrow morning.

The House then adjourned at fifty-three minutes past five of the clock
till eleven of the clock on Thursday, the 18th August, 2011.