Justice Mishra's Recusal from Land Acquisition Case

What is the issue?

- Arun Mishra is part of a five-judge Supreme Court Bench formed to give an interpretation of a provision in the 2013 land acquisition law.
- There is a demand for his recusal from the case.

What is recusal?

- It means the withdrawal of a judge or a prosecutor from a trial on the grounds that they are unqualified to perform legal duties because of a possible conflict of interest or lack of impartiality
- Generally, recusal could be a judge's individual decision.

What is doctrine of precedence?

- Every Bench is **bound by the precedent** set by another Bench of the same size.
- If a Bench is to differ from the ruling of a Bench of a same size, it should refer the matter to a larger bench.
- Adherence to this doctrine of precedent ensures judicial discipline.

Why is there a demand for recusal?

- In February 2018, a 3 member Bench headed by Justice Arun Mishra held that land acquisition by a government agency could not be quashed for delay on the part of land owners in accepting compensation within 5 years due to reasons such as lingering court cases.
- The verdict was in conflict with a 2014 verdict by another 3-judge Bench on grant of compensation under Section 24 of the land acquisition law of 2013.
- Saying, that the earlier judgment was *per incuriam* (an order passed without due regard to law), Justice Mishra departed from the doctrine of precedence.
- Since the matter was not dealt by a larger bench it leads to confusion to subsequent benches.
- So it was ordered that in view of the conflicting judgments, all hearings on land acquisition matters involving Section 24 be postponed until the question whether the matter has to be examined by a larger Bench was decided.
- Subsequently the matter was referred to the CJI for constituting a larger Bench.

- The apex ordered that a larger bench would test the correctness of the verdicts delivered by these two benches.
- As Justice Mishra was also a part of 5-judge bench, objections were raided over Justice Mishra hearing the matter.
- However, Justice Mishra refused to withdraw from the hearing.

What should be done?

- The case history shows that there could be grounds for apprehension.
- Justice Mishra has a predisposition towards a particular view that would affect his ability to render an impartial ruling in the current referral.
- The argument that a prior decision on a question of law does not disqualify any judge from considering the same question again is normally valid.
- However, it may not be applicable when the prior decision was made against the reigning precedent.
- So there is a compelling case for Justice Mishra to withdraw from the land acquisition case
- The controversy also brings under focus the power of the CJI as Master of the Roster.
- In a court of 34 judges, the entire controversy would have been avoided, if Justice Mishra was not been made a member of the Bench.

Source: The Hindu

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