

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION NO _____/2020

[Writ Petition under Article 32 of the Constitution of India]

IN THE MATTER OF

Rashid Khan Pathan)....Petitioner

-V/s-

Sr. Advocate Rajeev Dhawan And Another) Respondents

PAPER BOOK

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THE PETITIONER IN PERSON – RASHID KHAN PATHAN

SYNOPSIS & LIST OF DATES

1. The instant Writ Petition preferred under Article 32 r/w Article 14 of the Constitution of India, pertains to the conduct of Sr. Advocate Rajeev Dhawan during the course of hearing concerning 6 BSP MLAs of Rajasthan Assembly wherein Adv. Dhawan was smoking in the virtual court room while Sh. Kapil Sibal was arguing.
2. That the video clipping concerning the afore stated matter went viral bringing in angry/ sarcastic reactions qua the conduct of Sr. Adv. Rajeev Dhawan.
3. The petition also brings out the pompous conduct of Senior Advocates viz, Dushyant Dave & Rajeev Dhawan who are either interested what case should be allotted to which bench of shouting in the court, prompting on Hon'ble Ex- CJI Dipak Misra to exasperate on the eligibility of such advocates being designated as Senior.
4. The petition also brings out the fact that the designation of Sr. Advocate is poised of certain concomitant responsibilities and excellence of knowledge rather shouting in the court or over-lauding themselves through their pompous conduct in soiling the hallowed gown of senior advocate.
5. That the petition also states under Article 14 of the Constitution the person as high or as low he ought to be treated equally and that as an equivocal measure Sh. Rajeev Dhawan be eased of his Sr. Counsel designation.

Petitioner

Rashid Khan Pathan

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LIST OF DATES

12th Aug, 2020 Undignified/Contumacious conduct of Sr. Adv. Rajeev Dhawan as uploaded on the verified twitter handle of Utkarsh Anand.

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IN THE MATTER OF

Rashid Khan Pathan)
)
)....Petitioner

-V/s-

Sr. Advocate Rajeev Dhawan)
)
)....Respondent -1

Supreme Court of India,)
Through Secretary General,)
Bhagwan Dass Road, Supreme Court,)
New Delhi- 110001)Respondent-2

To,
The Hon'ble Chief Justice of India
and his Companion Judges of the Supreme Court of India.

The humble petition of the petitioner
above-named

MOST RESPECTFULLY SHEWETH;

This petition is submitted in seeking directions, in terms of Article 14 of the Constitution r/w Advocates Act & Bar Council Rules – Regulating the Code of Conduct for Advocates.

1. Particulars of the cause/order against which the petition is made:

- i. That during the course of hearing on disqualification of the 6 BSP MLAs of Rajasthan Assembly; Sr. Adv. Rajeev Dhawan was smoking; an outright affront within the meaning of Section -2 (c) of the Contempt of Courts Act r/w the Bar Council Rules, as to Advocates Code of Conduct. **Conduct of Adv. Dhawan certainly was disgraceful in soiling the hallowed gown of Senior Counsel.**
- ii. Under Rule 1 & 2 of Bar Council of India, Code of Conduct Rules, enjoins an advocate to act in a dignified manner before a Court & with self-respect. The term Court certainly includes a virtual Court; and the adherence to dignified conduct is a ‘must’ without any known exception for a designated senior advocate.
- iii. This Hon’ble Court in **E.S. Reddi Vs. Chief Secretary, Government of A.P (1987) 3 SCC 258**, gave some instructions to the designated Senior Counsel as under;

“10. By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honour and privilege conferred

on advocates of standing and experience by the Chief Justice and the Judges of this Court. They thus become leading counsel and take precedence on all counsel not having that rank. A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged “to settle” i.e. to put the pleadings into “proper and satisfactory form” and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors.

11. *Lord Reid in Rondel v. Worsley has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows :*

Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he

may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.

12. Again as Lord Denning, M. R. in *Rondel v. W* would say:

He (the counsel) has time and again to choose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. . . . When a barrister (or an advocate) puts his first duty to the court, he has nothing to fear. (words in brackets added).

In the words of Lord Dinning:

It is a mistake to suppose that he is the mouthpiece of his client to say what he wants. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honor. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.”

- iv. The instant petitioner, a Human Rights Activist.
- v. Respondent -1, who is a designated Senior Advocate practicing mostly in Supreme Court, is in the habit of brow beating and insulting the dignity of court as a matter of factly, stated herein - under the caption, facts of the case. Conduct of respondent-1, Sh.

Rajeev Dhawan – certainly not befitting a designated Senior Advocate.

- vi. The case of the petitioner being, that ‘Senior Advocates’ are conferred of their designation as an acknowledgement for their knowledge and upright conduct, to serve as role models for the profession – respondent-1 a designated senior advocate denigrated the dignity of this Hon’ble Court and its Judges with impunity, knowing fully well the destabilising impact of the same on judicial orderliness/administration of justice – such persons ought not to be permitted to continue with the respectable designation/ regalia, of ‘Senior Advocate’. The instant petition can also be construed as an information to initiate contempt proceedings against Sr. Adv. Rajeev Dhawan.
- vii. The petitioner is indeed disturbed by the conduct of the designated senior advocates who are either canvassing for certain judges as to why they are not being allotted political sensitive cases (Sh. Dave) or smoking (Sh. Dhawan) in a virtual court room during the course of proceedings which has sullied the majesty of this court to it’s perigee, which ought not to go unpunished. As measure of equality before law; it is axiomatic to say, any other lawyer – had he conducted with such brazenness wouldn’t and shouldn’t have been spared of any leniency, the petitioner entreats this Hon’ble Court to apply the same standards of punitive/disciplinary action against Sh. Rajeev Dhawan, as would have visited any other not so famed lawyer.
- viii. The petitioner with a deep heart narrates a fact, corroborating in-seriatim browbeating by designated senior advocate(s) including

Rajeev Dhawan...Source: latestlaws.com/latest-news/two-weeks-spat-cji-dipak-misra-sr-adv-rajeev-dhawan-retracts-statement-giving-legal-practice/

Excerpts of the above news item:

- A. Earlier CJI had said that if the Supreme Court Bar Association does not regulate such members, we will be forced to regulate them.
- B. Senior Supreme Court Advocate Rajeev Dhawan has written to CJI Dipak Mishra, retracting his statement that he would be giving up his legal practice. Move comes two weeks after Dhawan stated that he would give up practice, following a showdown with CJI Misra.
- C. Earlier, Dhawan was upset over a “humiliating” exchange in Apex Court between him and CJI Dipak Misra during hearing on Delhi v. Centre on statehood case early this month.
- D. Senior Advocate Dhawan had in a strong worded letter announced that he has given up his court practice. In the letter, he stated that, "After humiliating end to Delhi v. Centre case, I have decided to give up the court practice. You are entitled to take away Senior Gown conferred on me, **though I would like to keep it for memory and services rendered by me**" - (*If acting pompous - insulting the Court, browbeating judges is indeed a memorable service, Sh. Dhawan is unparalleled*).
- E. The two recent run-ins of Senior Advocate with CJI happened, during Ayodhya case, **Dhawan, Kapil Sibal, and Dushyant Dave** pleaded that, the Supreme Court defer hearing in the Babri-Ram Janambhoomi case until after the 2019 Lok Sabha election, during which according to the reports **Dhawan shouted**

at CJI Misra. In the another matter of Centre v. Delhi, Dhawan while representing Arvind Kejriwal Government, wanted to further a few more arguments even though Supreme Court had reserved its order in the case.

F. After these two instances, CJI Misra has stated that the trend of the lawyers raising their voices showed their "inadequacy, incompetence and the fact that they are not even eligible to become Seniors".

2. NATURE OF FUNDAMENTAL RIGHT AFFECTED: Under Article 14 of the Constitution - The petitioner submits a senior advocate, whose conduct and utterances has a resonance amongst the lawyer fraternity and common public, concurrently their irresponsible/contumacious conduct is potentially laden of maligning the distinction and solemnity of this Hon'ble Court, impacting the petitioner's fundamental right of having a reputed and majestic judiciary un-smeared by *senior advocates such as respondent-1, their conduct inherently rooted to their personal biases, prejudices, self-pompous beliefs of their own-selves, to have a sense of entitlement in browbeating the court. The petitioner in such circumstances believes he is entitled to entreat this Hon'ble Court, to take suitable action against such persons so that the dignity of the institution is not a casualty to the dusts of individual's self-pompousness 'cause celebre' on the proceeding of Hon'ble Courts.*

3. In respect of the reliefs claimed through the instant petition, the petitioner hasn't made any petition in any other court.

4. Details of remedies exhausted - To the best of understanding of the petitioner, there is no other efficacious remedy other than approaching this Hon'ble Court under Writ Jurisdiction.

5. FACTS OF THE CASE: Instances of contumacious conduct by Sh. Rajeev Dhawan, constitutes the challenges raised through in the instant petition, stated *infra*:-

A. The petitioner came across a video on the verified Twitter handle of Utkarsh Anand, Legal Editor @ CNNnews18: https://twitter.com/utkarsh_aanand/status/1293457441477128194?s=08 wherein Sr. Adv. Rajeev Dhawan is obnoxiously found smoking while fellow Sr. Adv. Kapil Sibal was addressing the Hon'ble Court during virtual court proceedings in respect of disqualification of 6 BSP MLAs. It is the least concern of the petitioner what Adv. Rajeev Dhawan does in his bedroom or within the confines of his privacy but certainly a virtual court room proceedings is not a private affair to be so denigrated, insulted, humiliated by Adv. Rajeev Dhawan and the only mitigating measure is what Hon'ble Ex-CJI Dipak Misra had exasperated about these celebrated advocates – ***they are not even eligible to become Seniors***. The petitioner apprehends, venerable Shri Dushyant Dave and Shri Rajeev Dhawan might have got themselves oblivion that these sort of outlandish reign existed in ancient Rome and not in an egalitarian society where the Constitution authored by Dr. B. R. Ambedkar has conferred equality before law to all citizens and Sr. Advocate/s Dave or Dhawan are no exceptions, as was earlier remonstrated by Hon'ble Ex-CJI Dipak Misra. Smoking during the court room proceedings perhaps exceeded all limits of decency given the wide spread angry reactions by netizens across, and cannot be let off lightly except for exemplary punishment to Adv. Rajeev Dhawan.

6. GROUNDS OF RELIEF: Stated subsequently -

- i. Sr. Adv. Rajeev Dhawan's, smoking during virtual courtroom proceedings are outright contumacious, and affront to the dignity and majesty of the Hon'ble Court. And is a fit case of being recalled of his Senior Advocate designation.
- ii. Reliance is placed on the ruling of this Hon'ble Court in *Indira Jaising V/s Supreme Court of India (2017) 9 SCC 766* – *which ruled, in the event a senior advocate is guilty of conduct, which according to the full court disentitles the senior advocate worthy of its designation, the court may recall the designation of such senior advocate.*
- iii. **That the conduct of Sh. Dhawan has smeared the image of Senior Counsel designation synonymous of being *carte blanche*, to act pompous and roughshod the dignity of Hon'ble Courts.**

7. GROUNDS FOR INTERIM RELIEF – Nil –**8. PRAYER** - Respectfully prayed to this Hon'ble Court, to issue such appropriate writ or directions to the effect:

- A.** In recalling the senior advocate designation of Advocate Rajeev Dhawan.
- B.** Any other appropriate relief as may be deemed given the facts and circumstances of the present case, including passing appropriate directions to respondent-2.

9. Interim Relief: - Nil –

**AND FOR THIS ACT OF KINDNESS AND JUSTICE THE
PETITIONER AS IS DUTY BOUND SHALL EVER PRAY.**

Place: Pusad

Dt/- 18th August, 2020

Petitioner
Rashid Khan Pathan