

IN THE HIGH COURT OF DELHI AT NEW DELHI

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. Of 2013

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA HIGHLIGHTING THE INACTION OF THE AUTHORITIES AGAINST THE VIOLATION OF REPRESENTATION OF PEOPLE'S ACT AND FOREIGN CONTRIBUTIONS (REGULATION) ACT BY MAJOR POLITICAL PARTIES AND CORPORATE GROUPS

MEMO OF PARTIES

In the matter of Public Interest Litigation:

Association for Democratic Reforms
Through Its Founder-Trustee and Secretary
Prof. Jagdeep S Chhokar
B-1/6 Upper Ground Floor
Hauz Khas, New Delhi-110016 Petitioner No.1

Dr. EAS Sarma
(Former Secretary, Govt of India)
S/o Emani Lakshmi Narayana
14-40-4/1 Gokhale Road, Maharanipecta,
Visakhapatnam 530002 (Andhra Pradesh) Petitioner No. 2

Versus

Union of India
Through the Cabinet Secretary
Cabinet Secretariat
Rashtrapati Bhawan, New Delhi-110004 Respondent No. 1

Election Commission
Through its Secretary
Nirvachan Sadan, Ashoka Road
New Delhi-110001 Respondent No. 2

Indian National Congress
Through its Secretary
24, Akbar Road, New Delhi-110011 Respondent No. 3

Bhartiya Janta Party
Through its Secretary
11, Ashoka Road, New Delhi-110001 Respondent No. 4

NEW DELHI

DATED:

**(PRASHANT BHUSHAN)
ADVOCATE FOR THE PETITIONER
301, NEW LAWYERS CHAMBERS
SUPREME COURT OF INDIA
NEW DELHI-110001**

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Association for Democratic Reforms & Anr ... Petitioners

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Union of India & Ors ... Respondents

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA HIGHLIGHTING THE INACTION OF THE AUTHORITIES AGAINST THE VIOLATION OF REPRESENTATION OF PEOPLE'S ACT AND FOREIGN CONTRIBUTIONS (REGULATION) ACT BY MAJOR POLITICAL PARTIES AND CORPORATE GROUPS

To,

THE HON'BLE CHIEF JUSTICE OF DELHI AND HIS COMPANION JUDGES OF THE HON'BLE HIGH COURT OF DELHI, AT NEW DELHI

The Humble Petition of
the Petitioner above-named

MOST RESPECTFULLY SHOWETH: -

1. That the petitioners are filing the instant writ petition in public interest. The petitioners have no personal interest in the litigation and the petition is not guided by self-gain or for gain of any other person / institution / body and that there is no motive other than of public interest in filing the writ petition.
2. That the petitioners have based the instant writ petition from authentic information and documents made available through publically available documents, either obtained through RTI or from the websites of the Government and Election Commission, and Vedanta.
3. That the petition, if allowed, would benefit the citizens of this country generally as rule of law is essential for democracy and such brazen violation of law by major political parties is to the detriment to citizens as a whole. Since these persons are too numerous and have no personal interest in the matter, they are

unlikely to approach this Hon'ble Court on this issue. Hence the petitioners herein are preferring this PIL.

4. The affected parties by the orders sought in the writ petition would be the Union of India, Election Commission, Indian National Congress and Bhartiya Janta Party who have been made as a Respondent. To the best of the knowledge of the petitioners, no other persons / bodies / institutions are likely to be affected by the orders sought in the writ petition.

5. That the petitioner no. 1 is Association for Democratic Reforms (ADR). ADR has been in the forefront of electoral reforms in the country for the last 14 years from wide-ranging activities including advocacy for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political parties including their income-tax returns. It was on ADR's petition this Hon'ble Court ordered all election candidates to declare their criminal records and financial assets, a judgment which was later upheld by the Hon'ble Supreme Court. The Organization is registered as Public Trust under Mumbai Public Trust Act, 1950. Under the practice followed by ADR, the Founder-Trustee & Secretary Prof. Jagdeep S Chhokar is authorised to institute proceedings on behalf of petitioner no. 1.

That the petitioner no. 2 is Dr. EAS Sarma is former secretary to the Government of India. He has been Secretary, Ministry of Finance and Secretary, Ministry of Power, among others.

The petitioners have means to pay if any cost is imposed by the Hon'ble Court.

6. That the petitioner no. 2 had made several representations to the Election Commission as explained later in this petition. A letter was received from the Election Commission that his representation has been forwarded to the Home Ministry for action. The petitioner no. 2 thereafter made a representation to the Home Ministry to which no response has been received. Neither any action has been taken nor has any meaningful response been given by the authorities.

7. That the petitioner no. 1 has filed several notable PILs in the past in the Hon'ble Supreme Court.

S. No.	Case	Status	Outcome
1	Petition seeking disclosure of the antecedents of election candidates. (2001) 5 SCC 294	Disposed off	SC directed all election candidates to declare their educational qualifications, financial assets and criminal records
2	Petition challenging the amendment made in the Representation of People's Act 1951 barring certain disclosures by election candidates (2003) 4 SCC 399	Disposed off	SC struck down the amendment in the said Act as unconstitutional

That the petitioner no. 2 has also filed several notable PILs in the past in the Hon'ble Supreme Court. A brief of them is given below.

In the Hon'ble Supreme Court

S. No.	Case	Status	Outcome
1	WPC 250/2007 (PIL on the issue of 'Salwa Judum' in Chhatisgarh)	Disposed off	SC allowed the writ petition holding the deployment of 'Salwa Judum' forces as unconstitutional
2	CA 11354-11356/2011 (appeal against the order of National Environment Appellate Authority)	Pending	SC has issued notices to the respondents
3	WPC 464/2011 (PIL on the lack of safety	Pending	SC has admitted the petition

	in the use of nuclear energy)		
6	WPC 407/2012 (PIL on the issue of liability of Kudankulam nuclear power plant)	Pending	SC has issued notice on the petition

THE CASE IN BRIEF

8. The instant writ petition is being filed in public interest against the inaction of the authorities to the violation of Representation of People's Act 1951, Foreign Contribution (Regulation) Act of 1976 and of 2010 (hereinafter 'the FCRA') by major political parties including Indian National Congress (INC) and the Bhartiya Janta Party (BJP). Section 29B of the Representation of People's Act prohibit the political parties from taking donations from government companies and from any foreign source. A copy of the said provision is annexed as **Annexure P1**. A brief summary of legal provisions regarding electoral funding prepared by the petitioners is annexed as **Annexure P2**.

9. The FCRA 2010 came into force from May 1st 2011, and a violation of the same is a serious criminal offence. The said Act has replaced FCR Act of 1976 which had similar provisions on the issue in question. The preamble to FCRA 1976 stated *"An Act to regulate the acceptance and utilisation of foreign contributions... by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations... as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic."* A copy of 1976 Act is annexed as **Annexure P3**. The preamble of FCRA 2010 states: *"An Act... to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest."* A copy of the FCRA 2010 is annexed as **Annexure P4**.

10. Section 4 of the 1976 Act and Section 3 of 2010 Act categorically prohibits any financial contribution from any foreign source or company to a political party registered in India. Violation of the same is a serious criminal offence. The term 'foreign company' has been defined in the said law, and a subsidiary of a foreign company is a foreign company within the meaning of the FCRA. Even multi-national companies are covered within the definition of a foreign source under the said Act. The law states that 'foreign company' would have the same meaning as defined in Section 591 of the Companies Act 1956. However, it is clear from the facts that have now come in public domain, that there is brazen violation of these provisions.

11. M/s Vedanta Resources is a company incorporated in United Kingdom and has its registered office in London, hence is clearly a foreign company without any shadow of doubt for the purposes of the FCRA. A copy of the relevant pages from Vedanta Resources' website is annexed as **Annexure P5**. Vedanta has many subsidiary companies in India including Sterlite Industries, Sesa Goa and Malco. This is clear from Vedanta's application to the London Stock Exchange. Relevant pages of the same are annexed as **Annexure P6**.

12. As per Section 2(1)(g)(ii) of FCRA, subsidiary of a foreign company is treated as a foreign company, hence it is impermissible for political parties to take donations from companies like Sterlite, Sesa Goa or Malco. However, from the facts that come in public domain, Vedanta Resources and its subsidiary companies have in fact donated several crores of rupees to major political parties like the INC and the BJP. Vedanta's own annual report of 2012 has the following admission: *"It is the Board's policy that neither Vedanta nor any of its subsidiary companies may, under any circumstances, make donations or contributions to political organisations within the United Kingdom or European Union. In exceptional circumstances, where such political donations or contributions are to be paid in the United Kingdom and European Union, and if deemed necessary for legitimate business reasons, they will not be made without the approval of the Board and the*

shareholders in the general meeting. During the year, the Group made political donations in India of US\$2.01 million (2011: US\$0.02 million) either through a trust or directly in respect of the Indian general election. The Board believes that supporting the political process in India will encourage and strengthen the democratic process.” Relevant pages of the Vedanta’s annual report of 2012 is annexed as **Annexure P7**. Sterlite’s annual report also states: *“During the year, the Group made political donations in India of (Rs) 5 Crore either through trust or directly”*. Relevant pages of the Sterlite’s annual report of 2011-2012 is annexed as **Annexure P8**.

13. The petitioners have accessed the filing of account statements made by the INC and the BJP to the Election Commission and other relevant official records made over by the INC and the BJP themselves. They show the Vedanta’s donations to these parties, and by other foreign companies and also show donation by public sector undertakings and State Government, which are in violation of the law. Relevant pages from the INC’s account statements are annexed as **Annexure P9 (Colly)** and relevant pages from the BJP’s account statements are annexed as **Annexure P10**. Copies of letters submitted by some foreign companies to the INC and the BJP confirming their donations are annexed as **Annexure P11 (Colly)**. It is evident that, in addition to Vedanta Group, there are several other foreign companies which gave contributions to the political parties, in violation of FCRA. An analysis prepared by the petitioners on the same is annexed as **Annexure P12**. There are also some Central PSUs like STC and MMTC which gave donations to INC, prohibited under Section 293A(1)(a) of Companies Act and Section 29B of RP Act of 1951.

14. Also, it is clear from Vedanta’s application to LSE that Mr. P Chidambaram was its Director till May 2004, and after that he became a Union Minister in the INC Government. Now, till recently he was the Home Minister in charge of ensuring the implementation of FCRA. He did not take any action against Vedanta or the INC with whom he is associated. He is now the Finance Minister under whose charge

income tax exemptions are being given to Vedanta and the INC for the illegal donations. Therefore, in view of clear situation of conflict of interest, a court monitored investigation is required as Union of India is unlikely to proceed against major political parties or corporate groups like Vedanta on its own. In other cases involving FCRA violations, Home Ministry has been quite firm and conducted proceedings quite expeditiously. During July and August, 2012, for example, MHA had taken action against 4,139 NGOs for FCRA violations and frozen the bank accounts of several of them. A news report dated 10-8-2012 that indicated this is annexed as **Annexure P13**.

15. Both Section 29B of Representation of the People Act, 1951 and Section 3(1)(e) of FCRA, 2010 [Section 4(1)(e) of FCRA, 1976] prohibit contributions being received by political parties from foreign companies. The major political parties which are registered with Election Commission of India and play a crucial role in the electoral process of the country, as envisaged in the Constitution, are expected to respect the law of the land and uphold the statute to set an example to the people of the country. By flouting the provisions of the statute, they have set an undesirable precedent that tends to erode the confidence of the people in the rule of law and our great Parliamentary democracy. Especially, accepting contributions from foreign companies has long term adverse implications from the point of view of national sovereignty and security.

16. It is reasonable to infer that the foreign companies which gave contributions to the political parties have done so for quid pro quos. In addition to receiving undue concessions, these quid pro quos involve acquiescence on the part of the governments headed by the political parties to the concerned companies violating the other statutes relating to protection of the environment, safeguarding of the human rights of the people and so on. Ministry of Environment & Forests (MOEF) appointed the Saxena Committee to investigate the legality of bauxite mining in Niyamgiri hills inhabited by Dongaria Kondh tribe. The report has highlighted the possible statutory violations, including human rights violations, in Vedanta's mining

and refinery activity. Evidently, the concerned statutory authorities acquiesced in this. The Hindu report dated 21-7-2011 indicated the statutory violations, especially violations that affected the environment as a result of Sesa Goa's mining activity in Goa and the civil society's efforts to contain the same. The report dated 11-4-2011 in Down to Earth indicated how the company's negligence resulted in polluting a river that is the lifeline for the downstream communities.

17. Receiving contributions from Central PSUs (STC and MMTC) violates the Section 293A of the Companies Act. A copy of the said provision is annexed as **Annexure P14**. This is especially objectionable as the PSUs gave the donations to the ruling INC at the Centre. This amounted to INC appropriating public money to fund its party activity, to the detriment of the public interest. It amounted to a breach of trust reposed by the people in the political executive. Also, the 2008-09 Contribution report of BJP showed that the Gujarat Government gave a donation to the BJP. Clearly, this amounted to the ruling political party in that State appropriating public money.

18. The petitioner no. 2 has written repeatedly to the Election Commission of India, pointing out these illegalities. He expressed the apprehension that the concerned political parties, by receiving such contributions, had not only infringed the provisions of Companies Act, RPA, 1951, FCRA (1976 & 1910) but also the relevant provisions of the Income Tax Act by claiming tax exemption on the donations. Likewise, the concerned companies had also infringed the provisions of these laws. The said representations to the Election Commission are annexed as **Annexure P15 (Colly)**. Petitioner no. 2 also addressed a letter dated 29-9-2012 to Union Revenue Secretary (**Annexure P16**) requesting that tax exemptions, if any, granted on the illegal donations be revoked in respect of both the companies and the political parties, to which no reply has been received.

19. Thereafter, Election commission in its response informed that the matter had been referred to Union Home Ministry on FCRA violations. Copy of the said letter

of Election Commission to the petitioner no. 2 is annexed as **Annexure P17**. Pursuant to this, the petitioner no. 2 addressed a letter dated 18-10-2012 (**Annexure P18**) to the Election Commission, the Union Home Ministry to ensure that the FCRA proceedings are carried out in a transparent and speedy manner. No communication has been received from the Home Ministry.

20. Since violations to FCRA constitute a serious offence punishable with severe penalties, the petitioner submits that the political executive at the Centre has not taken any action in the matter, in violation of its statutory duty. Similarly, no action has been taken under the Income Tax Act and the Companies Act. Considering the possibility of several foreign companies involved in giving donations to the various political parties during the last several years, it is necessary that a comprehensive investigation to identify the foreign companies and the political parties who have violated FCRA as well as other laws is carried out and necessary proceedings be initiated.

21. The Law Commission as far back as May 1999 in its 170th report on reform of electoral laws had recommended that a law must be brought to regulate the conduct and functioning of political parties including their funding. Relevant chapter of the said report is annexed as **Annexure P19**. No such law has been brought into force.

GROUND:

- A. That the INC and the BJP have violated Section 29B of the Representation of People's Act 1951 which categorically prohibits them to take donations from government companies and from any foreign source, and thus their registration/recognition is liable to be cancelled.
- B. That the donation of huge sums of money made by the Vedanta Group (being a foreign company) to major political parties like INC and BJP is in clear violation of the FCR Act of 1976 and the FCR Act of 2010.

- C. That the donation of huge sums of money by the public sector undertakings (who are also State within Article 12 of the Constitution) to the political parties is in violation of Section 293A of the Companies Act.
- D. That the donation by the state governments to the political parties amounts to using public money for partisan political objectives and the same is unconstitutional.
- E. That the total inaction of the Ministry of Home Affairs and other ministries is in violation of its statutory obligations and duties under FCR Act of 1976, FCR Act of 2010 and other laws like the Companies Act, Representation of People's Act and the Income-Tax Act.
- F. That the failure of the Election Commission to oversee that major political parties do not violate electoral funding laws, and its failure to ensure that necessary action is taken if they do, is in violation of its constitutional duty under Article 324 of the Constitution of India.

The petitioners have not filed any other petition, claim, suit or proceeding in any court or tribunal throughout the territory of India regarding the matter in dispute. The petitioners have no better remedy available.

PRAYERS:

In view of the facts & circumstances stated above, it is prayed that this Hon'ble Court in public interest may be pleased to: -

- a. Direct a thorough court-monitored investigation by SIT or the CBI into the violation of foreign funding and other laws by major political parties, corporate groups and public sector undertakings.

- b. Direct the Union of India to initiate action against the major political parties and corporate groups as per Foreign Contribution (Regulation) Act of 1976 and 2010, and to confiscate the illegal donations, under the supervision of this Hon'ble Court
- c. Direct the Union of India to initiate action against the major political parties and public sector undertakings /state governments under Section 293A of the Companies Act and others laws under the supervision of this Hon'ble Court
- d. Direct the Union of India to cancel the income-tax exemption given to political parties and the corporate groups for donations made in violation of the law of the land
- e. Issue such other writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

Petitioners

Through

New Delhi

Dated: January , 2013

PRASHANT BHUSHAN

(Advocate for the Petitioners)