

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I. A. NO. ____ OF 2016
IN
WRIT PETITION (CIVIL) NO. 784 OF 2015**

IN THE MATTER OF:

Lok Prahari

Petitioner

Versus

Union of India & Ors

Respondent

AND IN THE MATTER OF:

Association for Democratic Reforms
Through Its Founder-Trustee
Prof. Jagdeep S Chhokar
T-95A, First Floor, C.L House
Gautam Nagar, New Delhi-110049

**APPLICATION FOR IMPLEADMENT OF
THE APPLICANT ASSOCIATION AS A
PETITIONER.**

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

The Humble Petition of the Applicant named
above:

MOST RESPECTFULLY SHOWETH:

1. That the aforesaid Writ Petition has been filed by the Petitioner, seeking Writ/Order or Direction for the effective implementation of the directions issued by this Hon'ble Court in *Union of India v. Association for Democratic Reforms and Anr., (2002) 5 SCC 294*, wherein this Hon'ble Court while upholding the Judgment and Order passed by the Hon'ble High Court of Delhi in *Association of Democratic Reforms Vs. Union of India & Ors. AIR 2001 Delhi 126*, was pleased to direct the Election Commission of India to call for information on affidavit by issuing necessary Order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or State Legislature as a necessary

part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

1. Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine?
 2. Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.
 3. The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependents.
 4. Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.
 5. The educational qualifications of the candidate.
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2. The Applicant is filing the present application seeking impleadment as co-petitioner in aforesaid Writ Petition. The Applicant Association seeks to assist this Hon'ble Court for proper adjudication of the aforesaid Writ Petition.
 3. That the Applicant is an independent association of public spirited citizens who have been actively crusading for the democratic rights of the people of this country and also to ensure free and fair elections in the country. The Applicant association was set up in the year 1999 by a group of professors and alumni of the Indian Institute of Management,

Ahmedabad (IIMA) as a non-profit, non-political, non-partisan, non-government organization, committed to the task of improving democracy and governance in India. The Organization was later registered under the Society Registration Act. A true copy of the Certificate of Registration of the Applicant is annexed herewith and marked as **ANNEXURE A-1**.

4. That the Applicant Association along with National Election Watch (a conglomeration of more than 1200 organizations across the country), started to hold Election Watches for all Parliamentary and Assembly elections since 1992. The Association has also been conducting, various projects aimed at increasing transparency and accountability in the political and electoral system of the country.
5. That the Applicant Association has also successfully mobilized and networked with a large number of civil society organizations all over the country. This in turn has helped in taking the campaign to grass-roots while strengthening the network of civil society across the country. The information is disseminated through various media including Press Conferences, toll free help lines, SMS campaigns, websites (www.myneta.info and www.adrindia.org) and outbound calls using recorded voice messages.
6. That the Applicant Association, has support of about 1200 NGOs from all over the country and the Association in partnership with its partners has been organizing Citizen Election Watch for all major elections. The Applicant Association's goal is to improve governance and strengthen democracy by continuous work in the area of Electoral and

Political Reforms. The ambit and scope of work in this field is enormous, hence, Applicant Association has chosen to concentrate its efforts in the following areas pertaining to the political system of the country:

- I. Corruption and criminalization in the political process.
 - II. Empowerment of the electorate through greater dissemination of information relating to the candidates and the parties, for a better and informed choice.
 - III. Need for greater accountability of Political Parties.
 - IV. Need for inner-party democracy and transparency in party-functioning and gaps in the disclosure of candidate's profile.
7. That the Applicant seeks to espouse the fundamental right of millions of voters across India to have free and fair elections and to ensure a clean democratic polity, which is not infested with criminals. It is the electorate, which has to suffer on account of "corruption" and "criminalization of politics" and often can do little but helplessly participate in the election of the mighty and moneyed criminal elements of society to Parliament and the State Legislatures.
8. That the Applicant Association has been in the forefront of Electoral reforms in the country. In an initiative towards building an informed, aware citizenry the Applicant had filed Public Interest litigation before the Hon'ble High Court of Delhi at New Delhi in December 1999 seeking implementation of the recommendations of the 170th report of the Law Commission. The Hon'ble High Court was pleased to allow the said Writ Petition and

direct the Election Commission of India to direct the candidates to furnish particulars of their financial assets and also criminal antecedents. The said Judgment is reported as *Association of Democratic Reforms Vs. Union of India & Ors.* AIR 2001 Delhi 126. The said Judgment was challenged by the Union of India before this Hon'ble Court. This Hon'ble Court was pleased to uphold the law laid down by the Hon'ble High Court as regards the scope of powers of the Election Commission of India under Art. 324 of the Constitution of India is concerned to hold free and fair elections and was pleased to modify the directions issued by the High Court to the Election Commission of India. The said Judgment is reported as *Union of India Vs. Assn. For Democratic Reforms* 2002 (5) SCC 294.

9. That pursuant to the direction issued by this Hon'ble Court, when the Election Commission of India issued an order dated 28th June, 2002 the entire political class was up in arms. In an unprecedented show of unanimity, 21 political parties attended an all-party meeting on 8 July 2002, and to ensure non implementation of the aforesaid directions brought an amendment in the Representation of People Act, 1956, by an Ordinance "the Representation of the People (Amendment) Ordinance, 2002 (No.4 of 2002) ("Ordinance" for short) was promulgated by the President of India on 24th August 2002.

The Ordinance was repealed and on 28th December 2002, the Representation of the People (3rd Amendment) Act, 2002 ("Amended Act" for short) was notified to come into force with retrospective effect. A true copy of the Representation of the People (3rd Amendment) Act,

2002 is annexed herewith and marked as **ANNEXURE P-4**

10. That, initially the validity of the aforesaid Ordinance and subsequently the Representation of the People (3rd Amendment) Act, 2002 and the amended Section 33 B was subject matter of challenge in People's Union for Civil Liberties (PUCL) and others Vs. Union of India and others; (2003) 4 SCC 399. This Hon'ble Court was pleased to declare Section 33B to be unconstitutional.
11. That as a result of aforesaid dictum of this Hon'ble Court, a candidate to any National or State Assembly elections is now required under Section 33A of the RPA, read with Rule 4A of Conduct of Election Rules, 1961, an affidavit in Form 26 appended to the Conduct of Election Rules, giving information regarding their assets, liabilities, and criminal proceedings against them, if any. Specifically, the following information is required under Form 26 read with Rule 4A of the Conduct of Election Rules:
 - i. In case the candidate is accused of any offence punishable with two years or more, and charges have been framed by the Court, information such as the FIR No., Case No. and the date of framing of charges;
 - ii. Details of conviction in any case not included in Section 8 of the RPA, where the sentence was for one year or more;
 - iii. PAN Number and status of filing of Income Tax Return for the candidate, spouse and dependents;
 - iv. Details of movable and immovable assets the candidate, spouse and all dependents;

- v. Details of liabilities of the candidate to public financial institutions or to the government; and
- vi. Details of profession or occupation and of educational qualifications.

A true copy of the Affidavit filed by the candidates at the time of elections is annexed herewith and marked as **ANNEXURE P-5**

12. That it is most humbly submitted that major lacunae still persist in Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961. In spite of filing of the affidavits there is an unbridled increase in the use of money power for winning elections and greed to make more money. The criminal elements are also increasingly entering into the political arena. This close nexus between money power and muscle power has got so engrained in our electoral system that the citizens are left hostage to the current situation. There is an apparent increase in the assets of the MPs/MLAs with each election. A free and fair election does not start and end with the filing of affidavits. Rather, it also necessitates constant scrutiny of the statements made by candidates on oath. It is entirely conceivable that a candidate can also deliberately omit disclosure of substantial information in his/her affidavit for the sole purpose of winning. Further, because of the absence of any mechanism to verify and cross-check the affidavits filed by the candidates during elections and the absence of provisions for termination of their membership in case the information furnished by him/her in the affidavit is found to be false or incorrect, the voters are not in a genuine position to actually form an informed choice as per the declaration given by the candidate under Form 26.

The solemnity of affidavit cannot be allowed to be ridiculed by the candidates by offering incorrect information or suppressing material information, resulting in disinformation or misinformation to the voters.

13. That the Applicant Association has been conducting extensive research and collecting data to keep the voters informed about the criminal background and financial assets and liabilities of Parliamentarians and Members of State Assemblies, as declared by them through their self-sworn affidavit to the Election Commission of India.

The analysis of MPs from the Lok Sabha 2014 Elections, Rajya Sabha 2016 Elections as well as MLAs from the recently concluded State Assembly Elections (Tamil Nadu, Puducherry, Kerala, Assam, West Bengal) reveals that many MPs and MLAs have registered 'abnormal' increase in their assets since the last elections.

The assets of 4 current Lok Sabha MPs have increased by 1200%. 22 other Lok Sabha MPs have declared an asset increase of over 500%. One newly elected Rajya Sabha MP namely Anil Madhay Dave has declared an asset growth of over 2100 % since he last filed his affidavit. Seven other newly elected Rajya Sabha MPs have declared an asset increase of over 200%. The case is similar for State Assemblies as one MLA from Assam has declared an increase of over 5000% in his assets from 2011 to 2016. One MLA declared an increase of over 1700% in his assets since the Kerala, 2011 Assembly Elections and seven other MLAs declared that the value of their assets increased by over 300%. In 2016 West Bengal Assembly Elections, four MLAs declared that

the value of their assets increased by over 1000% and assets of three others increased by over 700%.

14. That the analysis of data also reveals that a large number of MPs and MLAs do not disclose details of their Income Tax Returns. There are 24 current Lok Sabha MPs who have declared assets worth Rs 1 crore but have not filed their Income Tax Returns as per their self-sworn affidavits. The case is similar for State Assemblies as 84 MLAs from Kerala and 58 MLAs from West Bengal have not disclosed details of their Income Tax Returns. True and Correct Copies of the analysis of the disproportionate increase in assets of MPs and MLAs and the non-declaration of their Income Tax Returns is annexed herewith and marked as **ANNEXURE P-12**.

15. That the Petitioner "Lok Prahari" in the aforesaid Writ Petition has relied on the aforesaid analysis conducted by the Applicant, in support of the averments and grounds raised in the aforesaid Petition. The Applicant having learnt about the aforesaid Writ Petition, the Applicant Association by way of the Present Application seeks this Hon'ble Courts leave to be impleaded as a Co-Petitioner in the aforesaid Writ Petition and also seek permission to place on record relevant and necessary material, input and suggestion as this Hon'ble Court deems fit for the proper adjudication of the issues raised in the Writ Petition.

PRAYER

IN view of the aforesaid facts and circumstances, it is prayed before this Hon'ble Court that this Hon'ble Tribunal may be graciously pleased to: -

- a) Permit the Applicants to be impleaded as Petitioner in the aforesaid Writ Petition; and/or
- b) Permit the Applicants to file additional pleadings/ documents to assist this Hon'ble Court, for the proper adjudication of the issue raised in the Writ Petition; and/or
- c) Pass any such/further order(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

ADVOCATE FOR THE APPLICANT

Filed on: