

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.784 OF 2015

IN THE MATTER OF:

Lok Prahari

...Petitioner

Versus

Union of India & Ors.

...Respondents

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ADVOCATE FOR RESPONDENT NO.1: MR. MUKESH KUMAR MARORIA

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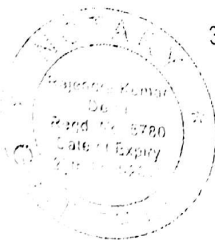
...Respondents

COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA
(RESPONDENT NO.1)

Most Respectfully Showeth:

I, K.K. Saxena, S/o Shri S.C. Saxena, aged about 58 years, working as Deputy Secretary in the Ministry of Law & Justice, Legislative Department having its office at Shastri Bhawan, New Delhi, do hereby solemnly affirm and state as under:

1. That I am Deputy Secretary in the office of Respondent No.1 and in my official capacity and from the records available, I am well conversant with the facts and circumstances of the case and as such fully competent to swear this Counter Affidavit.
2. That the Answering Respondent states that the averments made in the Writ Petition against the answering respondent are denied unless specifically admitted.
3. That Respondent No.1, Union of India, craves leave of this Hon'ble Court to file a short reply to the Writ Petition filed by the Petitioner, on the issues specifically raised by the petitioner which is to be replied

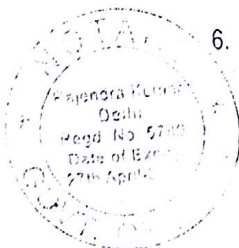


by the answering respondent and also reserves the right to file a detailed affidavit if required to be filed in future.

4. That it is respectfully submitted that the main issues raised in the petition, with which the answering respondent is administratively concerned, are, amending Form 26 as prescribed under Rule 4A of Conduct of Election Rules, 1961 (herein after referred to as "1961 Rules") so as to include 'source of income of the candidate/ spouse/ dependents' therein; amending Representation of Peoples Act, 1951 (hereinafter referred to as "1951 Act") for providing rejection of nomination papers and disqualification thereupon for deliberately furnishing wrong information regarding assets in the affidavit in Form 26; amending Section 9A of 1951 Act to include contracts in which the candidate/spouse/dependents have a share or interest, etc.
5. That a cursory reading of the counter affidavit as filed by Election Commission of India reveals that Election Commission of India, i.e. Respondent No. 2 have stated that the issue relating to amending of Form 26 was sent to the answering respondent on 07-09-2016 and that they support the amendment as envisaged by the petitioner in the petition.

The Election Commission of India have also supported the prayers made in Para 2, 3 & 4 of the petition and agree for extending the scope of section 9A for including government contracts with interest/share of spouse and dependents.

6. That it is further stated that the Election Commission of India's proposal relating to amending of Form 26 was thoroughly examined and considered in Ministry of Law and Justice and a final decision has

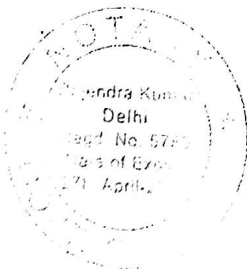


been taken to amend the Form 26 of 1961 Rules. As the issues involved relate to policy matter and after due deliberations on the subject matter a final policy decision was taken to amend the Form 26.

7. That the answering respondent submits that the Election Commission vide letter dated 13.02.2017 further proposed amendments in Forms of Nomination Papers (Forms 2A to 2E) as appended to the 1961 Rules. The Election Commission has recommended that columns referring to disqualification under Article 102(1) and 191(1) of the Constitution of India and under sections 8A, 9, 9A, 10 and 10A of the Representation of Peoples Act 1951 may also be added in Part IIIA of Form 2A and 2B and in Part II of Form 2C, 2D and 2E. Accordingly the amendments in aforementioned Forms as recommended by the Election Commission have been accepted and draft of the notification for amending the 1961 Rules has been prepared after getting the approval of the competent authority.

That the proposal of the Election Commission recommending certain changes/modifications in the aforementioned Forms have been approved and will be published in the Gazette of India shortly.

8. That in the writ petition the petitioner further prays for the amendment in the Representation of People Act 1951 to provide for rejection of nomination papers of the candidates and disqualification of MPs/ MLAs /MLCs deliberately furnishing wrong information about their assets in the affidavit in Form 26 at the time of filing the nomination. The answering respondent respectfully submits that in Para 15 of the affidavit filed by the Election Commission, it is stated as under:-



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"15.that if details are omitted despite reminder from R.O. in the nomination papers, it is fit to be rejected, however, if information is false, prosecution under Section 125A is possible however consequences upon conviction depend on the facts of each individual case. Due to paucity of time and complexities involved it would not be appropriate to provide for rejection of nomination papers by the R.O."

9. That the answering Respondent further submits:-

- a. That the issues agitated in the writ petition are purely policy decision matters. The framing of policy and the making of laws is essentially within the exclusive domain of the Legislature.
- b. That judicial interference with policy decision on the ground that it is ultra vires /arbitrary/invalid is absolutely different from the issuance of mandamus to frame policy in a particular manner. It is a settled legal position that the Hon'ble Courts ordinarily do not command to carry out an amendment in a particular manner and abstain themselves from plunging into policy-making by adding something to policy by way of issuing mandamus.
- c. That the Courts could only interfere if policy framed is absolutely capricious or without any reasons or totally arbitrary and founded offending article 14.
- d. That, as a matter of fact, recently, Law Commission of India has presented its comprehensive report on the subject matter of 'Electoral Reforms' in its 255 Report covering various facets



of the electoral process and phenomenon and suggesting certain recommendations thereupon. The said report is under consideration at appropriate stage. Even in said comprehensive report, there is no mention about the issues raised by the petitioner; that is to say, neither Law Commission nor any other person or stakeholder, for that purpose, has considered raising said issue at the relevant point of time when the former had asked for various claims during the preparation of its said Report.

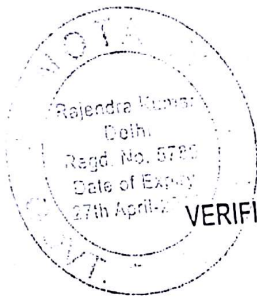
- e. That the relief sought for in Para 1 [except sub-Para (3)], Para 2 to 4 relates to the Representation of the People Act, 1951 and the subject matter thereof needs thorough study and examination from all angles and consultation with Election Commission, political parties and other stakeholders so as to arrive at a holistic decision in the matter. These issues need detailed deliberation into the subject as the same are having great impact and ramification on the existing electoral system. These policy issues could not be decided while responding to a writ petition without having appropriate and thoughtful examination and consultation with stakeholders.
- f. That Indeed, the issues, under reference, are part of electoral reforms and the electoral reform is an on-going and comprehensive process and the Union of India through the answering respondent is taking all possible action to deliberate upon the measures of electoral reforms through various forums like consultations, meeting, e-views, etc. with all



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stakeholders including political parties, jurists, public members, etc. and necessary modifications and additions are being made in the relevant laws from time to time.


It is therefore most respectfully and humbly prayed that your Lordship may be pleased to dispose of the Writ Petition in view of the submission made in this affidavit.



VERIFICATION :

Verified at New Delhi on this the _____ day of April, 2017 that the contents of this affidavit are true to my knowledge and believed to be correct on the basis of information based on the official records. No part of it is false and nothing material has been concealed therefrom.


DEPONENT SAXENA)
श्री. के. ए. ए. / Deputy Secretary
विधि और न्याय विभाग
Ministry of Law & Justice
(विधि विभाग / Legislative Deptt.)
नया दिल्ली New Delhi


DEPONENT
(श्री. के. ए. ए. / K. K. SAXENA)
उप सचिव / Deputy Secretary
विधि और न्याय विभाग
Ministry of Law & Justice
(विधि विभाग / Legislative Deptt.)
नया दिल्ली New Delhi

WITNESSED
RAJENDRA KUMAR
NOTARY DELHI-5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Fg./Sl. No.

Ph. 9212491692
9899446209

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO
UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT
DELHI ON IDENTIFIED BY

IDENTIFY THE EXECUTANT/DEPONENT WHO HAS
SIGNED IN THE PRESENCE OF

**IDENTIFY THE EXECUTANT/
DEPONENT WHO WAS
SIGNED IN THE PRESENCE OF**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
PIL WRIT PETITION [CIVIL] NO.784/2015.

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Lok Prahari, through its

General Secretary S. N. Shukla

...Petitioner.

VERSUS

Union of India & Ors.

...Respondents.

COUNTER AFFIDAVIT OF RESPONDENT NO.4

1. GURPREET SHAH SINGH Agg'd about 48 years. S/o. Rajendra Kumar
SH. S. S. SINGH working as Asstt. Commissioner of Income tax
(OSD)(Inv)-V, Central Board of Direct Taxes PRESENTLY IN DELHI
do hereby solemnly affirm
and state as under:-

1. That I am authorized on behalf of Respondent No.4 in the aforesaid matter and am conversant with the facts and circumstances of the case and competent to swear the instant affidavit.

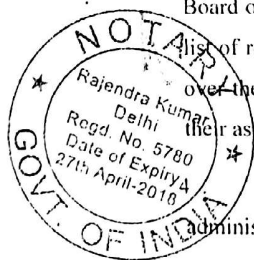
2. That I have read a copy of the aforesaid Special Leave Petition filed by the Petitioner herein and having understood the contents thereof, my reply to them is as under.

3. That however, before proceeding to deal with the various contentions raised by the Petitioner herein, it is necessary to state the following facts in brief.

a. That the writ - petitioner is aggrieved by the inadequacy of Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961 alleging absence of any mechanism to make out and check apparent disproportionate increase in the assets of the law makers as per their own declarations:

b. That the writ-petitioner is further aggrieved as alleged that no response was received in respect of his representation to the Chairperson of the Central Board of Direct Taxes, Ministry of Finance, Government of India along with a list of re-elected MPs/MLAs whose assets have increased by more than 500% over the previous election, for an inquiry into the disproportionate increase in their assets.

That it is respectfully submitted that the Income-tax Department administers Income-tax Act and other Direct taxes. Whenever any information



of violation of provisions of direct taxes, including evasion of income, is received, necessary action including investigation, assessment of income, levy of taxes, penalties, filing of criminal prosecution complaints in appropriate cases, is taken, depending upon the facts of each case.

5. That it is respectfully submitted that while investigation into affairs of persons contesting election, as a class, is not undertaken, specific cases where there is reason to undertake verification are enquired into. These cases include those in which specific references are received from the Election Commission of India. Outcome of such enquiries/ verifications are shared by jurisdictional Investigation Directorates directly with the Election Commission of India.

6. That now the deponent proceeds to deal with various submissions made by the Petitioner in the instant Special Leave Petition.

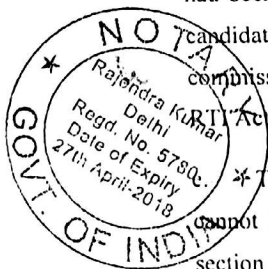
a. That it is respectfully submitted that the contents of paras 1-38, are not related to the Central Board of Direct Taxes - Respondent no. 4 herein, therefore no response is forthcoming.

b. That in reply to the submissions made by the writ-petitioner in para 39 of the writ-petition, the Petitioner filed its representation dated 30.06.2015 to the Chairperson, CBDT along with a list of MPs and MLAs whose assets were alleged to have increased by more than 500%. The said representation was forwarded vide letters dated 11.08.2015 to concerned Directors General of Income Tax (Investigation) for appropriate action. As per the practice followed in such cases, the DsGIT (Inv) were required to send reports directly to ECI under intimation to CBDT. As per information available with CBDT, a large number of cases have been verified and reports sent to ECI.

c. That in reply to the submissions made by the writ-petitioner in para 40 of the writ-petition, the RTI application of the petitioner dated 25.08.2015 was received in Inv. Div-V, CBDT on 07.09.2015 and a reply was duly sent vide order dated 22.09.2015 under Section 7 of the Right To Information Act by speed post. Therefore, the contention of the petitioner that there is no response from the respondent is factually not correct.

d. That in reply to the contents of para 40A, it is respectfully submitted that in respect of investigation of cases earlier referred by him, the petitioner had been duly informed that outcome of verification in cases of affidavits of candidate is shared by the Investigation Directorates directly with the Election Commission of India. It was also stated therein, that as per Section 24 of the RTI Act, the DGIT (Inv) were exempted from the provision of the RTI Act.

* That it may further be submitted that information in respect of assessee cannot be made public or shared except in accordance with the provisions of section 138 of the Income Tax Act, 1961.



f. That in reply to the contents of paras 40B - 40 D. it is respectfully submitted that Petitioner has commented in respect of investigation reports of cases shared by the CPIO of ECI. It is respectfully submitted that the outcome of the enquiry/ verification depends upon facts of each case and wherever the enquiries have led to the detection of violations of the provisions of Income Tax Act, 1961 necessary action has been taken by the officers concerned.

g. That the contents of paras 40E - 43. do not pertain to the Central Board of Direct Taxes - respondent no.4 herein. therefore no response is forthcoming.

7. That in the facts and circumstances described hereinabove. it is in the interest of justice that the aforesaid Special Leave Petition filed by the Petitioner herein, be dismissed summarily.

8. That no Additional facts have been pleaded in this Counter Affidavit which were not pleaded before the Courts below.

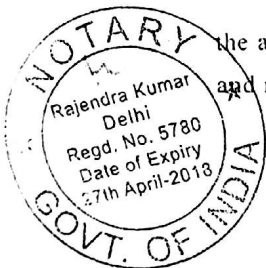
9. That the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.

DEPONENT

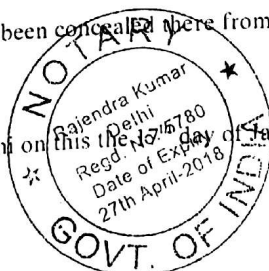
GURPREET SHAH SINGH
Assistant Commissioner of Income Tax
(OSD) (Investigation Division)-V
C.B.D.T., New Delhi

VERIFICATION:

I, the above named deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.



Verified at New Delhi on this the 17th day of January 2017.



DEPONENT

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO
UNDERSTAND & AFFIRMED, DEPOSED BEFORE ME AT
DELHI ON..... IDENTIFIED BY
.....
IDENTIFY THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE

GURPREET SHAH SINGH
Assistant Commissioner of Income Tax
(OSD) (Investigation Division)-V
C.B.D.T., New Delhi
RAJENDRA KUMAR
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