

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 3632 OF 2014

IN THE MATTER OF:

Association for Democratic Reforms

Petitioner

Versus

Union of India & Anr.

Respondents

**AFFIDAVIT IN COMPLIANCE OF THE ORDER DATED
07.01.2016 PASSED BY THIS HON'BLE COURT****MOST RESPECTFULLY SHOWETH:**

I, Jagdeep Chhokar S/o Shri Raghbir Singh aged about 71 years, Office at T-95A, First Floor, C.L. House, Gautam Nagar, New Delhi – 110049, do hereby solemnly affirm and declare as under:

1. That being the founder Trustee of the Petitioner Association, I am well aware with the facts and circumstances and records of the present case, therefore, I am competent to swear the present affidavit.
2. That the Respondent No.2 Election Commission of India during the pendency of the aforesaid Writ Petition has filed an additional affidavit dated 29.04.2015 bringing on record the “Guidelines on transparency and accountability in party funds and election expenditure matter” dated 29.08.2014 and the clarification to the said guidelines dated 19.11.2014, wherein they have conceded that the Election Commission of India has plenary powers and sacred duty to conduct free and fair elections in the country under Article 324 of the

Constitution of India, therefore, they have issued transparency guidelines in order to protect the purity of election process and for the conduct of free and fair elections as enshrined in the Constitution, where there is a legal vacuum. The Commission has also reaffirmed the settled law that the guidelines/instructions issued by the Commission under Article 324 are binding on all the political Parties.

3. That the Commission has issued following directions in the aforesaid guidelines:

- a) The Treasurer of the political party or such person as authorized by the party, besides ensuring maintenance of accounts at all State and Lower level shall maintain consolidated accounts at the Central Party Hqrs.;
- b) The accounts so maintained shall conform to the guidance note on accounting and auditing of political parties, issued by the Institute of Chartered Accountants of India;
- c) The annual accounts shall be audited and certified by the qualified Chartered Accountant;
- d) The copy of audited annual accounts with the auditors report shall be submitted to the Commission before 31st of October of each year;
- e) The political parties shall maintain name and addresses of all such individuals, companies or entities making donations to it, excepting petty sums, donated by public during public rallies;
- f) Any donation received in cash, shall be duly accounted in the relevant accounts books and deposited in the party's bank account within a period of ten working days of its receipt;

- g) Party shall ensure that no payment in excess of Rs. 20,000/- is made in a day to any person, company or entity in cash;
- h) The party providing financial assistance to its candidates for the election expenses shall not exceed prescribed ceiling;
- i) Any payment made to the candidates under the aforesaid head shall be made through crossed accounts payee cheque or draft or through bank account transfer; The Commission also provided that the transparency guideline are required to be followed by all the parties and the violation of the same may entail action, as envisaged under para 16(a) of Election Symbols (Reservation and Allotment) Order, 1968.

4. That the Counsel appearing for the Petitioner on 07.01.2016 submitted that the aforesaid guidelines do not address all the issues required to maintain the purity of the election process and to conduct free and fair election in the country, and therefore, this Hon'ble Court was pleased to direct the Petitioner to file an affidavit pointing out further issues that requires consideration by this Hon'ble Court. The period for filing the affidavit in compliance of the aforesaid order was further extended by this Hon'ble Court vide order dated 17.03.2016.

5. That the deponent has gone through the additional affidavit dated 20.04.2015 filed by the Respondent No. 2 and the guidelines placed on records alongwith the aforesaid

affidavit and by way of present affidavit seeks to submit, as below the shortcomings in the aforesaid guidelines and the further issues that requires consideration by this Hon'ble Court.

6. That the Petitioner in the aforesaid Writ Petition prayed for the writ/directions/orders to the Election Commission of India to exercise its Power under Article 324 of the Constitution of India, to:

- (i) Implement recommendations made by the Law Commission of India in its 170th Report, with regards to:
 - (a) Control on election expenditure, by taking into account all the expenses made either by the candidate, political party or any of their agents while ascertaining the ceiling in case of a candidate;
 - (b) Guidelines/Rules and Regulations requiring maintenance of true and correct account of receipt and expenditure by the political parties by disclosing the source of receipt and heads of expenditure;
 - (c) In the event the political parties, do not comply with the aforesaid directions, they shall be liable to pay a penalty for each day of non-compliance, as long as non-compliance continues and in the event of default beyond 60 days the Election Commission may de-recognize the political parties after following due process.
 - (d) In the event of Election Commission finds on verification that the statement of accounts filed by the political parties is false in any particular, it

shall levy such penalty on political party besides initiating criminal proceedings;

In addition to the aforesaid implementation the Petitioner also prayed for following directions to be issued by the Election Commission of India under Article 324:

- (a) Introducing ceiling on the election expenditure by the political parties on and during the elections;
- (b) Submission of Income and Expenditure statement periodically i.e. once a month, beginning from a year, prior to the declaration of election;
- (c) Submission of Income and Expenditure statement once a week after the declaration of election till its completion.

7. That from the comparison of the directions issued in the guidelines by the Election Commission of India and the prayer made by the Petitioner in the aforesaid writ petition, it is apparent that except for the prayer (i)(b) stated above, none of the prayers have been considered by the Election Commission while issuing the guidelines dated 29.08.2014 as clarified vide clarification dated 19.11.2014, therefore, it is most humbly submitted that the remaining issues needs to be considered by this Hon'ble Court in the present Writ Petition.

8. That in this regard it is most humbly submitted that subsequently the Law Commission of India in its 255th Report on Electoral Reform has made further recommendations which has been summarized in para 18.1 of Chapter XVIII.

The said recommendations not only supports the prayer made by the Petitioner but also made further recommendations to ensure control on the Income and Expenditure of the political parties and also contemplated auditing by the Comptroller and Auditor General of India (hereinafter 'CAG') or the panel of Accountants maintained by the CAG. True copy of the relevant extracts from the 255th Report on Electoral Reform made by the Law Commission of India dated 12.03.2015 is annexed herewith and marked as **ANNEXURE P-1**.

9. That in the backdrop of the aforesaid report the Election Commission of India organized a National Consultation on "Political Finance and Law Commission Recommendations" on 30th March, 2015. The perusal of the outcome of the said consultation submitted by the Election Commission of India in its affidavit dated 29.04.2015 would show that there has been a general agreement by the groups on the following issues:

a) Limit on the contribution to the expenditure of the political parties

There must be strict and enforceable limits on expenditures by political parties and also a cap on contributions to political parties;

b) Disclosure of contributions to parties/candidates

i) The identity of all donors to parties and candidates must be disclosed to the Election

Commission as well as made available in the public domain.

- ii) The recommendations of the Law Commission with regard to transparency and disclosure norms were accepted in their entirety unanimously.

c) Ban on direct corporate contributions:

Corporate contributions to political parties and candidates must be totally banned. Corporate contributions may, however, be made towards the Election Corpus/Trust referred to earlier.

Election Expenditure:

a) Limits on party election expenditure to commence before announcement of elections:

The ceiling on expenditure must include the period before the announcement of elections, when political parties engage in widespread mobilization and electioneering.

b) Monitoring Third Party Election Expenditure:

- i) third party campaigning must be strictly monitored, particularly on social media;
- ii) third party expenditures without the sanction of the Election Commission and without prior consultation of the parties of candidates must be penalized.

c) Election expenses through cheque and designated bank accounts only:

All payments to and from political parties must be made through cheque towards dedicated bank accounts.

Transparency and disclosure

- i) General agreement on need for greater transparency in disclosure of contributions by parties and candidates;
- ii) Stricter penalties for non-compliance by parties and candidates.

Audit and submission of party's Annual Accounts:

- a) General agreement that parties should maintain audited accounts annually and submit to ECI.
- b) General agreement that ECI should upload all annual returns of the parties and penal measures for non-submission of Annual Audit Reports by parties.
- c) General agreement that District Election Officer should upload the election expenses and contribution reports of candidates and be open for public scrutiny for 3 years.

Auditing provisions across all the levels of political parties, (national, regional, local and sub-local):

Party election expenses:

- i) General agreement in favour of statutory amendment to enforce party submission of election expense accounts within 90 days of a Parliamentary or 75 days of State Election;
- ii) General agreement that monitoring and disclosure of party expenses should increase during election year and need for penal measures for non-submission or incorrect submission of returns by parties;
- iii) It was recommended that the audit expenses may be funded by the state to ensure compliance. However, audits at all levels, including block/ward levels may not be possible.

Stronger deterrence against cash contributions required:

General agreement that penalty needs to be stronger than just non-deductibility of donations under the IT Act (under Section 80GGB and 80 GGC of Income Tax Act, the donor cannot claim tax deduction on contribution made in cash to a political party).

Penalty for accepting donations from impermissible sources:

General agreement, however, the understanding of a foreign company may need to be relooked in the current economic climate.

Penalty for submitting incorrect report of election expense by the candidates:

- a) Agreed on the suggestion for increasing the disqualification from 3 years to 5 years under Section 10A of RPA.
- b) Extension of this penal provision under Section 10A of RPA to non-submission or incorrect submission of contribution report by candidates.

Election Expenditure:

Transparency and disclosure of Election Expenses:

- a) Electorates have the 'Right to Know' the affairs of party and candidates for the period prior to election, and also during the election, so that they know, where from they raise the funds and how do they spend, before the electors make an informed choice. The disclosure of tentative unaudited accounts by the parties should be three times during election process as it is required for the candidates.
- b) General agreement that period of coverage for disclosure of election expenses should commence with announcement of election.

- c) General agreement that stringent penalties to be applied for non-disclosure.

Cap on Party Election Expenditure:

General agreement on fixation of a ceiling on party election expenditure, depending on number of candidates sponsored by them. Details about the amount is to be worked out by ECI.

Separate designated bank accounts for party and candidate election expenses:

- a) General agreement that there should be legal backing for the provision requiring the candidates to open a separate bank account for election purposes and incur expenses from that account by way of cheque or bank transfer;
- b) General agreement that parties should also have separate bank accounts for the purpose of election campaign expense and incur election expenses only by bank transfer or cheque from the said accounts. This will help segregate party's other non-campaign expense from the campaign expense.

General party propaganda and candidate expenditure:

General agreement that any campaign expenditure by parties in the constituency after its sponsored candidate files nomination, is to be considered within candidate expenditure, and not as general party propaganda.

Maintenance, Audit and Disclosure of Party Accounts:

Maintenance of accounts and filing of audited accounts with submission to ECI:

General agreement that parties should maintain audited accounts in conformity with a common (ICAI) standard

and stringent penalties to be enforced for non-filing and non-submission of audited accounts to the ECI.

Threshold contribution limit for audit of party accounts by CAG-empanelled auditor:

General agreement that small parties with turnover less than Rs 20 lakhs to be excluded from CAG audit.

Ban on direct corporate contributions:

There was consensus in the group that Corporate contributions to political parties and candidates must be totally banned. Corporate contributions may, however, be made towards the Corpus of National Election Trust, controlled by ECI, for the purpose of direct state funding of the parties.

Regulating third-party expenditure:

- a) General agreement that third party expenditure during the campaign period is to be monitored by the ECI. It is recommended that third party campaigners should register with ECI, if they want to incur campaign expenditure for any party or candidate, beyond a threshold limit;
- b) Third party expenditure on specific candidates to be included within that candidate's ceiling;
- c) Donors prohibited under Section 29B of RPA like foreign companies and loss-making companies, should be banned from campaigning for parties and candidates as third party campaigners.

Requirement for third parties to obtain authorization/consent from party/candidate

- a) Third parties to obtain an authorization/ consent from party/candidate and forward a copy of the same to the ECI before they incur such expense.

- b) General Agreement on need to amend section 171H to bring it in line with current figures and penalize third parties who breach the limit without due authorization.

Vote Buying:

Tackling and Penalizing Vote Buying:

- a) General agreement that vote buying is a serious menace that vitiates the integrity of elections. General agreement on use of totalizer in all constituencies to tackle vote buying.
- b) ECI to tackle vote buying by issuing instructions and bribery of voters to be made a cognizable offence under IPC.
- c) General agreement that vote buying should be visited with stringent penalties:
 - i) Suggested civil penalties extending up to de-registration of party in cases of vote buying by it or by its candidates; and
 - ii) Disqualification of candidate for a few terms, not years;
- d) Where vote buying is established, ECI should countermand elections in that constituency using extraordinary powers.

10. That pursuant to the guidelines dated 29.08.2014 r/w clarification dated 19.11.2014, almost every political party has filed their 'Annual Audited Reports' with the Election Commission. However, one political party i.e Indian National Congress (INC) has shown its disapproval to the powers of the Election Commission under Article 324 of the Constitution of

India. The Indian National Congress while filing its Annual Audited Report for the financial year 2014-15 vide its letter dated 04.04.2016 has claimed that the power of the Election Commission under Article 324 of the Constitution of India to pass such 'Transparency Guidelines' is misplaced since the Commission is not empowered to issue these guidelines and therefore, there is no legal justification for the demands being made by the Commission. Although, the petitioner undeniably affirms the power of the Election Commission under Article 324 of the Constitution of India, nevertheless, in view of the aforesaid fact submits that the said issue requires clarification by this Hon'ble court. True copy of the letter of the Indian National Congress dated 04.04.2016 is annexed herewith and marked as **ANNEXURE P-2**.

11. That the perusal of the outcome of the consultation above and the issues on which there has been general consensus in the group, would show that the guidelines dated 29.08.2014 r/w clarification dated 19.11.2014 does not address the said issues except for a few which requires an audited accounts etc. to be filed. To bring transparency and purity in the election process and to ensure free and fair election it is in the larger interest of the democracy, which is one of the basic feature of the Constitution that, this Hon'ble Court in exercise of its jurisdiction under Article 226 of the Constitution of India, may kindly consider directing the Election Commission to issue appropriate binding guidelines in exercise of its

power under Article 324 of the Constitution of India, to enforce all or to the extent possible the recommendations made by the Law Commission of India on which there has been a general consensus in the consultation held on 30th March, 2015.

DEPONENT

VERIFICATION:

Verified at New Delhi on this 11th day of May, 2016, that the contents of paras 1 to 11 of the above affidavit are true to my knowledge as derived from the records of the case. Nothing material has been concealed therein.

DEPONENT