

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

IA NO. OF 2016

IN

PIL Writ Petition (Civil) No. 784 of 2015

(Under Order LV Rule 6 of the SCR 2013)

IN THE MATTER OF

Lok Prahari, through its General Secretary ...Petitioner.

Versus

Union of India and Others

Respondents.

APPLICATION FOR AMENDMENT OF THE WRIT PETITION

To

The Hon'ble Chief Justice of India and his companion
Justices of the Supreme Court of India.

The humble petition of the petitioner above named

MOST RESPECTFULLY SOWETH:

1. That the applicant had filed the instant writ petition for enforcement of Article 19(1)(a) of the Constitution and to effectuate meaningful implementation of the judgments of this Hon'ble Court in Association for Democratic Reforms (AIR 202 SC 2112), People's Union for Civil Liberties (PUCL) (AIR 2003 SC 2363), Resurgence India Vs. Election Commission of India and Another (AIR 2014 SC 344) and Krishnamoorthy Vs. Sivakumar (AIR 2015 SC 1921) in this regard for restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the founding fathers of the Constitution and the concern expressed by the framers of the Representation of the People Act, 1951.

2. That, subsequent, to the filing of the writ petition there have been certain developments necessitating filing of this amendment application. Also, on 4.7.2016 the Hon'ble Court was graciously pleased to adjourn the matter to enable the petitioner in person to study in depth the issue raised in the writ petition in wider perspective. Accordingly, the instant application is being filed for permission to amend the writ petition as follows.

3. That the following paragraphs may kindly permitted to be added after para 40 in the writ petition-

40A. That vide letter dated 27.3.2016 the petitioner requested the CPIO, CBDT to supply copy of the enclosure to the letter dated 9.7.2015 (annexed with Annexure 1 to the IA dated 25.6.2016) and information about outcome of the cases wherein investigation was complete. Copies of this letter were also sent to the First Appellate Authority and to Member, CBDT for early compliance of the instruction in her letter dated 9.7.2015. However, there has been no response from any of them, despite petitioner's letter dated 9.6.2016.

40B. That in view of the reluctance of the CPIO, CBDT to supply information about verification of assets of even 26 MPs in the list annexed with Annexure P-6 to the WP, whose assets had increased by more than 5 times, vide RTI application dated 27.3.2016 the petitioner had also sought similar information. A

scrutiny of the photocopies of reports (annexure 4 to IA dated 25.6.2016) of various Director Generals (Investigation), CBDT to the Election Commission supplied to the petitioner by the CPIO of the Commission shows that-

- (1) Even after the letter dated 11.8.2015 (Annexure 3 to the I.A.No.4) from the CBDT in pursuance of the petitioner's representation dated 30.6.2015 (Annexure 6 to the WP) seeking compliance report *within a month*, verification of assets has been done only in respect of 11 out of 26 MPs mentioned at Sr. Nos. 1, 5, 8, 9, 10, 11, 17, 18, 19, 21, and 25 in the list at page 63 of the WP.
- (2) *No verification has been done* in respect of all the 6 MPs from UP, 2 MPs from Maharashtra, 2 MPs from Orissa, and 1 MP each from Jharkhand, Assam, Gujarat, Tamil Nadu, and Karnataka mentioned in the aforesaid list.
- (3) Even the verification reports in respect of the MPs at (1) *do not answer the issue as to whether more than 500% increase in their assets in 5 years was commensurate with the increase in income from their known sources of income or could be fully explained by any other valid reason*. Apparently, in the absence of the information of known sources of income

of the candidate and his/her spouse and dependents, the whole purpose of verification has been lost.

- (4) Out of the list of 257 MLAs (annexed with Annexure 6 to the WP), verification of assets has been done only in respect of **13** MLAs, *and that too does not address the issue as to whether in increase in assets is commensurate with known sources of income or is justified by any other valid reason.*
- (5) As stated in the letter dated 16.7.2015 (annexure 5 to IA dated 25.6.2016) from the Director of Income Tax(Inv.) Patna to the Director General of Income Tax (Inv.) Patna “the affidavits of the winning candidates could not be compared with the Return of Income owing to the fact that our ITD application does not have specific details of movable assets”. Likewise, for the same reason, in the absence of information about sources of income of the candidate, his spouse, and dependents in the affidavit in Form 26 *it is not possible for the voters draw any meaningful conclusion about his integrity.*

40C. That the position stated in the proceeding para fully justifies the prayer (3) in the writ petition so that the purpose of formulating the guidelines finalized in

consultation with the Election Commission is achieved and the object behind this exercise is fulfilled. Otherwise, mere superficial verification of assets declared in the affidavit, without inquiring as to whether the increase in assets is commensurate with the increase in income from known sources or for any other valid reason like inheritance, revision of circle rate etc, will defeat the whole purpose of declaration of assets by the Candidates to provide an insight to the voters about their integrity.

40D. That as per information provided by the ADR in respect of the 57 recently elected members of Rajya Sabha.

- (i) The increase in assets is highly disproportionate to the total income declared in the last ITR.
- (ii) Assets of members at Sr. Nos. 1 and 5 increased by more than 2000% and 500% respectively even though the profession declared by them is Rajya Sabha member and social, political activist.

A true and correct copy of the details of 11 newly elected members whose assets increase by more than 100% is annexed as **Annexure P- 10** to the WP.

40E. That in response to the petitioner's letter dated 29.2.2016 (Annexure 1 to the IA No. 5 Application

for Direction) the Under Secretary to the Election Commission vide his letter dated 26.5.2016 (Annexure 2 to the petitioner's supplementary affidavit dated 25.6.2016 in support of the application for Direction) had informed that the proposal was discussed in the meeting with political parties, and the Commission's decision in the matter will be informed shortly. Since information about the Commission's decision is still awaited, a request has been made to the Commission again vide letter dated 9.7.2016 a copy of which is annexed as **Annexure P- 11** to the WP.

40F. That apart from modification in Form 26 to incorporate the aforesaid information, a more important point which was missed out by the petitioner in person, while drafting the writ petition is the omission in Form 26 of the information about any contract with the appropriate government etc. In this connection it is relevant that the 1951 Act as originally enacted had the following provision in Section 7(d)-

7. Disqualification for membership of Parliament or of a State Legislature- A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of the state-

a) x x x

(b) x x x

(c) x x x

(d) If, whether, by himself or by any person or body of person is trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government;.

(e) x x x

(f) x x x

Section 8 (1)(c), (d) and (2) of the original Act provided as follows-

“8. Savings- (1) Notwithstanding anything in section 7-

(a) x x x

(b) x x x

(c) a disqualification under clause (d) of that section shall not, where the share or interest in the contract devolves on a person by inheritance or succession or as a legatee, executor or administrator, take effect until the expiration of six months after it has so devolved on his or of such longer period as the Election Commission may in any particular case allow;”.

(d) a person shall not be disqualified under clause (d) of that section by reason of his having a share or

interest in a contract entered into between a public company of which he is a shareholder but is neither a director holding an office of profit under the company nor a managing agent and the appropriate Government;”

(e) x x x

(f) x x x

(g) x x x

(2) Nothing in clause (d) of section 7 shall extend to a contract entered into between a co-operative society and the appropriate Government.

Section 9(1) and (2) of the original Act provided as follows-

9. Interpretation etc.- “(1) In this Chapter-

(a) “appropriate Government” means in relation to any disqualification for being chosen as or for being in relation of either House of Parliament, the Central Government and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;

(b) “public company” means a public company as defined in section 2 of the Indian Companies Act, 1913 (VII of 1913).”

(2) For the avoidance of doubt it is hereby declared that where any such contract as is referred to in clause (d) of section 7 has been entered into

by or on behalf of a Hindu undivided family and the appropriate Government, every member of that family shall become subject to the disqualification mentioned in the said clause; but where the contract has been entered into by member of a Hindu undivided family carrying on a separate business in course of such business, any other member of the said family having no share or interest in that business shall not become subject to such disqualification.”

40G. That subsequently, by amending Act 58 of 1958 Section 7(d) was amended to read as follows-

“(d) if there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government”

40H. That the statement of Objects and Reasons of the 1958 Amending Act ran as follows-

“The Object of the present Bill is to carry out certain amendments in the Representation of the People Act, 1950 and 1951, which are considered necessary in the light of the further experience gained by the Election Commission and the Government in the working of these two Acts since their last amendments in 1956. The reasons for the

principal changes proposed in the Bill are given in the Notes on clauses”.

The following reasons were given for the changes in amended Section 7 (d) stated in the preceding para by clauses 15, 16, 17 of the Amending Act.

“Clauses 15, 16, 17 – The language of section 7(d) of the 1951-Act which provides for disqualification in case of contracts with the Government is wide and vague enough to bring any kind or category of contract within its scope and it has been a fruitful source of election disputes in the past. Persons who only occasionally broadcast any talk from the radio station or contribute any article to any Government publication may come within the mischief of this section. It is accordingly, proposed to redraft section 7(d) in a simpler and more rational way so as to bring within purview only two categories of contracts entered into by a person with the Government in the course of his trade or business. These two categories are contracts for the supply of goods and contracts for the execution of any works.

By way of consequential amendments clauses (c) and (d) of sub-section (1) of section 8, sub-section (2) of that section and sub-section of section 9 are proposed to be omitted by clauses 16 and 17”.

40 I That significantly, the reasons given in the SOR of the 1958 Amending Act for restricting the scope of

the provision in Section 7(d) of the original Act is not justified by the example cited in the notes on clauses reproduced above. Such cases could be taken care of by simply deleting the words “or the performance of any services” instead of using these as an alibi to restrict the original provision to a *subsisting* “contract entered into in the course of *his* trade or business *by him*”. Apparently, the real aim was to give an opening to legislators to have business dealings with the government indirectly through HUF or a firm/trust/company in which he is a shareholder or even Director. This lacuna in the amended provision has been exploited by our legislators to further their self interest by misusing their position as ‘public representatives’.

40 J. That thereafter, by amending Act 47 of 1966 Chapter III of the original Act regarding disqualification containing Sections 7, 8 and 9 was substituted by Chapters III and IV of the existing Act and the provision in Section 7(d) of the original Act was incorporated along with an added explanation as Section 9-A of the present Act which runs as follows-

“9A. Disqualification for Government contract, etc- A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the

appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation.- For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.”

40.K That the objects and reasons which prompted the insertion of Section 9-A in place of old Section 7(d) , as extracted in the judgment in the case reported in (2002) 5 SCC 568 and reproduced in the erudite judgment in the case of Bajrang Bahadur Singh, a former MLA in UP, (2015) 12 SCC 570 (Para 48) were as follows-

“30. The objects and reasons for substituting Section 7(d) by Section 9-A are as under:-

Apart from the grouping of the sections effected by clause 20, some changes have also been made in the relevant provisions. In the new Section 9-A, an Explanation has been added to make it clear that a contract with the Government shall be deemed not to subsist by reason only of the Government has not performed its part of the contract either wholly or in part. *This change has become necessary in order to*

do away with the disqualification that attached to a person for being chosen as or for being a Member of Parliament or State Legislature even after he has fully performed his part of the contract, since it would hardly be justifiable to retain such a disqualification provision in a modern welfare State when State activities extend almost every domain of the citizen's affairs where very many persons, in one way or the other, have contractual relationship with the Government. That being the case, an unduly strict view about government contract in the present day might lead to the disqualification of a large number of citizens many of whom may prove to be able and capable Members of Parliament or State Legislatures. It would be of interest to note in this connection that in the United Kingdom, any disqualification arising out any contract with the Crown has been done away with the House of Commons Disqualification Act, 1957'.

- 40.L** That significantly, unlike Section 7(d) of the original Act, the present Section 9-A of Act limits the disqualification to a *subsisting* contract entered into *by the candidate* with the appropriate government, whereas the original provision disqualified a person if he had any share or interest in a contract “whether by himself *or by any person or body of persons* in trust for him or for his benefit or on his account

subject, of course, to the exceptions provided in Section 8(1) (c) and (d) and clarification in Section 9(2) of the original Act reproduced hereinbefore.

40M. That, however, the existing format of affidavit in Form 26 does not provide to the voters *even the limited information about Government contracts stipulated in Section 9-A of the Act*. As a result, the voters remain in dark about their so-called representatives and their families enriching themselves at public expense and getting away with it with impunity by being re-elected repeatedly taking advantage of this ill gotten money. Consequently, the increasing role of money power has been increasingly vitiating the election process, despite the concern expressed in the observations by the Apex Court in this regard from time to time. This is confirmed by the following recent observations of this Hon'ble Court-

- (i) *“Criminality and corruption go hand in hand. From the date the Constitution was adopted i.e., 26th January 1950, Red Letter Day in the history of India, the nation stood as a silent witness to corruption at high places. Corruption erodes the fundamental tenets of the rule of law”.*

Manoj Narula Vs. Union of India,

JT (9) 2014 SC 591 (Para 13).

(ii) *“We cannot close our eyes to the reality of the unwholesome influence which money power exerts on the Political System in this Country”.*

Bajrang Bahadur Singh (supra) (Para 56)

40N. That in the circumstances, it is necessary that to enable the voters to make an informed choice about the integrity of a candidate the voters are provided with the information not only about the candidate’s subsisting contracts with appropriate government but also about the contracts with appropriate Government and any public company by the Hindu undivided family/ trust/partnership firm(s)/private company (companies)/ in which the candidate and his spouse and dependents have a share or interest.

40.O. That the suggestion in the preceding para is fortified by the following observations of this Hon’ble Court in the case of Bajrang Bahadur Singh (Supra)-

“The purpose of Section 9-A as repeatedly held by this Court is to maintain the purity of the legislature and to avoid conflict of personal interest and duty of the legislators” (Para 53) and

“Any interpretation of Section 9-A which goes to assist a legislator who directly enters into a contractual relationship with the State for deriving monetary benefits (in some cases of enormous

proportions) should be avoided and be given a construction which as far as possible eliminates the possibility of creating such situation where the duty is certainly bound to conflict with personal interest.”
(Para 56).

40P. That above observations of this Hon'ble Court are entirely in sync with the reply of Dr. Ambedkar during the debate on the Representation of the People Bill, 1951 –

“Another thing that we must bear in mind and which I think goes to root of the matter is that our Parliament and our Electoral law should be so constituted that the independence of the Members of parliament as against the Government must be scrupulously observed. There can be no use in a Parliament if we adopt a system, which permits the Government to corrupt the whole of Parliament either by offering Political offices or by offering some other advantages. If a Parliament cannot act independently without fear or without favour from the Government, in my judgment, such a Parliament is of no use at all”. (Parliamentary Debates volume 11 part II, page 8353-54).”

4. That in the light of averments in para 3 above, the following grounds after ground S may kindly be permitted to be added in the writ petition-

T. Because, the suggestion for inclusion of information about the sources of income of the candidate and his/her spouse and dependents as well as their contracts with the appropriate government or a public company by Hindu undivided family/trust/partnership firm/private company in which they have any share or interest is in conformity with the objects and purpose of Section 9-A of the Act and the law laid down by this Hon'ble Court in this regard.

U. Because, the amendment in Section 7(d) as enacted in the original Act by unnecessarily replacing it with a very restricted Section 9-A on a rather feeble ground was not in accordance with the intentions of the framers of the Act.

5. That consequently the following may kindly be permitted to be added as prayer 3 and 4 in the writ petition and the existing prayer at 3 and 4 may be renumbered as 5 and 6-

3. issue a writ, order or direction in the nature of mandamus to the respondents to consider amending Section 9-A of the Act to include contracts with appropriate Government and any public company by the Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependents have a share or interest,

4. issue a writ, order or direction in the nature of mandamus to the respondents that, pending

amendment in Section 9-A of the Act, information about the contracts with appropriate Government and any public company by the Hindu undivided family/trust/partnership firm(s)/private company (companies)/ in which the candidate and his spouse and dependents have a share or interest shall also be provided in the affidavit in Form 26 prescribed under the Rules,

6. That the aforesaid facts and documents fully support the Prayers in the writ petition as amended and the application for interim relief. It is therefore, expedient in the interest of justice that the amendments proposed in paras 3, 4 and 5 are permitted to be incorporated by way of amendment to the writ petition.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (i) allow this application for amendment of the writ petition as per paras 3, 4 and 5 of this application, and/or,
- (ii) pass such other or further orders as may deem fit and proper.

And for this act of kindness the applicant shall ever remain grateful.

New Delhi

Dated- 12.7.2016.

(Satya Narain Shukla)

General Secretary, Lok Prahari

Petitioner-in Person