

R.11/19

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (CIVIL) NO.784/2015**

Lok Prahari through its General Secretary

S. N. SHUKLA Petitioner

VERSUS

Union of India & others Respondents

ADDITIONAL AFFIDAVIT

PAPER BOOK

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Advocate for Respondent : Mrs. Anil Katiyar

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S. N. SHUKLA

.....Petitioner

VERSUS

Union of India & others

.....Respondents

ADDITIONAL AFFIDAVIT OF RESPONDENT

NO. 4

I, GURPREET SHAH SINGH aged about 49 years,
S/o SH. S.S. SINGH working as Asst.
Commissioner of Income Tax (OSD)(Inv)-V,
Central Board of Direct Taxes 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

hence competent to swear the instant Additional Affidavit.

2 That this Additional Affidavit is being filed in view of the directions of this Hon'ble Court and in furtherance to the Counter-Affidavit of the Answering Respondent No. 4.

3. That it is respectfully submitted that the Election Affidavits filed by the candidates are self disclosed documents which are available in the public domain. As per an arrangement between Central Board of Direct taxes (CBDT) and Election Commission of India (ECI), verification of affidavits of candidates is undertaken as per the provisions of Income tax Act, 1961. Given that revenue augmentation is the primary concern of the Income tax Department and since increasingly the Department is graduating towards non-intrusive methods, the verification of election affidavits is carried out in respect of specific category of such cases, as per agreed parameters between ECI and CBDT. The

verification of election affidavits is carried out by the Investigation Directorates i.e. the Directors General of Income tax (Investigation) based on jurisdiction. A true copy of the arrangement between Central Board of Direct Taxes (CBDT) and Election Commission of India (ECI), is marked herewith and annexed as **Annexure : AA-1**, to this Additional Affidavit. (12-15)

3.1 That the verification of Affidavits is carried out in accordance with the provisions of the Income Tax Act, 1961. If the verification by the Investigation Directorate leads to a conclusion that, based on the comparison of information contained in the affidavit with the Return of Income, if any filed, and any further enquiries carried out, there is a case for assessment of income that escaped taxation, the matter is referred to the jurisdictional assessing officer who may proceed to pass an Assessment Order to assess or reassess the income as per the provisions of the Income Tax Act, 1961. It is respectfully submitted that the Income Tax Act,

1961 imposes tax on the total income computed in the assessment, along with interest (and attendant penal provisions). It is also respectfully submitted that the disclosure of information submitted by the assessee to the Income Tax department is governed by the provisions of Section 138 of the Income Tax Act, 1961 which mandates that no public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his or her possession during the discharge of official duties, except as provided in that section.

3.2. The outcome of verification of Affidavits of candidates are shared by Directors General of Income tax (Investigation) directly with ECI. They may send a copy to the Central Board of Direct Taxes for information. They are required to send a report to the Assessing officer having jurisdiction over the person, if assessment or reassessment of income has to be done. The Assessing Officers will then issue the statutory

notices and proceed with the assessment as per the provisions of the Income Tax Act, 1961.

3.3. That the nature of information contained in the Affidavits filed by candidate and that contained in their Income Tax returns (ITRs) vary. It is submitted that Affidavits reveal the statement of Assets and Liabilities of candidates at "market value" on a date. The Income Tax Returns contain the particulars of income, disclosed as mandated by the Act and verified in the prescribed Forms and may not contain a Statement of Assets and Liabilities in all cases, as for example, it does not require filing of balance sheet in cases of individuals not having professional or business income. Even where balance sheet is filed, it usually is based on the cost of acquisition and not on market value. Therefore, automatic comparison is not feasible and wherever necessary enquiries are carried out, though time consuming.

3.4. That the outcome of verification exercise carried out by Directors General of Income Tax (Investigation) is only indicative in nature to guide the Assessing officer to carry out further action, wherever it is found necessary, under the Income Tax Act, which results in an Assessment Order. Appellate remedy is provided against the Assessment order.

3.5. That the Petitioner had submitted a list of number of candidates for verification of their Affidavits, in view of substantial accretion in assets compared to their previous Affidavits. The number of such candidates in the list is as per table below :

Table-1

LOK	MLA	RAJYA
SABHA MP		SABHA MP
26	257	11

3.6 Out of the list of candidates mentioned in Table-1 above, copy of verification reports from Directors General of Income tax

(Investigation) have been received in CBDT in a large number of cases which are as per Table-2 below :

Table-2

LOK SABHA MP	MLA	RAJYA SABHA MP
26	215	2

3.7. The verification report of Election Affidavits from Directors General of Income tax (Inv), based on their remarks can be broadly classified into following 3 categories:

Category A : The verification prima facie with known sources of income has indicated discrepancy and therefore is taken up for further "Investigation" which may include reference to the Assessing officer for making assessment.

Category B : No discrepancy is found in value of assets declared and source of income.

Category C : The verification reports from Directors General of Income tax are pending.

That based on above classification, the outcome of report of election affidavits in respect of list of MPs/MLAs provided by the Petitioner is tabulated here as under :

LOK SABHA MP

CATEGORY A	CATEGORY B	CATEGORY C
7	19	0

MLA

CATEGORY A	CATEGORY B	CATEGORY C
98	117	42

RAJYA SABHA MP

CATEGORY A	CATEGORY B	CATEGORY C
0	2	9

3.8 It is humbly submitted that Directors General of Income tax (Investigation) are exempt under section 24 read with schedule II of the Right to Information Act, 2005 (RTI).

Therefore, the reports of verification of Affidavits of the candidates by the Directors General of Income tax (Investigation) cannot be provided under the RTI Act. It is also pertinent to note here the statutory restrictions under section 138 of the Income tax Act, 1961. (copy of Sch.II of RTI Act, 2005 is attached as **Annexure : AA2**) (16-17)

3.9 That in view of the reasons cited in para 3.8 supra, the certified true copy of the reports received in cases as per Table-2 in para 3.6 supra, from Directors General of Income tax (Investigation), **will be submitted separately in sealed cover for the kind perusal of the Hon'ble Court.**

4. That in furtherance to **para 6c of the Counter-affidavit filed by Respondent No.4**, the RTI application of the Petitioner dated 25.08.2015 was received in Investigation Division-V, CBDT on 7.09.2015 and a reply was duly sent vide order under section 7 of the RTI Act on 22.09.2015. The contention of the

Petitioner that there is no response from the Respondent is incorrect. The certified true copy of the order referred supra is attached as

Annexure : AA3 to this Additional affidavit. (18-20)

5. That in furtherance to **para 6d of the Counter-affidavit filed by Respondent No. 4**, it is respectfully submitted that the Petitioner was duly informed in response to his referred letter dated 27.03.2016 through letter F.No.282/4/2012-IT(Inv.V)/223 dated 25.07.2016 that the outcome of verification in cases of affidavits of candidates is shared by the Investigation directorates directly with the Election Commission of India. It was also clarified that the DsGIT(Inv.) is exempt organization from its purview under section 24 of the RTI Act (copy of letter dated 25-7-2016 is attached as **Annexure: AA4 to this Additional affidavit**). (21-22)

6. That the facts stated in the Additional Affidavit are true to knowledge based on official

records. No part of the same is false and nothing material has been concealed there from.

9/9/17
DEPONENT

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

VERIFICATION

I, GURPREET SHAH SINGH aged about 49 years, S/o. SH. S.S. SINGH working as Asst. Commissioner of Income Tax (OSD)(Inv)-V, Central Board of Direct Taxes do hereby verify that the facts stated in the above affidavit are true to the best of my knowledge. No part of the same is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the ___th day of
, 2017.

9/9/17
DEPONENT

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

Annexure AA-1

Record of discussion of the meeting between DG (Expenditure), Eel and CIT (Inv), CBDT on 19Th June to decide on-parameters-and ways for verification of affidavits

In deference to the decision taken during the meeting of 3rd June between the Chief Election Commissioner and the Member (Investigation) CSDT, another meeting between Sh. P K Dash, DG (Expenditure), ECI and Sh. Ramesh K. Yadav, CIT (Inv) CBDT took place on 19th June to decide on the areas and extent the Income Tax Department (ITD) could assist the Election Commission of India (ECI). Sh Amaresh Singh, Director (Inv), (SDT and Sh. Avinash Kumar, US, Eel were also present.

The following issues were discussed and decided upon:

- (1) Given that revenue augmentation was the primary concern of the income tax department and that it was guided by the provisions of the Income Tax

Act and since increasingly the department was graduating towards non-intrusive methods, only selected cases referred to by the ECI may be taken up for verification besides those where guidelines are issued by the ECI on the basis of agreed parameters.

(2) The following categories could be taken up by the ITO so far as verification of affidavits was concerned:

- (i) Specific cases received from the ECI.
- (ii) Cases witnessing phenomenal growth when the current affidavit is compared to that filed during the previous election, if any
- (iii) Cases of winning Candidates and the veracity of the affidavits compared to the returns of income, if any, filed by them
- (iv) Instances where there was no PAN but movable/immovable asset disclosed were in excess of Rs. 5 crore:

(v) Cases where addition of new immovable assets above a threshold say Rs. 2 crore vis-a-vis last affidavit, if any, was witnessed.

- (3) It was again requested that ECI may provide the contents of the affidavits in a 'soft format amenable for proper analysis by the ITO on systems.
- (4) It was also agreed that in order to make things smooth, a database of candidates having PAN would be provided by the Election Commission to the ITO w.r.t those who have filed affidavits in the old format.
- (5) For verification of status of returns of income filed by political parties, the ECI shall provide PAN details to enable the ITO carry out further verifications. OG (Expenditure) was informed about the interim reports sent by the ITD recently who appreciated the efforts made in this regard. Decision was also taken to expedite reports in the cases of remaining political parties.

- (6) Besides the above, attention was invited to the instructions of Eel requiring a very wide range of places & persons etc. for keeping surveillance. These may need a relook with a view to align the expectations with the ground realities and capabilities.

//true copy//

Annexure AA-2

Income Tax Department

Government of India

SECO D SCHEDULE

[Intelligence and security organisation established
by the Central Government]

INTELLIGENCE AND SECURITY ORGANISATION
Established BY THE CENTAL GOVERNMENT

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre of the Cabinet Secretariat.
8. Special Frontier Force of the Cabinet
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.

12. Central industrial Security Force
13. National Security Guards.
14. Assam Rifles
15. Sashstra Seema Bal.
16. Directorate General of income-tax (Investigation).
17. National Technical Research Organization.
18. Financial Intelligence Unit. India.
19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.
22. National Security Council Secretariat.
23. Central Bureau of investigation.
24. National Investigation Agency.
25. National Intelligence Grid.
26. Strategic Forces Command

Annexure AA-3

By speed post/

RTI MATTER

F.No. 282/3/2012-IT (Inv. V)/249

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Direct Taxes)

E-2, ARA Centre,

Jhandewalan Extn., New Delhi - 110055

Dated: 22.09.2015

ORDER Under section 7 of the
Right to Information Act, 2005

Application under the Right to Information Act,
2005 dated 25.08.2015 filed by Shri S. N. Shukla
IAS, (Retd.)(Advocate), Lucknow which is received
in this office on 07.09.2015 from the Section
officer (RTI Cell), Department of Revenue vide FTS
No. 179846/2015-RTI CELL being transferred to
this office u/s 6(3) of the RTI Act, 2005.

1. The information being sought in application are
furnished as under:

S. No.	Information asked for	Furnishing of information
1.	Action taken on the letter dated 30.06.2015 from tile General Secretary, Lok Prahari to Mrs. Anita Kapur Chairperson, CBOT regarding inquiry into disproportionate assets of MPs/MLAs.	On the basis of the information provided, secret letter to all concerned DSGIT (Inv.) have been issued vide this office's letter F.No. 282/4/2012:IT(Inv. V)/192 dated 11.08.2015 for verification and further necessary action.
2.	Photocopies of the notes and orders in the concerned file regarding(1) above	photocopies of above mentioned letter is enclosed

2. In view of above, application is accordingly disposed off u/s 7 of the Right to information Act 2005. Appeal against this order, if desired, can be preferred before the following Appellate Authority:

"The Director (Inv. V), Investigation Division-V, Central Board of Direct Taxes ((BOT), E-2, Ground Floor, ARA Centre, Jhandewalan, New Delhi - 110055

(Rajat Mittal)

Under Secretary (Inv. V) & CPIO, (BOT

To

Shri S. N. Shukla, I.A.S. (Retd.)(Advocate),
B-7, Nirala Nagar,
Ludnow.

Copy to (Without enclosures):

The Section Officer RTI Cell), Ministry of Finance,
Department of Revenue, North Block, New Delhi for
information.

//true copy//

Annexure-AA_4

F. No.282/4/2012-IT (Inv. V)/223

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Direct Taxes)

E-2, ARA Centre,

Jhandewalan Extn., New Delhi - 110055.

Dated: 25.07.2016

Shri S. N. Shukla, IAS. (Retd.),

(Advocate)

8-7, Nirala Nagar,

Lucknow

Sir,

Sub: Forwarding of information sought under RTI Act,
2005 - reg.

Kindly refer to your letter dated 27.03.2016
addressed to the CPIO with a copy to the Director
(Inv. V), CBDT and Ms. Surabhi Sinha, Member,
CBDT and Special Secretary, DOH, MOF, New Delhi
on the subject cited above.

2. I am directed that Directorate General of Income Tax (Inv.) of the Income Tax Department undertake verification/conduct enquiries under provision of the Income Tax Act, 1961, inter-alia, in appropriate cases of affidavits filed by candidates in the elections. Outcome of verification/enquiry in cases of the affidavits of candidates is shared by the Investigation Directorates with the Election Commission of India directly.
3. Further, the undersigned is directed to convey that as per Section 24 of the Right to Information Act, 2005, the RTI Act is not applicable to the Directorate Generals of Income Tax (Investigation)

Yours faithfully

(Parvesh Kumar)

Income Tax Officer (050) [Inv. V],
CBDT, New Delhi

//True copy//