

IN THE HIGH COURT OF DELHI AT NEW DELHI

CWP NO. 131 OF 2013

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS  
& ANOTHER

.....PETITIONER

VERSUS

UOI & OTHERS

.....RESPONDENTS

NDOH : 4.2.2013

INDEX

| <u>S.NO.</u> | <u>PARTICULARS</u>                                       | <u>PAGES</u> | <u>C.FEE</u> |
|--------------|--|--------------|--------------|
| 1.           | Counter affidavit on<br>on behalf of Respondent<br>No. 2 | 1 - 4        |              |
| 2.           | Annexure – R-2/1: Letter<br>Dated 28.9.2012              | 5-6          |              |
| 3.           | Annexure – R-2/2:<br>Reminder dated 11.1.2013            | 7            |              |
| 4.           | Annexure – R-2/3:<br>Letter dated 28.9.2012              | 9 -11        |              |
| 5.           | Vakalatnama  | 12           |              |

Note: Two Sets are filed.

*P.R. Chopra*  
(P.R. Chopra)

Advocate for Respondent No. 2  
245, Lawyers Chamber,  
Delhi High Court,  
New Delhi – 110003  
Ph. 23385367  
23383178  
M. 9810216998

New Delhi:  
01.2.2013

IN THE HIGH COURT OF DELHI AT NEW DELHI

CWP NO. 131 OF 2013

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS  
& ANOTHER

.....PETITIONER

VERSUS

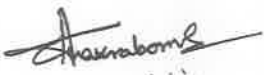
UOI & OTHERS

.....RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2 –  
THE ELECTION COMMISSION OF INDIA**

I, Ashish Chakraborty son of Shri A.C. Chakraborty aged about 58 years, Secretary, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi – 110001, do hereby solemnly affirm and state as follows:

1. I am employed as Secretary to the Election Commission of India, the Respondent No. 2 herein. I have gone through the above Writ Petition and the relevant official records, am well conversant with the facts and circumstances of the case, and am competent to swear this Affidavit.
2. The petitioner has sought direction for investigation by DIT or CBI into violation of foreign funding and other laws by major political parties, corporate groups and public undertakings, and, direction to initiate action against the said political parties and corporates under FCR Act of 1976 and 2010, Companies Act, Income Tax Act, etc.



3. That the answering respondent submits that as per the existing provisions of Section 29B of the Representation of People Act, 1951, no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of Section 2 of the Foreign Contribution (Regulation) Act, 1976. It may be relevant to state that FCRA, 1976 has been substituted by FCRA, 2010 and the foreign source is now defined in Clause (j) of Section 2 of that Act. Section 29C of Representation of People Act, 1951 requires the political parties to submit to the Election Commission a statement of contributions to the political party in excess of Rs.20,000/- received from any person including Companies, other than Government Companies, for each financial year. The report has to be in the prescribed Form 24A under Rule 85B of the Conduct of Elections Rules, 1961, and must be submitted before the due date for filing the Income Tax Return under Section 139 of the Income Tax Act, 1961. The consequence of not filing the said return with the Commission is that the said political party will not be entitled to tax relief under the Income Tax Act, and there is no other penal consequence.
4. That the political parties do not seek any financial relief or rebate from the Election Commission. Nor does the law provide for any penal consequences to be imposed by the Commission if the political parties do not file the report under Rule 85B of the Conduct of Elections Rules, 1961. The Election Commission puts these statements of contributions received from the political parties on its website and also forwards a copy of the reports to Central Board of Direct Taxes for necessary action on their part. The account statements submitted by INC and BJP to the ECI, attached to the petition as Annexure P9(Colly), Annexure P10 (Colly) and Annexure P12 are true copies of the statements as available in the records of the Commission and which have been forwarded to CBDT and MHA.
5. That the Election Commission is not an investigating agency in respect of any offence under the FCRA or the Income Tax Act. From the contribution reports

*Shankarabem*

furnished to the Commission by the political parties, it cannot be detected by the Commission as to which of the sources are foreign companies, or their subsidiaries operating in India. Thus, it is for the Union of India, Respondent No. 1, to investigate if there is any offence committed by the political parties, or the PSUs or the corporates, and as to what penal action is called for or has been taken against them for any violation noticed.

6. That the Election Commission has written to the Ministry of Home Affairs vide Letter No. 56/CR/2012-PPEMS/1136 dated 28.9.2012 (Annexure R-2/1) forwarding the complaints received by the Commission that certain political parties have received contributions from foreign sources in contravention of law. The Commission forwarded the complaints received together with contribution reports since 2003-04, requesting that Ministry to examine the matter and take such further action as may be deemed proper. A request was made to keep the Commission informed of the action taken in the matter. However, no reply/action taken report was received prompting the Commission to send a reminder dated 11.1.2013 (Annexure – R-2/2).
7. That the Commission has proposed to the Government of India for certain modifications in the existing Form 24A of the Conduct of Elections Rules, 1961 in the interest of greater transparency with regard to the contributions received by political parties during any financial year. The revised (proposed) Form 24A, inter-alia, seeks a declaration from the Political Party that it has not received any contribution from any source prohibited under Section 29B of the Representation of People Act, 1951. Annexure – R-2/3 is the letter dated 29.9.2012 addressed to Ministry of Law and Justice in this behalf.
8. In view of the legal position and submissions made hereinabove, it is humbly submitted that there is no case for any writ or direction against the answering

*Handwritten signature*

respondent and it is prayed that the Hon'ble Court may be pleased to dismiss the petition as against the answering respondent.



DEPONENT  
ASHISH CHAKRABORTY  
Secretary  
Election Commission of India  
New Delhi

New Delhi:  
Dated:

#### VERIFICATION

Verified at New Delhi this \_\_\_ day of January, 2013 that the facts stated in paras 1 to 8 above are true to my knowledge and the submissions made therein are true to my belief; nothing stated in this affidavit is false nor has anything material been concealed.



DEPONENT  
ASHISH CHAKRABORTY  
Secretary  
Election Commission of India  
New Delhi

Annexure R-2/1

By Special Messenger

11.07  
29/9/12  
PBI

# ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001. 5

No.56/CR/2012-PPEMS /1136

Dated : 28<sup>th</sup> September, 2012

To

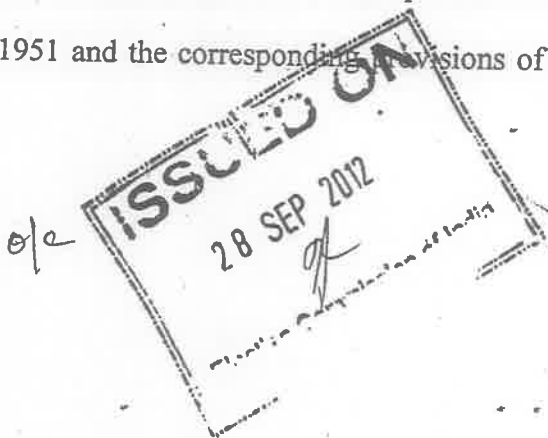
The Secretary to the Government of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110001.

Subject:- Contributions received by political parties from foreign sources - matter regarding.

Sir,

The political parties are required to file annual reports of contributions raised in excess of Rs.20,000/- from a person or a company before the Election Commission of India as per section 29C of Representation of the People Act, 1951. Further, the proviso to Section 29B stipulates that no political party shall receive any contribution from any foreign source as defined in Section 2(e) of Foreign Contribution Regulation Act, 1976. The said Foreign Contribution (Regulation) Act, 1976 (before its replacement by the Foreign Contribution (Regulation) Act, 2010) also specifically prohibited, vide Section 4 thereof, any foreign contribution being accepted, *inter alia*, by any political party or office-bearer thereof. Furthermore, Section 3 of the Foreign Contribution (Regulation) Act, 2010 also continues the same prohibition on acceptance of foreign contributions by the political parties and their office bearers.

2. In above regard, complaints are received that certain political parties have received contributions from foreign sources in contravention of the said proviso to Section 29B of the Representation of the People Act, 1951 and the corresponding provisions of the Foreign Contribution (Regulation) Act.



3. A copy each of the relevant complaints is being forwarded herewith to your Ministry as the administration and enforcement of the Foreign Contribution (Regulation) Acts of 1976 and 2010 fall within the jurisdiction of the Ministry of Home Affairs (MHA). The MHA may, therefore, look into the complaints and examine the matter for such enquiry and further action under the said Acts as may be deemed appropriate by the Ministry.

4. A copy each of the contribution reports as received and uploaded ([www.eci.nic.in](http://www.eci.nic.in)) by the Commission from political parties under Section 29C of the Representation of the People Act, 1951 since 2003-04 is also forwarded herewith in CD form (for those uploaded) and hard copies for those not yet uploaded.

5. Kindly acknowledge receipt and keep the Commission informed of action taken in the matter.

Yours faithfully,

*bharal*  
28/9/12  
(B.B. Garg)  
Joint Director (EE)

Enclosures: As above

BY SPECIAL MESSENGERReminder**ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 56/CR/2012-PPEMS /380

Dated: 11<sup>th</sup> January, 2013

To

The Secretary to the Government of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi- 110001.

Subject: - Contribution received by political parties from foreign sources  
- matter regarding.

Sir,

I am directed to refer to Commission's letter of even number dated 28.09.2012 on the subject cited (copy enclosed) and to state that no correspondence in this connection from your side has been received in the Commission till date.

You are therefore, requested to inform the Commission of the action taken in this matter so far.

Yours faithfully,



(MALAY MALLICK)

UNDER SECRETARY

FAX: 23318506

Phone No. 23052058

E mail: malay.mallick@eci.gov.in

नि किय/ISSUED ON

11 JAN 2013

निर्वाचन आयोग  
Election Commission of India  
नई दिल्ली/New Delhi



8  
Annexure R-2/3

By Special Messenger

Pl. no. 1138  
28/9/12  
B.B.G.

**ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 56/CR/2012/PPEMS/ 1138

Dated: 28<sup>th</sup> September, 2012

To

The Secretary,  
Ministry of Law and Justice  
(Legislative Department),  
Shastri Bhawan,  
New Delhi.


Subject: Proposed modifications in Form 24A- regarding.

Sir.

I am directed to state that in the interest of greater transparency with regard to contributions received during any financial year by political parties, they are required to file a report in Form 24 A u/r Rule 85 B of the Conduct of Elections Rules, 1961. The Commission proposes certain modifications to above said Form 24A.

A copy of the proposed Form 24 A with modifications is being forwarded herewith for making the necessary changes.

Yours faithfully,

  
28 SEP 2012  
JOINT DIRECTOR (EE)

Bhargava  
28/9/12  
(B.B. GARG)

9

FORM 24A

(See rule 85B)

[This report should be filed with the Election Commission of India before the due date for furnishing of Return of Income of the Political Party for the relevant financial year under section 139 of the Income-tax Act, 1961 (43 of 1961) and a certificate to this effect should be attached with the Income-tax Return to claim exemption under the Income-tax Act, 1961.]

**PART - A**

1. Name of Political Party: \_\_\_\_\_
2. Status of the Political Party (recognized/unrecognized): \_\_\_\_\_
3. Complete Postal Address of the headquarters of the Political Party: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
4. Date of registration of political party with Election Commission: \_\_\_\_\_
5. (i) Permanent Account Number (PAN): \_\_\_\_\_  
 (ii) Ward/Circle where the annual return of Income Tax of the political party is filed: \_\_\_\_\_
6. (a) Financial year for which the contribution report is being submitted: FY: 20..... - 20.....  
 (b) Details of contribution receipts:

| S. No. | Description  | Total amount (in Rupees) for the financial year [as mentioned at 6(a) above] |                    |       | Total amount for the last financial year (FY: 20... - 20...) (in Rupees) |
|--------|--|--|--------------------|-------|--|
|        |  | Cash   | Cheque/Draft/ RTGS | Total |  |
| (i)    | Total contributions received from all sources permissible under section 29 B of the Representation of the People Act, 1951   |  |                    |       |  |
| (ii)   | Out of (i) above, total amount of contributions received in excess of Rs. 20,000/- from a person or company as per Section 29C of the Representation of the People Act, 1951 |  |                    |       |  |
| (iii)  | Out of (i) above, total amount received below Rs. 20,000/- from a person or company  |  |                    |       |  |

7. The details of contributions received in excess of Rs.20,000/- from any person or company (other than Government company) in the financial year as mentioned in Item 6(ii) above, are given in *Part - B*.
8. Where the contributor is a company, the conditions laid down under section 293A of the Companies

10

Act, 1956 (1 of 1956) have been complied with by each company; and the certificate to this effect obtained from each company is annexed as per the enclosed list of such companies.

9. Where the contributor is an electoral trust, the conditions laid down in section 13B of Income Tax Act, 1961, have been complied by each electoral trust; and the certificate to this effect obtained from each trust is annexed as per the enclosed list of such trusts.

**Part - B**

(Details of contributions received in excess of Rs. 20,000/- from a person or company under section 29C of Representation of Peoples Act 1951)

Out of the contribution receipts, mentioned in Item 6 (b) of Part A, the details of contributions received in excess of Rs.20,000/- (Rupees twenty thousand) under section 29C of Representation of the People Act, 1951, during the Financial Year 20.... - 20.... are as under:

| Serial Number | Name and complete address of the person/ company making contribution | PAN | Amount of contribution (Rs.) | Date of Receipt | Mode of contribution |                                  |   | Remarks |
|---------------|--|-----|------------------------------|-----------------|----------------------|----------------------------------|---|---------|
|               |  |     |                              |                 | cash                 | Cheque No./Demand Draft No./RTGS | Name of the Bank and its Branch on which cheque or Draft is drawn |         |
| 1             | 2  | 3   | 4                            | 5               | 6a                   | 6b                               | 6c  | 7       |
|               |  |     |                              |                 |                      |                                  |   |         |
| Grand Total:  |  |     |                              |                 |                      |                                  |   |         |

Note:

- In case of payment by cheque/demand draft with date and instrument number, indicate name of the Bank and Branch of the bank on which the cheque/demand draft has been drawn.
- Where a person or company has made contributions on more than one occasion, the aggregate whereof exceeds Rs.20,000/- in the Financial Year under reference, details of each such contribution shall be given separately in columns (1) to (7) above, even if any such contribution was less than Rs.20,000/-.
- The Grand Total mentioned in column (4) above should tally with the total figure of contributions shown in Item 6 (b) (ii) of Part A of the Form 24A.

**PART - C**

**Verification**

I, \_\_\_\_\_ (full name in Block letters), son/daughter of \_\_\_\_\_ solemnly

declare that:

- 11
- (i) no contribution has been received directly or indirectly from any foreign source defined under clause (c) of Section(2) of the Foreign Contribution (Regulations) Act 1976 (49 of 1976),
- (ii) no contribution has been received from a Government Company or Local Authority or artificial juridical person wholly or partly funded by the Government,  
as prohibited under Section 29B of Representation of the People Act 1951;
- (iii) the figures shown in Item 6 (b) of Part-A above are as per the audited annual accounts of the political party for the above mentioned financial year;
- (iv) the information given in this report is correct, complete and truly stated, to the best of my knowledge and belief.

I further declare that I am verifying this report in my capacity as \_\_\_\_\_ on behalf of the political party named above and I am competent to do so.

(Signature of the Treasurer/Authorized person)

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**Enclosure:**

1. Certificates from the Companies under Section 293A of Companies Act, 1956 and the list of such companies.
2. Certificates from the Electoral Trusts and approval order of CDDT [as mentioned at Item 9 of Part-A above].
3. The above Form 24A with all enclosures and complete with all details to be also filed in soft copy on a CD readable in Scanned. pdf format.

**Notes:**

1. If any political party has not raised any contribution in excess of Rs.20,000/- during the Financial Year under reference, every such party is also required to file 'NIL' report.
2. If the report in Form 24A is not filed by any political party for any Financial Year before the due date of filing of Annual Income Tax Return under Section 139 of Income Tax Act, the party shall not be entitled to any tax relief under that Act, as laid down in section 29C of the Representation of the People Act, 1951.