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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) No. 333/2015

IN THE MATTER OF:

Association for Democratic Reforms & Anr ..Petitioner  
Versus  
Union of India & Ors ..Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT  
NO.5 THE COMMUNIST PARTY OF INDIA (MARXIST)

I, Sitaram Yechury, S/o Sri .Sarveswara Somayajula Yechury, aged 63 years, presently the General Secretary of the respondent No.4, the Communist Party of India (Marxist), A.K.Gopalan Bhawan, 27-29, Bhai Vir Singh Marg, New Delhi - 110001, do hereby solemnly affirm and state as under:

1. I am the General Secretary of the respondent No.5, the Communist Party of India (Marxist) in the above Writ Petition and fully conversant with the facts and circumstances of the case, as such I am swearing this affidavit for and on behalf of Respondent No.5.
2. That, save and except those, which are matter of record, all the averments, statements and submissions made by the



petitioners in the above Writ Petition, until and unless the same are specifically admitted, are denied by the answering respondent.

3. That the respondent, the Communist Party of India (Marxist), holds view that the statement of accounts and the details of finances of the political parties should be accessible to public. The Communist Party of India (Marxist) has been taking a consistent position that the financial statement and the accounts of a political party should be publically available and it stands for complete transparency of the income and expenditure of the political parties.
4. That the Answering respondent No. 5, The Communist Party of India (Marxist), is regularly submitting its accounts before the Election Commission and the Income Tax Department.
5. It is submitted that finding of the Central Information Commission(CIC)dated 3.06.2013 that political parties are 'public authorities' under section 2(h) of the Right to Information Act 2005 is wrong in law and facts.
6. If a political party is declared as a 'Public Authority', as prayed by the Writ Petitioner, the same would be destabilising the very party system in the country. A



political party is a voluntary association of citizens who believe in an ideology, programme and its policies and function on the basis of a Constitution adopted by its members. In a political party, free and frank discussions on all aspects are necessary to arrive at correct conclusions. If 'Right to Information Act 2005' is applied to a political party and permit access to all internal deliberations of the party on policy matters, organizational matters, selection of leaders and candidates etc, will constitute a serious infringement of the inner-party functioning, confidentiality of discussions and undermine the political party system itself.

7. It is submitted that, in a democratic political system, protection is granted to political parties to keep the confidentiality of the inner-party discussions with regard to policies, programme, assessment of other political parties, the Governments, attitude toward them, chalking out agitations and struggles against the wrong policies of the government, preparation of manifestos, selection of candidates and leaders to the various levels of the party, disciplinary action against erring members of the party or inner correspondence between members of the party and its different units etc. Opponents of a political party can



mischievously use the tool of the 'Right to Information' as an instrument and gain access to such confidential information to destabilize a political party. Political parties constitute an important component of the democratic political system in India and nothing should be done to undermine the democratic political system and political parties.

8. If prayers of the petitioners are allowed, the necessary corollary of such declaration is the appointment of Public Information Officers (PIOs) as per the statutory mandate. It may kindly be noted that, after the order of CIC dated, the answering respondent started receiving all kinds of queries such as the reasons for selecting a candidates, minutes of internal discussions took place in party meetings etc. Such a trend is preposterous and no party can function in such manner in the country.

9. It is submitted that the Parliament, while passing the Right to Information Act 2005, had no intention to include political parties within the ambit of the 'Right to Information Act 2005' and the whole scheme of the legislation, would prove the same. Section 8 of the Act gives an elaborate list of items of exemptions from disclosures of information to the public. Political Parties do



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not come under any of the those categories. The interpretations by the Central Information Commission in its decision about the role played by political parties, their nature of duties and the Constitutional and legal provisions etc. and the conclusion drawn to the effect that the political parties will come under the category of 'public authorities' were based on a wrong appreciation of the provision of Section 2(h) of the Right to Information Act.

10. It is submitted that the foundation of the order of the Central Information Commission is that the political parties are substantially financed by the Central Government. It is submitted 'theory of substantial funding' cannot be made applicable in the case of political parties in the view of the respectful submissions hereinabove. Notwithstanding and without acceding to the proposition of 'substantial funding', in the case of a political party, it is the respectful submission of the respondent that finding of the Central Information Commission on the said aspect is also wrong in view of the judgment of this Hon'ble Court in Thalappalam Service Coop. Bank Ltd. And Others Vs. State of Kerala and Others (2013) 16 SCC 32. The aforesaid decision lays down the law that merely providing subsidies, grants, exemptions, privileges, etc cannot be





said to be providing funding to a substantial extent unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding it would struggle to exist. If this yardstick applied, it cannot be held that the Communist Party of India (Marxist), is substantially financed by the Government, therefore, it will not come under the category of 'public authority' as defined by Section 2(h) of Right to Information Act 2005.

11. Further, the findings of the Central Information Commission, based on the critical role being played by the political parties in the democratic setup and the nature of duties performed by them, so as to bring them in the ambit of Section 2(h) is based on a wrong and liberal interpretation of Section 2(h) of Right to Information Act. This Hon'ble Court, in the judgment referred hereinabove, has held that Section 2(h) exhausts the categories mentioned therein. The judgment observes, "*Legislature, in its wisdom, while defining the expression 'public authority' under section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions 'means' and 'includes'. When a word is*



*defined to 'mean' something, the definition is prima facie restrictive and where the word is defined to 'include' some other thing, the definition is prima facie extensive. But when both the expression 'means' and 'includes' are used, the categories mentioned there would exhaust themselves. Meaning of the expressions 'mean' and 'includes' have been explained by this court in Delhi Development Authority v. BholaNath Sharma (Dead) by LRs and others (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions."*

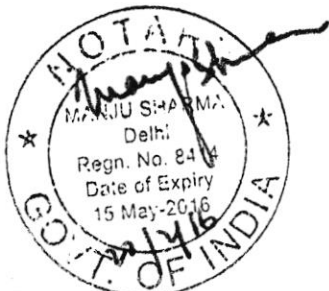
12. It is submitted that the definition of 'public authority' as defined by Section 2(h) of the Right to Information Act 2005 shall not include any association or body of individuals registered or recognized as a political party under the Representation of the People Act 1951. There are six categories of authority or body or institution or non governmentorganisation mentioned in Section 2 clause (h) of Right to Information Act as such declaration sought in the Writ Petition and consequential prayers may not be allowed.





13. It is submitted that, while maintaining the stand that the Political Parties cannot come under the category of 'public authority' as defined by Section 2(h) of Right to Information Act 2005, the answering respondent holds and reiterates the view that the financial statement and the accounts of a political party should be publically available and it stands for complete transparency of the income and expenditure political parties.

14. In view of the above submissions, this Hon'ble Court may be pleased to decline the prayers in the Writ Petition in the interest of justice.



*Subramaniam*  
DEPONENT

VERIFICATION

Verified at New Delhi on this 27<sup>th</sup> Day of February, 2016 that the contents of above counter affidavit are true and correct to my knowledge and the legal submissions made therein are on advice received and believed to be true. That no part of it is false and nothing material has been concealed therefrom.



*Subramaniam*  
DEPONENT

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO APPEARS PERFECT TO UNDERSTAND & AFFIRM / DEPOSE BEFORE ME AT DELHI ON 27/2/16 IDENTIFIED BY

✓ IDENTIFIED THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE

*PV Dandi* *Adi*

ATTESTED

NOTARY, DELHI-R-8414  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register Pg./Sl. No.....