

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. No _____ OF 2020

IN

WRIT PETITION(C) No. 1142 OF 2020

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY

... PETITIONER

VERSUS

UNION OF INDIA& ORS.

... RESPONDENT

AND IN THE MATTER OF:

ASSOCIATION FOR
DEMOCRATIC REFORMS
Through Its Founder-Trustee
Prof. Jagdeep S.Chhokar
T-95, Second Floor, C.L House
Gautam Nagar,
New Delhi-110049

...INTERVENOR
/APPLICANT

**APPLICATION FOR INTERVENTION/
IMPLEADMENT ON BEHALF OF THE
APPLICANTS AS CO-PETITIONER**

To

The Hon'ble the Chief Justice of India
And His companion Justices of
Supreme Court of India,
New Delhi

The Humble Petition of the Applicants named
above:

MOST RESPECTFULLY SHOWETH:

1. That the aforementioned Writ Petition has been filed
under Article 32 of the Constitution of India seeking writ,

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order or direction or writ in nature of mandamus to Centre and Election Commission to take apposite steps to debar the charge sheeted person from contesting election, against whom charges have been framed in serious offences.

2. That this Hon'ble Court has been pleased to issue rule on 28.09.2022 and on same date the Respondent no.3 namely Election Commission of India has accepted notice through its Counsel before this Hon'ble Court, and the matter is still pending for final adjudication.

3. The Applicant/Petitioner was set up in the year 1999 by a group of professors and alumni of the Indian Institute of Management, Ahmedabad (IIMA) as a non-profit, non-political, non-partisan, non-government organization, committed to the task of improving democracy and governance in India. The Organization is registered as Public Trust under Mumbai Public Trust Act, 1950 (Rules 29th of Mumbai 1950). A true copy of the certificate of registration of the Applicant/Petitioner is annexed herewith and marked as **ANNEXURE A-1 (Page No.)**.

4. The Applicant/Petitioner organization has been in the forefront of Electoral reforms in the country in the recent past. In an initiative towards building an informed, aware citizenry the Applicant/Petitioner filed Public Interest litigation before the Hon'ble High Court of Delhi at New Delhi in December 1999 seeking implementation of the recommendations of the 170th report of the Law Commission. The Hon'ble High Court

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was pleased to give a judgment in favor of the Applicant/Petitioner and the same was later on challenged before this Hon'ble Court and this Hon'ble Court has been pleased to uphold the High Court's Judgment. That the said Judgment is reported as *Union of India Vs. Assn. For Democratic Reforms* 2002 (5) SCC 294 and as *PUCL Vs. Union of India &Anr.* 2003(4) SCC 399, it was the effect of the abovementioned Judgment of this Hon'ble Court, in the matter filed by the Applicant Association that now the candidates contesting elections for the Parliament and State Assemblies are mandatorily required to submit affidavits along with their nomination papers giving information about criminal cases pending against them, if any; financial assets of the candidates, his/her spouse and dependents financial liabilities and educational qualifications of the candidate. It is relevant to set out that, the aforesaid judgments has been in fact relied upon by the Petitioner in Writ Petition to place reliance on decisions of this Hon'ble Court supporting the compelling necessity to take immediate steps to deter candidates who have charges framed against them from standing for election.

5. That the Applicant Association along with National Election Watch (a conglomeration of more than 1200 organizations across the country), started to hold Election Watches for all Parliamentary and Assembly elections since 1992. The Association has also been conducting, various projects aimed at increasing transparency and accountability in the political and electoral system of the country.

6. That in December, 2002, first Election Watch was conducted for Gujarat Assembly Election. So far Applicant Association along with News has conducted election watches for all Lok Sabha and Rajya Sabha elections and almost all state assembly elections since 2002 in the country. The Copies of the few Election watches are annexed herewith and marked as **ANNEXURE A-2 (Page No.)**

7. That the Applicant Association has also successfully mobilized and networked with a large number of civil society organizations all over the country. This in turn has helped in taking the campaign to grass-roots while strengthening the network of civil society across the country. The information is disseminated through various media including Press Conferences, toll free help lines, SMS campaigns, websites (myneta.info and Applicant Associationindia.org) and outbound calls using Aamir Khan's voice messages.

8. That the Applicant Association towards achieving the goal, has also been following the income tax filings status of political parties. That in April 2008 in an Appeal filed by the Applicant Association the Central Information Commission (CIC), held that the Income Tax Returns of Political Parties would be made available in the public domain along with the assessment orders. The aforesaid Appeal was an outcome of persistent follow up by the Applicant Association of an RTI Application for almost 2 years. In the process, the association has also procured details of political parties of 14 states.

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9. The Applicant Association/NEW also helped put up the information in the Register of Members' Interest of the Rajya Sabha in the public domain. The register contains crucial information regarding remunerative directorship, shareholding of controlling nature, regular remunerative activity, paid consultancy and professional engagement of the Rajya Sabha members. This information was analysed and released widely. The Applicant Association is currently corresponding with the Speaker of the Lok Sabha to institute the same disclosure norms in the Lower House also.

10. That the Applicant Association hold annual national conferences also, during 2012 Annual National Conference held at Bhubaneswar, the Applicant Association released "Political party Draft bill".

11. That the Applicant Association has representation in the task force set up by the Central Vigilance Commission (CVC) to evolve a National Strategy to Combat Corruption. The Applicant Association has been asked formally to be part of said committee.

12. In December 2011 Applicant Association won the NASSCOM award for ICT led Innovation by Multistakeholder Partnerships, which was awarded for the Election Watch software of Applicant Association and Webrosoft. The Election Watch Software (EWS), is the backbone of all Applicant Association's research work. EWS is the online tool used to feed information on antecedents of candidates. The changes

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were made to suit the new format of affidavits released by the ECI in 2011 and also for the analysis of election expenses. The online tool was also expanded to include information on the performance of MLAs and Assemblies.

13. The Applicant Association, has support of about 1200 NGOs from all over the country and the Association in partnership with its partners has been organizing Citizen Election Watch for all major elections. The Applicant Association's goal is to improve governance and strengthen democracy by continuous work in the area of Electoral and Political Reforms. The ambit and scope of work in this field is enormous, Hence, Applicant Association has chosen to concentrate its efforts in the following areas pertaining to the political system of the country:

- Corruption and criminalization in the political process.
- Empowerment of the electorate through greater dissemination of information relating to the candidates and the parties, for a better and informed choice.
- Need for greater accountability of Political Parties.
- Need for inner-party democracy and transparency in party-functioning and gaps in the disclosure of candidate's profile.

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14. That apart from the arena of electoral reforms, the Applicant Association is also engaged in the broad field of political reform and is committed to the task of greater transparency and accountability in government and polity. The Applicant Association believes that the political parties play a pivotal role in a parliamentary democracy like our Country; it is the political parties which field candidates to contest elections, to act as peoples representatives and as such functions as the bridge between government and the governed.

15. That the object of the aforesaid writ petition, seeking writ, order or direction or writ in nature of mandamus to Centre and Election Commission to take apposite steps to debar the charge sheeted person from contesting election, against whom charges have been framed in serious offences, is to curb out the Crime, Corruption and the Corrupt Practices from the Indian politics. The said subject matter has been critical to the objective for which the Applicant Association was formed. The Applicant Association has been instrumental since its inception in bringing out the several electoral reforms and thus has come in possession of ample material and statistical data, collected since the inception, which would be relevant and necessary for the adjudication of the issue raised in the aforesaid Writ Petition. The Applicant Association would be able with the aforesaid material, to assist this Hon'ble Court to arrive at just and reasonable conclusion in the aforesaid Writ Petition.

16. That the Applicant Association seeks to espouse the fundamental right of millions of voters across India to have free and fair elections and to ensure a clean democratic polity, which is not infested with criminals. It is the electorate, which has to suffer on account of “criminalization of politics” and often can do little but helplessly participate in the election of the mighty and moneyed criminal elements of society to Parliament and the State Legislatures.

17. That free and fair elections, voter’s right to choose and total absence of discrimination as enunciated in Article 14 read with Article 324 and Article 19(1)(a) of the Constitution clearly indicate a resilient need for election reforms to check the growing menace of criminalization of politics which is corroding the foremost democratic institutions of the nation.

18. That it is most humbly submitted that the criminal elements are increasingly entering into the political arena. This close nexus between money power and muscle power has got so engrained in our electoral system that the citizens are left hostage to the current situation.

19. That it is trite that elected representatives of the people should be capable and men of character and integrity so as to be able to make the best of the Constitution. If they are lacking in these qualities, the Constitution cannot help the country. Dr. Rajendra Prasad, President, Constituent Assembly of India in his speech on 26th November, 1949, before putting the motion for passing of the Constitution made the following observations:

“If the people who are elected are capable and men of character and integrity, then they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them..... It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas... We can only hope that the country will throw up such men in abundance¹.”

20. That the ground reality, however, is drastically different in as much as involvement of criminals in politics has been progressively increasing over the years with disastrous consequences to the democratic polity of our country. Needless to say, ‘criminalization of politics, with its concomitant of politicization of crime and criminals, negates the very intent of Article 326 and corrodes the very foundation of democracy. In Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and Ors. (1997) 6 SCC 1, the Supreme Court observed:

“5. Criminalization of politics is the bane of society and negation of democracy. It is subversive of free

and fair elections which is a basic feature of the Constitution...”

21. That holding of free and fair election by adult franchise in a periodical manner as has been held in *Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others* (1978)1 SCC 405, for it is the heart and soul of the parliamentary system. In the said case, Krishna Iyer, J. quoted with approval the statement of Sir Winston Churchill which is as follows: -

“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”

22. That the object of the aforesaid writ petition, by seeking writ, order or direction or writ in nature of mandamus to Centre and Election Commission to take apposite steps to debar the charge sheeted person from contesting election, against whom charges have been framed in serious offences. is to curb out the Crime, Corruption and the Corrupt Practices from the Indian politics. The said subject matter has been critical to the objective for which the Applicant Association was formed. The Applicant Association has been instrumental since its inception in bringing out the several electoral reforms and thus has come in possession of ample

material and statistical data, collected since the inception, which would be relevant and necessary for the adjudication of the issue raised in the aforesaid Writ Petition. The Applicant Association would be able with the aforesaid material, to assist this Hon'ble Court to arrive at just and reasonable conclusion in the aforesaid Writ Petition.

23. That for the aforesaid reason the Applicant Association by way of the Present Application seeks this Hon'ble Courts leave to be impleaded as a Co-Petitioner in the aforesaid Writ Petition and also seek permission to place on record relevant and necessary material, input and suggestion as this Hon'ble Court deems fit for the proper adjudication of the issues raised in the Writ Petition. The Applicant Association seeks to assist this Hon'ble Court for proper adjudication of the aforesaid Writ Petition.

PRAYER

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

- a) Allow the Applicant Association to be impleaded as Co-Petitioner in the WP (C) No. 1142 of 2020;
- b) Permit the Applicant Association to place on record relevant and necessary Material, Inputs and the Suggestion, for the proper adjudication of the issue raised in the Writ Petition;

- c) Permit the Applicant Association to assist this Hon'ble Court by adducing oral argument during the course of hearing;
- d) Pass such other order(s) as may be deemed just and proper in the facts & circumstances of the case.

FILED BY

Ms. KAMINI JAISWAL
ADVOCATE FOR THE APPLICANT

Filed on: