

IN THE SUPREME COURT OF INDIA
 CIVIL ORIGINAL JURISDICTION
 PIL Writ Petition (Civil) No. 784 of 2015
 (Under Article 32 of the Constitution of India)

IN THE MATTER OF

Lok Prahari, through its General Secretary

S. N. Shukla

...Petitioner.

Versus

Union of India and Others

Respondents.

REJOINDER AFFIDAVIT OF THE PETITIONER

I, Satya Narain Shukla, s/o Late Shri R.D. Shukla, aged about 74 years, r/o B-7 Nirala Nagar, Lucknow, the deponent do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner in person in this matter and as such is fully conversant with the facts deposed to hereunder.
2. That the deponent has read the counter affidavit dated 20.2.2017 filed on behalf of the respondent no. 3 (Secretary, Ministry of Home Affairs) and is filing this rejoinder affidavit in reply thereto.
3. That the averment in para 1 of the counter affidavit that its deponent is *fully* conversant with the facts and circumstances of the case is *prima facie* incorrect, since the main prayer in writ petition relates to the Ministry of Law and Justice and the Election Commission of India as stated in para 4 of the counter affidavit itself. Moreover, para 9 of the counter affidavit is required in SLPs and not in a writ petition. In fact, looking to the importance of the matter and prayer 1(3) in the writ petition it would have been appropriate if the Secretary or at least some other senior responsible officer of the Ministry would have filed the counter affidavit.

4. That as per his own admission, the deponent of the counter affidavit has only read the *affidavit and not the writ petition*.

Also, the extent to which the deponent of the counter affidavit has understood the affidavit filed by the petitioner is self evident from the use of word "appellant" instead of 'petitioner'.

A perusal of the counter affidavit shows that it has been filed in a very causal and slip shod manner without proper appreciation of the gravity of the matter and taking it seriously.

5. That in reply to para 3 of the counter affidavit, it is submitted that the respondents were required to file their counter affidavits and not short counter affidavit. Also, there is no provision in the Supreme Court Rules for filing a short counter affidavit. The failure of the respondent no. 3 to file a parawise counter affidavit despite clear categorical order dated 4.1.2017 of the Hon'ble Court shows that the answering respondent has no answer to the averments in the writ petition. These need to be taken as admitted and proved in terms of the decision reported in AIR 1993 SC 2592.

6. That with regard to para 4 of the counter affidavit it is stated that-

(i) The writ petition has been filed against the Union of India and not against Ministry of Law and Justice as wrongly stated in the writ petition.

(ii) Secretary, Ministry of Home Affairs, and not the Ministry of Home Affairs, as wrongly stated in the counter affidavit, is the respondent no. 3 in the writ petition.

(iii) The prayer in the writ petition reproduced in para 4 of the counter affidavit is incomplete. Significantly, it omits prayer at 1(3)(ii), directly relating to the answering respondent and prayer 2, 3, and 4 in the writ petition. The deponent of the counter affidavit is guilty of making false and misleading averments in the counter affidavit and thereby committing contempt of this Hon'ble Court.

7. That with regard to para 5 of the counter affidavit, it is stated that the matter relates to the Union of India and not Election Commission of India as wrongly stated therein.

8. That the averment in para 6 of the counter affidavit that *"the reply of the Ministry of Home Affairs is not necessary"* is contradicted by the Annexure R-1 to the counter affidavit itself wherein the answering respondent himself had issued instructions to the Chief Secretaries of the State for fast tracking of cases against MPs/MLAs. While the primary responsibility is of the state governments, it was also the duty of the Home Ministry to ensure that the cases regarding disproportionate increase of assets of MPs/MLAs are investigated and followed up by their prosecuting agencies like CBI and Enforcement Directorate. The prayer at 1 (3) in the writ petition directly relates to the respondent no. 3. Apparently, the answering respondent wants to shirk his responsibility in this regard by taking such prima facie unacceptable stand which shows his closed mind set in this matter of great national importance for the cleansing country's polity and restoring and maintaining the purity of our highest legislative bodies.

9. That with regard to para 7 of the counter affidavit it is submitted that, significantly, *it is totally silent about the outcome of the advisory dated 24.6.2014*, even though its para 3 vii required that action taken report be intimated to the answering respondent *within 30 days*. Apparently, he thinks that his job was over by just issuing the advisory and he is not answerable to this Hon'ble Court for reporting the outcome of the action taken by the state governments in this regard.
10. That in this connection it is relevant that due to lack of any follow up action on the part of the respondent no. 3 the directions issued in the order dated 10.3.2014 mentioned in the Annexure R-1 to the counter affidavit had remained un-complied in about half the cases in the state of UP. As per the information supplied by the Public Information officer of UP Prosecution Directorate vide his letter dated 8.12.2015, criminal cases in which charges were framed prior to 10.3.2014 were still pending against 2 MPs, 1 MLC and 27 MLAs. Charges against the MLC were framed in **January 2004** and **October 2007** while charges against the 2 MPs were framed in **February 2008** and **January 2011**, as against the **time limit of one year** for disposal of such cases as per the order dated 10.3.2014.
11. That para 8 of the counter affidavit does not disclose as to what interest of justice will be served by the dismissal of the writ petition and how. Apparently, the answering respondent wants to avoid any directions of this Hon'ble Court on the prayer 1 (3) which is necessary for bringing such cases to their

logical conclusion, defeating the ultimate purpose disclosures of assets in getting these affidavits. On the contrary, the Election Commission of India, which is directly concerned with the main relief prayed for in the writ petition, has whole heartedly supported the petitioner's case. The contention in para 8 of the counter affidavit only exposes the closed mind set of the respondent no. 1 which is yet to act on the Election Commission's recommendation in their letter dated 7.9.2016 (Annexure R-2 of the ECI's counter affidavit) even after 5 months. This can be the only explanation for the totally unjustified opposition to the writ petition by respondent no. 3 in utter disregard of the sage advice of Dr. Rajendra Prasad cited in para 8 of the writ petition that if the people who are elected are lacking in character and integrity the Constitution cannot held the country. The stand of the answering respondent is also against the unanimous resolution entitled 'Agenda for India' adopted by the Parliament at the time of Golden Jubilee of Independence 20 years ago which began with the resolve to free the political process of the *"adverse impact on governance of undesirable extraneous factors including criminalization"*. On the contrary, in view of the counter affidavit of the respondent no. 2 and the position stated above, the counter affidavit filed on behalf of the respondent no. 3 deserves to be rejected and the present writ petition deserves to be allowed in national interest with costs to the petitioner organization.

New Delhi

Dated :- 3.3.2017

Deponent

VERIFICATION

I, the deponent above named do hereby verify that the contents of paragraph nos. 1, 2, - of this affidavit are true to my own personal knowledge, those of paras 4, 6, 7, 8, 9, 10 are based on record and those of paras 3, 5, & 11 are based on legal advice believed to be true. No part of it is false and nothing material has been concealed. So help me God.

New Delhi

Dated:- 3.3.2017

Deponent