IN THE SUPREME COURT OF INDIA
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.

BRIEF OF THE PETITIONER'S SUBMISSIONS

1. John F. Kennedy had said, "The ignorance of one voter in a democracy impairs the security of all". The petitioner had filed the instant writ petition for enforcement of voters' right to information under Article 19(1)(a) of the Constitution and to effectuate meaningful implementation of the judgments of this Hon'ble Court in Association for Democratic Reforms (AIR 202 SC 2112), People's Union for Civil Liberties (PUCL) (AIR 2003 SC 2363), Resurgence India Vs. Election Commission of India and Another (AIR 2014 SC 344) and Krishnamoorthy Vs. Sivakumar (AIR 2015 SC 1921) in this regard for restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the founding fathers of the Constitution and the concern expressed by the framers of the Representation of the People Act, 1951.

2. Subsequently, the petitioner filed an application dated 12.7.2016 (IA No. 6 of 2016) for amendment of the WP and the Hon'ble Court was pleased to issue notice on the amended WP on 19.7.2016. The circumstances leading to the filing of the instant WP, along with relevant case law on the subject have been detailed in paras 8 to 42 of the WP and the grounds taken are listed at pages 43 to 48 of the petition.

3. The prayer in the amended WP is as follows-

1. issue a writ, order or direction, in the nature of Mandamus-

(1)to respondents no. 1 and 2 to make necessary changes in the Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961 keeping in view the suggestion in para 38 of the WP,

(2) to respondent no. 1 to consider suitable amendment in the Representation of the People Act 1951 to provide for rejection of nomination papers of the candidates and disqualification of MPs/MLAs/MLCs deliberately furnishing wrong information about their assets in the affidavit in Form 26 at the time of filing of the nomination,

(3) to respondents no. 3 to 5 to-

(i) conduct inquiry/investigation into disproportionate increase in the assets of MPs/MLAs/MLCs included in list in Annexure P-6 to the WP,

(ii) have a permanent mechanism to take similar action in respect of MPs/MLAs/MLCs whose assets increase by more than 100% by the next election,

(iii) fast track corruption cases against MPs/MLAs/MLCs to ensure their disposal within one year,

2. declare that non disclosure of assets and sources of income of self, spouse and dependents by a candidate would amount to undue influence and thereby, corruption and as such election of such a candidate can be declared

null and void under Section 100(1)(b) of the RP Act, 1951 in terms of the judgment reported in AIR 2015 SC 1921.

3. issue a writ, order or direction in the nature of mandamus to the respondents to consider amending Section 9-A of the Act to include contracts with appropriate Government and any public company by the Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependents have a share or interest,

4. issue a writ, order or direction in the nature of mandamus to the respondents that pending amendment in Section 9-A of the Act, information about the contracts with appropriate Government and any public company by the Hindu undivided family/trust/partnership firm(s)/private company (companies)/ in which the candidate and his spouse and dependents have a share or interest shall also be provided in the affidavit in Form 26 prescribed under the Rules,

5. award the cost of this petition in favour of the Petitioner organisation,

6. pass such other order or direction as may be deemed fit and proper in the circumstances of the case.

4. The Association for Democratic Reforms filed an application dated 17.10.2016 (IA 7) for impleadment as co-petitioner which was allowed by the order dated 20.2.2017.

5. Subsequently, the petitioner in person filed IA No. 8 of 2016 for amendment of the prayer in the WP to the effect that Form

26 may be further amended to provide information mentioned in para 3 of the representation dated 17.10.2016 to the Chief Election Commission in Annexure 3 to the IA 8.

6. Only after Hon'ble Court's order granting *six weeks* time on **20.2.2017** *as final opportunity*, instead of filing a proper parawise reply, a short counter affidavit was filed on 7.4.2017. Apparently, the answering respondent has no reply to the averments in the writ petition which have remained uncontroverted and hence stand as admitted and proved as held in AIR 1993 SC 2592. Significantly, para 4 of the counter affidavit omits prayers 1(3), 2, and 4 which are crucial for making the provision regarding declaration of assets and sources of income really worthwhile and effective. The counter affidavit does not specifically admit averments paras 11, 35, 40 I, 40 H and 42 of the writ petition particularly relating to respondent No.1. Accordingly, the bald denial thereof without indicating any reason is untenable. Also, while noticing that the Election Commission of India have supported the prayers at 2, 3 and 4, the counter affidavit does not indicate any reason for not agreeing with the same. The counter affidavit conceals that the notification (a copy of which was handed over to the petitioner in person at the time of hearing on 11.4.2017) for amending Forms 2A to 2E and 26 was already under issue as the same is dated 7.4.2017, just a day after the filing of the counter affidavit on 6.4.2017.

7. The Election Commission of India (ECI) (respondent no.2) filed a counter affidavit dated 30.12.2016 saying that it "supports the cause espoused by the petitioner organization, which is a step ahead towards a (i) healthier democracy, (ii) in furtherance of level playing field for participative democracy, and (iii) free and fair election". Paras 19 to 29 of the CA not only unequivocally support the prayer 2, 3 and 4 in the WP but also give unexceptional additional reasons for granting the same. The ECI also sent a letter dated 13.2.2017 for amending Forms 2A to 2 E of Nomination Papers in terms of the order dated 20.2.2017.

8. The respondent no. 4 (Chairperson, CBDT) who is concerned only with prayer 1(3) filed counter affidavit dated

30.12.2016 giving a jumbled reply instead of giving a point wise reply to the averments in paras 40B to 40D of the WP. Apparently, the respondent no. 4 has no answer to these and the same are to be taken as admitted and proved. As brought out in the petitioner's rejoinder affidavit filed on 14.2.2016, the counter affidavit does not disclose action taken in each of the cases mentioned in the list attached with Annexure P-6 at page 73-87 of the WP. The counter affidavit also does not disclose as to what interest of justice will be served by the dismissal of the writ petition and how. Only the answering respondent will get away without doing the work of meaningful verification of affidavits, thereby defeating the whole purpose of getting these affidavits.

9. Instead of filing a proper parawise counter affidavit, a short counter affidavit was filed on 20.2.2017 by an Under Secretary on behalf of the respondent no. 3, Secretary, Ministry of Home Affairs. The same is liable to be rejected for the reasons detailed in the petitioner's rejoinder affidavit dated 3.3.2017. As brought out therein, the respondent no. 3 only wants to avoid any directions on prayer 1(3) necessary for fulfilling the ultimate purpose of disclosure of assets by the candidates. The stand of the respondent no. 3 is not only in utter disregard of the sage advice of Dr. Rajendra Prasad cited in para 8 at page 4 of the WP, but also against the unanimous resolution entitled 'Agenda for India' adopted by the Parliament in 1997 quoted in para 11 at page 6 of the WP.

CASE IN NUTSHELL

10. As brought out in paras 23, 26, & 29 of the WP, despite concern expressed by this Hon'ble Court in this regard, increasing role of money power has vitiated the purity of election process. The number of crorepati MPs increased from 58% in 2009 to 82% in 2014 Lok Sabha elections and average assets from **5.36** to **14.70** Corores (para 13 of the IA no.4). Assets of 26 MPs increased by more than **500%,of** 4 MPs by more than **1000%** and of 2 MPs by more than **2000%** (Para 37 of the WP). This disturbs level playing field. As per ADR report, chances of winning election were **20%** for crorepati candidates as against only 2% for non-cororepati candidates (Para14 of the IA No. 4).

11. The main reasons for the unbridled use of money power for winning election to make more money are the lacuna in the Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961; the absence of any mechanism to make out and check apparent disproportionate increase in the assets of the law makers as per their own declarations; and the absence of provisions for termination of his membership in case the information given by him/her about the assets is found to be false or incomplete.

12. In a large number of cases, a *mere mention of the profession/occupation* stated by the candidate in the affidavit at the time of nomination gives no clue to enable voters to judge as to whether the assets declared by them could be acquired from their known sources of income. *As many as 105 Lok Sabha members*

have declared social work/social service/politics as their profession/occupation which cannot and should not be a source of income and 8 are merely housewives (IA No 4 Para 10). In fact, in the case of Alagaapuram R. Mohanraj and others reported in (2016) 6 SCC 82, this Hon'ble Court has held that "Membership of Parliament or State Legislature is not an occupation". *Moreover, declaring occupation/profession is not the same thing as information about source of income.*

13. *Moreover,* the percentage of MPs whose assets increased more than 5 times or more is significantly higher in case of these MPs without any known source of income compared to those of other professions/occupations (11 out of 26 as against 113 out of 542). *Evidently social work/social service has been used by them for asset creation for self, spouse and dependents rather than for public service.*

14. The petitioner's submissions on various prayers in the WP are as follows-

PRAYER 1(1)

1. *The existing form 26 does not give any information about sources of income of the candidate, his/her spouse and dependents to enable the voters to form an informed opinion as to whether the increase in his/her assets over the earlier declaration is reasonable or prima facie suspect through dubious means.* In the absence of this information it is not possible for the voters to know as to whether the assets held by them could be acquired by legitimate means. *This crucial lacuna in Form 26 defeats the very purpose of seeking*

information about assets. Consequently, even with the introduction of this provision the number of crorepati legislators whose assets have been increasing by leaps and bounds with successive elections has been increasing. Therefore, there is a dire need to plug the existing loopholes in the present system which permits corrupt politicians to thrive in the name of public service. Prayer 1(1) in the WP seeks to remove this serious lacuna in Form 26.

2. *It is, therefore, necessary that information about source(s) of income of the candidate, his/her spouse, and dependents is also provided in the affidavit in Form 26,* to enable voters to form an informed opinion about the integrity of the candidate in terms of the law laid down by this Hon'ble Court in the following cases-

   (i) AIR 2002 SC 2112

   (ii) AIR 2003 SC 2363

   (iii) AIR 2014 SC 344

   (iv) AIR 2015 SC 1921

3. Thanks to recommendations of the ECI in their letter dated 7.9.2016 and 13.2.2017 to the Ministry in pursuance of the petitioner's representations dated 27.6.15 and 17.10.2016 in this regard, Prayer 1(1) has been finally largely met by the Notification no. S.O 1133(E) dated 7.4.2017 (Annexure RA-1) to the petitioner in person's rejoinder affidavit dated 18.4.2017. However, taking advantage of the omission of the word "dependents" in the new column 9A proposed in the letter dated 7.9.2016, this omission was not corrected while

issuing the notification dated 7.4.2017 even though para 7 of the counter affidavit dated 30.12.16 of the ECI clearly said that *information about sources of income of dependents should form part of declaration in column 9 in Form 26.* When Form 26 requires disclosure about assets of the dependents also, their sources of income should also be disclosed as has been provided now for the candidate and his/her spouse by the said notification. This is necessary so that the voters may see as to whether the assets of the dependents could be acquired by them through their own known sources of income or are ill gotten wealth of the candidate. In this connection, it is relevant that a son of a former Chief Minister of UP owned a bungalow worth more than a crore in VVIP area in Lucknow *when he was a student of class 12.*

4. In this connection it is significant that such was such was the tearing hurry to present the fait accompli to the Hon'ble Court that the notification was issued on 7.4.2017 just 4 days before the hearing of the matter, while the ECI proposal had been with the Ministry for the last six months. Obviously, the intention was to pre-empt the petitioner to point out this deficiency in the proposed amendment to From 26 and to get the matter disposed of on the basis that the notification has already been issued. Therefore, the notification dated 7.4.2017 needs to be amended to correct this glaring omission. Intervention of this Hon'ble Court is still required to plug this remaining lacuna in Form 26 for doing complete

justice in the matter. Accordingly, this Hon'ble Court may kindly direct that the word "dependents" be also added in the newly inserted column 9A in Form 26.

PRAYER 1(2)

1. At present the RP Act, 1951 has no provision for rejection of nomination paper of candidate by the Returning Officer and disqualification of MPs/MLAs/MLCs deliberately furnishing wrong information about their assets in Form 26. In order to ensure that the candidates give complete and correct information about the assets held by them and their spouse and dependents, it is necessary that deliberately furnishing incomplete or wrong information about assets is made a ground for rejection of nomination paper under Section 36 and for challenging the election under Section 100 of the Act. In the absence of any penal provision to this effect, those elected as legislators can always get away despite furnishing incomplete or wrong information. It is, therefore, expedient in the interest of justice that the respondent no. 1 is directed to consider making suitable amendments in the RP Act, 1951 to provide for rejection of nomination paper of candidate by the Returning Officer and disqualification of MPs/MLAs/MLCs furnishing incomplete or wrong information about their assets in Form 26.

2. Even if prayer 1(2) for rejection of nomination paper is not considered feasible, furnishing of wrong information in the Form 26 and 2A to 2E may be made a ground for disqualification. In its 244th Report the Law Commission had

noted that the Election Commission in its Report on Proposed Electoral Reforms (2004) had noted that candidates has repeatedly failed to furnish information, or grossly undervalued information such as quantum of their assets. In the Reform Proposal by the ECI to the Law Commission in February 2014 it was noted that: "The lack of any serious consequences for making false disclosures has certainly contributed to the widespread flouting of the Supreme Court and the Election Commission's directives on this matter. Such misrepresentation affects the voters' ability to freely exercise their vote. Therefore, there is an urgent need to:

i. Introduce enhanced sentence of a minimum of two years under Section 125A.

ii. Include conviction under Section 125A as a ground of disqualification under Section 8(1) of the RPA.

iii. Set-up an independent method of verification of winners' affidavits to check the incidence of false disclosures in a speedy fashion.

iv. Include the offence of filing false affidavit as a corrupt practice under S. 123 of the RPA."

However, these recommendations of the Election Commission have been gathering dust for the last 3 years. In the absence of any reasonable justification for not acting on these recommendations of the ECI duly supported by the 244th Report of the Election Commission, the relief sought in prayer 1(2) deserves to be allowed in terms of the aforesaid recommendations.

PRAYER 1(3)

1. The role of money power in winning election is well known. While a lot of concern has been often expressed in this regard, precious little has been done so far. As a result, wealth of politicians has been increasing by leaps and bounds as is apparent from the figures in the statement in Annexure P-6 to page 72 of the WP. Evidently, no improvement in system and governance is possible unless the role of money power in winning elections is curbed and the public representatives who misuse their position for amassing wealth are brought to book.

2. Evidently, this situation is not in consonance with Article 20 of the UN Convention against Corruption (to which India is a signatory) which provides as follows-

   "Article 20 Illicit Enrichment- Subject to its Constitution and the fundamental principles of its legal system, each state Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, *that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income".* (emphasis supplied)

3. In this connection it is noteworthy that often information about assets declared by candidates in Form 26 is incomplete and understated since there is no provision for checking its veracity. Accordingly, vide representation dated 30.6.2015 (at Annexure P-6 at page 73 of the WP) the Chairperson of

CBDT was requested to inquire as to whether more than 5 times increase over the previous election in assets of the MPs/MLAs/MLCs in the attached list was proportionate to the increase in income from their known sources in the intervening period. After completion of this exercise necessary follow up action may be taken up to serve as lesson to them and deterrent to others to desist them converting public service into private enterprises.

4. The petitioner's representation at Annexure P-6 was forwarded by CBDT to the Directors General of Income Tax (Inv.) vide circular letter dated 11.8.2016 (Annexure 3 to IA 4) saying, "it is presumed that these cases *must have been* verified as per guidelines" *and not merely for appropriate action as wrongly stated in the CA*. The concluding para of the said letter ran as follows-

"The undersigned is directed to convey that any such case, featuring in the list that is yet to be verified, *should be got verified* ***urgently***. *A* ***comprehensive*** *report on the outcome in* ***all*** *the listed cases needs to be submitted to the Board. In addition results of the verifications done as per guidelines fixed by the Board* may also be provided, if not done earlier. The report may be submitted **within a month** from the date of this letter in the annexed proforma. It is requested that the "**Brief outcome**" column must sufficiently record the *outcomes and the suggested course of action".*

5. The *counter affidavit conceals the above directions of the Board and the outcome of the inquiries conducted in the cases*

mentioned in the list. The respondent no. 4 has refused to supply information about outcome of verification even under the RTI Act. Apparently, they have been avoiding this information since nothing substantial has been done in this regard.

6. On the contrary, as detailed in para 8 of the petitioner's IA dated 25.6.2016 photocopies of the reports of various DsGIT (Inv.) to the Election Commission of India supplied by the CPIO of the Commission show that-

   (i) Verification was done only in respect of only 11 out of **25** MPs and 13 out of **257** MLAs in the list in Annexure P-6

   (ii) Even in these cases the verification reports do not answer the real issue as to whether more than 500% increase in assets is commensurate with increase in income from their known sources of income, making the verification meaningless.

   (iii) As stated in the letter dated 16.7.2015 from the Director (Inv.) Patna himself, "the affidavits of the winning candidates could not be compared with the return of income owing to the fact that our ITD application does not have specific details of moveable assets".

7. The counter affidavit also does not disclose action taken in the cases of 11 Rajya Sabha MPs in the list in Annexure P-10 to the writ petition whose assets increased by more than 100% including two *social/political activists* whose assets increased by more than **500%** and **2000%**. Apparently, no verification has been done in these cases as per the guidelines finalized in consultation with the Election Commission in this regard.

8. As regards Prayer 1(3), the Law Commission in its 244th Report, while endorsing the other recommendations of Election Commission of India in the Reform Proposal of February 2014 did not make recommendation on the second part of issue 3.5 of its Consultation Paper about mode and mechanism which needs to be provided for adjudication of veracity of the affidavits filed by the candidates. However, it has endorsed the recommendation of the Election Commission that: "A gap of one week should be introduced between the last date for filing nomination papers and the date of scrutiny, to give adequate time for the filing of objections to nomination papers".

9. The position stated above fully justifies the prayer 1(3) in the writ petition so that the object behind the verification exercise is achieved. Otherwise, no verification or mere superficial verification of the assets declared in the affidavits will defeat the whole purpose of declaration of assets by candidates to provide an insight to voters about their integrity. The directions of this Hon'ble Court are evidently necessary in this regard.

PRAYER 2

3. In Krishnamoorthy Vs, Shivkumar (AIR 2015 SCC 1921) this Hon'ble Court has held that non disclosure of criminal antecedents by a candidate would amount to undue influence and thereby corrupt influence and the election of such candidate can be declared null and void under Section 100(1)(b). Para 86 of the judgment runs as follows-

"86. In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature."

2. The observations and conclusions of this Hon'ble Court in that case are equally applicable to cases of non-disclosure of assets and sources of income of self, spouse and dependents by a candidate. The prayer 2 in the instant WP

deserves to be granted on the same analogy in accordance with the law laid down in the case of Krishnamoorthy.

PRAYER 3

1. Section 7(d) of the 1951 Act, as originally enacted, provided, with certain exceptions, for disqualification for membership of Parliament or of a State Legislature, "If, whether, by himself or by any person or body of person is trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government".

2. Subsequently, by the amending Act 58 of 1958, Section 7(d) was amended and later, by amending Act 47 of 1966 was incorporated along with an added explanation as Section 9-A of the present Act which runs as follows-

"9A. Disqualification for Government contract, etc- A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation.- For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

3. Significantly, unlike Section 7(d) of the original Act, the present Section 9-A of Act limits the disqualification only to a *subsisting* contract entered into *by the candidate* with the appropriate government, whereas the original provision disqualified a person if he had any share or interest in a contract "whether by himself *or by any person or body of persons* in trust for him or for his benefit or on his account" subject, of course, to the exceptions provided in Section 8(1) (c) and (d) and clarification in Section 9(2) of the original Act.

3. In this connection the following observations of the Constitution Bench in the case of Laliteshwar Prasad Sahi Vs. Bateshwar Prasad, AIR 1966 SC 580 decided on 7.10.1965 are highly relevant-

"Comparing the old section and the new section, there is no doubt that there has been a change in the wording. One change is quite clear and that is that the contract now must have been entered in the course of his trade or business by a person with the appropriate Government. Previously it was much wider and included any contract entered into for his benefit or on his own account or a contract in which he had any share or interest. To this extent the Legislature has clearly narrowed to area of this disqualification".

4. It is also noteworthy that the explanation added to Section 9-A by the 1966 amending Act is prima facie irrational and contrary to the purpose of debarring persons having existing contract with the government as a contract cannot be said to

be not subsisting until both the parties have completely performed their part. Moreover, after election as MP/MLA/MLC a person can always misuse his position to influence the government to perform its part in a manner favourable to him and against public interest at the expense of public exchequer.

5. As a result of the 1958 and 1966 amendments in the original Section 7(d) of the Act restricting its scope persons having indirect business dealings with the government have been entering legislatures and influencing government decisions to favour their business interest. Consequently, the increasing role of money power has been increasingly vitiating the election process, despite the concern expressed in the observations by the Apex Court in this regard from time to time. This is confirmed by the following recent observations of this Hon'ble Court-

   (i) *"Criminality and corruption go hand in hand. From the date the Constitution was adopted i.e., 26th January 1950, Red Letter Day in the history of India, the nation stood as a silent witness to corruption at high places. Corruption erodes the fundamental tenets of the rule of law".*

   Manoj Narula Vs. Union of India,

   JT (9) 2014 SC 591 (Para 13).

   (ii) *"We cannot close our eyes to the reality of the unwholesome influence which money power exerts on the Political System in this Country".*

   Bajrang Bahadur Singh (supra) (Para 56)

6. The submissions in the preceding paras are fortified by the following observations of this Hon'ble Court in the case of Bajrang Bahadur Singh (Supra)-

"The purpose of Section 9-A as repeatedly held by this Court is to maintain the purity of the legislature and to avoid conflict of personal interest and duty of the legislators" (Para 53) and

"Any interpretation of Section 9-A which goes to assist a legislator who directly enters into a contractual relationship with the State for deriving monetary benefits (in some cases of enormous proportions) should be avoided and be given a construction which as far as possible eliminates the possibility of creating such situation where the duty is certainly bound to conflict with personal interest." (Para 56).

7. The above observations of this Hon'ble Court are entirely in sync with the reply of Dr. Ambedkar during the debate on the Representation of the People Bill, 1951 –

"Another thing that we must bear in mind and which I think goes to root of the matter is that our Parliament and our Electoral law should be so constituted that the independence of the Members of parliament as against the Government must be scrupulously observed. There can be no use in a Parliament if we adopt a system, which permits the Government to corrupt the whole of Parliament either by offering Political offices ***or by offering some other advantages.*** *If a Parliament cannot act independently a without fear or without favour from the Government, in my*

judgment, such a Parliament is of no use at all". (Parliamentary Debates volume 11 part II, page 8353-54)."

8. In the facts and circumstances stated above the amendments made in the Section 7(d) of the original 1951 Act 1951 by the Amendment Acts of 1958 and 1966 are clearly unsustainable being unconstitutional and against the letter and spirit of the parent Act, and as such the same are liable to be struck down.

9. Accordingly, the petitioner had filed a separate writ petition (c) no. 1004 of 2016 challenging validity of the amendments to the Section 7(d) of the 1951 RP Act as originally enacted. In view of the observation of the Hon'ble Court regarding wider scope of Article 226 the same was withdrawn with liberty to approach the High Court. However, in order to avoid further unnecessary litigation, this Hon'ble Court may kindly direct the respondent no. 1 to consider amending Section 9-A of the Act as per Prayer 3 in the writ petition.

PRAYER 4

1. The existing format of affidavit in Form 26 does not provide to the voters *even the limited information about Government contracts stipulated in Section 9-A of the Act.* As a result, the voters remain in dark about their so-called representatives and their families enriching themselves at public expense and getting away with it with impunity by being re-elected repeatedly taking advantage of this ill gotten money.

2. In the circumstances, it is necessary that to enable the voters to make an informed choice about the integrity of a candidate they

are provided with the information not only about the candidate's subsisting contracts with appropriate government but also about the contracts with appropriate Government and any public company by the Hindu undivided family/ trust/partnership firm(s)/private company (companies)/ in which the candidate and his spouse and dependents have a share or interest.

CONCLUSION

As pointed out in the editorial in the Hindustan Times dated 22.6.2015 (at Annexure P-9, page 90 of the WP) cleansing of our political system has to start from the top and probity, like charity, has to begin at home. The relief prayed for at page 48-50 of the WP is necessary for-

(1) Enforcement of fundamental right of voters under Article 19(1)(a),

(2) Effectuating meaningful implementation of the judgments of this Hon'ble Court in the cases cited in para of the brief, and

(3) Restoring and maintaining purity of our highest legislative bodies in accordance with the intentions of founding fathers of the Constitution and framers of the RP Act, 1951.

In view of the reluctance of the Parliament to act on their 20 year old resolution referred to above and the failure of the respondents to act so far, leave alone meaningfully effectuate implementation of the judgments of this Hon'ble Court cited above for restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the founding fathers of the Constitution and the concern expressed by the framers of the Representation of the People Act, 1951, intervention of this

Hon'ble Court has become necessary in terms of the following observation of this Hon'ble Court in the case of Vineet Narain, (1998) 1 SCC 226 (para 49)-

"There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mended to all authorities to act in aid of the orders of this Courts as provided in Article 144 of the Constitution. In a catena of decisions of this Court this power has been recognised and exercised if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its roll". The same view has been reiterated in several other cases e.g. AIR 2008 SC 2118 (paras 7 and 8) wherein it was held that if there is a buffer zone unoccupied by Legislature or Executive, *which is detrimental to public interest*, judiciary must occupy the field to sub-serve public interest.

In this connections the following observations in the case of Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Limited and Others (2015) 8 SCC 1 are directly applicable to the instant case-

"Where he Constitution has conceived a particular structure of certain institutions, the legislative bodies are bound to mould the statutes accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. As a general rule of interpretation, no doubt, nothing is to be added to

or taken from a statute. However, when there are adequate grounds to justify an inference, it is the bounden duty of the court to do so. ...." (Para 26)

and

"In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts". (Para 42)

In view of the above, suggestion of the respondent no. 1 to dispose of the writ petition in view of the submissions in their counter affidavit is liable to be rejected for the reasons detailed in para 14 of the petitioner's rejoinder affidavit. On the contrary, in the light of irrefutable material on record and the submissions made above, the notification dated 7.4.2017 deserves to be modified to include dependents in the newly added column 9A of Form 26 and the other prayers in the writ petition also deserve to be allowed in national interest with costs to the petitioner organization in terms of the decisions of this Hon'ble Court reported in AIR 1996 SC 1446 (para 71), AIR 1987 SC 579 (para 9), and (2008) 4 SC 720. For this, not only the petitioner organization, but the entire Nation shall be ever grateful for safeguarding the largest democracy of the world from the clutches of the unscrupulous rich.

(S.N. Shukla)
General Secretary, Lok Prahari
Petitioner-in-Person

New Delhi
Dated 25.4.2017
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Union of India and Others ... Respondents.

SUPPLEMENTARY WRITTEN SUBMISSIONS OF THE PETITIONER

1. The petitioner above named had submitted brief of his submissions at the time of hearing of the matter on 2.5.2017. Subsequently, upon closer examination of the notification dated 7.4.2017 (Annexure RA-1 to the petitioner's rejoinder affidavit) issued by the respondent no. 1 it transpires that while the identical amendments in Forms 2A and 2B of Part III A and forms 2C, 2D and 2E of Part II have now incorporated the disqualifications mentioned in Articles 102(1) and 191(1) of the Constitution, the amendments by sub Paras (5), (7) and (9) of paras 2, 3, 4, 5, and 6 of the said notification do not fully convey complete relevant information as shown below-

(5) -It should also include information as to *whether the candidate was found guilty of a corrupt practice* by an order under Section 99 of the RP Act,1951, since issuance of disqualification order by the President after judgment in election petition is likely to take considerable time

(7)-Information about *contracts of the candidate's spouse* should also be included.

(9)-It should also include information as to whether the candidate has lodged an account of election expenses in respect of the last election contested by him within the time and in the manner required by or under the RP Act, 1951, *so that he stands exposed for non-compliance of*

this very important mandatory requirement having a direct bearing on his integrity and respect for law. This is also necessary so that such candidates do not get away due to lack of timely action on the part of the Election Commission, especially as in reply to the RTI application dated 26.10.2016 of the petitioner in person, the CPIO of the Commission has informed vide letter dated 16.11.2016 that information about sitting members of Lok Sabha and UP Assembly who failed to lodge their account of election expenses within the time and in the manner required by or under the RTI Act *is not available in the Commission in the compiled form.*

Since this Hon'ble Court is seized of the issue of amendment in Form 26 of the Act, it is submitted that, in respect of Prayer 1 (1) of the WP, apart from addition of word 'dependents' in the newly inserted column 9 of Form 26 as prayed for in the petitioner's written submissions, the aforesaid amendments in sub Paras (5), (7) and (9) of paras 2 to 6 of the notification dated 7.4.2017 may kindly also be directed so that the issue of making Form 26 really meaningful and useful is comprehensively settled once for all.

The prayers in the WP deserve consideration also in view of news report in Hindustan Times dated 21.7.2017 that assets of a Mizo MLA grew **2406**% in 5 years and CM's **411**% and the statement of ex-RBI Governor quoted in Kapil Sibal's article in Hindustan Times dated 19.7.2017 that *"The crooked businessman needs the crooked politician to get public resources and contracts cheaply."*

New Delhi

Dated- 27.7.2017

(S.N.Shukla) Petitioner-in-Person