

## 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 6.4.2017 filed on behalf of the respondent no. 1 (Union of India) and is filing this rejoinder affidavit in reply thereto.
3. That para 1 of the counter affidavit needs no reply.
4. That in reply to para 2 of the counter affidavit it is stated that 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.
5. That with regard para 3 of the counter affidavit it is submitted that even after the expiry of six weeks period granted by the Hon'ble Court on 20.2.2017, instead of filing a proper parawise reply, only a short counter affidavit has been filed. 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.

6. That, 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. Evidently, the answering respondent has no answer to these.
7. That with regard to para 5 of the counter affidavit it is submitted that 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.
8. That the Election Commission's proposal for amendment of Form 26 was not a policy matter as wrongly made out in para 6 of the counter affidavit, but is legal requirement for enforcement of voters' right to information as per the law laid down by this Hon'ble Court. The CA does not indicate as to when the final decision to amend the Form 26 was taken and *it conceals that the notification in this regard was already under issue*. A true and correct copy of the Legislative Department's Notification no. S.O. 1133(E) dated 7.4.2017 given to the petitioner in person by the Id. Counsel for the respondent no. 1 at the time of hearing on 11.4.2017 is annexed as **Annexure RA-1** to this rejoinder affidavit.
9. That a perusal of the aforesaid notification shows that it does not provide for declaration of sources of income of dependents. There cannot be any justification for this omission. When the Form 26 requires disclosure about assets of the dependents



also, their sources of income should also be disclosed as has been provided 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.*

10. That in this connection it is apparent that 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 Form 26 and to get the matter disposed of on the basis that the notification has already been issued.
11. That para 7 of the counter affidavit does not indicate as to when the draft of the notification for amending the 1961 Rules was approved by the competent authority and it conceals that the said notification 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.
12. That in reply to para 8 of the counter affidavit it is submitted that 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 244<sup>th</sup> Report the Law Commission had noted that the Election Commission in its Report on Proposed Electoral Reforms (2004) had noted that candidates have 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.

13. That as regards Prayer 1(3), the Law Commission in its 244<sup>th</sup> 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".

14. That in reply to submissions in para 9 of the counter affidavit is as follows-

a. The issues raised in the WP are not purely policy matter but relate to constitutional requirement and meaningful effectuation of the law laid down by this Hon'ble Court in this regard in the following cases-

(i) AIR 2002 SC 2112

(ii) AIR 2003 SC 2363

(iii) AIR 2014 SC 344

(iv) AIR 2015 SC 1921

b. It is settled law that if there is buffer zone (as in the present case) unoccupied by Legislative or Executive, which is detrimental to public interest, judiciary must occupy the field to sub serve public interest.

c. It is also settled law that the policy has to conform to constitutional and legal requirements. As brought out in the WP the existing formats were not only irrational and arbitrary, but have proved to be totally ineffective in curbing the role of money power in vitiating the electoral process and maintaining and ensuring purity of our highest legislative

bodies. The Central Government's decision to issue the notification dated 7.4.2011 to amend Form 2A to 2E and 26 is an admission that the earlier formats did not meet the requirement of law.

- d. Non-mention of the issues raised in the instant WP in the report of the Law Commission does not detract from their importance as pointed out by the Election Commission of India in its counter affidavit. Lok Prahari was not invited to the National Consultation organized by the Law Commission on 1.2.2014, even though Section 8(4) of the RP Act, 1951 was struck down on its petition. In fact, none of the major National/State level parties were present in the consultation. Apparently, they have no interest in the much needed Electoral Reforms.
- e. The relief sought in the WP is to improve the existing electoral system by removing glaring lacunae in it. The Prayer 1 was already discussed by the Election Commission of India with the political parties who naturally opposed it. The main stakeholder is the civil society which is before the Hon'ble Court. Only those benefiting from the loopholes in the existing system would oppose the WP since the prayer in the WP is to improve the existing Electoral System by removing lacunae in the existing provisions.
- f. This is the stock reply of the respondent no. 1 to all RTI queries on electoral reforms. The consultation and deliberations over the decades have not yielded any concrete results. All sound and fury signifying nothing, as



Shakespeare put it. Significantly, none of the major recommendations of the Election Commission of India and Law Commission have been acted upon by the respondent no. 1. Its track record of inaction on the reports of various Commissions beginning with Goswami Committee in 1990, Vohra Committee Report (1993), Law Commission's 170<sup>th</sup> Report on Reform of the Electoral Laws (1999), Election Commission's Seminal 2004 Report on Proposed Electoral Reforms, National Commission for Review of working of the Constitution (2001), the Second Administrative Reforms Commission (2008), the Law Commission's 244<sup>th</sup> Report (2014) and 255<sup>th</sup> Report (2015) speaks for itself inviting the following observation in the Law Commission's 255<sup>th</sup> Report- *"Unfortunately, their recommendations were not followed by legislative action, required for the enhancement of the quality of democracy, be reducing the influence of money and media in politics and ensuring free and fair elections"*.

Even the unanimous Resolution of Parliament on the occasion of Golden Jubilee of Independence in 1997 which began with the promise of Electoral Reforms has been gathering dust, necessitating intervention by this Hon'ble Court from time to time. A recent glaring example is the non compliance of the order dated 10.3.2014 in WP (C) No. 536 of 2011 for disposal of criminal cases against the legislators within a year after framing of charge sheet. All substantive electoral reforms have been possible only by the intervention

of this Hon'ble Court at the initiative of civil society.

Prominent among these are-

- (i) Provision for disclosure assets and criminal antecedents.
- (ii) Striking down Section 33-B which prohibited the said provision.
- (iii) Rejection of affidavit with blank particulars.
- (iv) Introduction of NOTA.
- (v) Striking down of Section 8(4) of the RP Act, 1951.

15. That In view of the position stated above, the Notification dated 7.4.2017 deserves to be modified to include declaration of sources of income of the dependents also and the other prayers in the writ petition also deserve to be allowed with costs to the petitioner organization.

Lucknow

Dated :- 18.4.2017

Deponent

#### VERIFICATION

I, the deponent above named do hereby verify that the contents of paragraph no. 1 of this affidavit are true to my own personal knowledge, those of paras 2 to 14 are based on record and those of para 15 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.

Lucknow

Dated:- 18.4.2017

Deponent



## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

## NOTIFICATION

New Delhi, the 7th April, 2017

S.O. 1133(E).—In exercise of the powers conferred by section 169 read with section 33 of the Representation of People Act, 1951 (43 of 1951), the Central Government after consulting the Election Commission hereby makes the following rules further to amend the Conduct of Elections Rules, 1961, namely:—

1. (1) These rules may be called the Conduct of Elections (Amendment) Rules, 2017.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Conduct of Elections Rules, 1961 (hereinafter referred to as the said rules), in FORM 2A, in PART IIIA,—
  - (a) the existing paragraph shall be numbered as sub-paragraph (1) thereof;
  - (b) after the sub-paragraph (1) as so numbered, the following sub-paragraphs shall be inserted, namely:—
    - “(2) Whether the candidate is holding any office of profit under the Government of India or State Government?.....(Yes/No)  
—If Yes, details of the office held.....”
    - “(3) Whether the candidate has been declared insolvent by any Court?.....(Yes/No)  
—If Yes, has he been discharged from insolvency.....”
    - “(4) Whether the candidate is under allegiance or adherence to any foreign country?.....(Yes/No)  
—If Yes, give details.....”
    - “(5) Whether the candidate has been disqualified under section 8A of the said Act by an order of the President?.. .....(Yes/No)  
—If Yes, the period for which disqualified.....”
    - “(6) Whether the candidate was dismissed for corruption or for disloyalty while holding office under the Government of India or the Government of any State?.....(Yes/No)  
—If Yes, the date of such dismissal.....”
    - “(7) Whether the candidate has any subsisting contract(s) with the Government either in individual capacity or by trust or partnership in which the candidate has a share for supply of any goods to that Government or for execution of works undertaken by that Government?.....(Yes/No)  
—If Yes, with which Government and details of subsisting contract(s).....”
    - “(8) Whether the candidate is a managing agent, or manager or Secretary of any company or Corporation (other than a cooperative society) in the capital of which the Central/ Government or State Government has not less than twenty-five percent share?.....(Yes/no)  
—If Yes, with which Government and the details thereof.....”
    - “(9) Whether the candidate has been disqualified by the Commission under section 10A of the said Act .....(Yes/No)  
—If yes, the date of disqualification.....”
3. In the said rules, in FORM 2B, in PART IIIA,—
  - (a) the existing paragraph shall be numbered as sub-paragraph (1) thereof;
  - (b) after the sub-paragraph (1) as so numbered, the following sub-paragraphs shall be inserted, namely:—
    - “(2) Whether the candidate is holding any office of profit under the Government of India or State Government?.....(Yes/No)  
—If Yes, details of the office held.....”

- (3) Whether the candidate has been declared insolvent by any Court?.....(Yes/No)  
 If Yes, has he been discharged from insolvency.....
- (4) Whether the candidate is under allegiance or adherence to any foreign country?.....(Yes/No)  
 -If Yes, give details.....
- (5) Whether the candidate has been disqualified under section 8A of the said Act by an order of the President?.....(Yes/No)  
 -If Yes, the period for which disqualified.....
- (6) Whether the candidate was dismissed for corruption or for disloyalty while holding office under the Government of India or the Government of any State?.....(Yes/No)  
 -If Yes, the date of such dismissal.....
- (7) Whether the candidate has any subsisting contract(s) with the Government either in individual capacity or by trust or partnership in which the candidate has a share for supply of any goods to that Government or for execution of works undertaken by that Government?.....(Yes/No)  
 -If Yes, with which Government and details of subsisting contract(s).....
- (8) Whether the candidate is a managing agent, or manager or Secretary of any company or Corporation (other than a cooperative society) in the capital of which the Central/ Government or State Government has not less than twenty-five percent share?.....(Yes/no)  
 -If Yes, with which Government and the details thereof.....
- (9) Whether the candidate has been disqualified by the Commission under section 10A of the said Act .....(Yes/No)  
 -If yes, the date of disqualification....."

4. In the said rules, in FORM 2C, in PART II,—

- (a) the existing paragraph shall be numbered as sub-paragraph (1) thereof;
- (b) after the sub-paragraph (1) as so numbered, the following sub-paragraphs shall be inserted, namely:—
- "(2) Whether the candidate is holding any office of profit under the Government of India or State Government?.....(Yes/No)  
 -If Yes, details of the office held.....
- (3) Whether the candidate has been declared insolvent by any Court?.....(Yes/No)  
 -If Yes, has he been discharged from insolvency.....
- (4) Whether the candidate is under allegiance or adherence to any foreign country?.....(Yes/No)  
 -If Yes, give details.....
- (5) Whether the candidate has been disqualified under section 8A of the said Act by an order of the President?.....(Yes/No)  
 -If Yes, the period for which disqualified.....
- (6) Whether the candidate was dismissed for corruption or for disloyalty while holding office under the Government of India or the Government of any State?.....(Yes/No)  
 -If Yes, the date of such dismissal.....
- (7) Whether the candidate has any subsisting contract(s) with the Government either in individual capacity or by trust or partnership in which the candidate has a share for supply of any goods to that Government or for execution of works undertaken by that Government?.....(Yes/No)  
 -If Yes, with which Government and details of subsisting contract(s).....
- (8) Whether the candidate is a managing agent, or manager or Secretary of any company or Corporation (other than a cooperative society) in the capital of which the Central/ Government or State Government has not less than twenty-five percent share?.....(Yes/no)  
 -If Yes, with which Government and the details thereof.....



- (9) Whether the candidate has been disqualified by the Commission under section 10A of the said Act .....(Yes/No)

-If yes, the date of disqualification....."

5. In the said rules, in FORM 2D, in PART II,—

- (a) the existing paragraph shall be numbered as sub-paragraph (1) thereof;  
(b) after the sub-paragraph (1) as so numbered, the following sub-paragraphs shall be inserted, namely:—

- "(2) Whether the candidate is holding any office of profit under the Government of India or State Government?.....(Yes/No)

-If Yes, details of the office held.....

- (3) Whether the candidate has been declared insolvent by any Court?.....(Yes/No)

-If Yes, has he been discharged from insolvency.....

- (4) Whether the candidate is under allegiance or adherence to any foreign country?.....(Yes/No)

-If Yes, give details.....

- (5) Whether the candidate has been disqualified under section 8A of the said Act by an order of the President?.....(Yes/No)

-If Yes, the period for which disqualified.....

- (6) Whether the candidate was dismissed for corruption or for disloyalty while holding office under the Government of India or the Government of any State?.....(Yes/No)

-If Yes, the date of such dismissal.....

- (7) Whether the candidate has any subsisting contract(s) with the Government either in individual capacity or by trust or partnership in which the candidate has a share for supply of any goods to that Government or for execution of works undertaken by that Government?.....(Yes/No)

-If Yes, with which Government and details of subsisting contract(s).....

- (8) Whether the candidate is a managing agent, or manager or Secretary of any company or Corporation (other than a cooperative society) in the capital of which the Central/ Government or State Government has not less than twenty-five percent share?.....(Yes/no)

-If Yes, with which Government and the details thereof.....

- (9) Whether the candidate has been disqualified by the Commission under section 10A of the said Act .....(Yes/No)

-If yes, the date of disqualification....."

6. In the said rules, in FORM 2E, in PART II,—

- (a) the existing paragraph shall be numbered as sub-paragraph (1) thereof;  
(b) after the sub-paragraph (1) as so numbered, the following sub-paragraphs shall be inserted, namely:—

- "(2) Whether the candidate is holding any office of profit under the Government of India or State Government?.....(Yes/No)

-If Yes, details of the office held.....

- (3) Whether the candidate has been declared insolvent by any Court?.....(Yes/No)

-If Yes, has he been discharged from insolvency.....

- (4) Whether the candidate is under allegiance or adherence to any foreign country?.....(Yes/No)

-If Yes, give details.....

- (5) Whether the candidate has been disqualified under section 8A of the said Act by an order of the President?.....(Yes/No)

-If Yes, the period for which disqualified.....

- (6) Whether the candidate was dismissed for corruption or for disloyalty while holding office under the Government of India or the Government of any State?.....(Yes/No)

—If Yes, the date of such dismissal.....

- (7) Whether the candidate has any subsisting contract(s) with the Government either in individual capacity or by trust or partnership in which the candidate has a share for supply of any goods to that Government or for execution of works undertaken by that Government?.....(Yes/No)

—If Yes, with which Government and details of subsisting contract(s).....

- (8) Whether the candidate is a managing agent, or manager or Secretary of any company or Corporation (other than a cooperative society) in the capital of which the Central/ Government or State Government has not less than twenty-five percent share?.....(Yes/no)

—If Yes, with which Government and the details thereof.....

- (9) Whether the candidate has been disqualified by the Commission under section 10A of the said Act .....(Yes/No)

—If yes, the date of disqualification.....

7. In the said rules, in FORM 26, in PART A,—

- (a) for paragraph (3), the following paragraph shall be substituted, namely:—

"(3) My contact telephone number(s) is/are..... and my email ID (if any) is ..... and my social media account(s) (if any) is/are (i) ..... (ii) ..... (iii) ....."

- (b) after paragraph (9), the following paragraph shall be inserted, namely:—

"(9A) Details of source(s) of income:

(a) Self .....

(b) Spouse ....."

[F. No. H-11019/13/2016-Leg. II]

Dr. REETA VASISHTA, Addl. Secy.

Footnote : The principal rules were published in the 'Gazette of India, Extraordinary, vide number S.O. 859, dated the 15<sup>th</sup> April, 1961 and last amended vide number S.O. 3263(E), dated the 21<sup>st</sup> October, 2016.