

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 104 OF 2015

Anoop Baranwal

..Petitioner

Versus

Union of India

..Respondent

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT

I, Shri B.M. Sharma aged about 56 years presently working as Deputy Secretary to the Govt. of India, Ministry of Law and justice, Legislative Department, Shastri Bhawan, New Delhi, do hereby solemnly affirm and state as under:-

1. That I am working as Deputy Secretary to the Govt. of India, Ministry of Law and justice, Legislative Department, Shastri Bhawan and in my official capacity, I am fully conversant with the facts and circumstances of the case. I am competent to swear this affidavit on behalf of the answering respondent.

2. That I have gone through the contents of the present Writ Petition filed by the Petitioner and have understood the same. I have also perused the records pertaining to the case, and I am filling this affidavit in reply on the basis of the knowledge derived by me after perusing the records.
3. That, save and except those, which are matter of record, all the averments, statements and submissions made by Petitioner in the abovementioned Writ Petition are, until and unless specifically admitted, are denied by the answering respondent. The answering respondent craves leave of this Hon'ble Court to file a further detailed affidavit or affidavits if the situation so warrants or this Hon'ble Court so requires.
4. That the present Writ Petition has been filed by the Petitioner praying inter alia to:-
- (i) issue a writ of mandamus or an appropriate writ, order or direction, commanding the Respondents to make law for ensuring a fair, just and transparent process of selection by constituting a neutral and independent collegium/section.

- committee to recommend the name for the appointment of the member to the Election Commission under Article 324(2) of the Constitution of India;
- (ii) issue a writ of mandamus or an appropriate writ, order or direction constituting an interim neutral and independent collegiums/section committee to recommend the name for the appointment on the vacant post of the member to the Election Commission;
- (iii) issue a writ of mandamus or an appropriate writ, order or direction, commanding the Respondents to decide the petition of the petitioner dated 03.12.2014 for making a law for ensuring a fair, just and transparent selection process by constituting a neutral and independent collegiums /section committee to recommend the name for recommending the names for member to the Election Commission;
- (iv) pass any other or further orders as may be deemed fit and proper in the circumstances of the case; and /

(v) awards cost of this petition.

5. Mr. Prashant Bhushan, Advocate vide Interlocutory Application dated 08.07.2015 has requested this Hon'ble Court that prayer clause in the above said petition may be substituted by the following:

"In the light of the facts advanced and authorities cited, this Hon'ble Court may be pleased:

1. To issue an appropriate writ, direction or order to the Respondent to implement an independent and transparent system for appointment of members of the Election Commission on the lines recommended by the Report of the Committee on Electoral Reforms of May, 1990, formulated by the Ministry of Law and Justice, Government of India, the Report of the Second Administrative Reforms Commission, Government of India and the Report of the Law Commission of India on Electoral Reforms of March, 2015; and /or

2. To pass any other order deemed fit in the circumstances of the case."

6. I submit that at present there is no vacant post of Chief Election Commissioner/Election Commissioner. I further submit that the Chief Election Commissioner and other Election Commissioners (Condition or Service) Act, 1991 [No.11. of 1991] provide for the matters connected to the Chief Election Commissioner and Election Commissioners. Article 324 of the Constitution of India contemplates the provisions of appointment of the Chief Election Commissioner and Election Commissioners. The process and the procedure for appointment of the Chief Election Commissioner and Election Commissioner is as per the constitutional and statutory provisions.

7. I further submit that presently the appointment of Chief Election Commissioner and Election Commissioners in Election Commission is made as per the provisions of Article 324(2) of the Constitution of India and Government of India (Transaction of

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Business) Rules 1961 made under clause(3) of article 77 of Constitution of India and nature of cases mentioned against Sl.No.22 of the 3rd schedule to the said Rules and Rule 8 thereof. I further submit that according to these Rules, appointment of Chief Election Commissioner and Election Commissioners requires the approval of Hon'ble Prime Minister and the President of India. Therefore the process and procedure for appointment of the Chief Election Commissioner and Election Commissioners is as per the provisions of the aforesaid constitutional and statutory provisions. This procedure of appointment is in existence for long period.

8. I further submit that regarding recommendations of the Committee/Commission relating to change in the present system of appointment to the post of Chief Election Commissioner and other Election Commissioners, it is prerogative of the Government to accept such recommendations or otherwise. Further making legislation on any subject is the prerogative of Legislature only based on the overall requirement.

Existing system for appointment to the post of Chief Election Commissioner and other Election Commissioners is working smoothly. Further Election Commission since its establishment is working in a free and fair manner. I further submit that the subject matter agitated through this Writ Petition is purely policy matter and the same is in exclusive domain of the legislature and is not a justiciable matter.

9. I further submit that in the year 2012 a reply on similar subject was given to Shri L.K.Advani, Member of Parliament and Shri Gurudas Das Gupta, Member of Parliament by the then Hon'ble Prime Minister Dr.Manmohan Singh and the department was of the view that any change in the procedure for appointment, resignation and removal of the Chief Election Commissioner and other Election Commissioners as suggested would require discussion with other political parties and can be taken up with the other agenda for Electoral Reforms.

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I, therefore, submit that in view of the facts stated and submissions made herein above, the present Special Leave Petition is liable to be dismissed.

DEPONENT

VERIFICATION:

I, the above mentioned deponent, do hereby verify that the facts stated in paragraphs 1 to 3 of the Counter Affidavit are true to my personal knowledge and the facts stated in paragraphs 4 to 9 of the Counter Affidavit are true to record maintained in my office and the submissions made therein are based on legal advice which I received and believed to be true.

Verified at New Delhi on this day ___ day of October, 2015.

DEPONENT