

It may identify the remedial measures which may then be considered by appropriate authorities. The Committee may call for suggestions from all concerned. Such Committee may be constituted within two months. Report of the Committee may be submitted within three months thereafter. The UOI may take further action after due consideration of such report.

- (ii) The ED may complete the pending investigation within three months;
- (iii) ICAI may further examine all the related issues at appropriate level as far as possible within three months and take such further steps as may be considered necessary.

The matters stand disposed of accordingly.

.....J.
[ADARSH KUMAR GOEL]

.....J.
[UDAY UMESH LALIT]

NEW DELHI;
23rd FEBRUARY, 2018.

CD 417669097IN

25-07-2015

REGISTERED A.D.

MATTER FOR : 17.08.2015

SECTION PIL (WRIT)

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 104 OF 2015

(Under Article 32 of the Constitution of India)

WITH

INTERLOCUTORY APPLICATION NO. 2 OF 2015

(Application for permission to amend the Writ Petition)

Anoop Baranwal

... Petitioners

Versus

Union of India

... Respondents

To,

1. ✓ Union of India
Through its Secretary,
Ministry of Law & Justice
Shastri Bhawan, New Delhi - 110 001

WHEREAS the Writ Petition above-mentioned (copy enclosed) was filed in this Registry on 13.01.2015 by Mr. Anoop Baranwal, Petitioner-in-person, now represented by Mr. Prashant Bhushan, Advocate.

AND WHEREAS the said Writ Petition alongwith Interlocutory Applications above-mentioned were listed before this Hon'ble Court on 13.07.2015, when the Court was pleased to pass the following Order:-

"I.A. No. 3 is allowed
Notice, returnable in four weeks' time."

20 Imp. cell
Sh. Baranwal
10.30 O'Clock in the forenoon or so soon thereafter as may be convenient to the Court for orders when you may appear before this Court and show cause to the Court why Rule Nisi in terms of the prayer of the Writ Petition should not be issued and Interlocutory Application should not be allowed.

NOW, THEREFORE, TAKE NOTICE that the Writ Petition alongwith application above-mentioned will be posted for hearing before this Court on Monday, the 17th day of August, 2015 and will be taken up by this Court at

Take further notice that in default of your appearance the matter will be decided and determined in your absence.

Dated this the 22nd day of July, 2015.

Asst
22/7
Assistant Registrar

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LISTING PROFORMA

IN THE SUPREME COURT OF INDIA

1. Nature of the matter CIVIL
2. (a) Name of Petitioner Anoop Baranwal
(b) e-mail ID [REDACTED]
3. (a) Name of Respondent Union of India through its Secretary, Ministry of Law and Justice
(b) e-mail ID [REDACTED]
4. Number of case One
5. (a) Advocate(s) for Petitioner(s) Petitioner IN Person.
(b) e-mail ID [REDACTED]
6. (a) Advocate(s) for Respondent (s) ... N.A.
(b) e-mail ID N.A.
7. Section dealing with the matter
8. Date of the impugned Order/Judgment N.A.
- 8A. Name of Hon'ble Judges N.A.
- 8B. In Land Acquisition Matters :
i) Notification/Govt. Order No. u/s. 4,6) N.A.
dated..... N.A. issued by Centre/State of..... N.A.
ii) Exact purpose of acquisition & village involved..... N.A.
- 8C. In Civil Matters :- N.A.
i) Suit No., Name of Lower Court..... N.A.
Date of Judgment..... N.A.
- 8D. In Writ Petitions:- N.A.
"Catchword" of other similar matters..... N.A.
- 8E. In case of Motor Vehicle Accident Matters : N.A.
Vehicle No..... N.A.
- 8F. In Service Matters N.A.
(i) Relevant service rule, if any..... N.A.

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- (ii) G.O./Circular/Notification, if applicable or in question..... N.A.
- 8G. In Labour Industrial Disputes Matters : : N.A.
- I.D. Reference/Award No., if applicable N.A.
- Nature of urgency..... N.A..
9. In case it is a Tax matter : N.A.
- a) Tax amount involved in the matter..... N.A..
- b) Whether a reference/statement of the case was called for or rejected... N.A.
- c) Whether similar tax matters of same parties filed earlier (may be for
earlier/ other Assessment Year)? N.A.
- d) Exemption Notification/Circular No..... N.A.
11. Valuation of the matter : N.A.
12. Classification of the matter :
(Please fill up the number & name of relevant category with sub category as per the list circulated)
No. of Subject Category with full name :
No. of sub-category with full name :
13. Title of the Act involved (Centre/State)..... Constitution of India
14. (a) Sub-Classification (indicate Section/Article of the Statute)... Article 324 (2) and 14
(b) Sub-Section involved..... N.A.
(c) Title of the Rules involved (Centre/State)..... N.A.
(d) Sub-classification (indicate Rule/Sub-rule of the Statute)..... N.A.
15. Point of law and question of law raised in the Case: Whether selection process of member to the
Election Commission without constitution an independent and neutral collegiums is violative of
Article 14 of the Constitution and against the intention of the Constitutional maker expressed in
Article 324(2) of the Constitution?
16. Whether matter is not to be listed before any Hon'ble Judge? N.A.
Mention the name of the Hon'ble Judge..... N.A..
17. Particulars of identical/similar cases, if any No
a) Pending cases..... N.A.
b) Decided cases with citation..... N.A.

- 17A. Was SLP/Appeal/Writ filed against same impugned Judgment/order earlier? If yes, No
particulars..... N.A.
18. Whether the petition is against interlocutory/final order/decreed in the case..... No
19. If it is a fresh matter, please state the name of the High Court and the Coram
in the impugned Judgment/Order..... N.A.
20. If the matter was already listed in this Court : N.A.
- a) When was it listed?..... N.A.
- b) What was the Coram?..... N.A.
- c) What was the direction of the Court..... N.A.
21. Whether a date has already been fixed either by Court or on being mentioned
for the hearing of matter? If so, No
please indicate the date fixed..... N.A.
22. Is there a caveator? If so, whether a notice has been issued to him? No
23. Whether date entered in the Computer?..... N.A.
24. If it is a criminal matter, please state : No
- a) Whether accused has surrendered..... N.A.
- b) Nature of offence, i.e. convicted under Section with Act..... N.A.
- c) Sentence awarded..... N.A.
- d) Sentence already undergone by the accused..... N.A.
- 24 e) (i) FIR/RC/etc..... N.A.
- Date of Registration of FIR etc..... N.A.
- Name & place of the Police Station..... N.A.
- (ii) Name & place of Trial Court..... N.A.
- Case No. in Trial Court and Date of Judgment..... N.A.
- (iii) Name and place of 1st Appellate Court..... N.A.
- Case No. in 1st Appellate Court & date of Judgment..... N.A.

Dated

ANOOP BARANWAL
Petitioner in Person

SYNOPSIS AND LIST OF DATES

This writ petition is being filed as public interest litigation raising the issue of the constitutional validity of the practice of the Respondents in appointing the member to the Election Commission without following a fair, just and transparent selection process by constituting a neutral and independent collegiums/selection committee, on the ground that such practice is discriminatory and violative of Article 14 of the Constitution and is against the provision of Article 324(2) of the Constitution, which obligate our Executive/Legislature to make law for ensuring a fair, just and transparent selection process by constituting a neutral and independent collegiums/ selection committee to recommend the name for Election Commission, for which, time to time, the recommendations have been made by the Second Administrative Reform Commission in its Fourth Report in January, 2007; by the Dr. Dinesh Goswami Committee in its Report in May, 1990; and by the Justice Tarkunde Committee in its Report in year 1975.

The present writ petition raise the following question of law of constitutional importance for the kind determination by this Hon'ble Court:

- A). Whether the practice of appointing the member to the Election Commission without following a fair, just and transparent process of selection by constituting an

C

independent and neutral collegiums/selection committee to recommend the name and without making a law for the same as obligated in Article 324(2) of the Constitution, is not discriminatory and violative of Article 14 of the Constitution of India?

HZ B). Whether the provisions of Article 14 of the Constitution does not make it obligatory on the Respondents to follow a fair, just and transparent selection process by constituting a neutral and independent collegiums/selection committee for the appointment of the member of the Election Commission, even in the absence of any law, as intended to be made by the Parliament under Article 324(2) of the Constitution?

44 [C). Whether failing in implementing the recommendations of the Dr. Dinesh Goswami Committee; Second Administrative Reforms Commission and Justice Tarkunde Committee to constitute a neutral and independent committee for the fair, just and transparent mode of selection for the appointment of the members to Election Commission is not violative of Article 14 of the Constitution of India?

44 [D). Whether 'Integrity and Independence of Election Commission' is the basic feature of the Constitution of India in view of the fact that its functioning greatly determines the quality of governance and strength of democracy and whether adopting the process of appointment of the member

D

to the Election Commission solely on the recommendation of the executive at Centre without evolving fair and transparent selection process, is not undermining the 'Integrity and Independence of Election Commission' in view of the intention expressed by our Constitution makers during Constituent Assembly Debate?

H E) Whether the process of appointment of the member to the Election Commission also need not to be insulated from the political and executive pressure by evolving a neutral and independent collegium/committee for fair, just and transparent selection, particularly when for the other High Constitutional and Legal Authorities like Judge of Supreme Court and High Court; Chief Information Commissioner/ Information Commissioner; Chairperson and members of the National Human Right Commission; Chief Vigilance Commissioner; Director of Central Bureau of Investigation; Lokpal and other members; Chairman: Press Council of India, the law to constitute a neutral and independent collegium/selection committee for fair, just and transparent selection to recommend the name, has been adopted and implemented?

F). Whether permitting the Respondent to continue to appoint the members to the Election Commission solely on the advice of the political-executive at centre does not gives

ample room for the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation and partisanship and thus causing violation of Article 14 of the Constitution of India?

- G). Whether by not making a law for ensuring a fair, transparent and justified process of selection for the appointment of the members to the Election Commission under Article 324(2) of the Constitution of India, the Respondents failed in discharging their constitutional obligation continuously since adoption of the Constitution of India, and as such which is not needed to be interfered by this Hon'ble Court?

LIST OF DATES

26 November, 1949 Under the Constitution of India, the independence and integrity of the Election Commission is of paramount importance for ensuring a free and fair election to strengthen and maintain the life of the democracy.

In order to ensure the purity of the election process, it was thought by our Constitution-makers that the responsibility to hold free and fair election in the

country should be entrusted to an independent body which would be insulated from political-executive interference.

It is inherent in a democratic set up that the agency which is entrusted the task of holding elections to the legislatures should be fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day. This objective is achieved by setting up of an Election Commission, a permanent body, under Art 324(1) of the constitution.

The functioning of the Election Commission greatly determines the quality of governance and strength of democracy and in view of the great constitutional importance of the Election Commission, the fairness and transparency in the mode of procedure of appointment of the Chief Election Commissioner and its members under Article 324(2) of the Constitution becomes very crucial.

Article 324(2) of the Constitution of India provides for the appointment of the Election Commission, which are as follows:

324(2): "The Election Commission shall consist of

the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."

15 June,
1949

During the adoption of the clause 'subject to the provisions of any law made in that behalf by Parliament' in clause (2) of Article 324 of the Constitution, the views expressed by our Constitutional maker is relevant to quote here. The eminent Constitution maker namely Prof. Shibban Lal Saksena, in the Constituent Assembly Debate, while proposing an amendment that the appointment of the Chief Election Commissioner should be "subject to confirmation by a two-thirds majority in a joint session of both Houses of Parliament." argued that appointment by the President would really mean appointment by the Government under the decision of the Prime Minister.

Agreeing with Prof. Saksena, Dr. B.R. Ambedkar, the Chairman of Drafting Committee, in his reply stated:

"With regard to the question of appointment, I must confess that there is a great deal of force in what my friend, Prof. Saksena, has stated that there is no use of making the tenure of the Election Commissioner a fixed and secure one if there is no provision in the Constitution to prevent either a fool or knave or a person who is likely to be under the thumb of the Executive. My provision - I must admit - does not contain anything to provide against nomination of an unfit person to the post of Chief Election Commissioner or the other Election Commissioners."

Ultimately Dr. B.R. Ambedkar gave an amendment that the appointment of the Chief Election Commissioner and the Election Commissioner shall be made by the President "subject to any law made in that behalf by Parliament" which has also been inserted in the Article 324 (2) of the Constitution with the hope that in due course of time the Government will take an initiative to make the Law for fair, just and transparent mode of the appointment in the Election Commission to ensure its independence and integrity.

1975

Justice Tarkunde Committee (appointed by 'Citizens for Democracy' on the suggestion of Sri Jayaprakash Narayan) recommended that the members of Election Commission should be appointed by the President on the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India.

May, 1990

The Committee on Electoral Reforms in the chairmanship of then Law Minister namely, Mr. Dinesh Goswami, appointed by the Central Government, has made several recommendations on the issue of electoral reforms. In para no. 1.2 of its report, Mr. Dinesh Goswami Committee recommended for the effective consultation with neutral authorities like Chief Justice of India and the Leader of the Opposition for the appointment in Election Commission.

January,

2007

The Second Administrative Reforms Commission, in its fourth report made in January, 2007, also recommended for the constitution of neutral and independent collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and

the Deputy Chairman of the Rajya Sabha as members for making recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.

June 02,
2012

The issue of appointment by a neutral committee has also been favoured by the political leaders. Mr. L. K. Advani, then leader of opposition and member of Dr. Dinesh Goswami Committee, in his letter dated 02/06/2012, addressed to the Prime Minister, also urged and suggested to constitute a selection committee consisting of the Prime Minister, the Chief Justice of India, the Law Minister and the Leader of the Opposition in both Houses of Parliament.

June 06,
2012

The aforesaid suggestion of Mr. L.K. Advani was also found support from the Leftist leader namely Mr. Prakash Karat and Mr. Gurudas Das Gupta.

It is regrettable and disappointing that since the adoption of the Constitution, the successive Governments came at centre but none of them take any initiative to make a law, as per Article 324 (2), although several recommendations and suggestions have been made in this regard. The

recommendations and suggestions, so made, have not been given affect by the Respondents for obvious reasons.

It is a practice in vogue since adoption of the Constitution i.e. 26 November, 1949 that the President appoint a member of the Election Commission under Article 324 solely on the advice of the executive at Centre and there is no obligation on the Prime Minister to consult other parties or independent and neutral authorities while selecting and making the recommendation for the appointment of the member of Election Commission. This gives ample room for the ruling party to choose someone whose loyalty to it is assured.

Due to lack of law for the constitution of an independent and neutral committee for fair and just selection, the members to the Election Commission are being appointed by the President solely on the advice of the Prime Minister and thus the whole process of the appointment has been kept centralized with and left to the sweet will and pleasure of the Executive at Centre.

The appointment on the post of the head and

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members of many other authorities of constitutional importance like (i) Chief Information Commissioner/ Information Commissioner; (ii) Chairperson and member of the National Human Right Commission; (iii) Chief Vigilance Commissioner & Vigilance Commissioners; (iv) Director of Central Bureau of Investigation; (v) Lokpal and Members; (vi) Chairman: Press Council of India; (vii) Judge of Supreme Court and High Court, is made on the recommendation based on the selection made by an independent and neutral statutory collegiums/ selection committee under the relevant statutes.

15 January,
2015

A post of member to the Election Commission is vacated on the retirement of Chief Election Commission namely Mr. V.S. Sampath and for the appointment on this post, the selection process is to be initiated.

The practice of appointing the members to the Election Commission without making law for adopting fair, just and transparent selection process by constituting an independent and neutral collegium/ committee for recommendation of the name, is violative of Article 14 and 324(2) of the Constitution

of India.

03
December
2014

Against the unfair, unjustified and unconstitutional practice of appointing members to the Election Commission, the petitioner made petition on 03.12.2014 before the Prime Minister/Head-Council of Ministers of the Union of India (the Resp. no. 2) with a prayer to take initiative to make law for laying down a fair, just and transparent selection process by constituting an independent and neutral collegiums/committee for recommending the name for the post of the member of the Election Commission.

On the petition of the petitioner dated 03.12.2014 no reply or information in respect of any action or decision taken thereon, has been given by the Respondents till the date and aforesaid petition of the petitioner dated 03.12.2014 is still pending and kept undecided by the Respondents.

Keeping the petition of the petitioner dated 03.12.2014 pending and undecided is illegal, unlawful and unconstitutional and the Respondents are in hurry to recommend the name for the post of members to the Election Commission, which will be

fallen vacant on 15.01.2015, illegally, unlawfully and un-constitutionally without considering and deciding the petition of the petitioner dated 03.12.2014.

08.01.2015 The subject matter involve in the petition are the substantial question of law of the Constitutional importance and violation of the fundamental right guaranteed under Article 14 of the Constitution. Hence present writ Petition as a Public Interest Litigation is being filed.

FILED BY:

ANOOP BARANWAL

(Petitioner-in- person)

[REDACTED]
[REDACTED]
[REDACTED]

Drawn on: 05.01.2015

Filed on: .01.2015

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

PUBLIC INTEREST PETITION NO. OF 2015

(Under Article 32 of the Constitution of India)

IN THE MATTER OF

Anoop Baranwal

..... Petitioner

Versus

The Union of India through its
Secretary, Ministry of Law and
Justice, Shastri Bhawan, New Delhi-
110001.

... Respondent

PUBLIC INTEREST PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT, ORDER,
DIRECTION OR ANY OTHER APPROPRIATE DIRECTION.

To

Hon'ble The Chief Justice of India and His Companion Justices
of the Supreme Court of India.

The Humble petition of the Petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. This writ Petition under Article 32 of the Constitution of India, is being filed as Public Interest Litigation by the petitioner, who, being a Citizen of India and practicing advocate at Allahabad High Court, is having deep concern with democracy and is interested in securing the Integrity and Independence of Election Commission and in ensuring the proper implementation of the constitutional provisions. By means of writ petition the substantial question of constitutional validity of the practice of the Respondent in appointing the member to the Election Commission is being raised on the ground that such practice is discriminatory and violative of Article 14 of the Constitution and is against the provision of Article 324(2) of the Constitution, which obligate our Executive/ Legislature to make law for ensuring a

fair, just and transparent selection process by constituting a neutral and independent collegiums/ selection committee to recommend the name for Election Commission, for which, time to time, the recommendations have also been made by the Second Administrative Reform Commission in its Fourth Report in January, 2007; by the Dr. Dinesh Goswami Committee in its Report in May, 1990; and by the Justice Tarkunde Committee in its Report in year 1975.

1.1 This by means of present writ petition as Public Interest Litigation, the petitioner is challenging the selection process of the member to the Election Commission on the ground of violation of Article 14 of the Constitution of India and raising substantial question of law as to the interpretation of Article 324(2) of the Constitution and seeking writ of mandamus or an appropriate writ, order or direction, commanding the Respondent to make law for ensuring a fair, just and transparent process of selection by constituting a neutral and independent collegium/ selection committee to recommend the name for the appointment of the member to the Election Commission under Article 324(2) of the Constitution of India and further seeking writ of mandamus or an appropriate writ, order or direction for constituting an interim neutral and independent collegium/ selection committee to recommend the names for the appointment on the vacant post of the member to the Election Commission.

2. Disclosure in term of Order XXXVIII Rule 12 sub-rule (2) of the Supreme Court Rules, 2013:

2.1 That the petitioner's full name is Anoop Baranwal; his postal address [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The petitioner's annual income is about [REDACTED] He is filing the Identity

Card issued by High Court Bar Association, Allahabad as a proof regarding personal identification. A photocopy of the Identity Card of the petitioner is annexed herewith and marked as Annexure P-1 (Page no. 31 to —) to this petition.

2.2 That the practice of appointing the member to the Election Commission without making law for a fair, just and transparent process of selection by constituting an independent and neutral collegiums/ selection committee to recommend the name, is in violation of Article 14 and 324(2) of the Constitution of India and is in vogue continuously since adoption of the Constitution. Against the same unconstitutional practice, the petitioner made his petition before the Respondents on 03/12/2014, but to no avail and the Respondent is going to initiate the process of appointment on the post of the member to the Election

Commission, which will be fallen vacant due to retirement of Mr. V.S. Sampath, the Chief Election Commissioner on 15 January, 2015, without deciding the petition of the petitioner dated 03/12/2014. Thus the cause of action for filing the present Public Interest Litigation arises.

2.3 That under the Constitution of India, the independence and integrity of the Election Commission is of paramount importance for ensuring a free and fair election to strengthen and maintain the life of the democracy. By not constituting a neutral and independent Collegium/Selection Committee to recommend the name for the member to the Election Commission and by continuing to adopt the process in appointing the member of Election Commission solely on the recommendation of political-executive at Centre, the independence and the integrity of the Election Commission is being jeopardized and thus public injury is being caused.

2.4 That it is stated that the petitioner has no personal interest in filing the present Public Interest Litigation.

2.5 That it is stated that there is no civil, criminal or revenue litigation, involving the petitioner, which has or could have a legal nexus with the issue(s) involved in the present Public Interest Litigation.

2.6 That it is stated that the petitioner approached the Respondent, the concerned Government Authority and moved the petition dated 03/12/2014 (Ah. No. 6 to this Petition) for relief(s) sought in the petition. On the petition of the petitioner dated 03/12/2014, no action or decision has been taken by the Respondent.

2.7 That it is further stated that there is no personal gain, private motive and oblique reason of the petitioner in filing the present Public Interest Litigation.

QUESTIONS OF LAW:

3. The present writ petition raise the following question of law of constitutional importance for the kind détermination by this Hon'ble Court:

A). Whether the practice of appointing the member to the Election Commission without following a fair, just and transparent process of selection by constituting an independent and neutral collegiums/selection committee to recommend the name and without making a law for the same as obligated in Article 324(2) of the Constitution, is not discriminatory and violative of Article 14 of the Constitution of India?

- B). Whether the provisions of Article 14 of the Constitution does not make it obligatory on the Respondents to follow a fair, just and transparent selection process by constituting a neutral and independent collegiums/ selection committee for the appointment of the member of the Election Commission, even in the absence of any law, as intended to be made by the Parliament under Article 324(2) of the Constitution?
- C). Whether failing in implementing the recommendations of the Dr. Dinesh Goswami Committee; Second Administrative Reforms Commission and Justice Tarkunde Committee to constitute a neutral and independent committee for the fair, just and transparent mode of selection for the appointment of the members to Election Commission is not violative of Article 14 of the Constitution of India?
- D). Whether 'Integrity and Independence of Election Commission' is the basic feature of the Constitution of India in view of the fact that its functioning greatly determines the quality of governance and strength of democracy and whether adopting the process of appointment of the member to the Election Commission

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solely on the recommendation of the executive at Centre without evolving fair and transparent selection process, is not undermining the 'Integrity and Independence of Election Commission' in view of the intention expressed by our Constitution makers during Constituent Assembly Debate?

- E) Whether the process of appointment of the member to the Election Commission also need not to be insulated from the political and executive pressure by evolving a neutral and independent collegium/ committee for fair, just and transparent selection, particularly when for the other High Constitutional and Legal Authorities like Judge of Supreme Court and High Court; Chief Information Commissioner/ Information Commissioner; Chairperson and members of the National Human Right Commission; Chief Vigilance Commissioner; Director of Central Bureau of Investigation; Lokpal and other members; Chairman: Press Council of India, the law to constitute a neutral and independent collegiums/selection committee for fair, just and transparent selection to recommend the name, has been adopted and implemented?

PUBLIC INTEREST PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT, ORDER,
DIRECTION OR ANY OTHER APPROPRIATE DIRECTION.

To

Hon'ble The Chief Justice of India and His Companion Justices
of the Supreme Court of India.

The Humble petition of the Petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. This writ Petition under Article 32 of the Constitution of India, is being filed as Public Interest Litigation by the petitioner, who, being a Citizen of India and practicing advocate at Allahabad High Court, is having deep concern with democracy and is interested in securing the Integrity and Independence of Election Commission and in ensuring the proper implementation of the constitutional provisions. By means of writ petition the substantial question of constitutional validity of the practice of the Respondent in appointing the member to the Election Commission is being raised on the ground that such practice is discriminatory and violative of Article 14 of the Constitution and is against the provision of Article 324(2) of the Constitution, which obligate our Executive/ Legislature to make law for ensuring a

fair, just and transparent selection process by constituting a neutral and independent collegiums/ selection committee to recommend the name for Election Commission, for which, time to time, the recommendations have also been made by the Second Administrative Reform Commission in its Fourth Report in January, 2007; by the Dr. Dinesh Goswami Committee in its Report in May, 1990; and by the Justice Tarkunde Committee in its Report in year 1975.

1.1 This by means of present writ petition as Public Interest Litigation, the petitioner is challenging the selection process of the member to the Election Commission on the ground of violation of Article 14 of the Constitution of India and raising substantial question of law as to the interpretation of Article 324(2) of the Constitution and seeking writ of mandamus or an appropriate writ, order or direction, commanding the Respondent to make law for ensuring a fair, just and transparent process of selection by constituting a neutral and independent collegium/ selection committee to recommend the name for the appointment of the member to the Election Commission under Article 324(2) of the Constitution of India and further seeking writ of mandamus or an appropriate writ, order or direction for constituting an interim neutral and independent collegium/ selection committee to recommend the names for the appointment on the vacant post of the member to the Election Commission.

2. Disclosure in term of Order XXXVIII Rule 12 sub-rule (2) of the Supreme Court Rules, 2013:

2.1 That the petitioner's full name is Anoop Baranwal; his postal address is [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] The petitioner's annual income is about [REDACTED]. He is filing the Identity Card issued by High Court Bar Association, Allahabad as a proof regarding personal identification. A photocopy of the Identity Card of the petitioner is annexed herewith and marked as Annexure P-1 (Page no. 31 to —) to this petition.

2.2 That the practice of appointing the member to the Election Commission without making law for a fair, just and transparent process of selection by constituting an independent and neutral collegiums/ selection committee to recommend the name, is in violation of Article 14 and 324(2) of the Constitution of India and is in vogue continuously since adoption of the Constitution. Against the same unconstitutional practice, the petitioner made his petition before the Respondents on 03/12/2014, but to no avail and the Respondent is going to initiate the process of appointment on the post of the member to the Election

Commission, which will be fallen vacant due to retirement of Mr. V.S. Sampath, the Chief Election Commissioner on 15 January, 2015, without deciding the petition of the petitioner dated 03/12/2014. Thus the cause of action for filing the present Public Interest Litigation arises.

2.3 That under the Constitution of India, the independence and integrity of the Election Commission is of paramount importance for ensuring a free and fair election to strengthen and maintain the life of the democracy. By not constituting a neutral and independent Collegium/Selection Committee to recommend the name for the member to the Election Commission and by continuing to adopt the process in appointing the member of Election Commission solely on the recommendation of political-executive at Centre, the independence and the integrity of the Election Commission is being jeopardized and thus public injury is being caused.

2.4 That it is stated that the petitioner has no personal interest in filing the present Public Interest Litigation.

2.5 That it is stated that there is no civil, criminal or revenue litigation, involving the petitioner, which has or could have a legal nexus with the issue(s) involved in the present Public Interest Litigation.

2.6 That it is stated that the petitioner approached the Respondent, the concerned Government Authority and moved the petition dated 03/12/2014 (An. No. 6 to this Petition) for relief(s) sought in the petition. On the petition of the petitioner dated 03/12/2014, no action or decision has been taken by the Respondent.

2.7 That it is further stated that there is no personal gain, private motive and oblique reason of the petitioner in filing the present Public Interest Litigation.

QUESTIONS OF LAW:

3. The present writ petition raise the following question of law of constitutional importance for the kind determination by this Hon'ble Court:

A). Whether the practice of appointing the member to the Election Commission without following a fair, just and transparent process of selection by constituting an independent and neutral collegiums/selection committee to recommend the name and without making a law for the same as obligated in Article 324(2) of the Constitution, is not discriminatory and violative of Article 14 of the Constitution of India?

B). Whether the provisions of Article 14 of the Constitution does not make it obligatory on the Respondents to follow a fair, just and transparent selection process by constituting a neutral and independent collegiums/ selection committee for the appointment of the member of the Election Commission, even in the absence of any law, as intended to be made by the Parliament under Article 324(2) of the Constitution?

C). Whether failing in implementing the recommendations of the Dr. Dinesh Goswami Committee; Second Administrative Reforms Commission and Justice Tarkunde Committee to constitute a neutral and independent committee for the fair, just and transparent mode of selection for the appointment of the members to Election Commission is not violative of Article 14 of the Constitution of India?

D). Whether 'Integrity and Independence of Election Commission' is the basic feature of the Constitution of India in view of the fact that its functioning greatly determines the quality of governance and strength of democracy and whether adopting the process of appointment of the member to the Election Commission

solely on the recommendation of the executive at Centre without evolving fair and transparent selection process, is not undermining the 'Integrity and Independence of Election Commission' in view of the intention expressed by our Constitution makers during Constituent Assembly Debate?

- E) Whether the process of appointment of the member to the Election Commission also need not to be insulated from the political and executive pressure by evolving a neutral and independent collegium/ committee for fair, just and transparent selection, particularly when for the other High Constitutional and Legal Authorities like Judge of Supreme Court and High Court; Chief Information Commissioner/ Information Commissioner; Chairperson and members of the National Human Right Commission; Chief Vigilance Commissioner; Director of Central Bureau of Investigation; Lokpal and other members; Chairman: Press Council of India, the law to constitute a neutral and independent collegiums/selection committee for fair, just and transparent selection to recommend the name, has been adopted and implemented?

- F). Whether permitting the Respondent to continue to appoint the members to the Election Commission solely on the advice of the political-executive at centre does not give ample room for the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation and partisanship and thus causing violation of Article 14 of the Constitution of India?
- G). Whether by not making a law for ensuring a fair, transparent and justified process of selection for the appointment of the members to the Election Commission under Article 324(2) of the Constitution of India, the Respondents failed in discharging their constitutional obligation continuously since adoption of the Constitution of India, and as such which is not needed to be interfered by this Hon'ble Court?

FACTS OF THE CASE:

4. Facts of the case briefly stated are as follows:

- 4.1 The petitioner, being a Citizen of India and practicing advocate, is having deep concern with democracy and is interested in securing the Integrity and Independence of Election.

Commission and is also interested in the proper implementation of the constitutional provisions.

4.2 Under the Constitution of India, the independence and integrity of the Election Commission is of paramount importance for ensuring a free and fair election to strengthen and maintain the life of the democracy.

4.3 That in order to ensure the purity of the election process, it was thought by our Constitution-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political-executive interference.

4.4 That it is inherent in a democratic set up that the agency which is entrusted the task of holding elections to the legislatures should be fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day. This objective is achieved by setting up of an Election Commission, a permanent body, under Art 324(1) of the constitution.

4.5 That the functioning of the Election Commission greatly determines the quality of governance and strength of democracy and in view of the great constitutional importance of

the Election Commission, the fairness and transparency in the mode of procedure of appointment of the Chief Election Commissioner and its members becomes very crucial.

4.6 That Article 324(2) of the Constitution of India provides for the appointment of the Election Commission, which are as follows:

324(2): "The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."

4.7 That During the adoption of the clause 'subject to the provisions of any law made in that behalf by Parliament' in clause (2) of Article 324 of the Constitution, the views expressed by our Constitutional maker is relevant to quote here. The eminent Constitution maker namely Prof. Shibban Lal Saksena, in the Constituent Assembly Debate, while proposing an amendment that the appointment of the Chief Election Commissioner should be "subject to confirmation by a two-thirds majority in a joint session of both Houses of Parliament." argued that

appointment by the President would really mean appointment by the Government under the decision of the Prime Minister.

- 4.8 That Agreeing with Prof. Saksena, Dr. B.R. Ambedkar, the Chairman of Drafting Committee, in his reply stated:

"With regard to the question of appointment, I must confess that there is a great deal of force in what my friend, Prof. Saksena, has stated that there is no use of making the tenure of the Election Commissioner a fixed and secure one if there is no provision in the Constitution to prevent either a fool or knave or a person who is likely to be under the thumb of the Executive. My provision - I must admit - does not contain anything to provide against nomination of an unfit person to the post of Chief Election Commissioner or the other Election Commissioners."

- 4.9 That ultimately Dr. B.R. Ambedkar gave an amendment that the appointment of the Chief Election Commissioner and the Election Commissioner shall be made by the President "subject to any law made in that behalf by Parliament." with the hope that in due course of time the Government will take an initiative to make the Law for fair, just and transparent mode of the appointment in the Election Commission to ensure its independence and integrity.

4.10 That in the year 1975 Justice Tarkunde Committee (appointed by 'Citizens for Democracy' on the suggestion of Sri Jayaprakash Narayan) recommended that the members of Election Commission should be appointed by the President on the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India.

4.11 That the Committee on Electoral Reforms in the chairmanship of then Law Minister namely, Mr. Dinesh Goswami, appointed by the Central Government, has made several recommendations on the issue of electoral reforms. In para no. 1.2 of its report, Mr. Dinesh Goswami Committee recommended for the affective consultation with neutral authorities like Chief Justice of India and the Leader of the Opposition for the appointment in Election Commission. The relevant recommendations in para no. 1.2 of the Report are as follows:

- (i) The appointment of the Chief Election Commissioner should be made by the President in consultation with Chief Justice of India and the Leader of the Opposition (and in case no Leader of the opposition is

available, the consultation should be with the leader of the largest opposition group in the Lok Sabha).

(ii) . The consultation process should have a statutory backing.

(iii) The appointment of the other two Election Commissioners should be made in consultation with the Chief Justice of India, Leader of the Opposition (in case the Leader of the opposition is not available, the consultation should be with the leader of the largest opposition group in the Lok Sabha) and the Chief Election Commissioner.

A true copy of the Chapter I and Chapter II of the report of May, 1990 of the Committee on Electoral Reforms is annexed herewith and marked as Annexure P-2 (Page no. 32 to 46) to this petition.

4.12 That the Second Administrative Reforms Commission, in its fourth report made in January, 2007, also recommended for the constitution of neutral and independent body to recommend the name for Election Commission. The recommendation of the Commission is as follows:

"2.1.5.4 Recommendation:

- a. A collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners."

A true copy of the relevant para no. 2.1.5 of the 4th Report of January, 2007 of the Second Administrative Reforms Commission is annexed herewith and marked as Annexure P-3 (Page no. 47 to 49) to this petition.

- 4.13 That the issue of appointment by a neutral committee has also been favoured by the political leaders. Mr. L. K. Advani, then leader of opposition and member of Dr. Dinesh Goswami Committee, in his letter dated 02/06/2012, addressed to the Prime Minister, also urged and suggested to constitute a selection committee consisting of the Prime Minister, the Chief Justice of India, the Law Minister and the Leader of the Opposition in both Houses of Parliament. While making such suggestion, Mr. L. K. Advani argued:

"The present system whereby members to the Election Commission are appointed by the President,

solely on the advice of the Prime Minister, does not evoke confidence amongst the people."

"There is a rapidly growing opinion in the country which holds that appointments to constitutional bodies such the Election Commission should be done on a bipartisan basis in order to remove any impression of bias, or lack of transparency and fairness. The people of India wish to see that only persons with competence, integrity and an impeccable record of service get appointed to these crucial bodies, whose functioning greatly determines the quality of governance."

"Article 324 of the Constitution, which deals with the Election Commission of India, should be suitably amended. The phrasing of Article 324 (2) shows that this would not need any constitutional amendment and can be done through an ordinary enactment."

To this effect a news item in daily newspaper namely 'The Hindu' dated 04 June, 2012 has been published, the true copy whereof is annexed herewith and marked as Annexure P-4 (Page no. 50 to 52.) to this petition.

4.14 That the aforesaid suggestion of Mr. L.K. Advani was also found support from the Leftist leader namely Mr. Prakash Karat and Mr. Gurudas Das Gupta too. To this effect a news item in daily newspaper namely 'The Economic Times' dated 06 June, 2012 has been published, the true copy whereof is annexed herewith and marked as Annexure P-5 (Page no. 53 to 55) to this petition.

4.15. That it is regrettable and disappointing that since the adoption of the Constitution, the successive Governments came at centre but none of them take any initiative to make a law, as per Article 324 (2), although several recommendations and suggestions have been made in this regard. The recommendations and suggestions, so made, have not been given effect by the Respondents for obvious reasons.

4.16 That it is practice in vogue since adoption of the Constitution i.e. 26 November, 1949 that the President appoint a member of the Election Commission under Article 324 solely on the advice of the executive at Centre and there is no obligation on the Prime Minister to consult other parties or independent and neutral authorities while selecting and making the recommendation for the appointment of the member of Election

Commission. This gives ample room for the ruling party to choose someone whose loyalty to it is assured.

4.17 That due to lack of law for the constitution of an independent and neutral committee for selection and making recommendation, the members to the Election Commission are being appointed by the President solely on the advice of the Prime Minister and thus the whole process of the appointment has been kept centralized with and left to the sweet will and pleasure of the Executive at Centre.

4.18 That it is relevant to state that the appointment on the post of the head and members of many other Authorities are being made on the recommendation of an independent and neutral statutory collegium/ selection committee. Illustration of such Authorities may be quoted herewith as follows:

- (i) Chief Information Commissioner/ Information Commissioner - are appointed on the recommendation of the Committee consisting of Prime Minister, Leader of the Opposition in the Lok Sabha and one Union Cabinet Minister to be nominated by the Prime Minister u/s 12(3) of the Right to Information Act, 2005.

- (ii) Chairperson and member of the National Human Right Commission - are appointed on the recommendation of the Committee consisting of Prime Minister, Speaker, Home Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha and Deputy Chairman of Rajya Sabha u/s 4 of the Protection of Human Right Act, 1993.
- (iii) Chief Vigilance Commissioner & Vigilance Commissioners - are appointed on the recommendation of the Committee consisting of Prime Minister, the Minister of Home Affairs and Leader of the Opposition in the Lok Sabha u/s 4(1) of the Central Vigilance Commission, Act, 2003.
- (iv) Director of Central Bureau of Investigation - is appointed on the recommendation of the Selection Committee consisting of Prime Minister, Leader of the Opposition in the Lok Sabha and Chief Justice of India under the Delhi Special Police Establishment Act, 1946.
- (v) Lokpal and Members - is appointed on the recommendation of the Selection Committee consisting of (a) Prime Minister (Chairperson); (b) the Speaker of the House of the People—Member; (c) the Leader of

Opposition in the House of the People—Member; (d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—Member; (e) one eminent jurist u/s 4(1) of the Lokpal and Lokayuktas Act, 2013.

(vi) Chairman: Press Council of India is appointed on the recommendation of the Committee consisting of Chairman of the Council of States (Rajya Sabha), the Speaker of the House of the People (Lok Sabha) and a person elected by the members of the Council u/s section 5 of the Press Council Act, 1978.

(vii) Judge of Supreme Court and High Court - are appointed on the recommendation of the National Judicial Commission consisting of Chief Justice of India and two seniormost Judges of Supreme Court, Law and Justice Minister and two eminent persons nominated by the Prime Minister, Chief Justice of India, Leader of Opposition (largest party) under the National Judicial Appointment Commission Act, 2014.

4.19 That on 15 January, 2015 a post of member to the Election Commission is vacated on the retirement of Chief Election Commission namely Mr. V.S. Sampath and for the appointment on this post, the selection process is to be initiated.

4.20 That the practice of appointing the members to the Election Commission without making law for adopting fair, just and transparent selection process by constituting an independent and neutral collegium/ committee for recommendation of the name, is violative of Article 14 and 324(2) of the Constitution of India.

4.21 That against the unfair, unjustified and unconstitutional practice of appointing members to the Election Commission, the petitioner made petition on 03.12.2014 before the Prime Minister/Head-Council of Ministers of the Union of India with a prayer to take initiative to make law for laying down a fair, just and transparent selection process by constituting an independent and neutral collegiums/committee for recommending the name for the post of the member of the Election Commission. A true copy of the petition of the petitioner dated 03.12.2014 along with the postal receipt is annexed herewith and marked as Annexure P-6 (Page no. 5-6 to 60) to this petition.

4.22 That it is stated that on the petition of the petitioner dated 03.12.2014 no reply or information in respect of any action or decision taken thereon, has been given by the Respondents till the date and the aforesaid petition of the petitioner dated

03.12.2014 is still pending and kept undecided by the Respondent.

4.23 That keeping the petition of the petitioner dated 03.12.2014 pending and undecided is illegal, unlawful and unconstitutional and it appears that the Respondent are in hurry to recommend the name for the vacant post of members to the Election Commission illegally, unlawfully and unconstitutionally without considering and deciding the petition of the petitioner dated 03.12.2014.

4.24 That the petitioner has no alternative remedy and is directly approaching this Hon'ble Court under Article 32 of the Constitution of India since the subject matter involve in the petition are the substantial question of law of the Constitutional importance and violation of fundamental right guaranteed under Article 14 of the Constitution of India.

4.25 That in the interest of finality and expeditious resolution of issues raised in this petition, it would be in the interest of justice for this Hon'ble Court to entertain the present writ petition in the shape of the Public Interest Litigation and grant the relief.

5. That the present petitioner has not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the present petition.

6. GROUNDS

That the petitioner begs to prefer the present writ petition on inter alia the following grounds which are taken without prejudice to one another:

A). Because the practice of appointing the member to the Election Commission without following a fair, just and transparent process of selection by constituting an independent and neutral collegiums/selection committee to recommend the name and without making a law for the same as obligated in Article 324(2) of the Constitution, is discriminatory and violative of Article 14 of the Constitution of India.

41 [B). Because the provisions of Article 14 of the Constitution make it obligatory on the Respondents to follow a fair, just and transparent selection process by constituting a neutral and independent collegiums/selection committee for the appointment of the member of the Election Commission, even in the absence of any law, as intended

to be made by the Parliament under Article 324(2) of the Constitution.

C). Because failing in implementing the recommendations of the Dr. Dinesh Goswami Committee; Second Administrative Reforms Commission and Justice Tarkunde Committee to constitute a neutral and independent committee for the fair, just and transparent mode of selection for the appointment of the members to Election Commission is in violation of Article 14 of the Constitution of India.

D). Because 'Integrity and Independence of Election Commission' is the basic feature of the Constitution of India in view of the fact that its functioning greatly determines the quality of governance and strength of democracy and adopting the process of appointment of the member to the Election Commission solely on the recommendation of the executive at Centre without evolving fair and transparent selection process, is undermining the 'Integrity and Independence of Election Commission' in view of the intention expressed by our Constitution makers during Constituent Assembly Debate?

E). Because the process of appointment of the member to the Election Commission also need to be insulated from the political and executive pressure by evolving a neutral and independent collegium/ committee for fair, just and transparent selection, particularly when for the other High Constitutional and Legal Authorities like Judge of Supreme Court and High Court; Chief Information Commissioner/ Information Commissioner; Chairperson and members of the National Human Right Commission; Chief Vigilance Commissioner; Director of Central Bureau of Investigation; Lokpal and other members; Chairman: Press Council of India, the law to constitute a neutral and independent collegiums/selection committee for fair, just and transparent selection to recommend the name, has been adopted and implemented?

F). Because permitting the Respondent to continue to appoint the members to the Election Commission solely on the advice of the political-executive at centre gives ample room for the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation and partisanship and thus causing violation of Article 14 of the Constitution of India.

- G). Because by not making a law for ensuring a fair, transparent and justified process of selection for the appointment of the members to the Election Commission under Article 324(2) of the Constitution of India, the Respondents failed in discharging their constitutional obligation continuously since adoption of the Constitution of India, and as such it is needed to be interfered by this Hon'ble Court.
- H). Because on the petition of the petitioner dated 03.12.2014, no reply or information in respect of any action or decision taken thereon, has been given by the Respondents till the date and aforesaid petition of the petitioner dated 03.12.2014 is still pending and kept undecided by the Respondents.
- I). Because the Respondents are in hurry to recommend the name for the vacant post of members to the Election Commission illegally, unlawfully and unconstitutionally without considering and deciding the petition of the petitioner dated 03.12.2014 pending before the Respondents.

7. PRAYERS

It, is therefore, most respectfully prayed that this Hon'ble Court may be pleased 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/ selection 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 collegium/ selection committee to recommend the names 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 an independent and neutral

collegiums/ selection committee for recommending the names for members to the Election Commission;

- iv). pass any other or further order as may be deemed fit and proper in the circumstances of the case; and
- v). awards costs of this petition.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND, EVER PRAY.

Drawn & Filed By:

ANOOP BARANWAL
(Petitioner – in - person)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Drawn on: 03.01.2015

Filed on: .01.2015

Annexure P-2

COMMITTEE ON ELECTORAL REFORMS

REPORT OF THE COMMITTEE on ELECTORAL REFORMS

MAY, 1990

GOVERNMENT OF INDIA
MINISTRY Of Law and Justice
LEGISLATIVE DEPARTMENT

1.4 Sir Antony Eden, Former Prime Minister of United Kingdom was perhaps greatly influenced by these factors when he observed:-

"Of all the experiments in government which have been attempted since the beginning of Time, I believe that the Indian venture into parliamentary government is the most exciting. A vast sub-continent is attempting to apply to its tens and hundreds of millions a system of free democracy which has been slowly evolved over the centuries in this small island, Great Britain. It is a brave thing to try to do so. The Indian venture is not a pale imitation of our practice at home, but a magnified and multiplied reproduction on a scale we have never dreamt of. If it succeeds, its influence on Asia is incalculable for good. Whatever the outcome, we must honour those who attempt it."

1.5 Leaving now our laurels alone, it becomes imperative to take stock of the present state of affairs which causes real concern and anxiety because of the existence of the looming danger threatening to cut at the very roots of free and fair elections.

1.6 The role of money and muscle powers at elections deflecting seriously the well accepted democratic values and ethos and corrupting the process; rapid criminalization of politics greatly encouraging evils of booth capturing, rigging, violence etc.; misuse of

official machinery, i.e. official media and ministerial; increasing menace of participation of non-serious candidates; form the core of our electoral problems. Urgent corrective measures are the need of the hour lest the system itself should collapse.

1.7 Electoral reforms are correctly understood to be a continuous process. But the attempts so far made in this area did not touch even the fringe of the problem. They proved to be abortive. Some of the recent measures like reduction of voting age and anti-defection law are no doubt laudable and the basic principles underlying those measures should be appreciated. But there are other vital and important areas in election field completely neglected and left high and dry.

1.8 All these four decades, especially after 1967, the demand for electoral reforms has been mounting up. The subject of electoral reforms received wide attention at various Seminars and Forums. Many eminent persons and academicians have written on various aspects of electoral reforms. It would be relevant to make reference in brief to some of them.

(1) The Report of the Joint Parliamentary Committee on amendment to election law - Part I and Part II - submitted in 1972 in two parts and the draft Bill appended thereto.

- (2) The Report of the Committee For Democracy (CFD) set up by Shri Jaya Prakash Narayan under the Chairmanship of Justice Tarkunde in August 1974.
- (3) Consideration of the various aspects of electoral reforms by the Sub-Committee of Cabinet appointed in 1977.
- (4) Consideration of the various aspects of electoral reforms by the Sub-Committee of the Cabinet between 1982 - 1984.
- (5) Various Presidential Addresses in Parliament.
- (6) Various Reports of Election Commission containing the views, suggestions and recommendations of the Chief Election Commissioners from 1952 onwards and the package of proposals made by the Commission in 1982.
- (7) The comments and views of the present Chief Election Commissioner, Shri R.V.S. Peri Sastri, as contained in his Notes circulated at the meeting of the political parties held on 9-1-1990.
- (8) The recommendations of the various Seminars including the one organised in March, 1983 by the Institute of Constitutional and Parliamentary Studies in New Delhi to deal with the various aspects of electoral reforms.

(9) Write ups, articles etc. in national press regarding various aspects of electoral law and procedure.

(10) Articles in Periodical "Swarajya" by Shri R. Venkataraman, President of India in Sixties (1960)

1.9 Some of the books by eminent authors dealing with either comprehensively the various aspects of electoral reforms or particular important aspects thereof are:-

(1) 'Lack of Political Will' by Shri Ramakrishna Hegde, former Chief Minister of Karnataka and at present Deputy Chairman of the Planning Commission.

(2) 'Electoral Reforms' a book by Shri L.P. Singh, former Governor.

(3) 'Rescue Democracy From Money Power' by Shri Rajagopalachari (Rajaji), former Governor-General and an eminent statesman.

(4) Reports of various Seminars addressed by Shri S.L. Shakhder, former Chief Election Commissioner; Shri R.K. Trivedi, Former Chief Election Commissioner; Shri R.V.S. Peri Sastri, Present Chief Election Commissioner; Shri L.K. Advani (MP) and others.

1.10 Thus, there are in existence informative, productive and useful voluminous materials on the subject. The general public has been getting the feeling that there is lack of political will to undertake any useful exercise of electoral reforms.

1.11 In this context, the quick and timely initiative of the Prime Minister, Shri Visvanath Pratap Singh, on the assumption of office of the National Front Government is refreshing. It has revived the hope that meaningful electoral reforms could now be a distinct possibility and efforts would be directed towards removing the serious drawbacks and distortions in the election law and procedure.

1.12 A meeting mainly of the representatives of political parties in Parliament was convened on the 9th January, 1990 at New Delhi under the Chairmanship of the Prime Minister, Shri Vishwanath Pratap Singh. Various aspects of electoral reforms were discussed at the meeting. In summing up of the deliberations, the Prime Minister outlined the following areas of electoral reforms on which general discussions at the meeting took place and broad consensus on the need for corrective measures emerged :-

- (1) Change of electoral system with special reference to Proportional Representation System and List System on which divergent views were earlier expressed;

- (2) Strengthening of the Election Commission and securing its independence including making the holder of the post of the Chief Election Commissioner ineligible for any office under the government after his term;
- (3) More stringent laws to deal with evil of booth capturing and impersonation;
- (4) Fresh delimitation to cure the various distortions; provision for rotation of seats reserved for scheduled castes; Reservation of seats for women;
- (5) Expeditious disposal of election petitions and appeals by sitting Judges and to manage their other work by appointment of ad hoc Judges;
- (6) Examination of the present provision of Anti-Defection Law and introduction of necessary changes to limit its application only to certain areas of legislative activities and to limit the powers of the presiding officers of the Legislatures;
- (7) Public Funding of elections;
- (8) Fixation of rational basis for ceiling of election expenses and need for removing the present distortions;
- (9) Multi-purpose photo identity cards to voters;

- (10) Statutory time-limit for holding bye-elections;
- (11) Statutory backing to certain provisions of Model Code;
- (12) Statutory backing to the Observers' role;
- (13) Combating the evil of non-serious candidates, contesting elections;
- (14) Elimination of misuse of official machinery.

1.13 On the basis of the conclusions at the meeting of 9th January, 1990, the Government constituted a Committee under the Chairmanship of Law Minister Shri Dinesh Goswami with the following members to go into the various aspects of electoral reforms enumerated above:-

- 1. Shri H.K.L. Bhagat, M.P. (Indian National Congress)
- 2. Shri L.K. Advani, M.P. (Bharatiya Janata Party)
- 3. Shri Somnath Chatterjee, M.P. (Communist Party of India)
[Marxist]
- 4. Shri Ghulam Rasool Mattó, M.P. (National Conference)
- 5. Shri Chimanbhai Mehta, M.P.
- 6. Shri Indrajit M.P.
- 7. Shri Homi F. Daji, Former M.P. (Communist Party of India)
- 8. Shri Era Sezhiyan, Former M.P. (Janata Dal)

9. Shri V. Kishore Chandra Deo, Former M.P. (Congress (S))

10. Shri L.P. Singh, Former Governor

11. Shri S.L. Shukdher, Former Chief Election Commissioner

1.14 Shri K. Ganesan, former Secretary, Election Commission of India, who has been appointed honorary Consultant in the Ministry of Law and Justice for the specific work of electoral reforms has been instructed to assist the Committee in its deliberations. Shri J.C. Sharma, Consultant in the Ministry of Law and Justice, Legislative Department has been instructed to assist Shri K. Ganesan in the matter.

1.15 Smt. V.S. Rama Devi, Secretary, Legislative Department, Ministry of Law and Justice, has also been requested to assist the Committee in its deliberations.

1.16 At the first meeting of the Committee held on the 3rd February, 1990 at New Delhi under the Chairmanship of Shri Dinesh Goswami, Law Minister, the Chairman indicated that detailed working paper under various heads of subjects of the contemplated electoral reforms would be prepared and circulated to members.

1.17 Shri K. Ganesan has been instructed to prepare the detailed working paper in consultation with Shri Era Sezhiyan and the Law Minister.

1.18 Detailed Notes under different Headings have been prepared with necessary Appendices thereto. The number of such main headings are 10 in Part-I and the number of sub-items thereunder are 55 covering every main aspects of election law and procedure.

1.19 Under Part - 11, detailed notes on the different electoral systems obtaining in a few countries and the examination of those systems from the point of view of its suitability to Indian conditions have been prepared with necessary Appendices thereto.

1.20 These notes - Parts I and II - were circulated to the members of the Committee well in advance.

1.21 Thereafter, the Committee had six meetings as per the details given below:-

1. 7th March, 1990 "
2. 8th March, 1990
3. 30th March, 1990
4. 31 st March, 1990
5. 2nd April, 1990
6. 11th April, 1990

1.22 At these meetings, the Committee examined the Notes on subjects in Part-I and Part-II and also considered the following additional notes prepared on specific subjects:-

- (1) Note on proposal regarding amendment to section 39 of the Representation of the People Act, 1951 (relating to increase in the number of proposers to a nomination paper in the case of elections to Rajya Sabha and Legislative Councils).
- (2) Recommendations made by the National Seminar on 'Elections and role of Law Enforcement' organised by the National Police Academy, Hyderabad and a note thereon.
- (3) Additional notes on 'Offence of Booth Capturing' prepared in consultation with Shri L.P. Singh.
- (4) The opinion of the Attorney-General on the various legislative measures proposed for discouraging non-serious candidates from contesting elections.
- (5) A Note containing broad outlines of U.K. law regarding election expenses prepared by Shri Era Sezhiyan.
- (6) A Note on 'Contribution by Companies to Political Parties' prepared by Shri L.P. Singh.

1.23 Apart from the above Notes, a brief statement containing gist of the suggestions in the letters received from Members of Parliament and other important persons on electoral reforms in response to the letter of the Minister of Law and Justice dated the 28th December, 1989 inviting their views and suggestions, were also circulated to the members of the Committee. Such of the important suggestions as are

having a bearing on the subjects dealt with in the Notes have also been taken into account by the Committee.

1.24 The Committee concluded its work on the 4th May, 1990 at which the draft final report of the Committee has been approved.

CHAPTER II

Electoral Machinery

1. Set up of multi-member Commission

1.1 Set up of Multi member Commission with three members:-

The Committee examined the question of making the Election Commission as a multi-member body. There has been broad agreement among all members about the Commission being a multi-member body. The Committee feels that the Election Commission should be a three member body.

1.2 Mode of Appointment:- As regards the mode of appointment of the Chief Election Commissioner and the two Election Commissioners, the Committee recommends as follows.-

- (i) The appointment of the Chief Election Commissioner should be made by the President in consultation with Chief Justice of India and the Leader of the Opposition (and in case no Leader

of the opposition is available, the consultation should be with the leader of the largest opposition group in the Lok Sabha).

(ii) The consultation process should have a statutory backing.

(iii) The appointment of the other two Election Commissioners should be made in consultation with the Chief Justice of India, Leader of the Opposition (in case the Leader of the opposition is not available, the consultation should be with the leader of the largest opposition group in the Lok Sabha) and the Chief Election Commissioner.

(iv) **Appointment of Regional Commissioners:-** The appointment of Regional Commissioners for different zones as proposed is not favoured. However, such appointment should be made only as envisaged in the Constitution and not on a permanent footing.

2. Steps for securing independence of the Commission

2.1 Various measures have been considered for securing the real independence of the Election Commission.

2.2 The Committee recommends that the protection of salary and other allied matters relating to the Chief Election Commissioner and the Election Commissioners should be provided for in the Constitution itself on the analogy of the provisions in respect of the Chief Justice and Judges of the Supreme Court. Pending such measures being

taken, a parliamentary law should be enacted for achieving the object.

2.3 The Committee feels that the proposal to make the expenditure of the Commission to be 'charged' is not necessary. Such expenditure should continue to be 'voted' as of now.

2.4 Ineligibility for any appointment under the Government after expiry of term- The Committee further recommends that on the expiry of the terms of office, the Chief Election Commissioner and the Election Commissioners should be made ineligible not only for any appointment under the Government but also to any office including the post of Governor the appointment to which is made by the President.

.....
TRUE COPY

Annexure P-3

GOVERNMENT OF INDIA

SECOND ADMINISTRATIVE REFORMS COMMISSION

FOURTH REPORT

ETHICS IN GOVERNANCE

JANUARY 2007

.....

2.1.5 Appointment of the Chief Election Commissioner/Commissioners

2.1.5.1. The present procedure of appointment of the Chief Election Commissioner and other Election Commissioners, is laid down in Article 324 of the Constitution and stipulates that they are to be appointed by the President on the advice of the Prime Minister.

2.1.5.2 During debates in the Constituent Assembly on the procedure for appointment, there were suggestions that the person appointed as the Chief Election Commissioner should enjoy the confidence of all parties and therefore his appointment should be confirmed by a 2/3 majority of both the Houses. Thus even at that stage, there was a view that the procedure for appointment should be a broad based one, above all partisan considerations. In recent times, for statutory bodies such as the National Human Rights Commission (NHRC) and the Central Vigilance Commission (CVC), appointment of Chairperson and Members are made on the recommendations of a broad based Committee. Thus, for the appointment of the Chief Vigilance Commissioner, the Committee consists of the Prime Minister, the Home Minister and the Leader of the Opposition in the Lok Sabha, whereas for the NHRC, the Committee is chaired by the Prime Minister and has as its members, the Speaker of the Lok

Sabha, the Home Minister, the Leader of the Opposition in the Lok Sabha, the Leader of the Opposition in the Rajya Sabha and the Deputy Chairman of the Rajya Sabha.

2.1.5.3 Given the far reaching importance and critical role of the Election Commission in the working of our democracy, it would certainly be appropriate if a similar collegium is constituted for selection of the Chief Election Commissioner and the Election Commissioners.

2.1.5.4 Recommendation:

- a. A collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.

.....
Truecopy

Annexure P-4

The Hindu: June 04, 2012

Advani demands collegium for appointments to constitutional bodies.

(Says present system for appointing EC members does not inspire confidence among people)

Senior BJP leader L.K. Advani called on Sunday for reforming the selection process to fill the posts of Election Commissioners and those in other constitutional bodies and demanded that a broad-based collegium handle all such appointments.

In a letter to Prime Minister Manmohan Singh, Mr. Advani said: "The present system, whereby members to the Election Commission are appointed by the President, solely on the advice of the Prime Minister, does not inspire confidence among the people. Keeping these important decisions as the exclusive preserve of the ruling party renders the selection process vulnerable to manipulation and partisanship."

Mr. Advani's letter comes at a time when Chief Election Commissioner S.Y. Qureshi is set to retire by this month-end, and there will be a vacancy in another constitutional body — the

Comptroller and Auditor-General of India. Notably, even the second Administrative Reforms Commission recommended in 2009 that the CEC and other members of the Election Commission be appointed by a collegium.

Mr. Advani urged Dr. Singh to ensure that the new member to the Election Commission was appointed by a broad-based collegium, comprising the Prime Minister as its chairman and the Chief Justice of India, the Minister of Law and Justice and the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha as its members.

"Indeed, the credibility of this system was severely dented when a dubious appointment to the crucial office of the CEC was made a few years ago. The time has, therefore, come to reform the selection process for the EC and other constitutional bodies, as has indeed been done in the case of the CVC [the Central Vigilance Commissioner] and CIC [the Chief Information Commissioner]," he said.

Mr. Advani said: "There is a rapidly growing opinion in the country which holds that appointments to constitutional bodies such as the Election Commission should be done on a bipartisan basis in order to remove any impression of bias, or lack of transparency and fairness. The people of India wish to see that only persons with

competence, integrity and an impeccable record of service get appointed to these crucial bodies, whose functioning greatly determines the quality of governance."

"Article 324 of the Constitution, which deals with the Election Commission of India, should be suitably amended. The phrasing of Article 324 (2) shows that this would not need any constitutional amendment and can be done through an ordinary enactment," he said.

TRUE COPY

Annexure P-5

The Economic Times:

After Advani, DMK, Left demand collegium to select Election Commissioners & CAG

ET Bureau Jun 6, 2012, 03.01AM IST

NEW DELHI: UPA ally DMK and the Left Front have supported BJP veteran LK Advani's demand for abroad-based collegium to appoint the Comptroller and Auditor-General (CAG) and Election Commissioners.

Coming out in support of Advani's demand for transparency in appointments to constitutional posts, DMK chief M Karunanidhi has written in the party's mouthpiece Murasoli, "I am also in agreement with the contents in the letter (of Advani). It cannot be ignored just because it is the opposition view... Prime Minister Manmohan Singh and the central government will accord importance to the opinion and consider those views."

The demand seemed to be gaining political momentum as the Left Front also came out in support. Speaking to ET, CPM general secretary Prakash Karat said: "The stand is correct."

There should be a broad-based committee comprising the prime minister, the Leader of the Opposition, Chief Justice of India and other members to appoint CAG and Election Commissioners. It is important that we have transparency in these appointments. We have such a process for the appointment of the Central Vigilance Commissioner and this should be followed for other constitutional posts as well."

The demand comes at a time when CEC SY Quraishi is set to retire later this month. With at least 10 states heading for assembly elections over the next 18 months and parliamentary elections slated for 2014, the post of Chief Election Commissioner assumes greater significance.

Even CAG Vinod Rai, whose successive reports on coal block allocation and Delhi's international airport land sale have embarrassed the government, will retire in January next year.

In his letter to the prime minister, Advani made a case for a broad-based collegium and said it should comprise the PM, Chief Justice of India, minister of law and justice and leader of opposition of both Houses.

Annexure P-6

To

Prime Minister/ Chairman- Cabinet,
Govt. of Union of Bharat
New Delhi

Ref.: For making a Law and necessary Constitutional Amendment in respect of constitution of "C.E.C./E.C. Appointment Commission".

Respected Sir,

The dynamism in legal development is always of great concern with the development of any nation. Our Constitution makers also hoped that with the progress of time, coming generation of executive and legislature will ensure the dynamism in legal development, which strengthen our democratic value and cause our constitutional institutions more trustful. The recently passed National Judicial Appointment Bill is one welcoming steps in this respect. The idea is that there must be neutral and trustful committee to recommend for the appointment in the high constitutional offices and there should be no room for the appointing authority to choose someone whose loyalty to it is assured.

The constitutional office of Election Commission consisting of one Chief Election Commissioner and two Election Commissioners is also of great importance to maintain and strength the democracy of

the nation. In present prevailing system, the appointment to Election Commission is made by the President on the basis of recommendation of the Prime Minister. Without questioning on the wisdom and trust of the Prime Minister, it is being a concern of strong democracy to evolve a system, which must have the confidence of all concern parties and other neutral high office like Judiciary etc.

Looking the aforesaid aspect, Tarkunde Committee in 1975 had recommended that the members of Election Commission should be appointed by the President on the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India.

In 1990 also, the Committee on Electoral Reforms in the chairmanship of then Law Minister, Mr. Dinesh Goswami had made two important recommendation: (1) the appointment of CEC should be made by the President in consultation with Chief Justice and the Leader of the Opposition, and (2) the appointment of other Election Commissioner should be made by the committee in consultation with the Chief Election Commissioner.

In 2009, when the then CEC Sri SY Quraishi was going to be retired, Sri L. K. Advani in 2009 in his letter addressed to the prime Minister also urged and wrote that "The present system whereby members to the Election Commission are appointed by the President, solely on the advice of the Prime Minister, does not evoke confidence

amongst the people." He further advised for constitution of a five members Select-Committee consisting of the PM, the Chief Justice of India, the Law Minister and the Leader of Opposition in both House of Parliament."

Thus it is an issue since long back to rethink and reevaluate the present system of the appointment of the Election Commissioner in Bharat. With the retirement of present Chief Election Commissioner namely VS Sampath on 16 January, 2015, one post in the Election Commission will going to be felt vacant. There are remaining one and half months to make the process of appointment of the Election Commission much democratic, trustful and transparent like the other high offices like Chief Human Right Commissioner, Chief Vigilance Commissioner, Director of CBI, Lokpal, Chairman, Press Council of India of the Judges, of which the appointment is being recommended by the neutral Collegium. Also it has been proposed for constituting a neutral and more trustful collegiums in case of the appointment of the Judges in Supreme Court and High Courts.

In view of the aforesaid, it is hereby demanded that a five members Collegium, in the name of Election Commissioner Appointment Commission consisting of Prime Minister, Chief Justice of Bharat, Leader of largest party in Lok Sabha, seniormost Election Commissioner (Chief Election Commissioner) and the Law Minister be constituted. The applicant is hopeful that the foresaid suggestion may be given due consideration by accepting the following prayer:

PRAYER


It is, therefore, requested that kindly place the aforesaid demand of the applicant before the Cabinet of the Government of Union of Bharat to proceed for framing the necessary Bill for the constitution of five members Collegium in the name of Election Commissioner Appointment Commission consisting of Prime Minister, Chief Justice of Bharat, Leader of largest party in Lok Sabha, senior most Election Commissioner (Chief Election Commissioner) and the Law Minister to make procedure for appointment of the Election Commissioners more democratic, trustful and transparent; and accordingly place the same Bill for passing it from the parliament to make it the law of land.

03/12/2014

With Regard

(Anoop Baranwal)

Convener: Centre for Political and
Constitutional Research



TRUE COPY

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RL ALLAHABAD HIGH COURT 211007

B RU985035872IN

COUNTER NO. 2 CODE SKS

To: THE PM

New Delhi GPO PIN 110001

FROM ANOOP ALLD

WT. 20 GRAMS

AMT. 22.00 03/12/2014

10.44

True Copy



IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. No. OF 2015

IN

PUBLIC INTEREST PETITION NO. OF 2015

IN THE MATTER OF

Anoop Baranwal aged [REDACTED]

[REDACTED]

..... Petitioner

Versus

The Union of India through its Secretary,
Ministry of Law and Justice, Shastri
Bhawan, New Delhi-110001

.... Respondents

IN THE MATTER OF

AN APPLICATION FOR PERMITTING THE PETITIONER TO
APPEAR AND ARGUE THE CASE IN PERSON [Under Order IV
Rule 1(C) of the Supreme Court Rules, 2013]

To,

Hon'ble The Chief Justice of India and His Companion Justices
of the Supreme Court of India.

The Humble petition of the Petitioner above named.

MOST RESPECTFULLY SHOWETH

1. That the petitioner above named is seeking permission to appear and argue the case in person.
2. That the petitioner is an advocate and he is confident to assist the Court ably and thus he want to appear and argue the above noted case in person subject to permission of this Hon'ble Court. It is however, declared that in case, the petitioner is found to be unfit during the course of interaction, Legal Aid may be provided to the petitioner to assist this Hon'ble Court.

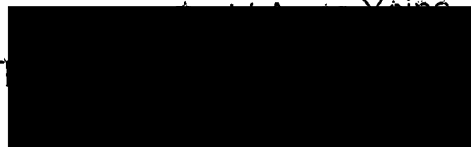
PRAYER

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

- i) PERMIT the petitioner to appear and argue the above noted case in person;
- ii) Pass any other or further order as may be deemed fit and proper in the circumstances

Drawn and Filed By

ANOOP BARANWAL
(Petitioner in Person)



Drawn on: 03.01.2015
Filed on: 13.01.2015

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. 45561 OF 2015

IN

WRIT PETITION (CIVIL) NO. 104 OF 2015
(PUBLIC INTEREST PETITION)

IN THE MATTER OF

Anoop Baranwal aged about [REDACTED]

[REDACTED]

..... Petitioner

Versus

The Union of India through its Secretary,
Ministry of Law and Justice, Shastri
Bhawan, New Delhi-110001

.... Respondents

IN THE MATTER OF

AN APPLICATION FOR AMENDMENT OF WRIT PETITION
RAISING ADDITIONAL FACTS, ADDITIONAL GROUNDS,
ADDITIONAL PRAYER.

To,

Hon'ble The Chief Justice of India and His Companion Justices
of the Supreme Court of India.

The Humble petition of the Petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. That the aforesaid writ petition has been filed by the petitioner as public interest litigation challenging the constitutional validity of the practice of the Respondents in appointing the member to the Election Commission without following a fair, just and transparent selection process and without constituting a neutral and independent collegiums/selection committee on the ground that such practice is discriminatory and violative of Article 14 of the Constitution and against the provision of Article 324(2) of the Constitution.

2. That the petitioner seeks humble permission to amend the writ petition and raise certain additional facts, additional grounds and additional prayers in view of subsequent developments taken place.

3. That by way of present application, the petitioner is seeking to add the following additional facts in para no. 4 of writ petition:

4.26 That on 12.03.2015, the Law Commission of India made its report no. 255 on the Electoral Reform. In para no. 6.12.1 and 6.12.2 of this report, the Law Commission made

recommendation that the appointment of all the Election Commissioner should be made by the President in consultation with a three-member collegiums or selection committee, consisting of the Prime Minister, the Leader of the Opposition of the Lok Sabha and the Chief Justice of India. A true copy of the relevant part of report no. 255 dated 12 March, 2015 of the Law Commission of India is annexed herewith and marked as Annexure P- 7 (Page no. ~~78~~ to ~~85~~) to this petition.

4.27 That it is relevant to state that till the date, the Respondent has neither adopted the recommendation of the Law Commission of India made in its report dated 12.03.2015 nor the recommendation of Justice Tarkunde Committee made in year 1975 nor of Dinesh Goswami Committee made in year 1990.

4.28 That during the course of pendency of the present writ petition, the Respondent has appointed Sri Achal Kumar Jyoti on one vacant post of member of Election Commission of India on 07.05.2015. Sri Achal Kumar Jyoti has also taken the charge of the member of Election Commission of India on 13.05.2015. It is relevant to state that the petitioner could not get the notification in regard to the aforesaid appointment of Sri Achal Kumar Jyoti and as such the petitioner is not in position to file the same herewith. However, to this effect a

news item in daily newspaper namely 'International Business Times' dated 08.05.2015 has been published, the true copy whereof is annexed herewith and marked as Annexure P- 8 (Page no. 87 to 87) to this petition.

4.29 That it is specifically stated that the aforesaid appointment of Sri Achal Kumar Jyoti has been made by the President solely on the recommendation of the executive in Central Government without deciding the application of the petitioner dated 03.12.2014.

4.30 That it is relevant to state that Sri Achal Kumar Jyoti is a former chief secretary of Gujarat during Narendra Modi's tenure as chief minister and his appointment as a Election Commissioner is being influenced by personal like and dislike of the Prime Minister of India, which is against the basic principle enshrined under Article 14 of the Constitution of India.

4.31 That in India, there are so many qualified and efficient Civil Servants with impeccable integrity, who were liable to be considered on the post of Election Commissioner on which Sri Achal Kumar Jyoti has been appointed, but due to lack of fair, just and transparent mode of selection, they could not be considered.

4.32 That during the course of selection of Sri Achal Kumar Jyoti as a Election Commissioner, no fair, just and transparent process like Inviting the name through open advertisement; Disclosing the name of nominees and inviting information in respect of the ability and character of such nominees; Scrutiny of the candidates with the help of expert search committee by taking into consideration the information received etc. etc. has been adopted.

4.33 That present Chief Election Commissioner Mr. Nasim Zaidi also expressed his opinion on 30.05.2015 that there should be a collegium type set up to choose the Chief Election Commissioner and other Election Commissioners. To this effect a news item in daily newspaper namely 'Times of India' dated 31.05.2015 has been published, the true copy whereof is annexed herewith and marked as Annexure P- 9 (Page no. 88 to 90) to this petition.

4.34 That inaction of the Respondent in not making appropriate law for ensuring just, fair and transparent selection process for member of Election Commission since 1950 is unwarranted and thus to ensure proper implementation of the rule of law, it is in the interest of justice to issue the necessary directions/ guidelines to fill the vacuum occurred on account of the aforesaid inaction till such time the legislature steps in to cover the gap or the executive

discharges its role. Such power of issuing directions/ guidelines under Article 32 read with Article 142 of the Constitution of India has also been laid down by this Hon'ble Court in Vineet Narain's case (AIR 1998SC 889). The relevant paragraph no. 51 of Judgment of Vineet Narain's case is relevant to quote here:

51. 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 mandate to all authorities to act in aid of the orders of this Court 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 role. It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an in depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe

top act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulate to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf...

4.35 That it is stated that still a post of member to the Election Commission of India is vacant and the Respondent is under process to recommend the name for the same in the same unconstitutional manner, by adopting which Sri Achal Kumar Jyoti has been appointed.

4. That by way of present application, the petitioner is also seeking to add the following additional grounds in para no. 6 of writ petition:

J). Because the Law Commission of India made its report dated 12.03.2015 recommending that the appointment of all the

Election Commissioner should be made by the President in consultation with a three-member collegiums or selection committee, consisting of the Prime Minister, the Leader of the Opposition of the Lok Sabha and the Chief Justice of India and till the date, the Respondent has not adopted either the aforesaid recommendation of the Law Commission of India or the recommendation of Justice Tarkunde Committee made in year 1975 or of Dinesh Goswami Committee made in year 1990.

K). Because in India, there are so many qualified and efficient Civil Servants with impeccable integrity, who were liable to be considered on the post of Election Commissioner on which Sri Achal Kumar Jyoti has been appointed, but due to lack of fair, just and transparent mode of selection, they could not be considered in as much as Sri Achal Kumar Jyoti is a former chief secretary of Gujarat during Narendra Modi's tenure as chief minister and his appointment as a Election Commissioner is being influenced by personal like and dislike of the Prime Minister of India, which is against the basic principle enshrined under Article 14 of the Constitution of India.

L). Because Sri Achal Kumar Jyoti has been appointed as a Election Commissioner without adopting fair, just and transparent selection process like inviting the name through

open advertisement; Disclosing the name of nominees and inviting information in respect of the ability and character of such nominees; Scrutiny of the candidates with the help of expert search committee by taking into consideration the information received etc. etc.

M). Because inaction of the Respondent in not making appropriate law for ensuring just, fair and transparent selection process for member of Election Commission since 1950 is unwarranted and thus to ensure proper implementation of the rule of law, it is in the interest of justice to issue the necessary directions/ guidelines to fill the vacuum occurred on account of the aforesaid inaction till such time the legislature steps in to cover the gap or the executive discharges its role in view of law laid down by this Hon'ble Court in Viheet Narain's case (AIR 1998SC 889).

5. That by way of present application, the petitioner is also seeking to add the following additional prayers in para no. 7 of writ petition:

vi). issue an appropriate writ declaring the appointment of Sri Achal Kumar Jyoti dated 08.05.2015 as member of Election Commission of India unfair, unjustified and against the provisions of Article 14 of the Constitution of India.

vii). issue an appropriate writ, order or direction directing the respondent to adopt the recommendations made by the Law Commission of India in paragraph no. 6.12.1; 6.12.2; 6.12.3; 6.12.4 and 6.12.5 of the report dated 12.03.2015 before making any appointment on the vacant post of member of Election Commission of India.

viii). issue an appropriate writ, order or direction directing the respondent to adopt fair, just and transparent process of selection like Inviting the name through open advertisement; Disclosing the name of nominees and inviting information in respect of the ability and character of such nominees; Scrutiny of the candidates with the help of expert search committee by taking into consideration the information received etc. etc. before making recommendation for the appointment of member of Election Commission of India till the time the legislature/executive does not frame the appropriate law in regard thereof.

6. That the aforesaid additional facts, additional grounds, additional prayers and Annexures P-7, P-8 and P-9 are necessary for the proper adjudication of the present case. The petitioner may kindly be allowed to amend the writ petition and raise the additional facts as stated in the preceding paragraph no. 3, 4 and 5 of the present application.

PRAYER

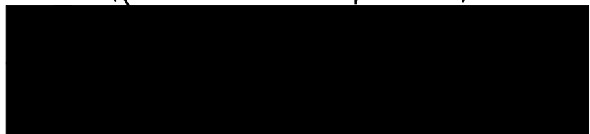
For the facts, circumstances and reason set out hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i). PERMIT the petitioner to amend Writ Petition and raise additional facts, additional grounds and additional prayers in the writ petition as stated in the preceding paragraph no. 3, 4 and 5 of the present application;
- ii). pass such other or further order, which this Hon'ble Court deem just and proper in the end of justice and in the circumstances of the case.

AND FOR THE ACT OF KINDNESS AND JUSTICES, YOUR PETITIONER, AS IN DUTY BOUND, SHALL EVER PRAY.

Drawn & Filed By:

ANOOP BARANWAL
(Petitioner -in- person)



Drawn on: .2015

Filed on: .2015

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. OF 2015

IN

WRIT PETITION (CIVIL) NO. 104 OF 2015
(PUBLIC INTEREST PETITION)IN THE MATTER OFAnoop Baranwal aged [REDACTED]
[REDACTED]

... Petitioner

Versus

The Union of India

... Respondents

AFFIDAVIT

I, Anoop Baranwal, son of Sri Madan Mohan Baranwal, aged
about [REDACTED]

[REDACTED] present at Allahabad do hereby solemnly
affirm and state as follows:-

1. That I state that I am the petitioner in the above mentioned matter and I am well conversant with the facts, proceedings

and circumstances of the case and hence competent to swear to this affidavit.

2. That I state that there is no personal gain, private motive and oblique reason in filing the present Public Interest Litigation.
3. That I state that that I have read and understood the contents of the accompanying I.A. [Para no. 1 to Para no. 6 at page no. 63 to 90] and I further state that the facts stated therein are true to my knowledge.
4. That I state that the accompanying annexures along with the accompanying I.A. are true copies of its respective originals.

(Anoop Baranwal)
(Deponent)

Verification:-

Verified at Allahabad on this the 23 day of June, 2015 that the contents of the above affidavit are true and correct to my personal knowledge and belief. Nothing false has been stated therein or material concealed there from.

(Anoop Baranwal)
(Deponent)

Annexure P-7

GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.255

Electoral Reforms

March 2015

D.O. No.6(3)/240/2013-LC(LS)

12 March, 2015

Dear Shri Sadananda Gowda ji,

The Ministry of Law and Justice, in January 2013, requested the Twentieth Law Commission of India to consider the issue of "Electoral Reforms" in its entirety and suggest comprehensive measures for changes in the law. While working on the subject, the Supreme Court of India, in the matter of "Public Interest Foundation & Others v. Union of India & Anr - Writ Petition (Civil) No. 536 of 2011, directed the Law Commission of India to make its suggestions on two specific issues, viz., (i) 'curbing

criminalization of politics and needed law reforms'; and (ii) 'impact and consequences of candidates filing false affidavits and needed law reforms to check such practice'. In the light of this judgment, the Commission worked specifically on these two areas and, after series of discussions, followed by a National Consultation held on 1st February 2014, submitted its 244th Report titled "Electoral Disqualifications" on 24th February 2014 to the Government of India.

After the submission of Report No.244, the Commission circulated another questionnaire to all registered national and State political parties seeking their views on ten points, the response received was not very encouraging, though. However, the Commission undertook an extensive study to suggest electoral reforms, held various rounds of discussions with the stakeholders and analysed in-depth the issues involved. After detailed deliberations, the Commission has now come up with its recommendations which are put in the form its final Report, Report No.255, titled "*Electoral Reforms*", which is sent herewith for consideration by the Government.

With warm regards,

Yours sincerely,

Sd/-

[Ajit Prakash Shah]

Shri D.V. Sadananda Gowda

Hon'ble Minister for Law and Justice

Government of India

Shastri Bhawan

New Delhi - 110 115

CHAPTER VI

STRENGTHENING THE OFFICE OF THE ELECTION COMMISSION OF INDIA

A. Constitutional Protection of all the Members of the ECI

6.1 The ECI is an independent, constitutional body, which has been vested with the powers of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all Parliamentary and State elections and elections to the office of the President and Vice President *vide* Article 324(1) of the Constitution.

6.2 Article 324(2) stipulates that the ECI shall comprise of the CEC and "such number of other Election Commissioners, if any, as the President may from time to time fix." By an order dated 1st October 1993, the President has fixed the number of Election Commissioners as two, until further orders. There is all round consensus, evident from the Goswami Committee's Report in 1990 (Goswami Committee Report, *supra* note 113, at para 1.1); the ECI's 1998 letter (Mendiratta, *supra* note 161, at 186.); and its 2004 proposed reforms that the number of Election Commissioners should remain at two to ensure the "smooth and effective functioning" of the ECI. Their stated rationale is that:

"The three-member body is very effective in dealing with the complex situations that arise in the course of superintending, directing and controlling the electoral process, and allows for quick responses to developments in the field that arise from time to time and require immediate solution. Increasing the size of this body beyond the existing three-member body would, in the considered opinion of the Commission, hamper the expeditious manner in which it has

necessarily to act for conducting the elections peacefully and in a free and fair manner". (ECI 2004 Reforms, supra note 203, at 14)

6.3 Article 324(5) of the Constitution is intended to ensure the independence of the ECI and free it from external, political interference and thus expressly provides that the removal of the CEC from office shall be on "*like manner and on the like grounds as a Judge of the Supreme Court*". Nevertheless, a similar impeachment procedure is not prescribed for the other Election Commissioners under Article 324(5), and they are treated on par with the Regional Commissioners. Instead Article 324(5) stipulates that subject to any Parliamentary law, the office tenure of the Election and Regional Commissioners shall be determined by the President and that they cannot be removed except on the CEC's recommendation.

6.4 The ECI in its 2004 Report expressly opined that the current wording of Article 324(5) was "inadequate" and required an amendment to bring the removal procedures of Election Commissioners on par with the CEC, and thus to provide them with the "same protection and safeguard[s]" as the CEC (ECI 2004 Reforms, *supra* note 203, at 14). The proposed amendment by the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010 is along the same lines.

6.5 Equating the removal procedures of the two Election Commissioners with that of the CEC is also in line with the legislative intent of the Parliament. In 1991, the Parliament enacted the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act whereby the retirement age of the CEC was fixed at 65 years, with a salary and other perquisites equal to that of a Supreme Court judge; whereas that of the other Election Commissioners was fixed at 62 years

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with benefits equivalent to a High Court judge. However, in 1993, the above Act was amended and the CEC and other Election Commissioners were placed on par on matters of retirement age, salaries and other benefits (Mendiratta, *supra* note 161, at 181). Section 10 of the Act also provided for all three members to have an equal say in the decision making process, with any difference in opinion being resolved "according to the opinion of the majority."

6.6 Commenting on this Act, the Supreme Court in *T.N. Seshan, CEC v Union of India* (1995) 4 SCC 611 held that the CEC was not superior to the Election Commissioners stating:

"As pointed out earlier, the scheme of Article 324 clearly envisages a multi-member body comprising the CEC and the ECs. The RCs may be appointed to assist the Commission. If that be so the ECs cannot be put on par with the RCs. As already pointed out, ECs form part of the Election Commission unlike the RCs. Their role is, therefore, higher than that of RCs. If they form part of the Commission it stands to reason to hold that they must have a say in decision-making. If the CEC is considered to be a superior in the sense that his word is final, he would render the ECs non-functional or ornamental. Such an intention is difficult to cull out from Article 324 nor can we attribute it to the Constitution-makers. We must reject the argument that the ECs' function is only to tender advice to the CEC." [Emphasis supplied]

6.7 It is thus clear that the CEC is at the same position as the other Election Commissioners and only functions as a first amongst equals. Moreover, the Election Commissioners are clearly superior to the Regional Commissioners and Article 324(5) should be amended to reflect that. Given that the removal (impeachment) procedure of the judges of the High Court and Supreme Court is also the same, the benefit of the CEC's

removal procedures under Article 324(5) should also be extended to the other Election Commissioners.

6.8 The Law Commission thus, relying on the Court's observations in the *Seshan's* judgment, and for the reasons aforementioned reiterates and endorses the ECI's proposal to extend the same protection under the Constitution in the matter of removability from office to the Election Commissioners as is available to the CEC. Thus, the second proviso in Article 324(5) after the words "Chief Election Commissioner", the words "and any other Election Commissioner" should be added. In the third proviso, the words "and any other Election Commissioner" should be deleted.

Recommendation

6.9 The following change should be made in Article 324:

- In sub-section (5), delete the words "the Election Commissioners and" appearing after the words "tenure of office of".
- In the first proviso to sub-section (5), after the words "Chief Election Commissioner" appearing before "shall not be removed", add the following words, "and any other Election Commissioner"; also, after the words "conditions of service of the Chief Election Commissioner", add the following words, "and any other Election Commissioner".
- In the second proviso to sub-section (5), after the words "provided further that", delete the words "any other Election Commissioner or" occurring before "a Regional Commissioner".

B. Appointment of the Election Commissioners and the CEC

(i) Appointment process

6.10.1 The power to appointment the CEC and the Election Commissioners lies with the President vide Article 324(2) of the Constitution, which states that:

"The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President."

6.10.2 Although the issue of appointments was discussed in the Constituent Assembly and a suggestion was floated to make the appointments subject to confirmation by a two-thirds majority, in a joint session of the Parliament, it was rejected (Mendiratta, *supra* note 161, at 179). Consequently, Article 324(2) left it open for the Parliament to legislate on the issue.

6.10.3 The Goswami Committee in 1990 recommended a change to the appointment process, suggesting that the CEC should be appointed by the President in consultation with the Chief Justice of India and the Leader of the Opposition in the Lok Sabha. In turn, the CEC should be additionally consulted on the question of appointment of the other Election Commissioners and the entire consultation process should have statutory backing (Goswami Committee Report, *supra* note 113, at 9).

6.10.4 This was followed by the introduction of the Constitution (Seventieth Amendment) Bill 1990, which was introduced in the Rajya Sabha on 30th May, 1990 providing that the CEC would be appointed by the President after consultation with the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha, and the Leader of the Opposition (or the leader of the largest party) in the Lok Sabha. The CEC was further made a part of the

consultative process in the appointment of the Election Commissioners. However, on 13th June 1994, the Government moved a motion to withdraw the Bill, which was finally withdrawn with the leave of the Rajya Sabha on the same day (Rajya Sabha debates, 13th June 1994, at 600 and 637. See also Mendiratta, *supra* note 161, at 179.).

6.10.5 Consequently, in the absence of any Parliamentary law governing the appointment issue, the Election Commissioners are appointed by the government of the day, without pursuing any consultation process. This practice has been described as requiring the Law Ministry to get the file approved by the Prime Minister, who then recommends a name to the President (Qureshi, *supra* note 1, at 39-40). Thus, there is no concept of collegium and no involvement of the opposition.

6.10.6 The Commissioners are appointed for a six year period, or up to the age of 65 years, whichever is earlier. Further, there are no prescribed qualifications for their appointment, although convention dictates that only senior (serving or retired) civil servants, of the rank of the Cabinet Secretary or Secretary to the Government of India or an equivalent rank, will be appointed. The Supreme Court in *Bhagwati Prashad Dixit Ghorewala v Rajiv Gandhi* (AIR 1986 SC 1534) rejected the contention that the CEC should possess qualifications similar to that of a Supreme Court judge, despite being placed on par with them in terms of the removal process.

(ii) Comparative practices

6.11.1 An examination of comparative practices is instructive. In South Africa, the Independent Electoral Commission comprises of five members, including one judge. They are appointed by the President on the recommendations of the National Assembly, following nominations by a National Assembly inter-party committee, which receives a list of at least

eight candidates. This list of (at least) eight nominees is recommended by the Selection Committee, which has four members being, the President of the Constitutional Court; a representative of the Human Rights Commission and the Commission on Gender Equality each; and the Public Prosecutor.

6.11.2 In Ghana too, the seven member Election Commission is appointed by the President on the advice of the Council of State, with the Chairman and two Deputy Chairmen having permanent tenure.

6.11.3 In Canada, the Chief Electoral Officer of "Elections Canada" is appointed by a House of Commons resolution for a non-renewable ten-year term, and to protect their independence from the government, he/she reports directly to Parliament. In the United States, the six Federal Election Commissioners are appointed by the President with the advise and consent of the Senate. The Commissioners can be members of a political party, although not more than three Commissioners can be members of the same party.

6.11.4 In all these cases thus, it is clear that the appointment of the Election Commissioners or the electoral officers is a consultative process involving the Executive/Legislature/other independent bodies.

(iii) Recommendations

6.12.1 Given the importance of maintaining the neutrality of the ECI and to shield the CEC and Election Commissioners from executive interference, it is imperative that the appointment of Election Commissioners becomes a consultative process.

6.12.2 To this end, the Commission adapts the Goswami Committee's proposal with certain modifications. *First*, the appointment of all the Election Commissioners (including the CEC) should be made by the

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President in consultation with a three-member collegium or selection committee, consisting of the Prime Minister, the Leader of the Opposition of the Lok Sabha (or the leader of the largest opposition party in the Lok Sabha in terms of numerical strength) and the Chief Justice of India. The Commission considers the inclusion of the Prime Minister is important as a representative of the current government.

6.12.3 *Second*, the elevation of an Election Commissioner should be on the basis of seniority, unless the three member collegium/committee, for reasons to be recorded in writing, finds such Commissioner unfit.

6.12.4 Such amendments are in consonance with the appointment process in Lokpal and Lokayuktas Act, 2013, the Right to Information Act, 2005 and the Central Vigilance Commission Act, 2003.

6.12.5 Pursuant to Article 324(2), an amendment can be brought to the existing Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 to amend the title and insert a new Chapter 1A on the appointment of Election Commissioners and the CEC as follows:

- Act and Short Title: The Act should be renamed the "Election Commission (Appointment and Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991".
- The short title should state, "An Act to determine the appointment and conditions of service of the Chief Election Commissioner and other Election Commissioners and to provide for the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto."

• Chapter I-A – Appointment of Chief Election Commissioner and Election Commissioners.

2A. Appointment of Chief Election Commissioner and Election Commissioners – (1) The Election Commissioners, including the Chief Election Commissioners, shall be appointed by the President by warrant under his hand and seal after obtaining the recommendations of a Committee consisting of:

- (a) the Prime Minister of India – Chairperson
- (b) the Leader of the Opposition in the House of the People – Member
- (c) the Chief Justice of India – Member

Provided that after the Chief Election Commissioner ceases to hold office, the senior-most Election Commissioner shall be appointed as the Chief Election Commissioner, unless the Committee mentioned in sub-section (1) above, for reasons to be recorded in writing, finds such Election Commissioner to be unfit.

Explanation: For the purposes of this sub-section, “the Leader of the Opposition in the House of the People” shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People...

Annexure P- 0

International Business Times

May 8, 2015 13:07 IST

The former Chief Secretary of Gujarat, Achal Kumar Jyoti, was appointed as the Election Commissioner of India on Thursday. Jyoti, who served as the Chief Secretary during Narendra Modi's term as Gujarat's Chief Minister, has filled one of the two vacancies in the three-member panel of the Election Commission of India (ECI). He will serve as the Election Commissioner for a period of three years, resigning at the age of 65 (the official age to demit office under the Constitution), PTI reports.

Born on 23 January 1953, 62 year-old Indian Administrative Service (IAS) officer of the 1975 batch served various posts in Gujarat, including as the Chairman of the Kandla Port Trust between 1999 and 2004 and Managing Director of the Sardar Sarovar Narmada Nigam Ltd. (SSNNL). After retiring as the Chief Secretary in January 2013, he was appointed as the State Vigilance Commissioner of Gujarat, the post he will vacate in June 2015 after his tenure ends. He said he's waiting for the formal orders and will join the new post soon after his retirement.

"I am yet to get formal orders. I was approached by the central government three-four months back for my consent. I expressed my willingness to join the Election Commission. My term as State Vigilance Commissioner ends in June 2015. So I will take the permission of the state government to resign and join the Election Commission as soon as possible," said Jyoti, according to the Times of India.

He will join his new post under Chief Election Commissioner Nasim Zaidi, who is one year junior to Jyoti in IAS.

The government will soon appoint the second Election Commissioner to fill up the last vacant position.

Annexure P- 9

TIMES OF INDIA

CEC favours collegium to choose ECs

PTI | May 31, 2015, 12.46PM IST

Chief Election Commissioner Nasim Zaidi favours a collegium type set up to choose the CEC and Election Commissioners who he says should have equal protection under the Constitution in the matter of removal.

NEW DELHI: Chief Election Commissioner Nasim Zaidi favours a collegium type set up to choose the CEC and Election Commissioners who he says should have equal protection under the Constitution in the matter of removal. He, however, hastened to add that the present system of selection of Election Commissioners and the three-member Commission is working fine.

"I would say that the (present) system has also worked well. But if there is a consensus going forward that this system needs to be replaced by a consultative system, I think the Commission would live with that and work well.

"Even in the absence of this consultative process, CECs and ECs have acted very neutrally, very independently," he told PTI in an interview.

He was responding to a question on the recent recommendation of the Law Commission that the appointment of Election Commissioners, including the CEC, should be made by the President in consultation with a

The collegium should consist of the Prime Minister, the Leader of the Opposition of the Lok Sabha (or the leader of the largest Opposition party in the Lok Sabha) and the Chief Justice of India, it had said. Zaidi recalled that a committee had some years ago recommended a collegium system for appointment of Election Commissioners.

"They focused on Election Commissioners. By seniority, the EC becomes CEC, unless there is something extraordinary. They said the EC should enjoy the confidence of the entire political arena. A bill was also brought, but it did not succeed," he said.

Asked whether he supports the demand raised by his predecessors that all the Commissioners be made equal even in matter of removal, Zaidi said he is in "total agreement with all my predecessor Commissioners. The Commission had been taking it up with Law Ministry. Law Commission has reiterated it and this recommendation has merit".

In its recent report on electoral reforms, the Law Commission has recommended amending Article 324(5) of the Constitution to equate the removal procedures of the two Election Commissioners with that of the CEC. Government appoints the Chief Election Commissioner and other Election Commissioners. The CEC can be removed from office only through impeachment by Parliament. The government can remove the Commissioners either on the recommendation of the CEC or even without it. Zaidi defended the multi-member Commission saying, "three-member Commission is the best, my experience tells me... EC is dealing with the most sensitive subject of democracy. Therefore, it is always essential that more than one person sits, they apply their wisdom and arrive at a decision after detailed discussion and informed decision making."

Responding to suggestions that even one-member poll body was sufficient, he said, "Three-member Commission is a very desirable proposition. Not more (than three) because decision making will be very difficult. Three, we can make very quick decision, on spot."

Election Commission is a permanent constitutional body which was established in accordance with the Constitution on January 25, 1950.

Originally, the Commission had only a Chief Election Commissioner. For the first time two additional Commissioners were appointed on October 16, 1989 but they had a very short tenure till January 1, 1990. Later, on October 1, 1993 two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision making power by majority vote.

Asked about his view on a 'legally specified bar' on Constitutional dignitaries like ECs taking up political posts after retirement, Zaidi said in the past no CEC or EC has opted for a post-retirement job. "If you look at the history, I think CECs and ECs have not opted for this."

When reminded that at least some have gone for a post-retirement assignment, Zaidi said he would not go into that.

"By and large, CECs after retirement have become part of the society. They have played very active role in generating debate, reflecting on various current issues. I think there is a merit that after retirement, these dignitaries should not enter the political (arena)," he said.

TRUE COPY

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IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

I.A. NO. _____ OF 2015

IN

WRIT PETITION (CIVIL) NO. 104 OF 2015

IN THE MATTER OF:
ANOOP BARANWAL

.....PETITIONER

VERSUS

UNION OF INDIA

.....RESPONDENT

APPLICATION FOR PERMISSION TO AMEND THE
PRAYER OF THE WRIT PETITION

To
HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

The Humble application of the Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the present writ petition is being filed seeking transparency in the appointment of the members of the Election Commission of India formulated under Article 324 of the Constitution thereby ensuring its independence from the Executive.
2. That all the facts leading to filing of the present application has been set out in detail in the accompanying Writ Petition and the same are not being repeated herein for the sake of brevity. The petitioner craves permission to rely upon

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the contents of the writ petition.

3. That the Petitioner seeks to amend the prayer clause of the Writ Petition to the effect that it may be substituted by the following:

"In 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, of January 2007 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."

PRAYER

In the above circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Allow the Petitioner to amend the prayer of the writ petition to the effect mentioned above;
- (b) Pass such other or further order (s) as this Hon'ble Court may deem and fit in the peculiar facts and circumstances of the case in favour of the Petitioner.

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AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY
BOUND SHALL EVER PRAY.

FILED BY:

Prashant Bhushan
PRASHANT BHUSHAN

ADVOCATE FOR THE PETITIONER

Drawn On: 8/7/2015
Filed On: 8/7/2015

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.No. _____ OF 2015

IN

WRIT PETITION (CIVIL) NO. 104 OF 2015

IN THE MATTER OF:

ANOOP BARANWAL

... PETITIONER

Versus

UNION OF INDIA

... RESPONDENT

AFFIDAVIT

I, Anoop Baranwal, [REDACTED]

do hereby solemnly affirm and state on oath as under:

1. That I am the petitioner in the instant writ petition and being conversant with the facts and circumstances of the case, am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying application for amendment to the prayer of the main writ petition, and I state that the contents of the same are true and correct to the best of my knowledge.
3. I further confirm that I have not concealed in the present application, any data/material/information which may enable this court to form an opinion whether to entertain this application or not and/or whether to grant any relief or not.

[Signature]

DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 8th day of July 2015.

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.


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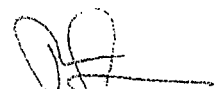
I, therefore, submit that in view of the facts stated and submissions made herein above, the present Special Leave Petition is liable to be dismissed.


DEPONENT
(सुभा मोहन शर्मा / S. M. SHARMA)
उप सचिव (अदालत)
Deputy Secretary (Admn.)
सर्वोच्च न्यायालय, भारत
Supreme Court of India
न्याय शाखा, न्यायालय
Judicial Branch, Court
नया दिल्ली, भारत
New Delhi, India

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
(सुभा मोहन शर्मा / S. M. SHARMA)
उप सचिव (अदालत)
Deputy Secretary (Admn.)
सर्वोच्च न्यायालय, भारत
Supreme Court of India
न्याय शाखा, न्यायालय
Judicial Branch, Court
नया दिल्ली, भारत
New Delhi, India