

**IN THE SUPREME COURT OF INDIA**  
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

CIVIL WRIT PETITION NO. 35 OF 2012

IN THE MATTER OF:

COMMON CAUSE

THROUGH ITS DIRECTOR

5, INSTITUTIONAL AREA

NELSON MANDELA ROAD

VASANT KUNJ, NEW DELHI-110070

... PETITIONER

VERSUS

1. THE UNION OF INDIA  
THROUGH ITS SECRETARY  
MINISTRY OF HOME AFFAIRS,  
NORTH BLOCK,  
NEW DELHI-110001

2. THE NATIONAL HUMAN RIGHTS COMMISSION  
THROUGH ITS CHAIRMAN  
FARIDKOT HOUSE,  
COPERNICUS MARG  
NEW DELHI-110001

3. JUSTICE K. G. BALAKRISHNAN  
CHAIRMAN,  
NATIONAL HUMAN RIGHTS COMMISSION  
NEW DELHI-110001

....RESPONDENTS

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

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF**  
**INDIA**

1. The Petitioner is filing the present writ petition under Article 32 of the Constitution of India seeking a writ of mandamus to Respondent No. 1 to make a reference under Section 5 (2) of the

Protection of Human Rights Act 1993 (herein after referred to as “the Act”) to this Hon’ble Court for holding an inquiry against Respondent No. 3. Respondent No. 3 is continuing as Chairperson of the National Human Rights Commission (hereinafter referred to as NHRC) despite the fact that in the past few months the news of close relatives and former-aide of Respondent No. 3 acquiring assets disproportionate to their known sources of income during his tenure as the Chief Justice of India has been covered widely by the national media. The Petitioner has also come across other instances of grave misbehaviour by Respondent No. 3 during his tenure as the Chief Justice of India which makes it expedient that a direction is issued to the Union of India to make a reference to this Hon’ble Court under Section 5 (2) of the Act for holding an enquiry against him so that if the ground of misbehaviour is proved, he could be removed from the post of Chairman of NHRC.

The Petitioner is filing the present petition in the interest of the public at large as allowing a person who is facing serious charges of corruption and impropriety to head an august body created for the protection of human rights would make the institution non-functional. Campaign for Judicial Accountability and Reforms through its Convener had written to the Prime Minister and the President of India vide letters dated 04.04.2011 enclosing numerous documents showing various acts of misbehavior by Respondent No. 3 and requesting the Government to make reference under Section 5(2) of the Act to this Hon’ble Court for initiating inquiry against Respondent No.3 but the Govt. has not responded to the said letters so far. Therefore, the Petitioner is approaching this Hon’ble Court through public interest litigation.

Petitioner, Common Cause, is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating common problems of the people and

securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization. Mr. K K Jaswal, Director is authorized to file this PIL.

Memorandum and Registration certificated has been placed along with Vakalatnama.

2. The documents annexed along with this Writ Petition are either obtained from news paper and magazine reports or are in the public domain.

**Facts:**

3. In the past few months the news of close relatives and a former-aide of Respondent No.3 possessing assets disproportionate to their known sources of income has been covered widely by the national media. The Petitioner has also come across other instances of grave misbehaviour by Respondent No.3 during his tenure as the Chief Justice of India.

After retiring as Chief Justice of India, Respondent No. 3 was appointed as the Chairman of National Human Rights Commission. The process of removal of a member of NHRC has been given in Sec 5 of Protection of Human Rights Act, 1993. According to Sec 5 (2), *subject to the provisions of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.*

4. The following are some of the known instances of misbehaviour on part of Respondent No. 3 which make him unfit to continue as the Chairman of National Human Rights Commission:

**I. Benami properties in the names of his daughters, sons-in-law and brother.**

P.V. Sreenijan, married to Soni, the elder daughter of Respondent No. 3 comes from a humble background. He is a practicing advocate in the Kerala High Court. When Respondent No. 3 started his three-year tenure as Chief Justice, Sreenijan started making huge investments in real estate and tourism. According to Form No. 26 filed by Sreenijan on his assets and liabilities to Election Commission in April 3, 2006, when he contested as an Indian National Congress candidate in Njrackkal (reserved) constituency in Ernakulam District, Kerala, he and his wife KB Soni had no agricultural land. Sreenijan had no non-agricultural land. His wife had 29.32 cent, currently valued at Rs.3,00, 000 at Thiruvankulam Village in Ernakulam District in Kerala in the survey no. 392/7. Both had no commercial properties and apartments. Sreenijan had cash in hand Rs.5000 and his wife had nothing. Sreenijan had savings bank account with a deposit of Rs.20,000 at Bank of Baroda, Kalamassery Branch in Ernakulam district and his wife had nothing. Both had no debentures or shares of any companies, savings certificates vehicles. Sreenijan had 3 sovereign (24 gram) gold valued at Rs.18,000 and wife had 20 sovereign (160 gram) valued at Rs.1,20,000. Both declared no heritable rights acquired by them. A copy of the said assets declaration form dated 3.4.2006 is annexed herewith as **Annexure-P/1**.

Recently, Asianet, Tehelka and others in the media have uncovered various properties acquired by Sreenijan and Soni after Respondent No. 3 became Chief Justice of India.

- Sreenijan along with his wife purchased lands along with an old building on April 8, 2008 - 9.241 cent, 14.455 cent, 9.904 cent, 2.5 cent in Varappuzha Village of survey numbers 265/1 and 265/3. Value shown Rs.7, 27, 000. The current Market value is around Rs.60 lakh. This deed agreement also shows that Soni lives in a posh flat (that address is shown in the deed) F4-Travacore Residency, Managd Road, Mamangalam, Eranakulam. A translated copy of relevant extracts of the said sale deed dated 8.4.2008 is annexed herewith as **Annxure-P/2.**
- Sreenijan purchased 20 cent of land on March 3, 2007 in Alangad village survey number 176/15. Value show is Rs.80, 000. Market value is more than Rs.7.5 lakh. A translated copy of relevant extracts of the said sale deed dated 3.3.2007 is annexed herewith as **Annxure-P/3.**
- Sreenijan purchased 3.750 cent of land having survey number 177/5, 21 cent in survey number 176/16 and 90 cent of land having survey number 176/17 in Alangad Village on March 3, 2007, Value shown is Rs.2, 30,000. Market value is more than Rs.20 lakh. A translated copy of relevant extracts of the said sale deed dated 3.3.2007 is annexed herewith as **Annxure-P/4.**
- Sreenijan along with wife Soni on June 5, 2009 purchased 29.033 cent in survey number 176/6A in Edapally South Village. Value shown is Rs.30 lakh. Market value is expected to be more than Rs.3 crore. A translated copy of relevant extracts of the said sale deed dated 5.6.2009 is annexed herewith as **Annxure-P/5.**
- PV Sreenijan's mother Smt.Vasu purchased One Acre 44 Square Meter of land in survey number 176/6A in Edapally South Village on October 6, 2010. Value shown is 15 lakh. This is a Commercial property and market value expected is above Rs.One crore. A translated copy of relevant extracts of the said

sale deed dated 6.10.2010 is annexed herewith as **Annexure-P/6.**

- KB Soni(eldest daughter of KGB and PV Sreenijan's wife) purchased flat at F4 of Travancore Residency in Mangattu Rd, Edapally and 1/34 of the undivided share in survey number 81/1B and 81/1C in Edapally Sub Registrar office and Edapally North Village (heart of the Eranakulam City) on Feb 12, 2007. Value shown is Rs.6 lakhs. Market value at the time of purchase was Rs.50 lakhs. A translated copy of relevant extracts of the said sale deed dated 12.02.2007 is annexed herewith as **Annexure-P/7**

- Sreenijan purchased 58.86 cent, 35.25 cent, 52.89 cent, 73.14 cent and 59.38 cent of land [Total 2.77 acres. A big resort is under construction at this place. This is river side property] of survey numbers 2076, 2077/1, 2385, 2076/1 and 2075 in Kallur Village (Kadukutty Panchayat) on November 11, 2008. There are old buildings in this property also. Value shown is Rs.14, 00, 000. The market value of the property was above Rs. 2 crore. A translated copy of relevant extracts of the said sale deed dated 11.11.2008 is annexed herewith as **Annexure-P/8.**

- KB Soni along with others (non-family) for purchased legal office in Survey No. 1986/1 of Eranakulam village the in heart of the Eranakulam town, opposite to Railway Station on March 19, 2007. Value shown is Rs.1,49,500. But the Market value is around Rs.50 lakh excluding furnishing cost etc. A translated copy of relevant extracts of the said sale deed dated 19.3.2007 is annexed herewith as **Annexure-P/9.**

Respondent No. 3's second son-in-law, advocate MJ Benny also became considerably wealthier after his marriage to Rani, Respondent No. 3's younger daughter particularly during Respondent No. 3's tenure as CJI. Between 19 March 2008 and 26 March 2010, he

purchased 98.5 cents of land through five title deeds for Rs.81.5 lakh. This is prime land along the National Highway in Marad, Ernakulam district. A cursory comparison of land rates during this period shows that the property was undervalued. When Benny purchased the property it was around Rs. 4 lakh per cent and at current rates it would be Rs. 10 lakh per cent thus making the total value as Rs. 9 crores, 85 lakhs. Yet Benny showed his yearly income as Rs. 5 lakh and Rs. 5.5 lakh during the assessment years 2008-09 and 2009-10. Just five land deals made Benny a millionaire in two years. (*The father, the sons-in-law and the unholy properties, Tehelka 26 April 2011*). A copy of the said article published in Tehelka on 26.04.2011 is annexed herewith as **Annexure-P/10.** Besides these properties, Benny has also made other lucrative investments.

- MJ Benny purchased a posh commercial Shop/Office in Swapnil Enclave (Room No. 12) in Marine Drive, Kochi (heart of the city) on Dec 19, 2007. Value shown is Rs.35 lakh. Market Value was around Rs.Three crores. A translated copy of relevant extracts of the said sale deed dated 19.12.2007 is annexed herewith as **Annexure-P/11.**
- Rani KB along with others purchased . 98.075 cent agro-plantation land including the entire belongings in the land including small homes in survey number 337/2 in Ettumanoor Sub Registrar office and Athirambuzha Village for Rs.7,90,000 on May 28, 2005. Market value is expected above Rs. Three crores. A translated copy of relevant extracts of the said sale deed dated 28.5.2005 is annexed herewith as **Annexure-P/12.**
- Benny purchased 31.650 cent in Marad Village on April 28, 2008. Value shown is Rs.39, 56,250. The Market value of this property near the National Highway is Rs.Five crores. A translated copy of relevant extracts of the said sale deed dated April 28, 2008 is annexed herewith as **Annexure-P/13.**

- Benny purchased 6.5 cent in Marad Village on April 28, 2008. Value shown is Rs. 2 lakhs. The Market value of this property near the National Highway is Rs. 30 lakh. A translated copy of relevant extracts of the said sale deed dated 28.4.2008 is annexed herewith as **Annexure-P/14.**
- Benny purchased 6.54 cent along with house on the land in Marad Village 17.03.2008. Value shown is Rs.9,50,000. The Market value of this property near the National Highway is Rs.30 lakh. A translated copy of relevant extracts of the said sale deed dated 17.03.2008 is annexed herewith as **Annexure-P/15.**
- Benny purchased 7.928 cent in Marad Village 10.6.2009. Value shown is Rs. 8 lakh. The Market value of this property near the National Highway is Rs.One crore. A translated copy of relevant extracts of the said sale deed dated 10.6.2009 is annexed herewith as **Annexure-P/16.**

Respondent No. 3's brother late KG Bhaskaran who was a senior Government Pleader at Kerala High Court also possessed property beyond his known sources of income. Mr. Bhaskaran resigned after these facts came to light.

- KG Bhaskaran, along with his wife MV Ratnamma (Advocate, retired and suspended Munsif) purchased 87.201 cent and house in it in survey number 383/3, 339/1 and 397/1 in Puthenkurisu Sub Registrar office and Thiruvaniyoor Village. Date of purchase June 24, 2009. Value shown is Rs.21,75,000. Market value is more than Rs.2 crore. A translated copy of relevant extracts of the said sale deed dated 24.6,2009 is annexed herewith as **Annexure-P/17.**
- KG Bhaskaran purchased a Farm House and 53 acre land in Bodikamanvadi Village in Dingugal in Tamil Nadu. Value shown is Rs. 4,21,289/-. Market Value is above Rs. 10 crore. The deal



was made on November 28, 2006. It is pertinent to mention that Respondent No. 3 was Tamil Nadu's Chief Justice for a year from 1999 to 2000. A translated copy of relevant extracts of the said sale deed dated 28.11.2006 is annexed herewith as **Annexure-P/18.**

- KG Bhaskaran along with wife and children purchased 40 acres of Farm House on Feb 23, 2005. Value shown is around Rs. 10,59,120. But the Market value is above Rs.3 crore. A translated copy of relevant extracts of the said sale deed dated 23.2.2005 is annexed herewith as **Annexure-P/19.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 20 acres of farm land. Value shown Rs. 1,28,050 is but the market value is above Rs.3 crore. A translated copy of relevant extracts of the said sale deed dated 18.3.2005 is annexed herewith as **Annexure-P/20.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 2.13 acres of farm land valued at Rs.75,615 but the market value is above Rs.50 lakh. A translated copy of relevant extracts of the said sale deed dated 18.3.2005 is annexed herewith as **Annexure-P/21.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 20 acres. Valued around Rs.6,64,950 but the market value is above Rs.5 crore. A translated copy of relevant extracts of the said sale deed dated 18.3.2005 is annexed herewith as **Annexure-P/22.**

This amassing of wealth beyond their known source by the kin of Respondent No. 3 during his tenure as Judge/ Chief Justice of the Supreme Court clearly indicates that this wealth was given to these people as illegal gratification to the then Respondent No. 3.

## **II. Benami properties in the name of his former aide M. Kannabiran.**

According to a story covered by *Headlines Today* on 4<sup>th</sup> February 2011, Tamil Nadu Chief Minister M. Karunanidhi misused his discretionary power and allotted two prime plots of land in Chennai to a former aide of Respondent No. 3. Documents accessed through *Headlines Today* show how Justice Balakrishnan's aide M. Kannabiran, whose monthly income was just around Rs 10,000, was awarded the plots, one currently costing Rs 48 lakhs and the other around Rs 2.5 lakhs. Copy of the *Headlines Today* story dated 04.02.2011 is annexed herewith as **Annexure P/23.**

The documents show that the Tamil Nadu Housing Board (TNHB) swiftly cleared Kannabiran's application and issued the letter of allotment for both the plots just a day after receiving the request. As per the Chief Minister's discretionary quota, only one plot can be allotted to a person. However, Kannabiran was allotted the two plots under the quota for government employees. It was not mentioned how he qualified for it. Also, Kannabiran was not even working in Tamil Nadu at the time he was granted the land. Kannabiran resigned from his job after the news coverage of the said allotments. It is obvious that rules would not have been bent for a lowly employee and in fact Respondent No. 3 used his influence with the Chief Minister of Tamil Nadu to get these allotments. Copies of the allotment letters dated 31.02.2008, July 2008 and receipt dated 20.03.2008 are annexed herewith as **Annexure-P/24 Colly..**

This in itself is misbehaviour. Further, in light of the fact that Kannabiran's monthly income was just around Rs 10,000, it appears that the said plots must have been purchased benami by him for Respondent No. 3. Copy of the pay certificate dated 11.03.2008 issued by Supreme Court to Kannabiran is annexed herewith as **Annexure-P/25.**

**III. Respondent No. 3 approved evasive and false replies given by CPIO, Supreme Court in response to the RTI application filed by Sh. Subhash Chandra Agarwal regarding declaration of assets by judges.**

According to a news-story published in *Times of India* on April 14, 2008, in response to an RTI application filed by Sh. Subhash Chandra Agarwal regarding declaration of assets by judges, Supreme Court's Central Public Information Officer (CPIO) stated that the information relating to declaration of assets by judges is "not held by or under the control of" its registry and therefore could not be furnished by him. When Sh. Agarwal filed another RTI application to access the file notings which led to the approval of the reply, it was revealed that this elusive reply was given with the approval of the then Chief Justice of India, Respondent No. 3, who was himself supposed to be the custodian of those declarations.

The file related to the RTI query on asset disclosures was in fact placed before Respondent No. 3 on two occasions.

The first time was when a note prepared by the CPIO on November 27, 2007, was "put up to Hon. CJI for approval" by the head of the SC registry, Secretary General V K Jain.

The second time was when Sh. Jain again "submitted for orders" of the Chief Justice a slightly revised note of the CPIO dated November 30, 2007.

The second note bears Respondent No. 3's signature with the same date. In a reference to the three points proposed to be mentioned in the RTI response, the Chief Justice wrote: "A, B & C approved."

What is crucial is point B, which says: "The applicant may be informed that the information relating to declaration of assets by Hon'ble Judges of the Supreme Court is not held by or under the control of the Registry, Supreme Court of India, and therefore cannot be furnished by the CPIO, Supreme Court of India, under the Right to Information Act, 2005."

In keeping with the CJI-approved note, the CPIO wrote his formal reply under RTI on that very day, November 30, 2007.

Later on the Central Information Commissioner and the single and division benches of Delhi High Court held that Supreme Court could not be allowed to make a distinction between its registry and the office of the CJI for the purpose of giving reply to an application under the RTI Act and that the CPIO had to disclose the information asked for in the said application since it was available at the Chief Justice's office. A copy of the said news story dated 14.04.2008 is annexed herewith as **Annexure-P/26.**

**IV. Suppressing a letter written by a High Court judge alleging that former Union Minister A. Raja tried to interfere his judicial function and later lying to the press that he had not received any such letter implicating any Union Minister.**

Justice R Raghupathy of the Madras High Court had written a letter on 2.7.2009 to Respondent No. 3, the then Chief Justice of India, in which he stated that the Chairman of Bar Council of Tamil Nadu and Pondicherry K Chandramohan, who is reportedly a friend of former Union Minister Sh. A. Raja, tried to influence him to grant anticipatory bail to his clients Dr Krishnamurthy and his son, who were wanted by the Central Bureau of Investigation (CBI) for forging mark-sheets in MBBS examinations. In his letter to Respondent No. 3, Justice Raghupathy said that Chandramohan wanted him to talk to 'a Union Minister by name Raja' over the bail issue as both the accused were Mr. Raja's family friends. Justice Raghupathy mentioned this incident in an order dated 7.12.2010. Respondent No. 3 in his press conference dated 8.12.2010 stated that he had not received any such letter implicating any Union Minister and that Mr. Raja's name was not mentioned in Justice Raghupathy's letter. This claim of Respondent No. 3 was refuted by Justice H.L. Gokhale, a Supreme Court Judge who was the Chief Justice of Madras High Court at the time the said letter was written. In a detailed press note dated

14.12.2010, Justice Gokhale said that he had forwarded to the former CJI a copy of Justice Raghupathy's letter dated July 2, 2009 by a letter dated July 5, 2009. The former CJI had in fact acknowledged the same in his subsequent letter dated August 8, 2009 as follows: "vide letter dated July 5, 2009, you have forwarded to me a detailed letter/report July 2, 2009 of Justice Raghupathy explaining the actual state of affairs concerning the alleged misbehaviour of a Union Minister of the Government of India reported in the media." Justice Gokhale said: "The former CJI informed me by that letter that he had received a copy of the memorandum concerning the above incident, addressed by a large number of Members of Parliament to the Prime Minister. A copy thereof was enclosed to seek my views/comments on the issues raised therein. I replied to this letter on August 11, 2009."

On Respondent No. 3's statement that there was no mention of the name of any Union Minister in the report sent by him, Justice Gokhale said: "I may point out that Justice Raghupathy's letter was already with him [Respondent No. 3] and in the second paragraph thereof Justice Raghupathy had specifically mentioned the name of Minister Raja. I had no personal knowledge about the incident, and the observations in my reply were in conformity with the contents of Justice Raghupathy's letter."

Justice Raghupathy and Justice Gokhale's revelations have made it clear that Respondent No. 3 not only suppressed the letter implicating Mr. A. Raja but did not flinch from lying to the nation about these grave allegations. It is pertinent to mention that Respondent No. 3 committed the misbehavior of deliberately lying in order to hide the fact of dereliction of duty committed by him and to shield a Union Minister while holding the post of Chairperson, NHRC. A copy of the press note dated 14.12.2010 issued by Justice Gokhale is annexed herewith as **Annexure-P/27.**

5. On 26.02.2011 Income Tax officials confirmed that three relatives of Respondent No. 3 hold black money. Director General (Investigation) ET Lukose stated "As far as Justice Balakrishnan is concerned, we can't say anything. But his two sons-in-law and brother possess black money." A copy of a related news story dated 26.02.2011 is annexed herewith as **Annexure-P/28.**
6. Campaign for Judicial Accountability and Reforms wrote to the Prime Minister and the President of India vide letters dated 04.04.2011 enclosing the above evidence and requesting the Government to make reference under Section 5(2) of the Act to the Hon'ble Supreme Court for initiating inquiry against Respondent No.3 but the Government has not responded to the said letters so far. Copies of the said letters dated 4.4.2011 are annexed herewith as **Annexure-P/29 Colly..**
7. On 15.06.2011 CNN-IBN broadcasted interviews of two retired judges of Kerala High Court wherein the judges, Justice PK Shamsuddin and Justice K Sukumaran, made grave allegation against Respondent No. 3. In an interview taken by Firstpost Justice Shamsuddin stated that he was approached by a man to facilitate an introduction to Respondent No. 3's son (KG Pradeep) or son-in-law (Puliyaneveetil Vasu Sreenijan) to fix a case in the Supreme Court. Justice Shamsuddin further said, "I am of the view that a detailed and comprehensive inquiry must be initiated against all the allegations against Justice Blakrishnan. I feel he should resign as the NHRC chief and establish that he is innocent. All judges have a moral obligation to ensure that relatives do not misuse their position and use their names in illegal and dubious matters." Justice K Sukumaran stated that Respondent No. 3 allowed his late brother KG Bhaskaran to exploit his name and position for personal gain. A copy of this news story dated 15.06.2011 is annexed herewith as **Annexure-P/30.**

8. It has been held by this Hon'ble Court in **R.P. Kapur v. S. Pratap Singh Kairon AIR 1964 SC 295** that even in the absence of any detailed instructions or directions as to how a government servant should act and conduct himself there would never be any manner of doubt that a government servant was expected and required to act honestly and not to use his position as a government servant for enriching himself or others. Every dishonest act of a government servant, including acts by which he uses his position for enriching himself or others would clearly amount to "misbehavior". Thus, it is apparent that there is overwhelming evidence indicating that the Respondent No. 3 has been guilty of several acts of serious misbehaviour despite that the Government has not taken any step for his removal from the Commission. It was the duty of the Government, on receiving such damaging reports against Respondent No. 3, to immediately make reference under Section 5(2) of the Act to this Hon'ble Court for holding an inquiry so that he could be removed from the Commission once the charge of misbehaviour is proved by this Hon'ble Court.
9. According to a news story published in Rediff.Com, Justice Sabharwal was not considered for the post of National Human Rights Commission chief because of "adverse media and other reports" about him. In reply to an RTI application by Subhash Chandra Agrawal, the human rights division of the Ministry OF Home Affairs said, "Because of adverse media and other reports with regard to Justice Y K Sabharwal, it was felt that highly sensitive post of chairperson of NHRC may not be offered to him." A copy of the news story dated 17.03.2010 is annexed herewith as **Annexure-P/31**. It is submitted that as in the case of Justice Sabharwal, there was sufficient material against Respondent No. 3 to exclude him from the field of consideration for appointment to the office of Chairman, NHRC. Even otherwise this Hon'ble Court in

**Center for Public Interest Litigation vs. Union of India AIR 2011**

**SC 1267** has emphasized on the concept of institutional integrity. If the selection adversely affects institutional competency and functioning then it shall be the duty of the High Powered Committee not to recommend such a candidate. What has been held regarding the Central Vigilance Commission is equally true for the National Human Rights Commission.

10. The National Human Rights Commission was established in India on 12 October 1993 under the Protection of Human Rights Act, 1993 as a result of strong international pressure created by adoption of the 'Paris Principles' by the United Nations Human Rights Commission in 1992 and the General Assembly in 1993. NHRC has been accredited with 'A' status by the International Coordinating Committee of National Human Rights Institutions (ICC) which means that it has to make full compliance with the Paris Principles. The Chairperson and Members of NHRC have to be accountable for their actions according to Paris Principles.

11. **Petitioner's Legal Rights –**

The inaction of the Government in making reference to this Hon'ble Court under Section 5(2) of the Act is not only arbitrary and violates Article 14 but is also against public interest since allowing a person who is facing serious charges of corruption and impropriety to head an august body created for the protection of human rights of the citizens of this country would make the institution non-functional.

The present writ petition is being filed on the following amongst other grounds:

**GROUND**

- A. That the inaction of the Government in making reference to this Hon'ble Court under Section 5(2) of the Act despite the fact that



there is overwhelming evidence indicating that the Respondent No. 3 has been guilty of several acts of grave misbehavior is totally arbitrary and hence, in violation of Article 14 of the Constitution of India.

- B. That the discretion vested in the Government to make a reference to this Hon'ble Court under Section 5(2) of the Act is not unlimited. This hon'ble Court in **Comptroller and Auditor General of India v. K S. Jagannathan, AIR 1987 SC 537** has held that the courts have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred.
- C. That the power vested in the Government to make a reference under Section 5(2) of the Act is vested with a duty to consider all relevant materials on record and to uphold the purpose of the Act.
- D. That in **In Re: Destruction of Public & Private Properties Versus State of A.P. and Ors. (2009) 5 SCC 212** this Hon'ble Court has held that positive directions can be issued where there is a power coupled with a duty.
- E. That the continuance of Respondent No. 3 as the Chairperson of the NHRC despite several grave charges of misconduct against him is against public interest and would defeat the purpose for which the NHRC was created i.e. having a vigilant

body to ensure that the human rights of the citizens of India are not violated.

F. That the inaction of the government in taking steps for the removal of Respondent No. 3 from the post of the Chairperson of NHRC despite the fact that serious charges of misuse of office have been made by some of his former brother judges against him is not only unreasonable but also malafide in law.

12. It is submitted that no other writ petition has been filed by the Petitioner in this Hon'ble Court or in any other Court of the country raising the same issue.

#### PRAYERS

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

- (a) issue a writ of mandamus or any other writ or direction of similar nature against Respondent No. 1 for making reference to this Hon'ble Court under Section 5(2) of the Human Rights Act, 1993 for holding an inquiry against Respondent No.3; and
- (b) pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstance of this case.

Petitioner

Drawn by: Pyoli, Advocate  
New Delhi  
Dated: .01.2012

(Prashant Bhushan)  
Through: Counsel for the Petitioner

**IN THE SUPREME COURT OF INDIA**  
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

CIVIL WRIT PETITION NO. OF 2011

IN THE MATTER OF:

COMMON CAUSE ...PETITIONER

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

# AFFIDAVIT

I, Kamini Jaiswal, D/o Sh. R. S. Jaiswal, 43, Lawyers Chambers, Supreme Court of India, New Delhi – 110 001, aged 58 years do hereby solemnly state and affirm as under:

1. That I am the General Secretary of the Petitioner Organisation and being familiar with the facts and circumstances of the case am competent and authorized to swear this Affidavit on its behalf.
2. That I have read the contents of the accompanying List of Dates and Events [Pages \_\_\_\_ to \_\_\_\_] and the Writ petition and the application for exemption from filing official translation comprising Pages \_\_\_\_ to \_\_\_\_\_. The contents of the same are based on newspaper and magazine reports and documents obtained from the offices of the Sub- Registrars of the concerned Taluks and are true and correct to the best of my knowledge. The same has been drafted by my counsel on my instructions.
3. I further state that all the Annexures to the present Writ Petition are true copies of their respective originals.

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 there from.

Verified at New Delhi on this \_\_\_\_ day of January 2012.

DEPONENT

**IN THE SUPREME COURT OF INDIA**  
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

CIVIL WRIT PETITION NO.                      OF 2011

IN THE MATTER OF:

CENTRE FOR PUBLIC INTEREST LITIGATION                      ...PETITIONER

VERSUS

UNION OF INDIA & ORS.                      ...RESPONDENTS

**APPLICATION FOR EXEMPTION FROM FILING OFFICIALLY  
TRANSLATED COPIES OF ANNEXURE P5**

To,  
The Hon'ble Chief Justice of India  
And his companion Justices of the Supreme Court of India

The humble application of the appellant above named

1. The Petitioner is filing the present writ petition under Article 32 of the Constitution of India seeking a writ of mandamus to the Union of India to make reference under Section 5 (2) of the Human Rights Act, 1993 to the Hon'ble Supreme Court for holding an inquiry against Respondent No. 3 who is the Chairman of National Human Rights Commission.
  
2. That the Petitioner has annexed Annexures P1, P2,P3,P4,P5,P6,P7,P8,P9,P11,P12,P13,P14,P15,P16,P17 along with the aforementioned petition which are in Malayalam language and Annexures P18,P19,P20,P21 and P22 which are in Tamil language. Due to paucity of time, the Petitioner could not get the translation of the said annexures done from the official translator. However, the translation has been done by a person who is well conversant with both the languages.

**PRAYER**

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

- a) exempt the petitioner from filing officially translated copies of Annexures P1, P2, P3, P4, P5, P6, P7, P8, P9, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21 and P22 ; and
- b) pass any other order or further order/s this Hon'ble Court may deem fit and proper.

PETITIONER

Date: .01.2012  
Place: New Delhi

THROUGH PRASHANT BHUSHAN  
COUNSEL FOR THE PETITIONER

## INDEX

SL. NO.	PARTICULARS	PAGE NO.
1.	LISTING PERFORMA	
2.	CHECK-LIST	
3.	SYNOPSIS AND LIST OF DATES	
4.	MEMO OF PARTIES	
5.	WRIT PETITION ALONG WITH AFFDIAVIT	
6.	<b>ANNEXURE P1-</b> A copy of the assets declaration form dated 3.4.2006	
7.	<b>ANNEXURE P2-</b> A translated copy of relevant extracts of the sale deed dated 8.4.2008	
8.	<b>ANNEXURE P3-</b> A translated copy of relevant extracts of the sale deed dated 3.3.2007	
9.	<b>ANNEXURE P4-</b> A translated copy of relevant extracts of the sale deed dated 3.3.2007	
10.	<b>ANNEXURE P5-</b> A translated copy of relevant extracts of the sale deed dated 5.6.2009	
11.	<b>ANNEXURE P6-</b> A translated copy of relevant extracts of the sale deed dated 6.10.2010	
12.	<b>ANNEXURE P7-</b> A translated copy of relevant extracts of the sale deed dated 12.02.2007	
13.	<b>ANNEXURE P8-</b> A translated copy of relevant extracts of the sale deed 13.11.2008	
14.	<b>ANNEXURE P9-</b> A translated copy of relevant extracts of the sale deed dated 19.3.2007	
15.	<b>ANNEXURE P10-</b> A copy of the article published in Tehelka on 26.04.2011	
16.	<b>ANNEXURE P11 -</b> A translated copy of relevant extracts of the sale deed dated 15.12.2007	
17.	<b>ANNEXURE P12 -</b> A translated copy of relevant extracts of the sale deed dated 28.5.2005	
18.	<b>ANNEXURE P13 -</b> A translated copy of relevant extracts of the sale deed dated 26.4.2009	
19.	<b>ANNEXURE P14 –</b> A translated copy of relevant extracts of the sale deed dated 23.4.2009	
20.	<b>ANNEXURE P15 -</b> A translated copy of relevant extracts of the sale deed dated 23.4.2009	
21.	<b>ANNEXURE P16 -</b> A translated copy of relevant extracts of the sale deed dated 23.4.2009	
22.	<b>ANNEXURE P17 –</b> A translated copy of relevant extracts of the sale deed dated 24.6,2009	
23.	<b>ANNEXURE P18-</b> A translated copy of relevant extracts of the sale deed dated 28.11.2006	
24.	<b>ANNEXURE P19-</b> A translated copy of relevant extracts of the sale deed 23.2.2005	
25.	<b>ANNEXURE P 20-</b> A translated copy of relevant extracts of the sale deed dated 18.3.2005	
26.	<b>ANNEXURE P 21-</b> A translated copy of relevant extracts of the sale deed dated 18.3.2005	
27.	<b>ANNEXURE P 22-</b> A translated copy of relevant extracts of the sale deed dated 18.3.2005	
28	<b>ANNEXURE P 23-</b> Copy of the Headlines Today story dated 04.02.2011	
29.	<b>ANNEXURE P 24 Colly-</b> (i) Copy of allotment letter dated 31.02.2008	

	(ii) Copy of allotment letter dated July 2008 (iii) Copy of receipt dated 20.03.2008	
30.	<b>ANNEXURE P 25-</b> Pay certificate of Kannabiran issued by Supreme Court dated 11.03.2008	
31.	<b>ANNEXURE P 26-</b> A copy of the news story dated 14.04.2008	
32.	<b>ANNEXURE P 27-</b> A copy of the press note dated 14.12.2010 issued by Justice Gokhale	
33.	<b>ANNEXURE P 28 -</b> A copy of a news story dated 26.02.2011	
34.	<b>ANNEXURE P 29 Colly -</b> (i) A copy of the letter dated 4.4.2011 to the President (ii) A copy of the letter dated 4.4.2011 to the Prime Minister	
35.	<b>ANNEXURE P 30-</b> A copy of news story dated 15.06.2011	
36.	<b>ANNEXURE P 31-</b> A copy of the news story dated 17.03.2010	
37.	APPLICATION FOR EXEMPTION FROM FILING OFFICIALLY TRANSLATED COPIES	
38.	REG.CERTIFICATE & VAKALATNAMA	

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SUPREME COURT OF INDIA  
NEW DELHI-110 001  
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NEW DELHI  
DATED .01.2012

### **SYNOPSIS**

The Petitioner is filing the present writ petition under Article 32 of the Constitution of India seeking a writ of mandamus to the Union of India to make reference under Section 5 (2) of the Human Rights Act, 1993 (herein after referred to as “the Act”) to the Hon'ble Supreme Court for holding an inquiry against Respondent No. 3 who is the Chairman of National Human Rights Commission (hereinafter referred to as NHRC). Despite the fact that there is overwhelming evidence indicating that the Respondent No. 3 has been guilty of several acts of grave misbehavior, the Government has not taken any step for his removal from the NHRC.

Section 5 (2) of the Act provides that the Chairperson or any other member of the Commission shall be removed from his office by the order of the President of India on the ground of misbehaviour after the Supreme Court, on a reference being made to it by the President, has on inquiry reported that the Chairperson or such member, on any such ground, be removed. Thus, as per Section 5 (2) of the Act, a member of the Commission can be removed only on the ground of misbehaviour when the Hon'ble Supreme Court after holding an inquiry reports that such member be removed on the said ground. But such inquiry can be held only when the Government of India makes a reference under Section 5 (2) of the Act to the Supreme Court.

In the past few months the news of close relatives of Respondent No. 3 acquiring assets disproportionate to their known sources of income during his tenure as the Chief Justice of India has been covered widely by the national media. Apart from this, there are other known instances of misbehavior on part of Respondent No. 3 for e.g. purchasing benami properties in the name of his former aide M. Kannabiran, approving evasive and false replies given by CPIO, Supreme Court in response to the RTI application filed by Sh. Subhash Chandra Agarwal regarding declaration of assets by judges and suppressing a letter written by a High Court judge alleging that former Union Minister A. Raja tried to interfere



his judicial function and later lying to the press that he had not received any such letter implicating any Union Minister. Campaign for Judicial Accountability and Reforms had written to the Prime Minister and the President of India vide letters dated 04.04.2011 enclosing numerous documents showing the above acts of misbehavior by Respondent No. 3 and requesting the Government to make reference under Section 5(2) of the Act to the Hon'ble Supreme Court for initiating inquiry against Respondent No.3 but the Government has not responded to the said letters so far.

Despite receiving the above letter and many such reports and the fact that investigations by the Income Tax Department and Kerala Police have shown that relatives of Respondent No. 3 amassed property worth crores of rupees during his tenure as a judge and Chief Justice of India, Respondent No. 3 is continuing to hold the office and no action whatsoever has been taken against him by the Government.

In the circumstances, it will be expedient in the interest of justice if a direction is issued to the Union of India to forthwith make a reference to the Hon'ble Supreme Court under Section 5 (2) of the Act for holding an enquiry against him so that if the ground of misbehaviour is proved, he could be removed from the Commission.

#### **LIST OF DATES**

1985	Respondent No. 3 was appointed as judge of Kerala High Court.
1997	Respondent No. 3 was transferred to Gujarat High Court.
1998	Respondent No. 3 became Chief Justice of Gujarat High Court.
1999	Respondent No. 3 assumed charge as the Chief Justice of the High Court of Judicature at Madras.
08.06.2000	Respondent No. 3 was elevated to the Supreme Court of India.

- 23.02.2005 Late KG Bhaskaran, brother of Respondent No. 3 along with wife and children purchased 40 acres of Farm House on Feb 23, 2005. Value shown is Rs. 10, 59, 120. But the Market value is above Rs.3 crore.
- 18.03.2005 KG Bhaskaran along with wife and children purchased on March 18, 2005 20 acres of farm land. Valued at Rs 1,28,050 but the market value is above Rs.3 crore.
- 18.03.2005 KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 2.13 acres. Valued at Rs 75, 615 but the market value is above Rs.50 lakh.
- 18.03.2005 KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 20 acres. Valued at Rs 6, 64,950 but the market value is above Rs.5 crore.
- 28.05.2005 Rani KB, daughter of Respondent No. 3 along with others purchased 10.5 acre rubber estate and farm properties, near Athirambuzha Market on May 28, 2005. Value shown is Rs.7, 90,00. Market Value is above Rs. Three crores.
- 03.04.2006 P.V. Sreenijan, son-in-law of Respondent No. 3 contested as an Indian National Congress candidate in Njrackkal (reserved) constituency in Eranakulam District, Kerala in 2006. According to Form No. 26 filed by Sreenijan on his assets and liabilities before Election Commission in April 3, 2006, when he contested as an Indian National Congress candidate in Njrackkal (reserved) constituency in Eranakulam District, Kerala, he and his wife KB Soni had no agricultural land. Sreenijan had no non-agricultural land. His wife had 29.32 cent, currently valued at Rs.30, 000 at Thiruvankulam Village in Eranakulam District in Kerala in the survey no. 392/7. Both had no commercial properties and apartments. Sreenijan had cash in hand Rs.5000 and his

wife had nothing. Sreenijan had savings bank account with a deposit of Rs.20,000 at Bank of Baroda, Kalamassery Branch in Eranakulam district and his wife had nothing. Both had no debentures or shares of any companies, savings certificates vehicles. Sreenijan had 3 sovereign (24 gram) gold valued at Rs.18,000 and wife had 20 sovereign (160 gram) valued at Rs.1,20,000. Both declared no heritable rights acquired by them.

- 28.11.2006 KG Bhaskaran purchased a Farm House and 53 acre land in Bodikamanvadi Village in Dingugal in Tamil Nadu. Value shown is Rs.4,21,289. Market Value is above Rs. 10 crore.
- 14.01.2007 Respondent No. 3 became Chief Justice of India.
- 12.02.2007 KB Soni(eldest daughter of KGB and PV Sreenijan's wife) purchased flat at F4 of Travancore Residency in Mangattu Rd, Edapally (heart of the Eranakulam City) Feb 12, 2007. Value show is Rs.Six lakhs. Market value at the time of purchase was Rs.50 lakh.
- 03.03.2007 Sreenijan purchased 20 cent of land on March 3, 2007 in Alangad village survey number 176/15. Value show is Rs.80,000. Market value is more than Rs.7.5 lakh.
- 03.03.2007 Sreenijan purchased 3.750 cent of land having survey number 177/5 and 90 cent of land having survey number 176/17 on March 3, 2007, Value shown is Rs.2, 30,000. Market value is more than Rs.20 lakh.
- 19.03.2007 KB Soni along with others (non-family) for purchased legal office in Survey No. 1986/1 of Eranakulam village the in heart of the Eranakulam town, opposite to Railway Station on March 19, 2007. Value shown is Rs.1,49,500 lakhs. But the Market value is around Rs.50 lakh excluding furnishing cost etc.

- 15.12.2007 MJ Benny, Respondent No. 3's second son-in-law purchased a posh commercial Shop/Office in Swapnil Enclave (Room No. 12) in Marine Drive, Kochi (heart of the city) on Dec 15, 2007. Value shown is Rs.35 lakh. Market Value was around Rs.Three crores.
- 17.03.2008 Benny purchased 6.54 cent in Marad Village April 28, 2008. Value shown is Rs.9,50,000. The Market value of this property near the National Highway is Rs.30 lakh.
- 08.04.2008 Sreenjan along with his wife purchased lands along with an old building on April 8, 2008 - 9.241 cent, 14.455 cent, 9.904 cent, 2.5 cent in Varappuzha Village of survey numbers 265/1 and 265/3. Value shown Rs.7, 27, 000. The current Market value is around Rs.60 lakh. This deed agreement also shows that Soni lives in a posh flat (that address is shown in the deed) F4-Travacore Residency, Managd Road, Mamangalam, Eranakulam.
- 14.04.2008 According to a news-story published in *Times of India* on April 14, 2008, Respondent No. 3 approved of evasive and false replies given by CPIO, Supreme Court in response to the RTI application filed by Sh. Subhash Chandra Agarwal regarding declaration of assets by judges.
- 28.04.2008 Benny purchased 6.5 cent in Marad Village on April 28, 2008. Value shown is Rs.Two lakhs. The Market value of this property near the National Highway is Rs. 30 lakh.
- 28.04.2008 Benny purchased 31.650 cent in Marad Village on April 28, 2008. Value shown is Rs.39, 56,250. The Market value of this property near the National Highway is Rs.Five crores.
- 11.11.2008 Sreenijan purchased 58.86 cent, 35.25 cent, 52.89 cent, 73.14 cent and 59.38 cent of land [Total 2.77 acres. A big resort is under construction at this place. This is river side property] of survey numbers 2076, 2077/1, 2385, 2076/1 and

2075 in Kallur Village (Kadukutty Panchayat) on November 11, 2008. There are old buildings in this property also. Value shown is Rs.14, 00, 000. The market value of the property was above Rs. 2 crore.

- 05.06.2009 Sreenijan along with wife Soni on June 5, 2009 purchased 20.8 cents of land and 9.3 cent of land of old survey nos 176/6A and 176/6A1 in Edapally South Village. Value shown is Rs.30 lakh. Market value is expected to be more than Rs.3 crore.
- 10.06.2009 Benny purchased 7.928 cent in Marad Village 10.06.2009. Value shown is Rs. Eight lakh. The Market value of this property near the National Highway is Rs.One crore.
- 24.06.2009 KG Bhaskaran, along with his wife MV Ratnamma (Advocate. Retired and suspended Munisf) purchased 87.201 cent including a house on old Survey nos 338/3,339/1 and 397/7 in Thiruvaniyoor panchayat. Date of purchase June 24, 2009. Value shown is Rs.21,75,000. Market value is more than Rs.2 crore.
- 02.07.2009 Justice R Raghupathy of the Madras High Court had written a letter on 2.7.2009 to Respondent No. 3, the then Chief Justice of India, in which he stated that the Chairman of Bar Council of Tamil Nadu and Pondicherry K Chandramohan, who is reportedly a friend of former Union Minister Sh. A. Raja, tried to influence him to grant anticipatory bail to his clients Dr Krishnamurthy and his son, who were wanted by the Central Bureau of Investigation (CBI) for forging mark-sheets in MBBS examinations.
- 12.05.2010 Respondent No. 3 retired from the post of Chief Justice of India.

- 07.06.2010 Respondent No. 3 became Chairman of the National Human Rights Commission and is continuing in the said post at present.
- 06.10.2010 PV Sreenijan's mother Smt.Vasu purchased One Acre 44 Square feet of land in survey number 176/6A in Edapally South Village on October 6, 2010. Value shown is 15 lakh. This is a Commercial property and market value expected is above Rs.One crore.
- 07.12.2010 Justice Raghupathy mentioned the incident dated 02.07.2009 in an order dated 7.12.2010.
- 08.12.2010 Respondent No. 3 in his press conference dated 8.12.2010 stated that he had not received any such letter implicating any Union Minister and that Mr. Raja's name was not mentioned in Justice Raghupathy's letter.
- 14.12.2010 The above claim of Respondent No. 3 was refuted by Justice H.L. Gokhale, a Supreme Court Judge who was the Chief Justice of Madras High Court at the time the said letter was written. In a detailed press note dated 14.12.2010, Justice Gokhale said that he had forwarded to the former CJI a copy of Justice Raghupathy's letter dated July 2, 2009 by a letter dated July 5, 2009. The former CJI had in fact acknowledged the same in his subsequent letter dated August 8, 2009 as follows:"vide letter dated July 5, 2009, you have forwarded to me a detailed letter/report July 2, 2009 of Justice Raghupathy explaining the actual state of affairs concerning the alleged misbehaviour of a Union Minister of the Government of India reported in the media."
- 04.02.2011 According to a story covered by *Headlines Today* on 4<sup>th</sup> February 2011, Tamil Nadu Chief Minister M. Karunanidhi misused his discretionary power and allotted two prime plots of land in Chennai to a former aide of Respondent No. 3.

Documents accessed through *Headlines Today* show how Justice Balakrishnan's aide M. Kannabiran, whose monthly income was just around Rs 10,000, was awarded the plots, one currently costing Rs 48 lakhs and the other around Rs 2.5 lakhs.

26.02.2011 On 26.02.2011 Income Tax officials confirmed that three relatives of Respondent No. 3 hold black money. Director General of Income Tax Investigation Wing, Kochi ET Lukose stated "As far as Justice Balakrishnan is concerned, we can't say anything. But his two sons-in-law and brother possess black money."

04.04.2011 Campaign for Judicial Accountability and Reforms wrote to the Prime Minister and the President of India vide letters dated 04.04.2011 enclosing the above evidence and requesting the Government to make reference under Section 5(2) of the Act to the Hon'ble Supreme Court for initiating inquiry against Respondent No.3 but the Government has not responded to the said letters so far.

15.06.2011 On 15.06.2011 CNN-IBN broadcasted interviews of two retired judges of Kerala High Court wherein the judges, Justice PK Shamsuddin and Justice K Sukumaran, made grave allegations against Respondent No. 3.

.01.2012 Hence the present petition.