

IN THE HON'BLE SUPREME COURT OF INDIA
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO. _____ OF 2021
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

COMMON CAUSE

....PETITIONER

VERSUS

UNION OF INDIA

....RESPONDENT

PAPERBOOK
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**FOR PETITIONER: PRASHANT BHUSHAN,
ADVOCATE ON RECORD**

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SECTION: XVI-A

PROFORMA FOR FIRST LISTING

The case pertains to (Please tick/check the correct box):

☐ Central Act: (Title)

☐ Section

☐ Central Rule : (Title)

☐ Rule No(s):

☐ State Act: (Title)

☐ Section :

☐ State Rule : (Title)

☐ Rule No(s):

☐ Impugned Interim Order: (Date)

☐ Impugned Final Order/Decree: (Date)

☐ High Court : (Name)

☐ Names of Judges:

☐ Tribunal/Authority ; (Name)

CONSTITUTION OF INDIA

UNDER ARTICLE 32

-NA-

- NA -

- NA -

- NA -

- NA -

- NA -

- NA -

-NA-

-NA-

-NA-

-NA -

1. Nature of matter : Civil ☐ Criminal ☐

2. (a) Petitioner/appellant No.1 :

(b) e-mail ID:

(c) Mobile Phone Number:

COMMON CAUSE

N.A.

N.A.

3. (a) Respondent No.1:

(b) e-mail ID:

(c) Mobile Phone Number:

UNION OF INDIA

- NA -

- NA -

4. (a) Main category classification:

(b) Sub classification:

**W.P. (C) UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

5. Not to be listed before:

6. (a) Similar disposed of matter with citation, **NO SIMILAR MATTER IS PENDING**
if any & case details:

(b) Similar Pending matter with case details: **NO DISPOSED MATTER IS PENDING**

7. **Criminal Matters:**

- (a) Whether accused/convict has surrendered: Yes ☐ No ☐
- (b) FIR No. - NA - Date: - NA -
- (c) Police Station: - NA -
- (d) Sentence Awarded: - NA -
- (e) Period of sentence undergone including period of Detention/ Custody Undergone: - NA -

8. Land Acquisition Matters: - NA -

- (a) Date of Section 4 notification: - NA -
- (b) Date of Section 6 notification: - NA -
- © Date of Section 17 notification: - NA -

9. Tax Matters: State the tax effect: - NA -

10. Special Category (first Petitioner/ appellant only): - NA -

- ☐ Senior citizen > 65 years ☐ SC/ST
- ☐ Woman/child ☐ Disabled ☐ Disabled
- ☐ Legal Aid case In custody - NA -

11. Vehicle Number (in case of Motor Accident Claim matters): - NA -

(PRASHANT BHUSHAN)
COUNSEL FOR THE PETITIONERS
REGISTRATION NO. 515
E-Mail: prashantbhush@gmail.com

NEW DELHI
DATED: __.10.2021

SYNOPSIS AND LIST OF DATES

The present public interest litigation has been filed under Article 32 of the Constitution of India seeking timely and transparent filling of long pending vacancies in the Central Vigilance Commission so as to ensure that the Commission can effectively discharge its duties as an 'integrity institution'. Presently, only one commissioner is discharging the functions of the entire Commission since 24.06.2021.

Section 3 of the Central Vigilance Commission Act, 2003, provides for the constitution of the Commission and Clause 2 thereof provides that the Commission shall consist of a Central Vigilance Commissioner as Chairperson and not more than two Vigilance Commissioners as Members. The history, scheme, and object of the act of 2003 -specifically Section 9 thereof- is such that the Commission is expected to function as a multi-member body that while performing its duties is to take decisions in a 'unanimous' manner in so far as possible and if not, then by 'majority'.

Anticipating a vacancy that was due to arise in October of 2020, *vide* advertisement dated 17.07.2020, the Department of Personnel & Training (hereinafter, 'DoPT'), had invited applications for filling the post of one **Vigilance Commissioner** with the last date of application being 17.08.2020. However, till date no appointments have been made pursuant thereto.

Similarly, anticipating vacancy that was due to arise in June of 2021, *vide* advertisement dated 04.05.2021, DoPT had invited applications for filling the post of the **Central Vigilance Commissioner** with the

last date of application being 07.06.2021. However, no appointment has been made pursuant to said advertisement as of date either.

Instead, *vide* notification dated 24.06.2021, the lone remaining Vigilance Commissioner, Sh. Suresh N. Patel, has been authorized “*to act as the Central Vigilance Commissioner...until the appointment of the Central Vigilance Commissioner.*”

It is pertinent to note that the Commission was set up in 1964 by a government resolution and continued to function as such when on 18-12-1997, the judgment in ***Vineet Narain v. Union of India (1998) 1 SCC 226*** came to be delivered. Exercising authority under Article 32 read with Article 142, this Court in order to implement an important constitutional principle of the rule of law ordered that the CVC shall be given a statutory status. The judgment in Vineet Narain was followed by the 1999 Ordinance under which the CVC became a multi-member Commission headed by the Central Vigilance Commissioner. The 1999 Ordinance conferred statutory status on the CVC. The said 1999 Ordinance was ultimately replaced by the enactment of the 2003 Act.

Thereafter, in the case of ***Centre for PIL v. Union of India, (2011) 4 SCC 1***, while striking down the appointment of Sh. P.J. Thomas as the Central Vigilance Commissioner, this Hon’ble Court noted that under Section 4 of the act of 2003, all appointments to the Commission were to be made by the President on the recommendation of a committee consisting of the Prime Minister, Minister of Home Affairs, & Leader of Opposition in the House of the People and was pleased to issue directions as under to ensure transparency and integrity in the process of appointments:

at page 35

88. No reason has been given as to why in the present case the zone of consideration stood restricted only to the civil service.

We therefore direct that:

*(i) In our judgment we have held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the members of the High-Powered Committee. As in the present case, **if one member of the Committee dissents, that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent. This will bring about fairness in action. Since we have held that legality of the choice or selection is open to judicial review, we are of the view that if the above methodology is followed, transparency would emerge which would also maintain the integrity of the decision-making process.***

(ii) In future the zone of consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants.

(iii) All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity.

*(iv) **The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.***

(v) The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the Ministry concerned.

*(vi) **The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the officer/person concerned, whether favourable or adverse. Nothing relevant or material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remarks, are specifically brought to the notice of the Selection Committee.***

(vii) The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers.

Not only have the Respondents failed to fill the long standing vacancies in time; but moreover, in wilful disobedience of this Hon'ble Court's direction that the Selection Committee should adopt a ***"a fair and transparent process"***, the Respondents have *vide* RTI replies dated 22.09.2021 outrightly refused to give absolutely any information with respect to the appointment process that has been set in motion months ago with the issuance of advertisements for the post of Vigilance Commissioner and Central Vigilance Commissioner dated 17.07.2020 (15 months ago) and 04.05.2021 (5 months ago) respectively except for providing a copy of the advertisement itself and stating that the selection process is underway.

Non-appointment of the Commissioners for extended periods of time and thereafter frustration of the citizenry's right to information so as to be able to demand accountability from the executive is in violation of rights guaranteed by Articles 14, 19, & 21 of the Constitution of India apart from the scheme and object of the act of 2003.

Pertinently, this Hon'ble Court in ***Anjali Bhardwaj v. Union of India, (2019) 18 SCC 246*** relating to appointments to the Central Information Commission and the State Information Commissions has been pleased to direct that even while the selection process is underway, all relevant information pertaining to the selection must be put in the public domain.

In such circumstances the petitioners have been constrained to approach this Hon'ble Court with prayers for timely and transparent appointments to the Central Vigilance Commission at the earliest.

Hence, the present petition.

LIST OF DATES

DATE	PARTICULARS
1964	CVC as an integrity institution was set up by the Government of India in 1964 vide government resolution pursuant to the recommendations of the Santhanam Committee. However, it was not a statutory body at that time. According to the recommendations of the Santhanam Committee, the CVC, in its functions, was supposed to be independent of the executive. The sole purpose behind setting up of the CVC was to improve the vigilance administration of the country.
Sept., 1997	In September 1997, the Government of India established the Independent Review Committee to monitor the functioning of the CVC and to examine the working of CBI and the Enforcement Directorate. The Independent Review Committee vide its report of December 1997 suggested that the CVC be given a statutory status. It also recommended that the selection of the Central Vigilance Commissioner shall be made by a High-Powered Committee comprising of the Prime Minister, the Home Minister and the Leader of the Opposition in the Lok Sabha. It also recommended that the appointment shall be made by the President of India on the specific

	<p>recommendations made by the HPC. That, the CVC shall be responsible for the efficient functioning of CBI; CBI shall report to the CVC about cases taken up for investigations; the appointment of CBI Director shall be by a committee headed by the Central Vigilance Commissioner; the Central Vigilance Commissioner shall have a minimum fixed tenure and that a committee headed by the Central Vigilance Commissioner shall prepare a panel for appointment of the Director of Enforcement.</p>
Dec., 1997	<p>On 18-12-1997 the judgment in <i>Vineet Narain v. Union of India (1998) 1 SCC 226</i> came to be delivered. Exercising authority under Article 32 read with Article 142, this Court in order to implement an important constitutional principle of the rule of law ordered that the CVC shall be given a statutory status as recommended by the Independent Review Committee. All the above recommendations of the Independent Review Committee were ordered to be given a statutory status. The judgment in Vineet Narain case was followed by the 1999 Ordinance under which the CVC became a multi-member Commission headed by the Central Vigilance Commissioner. The 1999 Ordinance conferred statutory status on the CVC. The said 1999 Ordinance was ultimately replaced by the enactment of the 2003 Act.</p>
2003	<p>The Central Vigilance Commission Act, 2003, was promulgated. Section 3 of the act provides for the constitution of the Commission and Clause 2 thereof provides that the Commission shall consist of a Central</p>

	<p>Vigilance Commissioner as Chairperson and not more than two Vigilance Commissioners as Members.</p> <p>By virtue of Clause 1 of Section 4 of the act, all appointments to the Commission are to be made by the President on the recommendation of a committee consisting of the Prime Minister, Minister of Home Affairs, & Leader of Opposition in the House of the People.</p> <p>Section 9 of the Act of 2003, makes it clear that the Commission is expected to always function as a multi-member body which while performing it's duties is to take decisions in a 'unanimous' manner in so far as possible and if not then by 'majority'</p>
2011	<p>In the case of <i>Centre for PIL v. Union of India, (2011) 4 SCC 1</i>, while striking down the appointment of Sh. P.J. Thomas as the Central Vigilance Commissioner, this Hon'ble Court noted that under Section 4(1) of the act of 2003, all appointments to the Commission were to be made by the President on the recommendation of a committee consisting of the Prime Minister, Minister of Home Affairs, & Leader of Opposition in the House of the People and was pleased to issue directions as under to ensure transparency and integrity in the process of appointments:</p> <p style="text-align: right;"><i>at page 35</i></p> <p style="text-align: right;"><i>88. No reason has been given as to why in the present case the zone of consideration stood</i></p>

restricted only to the civil service. We therefore direct that:

(i) In our judgment we have held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the members of the High-Powered Committee. As in the present case, if one member of the Committee dissents, that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent. This will bring about fairness in action. Since we have held that legality of the choice or selection is open to judicial review, we are of the view that if the above methodology is followed, transparency would emerge which would also maintain the integrity of the decision-making process.

(ii) In future the zone of consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants.

(iii) All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity.

(iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.

(v) The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the Ministry concerned.

(vi) The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the officer/person concerned, whether favourable or adverse. Nothing relevant or material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse

	<p><i>remarks, are specifically brought to the notice of the Selection Committee.</i></p> <p><i>(vii) The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers.</i></p>
17.07.2020	<p>Anticipating vacancy that was due to arise in October of 2020, vide advertisement dated 17.07.2020, the Department of Personnel & Training (hereinafter, 'DoPT'), had invited applications for filling the post of one Vigilance Commissioner with the last date of application being 17.08.2020. However, no appointments have been made pursuant thereto as of date.</p>
04.05.2021	<p>Anticipating vacancy that was due to arise in June of 2021, vide advertisement dated 04.05.2021, DoPT invited applications for filing the post of the Central Vigilance Commissioner with the last date of application being 07.06.2021. However, no appointment has been made pursuant to said advertisement as of date either.</p>
24.06.2021	<p>Vide notification dated 24.06.2021, the lone remaining Vigilance Commissioner, Sh. Suresh N. Patel, has been authorized "<i>to act as the Central Vigilance Commissioner...until the appointment of the Central Vigilance Commissioner.</i>" The post of one Vigilance Commissioner as member and one Central Vigilance Commissioner as Chairperson are lying vacant.</p>
06.09.2021	<p>RTI application dated 06.09.2021 was filed with the Department of Personnel & Training with respect to the vacancy for Vigilance Commissioner for which</p>

advertisement had been issued 15 months ago in July, 2020, as under:

Kindly provide the following information with respect to the post of Vigilance Commissioner in the Central Vigilance Commission which fell vacant in October 2020-

1. Copy of all advertisements/circulars inviting applications for the post of Vigilance Commissioner which fell vacant in October 2020.

2. Number of applications received by the government in pursuance of the advertisement.

3. Names and particulars of persons who have applied in pursuance of the advertisement.

4. If any search committee has been constituted, please provide the following information related to the said committee-

a. Order regarding constitution of the committee

b. Names of members of the committee

c. Date of all meetings of the committee

d. Agenda of all meetings of the committee

e. Copy of minutes/discussions/proceedings/verbam recordings etc. of the proceedings of all the meetings

f. Name and designation of persons attending the meeting

g. Criteria adopted by the committee for shortlisting the candidates

5. Copies of all documents, records, file notes, correspondence etc. related to the process adopted by the

	<p><i>government to short-list the applications received for consideration for the post.</i></p> <p><i>6. Please provide the following information about all the meetings held of the committee constituted under section 4(1) of the Central Vigilance Commission Act to make recommendations for the post of Vigilance Commissioner -</i></p> <p><i>a. Date of meetings</i></p> <p><i>b. Agenda of meetings</i></p> <p><i>c. Copy of minutes/discussions/proceedings/verbam recordings etc. of the proceedings of all meetings</i></p> <p><i>d. Name and designation of persons attending the meetings</i></p> <p><i>7. Please provide information on the current status of the process of appointment of the Vigilance Commissioner.</i></p> <p>Similar RTI application of the same date was filed with respect to the vacancy for Central Vigilance Commissioner as well.</p>
24.09.2021	<p>In response to the RTI applications dated 06.09.2021, DoPT refused to give any information to the applicant (except providing a copy of the advertisement that was issued) on the ground that the selection process which had commenced <u>more than 15 months ago</u> was still underway.</p>
Oct, 2021	<p>Hence, the present petition</p>

PUBLIC INTEREST LITIGATION
IN THE HON'BLE SUPREME COURT OF INDIA
WRIT PETITION (CIVIL) NO. _____ OF 2021
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

COMMON CAUSE

....PETITIONER

VERSUS

UNION OF INDIA

....RESPONDENT

MEMO OF PARTIES

COMMON CAUSE

THROUGH IT'S DIRECTOR

MR. VIPUL MUDGAL

5, INSTITUTIONAL AREA

NELSON MANDELA ROAD

VASANT KUNJ- 110070

... PETITIONER

VERSUS

UNION OF INDIA

THROUGH IT'S SECRETARY,

DEPARTMENT OF PERSONNEL & TRAINING,

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES, &
PENSIONS,

NORTH BLOCK, NEW DELHI-110001

...RESPONDENT

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA SEEKING A WRIT OF
MANDAMUS OR ANY OTHER APPROPRIATE WRIT,
ORDER, OR DIRECTION TO UNION OF INDIA TO
FILL VACANCIES FOR THE POST OF VIGILANCE
COMMISSIONER AND CENTRAL VIGILANCE
COMMISSIONER ADVERTISED MORE THAN 15
MONTHS (17.07.2020) AND 5 MONTHS (04.05.2021)
AGO RESPECTIVELY AND TO MAKE THE
SELECTION IN A “*FAIR AND TRANSPARENT
MANNER*” AS DIRECTED BY THIS HON’BLE COURT
IN *CENTRE FOR PIL V. UNION OF INDIA, (2011) 4 SCC
1***

TO,

THE HON’BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF THE HON’BLE SUPREME COURT OF INDIA

The Humble Petition

Of the Petitioner’s above named

MOST RESPECTFULLY SHOWETH:

1. That the present public interest litigation has been filed under Article 32 of the Constitution of India seeking timely and transparent filling of long pending vacancies in the Central Vigilance Commission so as to ensure that the Commission can effectively discharge its duties as an ‘integrity institution’.

1A. ABOUT THE 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 espousing the common problems of 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 fighting for an accountable, transparent and corruption-free system. Mr. Vipul Mudgal, Director of Common Cause, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama. The average annual income of the Petitioner Society for the last three financial years is approximately Rs. 1.86 crores only. PAN number of the Petitioner society is AAATC0310K. The Society does not have a UID number.

FACTS

2. **1964:** CVC as an integrity institution was set up by the Government of India in 1964 vide government resolution pursuant to the recommendations of the Santhanam Committee. However, it was not a statutory body at that time. According to the recommendations of the Santhanam Committee, the CVC, in its functions, was supposed to be independent of the executive. The sole purpose behind setting up of the CVC was to improve the vigilance administration of the country.
3. **1997:** In September 1997, the Government of India established the Independent Review Committee to monitor the functioning of the CVC and to examine the working of CBI and the

Enforcement Directorate. The Independent Review Committee vide its report of December 1997 suggested that the CVC be given a statutory status. It also recommended that the selection of the Central Vigilance Commissioner shall be made by a High-Powered Committee comprising of the Prime Minister, the Home Minister and the Leader of the Opposition in the Lok Sabha. It also recommended that the appointment shall be made by the President of India on the specific recommendations made by the HPC. That, the CVC shall be responsible for the efficient functioning of CBI; CBI shall report to the CVC about cases taken up for investigations; the appointment of CBI Director shall be by a committee headed by the Central Vigilance Commissioner; the Central Vigilance Commissioner shall have a minimum fixed tenure and that a committee headed by the Central Vigilance Commissioner shall prepare a panel for appointment of the Director of Enforcement.

4. **1997:** On 18-12-1997, the judgment in *Vineet Narain v. Union of India (1998) 1 SCC 226* came to be delivered. Exercising authority under Article 32 read with Article 142, this Court in order to implement an important constitutional principle of the rule of law ordered that the CVC shall be given a statutory status as recommended by the Independent Review Committee. All the above recommendations of the Independent Review Committee were ordered to be given a statutory status. The judgment in Vineet Narain case was followed by the 1999 Ordinance under which the CVC became a multi-member Commission headed by the Central Vigilance Commissioner. The 1999 Ordinance conferred statutory status on the CVC.

The said 1999 Ordinance was ultimately replaced by the enactment of the 2003 Act.

5. **2003:** The Central Vigilance Commission Act, 2003, was enacted. Section 3 of the act provides for the constitution of the Commission and Clause 2 thereof provides that the Commission shall consist of a Central Vigilance Commissioner as Chairperson and not more than two Vigilance Commissioners as Members. By virtue of Section 4 of the act, all appointments to the Commission are to be made by the President on the recommendation of a committee consisting of the Prime Minister, Minister of Home Affairs, & Leader of Opposition in the House of the People. Section 9 of the Act of 2003, makes it clear that the Commission is expected to function as a multi-member body that while performing its duties is to take decisions in a ‘unanimous’ manner in so far as possible and if not then by ‘majority’

For reference, Sections 3, 4, & 9 of the Act of 2003 are reproduced as under:

3. Constitution of Central Vigilance Commission.—(1)
There shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act and the Central Vigilance Commission constituted under sub-section (1) of Section 3 of the Central Vigilance Commission Ordinance, 1999 (Ord. 4 of 1999) which ceased to operate, and continued under the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended vide Resolution

of even number, dated the 13th August, 2002 shall be deemed to be the Commission constituted under this Act.

(2) The Commission shall consist of—

(a) a Central Vigilance Commissioner — Chairperson;

(b) not more than two Vigilance Commissioners — Members.

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; or

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b).

(4) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(5) The Central Vigilance Commissioner, the other Vigilance Commissioners and the Secretary to the Commission appointed under the Central Vigilance Commission Ordinance, 1999 (Ord.. 4 of 1999) or the Resolution of the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended vide Resolution of even number, dated the 13th August, 2002 shall be deemed to have been appointed under this Act on the same terms and conditions including the term of office subject to which they were so appointed under the said Ordinance or the Resolution, as the case may be.

Explanation.—For the purposes of this sub-section, the expression “term of office” shall be construed as the

term of office with effect from the date the Central Vigilance Commissioner or any Vigilance Commissioner has entered upon his office and continued as such under this Act.

(6) The headquarters of the Commission shall be at New Delhi.

4. Appointment of Central Vigilance Commissioner and Vigilance Commissioners.—*(1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:*

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Minister of Home Affairs — Member;

(c) the Leader of the Opposition in the House of the People — Member.

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.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

9. Proceedings of Commission.—*(1) The proceedings of the Commission shall be conducted at its headquarters.*

*(2) The Commission may, by **unanimous decision**, regulate the procedure for transaction of its business as also allocation of its business amongst the Central Vigilance Commissioner and other Vigilance Commissioners.*

*(3) Save as provided in sub-section (2), all business of the Commission shall, as far as possible, be transacted **unanimously**.*

*(4) Subject to the provisions of sub-section (3), if the Central Vigilance Commissioner and other Vigilance Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the **majority**.*

(5) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the seniormost Vigilance Commissioner present at the meeting, shall preside at the meeting.

(6) No act or proceeding of the Commission shall be invalid merely by reason of— (a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

A copy of the Central Vigilance Commission Act, 2003, is annexed hereto as **Annexure P1 at Pages ____ to ____**

6. **2011:** In the case of *Centre for PIL v. Union of India, (2011) 4 SCC 1*, while striking down the appointment of Sh. P.J. Thomas as the Central Vigilance Commissioner, this Hon'ble Court noted that under Section 4(1) of the act of 2003, all appointments to the Commission were to be made by the President on the recommendation of a committee consisting of the Prime Minister, Minister of Home Affairs, & Leader of Opposition in the House of the People and was pleased to issue directions as under to ensure transparency and integrity in the process of appointments:

at page 35

88. No reason has been given as to why in the present case the zone of consideration stood restricted only to the civil service. We therefore direct that:

*(i) In our judgment we have held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the members of the High-Powered Committee. As in the present case, **if one member of the***

Committee dissents, that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent. This will bring about fairness in action. Since we have held that legality of the choice or selection is open to judicial review, we are of the view that if the above methodology is followed, transparency would emerge which would also maintain the integrity of the decision-making process.

(ii) In future the zone of consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants.

(iii) All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity.

(iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.

(v) The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the Ministry concerned.

(vi) The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the officer/person concerned, whether favourable or adverse. Nothing relevant or material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remarks, are specifically brought to the notice of the Selection Committee.

(vii) The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers.

A copy of the judgement delivered in *Centre for PIL v. Union of India*, (2011) 4 SCC 1 is annexed hereto as **Annexure P2** at
Pages __ to __

7. **17.07.2020:** Anticipating vacancy that was due to arise in October of 2020, vide advertisement dated 17.07.2020, the Department of Personnel & Training (hereinafter, 'DoPT'), had invited applications for filling the post of one Vigilance Commissioner with the last date of application being 17.08.2020. However, no appointments have been made pursuant thereto as of date.

A copy of advertisement dated 17.07.2020 inviting applications for the post of Vigilance Commissioner is annexed hereto as **Annexure P3 at Pages __ to __**

8. **04.05.2021:** Anticipating vacancy that was due to arise in June of 2021, vide advertisement dated 04.05.2021, DoPT invited applications for filling the post of the **Central Vigilance Commissioner** with the last date of application being 07.06.2021. However, no appointment has been made pursuant to said advertisement as of date either.

A copy of the advertisement dated 04.05.2021 inviting applications for the post of Central Vigilance Commissioner is annexed hereto as **Annexure P4 at Pages __ to __**

9. **24.06.2021:** Vide notification dated 24.06.2021, the lone remaining Vigilance Commissioner, Sh. Suresh N. Patel, has been authorized "*to act as the Central Vigilance Commissioner...until the appointment of the Central Vigilance Commissioner.*" The post of one Vigilance Commissioner as member and one Central Vigilance Commissioner as Chairperson are lying vacant.

A copy of notification dated 24.06.2021 authorizing the lone Vigilance Commissioner, Sh. Suresh N. Patel, "*to act as the*

Central Vigilance Commissioner...until the appointment of the Central Vigilance Commissioner” is annexed hereto as Annexure P5 at Pages __ to __

10. **06.09.2021:** RTI application dated 06.09.2021 was filed with the Department of Personnel & Training with respect to the vacancy for Vigilance Commissioner for which advertisement had been issued 15 months ago in July, 2020, as under:

Kindly provide the following information with respect to the post of Vigilance Commissioner in the Central Vigilance Commission which fell vacant in October 2020-

1. Copy of all advertisements/circulars inviting applications for the post of Vigilance Commissioner which fell vacant in October 2020.

2. Number of applications received by the government in pursuance of the advertisement.

3. Names and particulars of persons who have applied in pursuance of the advertisement.

4. If any search committee has been constituted, please provide the following information related to the said committee-

a. Order regarding constitution of the committee

b. Names of members of the committee

c. Date of all meetings of the committee

d. Agenda of all meetings of the committee

e. Copy of minutes/discussions/proceedings/verbam recordings etc. of the proceedings of all the meetings

f. Name and designation of persons attending the meeting

g. Criteria adopted by the committee for shortlisting the candidates

5. Copies of all documents, records, file notings, correspondence etc. related to the process adopted by the government to short-list the applications received for consideration for the post.

6. Please provide the following information about all the meetings held of the committee constituted under section 4(1) of the Central Vigilance Commission Act to make recommendations for the post of Vigilance Commissioner

-

a. Date of meetings

b. Agenda of meetings

c. Copy of minutes/discussions/proceedings/verbatim recordings etc. of the proceedings of all meetings

d. Name and designation of persons attending the meetings

7. Please provide information on the current status of the process of appointment of the Vigilance Commissioner.

Similar RTI application of the same date was filed with respect to the vacancy for Central Vigilance Commissioner as well. A copy of RTI application dated 06.09.2021 filed with the Department of Personnel & Training with respect to the vacancy for Vigilance Commissioner for which advertisement had been issued 15 months ago (17.07.2020) is annexed hereto as **Annexure P6 at Pages ___ to ___**. A copy of RTI application dated 06.09.2021 filed with the Department of Personnel & Training with respect to the vacancy for Central Vigilance Commissioner for which advertisement was issued over 5 months ago (04.05.2021) is annexed hereto as **Annexure P7 at Pages ___ to ___**

11. **24.09.2021:** In response to the aforementioned RTI applications dated 06.09.2021, DoPT refused to give any information to the applicant (except providing a copy of the advertisement that was issued) on the ground that the selection processes that had commenced more than 15 months ago were still underway. A copy of response received from DoPT to the

RTI applications dated 06.09.2021 are annexed hereto as **Annexure P8 at Pages __ to __**

12. A representation dated 04.09.2021 was sent to the Hon'ble Prime Minister who is the Chairperson of the Selection Committee under Section 4(1) of the act of 2003 on whose recommendation appointments are to be made to the Commission. A copy of representation dated 04.09.2021 sent to Hon'ble Prime Minister who is the Chairperson of the Selection Committee under Section 4(1) of the act of 2003 is annexed hereto as **Annexure P9 at Pages __ to __**

13. That in such circumstances petitioners herein have been constrained to approach this Hon'ble Court as they have no other efficacious remedy available.

14. That no other petition has been filed by petitioner herein before this or any other court seeking the same reliefs.

GROUND

In light of the facts and circumstances aforementioned the petitioners are preferring the present petition on the following grounds without prejudice to each other:

A. BECAUSE, vacancies for the post of Vigilance Commissioner and Central Vigilance Commissioner were advertised more than 15 months (17.07.2020) and 5 months (04.05.2021) ago respectively and no appointments have been made pursuant thereto with the effect that against a sanctioned strength of a three member Commission (One Chairperson and two

members), it is presently functioning with only one Vigilance Commissioner who has been authorized “*to act as the Central Vigilance Commissioner...until the appointment of the Central Vigilance Commissioner.*”

B. BECAUSE, the Commission was made a multi-member body and given a statutory status pursuant to the judgement of this Hon’ble Court in *Vineet Narain v. Union of India (1998) 1 SCC 226* specifically to ensure it’s effective functioning and so that it could act as a robust ‘integrity institute’. The scheme and object of the act of 2003, specifically envision that the commission is to function as a multi-member body and to take decisions unanimously so far as possible. Non appointment of the Vigilance Commissioner and Central Vigilance Commissioner for extended periods therefore stultifies the statutorily sanctioned working of the commission. Section 9 of the act of 2003 in this regard is relevant and provides:

9. Proceedings of Commission.—(1) The proceedings of the Commission shall be conducted at its headquarters.

*(2) The Commission may, by **unanimous decision**, regulate the procedure for transaction of its business as also allocation of its business amongst the Central Vigilance Commissioner and other Vigilance Commissioners.*

*(3) Save as provided in sub-section (2), **all business of the Commission shall, as far as possible, be transacted unanimously.***

*(4) Subject to the provisions of sub-section (3), **if the Central Vigilance Commissioner and other Vigilance Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.***

(5) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the seniormost Vigilance Commissioner present at the meeting, shall preside at the meeting.

(6) *No act or proceeding of the Commission shall be invalid merely by reason of—*

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

C. BECAUSE, this Hon'ble Court has reiterated the status and role of the Central Vigilance Commission as a premier 'integrity institution' in ***Centre for PIL v. Union of India, (2011) 4 SCC 1*** and has been pleased to issue directions as under to ensure transparency and integrity in the process of appointments which have been flouted by the respondents by not making timely appointments and not putting any details of the selection process which commenced more than 15 months ago in the public domain:

at page 35

88. No reason has been given as to why in the present case the zone of consideration stood restricted only to the civil service. We therefore direct that:

*(i) In our judgment we have held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the members of the High-Powered Committee. As in the present case, **if one member of the Committee dissents, that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent. This will bring about fairness in action. Since we have held that legality of the choice or selection is open to judicial review, we are of the view that if the above methodology is followed, transparency would emerge which would also maintain the integrity of the decision-making process.***

(ii) In future the zone of consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants.

(iii) All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity.

(iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.

(v) The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the Ministry concerned.

(vi) The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the officer/person concerned, whether favourable or adverse. Nothing relevant or material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remarks, are specifically brought to the notice of the Selection Committee.

(vii) The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers.

D. BECAUSE, with respect to transparency in the appointment of Information Commissioners under the Right to Information Act, 2005, this Hon'ble Court in **Anjali Bhardwaj & Ors vs. Union of India & Ors, (2019) 18 SCC 246**, directed the Central and State governments to place records related to the ongoing process of appointments on their website. Following this, the concerned department uploaded on its website all the files related to appointments made to the Central Information Commission, which contained among other documents- the names of the members of the search and selection committees,

the agenda and minutes of search and selection committee meetings, the advertisement issued for the vacancies, the list of applicants, official notification of appointments, file notings and correspondence related to appointments. In its final judgment dated February 15, 2019, the SC noted:

“Insofar as transparency in appointment of Information Commissioners is concerned, pursuant to the directions given by this Court, the Central Government is now placing all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website. All States shall also follow this system.”

Further, the Court directed that the short-listing criteria adopted by the Search Committee should be made public-

“Likewise, it would also be appropriate for the Search Committee to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria.”

PRAYER

In these circumstances, it is therefore most respectfully prayed that your Lordships may graciously be pleased to:

- I. Issue writ of mandamus or any other appropriate writ, order, or direction to Respondents to take urgent steps to appoint Vigilance Commissioner and Central Vigilance Commissioner in pursuance of the advertisements that have been issued on 20.07.2020 (15 months ago) and 04.05.2021 (5 months ago) respectively;
- II. Issue writ of Mandamus or any other appropriate writ, order, or direction to Respondents to forthwith place all

details and documents regarding the selection process/appointments to be made to Central Vigilance Commission in the public domain in like manner as it has been directed to do with respect to selection/appointments made to Central Information Commission *vide* judgement of this Hon'ble Court in **Anjali Bhardwaj & Ors v. Union of India & Ors, (2019) 18 SCC 246;**

- III. Pass such other orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present petition

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

NEW DELHI

____.10.2021

DRAWN BY:

Rahul Gupta (Advocate)

FILED BY:

PRASHANT BHUSHAN
(ADVOCATE ON RECORD FOR PETITIONER)

