

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) No. 984 Of 2016
PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

1. COMMON CAUSE
(A REGISTERED SOCIETY)
THROUGH ITS PRESIDENT
MR. KAMAL KANT JASWAL
5, INSTITUTIONAL AREA
NELSON MANDELA ROAD
VASANT KUNJ, NEW DELHI-110070
EMAIL: COMMONCAUSEINDIA@GMAIL.COM
PH: 9810117071

...THE PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH ITS CABINET SECRETARY
GOVERNMENT OF INDIA
CABINET SECRETARIAT
NEW DELHI-110001
No. 1

... RESPONDENT

2. MR. RAKESH ASTHANA
INTERIM/ACTING DIRECTOR
CENTRAL BUREAU OF INVESTIGATION
PLOT 5B, 6TH FLOOR, CGO COMPLEX
LODHI ROAD, NEW DELHI-110003

... RESPONDENT No. 2

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING AN APPROPRIATE WRIT FOR THE APPOINTMENT OF CBI DIRECTOR IN ACCORDANCE WITH LAW AND FOR THE ENFORCEMENT OF THE RIGHTS OF THE CITIZENS UNDER ARTICLES 14 AND 21 OF THE CONSTITUTION OF INDIA,

To,

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

The Humble Petition of the
Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

- 1) That the petitioner is filing the instant writ petition in public interest seeking an appropriate writ for the appointment of the Director of the Central Bureau of Investigation (CBI) in accordance with the law and in accordance with the landmark judgment of this Hon'ble Court in *Vineet Narain* case (1998) 1 SCC 226. A proper appointment as per the statutory law is necessary for upholding the rule of law and for enforcement of the rights of the citizens under Articles 14 and 21 of the Constitution of India. The Government has failed to appoint a Director of the CBI as per Section 4A of the Delhi Special Police Establishment Act, 1946 on the expiry of the term of the last incumbent on 02.12.2016. The present petition also seeks the quashing of the appointment of Respondent No. 2 as the Interim/Acting Director of the CBI.

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 ventilating the 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 fighting for an accountable, transparent and corruption-free system. Mr. Kamal Kant Jaswal, President 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. 1.03 crore. (PAN number: AAXPM0305P). The Society does not have a UID number.

The petitioner has not made any representations to the respondent in this regard because of the extreme urgency of the matter in issue.

The petitioner has no personal interest, or any private or oblique motive, in filing the instant petition. There is no civil, criminal, revenue or any other litigation involving the petitioner, which has or could have a legal nexus with the issues involved in this PIL.

THE CASE IN BRIEF

2) The Central Bureau of Investigation (CBI) established under the Delhi Special Police Establishment Act (DSPE), 1946 is the premier investigation agency in the country. It investigates the corruption related offences connected with the Central Government, and under certain circumstances, also cases connected with State Government entities. This Hon'ble Court has time and again entrusted important cases of corruption and violation of human rights to the CBI for investigation. The CBI has, sometimes under the monitoring of this Hon'ble Court, investigated important cases involving powerful and influential individuals.

3) The Director of the CBI is the final authority in the organization. He supervises all the work in the CBI and is responsible for constitution of investigating teams for probing cases. Hence, this Hon'ble Court and later on Parliament have made determined efforts to enhance the functional autonomy of the CBI Director and limit the extent of executive discretion in the matter of appointment of this key functionary.

4) This Hon'ble Court in the landmark judgment in *Vineet Narain* case had directed that the Director CBI would have full freedom for allocation

of work in the organization, including the constitution of investigation teams. This Hon'ble Court had also directed that there should be a selection committee to identify a panel of names for the appointment of Director CBI, and thereafter the final selection to be made by the Appointments Committee of Cabinet (ACC). This Hon'ble Court also directed that the CBI Director would have a fixed tenure of two years. This was done to ensure that adhocism in the appointment and functioning of the CBI Director is eliminated and his independence is maintained.

5) The Delhi Special Police Establishment (DSPE) Act, 1946 was amended in 2003 *vide* the Central Vigilance Commission (CVC) Act, 2003 to state that the Director CBI shall be appointed by the Central Government on the recommendations of the Central Vigilance Commissioner, the Vigilance Commissioners and two Secretaries to the Government of India.

6) As the above mechanism was not found sufficient to insulate the CBI Director, Section 4A of the DSPE Act, 1946 was further amended *vide* the Lokpal and Lokayuktas Act, 2013 (the Lokpal Act) to provide that the CBI Director shall be appointed by the Central Government on the recommendations of a committee comprising a) the Prime Minister (Chairperson), b) the Leader of Opposition (Member), and c) the Chief Justice of India or any Judge of Supreme Court nominated by him (Member). The DSPE Act was further amended on 29.11.2014 to include the Leader of the single largest Opposition party in the said committee when there is no recognized Leader of Opposition.

7) Thus, the appointment of the CBI Director has to be made on the recommendation of the Prime Minister, leader of the single largest

Opposition party and the Chief Justice of India (or any Judge of Supreme Court nominated by CJI).

8) Shri Anil Sinha's term as the CBI Director came to an end on 02.12.2016. Thus, it was incumbent on the Central Government to call for a meeting of the selection committee for the appointment of his successor as per the law. This meeting ought to have been called well in advance so as to ensure a smooth transition.

9) However, the Government took a series of steps in a completely *mala fide*, arbitrary and illegal manner to ensure that Mr. Rakesh Asthana (Respondent No. 2 herein) was given the charge of CBI Director. Significantly, Respondent No. 2 had earlier held several important positions in Gujarat Police, e.g. Commissioner of Police, Surat City; Commissioner of Police, Vadodara City; Joint Commissioner of Police, Ahmedabad City; and IGP, Vadodara Range. He was part of SIT set up by the Gujarat Government to probe the Godhra train burning case.

10) The Central Government did not convene a meeting of the selection committee comprising the Prime Minister, the Leader of the largest Opposition party and the Chief Justice of India, even though it was fully aware that Mr. Anil Sinha was going to demit the office of CBI Director on 02.12.2016. This deliberate dereliction was in complete violation of the DSPE Act, 1946, as amended by the Lokpal Act, 2013.

11) The Government then prematurely curtailed the tenure of and transferred Mr. R K Dutta, Special Director, CBI, to the Ministry of Home Affairs. This was done on 30.11.2016, i.e. just two days before the incumbent CBI Director was slated to demit office. A post of Special Secretary was specially created in the Ministry to accommodate Mr.

Dutta by upgrading the post of a Joint Secretary, which is two levels below the Special Secretary, since the Government clearly wanted him out of the CBI. Mr. Dutta was second in command to the CBI Director and would have been a natural choice in case an interim or acting CBI Director was to be appointed. A copy of the appointment order of Mr. Dutta dated 30.11.2016 is annexed as **Anneure Px** (Pg _____).

12) After Mr. Dutta was moved out, the Government gave Respondent No. 2 an additional charge as the Interim/Acting Director of the CBI. Hence, for the first time in a decade, the CBI does not have a full time Director appointed as per the prescribed statutory procedure. A copy of the press release dated 02.12.2016 regarding the appointment of Respondent No. 2 as the Interim/Acting CBI Director is annexed as **Annexure Px** (Pg _____).

13) The above shows that the Government wanted to appoint its own choice as Interim CBI Director, even if it meant bypassing the statutory law, the norms of propriety, and the directions contained in this Hon'ble Court's judgment in Vineet Narain's case. The judgment in Vineet Narain's case had clearly held that the tenure of CBI Director would be two years. This was to ensure that there is no ad-hocism in the appointment and functioning of the CBI Director.

14) Recently, on a PIL filed against the non-appointment of full time Director at Enforcement Directorate (ED) that investigates money-laundering cases, this Hon'ble Court directed the Government to appoint a full-time Director within a time-frame. A copy of order dated 30.09.2016 passed by this Hon'ble Court in WPC 757 of 2016 is annexed as **Annexure Px** (Pg _____).

15) Therefore, the petitioner submits that the Government must be directed to comply with the mandate of the law and call for the meeting of the selection committee as per the DSPE Act, 1946 as amended by Lokpal Act, 2013. The *ad hoc* appointment of Respondent No. 2 as the Interim/Acting CBI Director deserves to be set aside. The manner in which the statutory requirement of involving the Chief Justice of India and the Leader of the largest Opposition party in the selection process was ignored and a handpicked person was given the important charge of Director CBI, ostensibly as an interim measure, deserves to be deprecated in the strongest terms.

16) The Petitioner has not filed any other petition, suit or application in any manner regarding the matter of dispute in this Hon'ble Court, or any High Court or any other Court throughout the territory of India. The Petitioner has no other better remedy available.

GROUND

A. That the Central Bureau of Investigation (CBI) established under the Delhi Special Police Establishment Act (DSPE), 1946 is the premier investigation agency in the country. It investigates the corruption related offences connected with the Central Government, and under certain circumstances, also cases connected with State Government entities. This Hon'ble Court has on many occasions entrusted important cases of corruption and violation of human rights to the CBI for investigation. The CBI has investigated many sensitive cases involving powerful and influential individuals.

B. That the Director of the CBI is the final authority in the organization. He supervises all the work in the CBI and is responsible for constitution of investigating teams for probing corruption cases. Hence, this Hon'ble Court and later on Parliament have made determined efforts to enhance the functional autonomy of the CBI Director and limit the extent of executive discretion in the matter of appointment of this key functionary.

C. That this Hon'ble Court in the landmark judgment in *Vineet Narain* case had directed that Director CBI would have full freedom for allocation of work in the CBI including constitution of investigation teams. This Hon'ble Court had also directed that there should be a selection committee to identify a panel of names for the appointment of Director CBI, and thereafter the final selection to be made by the Appointments Committee of Cabinet (ACC). This Hon'ble Court also directed that the CBI Director would have a fixed tenure of two years. This was done to ensure that adhocism in the appointment and functioning of CBI Director is eliminated and his independence is maintained.

D. That the Delhi Special Police Establishment (DSPE) Act, 1946 was amended in 2003 vide the Central Vigilance Commission (CVC) Act, 2003 to state that the Director CBI shall be appointed by the Central Government on the recommendations of the Central Vigilance Commissioner, the Vigilance Commissioners and two Secretaries to the Government of India.

E. That as the above mechanism was not found sufficient to insulate the CBI Director, Section 4A of the DSPE Act, 1946 was further amended *vide* the Lokpal and Lokayuktas Act, 2013 (the Lokpal Act) to provide that the CBI Director shall be appointed by the Central Government on the recommendations of a committee comprising a) the Prime Minister (Chairperson), b) the Leader of Opposition (Member), and c) the Chief Justice of India or any Judge of Supreme Court nominated by him (Member). The DSPE Act was further amended on 29.11.2014 to include the Leader of the single largest Opposition party in the said committee when there is no recognized Leader of Opposition.

F. That the Government took a series of steps in a completely *mala fide*, arbitrary and illegal manner to ensure that Respondent No. 2 was given the charge of CBI Director. Significantly, Respondent No. 2 had earlier held several important positions in Gujarat Police, such as Commissioner of Police, Surat City; Commissioner of Police, Vadodara City; Joint Commissioner of Police, Ahmedabad City; and IGP, Vadodara Range. He was part of SIT set up by the Gujarat Government to probe the Godhra train burning case.

G. The Central Government did not convene a meeting of the selection committee comprising the Prime Minister, the Leader of the largest Opposition party and the Chief Justice of India, even though it was fully aware that Mr. Anil Sinha was going to demit the office of CBI Director on 02.12.2016. This deliberate dereliction

was in complete violation of the DSPE Act, 1946, as amended by the Lokpal Act, 2013.

H. That the Government prematurely transferred Mr. Dutta to the Ministry of Home Affairs. This was done on 30.11.2016, i.e. just two days before incumbent CBI Director was slated to demit office. A special post was created in the Ministry to accommodate Mr. Dutta, since the Government clearly wanted him out of CBI. He was second in command to the CBI Director and would have been a natural choice in case an interim or acting CBI Director was to be appointed.

I. After Mr. Dutta was moved out, the Government gave Respondent No. 2 an additional charge as the Interim/Acting Director of the CBI. Hence for the first time in a decade, the CBI does not have a full time Director appointed as per statutory procedure.

J. That the aforesaid sequence shows that the Government wanted to appoint its own choice as CBI Director in the interim, even if it meant bypassing the statutory law, norms of propriety, and the directions contained in this Hon'ble Court's judgment in Vineet Narain's case. The judgment in Vineet Narain's case had clearly mandated that there should be no ad-hocism in the appointment and functioning of the CBI Director.

K. That recently, on a PIL filed against the non-appointment of a full time Director at Enforcement Directorate (ED) charged with the

investigation of money-laundering cases, this Hon'ble Court has directed the Government to appoint a full-time Director within a definite timeframe.

L. That the rampant corruption in high places in the country and the manifest unwillingness of the government to institute a transparent and accountable system to ensure that the culprits are punished seriously impairs the right of the people to live in a corruption and crime free society. This violates Articles 14 and 21 of the Constitution. The right to life guaranteed to the people also includes in its fold the right to live in a society that is free from crime and corruption and upholds the rule of law.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may in public interest be pleased to: -

- a. Issue an appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013.
- b. Issue an appropriate writ quashing the appointment of Respondent No. 2 as the Interim/Acting Director of the CBI.

- c. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

PETITIONER
THROUGH

PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER

DRAWN BY: PRANAV SACHDEVA

DRAWN & FILED ON: DECEMBER 2016

NEW DELHI