

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

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

IN THE MATTER OF:

1. COMMON CAUSE (A REGISTERED SOCIETY)
THROUGH ITS DIRECTOR
5, INSTITUTIONAL AREA
NELSON MANDELA ROAD
VASANT KUNJ, NEW DELHI-110070
EMAIL: COMMONCAUSEINDIA@GMAIL.COM
PH: 9818399055

...PETITIONER NO. 1

2. ADMIRAL L RAMDAS
(FORMER CHIEF OF NAVAL STAFF)
BHAIMALA VILLAGE, P.O. KAMARLE
ALIBAG-402201 (MAHARASHTRA)
EMAIL: LRAMDAS@GMAIL.COM

...PETITIONER NO. 2

3. DR. E A S SARMA
(FORMER SECRETARY, GOVT OF INDIA)
R/O 14-40-4/1, GOKHALE ROAD
MAHARANIPETA
VISHAKHAPATNAM-530002
EMAIL: EASSARMA@GMAIL.COM
PH: 09866021646

...PETITIONER NO. 3

4. MR. RAMASWAMY R IYER
(FORMER SECRETARY, GOVT OF INDIA)
R/O A-10, SARITA VIHAR
NEW DELHI-110076
EMAIL: RAMASWAMY.IYER@GMAIL.COM
PH: 9871075038

... PETITIONER NO. 4

5. DR. B P MATHUR
(FORMER DEPUTY CAG)
1621, BHARAMAPUTRA APARTMENTS
SECTOR-29, NOIDA-201303
EMAIL: DRBPMATHUR@GMAIL.COM
PH: 9810271222

...PETITIONER NO. 5

6. SHRI S KRISHNAN
(FORMER MEMBER, DEPT OF POSTS)
R/O E-212, ANANDLOK CGHS
MAYUR VIHAR PHASE-I
NEW DELHI-110091
EMAIL: VASUN_KRISH@HOTMAIL.COM
PH: 09811334738

...PETITIONER NO. 6

VERSUS

1. UNION OF INDIA
THROUGH ITS CABINET SECRETARY
CABINET SECRETARIAT
NEW DELHI-110001

... RESPONDENT NO. 1

2. MR. K V CHAUDHARY
CENTRAL VIGILANCE COMMISSIONER
CENTRAL VIGILANCE COMMISSION
SATARKATA BHAVAN, GPO COMPLEX
INA, NEW DELHI

...RESPONDENT NO. 2

3. MR. T M BHASIN
VIGILANCE COMMISSIONER

CENTRAL VIGILANCE COMMISSION
SATARKATA BHAVAN, GPO COMPLEX
INA, NEW DELHI

...RESPONDENT NO. 3

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING AN APPROPRIATE WRIT AGAINST THE ILLEGAL AND ARBITRARY APPOINTMENT OF THE CENTRAL VIGILANCE COMMISSIONER AND THE VIGILANCE COMMISSIONER, WHICH VIOLATES 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 petitioners are filing the instant writ petition in public interest seeking an appropriate writ against the arbitrary appointment of the India's new Central Vigilance Commissioner (hereinafter '**the CVC**') and the Vigilance Commissioner (hereinafter '**the VC**') as illegal and void. Respondent No. 1 has appointed Respondent No. 2 as India's new CVC on 06.06.2015 and Respondent No. 3 as the VC on 11.06.2015 for a period of 4 years. Respondent No. 2 and 3's appointments are illegal and liable to be declared void as they violate the principles of 'impeccable integrity' and 'institutional integrity' laid down in the landmark judgments of this Hon'ble Court in Vineet Narain case (1998) 1 SCC 226 and Centre for Public Interest Litigation (CPIL) case (2011) 4 SCC 1.

THE PETITIONERS

a) Petitioner No. 1, 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. Vipul Mudgal, Director of Common Cause is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama. His annual income is Rs 14.5 lakh (approx.) (PAN number: AAXPM0305P). Society does not have a UID number.

b) Petitioner No. 2 is Admiral (Retd.) L Ramdas. He is the former Chief of Naval Staff and a recipient of the Ramon Magsaysay award for his social work. His annual income is Rs 16 lakhs (approx.) (PAN number: ABXPL7264K). He does not have a UID number.

c) Petitioner No. 3 is Dr. E A S Sarma. He is a former Power Secretary to the Government of India, former Secretary in the Ministry of Finance, and former Principal Advisor (Energy) to the Planning Commission. He studied at Harvard University and holds a Doctoral degree from Indian Institute of Technology (Delhi). His annual income is Rs 11 lakhs (approx.) (PAN number: AABPE1384L). His UID number is 853422610935.

d) Petitioner No. 4 is Mr. Ramaswamy R Iyer. He is a distinguished former Secretary to the Government of India. A recipient of Padma Shri, Mr. Iyer is a honorary professor at Centre for Policy Research. His annual income is Rs 18 lakhs (PAN number: AAAP12364K). His UID number is 549572190826.

e) Petitioner No. 5 is Dr. B P Mathur. He is a former Deputy Comptroller & Auditor General of India. He is also former Director of National Institute of Financial Management. His annual income is Rs 11 lakhs (approx.) (PAN number: AAIPM3386P). His UID number is 280334940140.

f) Petitioner No. 6 is Mr. S Krishnan is a retired officer of Indian Audit & Account Service. He is formerly Member (Finance), Department of Posts, and Additional Secretary in the Ministry of Finance. His annual income is Rs 12 lakhs (PAN number: AAKPK3106B). His UID number is 840408776178.

THE RESPONDENTS

Respondent No. 1 is the Union of India through its Cabinet Secretary. Respondent No. 2 is Mr. K V Chaudhary who has been appointed as the CVC by the Union of India. Respondent No. 3 is Mr. T M Bhasin who has been appointed as the VC by the Union of India.

The petitioners have not made any representations to the authorities regarding the matter in issue since several eminent persons have already written to the authorities regarding the issue, and despite that the impugned appointments were made and not reviewed.

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

THE CASE IN BRIEF

2) Central Vigilance Commission (hereinafter '**the Commission**') is, in the absence of a Lokpal, India's top anti-corruption body. The Commission is considered the apex integrity and watchdog institution of the country. Apart from overseeing the vigilance administration, it has also been tasked with superintendence over the Central Bureau of Investigation (CBI) in corruption cases and is also the designated agency for protection of the whistleblowers & examination of their complaints. It acts as a watchdog over the Central Government and its instrumentalities.

BACKGROUND

3) This Hon'ble Court in the landmark judgment in Vineet Narain case had directed the following:

"The Central Vigilance Commission shall be given statutory status. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others **with impeccable integrity** to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately."
(emphasis supplied).

4) Pursuant to the said judgment of this Hon'ble Court, the Parliament had passed the Central Vigilance Commission Act, 2003 (hereinafter '**the 2003 Act**') giving statutory status to the Commission. It had incorporated the order of this Hon'ble Court that the Selection of the CVC be made by a Committee of the Prime Minister, Home Minister and Leader of Opposition. Section 4(1) of the 2003 Act reads as:

4. (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.

5) In the CPIL case (supra), this Hon'ble Court declared the recommendation of the selection committee to the President for appointment of the then CVC as non est in law. This was so held since this Hon'ble Court found that the appointment would dilute the integrity of the statutory institution of the Central Vigilance Commission. This Court held that the test is whether the individual would be able to perform his duties. The petitioners submit that the ratio of this judgment is squarely applicable in the present case. This Hon'ble Court in its detailed judgment held:

“If a duty is cast under the proviso to Section 4(1) on the HPC to recommend to the President the name of the selected candidate, the integrity of that decision making process is got to ensure that the powers are exercised for the purposes and in the manner envisaged by the said Act, otherwise such recommendation will have no existence in the eye of law.

The HPC must also take into consideration the question of institutional competency into account. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. Thus, the institutional integrity is the primary consideration which the HPC is required to consider while making recommendation under Section 4 for appointment of Central Vigilance Commissioner. In the present case, this vital aspect has not been taken into account by the HPC while recommending the name of Shri P.J. Thomas for appointment as Central Vigilance Commissioner.

We do not wish to discount personal integrity of the candidate. What we are emphasizing is that institutional integrity of an institution like CVC has got to be kept in mind while recommending the name of the candidate. Whether the incumbent would or would not be able to function? Whether the working of the Institution would suffer? If so, would it not be the duty of the HPC not to recommend the person.

In this connection the HPC has also to keep in mind the object and the policy behind enactment of the 2003 Act... These provisions indicate that the office of the Central Vigilance Commissioner is not only given independence and insulation from external influences, it also indicates that such protections are given in order to enable the Institution of CVC to work in a free and fair environment. The prescribed form of oath under Section 5(3) requires Central Vigilance Commissioner to uphold the sovereignty and integrity of the country and to perform his duties without fear or favour. All these provisions indicate that CVC is an integrity institution.

This is what we have repeatedly emphasized in our judgment – institution is more important than individual(s). For the above reasons, it is declared that the recommendation made by the HPC on 3rd September, 2010 is non-est in law.”

6) This Hon'ble Court in the above CPIL case judgment not only quashed the appointment of the CVC, but also passed important directions to be followed for its selection. This Court directed:

“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 the 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) ...

(vi) **The empanelling authority, while forwarding the names of 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.”**

(emphasis supplied)

7) It is important to note that for the appointment of Chief Vigilance Officers (CVOs) in various departments/ministries who work under the supervisory and administrative control of the Central Vigilance Commission, the Commission requires that they must have “unblemished record” of service. A copy of the relevant pages of the Commission’s report regarding the appointment of CVOs in various departments is annexed as **Annexure P1** (Pg _____). Therefore, the requirement of unblemished record is absolutely required in the case of CVC and VCs who supervise all the CVOs in the country.

8) In the above backdrop, a Writ Petition (WPC 683 of 2014) was filed by one Centre for Integrity, Governance & Training in Vigilance Administration before this Hon’ble Court seeking proper transparency and eligibility for the appointment of CVC and VCs. This Hon’ble Court vide order dated 04.08.2014 was pleased to issue notice on the said petition. This Hon’ble Court vide order dated 17.12.2014 in WPC 683 of 2014, directed the Union of India to proceed with the selection process but stayed the appointment of CVC and VCs without the leave of the Court.

9) On an application filed by the Union of India seeking lifting of the above stay, this Hon’ble Court in WPC 683 of 2014 passed the following order on 13.05.2015:

“By our order dated 17.12.2014, while recording the submissions made by Shri Mukul Rohtagi, learned Attorney General for India, we had stated that they can proceed with the selection process, but before any appointments are made, they should take the leave of the Court.

Learned Attorney General would request us to permit them to proceed further in the matter in accordance with Section 4(1) of the Central Vigilance Commission Act, 2003 (for short, “the Act”).

Keeping in view the urgency and importance of the appointments of the Central Vigilance Commissioner and the Vigilance Commissioner, which are kept vacant from the last few months, we permit them to proceed further in accordance with Section 4(1) of the Act.

After such appointments are made, the learned Attorney General would produce a copy of the order and the entire original record before this Court.

All the contentions of both the parties are left open. Call this matter after the ensuing summer vacation.”

A copy of this order dated 13.05.2015 is annexed as **Annexure P2** (Pg _____).

10) The above order was made after the Attorney General appearing for Central Government assured this Hon'ble Court that the Government would appoint the best person after following a credible and transparent selection process. This Hon'ble Court had also made it clear that the appointment would be subject to the satisfaction of this Hon'ble Court regarding the credibility of the appointment process.

APPOINTMENT OF RESPONDENT NO. 2

11) Respondent No. 2 has been appointed as the CVC on 06.06.2015 for a period of four years. Before his appointment as CVC, he was the Chairperson of CBDT and Advisor to the SIT on black money.

12) Even before he was appointed as the CVC, several important representations were made to the Prime Minister of India (who heads the selection panel as per Section 4 of the 2003 Act) and others including Home Minister, Finance Minister and the leader of largest part in Opposition. These representations were made because, apparently, the word had got out that Government had made up its mind to appoint Respondent No. 2 as the CVC. The said representations gave specific reasons as to why Respondent No. 2 is not eligible and suitable for heading this important integrity institution. However, despite that the Government went full steam ahead to appoint their favoured candidate.

13) Mr. Prashant Bhushan, counsel for the petitioners, wrote a letter to the Prime Minister (with copies to the Home Minister and Finance Minister) delivered on 20.05.2015 pointing out why Respondent No. 2 is not eligible and suitable for the position of the CVC. He gave specific reasons for this, which the Government could have easily verified. A copy of the said letter dated 20.05.2015 is annexed as **Annexure P3** (Pg _____).

14) Mr. Ram Jethmalani, senior advocate and Member of Parliament, on 26.05.2015 wrote to the Prime Minister requesting him not to select Respondent No. 2 as the CVC stating that he “by no means has a clean record”. A copy of the said letter dated 26.05.2015 is annexed as **Annexure P4** (Pg _____). He again wrote on 02.06.2015 stating that appointment of Respondent No. 2 would be “the greatest disaster that will fall on this unfortunate nation.” A copy of the said letter dated 02.06.2015 is annexed as **Annexure P5** (Pg _____). He wrote another strongly worded letter on 06.06.2015 categorically cautioning the Prime Minister not to appoint Respondent No. 2 as CVC because of specific reasons. A copy of the said letter dated 06.06.2015 is annexed as **Annexure P6** (Pg _____). Mr. Jethmalani had, vide letter dated 12.06.2015, also asked the leader of largest opposition party whether the letters sent by him to the Prime Minister were placed before the selection committee. A copy of the said letter dated 12.06.2015 is annexed as **Annexure P7** (Pg _____).

15) From these representations and from other available evidence, the following facts emerge which show that Respondent No. 2's appointment violates the principles of 'institutional integrity' and 'impeccable integrity' of the CVC as laid down by this Hon'ble Court in its landmark judgments.

16) It is public knowledge that the entry register kept at the official residence, i.e. 2 Janpath, of the last CBI Director Mr. Ranjit Sinha was leaked. It showed that he had been regularly meeting the accused in cases being investigated by the CBI. This Hon'ble Court vide order dated 20.11.2015 passed in Civil Appeal 10660 of 2010 directed him not to interfere in investigations and prosecutions being carried out by the CBI in the 2G Scam case and to recuse himself from the 2G Scam case. This Hon'ble Court also vide judgment dated 14.05.2015 in Writ Petition (Civil) 463 of 2012 stated that Mr. Sinha's meetings with accused in Coal Scam were "completely inappropriate" and his role in allegedly scuttling investigations in Coal Scam case needs to be investigated.

17) The original copy of the said entry register of Mr. Ranjit Sinha's residence is under the lock & key of this Hon'ble Court. That entry-register shows that Respondent No. 2 met Mr. Sinha multiple times at his residence. Respondent No. 2 visited Mr. Sinha on 29.12.2013 (from 7.10 pm to 7.25 pm) and 20.04.2014 (from 11.40 am to 11.48 am) as per that register. There might be more meetings between the two, which may not have come clearly in the pages of the register that came in possession of the counsel for the Petitioners. Petitioners seek leave of this Hon'ble Court to produce relevant pages of the said register at the time of hearing of this writ petition.

18) The meetings between Respondent No. 2 and Mr. Sinha were held when Respondent No. 2 was probing the dealings of & intercepted conversations of hawala dealer Mr. Moin Qureshi. Mr. Qureshi was known to Mr. Sinha and had allegedly met him close to 90 times at his residence as per the entry register.

19) These meetings also happened when CBI under Mr. Sinha was investigating the 'Stockguru Scam' where senior Income Tax officers were involved. CBI under Mr. Sinha was investigating the role of Respondent No. 2. A copy of a detailed news report on CBI investigation on this scam published in the Indian Express dated 15.04.2013 is annexed as **Annexure P8** (Pg _____). The said report states that investigations had revealed that senior income tax officers had taken bribes for showing favour to scamsters and had also misappropriated over Rs 40 crores. The income tax officers who were involved were working directly under Respondent No. 2 on this very case, and thus Respondent No. 2 was the subject matter of the investigation by CBI.

20) Ultimately, Income Tax Department in its appraisal report of Mr. Qureshi gave a clean chit to Mr. Sinha, and the CBI gave a clean chit to Respondent No. 2 in the 'Stockguru Scam'. A copy of news report dated 18.10.2014 recording the submission of the Attorney General before this Hon'ble Court that the Income Tax Department has not found anything adverse to Mr Sinha while investigating Mr. Moin Qureshi is annexed as **Annexure P9** (Pg _____). Thus both Respondent No. 2 and Mr. Sinha cleared the role of each other in the investigations being carried out by agencies under them.

21) One Mr. Anil Agarwal had made a complaint to the Finance Ministry on 10.06.2014 as to how the name of Respondent No. 2 was being shielded in the Stock Guru scam. He had pointed out that Respondent No. 2 had himself taken credit for taking action against Stock Guru before the scam involving Income Tax officers came to light. Thus, he cannot be allowed to distance himself from the scam when the entire thing happened under his watch. A copy of the said complaint dated 10.06.2014 is annexed as **Annexure P10** (Pg _____).

22) Respondent No. 2 also allegedly abused his position as Member (Investigation) CBDT to underassess the income of a company M/s Flora and Fauna Housing & Land Development Pvt Ltd, which is associated with infamous Mr. Ponty Chadha, by an amount of Rs 234 crores. He followed a procedure allegedly unknown to law by giving a direction to the Assessing Officer to dispose of the

case in this particular manner. According to the Income Tax Act (Section 119) and judgments of this Hon'ble Court, the CBDT has no jurisdiction to instruct the Assessing Officer to dispose of a case in a particular manner. A copy of the Office Note showing Respondent No. 2's intervention is annexed as **Annexure P11** (Pg _____). Mr. Anil Agarwal had complained against Respondent No. 2 to the Finance Minister vide his letter dated 17.07.2014. A copy of the same is annexed as **Annexure P12** (Pg _____). The above facts were placed by Mr. Agarwal before Mr. Jethmalani vide letter dated 18.05.2015. A copy of the said letter is annexed as **Annexure P13** (Pg _____).

23) Mr. Bhushan had in his letter had pointed out that Respondent No. 2 was in-charge of investigating the allegedly illegal account holders in foreign countries (in HSBC bank) for almost three years and until this Hon'ble Court appointed the SIT on black money, there were almost no progress in the income tax investigation under Respondent No. 2. At the time SIT was formed, income tax department had not filed even a single prosecution case against HSBC account holders.

24) Mr. Bhushan also stated that Respondent No. 2 was investigating the Radia tapes and did not take any action on evidence available with him. He was also investigating the Income Tax cases in the 2G scam, and failed to take any action unlike the CBI or the ED which filed several chargesheets. The said facts ought to have been examined by the Union of India before making the appointment.

25) Therefore, the Petitioners respectfully submit that Respondent No. 2 does not fulfill the requirement of impeccable integrity as is required for the position of the CVC, and his appointment is arbitrary, illegal and in violation of the principle of institutional integrity.

APPOINTMENT OF RESPONDENT NO. 3

26) Respondent No. 3 has been appointed as the VC on 11.06.2015 for a period of four years. He had been serving as the CMD of the Indian Bank from 01.04.2010, which is a public sector bank with its headquarters in Chennai, Tamil Nadu. Respondent No. 3 was indicted in a detailed inquiry by the Central Vigilance Commission in 2013 for forging and tampering with appraisal report of the then General Manager of the Indian Bank, which is a criminal offence.

27) The Commission started its inquiry after one Mr. Malay Mukherjee complained to it on 11.07.2011 that his Annual Performance Appraisal Report (APAR) has been tampered. After enquiry, the Commission found that APAR of Mr. Mukherjee was mala fide tampered and forged by Respondent No. 3 and grading of "excellent" was substituted with "average" with a view to destroy his career. A copy of the noting of the Commission's Advisor dated 30.11.2012 in this regard is annexed as **Annexure P14** (Pg _____). On the same, the then VC stated: "Having noted tampering of ACRs as established, being criminal offence a thorough investigation to establish notes of all concerned is called for. We could refer the case either to CBI or to DGP Tamil Nadu... A separate RDA may also be thought of against ED/CMD for deliberately preventing the career advancement of an official of the Bank by conduct unbecoming of the Bank."

28) On this the other VC stated that departmental action be taken against Respondent No. 3. The CVC then approved departmental action against Respondent No. 3. The Commission then issued an O.M. dated 11.12.2012 to Department of Financial Services (DFS), Govt of India to take departmental action against Respondent No. 3.

29) In response to the above OM, the DFS wrote to the Commission that departmental action may not stand scrutiny of law. The VC then wrote specific reasons why the Commission ought to reiterate its advise for departmental action against Respondent No. 3. The VC on 24.06.2013 stated:

“In view of the above, it is not only the Commission should reiterate the advice already tendered to DFS to initiate under RDA against Shri Bhasin and Shri Ram Gopal, DFS may be asked to take suitable action against Smt Guha for her lapses. In case, the Ministry has doubts about Commission’s advice standing legal scrutiny, the Ministry ought to file all available papers against the two officials in a Court of Law and seek Court’s orders thereon. I can say with confidence that Court will frame charges u/s 120B r/w Sec 463, 465, 466, 468, 469 and 471 of IPC for forgery and use of forged documents as genuine.”

30) The above noting of the then VC was approved by the then CVC who on 26.06.2013 noted: “As pointed out by them and decided in the Commission meeting, we should reiterate the advice already tendered to DFS to initiate action under RDA against Shri Bhasin...” A copy of the noting of the then VC dated 24.06.2013 is annexed as **Annexure P15** (Pg _____). However, the DFS refused to budge and said that matter ought to be closed. DFS conceded that it was unethical on the part of Respondent No. 3 to have written ‘average’ at two places on Mr. Mukherjee’s APAR. The then VC, on 06.05.2014, then stated that for this act, Respondent No. 3 must be ‘cautioned’. The same was approved in the Commission and was presumably carried out by the Government of India. The petitioners seek liberty to produce the entire handwritten & typed file before this Hon’ble Court at the time of hearing.

31) Former Union Minister and currently a senior member of the ruling party Mr. Subramanian Swamy had written a strongly worded letter to the Prime Minister on 11.06.2015 stating that charge against Respondent No. 3 is “very serious” and the recommendation of the selection committee to appoint Respondent No. 3 as VC must be withdrawn. He said “finding of moral turpitude by CVC of Mr. Bhasin makes him unfit to keep the position of Vigilance Commissioner.” A copy of the said letter of Mr. Swamy dated 11.06.2015 is annexed as **Annexure P16** (Pg _____).

32) The Union of India has, therefore, appointed a person who has himself been severely indicted for serious criminal conduct by the same Commission of which he is now a part. Thus, by no stretch of imagination he can be said to have impeccable integrity or unblemished record as is required as per law. Hence his appointment is liable to be quashed.

CONCLUSION

33) As per the judgment of this Hon’ble Court in Vineet Narain case and CPIL case, only a person of “impeccable integrity” can be appointed. Respondent No. 2 and 3 cannot be said to be persons of impeccable integrity as highlighted in the present petition. Therefore their appointments are illegal, arbitrary, in negation of rule of law and therefore in violation of Articles 14 and 21 of the Constitution of India.

34) Complete non-transparency was followed by the Central Government in making the appointment of the CVC and VC. There was no system followed and there was no scope for public inputs. The representations or inputs made against Respondent No. 2 and 3 were not duly considered. This complete non-transparency renders the appointment void and illegal, and in violation of Article 14 of the Constitution of India.

35) This Hon’ble Court in the CPIL case had directed that in all future appointment of CVCs and VCs, the empanelling authority shall produce all material and records, whether favourable or adverse to the candidates, before the selection committee under Section 4 of the 2003 Act. In the present case, non-production of serious adverse material & representations against Respondent No.s 2 and 3 would vitiate the appointment process and in case the said material was produced and despite that the appointment was made, then that appointment would be mala fide, arbitrary and illegal, as per the

judgment of this Hon'ble Court in CPIL case. Petitioners have learnt that representations and adverse material against Respondent No. 2 and 3 was not placed before the Selection Committee in complete violation of the directions passed by this Hon'ble Court in CPIL case.

36) That it is important to note that in regard to the Constitutional post of Chairperson of Public Service Commission, this Hon'ble Court reaffirmed the legal principle that appointment to important posts (even where the Constitution has not prescribed any procedure) cannot be arbitrary and has to be made after proper selection of the best candidate. This Hon'ble Court, while holding the above, upheld the judgment of the High Court quashing the appointment of Chairperson of the State Public Service Commission (*State of Punjab v Salil Sabhlok* (2013) 5 SCC 1).

37) Since this is an important public interest matter and there is an asymmetry in the availability of information between the parties, the Petitioners seek liberty from this Hon'ble Court to produce other documents and records as and when they become available to the Petitioners and are required in the course of the proceedings.

38) The Petitioners have not filed any other writ, suit or application in any manner regarding the matter of dispute in any Court throughout the territory of India. The Petitioners have no other better remedy available.

GROUNDS

- A. That as per the judgment of this Hon'ble Court in Vineet Narain case and CPIL case, only a person of "impeccable integrity" can be appointed. Respondent No. 2 and 3 cannot be said to be persons of impeccable integrity as highlighted in the present petition. Therefore their appointments are illegal, arbitrary, in negation of rule of law and therefore in violation of Articles 14 and 21 of the Constitution of India.
- B. That this Hon'ble Court in the CPIL case had directed that in all future appointment of CVCs and VCs, the empanelling authority shall produce all material and records, whether favourable or adverse to the candidates, before the selection committee under Section 4 of the 2003 Act. In the present case, non-production of serious adverse material & representations against Respondent No.s 2 and 3 would vitiate the appointment process and in case the said material was produced and despite that the appointment was made, then that appointment would be mala fide, arbitrary and illegal, as per the judgment of this Hon'ble Court in CPIL case.
- C. That in the CPIL case (*supra*), this Hon'ble Court declared the recommendation of the selection committee to the President for appointment of the then CVC as non est in law. This was so held since this Hon'ble Court found that the appointment would dilute the integrity of the statutory institution of the Central Vigilance Commission. This Court held that the test is whether the individual would be able to perform his duties. That the ratio of this judgment is squarely applicable in the present case.
- D. That in regard to the Constitutional post of Chairperson of Public Service Commission, this Hon'ble Court reaffirmed the legal principle that appointment to important posts (even where the Constitution has not prescribed any procedure) cannot be arbitrary and has to be made after proper selection of the best candidate. This Hon'ble Court, while holding the above, upheld the judgment of the High Court quashing the appointment of Chairperson of the State Public Service Commission (*State of Punjab v Salil Sabhlok* (2013) 5 SCC 1).

- E. That a complete non-transparency was followed by the Central Government in making the appointment of the CVC and VC. The Government did not even place the names of short-listed candidates in the public domain or the fact that Respondent No. 2 and 3 were being considered for the appointment to such important positions. That had the Government placed their names in the public domain, it would have received many more representations and material adverse to them, apart from the one it did, which would have perhaps forced it to reconsider its decision. This complete non-transparency renders the appointment void and illegal, and in violation of Article 14 of the Constitution of India.
- F. That for the appointment of Chief Vigilance Officers (CVOs) in various departments/ministries who work under the supervisory and administrative control of the Central Vigilance Commission, the Commission requires that they must have “unblemished record” of service. Therefore, the requirement of unblemished record is absolutely required in the case of CVC and VCs who supervise all the CVOs in the country.
- G. That the prevailing corruption in the country in high places and the unwillingness of the government to ensure a clean and accountable system so that the culprits are punished, seriously impairs the right of the people of this country to live in a corruption and criminal free society. This is a violation of Article 14 and 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and corruption.

PRAYERS

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

- a. Issue an appropriate writ setting aside the appointment made by the Union of India of Respondent No. 2 as the Central Vigilance Commissioner (CVC).
- b. Issue an appropriate writ setting aside the appointment made by the Union of India of Respondent No. 3 as the Vigilance Commissioner (VC).
- 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.

PETITIONERS

THROUGH

PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONERS

DRAWN BY: PRANAV SACHDEVA
DRAWN & FILED ON: 21ST JULY 2015
NEW DELHI