

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. _____/2013

IN

SPECIAL LEAVE PETITION (C) 29882/2011

IN THE MATTER OF:

ASHOK SHANKARRAO CHAVAN

....PEITIONER

VERSUS

MADAVRAO KINHALKAR & ORS.

..RESPONDENTS

AND IN THE MATTER OF:

1. Common Cause (A Registered Society),

Through its Director,

Shri Kamal Kant Jaswal,

5, Institutional Area,

Nelson Mandela Road,

VasantKunj, New Delhi-110 070

2. Association for Democratic Reforms

(A Registered Society),

Through its Founder-Trustee,

Prof.Jagdeep S. Chhokar,

B-35, Qutub Institutional Area,

Kiwanis Centre, 4th Floor,

New Delhi -110 016

3. Commonwealth Human Rights Initiative

(A Registered Society),

Through its Director, Ms.MajaDaruwala,

B-117, First Floor, Sarvodaya Enclave,
New Delhi – 110017

4. Manushi Sangathan,

(A Registered Society),

Through its President, Ms. Madhu Kishwar,

C-1/3, Sangam Estate,

1, Underhill Road, Civil Lines,

Delhi –110 054

5. Public Interest Foundation

(A Registered Society),

Through its Director, Shri Nripendra Misra,

B-32, Greater Kailash-I, New Delhi-110048

6. Forum For Fast Justice (A Registered Public Trust)

Through its Chairman,

Shri Bhagvanji Raiyani,

Kuber Bhuvan, Bajaj Road,

Vile Parle (West), Mumbai – 400 056

7. Foundation for Restoration of National Values

(A Registered Society),

Through its General Secretary,

Shri Bharat Wakhlu,

M-75, Greater Kailash, Part-I,

New Delhi – 110 048

8. Shri Boobli George Verghese,

C 11, DewanShri Apartment,

30, Feroze Shah Mehta Road,

New Delhi 110001

9. Shri J M Lyngdoh

Former Chief Election Commissioner

144, Pragati Resorts,

Prodattur Village, Shankarpally,

P.O.- Ranga Reddy

Andhra Pradesh- 501203

10. Shri N. Gopalaswami

Former Chief Election Commissioner

Flat No. 5, 'Leo Madhuram'

39, Giri Road, T. Nagar,

Chennai-600017

11. Shri K. J. Rao

Former Advisor to the Election Commission
Of India

E-6, Kakateeya Apartments

Plot No. 86

I.P. Extension, Delhi -92

APPLICATION FOR INTERVENTION

To

The Hon'ble Chief Justice of India

And his companion judges of the

Supreme Court of India

Most respectful sheweth:

1. The present intervention application is being filed by the applicants who have been working for long to bring about systemic improvements in various democratic institutions and the reform of electoral processes. The issue involved in the present SLP concerns one of the critical aspects of electoral reforms, i.e. curbing the undue influence of money power in the elections.
2. The stranglehold of money power on our electoral politics keeps well-meaning and public-spirited individuals out of the electoral arena and fosters an unholy alliance between politicians and their financiers, which works to the detriment of our democratic polity and the common weal. In order to curb the growing influence of money power in the elections, Parliament has empowered the Election Commission of India under Section 10 A of the Representation of People Act, 1951 to examine the correctness or truthfulness of the accounts of election expenses filed by the candidates. Where the account filed by a candidate is found after an inquiry under Rule 89 of the said Act to be incorrect or untrue, the Election Commission is competent to hold that the candidate has failed to lodge his account within the meaning of Section 10 A of the Act, rendering the said candidate liable to be disqualified.
3. The Union of India through its counter affidavit filed in the present SLP has made an attempt to deny the said power of the Election Commission by giving a completely wrong

interpretation of Section 10 A of the Act. The applicants are filing the present intervention application with the sole object of ensuring that the institution of the Election Commission of India retains the plenitude of its power and authority to safeguard the purity and integrity of the electoral process.

4. Details of the Applicant organisations:

- (i) Applicant No. 1, Common Cause, is a registered Society under the Societies Registration Act XXI of 1860 (No. S/11017). It was founded in 1980 by the late Shri H. D. Shourie with a view to 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 governance reforms and an accountable, transparent and corruption-free electoral system. In 1995, Common Cause filed a PIL in the Supreme Court to bring about greater accountability and transparency in the accounts of election expenses incurred by political parties and their respective candidates. In its landmark judgment in WP (C) 24 of 1995, *Common Cause Vs Union of India and others* (AIR 1996 SC 3081), the Court held that the political parties were under a statutory obligation to file regular returns of income and that a failure to do so rendered them

liable for penal action. The Court delineated the sweep of the Election Commission's power under Article 324 of the Constitution to call for scrutiny the accounts of expenditure incurred or authorized by the political parties in connection with the election of their candidates. This judgment marks a significant advance in the campaign against the rampant influence of black money in the elections by opening the way for mandatory declaration of assets by the candidates.

Shri Kamal Kant Jaswal, Director, Common Cause, is authorized to file this Intervention Application. Certificate & Authority Letter are filed along with the vakalatnama.

- (ii) Intervener No. 2, Association for Democratic Reforms (ADR), a registered Society under the Societies Registration Act XXI of 1860, has been in the vanguard of electoral and political reforms in the country. Its activities comprise advocacy for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political parties. In 1999, ADR filed a PIL in the Delhi High Court seeking disclosure of criminal, financial and educational background of candidates contesting elections. Based on this, the Supreme Court in 2002 and subsequently in 2003 made it mandatory for the candidates to

disclose their criminal, financial and educational background prior to the polls by filing an affidavit with the Election Commission. ADR, along with National Election Watch, has conducted election watches for the 2009 Lok Sabha Elections, Rajya Sabha Elections and almost all the State Assembly elections since 2002.

ADR is striving to bring about transparency and accountability in the functioning of political parties. In April, 2008, ADR obtained a landmark order from the Central Information Commission holding that the Income Tax Returns of political parties and the assessment orders passed on them will be available to the citizens. ADR is now working to extend this dispensation to members of Parliament and to bring political parties under the ambit of the RTI Act.

Prof. Jagdeep S. Chhokar, Founder-Trustee, is authorised to file this Intervention Application. Certificate and Authority letter are filed along with the vakalatnama.

- (iii) Intervener No. 3, Commonwealth Human Rights Initiative (CHRI), is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI was registered in India as a society (No. S – 24565) under the Societies Registration Act on 21.01.1993. CHRI, focuses on

ensuring greater accountability and transparency of governments and greater participation of people in decision making as a means of addressing the violation of human rights. In its pursuit of systemic reform, CHRI, has developed a strong focus on Access to Justice, particularly police reforms, and Access to Information,

Ms. Maja Daruwala, Director of Commonwealth Human Rights Initiative, is authorised to file this Intervention Application. Certificate & Authority Letter are filed along with the vakalatnama.

- (iv) Intervener No. 4, Manushi Sangathan, a non-profit-organisation was founded in 1978. It works for democratic reforms that promote greater social justice and strengthen human rights for all, especially women.

Manushi Sangathan was registered under the Societies Registration Act in 1994 to focus on research, investigation, policy reform and advocacy to make governance more transparent and accountable to people. Some of the salient PILs filed by Manushi which led to major policy reforms include land rights for women, policy reform for street vendors, law reform to include for non motorized vehicles, such as cycle rickshaws, as an integral part of public transport system.

The Founder President of Manushi Sangathan, Madhu Purnima Kishwar is a professor at the Centre for the Study of Developing Societies based in Delhi. Certificate & Authority Letter are filed along with the vakalatnama.

- (v) Intervener No. 5, Public Interest Foundation, is a registered society (Registration No. S/60918/2008). Its Governing Council is headed by ShriNaresh Chandra, former Cabinet Secretary and Ambassador to the United States. Dedicated to addressing issues concerning the welfare and larger interests of the society, the Foundation aims to improve the quality of governance and maximize the public welfare. For the purpose of advocacy and consensus-building, the Foundation has been sharing its research findings with civil society organisations, government ministries, political parties and elected representatives. It has also filed a PIL on Decriminalization of Politics before the Hon'ble Supreme Court.

ShriNripendraMisra, Director, Public Interest Foundation, is authorized to file this Intervention Application. Certificate & Authority Letter are filed along with the vakalatnama.

- (vi) Intervener No. 6, Forum For Fast Justice, registered under Bombay Public Trust Act, 1950, under Registration No. E 24875(M), was set up in March 2008

by ShriBhagvanjiRaiyani, the Chairman and Managing Trustee.

The Forum has been relentless in the pursuit of its nationwide campaign of mass awareness on judicial reforms under the slogan of SAVE JUDICIARY - SAVE NATION. The members of the Forum also engage with the government departments concerned, the Law Commission of India, jurists, like-minded NGOs and corporate entities, and concerned citizens. The aim of the organization is to bring about greater transparency, efficiency and accountability in the justice delivery system at all levels.

ShriBhagvanjiRaiyani, Chairman Forum For Fast Justice, is authorized to file this Intervention Application. Certificate & Authority Letter are filed along with the vakalatnama.

(vii) Intervener No. 7, Foundation for Restoration of National Values, registered under Societies Registration Act 1860, under registration no. S/62441/2008, is a non-profit society registered on 9.6.2008 The applicant society functions as a non-governmental organization, having been founded by eminent citizens of India to instill the national bonds of cultural values and cohesion in society that would ensure the fulfillment of the goals, objectives and exalted principles enshrined in the Constitution of India. The applicant society

works tirelessly to restore our time-tested National, and Cultural values, in order that people, individually and collectively, find an abiding inner persuasion to be truthful, ethical, patriotic and committed to serving the greater good.

Its Advisory Board comprises Justice M.N. Venkatachaliah, Sri Ratan N. Tata, Dr. E. Sreedharan, Sri N. Vittal, Sri T.S. Krishnamurthy and Smt. Vibha Parthasarathi, all of whom have impeccable credentials and widely recognized acumen in their respective areas of human endeavour and enterprise.

Sri Bharat Wakhlu, General Secretary, Foundation for Restoration of National Values, is authorized to file this Intervention Application. Certificate & Authority Letter are filed along with the vakalatnama.

- (viii) Intervener No. 8, ShriBoobli George Verghese, is a veteran journalist, author and social activist. He has been Information Adviser to Prime Minister; Editor, Hindustan Times; Editor, The Indian Express; and Information Consultant to Defence Minister. ShriVerghese has been associated with Media Foundation, Editor's Guild of India, Commonwealth Human Rights Initiative, Centre for Science and Environment, He has served on a number of Boards and Commissions, including the National Security Advisory Board and the Kargil Commission, and won

many a distinction, including Magsaysay Award, Gandhi Peace Foundation Rural Development Fellowship and Sankaradeva Award.

- (ix) Intervener No. 9, Shri J M Lyngdoh is former Chief Election Commissioner of India. He was CEC from 14th June 2001 to 7th February 2004. He is one of the members of [India Rejuvenation Initiative](#) an Indian anti-corruption organization formed by a group of retired and serving bureaucrats.
- (x) Intervener No. 10, Shri N. Gopalaswami is the former Chief Election Commissioner. He is 1966 batch IAS of Gujarat Cadre. He took over the charge of CEC on 30 June 2006 and has retired in April 2009. Prior to this appointment in the Election Commission of India, he was the [Union Home Secretary](#) and prior to that, he held the posts of Secretary in the Department of Culture and Secretary General in the [National Human Rights Commission](#). Gopalaswamy had also worked as adviser (education) in the Planning Commission, joint secretary, department of electronics, in charge of software development and industry promotion division and also the head of Software Technology Park of India (STPI) Society and SATCOMM India Society.
- (xi) Intervener No. 11, Mr. K. J Rao was an advisor to the Election Commission of India and he was also an Election Observer in 2004 Bihar Assembly Elections.

5. There is a growing concern that the pandemic of Paid News is eating into the vitals of our democratic polity by compromising the purity of the elections and destroying the credibility of the print/electronic media. The magnitude and implications of the practice have fully been brought out in the Seminal Report on Paid News by KalimekolanSreenivas Reddy and ParanjayGuhaThakurta, who had been commissioned by the Press Council of India to investigate the phenomenon. Copy of the relevant pages of the report dated 08.08.2010 by KalimekolanSreenivas Reddy and ParanjayGuhaThakurta is annexed hereto as **Annexure A (from page nos. _____ to _____)**.

6. Since there is no express provision in the Representation of the People Act that makes the practice of Paid News culpable, the Election Commission of India has invoked the provisions of Section 10A- Disqualification for failure to lodge account of election expenses- read with Sub section (1) of Section 77- Account of election expenses and maximum thereof- of the said Act to disqualify one Umlesh Yadav, who had been elected to the U. P. Legislative Assembly in the 2007 general election, for failing to account for an expenditure of Rs. 21,250/- on an advertisement that had appeared in the guise of a news item in the Dainik Jagran of 17.04.2007. The order of the Election Commission of India, which relies on the rulings of the Supreme Court in *Common Cause vs. Union of India and*

Others (AIR 1996 SC 3081) and *LR Shivaramagowda vs. TM Chandrasekhar (AIR 1999 SC 252)*, is attached hereto as **Annexure B (from page nos. _____ to _____)**.

7. It is submitted that the transgression in the case of UmleshYadav pales into insignificance in comparison to the media blitzkrieg launched to support the candidature of the Petitioner in the present case in the general election to the State Assembly in 2009. The Petitioner at the relevant time was the Chief Minister of Maharashtra. The Reddy – GuhaThakurta Report quotes extensively from P. Sainath's revealing testimony on the subject, as well as from the Petitioner's deposition before the Press Council.
8. It will be pertinent to mention here that the present case had a direct bearing on UmleshYadav's case. As would be seen from paragraphs 24 to 26 of the order of the Election Commission in UmleshYadav's case, which had been referred to the Commission by the Press Council after its adjudication, the final decision in the matter could be made only after the dismissal by the Delhi High Court of the writ petition filed by the present Petitioner challenging the Election Commission's competence to go into the correctness of an account of election expenses. The stand taken by the Commission in its order dated April 2, 2011 that it had jurisdiction under Section 10 A of the Act to go into the correctness of the accounts filed by the Petitioner was rightly upheld by the Hon'ble High Court.

9. The said order of the Hon'ble Delhi High Court has been challenged on specious grounds in the present SLP. Instead of rebutting the fallacious arguments advanced in the SLP, the Union of India, which has ostensibly taken a strong public position on the issue of Paid News and applauded the efforts of the Election Commission to curb this menace, has filed a counter affidavit which reveals its true colours. The Union of India has affirmed that a plain reading of Section 10A of the Representation of the People Act and Rule 89 of the Conduct of Election Rules indicates that the power of the Commission to disqualify a person arises only in the event of failure to lodge an account of election expenses and not for any other reasons, including the correctness or otherwise of such account. Copy of the counter affidavit filed by the Union of India in February 2013 in the present SLP is annexed hereto as **Annexure C (From page nos. _____ to _____)**.

10. The aforesaid averment of the Union of India flies in the face of this Hon'ble Court's landmark decision in *Common Cause vs. Union of India and Others*, reported as (1996) 2 SCC 752 in which it had held as follows:

"26. Superintendence and control over the conduct of election by the Election Commission include the scrutiny of all expenses incurred by a political party, a candidate or any other association or body of persons or by any individual in the course of the election. The expression

"Conduct of election" is wide enough to include in its sweep, the power to issue directions - in the process of the conduct of an election - to the effect that the political parties shall submit to the Election Commission, for its scrutiny, the details of the expenditure incurred or authorized by the parties in connection with the election of their respective candidates."

11. This Hon'ble Court had unequivocally held in *LR Shivaramagowda vs. TM Chandrasekhar* that an account of election expenses which is not true or is incorrect cannot be said to have been filed in the manner required by law and that for filing such incorrect return of election expenses, the candidate can be disqualified by the Election Commission under section 10A of the Representation of the People Act. The implications of the failure to file correct account of election expenses have been spelt out in a judgment of three- member Bench of this Hon'ble Court in *LR Shivaramagowda vs. TM Chandrasekhar, AIR 1999 SC 252*, in the following terms:

"21. The judgment in Gajanan's case referred to earlier has reiterated the High Court view set out above. It was held that the provisions of Section 123(6) related only to Section 77(3) of the act and not to violation of Sub-sections (1)&(2) of Section 77.

22. It was argued by learned counsel for the first respondent that the aforesaid view would enable any

successful candidate at an election to snap his fingers at the law prescribing the maximum limit of expenditure and escape from the provisions of Section 77(3) by filing false accounts. According to him, if the aforesaid construction of Sections 77 and 123(6) is to be adopted, there will be no sanction against a candidate who incurs an expenditure exceeding the maximum prescribed limit. Referring to Section 10(A) of the Act, which enables the Election Commission to disqualify a person who had failed to lodge an account of election expenses within the time and in the manner required by or under the Act and had no good reason or justification for the failure, he contended that the said Section provides only for a situation arising out of failure to lodge an account and not a situation arising from a failure to maintain true and correct accounts. We are unable to accept this contention. In our opinion, Sub-section (a) of Section 10(A) takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Section 77(2) provides that the accounts shall contain such particulars as may be prescribed.

Rule 86 of the conduct of Election Rules provides for the particulars to be set out in the account. The said Rule prescribes that a voucher shall be obtained for every item of expenditure and for lodging all vouchers along with the account of TC election expenses. Rule 89 provides that the

District Election Officer shall report to the Election Commission, the name of each contesting candidate, whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged and whether in his opinion such account has been lodged within the time and in the manner required by the Act and the rules.

That Rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act after adopting the procedure mentioned therein. If an account is found to be incorrect or untrue by the Election Commission after enquiry Under Rule 89, it could be held that the candidate had failed to lodge his account within the meaning of Section 10(A) and the Election Commission may disqualify the said person....”

12. The counter affidavit filed by the Union of India seeks to not only undo all the good work done by the Election Commission of India to curb the influence of money power in the elections and enforce the accountability of the candidates in respect of their election expenses by holding out the prospect of disqualification, but also unsettle the law already settled by this Hon’ble Court. It is submitted that the capacity of the Election Commission of India to ensure the purity of the elections is sought to be undermined in the

counter affidavit filed by the Union of India. Hence, the present intervention application is being filed by public-spirited civil society organizations and activists to defeat this nefarious design of the Union of India and to give proper assistance to this Hon'ble Court in the adjudication of a dispute concerning a critical dimension of electoral reforms dictated by the imperative of safeguarding the purity of elections and curbing the corrupting influence of money power.

Prayers

In view of the aforementioned facts and circumstances, this Hon'ble Court may be pleased to:

- (a) Allow the applicants to intervene in the aforementioned SLP;
- and
- (b) Pass any other order as this Hon'ble Court may deem fit and proper.

Applicants

Through
(Prashant Bhushan)
Counsel for the Applicants

New Delhi
Dated: