

**IN THE SUPREME COURT OF INDIA  
(CIVIL ORIGINAL JURISDICTION)**

**I.A No. \_\_\_\_\_ OF 2016**

IN

**WRIT PETITION (CIVIL) No. 505 OF 2015**

**IN THE MATTER OF:**

COMMON CAUSE & ORS.

...PETITIONERS

**VERSUS**

UNION OF INDIA & ORS.

...RESPONDENTS

**APPLICATION FOR DIRECTIONS  
ON BEHALF OF THE PETITIONERS**

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) The petitioners have filed the above writ petition in public interest seeking an appropriate writ against the illegal and arbitrary appointment of the Central Vigilance Commissioner (CVC) and the Vigilance Commissioner (VC) (Respondent No. 2 and 3 respectively) by the Union of India/Respondent No. 1. This Hon'ble Court *vide* order dated 13.08.2015 was pleased to issue notice on the above petition.

2) In the petition the petitioners have stated that 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.

3) The petitioners are filing the present application seeking this Hon'ble Court's intervention in an extremely serious matter where actionable evidence gathered in the raids on Sahara group and Birla group companies concerning corruption and bribing of important public functionaries was given a quiet burial by the Income Tax Department and the CBI.

4) The dubious role played in this matter by Respondent No. 2, presently the CVC, needs to be investigated. Before being appointed as Chairperson, CBDT, Respondent No. 2 held the post of Member (Investigation), CBDT, from August 2012 to August 2014. He retired in November 2014 and was appointed as Advisor to the SIT on Black Money, in which capacity he continued to work until June 2015 when the Government appointed him as CVC.

5) A brief account of the two raids and the evidence seized therein is given below. The relevant documents have come in possession of the petitioners through their counsel, Mr. Prashant Bhushan. These were given to Mr. Bhushan by whistle-blowers whose identity needs to be kept confidential.

### **Raid on Birla Group**

6) During the investigation in relation to coal block allocations to Hindalco Industries, an Aditya Birla group company, the CBI conducted

simultaneous search operations in four cities – New Delhi, Mumbai, Secunderabad and Bhubaneshwar on 15.10.2013.

7) The documents seized by the CBI in its search operation in Mumbai reportedly revealed massive bribery of politicians and officials of various ministries by the Aditya Birla group over several years. The simultaneous search operation conducted on 15.10.2013 by the CBI at Aditya Birla group's office at Parliament Street, New Delhi, reportedly led to the recovery of incriminating documents and a huge stash of unaccounted for cash amounting to Rs. 25 crore.

8) Although the documents seized indicated the commission of offences of corruption, bribery, possession of black money and disproportionate assets, and also of income tax violations, the CBI, instead of conducting a thorough scrutiny of their contents, simply transferred the highly incriminating documents to the Income Tax Department.

9) The records seized during the search operation at Delhi revealed payment of Rs. 7.08 crore made during the period from 09.01.2012 to 02.02.2012 under the heading "Project-J – Environment & Forest". It is to be noted that during Ms. Jayanti Natrajan's tenure as Minister, Environment & Forest, as many as 13 projects of Aditya Birla Group companies were cleared between 08.11.2011 and 17.06.2013. A copy of the relevant pages of the diary seized from Birla Group office on Parliament Street, New Delhi is enclosed as **Annexure A1** (Pg \_\_\_\_\_).

10) Also, the laptop of Mr. Shubhendu Amitabh, Group Executive President, was seized during the above raid. The laptop was found to contain evidence of highly incriminating money transactions. An email dated 16.11.2012 containing the cryptic entry, "*Gujarat CM – 25 cr (12 Done- rest?)*", was also recovered from the said laptop. A copy of the said document is enclosed as **Annexure A2** (Pg \_\_\_\_\_).

When Mr. Amitabh was questioned about this transaction and specifically asked as to what the letters C and M in the above entry stood for, he told the Income Tax Department that "*These were purely personal notes. Not meant for SMS or email transmission. And the first note is only to note for my knowledge and consumption – a business development at Gujarat Alkali Chemicals...*" A copy of the two relevant pages of handwritten notes (which are in the petitioners' possession) of the statement of Mr. Shubhendu Amitabh as recorded by the Income Tax Department is enclosed as **Annexure A3** (Pg \_\_\_\_\_).

11) The Income Tax Department in its appraisal report dated 27.02.2014 stated: "*...considering the highly incriminating nature of transactions in the data retrieved from the laptop and hard disc of Shri Shubhendu Amitabh and evasive replies and unsubstantiated claims made by him, it would be imperative for the Assessing Officers to scrutinize the data available in seized documents including the laptop and hard disc and determine the quantum of income concealed by Shri Shubhendu Amitabh, M/s ABMCPL, and other persons, if any.*" Copy of the relevant pages (Pg 115, 127) of the Assessment Report that have come in the petitioners' possession is enclosed as **Annexure A4** (Pg \_\_\_\_\_).

12) The Income Tax Department prepared an appraisal report of the records seized and found huge undisclosed payments. During the investigation, top officials of the Birla Group admitted that large amounts of cash were routed by the Group through hawala. The IT Department subsequently prepared a detailed appraisal report on the hawala transactions. A copy of the said appraisal report (pages that are in petitioners' possession) dated 27.02.2014 is enclosed as **Annexure A5** (Pg \_\_\_\_\_).

13) However, the Income Tax Department under Respondent No. 2 neither took any meaningful action nor forwarded the report to CBI or SIT on Black Money, as was required since incriminating documents showing corruption, bribery and black money had surfaced. Therefore, the petitioner Common Cause was constrained to move this Hon'ble Court in the coal scam case (WPC 463/2012) seeking a direction to CBI to investigate the documents. This Hon'ble Court *vide* its order dated 12.10.2015 directed the CBI to take action in accordance with law if the documents surfaced in raid on Birla group disclose offences, even though they might be unrelated to the coal block allocation cases. A copy of the relevant pages of the order dated 12.10.2015 passed by Supreme Court in IA 35/2015 in WPC 463/2012 is enclosed as **Annexure A6** (Pg \_\_\_\_\_).

14) Despite the above facts, the CBI has not taken any concrete action, and to the best of the petitioners' knowledge, has not even registered an RC/FIR in the matter. This deliberate lapse suggests that the CBI is trying to protect the influential personalities named in the documents seized and is shielding powerful corporate entities.

15) Despite receiving all the incriminating documents from the CBI, the Income Tax Department did not pursue the investigation to its logical conclusion. It did not even request the CBI to investigate the transactions which had showed not just Income Tax violations, but also commission of offences of corruption, bribery and possession of black money. In the Vineet Narain case, this Hon'ble Court had ruled that any evidence of alleged payments to public officials/representatives needed to be properly investigated. The Income Tax department, despite preparing a damning appraisal report after an inquiry into the alleged transactions, did not take any meaningful action and apparently did not transmit their report to the CBI for investigation of the offences of corruption or bribery. This was a serious lapse on the part of the Income Tax Department under Respondent No. 2. The role of Respondent No. 2 in this dereliction of duty needs to be investigated. It also needs to be ascertained whether the appraisal report was shared with the SIT on Black Money.

### **Raid on Sahara group**

16) According to news reports, the Income Tax Department raided Sahara India group offices in Delhi and Noida on 22.11.2014. During the said raid, incriminating documents and cash amounting to Rs. 135 crore were reportedly seized. A copy of a news report dated 24.11.2014 of PTI is annexed as **Annexure A7** (Pg \_\_\_\_\_).

17) The petitioners have come in possession of a few pages containing a record of cash transactions from May 2013 to March 2014. The said pages were apparently signed by the Income Tax Officer, one person from

the Sahara group and two witnesses. The date of 22.11.2014 is recorded along with the signatures.

18) The relevant documents are printouts of the Excel Sheet showing cash receipt of over Rs. 115 crore and cash outflow of over Rs. 113 crore during a short period of 10 months. While the first sheet goes up to 04.03.14, the others go up to 22.02.14 and 12.11.13, respectively. The logs suggest that cash was apparently transferred to several important public figures. Copies of the said pages are enclosed as **Annexure A8** (Pg \_\_\_\_\_).

19) One of the pages apparently details payments proposed to be made to top political leaders. The same is enclosed as **Annexure A9** (Pg \_\_\_\_\_). Another page apparently records payments made along with the date and place of delivery. The same is enclosed as **Annexure A10** (Pg \_\_\_\_\_).

19) The petitioners have been informed that one of the pages in question came in the possession of Mr. Ram Jethmalani, senior advocate and Member of Parliament. He requested the Delhi government on 28.06.2016 to compare the signatures of Income Tax Officer Ms. Ankita Pandey on the Sahara diary with her known signatures. A copy of the said letter along with its annexures is enclosed as **Annexure A11** (Pg \_\_\_\_\_). The Delhi Government got the signatures examined by its forensic laboratory. The laboratory gave a report on 01.07.2016 that the two signatures had been made by the same individual. Thus, the forensic report reinforces the credibility of the document that has now come in the petitioners' possession. A copy of the report of the forensic laboratory

dated 01.07.2016 along with its annexure is enclosed as **Annexure A12** (Pg \_\_\_\_\_).

20) It is clear that this document disclosed the bribing of several influential persons by the Sahara group. It ought to have been shared by the IT Department with the CBI & the SIT on Black Money, since the matter was not limited to Income Tax violations, but included bribery, corruption and possession of black money. The persons named in the diary ought to have been investigated, but it was not done. This constituted a serious lapse on the part of the IT Department.

21) Admittedly, the raid on Sahara group took place on 22.11.2014, by which time the Respondent No. 2 had retired as Chairperson, CBDT. However, as per the information received by petitioners' counsel, Respondent No. 2 continued to operate from the CBDT office after his appointment as advisor to the SIT on Black Money. It would, therefore, be reasonable to expect that he would have tapped his sources to gather information about the evidence uncovered in this raid, which would have been of great value to the SIT on Black Money.

#### **Complaints to CBI, CBDT, ED, Settlement Commission**

22) After coming in possession of the documents mentioned above, the petitioners' counsel, Mr. Prashant Bhushan, addressed letters to the SIT on Black Money, the CVC, the CBI and the CBDT seeking a thorough investigation into the matter. The complaints to CBI, CBDT, CVC and SIT on Black Money were sent on 25.10.2016. A copy of the complaint made to the CBI along with its acknowledgment is annexed as **Annexure A13** (Pg \_\_\_\_\_). A copy of the complaint made to the CBDT along with

the receiving is annexed as **Annexure A14** (Pg \_\_\_\_\_). A copy of the complaint to the CVC along with the acknowledgment is annexed as **Annexure A15** (Pg \_\_\_\_\_). A copy of the complaint to SIT on Black Money along with the receiving is annexed as **Annexure A16** (Pg \_\_\_\_\_). The petitioners' counsel also made a complaint to the Enforcement Directorate on 28.10.2016. A copy of the complaint to the ED along with the acknowledgment is annexed as **Annexure A17** (Pg \_\_\_\_\_).

23) It was learnt that both Sahara group and Birla group had approached the Income Tax Settlement Commission to settle their cases. Hence, the petitioners' counsel specifically asked the CBDT, the CBI and the CVC not to allow any settlement in the matter and bar the business groups concerned from taking back the seized documents to exclude the possibility of their destruction.

24) The petitioners' counsel also requested the Chairperson, Income Tax Settlement Commission, on 08.11.2016 not to allow any settlement in the cases and to direct the retention of all the seized records with the authorities, so that the evidence gathered could be investigated. A copy of the letter dated 08.11.2016 to the Income Tax Settlement Commission is annexed as **Annexure A18** (Pg \_\_\_\_\_).

25) It is learnt that the cases of Sahara and Birla groups are now being actively considered in the Settlement Commission for settlement. Hence, there is an urgent need for this Hon'ble Court to direct the authorities concerned to immediately produce the entire evidence before this Hon'ble Court so that it can be preserved.

26) The CVC, which is headed by Respondent No. 2, has *vide* a communication dated 04.11.2016 asked the petitioners' counsel Mr. Bhushan for a verification of identity before proceeding further in the matter. A copy of the said letter dated 04.11.2016 is annexed as **Annexure A19** (Pg \_\_\_\_\_). The petitioners' counsel has confirmed his identity on 10.11.2016. Meanwhile, the petitioners and their counsel have not been advised regarding any steps taken by the CVC to call for the relevant records or to communicate with the Settlement Commission despite the urgency of the matter. The lackadaisical attitude of the CVC under Respondent No. 2 suggests that it is not interested in getting the matter investigated despite such serious evidence of corruption and bribery of high public officials.

27) The petitioners, therefore, request this Hon'ble Court to direct the CBI, the CBDT and the CVC to produce the records and the material recovered in the raids on Sahara and Birla groups before this Hon'ble Court so as to preclude the possibility of tampering or destruction. The petitioners also request this Hon'ble Court to direct the constitution of an SIT to inquire and thoroughly investigate the evidence gathered in the said raids and also the role played by Respondent No. 2 in the apparent miscarriage of investigation in this matter of great public importance.

### **PRAYERS**

In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may in public interest be pleased to pass the following *ad interim* directions:-

- a. Direct the CBI, the CBDT and the CVC to produce the records and the seized material recovered in the raids on the Sahara group and the Aditya Birla group before this Hon'ble Court, and direct the said authorities not to return the seized documents to the business groups concerned.
- b. Direct the constitution of an SIT to inquire and thoroughly investigate the evidence gathered in the said raids and also the role played by Respondent No. 2 in the apparent miscarriage of investigation in this matter.
- c. Issue or pass any other 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  
DATE: 15<sup>TH</sup> NOVEMBER, 2016  
NEW DELHI