

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____ OF 2014

IN THE MATTER OF:

COMMON CAUSE A REGISTERED SOCIETY ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

PAPER BOOK
(FOR INDEX KINDLY SEE INSIDE)

I.A. NO. _____ OF 2014
APPLICATION FOR INTERIM RELIEF

PRASHANT BHUSHAN

ADVOCATE FOR THE PETITIONER

INDEX

S. No.	PARTICULARS	Pages
1.	LISTING PERFORMA	
2.	SYNOPSIS AND LIST OF DATES	A-G
3.	WRIT PETITION WITH AFFIDAVIT	1-19
4.	ANNEXURE P1: A Copy of the Lokpal and Lokayuktas Act, 2013 (1 of 2014)	
5.	ANNEXURE P2: A Copy of the notification dated 17.01.2014 inviting applications for filling up the posts of the Lokpal	
6.	ANNEXURE P3: A copy of Search Committee (Constitution, terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Rules, 2014	
7.	ANNEXURE P4: A Copy of the Economic Times report dated 12.02.2014	
8.	ANNEXURE P5: A Copy of the bulletin issued by the Loksabha on 12.02.2014	
9.	ANNEXURE P6: A Copy of the bulletin issued by the Rajyasabha on 13.02.2014	
10.	ANNEXURE P7: A Copy of the report dated 13.02.2014 published in THE HINDU newspaper	
11.	ANNEXURE P8: A Copy of the report dated	

	23.02.2014 published in The Hindu newspaper	
12.	ANNEXURE P9: A Copy of the letter written by Sh. FaliNariman to the Minister of Personnel dated 25.02.2014	
13.	ANNEXURE P10: A Copy of the NDTV report dated 03.03.014	
14.	Application for Interim Direction	

SYNOPSIS AND LIST OF DATES

The Petitioner is filing the present writ petition in public interest under Article 32 of the Constitution to question the entire selection process of Chairperson and Members of the Lokpal. The said selection process has been initiated under “*the Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of names for appointment of Chairperson and Members of Lokpal) Rules, 2014*” framed under “*the Lokpal and Lokayuktas Act, 2014*”. The entire selection process is vitiated mainly on the following grounds:

- (i) Rule 10 (1) of the said Rules, in so far as it provides that the Search Committee shall prepare a panel of persons to be considered by the Selection Committee for appointment of Chairperson and Members of the Lokpal, *from amongst the list of persons provided by the Central Government*, directly runs counter to the very object of having an independent Lokpal and the provisions of the said Act;
- (ii) Rule 10 (4) (i), where it provides that non-judicial members of Lokpal, apart from having special knowledge and expertise of not less than twenty-five years in matters relating to anti-corruption policy, public administration, vigilance or law, *must have held or must be holding the post of Secretary to the Government of India or any equivalent post thereto under the Central Government or a State Government*, travels beyond the

scope and ambit of the Lokpal Act since Section 3 (3) (b) of the said Act, while selecting Non-judicial members of the Lokpal from persons having special knowledge and expertise of anti-corruption policy, public administration, vigilance or law, does not limit the field of selection to retired and serving Secretaries to the Government of India and holders of equivalent posts in the state governments, most whom belong to the Indian Administrative Service;

- (iii) The said Rules framed vide notification dated 17th January, 2014 are illegal since the mandatory provision of Section 61 of the said Act requiring any Rule or Regulation framed under the said Act to be laid before each House of Parliament *for a total period of thirty days* has not been complied with; and
- (iv) At least four sitting judges of this Hon'ble Court are reported to have expressed their willingness for being considered for the post of judicial members of the Lokpal. Their candidature, even though permitted under clause (3) of Section 3 of the Act, will seriously compromise the independence of judiciary which is a part of the basic feature of our Constitution, since the Government, which is the biggest litigant before this Hon'ble Court, will be processing and considering the names of the judges of this Hon'ble Court for appointment as judicial members of the Lokpal.

- (v) A practicing Senior Advocate has been appointed as one of the members of the Selection Committee as jurist under Section 4 (1) (e) of the Act. This will lead to a serious conflict of interest since he appears as an advocate before this Hon'ble Court, and is likely to appear before those judges who are reported to be applying for the said posts.

Hence, the Petitioner is filing the present writ petition seeking declaration that the aforementioned provisions of the said Rules are *ultra vires* the said Lokpal Act and also seeking quashing of the entire selection process of the Lokpal initiated under the said Rules since it is illegal, arbitrary and violative of Article 14 of the Constitution.

18.12.2013 After a protracted struggle and a long wait for a credible, independent institution to deal with high level corruption, the Lokpal and Lokayuktas Act, 2013 (1 of 2014) (herein after referred as The Act) was passed by the Parliament on 18th December, 2013.

16.01.2014 The provisions of the said Act have come into force by virtue of the Central Government Gazette Notification S.O. 119 (E) dated 16th January 2014.

17.01.2014 Pursuant to the above, the Respondent, i.e. the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide its notification dated 17th January 2014 invited applications for filling up one post of Chairperson and eight posts of Members in the Lokpal. The above mentioned notification of 17th January 2014 seeking applications clearly stated the eligibility conditions as prescribed in the Act. Meanwhile, on 17th January itself, in exercise of the powers conferred by sub-section (1) read with clause (b) of sub-section (2) of section 59 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014), the Government issued a notification No. G.S.R. 31(E), called the Search Committee (Constitution, terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Rules, 2014 (hereinafter referred as The Rules). Rule 10 of the said rules prescribe the manner for preparation of panel of names by the Search Committee. As per sub rule (1) of Rule 10, the Search Committee shall prepare a panel of persons to be considered by the Selection Committee for appointment as the Chairperson and Members of the Lokpal, *from amongst the list of*

persons provided by the Central Government in the Department of Personnel and Training.

It is submitted that the aforesaid Rule has not only curtailed the zone of consideration of the candidates since Section 4(3) of the Act does not put any such restrictions, but has also defeated the very object of creating an independent institution like the Lokpal.

As per Rule 10(4) of the said rules,

“In case of persons falling under clause (b) of sub-section (3) of section 3 of the Act, such persons having special knowledge and expertise of not less than twenty-five years in matters relating to,

- (i) anti-corruption policy, public administration, vigilance or law and such persons must have held or must be holding the post of Secretary to the Government of India or any equivalent post thereto under the Central Government or a State Government;*
- (ii) finance including insurance and banking, and management and such persons must have held or must be holding the position of Chairman, Managing Director or Chief Executive Officer of a Public Sector*

*Undertaking or of a relevant private
institution of comparable status, and
who have attained outstanding achievements or
acquired eminence in the fields aforesaid:
.....”*

The aforesaid provisions further restrict the zone of consideration only to such persons who are holding or have held the post of Secretary to the Government of India. Further, it travels beyond the scope and ambit of the Lokpal Act since Section 3 (3) (b) of the said Act, while selecting Non-judicial members of the Lokpal from persons having special knowledge and expertise of anti-corruption policy, public administration, vigilance or law, does not limit the field of selection to retired and serving Secretaries to the Government of India and holders of equivalent posts in the State Government, most of whom belong to the Indian Administrative Service. Hence, this provision is also discriminatory qua individuals from other services and backgrounds.

12.02.2014 Mr. P. P. Rao was appointed as one of the members of the Selection Committee under Section 4 (1) (e) of the Act as jurist.

12/13.02.2014 Both the houses of Parliament were in session from 5th of February to 21st of February 2014. As per the

bulletin issued by Lok Sabha, the Rules were tabled on 12th February 2014. As per the bulletin issued by Rajya Sabha, the Rules were tabled on 13th February 2014. It is apparent that the said Rules were laid before each House of Parliament for less than 30 days, since both the houses were adjourned *sine die* after 21st February.

It was reported in the Economic Times that apparently at least four sitting judges of this Hon'ble Court have expressed their willingness for being considered for the posts of the judicial members of the Lokpal.

20.02.2014 The Lokpal Selection Committee constituted a Search Committee headed by Justice K T Thomas and comprising eight members from the fields and the categories of persons specified in sub-section (3) of section 4 of the Act, namely, eminent jurist and senior advocate Fali S Nariman; the former Chief Election Commissioner, S. Y. Quraishi; the Principal of Lady Shri Ram College, Delhi, MeenakshiGopinath; educationist MrinalMiri; the former Chief Secretary of Andhra Pradesh, Kaki Madhava Rao; and senior journalist and Rajya Sabha Member, H.K. Dua.

- 25.02.2014 Mr. FaliNariman refused to accept the offer of being appointed as one of the members of the Search Committee since, considering the selection process adopted by the government, he feared that *“the most competent, the most independent and most courageous will get overlooked.”*
- 03.03.2014 Justice K. T. Thomas also declined to accept the offer of the Chairperson of the Search Committee on the same ground as Mr. FaliNariman.
- 03.2014 Hence, the instant writ petition.

IN THE SUPREME COURT OF INDIA
(CIVIL WRIT JURISDICTION)
WRIT PETITION (CIVIL) No. OF 2013
(Under Article 32 of the Constitution of India)

IN THE MATTER OF::

Common Cause: A registered society
Through its Director
Shri Kamal Kant Jaswal
5, Institutional Area
Nelson Mandela Marg,
VasantKunj, New Delhi-70 Petitioner

Versus

Union of India
Through its Secretary,
Ministry of Personnel, Public Grievance & Pensions,
Department of Personnel and Training,
North Block,
New Delhi-110 001..... Respondent

**WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA**

To,

The Hon'ble Chief Justice of India and His Companion Justices of
the Hon'ble Supreme Court of India.

The Humble petition of the petitioner above-named

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is filing the present writ petition in public interest under Article 32 of the Constitution to question the entire selection process of Chairperson and Members of the Lokpal, which process has been initiated under "*the Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of names for appointment of Chairperson and Members of Lokpal) Rules,*

2014” framed under “*the Lokpal and Lokayuktas Act, 2014*”.

The entire selection process is vitiated mainly on the following grounds:

- (i) Rule 10 (1) of the said Rules, in so far as it provides that the Search Committee shall prepare a panel of persons to be considered by the Selection Committee for appointment of Chairperson and Members of the Lokpal, *from amongst the list of persons provided by the Central Government*, directly runs counter to the very object of having an independent Lokpal and the provisions of the said Act;
- (ii) Rule 10 (4) (i), where it provides that non-judicial members of Lokpal, apart from having special knowledge and expertise of not less than twenty-five years in matters relating to anti-corruption policy, public administration, vigilance or law, *must have held or must be holding the post of Secretary to the Government of India or any equivalent post thereto under the Central Government or a State Government*, travels beyond the scope and ambit of the Lokpal Act since Section 3 (3) (b) of the said Act, while selecting Non-judicial members of the Lokpal from persons having special knowledge and expertise of anti-corruption policy, public administration, vigilance or law, does not limit the field of selection to retired and serving Secretaries to the Government of India and holders of equivalent posts in the state

governments, most whom belong to the Indian Administrative Service;

- (iii) The said Rules framed vide notification dated 17th January, 2014 are illegal since the mandatory provision of Section 61 of the said Act requiring any Rule or Regulation framed under the said Act to be laid before each House of Parliament *for a total period of thirty days* has not been complied with; and
- (iv) At least four sitting judges of this Hon'ble Court are reported to have expressed their willingness for being considered for the post of judicial members of the Lokpal. Their candidature, even though permitted under clause (3) of Section 3 of the Act, will seriously compromise the independence of judiciary which is a part of the basic feature of our Constitution, since the Government, which is the biggest litigant before this Hon'ble Court, will be processing and considering the names of the judges of this Hon'ble Court for appointment as judicial members of the Lokpal.
- (v) A practicing Senior Advocate has been appointed as one of the members of the Selection Committee as jurist under Section 4 (1) (e) of the Act. This will lead to a serious conflict of interest since he appears as an advocate before this Hon'ble Court, and is likely to appear before those judges who are reported to be applying for the said posts.

Hence, the Petitioner is filing the present writ petition seeking declaration that the aforementioned provisions of the said Rules are *ultra vires* the said Lokpal Act and also seeking the annulment of the entire selection process of the Lokpal initiated under the said Rules since it is illegal, arbitrary and violative of Article 14 of the Constitution.

The Petitioner is a registered society bearing registration no. S/11017.

Since the issue involved in the present writ petition is of urgent nature and the very Rules framed by the Government are being challenged, the Petitioner has not directly approached any authority before filing of the present writ petition. The documents relied upon in the present writ petition, being newspaper reports and the Act and the Rules framed under the said Act, are already in the public domain.

Introduction of the Petitioner

2. The Petitioner Society was founded in 1980 by Late Shri H. D. Shourie as a public interest organization dedicated to articulation of the common problems of the people. The Petitioner Society has been in the forefront of the campaign for governance reforms and probity in public life and has filed several public interest petitions before this Hon'ble Court as well as the Hon'ble Delhi High Court. It has been campaigning for the establishment of a credible institutional framework for combating corruption in public life. In 1995, the Petitioner Society filed a public interest petition, WP (C) 26 of 1995, in

this Hon'ble Court, seeking the establishment of an independent Lokpal at the central level and the reinforcement of the institution of Lokayukta at the state level. Although the PIL has yet to be decided, it has had significant outcomes, commencing with the unprecedented imposition of a penalty of Rs. 50 lakh on the former Petroleum Minister, Capt. Satish Sharma, for the abuse of his discretionary powers. In August 2008, at the instance of the Bench, the Petitioner Society filed an additional affidavit, delineating the essential features of the institutions of Lokpal and Lokayukta. Two years later, this blueprint formed the starting point of the Jan Lokpal Bill, which served as the rallying point for India's biggest popular mobilization for combating corruption.

Facts of the case:

3. After a protracted struggle and a long wait for a credible, independent institution to deal with high level corruption, the Lokpal and Lokayuktas Act, 2013 (1 of 2014) (herein after referred as The Act) was passed by the Parliament on 18th December, 2013. The provisions of the said Act have come into force by virtue of the Central Government Gazette Notification S.O. 119 (E) dt 16th January 2014. Copy of the Lokpal and Lokayuktas Act, 2013 (1 of 2014) is being annexed hereto as **Annexure P1 (from page nos. _____ to _____)**.
4. As per Section 3 (3) of the Act, "*a person shall be eligible to be appointed*

- (a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;*
- (b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.”*

Further, Section 4 of the Act provides for the selection process of the Lokpal.

“4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

- (a) the Prime Minister—Chairperson;*
- (b) the Speaker of the House of the People—Member;*
- (c) the Leader of Opposition in the House of the People—Member;*
- (d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—Member;*
- (e) one eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President—Member.*

.....

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.”

Pursuant to the above, the Respondent, i.e. the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide its notification dated 17th January 2014 invited applications for filling up one post of Chairperson and eight posts of Members in the Lokpal. The above mentioned notification of 17th January 2014 seeking applications clearly stated the eligibility conditions as

prescribed in the Act. Copy of the notification dated 17.01.2014 inviting applications for filling up the posts of the Lokpal is being annexed hereto as **Annexure P2 (from page nos. _____ to _____)**.

5. Meanwhile, on 17th January itself, in exercise of the powers conferred by sub-section (1) read with clause (b) of sub-section (2) of section 59 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014), the Government issued a notification No. G.S.R. 31(E), called the Search Committee (Constitution, Terms and Conditions of Appointment of Members and the Manner of Selection of Panel of Names for Appointment of Chairperson and Members of Lokpal) Rules, 2014 (hereinafter referred as The Rules). Copy of the said Rules is being annexed hereto as **Annexure P3 (from page nos. _____ to _____)**.

6. Rule 10 of the said rules prescribe the manner for preparation of panel of names by the Search Committee. As per sub rule (1) of Rule 10, the Search Committee shall prepare a panel of persons to be considered by the Selection Committee for appointment as the Chairperson and Members of the Lokpal, *from amongst the list of persons provided by the Central Government in the Department of Personnel and Training.*

It is submitted that the aforesaid Rule has not only curtailed the zone of consideration of the candidates since Section 4(3) of the Act does not put any such restrictions but has also defeated the very object of creating an independent institution like the Lokpal.

7. As per Rule 10(4) of the said rules,

“In case of persons falling under clause (b) of sub-section (3) of section 3 of the Act, such persons having special knowledge and expertise of not less than twenty-five years in matters relating to,

(iii) anti-corruption policy, public administration, vigilance or law and such persons must have held or must be holding the post of Secretary to the Government of India or any equivalent post thereto under the Central Government or a State Government;

(iv) finance including insurance and banking, and management and such persons must have held or must be holding the position of Chairman, Managing Director or Chief Executive Officer of a Public Sector Undertaking or of a relevant private institution of comparable status, and

who have attained outstanding achievements or acquired eminence in the fields aforesaid:

.....”

The above mentioned provisions further restrict the zone of consideration only to such persons who are holding, or have held, the post of Secretary to the Government of India.

Further, it travels beyond the scope and ambit of the Lokpal Act since Section 3 (3) (b) of the said Act, while selecting Non-judicial members of the Lokpal from persons having special knowledge and expertise of anti-corruption policy, public administration, vigilance or law, does not limit the field of selection to retired and serving Secretaries to the Government of India and holders of equivalent posts in the state governments, most whom belong to the Indian Administrative Service. Hence, this provision is discriminatory *qua* individuals from other services and backgrounds.

8. On 12.02.2014, it was reported in the Economic Times that apparently at least four sitting judges of this Hon'ble Court have expressed their willingness for being considered for the posts of the judicial members of the Lokpal. Copy of the Economic Times report dated 12.02.2014 is being annexed hereto as **Annexure P4 (from page nos. _____ to _____)**.

9. Further, as per section 61 of the Act,

“every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not

be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

Both the houses of Parliament were in session from 5th of February to 21st of February 2014. As per the bulletin issued by Lok Sabha, the rules were tabled on 12th February 2014. Copy of the bulletin issued by Lok Sabha on 12.02.2014 is being annexed hereto as **Annexure P5 (From page nos. _____to _____)**. As per the bulletin issued by Rajya Sabha, the rules were tabled on 13th February 2014, copy of the same is being annexed hereto as **Annexure P6 (from page nos. _____to _____)**. It is apparent that the said Rules were laid before each House of Parliament for less than 30 days, since both the houses were adjourned *sine die* after 21st February.

On 12th February, 2014, Mr. P. P. Rao was appointed as one of the members of the Selection Committee under Section 4 (1) (e) of the Act as a jurist. Copy of the report dated 13.02.2014 published in THE HINDU is being annexed hereto as **Annexure P7 (from page nos. _____to _____)**.

10. Subsequently, on 20.02.2014, the Lokpal Selection Committee constituted a Search Committee headed by Justice K T Thomas and comprising eight members from the fields and the categories of persons specified in sub-section (3) of section 4 of the Act, namely, eminent jurist and senior advocate FaliS

Nariman; the former Chief Election Commissioner, S. Y. Quraishi; the Principal of Lady Shri Ram College, Delhi, MeenakshiGopinath; educationist MrinalMiri; the former Chief Secretary of Andhra Pradesh, Kaki Madhava Rao; and senior journalist and Rajya Sabha Member, H.K. Dua. Copy of the report dated 23.02.2014 published in The Hindu is being annexed hereto as **Annexure P8 (from page nos. _____ to _____)**.

11. On 25th February, 2014, Mr. FaliNariman refused to accept the offer of being appointed as one of the members of the Search Committee since, considering the selection process adopted by the government, he feared that *“the most competent, the most independent and most courageous will get overlooked.”* Copy of the letter written by Sh. FaliNarimanto the Minister of Personnel dated 25.02.2014 is being annexed hereto as **Annexure P9 (from page nos. _____ to _____)**.

12. On 3rd March, 2014, Justice K. T. Thomas also declined to accept the offer of the Chairperson of the Search Committee on the same ground as Mr. FaliNariman. Justice Thomas in his letter to the Government as published in the media categorically states;

“When I went through the Rules I have come to realize that the work of the Search Committee is to pick out names of persons from the list provided by the Central Government (Department of Personnel and Training). The Search Committee cannot make any independent search to find

out the most deserving persons to be included in the panel. Once the Search Committee gives the panel it is for the Selection Committee to select the persons for appointment as members of the Lokpal. In doing so the Selection Committee is not bound to take any one from the panel prepared by the Search Committee as could be discerned from the second proviso to Section 4(3) of the Act.

I wonder why there should be a Search Committee at all, much less, the arduous work to be undertaken by the members of such a Committee when the Selection Committee itself can decide on who should be the members of Lokpal.”

Copy of the NDTV report dated 03.03.014 is being annexed hereto as **Annexure P10 (from page nos. _____ to _____)**.

13. Therefore, the Petitioner is filing the present writ petition seeking declaration that the aforementioned provisions of the said Rules are *ultra vires* the said Lokpal Act and also seeking the annulment of the entire selection process of the Lokpal initiated under the said Rules. The Petitioner has not filed any other writ petition for the same relief before any other court of this country.

That the present writ petition is being filed on the following grounds amongst others:

GROUND

A. Because Rule 10 (1) of the aforesaid Rules, in so far as it provides that the Search Committee shall prepare a panel of persons to be considered by the Selection Committee for appointment of Chairperson and Members of the Lokpal, *from amongst the list of persons provided by the Central Government*, directly runs counter to the very object of having an independent Lokpal and the provisions of the said Act. This will defeat the very purpose of having the Lokpal since the Search Committee cannot make an independent search to find out the most deserving persons to be included in the panel. The members of the Lokpal so selected cannot be independent from the Government since the Search Committee is bound to choose from the list provided by the Central Government. This provision is arbitrary and violative of Article 14 of the Constitution.

B. Because this Hon'ble Court in a catena of judgments like *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav* (1988) 2 SCC 351, *ADM (Rev.) Delhi Administration vs. Shri Ram* (2000) 5 SCC 451, *Sukhdev Singh vs. Bhagat Ram* (1975) 1 SCC 421, *State of Karnataka vs. H. Ganesh Kamath* (1983) 2 SCC 402 etc. has held that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. The Rule making authority cannot use the power beyond the scope intended by the legislature. In the present

case, Rule 10 (4) (i), in so far as it provides that non-judicial members of Lokpal, *must have held or must be holding the post of Secretary to the Government of India or any equivalent post thereto under the Central Government or a State Government*, travels beyond the scope and ambit of the Lokpal Act since Section 3 (3) (b) of the said Act, while selecting Non-judicial members of the Lokpal from persons having special knowledge and expertise of anti-corruption policy, public administration, vigilance or law, does not conceive of eligible field of selection limited to a certain category of bureaucrats which is dominated by the IAS. The insertion of the aforesaid clause is also arbitrary and discriminatory qua persons from other services or fields without any reasonable basis or classification and hence, it violates Article 14 of the Constitution.

C. Because this Hon'ble Court in the case of *CPIL vs. UOI, (2011) 4 SCC 1* while dealing with the appointment of the Central Vigilance Commissioner adversely commented upon the act of the government in limiting the zone of consideration only to the Civil Servants even though the parent Act does not prescribe so and therefore, held that in future the zone of consideration shall not be limited to only civil servants. To quote from the judgment;

“87. The 2003 Act came into force on and from 11-9-2003. In the present case we find non-compliance with some of the provisions of the 2003 Act. Under Section 3(3), the Central Vigilance Commissioner and the Vigilance Commissioners are to be appointed from amongst persons:

(a) who have been or who are in all-India services or in any civil service of the Union or in a civil post under the Union having requisite knowledge and experience as indicated in Section 3(3)(a); or

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

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

.....

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

....”

D. Because the aforesaid Rules suffer from illegality since the mandatory provision of Section 61 of the Act requiring any Rule or Regulation framed under the said Act to be laid before each House of Parliament *for a total period of thirty days* has not been complied with. In the present case, the said rules were laid in Lok Sabha and Rajya Sabha on 12.02.2014 and 13.02.2014 respectively, and Parliament was adjourned *sine die* on 21.02.2014.

E. Because non-compliance of the mandatory provision of Section 61 of the Act clearly shows that the rules have been framed in a hurry; that the process of selection has been rushed through and that no opportunity was provided to Parliament to scrutinize the correctness of the rules. This clearly indicates a

mala fide intent on the part of the Government to subvert the process of law and select pliable and un-deserving persons for the crucial institution of Lokpal. Strangely, there has been little political resistance on such an important matter, though the leader of the Opposition is part of the Selection Committee which chooses the members of the Search Committee, and the rules were available to all the Members of Parliament from 12th/13th February when the same were tabled in the respective houses.

F. Because at least four sitting judges of this Hon'ble Court are reported to have expressed their willingness for being considered for the post of judicial members of the Lokpal. Their candidature, even though permitted under clause (3) of Section 3 of the Lokpal and Lokayuktas Act of 2013, will seriously compromise the independence of judiciary which is a part of the basic feature of our Constitution since the Government, which is the biggest litigant before this Hon'ble Court, will be processing and considering the names of the judges of this Hon'ble Court for appointment as judicial members of the Lokpal.

G. Because a practicing Senior Advocate has been appointed as one of the members of the Selection Committee as a jurist under Section 4 (1) (e) of the Act. This will lead to a serious conflict of interest, since he appears as an advocate before this Hon'ble Court and is likely to appear before the sitting judges who are reported to be applying for the posts in the Lokpal.

Considering the fact that at least four sitting judges of this Hon'ble Court have apparently expressed their willingness for being considered for the post of the Chairperson or judicial members of the Lokpal, the appointment of a practising Senior Advocate as one of the members of the Selection Committee as jurist under Section 4 (1) (e) of the Act vitiates the entire selection process since it suffers from a serious conflict of interest.

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

PRAYERS

- a) Declare the provisions of Rule 10 (1) and (4) (i) of the Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of names for appointment of Chairperson and Members of Lokpal) Rules, 2014 *ultra vires* the Lokpal and Lokayuktas Act, 2014;
- b) Declare the Search Committee (Constitution, Terms and Conditions of appointment of Members and the Manner of Selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Rules, 2014 illegal;
- c) Issue a writ of certiorari or any other writ or direction of similar nature to quash the entire selection process for appointment of Chairperson and Members of the Lokpal initiated under the aforesaid Rules framed under the Lokpal and Lokayuktas Act, 2014; and

d) Pass any other order or direction as this Hon'ble Court may deem fit and proper.

PETITIONER

THROUGH COUNSEL FOR THE PETITIONER
PRASHANTBHUSHAN

DRAWN BY: ROHIT KUMAR SINGH

DRAWN ON:

FILED ON:

IN THE SUPREME COURT OF INDIA
CIVIL WRIT PETITION NO. _____ OF 2014

IN THE MATTER OF:

COMMON CAUSE A REGISTERED SOCIETYPETITIONER

VERSUS

UNION OF INDIA

.....RESPONDENT

AFFIDAVIT

I, Kamal Kant Jaswal, Age-_____, S/O Shri Ambika Pd. Jaswal, having office at 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi-110070 do hereby solemnly state and affirm as under:

1. That I am the Director of the Petitioner society in the abovementioned Writ Petition and being familiar with the facts and circumstances of the case, I am competent and authorised to swear this Affidavit
2. That I have read the contents of the accompanying synopsis & list of dates (Page To) and Writ Petition (Page to) and Application for interim direction (page.....to) and I state that the same are believed to be true and correct to the best of my knowledge.
3. That all the Annexure to this Writ Petition are true copies of their respective originals.

DEPONENT

VERIFICATION:

I the above named deponent do hereby verify that the contents of the aforesaid affidavit from para 1 to 3 are true and correct to the best of my knowledge and belief, no part of it is false nothing material has been concealed there from.

Verified at New Delhi on thisday of March 2014

DEPONENT

IN THE SUPREME COURT OF INDIA

I.A. NO. _____ OF 2014

IN

CIVIL WRIT PETITION NO. _____ OF 2014

IN THE MATTER OF:

COMMON CAUSE A REGISTERED SOCIETYPETITIONER

VERSUS

UNION OF INDIA

....RESPONDENT

APPLICATION FOR INTERIM DIRECTION

To,

The Hon'ble Chief Justice of India and His Companion Justices of
the Hon'ble Supreme Court of India.

The Humble petition of the petitioner above-named

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is filing the present writ petition under Article 32 of the Constitution in public interest to question the entire selection process of Chairperson and Members of the Lokpal which has been initiated under "*the Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of names for appointment of Chairperson and Members of Lokpal) Rules, 2014*" framed under "*the Lokpal and Lokayuktas Act, 2014*". The Petitioner is filing the present writ petition seeking declaration that the aforementioned provisions of the said Rules are *ultra vires* the

said Lokpal Act and also seeking quashing of the entire selection process of the Lokpal initiated under the said Rules since it is illegal, arbitrary and violative of Article 14 of the Constitution.

2. The Petitioner is not repeating the facts of the writ petition for the sake of brevity and same may be read as part of the present application.
3. The Petitioner has a very good case and there is very good chance of succeeding in the present writ petition. The Government is going ahead with the selection process despite there being serious flaws in the rules under which selections are being done. Justice K T Thomas and Mr. Fali Nariman, who were offered the post of the Chairman and member of the Search Committee respectively, have already declined to accept the offers on these very grounds. Therefore, if the selection process of the Lokpal is not stayed during the pendency of the present writ petition, it would be rendered infructuous and public interest would suffer.

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

PRAYERS

- a) Stay the entire selection process for appointment of Chairperson and Members of the Lokpal initiated under the aforesaid Rules framed under the Lokpal and Lokayuktas Act, 2014; and

b) Pass any other order or direction as this Hon'ble Court may deem fit and proper.

PETITIONER

THROUGH COUNSEL FOR THE PETITIONER
PRASHANTBHUSHAN