

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

Writ Petition (Civil) No. WP (c) 348 Of 2010

**SYNOPSIS**

That the petitioners are filing the instant writ petition in public interest seeking a writ of quo warranto against Mr. P J Thomas (Respondent No. 2) to declare his appointment as India's new Central Vigilance Commissioner (hereinafter '**CVC**') as illegal and void.

Union of India has appointed Respondent No. 2 as India's new CVC on 07.09.2010. He succeeded Mr. Pratyush Sinha who demitted office of CVC on 06.09.2010. Respondent No. 2's appointment is illegal and liable to be declared void as it violates Section 4 of Central Vigilance Commission Act, 2003 and the landmark Supreme Court judgment in Vineet Narain case (1996) 1 SCC 226. It also is bad on the ground of conflict of interest.

The appointment being arbitrary is in violation of the equality clause contained in Article 14 of the Constitution of India. 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 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.

**LIST OF DATES**

**Date**

**Particulars**

18.12.1997 Hon'ble Supreme Court in a landmark judgment directed the Union of India to give statutory status to the Central Vigilance Commission.  
The court also held:

*"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."*

11.09.2003 Pursuant to the directions of this Hon'ble Court, Parliament passed the Central Vigilance Commission Act, 2003. Section 4 of the said Act reads:

**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.*

- 04.09.2010 As per Section 4 of the said Act, the Committee of Prime Minister, Home Minister and the Leader of Opposition met. Despite the objections and dissent of the Leader of Opposition, the Committee by majority selected the name of Respondent No. 2 for the post of CVC.
- 06.09.2010 Incumbent CVC Mr. Pratyush Sinha superannuated.
- 07.09.2010 Respondent No. 2, who was till recently Union Telecom Secretary, was sworn in as India's new CVC. Opposition claimed that he has been appointed to cover-up the investigations in the 2G spectrum telecom scam and the corruption in Commonwealth Games.
- 17.09.2010 A statement was issued by 25 prominent citizens, including former top civil servants decrying the manner in which Respondent No. 2 was selected.
- 15.04.2010 RTI query in the Kerala court revealed that Respondent No. 2 is still an accused in the Kerala's palm oil export scam and is out on bail. This was contrary to Government's assertions that he has been exonerated. This case was cited by the Leader of Opposition to record her dissent,
- 06.10.2010 Hence the instant Writ Petition.

## MEMO OF PARTIES

### IN THE MATTER OF:

CENTRE FOR PUBLIC INTEREST LITIGATION  
THROUGH ITS GENERAL SECRETARY,  
43, LAWYER'S CHAMBERS,  
SUPREME COURT OF INDIA  
NEW DELHI-110001

...PETITIONER No. 1

COMMON CAUSE  
THROUGH ITS CHIEF EXECUTIVE,  
MR. KAMAL KANT JASWAL  
5, INSTITUTIONAL AREA, NELSON MANDELA MARG  
VASANT KUNJ, NEW DELHI

... PETITIONER No. 2

### VERSUS

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

RESPONDENT No. 1

...

MR. P J THOMAS  
CENTRAL VIGILANCE COMMISSIONER  
CENTRAL VIGILANCE COMMISSION  
SATARKATA BHAVAN, INA, NEW DELHI

RESPONDENT No. 2

...

**NEW DELHI**

**(PRASHANT BHUSHAN)**

**DATED: 06/10/10**

**ADVOCATE FOR THE PETITIONERS**

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

Writ Petition (Civil) No. WP (c) 348 Of 2010

PUBLIC INTEREST LITIGATION

**IN THE MATTER OF:**

CENTRE FOR PUBLIC INTEREST LITIGATION & ANR.

...THE PETITIONERS

**VERSUS**

THE UNION OF INDIA & ANR.

...THE RESPONDENTS

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING A WRIT OF QUO WARRANTO AGAINST THE ILLEGAL AND ARBITRARY APPOINTMENT OF THE NEW CENTRAL VIGILANCE COMMISSIONER

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 a writ of quo warranto against Mr. P J Thomas (Respondent No. 2) to declare his appointment as India's new Central Vigilance Commissioner (hereinafter '**CVC**') as illegal and void.

2) Respondent No. 1 has appointed Respondent No. 2 as India's new CVC on 07.09.2010. He succeeded Mr. Pratyush Sinha who demitted office of CVC on 06.09.2010. Respondent No. 2's appointment is illegal and liable to be declared void as it violates Section 4 of Central Vigilance Commission Act, 2003 and the landmark Supreme Court judgment in Vineet Narain case (1996) 1 SCC 226. It also is bad on the ground of conflict of interest.

### **THE PETITIONERS**

3) Petitioner No. 1, Centre for Public Interest Litigation, is a registered society formed for the purpose of taking up causes of grave public interest and conducting public interest litigation in an organized manner. Its founder President was the late Shri V.M. Tarkunde and its Executive Committee consists of several senior advocates including Shri Fali S. Nariman, Shri Shanti Bhushan, Shri Anil Divan, Shri Rajinder Sachar, Shri Colin Gonsalves among others. Petitioner No.1 has, in the past, filed several important petitions in public interest, including the challenge against the allotment of oil and gas dealerships through the discretionary quota of the Minister as well as the Oil Selection Board, the transfer of developed oil fields of Panna & Mukta from the publicly owned ONGC to Reliance and Enron, the Government's decision to disinvest, privatize government owned oil companies without Parliamentary approval, Government's inaction in dealing with harmful chemicals in soft drinks, misconduct and mismanagement by the CEO of Prasar Bharti, non-

appointment of NHRC Chairperson by the Government, land scam at Kandla Port, corruption in 2G spectrum allocation and corruption in the Scorpene defence deal.

4) Petitioner No. 2, Common Cause, is a registered society that was founded in 1980 by late H. D. Shourie for the express purpose of ventilating common problems of the people and securing their resolution. It has brought before the Hon'ble Supreme Court of India and Hon'ble High Courts various Constitutional and other important issues and has established its reputation as a bona fide public interest organization.

#### **THE RESPONDENTS**

5) Respondent No. 1 is the Union of India through its Cabinet Secretary.

6) Respondent No. 2 is Mr. P J Thomas who has been appointed as the Central Vigilance Commissioner (CVC) by the Union of India.

#### **THE CASE IN BRIEF**

7) Central Vigilance Commission is India's top anti-corruption body. It acts as a watchdog over the Central Government and its instrumentalities. The appointment of Respondent No. 2 as Central Vigilance Commissioner is bad in law and illegal for the following reasons:

## **ILLEGAL MANNER OF APPOINTMENT**

8) The Hon'ble Supreme Court in the landmark judgment in Vineet Narain case (supra) had inter-alia held 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.”*

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

10) Leader of Opposition was specifically included in the Selection Committee because CVC is supposed to act as a watchdog over the Central Government. To avoid the situation where the Government appoints its own person, political party worker or its favoured bureaucrat, Leader of Opposition was specifically included to make the selection fair, bipartisan and politically neutral. It was also done so that the appointed person does not feel any obligation to his appointing political masters. Leader of Opposition is the most critical member of the Selection Committee.

11) Government came up with 3 names for the selection of the new CVC which apart from Respondent No. 2 also consisted of Mr. Bijoy Chatterjee (Secretary, Dept. of Chemicals and Petrochemicals) and Mr. S Krishnan (Former Fertilizer Secretary). But at the time of selection Prime Minister and the Home Minister insisted on the name of Respondent No. 2 despite the fact that Leader of Opposition vehemently objected to his name. Petitioners submits that this shows that Government had decided in advance to appoint

Respondent No. 2 as CVC and that the creation of the list of 3 names was merely a case of complying with a formality.

12) Prime Minister and the Home Minister recommended the name of Respondent No. 2's selection despite the fact that Leader of Opposition objected to his name being selected. So the Leader of Opposition was forced to record her dissent. Hence her presence was rendered meaningless in the selection committee which flies in the face of the judgment in Vineet Narain's case and the Act of 2003.

13) When the country's highest court and the Parliament held that CVC would be selected by the 3 member Committee including the Leader of Opposition, it was patently obvious that the said Committee would decide by unanimity or consensus. It was nowhere said that Committee would decide by majority. The latter interpretation would make the presence of Leader of Opposition meaningless as Prime Minister and Home Minister would always be ad-idem and the person selected would be a Government nominee. Therefore the manner in which Respondent No. 2 is selected makes his appointment illegal, bad in law and hence void ab-initio.

14) A statement issued by 25 prominent citizens (mainly former senior civil servants) raises serious concern over the manner in which the current CVC has been appointed. The said statement inter alia reads:

*“The selection process should not also violate the spirit of the Central Vigilance Commission Act. Although there is no statutory requirement about the selection having to be unanimous or based on consensus among the members of the Committee, there is an undeniable moral obligation on the part of the representatives of the Government on the Committee not to proceed with the appointment in case the Leader of the Opposition, on any reasonable ground, disagrees with the selection of any particular individual.*

*We cannot too strongly emphasise that the process of selection of high independent statutory and constitutional authorities should be kept completely free from the influence and control of the executive, in order that the posts occupied by them command universal sanctity, credibility and respect.”*

#### **INELIGIBILITY**

- 15) Supreme Court in Vineet Narain’s case had directed that:

*“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.”* (emphasis supplied).

16) Respondent No. 2 was charge-sheeted in the palmoleine export scam when he was Kerala's Secretary in the state Ministry of Food and Civil Supplies. The very fact that an officer of such seniority was charge-sheeted shows that there was a strong prima facie case and evidence against him. RTI replies from the court concerned have revealed that proceedings against him are still on and he is still an accused. He is out on bail. The dissenting note of the leader of the Opposition is reportedly based on this case also. Thus it cannot be said that Respondent No. 2 is a person of "impeccable integrity".

17) Respondent No. 2, also, recently as Secretary to the Government of India in the Department of Telecommunications has been involved up in the cover-up of the 2G spectrum allocation scam which is widely regarded as India's biggest corruption scandal having cost the exchequer Rs. 70,000 crores. He as Telecom Secretary asked for the opinion of the Joint Secretary of the Law Ministry to the effect that Central Vigilance Commission and the Comptroller & Auditor General of India (CAG) have no role in the investigation of 2G spectrum scam. The 7-page reply of the Law Ministry came on the very next day saying that since spectrum allocation is a policy matter both the CVC and CAG have no role in examining the same.

18) Hence, Respondent No. 2 cannot be considered to be a person of "impeccable integrity". Therefore his appointment being against the direction of the Hon'ble Supreme Court as per Vineet Narain's judgment is illegal and void.

### **CONFLICT OF INTEREST**

19) As per the Vineet Narain judgment and the Act of 2003, one of the major functions of CVC is to exercise superintendence and control over the anti-corruption work carried out by the Central Bureau of Investigation (CBI). One of the major tasks of the new CVC is to monitor the investigation currently being carried out by the CBI in the 2G spectrum allocation scam, where the FIR has been registered by the CBI at the instance of the CVC. So there is a clear conflict of interest if Respondent No. 2 monitors and exercises superintendence over the 2G spectrum allocation scam as he was, till recently, the Telecom Secretary and was involved in the cover-up of the said scam. Therefore his appointment is bad in law since it is a settled principal of law that no one can be a judge in his own cause and all conflict of interest situations must be scrupulously avoided.

20) The Petitioners have not filed any other writ, complaint, suit or claim in any manner regarding the matter of dispute. The Petitioners have no other better remedy available. The Petitioners seek liberty from this Hon'ble Court to produce other documents and records as and when required in the course of the proceedings.

## **GROUND**

- A. That the selection committee of Prime Minister, Home Minister and Leader of Opposition cannot decide by majority over-ruling the Leader of Opposition as that would defeat the purpose of including the Leader of Opposition in the said Committee making the appointment of India's top anti-corruption watchdog over the Government as the Government's own appointee and thus destroying the institution of CVC. The Selection Committee was always meant to function by unanimity or consensus. Respondent No. 2's appointment being made by over-ruling the Leader of Opposition who recorded her dissent is therefore illegal and void- *ab initio*. The appointment being arbitrary is also violates Article 14 of the Constitution of India.
- B. That as per the judgment of the Hon'ble Supreme Court in Vineet Narain's case only a person of "impeccable integrity" can be appointed. Respondent No. 2 cannot be said to be a person of impeccable integrity, since a prima facie case of chargesheeting in a very serious case was found by his administrative authorities. The case against him is still on and he is still an accused. Therefore his appointment is bad in law and deserves to be set aside.
- C. That CVC's main function is to exercise superintendence and monitor the anti-corruption work and investigations being carried by the CBI. The most important investigation being carried out by the CBI today is the

2G spectrum allocation scam which cost the exchequer about Rs. 70,000 crores. Respondent No. 2 having served, till recently, as Telecom Secretary and having been involved in the cover-up of the said scam is clearly barred on account of his conflict of interest.

D. That it is clear that the Government has appointed Respondent No. 2 mainly to have a pliant CVC in the face of severe embarrassment over multi-thousand crore rupees 2G spectrum allocation and Commonwealth Games (CWG) scams. He is likely to be used for a cover-up in these two and other major scams.

E. 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 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.

### **PRAYER**

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 a writ of quo warranto against Respondent No. 2 and set aside his appointment as Central Vigilance Commissioner.
- b. 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