

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. of 2013

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

1. COMMON CAUSE
THROUGH ITS DIRECTOR
5, INSTITUTIONAL AREA
NELSON MANDELA ROAD
VASANT KUNJ, NEW DELHI-110070 ...THE PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, CENTRAL SECRETARIAT
NEW DELHI-110001 ...RESPONDENT

No. 1

2. JUSTICE K G BALAKRISHNAN
CHAIRPERSON
NATIONAL HUMAN RIGHTS COMMISSION
FARIDKOT HOUSE, COPERNICUS MARG
NEW DELHI-110001 ...

RESPONDENT No. 2

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR THE ENFORCEMENT OF RIGHTS UNDER ARTICLE 14 AND 21 OF THE CONSTITUTION OF INDIA, SEEKING A WRIT OF MANDAMUS TO THE GOVERNMENT TO MAKE A REFERENCE UNDER SECTION 5(2) OF THE PROTECTION OF HUMAN RIGHTS ACT 1993 FOR HOLDING AN ENQUIRY AGAINST RESPONDENT No. 2

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 Petitioner is filing the present writ petition seeking a direction to the Government to comply with the letter and spirit of the order of this Hon'ble Court dated 10.05.2012 in W.P. (C) No. 35/2012 by making a reference under Sec 5 (2) of the Protection of Human Rights Act, 1993 (hereinafter "the Act") to this Hon'ble Court for holding an inquiry against the Chairperson of NHRC since the Union of India is not in a position reasonably to conclude that the allegations of misbehavior cited by the petitioner in the aforesaid petition were unworthy of any further action.

The Petitioner, Common Cause is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Kamal Kant Jaswal, Director of Common Cause, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama.

The petitioner, after receipt of communication dated 29.01.2013 from the Government of India (placed as Annexure P36 to this petition), had made a representation dated 14.04.2013 to the Government (placed as Annexure P37 to this petition) asking it to reverse its judgment and make a reference as is sought in the present petition. The Government, i.e. Respondent No. 1, has neither done the needful nor has it responded to the representation.

CASE IN BRIEF:

2. Campaign for Judicial Accountability and Reforms had written to the Prime Minister and the President of India vide letters dated 04.04.2011 enclosing numerous documents showing certain acts of misbehaviour by Respondent No. 2 such as close relatives of Respondent No. 2 acquiring assets disproportionate to their known sources of income during his tenure as a judge, purchasing benami properties in the name of his former aide M. Kannabiran, approving evasive and false replies given by CPIO, Supreme Court in response to the RTI application filed by Sh. Subhash Chandra Agarwal regarding declaration of assets by judges and suppressing a letter written by a High Court judge alleging that former Union Minister A. Raja tried to interfere in his judicial function and later lying to the press that he had not received any such letter implicating any Union Minister. The letter requested the Government to make reference under Section 5(2) of the Act to the Hon'ble Supreme Court for initiating inquiry against Respondent No. 2. Copies of the said letters dated 4.4.2011 are annexed herewith as **Annexure-P1 Colly**. (Pg 32 – 57)

3. When the Government did not respond to the above letter for more than 8 months then the Petitioner filed a Writ Petition being W.P. (C) No. 35/2012 before this Hon'ble Court seeking a writ of mandamus to Respondent No. 1 to make a reference under Section 5 (2) of the Protection of Human Rights Act

1993 (herein after referred to as “the Act”) to this Hon’ble Court for holding an inquiry against Respondent No. 2. A copy of the Petition viz W.P. (C) No. 35/2012 is annexed herewith as **Annexure-P2**. (Pg 58 – 75)

4. The following are the known instances of misbehaviour on part of Respondent No. 2 which were raised by the Petitioner in W.P. (C) No. 35/2012 along with documentary evidence:

- I. Benami properties in the names of his daughters, sons-in-law and brother.

P.V. Sreenijan, married to Soni, the elder daughter of Respondent No. 2 comes from a humble background. He is a practicing advocate in the Kerala High Court. When Respondent No. 2 started his three-year tenure as Chief Justice, Sreenijan started making huge investments in real estate and tourism. According to Form No. 26 filed by Sreenijan on his assets and liabilities to Election Commission in April 3, 2006, when he contested as an Indian National Congress candidate in Njrackkal (reserved) constituency in Eranakulam District, Kerala, he and his wife KB Soni had no agricultural land. Sreenijan had no non-agricultural land. His wife had 29.32 cent, currently valued at Rs.3,00, 000 at Thiruvankulam Village in Eranakulam District in Kerala in the survey no. 392/7. Both had no commercial properties and apartments. Sreenijan had cash in hand Rs.5000 and his wife had nothing. Sreenijan had savings bank account with a

deposit of Rs.20,000 at Bank of Baroda, Kalamassery Branch in Eranakulam district and his wife had nothing. Both had no debentures or shares of any companies, savings certificates vehicles. Sreenijan had 3 sovereign (24 gram) gold valued at Rs.18,000 and wife had 20 sovereign (160 gram) valued at Rs.1,20,000. Both declared no heritable rights acquired by them. A copy of the said assets declaration form dated 3.4.2006 is annexed herewith as **Annexure-P3**. (Pg 76 – 78)

Asianet and Tehelka and others in the media have uncovered various properties acquired by Sreenijan and Soni after Respondent No. 2 became Chief Justice of India.

- Sreenijan along with his wife purchased lands along with an old building on April 8, 2008 - 9.241 cent, 14.455 cent, 9.904 cent, 2.5 cent in Varappuzha Village of survey numbers 265/1 and 265/3. Value shown Rs.7, 27, 000. The current Market value is around Rs.60 lakh. This deed agreement also shows that Soni lives in a posh flat (that address is shown in the deed) F4-Travacore Residency, Managd Road, Mamangalam, Eranakulam. A translated copy of relevant extracts of the said sale deed dated 8.4.2008 is annexed herewith as **Annexure-P4**. (Pg 79)

- Sreenijan purchased 20 cent of land on March 3, 2007 in Alangad village survey number 176/15. Value show is Rs.80, 000. Market value is more than Rs.7.5 lakh. A translated copy of relevant extracts of the said sale deed dated 3.3.2007 is annexed herewith as **Annexure-P5**. (Pg 80)

- Sreenijan purchased 3.750 cent of land having survey number 177/5, 21 cent in survey number 176/16 and 90 cent of land having survey number 176/17 in Alangad Village on March 3, 2007, Value shown is Rs.2, 30,000. Market value is more than Rs.20 lakh. A translated copy of relevant extracts of the said sale deed dated 3.3.2007 is annexed herewith as **Annexure-P6**. (Pg 81)

- Sreenijan along with wife Soni on June 5, 2009 purchased 29.033 cent in survey number 176/6A in Edapally South Village. Value shown is Rs.30 lakh. Market value is expected to be more than Rs.3 crore. A translated copy of relevant extracts of the said sale deed dated 5.6.2009 is annexed herewith as **Annexure-P7**. (Pg 82)

- PV Sreenijan's mother Smt.Vasu purchased One Acre 44 Square Meter of land in survey number 176/6A in Edapally South Village on October 6, 2010. Value shown is 15 lakh. This is a Commercial property and market value expected is above Rs.One crore. A translated copy of relevant extracts of the said sale deed dated 6.10.2010 is annexed herewith as **Annexure-P8**. (Pg 83)

- KB Soni(eldest daughter of KGB and PV Sreenijan's wife) purchased flat at F4 of Travancore Residency in Mangattu Rd, Edapally and 1/34 of the undivided share in survey number 81/1B and 81/1C in Edapally Sub Registrar office and Edapally North Village (heart of the Eranakulam City) on Feb 12, 2007. Value shown is Rs.6 lakhs. Market value at the time of purchase was Rs.50 lakhs. A translated

copy of relevant extracts of the said sale deed dated 12.02.2007 is annexed herewith as **Annexure-P9**. (Pg 84)

- Sreenijan purchased 58.86 cent, 35.25 cent, 52.89 cent, 73.14 cent and 59.38 cent of land [Total 2.77 acres. A big resort is under construction at this place. This is river side property] of survey numbers 2076, 2077/1, 2385, 2076/1 and 2075 in Kallur Village (Kadukutty Panchayat) on November 11, 2008. There are old buildings in this property also. Value shown is Rs.14, 00, 000. The market value of the property was above Rs. 2 crore. A translated copy of relevant extracts of the said sale deed dated 11.11.2008 is annexed herewith as **Annexure-P10**. (Pg 85 – 86)

- KB Soni along with others (non-family) for purchased legal office in Survey No. 1986/1 of Eranakulam village the in heart of the Eranakulam town, opposite to Railway Station on March 19, 2007. Value shown is Rs.1,49,500. But the Market value is around Rs.50 lakh excluding furnishing cost etc. A translated copy of relevant extracts of the said sale deed dated 19.3.2007 is annexed herewith as **Annexure-P11**. (Pg 87)

Respondent No. 2's second son-in-law, advocate MJ Benny also became considerably wealthier after his marriage to Rani, Respondent No. 2's younger daughter particularly during Respondent No. 2's tenure as CJI. Between 19 March 2008 and 26 March 2010, he purchased 98.5 cents of land through five title deeds for Rs.81.5 lakh. This is prime land along the National Highway in Marad,

Ernakulam district. A cursory comparison of land rates during this period shows that the property was undervalued. When Benny purchased the property it was around Rs. 4 lakh per cent and at current rates it would be Rs. 10 lakh per cent thus making the total value as Rs. 9 crores, 85 lakhs. Yet Benny showed his yearly income as Rs. 5 lakh and Rs. 5.5 lakh during the assessment years 2008-09 and 2009-10. Just five land deals made Benny a millionaire in two years. (The father, the sons-in-law and the unholy properties, Tehelka 26 April 2011). A copy of the said article published in Tehelka on 15.01.2011 is annexed herewith as **Annexure-P12**. (Pg 88 – 90) Besides these properties, Benny has also made other lucrative investments.

- MJ Benny purchased a posh commercial Shop/Office in Swapnil Enclave (Room No. 12) in Marine Drive, Kochi (heart of the city) on Dec 19, 2007. Value shown is Rs.35 lakh. Market Value was around Rs.Three crores. A translated copy of relevant extracts of the said sale deed dated 19.12.2007 is annexed herewith as **Annexure-P13**. (Pg 91)

- Rani KB along with others purchased . 98.075 cent agro-plantation land including the entire belongings in the land including small homes in survey number 337/2 in Ettumanoor Sub Registrar office and Athirambuzha Village for Rs.7,90,000 on May 28, 2005. Market value is expected above Rs. Three crores. A translated copy of relevant extracts of the said sale deed dated 28.5.2005 is annexed herewith as **Annexure-P14**. (Pg 92)

- Benny purchased 31.650 cent in Marad Village on April 28, 2008. Value shown is Rs.39, 56,250. The Market value of this property near the National Highway is Rs.Five crores. A translated copy of relevant extracts of the said sale deed dated April 28, 2008 is annexed herewith as **Annexure-P15**. (Pg 93)

- Benny purchased 6.5 cent in Marad Village on April 28, 2008. Value shown is Rs. 2 lakhs. The Market value of this property near the National Highway is Rs. 30 lakh. A translated copy of relevant extracts of the said sale deed dated 28.4.2008 is annexed herewith as **Annexure-P16**. (Pg 94)

- Benny purchased 6.54 cent along with house on the land in Marad Village 17.03.2008. Value shown is Rs.9,50,000. The Market value of this property near the National Highway is Rs.30 lakh. A translated copy of relevant extracts of the said sale deed dated 17.03.2008 is annexed herewith as **Annexure-P17**. (Pg 95)

- Benny purchased 7.928 cent in Marad Village 10.6.2009. Value shown is Rs. 8 lakh. The Market value of this property near the National Highway is Rs.One crore. A translated copy of relevant extracts of the said sale deed dated 10.6.2009 is annexed herewith as **Annexure-P18**. (Pg 96)

Respondent No. 2's brother late KG Bhaskaran who was a senior Government Pleader at Kerala High Court also

possessed property beyond his known sources of income. Mr. Bhaskaran resigned after these facts came to light.

- KG Bhaskaran, along with his wife MV Ratnamma (Advocate, retired and suspended Munsif) purchased 87.201 cent and house in it in survey number 383/3, 339/1 and 397/1 in Puthenkurusu Sub Registrar office and Thiruvaniyoor Village. Date of purchase June 24, 2009. Value shown is Rs.21,75,000. Market value is more than Rs.2 crore. A translated copy of relevant extracts of the said sale deed dated 24.6,2009 is annexed herewith as **Annexure-P19**. (Pg 97)

- KG Bhaskaran purchased a Farm House and 53 acre land in Bodikamanvadi Village in Dindigul in Tamil Nadu. Value shown is Rs. 4,21,289/-. Market Value is above Rs. 10 crore. The deal was made on November 28, 2006. It is pertinent to mention that Respondent No. 2 was Tamil Nadu's Chief Justice for a year from 1999 to 2000. A translated copy of relevant extracts of the said sale deed dated 28.11.2006 is annexed herewith as **Annexure-P20**. (Pg 98 – 112)

- KG Bhaskaran along with wife and children purchased 40 acres of Farm House on Feb 23, 2005. Value shown is around Rs. 10,59,120. But the Market value is above Rs.3 crore. A translated copy of relevant extracts of the said sale deed dated 23.2.2005 is annexed herewith as **Annexure-P21**. (Pg 113 – 120)

- KG Bhaskaran along with wife and children purchased on March 18, 2005 20 acres of farm land. Value shown Rs.

1,28,050 is but the market value is above Rs.3 crore. A translated copy of relevant extracts of the said sale deed dated 18.3.2005 is annexed herewith as **Annexure-P22**. (Pg 121 – 130)

- KG Bhaskaran along with wife and children purchased on March 18, 2005 2.13 acres of farm land valued at Rs.75,615 but the market value is above Rs.50 lakh. A translated copy of relevant extracts of the said sale deed dated 18.3.2005 is annexed herewith as **Annexure-P23**. (Pg 131 – 136)

- KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 20 acres. Valued around Rs.6,64,950 but the market value is above Rs.5 crore. A translated copy of relevant extracts of the said sale deed dated 18.3.2005 is annexed herewith as **Annexure-P24**. (Pg 137 – 143)

This amassing of wealth beyond their known source by the kin of Respondent No. 2 during his tenure as Judge/ Chief Justice of the Supreme Court clearly indicates that this wealth was given to these people as illegal gratification to the then Respondent No. 2. A table of compilation of the above mentioned properties of the kin of Respondent No.2 is annexed herewith as **Annexure-P25**. (Pg 144 – 146)

II. Benami properties in the name of his former aide M. Kannabiran.

According to a story covered by Headlines Today on 4th February 2011, Tamil Nadu Chief Minister M. Karunanidhi misused his discretionary power and allotted two prime plots of land in Chennai to a former aide of Respondent No. 2. Documents accessed through Headlines Today show how Justice Balakrishnan's aide M. Kannabiran, whose monthly income was just around Rs 10,000, was awarded the plots, one currently costing Rs 48 lakhs and the other around Rs 2.5 lakhs. Copy of the Headlines Today story dated 04.02.2011 is annexed herewith as **Annexure P26**. (Pg 147)

The documents show that the Tamil Nadu Housing Board (TNHB) swiftly cleared Kannabiran's application and issued the letter of allotment for both the plots just a day after receiving the request. As per the Chief Minister's discretionary quota, only one plot can be allotted to a person. However, Kannabiran was allotted the two plots under the quota for government employees. It was not mentioned how he qualified for it. Also, Kannabiran was not even working in Tamil Nadu at the time he was granted the land. Kannabiran resigned from his job after the news coverage of the said allotments. It is obvious that rules would not have been bent for a lowly employee and in fact Respondent No. 2 used his influence with the Chief Minister of Tamil Nadu to get these allotments. Copies of the allotment letters dated 31.02.2008, July 2008 and receipt dated 20.03.2008 are annexed herewith as **Annexure P27 Colly**. (Pg 148 – 151)

This in itself is misbehaviour. Further, in light of the fact that Kannabiran's monthly income was just around Rs 10,000, it appears that the said plots must have been purchased benami by him for Respondent No. 2. Copy of the pay certificate dated 11.03.2008 issued by Supreme Court to Kannabiran is annexed herewith as **Annexure-P28**. (Pg 152)

III. Respondent No. 2 approved evasive and false replies given by CPIO, Supreme Court in response to the RTI application filed by Sh. Subhash Chandra Agarwal regarding declaration of assets by judges.

According to a news-story published in Times of India on April 14, 2008, in response to an RTI application filed by Sh. Subhash Chandra Agarwal regarding declaration of assets by judges, Supreme Court's Central Public Information Officer (CPIO) stated that the information relating to declaration of assets by judges is "not held by or under the control of" its registry and therefore could not be furnished by him. When Sh. Agarwal filed another RTI application to access the file notings which led to the approval of the reply, it was revealed that this elusive reply was given with the approval of the then Chief Justice of India, Respondent No. 2, who was himself supposed to be the custodian of those declarations.

The file related to the RTI query on asset disclosures was in fact placed before Respondent No. 2 on two occasions.

The first time was when a note prepared by the CPIO on November 27, 2007, was "put up to Hon. CJI for approval" by the head of the SC registry, Secretary General V K Jain.

The second time was when Sh. Jain again "submitted for orders" of the Chief Justice a slightly revised note of the CPIO dated November 30, 2007.

The second note bears Respondent No. 2's signature with the same date. In a reference to the three points proposed to be mentioned in the RTI response, the Chief Justice wrote: "A, B & C approved."

What is crucial is point B, which says: "The applicant may be informed that the information relating to declaration of assets by Hon'ble Judges of the Supreme Court is not held by or under the control of the Registry, Supreme Court of India, and therefore cannot be furnished by the CPIO, Supreme Court of India, under the Right to Information Act, 2005."

In keeping with the CJI-approved note, the CPIO wrote his formal reply under RTI on that very day, November 30, 2007.

Later on the Central Information Commissioner and the single and division benches of Delhi High Court held that Supreme Court could not be allowed to make a distinction between its registry and the office of the CJI for the purpose of giving reply to an application under the RTI Act and that the CPIO had to disclose the information asked for in the said application since it was available at the Chief Justice's office.

A copy of the said news story dated 14.04.2008 is annexed herewith as **Annexure-P29**. (Pg 153 – 154)

IV. Suppressing a letter written by a High Court judge alleging that former Union Minister A. Raja tried to interfere in his judicial function and later lying to the press that he had not received any such letter implicating any Union Minister.

Justice R Raghupathy of the Madras High Court had written a letter on 2.7.2009 to Respondent No. 2, the then Chief Justice of India, in which he stated that the Chairman of Bar Council of Tamil Nadu and Pondicherry K Chandramohan, who is reportedly a friend of former Union Minister Sh. A. Raja, tried to influence him to grant anticipatory bail to his clients Dr Krishnamurthy and his son, who were wanted by the Central Bureau of Investigation (CBI) for forging mark-sheets in MBBS examinations. In his letter to Respondent No. 2, Justice Raghupathy said that Chandramohan wanted him to talk to 'a Union Minister by name Raja' over the bail issue as both the accused were Mr. Raja's family friends. Justice Raghupathy mentioned this incident in an order dated 7.12.2010. Respondent No. 2 in his press conference dated 8.12.2010 stated that he had not received any such letter implicating any Union Minister and that Mr. Raja's name was not mentioned in Justice Raghupathy's letter. This claim of Respondent No. 2 was refuted by Justice H.L. Gokhale, a Supreme Court Judge who was the Chief Justice of Madras High Court at the time the said letter was written. In a detailed press note dated 14.12.2010, Justice Gokhale said that he had forwarded to

the former CJI a copy of Justice Raghupathy's letter dated July 2, 2009 by a letter dated July 5, 2009. The former CJI had in fact acknowledged the same in his subsequent letter dated August 8, 2009 as follows: "vide letter dated July 5, 2009, you have forwarded to me a detailed letter/report July 2, 2009 of Justice Raghupathy explaining the actual state of affairs concerning the alleged misbehaviour of a Union Minister of the Government of India reported in the media." Justice Gokhale said: *"The former CJI informed me by that letter that he had received a copy of the memorandum concerning the above incident, addressed by a large number of Members of Parliament to the Prime Minister. A copy thereof was enclosed to seek my views/comments on the issues raised therein. I replied to this letter on August 11, 2009."*

On Respondent No. 2's statement that there was no mention of the name of any Union Minister in the report sent by him, Justice Gokhale said: "I may point out that Justice Raghupathy's letter was already with him [Respondent No. 2] and in the second paragraph thereof Justice Raghupathy had specifically mentioned the name of Minister Raja. I had no personal knowledge about the incident, and the observations in my reply were in conformity with the contents of Justice Raghupathy's letter."

Justice Raghupathy and Justice Gokhale's revelations have made it clear that Respondent No. 2 not only suppressed the letter implicating Mr. A. Raja but did not flinch

from lying to the nation about these grave allegations. It is pertinent to mention that Respondent No. 2 committed the misbehavior of deliberately lying in order to hide the fact of dereliction of duty committed by him and to shield a Union Minister while holding the post of Chairperson, NHRC. A copy of the press note dated 14.12.2010 issued by Justice Gokhale is annexed herewith as **Annexure-P30**. (Pg 155 – 158)

5. On 26.02.2011 Income Tax officials confirmed that three relatives of Respondent No. 2 hold black money. Director General (Investigation) ET Lukose stated "As far as Justice Balakrishnan is concerned, we can't say anything. But his two sons-in-law and brother possess black money." A copy of a related news story dated 26.02.2011 is annexed herewith as **Annexure- P31**. (Pg 159 – 160)

6. Vide order dated 10.05.2012 this Hon'ble Court disposed of the said writ petition with the following observations and directions:

"We have given our thoughtful consideration to the solitary prayer made in the instant writ petition. It is not possible for us to accept the prayer made at the hands of the petitioner, for the simple reason that the first step contemplated under section 5(2) of the 1993 act is the satisfaction of the president of India. It is only upon the satisfaction of the president, that a reference can be made to the supreme court for

holding an enquiry. This court had an occasion to deal with a similar controversy based on similar allegations against respondent no. 3 in *Manohar Lal Sharma vs. Union of India* [W.P. (C) No. 60 of 2011 decided on 7.5.2012], wherein this court, while disposing of the writ petition, required the petitioner to approach the competent authority under section 5(2) of the 1993 act. As noticed above, the satisfaction of the president of India is based on the advice of the council of ministers. The pleadings in the writ petition do not reveal, whether or not any deliberations have been conducted either by the president of India or by the Council of Ministers in response to the communication dated 4.4.2011 (addressed to the President of India, by the Campaign for Judicial Accountability and Reforms). It is also the submission of the learned counsel for the Petitioner, that the petitioner has not been informed about the outcome of the communication dated 4.4.2011. In the peculiar facts noticed hereinabove, we are satisfied, that the instant writ petition deserves to be disposed of by requesting the competent authority to take a decision on the communication dated 4.4.2011 (addressed by the Campaign for Judicial Accountability and Reforms, to the President of India). If the allegations, in the aforesaid determination, are found to be unworthy of any further action, the Petitioner shall be informed

accordingly. Alternatively, the President of India, based on the advice of the Council of Ministers, may proceed with the matter in accordance with the mandate of section 5(2) of the 1993 Act. Disposed of in the above said terms.”

A copy of the said order dated 10.05.2012 of this Hon'ble Court is annexed herewith as **Annexure P32**. (Pg 161 – 166)

7. On 17.05.2012 the Counsel for the Petitioner wrote to the Prime Minister to take an expeditious decision on complaint dated 04.04.2012 of the Campaign for Judicial Accountability and Reforms and to inform them regarding the same. A copy of the said letter dated 17.05.2012 is annexed herewith as **Annexure P33**. (Pg 167 – 168)

8. When seven months elapsed and the Respondent No. 1 neither informed the Petitioner that the President of India, based on the advice of the Council of Ministers, had proceeded with the matter in accordance with the mandate of section 5(2) of the 1993 Act, nor did it inform the Petitioner that the allegations raised in the said communication letter dated 04.04.2011 were found to be unworthy of any further action, the Petitioner moved an Application praying this Hon'ble Court to direct the Competent Authority to take a decision on the communication dated 04.04.2011 addressed by the Campaign for Judicial Accountability and Reforms, to the President of India within 30 days and inform the Petitioner about the outcome. A copy of the said Application

filed in January 2013 is annexed herewith as **Annexure P34**. (Pg 169 – 172)

9. On 24.01.2013 when this Application came for hearing this Hon'ble Court held that it should be placed before the bench which had heard the main writ petition and that the Registry should apprise the Hon'ble Judges and list the said Application expeditiously. A copy of the said order in I.A. No. 2 in W.P.(C) 35/2012 is annexed herewith as **Annexure P35**. (Pg 173)

10. On 29.01.2013 after the above mentioned order the Respondent No.1 finally sent a communication to the Petitioner based on a wrong interpretation of this Hon'ble Court's judgment in *Krishna Swami vs Union of India and Another* 1992(4) SCC 605 to hold that functions of inquiry, intervention, review etc. of the violations of human rights cannot be said to be an elongation of the judicial functions which the Respondent No.2 discharged in the Supreme Court as Chief Justice of India in terms of the above judgment and thus, his conduct as CJI is not a relevant ground for making a Presidential reference under Sec 5(2) , PHR Act. A copy of the said letter dated 29.01.2013 of sent by Sh. P.K. Ahuja, Deputy Secretary to the Government of India, Ministry of Home Affairs is annexed herewith as **Annexure P36**. (Pg 174 – 175)

11. On 14.04.2013 the Petitioner through its Counsel replied to the above letter dated 29.01.2013 stating that the above argument

of the Respondent No.1 for not taking any action against The Respondent No.2 is untenable on the following grounds:

i. According to the law laid down in *Krishna Swami vs Union of India and Another* (supra), “misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office.” Thus, in the case of Justice Soumitra Sen, even though the allegation was regarding appropriation of Rs 32 lakh as a court-appointed receiver in 1993 still reference was made by the President to the Supreme Court to inquire into this allegation. On the basis of the findings of the Inquiry Committee, the Chief Justice of India recommended the removal of Justice Sen and which lead to his impeachment by the Rajya Sabha. Hence, on the basis of the law laid down in *Krishna Swami vs Union of India and Another*, even the prior conduct of a Chairperson/member of National Human Rights Commission remains germane for making a Presidential reference under Sec 5(2) , PHR Act

ii. Notwithstanding the above, the National Human Rights Commission is a quasi-judicial body under the Protection of Human Rights Act, which restricts the field of selection for its Chairperson only to former Chief Justices of India. Thus, it is abundantly clear that appointment as Chairperson of the National Human Rights Commission is nothing but an elongation of the judicial functions of a Chief Justice of India, as per the law laid down in *Krishna Swami vs Union of India and Another* (supra).

iii. The Hon'ble Supreme Court in *Center for Public Interest Litigation vs. UOI and Ors 2011 (4) SCC 1* while dealing with the validity of appointment of the Central Vigilance Commissioner had emphasized on the concept of institutional integrity. If the selection adversely affects institutional competency and functioning, then it shall be the duty of the High Powered Committee not to recommend such a candidate. What has been held regarding the Central Vigilance Commission is equally true for the National Human Rights Commission.

iv. According to Section 3 (2) of the Act, "The Commission shall consist of "a Chairperson who has been a Chief Justice of the Supreme Court." The true import of the words "who has been" has been elucidated by this Hon'ble Court in *N. Kannadasan vs. Ajoy Khose and Others [(2009) 7 SCC 1]* thus- "the said words indicate the eligibility criteria and further they indicate that such past or present eligible persons should be without any blemish whatsoever and that they should not be appointed merely because they are eligible to be considered for the post...." In the instant case, subsequent to the selection of The Respondent No.2 as Chairperson of the National Human Rights Commission, grave allegations of misconduct along with supporting documents have been submitted; hence, in the light of the above cited cases, an inquiry under Section 5(2) of the Protection of Human Rights Act is definitely called for.

v. The main allegation pertains to purchasing benami properties in the names of his daughters, sons in law and brother. The Respondent No. 2 and his kin continue to enjoy these properties or the profits earned from them even at present.

vi. One of the allegations pertains to a misconduct committed during The Respondent No.2's tenure as Chairperson of the National Human Rights Commission, namely, the false statement made by him regarding the contents of the communication received from Justice Raghupathy of the Madras High Court about the telephone call made on behalf of Mr. A. Raja, former Union Minister. The Respondent No.2, who had been appointed as

Chairperson of the National Human Rights Commission on 07.06.2010, held a press conference on 08.12.2010, in which he made a false statement that he had never received any complaint against Mr. A. Raja from Justice Raghupathy during his term as Chief Justice of India. This claim was falsified by Justice H. L. Gokhale's press note wherein he asserted that Justice Raghupathy's letter, in which Mr. Raja's name and designation had been mentioned in the second paragraph, was forwarded by him in his capacity as the Chief Justice of Madras High Court to the then Chief Justice of India, Justice Balakrishnan. The said press note dated 14.12.2010, which has been annexed in our writ petition, makes it clear that The Respondent No.2 not only suppressed the letter implicating Mr. A. Raja, but he also did not flinch from wilfully making a false statement to the nation in respect of these grave allegations. It is pertinent to mention here that Respondent

No. 2 committed this misbehaviour while holding the post of Chairperson, National Human Rights Commission, in order to cover up the dereliction of duty on his part in shielding a Union Minister while holding the exalted Constitutional office of the Chief Justice of India .

Thus, even if the Law Ministry's flawed opinion that Justice Balakrishnan's conduct as the Chief Justice of India was irrelevant for initiating an inquiry against him under Sec 5(2) of the Protection of Human Rights Act were to be accepted for the sake of argument, there is no justification for the refusal to make a reference for initiating an inquiry in respect of the grave allegation of purchasing benami properties in the names of his daughters, sons in law brother and a former aide which he and his kin continue to enjoy and also of the above mentioned misbehaviour which pertained to his tenure as Chairperson, National Human Rights Commission.

The Petitioner, therefore, urged that the Competent Authority should in public interest reverse its judgment in light of the law laid down by this Hon'ble Court of India and should make a reference to this Hon'ble Court to initiate an inquiry against the Respondent No.2. The Respondent no. 1 has not deemed it necessary to respond to the said letter of the Petitioner's counsel dated 14.04.2013, a copy of which is annexed herewith as

Annexure P37 (Pg 176 – 180).

12. The petitioner earlier writ petition (WPC 35/2012) in this Hon'ble Court had been disposed of with a direction to the Government to take a decision on the representation made by Campaign for Judicial Accountability and Reform on 04.04 2011. The Government has rejected the representation. Therefore the petitioner is approaching this Hon'ble Court again by way of the instant writ petition. The petitioner has not filed any other petition, claim, complaint, suit etc in this Hon'ble Court or any other Court throughout the territory of India. The petitioner has no better remedy available.

GROUND

- A. Because the refusal of the Government to make a reference to this Hon'ble Court under Section 5(2) of the Act despite the fact that there is overwhelming evidence indicating that the Respondent No. 2 has been guilty of several acts of grave misbehavior is totally arbitrary and hence, in violation of Article 14 of the Constitution of India.
- B. Because the refusal of the Government to make a reference to this Hon'ble Court under Section 5(2) of the Act is based on a wrong interpretation of this Hon'ble Court's judgment in *Krishna Swami vs Union of India and Another*.
- C. Because According to the law laid down in *Krishna Swami vs Union of India and Another*, "misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial

office”, thus, even the prior conduct of a Chairperson/member of National Human Rights Commission remains germane for making a Presidential reference under Sec 5(2) , PHR Act.

D. Because notwithstanding the above, the National Human Rights Commission is a quasi-judicial body under the Protection of Human Rights Act, which restricts the field of selection for its Chairperson only to former Chief Justices of India. Thus, it is abundantly clear that appointment as Chairperson of the National Human Rights Commission is nothing but an elongation of the judicial functions of a Chief Justice of India, as per the law laid down in *Krishna Swami vs Union of India and Another*.

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E. Because this Hon'ble Court in *Center for Public Interest Litigation vs. UOI and Ors 2011 (4) SCC 1* while dealing with the validity of appointment of the Central Vigilance Commissioner had emphasized on the concept of institutional integrity. If the selection adversely affects institutional competency and functioning, then it shall be the duty of the High Powered Committee not to recommend such a candidate. What has been held regarding the Central Vigilance Commission is equally true for the National Human Rights Commission.

F. Because according to Section 3 (2) of the Act, "The Commission shall consist of "a Chairperson who has been a Chief Justice of the Supreme Court." The true import of the words "who has been" has been elucidated by this Hon'ble Court in *N. Kannadasan vs. Ajoy Khose and Others* [(2009) 7 SCC 1] thus- "the said words indicate the eligibility criteria and further they indicate that such past or present eligible persons should be without any blemish whatsoever and that they should not be appointed merely because they are eligible to be considered for the post....."

G. Because the main allegation against the Respondent No. 2 pertains to purchasing benami properties in the names of his daughters, sons in law and brother. Respondent No. 2 and his kin continue to enjoy these properties or the profits earned from them even at present.

H. Because one of the Petitioner's allegations pertains to a misconduct committed during Justice Balakrishnan's tenure as Chairperson of the National Human Rights Commission, namely, the false statement made by him regarding the contents of the communication received from Justice Raghupathy of the Madras High Court about the telephone call made on behalf of Mr. A. Raja, former Union Minister.

I. Because the discretion vested in the Government to make a reference to this Hon'ble Court under Section 5(2) of the Act is not unlimited. This hon'ble Court in *Comptroller and Auditor General of India v. K S. Jagannathan*, AIR 1987 SC 537 has held that the courts have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or *has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred.*

J. Because the continuance of Respondent No. 2 as the Chairperson of the NHRC despite several grave charges of misconduct against him is against public interest and would defeat the purpose for which the NHRC was created i.e. having a vigilant body to ensure that the human rights of the citizens of India are not violated.

PRAYERS

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

- a) issue a writ of mandamus or any other appropriate writ or direction of similar nature against Union of India for initiating steps for the removal of Respondent No. 2 as Chairperson of NHRC by making a reference to this Hon'ble Court under Section 5(2) of the Protection of Human Rights Act, 1993 for holding an inquiry against Respondent No. 2; and/or
- b) pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstance of this case.

PETITIONER
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PRASHANT
BHUSHAN
(COUNSEL FOR THE
PETITIONER)

Drawn & Filed On: July 2013

New Delhi