

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 536 OF 2011

PUBLIC INTEREST FOUNDATION & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ANR Respondent(s)

(I.A. No. 1 - appln.(s) for intervention and office report )

Date: 16/12/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. Dinesh Dwivedi, Sr. Adv.  
Mr. Ashish Mohan, Adv.  
Mr. K.K. Mohan, Adv.

For Respondent(s) Mr. Paras Kuhad, A.S.G.  
Mr. J.S. Attri, Sr. Adv.  
Mr. T.A. Khan, Adv.  
Mr. Abhinav Mukherji, Adv.  
Mr. B.V. Balaram Das ,Adv  
Ms. Marin Mayee Sahu, Adv.  
Mr. R.K. Verma, Adv.  
Ms. Padma Lakshmi Nigam, Adv.  
Mr. Mr. R.K. Verma, Adv.

Ms. Meenakshi Arora, Sr. Adv.  
Mr. Mohit D. Ram ,Adv.  
Mr. Vasav Anant Raman, Adv.

Mr. Abhay Kumar ,Adv.  
Ms. Neetu Jain, Adv.  
Mr. Tenzing Tsering, Adv.

UPON hearing counsel the Court made the following  
O R D E R

On 25.11.2013 Mr. Paras Kuhad, learned Additional Solicitor General, submitted that for the purposes of de-criminalisation of politics and electoral reforms, the matter had been referred to the Law Commission of India (for short, 'Law Commission') for consideration.

2. Pursuant to the order of 25.11.2013, an additional affidavit has been filed by the Government of India through the Deputy Secretary, in the Legislative Department, Ministry of Law and Justice. It is stated therein that the Ministry of Law and Justice vide its Note dated 16.01.2013 had desired the Law Commission to consider and examine the issue of 'Electoral Reforms'. The Note of the Ministry of Law and Justice has been placed on record which reads as follows :-

"This issue of electoral reforms has been engaging the attention of the Government for quite some time. As far as back in 1972, the joint parliamentary committee on Amendment of Election Law had suggested that steps should be initiated so the burden of legitimate election expenses, as are borne by the a candidate or

a political party, are progressively shifted to the State. Thereafter, a number of Committees have given their recommendations, some of which have already been implemented by way of amendments in the election and other related laws. The Law Commission of India had earlier presented the 170th Report on "Reforms of the Election Laws" in 1999. The issue of State funding of Elections was also considered by a Group of Ministers in July, 2012 when the GoM agreed that the issue was required to be examined carefully in consultation with the Election Commission.

2. With a view to advancing the issue of free and fare elections and to progressively eliminate the use of money and muscle power in elections, the funding and conducts of elections, better management of electoral system, regulation of political parties, including the audit and finance thereof and review of the anti-defection laws are some of the issues on which detailed deliberations are required. This would require consultations with the Election Commission as well as with other stakeholders. Also there is overwhelming public opinion in the country that undesirable elements with criminal antecedents be weeded out from the legislatures and Parliament.

3. The Law commission of India may urgently consider the issue of electoral reforms in its entirety after taking into consideration the reports of various committees in the past, views of the Election Commission and the other stake holders and may suggest comprehensive measures for changes in the law expeditiously, preferably within a period of three months towards achieving the purpose listed in para 2 above."

3. It appears from the above Note that the Law Commission has been requested to suggest comprehensive measures for changes in the law expeditiously and preferably within a period of three months.

4. We are informed that the Law Commission has not so far submitted the report pursuant to Note dated 16.01.2013.

5. The Election Commission of India (for short, 'Election Commission') in its response dated 21.11.2013 filed before the Court had recommended that where a person has been accused of serious criminal charges, and where the court is prima facie satisfied about his involvement in the crime and consequently charges have been framed at least six months before the election for an offence punishable with imprisonment for 5 years or more, against such person, then in such cases, the said person should be disqualified from contesting elections.

6. Ms. Meenakshi Arora, learned senior counsel for the Election Commission, has placed before us copy of 'Consultation Paper on Electoral Reforms' (for short, 'Consultation Paper') circulated by the Law Commission. The Consultation Paper indicates the issues for consideration for Electoral Reforms.

7. With regard to filing of false affidavits under Section 125A of the Representation of People Act, 1951, the two issues under consideration before the Law Commission are (i) whether filing of false affidavits under Section 125A of the Representation of People Act, 1951 should be a ground for disqualification and (ii) if yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit?

8. It appears that the Law Commission may take some time for submitting comprehensive report on all aspects of Electoral Reforms as sought for by the Central Government in its Note dated 16.01.2013. We feel that the issues with regard to de-criminalisation of politics and disqualification for filing false affidavits deserve priority and immediate consideration by the Law Commission.

9. We, accordingly, request the Law Commission to expedite consideration on the two issues, namely, (1) whether

disqualification should be triggered upon conviction as it exists today or upon framing of charges by the court or upon the presentation of the report by the Investigating Officer under Section 173 of the Code of Criminal Procedure [Issue No. 3.1(ii) of the Consultation Paper] and (2) whether filing of false affidavits under Section 125A of the Representation of People Act, 1951 should be a ground of disqualification? and, if yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit? [Issue No. 3.5 of the Consultation Paper].

10. This Court will appreciate if the report on the above two issues is submitted by the Law Commission to the Government of India by the end of February 2014.

11. The Election Commission may forward copy of its affidavit filed before this Court to the Law Commission immediately.

12. The Government of India on receipt of the report from the Law commission may place the same on record of the present matter.

13. List the matter on March 10, 2014.

| (Rajesh Dham)  
| Court Master

| | (Renu Diwan)  
| | Court Master

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