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A

**IN THE SUPREME COURT OF INDIA**  
**LISTING PROFORMA**

1. Nature of the matter : CIVIL
2. (a) Name of the Petitioner : COMMON CAUSE
- (b) E-mail id : N.A.
- (a) Name of the Respondents : UNION OF INDIA & ORS.
- (b) E-mail id : N.A.
3. Number of the Case : WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2013
4. (a) Advocate for the Petitioners : PRASHANT BHUSHAN
- (b) E-mail id : prashantbhush@gmail.com
5. (a) Advocate for the Respondents : N.A.
- (b) E-mail id : N.A.
6. Section dealing with the Matter : PIL
7. Date of Impugned Order : N.A.
8. 8A. Name of Hon'ble Judges : N.A.
- 8B. in Land Acquisition Matters
- i) Notification/Govt. Order No. (u/s 4,6)  
Dated \_\_\_\_\_ issued by Centre/State : N.A.
- ii) Exact purpose of acquisition &  
Village involved : N.A.
- 8C. in Civil Matters:-
- i) Suit No. name of Lower Court : N.A.
- Date of judgment : N.A.
- 8D. In Writ Petitions:-
- "Catchword" of other similar matters : N.A.
- 8E. In case of Motor Vehicle Accident Matters
- Vehicle No. : N.A.
- 8F. In Service Matters
- (i) Relevant service rule if any : N.A.
- (ii) G.O./Circular/Notification, if applicable
- Or in question : N.A.
- 8G. In Labour Industrial Disputes Matters : N.A.
- I.D. Reference/Award No. if applicable : N.A.
9. Nature of Urgency : N.A.
10. In case it is a tax matter
- a) Tax amount involved in the matter : N.A.
- b) Whether a statement of the case was call

A1

For or rejected : N.A.

d) Exemption Notification/Circular No. : N.A.

11. Valuation of the matter : N.A.

12. Classification of the matter

(please fill up the No. & Relevant Sub. Category) : 08 (0811)

No. of subject Category full name : ORDINARY PIL MATTER

13. title of the Act involved : HUMAN RIGHTS ACT, 1993

14. Sub-classification

(Indicate section/article of the statute) : SECTION 5 (2)

15. Point or Points of law raised in the Case : N.A.

16. Whether matter is not be listed before

Any Hon'ble Judge, mention the name

Of the Hon'ble Judge : N.A.

17. Particulars of identical /similar case or

Cases if any

a) Pending case : WRIT PETITION (CIVIL) NO. 35 OF 2012

b) Decided cases with citation : N.A.

17.A. was S.L.P./Appeal filed against same impugned

Judgment Order earlier? If yes, particulars : N.A.

18. whether the petition against interlocutory final

Order/Decree in the case : N.A.

19 it is a fresh matter, fresh matter, : N.A.

Please state the name of High Court and

The Coram in the impugned judgment : N.A.

20 the matter was already listed in the Court? : N.A.

a) When was it listed? : N.A.

b) What was the Coram? : N.A.

What was the direction of the Court : N.A.

21 Whether a data has already been fixed

Either by Court, or on being mentioned

For the hearing of the matter? If so

Please indicate the data fixed/note : N.A.

22 Is there caveator, if so, whether a

A2

- Notice has been issued to him? : N.A.
- 23 Whether data entered in the computer? : N.A.
24. if it is a Criminal Matter, please state:
- a) whether accused has surrendered : N.A.
- b) Nature of offence, i.e. convicted under  
Section with Act. : N.A.
- c) Sentenced awarded
- d) Sentence already undergone by the accuse : N.A.
- 24.e (i) FIR/RC/etc 0 : N.A.
- Date of Registration of FIR etc
- Name of Place of the Police Station : N.A.
- (II) Name & place of trial court  
Case no. in trial Court & date of judgment: N.A.
- (iii) Name & Place of 1<sup>st</sup> Appellate Court  
Case no. in 1st Appellate court & Date of  
Judgment. : N.A.

Date: 02/08/2013  
Place: NEW DELHI

(PRASHANT BHUSHAN)  
Advocate for the Petitioner

## SYNOPSIS

B

The instant writ petition concerns the continuation of Justice K G Balakrishnan, former Chief Justice of India, as the Chairperson of the National Human Rights Commission (NHRC). Despite the fact that there is an overwhelming evidence indicating that Justice Balakrishnan (hereinafter "Respondent No. 2") has been guilty of several acts of grave misbehaviour, the Government has refused to initiate the process for his removal from the office of Chairperson of NHRC. Therefore, the instant petition seeks a direction to the Government to initiate steps for the removal of Respondent No. 2 as per Section 5(2) of the Protection of Human Rights Act, 1993 (hereinafter "the Act"). In the first instance, the President of India has to make a reference to this Hon'ble Court, which would hold an inquiry on the said grounds of misbehaviour. No such reference has been made, and thus the process of removal, which has to be preceded by an inquiry by this Hon'ble Court, has been frustrated at its threshold. It is a settled law that every power is coupled with a duty to exercise that power in a right manner as and when the need arises to exercise that power. Thus the Government has failed to do its duty as per Sec 5(2) of the Act.

Campaign for Judicial Accountability and Reforms (CJAR) had made representations to the Prime Minister and the President of India on 04.04.2011 along with detailed evidence against Respondent No. 2 of amassment of benami properties & disproportionate assets in the names of his relatives and associates, and several acts of misconduct, including stating falsehoods in

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public. CJAR had asked the authorities to initiate steps for his removal in accordance with the provisions of the Protection of Human Rights Act, 1993. When no such steps were initiated by the authorities and no response was received, the petitioner herein filed a writ petition (WPC 35/2012) in this Hon'ble Court seeking a mandamus to the Union of India to take steps for his removal.

This Hon'ble Court vide order dated 10.05.2012 in the said petition held: *"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 04.04.2011. 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."* The petitioner submits that the said direction has not been complied with, in as much, that the Government has mala fide decided, vide communication dated 29.01.2013, not to proceed with the mandate of the said Section, by using a spurious and illegal argument that the allegations pertain to the period before he became the Chairperson of NHRC. Petitioner's representation dated 14.04.2013 against the said communication has not been responded.

The Government on a completely wrong interpretation of this Hon'ble Court's judgment in *Krishna Swami vs Union of India* 1992(4) SCC 605, declined to make a reference under Sec 5(2) of the Act by claiming that functions of the NHRC, which include to

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inquire, intervene, review etc. the violations of human rights, cannot be said to be an elongation of the judicial functions which Respondent No. 2 discharged as a Judge of this Hon'ble Court.

It is submitted that the refusal of the Government to making a reference to this Hon'ble Court under Section 5(2) of the Act is both wrong in law as well as facts for the following reasons:

(i) It is based on a wrong interpretation of this Hon'ble Court's judgment in *Krishna Swami vs Union of India and Another* because according to the law laid down therein "*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.

(ii) 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*.

(iii) This Hon'ble Court in *Center for Public Interest Litigation vs. UOI and Ors 2011 (4) SCC 1*, while dealing

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with the validity of appointment of the Central Vigilance Commissioner, had emphasized on the concept of institutional integrity. The Court had held that 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] as follows: *"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..."*

(v) Notwithstanding the above, the main allegation against the Respondent No. 2 pertains to the purchase of 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 in the petition specifically pertains to a misbehaviour committed by Respondent No. 2



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during his 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.

It is submitted that in the recent past the process of impeachment of Justice Soumitra Sen of the Calcutta High Court was launched on the grounds of misconduct committed by him while he was a lawyer. Thus, it is not necessary that the allegations of misconduct for the removal of a person occupying important an public posts must relate to his tenure in that position. If glaring evidence of misconduct was available at the time of appointment and yet the appointment was made in disregard of the evidence, then that circumstance would in itself render the appointment as illegal and *non est* in terms of the CVC judgment. If the evidence of misconduct or corruption emerges after the person has occupied the office, then steps ought to be initiated for his removal as per law.

It is respectfully submitted that the refusal on the part of the Government to make a reference in terms Sec 5(2), PHR Act is not only based on a misinterpretation of law and misrepresentation of facts, it is also *mala fide*, because a Chairperson of NHRC, who is vulnerable on account of the serious allegations of misconduct pending against him, will be in no position to stand up to the government. Also, since the Government can take criminal and other action against Respondent No. 2 for amassment of benami

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properties and disproportionate assets, he would not be in any position to pass any significant order against the Government as Chairperson of NHRC, thus defeating the very objective of the Act that requires the Commission to act independently of the Government for the protection of Human Rights, especially the rights under Article 21 of the Constitution. In the circumstances, it would be in the interest of justice, and the protection of the rights of the people of India under Articles 14 and 21, that a direction is issued to the Government forthwith to initiate steps for the removal of the Respondent no. 2 as Chairperson for NHRC by making a reference to this Hon'ble Court under Section 5 (2) of the Act for holding an inquiry, so that in the event that the ground of misbehaviour is proved, the Respondent No. 2 could be removed from the post of Chairperson of NHRC.

## LIST OF DATES

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- 1985 Respondent No. 3 was appointed as judge of Kerala High Court.
- 1997 Respondent No. 3 was transferred to Gujarat High Court.
- 1998 Respondent No. 3 became Chief Justice of Gujarat High Court.
- 1999 Respondent No. 3 assumed charge as the Chief Justice of the High Court of Judicature at Madras.
- 08.06.2000 Respondent No. 3 was elevated to the Supreme Court of India.
- 23.02.2005 Late KG Bhaskaran, brother of Respondent No. 3 along with wife and children purchased 40 acres of Farm House on Feb 23, 2005. Value shown is Rs. 10, 59, 120. But the market value is above Rs.3 crore.
- 18.03.2005 KG Bhaskaran along with wife and children purchased on March 18, 2005 20 acres of farm land. Valued at Rs 1, 28,050 but the market value is above Rs.3 crore.
- 18.03.2005 KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 2.13 acres. Valued at Rs 75, 615 but the market value is above Rs.50 lakh.
- 18.03.2005 KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 20 acres. Valued at Rs 6, 64,950 but the market value is above Rs.5 crore.
- 28.05.2005 Rani KB, daughter of Respondent No. 3 along with others purchased 10.5 acre rubber estate and farm properties, near Athirambuzha Market on May 28, 2005. Value shown is Rs.7, 90,00. Market Value is above Rs. Three crores.
- 03.04.2006 P.V. Sreenijan, son-in-law of Respondent No. 3 contested as an Indian National Congress candidate

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in Njrackkal (reserved) constituency in Eranakulam District, Kerala in 2006. According to Form No. 26 filed by Sreenijan on his assets and liabilities before 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.30, 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.

28.11.2006 KG Bhaskaran purchased a Farm House and 53 acre land in Bodikamanvadi Village in Dingugal in Tamil Nadu. Value shown is Rs.4,21,289. Market Value is above Rs. 10 crore.

14.01.2007 Respondent No. 3 became Chief Justice of India.

12.02.2007 KB Soni(eldest daughter of KGB and PV Sreenijan's wife) purchased flat at F4 of Travancore Residency in Mangattu Rd, Edapally (heart of the Eranakulam City) Feb 12, 2007. Value show is Rs.Six lakhs. Market value at the time of purchase was Rs.50 lakh.

03.03.2007 Sreenijan purchased 20 cent of land on March 3, 2007 in Alangad village survey number 176/15.

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Value show is Rs.80, 000. Market value is more than Rs.7.5 lakh.

03.03.2007 Sreenijan purchased 3.750 cent of land having survey number 177/5 and 90 cent of land having survey number 176/17 on March 3, 2007, Value shown is Rs.2, 30,000. Market value is more than Rs.20 lakh.

19.03.2007 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 lakhs. But the Market value is around Rs.50 lakh excluding furnishing cost etc.

15.12.2007 MJ Benny, Respondent No. 3's second son-in-law purchased a posh commercial Shop/Office in Swapnil Enclave (Room No. 12) in Marine Drive, Kochi (heart of the city) on Dec 15, 2007. Value shown is Rs.35 lakh. Market Value was around Rs. Three crores.

08.04.2008 Sreenjan 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.

14.04.2008 According to a news-story published in Times of India on April 14, 2008, Respondent No. 3 approved of 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.

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28.04.2008 Benny purchased 6.5 cent in Marad Village on April 28, 2008. Value shown is Rs. Two lakhs. The Market value of this property near the National Highway is Rs. 30 lakh.

28.04.2008 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.

11.11.2008 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.

05.06.2009 Sreenijan along with wife Soni on June 5, 2009 purchased 20.8 cents of land and 9.3 cent of land of old survey nos 176/6A and 176/6A1 in Edapally South Village. Value shown is Rs. 30 lakh. Market value is expected to be more than Rs. 3 crore.

10.06.2009 Benny purchased 7.928 cent in Marad Village 10.06.2009. Value shown is Rs. Eight lakh. The Market value of this property near the National Highway is Rs. One crore.

24.06.2009 KG Bhaskaran, along with his wife MV Ratnamma (Advocate. Retired and suspended Munisf) purchased 87.201 cent including a house on old Survey nos 338/3, 339/1 and 397/7 in Thiruvaniyoor panchayat. Date of purchase June 24, 2009. Value shown is Rs. 21,75,000. Market value is more than Rs. 2 crore.

02.07.2009 Justice R Raghupathy of the Madras High Court had written a letter on 2.7.2009 to Respondent No.

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3, 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.

- 12.05.2010 Respondent No. 3 retired from the post of Chief Justice of India.
- 07.06.2010 Respondent No. 3 became Chairman of the National Human Rights Commission and is continuing in the said post at present.
- 06.10.2010 PV Sreenijan's mother Smt. Vasu purchased One Acre 44 Square feet 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.
- 07.12.2010 Justice Raghupathy mentioned the incident dated 02.07.2009 in an order dated 7.12.2010.
- 08.12.2010 Respondent No. 3 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.
- 14.12.2010 The above claim of Respondent No. 3 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



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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."

04.02.2011

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. 3. 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.

26.02.2011

On 26.02.2011 Income Tax officials confirmed that three relatives of Respondent No. 3 hold black money. Director General of Income Tax Investigation Wing, Kochi 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."

04.04.2011

Campaign for Judicial Accountability and Reforms wrote to the Prime Minister and the President of India vide letters dated 04.04.2011 enclosing the above evidence and requesting the Government to make reference under Section 5(2) of the Act to the Hon'ble Supreme Court for initiating inquiry against Respondent No.3 but the Government has not responded to the said letters so far.

.01.2012

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



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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. 3.

10.05.2012 Vide order dated 10.05.2012 this Hon'ble Court disposed of the said writ petition directing the Competent Authority to take a decision on the communication dated 4.4.2011.

17.05.2012 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.

..... 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.

24.01.2013 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

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the Hon'ble Judges and list the said Application expeditiously.

29.01.2013 On 29.01.2013 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.3 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.

14.04.2013 On 14.04.2013 the Petitioner, through its Counsel, responded to the Respondent No.1 enumerating how its decision now to go into the merits of the present matter was both wrong in law as well as facts and the Petitioner urged upon the Respondent No.1 to reverse its decision and to and make a reference to this Hon'ble Court to initiate an inquiry against the Respondent No.3. The Respondent No.1 has not responded to the said reply dated 14.04.2013 so far.

02.08.2013 Hence the present Writ Petition.

IN THE SUPREME COURT OF INDIA  
(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. **678** 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 **Annxure-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 Balakrishanan 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*.

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

THROUGH

PRASHANT BHUSHAN

(COUNSEL FOR THE PETITIONER)

Drawn By: Ms. Pyoli, Adv.

Drawn & Filed On: 2<sup>nd</sup> <sup>Aug.</sup> July 2013

New Delhi

## IN THE SUPREME COURT OF INDIA

## CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.

OF 2013

## PUBLIC INTEREST LITIGATION

In the matter of:

Common Cause

...Petitioners

**Versus**

The Union of India &amp; Anr.

...Respondent

AFFIDAVIT

I, Kamal Kant Jaswal, S/o Late Shri Ambica Prasad Jasvaul, Director of the Petitioner, having its office at 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi-110070, do hereby solemnly affirm and state on oath as under:

1. That I am the Director of the Petitioner in the aforementioned writ petition and being familiar with the facts and circumstances of the case, I am competent and authorized to swear this Affidavit. The petitioner is a registered society (No. S/11017) that was founded in 1980. I am authorized by the Rules and Regulations of the registered society to institute petitions on behalf of the petitioner no. 1.
2. That I have read the contents of the accompanying synopsis & list of dates (Page 13 to 0), the Writ Petition (Page 1 to 28) and Application for exemption from filing official translation (Page 181 to 182) and state that the same are true to my belief and knowledge.



3. The petitioner has no personal interest in the litigation and neither myself nor anybody in whom the petitioner is interested would in any manner benefit from the relief sought in the present litigation save as a member of the general public. This petition is not motivated by self- gain or gain of any person, institution, body and there is no motive other than that of public interest in filing this petition.
4. This petition is based on information received from documents available in public domain, communications with the government, documents available from reliable sources and newspaper reports.
5. That the annexures are true copies of their respective originals.
6. I have done whatever inquiry/investigation that was in my power to do, and collected all data/material which was available and which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.



**VERIFICATION:**

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge; that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on this 18<sup>th</sup> day of August 2013.

ATTESTED

NOTARY PUBLIC, DELHI

01.08.13

I Identify the Executant/Deponent who has Signed in My Presence

— 515

*Kamal Kant Jaswal*

**DEPONENT**  
Kamal Kant Jaswal  
Director, COMMON CAUSE  
5, Institutional Area,  
Nelson Mandela Road, Vasant Kunj  
New Delhi-110070

*Kamal Kant Jaswal*

Kamal Kant Jaswal  
Director, COMMON CAUSE  
5, Institutional Area,  
Nelson Mandela Road, Vasant Kunj  
New Delhi-110070

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ANNEXURE-PI (COLLY)

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORM

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Working Committee: Prashant Bhushan, Venkatesh Sundaram, Indu Prakash Singh, D. Leena, Devvrat, Rohit Kumar Singh, Mayank Misra, Divya Jyoti Jaipuria, Cheryl D'Souza, Pranav Sachdeva, Pyoli, P. M. Bhat

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04.04.2011

To,

Smt. Pratibha Devisingh Patil,

President of India,

Rashtrapati Bhawan,

New Delhi-110004

Subject: Request to make a reference to the Supreme Court for inquiry into the misbehaviour of Justice K. G. Balakrishnan, Chairman, National Human Rights Commission and ex-Chief Justice of India under Sec 5(1) of Protection of Human Rights Act, 1993.

Dear Rashtrapati ji,

The Campaign for Judicial Accountability and Reforms is a campaign committed towards bringing about an accountable and transparent judicial system which is accessible to every citizen of this country. The Campaign has, since its inception, highlighted several serious problems with the Indian Judicial System including its lack of affordability, its inaccessibility to the poor and marginalised, the appointment of its judges, its elitist and anti-poor bias, the lack of proper redressal mechanisms to address grievances against judges, inordinate delays in deciding matters and several instances of corruption in the higher judiciary.

In the past few months the news of close relatives and former-aide of Justice K.G. Balakrishnan possessing

assets disproportionate to their known sources of income has been covered widely by the national media. The Campaign has also come across other instances of grave misbehaviour by Justice Balakrishnan during his tenure as the Chief Justice of India.

After retiring as Chief Justice of India Justice Balakrishnan was appointed as the Chairman of National Human Rights Commission. The process of removal of a member of NHRC has been given in Sec 5 of Protection of Human Rights Act, 1993. According to Sec 5 (1), *subject to the provisions of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.* According to Sec 5(2), *Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment out side the duties of his office: or (c) is unfit to continue in office by reason of infirmity of mind or body; or (d) is of unsound mind and stands so declared by a competent court; or (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.*

The following are some of the known instances of misbehaviour on part of Justice Balakrishnan which make him unfit to continue as the Chairman of National Human Rights Commission:

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



P.V. Sreenijan, married to Soni, the elder daughter of Justice Balakrishnan comes from a humble background. He is a practicing advocate in the Kerala High Court. When Justice Balakrishnan 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 a 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.30, 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 is annexed herewith as **Annexure-1**.

Recently, Asianet, Tehelka and others in the media have uncovered various properties acquired by Sreenijan and Soni after Justice Balakrishnan 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, 22, 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

copy of the said sale deed is annexed herewith as **Annexure-2.**

- 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 copy of the said sale deed is annexed herewith as **Annexure-3.**
- Sreenijan purchased 3.750 cent of land having survey number 177/5 and 90 cent of land having survey number 176/17 on March 3, 2007, Value shown is Rs.2, 3000. Market value is more than Rs.20 lakh. A copy of the said sale deed is annexed herewith as **Annexure-4.**
- Sreenijan along with wife Soni on June 5, 2009 purchased 20.8 cents of land and 9.3 cent of land of old survey nos 176/6A and 176/6A1 in Edapally South Village. Value shown is Rs.30 lakh. Market value is expected to be more than Rs.3 crore. A copy of the said sale deed is annexed herewith as **Annexure-5.**
- PV Sreenijan's mother Smt.Vasu purchased One Acre 64 Square feet 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 copy of the said sale deed is annexed herewith as **Annexure-6.**
- KB Soni(eldest daughter of KGB and PV Sreenijan's wife) purchased flat at F4 of Travancore Residency in Mangattu Rd, Edapally (heart of the Eranakulam City) Feb 12, 2007. Value show is Rs.Six lakhs. Market value at the time of purchase was Rs.50 lakh. A copy of the said sale deed is annexed herewith as **Annexure-7**
- 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 13, 2008. There are old buildings in this property also. Value shown is Rs.14, 00, 00. The market value of the property was above Rs. 2 crore. A copy of the said sale deed is annexed herewith as **Annexure-8.**

- The sale deed of KB Soni along with others (non-family) for purchasing legal office in Survey No. 1986/1 of Eranakulam village in heart of the Eranakulam town, opposite to Railway Station. (On March 19, 2007) Value shown is Rs.1.47 lakhs. But the Market value is around Rs.50 lakh excluding furnishing cost etc. A copy of the said sale deed is annexed herewith as **Annexure-9.**

*(All documents accessed through Asianet and Tehelka)*

Justice Balakrishnan's second son-in-law, advocate MJ Benny also became considerably wealthier after his marriage to Rani, Justice Balakrishnan's younger daughter particularly during Justice Balakrishnan'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.)* 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 15, 2007. Value shown

is Rs.35 lakh. Market Value was around Rs.Three crores. A copy of the said sale deed is annexed herewith as **Annexure-10.**

- Rani KB along with others purchased 10.5 acre rubber estate and farm properties, near Athirambuzha Market on May 28, 2005. Value shown is Rs.10 lakhs. Market Value is expected above Rs. Three crores. A copy of the said sale deed is annexed herewith as **Annexure-11.**
- Benny purchased 31 cent in Marad Village on April 26, 2009. Value shown is Rs.39, 56,250. The Market value of this property near the National Highway is Rs.Five crores. A copy of the said sale deed is annexed herewith as **Annexure-12.**
- Benny purchased 6.5 cent in Marad Village on April 23, 2009. Value shown is Rs.Two lakhs. The Market value of this property near the National Highway is Rs. 30 lakh. A copy of the said sale deed is annexed herewith as **Annexure-13.**
- Benny purchased 6.5 cent in Marad Village April 23, 2009. Value shown is Rs.1.90 lakh. The Market value of this property near the National Highway is Rs.30 lakh. A copy of the said sale deed is annexed herewith as **Annexure-14.**
- Benny purchased 7.928 cent in Marad Village April 23, 2009. Value shown is Rs. Eight lakh. The Market value of this property near the National Highway is Rs.One crore. A copy of the said sale deed is annexed herewith as **Annexure-15.**

*(All documents accessed through Asianet and Tehelka)*

Justice Balakrishnan's brother KG Bhaskaran who was a senior Government Pleader at Kerala High Court also possesses 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 Munisf) purchased 30 cent and 12.14 cent including an old building old Survey nos 338/3,339/1 and 397/7 in Thiruvaniyoor panchayat. Date of purchase June 24, 2009. Value show is Rs.21,75,000. Market value is more than Rs.2 crore. A copy of the said sale deed is annexed herewith as **Annxure-16.**
- KG Bhaskaran purchased a Farm House and 53 acre land in Bodikamanvadi Village in Dingugal in Tamil Nadu. Value shown is Rs.19,27,285. Market Value is above Rs. 10 crore. The deal was on November 28, 2006. It is pertinent to mention that Justice Balakrishnan was Tamil Nadu's Chief Justice for a year from 1999 to 2000. A copy of the said sale deed is annexed herewith as **Annxure-17.**
- KG Bhaskaran along with wife and children purchased 40 acres of Farm House on Feb 23, 2005. Value shown is around Rs.six lakhs. But the Market value is above Rs.3 crore. A copy of the said sale deed is annexed herewith as **Annxure-18.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 20 acres of farm land. Valued around Rs five lakh but the market value is above Rs.3 crore. A copy of the said sale deed is annexed herewith as **Annxure-19.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 2.13 acres. Valued around Rs Two lakh but the market value is above Rs.50 lakh. A copy of the said sale deed is annexed herewith as **Annxure-20.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 20 acres. Valued around Rs 1.71lakh but the market value is above Rs.5 crore.



A copy of the said sale deed is annexed herewith as **Annxure-21.**

*(All documents accessed through Asianet and Tehelka)*

This amassing of wealth beyond their known source by the kin of Justice Balakrishnan 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 Justice Balakrishnan.

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

According to a story covered by *Headlines Today* on 4<sup>th</sup> 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 Justice Balakrishnan. 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. Copies of the supporting documents are annexed herewith as **Annxure-22 Colly..**

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 clear 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 Justice Balakrishnan used his influence with the Chief Minister of Tamil Nadu to get these allotments. 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 Justice Balakrishnan.

**III. Justice Balakrishnan approved of 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, Justice Balakrishnan, 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 Justice Balakrishnan 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 Jain again "submitted for orders" of the Chief Justice a slightly revised note of the CPIO dated November 30, 2007.

The second note bears Justice Balakrishnan'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



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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-

23.

IV. Resisting attempts to stop elevation of Justice Paul Dinakaran to the Supreme Court despite many charges of land-grab, encroachment and possessing assets beyond his known sources of income.

The Supreme Court Collegium recommended the name of Justice Dinakaran along with chief justices of four other high courts in August 2009. In spite of representations made by Bar Association of India, Supreme Court Bar Association, Forum for Judicial Accountability and many noted jurists, Justice Balakrishnan resisted all the attempts to stop the elevation of Justice Dinakaran and in fact made every effort to elevate him. Even after the Central Government rejected the Collegium's recommendation for elevation of Justice Dinakaran in December 2009 and impeachment proceedings against Justice Dinakaran had started, Justice Balakrishnan defended Justice Dinakaran as late as on January 16<sup>th</sup> 2010 in an interview to CNN IBN. Seeking to knowingly elevate a corrupt judge to the Apex Court is a clear case of misbehaviour. It may be noted that the Statutory inquiry committee headed by Justice Aftab Alam has framed

several very serious charges against Justice Dinakaran on 16<sup>th</sup> March 2011 including possessing wealth disproportionate to the known sources of his income; unlawfully securing five Housing Board plots in favour of his wife and two daughters; entering into benami transactions prohibited and punishable under the Benami Transaction (Prohibition) Act, 1988; acquiring and possessing agricultural holdings beyond the ceiling under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961; illegal encroachment on government and public property to deprive Dalits and the poor of their right to livelihood; violation of the human rights of Dalits and the poor; destruction of evidence during official enquiry; obstructing public servant on duty; repeated undervaluation of properties at the time of registration of sale to evade stamp duty; illegal construction in breach of the town planning law and planning permit; misuse of official position to unlawfully secure property and facilitate other illegal acts for personal gain; abuse of judicial office to pass dishonest judicial orders; contrary to settled principles of law to favour a few individuals or for his own unjust enrichment, at the cost of the public exchequer and the country's natural resources; in matters where he had a personal and direct pecuniary interest to secure several properties for his family; to take irregular and dishonest administrative actions; for constituting Benches and fixing rosters of judges to facilitate dishonest judicial decisions and to make arbitrary and illegal appointment and transfers. A copy of the news report dated 19.03.2011 appearing in The Hindu is annexed herewith as **Annexure-24.**

V. Suppressing a letter written by a High Court judge alleging that former Union Minister A. Raja tried to interfere 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 2.7.2009 to Justice Balakrishnan, 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 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 Justice Balakrishnan, 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. Justice Balakrishnan 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 Justice Balakrishnan 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 Justice Balakrishnan'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 [Justice Balakrishnan]

] 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 Justice Balakrishnan not only suppressed the letter implicating Mr. A. Raja but did not flinch from lying to the nation about these grave allegations. A copy press release issued by Justice Gokhale is annexed herewith as **Annexure-25.**

The above facts show that Justice Balakrishnan has been guilty of several acts of serious misbehaviour. We, therefore, request you to kindly make a reference to the Supreme Court for inquiry into the above acts of misbehaviour of Justice K. G. Balakrishnan, Chairman, National Human Rights Commission and ex-Chief Justice of India under Sec 5(1) of Protection of Human Rights Act, 1993.

Yours Sincerely,

(Prashant Bhushan)

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## CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORM

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Patrons: Justice V.R. Krishna Iyer, Justice P.B.Sawant, Justice H. Suresh, Shri Shanti Bhushan, Shri K.G. Kannabiran, Shri Ajit Bhattacharjea, Prof. B.B.Pande, Admiral R.H. Tahiliani, Dr. Bhaskar Rao, Ms. Arundhati Roy, Dr. Banwari Lal Sharma, Shri Pradip Prabhu, Prof Babu Mathew, Dr Baba Adhav, Ms. Kamini Jaiswal, Shri Mihir Desai, Shri Manoj Mitta

Working Committee: Prashant Bhushan, Venkatesh Sundaram, Indu Prakash Singh, D. Leena, Devvrat, Rohit Kumar Singh, Mayank Misra, Divya Jyoti Jaipuriar, Cheryl D'Souza, Pranav Sachdeva, Pyoli, P. M. Bhat

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04.04.2011

To,

Sh. Manmohan Singh,  
Prime Minister of India,  
Prime Minister's Office,  
South Block, New Delhi.

Subject: Request to make a reference to the Supreme Court for inquiry into the misbehaviour of Justice K. G. Balakrishnan, Chairman, National Human Rights Commission and ex-Chief Justice of India under Sec 5(1) of Protection of Human Rights Act, 1993.

Dear Prime Minister,

The Campaign for Judicial Accountability and Reforms is a campaign committed towards bringing about an accountable and transparent judicial system which is accessible to every citizen of this country. The Campaign has, since its inception, highlighted several serious problems with the Indian Judicial System including its lack of affordability, its inaccessibility to the poor and marginalised, the appointment of its judges, its elitist and anti-poor bias, the lack of proper redressal mechanisms to address grievances against judges, inordinate delays in deciding matters and several instances of corruption in the higher judiciary.

In the past few months the news of close relatives and former-aide of Justice K.G. Balakrishnan possessing assets disproportionate to their known sources of income has



been covered widely by the national media. The Campaign has also come across other instances of grave misbehaviour by Justice Balakrishnan during his tenure as the Chief Justice of India.

After retiring as Chief Justice of India Justice Balakrishnan was appointed as the Chairman of National Human Rights Commission. The process of removal of a member of NHRC has been given in Sec 5 of Protection of Human Rights Act, 1993. According to Sec 5 (1), *subject to the provisions of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.* According to Sec 5(2), *Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment out side the duties of his office: or (c) is unfit to continue in office by reason of infirmity of mind or body; or (d) is of unsound mind and stands so declared by a competent court; or (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.*

The following are some of the known instances of misbehaviour on part of Justice Balakrishnan which make him unfit to continue as the Chairman of National Human Rights Commission:

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

P.V. Sreenijan, married to Soni, the elder daughter of Justice Balakrishnan comes from a humble background. He is a practicing advocate in the Kerala High Court. When Justice Balakrishnan 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 a 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.30, 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 is annexed herewith as **Annexure-1**.

Recently, Asianet, Tehelka and others in the media have uncovered various properties acquired by Sreenijan and Soni after Justice Balakrishnan 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, 22, 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



copy of the said sale deed is annexed herewith as **Annxure-2.**

- 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 copy of the said sale deed is annexed herewith as **Annxure-3.**
- Sreenijan purchased 3.750 cent of land having survey number 177/5 and 90 cent of land having survey number 176/17 on March 3, 2007, Value shown is Rs.2, 3000. Market value is more than Rs.20 lakh. A copy of the said sale deed is annexed herewith as **Annxure-4.**
- Sreenijan along with wife Soni on June 5, 2009 purchased 20.8 cents of land and 9.3 cent of land of old survey nos 176/6A and 176/6A1 in Edapally South Village. Value shown is Rs.30 lakh. Market value is expected to be more than Rs.3 crore. A copy of the said sale deed is annexed herewith as **Annxure-5.**
- PV Sreenijan's mother Smt.Vasu purchased One Acre 64 Square feet 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 copy of the said sale deed is annexed herewith as **Annxure-6.**
- KB Soni(eldest daughter of KGB and PV Sreenijan's wife) purchased flat at F4 of Travancore Residency in Mangattu Rd, Edapally (heart of the Eranakulam City) Feb 12, 2007. Value show is Rs.Six lakhs. Market value at the time of purchase was Rs.50 lakh. A copy of the said sale deed is annexed herewith as **Annxure-7**
- 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 13, 2008. There are old buildings in this property also. Value shown is Rs.14, 00, 00. The market value of the property was above Rs. 2 crore. A copy of the said sale deed is annexed herewith as **Annexure-8.**

- The sale deed of KB Soni along with others (non-family) for purchasing legal office in Survey No. 1986/1 of Eranakulam village in heart of the Eranakulam town, opposite to Railway Station. (On March 19, 2007) Value shown is Rs.1.47 lakhs. But the Market value is around Rs.50 lakh excluding furnishing cost etc. A copy of the said sale deed is annexed herewith as **Annexure-9.**

*(All documents accessed through Asianet and Tehelka)*

Justice Balakrishnan's second son-in-law, advocate MJ Benny also became considerably wealthier after his marriage to Rani, Justice Balakrishnan's younger daughter particularly during Justice Balakrishnan'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.)*. 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 15, 2007. Value shown

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is Rs.35 lakh. Market Value was around Rs.Three crores. A copy of the said sale deed is annexed herewith as **Annexure-10.**

- Rani KB along with others purchased 10.5 acre rubber estate and farm properties, near Athirambuzha Market on May 28, 2005. Value shown is Rs.10 lakhs. Market Value is expected above Rs. Three crores. A copy of the said sale deed is annexed herewith as **Annexure-11.**
- Benny purchased 31 cent in Marad Village on April 26, 2009. Value shown is Rs.39, 56,250. The Market value of this property near the National Highway is Rs.Five crores. A copy of the said sale deed is annexed herewith as **Annexure-12.**
- Benny purchased 6.5 cent in Marad Village on April 23, 2009. Value shown is Rs.Two lakhs. The Market value of this property near the National Highway is Rs. 30 lakh. A copy of the said sale deed is annexed herewith as **Annexure-13.**
- Benny purchased 6.5 cent in Marad Village April 23, 2009. Value shown is Rs.1.90 lakh. The Market value of this property near the National Highway is Rs.30 lakh. A copy of the said sale deed is annexed herewith as **Annexure-14.**
- Benny purchased 7.928 cent in Marad Village April 23, 2009. Value shown is Rs. Eight lakh. The Market value of this property near the National Highway is Rs.One crore. A copy of the said sale deed is annexed herewith as **Annexure-15.**

*(All documents accessed through Asianet and Tehelka)*

Justice Balakrishnan's brother KG Bhaskaran who was a senior Government Pleader at Kerala High Court also possesses 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 Munisf) purchased 30 cent and 12.14 cent including an old building old Survey nos 338/3,339/1 and 397/7 in Thiruvaniyoor panchayat. Date of purchase June 24, 2009. Value show is Rs.21,75,000. Market value is more than Rs.2 crore. A copy of the said sale deed is annexed herewith as **Annexure-16.**
- KG Bhaskaran purchased a Farm House and 53 acre land in Bodikamanvadi Village in Dingugal in Tamil Nadu. Value shown is Rs.19,27,285. Market Value is above Rs. 10 crore. The deal was on November 28, 2006. It is pertinent to mention that Justice Balakrishnan was Tamil Nadu's Chief Justice for a year from 1999 to 2000. A copy of the said sale deed is annexed herewith as **Annexure-17.**
- KG Bhaskaran along with wife and children purchased 40 acres of Farm House on Feb 23, 2005. Value shown is around Rs.six lakhs. But the Market value is above Rs.3 crore. A copy of the said sale deed is annexed herewith as **Annexure-18.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 20 acres of farm land. Valued around Rs five lakh but the market value is above Rs.3 crore. A copy of the said sale deed is annexed herewith as **Annexure-19.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 2.13 acres. Valued around Rs Two lakh but the market value is above Rs.50 lakh. A copy of the said sale deed is annexed herewith as **Annexure-20.**
- KG Bhaskaran along with wife and children purchased on March 18, 2005 farm land 20 acres. Valued around Rs 1.71lakh but the market value is above Rs.5 crore.

A copy of the said sale deed is annexed herewith as **Annxure-21.**

*(All documents accessed through Asianet and Tehelka)*

This amassing of wealth beyond their known source by the kin of Justice Balakrishnan 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 Justice Balakrishnan.

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

According to a story covered by *Headlines Today* on 4<sup>th</sup> 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 Justice Balakrishnan. 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. Copies of the supporting documents are annexed herewith as **Annxure-22 Colly..**

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 clear 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 Justice Balakrishnan used his influence with the Chief Minister of Tamil Nadu to get these allotments. 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



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the said plots must have been purchased benami by him for Justice Balakrishnan.

**III. Justice Balakrishnan approved of 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, Justice Balakrishnan, 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 Justice Balakrishnan 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 Jain again "submitted for orders" of the Chief Justice a slightly revised note of the CPIO dated November 30, 2007.

The second note bears Justice Balakrishnan'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

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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-23.**

**IV. Resisting attempts to stop elevation of Justice Paul Dinakaran to the Supreme Court despite many charges of land-grab, encroachment and possessing assets beyond his known sources of income.**

The Supreme Court Collegium recommended the name of Justice Dinakaran along with chief justices of four other high courts in August 2009. In spite of representations made by Bar Association of India, Supreme Court Bar Association, Forum for Judicial Accountability and many noted jurists, Justice Balakrishnan resisted all the attempts to stop the elevation of Justice Dinakaran and in fact made every effort to elevate him. Even after the Central Government rejected the Collegium's recommendation for elevation of Justice Dinakaran in December 2009 and impeachment proceedings against Justice Dinakaran had started, Justice Balakrishnan defended Justice Dinakaran as late as on January 16<sup>th</sup> 2010 in an interview to CNN IBN. Seeking to knowingly elevate a corrupt judge to the Apex Court is a clear case of misbehaviour. It may be noted that the Statutory inquiry committee headed by Justice Aftab Alam has framed several very serious charges against Justice Dinakaran on 16<sup>th</sup>



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March 2011 including possessing wealth disproportionate to the known sources of his income; unlawfully securing five Housing Board plots in favour of his wife and two daughters; entering into benami transactions prohibited and punishable under the Benami Transaction (Prohibition) Act, 1988; acquiring and possessing agricultural holdings beyond the ceiling under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961; illegal encroachment on government and public property to deprive Dalits and the poor of their right to livelihood; violation of the human rights of Dalits and the poor; destruction of evidence during official enquiry; obstructing public servant on duty; repeated undervaluation of properties at the time of registration of sale to evade stamp duty; illegal construction in breach of the town planning law and planning permit; misuse of official position to unlawfully secure property and facilitate other illegal acts for personal gain; abuse of judicial office to pass dishonest judicial orders; contrary to settled principles of law to favour a few individuals or for his own unjust enrichment, at the cost of the public exchequer and the country's natural resources; in matters where he had a personal and direct pecuniary interest to secure several properties for his family; to take irregular and dishonest administrative actions; for constituting Benches and fixing rosters of judges to facilitate dishonest judicial decisions and to make arbitrary and illegal appointment and transfers. A copy of the news report dated 19.03.2011 appearing in The Hindu is annexed herewith as **Annexure-24.**

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

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Justice R Raghupathy of the Madras High Court had written a letter 2.7.2009 to Justice Balakrishnan, 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 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 Justice Balakrishnan, 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. Justice Balakrishnan 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 Justice Balakrishnan 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."

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On Justice Balakrishnan'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 [Justice Balakrishnan]

] 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 Justice Balakrishnan not only suppressed the letter implicating Mr. A. Raja but did not flinch from lying to the nation about these grave allegations. A copy press release issued by Justice Gokhale is annexed herewith as **Annexure-25.**

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Yours Sincerely,

(Prashant Bhushan)

(True copy)