

Headline Today dated 4.02.2011

TN CM Karunanidhi allotted plots to ex-CJI's aide

Tamil Nadu Chief Minister **M. Karunanidhi** misused his discretionary power and allotted two prime plots of land in Chennai to a former aide of ex-Chief Justice of India **K.G. Balakrishnan**, a *Headlines Today* investigation has found.

Documents in possession of *Headlines Today* show how Balakrishnan's aide Kannabiran, whose monthly income was just around Rs.10,000, was awarded the plots, one currently costing Rs.48 lakh and the other around Rs.2.5 lakh.

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.

Kannabiran had applied for land in Nolambur on February 7, 2008 and was allotted the plot the next day. The second plot in Anna Nagar was allotted on April 3, 2008.

As per the chief minister's discretionary quota, only one plot can be allotted to a person. However, Kannabiran was allotted the plots under the quota for government employees without blemish. 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.

Putting the value of the Nolambur plot between Rs.47 and 49 lakh, Manoharan, a surveyor with TNHB, admitted before a hidden camera, "It is a good locality. Plot number 312 is allotted to a clerk in Supreme Court. He is Kannabiran. He has paid everything. CM has given the allotment."

Beneficiary denies CJI link

There was no trace of Kannabiran after he took voluntary retirement. But after an extensive search, *Headlines Today* tracked him to a government quarter in the city. He maintained that he did not get any help from the former CJI.

Asked how he managed two plots, Kannabiran told before the hidden camera, "We had applied, they gave. They said it's not a serious violation. Now only I realised it is not correct. I will surrender it soon."

He insisted that there was "no connection between us (Kannabiran and Balakrishnan). He has not helped me in anyway".

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ANNEXURE- P27(colly)

TAMIL NADU HOUSING BOARD
MOGAPPAIR DIVISION

S.V. PRABHAKAR
MANAGER- Marketing &
Service (i/c), Mogappair Division,
Tamil Nadu Housing Board,
Thirumangalam Shopping Complex,
Anna Nagar West, Chennai-600101

To,
Thiru M. KANNABIRAN
S/o K.P.Mahalingam,
Office Assistant,
No.109,Lodhi Salai
Complex, New Delhi-3

Letter No. MRA 6/ /2008

Dated 31.02.2008

Sir,

Sub: TNHB- Mogappair Division- Allotment of Plot No. 312,
LIG-II Type at Nolamber Phase II Scheme under Hire Purchase
Basis under G.D.Q.- Provisional Allotment Order -illegible-Reg.

Ref: 1.G.O.(2D) No. 320 Hg & U.D. (HG)(I) Department Dated
03.04.2000

2. Board's Memo No. Allot. 1001747/2005. Dated 21.03.2000

I wish to inform you that you have been allotted Plot No. 312 LIG-II
Type at Nolamber Phase II Scheme under Hire Purchase basis as
per the orders in the reference cited.

I, therefore, request you to remit the Initial Deposit of Rs.
9,06,720/- along with Certification called for hereunder within 21
days from the date of receipt this letter.

The cost of the above Plot is Rs. 10,22,400/-. The Extent of the Plot
is 171.00 Square Meter (1841 Square Feet)

The Certificates required to be furnished in original are given
below:-

1. Nationality Certificate
2. Income Certificate
3. Age Proof Certificate and
4. Government servant certificate

Failure on your part to comply with the above requirements
will entail cancellation of the Provisional Allotment Order
communicated to you.

Sd/-
MANAGER- MARKETING & SERVICE(i/c)

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From:-

To:-

The Manager Marketing & Service Thiru Ar. M. Kannabiran
OA K.K. Nagar Division, S/o Late K.P. Mahalingam
Tamil Nadu Housing Board, Lothi Salai Complex
Ashok Nagar Shopping Complex, New Delhi - 110 003
Chennai - 13

Letter No. KK N B/1080/08

Date 07/08

Sir,

Sub: Tamil Nadu Housing Board - KKN Division - Allotment

Thiru Mr. M Kannabiran, OA. Plot No. MIG - 2 at Ahpakkum
Scheme - Under Hire Purchase Basis - Regular Allotment
Order - Issued Regarding

Ref: Your Application No. 9756/mnn 30/6/2008

I am glad to inform you that the ----- plot No. MIG - 2 at
Alapakkun Scheme is allowed to you under First come / first served
GDR basis subject to the rates and condition -----in the
application.

The Tentative cost of the above plot is Rs 2, 84,800/- at the
inertial deposit paid by you is Rs. Therefore the balance
cost of payable In within 60 monthly Installment i.e. Rs.

The amount is so be paid on or before 10th every month connecting
from failing which interest 8% and penal interest at the rate of
1% will be charged.

The Plot will be handed over to you only after the execution of lease-
cum-sale Agreement by you and on payment of the 40% cost. If no

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reply in received within 30 days from the date of receipt of this Regular Allotment Order, it will be presumed that you are not interested in the allotment made in your favour and the same will be allotted to another person's as per rules in force. The initial deposit will be refunded to you after deduction of interest for the period commencing from the date of Provisional Allotment order to the date of your intimation in writing requesting for cancellation, Property tax and all other levies to the Government in respect of the said property shall be paid by you only from the date of this order. The maintenance charge fixed by the Board should be paid Rs. 1500/-.

If there is any extra land in your plot other than the fixed of this category (MIG) you will be charged separately extra land cost will be charged on corner Plot and Plot abutting 60" Road & above.

Sd/-

Manager Marketing & Service

K.K. Nagar Division.

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TAMIL NADU HOUSING BOARD

From No CBA 02

CI NO. 052093

OFFICIAL RECEIPT

SUBJECT TO REALISATION

DATE 20.3.2008

Received with thanks from M. Kannabiran

(D.D. No. 078706 dt. 19.03.08) the sum of Rs. 2,24,800/- (Rupees in words Two lakh, twenty four Thousand and eight hundred by cash/MO/Cheque towards/ GDO

(Full cost.

Account description	A/c Code	Amount
HIG	Plot 435	Rs. 2,24,800/-

Checked by

Approved by

Sd/

Sd/

(True copy)

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ANNEXURE - P28

SUPREME COURT OF INDIA

NEW DELHI

d. No. 6/2008/SC(CASH)

DATED 11TH MARCH, 2008

PAY CERTIFICATE

Certified that Shri M. Kannabiran. Junior Court Attendant of this Registry was in receipt of the following Pay & Allowances as on 29.02.2008.

Pay	Rs. 4760/-
D.P.	Rs. 2360/-
D. A.	Rs. 2927/-
C.C.A.	Rs. 300/-
T.A.	Rs. 100/-
W.A.	Rs. 250/-
Total	Rs. 10802/-

This Certificate is being issued for the purpose of purchase of land in Tamil Nadu.

Sd/-

Assistant Registrar

(Personnel Administrator)

High Court, Madrass.

Sd/-

(Vijay Aggarwal)

Branch Officer

Serving & Distributing office

Supreme Court of India.

(True copy)

TIMES OF INDIA 14.04.2008

SC evasive on asset declaration by judges

TNN Apr 14, 2008, 12.55am IST

NEW DELHI: When Supreme Court judges adopted a resolution a decade ago to make a periodic declaration of their assets to the Chief Justice of India, they took care to state that the details of their holdings would not be made public. But now, the court is being evasive on whether judges have been filing such declarations at all.

In his response to an RTI (right to information) application, the court's central public information officer (CPIO), additional registrar Ashok Kumar, simply said 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.

The file notings, in possession of *The Times of India*, show that this elusive reply was given with the approval of the Chief Justice of India, Justice K G Balakrishnan, who is 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 typically brief 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.

The documentation behind the CPIO's reply and the CJI's approval of the evasion came to light thanks to another RTI application seeking disclosure of the file notings.

It has exposed the apex court's resistance to transparency: Though the CJI can easily say whether judges have been filing declarations of their assets, the CPIO is made to claim under the RTI Act that the information is not in possession of the registry.

The matter is now pending before the Central Information Commission, which will have to give a ruling on whether the Supreme Court could be allowed to make a distinction between its registry and the office of the CJI in an obvious bid to confer immunity on the latter from any obligation under the RTI Act.

If the justification offered for stonewalling the question on assets is taken to its logical conclusion, the CPIO for the Supreme Court cannot answer questions related to the CJI's office and Justice Balakrishnan will therefore have to appoint a separate CPIO for himself.

(True copy)

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ANNEXURE-P30

SUPREME COURT OF INDIA

NEW DELHI -110001

DECEMBER 14'2010

To,

Chief Editor

Press Trust of India

Parliament Street

New Delhi -110001

Dear Sir,

Please find enclosed here with a Press Release by Hon'ble Mr. Justice H.L.Gokhle, Judge , Supreme Court Of India for favour of publication .

Your faithfully,

Sd/-

(Meera Hemant)

PS to Hon'ble Judge

Copy To:-

Correspondents Accredited with the Supreme Court of India

Press Release by Justice H.L. Gokhale**Judge, Supreme Court of India**

14/12/2010

1. On 7th December, 2010 the electronic media reported about an order passed by the Madras High Court, suspending Advocate K. Chandramohan from functioning as the President of Bar Council Of Tamil Nadu. That was in view of the attempt made by him on 12.6.2009, to influence Hon'ble Justice R.Regupathi, a Judge of that High Court, to seek a bail order by saying to him in his chamber that the applicants were the family friends of a union minister by name Raja. The Advocate tried to hand over his mobile phone by saying that the Union Minister was on the line to have a talk with the judge. The Judge refused to talk and reported the incident by his letter dated 2.7.2009 to me since I was then the Chief Justice of that High Court. This letter had been taken into consideration by the court while passing its order. The said report appeared in the print media on the next day.
2. Subsequently, the electronic and print media published the news about a press conference held on 8th December, 2010, by Hon'ble Mr. Justice K.G. Balakrishnan, the then Chief Justice of India. He is reported to have stated, firstly that he had not received any letter from Justice Regupathi when he was the CJI, and secondly that the report which I had sent to the former CJI in this behalf, did not mention the name of any Minister having talked to Justice Regupathi on phone, and therefore, there was no occasion for him to recommend any further action.
3. The reported statement of the former CJI gives an erroneous impression about my role in the matter. Hence, it became necessary for me to verify the facts from the record with the CJI's office. Thereafter, I am releasing this press note.

4. With respect to the first statement of the former CJI that he did not receive any letter from Justice Regupathi, I may point out that, I had forwarded to the former CJI a copy of Justice Regupathi's letter dated 2.7.2009 by my letter dated 5.7.2009. The former CJI had in fact acknowledged the same in his subsequent letter dated 8.8.2009 as follows:-

"Vide letter dated 5th July, 2009, you have forwarded to me a detailed letter/report dated 2nd July, 2009 of Mr. Justice R. Regupathi explaining the actual state of affairs concerning the alleged misconduct of a Union Minister of the Government of India reported in the media".

5. 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 this letter on 11.8.2009. The former CJI had stated in his press conference that in my letter I did not mention the name of any Union Minister having talked to Justice Regupathi over the phone to influence him. With respect to this statement, I may point out that Justice Regupathi's letter was already with him, and in the second paragraph thereof Justice Regupathi has 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 Regupathi's letter. I drew attention of the former CJI, to the same para from Justice Regupathi's letter, which reads as follows:-

"On 12.6.2009, at about 2 P.M. during lunch recess, while I was in the Chamber, High Court, Madras, my office assistant Mr. Mujbir Ali informed me thst Mr. Chandramohan, Chairman, Bar Council of Tamil Nadu, is waiting and seeking for an appointment to meet me and, immediately I allowed him to come in. To start with, he discussed about the general subjects on

Advocates and so proceeding, he said that two persons, who are father and son/accused in a criminal case, are family friends of a Union Minister by name Raja, and the petition filed by them for anticipatory bail must be considered favourably. Simultaneously, he handed over his mobile phone by saying that the Union Minister is on the line to have a talk with me. Right away, I discouraged such conduct of Mr.Chandramohan and told him that the case would be disposed of in accordance with law, if listed before me."

Further, I drew the attention of former CJI to the following sentence in the third para of Justice Regupathi's letter regarding the statement he made in the court:-

"I observed that a counsel, who made an attempt to exert influence on the court by using the name of a Cabinet Minister, cannot be allowed to succeed in snatching an order in his favour by advancing threat."

In this letter, I also informed the former CJI about the petitions filed in the Madras High Court concerning this incident. The continuity of the correspondence clearly shows the incident related to Advocate Chandramohan and minister Raja had been brought to the notice of former CJI.

Justice H.L.Gokhale

Judge, Supreme Court of

India.

(True copy)

ECONOMIC TIMES

Ex-CJI's 3 kins found in possession of black money: I-T dept

PTI Feb 26, 2011, 08.21pm IST

KOCHI: In further embarrassment to former Chief Justice of India justice K G Balakrishnan, Income Tax authorities today said they have unearthed black money in possession of three of his relatives during their investigation into allegations of amassment of wealth by them.

"As far as Justice Balakrishnan is concerned, I cannot say anything. But as far as his relatives-- two sons-in-law and brother are concerned, we have found there is black money", Director General of Income Tax (Investigation), Kochi, E T Lukose, told reporters here.

Justice Balakrishnan's sons-in-law P V Sreenijan and M J Benny, both advocates, and brother K G Bhaskaran, former Special government Pleader, have been found to be possessing black money, he said.

"We are investigating how they have got the black money. We will again question the relatives", he said.

The official refused to state the quantum of black money with the three relatives of Justice Balakrishnan who is the Chairman of National Human Rights Commission.

Lukose refused to say whether Justice Balakrishnan will be questioned or not. "I cannot say anything now", he said.

The I-T investigation covered the last five years, he said adding the probe was in the final stages and likely to be completed by next month.

"The central government has so far not asked us -- the IT investigation wing -- for any report," he said.

The investigation wing had at first conducted a preliminary inquiry into the allegations of amassment of wealth against the relatives of Justice Balakrishnan.

After the allegations came to the fore, Bhaskaran had resigned as special government pleader of Kerala High Court citing health reasons.

Sreenijan, who had unsuccessfully contested the assembly polls as a Congress candidate, had quit Youth Congress after facing the charges. He is also facing a vigilance probe.

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Media reports had alleged that Bhaskaran, Sreenijan and Benny had allegedly amassed wealth disproportionate to known sources of their income when Balakrishanan was the Chief Justice of India, drawing demands from various quarters, including advocates associations, for his resignation as NHRC chief.

(True copy)

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 35 OF 2012

Common Cause

.... Petitioner

Versus

Union of India & Ors.

.... Respondents

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. Through the instant Writ Petition filed by Common Cause invoking the jurisdiction of this Court under Article 32 of the Constitution of India, it is brought out, that there are extensive allegations against the present Chairman of the National Human Rights Commission (hereinafter referred to as the "Commission"), which require to be enquired into. It is submitted, that under the provisions of the Protection of Human Rights Act, 1993 (hereinafter referred to as the "1993 Act"), the authority to initiate an enquiry into the matter, is vested with the President of India. It is accordingly pointed out, that a communication dated 4.4.2011 was addressed by Campaign for Judicial Accountability and Reforms, to the President of India, requesting her to make a reference to the Supreme Court for holding an enquiry, to probe the allegations levelled against Mr.

Justice K.G. Balakrishnan, ex-Chief Justice of India, under Section 5 of the 1993 Act.

2. It is pointed out, that even though a period of more than one year has lapsed since the aforesaid communication was addressed to the President of India and the Prime Minister of India, the petitioner has neither received a response to the communication dated 4.4.2011, nor has a reference been made by the President of India to the Supreme Court under Section 5 of the 1993 Act.

3. During the course of hearing, learned counsel for the petitioner invited our attention to a newspaper report, which had appeared in the Economic Times dated 22.6.2011, containing allegations against three relatives of Mr. Justice K.G. Balakrishnan. It is submitted, that two sons-in-law and a brother of the present incumbent of the Office of Chairman of the Commission, were blamed for having assets beyond their known sources of income. Reference was also made to the communication dated 4.4.2011 addressed by the Campaign for Judicial Accountability and Reforms to the President of India, where allegations were levelled against the Chairman of the Commission under five heads. Firstly, for owning benami properties in the names of his daughters, sons-in-law and brother ; secondly, for getting allotted benami properties from the Chief Minister of Tamil Nadu in the name of his former-aide M. Kannabiran ; thirdly, for approving evasive and false replies to an application under the Right to Information Act filed by Shri Subhash Chandra Agarwal, relating to

declaration of assets by Judges of this Court ; fourthly, resisting attempts to stop the elevation of Justice P.D. Dinakaran to the Supreme Court of India, despite allegations of land-grab, encroachment and possessing assets beyond his known sources of income ; and lastly, suppressing a letter written by a Judge of the High Court of Madras, alleging that a former Union Minister (A. Raja) had tried to interfere in his judicial functioning. Based on the aforesaid allegations, it was sought to be concluded, that Justice K.G. Balakrishnan, the present incumbent of the Office of Chairman of the Commission, has been guilty of several acts of serious misbehaviour. It was accordingly the claim of the petitioner, that a reference be made for an enquiry into the aforesaid alleged acts of misbehaviour at the hands of Justice K.G. Balakrishnan, to the Supreme Court under Section 5 of the 1993 Act.

4. Section 5 of the 1993 Act is being extracted hereinbelow:-

"5. Resignation and removal of Chairperson and Members

- (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.
- (2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India 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 the Member, as the case may be, ought on any such ground to be removed.

(3) Notwithstanding anything in sub-section (2), 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."

A perusal of Section 5(2) reveals the procedure for removal of a Chairperson/Member of the Commission. It is apparent from the procedure contemplated under Section 5(2) of the 1993 Act, that on being satisfied, the President of India shall require an enquiry to be conducted by the Supreme Court. It is also apparent that the President of India, while discharging her duties, is to be guided by the Council of Ministers. Accordingly, in terms of the mandate of Section 5(2) of the 1993 Act, if a decision is to be taken to hold an enquiry against an incumbent Chairperson/Member of the Commission, the President of India would require the advice of the Council of Ministers. It is only thereafter, if a prima facie case is found to be made out, that the President of India on being satisfied, may require the Supreme Court to initiate an enquiry into the allegations, under Section 5(2) of the 1993 Act.

5. The facts narrated in the pleadings of the instant case and the submissions made by the learned counsel appearing on behalf of the

petitioner reveal, that a series of allegations have been levelled against the Chairman of the Commission, in the communication addressed by Campaign for Judicial Accountability and Reforms, to the President of India and Prime Minister of India, on 4.4.2011. These allegations ought to have been forwarded to the Supreme Court, for an enquiry into the matter. The same having not been done, a prayer has been made by the petitioner, for the issuance of a writ in the nature of Mandamus, requiring the President of India to make a reference to this Court under Section 5(2) of the 1993 Act, for holding an enquiry against respondent No. 3, i.e., the present Chairman of the Commission.

6. 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.

7. 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.

8. Disposed of in the abovesaid terms.

.....J.
(B.S. Chauhan)

.....J.
(Jagdish Singh Khehar)

New Delhi;
May 10, 2012.

HS

(TRUE COPY)

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORM

6/6 Basement, Jangpura B, NEW DELHI-1100014

Tel : 7838211548

judicialreforms@gmail.com , www.judicialreforms.org

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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 Bhattacharjee, 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

To,

17.05.2012

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

Copy to: Smt. Pratibha Devisingh Patil,
President of India,
Rashtrapati Bhawan,
New Delhi-110004

Subject: Judgment dated 10.05.2012 of the Hon'ble Supreme Court of India with reference to our complaint dated 04.04.2012 regarding requesting you 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(2) of Protection of Human Rights Act, 1993.

Dear Prime Minister,

This is in reference to our complaint dated 04.04.2011 requesting you 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(2) of Protection of Human Rights Act, 1993. When we did not get a response to the above mentioned complaint for more than nine months, a public interest litigation was filed by the N.G.O. Common Cause in the Hon'ble Supreme Court praying for a mandamus to the Union of India 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(2) of Protection of Human Rights Act, 1993. The said public interest litigation was disposed of by the Hon'ble Supreme Court vide judgment dated 10.05.2012 wherein the Hon'ble Court held, *"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."* A copy of the said judgment dated 10.05.2012 is annexed herewith as **Annexure A**.

In light of the above mentioned judgment we urge you to take an expeditious decision on our complaint dated 04.04.2012 and inform us regarding the same.

Yours Sincerely,

(Prashant Bhushan)

CONVENOR, CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS)

(TRUE COPY)

IN THE SUPREME COURT OF INDIA
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

I.A. NO. OF 2012

IN

CIVIL WRIT PETITION NO. 35 OF 2012

IN THE MATTER OF:

COMMON CAUSE

PETITIONER

VERSUS

UNION OF INDIA AND ORS

RESPONDENTS

APPLICATION FOR DIRECTIONS

TO
THE HON'BLE CHIEF JUSTICE
AND HIS COMPANION JUDGES OF
THE SUPREME COURT OF INDIA

1. The Petitioner had filed the above mentioned writ petition under Article 32 of the Constitution of India seeking a writ of mandamus to the Union of India to make reference under Section 5 (2) of the Human Rights Act, 1993 to the Hon'ble Supreme Court for holding an inquiry against Respondent No. 3 who is the Chairman of National Human Rights Commission.
2. The Campaign for Judicial Accountability and Reforms had written to the Prime Minister and the President of India vide letters dated 04.04.2011 enclosing the extensive evidence annexed to the above mentioned writ petition 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 did not respond to the said letters.

3. Vide order dated 10.05.2012 this Hon'ble Court had 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.

7. 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.

8. 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 P/32**.

4. It is submitted that although 7 months have passed since the order of this Hon'ble Court, neither has the Petitioner been informed that the President of India, based on the advice of the Council of Ministers, has proceeded with the matter in accordance with the mandate of section 5(2) of the 1993 Act, nor has the Petitioner been told that the allegations raised in the said communication letter dated 04.04.2011 were found to be unworthy of any further action.

5. It is respectfully submitted that since the Competent Authority does not seem to have taken a decision on the communication

dated 04.04.2011 (addressed by the Campaign for Judicial Accountability and Reforms to the President of India) in terms of the order dated 10.05.2012 of this Hon'ble Court, it is imperative that a time frame be fixed for the Competent Authority to take a decision on the said communication dated 04.04.2011.

PRAYERS

It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- (a) 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;
- (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

Drawn by: Pyoli, Advocate
New Delhi
Dated: 13.12.2012

(Prashant Bhushan)
Through: Counsel for the Petitioner

(TRUE COPY)

ANNEXURE- P35

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ITEM NO.3

COURT NO.2

SECTION PIL

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A.No.2 IN WRIT PETITION (CIVIL) NO. 35 OF 2012

COMMON CAUSE
VERSUS
UNION OF INDIA & ORS.

Petitioner(s)
Respondent(s)

(With appln. for directions and office report)

Date: 24/01/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. Prashant Bhushan, Adv.

For Respondent(s)

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

List this application before the bench which heard the main writ petition i.e. (Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Jagdish Singh Khehar).

The Registry to apprise the Hon'ble Judges and list I.A.No.2 expeditiously.

[Usha Bhardwaj]
Court Master

[Savita Sainani]
Court Master

(TRUE COPY)

ANNEXURE - P36

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F.No. 15011/26/2011 – HR III
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
(HUMAN RIGHTS DIVISION)

4th Floor, NDCC-II Building,
Jai Singh Road, New Delhi 110001
Dated the 29th January , 2013

To

The Director,
Common Cause,
5, Institutional Area,
Nelson Mandela Road,
Vasant Kunj, New Delhi 110070

Subject: Writ Petition (c) No.35 of 2012 in the Supreme Court – Common Cause Vs Uol & Othrs regarding complaints against Chairperson, NHRC.

Sir,

Please refer to the above cited Writ Petition and Judgement dated 10.5.12 of the Hon'ble Supreme Court thereon. In Para 7 of above Judgement, the Hon'ble Court had directed that "if the allegations 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".

2. The matter has been examined in consultation with the Ministry of Law and Justice and they have commented/opined as below;

i) Shri Balakrishanan was appointed as Chief Justice of India on 14.1.2007; he retired on 11.5.2010 and assumed the charge of Chairperson, NHRC on 7.6.2010 and continues at this post till date;

ii) The provisions of removal of Chairperson and other members are provided in Section 5 of the PHR Act, 1993 and relevant extracts of the above Section are **enclosed**;

iii) The Supreme Court in Krishna Swami v. Union of India, 1992(4) SCC 605 held that misbehaviour of a person as a Judge of a High Court can form the basis of his removal even after his elevation to the Supreme Court. In the said case, a contention was raised that since the Ld. Judge, on his elevation as a Judge of the Supreme Court, had vacated his office as Chief Justice of

contd...../-

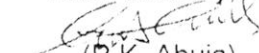
the Punjab & Haryana High Court, the alleged misbehaviour, if any, would cease to be relevant and his conduct, i.e. his misbehaviour as a Judge of the Supreme Court alone would be subject matter of the motion and investigation. Rejecting the said contention, the Supreme Court held as follows:

"So long as one holds the judicial office, the above conduct remains germane and relevant. Any imputation of misbehaviour through a valid motion admitted by the Speaker needs investigation. The elevation of a High Court Judge to the Supreme Court is only an elongation of the judicial functions in the apex court with the same judicial fervor. From this perspective, the alleged misbehaviour of the learned Judge, if proved, would remain germane, even while the learned Judge is a Judge of this Court. It would thus not be difficult to discount the contention of the learned advocate as of no substance".

iv) The functions and power of National Human Rights Commission are mentioned in Chapter III of the Act. In main, the functions of the Commission include to inquire, intervene, review etc. the violations of human rights and to study and spread human rights literacy among various sections of the society. These functions of the Commission cannot be said to be an elongation of the judicial functions which Shri Balakrishnan discharged in the Supreme Court as Chief Justice of India in terms of the judgement of the Supreme Court cited above. Therefore, his conduct as CJI does not appear to be a relevant ground for making a Presidential Reference to the Supreme Court under section 5(2) of the PHR Act, 1993 in respect of his continuation in his present tenure as the Chairperson of the National Human Rights Commission.

3. Keeping in view above and also that the alleged instances of misbehaviour pertain to the tenure of Justice Balakrishnan as Chief Justice of India, this Ministry has sent all the original papers relevant in this case to the Ministry of Law & Justice for taking further appropriate action.

Yours faithfully,


(P.K. Ahuja)

Deputy Secretary to the Government of India
Telefax : 23438110

Copy to File No.F 15011/22/2012-HR III

(TRUE COPY)

ANNEXURE-P37

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PRASHANT BHUSHAN

ADVOCATE

RESI.
B-16, SECTOR-14, NOIDA

OFFICE.
C-67, SECTOR-14, NOIDA

CHAMBER
301, NEW LAWYERS CHAMBER

DIST. GAUTAMBUDH NAGAR

DIST. GAUTAMBUDH NAGAR

SUPREME COURT OF INDIA

(U.P.) - 201 301

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E-MAIL: prashantbhush@gmail.com

14.04.2013

To,
Sh. P.K. Ahuja,
Deputy Secretary to the Government of India,
Ministry of Home Affairs,
Human Rights Division,
North Block,
New Delhi.

Subject: Your letter dated 29.01.2013 F. No. 1501112612011 – HR III,
regarding Writ Petition (c) No.35 of 2012 in the Supreme Court – Common
Cause Vs Uol & Ors regarding complaints against Chairperson, NHRC.

Sir,

Please refer to your letter dated 29.01.2013 being F. No. 1501112612011 - HR III
regarding the above mentioned Writ Petition. In the said letter you have relied on
the judgment of Hon'ble Supreme Court 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 Sh. Balakrishnan 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.

In this regard it is submitted that the above argument for not taking any action against Justice Balakrishnan is untenable on the following grounds:

1. 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
2. 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)*.
3. 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.

4. 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 Justice Balakrishnan 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.
5. The main allegation pertains to purchasing benami properties in the names of his daughters, sons in law and brother. Justice Balakrishnan and his kin continue to enjoy these properties or the profits earned from them even at present.
6. One of our 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.

Justice Balakrishnan, 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 Justice Balakrishnan 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 Justice Balakrishnan committed this misbehavior 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

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mentioned misbehaviour which pertained to his tenure as Chairperson, National Human Rights Commission.

In view of the foregoing, it is would be a travesty of justice if the merits of our serious and well-documented complaint are not given an objective consideration. It is, therefore, urged that the Competent Authority should in public interest reverse its judgment in light of the law laid down by the Hon'ble Supreme Court of India and should make a reference to the Hon'ble Supreme Court to initiate an inquiry against Justice K.G. Balakrishnan.

Yours Sincerely,

(Prashant Bhushan)

Counsel for the Writ Petitioner

(TRUE COPY)

IN THE SUPREME COURT OF INDIA
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

I.A. NO. _____ OF 2013

IN

CIVIL WRIT PETITION NO. _____ OF 2013

IN THE MATTER OF:

COMMON CAUSE

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

**APPLICATION FOR EXEMPTION FROM FILING OFFICIALLY
TRANSLATED COPIES OF ANNEXURES P3, P4,P5 ,P6, P7,P8,
P9,P10,P11,P13,P14,P15,P16,P17,P18,P19, P20,P21,P22,P23
and P24**

To,

The Hon'ble Chief Justice of India

And his companion Justices of the Supreme Court of India

The humble application of the appellant above named

1. The Petitioner is filing the present writ petition under Article 32 of the Constitution of India seeking a writ of mandamus to the Union of India to make reference under Section 5 (2) of the Human Rights Act, 1993 to the Hon'ble Supreme Court for holding an

inquiry against Respondent No. 3 who is the Chairman of National Human Rights Commission.

2. That the Petitioner has annexed Annexures P3, P4, P5, P6, P7, P8, P9, P10, P11, P13, P14, P15, P16, P17, P18, P19 along with the aforementioned petition which are in Malayalam language and Annexures P20, P21, P22, P23 and P24 which are in Tamil language. Due to paucity of time, the Petitioner could not get the translation of the said annexures done from the official translator. However, the translation has been done by a person who is well conversant with both the languages.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) exempt the petitioner from filing officially translated copies of Annexures P3, P4, P5, P6, P7, P8, P9, P10, P11, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22, P23 and P24; and
- b) pass any other order or further order/s this Hon'ble Court may deem fit and proper.

PETITIONER

Date: 09.07.2013
Place: New Delhi

THROUGH PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER

PS

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
IN

WRIT PETITION (Civil) NO.678 OF 2013

IN THE MATTER OF :

(KGB CASE)

Common Cause

..... Petitioner

Versus

Union of India and Anr

... Respondents

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FILED BY

B.K. PRASAD

ADVOCATE FOR RESPONDENT NO.1

- ① Keshava shani — Extends beyond judicial scope
- ② Only CJI's case approved, CVC ST
- ③ Large number of pipelines ^{in person}, still engaged
- ④ False statement to protect Raja & NRC Unit
- ⑤ Inquiry is by SC, not Govt

Court's view —

- ① CBIOT says no evidence given
- ② Mere allegations, not "Proven misbehaviour"
- ③ Allegation related to his tenure & Co.

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IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. 678 of 2013

IN THE MATTER OF:

Common Cause

... Petitioner

Versus

Union of India and Anr

... Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.1

I, P.K. Ahuja, Working as Deputy Secretary, Government of India, Ministry of Home Affairs, (Human Rights Division), 4th Floor, NDCC-II Building, Jai Singh Road, New Delhi-10001, do hereby solemnly and sincerely affirm and state as follows:-

- A. That in my official capacity as mentioned above, I am fully conversant with the facts of the case and competent to swear the present reply affidavit on behalf of the respondent.
- B. I have gone through the contents of the Writ Petition (Civil) No. 678 of 2013 and the annexures filed with the application and have understood the contents thereof. I am filing this reply-affidavit to the show cause in the above Writ Petition.

PRELIMINARY SUBMISSIONS:

1. At the outset the answering respondent denies each and every statement, allegation, averment and submission made by the Petitioner herein, that are contrary to the present affidavit, and the answering respondent shall not be deemed to have admitted any allegation, averment and submission which have not been specifically traversed or denied herein.

2. The answering Respondent submits that Justice K.G. Balakrishnan (hereinafter referred to as Respondent No.2 herein) was appointed as a Judge of this Hon'ble Court on 08-06-2000. He held the post of Chief Justice of India from 14-01-2007 till his retirement on 12-05-2010. Subsequent to his retirement Respondent No. 2 was appointed as the Chairperson of the National Human Rights Commission on 07-06-2010 and continues to hold the post as on date.
3. On 04-04-2011 an organization by the name "Campaign for Judicial Accountability and Reform" submitted a representation to the Hon'ble President of India requesting her to make a reference to this Hon'ble Court for inquiry into alleged acts of misbehaviour of the Respondent No.2 in terms of Section 5(2) of the Protection of Human Rights Act, 1993(hereinafter referred to as the 'Act').
4. The matter was referred to Ministry of Finance, Department of Revenue and the Central Board of Direct Taxes (CBDT), which gave a supplementary status note dated 18-04-2012 on income tax investigation in respect of allegations against the Respondent No.2 and his relatives. In the said note it was mentioned that on the basis of evidence collected during the course of inquiries it could not be established that the properties were held Benami on behalf of Respondent No. 2. Despite there being no allegations regarding professional receipts they were nevertheless examined, and it was found that there was no material link such payments to any cases pending in the concerned court.
5. The answering Respondent submits that the said supplementary note was prepared so as to place it before this Hon'ble Court in Writ

Where is
the report
of CBDT?

✓

Petition No. 35 of 2012. The said writ petition was a public interest litigation seeking a mandamus requiring the President of India to make a reference to this Hon'ble Court under Section 5(2) of the Act for holding an inquiry against the present Respondent No.2.

6. The answering Respondent submits that Writ Petition No. 35 of 2012 was disposed off by this Court on 10-05-2012 (reported as Common Cause v. Union of India, 2012 (11) SCC 600) in the following terms:

"13. 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."

7. The answering Respondent submits that in terms of the Order dated 10-05-2012 of this Hon'ble Court the matter was referred to the Department of Legal Affairs, Ministry of Law and Justice on the question whether the provisions of the Act will apply when allegations pertain to the period when respondent No.2 was functioning as Chief Justice of India and not to his current tenure as Chairperson of NHRC.

8. On 17-05-2012 the Ministry of Law and Justice furnished its opinion after examining this Court's observations in the case of Krishna

187 188

Swami v. Union of India, 1992 (4) SCC 605 wherein it was observed as under:

*“63... So long as one holds the judicial office, the above conduct remains germane and relevant. Any imputation of misbehaviour through a valid motion admitted by the Speaker needs investigation. **The elevation of a High Court Judge to the Supreme Court is only an elongation of the judicial functions in the apex court with the same judicial fervor.***

From this perspective, the alleged misbehaviour of the learned Judge, if proved, would remain germane, even while the learned Judge is a Judge of this Court. It would thus not be difficult to discount the contention of the learned advocate as of no substance”

9. The Ministry found that the functions of Chairman, National Human Rights Commission cannot be said to be an elongation of the judicial functions which the Respondent No.2 discharged in this Court as the Chief Justice of India. Accordingly it was opined that Respondent No.2's conduct as Chief Justice of India did not appear to be a ground for making a Presidential reference to this Court under section 5(2) of the Act.

10. It is submitted that vide letter dated 29-01-2013, the Petitioner was informed by the Ministry of Home Affairs about the opinion from the Ministry of Law and Justice, and it was stated that all the original papers relevant in the case had been sent to the Ministry of Law and Justice for appropriate action.

11. On 14-04-2013 the Advocate for the Petitioner addressed a letter to the Ministry of Home Affairs contending that the stand taken by the Ministry was untenable and referred to the Judgments of this Court in CPIL v. Union of India, 2011 (4) SCC 1 and N. Kannadasan v. Ajay Khose, 2009 (7) SCC 1. (Pr 77)

12. The answering respondent submits that in the afore mentioned circumstances the only question before this Court is whether the conduct of the Respondent No.2 as Chief Justice of India could be considered to invoke section 5(2) of the Act and seek his removal. ?

13. According to Section 3(2)(a) of the Act, the Chairperson of NHRC shall be a person '*who has been a Chief Justice of the Supreme Court*'. Section 5(2) prescribes the grounds for removal of a Chairperson and member 'from his office' on proved misbehaviour or incapacity. Both the grounds 'misbehaviour' and 'incapacity' have to be read in conjunction with the word *office*. It is submitted that a conjunctive reading of the grounds and the word 'office' would show that Section 5(2) targets 'proved misbehaviour' or 'incapacity' while holding the office. It is submitted that the words 'proved misbehaviour' cannot be construed to include within their ambit allegations pertaining to conduct in the previous office. ✓

14. It is submitted that at the time of the Respondent No.2's appointment there was no controversy, nor were there any allegations or established misbehaviour on his part. The allegations against Respondent No.2 cannot be described as 'proved misbehaviour' as required by section 5(2) of the Act. It is submitted that the It is submitted that the ✓

appointment of Respondent No.2 as NHRC Chairperson was never
challenged.

PARA WISE REPLY:

15. With respect to Para 1 it is submitted that there was no question of reversing the stand of the Respondent No.1 as informed to the petitioner vide letter dated 29-01-2013. It is submitted that the Respondent No.2's conduct as Chief Justice of India cannot be a ground for making a Presidential reference to this Court under section 5(2) of the Act.

16. Paras 2 to 4 do not call for any reply being factual position as stated by the Petitioner.

17. Para 5 does not call for any comment as the contents thereof are based on a news report dated 26-02-2011.

18. Paras 6 to 9 do not call for any reply being factual position as stated by the Petitioner.

19. With respect to para 10 it is denied that the reply dated 29-01-2013 is based on a wrong interpretation of this Court's judgment in Krishna Swamy v. UOI (Supra).

20. With respect to para 11(i) it is submitted that the case of Justice Soumitra Sen is distinguishable as the allegations against Justice Sen pertained to the period when he was an advocate and the misconduct had continued while he was a judge. The case at hand cannot be compared to that of Justice Sen's as the Respondent No.2 is not holding a judicial office.

21. With respect to para 11(ii) it is submitted that the post of Chairperson, NHRC cannot be described as the same as that or equal to the post of Chief Justice of India. The functions of the Commission are laid down in section 12 of the Act, from which it is amply clear that these functions cannot be said to be an elongation of Supreme Court's judicial functions with the same judicial fervour.

22. With respect to para 11(iii) it is submitted that the decision in CPIL v. Union of India, 2011(4)SCC 1 is not applicable to the matter at hand as there this Court was concerned with legality of appointment of the Central Vigilance Commissioner on the basis of an 'established' fact that there were pending criminal proceedings and the file notings recommending disciplinary action were not considered by the High-Powered Committee before making its recommendation.

23. With respect to para 11(iv) it is submitted that in the case of N. Kannadasan v. Ajay Khose, 2009 (7) SCC 1 this Court was concerned with a challenge to the appointment of a President of a State Consumer Commission on the ground that as an Additional Judge of the High Court he had been found unfit to continue as Judge and accordingly not made permanent. There the challenge was based on an undisputed fact. N. Kannadasan's case is not applicable to the matter at hand because there was no challenge to the Respondent's No.2's appointment nor is there an established fact concerning his alleged behaviour.

24. With respect to para 11 (v) and (vi) it is submitted that the mandate of section 5(2) of the Act cannot be invoked unless there is "proved misbehaviour". It is submitted that mere allegations against

??
✓

8 19/10/13

Respondent no.2 is insufficient to make a reference to this Court
under section 5(2).

25. The answering respondent submits that the grounds stand answered by the submissions made hereinabove and the arguments of law would be made at the time of hearing.

26. Based on what has been stated hereinabove, the answering respondent prays that this Hon'ble Court may be pleased to dismiss the Writ Petition with exemplary costs.

VERIFICATION:

Verified at New Delhi on this 30th day of September, 2013, that the contents of the above Counter-Affidavit are true and correct on the basis of information derived from the record of the case.


DEPONENT
(पी. के. आहुजा)
(P. K. AHUJA)
उप-सचिव/Deputy Secretary
गृह मंत्रालय
Ministry of Home Affairs
भारत सरकार/Govt. of India


DEPONENT
(पी. के. आहुजा)
(P. K. AHUJA)
उप-सचिव/Deputy Secretary
गृह मंत्रालय
Ministry of Home Affairs
भारत सरकार/Govt. of India