

SECTION: PIL

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

WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

COMMON CAUSE

...PETITIONERS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

FILING INDEX

S.NO.	PARTICULARS	COPIES	C.FEE
1.	WRIT PETITION WITH AFFIDAVIT	1	500/-
2.	ANNEXURE P1 TO P6	1	NIL
3.	APPLICATION FOR INTERIM DIRECTION	1	100/-
4.	VAKALATNAMA WITH MEMO OF APPEARANCE	1	10/-

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SUPREME COURT OF INDIA
NEW DELHI 110 001
CODE NO.: 515

NEW DEHI:

DATED: 01.03.2021

DOL RAJ BHANDARI , REGD. CLERK, I.D. NO. 3745, MOB. NO. 9868255076

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PAPER BOOK
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WITH
I.A. NO. _____ OF 2021
(APPLICATION FOR INTERIM DIRECTION)

COUNSEL FOR THE PETITIONER: **PRASHANT BHUSHAN**

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SECTION: PIL

PROFORMA FOR FIRST LISTING

The case pertains to (Please tick/check the correct box):

- | | | |
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| <input type="checkbox"/> | Central Act: (Title) | CONSTITUTION OF INDIA |
| <input type="checkbox"/> | Section | Article 14 and 21 |
| <input type="checkbox"/> | Central Rule : (Title) | -NA- |
| <input type="checkbox"/> | Rule No(s): | - NA - |
| <input type="checkbox"/> | State Act: (Title) | - NA - |
| <input type="checkbox"/> | Section : | - NA - |
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| <input type="checkbox"/> | Impugned Interim Order: (Date) | - NA - |
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| <input type="checkbox"/> | High Court : (Name) | -NA- |
| <input type="checkbox"/> | Names of Judges: | -NA- |
| <input type="checkbox"/> | Tribunal/Authority ; (Name) | - NA - |
| 1. | Nature of matter : <input type="checkbox"/> Civil <input type="checkbox"/> Criminal | |
| 2. | (a) Petitioner/ appellant No.1 : | COMMON CAUSE |
| | (b) e-mail ID: | |
| | (c) Mobile Phone Number: | COMMONCAUSEINDIA@GMAIL.COM |
| | | 09818399055 |
| 3. | (a) Respondent No.1: | UNION OF INDIA |
| | (b) e-mail ID: | - NA - |
| | (c) Mobile Phone Number: | - NA - |
| 4. | (a) Main category classification: | 08(0812) |
| | (b) Sub classification: | OTHER PIL MATTER |
| 5. | Not to be listed before: | - NA - |
| 6. | (a) Similar disposed of matter with citation, if any & case details: | - NA - |
| | (b) Similar Pending matter with case details: | -NA- |

7. **Criminal Matters:**
- (a) Whether accused/convict has surrendered: Yes No
- (b) FIR No. - **NA** - Date: - **NA** -
- (c) Police Station: - **NA** -
- (d) Sentence Awarded: - **NA** -
- (e) Period of sentence undergone including period of Detention/ Custody Undergone: - **NA** -
8. Land Acquisition Matters: - **NA** -
- (a) Date of Section 4 notification: - **NA** -
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- © Date of Section 17 notification: - **NA** -
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- Senior citizen > 65 years SC/ST Woman/child
- Disabled Legal Aid case In custody - **NA** -
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New Delhi
Dated: 01.03.2021

SYNOPSIS

The Petitioner is filing the instant writ petition in public interest under Article 32 of the Constitution of India, seeking an appropriate writ for the appointment of the Director of the Central Bureau of Investigation (CBI) in accordance with the law. A proper appointment as per the statutory law is necessary for upholding the rule of law and for enforcement of the rights of the citizens under Articles 14 and 21 of the Constitution of India.

The Government has failed to appoint the Director of CBI as per Section 4A of the Delhi Special Police Establishment Act, 1946 on the expiry of the term of the last incumbent viz. Mr. Rishi Kumar Shukla on 02.02.2021 and has instead, vide Order dated 03.02.2021, appointed Mr. Praveen Sinha as an interim / acting CBI Director till the appointment of new CBI Director, or until further orders.

The Petitioner herein is also seeking an appropriate order or direction to the Union of India to initiate and complete the process of selection of the CBI Director well in advance, atleast 1 to 2 months before the date on which the vacancy in the post of CBI Director is about to occur in future.

The CBI established under the Delhi Special Police Establishment Act (DSPE), 1946 is the premier investigation agency in the country. It investigates the corruption related offences connected with the Central Government, and under certain circumstances, also cases connected with State Government entities. This Hon'ble Court has time and again entrusted important cases of corruption and violation of human rights to the CBI for investigation. The CBI has, sometimes under the monitoring of this Hon'ble Court, investigated important cases involving powerful and influential individuals.

The Director of the CBI is the final authority in the organization. He supervises all the work in the CBI and is responsible for constitution of

investigating teams for probing cases. Hence, this Hon'ble Court and later on Parliament have made determined efforts to enhance the functional autonomy of the CBI Director and limit the extent of executive discretion in the matter of appointment of this key functionary.

Section 4A(1) of the DSPE Act, 1946 is quoted herein-below:

"4A. Committee for appointment of Director.— (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member."

Thus, the appointment of the CBI Director has to be made on the recommendation of the Prime Minister, leader of the single largest Opposition party and the Chief Justice of India (or any Judge of Supreme Court nominated by CJI).

That vide the judgment in *Prakash Singh v. Union of India*, (2006) 8 SCC 1], in a case which relates to appointments of Director Generals of Police (DGPs) in States, this Hon'ble Court was pleased to direct, inter alia, that once a DGP has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. Vide order dated 03.07.2018, passed in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India*, (2019) 4 SCC 13], a three-judge bench of this Hon'ble Court was pleased to pass, inter alia, the following direction:

"6.4. None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh case [Prakash Singh

v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417]
[emphasis supplied]

DGPs are the heads of police force in states and CBI is the premier Central investigating agency. Both the DGPs as well as the CBI Director have a minimum tenure of two-years, as per the existing law of the land. In the case of States' DGPs the selection procedure is prescribed by this Hon'ble Court and in case of CBI Director, the selection procedure is prescribed by the DSPE Act, 1946. Thus, the aforesaid direction passed by this Hon'ble Court in *(2019) 4 SCC 13* should be squarely applicable in the case of CBI Director to the effect that the Centre shall never conceive of the idea of appointing any person on the post of Director, CBI on an acting/interim basis.

The Petitioner, Common Cause, is a registered society (No. S/11017) that was founded in 1980 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. On two earlier occasions, the Petitioner had filed PILs regarding issues concerning the office of CBI Director:

- i. First was *W.P.(C) No. 984 of 2016*, vide which the Petitioner herein had sought appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013. After notice was issued in the PIL, the Government took steps to hold the meeting of the high-powered selection committee and appoint a regular CBI Director.
- ii. Second was *W.P.(C) No. 1315/2018* [tagged with *W.P.(C) No. 1309/2018*], vide which the Petitioner herein had sought appropriate

writ for quashing of order dated 23.10.2018, vide which the then incumbent Director of CBI, Mr. Alok Verma, had been illegally divested of all the work related to the Director, CBI. This Hon'ble Court, vide its judgment, dated 08.01.2019, reported in (2019) 3 SCC 1, was pleased to set aside the said order dated 23.10.2018, while clearly laying down that the Government was mandated to strictly follow the mandate of Delhi Special Police Establishment Act, 1946 and holding, inter alia, that:

***“38. These are the basic facts that cannot be overlooked while gathering the intention of the legislature in making the provisions contained in Section 4-A and Section 4-B of the DSPE Act. An in-depth consideration of the matter leaves us with no doubt that the clear legislative intent in bringing the aforesaid provisions to the statute book are for the purpose of ensuring complete insulation of the office of the Director, CBI from all kinds of extraneous influences, as may be, as well as for upholding the integrity and independence of the institution of CBI as a whole.*”**

In *Anjali Bhardwaj v. Union of India*, (2019) 18 SCC 246, this Hon'ble Court was pleased to pass, inter alia, the following general direction in a PIL that was filed highlighting the vacancies at Central Information Commission and State Information Commissions:

“66.5. We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time-lag between the occurrence of vacancy and filling up of the said vacancy.”
[emphasis supplied]

Hence the instant Writ Petition.

LIST OF DATES

<u>DATES</u>	<u>EVENTS</u>
18.12.1997	<p>This Hon'ble Court in the landmark judgment, dated 18.12.1997, in <i>Vineet Narain v. Union of India</i>, (1998) 1 SCC 226 had directed that Director CBI would have full freedom for allocation of work in the CBI including constitution of investigation teams. This Hon'ble Court had also directed that there should be a selection committee to identify a panel of names for the appointment of Director CBI, and thereafter the final selection to be made by the Appointments Committee of Cabinet (ACC). This Hon'ble Court also directed that the CBI Director would have a fixed tenure of two years. This was done to ensure that adhocism in the appointment and functioning of CBI Director is eliminated and his independence is maintained.</p>
2003	<p>In line with the aforesaid directions, a Central Vigilance Commission Act 2003 was enacted by the parliament and Section 26 of the CVC Act substituted Section 4 of the Delhi Special Police Establishment Act, 1946 (DSPE) and added Section 4(A) and 4(B) which deal with appointment of Director as well as terms and conditions of service of Director. The committee in the said Section 4A(1) consisted of a) Central Vigilance Commissioner, as Chairperson; b) Vigilance Commissioners, as members; c) Secretary to the GOI incharge of MHA, as member; and d) Secretary (Coordination & Public Grievances) in the Cabinet Secretariat, as member.</p>

29.11.2014	As the above mechanism was not found sufficient to insulate the CBI Director, Section 4A of the DSPE Act, 1946 was further amended <i>vide</i> the Lokpal and Lokayuktas Act, 2013 (the Lokpal Act) to provide that the CBI Director shall be appointed by the Central Government on the recommendations of a committee comprising a) the Prime Minister (Chairperson), b) the Leader of Opposition (Member), and c) the Chief Justice of India or any Judge of Supreme Court nominated by him (Member). The DSPE Act was further amended on 29.11.2014 to include the Leader of the single largest Opposition party in the said committee when there is no recognized Leader of Opposition.
16.12.2016	In an earlier PIL filed before this Hon'ble Court by the Petitioner herein viz. <i>W.P.(C) No. 984 of 2016</i> , the Petitioner herein had sought appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013. During the hearing on 16.12.2016, the then Ld. Attorney General of India informed this Hon'ble Court that the process of appointment of regular Director to the CBI has been commenced and that the Committee's first meeting will take place in the last week of December, 2016.
20.01.2017	When during the hearing on 20.01.2017, the then Ld. Attorney General of India informed this Hon'ble Court that Mr. Alok Kumar Verma has been appointed as CBI Director for a period of 2-years, this Hon'ble Court was pleased to close the said <i>W.P.(C) No. 984 of 2016</i> .

03.07.2018	<p>Vide order dated 03.07.2018, passed in <i>W.P.(C) No. 310/1996</i> [reported in <i>Prakash Singh v. Union of India, (2019) 4 SCC 13</i>], a three-judge bench of this Hon'ble Court was pleased to pass, inter alia, the following direction:</p> <p style="text-align: center;"><u>“6.4. None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh case [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417]”</u> [emphasis supplied]</p>
02.02.2019	<p>Vide Order, dated 02.02.2019, issued by the Department of Personnel and Training of the Government of India, Mr. Rishi Kumar Shukla was appointed as the CBI Director for a period of 2 years, after the approval of the Appointments Committee of the Cabinet.</p>
15.02.2019	<p>In the judgment, dated 15.02.2019, viz. <i>Anjali Bhardwaj v. Union of India, (2019) 18 SCC 246</i>, this Hon'ble Court was pleased to pass, inter alia, the following general direction in a PIL that was filed highlighting the vacancies at Central Information Commission and State Information Commissions:</p> <p style="text-align: center;"><u>“66.5. We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time-lag between the occurrence of vacancy and filling up of the said vacancy.”</u> [emphasis supplied]</p>

02.02.2021	Mr. Rishi Kumar Shukla's two-year term as the CBI Director came to an end on 02.02.2021. Thus, it was incumbent on the Central Government to call for a meeting of the selection committee for the appointment of his successor as per the law. This meeting ought to have been called well in advance so as to ensure a smooth transition.
03.02.2021	Vide Order dated 03.02.2021, the Central Government has appointed Mr. Praveen Sinha as an interim / acting CBI Director, after the approval from the Appointments Committee of the Cabinet, till the appointment of new CBI Director or until further orders, in violation of the mandate of Section 4A of the Delhi Special Police Establishment Act, 1946.
01.03.2021	The Petitioner filed the instant Writ Petition.

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. OF 2021
PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

COMMON CAUSE

(A REGISTERED SOCIETY)

THROUGH ITS DIRECTOR

MR. VIPUL MUDGAL

5, INSTITUTIONAL AREA

NELSON MANDELA ROAD

VASANT KUNJ, NEW DELHI-110070

EMAIL: COMMONCAUSEINDIA@GMAIL.COM

PH: 9818399055

...PETITIONER

VERSUS

UNION OF INDIA

THROUGH ITS CABINET SECRETARY

GOVERNMENT OF INDIA

CABINET SECRETARIAT

NEW DELHI-110001

...RESPONDENT

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING AN APPROPRIATE WRIT FOR THE APPOINTMENT OF CBI DIRECTOR IN ACCORDANCE WITH LAW AND FOR THE ENFORCEMENT OF THE RIGHTS OF THE CITIZENS UNDER ARTICLES 14 AND 21 OF THE CONSTITUTION OF INDIA

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
Petitioner above-named

MOST RESPECTFULLY SHOWETH: -

1. That the Petitioner is filing the instant writ petition in public interest seeking an appropriate writ for the appointment of the Director of the Central Bureau of Investigation (CBI) in accordance with the law and in accordance with the landmark judgment of this Hon'ble Court in *Vineet Narain v. Union of India*, (1998) 1 SCC 226. A proper appointment as per the statutory law is necessary for upholding the rule of law and for enforcement of the rights of the citizens under Articles 14 and 21 of the Constitution of India. The Government has failed to appoint the Director of CBI as per Section 4A of the Delhi Special Police Establishment Act, 1946 on the expiry of the term of the last incumbent viz. Mr. Rishi Kumar Shukla on 02.02.2021 and has instead, vide Order dated 03.02.2021, appointed Mr. Praveen Sinha as an interim / acting CBI Director till the appointment of new CBI Director, or until further orders. The Petitioner herein is also seeking an appropriate order or direction to the Union of India to initiate and complete the process of selection of the CBI Director well in advance, atleast 1 to 2 months before the date on which the vacancy in the post of CBI Director is about to occur in future.

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. Vipul Mudgal, Director of Common Cause, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama. The average annual income of the Petitioner Society for the last three financial years is approximately

Rs. 1.86 crores only. PAN number of the Petitioner society is AAATC0310K. The Society does not have a UID number.

On two earlier occasions, the Petitioner had filed PILs regarding appointment and removal of CBI Director:

- i. First was *W.P.(C) No. 984 of 2016*, vide which the Petitioner herein had sought appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013. After notice was issued in the PIL, the Government took steps to hold the meeting of the high-powered selection committee and appoint a regular CBI Director.
- ii. Second was *W.P.(C) No. 1315/2018* [tagged with *W.P.(C) No. 1309/2018*], vide which the Petitioner herein had sought appropriate writ or direction for quashing of order dated 23.10.2018, vide which the then incumbent Director of CBI, Mr. Alok Verma, had been illegally divested of all the work related to the Director, CBI. This Hon'ble Court, vide its judgment, dated 08.01.2019, reported as *Alok Kumar Verma v. Union of India, (2019) 3 SCC 1*, was pleased to set aside the said order dated 23.10.2018.

The Petitioner has not made any representations to the Respondent in this regard because of the extreme urgency of the matter in issue.

The Petitioner has no personal interest, or any private or oblique motive, in filing the instant petition. There is no civil, criminal, revenue or any other litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in this PIL.

THE CASE IN BRIEF

2. The Central Bureau of Investigation (CBI) established under the Delhi Special Police Establishment Act (DSPE), 1946 is the premier investigation agency in the country. It investigates the corruption related offences connected with the Central Government, and under certain circumstances, also cases connected with State Government entities. This Hon'ble Court has time and again entrusted important cases of corruption and violation of human rights to the CBI for investigation. The CBI has, sometimes under the monitoring of this Hon'ble Court, investigated important cases involving powerful and influential individuals.
3. The Director of the CBI is the final authority in the organization. He supervises all the work in the CBI and is responsible for constitution of investigating teams for probing cases. Hence, this Hon'ble Court and later on Parliament have made determined efforts to enhance the functional autonomy of the CBI Director and limit the extent of executive discretion in the matter of appointment of this key functionary.
4. This Hon'ble Court in the landmark judgment in *Vineet Narain v. Union of India*, (1998) 1 SCC 226 case had directed that the Director CBI would have full freedom for allocation of work in the organization, including the constitution of investigation teams. This Hon'ble Court had also directed that there should be a selection committee to identify a panel of names for the appointment of Director CBI, and thereafter the final selection to be made by the Appointments Committee of Cabinet (ACC). This Hon'ble Court also directed that the CBI Director would have a fixed tenure of two years. This was done to ensure that adhocism in the appointment and functioning of the CBI Director is eliminated and his independence is maintained.
5. The Delhi Special Police Establishment (DSPE) Act, 1946 was amended in 2003 *vide* the Central Vigilance Commission (CVC) Act, 2003 to state that the Director CBI shall be appointed by the Central Government on the recommendations of the Central Vigilance Commissioner, the

Vigilance Commissioners and two Secretaries to the Government of India.

6. As the above mechanism was not found sufficient to insulate the CBI Director, Section 4A of the DSPE Act, 1946 was further amended *vide* the Lokpal and Lokayuktas Act, 2013 (the Lokpal Act) to provide that the CBI Director shall be appointed by the Central Government on the recommendations of a committee comprising a) the Prime Minister (Chairperson), b) the Leader of Opposition (Member), and c) the Chief Justice of India or any Judge of Supreme Court nominated by him (Member). The DSPE Act was further amended on 29.11.2014 to include the Leader of the single largest Opposition party in the said committee when there is no recognized Leader of Opposition.
7. That Section 4A of the DSPE Act, 1946, as it stands now, is quoted herein-below:

“4A. Committee for appointment of Director.— (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member.

(2) No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases;

and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951 (61 of 1951), for being considered for appointment as the Director.”

8. Thus, the appointment of the CBI Director has to be made on the recommendation of the Prime Minister, leader of the single largest Opposition party and the Chief Justice of India (or any Judge of Supreme Court nominated by CJI).
9. That vide Order, dated 02.02.2019, issued by the Department of Personnel and Training of the Government of India, Mr. Rishi Kumar Shukla was appointed as the CBI Director for a period of 2 years, after the approval of the Appointments Committee of the Cabinet. Mr. Rishi Kumar Shukla's two-year term as the CBI Director came to an end on 02.02.2021. Thus, it was incumbent on the Central Government to call for a meeting of the selection committee for the appointment of his successor as per the law. This meeting ought to have been called well in advance so as to ensure a smooth transition. A copy of the Order, dated 02.02.2019, issued by the Department of Personnel and Training of the Government of India is annexed hereto and marked as **ANNEXURE P-1 (Pg. 24)**.
10. That however, vide Order dated 03.02.2021, the Central Government has appointed Mr. Praveen Sinha as an interim / acting CBI Director, after the approval from the Appointments Committee of the Cabinet, till the appointment of new CBI Director or until further orders. A copy of the Order dated 03.02.2021, issued by the Department of Personnel and Training of the Government of India is annexed hereto and marked as **ANNEXURE P-2 (Pg. 25)**.
11. That as per media reports, the Central Government could not convene meeting of the selection committee comprising the Hon'ble Prime Minister, the Leader of the largest Opposition party and the Hon'ble Chief Justice of India, even though it was fully aware that Mr. Rishi Kumar Shukla was going to demit the office of CBI Director on 02.02.2021 and therefore, Mr. Praveen Sinha was appointed as an interim / acting CBI Director. This deliberate dereliction was in complete violation of the DSPE

Act, 1946, as amended by the Lokpal Act, 2013. A copy of the news report, dated 03.02.2021, titled “*Gujarat-cadre IPS officer Praveen Sinha appointed acting CBI*”, published by Times of India, is annexed hereto and marked as **ANNEXURE P3 (Pg. 26)**.

12. That the judgment in *Vineet Narain*'s case had clearly held that the tenure of CBI Director would be two years. This was to ensure that there is no ad-hocism in the appointment and functioning of the CBI Director.
13. That in an earlier PIL filed before this Hon'ble Court by the Petitioner herein viz. *W.P.(C) No. 984 of 2016*, the Petitioner herein had sought appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013. During the hearing on 16.12.2016, the then Ld. Attorney General of India informed this Hon'ble Court that the process of appointment of regular Director to the CBI has been commenced and that the Committee's first meeting will take place in the last week of December, 2016. Relevant part of the said order, dated 16.12.2016, passed by this Hon'ble Court is quoted herein-below:

“The learned Attorney General for India, on instruction, submits that as far as Mr. Rupak Kumar Dutta, IPS, is concerned, his curtailment has been done after following the procedure laid down under Section 4C of the Delhi Special Police Establishment Act, 1946. It is further submitted that the process of appointment of regular Director to the CBI has been commenced and hopefully, the first meeting of the Committee will take place in the last week of December, 2016.”
[emphasis supplied]

A copy of the order, dated 16.12.2016, passed by this Hon'ble Court in *W.P.(C) No. 984 of 2016* is annexed hereto and marked as **ANNEXURE P-4 (Pg. 27 - 28)**

14. That thereafter, when during the hearing on 20.01.2017, the then Ld. Attorney General of India informed this Hon'ble Court that Mr. Alok Kumar

Verma has been appointed as CBI Director for a period of 2-years, this Hon'ble Court was pleased to close the said *W.P.(C) No. 984 of 2016*. The said order, dated 20.01.2017, passed by this Hon'ble Court is quoted herein-below

“The learned Attorney General for India has brought to the notice of this Court that Mr. Alok Kumar Verma, IPS, has been appointed as Director, Central Bureau of Investigation for a period of two years from the date of assumption of charge of the office, as per order dated 19.01.2017. Therefore, nothing survives in this Writ Petition, which is, accordingly, closed.” [emphasis supplied]

A copy of the order, dated 20.01.2017, passed by this Hon'ble Court in *W.P.(C) No. 984 of 2016* is annexed hereto and marked as **ANNEXURE P-5 (Pg. 29 - 30)**.

15. That vide the judgment dated, 22.09.2006, passed in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India, (2006) 8 SCC 1*], in a case which relates to appointments of Director Generals of Police (DGPs) in States, this Hon'ble Court was pleased to direct, inter alia, that once a DGP has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. Vide order dated 03.07.2018, passed in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India, (2019) 4 SCC 13*], a three-judge bench of this Hon'ble Court was pleased to pass, inter alia, the following direction:

*“6.4. None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in *Prakash Singh case [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417]*”*
[emphasis supplied]

A copy of the order dated 03.07.2018, passed by this Hon'ble Court in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India, (2019)*

4 SCC 13] is annexed hereto and marked as **ANNEXURE P-6 (31 - 34)**.

16. The Petitioner herein submits that the Government must be directed to comply with the mandate of the law and call for the meeting of the selection committee as per the DSPE Act, 1946 as amended by Lokpal Act, 2013. The *ad hoc* appointment of Mr. Praveen Sinha as the Interim/Acting CBI Director deserves to be set aside.
17. The Petitioner herein has not filed any other petition, suit or application in any manner regarding the matter of dispute in this Hon'ble Court, or any High Court or any other Court throughout the territory of India. The Petitioner has no other better remedy available.

GROUND

A. Because the Central Bureau of Investigation (CBI) established under the Delhi Special Police Establishment Act (DSPE), 1946 is the premier investigation agency in the country. It investigates the corruption related offences connected with the Central Government, and under certain circumstances, also cases connected with State Government entities. This Hon'ble Court has on many occasions entrusted important cases of corruption and violation of human rights to the CBI for investigation. The CBI has investigated many sensitive cases involving powerful and influential individuals.

B. Because the Director of the CBI is the final authority in the organization. He supervises all the work in the CBI and is responsible for constitution of investigating teams for probing corruption cases. Hence, this Hon'ble Court and later on Parliament have made determined efforts to enhance the functional autonomy of the CBI Director and limit the

extent of executive discretion in the matter of appointment of this key functionary.

C. Because this Hon'ble Court in the landmark judgment in *Vineet Narain v. Union of India*, (1998) 1 SCC 226 had directed that Director CBI would have full freedom for allocation of work in the CBI including constitution of investigation teams. This Hon'ble Court had also directed that there should be a selection committee to identify a panel of names for the appointment of Director CBI, and thereafter the final selection to be made by the Appointments Committee of Cabinet (ACC). This Hon'ble Court also directed that the CBI Director would have a fixed tenure of two years. This was done to ensure that adhocism in the appointment and functioning of CBI Director is eliminated and his independence is maintained. This Hon'ble Court, in *Vineet Narain v. Union of India*, (1998) 1 SCC 226, was pleased to direct as follows:

"58. As a result of the aforesaid discussion, we hereby direct as under:

1. Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overseeing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's

functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which charge-sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.

6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extension of tenure of officers up to the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers up to the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

11. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the Revenue, Banking and Security sectors should be inducted into the CBI.

12. The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

13. The Director, CBI shall be responsible for ensuring the filing of charge-sheets in courts within the stipulated time-limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.”

D. Because in line with the aforesaid directions, a Central Vigilance Commission Act 2003 was enacted by the parliament and Section 26 of the CVC Act substituted Section 4 of the Delhi Special Police Establishment Act, 1946 (DSPE) and added Section 4(A) and 4(B) which deal with appointment of Director as well as terms and conditions of service of Director. The relevant provision is extracted below:

“Section 26. Amendment of Act 25 of Act of 1946 – In the Delhi Special Police Establishment Act, 1946-

...

4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

- (a) the Central Vigilance Commissioner — Chairperson;*
- (b) Vigilance Commissioners — Members;*
- (c) Secretary to the Government of India incharge of the Ministry of Home Affairs in the Central Government — Member;*
- (d) Secretary (Coordination and Public Grievances) in the Cabinet Secretariat — Member.*

(2) While making any recommendation under sub-section (1), the Committee shall take into consideration the views of the outgoing Director.

- (3) The Committee shall recommend a panel of officers—*
 - (a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and*
 - (b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951, for being considered for appointment as the Director.”*

E. Because as the above mechanism was not found sufficient to insulate the CBI Director, Section 4A of the DSPE Act, 1946 was further amended *vide* the Lokpal and Lokayuktas Act, 2013 (the Lokpal Act) to provide that the CBI Director shall be appointed by the Central Government on the recommendations of a committee comprising a) the Prime Minister (Chairperson), b) the Leader of Opposition (Member), and c) the Chief Justice of India or any Judge of Supreme Court nominated by him (Member). The DSPE Act was further amended on 29.11.2014 to include the Leader of the single largest Opposition party in the said

committee when there is no recognized Leader of Opposition. Section 4A of the DSPE Act, 1946, as it stands now, is quoted herein-below:

“4A. Committee for appointment of Director.— (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member.

(2) No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases;

and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951 (61 of 1951), for being considered for appointment as the Director.”

F. Because before Mr. Rishi Kumar Shukla’s two-year term as the CBI Director came to an end on 02.02.2021, it was incumbent on the Central Government to call for a meeting of the selection committee for the appointment of his successor as per the law, well in advance, so as to ensure a smooth transition. However, the the Central Government has instead, vide Order dated 03.02.2021, appointed Mr. Praveen Sinha as an interim / acting CBI Director till the appointment of new CBI Director, or until further orders.

G. Because as per media reports, the Central Government could not convene meeting of the selection committee comprising the Hon’ble Prime Minister, the Leader of the largest Opposition party and the Hon’ble Chief Justice of India, even though it was fully aware that Mr. Rishi Kumar Shukla was going to demit the office of CBI Director on 02.02.2021 and

therefore, Mr. Praveen Sinha was appointed as an interim / acting CBI Director. This deliberate dereliction was in complete violation of the DSPE Act, 1946, as amended by the Lokpal Act, 2013.

H. Because the judgment in *Vineet Narain's* case had clearly mandated that there should be no ad-hocism in the appointment and functioning of the CBI Director.

I. Because in an earlier PIL filed before this Hon'ble Court by the Petitioner herein viz. *W.P.(C) No. 984 of 2016*, the Petitioner herein had sought appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013. During the hearing on 16.12.2016, the then Ld. Attorney General of India informed this Hon'ble Court that the process of appointment of regular Director to the CBI has been commenced and that the Committee's first meeting will take place in the last week of December, 2016. Thereafter, when during the hearing on 20.01.2017, the then Ld. Attorney General of India informed this Hon'ble Court that Mr. Alok Kumar Verma has been appointed as CBI Director for a period of 2-years, this Hon'ble Court was pleased to close the said *W.P.(C) No. 984 of 2016*.

J. Because in an earlier PIL viz. *W.P.(C) No. 1315/2018*, [tagged with *W.P.(C) No. 1309/2018*] the Petitioner herein had sought appropriate writ or direction for quashing of order dated 23.10.2018, vide which the then incumbent Director of Central Bureau of Investigation, Mr. Alok Verma, had been illegally divested of all the work related to the Director, CBI. This Hon'ble Court, vide its judgment, dated 08.01.2019, reported as *Alok Kumar Verma v. Union of India, (2019) 3 SCC 1*, while setting aside the

said order dated 23.10.2018, clearly laid down that the Government was mandated to strictly follow the mandate of Delhi Special Police Establishment Act, 1946. This Hon'ble Court observed and held, inter alia, as follows:

“38. These are the basic facts that cannot be overlooked while gathering the intention of the legislature in making the provisions contained in Section 4-A and Section 4-B of the DSPE Act. An in-depth consideration of the matter leaves us with no doubt that the clear legislative intent in bringing the aforesaid provisions to the statute book are for the purpose of ensuring complete insulation of the office of the Director, CBI from all kinds of extraneous influences, as may be, as well as for upholding the integrity and independence of the institution of CBI as a whole.

39. There are certain other relevant facts that cannot be ignored. The provisions of various State enactments (the Police Act), as, for example, the Uttrakhand Police Act, 2007, following the decision of this Court in Prakash Singh v. Union of India [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] , while providing for a tenure of two years to the Director General of Police of the State expressly contemplates removal of the incumbent before expiry of the tenure on certain specified grounds [Sections 20(4) & (5)]. Similarly, Section 6 of the CVC Act, which has been extracted above, specifically contemplates certain interim measures against the Central Vigilance Commissioner or a Vigilance Commissioner pending consideration by the Supreme Court of the reference made by the President to the Court for removal of any such incumbent. Removal of any of the aforesaid incumbents holding any of the aforesaid posts is also contemplated on certain contingencies occurring as spelt out by sub-section (3) of Section 6 of the CVC Act. No such provision has been engrafted so far as the office of the Director, CBI is concerned except what is contained in Section 4-B(2) of the DSPE Act, namely, that “the Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of Section 4-A”. As already noticed, Section 4-B including sub-section (2) thereof of the DSPE Act, as it exists on date, were brought in by the same legislation i.e. the CVC Act (Act 45 of 2003).

40. If the legislative intent would have been to confer in any authority of the State a power to take interim measures against the Director, CBI thereby affecting his functioning, surely, the legislation would have contained enabling provisions to that

effect and consequently would have been differently worded and drafted. It is against this backdrop that the words “transferred except with the previous consent of the Committee” mentioned in Section 4-B(2) of the DSPE Act has to be understood. If the word “transferred” has to be understood in its ordinary parlance and limited to a change from one post to another, as the word would normally convey and on that basis the requirement of “previous consent of the Committee” is understood to be only in such cases i.e. purely of transfer, such an interpretation would be self-defeating and would clearly negate the legislative intent. In such an event it will be free for the State Authority to effectively disengage the Director, CBI from functioning by adopting various modes, known and unknown, which may not amount to transfer but would still have the same effect as a transfer from one post to another, namely, cessation of exercise of powers and functions of the earlier post. **This is clearly not what the legislature could have intended. The long history of evolution has shown that the institution of CBI has been perceived to be necessarily kept away from all kinds of extraneous influences so that it can perform its role as the premier investigating and prosecuting agency without any fear and favour and in the best public interest. The head of the institution, namely, the Director, naturally, therefore, has to be the role model of independence and integrity which can only be ensured by freedom from all kinds of control and interference except to the extent that Parliament may have intended.** Such intendment, in our considered view, would require all authorities to keep away from intermingling or interfering in the functioning of the Director. In a situation where such interference may at all be called for, public interest must be writ large against the backdrop of the necessity. **The relevance and adequacy of the reasons giving rise to such a compelling necessity can only be tested by the opinion of the Committee constituted under Section 4-A(1) of the DSPE Act in whom the power to make recommendations for appointment of the Director has been vested by Parliament. This alone can provide an adequate safeguard to ensure the independence of the office keeping in view the legislative intent, as found and held by us. In this regard, we feel fortified in saying that the status of the Committee having undergone an upward movement by the amendment brought in by the Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014) it cannot but be said that the legislative intent in shielding and insulating the office of the Director from any kind of extraneous influence has been foremost in the mind of Parliament which intent found manifestation in the changes in law brought about in the circumstances noted above.**

41. There is yet another issue of significance that arises from the weighty arguments advanced in the course of the long debate that has taken place. This is with regard to the application of Sections 14, 15 and 16 of the General Clauses Act, 1897 so as to confer a power in the Central Government to pass the impugned orders including the order of appointment of an acting Director of CBI. The preceding discussions and our views on the true and correct meaning of the provisions contained in Sections 4-A and 4-B of the DSPE Act leaves us convinced that the aforesaid provisions of the General Clauses Act will have no application to the present case in view of the clear and apparent intention to the contrary that unequivocally flows from the aforesaid provisions of the DSPE Act. [emphasis supplied]

K. Because in *Anjali Bhardwaj v. Union of India*, (2019) 18 SCC 246, this Hon'ble Court was pleased to pass, inter alia, the following general direction in a PIL that was filed highlighting the vacancies at Central Information Commission and State Information Commissions:

“66.5. We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time-lag between the occurrence of vacancy and filling up of the said vacancy.” [emphasis supplied]

L. Because Clause 12 of the Memorandum showing the Procedure for Appointment and Transfer of Chief Justices and Judges of High Courts provides that:

“12. When a permanent vacancy is expected to arise in any year in the office of a Judge, the Chief Justice will as early as possible but at least 6 months before the date of occurrence of the vacancy, communicate to the Chief Minister of the State his views as to the persons to be selected for appointment. Full details of the persons recommended, in the format given in Annexure-I, should invariably be sent. Before forwarding his recommendation, the Chief Justice must consult two of his seniormost colleagues on the Bench regarding the suitability of the names proposed. All consultation must be in writing and these opinions must be sent to the Chief Minister along with the recommendations.” [emphasis supplied]

M. Because vide the judgment dated, 22.09.2006, passed in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India, (2006) 8 SCC 1*], in a case which relates to appointments of Director Generals of Police (DGPs) in States, this Hon'ble Court was pleased to direct, inter alia, that once a DGP has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. Vide order dated 03.07.2018, passed in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India, (2019) 4 SCC 13*], a three-judge bench of this Hon'ble Court was pleased to pass, inter alia, the following direction:

“6.4. None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh case [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417]”
[emphasis supplied]

N. Because DGPs are the heads of police force in states and CBI is the premier Central investigating agency. Both the DGPs as well as the CBI Director have a minimum tenure of two-years, as per the existing law of the land. In the case of States' DGPs the selection procedure is prescribed by this Hon'ble Court and in case of CBI Director, the selection procedure is prescribed by the DSPE Act, 1946 as amended vide the Lokpal and Lokayuktas Act, 2013. Thus, the aforesaid direction passed by this Hon'ble Court in *(2019) 4 SCC 13* should be squarely applicable in the case of CBI Director to the effect that the Centre shall never conceive of the idea of appointing any person on the post of Director, CBI on an acting basis.

O. Because as mentioned herein-before, in the year 2016 also, the Petitioner herein was constrained to move this Hon'ble Court seeking appointment of a regular Director of CBI by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946.

Now again the same issue has cropped up which has to be dealt with utmost seriousness in view of the sheer power that vests with the important office of a CBI Director. Thus, the Petitioner herein is also seeking an appropriate order or direction to the Union of India to initiate and complete the process of selection of the CBI Director well in advance, atleast 1 to 2 months before the date on which the vacancy in the post of CBI Director is about to occur in future.

P. That the rampant corruption in high places in the country and the manifest unwillingness of the government to institute a transparent and accountable system to ensure that the culprits are punished seriously impairs the right of the people to live in a corruption and crime free society. This violates Articles 14 and 21 of the Constitution. The right to life guaranteed to the people also includes in its fold the right to live in a society that is free from crime and corruption and upholds the rule of law.

PRAYERS

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

- a.** Issue an appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013;
- b.** Issue an appropriate order or direction to the Union of India to initiate and complete the process of selection of the CBI Director well in advance, atleast 1 to 2 months before the date on which the vacancy in the post of CBI Director is about to occur in future;
- c.** Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

PETITIONER
THROUGH

Prashant Bhushan

PRASHANT BHUSHAN

COUNSEL FOR THE PETITIONER

DRAWN BY: PRANAV SACHDEVA & JATIN BHARDWAJ, ADVOCATES

DRAWN & FILED ON: 01.03.2021

NEW DELHI

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2021

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

COMMON CAUSE

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

AFFIDAVIT

I, Vipul Mudgal, S/o Shri Jai Kumar Mudgal, the Director of the Petitioner Society, 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 Society 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.
2. That I have read and understood the contents of the Synopsis and List of Dates (Page B to I), Writ Petition (Page 1 to 21), Application for Interim Directions (Page 35 to 39). I state that the facts therein are true to the best of my knowledge, based on documentary evidence, and nothing material has been concealed therefrom. The annexures of the writ petition are true copies of their respective originals.



- 3. The source of the information is official documents, court records, and information available in the public domain, and information received from reliable sources.
- 4. That this petition is only motivated by public interest. I affirm that I have no personal interest in this matter.
- 5. That I have done whatsoever enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.



DEPONENT

VIPUL MUDGAL
 Director, COMMON CAUSE
 5, Institutional Area
 Nelson Mandela Road, Vasant Kunj
 New Delhi-110070

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 ___ day of February, 2021.



DEPONENT

VIPUL MUDGAL
 Director, COMMON CAUSE
 5, Institutional Area
 Nelson Mandela Road, Vasant Kunj
 New Delhi-110070



ATTESTED

NOTARY PUBLIC
 DELHI (INDIA)
 Ch. No.-5, Patiala House Court, N.D.-1
 Reg. Entry No. 240/21


26 FEB 2021

F.NO. 202/20/2018-AVD-II
Government of India
Ministry of Personnel , Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi
Dated 2nd February 2019

ORDER


In pursuance of the F.No.06/03/2019-EO(SM-I) dated 2nd February 2019 of the Secretary, Appointments Committee the Cabinet (ACC) conveying the approval of the ACC to the appointment of Shri Rishi Kumar Shukla, IPS (MP:83) as Director, Central Bureau of Investigation (CBI) vice Sh. Alok Kumar Verma, IPS (AGMU: 79) for a period of two years from the date of assumption of charge of the office, the approval of the Competent Authority is hereby conveyed to the appointment of Shri Rishi Kumar Shukla, IPS (MP:83) as Director, Central Bureau of Investigation (CBI) accordingly.


(Ashwini Dattatraya Thakare)
Deputy Secretary to the Government of India
Tel: 011-23094319

To
The Director (I/C), Central Bureau of Investigation
CGO Complex, Lodhi Road
New Delhi.

Copy to:

1. The Central Vigilance Commissioner.
2. The Secretary, Ministry of Home Affairs with a request to get Shri Rishi Kumar Shukla relieved to join the post of Director, CBI.
3. Prime Minister's Office (Shri V. Sheshadri , Joint Secretary)
4. Cabinet Secretariat, Rashtrapati Bhavan (Shri Amandeep Garg, Joint Secretary)
5. Chief Secretary, Government of Madhya Pradesh
6. Shri Rishi Kumar Shukla, Director General / Chairman, M.P. Police Housing & Infrastructure Development Corporation Ltd., Bhopal.
7. PS to MOS (PP)/PSO to Secretary (P)/PPS to E.O/PS to AS(S&V).
8. Director (Technical),NIC, North Block- for updating the order on the DOPT's website.
9. Guard File.


(Ashwini Dattatraya Thakare)
Deputy Secretary to the Government of India
Tel: 011-23094319

No. 202/15/2020-AVD-II (Pt.)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)
(AVD-II)

North Block, New Delhi
Dated the 03.02.2021

With reference to the approval of the Appointments Committee of the Cabinet (ACC), conveyed vide order No. 06/09/2021-EO(SM-I) dated 03.02.2021, **Shri Praveen Sinha, IPS (GJ:88), Additional Director, CBI** shall with immediate effect look after the duties of Director CBI, vice Shri Rishi Kumar Shukla, IPS (MP:83), till the appointment of new Director CBI, or until further orders, whichever is earlier.


(Nidhi Srivastava)


Deputy Secretary to the Government of India

To

Shri Praveen Sinha,
Additional Director, Central Bureau of Investigation (CBI)
CBI, HQ, CGO Complex, Lodhi Road, New Delhi-110003.

Copy to: -

1. The Central Vigilance Commissioner, Satarkata Bhawan, INA, New Delhi.
2. Home Secretary, MHA, North Block, New Delhi.
3. Prime Minister's Office (Kind Attn: Shri C. Sridhar, Joint Secretary), South Block, New Delhi.
4. Cabinet Secretariat (Kind Attn: Shri Amandeep Garg, Joint Secretary), Rashtrapati Bhawan, New Delhi.
5. EO & AS (Shri Srinivas Ramaswamy Katikithala), North Block, New Delhi.
6. Joint Director (Admn.), CBI, HQ, CGO Complex, New Delhi.
7. PS to MOS (PP)
8. PSO to Secretary(P) /PPS to AS(S&V)
9. Guard File


(Nidhi Srivastava)

Deputy Secretary to the Government of India

Printed from

THE TIMES OF INDIA

Gujarat-cadre IPS officer Praveen Sinha appointed acting CBI chief

PTI | Feb 3, 2021, 09:27 PM IST

NEW DELHI: CBI Additional Director Praveen Sinha, a 1988-batch Gujarat cadre IPS, has been appointed acting chief of the agency till a decision on a new director is taken to succeed Rishi Kumar Shukla who retired on Wednesday after a two-year fixed stint.

The Appointments Committee of the Cabinet chaired by Prime Minister Narendra Modi approved Sinha's name.

This is the fourth time since 2014 that an acting director has been given charge to look after duties of the CBI chief.

Earlier, Rakesh Asthana, then additional director, held the fort before Alok Verma was appointed as Director. M Nageswara Rao, as additional director, took charge of the agency twice when the government removed Asthana and Verma from the agency following allegations of corruption levelled by them against each other.

After a probe, the CBI cleared the allegations against Asthana who is now the chief of the BSF.

The CBI director is chosen by a high-powered committee of the prime minister, Leader of the Opposition in Lok Sabha and the Chief Justice of India.

It is understood that the meeting of the committee could not be convened for choosing Shukla's successor and Sinha, who was next in seniority was given the charge.

An order issued by the Department of Personal and Training on Wednesday stated that Sinha will look after duties of the director with immediate effect till the appointment of a new CBI chief or until further orders, whichever is earlier.

Shukla, a 1983-batch IPS officer, completed his two-year stint in the agency which was marked by Indian victory in London courts allowing extradition of fugitive businessman Vijay Mallya and India clinching the hosting of General Assembly of Interpol in 2022, coinciding with the 75th year of Independence.

The Madhya Pradesh cadre, soft spoken officer allowed anyone with a grievance in the agency to walk into his office on Fridays.

During his tenure, the agency caught some notorious paedophiles in the country who were running international racket of producing and selling child sexual abuse material on dark web.

Shukla, who was the Madhya Pradesh Director General of Police for three years, took over the reins of the agency on February 4, 2019.

A post-graduate in Philosophy, Shukla had served in various positions during his long tenure of about 37 years of service, including as SP of Damoh, Shivpuri, Mandsoor; DIG; IGP and ADG and the Intelligence Bureau during Central deputation, a statement from the CBI said.

"It was his endeavour all along to expedite the justice delivery system. Efforts taken by him in this regard led to early conclusion of numerous important trials of heinous crimes resulting in award of exemplary punishment to guilty criminals," the agency said.

P.B.
(TRUE COPY)

ITEM NO.59

COURT NO.8

SECTION PIL(W)

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

Writ Petition(s) (Civil) No(s). 984/2016

COMMON CAUSE

Petitioner(s)

VERSUS

UNION OF INDIA AND ANR.

Respondent(s)

(with appln. (s) for interim directions)

Date : 16/12/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE ROHINTON FALI NARIMANFor Petitioner(s) Mr. Prashant Bhushan, Adv.
Mr. Pranav Sachdeva, Adv.
Mr. Pavan Bhushan, Adv.For Respondent(s) Mr. Mukul Rohatgi, Attorney General
Mr. Tushar Mehta, ASG
Ms. V. Mohana, Sr. Adv.
Ms. Diksha Rai, Adv.
Ms. Binu Tamta, Adv.
Mr. Madhavi Devan, Adv.
Ms. Ranjeeta Rohatgi, Adv.
Mr. M. K. Maroria, Adv.UPON hearing counsel the Court made the following
O R D E R

The learned Attorney General for India, on instruction, submits that as far as Mr. Rupak Kumar Dutta, IPS, is concerned, his curtailment has been done after following the procedure laid down under Section 4C of the Delhi Special Police Establishment Act, 1946. It is further submitted that the process of appointment of regular Director to the CBI has been commenced and hopefully, the first meeting of the Committee will take place in the last week of December, 2016.

The learned Attorney General further submits that the counter affidavit on behalf of the Government of India is being filed during the course of the day. Permission is granted. The petitioner is at liberty to file Rejoinder Affidavit, if any, within 10 days.

List on 17.01.2017.

(Jayant Kumar Arora)
Court Master

(Renu Diwan)
Assistant Registrar

P.B.
(TRUE COPY)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No. 984 OF 2016

COMMON CAUSE

Petitioner(s)

VERSUS

UNION OF INDIA AND ANR.

Respondent(s)

O R D E R

The learned Attorney General for India has brought to the notice of this Court that Mr. Alok Kumar Verma, IPS, has been appointed as Director, Central Bureau of Investigation for a period of two years from the date of assumption of charge of the office, as per order dated 19.01.2017.

Therefore, nothing survives in this Writ Petition, which is, accordingly, closed.

.....J.
[KURIAN JOSEPH]

.....J.
[A. M. KHANWILKAR]

New Delhi;
January 20, 2017.

ITEM NO.60

COURT NO.7

SECTION PIL(W)

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

Writ Petition(s) (Civil) No(s). 984/2016

COMMON CAUSE

Petitioner(s)

VERSUS

UNION OF INDIA AND ANR.

Respondent(s)

(with appln. (s) for interim directions)

Date : 20/01/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE A.M. KHANWILKAR

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

For Respondent(s) Mr. Mukul Rohatgi, Attorney General
Mr. Tushar Mehta, ASG
Ms. Diksha Rai, Adv.
Ms. Ranjeeta Rohatgi, Adv.
Ms. Madhavi Divan, Adv.
Mr. Binu Tamta, Adv.
Ms. Nidhi Khanna, Adv.
Mr. Mukesh Kumar Maroria, Adv.

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

The Writ Petition is closed in terms of the signed order.

Pending interlocutory applications, if any, stand disposed
of.

(Jayant Kumar Arora)
Court Master

(Renu Diwan)
Assistant Registrar

(Signed order is placed on the file)

P.B.
(TRUE COPY)

PRAKASH SINGH v. UNION OF INDIA

13

(2019) 4 Supreme Court Cases 13

(Record of Proceedings)

a

(BEFORE DIPAK MISRA, C.J. AND A.M. KHANWILKAR
AND DR D.Y. CHANDRACHUD, JJ.)

PRAKASH SINGH AND OTHERS . . . Petitioners;

Versus

UNION OF INDIA . . . Respondent.

b

Writ Petition (C) No. 310 of 1996 with IAs Nos. 46-47 of 2015, 60411, 130514 of 2017, 25307 of 2018, Contempt Petitions (C) Nos. 92, 240 of 2007, 235 of 2014, 177 of 2015, 1037 of 2018 in WP (C) No. 310 of 1996, WPs (C) Nos. 417 of 2010, 42 of 2011, 317, 286, 335 of 2013 and Transferred Cases (C) Nos. 75-76 of 2015, decided on July 3, 2018

c

Police — Director General of Police (DGP) — Tenure and selection — Direction in *Prakash Singh*, (2006) 8 SCC 1 — Non-compliance with — Directions issued — All State Governments directed to scrupulously comply with the directions and approach Court in case of any grievance — Any legislation/rule running counter to directions issued herein shall remain in abeyance

d

— All State Governments directed to (i) send anticipated proposals to UPSC at least three months prior to date of retirement of sitting DGP, (ii) immediately appoint a person from panel prepared by UPSC, (iii) never appoint any acting DGP, and (iv) ensure that any extension of term of DGP beyond superannuation should be a reasonable period — UPSC directed to prepare panel as per directions in *Prakash Singh case* as far as practicable, from amongst people having clear two years of service, by giving due weightage to merit and seniority

e

Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417, clarified and followed

SS-D/61954/CR

f

Advocates who appeared in this case :

K.K. Venugopal, Attorney General, Maninder Singh, Additional Solicitor General, Abhinav Mukerji, S.S. Shamsheery, Anil Grover, Ms Aishwarya Bhati, Ms Nidhi Gupta, Additional Advocates General, Colin Gonsalves and Ms V. Mohana, Senior Advocates [Choudhary Ali Zia Kabir, Ms Jyoti Mendiratta, Prashant Bhushan, Rohit Kr. Singh, Shakti Vardhan, Amiy Shukla, M/s Legal Options (Advocate-on-Record), Prakash Kr. Singh (Advocate-on-Record), Ambhoj Kr. Sinha (Advocate-on-Record), Dr Kailash Chand (Advocate-on-Record), Shekhar G. Devasa, G.R. Mohan, Manish Tiwari, Luv Kumar (for M/s Devasa & Co.) (Advocate-on-Record), S. Wasim A. Qadri, Ms Binu Tamta, Ms Purna Priyadarshani, B.V. Balaram Das (Advocate-on-Record), Gopal Sankaranarayanan, A.K. Upadhyay, Shrutanjay B., Ms Bihu Sharma, Ms Purnima Krishna, Ankit Raj, Ms Indira Bhakar, Ms Ruchi Kohli, Ms Noopur Singhal, Satish Kumar, Sanjay Kr. Visen, Pradeep Misra (Advocate-on-Record), Suraj Singh, B. Balaji (Advocate-on-Record), Pawan Upadhyay, Sarvjit Pratap Singh, Ms Sharmila Upadhyay (Advocate-on-Record),

g

h

Pratap Venugopal, Ms Surekha Raman, Ms Niharika, Ms Kanika Kalaiyaran (from M/s K.J. John & Co.) (Advocate-on-Record), Bhupesh Narula, K.V. Jagdishvaran, Ms G. Indira (Advocate-on-Record), B. Krishna Prasad (Advocate-on-Record), Ms Aruna Mathur, Avneesh Arputham, Ms Anuradha Arputham, Ms Simran Jeet (for M/s Arputham Aruna & Co.) (Advocate-on-Record), Ms Rachana Srivastava, Ms Monika, M/s Corporate Law Group (Advocate-on-Record), Shikhar Garg, Mudit, P.V. Yogeswaran (Advocate-on-Record), G.N. Reddy (Advocate-on-Record), Sanjay Kr. Visen (Advocate-on-Record), Rohit K. Singh (Advocate-on-Record), V.G. Pragasam (Advocate-on-Record), S. Prabu Ramasubramanian, S. Manuraj, Gopal Singh (Advocate-on-Record), Manish Kumar, Ashok Kr. Singh (Advocate-on-Record), Balaji Srinivasan (Advocate-on-Record), V.N. Raghupathy (Advocate-on-Record), Rajiv Nanda (Advocate-on-Record), Ms Neha Sangwan, Ms Sanjana N., Ms Monisha Suri, Chirag M. Shroff (Advocate-on-Record), G. Prakash (Advocate-on-Record), Jishnu M.L., Ms Priyanka Prakash, Ms Beena Prakash, Ms Hemantika Wahi (Advocate-on-Record), Ms Puja Singh, Ms Mamta Singh, Ms Vishakha, Ms Deepa Kulkarni, Nishant Ramakantrao Katneshwarkar (Advocate-on-Record), Tapes Kr. Singh (Advocate-on-Record), Mohd. Waquas, Aditya Pratap Singh, Ajay Choudhary (Advocate-on-Record), Ms Kamakshi S. Mehlwal (Advocate-on-Record), Sanveer Mehlwal, Ms Geetanjali Mehlwal, G.M. Kawoosa, M. Shoeb Alam (Advocate-on-Record), T.N. Rama Rao, Hitesh Kr. Sharma, T. Veera Reddy, Ms Uttara Babbar (Advocate-on-Record), Ms Akanksha Choudhary, Ms Bhavana D., Aniruddha P. Mayee (Advocate-on-Record), D.S. Mahra (Advocate-on-Record), Chandra Prakash (Advocate-on-Record), C.K. Sasi (Advocate-on-Record), Ranjan Mukherjee (Advocate-on-Record), K.V. Kharlyngdoh, Daniel Stone Lyngdoh, Ms Rachana Srivastava (Advocate-on-Record), Sarad Kr. Singhania, Milind Kumar (Advocate-on-Record), Kamal Mohan Gupta (Advocate-on-Record), Kuldip Singh (Advocate-on-Record), Ms Liz Mathew (Advocate-on-Record), M.T. George (Advocate-on-Record), Ms Sushma Suri (Advocate-on-Record), Ms Pragati Neekhara (Advocate-on-Record), Merusagar Samantaray (Advocate-on-Record), Salvedor Santosh Rebello, Ms Lhingneivah, Ms Snehapravu Tendulkar, Ms K. Enatoli Sema (Advocate-on-Record), Edward Belho, Amit Kr. Singh, K. Luikang Michael, Anip Sachthey (Advocate-on-Record), M. Yogesh Kanna (Advocate-on-Record), Ms Sujatha Bagadhi, Ms Kaveeta Wadia (Advocate-on-Record), P.V. Dinesh (Advocate-on-Record), Ms Anil Katiyar (Advocate-on-Record), Gunnam Venkateswara Rao (Advocate-on-Record), P. Parmeswaran (Advocate-on-Record), M/s Narain & Co. (Advocate-on-Record), Kamendra Mishra (Advocate-on-Record), T.V. George (Advocate-on-Record), Jayesh Gaurav, Gopal Prasad (Advocate-on-Record), Rajesh Srivastava (Advocate-on-Record), Ms Sumita Hazarika (Advocate-on-Record), P. Venkat Reddy, Prashant Tyagi (for M/s Venkat Palwai Law Associates) (Advocate-on-Record), Atul Jha, Sandeep Jha, Dharmendra Kr. Sinha (Advocate-on-Record), Ashok Mathur (Advocate-on-Record), Tara Chandra Sharma (Advocate-on-Record), Radha Shyam Jena (Advocate-on-Record), Mohanprasad Meharia (Advocate-on-Record), Anuvrat Sharma (Advocate-on-Record), Lakshmi Raman Singh (Advocate-on-Record), Ms Anitha Shenoy (Advocate-on-Record), T. Harish Kumar (Advocate-on-Record), R. Ayyam Perumal (Advocate-on-Record), Anil Shrivastav (Advocate-on-Record), Abhishek (Advocate-on-Record), Shuvodeep Roy (Advocate-on-Record), Sayooj Mohandas M., Naman Kamboj, Rituraj Biswas, Suhaan Mukerji, Ms Astha Sharma, Harsh Hiroo Gursahani, Amit Verma, Vishal Prasad (for M/s PLR Chambers & Co.) (Advocate-on-Record), Guntur Prabhakar, Ms Prerna Singh, Leishangthem Roshmani Kh., Ms Haibam Babina, Ms Prachi Mishra, Arjun Garg and Ms Pragya Garg, Advocates] Petitioner-in-person for the appearing parties.

Chronological list of cases cited

on page(s)

1. (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417, *Prakash Singh v. Union of India*

15b, 15f, 16b, 16c-d

a

b

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g

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PRAKASH SINGH v. UNION OF INDIA

15

ORDER

IA No. 25307 of 2018

a 1. Heard Mr K.K. Venugopal, learned Attorney General for the Union of India along with Mr Maninder Singh, learned Additional Solicitor General, Mr Prashant Bhushan, learned counsel for the petitioner and Mr Gopal Sankaranarayanan, learned counsel for the intervenor.

b 2. This is an application for modification of the judgment in *Prakash Singh v. Union of India*¹. In the said judgment the Court has prescribed a minimum tenure for Director General of Police. Direction No. 2 given in the said judgment, which is relevant for the present purpose, reads thus: (SCC p. 15, para 31)

c “(2) The Director General of Police of the State shall be selected by the State Government from amongst the three seniormost officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All-India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.”

d 3. It is submitted by Mr K.K.Venugopal, learned Attorney General, that out of 29 States, only 5 States, namely, the States of Karnataka, Tamil Nadu, Telangana, Andhra Pradesh and Rajasthan have approached the Union Public Service Commission for empanelment. The other States have not followed the direction. It is further urged by him that some of the States are adopting a method of appointing acting Directors General of Police whereas such a concept is not perceptible from an analysis of the decision in *Prakash Singh case*¹. We have also been apprised by Mr Venugopal that some Directors General of Police are initially appointed on acting basis and thereafter, they are made permanent just before the date of their superannuation as a consequence of which they continue till the age of 62 years.

e 4. Mr Prashant Bhushan, learned counsel appearing for the petitioner would contend that the whole approach of the States is absolutely unacceptable. He further submits that this Court has directed that the Director General of Police will continue for at least two years irrespective of the date of superannuation.

f 5. Mr Gopal Sankaranarayanan, learned counsel for the intervenor would submit that the Union Public Service Commission should act as per the directions of this Court and it is the duty of the Union Public Service

g

¹ (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417

Commission and the States to see that the candidates who come within the zone of consideration have two years to go so that there will be a fair competition.

6. Having heard the learned counsel for the parties, we pass the following directions: a

6.1. All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police;

6.2. The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in *Prakash Singh case*¹ and intimate to the States; b

6.3. The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

6.4. None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in *Prakash Singh case*¹; c

6.5. An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation. Such a practice will not be in conformity with the spirit of the direction. d

6.6. Our Direction 6.3 should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage. e

6.7. Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent. f

7. The present directions shall be followed scrupulously by the Union of India and all the States/Union Territories. If any State Government/Union Territory has a grievance with regard to these directions, liberty is granted to them to approach this Court for modification of the instant order.

8. IA stands disposed of accordingly. g

Rest of the matters

9. List after two weeks.

h

¹ *Prakash Singh v. Union of India*, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. _____ OF 2021

IN

WRIT PETITION (CIVIL) NO. OF 2021

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:**COMMON CAUSE**

...PETITIONER / APPLICANT

VERSUS**UNION OF INDIA**

...RESPONDENT

**APPLICATION FOR DIRECTION
ON BEHALF OF THE PETITIONER**

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA**The Humble Application of the
Applicant above-named**MOST RESPECTFULLY SHOWETH: -**

1. That the Petitioner has filed the accompanying writ petition in public interest seeking an appropriate writ for the appointment of the Director of the Central Bureau of Investigation (CBI) in accordance with the law and in accordance with the landmark judgment of this Hon'ble Court in *Vineet Narain v. Union of India, (1998) 1 SCC 226*. A proper appointment as per the statutory law is necessary for upholding the rule of law and for enforcement of the rights of the citizens under Articles 14 and 21 of the Constitution of India. The Government has failed to appoint the Director of CBI as per Section 4A of the Delhi Special Police Establishment Act, 1946 on the expiry of the term of the last incumbent viz. Mr. Rishi Kumar Shukla on 02.02.2021 and has instead, vide Order dated 03.02.2021,

appointed Mr. Praveen Sinha as an interim / acting CBI Director till the appointment of new CBI Director, or until further orders. The Petitioner herein is also seeking an appropriate order or direction to the Union of India to initiate and complete the process of selection of the CBI Director well in advance, atleast 1 to 2 months before the date on which the vacancy in the post of CBI Director is about to occur in future.

2. That Section 4A of the DSPE Act, 1946, as it stands now, is quoted herein-below:

“4A. Committee for appointment of Director.— (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member.

(2) No appointment of a Director shall be invalid merely by reason of any vacancy or absence of a Member in the Committee.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases;

and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951 (61 of 1951), for being considered for appointment as the Director.”

3. Thus, the appointment of the CBI Director has to be made on the recommendation of the Prime Minister, leader of the single largest Opposition party and the Chief Justice of India (or any Judge of Supreme Court nominated by CJI).
4. That vide Order, dated 02.02.2019, issued by the Department of Personnel and Training of the Government of India, Mr. Rishi Kumar Shukla was appointed as the CBI Director for a period of 2 years, after

the approval of the Appointments Committee of the Cabinet. Mr. Rishi Kumar Shukla's two-year term as the CBI Director came to an end on 02.02.2021. Thus, it was incumbent on the Central Government to call for a meeting of the selection committee for the appointment of his successor as per the law. This meeting ought to have been called well in advance so as to ensure a smooth transition.

5. That however, vide Order dated 03.02.2021, the Central Government has appointed Mr. Praveen Sinha as an interim / acting CBI Director, after the approval from the Appointments Committee of the Cabinet, till the appointment of new CBI Director or until further orders.
6. That as per media reports, the Central Government could not convene meeting of the selection committee comprising the Hon'ble Prime Minister, the Leader of the largest Opposition party and the Hon'ble Chief Justice of India, even though it was fully aware that Mr. Rishi Kumar Shukla was going to demit the office of CBI Director on 02.02.2021 and therefore, Mr. Praveen Sinha was appointed as an interim / acting CBI Director. This deliberate dereliction was in complete violation of the DSPE Act, 1946, as amended by the Lokpal Act, 2013.
7. That in an earlier PIL filed before this Hon'ble Court by the Petitioner herein viz. *W.P.(C) No. 984 of 2016*, the Petitioner herein had sought appropriate writ directing the Union of India to appoint a regular Director of CBI forthwith by following the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013. During the hearing on 16.12.2016, the then Ld. Attorney General of India informed this Hon'ble Court that the process of appointment of regular Director to the CBI has been commenced and that the Committee's first meeting will take place in the last week of December, 2016.
8. That thereafter, when during the hearing on 20.01.2017, the then Ld. Attorney General of India informed this Hon'ble Court that Mr. Alok Kumar

Verma has been appointed as CBI Director for a period of 2-years, this Hon'ble Court was pleased to close the said *W.P.(C) No. 984 of 2016*.

9. That vide the judgment dated, 22.09.2006, passed in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India, (2006) 8 SCC 1*], in a case which relates to appointments of Director Generals of Police (DGPs) in States, this Hon'ble Court was pleased to direct, inter alia, that once a DGP has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. Vide order dated 03.07.2018, passed in *W.P.(C) No. 310/1996* [reported in *Prakash Singh v. Union of India, (2019) 4 SCC 13*], a three-judge bench of this Hon'ble Court was pleased to pass, inter alia, the following direction:

“6.4. None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh case [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417]”
[emphasis supplied]

10. The Petitioner herein submits that the Government must be directed to comply with the mandate of the law and call for the meeting of the selection committee as per the DSPE Act, 1946 as amended by Lokpal Act, 2013. The *ad hoc* appointment of Mr. Praveen Sinha as the Interim/Acting CBI Director deserves to be set aside.

PRAYERS

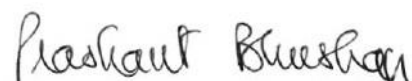
In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may in public interest be pleased to: -

- a. Direct the Union of India to immediately call for a meeting of the Committee in terms of the procedure laid down in Section 4A of the Delhi Special Police Establishment Act, 1946, as amended by the Lokpal and Lokayuktas Act, 2013 for appointing a regular Director of CBI;

b. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

PETITIONER / APPLICANT

THROUGH



PRASHANT BHUSHAN

COUNSEL FOR THE PETITIONER / APPLICANT

DRAWN BY: PRANAV SACHDEVA & JATIN BHARDWAJ, ADVOCATES

DRAWN & FILED ON: 01.03.2021

NEW DELHI

VAKLATNAMA
IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. _____ OF 2021
PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

Common Cause

...Petitioner

Versus

Union of India & Ors.

...Respondents

I, Vipul Mudgal, S/o Shri Jai Kumar Mudgal, the Director of the Petitioner Society, duly authorized by the Appellant organisation to act on its behalf in the instant appeal, do hereby appoint and retain Mr. Prashant Bhushan, Advocate on Record of the Supreme Court, to act and appear for the Petitioner society in the above Petition and our behalf to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any degree or order passed there in, including proceeding in taxation and application for review, to file and obtain return of document and to deposit and receive money on may/our behalf in the said petition/appeal Reference and application, Review Petition and to represent me/us and to take all necessary steps on may /our behalf in the above matter, I. We agree to rectify all acts done by the aforesaid advocate on record in pursuance of this authority.

Dated day of February, 2021

Accepted, certified and identified the client.

(Signed)

Prashant Bhushan

Vipul Mudgal

PRASHANT BHUSHAN
ADVOCATE-ON-RECORD

CLIENT
(Vipul Mudgal)
Director of the Petitioner Society

MEMO OF APPEARANCE

To,
The Registrar,
Supreme Court of India,
New Delhi,
Sir,

VIPUL MUDGAL
Director, COMMON CAUSE
5, Institutional Area
Nelson Mandela Road, Vasant Kunj
New Delhi-110070

Please enter my appearance on behalf of the Petitioner in the matter mentioned above:
New Delhi dated this, the 26th day of February, 2021.

Yours faithfully,

Prashant Bhushan

(PRASHANT BHUSHAN)
Advocate for the Petitioner
CODE: 515

The address for service of the said Advocate on record is: -

- 301, New Lawyer Chambers, Supreme Court, New Delhi
- E-mail: prashantbhush@gmail.com
- Ph: 9811164068

CERTIFICATE OF REGISTRATION OF SOCIETIES.

(ACT XXI OF 1860)

NO. S/ 11017 of 19 80.

I hereby certify that "Common Cause"

has this day been registered under the Societies Registration Act XXI of 1860.

Given under my hand at Delhi this 5th day of June One Thousand Nine Hundred and Eighty

Registration Fee of Rs.50/- paid.

REGISTRAR OF SOCIETIES: DELHI ADMINISTRATION: DELHI.



Sbatras.

आयकर विभाग

INCOME TAX DEPARTMENT



सत्यमेव जयते

भारत सरकार

GOVT. OF INDIA

COMMON CAUSE



05/06/1980

Permanent Account Number

AAATC0310K

04012006

इस कार्ड के खो जाने पर / खोया हुआ कार्ड मिलने पर
कृपया सूचित करें / लौटायें :
आयकर पैन सेवा इकाई, एन एस डी एल
तीसरी मंजिल, ट्रेड वर्ल्ड, ए विंग, कमला मिल्स कम्पाउंड
एस. बी. मार्ग, लोअर परेल, मुम्बई - 400 013.

*If this card is lost / someone's lost card is found,
please inform / return to :*

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3rd Floor, Trade World, A Wing,
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Tel: 91-22-2499 4650, Fax: 91-22-2495 0664,
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COMMON CAUSE

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www.commoncause.in; e-mail: commoncauseindia@gmail.com; contact@commoncause.in

AUTHORISATION

This is to certify that Shri Vipul Mudgal , Director , COMMON CAUSE , a registered Society under the Societies Registration Act XXI of 1860 (Registration No. S/11017 of June 5 , 1980), is authorized under Rule 22 of the Rules and Regulations of the Society to file a Writ Petition on behalf of the Society in the matter of the appointment of regular Director, CBI, as per law.

The aforesaid Rule 22 is reproduced below.

Rule 22 : The Society may sue or be sued in the name of the President or the Director of the Society .

For **COMMON CAUSE**



Authorised Signatory

Pankaj Gupta

Head, Administration & Accounts



भारत सरकार
GOVERNMENT OF INDIA



विपुल मुद्गल
Vipul Mudgal
जन्म तिथि/ DOB: 08/06/1960
पुरुष / MALE



2303 7490 7494

आधार - आम आदमी का अधिकार



भारतीय विशिष्ट पहचान प्राधिकरण
UNIQUE IDENTIFICATION AUTHORITY OF INDIA

पता:

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