

IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION
WRIT PETITION (C) NO. 176 OF 2009

IN THE MATTER OF:

Ram Jethmalani & Ors

Petitioners

versus

Union of India & Ors

Respondents

AFFIDAVIT

I, Ram Jethmalani S/o Late Mr. Boolchand Jethmalani, aged about 91 years, residing at 2, Akbar Road, New Delhi 110011, do hereby state on oath as under:

1. On 20.04.2015, this Hon'ble Court, was pleased to observe that;

"..... On the next date of hearing, this Court will permit Shri. Ram Jethmalani and also Dr. Subramanian Swamy, petitioners in person to put forth their respective submissions with regard to this matter before we pass any further orders."

Pursuant to the above order, I crave leave to put forth my submissions, incorporating some significant subsequent developments by way of this affidavit.

Astronomical amount of illicit Indian "Black" Money stashed abroad.

2. To briefly recapitulate, it was in April 2009 that Professor R. Vaidyanathan of the Indian Institute of Management (IIM), Bangalore an expert in this field, shared this sense of tragedy, in his article "Get Black Money Illegally Deposited in Tax Havens" and estimated the volume of stolen money as about USD 1.4 Trillion equivalent to about Rs.

700,000,000,000,000 (Rupees Seventy Lakhs Crores) i.e 7 followed by 14 zeroes. This article is part of the record in this writ petition, vide Annexure P-1 page 13-27 Volume I.

2.1 During the election campaign in the run up to the Lok Sabha elections of 2014, the Hon'ble Prime Minister had promised to bring back the illegal and illicit black money stashed abroad.

2.2 Shockingly, on 05.02.2015, in a television interview (ABP TV), when a specific question was asked about this promise, Mr. Amit Shah, President of BJP, has stated that "Modiji's statement during Lok Sabha poll campaigning was just a political jumla (idiomatic expression). Copy of the relevant statement downloaded from the website of ABP dated 05.02.2015 is herewith produced as Annexure A-1 pg 13.

2.3 A 'jumla' is a sentence - loosely translated as a 'platitude'. So, a political jumla is simply a vapid, empty promise which is merely some words strung together.

3. The above coupled with the following, facts and events briefly stated, make it absolutely clear that present Government is not taking effective steps to bring back the black money illegally stashed abroad.

- a. Non invocation of United Nations Convention Against Corruption (UNCAC), by Government of India.

- b. Non-furnishing of relevant correspondence between Germany and India, regarding Liechtenstein Bank accounts in clear violation of the directions issued by this Hon'ble Court vide judgement dated 04.07.2011 {(2011) 8 SCC 1}, followed by order dated 01.05.2014 by a bench consisting of Hon'ble Mr. Justice H.L. Dattu, Hon'ble Mrs. Justice Ranjana Prakash Desai, and Hon'ble Mr. Justice Madan B Lokur.
- c. Proposed Legislation i.e. The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 not in conformity with the law advocated by Sri. Ajit Doval, National Security Advisor of India and Report of the Task Force of BJP.
- d. The subsequent development being that blocking of my column, which was to be published in the weekly newspaper "THE SUNDAY GUARDIAN". Thereafter published as an Advertisement in Indian Express dated 29.04.2015.

4. Non invocation of United Nations Convention Against Corruption (UNCAC), by Government of India.

4.1 I have pointed out what was obviously required to be done, namely, invocation of the United Nations Convention Against Corruption (UNCAC), which was being discussed from December 2000 and came to be finalized in 2004. The then Government of India signed this Convention in 2005, but it was not ratified until 2011, when the judgment of this Hon'ble Court was expected soon in July 2011. The

object of UNCAC, was and is to get rid of and nullify the practices of notorious tax-havens, whose laws were intended to shield criminals guilty of larceny of our national resources. No use whatsoever had been made of this Convention, upto the time when I filed this petition on 20.04.2009.

4.2 Curiously, even the present Government has chosen to take no steps in this regard.

5. Non-furnishing of relevant correspondence between Germany and India, in clear violation of the directions issued by this Hon'ble Court vide judgement dated 04.07.2011 {(2011) 8 SCC 1}, followed by order dated 01.05.2014 by a bench consisting of Hon'ble Mr. Justice H.L. Dattu, Hon'ble Mrs. Justice Ranjana Prakash Desai, and Hon'ble Mr. Justice Madan B Lokur.

5.1 On 01.05.2014, this Hon'ble Court, passed the following order:

“Since the investigation is completed in the aforesaid cases, we once again direct the Union of India to furnish documents and information, kept in sealed covers 'A' and 'B' to the Petitioners within three days time from today.”

Copy of the order dated 01.05.2014, in W.P. No. 176 of 2009, passed by this Hon'ble Court is herewith produced as Annexure A-2 pg 14 to 16.

5.2 This Hon'ble Court had directed the Respondents, including the Union of India, that the entire correspondence between the Government of India and the German Government must be supplied to me. What was

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supplied are copies of 17 letters (blacked out) exchanged between 27.02.2008 and 18.03.2009. They were supplied on 27th May 2014, by Sri. Mohan Parasaran the then Solicitor General of India. I have already complained to this Hon'ble Court that all these copies supplied to me have the names of the writer and the addressee completely blacked out. During the hearing of this writ petition, on 03.12.2014, the learned Attorney General, orally submitted before this Hon'ble Court, that these documents are in care and custody of the SIT.

5.3 This Hon'ble Court vide its order dated 03.12.2014, was pleased to permit the Petitioner to seek them from SIT. Accordingly, Mr. Anil Divan, Senior Advocate, appearing for the Petitioners vide letter dated 11.12.2014, requested the SIT to provide copy of its reports and copies of the correspondence between Germany and India. Copy of the letter dated 11.12.2014, written by Sri. Anil Divan, Senior Advocate, is herewith produced as Annexure A-3 pg 17 to 18.

5.4 That on 19th December, 2014 the Joint secretary of Revenue, Mr. Udai Singh Kumawat, replied to the letter dated 11.12.2014 and enclosed the copy of the extracts of the Second status Report of the SIT; the same had also been submitted to this Hon'ble Court. That in this letter the Joint Secretary alluded to the fact that the CBDT were in possession of the relevant information. The following statement was made in lieu of provision of the required information:

" 2. It is further informed that your letter dated 11th December 2014 has also been sent to the Chairperson, CBDT for necessary action"

Copy of the letter dated 19.12.2014 sent by the Joint Secretary of Finance has been annexed to and marked herewith as **Annexure A- 4** [Pg. Nos. 19.]

However, upto date copies of the original 17 letters 'non-blackened' have not been supplied. The Respondents are wilfully and consciously disobeying the orders of this Hon'ble Court.

5.5 I was again constrained to approach the Central Board of Direct Taxes vide letter dated 3rd February 2015, seeking clarification and requested the CBDT to provide me, with non-blackened out copies of the correspondences and information exchanged between Germany and India relating to bank accounts in the Liechtenstein Bank. True Copy of the letter dated 3rd February, 2015 has been attached herewith as **Annexure A-5** [Pg. Nos. 20 to 25]

However, copies of the non-blackened out letters are not furnished.

5.6 There was no response from the Chairperson of CBDT. On 05.05.2015, I again wrote the Chairperson CBDT and requested her to comply with the directions issued by this Hon'ble Court.

5.7 On 07.05.2015, a letter was written by the Chairperson, CBDT, that the correspondence between India and Germany is with the SIT, and has further stated that;

"3. In compliance with the above directions and in response to the letter dated 19 December, 2014 of Joint Secretary (Revenue), who is the member of SIT, copies of the originals as well as redacted

version were handed over to him on 08th January, 2015 in a sealed cover with a request that the SIT may take a decision as to whether the correspondence with redaction of the names (of officials) may be given to the Petitioner.”

Copy of the letter dated 07.05.2015 written by Chairperson, CBDT is herewith produced as Annexure A-6 Pg 26.

I state that in view of clear directions issued by this Hon'ble Court, it obligatory on the part of the Respondent Union of India, to provide non-blacked out copies of the letters and there can be no question of placing this matter with the SIT.

5.8 Thus, from the above it is clear that the Respondents are acting in a manner so as to frustrate, and overreach the directions issued by this Hon'ble Court.

5.9 However, correspondence [in particular email dated 27.10.2008 vide Annexure 9 & email dated 16.03.2008 vide Annexure 16] also shows that though the Germans were willing to send these documents to India, it is the Government of India which wanted the documents to be delivered in Germany. There is no record available about what was received in Germany, whether it reached India and what were its contents.

5.10 The names which have been blacked out are the names of persons who have to be interrogated, prosecuted and arrested for effective investigation. Sadly, even with the change of Government, the same attitude has continued and it is quite clear by two answers given by the present Finance minister of India in Parliament that he persists in use of what is known as the Amended Double Taxation Avoidance Treaty, which has been elaborated in paragraph 8 of this affidavit.

5.11 The German Government had been able to achieve, in the matter of securing 1400 names of illicit account holders in the bank of Liechtenstein. The majority of these names were declared to be of Indians. The German Finance Ministry spokesman Mr. Thorsten Albig, publicly announced that the German Government would be willing to share the information at no cost whatsoever, if any country sought it. This article is already part of the record of this writ petition at pg vol . However, for ready reference the Article published in Finfacts dated 26.02.2008 is herewith produced as Annexure A- 7.
Pg 27 to 28.

6 I was stunned that neither the then Government in power nor the Opposition leaders took any advantage of this generous German offer.

7. However, a perusal of this correspondence shows that the use of UNCAC was scrupulously avoided and deliberately information was being sought only under DTAA (Double Taxation Avoidance Agreement), obviously to save all offenders from criminal penalties and only exposing them to fiscal penalties. The other illegal object was to prevent disclosure

of offender's identity and amounts secreted must not be known to the owners of the wealth i.e the People of India.

8. I have explained the baneful effect of this Amended DTAA. Under this treaty no information can be obtained, about the past, but only about transactions in the future i.e after October 2011. In other words the present Government, has decided not to seek any information about the law breakers, for which search should have been made and on being faced with possible imprisonment, they would have in all probability brought back the money. By my letters dated 09.07.2014 and 25.07.2014 addressed to the Prime Minister, I have pointed out the answers given in Parliament by the concerned Minister on 08.07.2014 and 15.07.2014. My two letters dated 09.07.2014 and 25.07.2014 to the Prime Minister are herewith produced as Annexure A - 8 pg 29 to 36 and Annexure - 9 pg 37 to 30. The proceedings of Rajya Sabha dated 08.07.2014 & 15.07.2014 are herewith produced as Annexure - 10 pg 39 40 and Annexure - 11 pg 41 to 51. I am convinced that in view of the proceedings in the Parliament is to make sure that, the promises made by the Hon'ble Prime Minister, during his entire election campaign can never be fulfilled.

Blocking of article to be published in the weekly newspaper "THE SUNDAY GUARDIAN". Thereafter published as an Advertisement in Indian Express dated 29.04.2015.

8. I have been regularly writing a column at page 11 in weekly newspaper "THE SUNDAY GUARDIAN" of which I was Chairman of the Board till recently.

8.1. I had written a hard hitting article, conveying my sense of frustration and also addressed 12 questions to the concerned Minister of the present Government. This article was to be published on Sunday i.e. 26.04.2015. Shockingly, this article was killed and not published and in the space reserved for this article, a full page commercial advertisement came to be published. Copy of the Cover page along relevant page 11 of Sunday Guardian dated 26.04.2015 is herewith produced as Annexure A-12 pg 52 to 53.

9. The article which was not published, in the Sunday Guardian was thereafter published in Indian Express on 28.04.2015, (Tuesday) as a paid advertisement for which I would be paying from my personal funds. Copy of the Advertisement dated 28.04.2015, published in The Indian Express Newspaper is herewith produced as Annexure A- 13 pg 54

10. I submit that, in view of the conduct mentioned by me, something has to be done to prevent the frustration of 6 years efforts put in by me.

11. I would request this Hon'ble Court to read the 12 questions that I have addressed, as a citizen of India and the Petitioner in the present proceedings. My column was not published by devious means and influence on the employees of Sunday Guardian, which was to carry this article. The article was dropped and the space reserved for this article was blocked by a full page commercial advertisement, for a huge sum of money.

12. My efforts were to glean and obtain information from the banks, Government sources, and others in tax havens. I have met the Hon'ble Chairman of SIT and made my suggestion, as to how this investigation,

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should be successfully and intelligently directed, to recover money stashed abroad. The Hon'ble Chairman, agreed with me to make some suggestion on this matter which will be reported to this Hon'ble Court. I understand that some recommendation has been made. I have volunteered to do this job, on an appropriate authorization of SIT, without any cost or emoluments. I have recorded what was agreed in my letter dated 07.04.2015 addressed to Hon'ble Justice Mr. M. B. Shah and Hon'ble Justice Mr. Arijit Pasayat. Copy of the letter dated 07.04.2015 to the SIT are herewith produced as Annexure- 14 pg 55 to 56.

Proposed Legislation i.e. The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 not in conformity with the law advocated by Sri. Ajit Doval, National Security Advisor of India and Report of the Task Force of BJP.

13. Apart from the unfortunate and disingenuous use of self defeating Amended DTAA, another question is the legislation to recover and curb disappearance of the 'black money'. This legislation suggested by me is in accordance with the article written by Mr. Ajit Doval, National Security Advisor to Prime Minister of India and the task force of the BJP itself. The Bill deliberately prevents the vesting of the stolen money and ownership of accounts, in the Union of India to prevent Banks allowing disappearance of money and closing of accounts. If such stolen money and all relevant accounts is vested in the Union of India, then all the details of foreign bank accounts right from inception and opening till date would be available to the Union of India, as owner of these accounts and further no money would disappear from the accounts. This would facilitate the identification of wrongdoers.

14. I am filing this affidavit because my conscience, tells me that this Hon'ble Court, should realize how the great judgement of 4th July 2011 is being reduced to a farce. I respectfully submit that it is evident what should be done in the matter and it is for this Hon'ble Court to decide what directions should be issued.

Place: New Delhi

Nam Jethmalani

Date: 11.05.2015

Deponent

VERIFICATION

I deponent above named do hereby state that this is my name and signature and what is stated in paragraphs 1 to 14 are true and correct to the best of my information, knowledge and belief. No material fact has been concealed.

Place: New Delhi

Nam Jethmalani

Date: 11.05.2015

Deponent