

**Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.5044 OF 2014  
(@ SLP (C) NO.29882 OF 2011)**

Ashok Shankarrao Chavan ...Appellant

VERSUS

Dr. Madhavrao Kinhalkar & Ors. ...Respondents

**With**

**CIVIL APPEAL NO.5045 OF 2014  
(@ SLP (C) 14209 of 2012)**

Madhu Kora ...Appellant

VERSUS

Election Commission of India ...Respondent

**&**

**CIVIL APPEAL NO.5078 OF 2014  
(@ SLP (C) 21958 of 2013)**

Smt. Umlesh Yadav ...Appellant

VERSUS

Election Commission of India & Ors. ...Respondents

**J U D G M E N T**

**Fakkir Mohamed Ibrahim Kalifulla, J.**

1. Leave granted in all the Special Leave Petitions.

2. The simple yet important question of law that have arisen in these appeals before us and which have serious ramifications on the maintenance of sanctity in our democracy is as to whether the Election Commission, under Section 10A of the Representation of the People Act, 1951, can conduct an enquiry to determine the falsity of the return of election expenses by an elected candidate, especially after a decision is rendered by the High Court in the Election Petition preferred by the Respondent No.1.
  
3. On the aforesaid background, let us briefly examine the facts of this case. The appeal (@ SLP(C) No.29882 of 2011) has been filed by the candidate who was elected in the Assembly elections in the State of Maharashtra. The results of the election to the Assembly were declared on 22.10.2009. The Respondent No.1 was one of the candidates who contested the said election as against the Appellant. The Appellant was declared elected and the Respondent No.1 was an unsuccessful candidate. As per the provisions of the Representation of the People Act, 1951 and the Conduct of Election Rules, 1961 (hereinafter called “the Act and the Rules”), within one month

from the date of publication of the results, a statement of election expenses has to be filed by the candidate with the District Election Officer (hereinafter called "DEO"). The Appellant stated to have filed his statement of election expenses on 17.11.2009, i.e., within one month of the date of election. It is also brought to our notice that on 24.11.2009, the DEO, Nanded forwarded his report to the Election Commission of India and that according to the Appellant, nothing adverse was stated in the said report. However, on 02.12.2009, the Respondent No.1 filed a complaint with the Election Commission alleging violation of the Election Code based on newspaper reports. Besides the above complaint of the Respondent No.1 to the Election Commission, he also filed an Election Petition before the Election Tribunal (High Court) on 04.12.2009. This very allegation which was raised before the Election Commission was stated to have been raised in the Election Petition as well. The Election Petition was dismissed by the Election Tribunal (High Court) on 18.10.2012 on the ground of want of material particulars. The Respondent No.1 thereby preferred a statutory appeal before this Court in Civil

Appeal No.9271 of 2012, which was also dismissed by this Court on 21.01.2013.

4. We heard Mr. Gopal Subramaniam, learned Senior Counsel for the Appellant in the appeal (@ SLP(C) No.29882 of 2011), Mr. Venkatramani, learned Senior Advocate for the Appellant in the appeal (@ SLP(C) No.14209 of 2012), Mr. Sunil Kumar, Senior Advocate for the Appellant in the appeal (@ SLP(C) No.21958 of 2013. We also heard Mr. Jayant Bhushan, Senior Advocate for the Respondent No.1 in the appeal (@ SLP(C) No.29882 of 2011) and Ms. Pinki Anand, Senior Advocate for Respondent Nos.2 and 3 in the said appeal. Mr. L. Nageswar Rao, Additional Solicitor General appeared for the Respondent No.5, Union of India and Mr. Ashok H. Desai, Senior Advocate represented the Election Commission. We also heard Mr. Prashant Bhushan, learned counsel, who appeared for the Applicants/Intervenors through I.A. No.2 of 2013.

5. Mr. Gopal Subramaniam, learned Senior Counsel in the first instance, referred to Sections 77(1)(2)(3), 80A, 86 (1), 100(1)(a)(b) and 123(6), as well as Section 10A of the said Act. The learned Senior Counsel also referred to Articles 101(3)(a),

102(1)(e) and 103 of the Constitution, as well as Articles 190, 191(1)(e) and 192. The learned Senior Counsel also made reference to Rules 86, 87, 88 and 89 falling under Part VIII of the Rules and contended that the Election Commission had no jurisdiction to deal with the issue relating to disqualification on the ground of irregularity in the lodging of election expenses in the present case, by virtue of the fact that the said issue can only be dealt with in an Election Petition before the Election Tribunal (High Court). According to learned Senior Counsel, in the case on hand, since at the instance of Respondent No.1, the successful election of the Appellant was the subject matter of challenge in an Election Petition, which was dismissed by the Election Tribunal (High Court) for want of material particulars and upheld by this Court in Civil Appeal No.9271 of 2012, there is total lack of jurisdiction for the Election Commission to deal with said issue all over again.

6. The learned Senior Counsel also brought to our notice the old Section 7(c) of the 1950 Act, which was a provision for disqualification prior to the 1966 amendment by which Section 10A was introduced and also referred to the earlier judgment of

this Court reported in **Sucheta Kripalani v. S.S. Dulat & Ors.**- AIR 1955 SC 758, as well as the subsequent decision reported in **L.R. Shivaramagowda & Ors. v. T.M. Chandrashekar (D) by LRs. & Ors.** - 1999 (1) SCC 666. The learned Senior Counsel then contended that when the Election Petition, as preferred under Section 86 of the Act was dismissed for want of material particulars, which is a binding judgment, having regard to the principles laid down in the decisions of this Court reported in **Dipak Chandra Ruhidas v. Chandan Kumar Sarkar** - 2003 (7) SCC 66 and **Azhar Hussain v. Rajiv Gandhi** - 1986 (Supp) SCC 315, such contentions are to be pleaded/supported by proper material facts and when once such plea was dealt with by the Election Tribunal (High Court) and rejected, which was also upheld by this Court, there is no residuary jurisdiction left with the Election Commission to pass another order of disqualification. The learned Senior Counsel contended that though the Election Petition was dismissed for want of material particulars, still it is a final judgment and that the same is binding on all concerned. The learned Senior Counsel after referring to Section 10A vis-à-vis the old Section 7(c) of the Act,

contended that failure to lodge the account 'in the manner required' is an exercise to be examined in a summary manner and there is no scope for an adjudication as sought to be made by the Election Commission. The learned Senior Counsel also contended that for the first time since the amendment in 1966, the Election Commission seeks to examine the correctness of the details in an elaborate manner, which is not permissible.

7. According to the learned Senior Counsel, while Section 78 of the Act may be referable to Section 10A, Section 77 cannot be read into Section 10A. After making reference to Sections 77, 100, 123(6) as well as Sections 44, 76, 99 and 100 of the Act learned Senior Counsel contended that while under the old law, a false return was a corrupt practice which can earn a disqualification, in the light of the amendment now made, the Election Commission cannot confer upon itself a jurisdiction, even after an adjudication in an election petition, by seeking to exercise its powers under Section 10A. The learned Senior Counsel by referring to the earlier decision of this Court in **Sucheta Kripalani (supra)** contended that the ratio laid down

therein that the Election Commission can only see the form and not substance, continue to hold good even as on date.

8. According to the learned Senior Counsel, after the amendment to Section 7(c) and introduction of Section 10A, the automatic disqualification has been taken away and the power is now vested with the Election Commission. It was, however, contended that the present attempt of the Election Commission to hold an adjudication of the issue, if accepted, would result in collision with the judicial forum, which has already exercised its powers in an Election Petition. According to learned Senior Counsel, the law declared in **Sucheta Kripalani (supra)** which held the field prior to the various amendments introduced viz to Sections 7, 8, 8A, 10, 10A, 11, 77, 85, 101(b) and 126, continue to hold good.

9. The learned Senior Counsel also finally brought to our notice the amended Rule 89 after the 1966 amendment in which sub-rule (5) was introduced. This Rule empowers the Election Commission to take a decision in the event of the contesting candidates failing to lodge their account of election expenses within the time and in the manner required by the Act, as well



as the Rules by which the Election Commission can call upon the candidate concerned to show cause why he should not be disqualified under Section 10A for his failure. The learned Senior Counsel then referred to the order impugned in the appeal (@ SLP(C) No.29882 of 2011) passed by the Election Commission holding that the Election Commission is fully empowered to pass an order of disqualification for the failure of the elected candidate to lodge the account as per the Act and the Rules.

10. The sum and substance of the submission of Mr. Gopal Subramaniam, learned Senior Counsel is:

(a) By virtue of Article 329 (b) of the Constitution read with Section 80 of the Act, a challenge to the election can only be by way of an election petition, that the election of the Appellant having been challenged unsuccessfully, in an election petition which was also confirmed by this Court in C.A. 9271/2012 by order dater 21.1.2013, there is no power or jurisdiction with the Election Commissioner to enquire into the validity of the said election or for that matter pass an order of

disqualification by way of holding an enquiry under Section 10A of the Act.

(b) Even after the amendments to the Act in 1956, as well as in 1966, in the end by which Section 7(c) came to be amended and, thereafter, replaced by Section 10A, whatever ratio laid down by this Court in **Sucheta Kripalani (supra)** continued to hold good and that the judgment in **L.R. Shivaramagowda (supra)** was clearly distinguishable and required reconsideration. The submission is that as per Section 7(c) of the Act, prior to its amendment, what was held by this Court in **Sucheta Kripalani (supra)** was that the submission of return of election expenses is only in form and not in substance and that the said principle continues to apply even in relation to Section 10A of the Act.

(c) The enquiry contemplated by the Election Commission if permitted to be held, would result in conducting a trial which would be *ultra vires* of Article 329 (b), that there is no statutory rule or procedure for holding such an enquiry, which would otherwise involve

the applicability of rules of pleading, powers of the Code of Civil Procedure, 1905 question of limitation, adding of proper parties, applicability of the Evidence Act, 1872 and the like. When such a procedure is not being provided as contemplated in the Act, the attempt of the Election Commission to proceed with the inquiry would result in anomalous consequences, and, therefore, the impugned order of the Election Commission cannot be sustained.

(d) Section 10A disqualification is only a default disqualification and not a stigmatized one and any enquiry under Section 10A can only be based on the DEO's report. Also reasons are to be given only when removal or reduction of disqualification is to be made under Section 11, and, therefore, if the Election Commission were to ultimately set aside an election by exercising its power under Section 10A, the consequences would be very severe.

(e) The Election Commission, who was impleaded as a party in the election petition itself sought for its

deletion, that the Complainants Mukhtar Abbas Naqvi or Kirit Somaiya, neither being voters nor candidates who lost in the election, had no *locus standi* to seek for an enquiry under Section 10A, inasmuch as an election petition can only be as against an elected candidate. Further, the scope of holding any enquiry by the Election Commission can be referable only to Article 191(1)(e) read with Article 192(2) of the Constitution and not otherwise by invoking Section 10A of the said Act.

(f) The scope of invalidating an election is available under Section 100(1)(d)(iv) of the said Act which would cover all illegality.

(g) Law of the election being a special law, its intendment as well as effects will have to be found in the given law and not outside of it. The doctrine of equitable consideration will not apply and where the Constitution leaves any ambiguity, the benefit of the doubt should be given to the subject as against the legislature.

(h) The power of Election Commission under Article 324 of the Constitution can be invoked only where it is unoccupied and when there is no vacuum in the Act, the Election Commission cannot enlarge its powers wider than what is available to the Election Tribunal (High Court).

(i) The impugned order of the Election Commission in attempting to enlarge its powers while invoking Section 10A cannot be permitted.

(j) The Election Commission failed to note that the requirement under the Rule is for the election officer, as well as the Election Commission, to only see that the returns were filed in time as prescribed under the Act and if there is no good reason for failure to lodge the accounts within time, the Election Commission can only examine the reason for passing appropriate orders under Section 11 and not beyond.

11. In support of the above submissions, the learned Senior Counsel relied upon **N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal,**

**Salem Dist., & Ors.** - AIR 1952 SC 64, **State of H.P. & Ors. v. Surinder Singh Banolta** - 2006 (12) SCC 484, **Shri Krishan v. Sat Narain** - 1971 (37) ELR 13, **Dalchand Jain v. Narayan Shankar Trivedi & Anr.** - 1969 (3) SCC 685, **Brundaban Nayak v. Election Commission of India & Anr.** - AIR 1965 SC 1892, **Ram Phal Kundu v. Kamal Sharma** - 2004 (2) SCC 759, **Jagan Nath v. Jaswant Singh & Ors.** - AIR 1954 SC 210, **Tukaram S. Dighole v. Manikrao Shivaji Kokate** - 2010 (4) SCC 329, **Kanwar Singh Saini v. High Court of Delhi** - 2012 (4) SCC 307, **State of Andhra Pradesh & Anr. v. Andhra Provincial Potteries Ltd. & Ors.** - AIR 1973 SC 2429, **M. Karunanidhi v. Dr. H.V. Hande & Ors.** 1983 (2) SCC 473, **Secretary, A.P.D. Jain Pathshala & Ors. v. Shivaji Bhagwat More & Ors.** - 2011 (13) SCC 99, **Election Commission of India Through Secretary v. Ashok Kumar & Ors.** - 2000 (8) SCC 216, **Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.** - AIR 2011 SC 312. Mr. Venkataramani, learned Senior Counsel for the Appellant in the appeal (@ SLP (C) No.14209 of 2012 adopted the submission of Mr. Gopal Subramanium.

12. The Union of India was represented by Mr. L. Nageswar Rao, learned Additional Solicitor General. At the very outset, he submitted that though the Union of India is now taking a contrary stand than what was taken before the Election Commission, as the issue relates to the interpretation of Section 10A, which is purely a legal question, in the light of the judgment of this Court in **P. Nallammal & Anr. v. State Rep. by Inspector of Police** – (1999) 6 SCC 559 such a stand of the Union of India cannot be faulted. The learned Additional Solicitor General contended that Section 10A only covers some procedural aspects and not substantive aspects. After referring to Section 10A and the expressions used in the said Section, namely, ‘manner’ the learned Additional Solicitor General contended that the said expression has to be interpreted only as a mode or a procedure and not a substance of correctness of the return to be filed. The learned Additional Solicitor General after referring to the dictionary meaning of the expression ‘manner’, relied on a decision of this Court reported in **Sales Tax Officer v. K.I. Abraham** - 1967 (3) SCR 518 wherein, this Court held that the expression ‘manner’ only refers to the mode and not substance. His contention was that since the provision

is penal in nature, it calls for strict interpretation. The learned Additional Solicitor General, therefore, contended that when such an interpretation is made to Section 10A, the failure to submit the accounts in time is for the satisfaction of the Election Commission, which is merely about the form and not of substance. The learned Additional Solicitor General further submitted that the scope of enquiry under Section 10A is not adjudicatory in nature and that no reasons are needed to be recorded. According to him, what is to be seen is that the filing and such filing is in the proper form. The Learned Additional Solicitor General relied upon the decision reported in **Tolaram Relumal & Anr. v. The State of Bombay** – 1955 (1) SCR 158, **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.** - 2012 (9) SCC 552, **Capt. Chanan Singh Sidhu v. The Election Commission of India, New Delhi & Ors.** - AIR 1992 P&H 183,. While referring to **L.R. Shivaramagowda (supra)**, the learned Additional Solicitor General submitted that the interpretation placed in paragraph 18 is not in consonance with Section 123 (6) vis-à-vis Section 77, read along with Rules 86 and 89 and, therefore, it requires reconsideration.



13. Mr. Jayant Bhushan, learned Senior Counsel appearing for the Respondent No.1, after narrating the sequence of events from the date the election result was declared, announcing the success of the Appellant on 22.10.2009 and thereafter, the filing of the complaint under Section 10A before the Election Commission on 02.12.2009, referred to the various dates of hearings when the Election Commission heard the parties, including the Appellant and the impugned order dated 02.04.2011 passed by the Election Commission, which was upheld by the Delhi High Court in W.P. No.2511 of 2011 by order dated 30.09.2011. In his submissions, he raised the following contentions:

- (a) A reading of Section 10A along with Section 77(1) and (2), 78 as well as Rules 86 to 89 would show that it is only the Election Commission which can, on being satisfied about the failure to lodge a correct account of all election expenditure in the manner required by or under the Act, disqualify a candidate for the period specified in the said provision.

- (b) That Section 10A is independent of Article 329(b) of the Constitution and, therefore, there is no scope to hold that the said provision is *ultra vires*.
- (c) By virtue of Rule 89 read along with Section 10A, it cannot be held that only at the instance of DEO the Election Commission can exercise its powers under Section 10A. On the other hand, the satisfaction which could be arrived at by the Election Commission under Section 10A may be based on a report of the DEO or after hearing the parties or upon an enquiry by the Election Commission as per Rule 89, which uses the expression 'as it thinks fit'.
- (d) The present allegation against the Appellant is paid news and advertisements, which were not accounted for and which having not been disclosed by the Appellant in the return, have now come to light through the Press Council and other sources. Therefore, it could not have been within the knowledge of the DEO in order to state that it

is only at the instance of the DEO that the Election Commission can hold any enquiry under Section 10A of the Act.

- (e) The scope of jurisdiction of the Election Tribunal in considering the validity of the Election of a member is different from the power of disqualification that can be passed by the Election Commission under Section 10A and, therefore, the dismissal of the Election Petition for want of particulars cannot be a ground to thwart the exercise of the power and jurisdiction of the Election Commission to pass orders under Section 10A.
- (f) The case on hand is covered by the decision of this Court reported in **L.R. Shivaramagowda (supra)** inasmuch as this Court has already held that the Commission alone has the power to determine whether the election account filed by a returned candidate is true and correct for the purpose of Section 10A of the Act.

(g) The decision in **Sucheta Kripalani (supra)** is no longer good law inasmuch as the substratum of the said judgment having been erased by the subsequent amendments to the Act once in 1956 and again in 1966 by which the whole scheme of the Act had undergone a drastic change by which the scope of jurisdiction of the Election Tribunal, as well as the power and jurisdiction of the Election Commission has been distinctly spelt out.

14. It is, therefore, contended that since the old Section 7(c), which provided for a disqualification without reference to the satisfaction of the Election Commission, having been replaced by Section 10A which specifically uses the expression 'the satisfaction of the Election Commission of India' and also by using the expression 'about the lodging of the return', 'in the manner as prescribed by or under the Act' and 'within the time', were all expressions which demonstrate that the power of the Election Commission under Section 10A was wide enough to hold an enquiry to find out the truthfulness and

correctness of the expenditure incurred by the Appellant in order to pass appropriate order of disqualification.

15. The learned Senior Counsel, therefore, contended that the order of the Election Commission dated 02.04.2011, as well as that of the High Court of Delhi dated 30.09.2011, do not call for interference.

16. Mr. Sunil Kumar learned Senior Counsel who appeared for the Appellant in appeal (@ SLP(C) No.21958 of 2013), supported the submission of Mr. Gopal Subramaniam, learned Senior Counsel and also contended that Section 10A does not empower the Election Commission to take oath, nor assume the powers of a quasi-judicial authority and, therefore, the Election Commission cannot exercise a jurisdiction to the extent of passing the order of disqualification. According to the learned Senior Counsel, the Act and the Rules make a clear distinction as between lodgment and maintenance of accounts. According to him, while lodgment is mere form, maintenance of accounts is one of substance. The learned Senior Counsel submitted that Section 78 along with Rules 86 (3) and 89, only talk of lodgment of account and not correctness of the account.

According to the learned Senior Counsel, after a reading of paragraph 22 of the **L.R. Shivaramagowda (supra)** judgment, it can only be said that failure of lodgment is a matter of form and the correctness or otherwise of lodgment of accounts was not spelt out. The learned Senior Counsel further contended that Section 77 only talks of maintenance of accounts. It is a matter of substance which will attract Section 123 (6) in which event the issue would be outside the jurisdiction of the Election Commission. The learned Senior Counsel relied upon certain decisions of this Court in **Somnath Sahu v. The State of Orissa & Ors.** - 1969 (3) SCC 384 and **Common Cause (A Registered Society) v. Union of India & Ors.** - (1996) 2 SCC 752 in support of his submissions. The learned Senior Counsel apart from arguing about the scope of jurisdiction of the Election Commission under Section 10A of the Act also challenged the order of the Election Commission dated 20.10.2011, disqualifying the Appellant for a period of three years on merits which order was also confirmed by the Division Bench in the impugned order in this appeal. Mr. Sunil Kumar, while attacking orders impugned in this Special Leave Petition contended that the expenses incurred by the party cannot be

held to be expenses incurred by the Appellant and, therefore, conclusion of the Election Commission, in having held that the Appellant did not file the return of expenses in manner and as prescribed by or under the Act, has liable to be set aside.

17. Ms. Pinki Anand, learned Senior Counsel appearing for Respondent Nos.2 and 3 in her submissions stated that the said Respondents had not filed any election petition, therefore, the submission that the election petition has already been dismissed for want of particulars, will not apply to them. The learned Senior Counsel after referring to the complaint, the reply filed by the Appellant and the form in which the Appellant filed the accounts as well as the supplement letter of the DEO dated 01.12.2009, submitted that after deletion of Section 143, the decision in **Sucheta Kripalani (supra)** could longer survive. The learned Senior Counsel contended that having regard to Rules 89 (4) and 86 (e) and (f), it is a mandatory requirement for a candidate to file a true and correct account and if the account is incorrect, Rule 89 (4) will get attracted. Consequently, the power of the Election Commission while holding an enquiry under Section 10A fully

empowers the Election Commission to examine the correctness of the accounts as prescribed under the Act, namely, Sections 77 and 78 and therefore, has the jurisdiction to hold an enquiry and pass the order of disqualification.

18. Mr. Prashant Bhushan, learned counsel who appeared for the intervenor in I.A.No.2 of 2013, submitted that after the introduction of Section 10A by the 1966 amendment and a reference to Section 77 and 123 (6), it can no longer be contended that even by submitting a nil return, the obligation under Section 77 read with Section 123 (6) is complied with. The learned Senior Counsel contended that the Election Commission had the power and duty to disqualify and the reliance placed upon **Sucheta Kripalani (supra)** cannot be permitted in the light of the subsequent change made in the provisions of the Act. The learned Counsel, therefore, contended that the Election Commission has got every jurisdiction to hold an enquiry and pass appropriate orders of disqualification and the remedy has also been provided for under Section 11 for the Election Commission to pass



appropriate orders for stated reasons to reverse the order of disqualification.

19. Mr. Ashok Desai, learned Senior Counsel who appeared for the Election Commission, prefaced his submission by stating that free and fair election is the basic feature of our democracy, which again is the basic structure of the Constitution, that under Article 324 of the Constitution, the Election Commission is not only invested with plenary powers but has got a constitutional obligation to organize a free and fair election and that under Section 10A, the power of the Election Commission is much wider when it comes to the question of disqualification in contrast to an election petition, where the validity of an election can be challenged. The learned Senior Counsel referred to the nature of allegations levelled against the Appellants in the above appeals, namely, Mr. Ashok Shankarrao Chavan, Ms. Madhu Kora and Mr. Umlesh Yadav, wherein the complaint disclosed the enormous unaccounted expenses incurred by them. This was brought to the notice of the Election Commission by the contestants in the case of Mr. Ashok Shankarrao Chavan, by the Central Board of

Direct Taxes in the case of Mr. Madhu Kora and by the Press Council in the case of Mr. Umlesh Yadav. The learned Senior Counsel also submitted that in all the above cases, notice was duly issued to the Appellants calling for their remarks. The submission of the learned Senior Counsel can be concretized as under:

(a) The learned Senior Counsel by making a comparative reading of Section 123(6) vis-à-vis Section 10A, submitted that while under Section 123(6), only a candidate who contested the election can file a complaint, under Section 10A any person including an elector can make the complaint.

(b) It was then pointed out that while for preferring a complaint under Section 123(6) a period of limitation of 45 days from the date of the election is prescribed as per Section 81, there is no prescribed time limit for invoking Section 10A and that what is expected is only a complaint to be filed within a reasonable time.

(c) Lastly under Section 123(6), a party who is concerned with the allegation may be an aggrieved party who can provide the source, while under Section 10A a

citizen who is keen on purity of election can prefer a complaint. It was also pointed out that while an election petition would be decided by Election Tribunal (High Court) namely, the High Court, the disqualification under Section 10A can be decided by an Election Commission.

20. Mr. Desai, learned Senior Counsel after referring to the provisions of the Act, as it originally stood prior to its amendments of 1956 and 1966, also referred to the decisions in **Sucheta Kripalani (supra)** and **L.R. Shivaramagowda (supra)**. He submitted that in **L.R. Shivaramagowda (supra)**, after the introduction of Section 10A the scope and jurisdiction of Election Commission has been firmly stated and that that position alone should prevail. The learned Senior Counsel submitted that having regard to the wide powers invested with the Election Commission under Section 10A, which has been rightly recognized and approved by this Court in **L.R. Shivaramagowda (supra)**, there is no scope for the Appellant to contend that the Election Commission lacked jurisdiction.

21. Having dealt with the rival contentions of the parties, it would be necessary to find out whether the impugned order of the Election Commission is correct or not. For this, the various provisions of the Constitution as well as the relevant provisions as they originally existed prior to 1956 and 1966, the amendments made to the Act and the provisions which are existing as on date are required to be noted. In fact, the various provisions under the Act both prior to the 1956 and 1966 amendments and the provisions which are existing as on date, were adverted to by the learned counsel appearing for their respective parties, as there is a need to find out the implication of those provisions. The purpose is to find out an answer to the question posed for consideration, namely, whether under Section 10A of the Act, the Election Commission has been empowered to hold an enquiry to ascertain the correctness or otherwise of the election expenses incurred by a returned candidate for the purpose of passing the order of disqualification, either at the instance of the candidate who also contested in the said election or by any other person or based on any other information received by the Election Commission through some reliable sources. For the said

purpose, in our considered view, the following provisions under the Constitution and the various sections under the Act and Rules are required to be noted.

22. As far as the provisions of the Constitution are concerned, the relevant Articles are Articles 101(3) (a) read with 102(1)(e) and 103(2), Article 190 (3)(a) read with 191 (1)(e) and Article 192, Article 329(b) which relates to the Election Petition, Articles 327 and 328 which empower the Parliament to make provisions by law to deal with the elections to Parliament and State Legislature respectively, Article 324(1) which mentions the nature of powers and functions as well as the control of elections vested with the Election Commission. The said Articles are, therefore, extracted hereunder:

**101. Vacation of seats.**

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) If a member of either House of Parliament-
  - (a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102, or
  - (b) xxx xxx xxx

**102. Disqualifications for membership.** (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx

(d) xxx xxx xxx

(e) If he is so disqualified by or under any law made by Parliament.

**103. Decision on questions as to disqualifications of members.-**

(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

**190. Vacation of seats.**

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) If a member of a House of the Legislature of a State.

(a) Becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or

**191. Disqualifications for membership.**

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) If he is so disqualified by or under any law made by Parliament.

**192. Decision on questions as to disqualifications of members.**

(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

**324. Superintendence, direction and control of elections to be vested in an Election Commission.**

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

**327. Power of Parliament to make provision with respect to elections to Legislatures.**

Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

**328. Power of Legislature of a State to make provision with respect to elections to such Legislature.**

Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

**329. Bar to interference by courts in electoral matters. –**

(a) xxx xxx xxx

(b) No election to either House of Parliament or to the House or either House of the Legislature or a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

23. Apart from the above constitutional provisions, the unamended provisions under the erstwhile Act are Section 7(c) to be read along with Section 8(b). Then the existing provisions, namely, Sections 143 and 144 relating to disqualification of an elected candidate are also required to be noted, which are as under:

**S.7. Disqualifications for membership of Parliament or of a State Legislature.**- A person shall be disqualified for being chosen as, and for being, a member of either House, of Parliament or of the Legislative Assembly or Legislative Council of a State-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) if, having been nominated as a candidate for Parliament or the Legislature of any State or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by or under this Act, unless five years have elapsed from the date by which the return ought to have been lodged or the Election Commission has removed the disqualification;

**S.8. Savings**

(a) xxx xxx xxx



(b) a disqualification under clause (c) of that section shall not take effect until the expiration of two months from the date by which return of election expenses ought to have been lodged or of such longer period as the Election Commission may in any particular case allow;

**S.143. Disqualification arising out of failure to lodge return of election expenses.**- If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which the provisions of Chapter VIII of Part V apply, or if such a return is found, either upon the trial of an election petition under Part VI or by any court in a judicial proceeding to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which the return was required to be lodged.

**S.144. Removal of disqualifications.** - Any disqualification under this Chapter may be removed by the Election Commission for reasons to be recorded by it in writing.

24. After the 1956 amendment, there was an amendment to Section 7(c) and Section 8(b). The amendment to Section 7(c) was relating to the alteration of the period, namely, from 5 years to 3 years within which time the occurrence of the event of disqualification would lapse. Under the amended Section 8(b), the power to decide the nature of default mentioned in Section 7(c) was entrusted with the Election Commission. Further, Section 123 in Chapter I of Part VII was substituted. A

new Section 140 about corrupt practice entailing disqualification based on finding of the Election Tribunal (High Court) as well as the power of Election Commission to reverse the disqualification under Section 148 was also introduced, while Section 143 stood omitted.

25. That apart, the other relevant sections to be noted are Section 7, which has now been restricted to sub-clause (a) and (b) alone. Section 8 deals with disqualification on conviction of an offence. Section 8(4) prescribes as to how the disqualification as provided under Section 8 would take effect. Section 8A read with Section 99 prescribes how the disqualifications would take effect. Section 10A prescribes the disqualification to be imposed for failure to lodge account of election expenses in the manner and as required by the Act. Section 11 deals with removal of or reduction of the period of disqualification. Chapter VIII under the head 'Election Expenses' consists of Section 77(1) and (3), which specifies as to how a separate and correct account is to be maintained and the total of the expenditure which should not exceed the prescribed limit. Section 78 specifies the requirement of

lodging of account with the DEO as required under Section 77 within a stipulated time limit. Sections 80 to 116, barring Sections 88 to 92 and 104 and 105, deal with the manner in which an Election Petition is to be presented before the Election Tribunal (High Court) and the various procedures as to how such Election Petition to be dealt with and ultimately disposed of.

26. In Part VII under Chapter I in Section 123(6), the implication of non-compliance of Section 77 is set out as one of the corrupt practices. In Part VIII under Chapter IV, we find the power of the Election Commission under Section 146 the procedure for holding an enquiry as required under Articles 103 and 192 of the Constitution is set out. Sections 146A to 146C prescribes the procedure to be followed by the Election Commission while holding the enquiry under Section 146.

27. Apart from the above provisions in the Act, Rules 86, 87, 88, 89 and 90 in Part VIII of the Rules are required to be noted. The relevant statutory provisions in the Act and the

Rules which are required for our purpose are, therefore, extracted hereunder:

**The Representation of the People Act, 1951**

**S.7. Definitions.-**

(a) xxx xxx xxx

(b) “disqualified” means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State.

**S.10A. Disqualification for failure to lodge account of election expenses.-** If the Election Commission is satisfied that a person-

(a) Has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and

(b) Has no good reason or justification for the failure, The Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

**S.11. Removal or reduction of period of disqualification.-** The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter (except under section 8A) or reduce the period of any such disqualification.

**S.77. Account of election expenses and maximum thereof.-** (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

**S.78. Lodging of account with the district election officer.-** (1) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district, election officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.

**S.79. Definitions.** – In this Part and in Part VII unless the context otherwise requires, -

(a) any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be;

(b) “candidate” means a person who has been or claims to have been duly nominated as a candidate at any election;

(c) “costs” means all costs, charges and expenses of, or incidental to, a trial of an election petition;

**S.80. Election Petitions.-** No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

**S.80A. High Court to try election petitions.-** (1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice,

shall, from time to time, assign one or more Judges for that purpose:

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) xxx xxx xxx

**S.81. Presentation of petitions.**-(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1)] of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation. In this subsection, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) xxx xxx xxx

**S.83. Contents of petition.**- (1) An election petition-  
(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleged including as full statement as possible of the names of the parties alleged to have commission such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by all affidavit in the prescribed form in support of the

allegation of such corrupt practice and the particulars thereof.]

(2) xxx xxx xxx

**S.84. Relief that may be claimed by the petitioner.**-A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

**S.123. Corrupt practices.**

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) The incurring or authorizing of expenditure in contravention of section 77.

**S.146. Powers of Election Commission.** (1) Where in connection with the tendering of any opinion to the President under article 103 or, as the case may be, under sub-section (4) of section 14 of the Government of Union Territories Act, 1963 (20 of 1963), or to the Governor under article 192, the Election Commission considers it necessary or proper to make an inquiry, and the Commission is satisfied that on the basis of the affidavits filed and the documents produced in such inquiry by the parties concerned of their own accord. it cannot come to a decisive opinion on the matter which is being inquired into, the Commission shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure. 1909 (5 of 1908), in respect of the following matters, namely: -

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of any document or other material object producible as evidence;

(c) Receiving evidence on affidavits;

(d) Requisitioning, any public record or a copy thereof from any Court or officer

(e) Issuing commissions for the examination of witnesses or documents.

(2) The Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force., to furnish information on such points or matters as in the opinion of the Commission may be useful for or relevant to, the subject-matter of the inquiry.

(3) The Commission shall be deemed to be a civil court and when any such offence, as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (5 of 1898) to forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

(4) Any proceeding before the Commission shall be deemed to be Judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

**S.146B. Procedure to be allowed by the Election Commission.-** The Election Commission shall have the power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private.)

### **The Conduct of Election Rules, 1961**



**Rule 86. Particulars of account of election expenses.**-(1)The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely:-

(a) the date on which the expenditure was incurred or authorised;

(b) the nature of the expenditure (as for example, travelling, postage or printing and the like);

(c) the amount of the expenditure-

(i) the amount paid;

(ii) the amount outstanding;

(d) the date of payment;

(e) the name and address of the payee;

(f) the serial number of vouchers, in case of amount paid;

(g) the serial number of bills if any, in case of amount outstanding;

(h) the name and address of the person to whom the amount outstanding is payable.

(2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.

(3) All voucher shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).

(4) It shall not be necessary to give the particulars mentioned in item (e) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (2).

**Rule 87. Notice by district election officer for inspection of accounts.**- The district election officer shall, within two days from the date on which the account of election expenses has been lodged by a candidate under section 78, cause a notice to be affixed to his notice board, specifying-

- (a) the date on which the account has been lodged;
- (b) the name of the candidate; and
- (c) the time and place at which such account can be inspected.

**Rule 88. Inspection of account and the obtaining of copies thereof.**- Any person shall on payment of a fee of one rupee be entitled to inspect any such account and on payment of such fee as may be fixed by the Election Commission in this behalf be entitled to obtain attested copies of such account or of any part thereof.

**Rule 89. Report by the district election officer as to the lodging of the account of election expenses and the decision of the Election Commission thereon.**- (1) As soon as may be after the expiration of the time specified in section 78 for the lodging of the accounts of election expenses at any election, the [district election officer] shall report to the Election Commission-

- (a) the name of each contesting candidate;
- (b) whether such candidate has lodged his account of election expenses and if so, the date on which such account has been lodged; and
- (c) whether in his opinion such account has been lodged within the time and in the manner required by the Act and these rules.

(2) Where the district election officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act

and these rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

(3) Immediately after the submission of the report referred to in sub-rule (1) the district election officer shall publish a copy thereof affixing the same to his notice board.

(4) As soon as may be after the receipt of the report referred to in sub-rule (1) the Election Commission shall consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by the Act and these rules.

(5) Where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act and these rules it shall by notice in writing call upon the candidate to show cause why he should not be disqualified under section 10A for the failure.

(6) Any contesting candidate who has been called upon to show cause under sub-rule (5) may within twenty days of the receipt of such notice submit in respect of the matter a representation in writing to the Election Commission, and shall at the same time send to district election officer a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.

(7) The district election officer shall, within five days of the receipt thereof, forward to the Election Commission the copy of the representation and the account (if any) with such comments as he wishes to make thereon.

(8) If, after considering the representation submitted by the candidate and the comments made by the district election officer and after such inquiry as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified under section 10A for a period of three years from the date of the order, and cause the order to be published in the Official Gazette.

**Rule 90. Maximum election expenses.**- The total of the expenditure of which account is to be kept under section 77 and which is incurred or authorized in connection with an election in a State or Union territory mentioned in column 1 of the Table below shall not exceed-

(a) in any one parliamentary constituency of that State or Union territory, the amount specified in the corresponding column 2 of the said Table; and

(b) in any one assembly constituency, if any, of the State or Union territory, the amount specified in the corresponding column 3 of the said Table.

28. Having noted the various Articles of the Constitution as well as the provisions of the Act, it will be worthwhile to understand the whole scheme of the above articles and provisions before making any attempt to find out the scope and ambit of Section 10A of the Act. Article 101(3)(a) will have to be read along with Article 102(1)(e). Article 101(3)(a) merely states about the consequences that would follow if a Member of either House of Parliament suffers disqualification as provided under

Article 102(1)(e), namely, that the seat would thereupon become vacant in the Parliament. The purport of Article 102(1)(e) is to ensure that any disqualification of a Member of Parliament can be declared only by or under any law made by the Parliament. That apart under Article 103 of the Constitution, whenever a question arises as to whether a Member of Parliament has been disqualified as provided under Article 102(1), the decision as to such a disqualification can be reached only by the President of India, which would become absolute and conclusive. However, under Article 103(2) it is provided that before arriving at such a decision, the President should obtain the opinion of the Election Commission and act based upon such opinion of the Election Commission. Articles 190(3)(a), 191(1)(e) and 192(1)&(2) are the identical provisions, which would be applicable to a Member of a Legislature of the State. The only difference is under Article 192, it will be the Governor who can take the decision and such a decision should be again based on the opinion rendered by the Election Commission. Therefore, Articles 101, 102, 103, 190, 191 and 192 prescribe and mention as to how a disqualification of a Member of a Parliament or a Member of a State Legislature can

be given effect to either by the President of India or by the Governor of the respective States by declaring the consequent vacancy created either in the Parliament or the State Legislature. Under Article 102 (1) (e) and 191(1)(e), it is stipulated that such a disqualification shall have to be initially arrived at by applying the provisions of law made by the Parliament. Therefore, the common thread in the above Constitutional provisions relating to a Member of a Parliament or a Member of a State Legislature is that apart from other disqualifications mentioned in Articles 102(1)(a) to (d) and 191(1)(a) to (d), a disqualification arrived at as provided under a law made by the Parliament would form the basis for either the President of India or for the Governor of the respective States to ultimately take a decision as regards such disqualification declared under a valid law made by the Parliament.

29. Apart from the above provisions, under Article 329(b), it is specified that an Election to either House of Parliament or either House of the Legislature of a State, cannot be called in question except by an Election Petition presented to such

authority in such manner as may be provided for by or under any law made by the appropriate legislature. While Articles 101 to 103 and 191 to 192 deals with the disqualification of an elected member either to the Parliament or to the State Legislature, Article 329(b) relates to the validity of a member elected to any constituency in an election held in accordance with law and such validity can be examined only by a prescribed authority under the law made by the appropriate legislature. Reading Article 329(b) and Sections 80 to 116 of the Act together, the position emerges that the status of a validly elected candidate in an election can be called in question only before the Election Tribunal (High Court) by way of an Election Petition and such Election Petition to be decided by the Election Tribunal (High Court) in the manner prescribed under the above referred to provisions by following the procedures laid down therein. It further emerges that the validity of an election to either of the House of Parliament or the State Legislature cannot be called in question in any other manner other than what has been prescribed under the provisions of the Act, as has been set out in Sections 80 to 116 of the Act.

30. Apart from the above Constitutional mandates, relating to disqualification and validity of an election to be challenged, under Articles 327 and 328 of the Constitution, provides the power to Parliament to make provisions by law to deal with the elections to Parliament and State Legislature and also by the State if such law does not contain any provision to deal with an election to the said offices. Apparently, in the purported exercise of the above Article 327 of the Constitution, the Representation of the People Act in the year 1950 and subsequently in the year 1951, came to be passed in the Parliament and thereafter, the relevant rules, namely, the Conduct of Election Rules, 1961 were also promulgated.

31. Under Article 324(1) of the Constitution in Part XV, the nature of functions, powers such as superintendence, issuance of directions, control of the preparation of the electoral rolls, the conduct of all elections to Parliament and to the legislature of every State, as well as the elections to the offices of the President and Vice-President, as per the Constitution, is invested with the Election Commission. When we discuss about the powers of the Election Commission, a detailed



reference to Article 324(1) can be made to Section 10A of the said Act in the matter of disqualification of a Member of Parliament or State Legislature.

32. Apart from the above Constitutional provisions, we also refer to some of the provisions which were existing prior to the 1956 and 1966 Amendments to the Act. One relevant provision which has to be noted in the context of the present Section 10A of the Act is Section 7(c) as it existed prior to the amendment.

33. Prior to the introduction of Section 10A, Section 7(c) prescribed as to how a person should be disqualified for being chosen as and for being a Member of either House of the Parliament or of a Legislative Assembly or Legislative Council of a State. It was stipulated that if a person having been nominated as a candidate for Parliament or the Legislature of a State fails to lodge a return of election expenses within time and in the manner required by or under the Act, would suffer such disqualification unless five years have elapsed from the date by which the return ought to have been lodged or the Election Commission removed such disqualification. Section

8(c), which was a non-obstante clause, specified that a disqualification suffered under Clause (c) of Section 7, cannot take effect unless the expiration of two months from the date by which return of the election expenses ought to have been lodged or such longer period as the Election Commission may in any particular case allow. A reading of Sections 7(c) and 8(b) as it existed then, vested no specific authority with the Election Commission or for that matter with any other authority as to how a disqualification can be declared for the failure to lodge a return of the election expenses within the time and in the manner required by or under the Act.

34. In fact, the subsequent amendment to Section 7(c) only related to the expiration of a period of five years having been altered as three years and in Section 8(c) it is stated that the expiration of two months period would start from the date on which the Election Commission decided that the account of election expenses has not been lodged within the time and in the manner required by or under this Act. Therefore, a conspicuous reading of Sections 7(c) and 8(b), as it originally existed, and after its amendment under Act 27 of 1956,

remained the same and the only improvement made was that the decision as regards the failure to lodge the account within the stipulated time limit is to be declared by the Election Commission for Section 7(c) to operate.

35. The above prescription which existed prior to introduction of Section 10A has to be necessarily noted in order to appreciate what is the effect that had been brought about by virtue of the introduction of Section 10A to the Act. Before adverting to the scope of Section 10A, it is necessary to note certain other provisions, namely, Sections 77, 78, 123(6) as well as Rules 86, 87, 88, 89 and 90 of the Rules, since, the implication of the above provisions and Rules would arise while examining the effect of Section 10A after its introduction.

36. Section 77 which is under Chapter VIII mandates as to how the account of election expenses are to be maintained and the maximum limit that can be expended as prescribed.

37. When we read Section 77(1), it is specified therein that every candidate should keep a separate and correct account of all the expenditure in connection with the election that was incurred as between the date on which his nomination was

made and the date of declaration of the result thereof i.e. inclusive of both the dates. A careful reading of Section 77(1) makes it significantly clear that a candidate contesting in an election, should maintain a separate and correct account of all expenditure incurred by him in connection with the election. Section 73(3) makes it mandatory that the total of the expenditure in connection with an election should not exceed such amount as may be prescribed. Here and now we can point out that under Rule 90 of the Rules, the total of the expenditure that can be expended for which account is to be maintained under Section 77 has been prescribed in a separate table applicable to different States, in respect of their Parliamentary Constituency and Assembly Constituency. Therefore, reading Section 77(3) along with Rule 90 and Section 77(1), what ultimately emerges is that every candidate contesting in an election should maintain a separate account relating to the election, that such account should contain all the expenditures incurred by him in connection with the election and most importantly such details of the account and the expenses incurred must reflect the correct particulars apart from ensuring that such expenditure does not exceed the

maximum limit prescribed under Rule 90 as stipulated under Section 77(3).

38. The next step is lodging of such an account which was maintained as stipulated under Section 77 read with Rule 90. Section 78 of the Act mandates that every contesting candidate in an election should within 30 days from the date of election of the returned candidate, lodge with the DEO an account of his election expenses, which should be a true copy of the account kept by him or by his election agent as required under Section 77. The corresponding rules are Rules 87, 88 and 89 of the Rules. Under Rule 87, within two days from the date on which the account of election expenses is lodged by candidate, as stipulated under Section 78, the DEO should cause a notice to be affixed in the notice board, specifying the date on which the account was lodged, the name of the candidate and the time and place at which such account could be inspected. Under Rule 88 any person would be entitled on payment of a fee of Rs.1 to inspect any such account and on payment of such fee that may be fixed by the Election Commission, obtain attested copies of such account or any part thereof. Reading

Section 78 and Rules 87 and 88, the intention of the legislature has been explicitly made clear that the maintenance of the correct account of the election expenses within the time limit prescribed in making such expenses is not for the satisfaction of the Election Commission alone. The purport and intent of the said exercise is to ensure that none of the candidates can take it as a formality and file some return without disclosing their correct particulars, inasmuch as once the true copy of the account maintained is lodged with the DEO it is not only for the candidates who contested in the election but 'any person' meaning thereby, any citizen of this country can have access to verify the account lodged with the DEO and also get a authenticated copy of such a statement. In fact, such a stipulation contained in Sections 77(1) and (3), 78, Rule 90, as well as Rules 87 and 88 were brought into the statute book in order to ensure that the purity in the election is maintained at any cost and nobody is allowed to take the voting public of this country for a ride.

39. It will also be appropriate to state and we can even take judicial notice of the fact about every kind of

manipulations and malpractices that are being adopted and applied in elections in the recent past as is reported widely in the Press and Media. Unlike the yester years, i.e. immediately after independence and the role of Election Commission while holding the public elections has become so vital, a greater and wider responsibility is imposed on the Election Commission to ensure that those who contest the elections maintain high amount of integrity and honesty and that the voting public are not duped by their evil designs. With that when we come to Rule 89, the said rule contains sub-rules (1) to (8), which specify to the extent to which the verification of the correctness and genuineness of the accounts lodged can be enquired. Under sub-rule (1) of Rule 89, after lodging of the true copy of the account as specified under Section 78 of the Act, the DEO should report to the Election Commission as to the name of each contesting candidate and state whether such candidate lodged his account of election expenses and if so the date on which such account was lodged and whether the account was lodged within the required time and in the manner required by the Act and the Rules.

40. When we refer to the said stipulation, namely, the manner required under the Act, it will have to be stated that the manner required would certainly include the true and correct accounts to be maintained, a copy of which alone can be stated to mean having been lodged in the manner required. In fact, under sub-rule (2) of Rule 89, the DEO if on verification found that the lodging of the account was not in the manner required, should send a report to that effect to the Election Commission along with the accounts lodged by the candidate concerned. The DEO should also publish a copy of his report in the notice board. Under sub-rule (4) of Rule 89, after the receipt of the report referred to in sub-rule (1), the Election Commission has to again consider the same and decide whether any contesting candidate failed to lodge the account of election expenses within the time and in the manner required by or under the Act and the Rules.

41. Under sub-rule (5) of Rule 89 when the Election Commission decides that a contesting candidate failed to lodge his account of election expenses within time and in the manner required by the Act as well as the Rules, it should by notice in



writing call upon the candidate to show cause why he should not be disqualified under Section 10A for such default. Under sub-rule (6) of Rule 89, once the notice to show cause is issued as per sub-rule (5), within 20 days of receipt of such notice, the candidate concerned should submit a representation in writing to the Election Commission and simultaneously forward a copy to the DEO together with the complete account of his election expenses, if he had not already furnished such an account. Under sub-rule (7) of Rule 89, the DEO should forward his report on the representation so submitted by the candidate, if any, with such comments which he wishes to make on the said representation.

42. Under sub-rule (8) of Rule 89, the Election Commission after such enquiry, as he thinks fit, on being satisfied that no good reason or justification was shown for the failure to lodge the account, can pass an order of disqualification as provided under Section 10A for a period of three years from the date of the order and publish such order in the official gazette. We find in sub-rules (1) to (5), specific reference to the manner required by the Act as regards the

account to be maintained, a true copy of which is to be lodged with the DEO which is to be ultimately forwarded to the Election Commission.

43. When we examine sub-rule (8) of Rule 89, the said Rule makes it clear that the Election Commission is empowered to hold such enquiry as it thinks fit before passing any orders under Section 10A of the Act. The said exercise has to be carried out by the Election Commission after the issuance of the show cause notice and after the receipt of representation by the candidate read along with the comments of the DEO. When the Election Commission has been invested with the powers to hold an enquiry, it will have to be stated that such an enquiry is not an empty formality, but having regard to the requirement of law as stipulated under Section 77(1) and (3) and 78 of the Act, it should be a comprehensive enquiry, wherein the Election Commission can ascertain whether the accounts lodged in the purported exercise of Section 78 by a contesting candidate reflects a true, correct and genuine account and not a bogus one. In fact, the purpose of holding an enquiry is not only to ensure that the

ascertainment of the correctness or otherwise of the account lodged, as well as, the time within which such lodgment was made, but also ensure that such account is a true and correct account of the actual expenses incurred for the election inasmuch as the Act as well as the Rule makes it clear that such furnishing of the account is in the manner required under the Act.

44. In our considered opinion if such a onerous responsibility has been imposed on the Election Commission while scrutinizing the details of the accounts of the election expenses submitted by a contesting candidate, it will have to be stated that while discharging the said responsibility, every care should be taken to ensure that no prejudice is caused to the contesting candidate. The Election Commission should also ensure that no stone is left unturned before reaching a satisfaction as to the correctness or the proper manner in which the lodgment of the account was carried out by the concerned candidate. If such a meticulous exercise has to be made as required under the law, it will have to be held that the onerous responsibility imposed on the Election Commission

should necessarily contain every power and authority in him to hold an appropriate enquiry. Only such an exercise would ensure that in ultimately arriving at the satisfaction for the purpose of examining whether an order of disqualification should be passed or not as stipulated under Section 10A, the high expectation of the electorate, that is the citizens of the country reposed in the Election Commission is fully ensured and also no prejudice is caused to the contesting candidate by casually passing any order of disqualification without making proper ascertainment of the details of the accounts, the correctness of the accounts and the time within which such account was lodged by the candidate concerned.

45. When we examine Section 10A in this context, it makes it clear that the Election Commission has to find out whether a person has failed to lodge an account of election expenses within the time and in the manner required by or under this Act. The specific expression 'by or under' used in Section 10A(a) emphasizes that wherever the Act stipulates as regards the maintenance and the lodgment of the account, such stipulations in its substance would be the requirement

for the verification to be made while holding an enquiry under Section 10A. Section 10A has been comprehensively enacted replacing earlier Sections 7(c) and 8(b) of the Act in order to ensure that the contesting candidate in an election cannot deal with the expenses in regard to the election in any manner he likes but such expenses can be incurred only in the manner required under the law. Also, while incurring such expenditures, a true and correct account should also be maintained and such expenditure should not exceed the prescribed limit as is contemplated under Section 77(1) and (3) read with Rule 90. If such a stringent provision for incurring election expenses has been brought into the statute book and if the real intent and purpose of such provisions are not understood and allowed to be implemented in its true spirit, in our considered opinion, it would provide scope for any contesting candidate to violate such a statutory requirement flagrantly and thereby, make the provision a dead letter.

46. Under Section 10A when the Election Commission, on being satisfied that a person failed to lodge an account of election expenses within the time specified and in the manner

required by or under this Act, can pass an order of disqualification of such person for a period of three years from the date of its order, it is needless to state that such an exercise should be carried out by the Election Commission with utmost care and caution and not by merely finding that there is a statement of account claimed to be a true copy of the election expenses maintained by the candidate and that it was lodged with the DEO in the appropriate format. In such an event, the concerned candidate can go scot-free even in a case where it can be brought to the notice of Election Commission that apart from the expenses disclosed in the statement of expenses lodged with the Election Commission, the candidate concerned had incurred various other expenses in a clandestine manner by adopting various manipulations and thereby, violating the requirement of law in particular Section 77(1) and (3) of the Act and thereby in effect not only cheat the electorate concerned, but even a constitutional authority in whom a very heavy responsibility has been invested under Article 324(1) of the Constitution. In fact, the requirement of an enquiry to be made by the Election Commission at the instance of the President of the country under Article 103 and in the

case of Members of Parliament under Article 192 by the Governor of the State in the case of Member of Legislative Assembly of the State, fortifies our above conclusion that even the President of the country and the Governor of a State can rely upon the report of the Election Commission based on an enquiry before taking a decision under Article 103(2) and under Article 192(2) of the Constitution. Therefore, to call the Election Commission's responsibility before passing an order under Section 10A only to see the form and not substance as canvassed by the Appellant is a proposition too difficult to accept.

47. When we come to Section 143 falling under Chapter I of Part VII, the said provision needs to be examined alongside the explanation to sub-section (1) and (6) of Section 123. When we read the explanation to sub-section (1), 'bribery' is stipulated as one form of corrupt practices and yet proceeds to state that the act of bribery cannot be attributed to the payment of any expenses bona fide incurred for the purpose of any election and duly entered into the account of election expenses referred to in Section 78, i.e. the provision under

which a contesting candidate is mandated to lodge, a true copy of the election expenses maintained by him, within 30 days from the date of the election of the returned candidate. The said explanation further reinforces the fact that maintenance of expenses, as mandated under Section 77(1), should not only be correct, but also be bona fide expenses. Therefore, even the explanation to sub-section (1) to Section 123 makes it clear that incurring of election expenses and the maintenance of account of those expenses are not an empty formality but the very purpose of stipulating such restrictions and directions under Section 77(1) and (3) read along with Section 78 explains the mandate to maintain absolute purity in elections by the contesting candidates. This is required in order to ensure that the process of the election is not sullied by resorting to unethical means while incurring election expenses.

48. It is common knowledge as is widely published in the Press and Media that nowadays in public elections payment of cash to the electorate is rampant and the Election Commission finds it extremely difficult to control such a menace. There is no truthfulness in the attitude and actions of the contesting



candidates in sticking to the requirement of law, in particular to Section 77 and there is every attempt being made to violate the restrictions imposed in the matter of incurring election expenses with a view to woo the electorate concerned and thereby, gaining their votes in their favour by corrupt means viz by purchasing the votes. Therefore, this Court cannot turn a Nelson's eye and state that Section 77(1) and (3), as well as 78 would be relevant only for the purpose of ascertaining the corrupt practices under Section 123(6) of the Act and that such requirement of incurring bona fide and correct expenditure need not be a requirement for ascertainment for the Election Commission while exercising its powers under Section 10A of the Act. In fact, ascertainment of the requirement under Section 77(3) viz the expenses incurred, do not exceed the limit prescribed and can be made both for the purpose of an enquiry under Section 10A, as well as in the event of a candidate exceeding the limit as a corrupt practice for the purpose of invalidating the election. Therefore, the requirement under Section 77(3) has got twin objectives to be fulfilled.

49. One other relevant provision under the Act is Section 146 falling under Chapter IV of Part VIII. Section 146 is relatable to Articles 103 and 192 of the Constitution. As was noted earlier under Articles 103 and 192 of the Constitution in the case of a Member of Parliament or a Member of State Legislature for the purpose of ascertaining the fact about a member vacating his seat as a member, one of the requirements would be that such a member is disqualified by or under any law made by the Parliament. It is needless to state that the act of disqualification referred to in Articles 102 or 190 of the Constitution, can be mainly referable to the law made by the Parliament viz the Representation of the People Act. The decision of the President of India and the Governor of a State depends upon the opinion of the Election Commission. Section 146 of the Act prescribes the procedure to be followed before rendering the opinion to the President of India or the Governor of a State.

50. When it is stipulated under Articles 102(1)(e) and 191(1)(e) to the effect that the ascertainment of vacation of a seat of a Member of Parliament or a Member of a State

Legislature would depend upon a disqualification suffered by or under the provisions of the Act, it will have to be held that the procedure to be followed for passing such an order of disqualification should be befitting the requirement of Section 10A or otherwise when an opinion is sought for from the Election Commission under Article 103(2) or 192(2), it would be rather impossible for the Election Commission to sustain any such order of disqualification. The Act in that respect cannot be held to have imposed in the Election Commission a responsibility which will not synchronise with the original order of disqualification to be made under Section 10A of the said Act and for the ultimate opinion to be rendered after such disqualification order is passed for the purpose of enabling the President of India and the Governor of a State to take appropriate decision for ascertaining the status of a member to vacate his seat as a Member of Parliament or State Legislature. It would be incongruous to visualise such a situation while reading Articles 101 to 103 and 190 to 192 of the Constitution, read along with Sections 146 and 10A of the Act. We, therefore, have no hesitation in asserting the legal position that an order to be passed under Section 10A of the said Act, could be no

less important than an opinion to be rendered by the Election Commission under Section 146 when sought for by the President of India or the Governor of the concerned States. In our considered opinion, therefore, the exercise to be made under Section 10A of the said Act would certainly include the requirement of not a farce of an enquiry but a true and complete one to determine whether the return of election expenses by an elected candidate is a true/correct or false/bogus return and that would not depend upon the decision of the Election Tribunal (High Court), which is provided under the Act for validating the election of a returned candidate on very many grounds set out in Section 123 of the Act, including the one under Section 123(6) which contemplates the compliance of the requirement under Sections 77 and 78 of the Act. However, it will have to be stated that if the said issue was squarely dealt with by the Election Tribunal (High Court) based on the entire materials that were also placed before the Election Commission and the Election Tribunal (High Court) had dealt with the said issue in detail and recorded a finding after examining such materials threadbare, there is no reason for the Election Commission to

give due weight to such a finding of the Election Tribunal (High Court) while exercising its jurisdiction under Section 10A. With this we wish to deal with the various submissions of the respective counsel.

51. Before advertng to the submissions of the learned counsel for the respective parties, it will be in order to note the alleged violations committed by the Appellants in the above appeals, which prompted the Election Commission to initiate the present proceedings under Section 10A of the Act. Insofar as the Appellant in the appeal (@ SLP(C) No.29882 of 2011) is concerned, there were three complaints at the instance of (i) Shri Mukhtar Abbas Naqvi, Member of Parliament, Bhartiya Janata Party and five others, (ii) Dr Madhavrao Kinhalakar, one of the rival contestants at the aforesaid general elections from 85 Bokar Assembly Constituency and (iii) Dr. Kirit Somaiya, Vice-President, Bhartiya Janata Party, Maharashtra and four others. In their complaints submitted to the Election Commission towards the end of November 2009 and beginning of December 2009, it was alleged that the Appellant Ashok Shankarrao Chavan got several advertisements published in

various newspapers, in particular, Lokmat, Pudhari, Maharashtra Times and Deshonnati during the election campaigning period, which appeared in those newspapers in the garb of news eulogizing him and his achievements as Chief Minister of Maharashtra. It was further alleged that the huge expenditure, which they described, was incurred or authorized by the Appellant for getting those advertisements published as news and is now a well-known phenomenon, as 'paid news'. The expenditure incurred or authorized on the publication of those 'paid news' was not included by the Appellant in his account of election expenses as required under Section 77 of the Act and lodged with the DEO, Nanded under Section 78 of the Act. The Complainants alleged that the Respondent showed only an expense of Rs.5379/- as the expenses of newspaper advertisement in his account, whereas the expenditure on the above mentioned 'paid news' ran into several crores and it was suppressed in his return of election expenses. In the complaint dated 30.11.2009 of Shri Mukhtar Abbas Naqvi and others, it was prayed that the account of the election expenses of the Respondent should be enquired into and action should be taken against him under Section 10A of the said Act.

52. Pursuant to the receipt of the above complaints, the Appellant was called upon to submit his comments by the Commission on 16.01.2010. The Appellant submitted his reply on 29.01.2010 refuting all the allegations of the Complainants. The reply was forwarded to the Complainants on 5<sup>th</sup> and 9<sup>th</sup> February, 2010 and the Complainants filed their rejoinders in February and March 2010. The Commission decided to hear the parties on 11.06.2010. In the meanwhile, the Commission also obtained the comments of the Chief Electoral Officer, Maharashtra about the four newspapers and the allegations of publishing 'paid news' relating to the Appellant. The impugned order of the Election Commission states that all the four newspapers denied the allegation of any payment having been made to them by the Respondent for the publication of the alleged 'paid news'. According to the newspaper establishments, the alleged 'paid news' were in fact news or editorials and supplements published by them gratuitously as they had links with or leanings towards the Congress Party and the Appellant. When the matter was posted for hearing, a preliminary objection was raised questioning the jurisdiction of the Election Commission to hold an elaborate enquiry in

exercise of its powers under Section 10A and while dealing with said preliminary issue, the Election Commission relied upon the decision of this Court in **L.R. Shivaramagowda (supra)** and reached a conclusion that the commission had every jurisdiction under Section 10A to go into the question of alleged incorrectness or falsity of the election expenses maintained by the Appellant under Section 77(1) and (2) and lodged by him under Section 78 of the Act. The Commission, therefore, decided to hear the matter on merits to be held on 29.04.2011 at 4 p.m. in the Commission Secretariat. The said order was the subject matter of challenge. The said order of the Election Commission came to be upheld by the Division Bench of the Delhi High Court in the order impugned dated 30.09.2011 in Writ Petition (C) No.2511 of 2011.

53. Insofar as the Appellant in the appeal (@ SLP(C) No.14209 of 2012) is concerned, he submitted his accounts of election expenses along with the register and vouchers to the tune of Rs.18,92,353/- as per the requirements of Section 78 of the said act, to the DEO West Singhbhum, Chaibasa, Jharkhand on 01.06.2009, who in turn submitted this report



to the Election Commission on 08.10.2010, as per the requirements of Rule 89 of the Rules. It was alleged that the Election Commission after receiving the report failed to act as per the requirements of Rule 89(4), which envisaged the commission to decide the issue as soon as possible after the submission of the report by the DEO. It was further alleged that after about 15 months from the submission of the report by the DEO, the Election Commission on 07.10.2010 issued a show cause notice under Rule 89(5) of the Rules to the Appellant, for the reason being that he failed to lodge his election expenses in the manner required by law and demanded as to why he shouldn't be disqualified under Section 10A of the said act. Pursuant to his notice, the Appellant explained on 24.10.2010 that the vouchers were misplaced in the DEO's office and were again provided to the DEO on 08.10.2010 and therefore, requested the Election Commission to treat the notice dated 07.10.2010 as withdrawn. Subsequent to this reply, it was alleged that the Election Commission, 4 months after the submission of the representation by the Appellant on 22.11.2011, again issued a fresh show cause notice to the him under Rule 89(5) read with Section 10A,

stating therein that they were in further receipt of a report from the Income Tax Department, which alleged that prima facie, the account filed by the Appellant was incorrect and as to why he shouldn't be disqualified. The Election Commission along with this notice, sent a copy of the alleged summary of findings by the Income Tax Department, which showed the election expenses incurred to the tune of Rs.9,32,56,259/-. The authorized total expenditure of which account is to be kept and can be incurred in one parliamentary constituency in the state of Jharkhand as per Section 77 read with Rule 90 is Rs. 25,00,000/-. The Appellant replied to this notice by stating that as he was in jail and was having severe health issues, and therefore, requested the Election Commission to grant him more time for inspecting the documents, to which a period of 20 days was granted. The Election Commission subsequently passed an order on 02.02.2011 in the similar and identical case of Ashok Shankarrao Chavan, concluding that the Commission has undoubted jurisdiction under Section 10A to go into the question of the alleged incorrectness or falsity of the return by the candidate under Sections 77(1) and 77(2), lodged under Section 78. Aggrieved by this order, the Appellant herein

filed Writ Petition(C) No.4662 of 2011 before the Delhi High Court, which was thereby dismissed by the Court in view of the order already passed by it in Writ Petition (C) No. 2511 of 2011.

54. In so far as the appeal (@ SLP(C) No.21958 of 2013) is concerned, the Appellant was a candidate from 24 Bisauli Assembly Constituency U.P. in the General Assembly Election of 2007 from a party, namely, Rashtriya Parivartan Dal. Sri Yogendra Kumar, the 2<sup>nd</sup> Respondent, was also a contesting candidate from the said constituency. The polling in the constituency was scheduled to take place on 18.04.2007. A day before the date of polling, a publication was made in a newspaper 'Amar Ujala' dated 17.04.2007 mentioning that there is a wave in favour of the Appellant in the election and the voters have made up their mind to support the Appellant. A similar publication was also made in the newspaper 'Dainik Jagaran' dated 17.04.2007. The polling took place on 18.04.2007 and the Appellant was declared as an elected member of the U.P. Legislative Assembly. On 27.04.2007 a complaint was submitted by the Respondent No.2 to the Press Council of India that the newspapers Amar Ujala and Dainik

Jagaran, were in violation of journalistic conduct and have published one sided news item in the form of advertisement in favour of the Appellant by taking huge sums of money on 17.04.2007, i.e. after the close of the campaigning and the day before the poll. On 12.05.2007 the Appellant submitted the accounts of his election expenses before District Election Officer as required by Section 77 and 78 of the Act. The Press Council of India issued notices to both the newspapers on 09.08.2007, to which both the papers submitted their reply before the Press Council of India that the publication was not a news item but an advertisement. It was stated in the reply that at the bottom, the word 'ADVT' was appended and it was further submitted that the material, which was published was given to the Press on behalf of the Appellant and was not materials collected by the correspondents of the newspaper. The Press Council thereby, decided the complaint vide order dated 31.03.2010, wherein it held that the publication though camouflaged as news items, in reality it was only an advertisement. It further held that the newspapers Amar Ujala and Dainik Jagaran were guilty of ethical violation. Subsequently, after receiving the order dated 31.03.2010 from

the Press Council of India vide letter dated 04.05.2010, the Commission called for a report from the Chief Electoral Officer U.P. regarding expenditure on the advertisement dated 17.04.2010 to which the Chief Electoral Officer vide his letter dated 10.05.2010 forwarded the report dated 09.05.2010 of the DEO. The DEO in his report had stated that the expenditure was not clear from the returns submitted by the Appellant. The Election Commission thereby issued a notice dated 22.06.2010 to the Appellant stating that in the account of the election expenses, the expenditure incurred for the two advertisements dated 17.04.2007 were not reflected and thereby, attracted disqualification under Section 10A for a period of three years. The Appellant thereby submitted a reply on 18.07.2010 stating that the publication of the above items in the newspapers were neither ordered by the Appellant nor by her election agent. On 19.08.2010, the Election Commission requested the newspapers to send copies of all the relevant documents pertaining to the publication dated 17.04.2007. On 06.01.2011, the Election Commission again wrote to the Appellant stating that the account of election expenses lodged by her as per Section 78 of the Act had not reflected the proper

and correct expenditure and a hearing was thereby fixed on 04.02.2011. In the hearing it was submitted by the Appellant that the advertisement given by her party was only in a small box size 7 x 6 cms. for which an amount of Rs.840 was paid to the Daily Amar Ujala vide bill dated 17.04.2007. The Election Commission after hearing the Appellant and the Respondent No.2, vide its order dated 20.10.2011 held the Appellant to be guilty of breach of the provisions 78 and 10A of the Act and accordingly disqualified her for a period of three years. Subsequent to this order, a writ petition was filed by her on 05.11.2011, challenging the order of the Election Commission in Writ Petition No.63965 of 2011 before the Hon'ble High Court of Allahabad, which dismissed the said writ petition vide the judgment and order dated 03.05.2013.

55. In recent times, when elections are being held it is widely reported in the Press and Media that money power plays a very vital role. Going by such reports and if it is true then it is highly unfortunate that many of the voters are prepared to sell their votes for a few hundred rupees. In fact, taking advantage of the weakness of the voters, exploitation to the

maximum level is being carried out by those who aspire to become either Member of Parliament or State Legislature. We are pained to state that the sanctity of the status as a Member of the Legislatures, either Parliament or State Legislature are not being seriously weighed even by those who sponsor their candidature. It is a hard reality that if one is prepared to expend money to unimaginable limits only then can he be preferred to be nominated as a candidate for such membership, as against the credentials of genuine and deserving candidates. If such practices are to be simply ignored and a laudable object with which the Act has been brought into the statute book as early as in the year 1950 and later on by the Act of 1951, wherein by virtue of the Constitutional provision under Article 324 an authority in the status of the Election Commission is created in order to supervise and control the elections, it must be stated that such an authority who is in ultimate control in the matter of holding of the elections should be held to be invested with the widest power of its kind specified in the Act. Therefore, when it comes to the question of interpretation of the extent of such power to be exercised by the said authority, we are convinced that the

Court should have a very liberal approach in interpreting the nature of power and jurisdiction vested with the said authority, namely, the Election Commission. This view of ours is more so apt in the present day context, wherein money power virtually controls the whole field of election and that people are taken for a ride by such unscrupulous elements who want to gain the status of a Member of Parliament or the State Legislature by hook or crook.

56. In this context, we also keep in mind the Preamble to the Constitution which in liberal words states that the people of India having solemnly resolved to constitute India into a sovereign, social, secular, democratic, republic and to secure to all citizens justice, liberty, equality and fraternity. In such a large democratic country such as ours, if purity in elections is not maintained and for that purpose when the constitution makers in their wisdom thought it fit to create an authority, namely, the Election Commission and invested with it the power of superintendence, control and also to issue directions, it must be stated that such power invested with the said constitutional authority should not be a mere empty formality



but an effective and stable one, in whom the citizens of this country can repose in and look upon to ensure that such unscrupulous elements and their attempts to enter into political administration of this vast country are scuttled. In that respect, since the ruling of this vast country is always in the hands of the elected representatives of the people, the enormous powers of the Election Commission as the guardian of democracy should be recognized. It is unfortunate that those who are really interested in the welfare of society and who are incapable of indulging in any such corrupt practices are virtually sidelined and are treated as totally ineligible for contesting the elections.

57. Having noted the above features in the case of each of the Appellant which has gone before the Election Commission, wherein the impugned orders came to be passed, we proceed to deal with the submissions made on behalf of the Appellants, as well as the counsel for the Respondents and the learned counsel for the Election Commission. In the first instance, Mr. Gopal Subramaniam, learned Senior Counsel appearing for the Appellant in the appeal (@SLP(C) No.29882 of 2011) submitted

that one of the Complainants before the Election Commission who was an unsuccessful candidate in the very same election in which the Appellant was successfully elected, also challenged the said election in an Election Petition which was enquired into by the Election Tribunal (High Court) in Election Petition No.11 of 2009 and that the same came to be dismissed for want of material facts. The said decision of the Election Tribunal (High Court) was also stated to be confirmed by this Court in Civil Appeal No.9271 of 2012 in the order dated 21.01.2013. The learned Senior Counsel therefore, contended that the Election Tribunal (High Court) having concluded the issue while rejecting the Election Petition stated that there cannot be a further complaint before the Election Commission as the same is not permissible in law. Per contra, it was contended on behalf of the Respondents that the scope and jurisdiction of the Election Tribunal (High Court) is entirely different from the one conferred on the Election Commission under Section 10A of the Act and, therefore, the dismissal of the Election Petition preferred by one of the Complainant's cannot be a ground to reject the complaint, which is required to be dealt with under Section 10A of the Act. We find force in

the submission of the learned counsel for the Respondents. As was pointed out by us earlier, the challenge to an election by way of an Election Petition is provided for under Article 329(b) of the Constitution and the manner in which such Election Petition is to be filed and the procedure to be followed were all set out in Sections 80 to 116 of the Act.

58. It is true that Article 329(b) specifically stipulates that no election can be called in question except by way of an Election Petition. When we peruse the various stipulations contained in Sections 80 to 116 of the said Act, we find that under Section 80 it is reiterated that no election shall be called in question except by an Election Petition presented in accordance with the provisions of this Part, namely, Part VI of the Act. Section 83 stipulates that an Election Petition should contain a concise statement of the material facts on which the Appellant relies, set-forth full particulars of any corrupt practice that the Appellant alleges, including a full statement of the possible names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, which should be signed by

the Appellant concerned and verified in a manner as provided in the Code of Civil Procedure for verification of pleadings. The proviso to Section 83(1) states that where the Appellant alleges any corrupt practice, the Petition should also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It is based on such contents in the Election Petition as provided under Section 83, the trial of Election Petition will be made by the Election Tribunal (High Court) and the various other provisions describe the procedures which are to be followed, including the relief to be ultimately granted which is provided for and that is the scope and ambit of jurisdiction that could be exercised by an Election Tribunal (High Court).

59. As compared to the nature of proceedings of an Election Petition, when we examine the scope and jurisdiction of the Election Commission under Section 10A, at the outset it must be stated that the power and jurisdiction therein does not clothe the Election Commission to deal with the successful election of the candidate concerned. In other words, exercising power under Section 10A, the Election Commission cannot set

aside the election of a successful candidate. Section 10A talks of only an order of disqualification that can be passed by an Election Commission. Further, such disqualification order can be passed for failure to lodge an account of election expenses and such failure was within the time and in the manner required by or under the Act. Therefore, the scope of an Election Petition to be tried by an Election Tribunal (High Court) and the scope of an order of disqualification to be passed under Section 10A are entirely different and it must be stated that one does not conflict with the other. The very same allegation of a corrupt practice may form part of the failure to lodge the account in the manner required by or under the Act as has been specified in Sections 77 and 78 of the Act in an Election Petition. Therefore, simply because such an issue may form part of a corrupt practice as provided under Section 123(6) and the failure may be in contravention of Section 78 of the Act, it may also be one of the grounds in challenging the successful election of a candidate concerned in an Election Petition. On that score, it cannot be held that the area of disqualification to be considered by the Election Commission, under Section 10A, is fully covered in an Election Petition and

thereby, the power and jurisdiction of the Election Commission would stand excluded. It cannot therefore, be contended that once the Election Petition having been rejected for want of particulars, which order has become final, a complaint under Section 10A cannot be pursued. We therefore, reject the said contention raised on behalf of the Appellant.

60. The next submission of Mr. Gopal Subramaniam, learned Senior Counsel for the Appellant was that the provision for disqualification was originally incorporated in Section 7(c) of the 1950 Act, which has now been restructured in Section 10A, that the provision of Section 7(c) was interpreted by this Court in **Sucheta Kripalini (supra)**, wherein this Court has ruled that the requirement of lodgment of the account of election expenses is only in form and not in substance and that the said legal position continued even after the introduction of Section 10A. The learned Senior Counsel while referring to the subsequent decision of this Court on Section 10A reported in **L.R. Shivaramagowda (supra)** contended that having regard to the fact that the decision in **Sucheta Kripalini (supra)** is the decision of a Constitution Bench of this Court, a contrary view

expressed in **L.R. Shivaramagowda (supra)**, a three Judge Bench decision calls for reconsideration.

61. Meeting the above submissions of the learned counsel for the Appellant, Mr. Bhushan, learned Senior Counsel and Mrs. Pinki Anand, learned Senior Counsel for the contesting Complainants before the Election Commission and Mr. Ashok Desai, learned Senior Counsel appearing for the Election Commission, contended that the scope and ambit of Section 7(c) as it originally stood, as well as the subsequent amendments to it, read along with Section 8(b), was far different from the present Section 10A and, therefore, what was ruled while examining Section 7(c) of the 1950 Act in the decision reported in **Sucheta Kripalani (supra)** can have no application to the present Section 10A of the Act. The learned Senior Counsel, therefore, submitted that the decision in **L.R. Shivaramagowda (supra)**, which squarely dealt with the scope and power of the Election Commission as adumbrated in Section 10A alone would apply and the same does not call for any further reconsideration.

62. Having considered the respective submissions of the learned counsel, we are also convinced that the decision in **L.R. Shivaramagowda (supra)** does not call for reconsideration. As rightly pointed out by the learned Senior Counsel for the Election Commission, as well as the other learned counsel for the Respondents, the scope and ambit of Section 7(c) has been widened by metes and bounds in Section 10A in its present form. In Section 7(c), there is no reference to any positive order to be passed by any authority much less an Election Commission specifying the disqualification suffered. On a reading of Section 7(c) along with Section 8(b), as it originally stood, there is no scope to hold that the failure to lodge a return of election expenses within the time and in the manner required by or under the Act can be examined by an Election Commission in a manner known to law. Therefore, an order of disqualification to be passed based on such examination or enquiry should precede such an order. On the contrary, as has been explained in detail about the scope of Section 10A read along with Section 77(1) and (3), Section 78 and Rules 86 to 90, we find that the failure to lodge an account of election expenses within the time and in the manner



required by or under the Act would result in serious consequences and consequently, such a failure would result in an order of disqualification to be passed by the Election Commission. When we read Section 10A as compared to Sections 7(c) and 8(b), as it originally stood, Section 10A in its very opening words, empowers the Election Commission on being satisfied about the defects in the lodging of the account of election expenses as contemplated under Section 77(1) and (3) read along with Section 78 and the Rules 86 to 90, to pass an order and publish it in the official gazette, as regards the disqualification period of which is prescribed as three years from the date of the order. Such a detailed nature of power, now prescribed under Section 10A, was not provided for under Section 7(c) read along with Section 8(b), as it originally stood.

63. Further, a consideration of the implication of Articles 101(3)(a), 102(1)(e) and 103, as well as 190(3)(a), 191(1)(e) and 192 of the Constitution read along with Section 146 of the Act having been exhaustively noted by us in the earlier part of the judgment, it will have to be held that the power under Section 10A is wide enough for the Election Commission to deal with

the issue of disqualification on the ground of failure to lodge the account of election expenses within the time and in the manner required by or under the Act for deciding the issue whether an order of disqualification should be passed against a contesting candidate. In fact, while the scope of consideration by the Election Tribunal (High Court) will be in relation to the validity of election of a successful candidate by the other contesting candidates and the ultimate conclusion by the Election Tribunal (High Court) may be either validating the election or invalidating the election by setting it aside, the power under Section 10A would apply to all the candidates who contested in the election, who have to mandatorily comply with the requirement of Section 77(1) and (3) as well as Section 78 along with the prescribed rules in that respect. Therefore, the submission that under Section 10A the Election Commission cannot venture to hold an enquiry for the purpose of passing an order of disqualification in the light of the decision of the Election Tribunal (High Court) in the case of the Appellant in the appeal (@ SLP(C) 29882 of 2011) is a far-fetched one.

64. As far as the earlier decision of the Constitution Bench of this Court reported in **Sucheta Kripalani (supra)** is concerned, the said decision having stated that the lodging of a return of election expenses is one of form and not of substance was held on the anvil of Section 7(c), as it originally stood, and since the ambit and scope of Section 10A which replaced Sections 7(c) and 8(b) of the 1950 Act being wider in ambit and scope and as also the power of the Election Commission has also been widened for passing an order of disqualification, the said decision can have no application. On the other hand, in the decision in **L.R. Shivaramagowda (supra)**, this Court after examining the implication of Section 10A has stated the legal position in uncontroverted terms as under in paragraph 22:

“22.....in our opinion, sub-sections (6) of Section 10A takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Section 77(2) provides that the account shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules provides for the particulars to be set out in the account. The said rule prescribes that a voucher shall be obtained for every item of expenditure and for lodging all vouchers along with the account of election expenses. Rule 89 provides that the District Election Officer shall report to the Election Commission, the name of each contesting candidate, whether such candidate has lodge his account of election expenses, and if so, the date on which such account has been

lodged and whether in his opinion, such account has been lodged within that time and in the manner required by the Act and the Rules. That rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act after adopting the procedure mentioned therein. If an account is found to be incorrect or untrue by the Election Commission after enquiry under Rule 89, it could be held that the candidate had failed to lodge his account within the meaning of Section 10A and the Election Commission may disqualify the said person. Hence, we do not find any substance in the argument of learned counsel for the first respondent.”

65. Therefore, the said conclusion reached by this Court in the said decision fully covers the issue raised and we hold that the order of the Election Commission, which has now been upheld by the High Court in stating that it has got every jurisdiction to enquire into the complaint made before it as regards the incorrect and untrue statement of accounts of election expenses lodged by the Appellant can be enquired into for the purpose of passing an order of disqualification under Section 10A, is perfectly justified.

66. The contention of Mr. Gopal Subramaniam, learned Senior Counsel that the proposed action of the Election Commission to conduct an enquiry under Section 10A would conflict with the power to be exercised in an Election Petition

under Article 329(b) and thereby ultimately in the event of an order of disqualification being passed would result in virtually setting aside the election of a successful candidate and therefore the impugned order of the Election Commission, as confirmed by the High Court, cannot be sustained. In dealing with the said contention, it will have to be noted that having regard to the scope of Articles 101 to 103 and 190 to 192 of the Constitution, any order of disqualification passed against a Member of Parliament or a Member of a Legislature will have to be considered by the President of India and the Governor of a State respectively for taking a decision as to the consequence that should follow by reason of such an order of disqualification. Even at that stage, there is another filter point in the form of an opinion to be rendered by the Election Commission to the President of India or the Governor of the State before taking a decision as to whether the member elected should vacate his office pursuant to such disqualification. For the reasons which we have elaborately stated while dealing with the scope and power of jurisdiction of the Election Tribunal (High Court) and the power of the Election Commission under Section 10A, it will have to be

stated that the said submission no longer survives for consideration. The same is, therefore, rejected.

67. The other submission of Mr. Gopal Subramaniam, learned Senior Counsel was on the issue of *locus standi*. The contention was that the Complainants were neither voters nor losing candidates, that the legislative scheme does not provide for an opportunity to a person who wishes to oppose the explanation offered by the candidate and that though Section 10A applies to all candidates, the Election Petition can be filed only against an elected candidate. It was therefore contended that the complainants have no way to invoke Section 10A and that if at all any enquiry can be held by the Election Commission, it can be only under Articles 103 or 192 at the instance of the President of India or the Governor of the State.

68. To counter the said submission, it was contended by Mr. Jayant Bhushan, Ms. Pinki Anand and Mr. Ashok Desai, learned Senior Counsel and Mr. Prashant Bhushan, learned counsel that such a restricted meaning cannot be applied to Section 10A. The learned counsel for the Respondents by referring to Section 10A and the Rules, in particular Rule 88

pointed out that under Rule 88, after the account of election expenses are lodged with the DEO, as stipulated under Rule 87, any person is entitled on payment of nominal fee of Rs.1 to inspect such account and on payment of such other fee prescribed or fixed by the Election Commission, is also entitled to obtain attested copies of such accounts or of any part thereof. The learned counsel, therefore, contended that the very right given to a citizen or a voter to seek for inspection of the account of election expenses submitted by a candidate and also get attested copies of such account, would show that the said person who seeks for such inspection and gets a copy will have every consequential right to move the appropriate authorities to point out any illegality committed in the submission of the account of election expenses.

69. When we consider the above submission, we find force in the submissions of the learned counsel for the Respondents. Reading Section 10A along with Rules 87 to 90, in particular, the right conferred on any person to seek for inspection of the accounts submitted, it will have to be held that such a right is not conferred merely to look into the details

of the account. If based on the inspection, made by a person under Rule 88 and the attested copies of such accounts disclose that the candidate concerned committed a very serious illegality in the matter of submission of the account of election expenses, it must be stated that such a person will have every right to bring it to the notice of the Election Commission for taking appropriate legal recourse available to that person under the Act. It may be stated that once any such misfeasance in the submission of the account of the election expenses is brought to the notice of the Election Commission, thereafter it would be for the Election Commission to set the process in motion for deciding the issue as contemplated in Section 10A of the Act. It cannot be said that no person can by way of a complaint approach the Election Commission.

70. The conduct of election being in the realm of public domain, the operation of such election would take place in each constituency, in an area spread over the whole of the constituency. It will have to be stated that the Election Commission may not be in a position to have access to any kind of illegality or irregularity indulged in by the candidates



concerned, irrespective of the various personnel such as Election officers, security personnel, etc. functioning exclusively for the purpose of holding the election under the control of the Election Commission. Therefore, such instances of illegalities committed by the candidates contesting in the election in certain areas of the constituency may come to the notice of some individuals, which may have a serious ramification relating to the conduct of the candidate by abusing the process of the election with the aid of money power available with such candidate. Therefore, if someone is able to assert such misuse of funds in the process of election by a candidate by making an inspection under Rule 88 and if the concerned individual finds out that such misuse of funds had taken place, which was not disclosed in the statement of account of election expenses, he will have every right to bring it to the notice of the Election Commission and the very purport of providing such a right under Rule 87 and 88 when read along with Section 10A makes it clear that he would have every locus to prefer a complaint. Also in the course of an enquiry made under Section 10A, the Election Commission can call upon the concerned individual to substantiate the complaint

with relevant materials to enable the Election Commission to pass appropriate orders of disqualification under the said Section. Therefore, the contention of learned Senior Counsel for the Appellant that the Complainants have no locus cannot be accepted.

71. In fact, apart from the complaints of the individuals, in the case of the Appellant in the appeal (@ SLP(C) No.29882 of 2011) and in the case of the Appellants in the other appeals, such illegality in the matter of accounts of the election expenses was brought to the notice of the Election Commission by the Press Council of India in one case and by the Board of Direct Taxes in the other. Even if some motive can be attributed to the complaints made by the individuals, we see no reason why bodies like the Press Council of India and the statutory body, namely, Board of Direct Taxes should have any malice or motive against the candidates concerned, namely, the Appellants while bringing the illegalities committed by the Appellants to the notice of the Election Commission. Therefore, the contention based on locus of the Complainants has absolutely no substance and the same stands rejected.

72. Having dealt with the submission made on behalf of the Appellant, we also wish to find out whether the reliance placed upon various decisions by the learned Senior Counsel for the Appellant support the stand of the Appellant. Mr. Gopal Subramaniam, learned Senior Counsel relied upon **N.P. Ponnuswami (supra)**, a Constitution Bench decision of six Judges. In the said case, the point raised based on Article 329(b) was noted as under in Paragraph 5:

“5. It was conceded at the Bar that the effect of this difference in language is what (that) whereas any law made by Parliament under Article 327, or by the State Legislatures under Article 328, cannot exclude the jurisdiction of the High Court under Article 226 of the Constitution, that jurisdiction is excluded in regard to matters provided for in Article 329.”

73. That was a case where the nomination of a candidate rejected by the returning officer could be challenged only by of an Election Petition under Section 329(b) and if that be so, whether any other proceedings could be resorted to including a proceeding under Article 226 of the Constitution challenging the rejection of the nomination. Dealing with that situation, this Court held that the word ‘election’ can be and has been appropriately used with reference to the entire process, which

consists of several stages and embraces many steps some of which may have important bearing on the result of the process. Therefore, it was held that if the grounds on which an election can be called in question, could be raised at an earlier stage and the errors, if any, are rectified there will be no meaning in enacting a provision like Article 329(b) and in setting up a Special Tribunal. It was further held that any other meaning ascribed to the words used in the Article would lead to anomalies which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the Election Tribunal, which is to be an independent body at the stage when the matter is brought up before it. In the light of the situation in which the overall jurisdiction of the Election Tribunal (High Court) relating to a challenge that can be made to an election can be made as provided under Article 329(b), this Court having held that the word 'election' would include very many process till the completion of the polling and the declaration of the result and, therefore, there cannot be a piecemeal challenge permitted to be made by way of a Writ Petition under Article 226. The said proposition of law, as

declared by this Court, can never be controverted. In the case on hand, there was no attempt made by anyone to challenge the election of the Appellant by resorting to a complaint which has emanated in the form of proceeding under Section 10A by the Election Commission. In fact, in a proceeding under Section 10A, there is no scope or power vested with Election Commission to declare the election as invalid. Therefore, there is no question of any violation of Article 329(b) that would arise in the case on hand. We, therefore, do not find any support from the said decision for the Appellant.

74. The Appellant then relied upon the decision reported in **Surinder Singh Banolta (supra)**. In the said decision, reliance was placed upon Paragraph 18, wherein it was stated as under:

**“18.** If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of Section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, it is well settled, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a situation, therefore, must be avoided. It will

also lead to an absurdity if two different tribunals are allowed to come to contradictory decisions.”

75. To understand the principle stated in the said paragraph, it will have to be noted that under the Himachal Pradesh Panchayat Raj Act, 1994, Section 122 provided for various circumstances which would disqualify a person from being Member of a Panchayat or from being chosen as a Member of Panchayat. After setting out this various situations under which such a disqualification will occur, as far as the remedy is concerned, it was noted that the same is provided in Sections 163, 174 and 175 of the Act by which if anyone wanted to contend that a particular person is disqualified from being a member or to be chosen as a Member of Panchayat, the only remedy is by way of an Election Petition and not otherwise. In the said case, one of the contestants was held to be disqualified based on another proceeding where he was found to have encroached public lands and was directed to be ejected from the land in question, which was one of the circumstances under which he came to be disqualified as prescribed under Section 122(1) of the Act. The person who alleged such disqualification as against the contestant, moved

the Deputy Commissioner, who took cognizance of the said complaint and by an order dated 04.06.2002, declared the contestant as disqualified from being chosen as a Member of the Zila Parishad and consequently, his election was set aside. On finding that such a power was not invested with a Deputy Commissioner under the said Act and that the only remedy available to the Complainant was by way of an Election Petition as provided under Section 163 read with Sections 174 and 175 of the Act, this Court held that such parallel proceedings cannot be permitted. We do not find any scope to apply the said decision to the case on hand. We have elaborately noted the scheme of the Act by which the scope of the Election Petition as contained in Sections 79 to 116 was noted, as against the power and jurisdiction of the Election Commission to pass an order of disqualification under Section 10A, which does not deal with the validity of the election but is only concerned with the failure to lodge a statement of election expenses in the manner as required by or under the Act, for the purpose of passing an order of disqualification.

76. In the light of such statutory prescription contained in the Act clearly distinguishing the different role to be played by an Election Tribunal (High Court) and the Election Commission as compared to the provisions contained in the Himachal Pradesh Panchayat Raj Act, 1994, the said decision also does not support the stand of the Appellant.

77. Reliance was also placed upon **Dalchand Jain (supra)** to contend that suppression of certain expenses incurred in the election while submitting the return as stipulated under Section 77 would amount to a corrupt practice as specified in Section 123(6) and consequently, in that case on finding that such non-disclosure of expenditure amounted to corrupt practice, the election was set aside by an Election Tribunal (High Court). When the said order of the Election Tribunal (High Court) was challenged before this Court, after examining the factual matrix in detail, this Court upheld the order of the Election Tribunal (High Court) holding that the same did not call for any interference. It will have to be stated that the said decision can have no application to the case on hand, inasmuch as, the question whether the jurisdiction of the



Election Commission under Section 10A would stand excluded by virtue of the dismissal of an Election Petition by the Election Tribunal (High Court) at the instance of one of the Complainants in the case of the Appellant in the appeal (@ SLP(C) No.29882 of 2011) was not the point in issue. There was also no issue raised as to whether as a general proposition of law, jurisdiction under Section 10A of the Act for passing an order of disqualification for failure to lodge the account in the manner and as required by or under the Act can only be raised as a ground of attack for setting aside an election before the Election Tribunal (High Court). Therefore, we do not find any scope to apply the said decision to the facts of this case.

78. Reliance was then placed upon a Constitution Bench decision of this Court reported in **Brundaban Nayak (supra)**. In the said judgment, which was prior to the introduction of Section 10A and the corresponding Rules, relating to the said section. In Paragraph 19, after noting the observations made by the Chief Election Officer, while rendering its opinion at the request of the Governor as provided under Article 192 of the Constitution, when relevant facts are in dispute it can be

ascertained only after a proper enquiry, this Court observed as under in paragraph 19:

**“19.....**We would like to invite the attention of parliament to these observations, because we think that the difficulty experienced by Election Commission in rendering its opinion under Article 103 (2) or Article 192 (2) appears to be genuine and so parliament may well consider whether the suggestion made by the Chief Election Commissioner should not be accepted and appropriate legislation adopted in that behalf”.

79. In fact, Section 146 of the Act, which came to be introduced with effect from 22.09.1965 apparently was in compliance with the above observations made by this Court under which provision, the Election Commission has now been invested with all the powers. Apart from the above observations, it will be worthwhile to note the conclusion arrived at by this Court in **Brundaban Nayak (supra)** in paragraph 18, which reads as under:

**“18.** In this connection, we ought to point out that so far the practice followed in respect of such complaints has consistently recognised that the enquiry is to be held by the Election Commission both under Article 192(2) and Article 103(2). In fact, the learned Attorney-General for Respondent 1 stated before us that though on several occasions, the Election Commission has held enquiries before communicating its opinion either

to the President under Article 103(2) or to the Governor under Article 192(2), no one ever thought of raising the contention that the enquiry must be held by the President or the Governor respectively under Article 103(1) and Article 192(1). He suggested that the main object of the appellant in taking such a plea was to prolong the proceedings before Respondent 1. In the first instance, the appellant asked for a long adjournment and when that request was refused by Respondent 1, he adopted the present proceedings solely with the object of avoiding an early decision by the Governor on the complaint made against the appellant by Respondent 2. We cannot say that there is no substance in this suggestion.”

80. A reading of the above paragraph also shows that even in the absence of Section 146, this Court has recognized the power of the Election Commission to hold an enquiry whenever a complaint of disqualification is raised as against a member. Therefore, the said decision fully supports the stand of the Election Commission, rather than the case of the Appellant.

81. The reliance placed upon the decision of this Court in **Jagan Nath (supra)** is totally misconceived, inasmuch as, the said judgment came to be rendered when there was a specific provision in sub-section (1) and (2) of Sections 100 and 101 by which an election of a successful candidate can be called in question by way of an Election Petition before the Election

Commission itself. Inasmuch as the said power vested with the Election Commission is no longer available under the said provisions, which has now been entrusted with the Election Tribunal (High Court) alone, the reliance placed upon the said decision is of no use to the Appellant.

82. The learned Senior Counsel also placed reliance upon the decision reported in **Kanwar Singh Saini (supra)**. Reference was made to paragraphs 22 and 23, which are as under:

“22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute.

23. When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, ‘that

performance cannot be enforced in any other manner'. Thus for enforcement of a right/ obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act.”

83. No one can quarrel with the proposition as laid down in the above paragraphs. The question is whether under Section 10A and the other alleged provisions under the Act, as well as, the Rules, such a power has been invested with the Election Commission. We have elaborately referred to the various provisions in the Act, as well as the Rules in particular Section 10A, Section 77(1) and (3), Section 78 read along with Rules 86 to 90 and have held that such a power to hold an enquiry before passing an order of disqualification under Section 10A has been invested with the Election Commission. Therefore, even applying the above said principles, we do not find any scope to take a different view.

84. We do not find any support from the decision relied upon by the learned Senior Counsel on **Andhra Provincial Potteries Ltd. & Ors. (supra)**. Reliance was placed upon the principle stated in paragraph 7, wherein it was held that in interpreting a penal provision, it is not permissible to give an extended meaning to the plain words of the Section. Inasmuch

as the said principle has been stated while interpreting a penal provision, it will have to be stated that the said principle cannot be applied while interpreting Section 10A. In any event we have found that in Rule 89 sub-rule (5), it has been specifically provided that the Election Commission should issue a show cause notice for the purpose of passing any order of disqualification under Section 10A calling upon the candidate concerned to submit its representation in writing. Under sub-rule (6) of Rule 89 it has been further clarified that a contesting candidate who has been called upon to show cause under sub-rule (5) may within 20 days of the receipt of such notice, submit a representation in writing to the Election Commission simultaneously forwarding a copy to the DEO together with a complete account of his election expenses if he had not already furnished such an account. Therefore, reading sub-rule (5) and (6) of Rule 89 along with Section 10A, the position is explicitly clear that the Election Commission, while invoking its power under Section 10A has to necessarily issue a show cause notice calling upon the contesting candidate to submit his reply and after the receipt of the reply to the said show cause notice, consider whether the statement of account

was lodged in the manner and as required by or under the Act and only thereafter, pass an order of either disqualification or otherwise. Therefore, the said decision also does not come for the rescue of the Appellant.

85. The decision reported in **Tukaram S. Dighole (supra)** was relied upon to highlight that a charge of corrupt practice envisaged by the Act is equated with the criminal charge and, therefore, the standard of proof would not be the preponderance of probabilities, as in a civil action, but proof beyond reasonable doubt as in a criminal trial. Paragraph 10 of the said decision was relied upon for the above proposition, which reads as under:

“**10.** Mr K.V. Viswanathan, learned Senior Counsel, appearing on behalf of the respondent, on the other hand, supported the decision of the Tribunal and submitted that apart from the fact that there was no specific pleading in the election petition with regard to the mode of acquisition of the cassette in question, even if it was assumed that the said cassette was a public document yet in order to attract the provisions of Section 123 of the Act, the appellant was required to prove with cogent evidence that the speeches recorded therein were, in fact, made by the respondent and his agents. In support of the proposition that unless a document is exhibited at the trial and is put in evidence it cannot be looked into, reliance was placed on a decision of this Court in *Amar Nath Agarwalla v. Dhillon Transport Agency*. Learned counsel asserted

that the finding recorded by the Tribunal on the issue, being a pure finding of fact, no interference is called for.”

86. In the first place, the enquiry to be held under Section 10A is not to examine any allegation of corrupt practice falling under Section 123 of the Act. The only area of examination to be made in an enquiry under Section 10A is with regard to the lodging of the account of election expenses and whether such lodgment was done in the manner and as required by or under the Act. In the second place, when such an enquiry is held, the scope would be as contained in Section 77(1) and (3) as well as Section 78. The said provisions require a contesting candidate to maintain a true and correct account of the election expenses to ensure that such expenses are within the limits prescribed under the Act and that a copy of such statement of accounts is filed within the time prescribed under Section 78. When it comes to the question of a corrupt practice under Section 123, it is needless to state that the scope of examination of the said issue would be within the four corners of an Election Petition, as has been prescribed in Chapter I of Part VI of the Act to Chapter V of the Act. At the risk of repetition it will have to be



reiterated that the enquiry under Section 10A would be more or less of a civil nature and therefore, the principles of preponderance of probabilities alone would apply and it is relevant to note that even after the order of disqualification, if any, is passed under Section 10A, after following the requirement of issuance of show cause notice, receipt of reply, etc., there is a further remedy available to the contesting candidate under Section 11 by which the aggrieved candidate can demonstrate before the Election Commission as to how the order of disqualification cannot stand and that it has to be varied. Even if by invoking Section 11 the aggrieved candidate is not able to get his grievance redressed, the Constitutional remedy under Articles 32 and 226 of the Constitution is always available to question the correctness of any order that may be passed by the Election Commission under Sections 10A and 11 of the Act.

87. Reliance was placed upon the recent decision of this Court reported in **Secretary, A.P.D. Jain Pathshala & Ors. (supra)** for the proposition that *ad hoc* authorities cannot be permitted to exercise judicial functions and that the executive

power of the State cannot be extended to creating Judicial Tribunals or Authorities exercising juridical powers and rendering judicial decisions. The said decision came to be rendered while examining the scope of binding nature of a decision rendered by a three member Grievance Redressal Committee constituted under a scheme called Shikshan Sevak Scheme in all recognized private secondary/higher secondary school/ junior colleges/B.Ed. colleges in the State of Maharashtra. Such a scheme was not under any statute or was not governed by any statutory provision. In examining the scope of authority of such a committee called Grievance Redressal Committee formed under a scheme in the purported exercise of executive authority, this Court held that constitution of a Grievance Committee, as a public adjudicatory forum whose decisions are supposedly binding on the parties to the dispute pursuant to executive order of the Government, was impermissible. We do not find any scope to apply the said decision, inasmuch as, there is a world of difference as between the Constitution of a Grievance Redressal Committee under a Scheme with no statutory support and the existence of a Constitutional Authority, viz the

Election Commission, created under the Constitution of India, which has been invested with the powers of superintendence, control and issuance of directions for the purpose of holding public elections in this country, apart from the entrustment of specific powers under the Act, *inter alia*, under Section 10A and 11 and such powers are to be exercised in accordance with the Rules, viz the Conduct of the Election Rules. The said decision also, therefore, does not help the Appellant.

88. We find that the reliance placed upon the decision reported in **Election Commission of India Through Secretary (supra)** is not applicable to the case on hand, inasmuch as, in the said decision, the question posed for consideration was as to what extent Article 329(b) had overriding effect on Article 226 of the Constitution. This Court as a proposition of law stated that if the petition presented to the Court calls in question an election, the bar of Article 329(b) is attracted, else it is not. We do not find any reference to any of the issues which arise for consideration in the case on hand in the said judgment. Therefore, the said decision also does not support the case of the Appellant.

89. Reliance was placed upon the decision reported in **Bharat Aluminium Company (supra)** paragraphs 165, 166 and 168 for the proposition that the legislation cannot be construed contrary to Parliament's intention, just to avoid any hardship. In support of his contention, he submitted that the complainants before the Election Commission have no *locus standi* to raise the issue under Section 10A. We have found that the power in Election Commission under Section 10A is inherent. We have also held by making reference to Sections 77 (1), (2) & (3) and 78, read along with Rules 86 to 90 that there is every right in any member of the electorate who is entitled to seek for inspection of the account submitted by a candidate and also get the authenticated copy of such statement. He is also entitled to bring to the notice of the Election Commission any serious flaw in the account of election expenses submitted by a contesting candidate.

90. Our conclusion is, therefore, based on an interpretation of the statutory provisions in the Act, as well as the Rules. Therefore, the reliance placed upon the decisions reported in **Bharat Aluminium Company (supra)** and **M.**

**Karunanidhi (supra)** does not support the case of the Appellant.

91. The decision reported in **Siddharam Satlingappa Mhetre (supra)** was relied upon for the proposition that a decision delivered by a larger Bench is binding on any subsequent Bench of lesser or co-equal strength. The submission was that the decision rendered in **Sucheta Kripalani (supra)** is a Constitution Bench decision, while the one rendered in **L.R. Shivaramagowda (supra)** is by three Judge Bench and that since the Constitution Bench decision covered the issue, the same should have been followed and, therefore, the law laid down in **L.R. Shivaramagowda (supra)** need not be followed.

92. Having considered the said submission of the learned Senior Counsel Mr. Gopal Subramaniam in the earlier part of the judgment while examining the then existing Section 7(c) and 8(b) and insertion of Section 10A replacing the earlier Section 7(c) and 8(b), we have held that the ratio laid down in **Sucheta Kripalani** based on Section 7(c) and 8(b), cannot be applied and that decision in **L.R. Shivaramagowda (supra)**,

which came to be rendered after the insertion of Section 10A alone would apply. We have examined in detail as to how the insertion of Section 10A in the place of Section 7(c) and 8(b) has widened the powers and scope of the Election Commission for passing an order of disqualification which was squarely considered by this court in **L.R. Shivaramagowda (supra)**. In the light of the said position, the reliance placed upon **Siddharam Satlingappa Mhetre (supra)** is also of no assistance to the Appellant.

93. Mr. L. Nageshwar Rao, learned Additional Solicitor General relied upon **Bharat Aluminum Co. (supra)**, a Constitution Bench decision of this Court. Our attention was drawn to paragraph 65 where the decision of the House of Lords has been quoted reported in **Duport Steels Ltd. v. Sirs-** (1980) 1 WLR 142. The specific reference was made to the expression:

“Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient or even unjust or immoral.”

94. We must state that there is no scope for applying the said principle to the case on hand, inasmuch as, while interpreting Section 10A, we have only attempted to highlight what the said provision literally means. We have neither attempted to make an interpretation which thereby widens the scope of the provision. We have only analyzed the said provision for the working of which Rules have also been framed and by reading Section 10A along with the said Rules, and we wish to point out that the many expressions and ingredients set out in the Section itself, read along with Rules disclose what is the nature and extent of power that has been invested with the Election Commission. Since this Court has not attempted to enlarge the scope of Section 10A and the allied Rules, we do not find any scope to apply the above referred to statement quoted in paragraph 65 of the said judgment.

95. The learned Additional Solicitor General also placed reliance upon a three Judge Bench decision of this Court reported in **Sales Tax Officer v. K.I. Abraham (supra)**. Reliance was placed upon page 522, while interpreting the phrase 'in the prescribed manner' in Section 8(4), read with

Section 13 of the Central Sales Tax Act, wherein it was held as under:

“.....The decision of the question at issue therefore depends on the construction of the phrase ‘in the prescribed manner’ in s. 8(4) read with s.13 of the Act. In our opinion, the phrase ‘in the prescribed manner’ occurring in s. 8(4) of the Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase ‘in the prescribed manner’ in s. 8(4) does not take in the time-element. In other words, the section does not authorize the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer.....This makes it clear that the Legislature was conscious of the fact that the expression ‘in the manner’ would denote only the mode in which an act was to be done, and if any time-limit was to be prescribed for the doing of the act, specific words such as ‘the time within which’ were also necessary to be put in the statute. In Stroud’s Judicial Dictionary it is said that the words ‘manner and form’ refer only ‘to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it.....”

96. We do not find any scope to apply the said decision to the case on hand. What was highlighted in the said decision was that though the phrase mentioned ‘in the prescribed manner’ in Section 8 (4), yet significantly there was no



prescription of any time limit. The authority on its own prescribed the time limit, and therefore, it was held that when such a prescription was not found in the Act, it was not within the authority of the concerned assessing authority to prescribe any time limit. In fact, there was no challenge to the authority exercised by the concerned officer. What was held was that while exercising the authority, there was exercise of jurisdiction by prescribing a time limit which was not provided for in the statute. We are dealing with a case where the power prescribed under Section 10A of the Act provides that the Election Commission on finding that the lodgment of the account of election expenses was not in the manner prescribed and as required under the Act can pass an order of disqualification. The question is when Section 77(1) and (3) of the Act read with section 78, which prescribe a time limit within which the lodgment of account should be made by a contesting candidate considering the rules prescribed in Section 89, whether the Election Commission is invested with the powers to examine the statement of account lodged by a contesting candidate and find out whether such lodgment of the account was within the time prescribed and that it reflected

a true, correct and *bona fide* accounts. Therefore, when such prescriptions are contained in the Act and the Election Commission has to only find out whether such prescriptions in the other provisions of the Act have been duly complied with or not, we fail to see any ground to apply the ratio of the above decision to the case on hand. Therefore, the said decision also does not support the stand of the Union of India.

97. When we consider the submission of Mr. Jayant Bhushan, learned Senior Counsel pointing out the distinguishing feature in the case of **Sucheta Kripalani (supra)**, which came to be rendered when Section 7 (c) was as it originally stood was to be applied along with Section 143 of the Act, this Court in paragraph 11 stressed the point that under Section 143, which specifically prescribes that a return is found to be in accordance with Section 77 of the Act, the jurisdiction was vested with the Election Tribunal (High Court) in an election petition to find out whether the return contained falsity in material particulars. The learned Senior Counsel, therefore, submitted that what was held in paragraph 30 that in the light of the said Section 143, which was prevailing then,

this Court when examining the jurisdiction of the Election Commission to pass an order of disqualification, stated in paragraph 30 that it is a question of form and not of substance. The learned Senior Counsel also pointed out that since now section 143 itself has been removed from the Act and the scope of power of Election Commission has been incorporated in Section 10A as against the then Section 7(c) and 8(b), the decision in **Sucheta Kripalani (supra)** can have no application to the case on hand. A reading of the decision in **Sucheta Kripalani (supra)**, particularly paragraphs 11 and 12 really support the above stand of the learned Senior Counsel. Paragraphs 11 and 12 are as under:

“11. Section 76 of the Act requires every candidate to file a return of election expenses in a particular form containing certain prescribed particulars. The form and particulars are set out in the Rules. Section 143 prescribes the penalty for failure to observe those requirements. It is disqualification. This ensues if there is a ‘default’ in making the return. It also ensues:

‘if such a return is found ... upon the trial of an election petition under Part VI ... to be false in any material particular’.

12. That places the matter beyond doubt. The trial of an election petition is conducted by an Election Tribunal and this section makes it incumbent on the Tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the

allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission. The duty of the Election Commission is merely to decide under Rule 114(4) whether any candidate has, among other things,

‘failed to lodge the return of election expenses ... in the manner required by the Act and these rules’.”

98. Inasmuch as Section 143 has now been removed from the statute book, while at the same time the prescription in Section 10A which has now replaced the earlier Sections 7(c) and 8(b) of the 1950 Act, has prescribed clear and unambiguous power in the Election Commission to find out whether the lodgment of account of election expenses was in the manner and as required by or under the Act, as was pointed by us earlier, the decision in **Sucheta Kripalani (supra)** can have no application to the case on hand and that the subsequent decision in **L.R. Shivaramagowda (supra)** would alone apply.

99. Ms. Pinki Anand, learned Senior Counsel placed reliance upon the decision of this Court reported in **State of Gujarat & Anr. v. Justice R. A. Mehta (Retd.) & Ors.** - 2013 (3) SCC 1, to which one of us was the party (F.M. Ibrahim

Kalifulla, J.). Paragraph 96 of the said judgment is to the following effect:

“**96.** In the process of statutory construction, the court must construe the Act before it bearing in mind the legal maxim *ut res magis valeat quam pereat* which means it is better for a thing to have effect than for it to be made void i.e. a statute must be construed in such a manner so as to make it workable. Viscount Simon, L.C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.* stated as follows: (AC p. 1022)

‘...if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result’.”

100. Applying the above well known principle to the facts of this case, we are not persuaded to accept the submission of Mr. Gopal Subramaniam, learned Senior Counsel. If the submissions were to be accepted and it will have to be held that Election Commission will have no jurisdiction to make an enquiry for the purpose of ascertaining the fulfillment of the requirement as contained in Section 10A then the very provision, namely, Section 10A will have to be rendered otiose. We are, therefore, not able to accede to the said submission.

On the other hand, if Section 10A has to operate, the conclusion of ours that the Election Commission has the required jurisdiction to make the enquiry into the complaint alleged as against the Appellant is well justified.

101. To the same effect is the decision reported in **Afjal Imam v. State of Bihar & Ors.**- 2011 (5) SCC 729 which was also relied upon by Ms. Pinki Anand, learned Senior Counsel.

102. We can also usefully refer to the decision referred to before us by Mr. Ashok Desai, learned Senior Counsel for the Election Commission **Union of India v. Association for Democratic Reforms & Anr.** - 2002 (5) SCC 294, wherein this Court has highlighted the dire need for maintaining purity in the elections and for that purpose Article 324 to be interpreted in a broad perspective, acknowledging the wide powers invested with the Election Commission. Paragraph 17 of the said decision which is relevant for our purpose is as under:

“17. Ms Kamini Jaiswal, learned counsel appearing on behalf of the respondents in support of the decision rendered by the High Court referred to the decision in *Kihoto Hollohan v. Zachillhu* wherein while considering the validity of the Tenth Schedule of the Constitution, the Court observed: (SCC p. 741, para 179)

‘179. Democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority.’

She, therefore, contended that for free and fair elections and for survival of democracy, entire history, background and the antecedents of the candidate are required to be disclosed to the voters so that they can judiciously decide in whose favour they should vote; otherwise, there would not be true reflection of electoral mandate. For interpreting Article 324, she submitted that this provision outlines broad and general principles giving power to the Election Commission and it should be interpreted in a broad perspective as held by this Court in various decisions.”

103. In the light of the above categorical statement made while holding that the rule of law and free and fair elections are the basic features and facts of our democracy, Article 324 should be interpreted in a wide perspective giving power to the Election Commission which has to be recognized in a broad sense and not in a narrow one. We fully approve of the submissions of Mr. Ashok Desai, learned Senior Counsel on the above lines and we have already held that in order to ensure free and fair elections, the power vested with the Election Commission under Section 10A read along with the

other provisions of the Act and the Rules, it should be held that Election Commission does possess the requisite powers under Section 10A to hold the necessary enquiry to ascertain the fact about the compliance of the statutory requirements in the matter of submission of accounts of the election expenses, i.e. the true, correct and bona fide expenses and that such expenses were within the prescribed limit of the Act.

104. We also wish to refer to the decision of this Court reported in **People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr.** - 2003 (4) SCC 399 which was brought to our notice by Mr. Ashok Desai, learned Senior Counsel. In paragraph 20 of the said decision, this Court has practically acknowledged the report of the National Commission to Review the Working of the Constitution appointed by the Union Government submitted in March, 2002. Paragraph 20 (4.14.1) and (4.14.3) can be usefully referred to show how as a matter of fact money power is playing a very detrimental role in the matter of elections which requires to be curbed, which are as under:



“20.....4.14.1. One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. *As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena.* This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country. *The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc.* No matter how we look at it, citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of widespread corruption are even more serious than many imagine. Electoral compulsions for funds become the foundation of the whole superstructure of corruption.

4.14.3. Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the Income Tax Authorities. *The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.* EC should devise specific formats for filing such statements so that

fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission.”

105. We only refer to the said paragraphs as has been relied in the above judgment and keep the same in mind when we interpret the power of the Election Commission under Section 10A. The same will have to be kept in mind when we interpret the power of the Election Commission under Section 10A of the Act. When we do so we are convinced that the interpretation placed by us on Section 10A would be the proper manner of interpretation, in order to ensure that such misuse of money power in the field of public elections are to be curbed.

106. Mr. Prashant Bhushan, learned Counsel for the intervenor by relying upon the decision reported in **Dalchand Jain (supra)** in paragraph 14, pointed out that while Section 123(6), which relates to corrupt practice, is referable to Section 77(3), Section 77(1) and (2) relate to the maintenance of correct accounts with the prescribed particulars, contravention of which, it can be examined only by the Election Commission under Section 10A. The said submission is perfectly justified and the reliance placed upon the above decision in paragraph

14 also fully supports the stand of the learned counsel. Para

14 reads as under:

“14. Section 123(6) lays down that ‘the incurring or authorising of expenditure in contravention of Section 77’ is a corrupt practice. Every contravention of Section 77 does not fall within Section 123(6). Section 77 consists of three parts. Section 77, sub-section (1) requires the candidate to keep a separate and correct account of all election expenses incurred or authorised by him within certain dates. Section 77, sub-section (2) provides that the account shall contain such particulars as may be prescribed. Section 77, sub-section (3) requires that the total of the said expenditure shall not exceed the prescribed amount. Section 123(6) is related to Section 73(3). If the candidate incurs or authorises expenditure in excess of the prescribed amount in contravention of Section 77(3) he commits corrupt practice under Section 123(6). The contravention of Section 77, sub-sections (1) and (2) or the failure to maintain correct accounts with the prescribed particulars does not fall within Section 123(6). See *Sri Krishna v. Sat Narain*. The same opinion has been expressed in several decisions of the High Courts, see *Savitri Devi v, Prabhawati Misra; N.L. Verma v. Muni Lal; Narasimhan v. Natesa* and the cases referred to therein.”

107. Relying upon the said paragraph, we are not hesitant to hold that while Section 123(6) is relatable to Section 77(3), there is no bar to invoke Section 77(1) and (2) while holding the enquiry under Section 10A of the Act.

108. While holding so, we do not find any support for the Appellants in relying upon the decision reported in **Common Cause (A Registered Society) (supra)**. Reliance was placed upon paragraph 28(5) and (6).

“**28**.....5. A political party which is not maintaining, audited and authenticated, accounts and has not filed the return of income for the relevant period, cannot, ordinarily, be permitted to say that it has incurred or authorized expenditure in connection with the election of its candidates in terms of Explanation I to Section 77 of the RP Act.

6. That the expenditure, (including that for which the candidate is seeking protection under Explanation 1 to Section 77 of the RP Act) in connection with the election of a candidate—to the knowledge of the candidate or his election agent—shall be presumed to have been authorised by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law and to show that part of the expenditure or whole of it was in fact incurred by the political party to which he belongs or by any other association or body of persons or by an individual (other than the candidate or his election agent). Only when the candidate discharges the burden and rebuts the presumption he would be entitled to the benefit of Explanation 1 to Section 77 of the RP Act.....”

109. The submission apparently was that there was every right in the candidate concerned to demonstrate that the candidate did not really incur such expenditure and that he

was not to be blamed for any unauthorized expenditure made by the party concerned. Assuming such a stand of any of the Appellants is to be believed, it is always open to the Appellant to demonstrate before the Election Commission, with all the relevant materials and convince the Election Commission that on that score, no order of disqualification can be passed. The said decision cannot however be relied upon to hold that the Election Commission has no power or jurisdiction to enquire into the complaint, which has now been made against the appellant.

110. At the end we can profitably refer to the basics of our democracy, which have been succinctly stated by His Lordship Justice V.R. Krishna Iyer in the Constitution Bench decision reported in **Mohinder Singh Gill & Anr. v. Chief Election Commission, New Delhi & Ors.** - 1978 (1) SCC 405. To borrow His Lordship's expression stated in paragraph 2, the same are as under:

“2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy

of democratic elections which Sir Winston Churchill vivified in matchless words:

‘At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.’

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men ‘dressed in little, brief authority’. For ‘be you ever so high, the law is above you.’

111. In our considered view, if the above basics of democracy and purity in elections have to be maintained, it is appropriate to hold that the decision of the Election Commission as upheld by the High Court to the effect that Section 10A clothes the Election Commission with the requisite power and authority to enquire into the allegations relating to failure to submit the accounts of election expenses in the manner prescribed and as required by or under the Act, is perfectly justified and we do not find any scope to interfere with the same. Inasmuch as the period of membership is likely to come to an end, it will be in order for the Election Commission to conclude the proceedings within one month and pass appropriate orders in accordance with law. In order

to ensure that within the said period the Election Commission is not prevented from passing the orders due to non-cooperation of any of the parties, it will open for the Election Commission to hold the proceedings on a day to day basis and conclude the same within the said period.

112. In so far as the appeal (@ SLP(C) No.21958 of 2013) is concerned, apart from holding that the Election Commission has got every jurisdiction to hold the enquiry under Section 10A for the purpose of disqualification, since the Election Commission has already passed its orders on merits and disqualified the Appellant for a period of three years, we also examined the reasoning of the Election Tribunal (High Court) for passing the said order, as well as the judgment of the Division Bench. Since, the order of Election Commission has now been confirmed by the Division Bench and since the Division Bench has dealt with the said issue on merits extensively, we wish to refer to the said part of the judgment to find out whether the grievance of the Appellant on merits deserves any consideration. The Division Bench has recorded the plea raised on behalf of the Appellant by stating that

according to the Appellant, the advertisements were published by Rashtriya Parivartan Dal and the payment of publication was borne by the party and, therefore, the question to be considered was as to whether the expenses incurred by the party for publishing the advertisement can be held to be expenses incurred or authorized by the Appellant. The Division Bench also took note of the decision of this Court in **Common Cause (A Registered Society) (supra)**, wherein it was held that even if expenses are claimed by the party, the presumption should be that the said expenses shall be incurred or authorized by the candidate, which presumption however is rebuttable. The relevant paragraph of the abovementioned decision on this proposition has been extracted in the earlier part of the judgment.

113. After noting the above settled principle, the Division Bench proceeded to find out whether the said expenses claimed to have been incurred by the party can be treated to be expenses incurred or authorized by the Appellant.

114. The Division Bench thereafter reached the following conclusion:



“Section 77 of the Representation of People Act, 1951, as amended by Act No. 46 of 2003, Explanation- I, clearly provides that expenditure incurred by the leaders of political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate of that political party. Thus now expenses of only limited category incurred by political party is not treated as expenses incurred or authorised by the candidate. The present is not a case which can be said to be covered by Explanation 1 (a) of Section 77 of the Representation of People Act, 1951. Thus, the expenses incurred for publishing the advertisement in the newspapers on 17<sup>th</sup> April, 2007 are expenses which have to be treated to be incurred or authorised by the candidate by virtue of Section 77 of the Representation of People Act, 1951 and the expenses are not covered by exception as engrafted in Explanation- I. The Election Commission of India, after considering all materials on the record, has recorded a finding that the expenses were required to be shown in the account of expenditure of the candidate. The petitioner has filed the account of expenditure as Annexure-5 to the writ petition. In the account of expenditure submitted by the petitioner neither it is claimed that amount incurred in the above advertisement was shown by the petitioner in her account of expenditure nor it is even claim that expenditure was incurred by the petitioner. The petitioner’s clear case is that the aforesaid expenditure was incurred by the political party of which petitioner was a candidate. As per the law laid down by the Apex Court in the abovenoted cases and the pleadings on the record, it is clear that the aforesaid expenses cannot be treated to be expenses which were not required to be shown in the account of expenditure of the petitioner. The petitioner, thus, has to be held to have incurred/authorize the expenses for publication of the aforesaid advertisement which having not been shown in her account, the account of expenditure

submitted by the petitioner is clearly untrue and breach was committed by the petitioner of Section 77 of the Representation of People Act, 1951.”

115. Before reaching the above conclusion, the Division Bench has also taken note of the various factual details observed by the Election Commission in its order, as to the nature of expenses and the stand of the Appellant as under:

“As noted above, the main issue before the Election Commission of India was as to whether the expenditure expenses incurred for publishing two advertisements on 17<sup>th</sup> April, 2007 in the newspapers ‘Amar Ujala’ and Dainik Jagaran’ were shown in the account of expenses submitted by the petitioner under Section 78 of the Representation of People Act, 1951. There is no dispute between the parties that advertisement was published on 17<sup>th</sup> April, 2007 in the aforesaid two newspapers. Copy of the advertisements have been filed as Annexure- 1 and 2 to the writ petition. The election Commission of India has specifically considered the advertisement published in the newspaper ‘Dainik Jagran’ on 17<sup>th</sup> April, 2010. The advertisement in the newspaper is in a block and in the bottom of the block the word ‘Advt’ has been mentioned. However, the advertisement has been disguised as a news item and the newspaper publication mentions that leaning of voters of Bisauli constituency is in favour of Smt. Umlesh Yadav, the petitioner. In the advertisement name of petitioner has been mentioned in several places and also the names of large number of persons have been mentioned quoting their view that they are in favour of the petitioner. The said publication mentions that voters have now decided to elect Smt. Umlesh Yadav, the

petitioner. The details of publishing the said news item in the newspaper 'Dainik Jagran' was called by the Election Commission of India. Both before the Press Council of India and the Election Commission of India, the newspaper 'Dainik Jagran' stated that aforesaid news publication was an advertisement for which a bill of Rs. 21,250/- in the name of Pramod Mishra was issued and client name was mentioned as D.P. Yadav and the amount was paid in cash. Similar advertisement was published in the newspaper 'Amar Ujala' on 17<sup>th</sup> April, 2007 which advertisement was also in a block. The advertisement although was disguised as a news item but was in a block. In the bottom of the block there was another small block with the heading 'Appeal' and in the bottom the word 'Advt.' was mentioned. The newspaper was submitted before the Election Commission of India as well as Press Council of India stating that the same was advertisement in the newspaper for which a bill of Rs.8,000/- in the name of D.P. Yadav was issued and paid. Both the newspapers have submitted that materials for publication of advertisement was provided on behalf of the petitioner and the material was not collected by correspondents of the newspapers. The petitioner's case before the Election Commission of India was that only an appeal was published by the party from which the petitioner was contesting on 17<sup>th</sup> April, 2007 for which an amount of Rs.840/- was paid and bill was also issued by the newspapers of Rs.840/-. Petitioner's case is that the said bill was drawn in the name of D.P. Yadav, the husband of the petitioner who was also the president of Rashtriya Parivartan Dal. The petitioner in this writ petition has come with specific plea that aforesaid two news publications were published by the party i.e. the Rashtriya Parivartan Dal and the expenditure of the aforesaid news publication was paid and borne by the party. Paragraph 6 of the writ petition which contains the said pleading is quoted below:-

‘6. That at this juncture, it may be stated here that the aforesaid two news publications were published by the Party, which the petitioner belong to, viz., Rashtriya Parivartan Dal and the expenditure for the aforesaid news publications were paid and borne by the Party. The Photostat copies of the aforesaid two news publications as published in ‘Amar Ujala’ and ‘Dainik Jagaran’ dated 17.04.2007 are being annexed herewith and marked as Annexure-1 and 2, respectively, to this writ petition.’

In the writ petition, the petitioner has now having come with the plea that advertisements were got published by Rashtriya Parivartan Dal and the payment of publication was borne by the party, now the question to be considered is as to whether expenses incurred by the party for publishing the advertisement can be held to be expenses incurred or authorized by the petitioner.”

116. Apart from noting the above factual aspects relating to the expenses claimed to have been incurred by the party, which claim of the Appellant was rejected by the Election Commission and also confirmed by the Division Bench of the High Court, the High Court considered the various decisions relied upon by on behalf of the Appellant and held as under:

“The Election Commission of India considered the entire facts and circumstances of the present case, the reply submitted by the petitioner on 22<sup>nd</sup> July, 2011 as well as the supplementary reply dated 4<sup>th</sup> April, 2011 and has rightly exercised its jurisdiction under Section 10A of the Representation of People Act, 1951

declaring the petitioner disqualified for three years. All the conditions for exercise of power under Section 10A of the Representation of People Act, 1951 were fully satisfied and we do not find any infirmity in the order of the Election Commission of India dated 20<sup>th</sup> October, 2011 which may warrant any interference by this Court in exercise of discretionary jurisdiction.”

117. Having perused the above order of the Division Bench, wherein the details with regard to the various allegations relating to the violation in the lodging of the election expenses, in such details, in the absence of glaring illegality or irregularity pointed out before us, we have no reason to interfere with those finding of facts arrived at by the Election Commission, which was also confirmed by the Division Bench after a thorough examination. Therefore, on merits as well, we do not find any good ground to interfere with the impugned order of the Election Commission disqualifying the Appellant for a period of three years. The appeals, therefore, stand dismissed.

118. The appeals (@ SLP(C) Nos.29882 of 2011 and 14209 of 2012) are dismissed with the above observations and directions to the Election Commission. The appeal (@ SLP(C) No.21958 of 2013) stands dismissed. No costs.

.....J.  
[Surinder Singh Nijjar]

.....J.  
[Fakkir Mohamed Ibrahim Kalifulla]

**New Delhi;  
May 05, 2014**