



**भारत निर्वाचन आयोग**  
*Election Commission of India*

निर्वाचन सदन  
NIRVACHAN SADAN  
अशोक रोड, नई दिल्ली – 110 001  
ASHOKA ROAD, NEW DELHI - 110 001

**In re:** Account of election expenses of Shri Ashok Chavan, returned candidate from 85-Bhokar Assembly Constituency at the general election to the Maharashtra Legislative Assembly, 2009 – Scrutiny of account under section 10A of the Representation of the People Act, 1951.

**Dr. Madhavrao Kinhalakar & Ors**

**..... Complainants**

**Vs.**

**Ashok Shankarrao Chavan**

**..... Respondent**

**Coram :**

Hon'ble Mr. V.S. Sampath, Chief Election Commissioner of India

Hon'ble Mr. H.S. Brahma, Election Commissioner of India

Hon'ble Dr. S.N.A. Zaidi, Election Commissioner of India

**For complainants:**

Ram Jethmalani, Sr. Advocate

U.U. Lalit, Sr. Advocate

Ms. Pinki Anand, Sr. Advocate

Dilip Annasaheb Taur, Advocate

Harinder Toor, Advocate

Balendu Shekhar, Advocate

Prabal Bagchi, Advocate

**For respondent:**

Abhishek Manu Singhvi, Sr. Advocate

Mohan Prasaran, Sr. Advocate

Praveen M. Shah, Sr. Advocate

Abhimanyu Bhandari, Advocate

Samanvya D Dwivedi, Advocate

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## **ORDER**

This case relates to complaints against Shri Ashok Chavan, who was the returned candidate at the general election to the Maharashtra Legislative Assembly held in September-October, 2009 from 85-Bhokar Assembly Constituency and who happened to be the incumbent Chief Minister of Maharashtra at that time.

2. The complainants, namely, (i) Dr. Madhavrao Kinhalakar, one of the rival contestants at the aforesaid general election from 85-Bhokar Assembly Constituency, (ii) Dr. Kirit Somaiya, Vice-President, Bharatiya Janata Party, Maharashtra, and four others, and (iii) Shri Mukhtar Abbas Naqvi, Member of Parliament, Bharatiya Janata Party, and five others, in their complaints submitted to the Election Commission towards the end of November, 2009 and beginning of December, 2009, alleged that Shri Ashok Chavan (hereinafter referred to as 'respondent') got several advertisements published in various newspapers, in particular, Lokmat, Pudhari, Maharashtra Times and Deshonnati, during the election campaign period, many of which appeared in those newspapers in the garb of news eulogizing him and his achievements as Chief Minister of Maharashtra. It is alleged by them that a huge expenditure was incurred or authorized by the respondent for getting those advertisements and the articles published as news, which they described, and is now a well known phenomenon, as "Paid News", and that the expenditure incurred or

authorized on the publication of those paid news was not included by the respondent in his account of election expenses maintained under section 77 of the Representation of the People Act, 1951 (hereinafter referred to as '1951-Act') and lodged with the District Election Officer, Nanded under section 78 of the said Act. The complainants alleged that the respondent showed only an expense of Rs.5,379/-, as the expenses on newspapers advertisements in his account, whereas the expenditure on the abovementioned paid news ran into several crores and it was suppressed from his return of election expenses. In the complaint dated 30<sup>th</sup> November, 2009 of Shri Mukhtar Abbas Naqvi and others, it was specifically prayed that the account of election expenses of the respondent should be enquired into and action should be taken against him under section 10A of the 1951-Act.

3. All the abovementioned complaints were referred to the respondent by the Commission on 16<sup>th</sup> January, 2010, seeking his comments. The respondent submitted his reply to these complaints on 29<sup>th</sup> January, 2010, refuting all the allegations of complainants. The respondent's reply was thereafter referred to the complainants for their rejoinders, if any, on 5<sup>th</sup> and 9<sup>th</sup> February, 2010. After the receipt of rejoinders from the complainants in February-March, 2010, the Commission decided to hear the parties on 11<sup>th</sup> June, 2010. Meanwhile, the Commission also obtained, through the Chief Electoral Officer, Maharashtra, the comments of the abovementioned four newspapers, namely, Lokmat,

Pudhari, Maharashtra Times and Deshonnati, on the allegations of publishing 'paid news' by them relating to the respondent. Suffice to say at this stage that all the above four newspapers denied the allegation of any payment having been made to them by the respondent for the publication of the impugned 'paid news'. They all stated that the impugned 'paid news' were in fact news or editorials or supplements published by them gratuitously as they have either links with, or leanings towards, the Congress Party and the respondent.

4. The hearing scheduled to be held on 11<sup>th</sup> June, 2010 was postponed to 9<sup>th</sup> July, 2010 at the request of the respondent. The matter was accordingly heard by the Commission on the 9<sup>th</sup> July, 2010 and the learned counsels for Dr. Kinhalkar and Dr. Somaiya made their submissions. It was observed at the hearing that certain documents submitted by the parties in the months of May and June were not properly exchanged between them, and the hearing was adjourned to 20<sup>th</sup> July, 2010. The hearing fixed for 20<sup>th</sup> July, 2010 was subsequently postponed as the parties wanted some further time for submitting their comments/replies in regard to the abovementioned documents exchanged between them at the hearing on the 9<sup>th</sup> July, 2010. The hearing was then fixed on 1<sup>st</sup> October, 2010, but was again postponed to 29<sup>th</sup> October, 2010 at the request of Dr. Somaiya.

5. The matter was then further heard by the Commission on 29<sup>th</sup> October, 12<sup>th</sup> November, 19<sup>th</sup> November, 2010, 4<sup>th</sup> January, 6<sup>th</sup> January, 4<sup>th</sup> February and

10<sup>th</sup> February, 2011. At these hearings, Dr. Madhavrao Kinhalkar (hereinafter referred to as ‘complainant No.1’) was represented by Shri U. Lalit, learned senior counsel, and Dr. Kirit Somaiya and Shri Mukhtar Abbas Naqvi (hereinafter referred to as ‘complainants No.2 and 3’) were represented by Shri Ram Jethmalani, learned senior counsel. The respondent’s case was taken up by Shri Abhishek Manu Singhvi, learned senior counsel.

6. Shri U Lalit and Shri Ram Jethmalani argued the whole case and dwelt at length on the merits of the case as sought to be made out by them. However, Shri Abhishek Manu Singhvi, in his reply, confined his arguments to the question of maintainability of the present complaints before the Commission, raising the question of the Commission’s very jurisdiction to go into the complaints as the preliminary issue. He contended that the question of incorrectness or falsity of the return of election expenses of the respondent could be gone into only by the High Court in an election petition under Sections 80 and 100 and not by the Election Commission under Section 10A of the 1951-Act. He stressed that the Commission should first decide the question of its jurisdiction before going into the disputed questions of fact and law raised in the complaints. In support of his contention that the Commission was obliged to first decide this preliminary issue before going into the merits, he relied upon the decision of the Hon'ble Supreme Court in *Smt. Ujjam Bai Vs. State of Uttar Pradesh* [1963 (1)SCR 778]. He also relied on the provisions of

Order 14, Rule 2 of the Civil Procedure Code which provide that the issue of law relating to jurisdiction should be decided first and submitted that though that rule was amended in 1976, the main substance of the rule remained as before the amendments and was still applicable as was held by the Hon'ble Madras High Court in *Mitsubishi France Vs. Neyveli Lignite Corporation Ltd. and Another* (AIR 1985 Mad 300).

7. The Commission saw quite a force in the above submission of Shri Singhvi, though it needs to be pointed out that Shri Singhvi ought to have raised this preliminary issue at the commencement of the hearing in July, 2010 itself and not in February, 2011 at the fag end of the long hearings when the learned counsel for the complainants had already made their detailed submissions on the merits of the case and Shri Singhvi was expected in the normal course to reply to those submissions of the complainants on merits. Nevertheless, that preliminary issue having been raised by the learned counsel for the respondent, the Commission decided to consider it first as insisted upon by the learned counsel for the respondent.

8. After detailed consideration of the provisions of section 10A of the 1951-Act and of Rules 86 to 89 of the Conduct of Elections Rules, 1961 (hereinafter referred to as '1961-Rules') as amended from time to time and the case law on the subject as propounded by the Hon'ble Supreme Court, more particularly in the case of *L.R. Shivaramagowda Vs. T.M. Chandrashekar* (AIR 1999 SC 252),

the Commission held by its order dated 2<sup>nd</sup> April, 2011 that the Commission has undoubted jurisdiction under section 10A to go into the question of alleged incorrectness or falsity of return of election expenses maintained by the respondent under sections 77(1) and 77(2) and lodged by him under section 78 of the 1951-Act. Accordingly, the Commission decided to hear the matter further on merits on 29<sup>th</sup> April, 2011.

9. Aggrieved by the above order dated 2<sup>nd</sup> April, 2011 of the Election Commission, the respondent filed Writ Petition (Civil) No. 2511/2011 before the Hon'ble High Court of Delhi. The Hon'ble High Court, by its interim order dated 21<sup>st</sup> April, 2011, stayed further proceedings in the matter before the Commission. Ultimately, the Hon'ble High Court was pleased to dismiss the respondent's Writ Petition on 30<sup>th</sup> September, 2011, upholding the Commission's impugned order dated 2<sup>nd</sup> April, 2011.

10. Feeling still aggrieved by the order dated 2<sup>nd</sup> April, 2011 of the Election Commission and the order dated 30<sup>th</sup> September, 2011 of the Hon'ble High Court of Delhi, the respondent filed SLP (Civil) No.29882/2011 before the Hon'ble Supreme Court and the Apex Court, by its interim order dated 3<sup>rd</sup> November, 2011, stayed the operation of the order dated 30<sup>th</sup> September, 2011 of the Hon'ble High Court of Delhi and the proceedings pending before the Commission. However, by its subsequent interim order dated 2<sup>nd</sup> May, 2012, the Hon'ble Supreme Court modified its earlier stay order dated 3<sup>rd</sup> November,

2011, by allowing the Commission to proceed with the complaints filed by the complainants herein and to even pass a final order, which was however not to be pronounced and not to be given effect and was to be kept in a sealed envelope till the disposal of the Special Leave Petition. This order was passed by Hon'ble Supreme Court in view of the fact that the then Chief Election Commissioner, Dr. S.Y. Quraishi, was due to retire and demit his office on 10<sup>th</sup> June, 2012.

11. Pursuant to the above modified order dated 2<sup>nd</sup> May, 2012 of the Hon'ble Supreme Court, the Commission fixed an urgent hearing in the matter on 17<sup>th</sup> May, 2012. On 16<sup>th</sup> May, 2012, the respondent filed two applications seeking certain clarifications and directions. In the first application, it was submitted on behalf of the respondent that in a matter like the present one where allegations in the nature of corrupt practice were made, strict proof was necessary to prove the allegations for which the onus and burden of proof lay on the complainants. It was contended that mere production of certain newspapers, per se, could not constitute legally acceptable evidence and that the evidence of the editor, publisher or the concerned correspondent needed to be examined to prove the genuineness or authenticity of the newspaper publications. The respondent denied knowledge of such publications and stated that he was neither the author of those publications nor had any nexus or connection with the publications and that no expenditure was incurred or authorized by him or his agent on their



publication. He, therefore, prayed that none of the newspapers produced by the complainants may be read in the present proceedings and the same be excluded from consideration by the Commission. With this application, the respondent also produced an article purportedly written by the complainant Dr. Kinhalkar, wherein the author himself had stated that the respondent did not incur any significant expenditure on his election campaign. In the second application dated 16<sup>th</sup> May, 2012, the respondent submitted that he had not been heard by the Commission on merits and that for presenting his defence, it was necessary that the Commission may lay down the procedure for producing legal evidence because of the serious consequences that may result if disqualification is imposed upon him. He submitted that section 10A of 1951-Act did not lay down any procedure for enquiry by the Commission under that section and, as the matter involved disputed questions of fact, it was necessary to spell out whether the provisions of Code of Civil Procedure and the Evidence Act would apply in the conduct of the said enquiry, whether the examination and cross examination of parties/witnesses would be permissible and whether their evidence would be recorded on oath.

12. At the hearing on the 17<sup>th</sup> May, 2012, the learned counsels for the complainants opposed the above applications of the respondent and stated that it was merely a dilatory tactic on the part of the respondent to delay the proceedings before the Commission. Thereupon, the counsel for the respondent

was asked to make his written submissions in support of his applications by 25<sup>th</sup> May, 2012, and the complainants were given time to file their written submissions in opposition to the same by 28<sup>th</sup> May, 2012. The matter was then fixed for further hearing on 29<sup>th</sup> May, 2012.

13. On 17<sup>th</sup> May, 2012, an application was also moved before the Commission on behalf of 'Deshonnati', one of the newspapers which is alleged to have published some of the 'paid news' under reference in the present case. In this application, the newspaper sought permission to intervene and present their case before the Commission as the newspaper felt that the charges levied against the newspaper were serious in nature and resulting in tarnishing and damaging their independent image amongst their readers. It was decided that the applicant for intervention would also be heard by the Commission on 29<sup>th</sup> May, 2012.

14. As scheduled, the matter was further heard by the Commission on the 29<sup>th</sup> May, 2012. Meanwhile, the respondent and one of the complainants, Dr. Kinkalkar, had filed their written submissions as per the time granted to them at the last hearing.

15. At the hearing on 29<sup>th</sup> May, 2012, the learned counsel for the respondent reiterated his submissions in his applications dated 16<sup>th</sup> May, 2012 seeking directions for laying down the procedure for further enquiry in the matter. The

learned counsel for Dr. Kinhalkar, complainant No.1, also reiterated his submissions in his reply dated 28<sup>th</sup> May, 2012. He submitted that the matter had been already heard fully by the Commission in all its aspects, including on merits, and that the Commission should proceed to give its decision in the matter. He stated that if the matter was not concluded by the Commission before 10<sup>th</sup> June, 2012, when the present Chief Election Commissioner was due to demit office on his retirement, the respondent would succeed in his endeavours to delay the proceedings so that he could complete his full tenure as Member of the Maharashtra Legislative Assembly upto 2014. He contended that the proceedings under section 10A of 1951-Act are not an adjudication of a civil dispute, but the automatic result flowing from non-observance of the provisions of the said Act and that the Commission was not required to record any reason for its decision beyond 'Failure to Lodge the Account' and that "only prima facie case must be established, not to be proved Beyond Doubt". He further stated that the respondent was trying to shift the burden of proof on the complainant which was completely erroneous and that the phraseology of section 10A made it clear that the issue of disqualification under that section was purely left to the satisfaction of the Commission and for that purpose no further procedure was necessary to be laid down to prove the contents of the documents. His further submission was that rule 89(8) of the Conduct of Elections Rules, 1961, permitted the Commission to make 'such enquiry as it thinks fit' and that it was not binding upon the Commission to permit the

evidence to be adduced like a civil court or to permit cross examination of witnesses. He prayed that the matter may be proceeded with in the same manner in which the Commission dealt with the case of Smt. Umlesh Yadav, who was recently disqualified by the Commission for not including the expenditure on 'paid news' in her account of election expenses.

16. After hearing the learned counsel for opposing parties and written submissions filed by them, the Commission was of the view that the respondent had not yet made his reply, and addressed his arguments, on merits and that the enquiry was not yet complete and he had to be given an opportunity for presenting his defence on merits in rebuttal of the allegations made against him by the complainants. The Commission, therefore, directed, by its order dated 5<sup>th</sup> June, 2012, that:

- (i) the enquiry will proceed, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits;
- (ii) the provisions of Evidence Act, 1872, will, as nearly as may be, apply in all respects to the present enquiry, and
- (iii) the next date of hearing would be intimated to all concerned in due course.

17. Subsequently, the matter could not be heard further before 10<sup>th</sup> June, 2012, i.e., the date of retirement of Dr. Quraishi, because of his preoccupations

before he demitted office. On the retirement of Dr. Quraishi, the composition of the Commission underwent a change by the appointment of a new Election Commissioner and the Commission decided that the matter would be further heard when the Hon'ble Supreme Court disposes of the SLP of the respondent finally.

18. Ultimately, the Hon'ble Supreme Court was pleased, by its order dated 5<sup>th</sup> May, 2014, to dismiss the SLP filed by Shri Ashok Chavan. While dismissing the above SLP, the Hon'ble Supreme Court held and observed in para 111 of its judgement and order as under:-

*“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 45 days 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.”*

19. At the time when the above order was passed by the Hon'ble Supreme Court, the Commission was extremely busy with the conduct of country-wide general elections to the Lok Sabha and to the Legislative Assemblies of the States of Andhra Pradesh, Arunachal Pradesh, Odisha, and Sikkim. As soon as after the Commission was free from the constitutional requirement of holding the above general elections and completing the process on 18<sup>th</sup> May, 2014, the Commission fixed a hearing in the present case on 23<sup>rd</sup> May, 2014. The notices to that effect were issued to all the concerned parties on 12<sup>th</sup> May, 2014. On 21<sup>st</sup> May, 2014, the counsel for the respondent filed an application praying that the Commission may first frame the issues so that the points in controversy crystallize and the parties are put to proper notice as to what they have to prove or disprove in the present proceedings.

20. As scheduled, the hearing was held on 23<sup>rd</sup> May, 2014. Shri Abhimanyu Bhandari, learned counsel for the respondent, referred to his above application for framing of issues. He also informed the Commission that the respondent Shri Ashok Chavan had resigned his seat in the Maharashtra Legislative Assembly on 22<sup>nd</sup> May, 2014 on his election as Member of the Lok Sabha on 16<sup>th</sup> May, 2014 from Nanded Parliamentary Constituency. He submitted that in view of the above development, the urgency in the disposal of the present case as underscored by the Hon'ble Supreme Court was no longer relevant and that the matter should be disposed of by the Commission by holding a proper

enquiry giving the respondent a reasonable opportunity of presenting his case. In this context, he also referred to the following observations of the Hon'ble Supreme Court in paras 44 and 50 of the Hon'ble Supreme Court's order dated 5<sup>th</sup> May, 2014:-

*“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.*

.....

*50. ....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 (not?) 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.”*

21. On the other hand, Shri Dilip Taur, learned counsel for complainant No.1, contended that there was no necessity for framing any issues or for adducing any further evidence as the material facts available on record of the present case were clear even to the naked eye and that the matter could be decided on the basis of the facts disclosed by the materials on record without any further enquiry. He also stated that the matter has to be decided on the principle of preponderance of probability as observed by the Hon'ble Supreme Court in para 86 of its order dated 5<sup>th</sup> May, 2014. Disputing the above submissions of Shri Taur, Shri K.C. Mittal, learned counsel for the respondent submitted that the Commission had to hold a statutory enquiry under section 146 of the 1951-Act, as observed by the Hon'ble Supreme Court in its order dated 5<sup>th</sup> May, 2014, and



there was no law that the controversial matters could be decided on the ground that facts were clear to the naked eye ignoring the principles of natural justice.

22. After hearing the learned counsel for both the contending parties, the Commission decided, in the interest of fair enquiry, to frame the issues and, for that purpose, gave time to both the parties to submit draft issues for the Commission's consideration by 26<sup>th</sup> May, 2014, and adjourned the hearing to be further resumed on 30<sup>th</sup> May, 2014.

23. At the hearing held on 30<sup>th</sup> May, 2014, the Commission, after taking into consideration the draft issues submitted on behalf of complainant No.1 and the respondent, framed the following issues with the consent of all parties:-

1. Whether the news, analysis, articles and items marked 'advertisements', 'advertorial' and appearing in various news papers, news paper supplements, pamphlets, magazines, etc., produced by (i) Shri Madhavrao Kinhalkar with his written submissions dated 09.07.2010 and additional written submissions dated 20.10.2010, 22.10.2010, 29.10.2010, 04.01.2011, (ii) Shri Mukhtar Abbas Naqvi and others with their letter dated 30.11.2009, and (iii) Shri Kirit Somaiya and others with his/their letter dated 02.12.2009 and 07.12.2009, were published as paid news for consideration in kind or cash for promoting or procuring the election of the respondent?
2. Whether the publication of the abovementioned news, analysis, articles, supplements, etc., was authorized, and expenditure on their publication was incurred or authorized, by the respondent or by his

election agent or by any other person with the consent or knowledge of the respondent or of his election agent?

3. Whether the lodging of such account of election expenses which does not include the expenses covered by issue No. 2 above (in connection with the election of the respondent) would be tantamount to failure on his part to lodge the account in the manner required by or under the law?
4. Whether the respondent has good reason or justification for such failure to lodge his account of election expenses in the manner required by or under the law?
5. Whether the respondent is liable to be disqualified for his above failure by the Election Commission under Section 10A of Representation of Peoples Act, 1951, r/w sections 77 & 78 for a period of three years from the date of the order of the Commission?

24. The learned counsel for the respondent also wanted an additional issue to be framed on the effect of resignation of the respondent from the membership of the Maharashtra Legislative Assembly on the present proceedings. The Commission, however, did not consider it necessary to frame specific issue on this point and permitted the parties to make their submissions on this aspect during their oral submissions. Further, at the request of the parties, the Commission allowed the complainants to adduce their evidence in support of their case by way of affidavits in lieu of the examination-in-chief by 4<sup>th</sup> June, 2014 and the respondent was permitted to adduce his evidence in the form of

affidavits in rebuttal of the evidence adduced by the complainants, by 9<sup>th</sup> June, 2014.

25. In pursuance of the above direction, the complainant No.1 filed his affidavit by way of his evidence on 4<sup>th</sup> June, 2014 and the respondent adduced evidence by filing his affidavit and also the affidavits of (1) Smt. Ameeta Chavan, election agent of the respondent, (2) Shri Amarnath Anantrao Rajurkar, General Secretary of the Maharashtra Pradesh Congress Committee, (3) Shri Shyam Ramjivanji Darak, Secretary of Nanded District Congress Committee in 2009, (4) Shri Abbas Hussain @ Munna Abbas, a Congress worker and Corporator of Nanded Municipal Corporation in 2009, and (5) Shri G.L. Lakhotia, Publisher and Managing Editor of the Free Press Journal, on 9<sup>th</sup> June, 2014. However, the learned counsel for the complainants No.2 and 3 prayed for time of two more days for filing their affidavits because of the unfortunate demise of Shri Gopinath Munde, prominent leader of the Bharatiya Janata Party, on 3<sup>rd</sup> June, 2014, to which said complainants belong. Allowing the above prayer of the complainants No.2 and 3, they were permitted one more day for filing their affidavit(s) and the respondent was given one day's time thereafter for filing his affidavit in rebuttal, if the respondent so desired. Accordingly, Dr. Kirit Somaiya filed his affidavit on 10<sup>th</sup> June, 2014, on behalf of complainants No. 2 and 3.

26. On the completion of the pleadings by the rival contending parties, the matter was further heard by the Commission on 9<sup>th</sup> June, 10<sup>th</sup> June, 11<sup>th</sup> June, 12<sup>th</sup> June, 13<sup>th</sup> June and 16<sup>th</sup> June, 2014. Detailed oral submissions were made by Shri Dilip Taur and Shri Harinder Toor, learned counsel for complainant No.1, Shri Balendu Shekhar, learned counsel for complainants No.2 and 3 and Shri Pravin M. Shah, learned senior counsel, Shri Mohan Parasaran, learned senior counsel, and Shri Abhimanyu Bhandari, learned counsel, for the respondent. They were also directed by the Commission to submit their written synopsis of their oral submissions by 19<sup>th</sup> June, 2014, which they did by the said stipulated date.

27. We may now consider the submissions, both oral and written, made by the rival contending parties in support of their respective cases. In the light of such consideration, it is apparent that the main issues to be decided by the Commission are the first two issues, i.e., issues No 1 and 2. Issues No.3, 4 and 5 ask for the consequential inferences to be drawn and reliefs which may be granted or declined dependent upon the decision of the Commission on the first two issues. Therefore, let us first consider issues 1 and 2 which are inter-related and inter-linked.

## **Issues No. 1 and 2**

Issues No.1 and 2 read as follows:-

1. Whether the news, analysis, articles and items marked 'advertisements', 'advertorial' and appearing in various news papers, news paper supplements, pamphlets, magazines, etc., produced by (i) Shri Madhavrao Kinhalkar with his written submissions dated 09.07.2010 and additional written submissions dated 20.10.2010, 22.10.2010, 29.10.2010, 04.01.2011, (ii) Shri Mukhtar Abbas Naqvi and others with their letter dated 30.11.2009, and (iii) Shri Kirit Somaiya and others with his/their letter dated 02.12.2009 and 07.12.2009, were published as paid news for consideration in kind or cash for promoting or procuring the election of the respondent?

2. Whether the publication of the abovementioned news, analysis, articles, supplements, etc., was authorized, and expenditure on their publication was incurred or authorized, by the respondent or by his election agent or by any other person with the consent or knowledge of the respondent or of his election agent?

28. The main case of the complainants is that during the general election to the Maharashtra Legislative Assembly in 2009 from 85-Bhokar Assembly Constituency from where the respondent contested the said election, a large number of news items, articles, analysis and items marked 'advertisements' and 'advertorial' appeared in various newspapers, newspaper supplements, pamphlets, magazines, etc., eulogising the respondent, which were in fact 'paid news' published for consideration in kind or cash for promoting or procuring

the election of the respondent. It is alleged that the publication of these news, analysis, articles, supplements, etc., was authorized, and expenditure on their publication was incurred or authorized, by the respondent or by his election agent or by some other persons with the consent or knowledge of the respondent or his election agent. It is further alleged that the expenditure on the publication of these news, analysis, articles, supplements, etc., though authorized by the respondent or by his agents with his consent, was not duly reflected by the respondent in the account of his election expenses and thereby he failed to maintain a true account of his election expenses as required under section 77(1) of the 1951-Act. It is thus contended by the complainants that for his failure to maintain a true account of his election expenses and for filing a false or incorrect account of his election expenses suppressing the expenditure incurred and/or authorized by him on the publication of aforesaid news, supplements, advertisements, etc., the respondent has incurred disqualification under section 10A of the said Act. On the other hand, the case of the respondent is that all the news items, supplements, advertisements, etc., in question in the present proceedings, were published by the newspapers gratuitously on their own because of their inclination, leaning, and close association of the publishers and proprietors of publishing newspapers with the Indian National Congress, and that the publication thereof was neither authorized by him nor was any expenditure incurred or authorized by him or by any of his agents with his consent. His further case is that none of these news items, supplements,

advertisements, etc., made any appeal or solicitation for votes for him in the 85-Bhokar Assembly Constituency and were in fact in the nature of highlighting the achievements of the Government of Maharashtra headed by him as Chief Minister and the welfare measures and schemes devised and implemented by the State Government formed by the Indian National Congress and its allies.

### **Submissions on behalf of Complainant No.1**

29. Shri Dilip Taur and Shri Harinder Toor, the learned counsels for the complainant No.1, mainly relied upon and based their arguments and submissions on the following observations of the Hon'ble Supreme Court in the case of *Kanwar Lal Gupta v. Amar Nath Chawla*, (1975) 3 SCC 646:-

*“11. Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our Constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislators wisely interdicted not only the incurring but also the*

*authorising of excessive expenditure by a candidate. When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money.”*

30. They also adverted to the following observations of the Hon'ble Supreme Court in the case of *Common Cause (A Registered Society) v. Union of India*, (1996) 2 SCC 752:-

*“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”*

31. They pointed out that following the above judgement of the Hon'ble Supreme Court in *Kanwar Lal Gupta's* case (supra) Explanations (1) and (2) to section 77 of the 1951-Act were added in 1974 and 1975 exempting the expenditure incurred or authorized by political parties or any other association, friends, supports, etc., from the purview of the candidate's expenditure. The said Explanations (1) and (2) were, however, subsequently omitted in 2003 by substituting two new Explanations whereby it has now been clarified that only the travel expenses of the leaders of the political parties for general party propaganda are alone exempt from the purview of election expenditure of candidates. They contended that with the above change in law in 2003, the legal position as was expounded by the Hon'ble Supreme Court in *Kanwar Lal Gupta's* case (Supra) was restored. They further stated that the above position in regard to the existing law has been accepted and clarified by the Commission also in its circular dated 29<sup>th</sup> March, 2007. The Election Commission has

clarified that expenditure incurred by a political party on advertisements in connection with any election could be categorized as under:-

- (i) Expenditure on general party propaganda seeking support for the party and its candidates in general, but, without any reference to any particular candidate or any particular class/group of candidate;
- (ii) Expenditure incurred by the party, in advertisements etc. directly seeking support and/or vote for any particular candidate or group of candidates;
- (iii) Expenditure incurred by the party which can be related to the expenditure for promoting the prospects of any particular candidate or group of candidates.

32. They contended that applying the ratio of the judgment in *Kanwar Lal Gupta's* case (Supra), the Commission has clarified that in the case of any advertisement by political parties, whether in print or electronic or any other media, falling in category (i) above, which is not relatable to the election of any particular candidate or a given group of candidates alone, the expenditure may be treated as expenditure of the political party on general party propaganda. In the cases of expenditure falling in categories (ii) and (iii) above, i.e., cases where the expenditure is relatable to the election of a particular candidate or a group of candidates, the expenditure shall be treated as expenditure authorized by the candidates concerned and such expenditure shall be accounted for in their election expenses accounts. In those cases where the expenditure is incurred by

the party for the benefit of a given group of candidates, the expenditure is to be apportioned equally among the candidates.

33. They further stated that the above legal position was again reiterated by the Commission in its circular dated 20<sup>th</sup> January, 2012 and the Commission has clarified that if there is a reference to a candidate in any advertisement issued by a political party, even if such candidate happens to be a leader of the political party within the meaning of Explanations (1) and (2) to section 77(1) of the 1951-Act, i.e., a star campaigner, the expenditure on such general party propaganda with reference to his constituency shall be booked to the account of such leader, as it is in the nature of party propaganda with reference to his constituency.

34. They contended that the large number of news, articles, analysis, etc., which appeared in various newspapers during the relevant period of election, i.e., the date on which the respondent filed his nomination paper and till the date of the declaration of the result, were in the nature of paid news/surrogate news, public advertisements and the publication thereof was authorized by the respondent, as the same eulogized him with a view to promoting and procuring his election. They produced some of the pages of the following newspapers and supplements to substantiate their averments and contentions:-

- (i) Lokmat dated 12.09.2009
- (ii) Deshonatti dated 15.09.2009
- (iii) Maharashtra Times dated 27.09.2009 and 10.10.2009

- (iv) Dainik Satyaprabha dated 11.10.2009, 02.10.2009 and 13.10.2009
- (v) Pudhari dated 20.09.2009
- (vi) Lokmat dated 05.10.2009, 06.10.2009, 07.10.2009, 08.10.2009, 09.10.2009, 10.10.2009, 11.10.2009, 12.10.2009,
- (vii) Deshonatti dated Nil (annexed with submission), and on 08.10.2009
- (viii) Pudhari dated 03.10.2009, 04.10.2009, 06.10.2009, 07.10.2009, 11.10.2009, 13.10.2009 and 12.10.2009.
- (ix) Nav Bharat Times dated 30.09.2009, 10.10.2009, 11.10.2009 and 12.10.2009.
- (x) Punya Nagari dated 06.09.2009 and 06.09.2009.
- (xi) Satyaprabha dated 13.10.2009, 13.10.2009 and 11.10.2009.
- (xii) Nav Bharat dated 08.10.2009, 09.10.2009, 10.10.2009, 11.10.2009, 12.10.2009 and 13.10.2009.
- (xiii) Punyanagari dated 13.10.2009 and 13.10.2009.
- (xiv) The Free Press Journal dated 03.10.2009.
- (xv) Deshonatti dated 10.10.2009.
- (xvi) Lokrajya dated August, 2009.
- (xvii) Maharashtra Times dated 10.10.2009.
- (xviii) Udyacha Marathawada dated 04.10.2009.

35. They pointed out that many of the above publications were special supplements published in the aforesaid newspapers and the same did not contain any other news items but looked like posters. The special colour supplements and the advertisements with photo of respondent, wearing tri-colour scarf having his party symbol, clearly show that these were advertisements intended for promoting the prospects of the election of the respondent and these were not normal news.

36. They also produced the following chart showing that the news items/posters in various newspapers were published verbatim but with different headlines or with some cosmetic changes in the content:-

Sr. No.	Word for Word Articles Repeated in different Newspaper	News Papers	Date	Remarks
1.	Promises given to Peoples (English Translation)	Pundari	07/10/2009	Verbatim but under different headline
		Lokmat	09/10/2009	
		Deshonatti	08/10/2009	
2.	Industrial Revolution (English Translation)	Maharashtra Time	27/09/2009	Verbatim but under different headline
		Lokmat	08/10/2009	
		Satyaprabha	11/10/2009	
3.	Leading Maharashtra (English Translation)	Lokmat	07/10/2009	Verbatim
		Maharashtra Times	27/10/2009	
4.	Young & Dynamic Leadership (English Translation)	Pudhari	04/10/2009	Verbatim but under different headline
		Lokmat	10/10/2009	
		Pudhari	07/10/2009	
5.	Government's Success Flag (English Translation)	Maharashtra Times	27/09/2009	Verbatim but under different headline
		Satyaprabha	11/10/2009	
6.	Ashok Chavan's Great Take Off(English Translation)	Maharashtra Times	27/09/2009	Verbatim
		Satyaprabha	13/10/2009	
		Nav Bharat Times (English Translation)	30/09/2009	
7.	My Global Maharashtra Times (English Translation)	Maharashtra Times	27/09/2009	Verbatim
		Satyaprabha	13/10/2009	
8.	Why to Vote Congress? (English Translation)	Lokmat	12/10/2009	Verbatim but under different headline
		Satyaprabha	13/10/2009	
		Dashonatti	10/10/2009	
9.	Article On Kokan Development (English Translation)	Pudhari	20/09/2009	Verbatim but under different headline
		Nav Bharat Times	12/10/2009	
10.	Four Month Magic of Ashok Chavan/ Achievements in	Maharashtra Times	27/09/2009	Verbatim but under different headline

	Golden Jubilee Year	Nav Bharat Times	30/09/2009	
11.	Waving Farmers Loan- A Historical Decision (English Translation)	Maharashtra Times	27/09/2009	Word for Word with Cosmetic Changes under different headline
		Nav Bharat Times	30/09/2009	
12.	Five Years of Development for Public Welfare (English Translation)	Lokmat	12/09/2009	Verbatim in Pudhari both Editions  Word for Word with Cosmetic Changes under different headline in Lokmat and Lok Rajya Government Magazine
		Pudhari (Part-I)	11/10/2009	
		Pudhari (Part-II)	12/10/2009	
		Lok Rajya	August, 2009	
13.	Package for Nashik Revenue Division (English Translation)	Lokmat	12/09/2009	Word for Word with Cosmetic Changes under different headline
		Lok Rajya	August, 2009	
14.	Package for Kokan Revenue Division (English Translation)	Lokmat	12/09/2009	Verbatim but under different headline
		Lok Rajya	July, 2009	
15.	Sagri Setu, 21 <sup>st</sup> Vya Shatkal Samudra Varil Cable Stete	Dehosnatti	08/10/2009	Verbatim but under different headline
		Pudhari	06/10/2009	
16.	Sukha Pidito ko Di Rahat, Gareeb Kisano ke Hit Me Kiye Gaye Faislay, Shetak-Yanchya Sukhashi Congress Aadhadi Sarkarchi Banhilki	Nav Bharat Times	10/10/2009	Verbatim but under different headline
		Nav Bharat Times	12/10/2009	
		Pudhari	03/10/2009	
17.	Udhyog Vishwat Maharashtra Chee Aadhadi, Udhyog Vishwateel Maharashtra Chee Aadhadi	Dehosnatti	10/10/2009	Verbatim
		Pudhari	06/10/2009	
18	Gatiman Parivehan Sewa	Nav Bharat	06/10/2009	Verbatim but under different headline
		Lok Rajya	August, 2009	

19.	Nirmal Gram Baad Mukh Muheem Me Aadhadhi, Nirmal Gram, Tantamukt Mohi Mate Aadhadhi	Nav Bharat	08/10/2009	Verbatim
		Lok Rajya	August, 2009	
20.	Bhujal Ke Stur Me Badhotari, Bhujal Patleet Badh	Nav Bharat	08/10/2009	Verbatim
		Lok Rajya	August, 2009	
21.	Vanchito Ko Nyaya Ke Liye Sadaiv Kati Baddh, Vanchitanchya Vikasa Shathi	Nav Bharat	06/10/2009	Verbatim
		Lok Rajya	August, 2009	
22.	Gramst Din, Lokabhimukh Gramst Din	Nav Bharat	06/10/2009	Verbatim
		Lok Rajya	August, 2009	
23.	Uchha Wai Takneeki Shikshan Me Aage, Uchha Wai Tantra Shikshan, Uchha Shikshanchi Bharari	Nav Bharat	13/10/2009	Verbatim but Change in headline
		Lokmat	08/10/2009	
		Lok Rajya	August, 2009	
24.	Mahila Wai Vikas, Mahila Wai Vikas, Saksham Mahila Wai Sudrada Bal Kan Sathi	Nav Bharat	13/10/2009	Verbatim but under different headline
		Lokmat	08/10/2009	
		Lok Rajya	August, 2009	
25.	Tirth Shatro Ka Vikas, Tirth Shetrancha Vikas	Nav Bharat	12/10/2009	Verbatim
		Lokmat	12/09/2009	
26.	Conclusive Nirnayak, Grih, Mehsool, Sehkar, Panan, Phalothpadan, Pashusambardhan, Dudh Vikas, Udhyog, Urja, Kaamgar, Paryavaran, Grih Nirman, Aadhiwasi Vikas, Gram Vikas,	Lokmat	06/10/2009	Verbatim
		Lok Rajya		

37. In particular, they referred to the news items appearing in “Maharashtra Times” under the title “Ashok Chauhan did Wonders”, “Ashok Chavan brought industrial revolution”, “Ashok Niti – my Global Maharashtra”, the news items appearing in ‘Lokmat’ on 5.10.2009, written by Sukrut Khandekar, under the heading “Vikash Parba”, decorated with border, flowers, and rising sun, and contended that these were nothing but posters for promoting the election prospects of the respondent. They also added that news items of similar nature written by Atul Kulkarni, “Zahinama” and “Jai ho” appeared in Lokmat, which were in fact in the nature of posters. They further added that the news item “Vote for Congress” appeared in Lokmat, which denigrated the opponents; that there was an appeal by the respondent to the voters in Lokmat under the heading “Do something for me”; that ‘Deshonnati’ mentioned in one of the news as “sponsored” page; that ‘Pudhari’ brought out articles under the title “Young Dyanamic leader Ashok Chavan”, “What concerns for a limited period”, “King maker”; that Nav Bharat Times brought out article “Ashok Path” – which was a poster, giving the bio data and history of the respondent and wrote “Agrasara Maharashtra”.

38. Based on the above averments, the learned counsel contended that the abovementioned publications in various newspapers were sponsored by the respondent and in any event their publication was authorized by the respondent or by his agents with his consent. They also sought to derive support for their



above contention from the interview given by the respondent to the Press Council of India that he was not surprised by looking into the various large numbers of articles written about him in various newspapers and that he thereby admitted the publication of those news, articles, etc. They submitted that in such cases, there may not be direct proof of the consent of the respondent but such consent could be inferred from circumstantial evidence. In support of their above proposition, they relied upon the observation of the Hon'ble Supreme Court in *Gadak Yashwant Rao Kanak Rao Vs. Balasaheb Patil*, (1994) 1 SCC 682 that “The consent of the candidate for the purposes of Section 123(4) when the offending statement of fact which is false is published by any other person may be proved by inference from the circumstances and not necessarily by positive evidence to that effect since positive evidence of consent may not be available.” They also relied upon the observations and instructions contained in the Commission’s circular dated 8<sup>th</sup> June, 2010 that generally no transactional evidence of payment of consideration in cash or kind for a paid news may be available and that the instances of paid news may be inferred from circumstantial evidence, like, ‘newsarticles/reports published about a particular candidate or a party eulogising them, or similar news articles/reports denigrating the opponents, both intended at unduly influencing the voters. The same or similar type of news articles/reportings (with cosmetic modifications) appearing in more than one newspaper/periodical would amount to further corroboration as circumstantial evidence that such news publication could result

from collusion of the candidate/party with the editors, publishers, financiers of the newspaper, etc. Such collusion would, however, have generally no transactional evidence of payment of consideration in cash or kind.’ According to them, the circumstantial evidence mentioned above that the above publications appearing verbatim or with minor cosmetic changes in various newspapers around the same time sufficiently establishes the fact that these publications were in fact paid news published at the instance of the respondent or with its consent or by his agents with his consent and, therefore, the expenses on these publications should be deemed to have been incurred or authorised by the respondent.

39. They thus contended that the expenditure on the above publications in various newspapers fell within categories (ii) and (iii) mentioned in the above referred Commission’s circular dated 29<sup>th</sup> March, 2007 which had to be accounted for by the respondent in his account of election expenses and which he failed to do. He has shown in his account of election expenses a meagre amount of only Rs.5,379/- on advertisements in the electronic/print media, whereas all these publications must have cost lakhs of rupees even on a conservative estimate. They pointed out that the party has shown ‘Nil’ expenditure on publications in print media in his return of election expenses submitted to the Commission.

40. Referring to the replies of the four newspapers, namely, Lokmat, Pudhari, Deshonnadi, and Times of India Group, in response to the Commission's queries sent to them vide the letter dated 6<sup>th</sup> April, 2010 of the Chief Electoral Officer, Maharashtra, whereby all the news papers have denied that the news items, etc., published in their news papers were paid news and have stated that no charges were claimed by them from any party or individual in respect of those publications, the learned counsel stated that no business house which is running the news paper industry will bear the cost of production and publication of such advertisements on its own and, therefore, considering the overall circumstances and principle of preponderance of probability, it has to be taken as proof that there was consideration in kind or cash for aforesaid publications.

41. They also pointed out that in addition to the above publications in the newspapers in the form of paid news, there were several advertisements issued by certain local leaders and workers of the Indian National Congress in a number of newspapers and that the respondent did not include the expenditure, either wholly or in part, on the publication of such advertisements in his account of election expenses, though his name, his photograph and the name of his constituency from where he was contesting election were specifically mentioned therein. In this context, they specifically referred to the following advertisements which were published by the abovementioned leaders and workers of the party in the newspapers mentioned below:-

1. "Lokmat" dated 03.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
2. "Lokmat" dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
3. "Lokmat" dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
4. "Lokmat" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
5. "Prajawani" dated 03.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
6. "Prajawani" dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
7. "Prajawani" dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
8. "Prajawani" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
9. "Dainik Satyaprabha" dated 03.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
10. "Dainik Satyaprabha" dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
11. "Dainik Satyaprabha" dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
12. "Dainik Satyaprabha" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
13. "Dainik Gaonkari" dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
14. "Dainik Gaonkari" dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.

15. "Dainik Gaonkari" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
16. "Udyacha Marathwada" dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
17. "Udyacha Marathwada" dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
18. "Udyacha Marathwada" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
19. "Deshonatti" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
20. "Lokmat" dated 07.10.2009 is published by Shri Ajay Bisen, President, Nanded District Congress Committee & Shri Munna Abbas for Nanded City Youth Congress Committee.
21. "Prajawani" dated 07.10.2009 is published by Shri Ajay Bisen, President, Nanded District Congress Committee & Shri Munna Abbas for Nanded City Youth Congress Committee.
22. "Prajawani" dated 10.10.2009 is published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.
23. "Udyacha Marathwada" dated 10.10.2009 is published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.
24. "Gaonkari" dated 10.10.2009 is published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.
25. "Godatir Samachar" dated 10.10.2009 is published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.

42. These advertisements were issued by way of giving information to the general public about the public meetings which were scheduled to be addressed by Smt. Sonia Gandhi, President of the Indian National Congress on 5<sup>th</sup>

October, 2009 (which was later on postponed to 6<sup>th</sup> October, 2009) at Nanded, by Shri Jyotiraditya Scindia on 7<sup>th</sup> October, 2009 at Cidco, Nanded City and Mudkhed and by Shri Salman Khan, Cine Artist, on 10<sup>th</sup> October, 2009 at Nanded. These advertisements carried the photographs of Smt. Sonia Gandhi, Shri Jyotiraditya Scindia, and Salman Khan, and also of the respondent, together with the symbol of the party and the names of the candidates, including the name of the respondent, contesting election from various assembly constituencies in the Nanded District. These advertisements also contained exhortation to the general public to attend the above public meetings in large numbers which, according to the counsel for complainant No.1, was tantamount to soliciting votes and promoting the prospects of election of the respondent. They pointed out that some of the publishers of these advertisements, namely, Shri Amar Rajurkar, Shri Shyam Darak and Shri Munna Abbas, have themselves admitted in their affidavits filed before the Commission in support of the respondent that they are important local leaders of the party and they were responsible for publication of the above advertisements and that the expenditure on such advertisements was borne by them or by the party to which they belonged. The learned counsel alleged that the respondent had knowledge about the publication of these advertisements as he himself included part of the expenditure on some of these advertisements in his account of election expenses, but suppressed the expenditure on the remaining advertisements published on the same dates in many other newspapers; for instance, the

respondent showed an expenditure of Rs.660/- only in respect of an advertisement published by Shri Shyam Darak in 'Satyaprabha' on 10<sup>th</sup> October, 2009, but did not show any expenditure in respect of similar advertisements published by Shri Shyam Darak on the same day in 'Prajawani', 'Udyacha Marathwada', 'Gaonkari' and 'Godatir Samachar'. They contended that, applying the principle laid down in *Kanwarlal Gupta's case* (Supra), the expenditure on such advertisements published in various news papers, details whereof are given in the preceding paragraph, should have been included by the respondent in his account as he had knowledge of such advertisements and also took advantage of the campaign carried out by the party and its local leaders through these advertisements. The failure on the part of the respondent to account for the above expenditure in his return amounted to failure to file his true account in the manner required by or under the law within the meaning of section 10A of the 1951-Act, contended the learned counsel for complainant No.1.

43. They also pointed out to a news item which appeared in the English Daily Free Press Journal on 3<sup>rd</sup> October, 2009 which carried the tag 'advertorial' at its bottom and contended that on the admission of the newspaper itself, it was a paid advertisement. Referring to the affidavit filed by Shri G.L. Lakhota, Publisher and Managing Editor of Free Press Journal through the respondent in support of his case, the learned counsel alleged that the statement made in that

affidavit that the word 'advertorial' was added by mistake of the journalist, who contributed that news item was only an afterthought in order to support the case of the respondent that it was not a paid advertisement.

### **Submissions on behalf of complainants No. 2 and 3**

44. Shri Balendu Shekhar, the learned counsel for complainants No.2 and 3, mainly adopted the submissions made on behalf of complainant No.1. He contended that the respondent had deliberately flouted all the laws and the office orders issued by the Commission relating to maintenance of true accounts of election expenses, including the expenses incurred or authorized on various publications in the newspapers and other periodicals which eulogized him and were in the nature of paid news. He submitted that the reliance placed by the respondent on the Commission's instructions dated 20<sup>th</sup> January, 2012 and 22<sup>nd</sup> January, 2014 was misplaced as the instructions contained therein were issued long after the election under reference held in 2009. According to him, the respondent had failed to prove that various news articles in questions were not in the nature of paid news; that he had not given any justification or reason as to why similar news items/articles/advertisements (word for word, same) were published in various news papers on different dates; that he had failed to give reason why the expenditure on all advertisements published in various news papers for conducting public meetings/road show of Smt. Sonia Gandhi, Shri Jyotiraditya Scindia and Shri Salman Khan had not been shown in his election



expenses, despite the fact that all such advertisements carried his name and his photograph and eulogized him to secure his electoral victory from Bhokar assembly constituency; and that the various affidavits filed in his support clearly reflect that there is apparent existence of *quid pro quo* relationship between respondent and those witnesses. He also referred to the Commission's instructions contained in para 11.3 of its Handbook for Candidates issued in 2009, which were relevant at the time of the election under reference and read as follows:-

*“11.3 In recent times, the Election Commission of India has observed the trend that the advertisements are brought out in print media, especially news papers, for and against particular political parties and candidates, some surrogate and some under the name of some organization during the election period. In order that there is strict observance of and compliance with, the requirement of the provisions of Section 127-A of Representation of People Act, 1951, the Commission has issued following orders -*

*(a) In the case of advertisements, the source of which is traceable, the following action shall be taken: -*

*(i) if the advertisement is with the consent or knowledge of the candidate, it will be treated to have been authorized by the candidate(s) concerned and will be accounted for in the election expenses account of the candidate(s);*

*(ii) if the advertisement is not with the authority from the candidate, then action shall be taken for prosecution of the publisher for violation of Section 171 H of IPC-(incurring*

*expenditure in advertisement without written authority from the candidate(s) concerned).*

*(b) If the identity of the publisher is not indicated in the advertisement, then the District Election Officer/Returning Officer shall contact and get the information from the Newspaper concerned, and shall take appropriate action, as above.”*

45. His contention is that the expenditure on all the news items, articles, advertisements, etc. formed part of his election expenses and he had to account for the same and by his failure to show all that expenditure in his return he has failed to comply with the provisions of section 10A and is liable to be disqualified under that section for a period of three years from the date of the Commission's order.

#### **Submissions on behalf of respondent**

46. Replying to the above submissions on behalf of the complainants, Shri Abhimanyu Bhandari, learned counsel for the respondent, submitted at the outset that the respondent had resigned from the membership of the Maharashtra Legislative Assembly on 22<sup>nd</sup> May, 2014, on his election as member of the Lok Sabha at the recent general election, and in view of this development, it would be futile to continue the present proceedings relating to the assembly election held in 2009. According to him, the proceedings have become infructuous inasmuch as the nature of disqualification under section

10A of the 1951-Act is *qua* a particular election vis-à-vis a particular seat in the Legislative Assembly and that once the term of the Assembly is over or the seat has become vacant on any count, the proceedings under section 10A should abate.

47. Supplementing the above submissions of Shri Bhandari, Shri Pravinkumar M. Shah, learned senior counsel for the respondent, also contended that the present proceedings should abate. He submitted that as per the original section 7(c) of the 1951-Act, the period of disqualification for default in the lodging of the return of election expenses was five years. However, a Select Committee under the Chairmanship of Shri Thakur Das Bhargava, appointed after the first general election in 1951-52 to suggest amendments to the Principal Act of 1951, recommended as follows:-

*“15. Clause 4 (Original clause 3) – The Committee consider that attaching disqualification for 5 years is too severe a punishment as in that event normally the person would be debarred from being a candidate in the next general election as well. The Committee have therefore reduced the period to 3 years.”*

48. Shri Shah thus contended that the law, as amended in 1956 and which still prevails, is that the disqualification under section 10A should be for three years so that a person becomes eligible for contesting the next general election. He submitted that the Hon'ble Supreme Court has also taken note of that fact while making an observation in para 111 of its order dated 5th May, 2014 that

*“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 45 days and pass appropriate order in accordance with law.”*

49. Without prejudice to the above contentions about the abatement of the present proceedings, Shri Pravinkumar M. Shah, the learned senior counsel for the respondent, then made his submissions and arguments on the merits of the case against the respondent contending that he had not incurred any disqualification under the said section 10A of the 1951-Act.

50. The learned senior counsel refuted the allegations of the complainants that the respondent had launched his election campaign on a lavish scale by resorting to publication of a huge number of surrogate news, surrogate advertisements and paid news through the print media. He denied that the news items, articles, reports and news analysis in various news papers produced by the complainants were published on his authorization or with his consent or by his agents with his consent. He submitted that there was not even an iota of any evidence to prove the authorization or consent of the respondent in the publication of the aforesaid news, articles, etc. He further submitted that it would be a misnomer to call the publications in question as advertisements or paid news in the context of section 77(1) of the 1951-Act. He submitted that the nature and character of any document has to be judged not merely by reading heading or title or photographs printed on it but by reading the whole text of the

document in its entirety. Referring to the publications in question, he submitted that:

- i) none of these publications refers to any particular contesting candidate or a particular class or group of candidates;
- ii) none of the alleged publications directly seeks support and / or solicits votes for the respondent;
- iii) none of the alleged publications makes any reference to Bhokar Legislative Assembly Constituency from which the respondent was the candidate;
- iv) none of these publications contains any appeal or even a single stray-sentence soliciting votes for the respondent as a candidate from any Assembly Constituency. In any case, the said publications were not seeking votes for the respondent from 85-Bhokar Legislative Assembly Constituency.

51. He submitted that, on the other hand, there was an article written by the complainant himself soon after the election in which the complainant had himself brought out the nature of election campaign and the expenditure incurred in connection with the election under reference as under :

*“... (4) There was no fanfare, intensity or fierceness in the canvassing as expected from the respondent as he was Chief Minister and a leader from Nanded District. The language as well as body language of leaders and volunteers of Congress was of utmost confidence till last.*

*(5).....*

(6) *During this electioneering campaign, there was not much talk about the otherwise usual experience of extravagant and indiscriminate use as well as distribution of money.*

(7) *The electioneering campaign was absolutely informal and nominal phenomena. The Chief Minister simply pretended to have canvassed by visiting only few villages in constituency and that too just two days prior to poll. Totality of circumstances indicated that, on the date of poll only formality was completed by going to booth.”*

*(Free translation of original text in Marathi)*

52. The learned counsel submitted that when the complainant himself had taken the stand that there was no need for the respondent to incur any extravagant expenditure on his election campaign, he was now estopped from taking a different stand that the respondent mounted his election campaign on a massive scale. He also contended that the admission of the party is the best evidence against it.

53. Shri Shah, at first, sought to rely upon the Explanations (1) and (2) to section 77(1) which were added in 1974 and 1975 whereby it was clarified by the Parliament that the expenditure incurred by the political parties, other associations, friends and supporters would not be treated as expenditure incurred or authorized by the candidate. He also submitted that the constitutional validity of the above Explanations was upheld by the Hon'ble Supreme Court in *Indira Gandhi Vs. Raj Narain* (AIR 1975 SC 2299) and *P.*

*Nalla Thampy Terah Vs. Union of India and Ors.* (AIR 1985 SC 1133). He, however, subsequently revised his stand with regard to the above Explanations when pointed out to him by the Commission that the said Explanations were omitted from section 77(1) in 2003 restoring the position of law as propounded by the Hon'ble Supreme Court in *Kanwar Lal Gupta's* case (Supra). Thereupon, he relied on the following observation of the Hon'ble Supreme Court in the *Kanwar Lal Gupta's* case (Supra) that expenditure by a political party on its general party propaganda as distinguished from the expenditure on the promotion of a particular candidate could not be deemed to be the expenditure of the candidate and was not includible in his account of election expenses:-

*“11.....When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so.....It is only where expenditure is incurred which can be identified with the election of a given candidate that it would be liable to be added to the expenditure of that candidate as being impliedly authorised by him.” (emphasis supplied by the learned senior counsel).*

54. Relying on the above observation of the Hon'ble Supreme Court in *Kanwar Lal Gupta's* case, the learned senior counsel now contended that all the publications in various news papers on which the complainants were relying were, in fact, publications in the nature of general party propaganda of the Indian National Congress highlighting its achievements in the State of Maharashtra under the Chief Ministership of the respondent and were not the publications eulogizing him personally or promoting his candidature from Bhokar Assembly Constituency. He stated that the respondent was a star campaigner of the party within the meaning of the existing Explanations (1) and (2) to section 77(1) of the 1951-Act and the appearance of his photograph on the said publications could not be taken as election materials published by the respondent or by his agents with his consent for promoting the prospects of his election from Bhokar Assembly Constituency.

55. He submitted that when the Commission made a pointed query to the complainants about the nature and character of the publications under reference and whether there was any specific reference to the respondent as a candidate vis-à-vis Bhokar Assembly Constituency, the complainants identified two references to Nanded and Bhokar in "Lokmat" dated 12<sup>th</sup> September, 2009 and republished in "Nav Bharat" dated 12<sup>th</sup> October, 2009 and "Maharashtra Times" dated 10<sup>th</sup> October, 2009. He pointed out that the reference to Nanded and Bhokar in "Maharashtra Times" was only in the context of the general



developments, like, “Marathwada Development Programme 2008”, “Effective Electricity Distribution System”, etc. that the Government of Maharashtra had made and the welfare measures which the State Government had taken or proposed to take in, among others, the whole Marathwada region which consists of eight districts, including Nanded, and Bhokar Assembly Constituency falling in Nanded District. In the second publication in “Lokmat” and “Nav Bharat”, the reference was to the development of Ardhapur Mahavihar, Bawari Nagar in Bhokar Assembly Constituency. This again was a part of the general development plan of the State Govt for Boudhvihars in the State and not any exclusive development plan for the said Ardhapur Mahavihar. Thus, the reference to any development programmes in Nanded and Bhokar in these publications was only as a part of the general plans of the State Government to develop that region and not something which was specifically meant for development of Nanded or Bhokar alone and thus could not be taken as election campaign by the respondent for promoting his own prospects in Bhokar Assembly Constituency. The learned counsel alleged that it was a purposeful attempt to mislead the Commission to suggest that these two articles were in the context of Bhokar Assembly Constituency.

56. Countering the allegation and the contention of the complainants that the similarity of language used in several publications in different newspapers is a circumstantial evidence that the said publications were in the nature of paid

news, the learned counsel for the respondent submitted that these publications were mainly based on three documents or sources of information which were already in public domain, namely:

- (i) 'Lokrajya', a government publication, published by the Director of Information, State of Maharashtra, which gives general information about the achievements, growth, developments or vision of the government, etc.
- (ii) 'Mahabharari' (Big Leap), a party publication published by the Maharashtra Pradesh Congress Committee, which periodically publishes the achievements, development and growth made by the Congress political party.
- (iii) Party Manifesto published jointly by the Indian National Congress, Nationalist Congress Party and RPI (G) alliance in the context of the 2009 general election.

57. He also produced a chart giving reference to inputs or sources on the basis of which the impugned publications under reference in various newspapers were based. That chart is reproduced below for ready reference:-

S.No.	Heading of Articles	Name of Newspaper	Date	Input or Source	Remarks
1.	5 years of development	<ul style="list-style-type: none"> <li>• Lokmat</li> <li>• Pudhari (Part-I)</li> <li>• Pudhari (Part-II)</li> </ul>	12.09.2009 11.10.2009 12.10.2009	Interview by Sukrut Khandekar, Editor, Lokmat published in Lokrajya – August 2009	Various achievements of the State Government are mentioned in the said Article.
2.	Commitments given to the citizens	<ul style="list-style-type: none"> <li>• Pudhari</li> <li>• Deshonnati</li> <li>• Lokmat</li> </ul>	07.10.2009 08.10.2009 09.10.2009	Party Manifesto	Consists of various commitments and promises given to the people in the State of Maharashtra mentioned in the party manifesto of INC and NCP alliance.
3.	Industrial Development / Revolution in the State of Maharashtra	<ul style="list-style-type: none"> <li>• Maharashtra Times</li> <li>• Lokmat</li> <li>• Satyaprabha</li> </ul>	07.10.2009 09.10.2009 11.10.2009	Lokrajya – August 2009, Mahabharari	The news gives statistics of Industrial development in Maharashtra and various decisions of the Government in last five years.
4.	Leading Maharashtra	<ul style="list-style-type: none"> <li>• Lokmat</li> <li>• Maharashtra Times</li> </ul>	07.10.2009 27.09.2009	Mahabharari, Lokrajya	Entire article is about the decisions and achievements of the State Government. Nowhere in the said article, name of Ashok Chavan is mentioned.

5.	Success Flag of Congress Alliance Government	<ul style="list-style-type: none"> <li>• Maharashtra Times</li> <li>• Satyaprabha</li> </ul>	27.09.2009 11.09.2009	Lokrajya, Mahabharari	Entire Article is about the achievements of the State Government. Name of Shri Ashok Chavan is not mentioned anywhere in the said article.
6.	Great take of by Shri Ashok Chavan	<ul style="list-style-type: none"> <li>• Maharashtra Times</li> <li>• Lokmat</li> <li>• Nav Bharat Times</li> </ul>	27.09.2009 13.10.2009 30.09.2009	Lokrajya, Mahabharari	Entire Article is about the achievements of the State Government. Apart from the heading of the article, name of Shri Ashok Chavan is not mentioned at any other instance.
7.	Dynamic & Young leadership of Shri Ashok Chavan	<ul style="list-style-type: none"> <li>• Pudhari</li> <li>• Lokmat</li> <li>• Pudhari</li> </ul>	04.10.2009 10.10.2009 07.10.2009	Mahabharari	Achievements and efforts of the State Government under the Chief Ministership of Shri Ashok Chavan
8.	Appeal to voters to vote by consigns	<ul style="list-style-type: none"> <li>• Lokmat</li> <li>• Satyaprabha</li> <li>• Deshonnati</li> </ul>	12.10.2009 13.10.2009 10.10.2009		Promises by the Congress Party and achievements of State Government.
9.	My Global Maharashtra	<ul style="list-style-type: none"> <li>• Maharashtra Times</li> <li>• Satyaprabha</li> </ul>	27.09.2009 13.10.2009	Mahabharari, Lokrajya	The article consists of the achievements of State Government under the leadership of Shri Ashok Chavan and the vision of Shri Ashok Chavan.
10.	Konkan Development	<ul style="list-style-type: none"> <li>• Pudhari</li> <li>• Nav Bharat Times</li> <li>• Lokmat</li> </ul>	20.09.2009 12.10.2009 12.09.2009	Lokrajya, Mahabharari	Pudhari dated 20.09.2009 & Lokmat dated 12.09.2009 are published prior to the date of nomination. The entire article consists of the development of Konkan Region of Maharashtra and the efforts taken by the Chief Minister for the said development.
11.	Waiver of Farmers Loan : A historic decision	<ul style="list-style-type: none"> <li>• Maharashtra Times</li> <li>• Nav Bharat Times</li> </ul>	27.09.2009 30.09.2009	Lokrajya, Mahabharari	Policy decision taken by the Government in Nagpur Session & the efforts of the Chief Minister to take such policy decision.
12.	Achievements in Golden Jubilee Year	<ul style="list-style-type: none"> <li>• Maharashtra Times</li> <li>• Nav Bharat Times</li> </ul>	27.09.2009 30.09.2009	Lokrajya, Mahabharari	Achievements of the State Government under the leadership of Shri Ashok Chavan
13.	Package of Nashik Revenue Division	<ul style="list-style-type: none"> <li>• Lokmat</li> </ul>	12.09.2009	Lokrajya	The said newspaper is published prior to the date of nomination. It discloses the decision of the Government. Name of Shri Ashok Chavan is not mentioned anywhere in the said article.
14.	No heading	<ul style="list-style-type: none"> <li>• Lokmat</li> </ul>	06.10.2014	Lokrajya	The contents of the said publication are traceable in Lokrajya. The entire article/ publication consist of the achievements of the State Government.
15.	Rajiv Gandhi Sea-Link	<ul style="list-style-type: none"> <li>• Deshonnati</li> <li>• Pudhari</li> </ul>	08.10.2009 06.10.2009	Taken from the publication of MPCC	The said article consist of the decision and efforts of the State Government for the construction of the said sea-link. Name of Shri Ashok Chavan is not mentioned anywhere in the said Article.
16.	Development of religious places.	<ul style="list-style-type: none"> <li>• Lokmat</li> <li>• Nav Bharat Times</li> </ul>	12.09.2009 12.10.2009	Mahabharari	Lokmat dated 12.09.2009 is published prior to the date of nomination. The said article consist of the decisions taken by the State Government for the development of the religious places in the entire State of Maharashtra.
17.	Decisions taken for the upliftment of the farmers.	<ul style="list-style-type: none"> <li>• Nav Bharat Times</li> <li>• Nav Bharat Times</li> <li>• Pudhari</li> </ul>	10.10.2009 12.10.2009 03.10.2009	Mahabharari	Entire article discloses the decisions taken by the State Government for the development and upliftment of farmers.
18.	Industrial Development I Maharashtra	<ul style="list-style-type: none"> <li>• Deshonnati</li> <li>• Pudhari</li> </ul>	10.10.2009 06.10.2009	Mahabharari, Lokrajya	Entire article consist of the achievement of the State Government for industrial development in the entire State.
19.	<ul style="list-style-type: none"> <li>• Speedy Transportation Service</li> <li>• Wanchito Ko Nyay Ke Liya Sadaiva</li> </ul>	<ul style="list-style-type: none"> <li>• Nav Bharat</li> </ul>	06.10.2009	Lokrajya, Mahabharari	Discloses the decisions and achievements of the Government. Nowhere discloses the name of Shri Ashok Chavan

	Katibaddha • Gramastha Din				
20.	• Nirmal Gram, Wadmukta Muhim, may Aghadi • Increase in under water level	• Nav Bharat	08.10.2009	Lokrajya	Discloses the decisions and achievements of the Government. Nowhere discloses the name of Shri Ashok Chavan and even the name of Congress party.
21.	• Lead in Higher and Technical Education • Women & Child Welfare	• Nav Bharat • Lokmat	13.10.2009 08.10.2009	Lokrajya, Mahabharari	Entire article discloses the achievements of the State Government and the measures / efforts taken by the State Government for the Welfare of Women and Children
22.	• The development man of Maharashtra	• Free Press Journal	03.10.2009		Introduction, achievements & Vision of Shri Ashok Chavan

58. He submitted that the close scrutiny of the alleged publications of the articles in question would reveal that the source of information and the inputs in the said articles or news analysis appeared to be derived from the aforesaid three documents. One such illustration is an issue of “Lokrajya” published in July/August 2009, whereas some publications are having journalists’ inputs. In other words, all the alleged publications are in the nature of general party propaganda and not personal or private campaign of the respondent as a candidate from Bhokar Assembly Constituency. He pointed out that even according to the complainant No.1 himself, the above publications were for seeking votes for the Congress party as he himself admitted that the newspapers which carried these publications ‘reach the doorsteps of several lakhs of voters in all the 288 Assembly Constituencies and bolstered the chances of all the contesting candidates of Indian National Congress’ and that ‘.....if total circulation of aforesaid newspaper is calculated it will come to 23 lakhs x 5 readers = 1.5 crores readers daily’. He further pointed out that the complainant

No.1 himself has also admitted that *‘in many of the articles, he (respondent) was focused as leader of Maharashtra and all the achievements in Maharashtra have been committed at the instance of Shri Ashok Chavan’* and *‘ .....Lokrajya is a Government publication having been published by the Government of Maharashtra having 45 lacs circulation in the State of Maharashtra. Throughout the entire edition of Lokrajya, attractive photographs of Shri Ashok Chavan have been published along with his achievements of the Government, various schemes of the Government to show that the same has been committed at the instance of Shri Ashok Chavan’.*

59. The learned senior counsel also laid great stress on the replies furnished by the four newspapers in which these publications were published, namely, ‘Lokmat’, ‘Pudhari’, ‘Deshonati’ and ‘Maharashtra Times’, in response to the Commission’s query dated 6<sup>th</sup> April, 2010, through the Chief Electoral Officer, Maharashtra. The publishers/Managing Directors/Editors of Lokmat Newspapers Private Limited, Pudhari Publications Private Limited, ‘Deshonati’ and Maharashtra Times categorically stated that they had made the above publications voluntarily on their own because of their alignment of ideology with the Congress Party or inclination and leaning towards that party or as a responsible corporate to ensure that correct and balanced information reaches the right set of people at correct time. All of them positively asserted that the said publications were neither sponsored articles nor paid news and that no

payment was either claimed or received by them from any person/political party for those publications. On the basis of such categorical denial by all the four newspapers of having received any payment from any person or political party, the learned senior counsel asserted that the question of incurring or authorizing any expenditure on these publications by the respondent or by any of his agents with his consent does not arise at all. As regards his interview with the Press Council of India, adverted to by the complainants, the learned senior counsel submitted that by stating that the respondent had seen large number of publications about him, he did not admit thereby that he sponsored or authorized those publications.

60. In the context of the above publications, the learned senior counsel also pointed out that the newspapers 'Lokmat' and 'Maharashtra Times' are published at Aurangabad, which is at a distance of approximately 270 km. from Bhokar and with three revenue districts intervening in between. Likewise, 'Pudhari' is published from Kolhapur and 'Deshonati' from Akola which are also far away from Bhokar. He submitted that there was no reason for the respondent to get these publications published in newspapers which hardly had any circulation in Bhokar from where he was contesting election.

61. As regards the publication of the news item in 'Free Press Journal' on 3<sup>rd</sup> October, 2009, with the tag 'advertorial', the learned senior counsel submitted that the Managing Editor of the newspaper had himself admitted by an affidavit

that the addition of the word 'advertorial' was a mistake on the part of the journalist who contributed the story and that the said journalist was duly punished by the newspaper authorities for such lapse and denied that it was any sponsored news item. He also added that the 'Free Press Journal' is published in Mumbai and had no circulation in Nanded or Bhokar and any publication in that newspaper far away from the constituency would have hardly given him any advantage in his election campaign in Bhokar Assembly Constituency.

62. Replying to the allegations of the complainants that the respondent suppressed expenditure either wholly or in part on the advertisements which were issued by the local leaders of the Indian National Congress in connection with the public meetings/road show of Smt. Sonia Gandhi, Shri Jyotiraditya Scindia and Shri Salman Khan held in Nanded District on 6<sup>th</sup> October, 2009, 7<sup>th</sup> October, 2014 and 10<sup>th</sup> October, 2009, the learned senior counsel submitted that there was not even a whisper of such allegation by the complainants in their original complaints submitted in November-December, 2009 and that these allegations were made at much later stage during the course of these proceedings. He, however, submitted that the respondent had duly accounted for the expenditure on such of those advertisements which were in his knowledge or were brought to his knowledge. He contended that if the publishers of those advertisements or anyone else did not bring to his notice or knowledge some of those advertisements, he could not be required to account

for any expenditure on those advertisements of which he was neither aware nor had knowingly taken any advantage thereof. He also submitted that the respondent as a star campaigner and Chief Minister of the State was shouldering the responsibility of the election campaign for the party in the entire State and was moving from place to place throughout the State and could not be expected to read all the newspapers and know what was appearing therein as advertisements. He also added that the public meeting of Smt. Sonia Gandhi was held outside the Bhokar Assembly Constituency and that he was not part of any of the meetings/road show of Shri Jyotiraditya Scindia and Shri Salman Khan, being out of station. He further added that if any expenditure had been incurred on the publication of the abovementioned advertisements by any persons without his authorization, the persons concerned committed electoral offences punishable under section 171H of IPC and section 127A of the 1951-Act and they were answerable for their lapses and not the respondent.

63. The learned senior counsel also submitted that the respondent could incur or authorize election expenditure upto Rs.10 lakhs in connection with the election under reference and that he incurred/authorised the expenditure of only Rs.6,85,192/-. If he had any knowledge about the publication of the above advertisements, the expenditure whereof has not been allegedly accounted for by him, there was no difficulty, legal or otherwise, for him in accounting for that small expenditure on the publication of those advertisements and including



the same in his return, as he still had a margin of Rs.3,14,888/- to reach the maximum permissible limit of Rs.10 lakhs. He added that if any expenditure which is not within the knowledge of the candidate is added to his account, then every candidate would be at a risk of disqualification because even the rivals or enemies of the candidates could make any publications somewhere in the constituency without the candidates' knowledge and thus make the candidates answerable therefor.

64. Concluding his submissions and arguments, the learned senior counsel submitted that all the statements, averments, contentions, allegations made by all the complainants may be deemed to be categorically, specifically and emphatically denied unless anything is specifically admitted by the respondent. He reiterated that the respondent was not the author of any alleged publications, nor had he any nexus or connection whatsoever with those publications. The respondent had no knowledge of publications under reference and he does not accept the authenticity of the newspaper publications being not connected in any manner with those publications.

65. Supplementing the above submissions of Shri Pravinkumar Shah, the learned senior counsel, Shri Mohan Parasaran, another senior counsel for the respondent, contended that the present enquiry was being conducted by the Commission under Rule 89 of the Conduct of Elections Rules, 1961 (1961-Rules) but the provisions of that Rule had not been followed inasmuch as no

notice was given by the Commission to the respondent under Rule 89(5) allowing him to file his reply and the account within a period of 20 days as permissible under Rule 89(6). He stated that if the respondent had been given any notice pointing out any discrepancies in his account, he would have filed the revised return rectifying those discrepancies. He further submitted that the spirit and underlying object of section 77 read with section 10A of the 1951-Act was that a candidate should be disqualified if he exceeds the prescribed limit and not for minor discrepancies in the account. He also pointed out that a margin of more than 3 lakhs rupees was still available to the respondent to reach the maximum limit and if any small or insignificant amount of certain advertisements was not included in the return because of lack of knowledge of such expenditure, the respondent could not be visited with the severe penalty of disqualification under section 10A of the 1951-Act.

66. He also referred to the recommendations of the Thakur Das Bhargava Committee in 1956 whereby the period of disqualification under section 10A was reduced from five years (wrongly mentioned by him as six years) to three years so that a person disqualified would not be debarred from contesting the next election. He also sought to derive support from the abovementioned observations of the Hon'ble Supreme Court in para 111 of its judgement dated 5<sup>th</sup> May, 2014 that the Commission may like to dispose of the matter within 45

days keeping in view the term of the existing Maharashtra Legislative Assembly.

67. He next contended that a candidate could be disqualified under section 10A only if he had no good reason or justification for his failure to file a true account. He submitted that the respondent had followed all requirements of law and stuck to the various timelines as fixed by the election authorities and that no discrepancy was pointed out to him by any election authority during the relevant period, that he had no intention of suppressing any expenditure as the total expenditure incurred or authorized by him was nowhere near the prescribed maximum limit. He also submitted that the law laid down by the Hon'ble Supreme Court in *Kanwar Lal Gupta's* case (supra) was still a good law and applicable in the present case and that the onus lay heavily on the complainant to show that the expenditure, if any, on the publications under reference in the present proceedings was incurred or authorized by the respondent or by any of his agents with his consent. He maintained that the impugned publications were in the nature of general party propaganda and not an election campaign for the respondent as a candidate from Bhokar Assembly Constituency. He also relied upon the affidavits of Shri Amarnath Anantrao Rajurkar, Shri Shyam Ramjivanji Darakand Shri Abbas Hussain @ Munna Abbas and contended that it was for the complainants to disprove the averments made by them in their affidavits. In short, Shri Mohan Parasaran, learned senior counsel, also averred

and contended that the respondent had not committed any failure in the filing of his return of election expenses and was thus not liable for any disqualification under section 10A of the 1951-Act.

68. Before dealing with the formal issues (1) and (2), the Commission would like to dispose of a preliminary issue raised on behalf of the respondent that the present proceedings against him have become infructuous on his resignation from membership of the Maharashtra Legislative Assembly on 22<sup>nd</sup> May, 2014 on his election as member of the current Lok Sabha on 16<sup>th</sup> May, 2014 from Nanded Parliamentary Constituency.

69. For consideration of this issue, it will be apt to again have a look at section 10A of the 1951-Act under which the present proceedings have been initiated; the same is reproduced below for ready reference:-

*“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.”*

70. It is true that the proceedings under section 10A are initiated on the failure of the candidate to lodge a true and correct account of his election expenses which he incurred or authorized in the context of a given election, but it is to be noted that this section applies to all contesting candidates irrespective of whether they won or were defeated. Thus, the membership of the House in relation to which that election was held is not material for determination of the question whether the proceedings under section 10A should continue or abate if an elected member ceases to be the member of that House or vacates his seat by resignation for any reason. A candidate who is declared disqualified by the Election Commission under that section incurs disqualification for contesting further elections to any House of Parliament or State Legislature for a period of three years, and also for continuing as member of any such House if he is already a sitting member from the date of the order of the Election Commission and not from the date on which he contested the election or was elected at such election. Therefore, the resignation of the respondent from the membership of the Maharashtra Legislative Assembly on 22<sup>nd</sup> May, 2014, has no effect or impact on the continuance of the present proceedings before the Commission and the proceedings shall continue unabated until logical conclusion thereof.

71. Another preliminary point raised by Shri Mohan Parasaran, learned senior counsel for the respondent, may also be answered here. He is not correct in his contention that the respondent could have filed a revised account of election

expenses under Rule 89(6) had he been given a notice in terms of Rule 89(5) of the 1961-Rules. A look at Rule 89(6) would show that that rule permits a candidate to file his account of election expenses where he has not previously filed any account at all under section 78 of the 1951-Act, and not where he has filed an account alleged to be false or incorrect.

72. Having thus decided that the present proceedings do not abate on account of resignation of respondent from the membership of the Maharashtra Legislative Assembly and that the respondent cannot file a revised account of his election expenses at this stage, the Commission would now like to deal with the real issues involved in these proceedings. As mentioned above, the real issues which need to be considered by the Commission are issues No.1 and 2. A closer look at these issues would show that the Commission has to examine and analyse the following ingredients of those issues:-

- (i) Whether the publications referred to in issue No.1 were published as general news in normal course or as paid news;
- (ii) Whether any price was paid in kind or cash as consideration for these publications;
- (iii) Whether these publications were made with the object of promoting or procuring the election of the respondent from 85-Bhokar Assembly Constituency;

- (iv) Whether the publication of these news items, and advertisements was authorized (a) by the respondent or by his election agent, or (b) by any other person with the consent or knowledge of the respondent or his election agent;
- (v) Whether the expenditure, if any, on their publication was incurred or authorized (a) by the respondent or his election agent, or (b) by any other person with the consent or knowledge of the respondent or his election agent.

73. While examining the first ingredient of issue No.1, it may be relevant to recall that at the time of the 2009-general election to which this case pertains, while the phenomenon of ‘paid news’ may have been working as news for consideration in cash or kind, the terminology of ‘paid news’ was formally recognized by the Commission vide its circular dated 8<sup>th</sup> June, 2010 which also laid down, among others, the following guidelines for guidance of the Media Monitoring Committees set up at District and State levels in the context of the general elections which were held in 2010 and subsequent thereto:-

*“The cases of ‘Paid News’ generally manifest in the forms of news articles/reports published about a particular candidate or a party eulogising them, or similar news articles/reports denigrating the opponents, both intended at unduly influencing the voters. The same or similar type of news articles/reportings (with cosmetic modifications) appearing in more than one newspaper periodical would amount to further corroboration as circumstantial evidence that such news*

*publication could result from collusion of the candidate/party with the editors, publishers, financiers of the newspaper etc. Such collusion would, however, have generally no transactional evidence of payment of consideration in cash or kind.”*

Thus, while the terminology had been defined by the circular in 2010, largely based on recommendation of Press Council of India, the phenomenon of news for consideration (in cash or kind) has always been an area of concern and has been recognized as such by the Election Commission. The subsequent codification of the definition of paid news was done with the intent of guiding the field functionaries to identify and suitably check this menace. While laying down these guidelines, the Commission took due note of the views expressed by the sub-committee of the Press Council of India (which was set up by that Council on the matter being taken up by the Commission with them) in its preliminary report dated 1<sup>st</sup> April, 2010. The Press Council thereafter defined ‘paid news’ as “Any news or analysis appearing in any media (Print & Electronic) for a price in cash or kind as consideration” in its report dated 30<sup>th</sup> July, 2010.

74. To substantiate the allegations and contentions of the complainants that the publications under reference were in fact paid news, the complainants took the Commission through most of these publications which are on record to show that because of the similarity of the contents of many of these publications



with only some minor modifications or cosmetic changes in the title, headings, etc., these publications would squarely fall within the parameters of guidelines relating to paid news as given by the Commission's above referred circular dated 8<sup>th</sup> June, 2010. They contended that these publications were verbatim reproductions appearing in several news papers, particularly, Lokmat, Pundari, Deshonatti and Maharashtra Times, more or less on the same days. Reference here may be usefully invited to the statement of such publications furnished by the complainants No.1 and as reproduced in paragraph 36 above. They contended that the publication of these news, articles, etc., was not a coincidence as four different newspapers could not write and publish the same matter verbatim unless there was a common source for providing a written material for publication thereof. The contention of the respondent, on the other hand, to counter the above contention of the complainants is that all these publications speak about the achievements of the Indian National Congress and the State Government and are based on three sources of information which were already in public domain and accessible to all news papers and others interested. According to the respondent, the said three sources of information were those which are mentioned in paragraph 56 above, namely: (a) 'Lokrajya', a government publication, published by the Director of Information, State of Maharashtra, which gives general information about the achievements, growth, developments or vision of the government; (b) 'Mahabharari' (Big Leap), a party publication published by the Maharashtra Pradesh Congress Committee,

which periodically publishes the achievements, development and growth made by the Congress party; and (c) Party Manifesto published jointly by the Indian National Congress, Nationalist Congress Party and RPI (G), alliance partners in the context of the 2009 general election.

75. Weighing the contentions and the counter contentions of the complainants and the respondent, the Commission sees considerable force in the contention of the complainants that the impugned publications which in most of the cases are identical or verbatim reproduction could not have been coincidence or written independently by the news reporters or journalists of four different news papers working separately and more or less on the same dates particularly when publications do not state that the contents are from the same source. It would rather point to a situation where there was some hidden hand working behind the scene who produced that material and furnished to those news papers for publication.

76. Going by the definition of paid news as given by the Press Council of India, a news item or news analysis or article, etc., would be deemed to be paid news, if it is published for a 'price in cash or kind as consideration'. Therefore, an important question for consideration is the second ingredient, mentioned above, of issue No.1. It is settled law that the onus of proof of an allegation or contention lies initially on the party which makes that allegation or contention. In the instant case, it is the complainants who have made the allegation that the

impugned publications are paid news and, therefore, the onus lies initially on them to prove that there was a price paid for these publications in cash or kind as consideration. While the complainants have not been able to show any documentary evidence for payment, they contended that any business house running newspaper industry would not incur huge expenditure on printing of supplements, etc., without consideration and suffer loss on that account.

77. In order to find out the version of the newspapers, the Commission, by its letter dated 6<sup>th</sup> April, 2010, sent through the Chief Electoral Officer, Maharashtra, had forwarded the clippings of the articles, etc., under reference, to the publishers of Lokmat, Pudhari, Deshonatti and Maharashtra Times, and asked them: (1) whether it is a sponsored article or paid article, (2) whether it was inserted through the instrumentalities of any political party or advertising agency, (3) if so, the amount paid, and (4) if so, the agency which paid for it. It would be apt to reproduce the relevant extracts of their replies as under:-

Letter dated 15<sup>th</sup> April, 2010 of the publisher, Lokmat Newspapers Pvt. Limited:

*“The objective of publishing these supplements was to acquaint the people of Maharashtra about the achievements and the developments brought about by the Congress led government in Maharashtra during its tenure under the leadership of the sitting Chief Minister. Educating and updating people about the development and the socio-political events are some of the prime responsibilities and objectives of media..... The other fact that motivated us to publish the supplements highlighting the accomplishments of the Congress led government in Maharashtra is the*

*alignment of our groups' ideology with that of the Congress party. Our founder late Jawaharlalji Darda was one of the leaders of the Congress party who were at the forefront during the freedom struggle..... Our Group strongly believe that Congress is the only party which offers a secular option to the electorate. This would give you a glimpse of the reason that drives us to reach out to the people of Maharashtra to present before them such content which highlights and promotes the Congress party and its leaders.....”*

Letter dated 10<sup>th</sup> April, 2010 of the Chairman and Managing Director, Pudhari Publications Pvt. Limited:

*“.....every newspaper has its inclination towards a political party and Pudhari is no exception to that. The Founder Editor of Daily Pudhari (Late) Padamshri Dr. G. Jadhav was a staunch congressman and had close relation with Mahatama Gandhi and Dr. B.R. Ambedkar. He was also a member of the Legislative Council representing Congress party..... there is no denying the fact that, it has a leaning towards Congress party, as is the case with other Marathi newspapers which are inclined towards some or the other political parties.....each newspaper covers all such events and gives due publicity, the only difference being the degree and extent of coverage depending on newspapers political inclination as explained above.....”*

*The NCP, Congress parties were sending the news items / articles from the party office of their respective parties and we had published these articles of various parties, so that the question of paid news does not arise and such type of articles are also published in all other newspapers in Maharashtra I.e. Lokmat / Punyanagari / Maharashtra Times etc.*

*I would like to reiterate as follows: (1) No news or article is sponsored or paid article, (2) It was not inserted through the instrumental of any*

*political party or advertising agency, (3) As it is an article the question of payment/amount does not arise, (4) The payment is not done so the question of any agency for paying the same does not arise.”*

Letter dated 17<sup>th</sup> April, 2010 of Managing Director and Editor of Deshonatti:

*“I have to clarify that the said publications were neither sponsored articles nor paid articles. It was reflection of my individual perception. It was not inserted through the instrumentality of any political party or any advertising agency. No bills are issued. It was not against any payment. No agency has made any payment for the same.”*

Letter dated 4<sup>th</sup> May, 2010 of the authorised signatory for Bennett, Coleman and Company Limited (Times of India Group):

*“We firmly believe in the Constitution of India and do everything within our means to strengthen our rich and diverse society through responsible media coverage. As a responsible corporate, we assure that correct and balance information reaches a right set of people at correct time..... As a complete newspaper during elections we cover newsworthy items, personalities, information and analysis of political parties/personalities so as to keep our readers informed and fulfil our duties as the fourth pillar of democracy..... In relation to election of said Hon’ble Chief Minister of Maharashtra, Shri Ashok Chavan, we categorically confirm that the three impugned articles are neither advertisement nor have been sponsored or paid for by him or on his behalf by any other person including any political party.....We are therefore, in compliance of your letter responding in seriatim to your queries as mentioned below: (1) the said articles are neither sponsored nor paid articles, (2) the said articles were not published at the instance of any political party or any*

*advertising agency, (3) in view of our response in para 1 and 2 hereinabove, we reiterate that the said articles are not advertisements and hence no monetary consideration was paid to us for the said articles. (4) we confirm that no agency was involved in the publication of the said articles.”*

78. Under the law, the respondent has to account for the expenditure incurred or authorized by him in connection with his election from 85-Bhokar Assembly Constituency and the Commission is making this enquiry to find out and ascertain whether there were any publications which sought to promote the prospects of the respondent at the election from 85-Bhokar Assembly Constituency and procure his election and of which the respondent knowingly took advantage. The Commission has given a careful look at all the impugned publications brought on record by the complainants in the form of various news, analysis, articles and items marked ‘advertisorial’, and appearing in various news papers, news paper supplements, pamphlets, magazines, etc. The details of all such publications produced by the complainants are given in paragraph 34 above.

79. The learned counsels for the respondent have asserted and claimed that all these publications speak only about the development of the State of Maharashtra and several welfare measures taken by the State Government under the leadership of respondent and that these publications nowhere make any

appeal or solicitation for votes for the respondent as a candidate from Bhokar Assembly Constituency. They contended that these publications are in the nature of general party propaganda and cannot be considered as having been made with the objective of promoting or procuring the election of the respondent from the said constituency. At the hearing, the Commission had made a specific query to the learned counsel for the complainants to point out those publications in particular which made any reference to the respondent as a candidate from the said Bhokar Assembly Constituency or to any special development works or welfare measures undertaken in relation to that constituency which might give an impression that an appeal, direct or indirect, was being made to woo the voters of that constituency in favour of the respondent. In response, the learned counsel for the complainant No.1 pointed out (i) one publication in which a reference was made to development works in the area falling in Bhokar Assembly Constituency, (ii) one more publication in which a similar reference was made for certain development works in Nanded District in which the Bhokar Assembly Constituency falls, and (iii) three news items eulogizing the respondent and the work done by him in Bhokar Assembly Constituency. The first such publication is a news item published in 'Lokmat' dated 12<sup>th</sup> September, 2009, and republished in 'Nav Bharat' dated 12<sup>th</sup> October, 2009, which speaks about the funding assistance to a Buddhist Pilgrims Spot, Mahavihar, Bavrinagar in Ardhapur, which forms part of Bhokar Assembly Constituency. The second publication is in 'Maharashtra Times' dated 10<sup>th</sup>

October, 2009 and it relates to some development plans for Nanded District as part of the development programme for Marathwada region. The remaining three publications are some news items in 'Dainik Satyaprabha' dated 13<sup>th</sup> October, 2009 in which the development works done in Bhokar Assembly Constituency have been highlighted and stated that the respondent has fair chance of success in that constituency.

80. Before the abovementioned publications are examined and analysed, it may be clarified that, under the provisions of section 77(1) of the 1951-Act, the Commission can look into only those publications which were made on or after the date on which the respondent filed his nomination for the election under reference, i.e., 24<sup>th</sup> September, 2009, and not any publication made earlier thereto. Further, the Commission would be legally required to look into only those publications which form part of the pleadings of the complainants and not any other document which may have been brought on record by way of evidence but which does not form part of any pleadings. The law on this point is well settled by the Hon'ble Supreme Court in *Ravinder Singh Vs. Janmeja Singh* (AIR 2000 SC 3026) that no evidence can be led on a plea not raised in the pleadings and no amount of evidence can cure defect in the pleadings. The Apex Court has also observed in *Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe* (AIR 1995 SC 2284) that in the appraisal of evidence, the courts have to closely scrutinize the same so as to ensure that the evidence led



by the parties has not gone beyond their pleadings or that no new case has been sought to be made out on the basis of the evidence produced or in the arguments which is not pleaded in the petition.

81. A look at the first mentioned publication in 'Lokmat' dated 12<sup>th</sup> September, 2009, and republished in 'Nav Bharat' dated 12<sup>th</sup> October, 2009, would show that the funding assistance to Mahavihar, Bavrinagar in Ardhapur, speaks about the overall development programme of the State Government for pilgrim destinations, like, Pandharpur, Tuljarpur, Shirdi, several forts (including Mahur Fort of Nanded) and several other pilgrim centres spread over the entire State of Maharashtra, like, Shrikshetre Dehu, Alandi, Bhandara Hilly Area, Pohra Devi and Ashtvinayak Temples. The second publication, mentioned above, is in 'Maharashtra Times' dated 10<sup>th</sup> October, 2009. This enumerates the details of the development plans for all the eight districts in the Marathwada region and is titled 'Marathwada Vikas Karyakram 2008'. The remaining three publications are some news items which appeared in the edition dated 13<sup>th</sup> October, 2009 of the main news paper 'Dainik Satyaprabha'. In these news items the development works done in Bhokar Assembly Constituency have been highlighted and the achievements of the respondent have been eulogized. Two of these publications are shown to be news items contributed by the correspondents of the newspaper 'Dainik Satyaprabha'. The third publication also is shown as news item contributed by some reporter or correspondent of

the news paper giving perception of the election campaign in the Bhokar Assembly Constituency. However, it has not been attributed to that correspondent. But, that there is no pleading at all with regard to these three publications in the main news paper of the issue dated 13<sup>th</sup> October, 2009 of 'Dainik Satyaprabha'. When confronted on the question of such silence in the pleadings on the same being pointed by the Commission, the learned counsel for the complainant No.1 placed reliance on the following sub-para at page 6 of his additional written statement dated 21<sup>st</sup> September, 2010 to contend that the above publications were covered by the pleading in the said sub-para:-

*“That, in view of the above fact no one can agree with the written statements by various news paper establishments in their reply to Commission. Thus the say of Shri Ashok Chavan based on the said news paper establishments replies to Commission stands untrue and cannot be accepted by any yardstick. Moreover above said news paper supplement should be considered as proof of sponsored advertisement and the expenditure of the above said sponsored supplement incurred by whatsoever should be considered as authorised expenditure by Shri Ashok Chavan. The above said expenditure should have appeared in the election expenditure account of Shri Ashok Chavan but as it is not so, the submitted election expenses account of Shri Ashok Chavan is untrue and incorrect. It would not be incorrect or out of place to furnish another evidence of Special supplement named VIKAS PARVA in local news paper Dainik Satyaprabha dated 11<sup>th</sup>, 12<sup>th</sup>, & 13<sup>th</sup> October 2009 annexed as – B.”*

The above paragraph would show that what the complainant is referring to, and relying upon, in this paragraph is the supplement of the 'Dainik Satyaprabha' under the title 'VIKAS PARVA' and not to any news item or article published in the issue dated 13<sup>th</sup> October, 2009, of the main news paper 'Dainik Satyaprabha'. In view of the settled position of law by the Hon'ble Supreme Court in the cases of *Ravinder Singh Vs. Janmeja Singh* (supra), the Commission cannot look into these three publications not adverted to at all in the pleadings of the complainant No.1 or by any other complainant.

82. The next point for consideration revolves around the news item published under the title 'The Development Man of Maharashtra' in the Free Press Journal on 3<sup>rd</sup> October, 2009 and the tag 'advertorial' added at the end of that news item. The contention of the learned counsel for complainant No.1 is that the said news item on its very face shows that it was an advertisement and as it speaks of the achievements of the respondent and eulogizes him, it should be considered as a 'paid news' by or on behalf of the respondent. There is an affidavit dated 5<sup>th</sup> June, 2014 of Shri G.L. Lakhotia, Publisher/Managing Editor of Free Press Journal in which he has stated that the said news item was contributed by their journalist Shri Nilesh More, that it was based on his own analysis and assessment of the news gathered during assembly election, that he had himself written and edited and that it was a pure news item and that he erroneously tagged with that story the word 'advertorial'. The Managing

Editor/Publisher has further stated that he took cognizance of that error and censured Shri More and transferred him from news desk to sports desk. the learned senior counsel for the respondent stated that the 'Free Press Journal' is published in Mumbai and has no circulation in Nanded or Bhokar and any publication in that newspaper far away from the constituency would have hardly given him any advantage in his election campaign.

83. The Commission has examined, scrutinized, and analysed all the news, analysis, articles and items marked 'advertorial' and appearing in various news papers, news paper supplements, pamphlets, magazines, etc., referred to in issue No.1. In the letters by various editors quoted in para 76, one paragraph stands out strikingly. The clear admission by the Chairman and Managing Director, Pudhari Publications, that "*The NCP, Congress parties were sending the news items / articles from the party office of their respective parties and we had published these articles of various parties, so that the question of paid news does not arise and such type of articles are also published in all other newspapers in Maharashtra i.e. Lokmat / Punyanagari / Maharashtra Times etc.*". This clearly demonstrates that the articles published by Pudhari have been provided by the political parties concerned. Thus it can be reasonably inferred that among the news articles mentioned in Para 57 (at least to the extent of news items in serial numbers 1,2,7, 10, 15, 17 and 18), those which were published by Pudhari have been provided by the political parties. Thus, the other newspaper

articles / materials which had identical publication (to the extent of the above serial numbers) also should have received the material from the same source. In view of the above, and with respect to ingredient (i) of issue No. 1, the Commission is of the considered view that the said news articles cannot be treated as general news in normal course as these are quite clearly received from political parties and reproduced by all such newspapers so as to pass as general news.

Further, the Commission is concerned to note that the newspapers Lokmat and Pudhari have admitted to be sympathisers of the Congress Party. The Lokmat newspaper further has said that *“our group strongly believes that Congress is the only party which offers a secular option to the electorate.”*. While every newspaper / media house is entitled to its own philosophy (which could be akin to a political party’s philosophy), what is sought to be published as news should be untinged by such philosophy as different from editorial. The minimum that is expected of ethical journalism is that the reader is cautioned by suitable disclaimers while such articles are published so that the unwary reader can make suitable allowance in his mind while forming his judgement. This matter assumes greater significance in the election period when the media needs to show greater responsibility.

84. However, in respect of ingredient (ii) of issue No.1, it must be stated that the price being paid in cash or kind is of relevance only if the publications were

made with a view to promoting or procuring the election of the respondent from 85-Bhokar Assembly Constituency. The Commission is of the considered opinion that the aforementioned publications, although can be established as being sourced from the political parties (by the own admission of Pudhari newspaper and corroborative evidence of identical articles in other newspapers), cannot be held to be promoting or procuring the election of the respondent from 85-Bhokar Assembly Constituency. These have to be seen as general party propaganda for the Indian National Congress and highlighting the achievements and the development works undertaken by the State Government headed by the respondent as Chief Minister of the State of Maharashtra.

85. Now, the Commission has to consider the matter relating to the publication of certain advertisements in the news papers in the context of the visits of Smt. Sonia Gandhi, President of the Indian National Congress, and Shri Jyotiraditya Scindia, Union Minister (both star campaigners of Indian National Congress within the meaning of Explanations (1) and (2) to section 77(1) of the 1951-Act), and Shri Salman Khan, Cine Artist, and the public meetings held by them in Nanded city and certain other places in that district. A public meeting was scheduled to be held at Nanded and addressed by Smt. Sonia Gandhi on 5<sup>th</sup> October, 2009, which was later on postponed to 6<sup>th</sup> October, 2009. Similarly, a public meeting was held by Shri Jyotiraditya Scindia on 7<sup>th</sup> October, 2009 at Cidco, Nanded City and Mudkhed (which falls in Bhokar Assembly

Constituency). Shri Salman Khan, Cine Artist also held a road show and a public meeting on 10<sup>th</sup> October, 2009 at Nanded. According to the complainant No.1, with a view to giving publicity and inviting the general public to attend those public meetings, the following advertisements were issued in various news papers, the expenditure whereon was not shown by the respondent in his account of election expenses:-

(A) Advertisements with regard to the public meeting of Smt. Sonia Gandhi initially scheduled to be held on 5<sup>th</sup> October, 2009 and re-scheduled and held on 6<sup>th</sup> October, 2009:

1. "Lokmat" dated 03.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
2. "Lokmat" dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
3. "Lokmat" dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
4. "Lokmat" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
5. "Prajawani" dated 03.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
6. "Prajawani" dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
7. "Prajawani" dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
8. "Prajawani" dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
9. "Dainik Satyaprabha" dated 03.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.

10. “Dainik Satyaprabha” dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
11. “Dainik Satyaprabha” dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
12. “Dainik Satyaprabha” dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
13. “Dainik Gaonkari” dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
14. “Dainik Gaonkari” dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
15. “Dainik Gaonkari” dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
16. “Udyacha Marathwada” dated 04.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
17. “Udyacha Marathwada” dated 05.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
18. “Udyacha Marathwada” dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.
19. “Deshonatti” dated 06.10.2009 published by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee.

(B) Advertisements with regard to the public meeting scheduled to be addressed Shri Jyotiraditya Scindia on 7<sup>th</sup> October, 2009 at Cidco, Nanded City and Mudkhed:

1. “Lokmat” dated 07.10.2009 published by Shri Ajay Bisen, President, Nanded District Congress Committee & Shri Munna Abbas for Nanded City Youth Congress Committee.



2. “Prajawani” dated 07.10.2009 published by Shri Ajay Bisen, President, Nanded District Congress Committee & Shri Munna Abbas for Nanded City Youth Congress Committee.

(C) Advertisements with regard to the road show and public meeting of Shri Salman Khan, Cine Artist scheduled to be held on 10<sup>th</sup> October, 2009 at Nanded:

1. “Prajawani” dated 10.10.2009 published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.

2. “Udyacha Marathwada” dated 10.10.2009 published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.

3. “Gaonkari” dated 10.10.2009 published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.

4. “Godatir Samachar” dated 10.10.2009 published by Shri Shyam Darak, Secretary, District Congress Committee Nanded.

86. The allegation of the complainant No.1 is that the respondent has not shown any expenditure in respect of the abovementioned 19 advertisements issued in various news papers between 3<sup>rd</sup> and 6<sup>th</sup> October, 2009 by Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee giving publicity to the public meeting to be held by Smt. Sonia Gandhi on 5<sup>th</sup> October, 2009, which was later postponed to 6<sup>th</sup> October, 2009. It is further alleged that the respondent has shown an apportioned expenditure of Rs.264/- on the publication of an advertisement by Shri Munna Abbasin “Satyaprabha” on 07.10.2009, but no expenditure was shown on similar advertisements in “Lokmat” and “Prajawani” on the same day, i.e., dated 07.10.2009. Likewise, it

is also alleged that the respondent has shown an apportioned expenditure of only Rs.660/- in respect of an advertisement published by Shri Shyam Darak in 'Satyaprabha' on 10<sup>th</sup> October, 2009, but did not show any expenditure in respect of similar advertisements published by Shri Shyam Darak on the same day in 'Prajawani', 'Udyacha Marathwada', 'Gaonkari' and 'Godatir Samachar' newspapers.

87. The plea of the respondent to refute the above allegations of the complainant No.1 is that he has accounted for the expenditure on all those advertisements of which he had knowledge or about which he was informed by the publishers of those advertisements. In support of his above stand, he has relied upon the affidavits of the publishers of those advertisements, namely, Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee, (who allegedly published the abovementioned 19 advertisements relating to the public meeting of Smt. Sonia Gandhi), Shri Munna Abbas, President, Nanded City Youth District Congress Committee (who allegedly published the abovementioned two advertisements relating to public meeting addressed by Shri Jyotiraditya Scindia at Cidco, Nanded City and Mudkhed) and Shri Shyam Darak, Secretary, District Congress Committee Nanded, (who allegedly published the abovementioned four advertisements relating to road show and public meeting of Shri Salman Khan, Cine Artist).

88. In his affidavit dated 9<sup>th</sup> June, 2014, Shri Amar Rajurkar, Secretary of Maharashtra Pradesh Congress Committee, has deposed that he had published the advertisements relating to the public meeting of Smt. Sonia Gandhi on 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> October, 2009 only in local dailies “Prajavani”, “Lokmat”, “Gaonkari” and “Udyacha Marathwada” and on 6<sup>th</sup> October, 2009 only in “Deshonnati”. In those advertisements, the names of all the nine candidates contesting in the district of Nanded as candidates of the Indian National Congress – Nationalist Congress Party – RPI(Gavai) alliance were given, as the public meeting of Smt. Sonia Gandhi was jointly held. The deponent has further stated on oath that he has borne the entire expenditure on the above publications on his own individually without the knowledge, consent, authorization and concurrence of any of the candidates, named in the said advertisements. The affidavit of the second publisher Shri Munna Abbas, President, Nanded Youth District Congress Committee, shows that on learning about the meeting of Shri Jyotiraditya Scindia, he had personally volunteered to make the publication about his public meetings at Cidco, Nanded City and Mudkhed. According to him, he published the advertisement only in the local daily “Satyaprabha” on 7<sup>th</sup> October, 2009 and not in any other newspaper and that neither the candidates nor their election agent have given their written or implied consent or authorization to publish those alleged advertisements. He added that though the publication of the above advertisement in “Satyaprabha” was his voluntary act, he nevertheless communicated to the accountant of the respondent that he had incurred an

expenditure of Rs.792/- on the above advertisement and that an amount of Rs.264/- was to be apportioned to the share of the respondent as the said advertisement carried the names of three candidates and that the said expenditure of Rs.264/- was accordingly accounted for in the account of election expenses of the respondent. Shri Shyam Darak, Secretary, District Congress Committee Nanded, in his affidavit dated 4<sup>th</sup> June, 2014 has also accepted the responsibility for the publication of an advertisement in “Satyaprabha” on 10<sup>th</sup> October, 2009, on the road show and public meeting of Shri Salman Khan, Cine Artist. He has denied the responsibility or knowledge about the publication of any other advertisement relating to the above road show and public meeting of Shri Salman Khan in any other newspapers. He states that he never delivered any declaration signed by him and attested by two persons personally known to him to the other newspapers, who printed those advertisements (as required under section 127A of the 1951-Act). According to his further assertion, he spent an amount of Rs.1,980/- on the publication of the above advertisement in “Satyaprabha” on 10<sup>th</sup> October, 2009, and that he gave an intimation to the account of the respondent to charge the apportioned amount of Rs.660/- in the election expenditure account of the respondent and which was subsequently ratified by the respondent.

89. Apart from the support sought to be derived by the respondent from the above affidavits of Shri Amar Rajurkar, Shri Munna Abbas and Shri Shyam

Darak, the respondent has also taken the plea that there was not even a whisper of any allegation by the complainants in their original complaints submitted in November-December, 2009 that he had suppressed any expenditure on advertisements relating to the abovementioned public meetings. He added that these allegations were made at much later stage in September, 2010, by adducing evidence during the course of these proceedings. He contended that the allegations with regard to these advertisements should not be looked into by the Commission in view of the Hon'ble Supreme Court's dictum in *Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe* (AIR 1995 SC 2284) that no evidence can be led on a plea not raised in the pleadings and that the court in the appraisal of evidence should ensure that the evidence led by the parties has not gone beyond their pleadings and no new case has been sought to be made out. He, nevertheless, submitted that he had duly accounted for the expenditure on such of those advertisements which were in his knowledge or were brought to his knowledge. He contended that if the publishers of those advertisements or anyone else did not bring to his notice or knowledge some of those advertisements, he could not be expected or required to account for any expenditure on those advertisements of which he was neither aware nor had knowingly taken any advantage whereof. His further submission was that even if the expenditure on some of the advertisements was not included in the account of his election expenses it was purely unintentional and was an accidental omission without any intention of suppressing any expenditure

incurred or authorized by him. He submitted that the well accepted general principle of law is that in borderline cases where two views are reasonably possible, the one in favour of the returned candidate should be accepted and he relied upon the following observation of the Hon'ble Supreme Court in *Narendra Singh V/s Mala Ram & another* (1999) 8 SCC 198 in support of his above submission:-

*“In borderline cases the courts have to undertake the onerous task of, ‘disengaging the truth from falsehood, to separate the chaff from the grain’. In our opinion, all said and done, if two views are reasonably possible – one in favour of the elected candidate and the other against him – Courts should not interfere with the expensive electoral process and instead of setting at naught the election of the winning candidate should uphold his election giving him the benefit of doubt. This is more so where allegations of fraud or undue influence are made.”*

90. He also submitted that he was a star campaigner of the party in terms of Explanations (1) and (2) of 1951-Act and also Chief Minister of the State carrying out the responsibility of the election campaign for the party in the entire State and moving from place to place throughout the State and could not be expected to read all the newspapers and know what was appearing therein relating to his own constituency. He contended that his case should be treated

as a special case falling within the exemption clause envisaged in the following observation of the Hon'ble Supreme Court in *Kanwar Lal Gupta's* case (supra):-

*“.....When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, **save in special circumstances**, that he impliedly authorized the political party to incur such expenditure.....”*

*(emphasis supplied by the respondent).*

91. He also added that the public meeting of Smt. Sonia Gandhi was held outside the Bhokar Assembly Constituency from where he was contesting the election, yet he accounted for the proportionate expenditure of Rs.1,24,062/-on the holding of the public meeting which fell to his share as he attended that public meeting and knowingly took advantage of. As regards the meetings/road show of Shri Jyotiraditya Scindia and Shri Salman Khan, though he did not attend the same being out of station, he nevertheless accounted for the proportionate expenditure of Rs.4,925/- on the public meeting of Shri Jyotiraditya Scindia and Rs.4,300/- only road show/meeting of Shri Salman Khan, apart from the expenditure on advertisements for those meetings which

were brought to his notice by the advertisers/publishers of those advertisements. He further added that if any expenditure had been incurred on the publication of any advertisements by any persons without his authorization, the persons concerned committed electoral offences punishable under section 171H of IPC and section 127A of the 1951-Act and they were answerable for their lapses and not the respondent.

92. The respondent has also relied upon the following observation of the Hon'ble Supreme Court in the case of *Smt. Indira Nehru Gandhi V/s Shri Raj Narain & others (1975) SCC Supp 1 (Page 189, Para 502)* and contended that he could not be held vicariously liable for the act or omission of a person who does something in the interest of the returned candidate, voluntarily, without his knowledge or consent:

*“502.....It is true that when elections of persons in the position of the Prime Minister or even of Ministers, whether in the Central Government or State Government, take place, a number of people come forward to either give or thrust their supposed aid in the election. It may be impossible for the candidate to refuse it without offending them. But it is also impossible for the Courts to make the candidate himself or herself responsible so as to impose an obligation upon the candidate to find out what expenses incurred by them were and then to add these on to the candidate's account of expenses. That would*



*be, obviously, a most unfair results. And, this is not what the law requires in this country. The law requires proof of circumstances from which at least implied authorization can be inferred.”*

With regard to concept of implied authorization as enunciated by the Hon'ble Supreme Court in the above cited case of *Smt. Indira Gandhi*, the respondent also referred to the following observation of the apex court in para 121 of that very judgement in *Smt. Indira Gandhi's* case:-

*“121. Allegations that election expenses are incurred or authorised by a candidate or his agent will have to be proved. Authorisation means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of reimbursement.”*

93. The Commission has given a careful consideration to the contentions and counter contentions of the complainants and the respondent on the question of publication of the abovementioned 25 advertisements in connection with the public meetings of Smt. Sonia Gandhi, Shri Jyotiraditya Scindia and Shri Salman Khan. In regard to the preliminary contention of the respondent that the

allegations with regard to the publication of these advertisements should not be looked into by the Commission, it needs to be pointed out that the allegations relating to the advertisements were specifically made by the complainant No.1 in his additional written statement dated 21<sup>st</sup> September, 2010, as with the evident from the following extract from the said additional written statement of the complainant dated 21<sup>st</sup> September, 2010:-

*“In the letter dated 27<sup>th</sup> January, 2010 Mr. Ashok Chavan has claimed that he had adhered to all the norms and rules of the election and that the expenses incurred by him were correctly and sincerely accounted. It will be very much evident from the following facts that Mr. Ashok Chavan has not adhered to all the norms and rules of the election and the expenses incurred and authorised by him were not correctly and sincerely accounted.*

*a) The advertisements of Hon’ble Sonia Gandhi’s Public Meeting for group of candidates for seekng support from voters in the said election, published by Maharashtra Pradesh Congress Committee Secretary Mr. Amar Rajurkar in Marathi dailies like LOKMAT, PRAJAWANI, SATYAPRABHA dated 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> October 2009 annexed as – C – Dainik Gavkari & Udyacha Marathwada dated 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, October 2009 annexed as – D – and Dainik Deshonnatee dated 6<sup>th</sup> October 2009 annexed as ---- E -----.*

*b) The advertisements of Hon’ble Jotiraditya Shinde’s (Scindia’s) public meeting for group of candidates for seekng support from voter in the said election, published by Mr. Ajay Bhisen President of Nanded city Congress I committee and Munna Abbas Nanded city youth congress I president, in Marathi dainik LOKMAT, PRAJAWANI dated 7<sup>th</sup> October 2009 annexed as – F –.*

*c) The advertisements of cine actor Shri Salman Khan's public meeting and road show for group of candidates for seeking support from voter in the said election, published by Mr. Shyam Darak Secretary Nanded Distt. Congress committee in DAINIK PRAJAWANI, UDYACHA MARATHWADA, GAVKARI, GODATEER SAMACHAR dated 10<sup>th</sup> October 2009 annexed as – G –.”*

Thus, it is clear that these advertisements have come on record to substantiate the specific allegations made by the complainant No.1 in his aforesaid additional written statement dated 21<sup>st</sup> September, 2010 and have to be necessarily taken into consideration by the Commission. Even the documents brought on record subsequent to 21<sup>st</sup> September, 2010 by way of additional written statements dated 20<sup>th</sup> October, 22<sup>nd</sup> October, and 29<sup>th</sup> October, 2010 and 4<sup>th</sup> January, 2011 have also been duly taken into consideration.

The complainants have produced the original newspapers containing these 25 advertisements. Even a cursory glance at those newspapers brought on record by the complainants will show that the name of the respondent, the name of his constituency from where he was contesting election and his photograph have been prominently displayed in all the advertisements published in these newspapers. All these advertisements, besides indicating the date, time and venue of the public meetings of Smt. Sonia Gandhi, Shri Jyotiraditya Scindia and Shri Salman Khan, contain exhortations to the general public of all the constituencies concerned to attend those meetings in lakhs. Insofar as the public meeting of Smt. Sonia Gandhi is concerned, there were as many as 19

advertisements which were repeatedly published on 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> October, 2009 in as many as six newspapers having local circulation, namely, “Lokmat”, “Prajawani”, “Dainik Satyaprabha”, “Dainik Gaonkari”, “Udyacha Marathwada” and “Deshonatti”. The public meeting of Shri Jyotiraditya Scindia was publicized by issuing advertisements on 7<sup>th</sup> October, 2009 in “Lokmat” and “Prajawani”, in addition to “Dainik Satyaprabha”. Likewise, the road show/public meeting of Shri Salman Khan was also given publicity on 10<sup>th</sup> October, 2009 by means of advertisements issued in “Prajawani”, “Udyacha Marathwada”, “Dainik Gaonkari” and “Godatir Samachar”, besides “Dainik Satyaprabha”. The Commission cannot accept the plea of the respondent that he was totally unaware, ignorant, or had no knowledge, of publication of all these advertisements, though he admits knowledge of the holding of the above meetings. He himself admits to have attended the public meeting of Smt. Sonia Gandhi on 6<sup>th</sup> October, 2009 and yet he claims that he had no knowledge about the issue of as many as 19 advertisements published about that meeting repeatedly in six newspapers on 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> October, 2009. The Commission is unable to accept this explanation. He also cannot disown knowledge of the advertisements relating to the public meetings of Shri Jyotiraditya Scindia and Salman Khan, when he himself accounted for the proportionate expenditure on advertisements relating to those meetings in one of the newspapers, “Dainik Satyaprabha”. Shri Amar Rajurkar who published the advertisements relating to public meeting of Smt. Sonia Gandhi admitted the

publication of advertisements on 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> October, 2009 only in four local dailies “Prajawani”, “Lokmat”, “Dainik Gaonkari” and “Udyacha Marathwada”, and on 6<sup>th</sup> October, 2009, only in “Deshonnati”. Shri Amar Rajurkar further claimed that he published the advertisements on his own, without authorization from the respondent. Similarly, Shri Munna Abbas and Shri Shyam Darak have deposed in their affidavits that they published advertisements relating to public meetings of Shri Jyotiraditya Scindia and Shri Salman Khan respectively, only in one newspaper “Dainik Satyaprabha” and not in the other newspapers. The Commission has examined closely the original advertisements bearing their names and designations in the party organization have been produced before the Commission. All these advertisements look identical in all respects including fonts and photography used, to those advertisements the publication whereof they themselves have admitted in one of the newspapers. Here also, the respondent has himself admitted the knowledge on his part about the holding of the abovementioned two public meetings as he has himself accounted for the proportionate expenditure on the holding of those meetings and included such expenditure in his account of election expenses. In the circumstances, it is hard to believe their statements.

94. Having regard to the totality of the circumstances mentioned above relating to the publication of the aforesaid 25 advertisements in various newspapers referred to above, the Commission is of the considered view that

respondent cannot validly claim ignorance about the publication of the abovementioned 25 advertisements in which his name, the name of his constituency and also his photograph prominently appeared.

95. The Supreme Court, in its judgement in *Kanwarlal Gupta vs Amar Nath Chawla* (1975), has noted –

*“Douglas points out in his book called Ethics in Government at page 72, "if one party ever attains overwhelming superiority in money, newspaper support, and (government) patronage, it will be almost impossible, barring an economic collapse, for it ever to be defeated." This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or wealth.*

*.....It is only where expenditure is incurred which can be identified with the election of a given candidate that it would be liable to be added to the expenditure of that candidate as being impliedly authorised by him.”*

96. Further, the Supreme Court, in its judgement dated 05/05/2014 in *Ashok Shankarrao Chavan Vs. Dr. Madhavrao Kinhalakar & Ors.*, while directing the manner of proceedings to be undertaken by the Election Commission in deciding this matter, has noted as follows –

*“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.”*

97. The Commission is fully alive to the implications of invoking the concept of “implied authorization” in expenditure by candidates in connection with their election. The Commission has also taken note of the observation of the Hon'ble Supreme Court in Smt. *Indira Gandhi's* case (Supra), referred to in para 92above. It may be pointed out that the above observation made by the Hon'ble Supreme Court in the context of the law then obtaining whereby the expenditure incurred or authorized by any political party, association or body of persons or even individuals (other than the candidate or his election agent) were not to be treated as part of the candidate's expenditure. Further, that observation of the Hon'ble Supreme Court came while considering the constitutional validity of the Explanations (1) and (2) added to section 77(1) in 1974/1975. As noticed above, the law on the point has undergone a change in 2003 when the said Explanations (1) and (2) to section 77(1) were omitted and replaced by two new Explanations exempting only the expenditure incurred by political parties on the travel of their leaders for general party propaganda. Thus, any expenditure incurred by a political party or any third person of which the candidate knowingly takes advantage is to be considered as having been authorized, by necessary implication by the candidate, as was held by the Hon'ble Supreme

Court in the case of *Kanwar Lal Gupta* (Supra). Even the learned senior counsel for the respondent conceded in his oral submissions that the law laid down by the Hon'ble Supreme Court in *Kanwar Lal Gupta's* case is good law and applicable to the facts and circumstances of the present case.

98. The Commission has also taken due note of the concern raised by the respondent, relying on the observation of the Hon'ble Supreme Court in *Smt. Indira Gandhi's* case (supra), referred to in para 92 above and also the observations of the apex court in *Kanwar Lal Gupta's* case referred to in para 90 above, regarding the special consideration to be given in relation to expenditure of star campaigners (as defined in Explanation (1) and (2) of Section 77 of the 1951-Act) or top political leaders who have a responsibility of campaigning for the state or for the country on behalf of the party. It is true that there could be an assortment of so-called friends and well-wishers who could proffer assistance by way of advertisements etc., or even malevolent persons offering unsolicited and unknown advertisements which could act as a booby trap at a later stage by raising issues under rule 89 read with section 10A of the 1951-Act. However, in the instant case, the Commission has carefully examined the material on record and the persons who have claimed sponsorship of such advertisements. The Commission feels fully justified in invoking application of implied authorization in the instant case, as –

- The persons sponsoring advertisements are responsible office bearers holding important positions in the party – one, being the Secretary of the



Maharashtra Pradesh Congress Committee, the second being the Secretary of the Nanded District Congress Committee and the third being the President of the Nanded City Youth Congress Committee, and not ordinary supporters or workers in the field.

- The quantum of such advertisements is significant (25 in number) and cannot be claimed as a stray advertisement. The publication of these very advertisements in some of the newspapers is admitted by the respondent himself and account for the expenditure on those advertisements.
- The advertisements relate to public meetings in furtherance of the candidate's election prospects, in which the expenditure for the public meeting / rally is also admitted by the candidate. In the main public meeting held by Smt. Sonia Gandhi, the respondent himself admits to have attended and 19 out of 25 impugned advertisements which have not been accounted for relate to that very public meeting which he had attended.
- These advertisements were specifically issued in the context of the public meetings to be held by Smt. Sonia Gandhi, Shri Jyotiraditya Scindia and Shri Salman Khan and not by way of general party propaganda.

99. The contention of the respondent that in borderline cases where two views are reasonably possible, the one in favour of the returned candidate should be accepted has also no relevance in the facts and circumstances of the

present case. The provisions of section 10A of the 1951-Act, as interpreted by the Hon'ble Supreme Court in its present judgement dated 5<sup>th</sup> May, 2014 are now explicitly clear and unambiguous. Even the Commission's own view in the case of *Umlesh Yadav* (decided by the Commission on 20<sup>th</sup> October, 2011), fortifies this position that section 10A does not admit the possibility of two reasonably plausible views being taken. The Commission has observed in that case that said section 10A of the 1951-Act does not give any discretion to the Commission or leeway in the matter of its application. This view has been upheld, not only by the Hon'ble Allahabad High Court in the Writ Petition filed by Smt. Umlesh Yadav, but also by the Hon'ble Supreme Court in the SLP filed by her and decided on 5<sup>th</sup> May, 2014. Therefore, the present case cannot be taken as a borderline case where two reasonably plausible views are possible.

100. In view of the above position as set out by the Hon'ble Supreme Court, examination and analysis of the documents on record and the submissions of the learned counsel of both the contended parties, the conclusion of the Election Commission on issues No.1 and 2 is that the respondent had given his implied authorization for the publication of the above mentioned 25 advertisements in various newspapers and had knowingly taken advantage of such publications of the advertisements relating to the public meetings / rally of Smt. Sonia Gandhi, Shri Jyotiraditya Scindia and Shri Salman Khan. Thus, by such implied authorization, the respondent had given his authorization and consent for the expenditure incurred on the publication of those advertisements in the

newspapers mentioned above. The respondent cannot feign ignorance about the large number of advertisements relating to these important election campaign activities. The respondent also cannot validly contend that the action may be taken under section 171H of the IPC and section 127A of the 1951-Act against those persons who were responsible for the publication of these advertisements without his knowledge or consent. As has been held by the Commission above, the respondent had given his consent by implied authorization, for the expenditure incurred on the publication of these impugned advertisements and therefore, there is no merit in his contention that the action would lie against the publishers and not against him, for not including the expenditure on those advertisements in his account.

### **Issue No.3**

101. The Commission would now take up issue No.3 which is reproduced below:-

*“Whether the lodging of such account of election expenses which does not include the expenses covered by issue No. 2 above (in connection with the election of the respondent) would be tantamount to failure on his part to lodge the account in the manner required by or under the law?”*

102. In view of the above conclusion of the Commission arrived at on issues No.1 and 2, it is quite clear that despite knowledge and awareness on his part, the respondent did not show the expenditure made on the publication of the

abovementioned 25 advertisements in his account of election expenses maintained under section 77(1) and lodged with the District Election Officer, Nanded under section 78 of the 1951-Act. He has thus failed to lodge the account of his election expenses in the manner required by or under the law. His plea is of no avail that even if the total amount of expenditure on the abovementioned advertisements, which according to his calculation comes to Rs.16,924/-, is added to his expenditure of Rs.6,85,192/- incurred or authorized by him in connection with his election, such total expenditure would come nowhere near the maximum limit of Rs.10 lakh as permissible under the law. If such a plea is accepted by the Commission, then every candidate would get a license to file an incorrect or false statement and, if caught, may contend that the suppressed expenditure may be added to his account of election expenses. This would frustrate and defeat the very object underlying the provisions of section 77 requiring the maintenance of true account of election expenses and of section 10A of the 1951-Act providing for disqualification for filing an incorrect or false account. In a similar matter relating to the account of election expenses of Ms. Umlesh Yadav, a returned candidate at the general election to Uttar Pradesh Legislative Assembly in 2007, the Commission had held :

*“To some people, the view of the Commission that the suppression of expenditure of Rs. 21,250/- by Smt. Umlesh Yadav in her account of election expenses amounts to failure on her part to file her true and correct account inviting action under the said Section 10A might appear too harsh. The*

*Commission is, however, bound by the law made by Parliament and is duty bound to follow the same, particularly where the law so enacted does not give any discretion to the Commission or leeway in the matter of its application.”*

**Issue No.4& 5**

103. Issue No.4 is in the following terms:-

*“Whether the respondent has good reason or justification for such failure to lodge his account of election expenses in the manner required by or under the law?”*

104. Issue No. 5 is in the following terms:-

*“Whether the respondent is liable to be disqualified for his above failure by the Election Commission under Section 10A of Representation of Peoples Act, 1951, r/w sections 77 & 78 for a period of three years from the date of the order of the Commission?”*

105. In answer to issue No.3, the Commission has found and decided that the respondent failed to lodge his account of election expenses in the manner required by law. Having arrived at such conclusion, the Commission is bound by the provisions of rule 89 (5), as under –

*“When 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”*

106. The further question for consideration by the Commission in terms of issue No.4 now is whether the respondent had any good reason or justification for the above-said failure to include the expenditure on the advertisements published in various newspapers in connection with the meetings of Smt. Sonia Gandhi, Shri.Jyotiraditya Scindia and Shri. Salman Khan. The learned senior counsel for the respondent had argued that the question of offering any justification or reason for any failure to lodge the account of election expenses in the manner required by or under the law would arise only after the Commission has come to a decision in terms of Rule 89(5) of the 1961-Rules that the respondent had failed to lodge the account of election expenses in the manner required by or under the law and had issued a notice to the respondent asking for such explanation. They further argued that the respondent would then get an opportunity under Rule 89(6) of giving such explanation within 20 days of the receipt of the notice asking for such explanation. In this context, the learned senior counsel also invited reference to para 47 of the Commission's order dated 2<sup>nd</sup> April, 2011 wherein the Commission has observed that the Commission has to arrive at satisfaction under section 10A on two counts, namely, (a) that the candidate has failed to lodge an account of election expenses within the time and in the manner required by or under the law, and (b) that the candidate has no good reason or justification for the above failure. The Commission has further observed in that para that the present enquiry by

the Commission in the instant case is for the purpose of coming to its satisfaction on the first count and that if the Commission is satisfied on the first count that there has been a failure on the part of the respondent in lodging his account of election expenses in the manner required by law, then the respondent would require a notice whether he has any good reason or justification for his failure and whether he should be disqualified under section 10A. One view, as has been taken on behalf of the complainants, may be that there is no need for issuing any further notice to the respondent at this stage as the respondent had full knowledge with regard to the questions of law and also the questions of fact in controversy as is evident from the issues framed by the Commission, particularly issue No.4. According to them, the observations of the Commission in the above referred para 47 of the Commission's order dated 2<sup>nd</sup> April, 2011, got subsumed in the present issues framed by the Commission and that the respondent can thus be presumed to have been given the requisite notice in terms of Rule 89(5) of the 1961-Rules.

107. However, the Supreme Court order dated 5<sup>th</sup> May, 2014, also envisages issuance of a showcause notice under Rule 89 (5).The Commission also feels bound by its own above cited observations in para 47 of its order dated 2<sup>nd</sup> April, 2011 that the Commission may give a further notice to the respondent if it is satisfied on the first count that the candidate had failed to lodge his account of election expenses in the manner required by law.

108. The Commission hereby has decided that the respondent has failed to lodge his account of election expenses in the manner required by the Act and rules. The Commission directs the respondent to show cause in terms of Rule 89(5) of the 1961-Rules why he should not be disqualified under section 10A of the 1951-Act. The respondent is directed to submit his representation, if any, to the Commission within 20 days from the date of receipt of this order.

ORDERED ACCORDINGLY

Sd/-  
(H.S. BRAHMA)  
ELECTION COMMISSIONER

Sd/-  
(V.S.SAMPATH)  
CHIEF ELECTION COMMISSIONER

Sd/-  
(Dr. S.N.A. ZAIDI)  
ELECTION COMMISSIONER

NEW DELHI THE 13<sup>th</sup> JULY, 2014

*Certified*  
*Mallik*  
*13-07-14*  
MALAY MALLICK  
Under Secretary  
Election Commission of India  
New Delhi-110001