IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2018

(Against the Final Impugned Order dated 03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Revision Application No. 94 of 2016 and in Criminal Application (APPR) No.101 of 2018)

IN THE MATTER OF

SatishUkey ... Petitioner

Versus

DevendraGangadharraoFadnavis& Anr. ... Respondents

PAPER BOOK
Vol - I Page → A to 201
(FOR INDEX ONLY SEE INSIDE)

WITH

CRLMP No. /2018

APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

AND

CRLMP No. /2018:

APPLICATION FOR CONDONATION OF DELAY IN FILING SLP

AND

CRLMP No. /2018

APPLICATION FOR CONDONATION OF DELAY IN REFILLING SLP

CRLMP No. /2018

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION

DVOCATE FOR PETITIONER: BALRAJ DEWAN

RANJEETA ROHATGI
Advocate on Record
Supreme Court of India
A-207, Lower Ground Floor, Defence Colony, New Delhi-110024
Tel.: +91-11-41006747, Telefax : +91-11-41005031, Mobile : +91-9810933276
Email : rohatgi.ranjeeta@gmail.com

To

08/02/2019

The Registrar
Supreme Court of India
New Delhi

Court No. 1
Item No. 37
Dated 11.02.2019

Re: SLP (Crl) No. 19-20 of 2019
SATISH UKEY
Versus
DEVENDRA GANGADHARRAO FADNAVIS AND ANR

Dear Sir,

1. The above-mentioned matter is listed on 11.02.2019 in Court No. 1 as Item No. 37 before their Lordships Hon'ble The Chief Justice and Hon'ble Mr. Justice Sanjiv Khanna.

2. The Advocate on record has filed Vakalatnama on behalf of Respondent No.1 on 06.02.2019, when the matter will be called out, the Counsel for Respondent No.1 will be requesting for an adjournment by 4 weeks for filing Counter Affidavit.

3. You are requested to kindly circulate this letter before their Lordships, Hon'ble The Chief Justice and Hon'ble Mr. Justice Sanjiv Khanna, for their Lordships convenience at my risk.

Thanking You,

Yours faithfully,
Ranjeeta Rohatgi
(RANJEETA ROHATGI)
Advocate for the Respondent No.1

Copy to:

Mr. Balraj Dewan, Adv.

Mr. Nishant Ramakantrao Katneshwarkar, Adv.

Ms. Kamini Jaiswal, Adv.

ITEM NO.5 COURT NO.1 SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL). NO(S)...../2018
DIARY NO(S). 30432/2018
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 03-05-2018 IN CRA NO. 94/2016 AND CRL.APP.(APPR) NO.101/2018 PASSED BY THE HIGH COURT OF JUDICATURE AT BOMBAY AT NAGPUR)

SATISH UKEY PETITIONER(S)

VERSUS

DEVENDRA GANGADHARRAO FADNAVIS & ANR. RESPONDENT(S)
(IA NO.172155/2018-CONDONATION OF DELAY IN FILING AND IA NO.172159/2018-EXEMPTION FROM FILING O.T. AND IA NO.172156/2018-CONDONATION OF DELAY IN REFILING AND IA NO.172157/2018-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 13-12-2018 These petitions were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Vaibhav Srivastava, Adv.
Mr. Balraj Dewan, AOR

For Respondent(s)

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

Heard the learned counsel for the petitioner and perused the relevant material.

Delay condoned.

Exemption from filing O.T. is granted.

Permission to file additional documents is granted.

Issue notice, returnable in six weeks.

[VINOD LAKHINA]
AR-cum-PS

[ANAND PRAKASH]
BRANCH OFFICER

INDEX OF RECORD OF PROCEEDINGS

S.No.	DATE OF RECORD OF PROCEEDINGS	PAGE No.
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

INDEX

S.No.	Particulars of Documents	Page No. of Part to which it belongs		Remarks
		Part1	Part2	
(i)	(ii)	(iii)	(iv)	(v)
1.	Office Report	A	'A'	
2.	Listing Performa	A1-A2	A1-A2	
3.	Cover page of paper book		A3	
4.	Index of Record of Proceeding		A4	
5.	Limitation Report prepared by the registry		A5	
6.	Defect list		A6 -	
7.	Note Sheet		NS1 to NS	
8.	Synopsis with list of dates and events	B - F		
9.	A true copy of final Impugned Order dated03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Revision Application No. 94 of 2016.	1-28		
10. S.L.P.	A true copy of final Impugned Order dated 03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Application (APPR) No. 101 of 2018	29-36		
11.	Special leave Petition along with affidavit	32-32B		
12.	Appendix Rule 4A Conduct of Election Rules, 1961 and section 33A Representation of People Act 1951.	38-39		

13.	Annexure P-1 A true copy of the order dated 07.05.1996 passed by Judicial Magistrate First Class (Court No-6), Nagpur in Summary Case No. 231/1996	40		
14.	Annexure P-2 A true copy of the order dated 07.06.1999 passed by Judicial Magistrate First Class (Corp. Court No-2), Nagpur in Regular Criminal Case (old No. 125 of 1998) No. 343/2003	41		
15.	Annexure P-3 A true copy of the application dated 18.09.2000 filed in Regular Criminal Case (old No. 125 of 1998) No. 343/2003 before Judicial Magistrate First Class (Corp. Court No-2), Nagpur	42-43		
16.	Annexure P-4 A true copy of the order in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294] dated 02.05.2002	44-72		
17.	Annexure P-5 A true copy of judgment passed by this Hon'b'e Court in Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399]	73-150		
18.	Annexure P-6 A true copy of Order No. 3/ER/2003/JS-II issued by the Election Commission of India dated 27.03.2003	151-164		
19.	Annexure P-7 A true copy of the notification dated	165-175		

Copy

	01.08.2012 amending the Conduct of Election Rules, 1961			
20.	Annexure P-8 A true copy of the letter No. 3/2012/SDR dated 24.08.2012 issued by Election Commission of India to Chief Electoral Officers of all the States and Union territories notifying them of the changes made in Form 26	176-177		
21.	Annexure P-9 A true copy of the letter dated 26.09.2012 by Election Commission of India to Chief Electoral Officer of all States and Union Territories	178		
22.	Annexure P-10 A true copy of Letter No. 4/2014/SDR-/Vol-I dated 26.04.2014 issued by the Election Commission of India to the Chief Electoral Officers of all States and Union Territories along with original document	179-182		
23.	Annexure P-11 A true copy of the relevant portion of the affidavit (FORM 26) dated 26.09.2014 submitted by Mr. DevendraFadnavis before the Retuning officer for the 52- South West Nagpur Constituency Maharashtra Legislative Assembly general election 2014	183-193		
24.	Annexure P-12 A true copy of the CR [illegible] MCA No. 3550 of 2014 dated 20.10.2014 filed before the court of Judicial Magistrate First Class (Court No-6),Nagpur	194-201		

A

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2018

IN THE MATTER OF

SatishUkey ... Petitioner

Versus

DevendraGangadharraoFadnavis and Anr. ... Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is/ are within time.

2. The Petition is barred by time and there is delay of ____ days in filing the same against order dated _____ and petition for condonation of ____ days delay has been filed.

3. There is delay of 48 days in refiling the petition and petitioner has prayed for condonation of 48 days delay in refiling and petition for condonation of 48 days delay in refiling has been filed.

BRANCH OFFICER

NEW DELHI

DATED:

A1

PROFORMA FOR FIRST LISTING

SECTION : IIA

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

- Central Act : (Title) Representation of People Act 1951
- Section : 33A Rule 4
- Central Rule : (Title) NA
- Rule No(s) : NA
- State Act : NA
- Section : NA
- State Rule : (Title) NA
- Rule No(s) : NA
- Impugned Interim Order : (Date) NA
- Impugned Final Order/Decree : (Date) 3.5.2018
- High Court (Name): Bombay Nagpur Bench Nagpur
- Names of Judges : Hon'ble Mr. Justice S.B Shukre, J
- Tribunal/Authority : (Name) :

1. Nature of Matter : Civil [ ] Criminal [Yes]
2. (a) Petitioner/ Appellant No. 1 : Satish Uke
   (b) E-mail ID : NA.
   (C) Mobile Phone Number : NA.
3. (a) Respondent No. 1 : Devendra Gangadharrao Fadnavis
   (b) E-mail ID : NA.
   (c) Mobile phone number : NA.
4. (a) Main category classification : 18
   (b) Sub classification : 1807
5. Not to be listed before : NA.
6. Similar/Pending matter : No similar matter is pending

7. **Criminal Matters :**

(a) Whether accused/convict has surrendered : Yes ☐ No ☐

(b) FIR No. NA. Date : NA.

(c) Police Station : NA.

(d) Sentence Awarded : NA.

(e) Sentence Undergone : NA.

8. **Land Acquisition Matters :**

(a) Date of Section 4 notification : NA.

(b) Date of Section 6 notification : NA.

(c) Date of Section 17 notification : NA.

9. **Tax Matters :** State the tax effect : NA.

10. **Special Category** (first Petitioner/appellant only) :

Senior citizen > 65 years ☐ SC ☐ Woman/child ☐ Disabled ☐

Legal Aid case ☐ In custody ☐

11. Vehicle Number (in case of Motor Accident Claim matters) : NA.

12. Decided cases with citation : NA.

AOR for Petitioner(s)/appellant(s)

(Name) Bairaj Deewan

Registration No.

B

SYNOPSIS

The present Special Leave Petition under Article 136 of the Constitution of India has been filed by the Petitioner against the final Impugned Order dated 03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in Criminal Revision Application No. 94 of 2016 wherein the Hon'ble High Court allowed the criminal revision application in favour of Respondent No. 1 and set aside the order dated 30.05.2016 passed by the Session Judge, Nagpur in Criminal Revision 250 of 2015 and confirmed the order passed by the Judicial Magistrate, First Class, Nagpur on 07.09.2015.

The Impugned Order engages in an overly strict and incorrect reading of Rule 4-A of the Conduct of Election Rules, 1961 read with the parent act viz. Representation of the People Act, 1951 clearly ignoring the law laid down by the Hon'ble Supreme Court in Union of India v. Association for Democratic Reforms and Anr.[(2002) 5 SCC 294] and People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399] where it was categorically held that a candidate contesting elections must disclose information about cases in which cognizance has been taken by a court.The law declared by the Supreme Court is binding upon all other courts under Article 141 and must be read as a part of and along with any statutory provision or rule. The Impugned Order doesn't discuss at all the law concerning declaration of criminal antecedents laid down by this Hon'ble Court and its evolution over the course of time.

The Central Government and the Election Commission, acting on the directions and law propounded by this Hon'ble Court made changes to Form 26 in of the Conduct of Election Rules in 2012, which is prior to the Respondent filing his nomination.This provision was upheld by a Constitution Bench of this Hon'ble Court very recently in Public Interest Foundation and Ors. v. Union of India and Anr. (2018, SCC Online SC 1617)where it stated that "each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein."

This Hon'ble Court in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294] issued directions to Election Commission of India to call for, on an affidavit, information on whether a Lok Sabha or State Legislature election candidate is accused in any pending case of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by court of law, six months prior to filing of nomination.

Following the judgment of the Hon'ble Supreme Court, in 2002 amendments were made to the Representation of the People Act, 1951 [hereinafter referred to as "RPA"]. Inter alia, Section 33A was added:

> "(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more."

It is pertinent to note that Section 33-A(1)(i) explicitly only required disclosure ininstances where charges had been framed and excluded cases where cognizance had been taken without charges being framed.

Subsequently, this Hon'ble Court in People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399] held that "there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure."Further, the Election Commission was directed to issue revised instructions to ensure implementation of Section 33-A subject to the directions issued with respect to cases in which cognizance has been taken in Union of India v. Association for Democratic Reforms and Anr.[(2002) 5 SCC 294].

Section 33-B was also added through the 2002 amendment. It stated that notwithstanding anything contained in any judgment of any court, or any instruction issued by the Election Commission, no candidate shall be liable to disclose information not required by the Act or rules made thereunder.Section 33-B was declared

unconstitutional in People's Union for Civil Liberties v. Union of India and Ors.[(2003) 4 SCC 399] as violating the fundamental right of citizens to know the antecedents of election candidates. This right was held to be an essential facet of freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution with could only be validly limited through restrictions conforming with Article 19(2).

In pursuance of implementing the decisions of this Hon'ble Court, Election Commission ordered disclosure in the nomination paper of the details of pending cases against the candidate in which cognizance had been taken by a competent court of law, even if charges had not been framed. In order to ground this essential disclosure obligation on stronger legal footing, the Code of Conduct Rules, 1961 were amended to incorporate this provision in Form 26 read with Rule 4-A. Rule 4-A stated that the candidate "shall" deliver to the Returning Officer an affidavit as laid down in Form 26. Form 26 required disclosure of information regarding case in which cognizance had been taken.

In a letter dated 26.12.2012 the Election Commission reiterated and clarified that a disclosure would be incumbent upon a candidate after cognizance of a case is taken by the Magistrate, irrespective of whether charges have been framed or not.

Respondent No. 1 was the accused in a Summary Case and a Regular Criminal Case under Section 500 andSections 468, 471, 217, 218, 467, 420, 34 of the Indian Penal Code, 1860 respectively.

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Orders issuing process were passed in both the casesthereby implying that cognizance of the offences had been taken.

Respondent No. 1, presently the Chief Minister of Maharashtra, contested Maharashtra Legislative Assembly General Elections in 2014. He filed the affidavit required by Form 26 while concealinginformation about the two criminal cases pending against him where cognizance had been taken.

The Petitioner, filed a complaint case before the Judicial Magistrate First Class (JMFC) at Nagpur for taking action under Section 125-A of the RPA. The JMFC, in utter disregard of the statutory provisions, held that since charges had not been framed against Respondent No. 1 in the two cases, he was not bound to disclose information about these cases in the affidavit.

Consequently a revision application was filed before the Sessions Judge, Nagpur who set aside the "cryptic and non-speaking order" of the JMFC and remanded the matter back for fresh consideration.

Respondent No. 1 filed a revision application before the High Court of Judicature at Bombay, Nagpurand the court through the Impugned Order wrongly set aside the order of the Sessions Court and confirmed the order of the JMFC.

The High Court mistakenlypresumed Section 33-A to be exhaustive, when it stated that "it is only the kind of information that has been specified under it's [sic] two clauses, clause (i) and clause (ii), which is required to be furnished by the candidate and nothing more."The Court then pigeonholed the complaint of the Petitioner as being one under Section 33-A(1)(i). It is pertinent to note that it was never the

case of the Petitioner that the alleged disclosure is required under Section 33-A(1)(i). Rather the Petitioner traced this obligation through a cumulative reading of Section 33-A of the RPA, Rule 4-A and Form 26 of the Conduct of Election Rules, 1961.

The interpretation offered by the High Court in the Impugned Order runs contrary to both the text as well as the underlying objective of the statutory provision.Clauses (i) and (ii) fall under sub-section 1 which opens by stating that "apart from any information which he is required to furnish under the Act or the rules made thereunder" the candidate shall "also" furnish the information required in clauses (i) and (ii). Therefore, the Section clearly envisages disclosure of information beyond what is directly stated therein. In furtherance of this very intention, Conduct of Election Rules, 1961 have been framed.

Rule 4-A requires that the candidate "shall" deliver the affidavit in Form 26 to the Returning Officer. Therefore, a candidate ought to abide by the disclosures mandated by Form 26 (including disclosure of pending cases in which cognizance has been taken), which Respondent No. 1 has admittedly failed to do in the instant case.

The High Court was also wrong in its interpretation of Section 125-A when it stated that the penalty under the Section "is invited only when a candidate fails to furnish information as *required* under sub-section (1) of Section 33A". Section 125-A does not refer to information "*required* under sub-section (1)" but instead refers to the information "*relating to* sub-section (1)", thereby taking into account the expansive scope of Section 33-A, and consequently not overly

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restricting the ambitof Section 125-A.This interpretation is buttressed by the fact that the Election Commission had already explicitly clarified that any false declaration or concealing of information in the affidavit in Form 26 would attract provisions of Section 125-A of the RPA.

The High Court erred in concluding that Rule 4-A cannot dominate the substantive provision of law viz. Section 33-A and that Rule 4-A "cannot be understood as prescribing something more which is not the requirement of sub-section (1) of Section 33A of the Act." This conclusion flows from a complete misreading of the statute. Section 33-A read with Section 169 (power of the Central Government to make rules) clearly envisages the possibility of the candidate being compelled to furnish more information than what is expressly enumerated in Section 33-A. Therefore, Rule 4-A read with Form 26 merely operationalizes what Section 33-A fathoms, and in no way dominates or clashes with any substantive provision of law.

The overly restrictive interpretation adopted by the High Court seeks to limit the scope of disclosures that may be required of a candidate to only what is specifically enumerated in Section 33-A. Such an interpretation stifles a voter's fundamental right to know about the candidate contesting the elections, an essential and a necessary concomitant of a free and fair election.

The interpretation offered by the High Court which relegates Section 4-A to a mere formality isin direct contradiction to the text and objective of the provisions.The High Court's interpretation of the Rule implies that there are no repercussions whatsoever in case a

candidate conceals facts/ lies on affidavit. The Supreme Court in Krishnamoorthy v. Sivakumar[(2015) 3 SCC 467] has emphasized the importance of disclosure of information of pending criminalcases, and even treated non-disclosureas grounds for declaring election null and void. Further, in Public Interest Foundation and Ors. v. Union of India and Anr. 2018 SCC Online SC 1617 it was held that "each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein."

TheImpugned Order brazenly disregards the orders of this Hon'ble Court and the interpretation put forward by theElection Commission.The court unambiguously ordered the Election Commission to expand the ambit of disclosures to cases where cognizance has been taken, even if charges have not been framed. The Election Commission, a specialized body bestowed with Constitutional authority,has unequivocally clarified that a candidate ought to disclose allcriminal cases where cognizance has been taken by the Magistrate and that a violation of this obligation would entail penalty under Section 125-A.

Hence, the High Court erred in allowing the revision application filed by the Petitioner.

LIST OF DATES AND EVENTS

07.05.1996	Summary Case No. 231 of 1996 in which one Mr. Madanlal S/o BabulalParate was complainant and Respondent No. 1 was the accused. In this Complaint

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Case Judicial Magistrate First Class (Court No-6), Nagpur passed an order to issue process for offence under Section 500 of the Indian Penal Code against the Accused. By this way the JMFC Court took cognizance of an offence against Mr. DevendraFadnavis. A true copy of the order dated 07.05.1996 passed by Judicial Magistrate First Class (Court No-6), Nagpur in Summary Case No. 231/1996 is annexed herewith and marked as **Annexure P/1** (Pages 40 to ____).

07.06.1999 Regular Criminal Case (old No. 125 of 1998) No. 343/2003 in which Mr. Madanlal was complainant and Respondent No. 1 was one of the accused. In this Complaint Case Judicial Magistrate First Class (Corp. Court No-2), Nagpur passed an order to issue process under Sections 468, 471, 217, 218, 467, 420, 34 of the Indian Penal Code against the Accused. By this way the JMFC Court took cognizance of an offence against Mr. DevendraFadnavis. A true copy of the order dated 07.06.1999 passed by Judicial Magistrate First Class (Corp. Court No-2), Nagpur in Regular Criminal Case (old No. 125 of 1998) No. 343/2003 is annexed herewith and marked as **Annexure P/2** (Pages 41 to ____).

18.09.2000 Regular Criminal Case (old No. 125 of 1998) No. 343/2003 accused DevendraFadnavis moved an

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application for releasing the accused on personal release bond. A true copy of the application dated 18.09.2000 filed in Regular Criminal Case (old No. 125 of 1998) No. 343/2003 before Judicial Magistrate First Class (Corp. Court No-2), Nagpur is annexed herewith and marked as **Annexure P/3** (Pages 42 to 43).

02.05.2002 This Hon'ble Court in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294] issued directions to Election Commission of India to call for information and details on whether the candidate is accused in any pending case of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by court of law, six months prior to filing of nomination. This information was to be provided on affidavit from each candidate seeking election to Parliament or State Legislature as a necessary part of his nomination paper. A true copy of the order in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294] dated 02.05.2002 is annexed herewith and marked as **Annexure P/4** (Pages 44 to 72).

13.03.2003 This Hon'ble Court in PIL People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399] directed Election Commission to issue revised

instructions to ensure implementation of recently added Section 33A, Representation of the People Act, 1951 subject to the directions issued with respect to cases in which cognizance has been taken in order dated 02.05.2002 in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294]. A true copy of directions dated 13.03.2001 in People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399] is annexed herewith and marked as **Annexure P/5 (Pages 73 to 150).**

27.03.2003 In pursuance of the order dated 13.03.2003 of this Hon'ble Court, Election Commission of India issued Order No. 3/ER/2003/JS-II seeking information from each candidate at the time of filing his nomination paper for any election to the Council of States, House of People, Legislative Assembly of a State or the Legislative Council of a State with regards to their criminal antecedents in the form of a prescribed affidavit (Annexure-I). That affidavit so prescribed in Annexure-I sought, inter alia, details about the history of pending cases against the candidate filing the nomination paper in which cognizance has been taken by a competent court of law against a candidate. A true copy of Order No. 3/ER/2003/JS-II issued by the Election Commission of India dated 27.03.2003 is annexed herewith and marked as **Annexure P/6**

(Pages 151 to 164). M

01.08.2012 The Central Government made amendments to the Conduct of Election Rules, 1961 and replaced Form 26 with a new form which required disclosure of pending cases against a candidate in which cognizance has been taken by the Court. A true copy of the notification dated 01.08.2018 amending the Conduct of Election Rules, 1961 is annexed herewith as Annexure P/7 (Pages 165 to 186)

24.08.2012 Election Commission of India issued Letter No. 3/4/2012/SDR to the Chief Electoral Officers of all states and Union Territories notifying them of the modification in format of affidavit to be filed by candidates along with their nomination paper wherein the amended From 26 was an amalgamation of the information that was earlier sought in two separate affidavits. The amended Form 26 also sought detail from the candidate about the history of pending cases against them in which cognizance has been taken. A true copy of the letter No. 3/4/2012/SDR dated 24.08.2012 issued by Election Commission of India to Chief Electoral Officers of all the States and Union territories notifying them of the changes made in Form 26 is annexed herewith and marked as **Annexure P/8**(Pages 187 to 209).

26.09.2012 Election Commission of India issued letter No.

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3/4/2012/SDR to the Chief Electoral Officers of all states and Union Territories and made clarification with regards to the appended Form 26. The clarification specified that the item 5 of Part A and Part B of the revised Form 26 relates to information regarding criminal antecedents to be furnished by the candidates. It was also clarified that in item (5)(ii) of the said Part A and Part B of Form-26, the details of all pending cases in which cognizance has been taken by the Court, irrespective of the quantum of punishment or framing of charges will have to be disclosed by the candidate. The said clarification was also to be brought to notice of all the political parties and all candidates when they file their nomination at all future general/ by-elections in the State. A true copy of the letter dated 26.09.2012 by Election Commission of India to Chief Electoral Officer of all States and Union Territories is annexed herewith and marked as Annexure P/9 (Pages 210 to ___).

26.04.2014 Election Commission of India issued Letter No. 4/2014/SDR/Vol-I to the Chief Electoral Officer of all States and Union Territories notifying them that any false declaration or concealing of information in the affidavit in Form 26 will attract provisions of Section 125A of Representation of People Act, 1951 which prescribes imprisonment up to 6 months or fine or

both. It further notified that now the complainant no longer has to approach the court via the Returning Officer and complainant can directly approach the appropriate Court of competent jurisdiction with petition for action under Section 125A in the case of any false declaration or concealing of information in the affidavit in Form 26. A true translated copy of Letter No. 4/2014/SDR-/Vol-I dated 26.04.2014 issued by the Election Commission of India to the Chief Electoral Officers of all States and Union Territories is annexed herewith and marked as **Annexure P/10** (Pages 179 to 182).

26.09.2014 The Respondent filed affidavit Form 26 with nomination paper before Retuning officer for the 52-South West Nagpur Constituency Maharashtra Legislative Assembly general election, in which he concealed two pending criminal cases against him in which court has already taken cognizance. The two cases are Regular Criminal Case No. 343 of 2003 and Summary Case No. 231 of 1996. A true copy of the relevant portion of the affidavit (FORM 26) dated 26.09.2014 submitted by Respondent before the Retuning officer for the 52-, South West Nagpur Constituency Maharashtra Legislative Assembly general election 2014 is annexed herewith as Annexure P/11 (Pages 183 to 193).

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20.10.2014 The petitioner filed a complaint case (Misc. Criminal Application No. 3550 of 2014) under Section 200 Cr.P.C. against Respondent before Judicial Magistrate First Class at Nagpur for taking action under Section 125-A of the Representation of the People Act 1951. A true copy of the Misc. Criminal Application No. 3550 of 2014 dated 20.10.2014 filed before the court of Judicial Magistrate First Class (Court No-6),Nagpur is annexed herewith as Annexure P/12 (Pages 194 to 201).

14.11.2014 The Petitioner filed Election Petition No. 1/2014 challenging the Election of Respondent No. 1 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur. A true copy of the Election Petition No. 1/2014 dated 14.11.2014 challenging filed before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur is annexed herewith and marked as Annexure P/13 (Pages 202 to 259).

05.02.2015 This Hon'ble Court in Krishanmoorthy v. Sivakumar [AIR 2015 SC 1921] upheld the previous orders passed by this Hon'ble Court in: Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294] and People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399]. A true copy of the judgment in Krishanmoorthy vs. Sivakumar [AIR 2015 SC 1921] dated 05.02.2015 is

annexed herewith and marked as **Annexure P/14** (Pages 260 to 284).

22.03.2015 Respondent No. 1 filed his written statement in Election Petition No. 1/2014. A true copy of the written statement filed in Election Petition No. 1/2014 dated 22.3.2015 by Respondent No. 1 before the Hon'ble High Court of Judicature At Bombay, Nagpur Bench, Nagpur is annexed herewith and marked as **Annexure P/15** (Pages 285 to 301).

19.08.2015 The Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur passed an order in Civil Application No. 993 of 2015 in Election Petition No. 1/2014, in which the Hon'ble High Court considered and interpreted relevant provisions of the Representation of People Act, 1951. A true copy of the order dated 19.08.2015 passed by the High Court of Judicature At Bombay, Nagpur Bench, Nagpur in Civil Application No. 993 of 2015 in Election Petition No. 1/2014 is annexed herewith and marked as **Annexure P/16** (Pages 302 to 375).

07.09.2015 Judicial Magistrate First Class, Nagpur (Court No-6), dismissed the Criminal Application No. 3550 of 2014 by misinterpreting the legal provisions and stating that since charges had not been framed against the Respondent No. 1 in an offence with a punishment of at least two years, no disclosure is required to be

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made. A true and translated copy of the order dated 07.09.2015 passed by the Judicial Magistrate First Class (Court No-6), Nagpur in Criminal Application No. 3550 of 2014 is annexed herewith and marked as Annexure P/17 (Pages 376 to 379).

08.09.2015 Petitioner filed Criminal Revision Application No. 250 of 2015 before the Hon'ble Sessions Judge, Nagpur against the order dated 07.09.2015 of Judicial Magistrate First Class (Court No-6), Nagpur, in Criminal Application No. 3550 of 2014. A true copy of the Criminal Revision Application No. 250 of 2015 filed before the Hon'ble Sessions Judge, Nagpur dated 08.09.2015 is annexed herewith and marked as Annexure P/18 (Pages 380 to 389).

30.05.2016 Hon'ble Court of Sessions Judge, Nagpur in Criminal Revision No. 250/2015 quashed and set aside the order dated 07.09.2015 passed by the Judicial Magistrate First Class (Court No.-6), Nagpur in Criminal Application No. 3550 of 2014 and remanded the matter back to Judicial Magistrate First Class (Court No.-6), Nagpur for fresh consideration. A true copy of the order passed by Hon'ble Court of Sessions Judge, Nagpur dated 30.05.2016 in Criminal Revision No. 250/2015 is annexed herewith as Annexure P/19 (Pages 390 to 393).

01.06.2016 Respondent No. 1 filed second revision before the

High Court of Judicature at Bombay, Nagpur Bench, Nagpur against the order dated 30.05.2016 passed in Criminal Revision No. 250 of 2015 by the Hon'ble Sessions Judge, Nagpur. A true copy of the second revision dated 01.06.2016 filed before the High Court of Judicature at Bombay, Nagpur Bench, Nagpur against the order dated 30.05.2016 passed in Criminal Revision No. 250 of 2015 is annexed herewith and marked as Annexure P/20 (Pages 394 to 401).

14.03.2018 The Petitioner, in person, filed points of argument in Criminal Revision Application no 94/2016 before the Hon'ble High Court of Judicature, Nagpur Bench. A true copy of points of argument dated 14.03.2018 filed by the Petitioner before the Hon'ble High Court of Judicature, Nagpur Bench in Criminal Revision Application no 94/2016 is annexed herewith and marked as Annexure P/21 (Pages 402 to 409)

16.03.2018 The Petitioner filed a Criminal Application No. 101 of 2018 (APPR) in Criminal Revision Application No. 94/2016 before Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur for taking action against the Respondent No. 1 under Section 200 of the Indian Penal Code read with Sections 195 and 340 of the Code of Criminal Procedure. A true copy of the Criminal Application No. 101 of 2018 (APPR) in Criminal Revision Application No. 94/2016 dated

16.03.2018 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur is annexed herewith and marked as **Annexure P/22** (Pages 410 to 427).

03.05.2018 The Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Revision Application No.94/2016 passed an order and quashed and set aside the order dated 30.05.2016 passed by the Hon'ble Sessions Judge, Nagpur in Criminal Revision No. 250 of 2015. The High Court also confirmed the order dated 07.09.2015 passed by the Judicial Magistrate First Class (Court No-6), Nagpur in Criminal Application No. 3550 of 2014 while allowing the Criminal Revision Application.

03.05.2018 The Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Application (APPR) No. 101 of 2018 in Criminal Revision Application No.94/2016 passed an order and dismissed the application filed by the Petitioner herein.

14.08.2018 Hence this Special Leave Petition.

C. A. No. 6262/ER
Private use.....

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

Criminal Revision Application No. 94 of 2016

Applicant : Devendra Gangadharrao Fadnavis, aged about 46 years, Occupation - Social Worker, presently Chief Minister, Maharashtra, resident of "Varsha", Malabar Hills, Mumbai

Versus

Respondents: 1) Satish s/o Mahadeorao Ukey, aged about 37 years, Occupation : Advocate, resident of Parvati Nagar, Nagpur

2) State of Maharashtra

Shri Sunil Manohar, Senior Advocate and Shri Uday Dable, Advocate with him for applicant

Respondent Shri Satish Uike in person

Coram : S. B. Shukre, J

Dated : 3rd May 2018

Oral Judgment

1. This revision application challenges the legality and correctness of the order dated 30.5.2016 rendered in Criminal Revision No. 250 of 2015 by the Principal District and Sessions Judge, Nagpur. By this order order, the learned Sessions Judge upset the order passed by the

Judicial Magistrate, First Class (Court No. 6), Nagpur on 7.9.2015 thereby dismissing the complaint filed against the present revision applicant by the respondent and remanded the matter back to the Court of Judicial Magistrate, First Class, Nagpur for consideration afresh in accordance with law. The learned Sessions Judge went a step further in directing not only original complainant, who is respondent in this revision applicant, to remain present before the trial Court, but also directed present revision applicant to do so on the day fixed by the learned Sessions Judge.

2. The facts giving rise to this revision application are, in brief, as under:

(i) The revision applicant is a politician and presently the Chief Minister of the State of Maharashtra. The general elections to the State Legislative assembly were held in the State of Maharashtra in the year 2014. The revision applicant was one of the candidates who contested elections. He contested the elections from Constituency-52, South-West, Nagpur, the State of Maharashtra. He submitted his nomination paper along with the requisite documents and affidavit in prescribed form, Form No. 26 as prescribed under Rule 4A of the Conduct of Elections Rules, 1961 ("Election Rules" for short).

(ii) The affidavit filed in Form No. 26 contained a declaration

regarding the information that revision applicant was required to submit mandatorily, in particular, the information in terms of Section 33A (1) and (2) of the Representation of the People Act, 1951 (for short, the "Act of 1951"). This provision of law required of the revision applicant to disclose information relating to any pending criminal case in which punishment prescribed was of imprisonment for two years or more, and a charge was framed by the Court of competent jurisdiction or those criminal cases in which he was convicted of an offence and sentenced to imprisonment for one year or more.

(iii) According to the respondent, the revision applicant did not disclose the information as required of him under sub-section (1) of Section 33A of the Act of 1951. It was his contention that not only the information relating to pending criminal cases involving offences prescribing punishment of imprisonment of two years or more in which charge was framed, but also such cases in which cognizance was taken by the Court of competent jurisdiction as of the date of filing of the nomination paper was required to be furnished by way of declaration made on an affidavit in Form No. 26 by the revision applicant, which he did not. According to him, there were two such cases being RCC No. 343 of 2003 (Madanlal Parate v. Shashikant Hastak & ors) involving offences punishable under Sections 217, 218, 425, 466, 467, 468, 470, 474, 506, 109 read with Section 34 of IPC and RCC No. 231 of 1996 (Madanlal

Parate v. Devendra Fadnavis) involving an offence punishable under Section 500 IPC in both of which though charge was not framed, the concerned Court of Judicial Magistrate, First Class, Nagpur had taken cognizance which were not disclosed by the revision applicant.

(iv) It was also the contention of respondent that non-disclosure of these two pending criminal cases was in violation of Section 125A of the Act of 1951 and constituted an offence envisaged by this provision of law. The revision applicant pointed out this fact, firstly, to the Election Observer and then to the Returning Officer on 4.10.2014, but to no avail. The respondent also sent notices to the Returning Officer and Election Commission of India inviting their attention to the offence committed by the revision applicant under Section 125A of the Act of 1951. But, according to the respondent, no action whatsoever was taken, rather, he was informed by the Election Commission of India that a private citizen having right to vote could also file a complaint before the competent criminal court praying for taking of action against a candidate committing an offence punishable under Section 125A of the Act of 1951.

(v) The communication of the Election Commission of India dated 26.4.2014 relied upon by the respondent was a circular issued to electoral officers of all States and Union Territories. Accordingly, the respondent filed a criminal complaint under Section 200 Cr. P. C. before the Judicial Magistrate, First Class, Nagpur for initiating action against the

revision applicant for his committing an offence under Section 125A of the Act of 1951.

(vi) The learned Magistrate recorded verification statement of the respondent on 1.6.2015 and following the pursis filed by the respondent at exhibits 16 and 19, applied his mind to the facts of the case as disclosed by the complaint, verification statement of the respondent and documents filed along with the complaint which included certified copies of the nomination form and affidavit submitted by the revision applicant. Upon consideration of all the relevant material available on record, the learned Magistrate found that no prima facie case for proceeding further under Section 125A of the Act of 1951 was made out against the revision applicant and, therefore, by the order passed on 7.9.2015, the learned Magistrate dismissed the complaint. The respondent carried the matter in revision before the learned Sessions Judge who, by the order dated 30.5.2016 quashed and set aside the order of learned magistrate and remanded the matter back to the Court of Judicial Magistrate, First Class for its fresh consideration in accordance with law. The learned Sessions Judge was of the opinion that the learned Magistrate had passed a cryptic and non-speaking order and did not consider the other relevant provisions of law and, thus, committed perversity. Not being satisfied with it, the revision applicant is before this Court in this application.

Section 33A (1) of the Act of 1951 and consequently, one has to say that no offence under Section 125A of the Act of 1951 is prima facie disclosed against the applicant.

5. Learned Senior Advocate further submits that these facts of the case, glaringly coming out from the record of the case, have been properly appreciated by the trial Court, but have been completely ignored by the Sessions Court. He further submits that the order dated 7.9.2015 passed by the learned Magistrate, and its bare perusal is enough, shows that it is neither a cryptic order nor a non-speaking order and is a reasoned order passed after due application of mind by the learned magistrate. He submits that the provisions mentioned in the impugned order passed by the learned Sessions Judge which, in the opinion of the learned Sessions Judge ought to have been considered by the learned Magistrate, are in fact not relevant for the purpose of present enquiry and, therefore, ought not to have been suggested to be considered by the learned magistrate by remanding the case back to his Court.

6. Shri Satish Ukey, respondent in person, submits that if Rule 4A of the Election Rules and Form No. 26 prescribed by it are carefully perused, one would instantly know that a contesting candidate is required to disclose information of all pending criminal cases in which offences

involved are punishable with imprisonment for two years or more and in which cognizance has been taken by the competent criminal court and if such information is not disclosed in the affidavit, such non-disclosure or concealment would be an offence punishable under Section 125A of the Act of 1951.

7. Shri Satish Ukey further submits that the position in this regard before the year 2012 was quite different when the column relating to disclosure of information regarding a criminal case in which cognizance was taken by the Criminal Court was not there in the affidavit, but now it is not so. He submits that after the year 2012 which marked the amendment of the prescribed Form No. 26, the scenario is that even such information must be disclosed by a contesting candidate. He further submits that the letter of Election Officer, which is in the nature of circular dated 26.4.2014, would show that non-disclosure of such information constitutes an offence under Section 125A of the Act of 1951.

8. Shri Satish Ukey, the respondent in person, further submits that these facts, though relevant, were not at all considered by the learned Magistrate when he dismissed the complaint erroneously by an order dated 7.9.2015, which error has been sought to be corrected under the order of the learned Sessions Judge impugned herein. He submits that

the learned Sessions Judge has rightly observed that the order of the learned Magistrate is cryptic and non speaking and also discloses perversity for having not considered the relevant provisions of law and as such, the order of the learned Sessions Judge deserves to be upheld by dismissing this revision application.

9. Upon consideration of the order of the learned Magistrate dated 07.09.2015, the order of the learned Sessions Judge dated 30.05.2016, impugned herein, the copy of the affidavit in question submitted by the revision applicant along with his nomination form and the relevant provisions of law, I am of the considered view that there is a great substance in the argument of the learned Senior Counsel for the revision applicant and no merit in the submissions advanced by the respondent in person.

10. In order to appreciate the arguments made across the bar, it would be profitable for us to first consider the law which requires a contesting candidate to disclose certain information in the manner prescribed under the law. These provisions are contained in Sections 33 A and 125 A of the Act of 1951 and rule 4A of the Election Rules. For the sake of convenience relevant portions of these provisions of law are reproduced as under :-

THE REPRESENTATION OF THE PEOPLE ACT, 1951.

Sec.33A Right to Information -(1) A candidate shall, apart from any information which he is required to furnish under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (2) or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1), of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1)

(3) ----------

Section 125A. Penalty for filing false affidavit, etc. - A

candidate who himself or through his proposer, with interest to be elected in an election, -

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of Section 33A or in his affidavit which is required to be delivered under sub-section (2) of Section 33A, as the case may be, shall notwithstanding anything contained in any other law for the time being in force, be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

The Conduct of Elections Rules, 1951

Rule 4A. From of affidavit to be filed at the time of delivering nomination paper. - The candidate or his proposer, as the case may be, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.

11. Though it is the case of the respondent in person that sub-

section (1) of Section 33A of the Act, 1951 requires disclosure of those pending criminal cases involving offences punishable with imprisonment for two years or more and in which cognizance has been taken by the court of competent jurisdiction, a bare reading of this section reproduced above would show that it is not so. This section speaks of the information to be furnished in his nomination paper, apart from any information which a candidate is required to furnish under the Act of 1951 or Rules made thereunder, which relates to two kinds of criminal cases. These categories of cases are described in clause (i) and (ii) of this section. Clause (i) relates to pending criminal cases in which offences involved are punishable with imprisonment for two years or more and a charge has been framed by the Criminal Court. Clause (ii) comprises those criminal cases in which the candidate has been convicted of an offence and sentenced to imprisonment for one year or more, other than any offence referred to in sub-section (1) or sub-section (2), or sub-section (3), of section 8 of the Act of 1951.

12. Here, I may make it clear that the case of the respondent does not relate to non disclosure of information required under clause (ii) of sub-section (1) of Section 33A. His case is about concealment of information required to be disclosed under clause (i) of sub-section (1) of Section 33A of the Act of 1951. This violation, the respondent seeks to

prove by adding to the requirement of framing of charge the requirement of taking of cognizance of an offence as of the date of filing of the nomination paper. The respondent, for this submission, seeks aid of Rule 4A of the Election Rules and amended Form 26 prescribed under this Rule.

13. A plain reading of clause (i) of sub-section (1) of Section 33A, however, leads us to a different conclusion. The disclosure it mandates is of the information in respect of only those criminal cases wherein the offences involved are punishable with imprisonment for two years on more and the charge has been framed. It speaks of no criminal cases in which charge has not been framed, but cognizance has been taken. The information so required to be disclosed by a candidate in his nomination paper is also required to be supported by and verified on an affidavit to be sworn in by the candidate in a prescribed form under sub-section (2) of Section 33A of the Act of 1951. The prescribed form of affidavit is Form 26 and it is prescribed by Rule 4A of the Election Rules. Rule 4A does no more than prescribing the form of affidavit required to be submitted by a candidate in terms of sub-section (2) of Section 33A and thus only fulfills the mandate of Section 33A (2). As such, it does not control sub-section (2) of Section 33A, rather is a tool to put into effect that a candidate is obliged to do under Section 33A (1) of the Act of

1951.

14. Rule 4A lays down that at the time of delivering to the returning officer the nomination paper disclosing information as required under sub-section (1) of Section 33A of the Act of 1951 the candidate shall also deliver to him an affidavit sworn by the candidate before the Magistrate of the first class or a Notary in form 26. Rule 4A lays down this requirement because sub-section (2) of Section 33A which is reproduced above says so. Sub-section (2) of Section 33A mandates the candidate himself or through his proposer to also deliver, at the time of submitting his nomination paper, an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1) of Section 33A. So, it is clear that an affidavit which is required to be submitted along with a nomination paper under this provision of law is for the purpose of verifying the correctness of the information which is required to be disclosed mandatorily by the contesting candidate in terms of sub-section (1) of Section 33A of the Act of 1951. We have seen that it is only the kind of information that has been specified under it's two clauses, clause (i) and clause (ii), which is required to be furnished by the candidate and nothing more. We have also seen that this information does not relate to those pending criminal cases in which cognizance has been taken and it relates to only those criminal cases, as laid down in clause (i), in which

charge has been framed. Therefore, the argument of respondent in person that in terms of sub-section (1) of Section 33A of the Act of 1951 read with Rule 4A of the Election Rules and Form 26 affidavit, a contesting candidate is also required to furnish information about pending criminal cases in which cognizance has been taken is fallacious and is rejected.

15. Section 125A of the Act of 1951 imposes penalty for filing a false affidavit. The penalty prescribed under this section is in the nature of punishment with imprisonment for a term which may extend to six months, or with fine, or with both. This penalty is invited only when a candidate fails to furnish information as required under sub-section (1) of Section 33A or knowingly gives false information or conceals any such information in his nomination paper as is required to be given under sub-section (1) of Section 33A or in his affidavit which is required to be delivered under sub-section (2) of Section 33A of the Act of 1951. Here, the allegation made against the revision applicant is that in the affidavit delivered by him along with his nomination paper the information about two criminal cases, Reg. Criminal Case No. 343 of 2003 and Reg. Criminal Case No. 231 of 1996, pending against the revision applicant was not furnished by him. They were the cases, it is alleged, in which offences attracted imprisonment for two years or more and though the charge was not framed, cognizance had been taken by the Criminal Court.

But, as we have seen, this is not the requirement of Section 33A (1) of the Act of 1951. To constitute an offence under Section 125A of the Act of 1951, what is required is that false information must be given knowing it to be false or there should be failure to furnish such information or concealment of such information as is required to be given under sub-section (1) and such folly must occur either in the nomination paper or the affidavit delivered as per sub-section (2) of Section 33A of the Act of 1951 or both.

16. This can be seen and understood unhesitatingly upon reading Section 125A of the Act of 1951 as a whole. Failure to furnish information or knowingly giving false information or concealing information are all the acts, as this provision of law lays bare before us, which are related to not just any kind of information but to that information as is required to be disclosed under sub-section (1) of Section 33A. This is because of the specific words used in Section 125A to the effect - ".... in his nomination paper delivered under sub-section (1) of Section 33A or in his affidavit which is required to be delivered under sub-section (2) of Section 33A, as the case may be...". It must be noted here that sub-sections (1) and (2) of Section 33A of the Act of 1951 speak of disclosure of information specified in clauses (i) and (ii) of sub-section (1) of Section 33A and verification of that disclosure in prescribed

form of an affidavit respectively. In this backdrop, if one peruses the affidavit submitted by the revision applicant, one would find that he concealed no information which he was obliged to disclose under sub-section (1) of Section 33A of the Act of 1951.

17. Rule 4A of the Election Rules, we have seen, by prescribing the form of affidavit, only gives effect to the command of sub-section (2) of Section 33A of the Act of 1951. As such, Rule 4A does not and being a delegated piece of Legislation, cannot dominate the substantive provision of law which is Section 33A of the Act of 1951. So, Rule 4A cannot be understood as prescribing something more which is not the requirement of sub-section (1) of Section 33A of the Act of 1951 and even if it does, the additional requirement cannot be read as the requirement of sub-section (1) of Section 33A of the Act of 1951, which is mandatory in its nature and which when breached, would constitute an offence punishable under Section 125A of the Act of 1951. Whenever any additional information, not specified in sub-section (1) of Section 33A, is required to be given in the affidavit in Form 26, and is not given, the breach does not violate Section 33A (1) of the Act of 1951 and hence, does not amount to an offence under Section 125A of the Act of 1951.

18. In the present case, the complaint is about concealment of

information of two pending criminal cases being Regular Criminal Case No. 343 of 2003 and Regular Criminal Case No. 231 of 1996 which related to the offences prescribing punishment for more than two years and which were the cases in which, admittedly, no charge was framed but only cognizance was taken by the concerned criminal court. However, these are not the cases contemplated under clause (i) or even clause (ii) of sub-section (1) of Section 33A of the Act of 1951 and, therefore, there was no requirement on the part of the revision applicant to have disclosed pendency of these two criminal cases in the affidavit filed in Form 26 by him along with his nomination paper. After all, such an affidavit, as laid down in sub-section (2) of Section 33A of the Act of 1951 is for the purpose of "verifying the information specified in sub-section (1)" of Section 33A and when this provision of law mandates no disclosure of those pending criminal cases in which charge has not been framed and only cognizance has been taken, there remains no need to verify by stating in an affidavit something not required by the substantive provision of law to be stated. This is what the affidavit submitted by the revision applicant along with his nomination form did and in my view, it violated neither sub-section (1) of Section 33A nor Section 125A of the Act of 1951. This would make me hold that *prima-facie*, no offence punishable under Section 125A of the Act of 1951 has been made out in this case against the revision applicant.

19. The respondent in person invited my attention to prescribed form of the affidavit in Form 26 which, according to him, was amended in the year 2012, in order to buttress his case as to how revision applicant brazenly violated sub-section (1) of Section 33A and Section 125A of the Act, 1951. I have gone through the relevant portions of Form 26 affidavit with his assistance. There is indeed a clause therein which requires disclosure by the candidate of pending criminal cases in which cognizance has been taken by the Court. The respondent in person also took me through the copy of the affidavit delivered by the revision applicant along with his nomination paper. In the copy of the affidavit available on record of the case there is no mention about two criminal cases being RCC No. 343 of 2003 and RCC No. 231 of 1996. But the question is whether failure to furnish information about these two pending cases would be an offence punishable under Section 125A of the Act of 1951 or not. To my mind, the answer is a clear no for the reason that it is not the requirement of sub-section (1) of Section 33 that information about such criminal cases be disclosed nor is it the requirement of sub-section (2) of Section 33A to make any verification of such information by stating it in an affidavit. The verification of the information upon an affidavit has to be done in respect of the disclosures required under clauses (i) and (ii) of sub-section (1) of Section 33A and no more insofar as an offence under Section 125A of the Act of 1951 is

concerned. A criminal case in which cognizance has been taken is not the one which is included in either of these two clauses of sub-Section (1) of Section 33A. Therefore, failure to furnish information about pending criminal case in which cognizance has been taken and no charge has been framed, as is the case here, does not amount to commission of any offence under Section 125A of the Act of 1951.

20. Apart from what is said above, Rule 4A of the Election Rules is only a delegated piece of legislation and so can command disclosure of only so much of information as is mandated by a substantive provision of law and whenever it directs to disclose some additional information not required under Section 33A of the Act of 1951, it does so for some other purpose and certainly not for the purposes of Section 33 A and Section 125A of the Act of 1951. In other words, non-disclosure of such additional information would be beyond the bounds of an offence punishable under Section 125A of the Act of 1951.

21. Respondent in person submits that there is an opinion of the Election Commission that failure to furnish such additional information is also an offence under Section 125A. I must say that the opinion, if it is there, is beyond the scope of Section 33A and Section 125A of the Act of 1951 and and as such is incorrect. In any case, it is not binding on this

Court.

22. These aspects of law have been properly considered by the learned Magistrate when he found that no prima facie case was made out to proceed further for an offence under Section 125A of the Act of 1951 against the revision applicant. The order of the learned Magistrate, disagreeing with the view expressed by the learned Sessions Judge, must be said to be a well reasoned order. I do not understand as to how such an order could have been described as a cryptic order and dealt with in disdain by the learned Sessions Judge. For an order to be reasoned, it is not necessary that it must run into several pages. Reasons can be stated and best reasons have always been stated in an order which is short, precise and succinct. To know the reasons, all that is required is a discerning eye, which looks for the meaning of the words rather than the number of words used. Sometimes, even the long orders do not contain any reasons. But, as I understand, it is not the length of the order but the strength of analysis and logic contained in an order which determines its character. The learned Sessions Judge, however, has missed this basic attribute of a reasoned order and thus committed a perversity in finding something in the order of the learned Magistrate which was not its frailty.

23. The learned Sessions Judge has, without any rhyme or reason, also said that the trial Court failed to consider the other relevant provisions when she observed, "....However, for reaching at the final conclusion, the learned trial Court has skipped from consideration the other relevant provisions like Section 33-A (2) and (3), Section 125-A, Rule 4-A and Form 26 of the Conduct of Election Rules, 1961 and also the object of insertion of Sections 33-A and 125-A in the said Act in 2002 and the amendment of Form 26 in 2012 etc.". As a matter of fact, all relevant provisions were indeed considered by the learned Magistrate and as stated earlier, the provisions made in Rule 4A or amended Form 26 of the Election Rules would not and do not go beyond substantive provisions of law and, therefore, there was no further need to have considered those provisions *de hors* the provisions of substantive law. Similarly, the object of Section 33A and Section 125A of the Act of 1951, as an external aid of interpretation, was not required to be considered, in view of the first and foremost rule of interpretation of Statutes which is a literal rule of construction, with the language of these two provisions of law being plain and clear leaving no ambiguity of any nature in one's mind while reading them. In this regard, I would like to draw strength from the law settled by the Hon'ble Apex Court in the cases of M/s Hiralal Ratan Lal v. The Sales Tax Officer and anr reported in *AIR 1973 SC 1034* and Lt. Col. Prithi Pal Singh Bedi v. Union of India and ors reported in *(1982)*

3 SCC 140. This is another illegality committed by the learned Sessions Judge.

24. The learned Sessions Judge, it is further seen, committed one more illegality, a serious illegality, in directing the revision applicant, an accused in a criminal complaint case filed against him by the respondent, to appear before the Court of learned Magistrate while directing the learned Magistrate to consider the matter afresh. This direction made the revision applicant appear before the learned Magistrate even before any process was issued against him by the learned Magistrate and thus converted the whole proceeding before the magistrate into a farce, leaving virtually no discretion with the Magistrate under Section 202 or Section 203 of Cr. P. C.

25. Such an order of the learned Sessions Judge cannot sustain the scrutiny of law. It deserves to be quashed and set aside by confirming the order dated 7.9.2015 passed by the Judicial Magistrate, First Class (Court No. 6), Nagpur.

ORDER

1) The revision application is allowed.

2) The impugned order dated 30.5.2016 passed by the Sessions Judge,

Nagpur in Criminal Revision No. 250 of 2015 is quashed and set aside and order passed by the Judicial Magistrate, First Class (Court No. 6), Nagpur on 7.9.2015 in Misc. Criminal Application No. 3550 of 2014 below Exhibit 1 is hereby confirmed.

Rule is made absolute in the above terms.

S. B. Shukre, J

joshi

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C. A. : 6262/6/18

Private use.....

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

Criminal Application (APPR) No. 101 of 2018

In

Criminal Revision Application No. 94 of 2016

Applicant : Devendra Gangadharrao Fadnavis

Versus

Respondent: Satish s/o Mahadeorao Ukey

Shri Sunil Manohar, Senior Advocate and Shri Uday Dable, Advocate with him for applicant

Respondent Shri Satish Ulke in person

Coram : S. B. Shukre, J

Dated : 3rd May 2018

P. C.

1. Heard.

2. This is an application filed by the respondent in person to initiate action against revision applicant for having committed an offence under Section 200 of the Indian Penal Code in terms of Sections 195 and 340 of the Code of Criminal Procedure.

26

3. According to the applicant, who is the respondent in person in the revision application, by delivering false and misleading declaration in the form of an affidavit given along with criminal revision application No. 94 of 2016, the revision applicant has committed an offence punishable under Section 200 of the Indian Penal Code. According to the complainant, false and misleading statements are to have been made by the revision applicant in the form of an affidavit given along with Criminal Revision Application No. 94 of 2016 and as such, the revision applicant has committed an offence punishable under Section 200 of the Indian Penal Code. According to the complainant, these false and misleading statements are to the effect that there is no requirement under Sections 33A and 125A of the Representation of the People Act, 1951 read with Rule 4A of the Election Rules and Form 26 that the information relating to the pending criminal cases in which cognizance has been taken must be disclosed. Therefore, the respondent in person submits that after initiating enquiry under Section 340 Cr. P. C., the complaint as laid down in Section 195 Cr. P. C., be directed to be filed against revision applicant. The respondent in person also submits that is not necessary that the revision applicant be heard for taking such an action against him. He places his reliance on Pritish vs. State of Maharashtra & ors reported in *AIR 2002 SC 236* and Union of India & ors v. Haresh Virumal Milani reported in *2017 (4) Mh. L. J. 441*.

27

4. This is all refuted to by the learned Senior Advocate for revision applicant. He submits that the submissions made in the revision application are only in the nature of interpretation of law and facts considered to be right by the revision applicant and, therefore, while making such an interpretation if such documents are submitted to support the interpretation, such submission of documents does not amount to tendering of documents in evidence. He places his reliance on the case of Sushil Kumar & ors v. State of Haryana & ors reported in *AIR 1988 SC 419.*

5. I must say it here that after allowing of the revision application filed by the revision applicant, grievance tried to be made out in this application and argument canvassed in support of the grievance by the respondent in person do not survive for consideration. The revision application has been found to be having substance in it and it has culminated into upholding the contentions of the revision applicant that he has concealed no such information as he is mandatorily required to disclose under the law and that he has not prima facie committed any offence.

6. That being so, it has to be held that the submissions made in

the nature of interpretation of law and facts in the revision application supported by an affidavit of the revision applicant have been accepted by this Court and so, no offence punishable under Section 200 of IPC can be said to be prima facie constituted in the instant case. That apart, the documents submitted along with revision application were only for supporting the interpretation of the revision applicant and were not something which were tendered in evidence, as held in the case of Sushil Kumar (supra) and so the cases cited by the revision applicant are not applicable to the facts of this case. There is thus no merit in this application and it deserves to be dismissed. The application stands dismissed.

S. B. Shukre, J.

joshi

IN THE SUPREME COURT OF INDIA 29

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2018

(Against the Final Impugned Order dated 03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Revision Application No. 94 of 2016)

BETWEEN PARTIES	POSITION OF	
	Before the Hon'ble High Court	Before this Hon'ble Court
SatishUkey, s/oMahadeoraoUkey, R/o Parvati Nagar, Nagpur, Maharasthra	Respondent No.1	Petitioner
VERSUS		
DevendraGangadharraoFadnavis, R/o "Varsha", Malabar Hills, Mumbai, Maharashtra.	Applicant	Contesting Respondent No. 1
State of Maharashtra SHO, Police Station Nagpur, Maharashtra.	Respondent No.2	Contesting Respondent No. 2

(Against the Final Impugned Order dated 03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Application (APPR) No. 101 of 2018)

BETWEEN PARTIES	POSITION OF	
	Before the Hon'ble High Court	Before this Hon'ble Court
SatishUkey, s/oMahadeoraoUkey, R/o Parvati Nagar, Nagpur, Maharasthra	Respondent No.1	Petitioner
VERSUS		

DevendraGangadharraoFadnavis, R/o "Varsha", Malabar Hills, Mumbai, Maharashtra.	Applicant	Contesting Respondent No. 1
State of Maharashtra SHO, Police Station Nagpur, Maharashtra.	Respondent No. 2	Contesting Respondent No. 2

To,
The Hon'ble Chief Justice of India
And His'Companion Judges
Of the Supreme Court of India

The humble Petition of
thePetitioner above named

1. The present SLP under Article 136 of the Constitution of India has been filed by the Petitioner against the final Impugned judgment and order dated 03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Revision Application No. 94 of 2016 and in Criminal Application (APPR) No. 101 of 2018 whereby the Hon'ble High Court erred in allowing the Criminal Revision Application and rejected the Criminal Application without considering the law laid down by this Hon'ble Court.

2. <u>QUESTIONS OF LAW</u>

The present Special Leave Petition raises the following substantial questions of law of general importance for consideration by this Hon'ble Court:

a) Whether a High Court has the power to read down and limit the scope of a provision while exercising power of revision?

b) Whether Rule 4-A of the Conduct of Election Rules, 1961 dominates or is ultra vires Section 33-A of the RPA?

c) Whether an election candidate has the obligation to disclose information about cases pending against them in which

cognizance has been taken against but charges have not been framed?

d) Whether disclosures, in addition to the ones expressly enumerated in Section 33-A of the RPA, can be mandated through the Conduct of Election Rules, 1961?

e) Whether an election candidate can be penalized under Section 125-A of the RPA for non-disclosure of information mandated through Conduct of Election Rules, 1961?

f) Whether an election candidate can be penalized under Section 125-A of the RPA for non-disclosure of information mandated through Rule 4-A read with Form 26 Conduct of Election Rules, 1961?

g) Whether the fundamental right of the citizens to know the antecedents of election candidates can be limited to merely information about cases in which charges have been framed?

h) What are the limits on the rule making power of the Central Government under Section 169 of the RPA?

i) What is the value of orders and communications issued by the Election Commission in pursuance of the orders of this Hon'ble Court in People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399] and Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294]?

j) Whether the requirement of furnishing facts listed by Form 26 of the Conduct of Election Rules, 1961 is merely a superfluous formal requirement with no repercussions whatsoever? If not, what are the repercussions of a violation of this requirement?

3. DECLARATION IN TERMS OF RULE 3(2):

Petitioner has not filed any other or similar petition against the impugned final judgment and order.

4. DECLARATION IN TERMS OF RULE 5:

The Annexures P-1 to P-22 produced along with the SLP are true/ translated copies of the pleadings/ documents which formed part of the records of the case in the Courts below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS

The Leave to Appeal is sought on the following amongst other Grounds:

A. Because the impugned Order engages in an overly strict and incorrect reading of Rule 4-A of the Conduct of Election Rules, 1961 read with Representation of the People Act, 1951 clearly ignoring the law laid down by the Hon'ble Supreme Court in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294] and People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399] and affirmed in Public Interest Foundation and Ors. v. Union of India and Anr. [2018 SCC Online SC 1617].

B. Because this Hon'ble Court in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294] issued directions to Election Commission of India to call for, on affidavit, information and details on whether a Lok Sabha or State Legislature election candidate is accused in any pending case of any offence punishable with imprisonment for two years or more and in which charge is

framed or cognizance is taken by court of law, six months prior to filing of nomination.

C. Because in People's Union for Civil Liberties v. Union of India and Ors. [(2003) 4 SCC 399], in response to the amendments enacted to the RPA in 2002,the court struck down Section 33-B and directed the Election Commission to issue revised instructions to ensure implementation of Section 33-A subject to, the directions issued with respect to cases in which cognizance has been taken in order dated in Union of India v. Association for Democratic Reforms and Anr. [(2002) 5 SCC 294].

D. Because in Public Interest Foundation and Ors. v. Union of India and Anr. (2018 SCC Online SC 1617) it was held that "each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein."

E. Because the Election Commission, through Order No. 3/ER/2003/JS-II dated 27.03.2003ordered disclosure in the nomination papers of the details of pending cases against the candidate in which cognizance had been taken by a competent court of law.

F. Because the Central Government amended the Code of Conduct Rules, 1961 to incorporate the obligation to disclose information pertaining to pending cases in which cognizance had been taken in Form 26 read with Rule 4-A.

G. Because citizens enjoy the fundamental right under Article 19(1) to know the antecedents of election candidates. This right

could only be validly limited through restrictions conforming with Article 19(2).

H. Because in a letter dated 26.12.2012 the Election Commission reiterated and clarified that a disclosure would be incumbent upon a candidate after cognizance of a case is taken by the Magistrate, irrespective of whether charges have been framed or not.

I. Because Respondent No. 1 was the accused in a Summary Case and a Regular Criminal Case under Section 500 and Sections 468, 471, 217, 218, 467, 420, 34 of the Indian Penal Code, 1860 respectively. Orders issuing process were passed in both the cases thereby implying that cognizance of the offences had been taken.

J. Because Respondent No. 1 filed the affidavit required by Form 26 while concealing information about the two criminal cases pending against him where cognizance had been taken.

K. Because the High Court erred in presuming Section 33-A to be exhaustive and then pigeonholing the complaint of the Petitioner as being one under Section 33-A(1)(i).

L. Because the obligation upon election candidates to disclose information about pending cases in which cognizance has been taken exists upon a cumulative reading of Section 33-A of the RPA, and Rule 4-A and Form 26 of the Conduct of Election Rules, 1961.

M. Because Section 33-A clearly envisages disclosure of information beyond what is directly stated therein. In furtherance of this very intention, Conduct of Election Rules, 1961 have been framed.

N. Because Rule 4-A requires that the candidate "shall" deliver the affidavit in Form 26 to the Returning Officer. Therefore, a

candidate ought to abide by the disclosures mandated by Form 26 (including disclosure of pending cases in which cognizance has been taken), which Respondent No. 1 has admittedly failed to do in the instant case.

O. Because Section 125-A of the RPA penalizes non-disclosure of information relatinfgto Section 33-A(1).

P. Because the Election Commission explicitly clarified that any false declaration or concealing of information in the affidavit in Form 26 would attract provisions of Section 125-A of the RPA.

Q. Because Section 33-A read with Section 169 clearly envisages the possibility of the candidate being compelled to furnish more information than what is expressly enumerated in Section 33-A.

R. Because the interpretation of the statute offered by the High Court stifles a voter's fundamental right to know about the candidate contesting the elections, an essential and a necessary concomitant of a free and fair election.

S. Because the interpretation offered by the High Court which relegates Section 4-A to a mere and implies that there are no repercussions whatsoever in case a candidate conceals facts/ lies on affidavit.

T. Because the Supreme Court in Krishnamoorthy v. Sivakumar[(2015) 3 SCC 467] has emphasized the importance of disclosure of information of pending criminal cases, and even treated non-disclosure as grounds for declaring election null and void.

U. Because the interpretation offered by the High Court stands in direct contradiction to the text of the provisions, objective of the

statute, the orders of this Hon'ble Court and the interpretation put forward by the Election Commission.

6. GROUNDS FOR INTERIM RELIEF

NA

7. MAIN PRAYER:-

The Petitioner, therefore, prays that this Hon'ble Court will be pleased to :

(A) Grant Special Leave to Appeal against the impugned final judgment and order dated 03.05.2018 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Revision Application No. 94 of 2016 and in Criminal Application (APPR) No. 101 of 2018;

(B) For such and other order or orders as this Hon'ble Court may deem fit.

8. PRAYER FOR INTERIM RELIEF:-

NA

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed By

drawn on 22.6.2018

filed on 14.8.2018

BALRAJ DEWAN

Advocate for the Petitioner

37

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2018

IN THE MATTER OF

SatishUkey ...Petitioner

Versus

Devendra Gangadharrao Fadnavis and Anr. ... Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/ Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the special leave petition. It is further certified that the Annexures P-1 to P-22 (other than AnnexureP-23 for which separate application for additional document is filed) attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioners whose affidavit is filed in support of the Special Leave Petition.

Filed by:

(BALRAJ DEWAN)
Advocate for the Petitioner

Date: 14.08.2018

37(A)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2018

IN THE MATTER OF:

Satish Uke PETITIONER

VERSUS

Devendra Gangadharrao Fadnavis & Anr. RESPONDENT

AFFIDAVIT

I, Satish Uke, S/o Mahadeorao Uke, aged about 37 years, R/o Parvati Nagar, Nagpur, 440027, do hereby solemnly affirm and state as under:

1. That I am the Petitioner herein and as such I am well conversant with the facts and circumstances of the case and am competent to swear this affidavit.

2. I say that I have been read over and explained the contents of the Synopsis & List of Dates at pages B to T and contents of the Special Leave Petition (Criminal) as contained in Paras 1 to 8 at pages 29 to 36 and CrLMPs. I state that the factual averments made therein are correct and true to the best of my knowledge and information, based on records and the submissions

37(B)

of law made in the grounds, prayer, are true and correct to the best of my knowledge and belief.

3. That the Annexure P- 1 to P- 22 at pages to be filed along with the Special Leave Petition (Criminal) are true copies of their respective originals.

4. That the Petitioner has not filed any other Special Leave Petition (Criminal) against the impugned order.

SEAL OF OATH COMMISSIONER SUPREME COURT OF INDIA NEW DELHI
SUMEER KUMAR SHRIVASTVA
EL. NO. 28/2016
APPOINTED BY
HIGH COURT OF DELHI
PERIOD FROM 27-07-2016
TO 26-07-2018

DEPONENT

VERIFICATION:

Verified at New Delhi on this 26th day of June, 2018, that the contents of the above affidavit are true and correct, to the best of my knowledge and belief. No part of this affidavit is false and nothing material has been willfully concealed there from.

DEPONENT

IDENTIFIED THE DEPONENT AND SIGNATURE
NAME
OCCUPATION
SIGNATURE

ATTESTED
26.6.18
OATH COMMISSIONER
SUPREME COURT OF INDIA
NEW DELHI

Appendix

Rule 4A. Form of affidavit to be filed at the time of delivering nomination paper.—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.]

Section 33A of Representation of People Act 1951 was added:

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more.

2. The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

3. The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid

information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

Annexure-P.1
Ex. 1

40

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS

(COURT NO . NAGPUR)

SUM. CRIMINAL COMPLAINT CASE NO. 231 OF 1996

Complainant :- Madanlal S/o Babulal Parate

Aged about 50 years ,occ. Advocate ,

r/o Giripeth , Nagpur-10

Verses

Accused:- Devendra r/o Gangadhar Fadnis

Aged about 30 years ,occ. Corporator,

r/o 276,Raosaheb Fadnis Park, Dharampeth

Ward No. 88,Nagpur 10

Order

Heard the Complainant, Perused the case record .There is prima facie case to issue process. Hence issue process U/S 500 of the Penal Code against the accused P.F. within 3 days.

Sd/-

7.5.96

// True Copy //

41

Annexure - P-2

Ex. 1

IN THE COURT OF THE 1'st JUDICIAL MAISTRATE NAGPUR

~~REG. CRIMINAL CASE NO. 125/1998 DATED 9.7.98~~

REG. CRIMINAL CASE NO. 343/2003 DATED 30.1.03

Complainant :- Madanlal S/o Babulal Parate

Aged about 53 years ,occ. Legal practitioner,

Resident of Giripeth , Nagpur-10

Verses

Accused:- 1. Shri. S.S. Hastak,.....

2. Shri. Dhakate,.....

3.Shri Nerkar,.....

4.Devendra s/o Gangadhar Fadnis

Aged about 32 years , Mayer,N.M.C.,

Resident of Near Trikoni Park ,

Dharampeth ,Nagpur

Order

Sufficient time is already granted to Police to file report U/S 202 Cr. P.C.. As no report is filed so matter is argued & heard .There is sufficient ground for issue process. So issue process U/S 468,471,217, 218, 467, 420, 34 I.P.C. on PF returnable on 5/7/99

Sd/-

(7/6/99)

// True Copy //

Annexure-P-3

Exh.26

42

IN THE COURT OF HON' BLE 2nd J.M.F.C., NAGPUR.

COMPLAINT CASE NO.125/1998

Madan Parate

Vs

Hastak and others.

Applicant : Devendra s/o Gangadhar Fadnavis , Aged about 30 years , Occupation business , r/o of Trikoni Park , Dharampeth ,Nagpur

APPLICATION FOR RELEASING THE ACCUSED ON P.R. BOND.

The accused named above most respectfully begs to submits as under:

1. That the complainant has filed a private complaint case against the present accused alongwith the other persons under section 217, 218, 406, 407, 408, 506-B, 500 read with Section 34o f IPC wide case No.125/1998.

2. This Hon'ble Court was pleased to issue the summons against all the accused. All the accused except the present applicant are released on bail by this Hon'ble Court. The applicant is a social worker and is M.L.A. of West Nagpur. Due to his duty being representative of West Nagpur he could not attend this Hon'ble. Court and could not obtained bail.

3. The accused is present before this Hon'ble Court today. Looking to the fact that there are absolutely no chances of his flying away from the course of justice and the fact that the accused is ex-mayor of Nagpur City and sitting M.L.A. of West Nagpur and a well known person, this Hon'ble Court may kindly be pleased to release the accused on P.R. Bond. The accused undertakesto abide by all conditions imposed by this Hon'ble Court. In view of this and in the

interest of justice this Hon'ble Court may kindly be pleased to release the accused on P.R. bond.

PRAYER: It is therefore prayed that this Hon'ble Court may kindly be pleased to release the accused on P.R. Bond in the interest of justice.

NAGPUR

DATE: 18.09.2000

COUNSEL FOR ACCUSED

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P-4
44

(2002) 5 Supreme Court Cases 294

(BEFORE M.B. SHAH, BISHESHWAR PRASAD SINGH AND H.K. SEMA, JJ.)

Civil Appeal No. 7178 of 2001†

UNION OF INDIA .. Appellant;

Versus

ASSOCIATION FOR DEMOCRATIC REFORMS AND ANOTHER .. Respondents.

With

Writ Petition (C) No. 294 of 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL) AND ANOTHER .. Petitioners;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Civil Appeal No. 7178 of 2001 with WP (C) No. 294 of 2001, decided on May 2, 2002

A. Constitution of India — Art. 324 — Election Commission — Powers of — Nature, scope and limitations on — Held, are plenary and include all powers necessary for smooth conduct of election subject only to a valid law enacted by Parliament or State Legislature — In the absence of such a law, Election Commission can exercise its residuary power under Art. 324 to fill the vacuum in order to meet unforeseen contingencies — Hence, where, with a view to enable the voter to make a right choice, High Court directed the Election Commission to secure to the voters information in respect of each of the candidates for Lok Sabha/State Legislature regarding pendency, if any, of criminal cases against the candidate, assets of the candidate or of his/her spouse or dependent relations, and his/her competence, capacity, suitability including educational qualifications, such directions, held, justified and within High Court's jurisdiction — However, considering the parties' submissions, Supreme Court, in modification of High Court's directions, directing the Election Commission to require, in exercise of its powers under Art. 324, each candidate to submit, as a necessary part of his nomination papers, information on affidavit in respect of items specified by Supreme Court — Since the field had remained unoccupied by legislature and executive, Supreme Court could issue such directions under Arts. 32, 141 and 142 — Judicial activism — Words and Phrases — "Conduct of elections", "elections", "direction" — Election — Representation of the People Act, 1951, S. 83(1) — Information to be furnished along with nomination paper

B. Constitution of India — Art. 19(1)(a) — Freedom of speech and expression — Scope — Casting of votes by voters, held, covered — Hence, voter's right to know antecedents including criminal past of a candidate to membership of Parliament or Legislative Assembly, held, is a fundamental

† From the Judgment and Order dated 2-11-2000 of the Delhi High Court in CWP No. 7257 of 1999 : AIR 2001 Del 126

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45

right — Election — Voting right — International Covenant on Civil and Political Rights, Arts. 19(1) & (2)

C. Public Functionaries — Who are — MPs and MLAs, held, included

a D. Election — Generally — MP or MLA — Status of and duty to public owed by, held, is higher than that of a gazetted officer — Service Law — Government servants — Status and duty of — Compared with that of legislators

E. Constitution of India — Arts. 32, 136 and 141 — Issue of directions or guidelines or orders — Powers of Supreme Court — Scope — Held, b Supreme Court cannot give any directions for amending an Act or Rules nor can it give any direction contrary to the Act and Rules — However, where the Act and Rules are silent on a subject and the authority implementing the same has constitutional or statutory power to implement it, Court can issue directions to such authority on such a subject to fill the vacuum or void till the enactment of a suitable law

c F. Constitution of India — Preamble and Art. 368 — Basic structure of the Constitution — Form of government — Republican and democratic form of government, held, is a part of basic structure of the Constitution

G. Election — Generally — Manner of election — Election to House of People and Legislative Assembly, held, is on the basis of adult suffrage — Constitution of India, Art. 326

d H. Election — Candidature — Election to House of People or Legislative Assembly — Eligibility criteria — Holding of any asset (movable or immovable) or any educational qualification, held, are not part of the eligibility criteria to contest such elections — Constitution of India, Arts. 84 and 173

I. Election — Election Commission — Powers of — Election to Parliament and State Legislatures — Superintendence, direction and e control of the conduct of such elections, held, vests in Election Commission — Constitution of India, Art. 324 — Words and Phrases — "Conduct of elections"

In CA No. 7178 of 2001, the appellant challenged a decision of the Delhi High Court in which, holding that for making a right choice it was essential that the past of the candidates to the Lok Sabha or Legislative Assembly should be f disclosed to the voters, the High Court had directed the Election Commission to secure to voters the following information pertaining to each of the candidates and the parties they represent: (i) pendency of case, if any, in which the candidate is an accused, (ii) assets of the candidate, the candidate's spouse and dependent relations, (iii) & (iv) facts relating to the competence and suitability of the candidate and the political party fielding him. In WP No. 294 of 2001, the petitioners sought issuance of directions similar to those as (i) and (ii) above and g further sought the Supreme Court to frame guidelines under Article 141 of the Constitution by taking into consideration the 170th Report of the Law Commission of India. The appellant contended that it was for the political parties to decide whether such amendments should be brought and carried out in the Act and the Rules. It added that the Representation of the People Act, 1951 (for short "the Act") nowhere disqualified a candidate for non-disclosure of assets or h pending charge in a criminal case and that, therefore, directions given by the High Court were improper. The Election Commission supported the High

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46

Court's directions. Indian National Congress, whose application for intervention in the appeal was granted by the Supreme Court, contended that the High Court ought to have directed the writ petitioners to approach Parliament for appropriate amendments to the Act instead of directing the Election Commission to implement the same. It further contended that the citizens' right to know about the affairs of the Government did not mean that citizens had a right to know the personal affairs of MPs or MLAs. The Supreme Court formulated two questions: (*i*) whether the Election Commission is empowered to issue directions as ordered by the High Court, and (*ii*) whether a voter has a right to get the relevant information, such as assets, qualification and involvement in offence for being educated and informed for judging the suitability of a candidate contesting election as MP or MLA.

Partly allowing the appeal and the writ petition, the Supreme Court

Held:

The Supreme Court cannot give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till a suitable law is enacted. (Paras 19 and 20)

Moreover, (*a*) one of the basis structures of the Constitution is "republican and democratic form of government"; (*b*) the election to the House of People and the Legislative Assembly is on the basis of adult suffrage (Article 326); (*c*) holding of any asset (immovable or movable) or any educational qualification is not the eligibility criteria to contest election; and (*d*) under Article 324, the superintendence, direction and control of the "conduct of all elections" to Parliament and to the legislature of every State vests in the Election Commission. The phrase "conduct of elections" is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections. (Para 21)

Whether the Election Commission is empowered to issue directions as ordered by the High Court

In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. The voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well-informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided — its result, if pending — whether charge has been framed or cognizance has been taken by the court. There is no necessity of suppressing the relevant facts from the voters. (Para 22)

The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word "elections" is

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47

used in a wide sense to include the entire process of election which consists of several stages and embraces many steps. [Paras 46(1), (3) and 27]

Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628; *Common Cause (A Registered Society) v. Union of India*, (1996) 2 SCC 752, *relied on*

A.C. Jose v. Sivan Pillai, (1984) 2 SCC 656, *referred to*

The limitation or plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair elections. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case* the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such a phrase should be construed liberally empowering the Election Commission to issue such orders. [Paras 46(2), 25, 24, 26 & 27]

Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405; *Kanhiya Lal Omar v. R.K. Trivedi*, (1985) 4 SCC 628, *relied on*

Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. If on an affidavit a candidate is required to disclose the assets held by him at the time of election, the voter can decide whether he could be re-elected even in case where he has collected tons of black money. (Para 46)

Even if this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom. [Paras 46(3) and 28]

Common Cause (A Registered Society) v. Union of India, (1996) 2 SCC 752, *relied on*

To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. [Para 46(4)]

Common Cause (A Registered Society) v. Union of India, (1996) 2 SCC 752, *relied on*

Therefore, it is not possible to accept the contention raised by the appellant and the intervenor that if there is no provision in the Act or the Rules, the High Court ought not to have issued such directions to the Election Commission. It is settled that the power of the Commission is plenary in character in exercise thereof. In statutory provisions or rules, every contingency could not be foreseen or anticipated with precision, therefore, the Commission can cope with a situation, where the field is unoccupied, by issuing necessary orders. (Para 25)

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Page 5 Wednesday, September 26, 2018
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48

Right to know about the candidates contesting elections

The people of the country have a right to know every public act, everything that is done in a public way by the public functionaries. MPs or MLAs are undoubtedly public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision-making process. The decision-making process of a voter would include his right to know about public functionaries who are required to be elected by him.

(Para 30)

State of U.P. v. Raj Narain, (1975) 4 SCC 428; *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121; *Secy., Ministry of Information and Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161; *Dinesh Trivedi, M.P. v. Union of India*, (1997) 4 SCC 306, *relied on*

Romesh Thappar v. State of Madras, AIR 1950 SC 124 : 1950 SCR 594 : 1950 Cri LJ 1514; *Attorney-General v. Times Newspapers Ltd.*, (1973) 3 All ER 54 : 1974 AC 273 (HL), *referred to*

In a democracy, the electoral process has a strategic role. The little man of the country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted. [Para 46(4)]

The right to get information in a democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. A reference to Articles 19(1) and (2) of the International Covenant of Civil and Political Rights can be made in this regard. Moreover, Article 19(1)(*a*) of the Constitution of India provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers. [Paras 46(5), (7) and 23]

Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405, *relied on*

The intervenor's contention that the citizens have no right to know the personal affairs of MPs or MLAs, is totally misconceived. There is no question of knowing the personal affairs of MPs or MLAs. The limited information is — whether the person who is contesting election is involved in any criminal case and if involved, what is the result? Further, there are widespread allegations of corruption against the persons holding post and power. In such a situation, the question is not of knowing personal affairs but to have openness in a democracy for attempting to cure the cancerous growth of corruption by a few rays of light. Hence, citizens who elect MPs or MLAs are entitled to know that their representative has not misconducted himself in collecting wealth after being elected. This information could be easily gathered only if prior to election, the assets of such person are disclosed. Moreover, even the gazetted officers in all government services are required to disclose their assets and thereafter to furnish details of any acquisition of property annually, while in a democratic form of government, MP or MLA is having higher status and duty to the public.

(Paras 41 and 44)

P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626 : 1998 SCC (Cri) 1108, *referred to*

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49

Therefore, it cannot be said that the directions issued by the High Court were unjustified or beyond its jurisdiction. However, considering the submissions made by the parties at the time of hearing of this matter, the said directions are modified as stated below:

The Election Commission is directed to call for an affidavit by issuing necessary order in exercise of its power under Article 324 from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.

(Paras 47 and 48)

The norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case, within two months. (Para 49)

Vineet Narain v. *Union of India*, (1998) 1 SCC 226 : 1998 SCC (Cri) 307; *Enach Sam Kanga* v. *Union of India*, WP No. 2632 of 1978, decided on 20-3-1979; *Lakshmi Kant Pandey* v. *Union of India*, (1984) 2 SCC 244; *State of W.B.* v. *Sampat Lal*, (1985) 1 SCC 317 : 1985 SCC (Cri) 62; *K. Veeraswami* v. *Union of India*, (1991) 3 SCC 655 : 1991 SCC (Cri) 734; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584; *Delhi Judicial Service Assn.* v. *State of Gujarat (Nadiad case)*, (1991) 4 SCC 406; *Delhi Development Authority* v. *Skipper Construction Co. (P) Ltd.*, (1996) 4 SCC 622; *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (1993) 4 SCC 441; *Vishaka* v. *State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932; *Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651, *referred to*

H-M/25705/C

Advocates who appeared in this case :

Harish N. Salve, Solicitor-General, Rajinder Sachar, Ashwani Kumar and K.K. Venugopal, Senior Advocates (Sanjay R. Hegde, Satya Mitra, Ms Aparajita Singh, S.N. Terdal, Sanjay Parikh, R.R. Chandrachud, Ranji Thomas, Javed M. Rao, S. Muralidhar, S.K. Mendiratta, S. Vallinayagam, Shreyas Jayasimha, Ms Kamini Jaiswal and Ms Aishwarya Rao, Advocates, with them) for the appearing parties.

Chronological list of cases cited *on page(s)*

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2. (1998) 1 SCC 226 : 1998 SCC (Cri) 307, *Vineet Narain* v. *Union of India* — 306d-e, 306f, 320c-d
3. (1997) 6 SCC 241 : 1997 SCC (Cri) 932, *Vishaka* v. *State of Rajasthan* — 307e, 307e-f, 320b
4. (1997) 4 SCC 306, *Dinesh Trivedi, M.P.* v. *Union of India* — 307d, 317f-g
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Page 7 Wednesday, September 26, 2018
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50

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13. (1985) 4 SCC 628, *Kanhiya Lal Omar v. R.K. Trivedi* 312d, 320g
14. (1985) 1 SCC 641 : 1985 SCC (Tax) 121, *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* 315b-c
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16. (1984) 2 SCC 656, *A.C. Jose v. Sivan Pillai* 313b
17. (1984) 2 SCC 244, *Lakshmi Kant Pandey v. Union of India* 307c
18. (1978) 1 SCC 405, *Mohinder Singh Gill v. Chief Election Commr.* 310a-b, 313a-b
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21. (1973) 3 All ER 54 : 1974 AC 273 (HL), *Attorney-General v. Times Newspapers Ltd.* 315f
22. AIR 1950 SC 124 : 1950 SCR 594 : 1950 Cri LJ 1514, *Romesh Thappar v. State of Madras* 315c-d

The Judgment of the Court was delivered by

SHAH, J.— Short but important question involved in these matters is — in a nation wedded to republican and democratic form of government, where election as a Member of Parliament or as a Member of Legislative Assembly is of utmost importance for governance of the country, whether, before casting votes, voters have a right to know relevant particulars of their candidates? Further connected question is — whether the High Court had jurisdiction to issue directions, as stated below, in a writ petition filed under Article 226 of the Constitution of India?

2. Before dealing with the aforesaid questions, we would refer to the brief facts as alleged by the petitioner Association for Democratic Reforms in Writ Petition No. 7257 of 1999 filed before the High Court of Delhi for direction to implement the recommendations made by the Law Commission in its 170th Report and to make necessary changes under Rule 4 of the Conduct of Elections Rules, 1961. It has been pointed out that the Law Commission of India had, at the request of the Government of India, undertaken comprehensive study of the measures required to expedite hearing of election petitions and to have a thorough review of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") so as to make the electoral process more fair, transparent and equitable and to reduce the distortions and evils that have crept into the Indian electoral system and to identify the areas where the legal provisions required strengthening and improvement. It is pointed out that the Law Commission

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Page 8 Wednesday, September 26, 2018
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51

has made recommendation for debarring a candidate from contesting an election if charges have been framed against him by a court in respect of certain offences and necessity for a candidate seeking to contest election to furnish details regarding criminal cases, if any, pending against him. It has also suggested that true and correct statement of assets owned by the candidate, his/her spouse and dependent relations should also be disclosed. The petitioner has also referred para 6.2 of the report of the Vohra Committee of the Government of India, Ministry of Home Affairs, which reads as follows:

> "6.2. Like the Director CBI, DIB has also stated that there has been a rapid spread and growth of criminal gangs, armed senas, drug mafias, smuggling gangs, drug peddlers and economic lobbies in the country which have, over the years, developed an extensive network of contacts with the bureaucrats/government functionaries at the local levels, politicians, media persons and strategically located individuals in the non-State sector. Some of these syndicates also have international linkages, including the foreign intelligence agencies. In this context DIB has given the following examples:
>
> (i) In certain States like Bihar, Haryana and U.P., these gangs enjoy the patronage of local-level politicians, cutting across party lines and the protection of governmental functionaries. Some political leaders become the leaders of these gangs, armed senas and *over the years get themselves elected to local bodies, State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardising the smooth functioning of the administration and the safety of life and property of the common man causing a sense of despair and alienation among the people.*
>
> (ii) The big smuggling syndicates having international linkages have spread into and infected the various economic and financial activities, including hawala transactions, circulation of black money and operations of a vicious parallel economy causing serious damage to the economic fibre of the country. *These syndicates have acquired substantial financial and muscle power and social respectability and have successfully corrupted the government machinery at all levels and yield enough influence to make the task of investigating and prosecuting agencies extremely difficult; even the members of the judicial system have not escaped the embrace of the mafia.*
>
> (iii) Certain elements of the mafia have shifted to narcotics, drugs and weapon-smuggling and established narco-terrorism networks specially in the States of J&K, Punjab, Gujarat and Maharashtra. The cost of contesting elections has thrown the politician into the lap of these elements and led to a grave compromise by officials of the preventive/detective systems. The

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Page 3 Wednesday, September 26, 2018
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52

virus has spread to almost all the centres in the country, the coastal and the border States have been particularly affected.

(*iv*) The Bombay bomb blast case and the communal riots in Surat and Ahmedabad have demonstrated how the Indian underworld has been exploited by the Pak ISI and the latter's network in UAE to cause sabotage, subversion and communal tension in various parts of the country. The investigations into the Bombay bomb blast cases have revealed extensive linkages of the underworld in the various governmental agencies, political circles, business sector and the film world."

3. It is also contended that despite the reports of the Law Commission and the Vohra Committee, successive Governments have failed to take any action and, therefore, petition was filed for implementation of the said reports and for a direction to the Election Commission to make mandatory for every candidate to provide information by amending Forms 2-A to 2-E prescribed under the Conduct of Elections Rules, 1961. After hearing the parties, the High Court by judgment and order dated 2-11-2000, held that it is the function of Parliament to make necessary amendments in the Representation of the People Act, 1951 or the Elections Rules and, therefore, the Court cannot pass any order, as prayed, for amending the Act or the Rules.

4. However, the Court considered — whether or not an elector, a citizen of the country has a fundamental right to receive information regarding the criminal activities of a candidate to the Lok Sabha or the Legislative Assembly for making an estimate for himself — as to whether the person who is contesting the election has a background making him worthy of his vote, by peeping into the past of the candidate. After considering the relevant submissions and the reports as well as the say of the Election Commission, the High Court held that for making a right choice, it is essential that the past of the candidate should not be kept in the dark as it is not in the interest of the democracy and well being of the country. The Court directed the Election Commission to secure to voters the following information pertaining to each of the candidates contesting election to Parliament and to the State Legislatures and the parties they represent:

"1. Whether the candidate is accused of any offence(s) punishable with imprisonment. If so, the details thereof.

2. Assets possessed by a candidate, his or her spouse and dependent relations.

3. Facts giving insight into the candidate's competence, capacity and suitability for acting as a parliamentarian or a legislator including details of his/her educational qualifications.

4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature.

That order is challenged by the Union of India by filing the present appeal.

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Page 10 Wednesday, September 26, 2018
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53

5. On behalf of Indian National Congress IA No. 2 of 2001 is also filed for impleadment/intervention in the appeal filed by the Union of India by *inter alia* contending that the High Court ought to have directed the writ petitioners to approach Parliament for appropriate amendments to the Act instead of directing the Election Commission of India to implement the same. IA for intervention is granted.

6. Further, People's Union for Civil Liberties (PUCL) has filed Writ Petition No. 294 of 2001 under Article 32 of the Constitution praying that writ, order or direction be issued to the respondents — (*a*) to bring in such measures which provide for declaration of assets by the candidate for the elections and for such mandatory declaration every year during the tenure as an elected representative as MP/MLA; (*b*) to bring in such measures which provide for declaration by the candidate contesting election, whether any charge in respect of any offence has been framed against him/her; and (*c*) to frame such guidelines under Article 141 of the Constitution by taking into consideration the 170th Report of the Law Commission of India.

Submissions

7. We have heard the learned counsel for the parties at length. Mr Harish N. Salve, learned Solicitor-General appearing for the Union of India submitted that till suitable amendments are made in the Act and the Rules thereunder, the High Court should not have given any direction to the Election Commission. He referred to various sections of the Act and submitted that Section 8 provides for disqualification on conviction for certain offences and Section 8-A provides for disqualification on the ground of corrupt practices. Section 32 provides nomination of candidate for election if he is qualified to be chosen to fill that seat under the provisions of the Constitution and the Act or under the provisions of the Government of Union Territories Act, 1963. Thereafter, elaborate procedure is prescribed for presentation of nomination paper and requirements for a valid nomination. Finally, Section 36 provides for scrutiny of nominations and empowers the returning officer to reject any nomination on the following grounds:

> "36. (2)(*a*) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely—
>
> Articles 84, 102, 173 and 191,
>
> Part II of this Act and Sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or
>
> (*b*) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or
>
> (*c*) that the signature of the candidate or the proposer on the nomination paper is not genuine."

8. It is his submission that it is for the political parties to decide whether such amendments should be brought and carried out in the Act and the Rules. He further submitted that as the Act or the Rules nowhere disqualify a candidate for non-disclosure of the assets or pending charge in a criminal

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Page 11 Wednesday, September 26, 2018
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54

case, therefore, directions given by the High Court would be of no consequence and such directions ought not to have been issued.

9. Supplementing the aforesaid submission, Mr Ashwani Kumar, learned Senior Counsel appearing on behalf of intervenor Indian National Congress submitted that the Constituent Assembly had discussed and negatived requirement of educational qualification and possession of assets to contest election. For that purpose, he referred to the debates in the Constituent Assembly. He submitted that 3/4th of the population is illiterate and providing education as a qualification for contesting election was not accepted by the Constituent Assembly. Similarly, prescribing of property qualification for the candidates to contest election was also negatived by the Constituent Assembly. He, therefore, submitted that furnishing of information regarding assets and educational qualification of a candidate is not at all relevant for contesting election and even for casting votes. Voters are not influenced by the educational qualification or by possession of wealth by a contesting candidate. It is his say that the party whom he represents is interested in purity of election and wants to stop entry of criminals in politics or its criminalisation but it is for Parliament to decide the said question. It is submitted that a delicate balance is required to be maintained with regard to the jurisdiction of Parliament and that of courts and once Parliament has not amended the Act or the Rules despite the recommendation made by the Law Commission or the report submitted by the Vohra Committee, there was no question of giving any direction by the High Court to the Election Commission.

10. Mr K.K. Venugopal, learned Senior Counsel appearing on behalf of the Election Commission exhaustively referred to the counter-affidavit filed on behalf of the Election Commission. At this stage, we would refer to some part from the said affidavit. It is stated that the issue of "persons with criminal background" contesting election has been engaging the attention of the Election Commission of India for quite some time; even Parliament in the debates on 50 years of independence and the resolution passed in its special session in August 1997 had shown great concern about the increasing criminalisation of politics; it is widely believed that there is criminal nexus between the political parties and anti-social elements which is leading to criminalisation of politics; the criminals themselves are now joining the election fray and often even getting elected in the process. Some of them have even adorned ministerial berths and, thus, law-breakers have become law-makers. The Commission has suggested that a candidate should be required to furnish information in respect of—

(*a*) all cases in which he has been convicted of any offence and punished with any kind of imprisonment or amount of fine, and whether any appeal or application for review is pending in respect of any such cases of conviction; and

(*b*) all pending cases in which he is involved before any court of law in any offence, punishable with imprisonment for two years or more, and

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Page 12 Wednesday, September 26, 2018
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55

where the appropriate court has on prima facie satisfaction framed the charges against him for proceeding with the trial.

11. For declaration of assets, it has been suggested by the Election Commission that the candidate should be asked to disclose his assets, all immovable and movable properties which would include cash, bank balances, fixed deposits and other savings such as shares, stocks, debentures etc. The candidate also should be directed to disclose for voters' information, not only his assets but his liabilities like overdues to public financial institutions and government dues and charges on his/her properties.

12. For other directions issued by the High Court, it has been pointed out that it is for the political parties to project the capacity and capability of a candidate and that directions issued by the High Court are required to be set aside. Finally, the Election Commission has suggested as under:

"I. Each candidate for election to Parliament or a State Legislature should submit, along with his nomination paper, a duly sworn affidavit, for the truth of which he is liable, as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his candidature:

(i) whether the candidate is convicted of any offence in any case in the past, and punished with imprisonment or fine; if so, the details thereof, together with the details of any pending appeals or applications for revision in any such cases of conviction;

(ii) whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charges have been framed against him by the competent court of law; if so, the details thereof, together with the details of any pending appeals or applications for revision in respect of the charges framed in any such cases;

(iii) whether the candidate is an income tax and/or wealth tax assessee and has been paying his tax(es) and filing his returns regularly, wherever he is liable, and if so, the financial year for which the last income tax/wealth tax returns have been filed;

(iv) the liabilities of the candidate, his/her spouse and minor children; that is to say, overdues to any public financial institutions, any government dues, and charges on his/her properties;

(v) the educational qualifications of the candidate.

II. The information by each candidate in respect of all the foregoing aspects shall be furnished by the candidate in a format to be prescribed by the Election Commission and shall be supported by a duly sworn affidavit, making him responsible for the correctness of the information so furnished and liable for any false statement.

III. The information so furnished by each candidate in the prescribed format and supported by a duly sworn affidavit shall be disseminated by the Election Commission, through the respective Returning Officers, by displaying the same on the notice board of the Returning Officer and

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Page 13 Wednesday, September 26, 2018
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56

making the copies thereof available freely and liberally to all other contesting candidates and the representatives of the print and electronic media.

If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate may also be disseminated along with the affidavit of the candidate concerned.

The court may lay down that it would be mandatory for each candidate for election to Parliament or State Legislature, to file along with his nomination paper, the aforesaid duly sworn affidavit, furnishing therein the information on the aspects detailed above and that the nomination paper of such a candidate who fails or refuses to file the required affidavit or files an incomplete affidavit shall be deemed to be an incomplete nomination paper within the meaning of Section 33(1) of the Representation of the People Act, 1951 and shall suffer consequences according to law."

13. The aforesaid suggestions made by the Election Commission would certainly mean that except certain modifications, the Election Commission virtually supports the directions issued by the High Court and that candidates must be directed to furnish necessary information with regard to pending criminal cases as well as assets and educational qualification.

14. Mr Rajinder Sachar, learned Senior Counsel appearing on behalf of the petitioners relied upon the decision rendered by this Court in *Vineet Narain* v. *Union of India*[1] and submitted that considering the widespread illiteracy of the voters, and at the same time their overall culture and character, if they are well informed about the candidates contesting election as MP or MLA, they would be in a position to decide independently to cast their votes in favour of a candidate who, according to them, is much more efficient to discharge his functions as MP or MLA. He, therefore, submitted that presuming that the High Court has no jurisdiction to pass orders to fill in the gaps, this Court can do so by exercising its powers under Article 142 which have the effect of law.

15. In *Vineet Narain case*[1] this Court dealt with the writ petitions under Article 32 of the Constitution of India brought in public interest wherein allegation was against the Central Bureau of Investigation (CBI) of inertia in matters where accusation made was against high dignitaries. Primary question considered was — whether it was within the domain of judicial review and it could be an effective instrument for activating the investigating process which is under the control of the executive? While discussing the powers of this Court, it was observed: (SCC p. 264, paras 48-49)

"The powers conferred on this Court by the Constitution are *ample to remedy this defect and to ensure enforcement of the concept of equality.*

There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141

[1] (1998) 1 SCC 226 : 1998 SCC (Cri) 307

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Page 14 Wednesday, September 26, 2018
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57

and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, *by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role.*" (emphasis supplied)

16. In paragraph 51, the Court pointed out previous precedents for exercise of such power: (SCC pp. 265-66, para 51)

"*51.* In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In *Erach Sam Kanga* v. *Union of India*[2] the Constitution Bench laid down certain guidelines relating to the Emigration Act. In *Lakshmi Kant Pandey* v. *Union of India*[3] (In re, Foreign Adoption), guidelines for adoption of minor children by foreigners were laid down. Similarly in *State of W.B.* v. *Sampat Lal*[4], *K. Veeraswami* v. *Union of India*[5], *Union Carbide Corpn.* v. *Union of India*[6], *Delhi Judicial Service Assn.* v. *State of Gujarat (Nadiad case)*[7], *Delhi Development Authority* v. *Skipper Construction Co. (P) Ltd.*[8] and *Dinesh Trivedi, M.P.* v. *Union of India*[9] guidelines were laid down having the effect of law, requiring rigid compliance. In *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[10] *(IInd Judges case)* a nine-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in *Vishaka* v. *State of Rajasthan*[11] elaborate guidelines have been laid down for observance in workplaces relating to sexual harassment of working women. In *Vishaka*[11] it was said (SCC pp. 249-50, para 11)

"*11.* The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 (As amended at Manila, 28th August, 1997) as those representing the

2 WP No. 2632 of 1978, decided on 20-3-1979
3 (1984) 2 SCC 244
4 (1985) 1 SCC 317 : 1985 SCC (Cri) 62
5 (1991) 3 SCC 655 : 1991 SCC (Cri) 734
6 (1991) 4 SCC 584
7 (1991) 4 SCC 406
8 (1996) 4 SCC 622
9 (1997) 4 SCC 306
10 (1993) 4 SCC 441
11 (1997) 6 SCC 241 : 1997 SCC (Cri) 932

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Page 15 Wednesday, September 26, 2018
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58

minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"*Objectives of the Judiciary*:

10. The objectives and functions of the judiciary include the following:

(*a*) to ensure that all persons are able to live securely under the rule of law;

(*b*) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(*c*) to administer the law impartially among persons and between persons and the State."

Thus, an exercise of this kind by the court is now a well-settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field.' "

17. Ms Kamini Jaiswal, learned counsel appearing on behalf of the respondents in support of the decision rendered by the High Court referred to the decision in *Kihoto Hollohan* v. *Zachilhu*[12] wherein while considering the validity of the Tenth Schedule of the Constitution, the Court observed: (SCC p. 741, para 179)

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

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

18. In these matters, questions requiring consideration are:

1. Whether the Election Commission is empowered to issue directions as ordered by the High Court?

2. Whether a voter — a citizen of this country — has right to get relevant information, such as assets, qualification and involvement in offence for being educated and informed for judging the suitability of a candidate contesting election as MP or MLA?

For deciding the aforesaid questions, we would proceed on the following accepted legal position.

12 1992 Supp (2) SCC 651

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Page 16 Wednesday, September 26, 2018
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59

19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.

20. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted.

21. Further, it is to be stated that: (*a*) one of the basic structures of our Constitution is "republican and democratic form of government"; (*b*) the election to the House of People and the Legislative Assembly is on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under the Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election (Article 326); (*c*) holding of any asset (immovable or movable) or any educational qualification is not the eligibility criteria to contest election; and (*d*) under Article 324, the superintendence, direction and control of the "conduct of all elections" to Parliament and to the legislature of every State vests in the Election Commission. The phrase "conduct of elections" is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections.

Question 1

Whether the Election Commission is empowered to issue directions as ordered by the High Court

22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens — voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational

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60

qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided — its result, if pending — whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters.

23. The Constitution Bench of this Court in *Mohinder Singh Gill* v. *Chief Election Commr.*[13] while dealing with a contention that the Election Commission has no power to cancel the election and direct re-poll, referred to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless words: (SCC p. 413, paras 2-3)

> " 'At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.'
>
> If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by *mob muscle methods, or subtle perversion of discretion by men dressed in little, brief authority*'. For 'be you ever so high, the law is above you'.
>
> The moral may be stated with telling terseness in the words of William Pitt: '*Where laws end, tyranny begins*.' Embracing both these mandates and emphasizing their combined effect is the elemental law and politics of power best expressed by Benjamin Disraeli (*Vivian Grey*, Bk VI Ch 7): '
>
> > 'I repeat ... that all power is a trust — that we are accountable for its exercise — that, from the people and for the people, all springs, and all must exist.' " (emphasis supplied)

Further, the Court (in para 23) observed thus: (SCC p. 424)

> "23. *Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of this proxy.* Although the full flower of participative government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions. 'The right of election is the very essence of the Constitution' (Junius). It needs little argument to hold that the heart of the parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more." (emphasis supplied)

Thereafter, the Court dealt with the scope of Article 324 and observed (in para 39) thus: (SCC p. 431)

> "Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control', as well as 'conduct of all elections', are the broadest terms."

13 (1978) 1 SCC 405

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61

The Court further held: (SCC p. 432, para 41)

> "41. Our conclusion on this limb of the contention is that Article 324 is wide enough to supplement the powers under the Act, as here, but subject to the several conditions on its exercise we have set out."

The Court also held (in para 77) thus: (SCC pp. 446-47)

> "77. We have been told that wherever Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specificated it is otiose. There is no such sequitur. *The silence of a statute has no exclusionary effect except where it flows from necessary implication.* Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation." (emphasis supplied)

24. In the concluding portion of paragraph 92, the Court *inter alia* observed thus: (SCC p. 452)

> "(1)(*a*) * * *
>
> (*b*) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.
>
> (2)(*a*) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. *This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending* on the circumstances.
>
> (*b*) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions *but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition.*" (emphasis supplied)

25. In concurring judgment, Goswami, J. with regard to Article 324 observed (in para 113) thus: (SCC pp. 459-60)

> "Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, *the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission, in its own right,* as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules." (emphasis supplied)

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62

26. The aforesaid decision of the Constitution Bench unreservedly lays down that in democracy the little man — voter — has overwhelming importance on the point and the little-large Indian (voter) should not be hijacked from the course of free and fair elections by subtle perversion of discretion of casting votes. In a continual participative operation of periodical election, the voter does a social audit of his candidate and for such audit he must be well informed about the past of his candidate. Further, Article 324 operates in areas left unoccupied by legislation and the words "superintendence, direction and control" as well as "conduct of all elections" are the broadest terms. The silence of statute has no exclusionary effect except where it flows from necessary implication. Therefore, in our view, it would be difficult to accept the contention raised by Mr Salve, learned Solicitor-General and Mr Ashwani Kumar, learned Senior Counsel appearing on behalf of the intervenor that if there is no provision in the Act or the Rules, the High Court ought not to have issued such directions to the Election Commission. It is settled that the power of the Commission is plenary in character in exercise thereof. In statutory provisions or rules, it is known that every contingency could not be foreseen or anticipated with precision, therefore, the Commission can cope with a situation where the field is unoccupied by issuing necessary orders.

27. Further, this Court in *Kanhiya Lal Omar v. R.K. Trivedi*[14] dealt with the constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 which was issued by the Election Commission in its plenary exercise of power under Article 324 of the Constitution read with Rules 5 and 10 of the Conduct of Elections Rules, 1961. The challenge was on the ground that the Symbols Order which is legislative in character could not be issued by the Commission because the Commission is not entrusted by law the power to issue such an Order regarding the specification, reservation and allotment of symbols that may be chosen by the candidates at elections in parliamentary and assembly constituencies. It was urged that Article 324 of the Constitution which vests the power of superintendence, direction and control of all elections to Parliament and to the legislature of a State in the Commission cannot be construed as conferring the power on the Commission to issue the symbols. The Court negatived the said contention and pertinently observed that (SCC p. 635, para 9)

> "The word 'elections' in Article 324 is used in a wide sense so as to include *the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process*. India is a country which consists of millions of voters. Although they are quite conscious of their duties politically, unfortunately, a large percentage of them are still illiterate."
>
> (emphasis supplied)

The Court in paragraph 16 held: (SCC pp. 639-40)

> "16. Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules,

14 (1985) 4 SCC 628

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63

the power of the Commission under Article 324(1) of the Constitution which is plenary in character can encompass all such provisions. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' as well as 'conduct of all elections' are the broadest terms which would include the power to make all such provisions. (See *Mohinder Singh Gill* v. *Chief Election Comm.*[13] and *A. C. Jose* v. *Sivan Pillai*[15].)" (emphasis supplied)

The Court further observed: (SCC p. 640, para 17)

"While construing the expression 'superintendence, direction and control' in Article 324(1), one has to remember that every norm which lays down a rule of conduct cannot possibly be elevated to the position of legislation or delegated legislation. *There are some authorities or persons in certain grey areas who may be sources of rules of conduct and who at the same time cannot be equated to authorities or persons* who can make law, in the strict sense in which it is understood in jurisprudence. A direction may mean an order issued to a particular individual or a precept which many may have to follow. It may be a specific or a general order. One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved. Viewed from this angle it cannot be said that any of the provisions of the Symbols Order suffers from want of authority on the part of the Commission, which has issued it." (emphasis supplied)

28. Thereafter, this Court in *Common Cause (A Registered Society)* v. *Union of India*[16] dealt with election expenses incurred by political parties and submission of return and the scope of Article 324 of the Constitution, where it was contended that cumulative effect of the three statutory provisions, namely, Section 293-A of the Companies Act, 1956, Section 13-A of the Income Tax Act, 1961 and Section 77 of the Representation of the People Act, 1951, is to bring transparency in the election funding and the people of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It was contended that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election and that this vicious circle has totally polluted the basic democracy in the country. The Court held that purity of election is fundamental to democracy and the Commission can ask the candidates about the expenditure incurred by the candidates and by a political party for this purpose. The Court also held: (SCC p. 761, para 18)

13 (1978) 1 SCC 405
15 (1984) 2 SCC 656
16 (1996) 2 SCC 752

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64

"The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

Thereafter, the Court observed that under Article 324, the Commission can issue suitable directions to maintain the purity of election and in particular to bring transparency in the process of election. The Court also held (paragraph 26) thus: (SCC p. 767)

"26. Superintendence and control over the conduct of elections by the Election Commission include the scrutiny of all expenses incurred by a political party, a candidate or any other association or body of persons or by any individual in the course of the election. The expression 'Conduct of election' is wide enough to include in its sweep, the power to issue directions — in the process of the conduct of an election — to the effect that the political parties shall submit to the Election Commission, for its scrutiny, the details of the expenditure incurred or authorised by the parties in connection with the election of their respective candidates."

29. The Court further observed that the Constitution has made comprehensive provision under Article 324 to take care of surprise situations and it operates in areas left unoccupied by legislation.

Question 2

Right to know about the candidates contesting elections

30. Now we would refer to various decisions of this Court dealing with citizens' right to know, which is derived from the concept of "freedom of speech and expression". The people of the country have a right to know every public act, everything that is done in a public way by the public functionaries. MPs or MLAs are undoubtedly public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision-making process. The decision-making process of a voter would include his right to know about public functionaries who are required to be elected by him.

31. In *State of U.P.* v. *Raj Narain*[17] the Constitution Bench considered a question — whether privilege can be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar Pradesh and certain documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh? The Court observed that: (SCC p. 453, para 74)

"The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary,

17 (1975) 4 SCC 428

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65

when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security."

a The Court pertinently observed as under: (SCC p. 453, para 74)

> "74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. *The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.* They are entitled to know the particulars of every public transaction in all
> b its bearing." (emphasis supplied)

32. In *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*[18] this Court dealt with the validity of customs duty on the newsprint in context of Article 19(1)(a). The Court observed (in para 32) thus: (SCC p. 664)

> "The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate
> c cannot make responsible judgments."

33. The Court further referred (in SCC p. 665, para 35) the following observations made by this Court in *Romesh Thappar* v. *State of Madras*[19]: (SCR p. 602)

> "(The freedom) lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for
> d the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But ... 'it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits'."

e Again in SCC pp. 685-86, paragraph 68, the Court observed:

> " '*The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves.*' (Per Lord Simon of Glaisdale in *Attorney-General* v. *Times Newspapers Ltd.*[20]) Freedom of expression, as learned writers have observed, has four
> f broad social purposes to serve: (*i*) it helps an individual to attain self-fulfilment, (*ii*) it assists in the discovery of truth, (*iii*) it strengthens the capacity of an individual in participating in decision-making and (*iv*) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of
> g society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration."

h 18 (1985) 1 SCC 641 : 1985 SCC (Tax) 121
19 AIR 1950 SC 124 : 1950 SCR 594 : 1950 Cri LJ 1514
20 (1973) 3 All ER 54 : 1974 AC 273 (HL)

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66

34. From the aforequoted paragraph, it can be deduced that the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes.

35. In *Secy., Ministry of Information and Broadcasting, Govt. of India* v. *Cricket Assn. of Bengal*[21] this Court considered the question of right to telecast sports event and after considering various decisions, the Court referred to Article 10 of the European Convention on Human Rights which *inter alia* states as follows (para 36): (SCC p. 208)

> "*10.1.* Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

36. Thereafter, the Court summarised the law on the freedom of speech and expression under Article 19(1)(*a*) as restricted by Article 19(2) thus: (SCC p. 213, para 43)

> "The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts."

37. The Court dealt with the right of telecast and (in paragraph 75) held thus: (SCC p. 224)

> "In a team event such as cricket, football, hockey etc., there is both individual and collective expression. It may be true that what is protected by Article 19(1)(*a*) is an expression of thought and feeling and not of the physical or intellectual prowess or skill. It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self-expression. However, *the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained.* The former is the right of the telecaster and the latter that of the viewers. The right to telecast sporting event will therefore also include the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. Hence, when a telecaster desires to telecast a sporting event, it is incorrect to say that the free-speech element is absent from his right" (emphasis supplied)

21 (1995) 2 SCC 161

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67

The Court thereafter (in paragraph 82) held: (SCC p. 229)

> "*True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country.* The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 1/2 per cent of the population has an access to the print media which is not subject to pre-censorship." (emphasis supplied)

The Court also observed: [SCC p. 300 para 201(3)(*b*)] "A successful democracy posits an 'aware' citizenry".

38. If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(*a*), we fail to understand why the right of a citizen/voter — a little man — to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(*a*). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of *X* or *Y* candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of "speech and expression" and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy.

39. In *Dinesh Trivedi, M.P.* v. *Union of India*[9] the Court dealt with a petition for disclosure of a report submitted by a Committee established by the Union of India on 9-7-1993 which was chaired by the erstwhile Home Secretary Shri N.N. Vohra which subsequently came to be popularly known as the Vohra Committee. During July 1995, a known political activist Naina Sahni was murdered and one of the persons arrested happened to be an active politician who had held important political posts and a newspaper report published a series of articles on the criminalisation of politics within the country and the growing links between political leaders and mafia members. The attention of the masses was drawn towards the existence of the Vohra Committee Report. It was suspected that the contents of the report were such that the Union Government was reluctant to make it public.

9 (1997) 4 SCC 306

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40. In the said case, the Court dealt with citizens' right to freedom of information and observed: (SCC p. 313, para 16)

> "16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare."

The Court also observed: (SCC p. 314, para 19)

> "Democracy ... expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant."

41. Mr Ashwani Kumar, learned Senior Counsel appearing on behalf of the intervenor submitted that the aforesaid observations are with regard to citizens' right to know about the affairs of the Government, but this would not mean that citizens have a right to know the personal affairs of MPs or MLAs. In our view, this submission is totally misconceived. There is no question of knowing the personal affairs of MPs or MLAs. The limited information is — whether the person who is contesting election is involved in any criminal case and if involved, what is the result? Further, there are widespread allegations of corruption against the persons holding post and power. In such a situation, question is not of knowing personal affairs but to have openness in democracy for attempting to cure cancerous growth of corruption by few rays of light. Hence, citizens who elect MPs or MLAs are entitled to know that their representative has not misconducted himself in collecting wealth after being elected. This information could be easily gathered only if prior to election, the assets of such person are disclosed. For this purpose, learned counsel Mr Muralidhar referred to the practice followed in the United States and the form which is required to be filled in by a candidate for the Senate, which provides that such candidate is required to disclose all his assets and that of his spouse and dependants. The form is required to be refilled every year. Penalties are also prescribed which include removal from ballot.

42. Learned counsel Ms Kamini Jaiswal referred to the All India Service (Conduct) Rules, 1968 and pointed out that a member of all-India service is required to disclose his/her assets including that of spouse and dependent children. She referred to Rule 16 of the said Rules, which provides for declaration of movable, immovable and valuable property by a person who becomes a member of the service. Relevant part of Rule 16 is as under:

> "16. (1) Every person shall, where such person is a member of the service at the commencement of these Rules, before such date after such commencement as may be specified by the Government in this behalf, or, where such person becomes a member of the service after such commencement, on his first appointment to the service, submit a return of his assets and liabilities in such form as may be prescribed by the Government giving the full particulars regarding—
>
> (a) the immovable property owned by him, or inherited or acquired by him or held by him on lease or mortgage, either in his own name or

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69

in the name of any member of his family or in the name of any other person;

(*b*) shares, debentures, postal cumulative time deposits and cash including bank deposits inherited by him or similarly owned, acquired or held by him;

(*c*) other movable property inherited by him or similarly owned, acquired or held by him; and

(*d*) debts and other liabilities incurred by him directly or indirectly."

43. Such officer is also required to submit an annual return giving full particulars regarding the immovable and movable property inherited by him or owned or acquired or held by him on lease or mortgage either in his own name or in the name of any member of his family or in the name of any other person.

44. It is also submitted that even the gazetted officers in all government services are required to disclose their assets and thereafter to furnish details of any acquisition of property annually. In our view, it is rightly submitted that in a democratic form of government, MP or MLA is having higher status and duty to the public. In *P.V. Narasimha Rao v. State (CBI/SPE)*[22] the Court inter alia considered whether Member of Parliament is a public servant. The Court (in para 162) held thus: (SCC p. 747)

"*162*. A public servant is 'any person who holds an office by virtue of which he is authorised or required to perform any public duty'. Not only, therefore, must the person hold an office but he must be authorised or required by virtue of that office to perform a public duty. Public duty is defined by Section 2(*b*) of the said Act to mean 'a duty in the discharge of which the State, the public or that community at large has an interest'. *In a democratic form of government it is the Member of Parliament or a State Legislature who represents the people of his constituency in the highest law-making bodies at the Centre and the State respectively.* Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest." (emphasis supplied)

The aforesaid underlined portion highlights the important status of an MP or an MLA.

45. Finally, in our view this Court would have ample power to direct the Commission to fill the void, in the absence of suitable legislation covering the field and the voters are required to be well informed and educated about contesting candidates so that they can elect a proper candidate by their own assessment. It is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by the executive, for whatever reason, the judiciary must

22 (1998) 4 SCC 626 : 1998 SCC (Cri) 1108

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70

step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her spouse's and dependants' assets — immovable, movable and valuable articles — it would have its own effect. This Court in *Vishaka* v. *State of Rajasthan*[11] dealt with the incident of sexual harassment of a woman at work place which resulted in violation of fundamental right of gender equality and the right to life and liberty and laid down that in the absence of legislation, it must be viewed along with the role of the judiciary envisaged in the Beijing Statement of Principles of Independence of Judiciary in the LAWASIA region. The decision has laid down the guidelines and prescribed the norms to be strictly observed in all work places until suitable legislation is enacted to occupy the field. In the present case also, there is no legislation or rules providing for giving necessary information to the voters. As stated earlier, this case was relied upon in *Vineet Narain case*[1] where the Court has issued necessary guidelines to CBI and the Central Vigilance Commission (CVC) as there was no legislation covering the said field to ensure proper implementation of the rule of law.

46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word "elections" is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case*[14] the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.

11 (1997) 6 SCC 241 : 1997 SCC (Cri) 932

1 *Vineet Narain* v. *Union of India*, (1998) 1 SCC 226 : 1998 SCC (Cri) 307

14 *Kanhiya Lal Omar* v. *R.K. Trivedi*, (1985) 4 SCC 628

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71

3. The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated earlier, in *Common Cause case*[16] the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on an affidavit a candidate is required to disclose the assets held by him at the time of election, the voter can decide whether he could be re-elected even in case where he has collected tons of money.

Presuming, as contended by the learned Senior Counsel Mr Ashwani Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted. Maybe true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

> "(1) Everyone shall have the right to hold opinions without interference.
>
> (2) Everyone shall have the right to freedom of expression; *this right shall include freedom to seek, receive and impart information and ideas of all kinds*, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142

16 *Common Cause (A Registered Society) v. Union of India*, (1996) 2 SCC 752

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72

of the Constitution to issue necessary directions to the executive to subserve public interest.

7. Under our Constitution, Article 19(1)(*a*) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers.

47. In this view of the matter, it cannot be said that the directions issued by the High Court are unjustified or beyond its jurisdiction. However, considering the submissions made by the learned counsel for the parties at the time of hearing of this matter, the said directions are modified as stated below.

48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(*1*) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(*2*) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(*3*) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(*4*) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(*5*) The educational qualifications of the candidate.

49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months.

50. In the result, Civil Appeal No. 7178 of 2001 is partly allowed and the directions issued by the High Court are modified as stated above. Appeal stands disposed of accordingly.

51. Writ Petition (C) No. 294 of 2001 is allowed to the aforesaid extent.

52. There shall be no order as to costs.

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Annexure P-5
43

(2003) 4 Supreme Court Cases 399

(BEFORE M.B. SHAH, P. VENKATARAMA REDDI AND D.M. DHARMADHIKARI, JJ.)

Writ Petition (C) No. 490 of 2002†

PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL) AND ANOTHER .. Petitioners;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

With

Writ Petition (C) No. 509 of 2002

LOK SATTA AND OTHERS .. Petitioners;

Versus

UNION OF INDIA .. Respondent.

And

Writ Petition (C) No. 515 of 2002

ASSOCIATION FOR DEMOCRATIC REFORMS .. Petitioner;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Writ Petitions (C) No. 490 of 2002 with Nos. 509 and 515 of 2002, decided on March 13, 2003

A. Election — Representation of the People Act, 1951 — S. 33-B [as inserted by Representation of the People (Third Amendment) Act, 2002] — Held, invalid

The Supreme Court in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 at para 48 gave the following directions:

"48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filling of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

† Under Article 32 of the Constitution of India

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(5) The educational qualifications of the candidate."

Subsequently, the Representation of the People (Amendment) Ordinance, 2002 (4 of 2002)‡ was promulgated on 24-8-2002. The Ordinance was later replaced by the Representation of the People (Third Amendment) Act, 2002 (72 of 2002)‡‡ which received the assent of the President on Dec. 28, 2002. Sections 33-A and 33-B as inserted by the said Amending Act read as under:

"33-A. *Right to information.*—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether—

(*i*) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(*ii*) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

33-B. *Candidate to furnish information only under the Act and the rules.*—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

Thus a candidate is not required to disclose (*a*) the cases in which he is acquitted or discharged of criminal offence(s); (*b*) his assets and liabilities; and (*c*) his educational qualification. In the present writ petitions, the validity of Section 33-B has been challenged. It was submitted by the petitioners that Section 33-B on the face of it is arbitrary, unjustifiable and void being violative of the fundamental right of the citizens/voters to know the antecedents of the candidates. Without exercise of that right it would not be possible to have free and fair elections and therefore, the impugned section violates the very basic features of the Constitution, namely, republic democracy. For having free and fair elections, anywhere in the territory of India, it is necessary to give effect to the voters' fundamental right as declared by the Supreme Court in the above judgment. It was contended that by issuing the Ordinance the Government has arrogated to itself the power to decide unilaterally for nullifying the decision rendered by the Supreme Court without considering whether it can pass

‡ Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 3

‡‡ Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 151

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legislation which abridges fundamental right guaranteed under Article 19(1)(*a*). On the other hand it was submitted on behalf of the respondents that the aforesaid Ordinance/Amended Act is in consonance with the judgment rendered by the Supreme Court and the vacuum pointed out by the said judgment is filled in by the enactment. It was also contended that voters' right to know the antecedents of the candidate is not part of the fundamental rights, but it is a derivative fundamental right on the basis of interpretation of Article 19(1)(*a*) given by the Supreme Court. It was submitted that the Ordinance/Amended Act is in public interest and, therefore, it cannot be held to be illegal or void.

Disposing of the writ petitions, the Supreme Court

Held:

Per Shah, J. (Dharmadhikari, J. concurring)

Section 33-B of the amended Act is held to be illegal, null and void. However, this judgment would not have any retrospective effect but would be prospective. (Para 79)

Per Reddi, J. (concurring)

Section 33-B of the Representation of the People Act, 1951 does not pass the test of constitutionality. (Para 80)

B. Election — Representation of the People Act, 1951 — S. 33-B [as inserted by Representation of the People (Third Amendment) Act, 2002] — Held, per curiam, invalid — Supreme Court in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 directing Election Commission to call for from the prospective candidates for election information relating to criminal background of the candidate and initiation or pendency of criminal cases or proceedings against him, his assets and liabilities and his educational qualification — But by virtue of the Amendment Act, a candidate is not required to disclose the cases in which he is acquitted and discharged of criminal offences, his assets and liabilities and his educational qualification — Held, per Shah, J., once Supreme Court in *Assn. for Democratic Reforms case* has held that a voter has right under Art. 19(1)(a) to know the antecedents of the candidate, that right can be restricted by passing such legislation only as covered by Art. 19(2) — But S. 33-B cannot be justified or saved under Art. 19(2) — It is also not open to the legislature to nullify the decision of Supreme Court on ground that right to know antecedents of voters is only a derivative right and not a specific fundamental right — Hence, S. 33-B is ultra vires Art. 19(1)(a) — Directives of Supreme Court do not impinge upon right to privacy of the candidates — Held, per Reddi, J. (concurring), directives issued to Election Commission by Supreme Court in *Assn. for Democratic Reforms case* regarding disclosure of certain information about a candidate's antecedents in view of voters' right under Art. 19(1)(a) to have such information were pro tempore or tentative in nature, intended to operate till law made in that regard by legislature considering those directives as broad indicators or parameters — While making the law legislature should have given due weight to those directions and a substantial departure therefrom was not permissible — Court in exercise of power of judicial review has to take a holistic view and adopt a balanced approach in ascertaining whether the information required by the legislation to be disclosed by the candidate are reasonably adequate — Amendment Act has not provided for disclosure of information

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in respect of certain crucial aspects as pointed out by Supreme Court in *Assn. for Democratic Reforms case* and S. 33-B imposed a blanket ban on disclosure of information other than those required by the Amendment Act — S. 33-B thus nullified substantially the said directives of the Supreme Court and hence violative of Art. 19(1)(a) — Held, per Dharmadhikari, J. (concurring), S. 33-B is deficient in ensuring free and fair elections which is basic structure of the Constitution and hence liable to be struck down so as to revive the law declared by Supreme Court in *Assn. for Democratic Reforms case* — Constitution of India, Arts. 19(1)(a) & (2) and 21 — Citizen's right to know or right to information versus right to privacy of candidates

C. Election — Representation of the People Act, 1951 — S. 75-A [as inserted by Representation of the People (Third Amendment) Act, 2002] — Whether failed to effectuate the right to information and freedom of expression of voters/citizens in respect of assets and liabilities of candidates

D. Constitution of India — Art. 19(1)(a) — "Freedom of expression" — Nature and scope of — Voting at an election is a form of expression — Words and phrases — "Freedom of expression"

E. Constitution of India — Pt. III — Generally — Fundamental rights discovered by Supreme Court by expansive interpretation whether can be ignored as derivative rights — Fundamental rights are dynamic concepts having no fixed contents and Court expands them in the changing context so as to make them vibrant and lively — Therefore, expansive meaning given to these rights by Court are equally enforceable and cannot be ignored by the legislature on ground of being derivative rights — Expansive interpretation of Art. 19(1)(a) noticed — Right to information is an integral part of Art. 19(1)(a)

F. Statute Law — Overriding effect — Validating law — Legislature cannot override decision of court by empowering instrumentalities of the State to disobey the same — But legislature can change the basis of the decision prospectively or retrospectively or remove the defect pointed out by the court so as to render the decision ineffective

It was submitted that by the impugned legislation, most of the directions issued by the Supreme Court in *Assn. for Democratic Reforms case* are complied with and vacuum pointed out is filled in by the legislation and that the legislature did not think it fit that the remaining information as directed by the Court is required to be given by a contesting candidate.

Held:

Per Shah, J.

Section 33-B, which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as the Supreme Court has held that the voter has a fundamental right under Article 19(1)(*a*) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment. The amended Act does not wholly cover the directions issued by the Supreme Court. On the contrary, it provides that a candidate would not be bound to furnish certain

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77

information as directed by the Supreme Court. Once the Supreme Court held that a voter has a fundamental right to know the antecedents of his candidate, that fundamental right under Article 19(1)(*a*) could be abridged by passing such legislation only as provided under Article 19(2). So legislative competence to interfere with a fundamental right enshrined in Article 19(1)(*a*) is limited as provided under Article 19(2). It has not been pointed out how the impugned legislation could be justified or saved under Article 19(2). (Paras 78, 38 to 40)

The legislature has no power to review the decision of the Supreme Court and set it at naught. The legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the court is not binding, void or is of no effect. The legislature can with retrospective effect change the basis on which a decision is rendered by a court and change the law in general. However, this power can be exercised subject to constitutional provision, particularly, legislative competence and if it is violative of fundamental rights enshrined in Part III of the Constitution, such law would be void as provided under Article 13 of the Constitution. (Paras 34, 78 and 37)

Municipal Corpn. of the City of Ahmedabad v. New Shrock Spg. and Wvg. Co. Ltd., (1970) 2 SCC 280; *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1; *P. Sambamurthy v. State of A.P.*, (1987) 1 SCC 362 : (1987) 2 ATC 502; *Cauvery Water Disputes Tribunal, In re*, 1993 Supp (1) SCC 96 (2); *Mahal Chand Sethia v. State of W.B.*, 1969 UJ (SC) 616; *relied on*

Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283, *cited*

It is not possible to accept the submission that as there is no specific fundamental right of the voter to know the antecedents of a candidate, the declaration by the Supreme Court of such fundamental right can be held to be derivative and therefore, it was open to the legislature to nullify it by appropriate legislation. There is no such concept of derivative fundamental rights. It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. The Constitution is required to be kept young, energetic and alive. Therefore, as the phrase "freedom of speech and expression" is given the meaning to include citizens' right to know the antecedents of the candidates contesting election of MP or MLA, such rights could not be set at naught by the legislature.

(Paras 41, 42, 78 and 55)

Unni Krithnan, J.P. v. State of A.P., (1993) 1 SCC 645; *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108; *C. Narayanaswamy v. C.K. Jaffer Sharief*, 1994 Supp (3) SCC 170; *T.N. Seshan, CEC of India v. Union of India*, (1995) 4 SCC 611, *relied on*

Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; *Pathumma v. State of Kerala*, (1978) 2 SCC 1; *Missouri v. Holland*, 252 US 416, 433 : 64 L Ed 641 (1919); *Satwant Singh Sawhney v. D. Ramarathnam, A.P.O.*, AIR 1967 SC 1836 : (1967) 3 SCR 525; *Gobind v. State of M.P.*, (1975) 2 SCC 148 : 1975 SCC (Cri) 468; *Griswold v. Connecticut*, 381 US 479 : 14 L Ed 2d 510 (1965); *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494 : 1979 SCC (Cri) 155; *Charles Sobraj v. Supdt., Central Jail*, (1978) 4 SCC 104 : 1978 SCC (Cri) 542; *Madhav Hayawadanrao Hoskot v. State of Maharashtra*, (1978) 3 SCC 544 : 1978 SCC (Cri) 468; *Hussainara Khatoon (I) v. Home Secy., State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23; *Prem Shankar Shukla v. Delhi Admn.*, (1980) 3

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SCC 526 : 1980 SCC (Cri) 815; *T.V. Vatheeswaran v. State of T.N.*, (1983) 2 SCC 68 : 1983 SCC (Cri) 342; *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96 : 1983 SCC (Cri) 353; *Attorney General of India v. Lachma Devi*, 1989 Supp (1) SCC 264 : 1989 SCC (Cri) 413; *Parmanand Katara v. Union of India*, (1989) 4 SCC 286 : 1989 SCC (Cri) 721; *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520; *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129 : (1950) 51 Cri LJ 1525; *Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554 : 1960 Cri LJ 735; *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305; *Bennett Coleman and Co. v. Union of India*, (1972) 2 SCC 788; *Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana*, (1988) 3 SCC 410; *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574; *LIC of India v. Manubhai D. Shah*, (1992) 3 SCC 637; *Dinesh Trivedi, MP v. Union of India*, (1997) 4 SCC 306; *Sub-Committee on Judicial Accountability v. Union of India*, (1991) 4 SCC 699, *referred to*.

By declaration of a fact, which is a matter of public record, that a candidate was involved in various criminal cases, there is no question of infringement of any right of privacy. Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, once a person becomes a candidate to acquire public office, such declaration would not affect his right of privacy. This is the necessity of the day because of statutory provisions of controlling widespread corrupt practices as repeatedly pointed out by all concerned including various reports of the Law Commission and other committees. (Para 47)

R. Rajagopal v. State of T.N., (1994) 6 SCC 632, *explained and distinguished*

Kharak Singh v. State of U.P., AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329; *Gobind v. State of M.P.*, (1975) 2 SCC 148 : 1975 SCC (Cri) 468, *referred to*

B.R. Kapur v. State of T.N., (2001) 7 SCC 231; *Common Cause v. Union of India*, (1996) 2 SCC 752, *relied on*

Per Ruddi, J. (concurring and partly dissenting)

The directives given by the Supreme Court in *Union of India v. Assn. for Democratic Reforms* were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by the Supreme Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced. If the legislature in utter disregard of the indicators enunciated by the Supreme Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass muster of Article 19(1)(*a*). Though certain amount of deviation from the aspects of disclosure spelt out by the Supreme Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens at large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is crucial, by any objective standards, is not denied. It is for the constitutional court in exercise of its judicial review power to judge whether the areas of disclosure carved out by the legislature are reasonably adequate to safeguard the citizens' right to information. (Paras 123 and 109)

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Page 7 Wednesday, September 26, 2018
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The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right. The Court has to keep in view the twin principles that the citizens' right to information to know about the personal details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. It is not a proper approach to test the validity of legislation only from the standpoint whether the legislation implicitly and word to word gives effect to the directives issued by the Court as an ad hoc measure when the field was unoccupied by legislation. (Paras 123 and 109)

Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients. The concept of freedom of speech and expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by law. New situations and the march of events may demand the flow of additional facets of information. The right to information should be allowed to grow rather than being frozen and stagnant; but the mandate of Section 33-B prefaced by the non obstante clause impedes the flow of such information conducive to the freedom of expression. In the face of the prohibition under Section 33-B, the Election Commission which is entrusted with the function of monitoring and supervising the election process will have to sit back with a sense of helplessness in spite of the pressing need for insisting on additional information. Even the Court may at times feel handicapped in taking necessary remedial steps to enforce the right to information. The legislative injunction curtailing the nature of information to be furnished by the contesting candidates only to the specific matters provided for by the legislation and nothing more would emasculate the fundamental right to freedom of expression of which the right to information is a part. The very objective of recognizing the right to information as part of the fundamental right under Article 19(1)(*a*) in order to ensure free and fair elections would be frustrated if the ban prescribed by Section 33-B is taken to its logical effect. The second reason is that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate by blocking the ambit of disclosures only to what has been specifically provided for by the amendment, Parliament failed to give effect to one of the vital aspects of information viz. disclosure of assets and liabilities and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression. Parliament has unduly restricted the ambit of information which the citizens should have and thereby impinged on the guarantee enshrined in Article 19(1)(*a*). (Paras 123, 110 and 111)

It is a settled principle of constitutional jurisprudence that the only way to render a judicial decision ineffective is to enact a valid law by way of amendment or otherwise fundamentally altering the basis of the judgment either prospectively or retrospectively. The legislature cannot overrule or supersede a judgment of the Court without lawfully removing the defect or infirmity pointed out by the Court because it is obvious that the legislature cannot trench on the judicial power vested in the courts. Parliament did not by law provide for disclosure of information on certain crucial points such as assets and liabilities

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Page 6 Wednesday, September 28, 2016
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and at the same time, placed an embargo on calling for further informations by enacting Section 33-B. That is where Section 33-B of the impugned amendment Act does not pass the muster of Article 19(1)(*a*), as interpreted by the Supreme Court. (Paras 112 and 113)

The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure. (Para 123)

The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(*a*). By calling upon the contesting candidate to disclose the assets and liabilities of his/her spouse, the fundamental right to information of a voter/citizen is thereby promoted. When there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves the larger public interest. The right to know about the candidate who intends to become a public figure and a representative of the people would not be effective and real if only truncated information of the assets and liabilities is given. It cannot be denied that the family relationship and social order in our country is such that the husband and wife look to the properties held by them as belonging to the family for all practical purposes, though in the eye of the law the properties may distinctly belong to each of them. By and large, there exists a sort of unity of interest in the properties held by spouses. The property being kept in the name of the spouse *benami* is not unknown in our country. In this situation, it could be said that a countervailing or paramount interest is involved in requiring a candidate who chooses to subject himself/herself to public gaze and scrutiny to furnish the details of assets and liabilities of the spouse as well. That is one way of looking at the problem. More important, it is to be noted that Parliament itself accepted in principle that not only the assets of the elected candidates but also his or her spouse and dependent children should be disclosed to the constitutional authority and the right of privacy should not come in the way of such disclosure; but, the hitch lies in the fact that the disclosure has to be made to the Speaker or Chairman of the House after he or she is elected. No provision has been made for giving access to the details filed with the presiding officer of the House. By doing so, Parliament has omitted to give effect to the principle, which it rightly accepted as a step in aid to promote integrity in public life. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of other family members, Parliament refrained from making a provision for furnishing the information at the time of filing the nomination. This has resulted in jeopardizing the right to information implicitly guaranteed by Article 19(1)(*a*). Therefore, the provision made in Section 75-A regarding declaration of assets and liabilities of the elected

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candidates to the presiding officer has failed to effectuate the right to information and the freedom of expression of the voters/citizens. (Paras 123 and 121)

The failure to provide for disclosure of educational qualification does not, however, in practical terms, infringe the freedom of expression. Consistent with the principle of adult suffrage, the Constitution has not prescribed any educational qualification for being Member of the House of the People or Legislative Assembly. That apart, the information relating to educational qualifications of contesting candidates does not serve any useful purpose in the present context and scenario. The information regarding educational qualifications is not a vital and useful piece of information to the voter, in the ultimate analysis. At any rate, two views are reasonably possible. Therefore, it is not possible to hold that Parliament should have necessarily made the provision for disclosure of information regarding educational qualifications of the candidates. (Paras 123 and 122)

The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders relating to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information, should not be enforced. (Para 123)

Per Dharmadhikari, J. (concurring)

Making of law for election reform is undoubtedly a subject exclusively for the legislature. Based on the decision of the Supreme Court in the case of *Assn. for Democratic Reforms* and the directions made therein to the Election Commission, the Amendment Act under consideration has made an attempt to fill the void in law but the void has not been filled fully and does not satisfy the requirements for exercise of fundamental freedom of the citizen to participate in election as a well-informed voter. Democracy based on "free and fair elections" is considered as a basic feature of the Constitution. Lack of adequate legislative will to fill the vacuum in law for reforming the election process in accordance with the law declared by the Supreme Court in the case of *Assn. for Democratic Reforms* obligates the Supreme Court as an important organ in constitutional process to intervene. The Supreme Court is obliged by the Constitution to intervene because the legislative field, even after the passing of the Ordinance and the Amendment Act, leaves a vacuum. The Supreme Court in the case of *Assn. for Democratic Reforms* has determined the ambit of fundamental "right of information" to a voter. The law, as it stands today after amendment, is deficient in ensuring "free and fair elections". The Supreme Court has, therefore, found it necessary to strike down Section 33-B of the Amendment Act so as to revive the law declared by the Supreme Court in the case of *Assn. for Democratic Reforms*. (Paras 128 to 130)

Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294, *referred to*

I agree with all the conclusions drawn by Shah, J. Though I agree with the conclusions of Reddi, J., I am unable to agree with his conclusions that the directives given in *Assn. for Democratic Reforms case* were pro tempore in nature and also that the failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression. (Paras 123, 131 and 132)

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Page 10 Wednesday, September 26, 2018
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G. Constitution of India — Art. 19(1)(a) — Freedom of information — Voters' right to know antecedents/assets of candidates contesting election to Parliament or Legislative Assembly — Held, per curiam, is a facet of Art. 19(1)(a) — Basis of such right, explained — Per Reddi, J., this right is different from right to information about public affairs or right to receive information through press or electronic media

Per Shah, J.

All citizens of this country have the fundamental right to "freedom of speech and expression" and this phrase is construed to include fundamental right to know relevant antecedents of the candidate contesting the elections. Democratic republic is part of the basic structure of the Constitution. For this, free and fair periodical elections based on adult franchise are a must. For having unpolluted healthy democracy, citizen-voters should be well informed. The foundation of a healthy democracy is to have well-informed citizen-voters. The reason to have right of information with regard to the antecedents of the candidate is that the voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. The little man — a citizen, a voter — is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling the little citizen/voter. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is a necessity. (Paras 16 to 18)

Right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information, all equally create an uninformed citizenry which would finally make democracy a mobocracy and a farce. The primary duty of the judiciary is to uphold the Constitution and the laws without fear or favour, without being biased by political ideology or economic theory. Interpretation should be in consonance with the constitutional provisions, which envisage a republic democracy. Survival of democracy depends upon free and fair election. It is true that the elections are fought by political parties, yet election would be a farce if the voters are unaware of the antecedents of candidates contesting elections. Their decision to vote either in favour of *A* or *B* candidate would be without any basis. Such election would be

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neither free nor fair since for survival of true democracy the voter must be aware of the antecedents of his candidate. Voter has to cast intelligent and rational vote according to his own criteria. A well-informed voter is the foundation of democratic structure. That information to a voter, who is the citizen of this country, is one facet of the fundamental right under Article 19(1)(*a*).

(Paras 26, 9 and 27)

Kesavananda Bharati v. *State of Kerala*, (1973) 4 SCC 225; *State of U.P.* v. *Raj Narain*, (1975) 4 SCC 428; *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121; *Romesh Thappar* v. *State of Madras*, AIR 1950 SC 124 : 1950 SCR 594 : 1950 Cri LJ 1514; *Secy., Ministry of Information and Broadcasting, Govt. of India* v. *Cricket Assn. of Bengal*, (1995) 2 SCC 161; *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87, *relied on*

Attorney General v. *Times Newspapers Ltd.*, (1973) 3 All ER 54 : 1974 AC 273 : (1973) 3 WLR 298 (HL), *cited*

Law Commission Report, 1999, paras 5.1, 6.3; *Report of the National Commission to Review the Working of the Constitution*, 2002, paras 4.4, 4.12, 4.14, 4.23; *Ethics Manual for Members, Officers and Employees of the U.S. House of Representatives*; *Report of the Committee on State Funding of Elections* (headed by Shri Indrajit Gupta), 1998, *relied on*

Per Reddi, J. (concurring)

Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by the Supreme Court right from the 1950s. It has been variously described as a "basic human right", "a natural right" and the like. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and viewpoint and debates on matters of public concern. The importance which our Constitution-makers wanted to attach to this freedom is evident from the fact that reasonable restrictions on that right could be placed by law only on the limited grounds specified in Article 19(2), not to speak of inherent limitations of the right. In due course of time, several species of rights unenumerated in Article 19(1)(*a*) have branched off from the genus of the article through the process of interpretation by the Apex Court. One such right is the "right to information". The right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1)(*a*). Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(*a*). (Paras 82, 83, 86 and 123)

State of U.P. v. *Raj Narain*, (1975) 4 SCC 428; *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87; *Secy., Ministry of Information and Broadcasting, Govt. of India* v. *Cricket Assn. of Bengal*, (1995) 2 SCC 161; *Dinesh Trivedi, MP* v. *Union of India*, (1997) 4 SCC 306, *relied on*

The citizens of the country are enabled to take part in the government through their chosen representatives. In a parliamentary democracy like ours, the Government of the day is responsible to the people through their elected representatives. The elected representative acts or is supposed to act as a live link between the people and the Government. The peoples' representatives fill the role of law-makers and custodians of the Government. People look to them for ventilation and redressal of their grievances. They are the focal point of the will and authority of the people at large. The moment they put in papers for contesting the election, they are subjected to public gaze and public scrutiny. The character, strength and weakness of the candidate is widely debated. Nothing is

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therefore more important for sustenance of democratic polity than the voter making an intelligent and rational choice of his or her representative. For this, the voter should be in a position to effectively formulate his/her opinion and to ultimately express that opinion through ballot by casting the vote. The concomitant of the right to vote which is the basic postulate of democracy is thus twofold: first, formulation of opinion about the candidates and second, the expression of choice by casting the vote in favour of the preferred candidate at the polling booth. The first step is complementary to the other. Many a voter will be handicapped in formulating the opinion and making a proper choice of the candidate unless the essential information regarding the candidate is available. The voter/citizen should have at least the basic information about the contesting candidate, such as his involvement in serious criminal offences. To scuttle the flow of information — relevant and essential — would affect the electorate's ability to evaluate the candidate. Not only that, the information relating to the candidates will pave the way for public debate on the merits and demerits of the candidates. When once there is public disclosure of the relevant details concerning the candidates, the press, as a media of mass communication and voluntary organizations vigilant enough to channel the public opinion on right lines will be able to disseminate the information and thereby enlighten and alert the public at large regarding the adverse antecedents of a candidate. It will go a long way in promoting the freedom of speech and expression. That goal would be accomplished in two ways. It will help the voter who is interested in seeking and receiving information about the candidate to form an opinion according to his or her conscience and best of judgment and secondly, it will facilitate the press and voluntary organizations in imparting information on a matter of vital public concern. An informed voter — whether he acquires information directly by keeping track of disclosures or through the press and other channels of communication — will be able to fulfil his responsibility in a more satisfactory manner. An enlightened and informed citizenry would undoubtedly enhance democratic values. Thus, the availability of proper and relevant information about the candidate fosters and promotes the freedom of speech and expression both from the point of view of imparting and receiving the information. In turn, it would lead to the preservation of the integrity of electoral process which is so essential for the growth of democracy. Such information will certainly be conducive to fairness in election process and integrity in public life. The disclosure of information would facilitate and augment the freedom of expression both from the point of view of the voter as well as the media through which the information is publicized and openly debated. (Para 94)

Lily Thomas v. Speaker, Lok Sabha, (1993) 4 SCC 234, *relied on*

A voter "speaks out or expresses by casting vote". Freedom of expression, as contemplated by Article 19(1)(a) which in many respects overlaps and coincides with freedom of speech, has manifold meanings. It need not and ought not to be confined to expressing something in words orally or in writing. The act of manifesting by action or language is one of the meanings. Even a manifestation of an emotion, feeling etc. without words would amount to expression. Communication of emotion and display of talent through music, painting etc. is also a sort of expression. Having regard to the comprehensive meaning of the phrase "expression", voting can be legitimately regarded as a form of expression. Ballot is the instrument by which the voter expresses his choice between candidates or in respect to propositions; and his "vote" is his choice or election,

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85

as expressed by his ballot. "Opinion expressed, resolution or decision carried, by voting" is one of the meanings given to the expression "vote". The fundamental right of freedom of speech and expression should be broadly construed and it has been so construed all these years. In the light of this, the dictum of the Court that the voter "speaks out or expresses by casting a vote" is apt and well founded. Freedom of voting by expressing preference for a candidate is nothing but freedom of expressing oneself in relation to a matter of prime concern to the country and the voter himself. (Para 95)

Ramanatha Aiyar's Law Lexicon; Collin's Dictionary of English Language (1983 Reprint); *A Dictionary of Modern Legal Usage*, 2nd Edn., by A. Garner Bryant; *New Oxford Illustrated Dictionary, relied on*

For the first time in *Assn. for Democratic Reforms case* which is the forerunner to the present controversy, the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(*a*). By doing so, a new dimension has been given to the right embodied in Article 19(1)(*a*) through a creative approach dictated by the need to improve and refine the political process of election. In carving out this right, the Court had not traversed a beaten track but took a fresh path. The right to information evolved by the Supreme Court in the said case is qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though to a certain extent, there may be overlapping. The right to information of the voter/citizen is sought to be enforced against an individual who intends to become a public figure and the information relates to his personal matters. Secondly, that right cannot materialize without the State's intervention. The State or its instrumentality has to compel a subject to make the information available to the public, by means of legislation or orders having the force of law. It does not stand on the same footing as right to telecast and the right to view sports and games or other items of entertainment through television. (Para 92)

Till a candidate gets elected and enters the House, it would not be appropriate to refer to him as a public functionary. Therefore, the right to know about a public act done by a public functionary is not the same thing as the right to know about the antecedents of the candidate contesting for election. Nevertheless, the conclusion reached by the Court that the voter has such a right and that the right falls within the realm of freedom of speech and expression guaranteed by Article 19(1)(*a*) can be justified on good and substantial grounds. (Para 92)

State of U.P. v. Raj Narain, (1975) 4 SCC 428, *relied on*

Per Dharmadhikari, J. (concurring)

To control the ill-effects of money power and muscle power the Commissions recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of the Act here and there, but a much improved election system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money and physical force of criminals do not make democracy a farce — the citizen's fundamental "right to information" should be recognised and fully effectuated. (Para 127)

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Page 14 Wednesday, September 25, 2018
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H. Constitution of India — Art. 19(1)(a) — Right to vote and contest in elections to Parliament or Legislative Assembly — Held, per Shah, J., it is a statutory right — But it does not affect or abridge voter's right to know antecedents of candidates contesting the election which forms part of Art. 19(1)(a) and is an independent right — Therefore S. 33-B, RPA which abridges this right is unconstitutional — Per Reddi, J., right to vote is a constitutional right and not merely a statutory right — Freedom of voting, as distinct from right to vote, is a facet of Art. 19(1)(a) and it is accomplished by casting the vote — Election — Representation of the People Act, 1951 — S. 33-B (as inserted in 2002) — Constitutionality of

It was submitted that right to elect or to be elected is a pure and simple statutory right and in the absence of statutory provision neither has the citizen a right to elect nor has he a right to be elected because such right is neither a fundamental right nor a common law right. It is, therefore, submitted that it cannot be held that a voter has any fundamental right of knowing the antecedents/assets of a candidate contesting the election. It was also submitted that on the basis of the decision rendered by the Supreme Court, the Act is amended by the impugned Ordinance/Amendment Act. However, for the directions which are left out, the presumption would be — it is a deliberate omission on the part of the legislature and, therefore, there is no question of it being violative of Article 19(1)(*a*).

Held:

Per Shah, J.

The right to vote or stand as a candidate for election and decision with regard to violation of election law is not a civil right but is a creature of statute or special law and would be subject to the limitations envisaged therein. (Para 57)

In an election petition challenging the validity of election, rights of the parties are governed by the statutory provisions for setting aside the election but this would not mean that a citizen who has right to be a voter and elect his representative in the Lok Sabha or Legislative Assembly has no fundamental right. Such a voter who is otherwise eligible to cast vote to elect his representative has statutory right under the Act to be a voter and has also a fundamental right as enshrined in Chapter III. Merely because a citizen is a voter or has a right to elect his representative as per the Act, his fundamental rights could not be abridged, controlled or restricted by statutory provisions except as permissible under the Constitution. If any statutory provision abridges the fundamental right, that statutory provision would be void. It also requires to be well understood that democracy based on adult franchise is part of the basic structure of the Constitution. The right of an adult to take part in election process either as a voter or a candidate could be restricted by a valid law which does not offend constitutional provisions. It cannot be held that as there is deliberate omission in law, the right of the voter to know the antecedents of the candidates, which is his fundamental right under Article 19(1)(*a*), is taken away. (Para 62)

C. Narayanaswamy v. C.K. Jaffer Sharief, 1994 Supp (3) SCC 170; *N.P. Ponnuswami v. Returning Officer*, AIR 1952 SC 64 : 1952 SCR 218; *G. Narayanaswami v. G. Pannerselvam*, (1972) 3 SCC 717; *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 691 : (1982) 3 SCR 318, *distinguished*

The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by the Supreme Court are against the statutory provisions is, on

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87

the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures. (Para 78)

The freedom of speech and expression is basic to and indivisible from a democratic polity. It includes right to impart and receive information. Restriction to the said right could be only as provided in Article 19(2). Right of a voter to know the biodata of a candidate is the foundation of democracy. The old dictum — let the people have the truth and the freedom to discuss it and all will go well with the Government — should prevail. The true test for deciding the validity of the Act is — whether it takes away or abridges fundamental rights of the citizens. If there is direct abridgment of the fundamental right of freedom of speech and expression, the law would be invalid. If the provisions of the law violate the constitutional provisions, they have to be struck down and that is what is required to be done in the present case. It is made clear that no provision is nullified on the ground that the Court does not approve the underlying policy of the enactment. (Paras 69 to 71 and 66)

The contention that Members of Parliament or the Legislature are representatives of the people and are supposed to know and be aware of what is good and bad for the people and that the Court cannot sit in judgment over their wisdom cannot be accepted. (Para 63)

P. Nalla Thampy Terah (Dr) v. Union of India, 1985 Supp SCC 189, *distinguished*

Per Reddi, J.

The right to vote for the candidate of one's choice is of the essence of democratic polity. This right is recognized by our Constitution and it is given effect to in specific form by the Representation of the People Act. The right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely the RP Act. That is the correct legal position as regards the nature of the right to vote in elections to the House of the People and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. (Paras 96 and 97)

Lily Thomas v. Speaker, Lok Sabha, (1993) 4 SCC 234, *doubted*

A distinction has to be drawn between the conferment of the right to vote on fulfilment of requisite criteria and the culmination of that right in the final act of expressing choice towards a particular candidate by means of ballot. Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression

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Page 16 Wednesday, September 26, 2018
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of the voter. That is where Article 19(1)(*a*) is attracted. Freedom of voting as distinct from right to vote is thus a species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom. (Para 97)

Jamuna Prasad Mukhariya v. Lachhi Ram, AIR 1954 SC 686 : (1955) 1 SCR 608, *distinguished*

The contention that if the right to information is culled out from Article 19(1)(*a*) and read as an integral part of that right, it is fraught with dangerous consequences inasmuch as the grounds of reasonable restrictions which could be imposed are by far limited and therefore, the Government may be constrained to part with certain sensitive informations which would not be in public interest to disclose, raises the larger question whether apart from the heads of restriction envisaged by sub-article (2) of Article 19, certain inherent limitations should not be read into the article, if it becomes necessary to do so in national or societal interest. Whenever rare situations of the kind anticipated by the counsel arise, the Constitution and the courts are not helpless in checking the misuse and abuse of the freedom. Such a check need not necessarily be found strictly within the confines of Article 19(2). (Paras 99 and 101)

Gitlow v. New York, 69 L Ed 1138 : 268 US 652 (1925), *relied on*

Per Dharmadhikari, J.

This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act. (Para 127)

I. Constitution of India — Art. 145(3) — Question regarding interpretation of Art. 19(1)(a) finally decided by Supreme Court in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 by taking the view that right of voters to know antecedents/assets of candidates contesting election is part of Art. 19(1)(a) — No other substantial question of law requiring interpretation of the Constitution surviving — Held, matter not required to be referred to a five-Judge Bench of the Supreme Court

Per Shah, J. (Dharmadhikari, J. concurring)

The submission that the question involved in these petitions is a substantial question of law as to the interpretation of the Constitution and, therefore, the matter may be referred to a Bench consisting of five Judges is totally misconceived. No such contention was raised before the Supreme Court in *Assn. for Democratic Reforms case* in which it arrived at the conclusion that for survival of the democracy, right of the voter to know antecedents of a candidate would be part and parcel of his fundamental right. It would be the basis for free and fair election which is a basic structure of the Constitution. Therefore, the question relating to interpretation of Article 19(1)(*a*) is concluded and there is no other question which requires interpretation of the Constitution. The question raised before the present Bench has been finally decided and no other substantial question of law regarding the interpretation of the Constitution survives. Hence, the matter is not required to be referred to a five-Judge Bench. [Paras 28, 32 and 78(*c*)]

Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294, *referred to*

State of J&K v. Thakur Ganga Singh, AIR 1960 SC 356 : (1960) 2 SCR 346; *Sardar Sardul Singh Caveeshar v. State of Maharashtra* sub nom *Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra*, AIR 1965 SC 682 : (1964) 2 SCR 378 : (1965) 1 Cri LJ 608, *relied on*

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Page 17 Wednesday, September 25, 2018
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89

Per Reddi, J. (concurring)

It would have been in the fitness of things if the case (*UOI v. Assn. for Democratic Reforms*) was referred to the Constitution Bench as per the mandate of Article 145(3) for the reason that a new dimension has been added to the concept of freedom of expression so as to bring within its ambit a new species of right to information. Apparently, no such request was made at the hearing and all parties invited the decision of the three-Judge Bench. The law has been laid down therein elevating the right to secure information about a contesting candidate to the position of a fundamental right. That decision has been duly taken note of by Parliament and acted upon by the Election Commission. It has attained finality. No decision of the Supreme Court goes counter to the accepted proposition that the fundamental right of freedom of expression sets in when a voter actually casts his vote. At this stage, it would not be appropriate to set the clock back and refer the matter to the Constitution Bench to test the correctness of the view taken in that case. (Paras 92 and 97)

Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294, *referred to*

J. Constitution of India — Art. 19(1)(a) — Voters' right to know antecedents/assets of candidates contesting election — Directions given to Election Commission by Supreme Court in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 requiring the candidates to disclose certain information relating to their antecedents/assets — Pursuant thereto, Election Commission issuing direction to reject nomination paper on furnishing wrong or incomplete information or suppression of material information by any candidate and to hold a summary enquiry at the time of scrutiny of nomination — Held, such direction unjustified

Held:

Per Shah, J.

While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in *Assn. for Democratic Reforms case* the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the "documentary proof". Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time *prima facie* it appears that the Election Commission is required to revise its instructions in the light of directions issued in *Assn. for Democratic Reforms case* and as provided under the Representation of the People Act and its Third Amendment. (Para 73)

K. Constitution of India — Art. 32 — Notice — Vires of an Act challenged — Union of India made party-respondent and Solicitor-General appearing on its behalf before the Court — Held, per Shah, J., service of notice to Attorney-General would only be an empty formality (Para 75)

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Page 18 Wednesday, September 26, 2018
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L. Constitution of India — Arts. 32, 136 & 226 — Political question — Court should not shirk from its duty of performing its function merely because it has political thicket [Para 9(c)]

State of Rajasthan v. *Union of India*, (1977) 3 SCC 592; *B.R. Kapur* v. *State of T.N.*, (2001) 7 SCC 231, *relied on*

R-M/TZ/27923/C

Advocates who appeared in this case :

K.N. Ruval, Additional Solicitor-General, Rajinder Sachar, P.P. Rao and Ranjit Kumar, Senior Advocates (Sanjay Parikh, A.N. Singh, R. Chandrachud, Ms Vandana Sudan, Abinash K. Misra, Prashant Bhushan, Sanjeev K. Kapoor, T.K. Naveen, Vishal Gupta, Anil Kr. Mittal, G. Balaji, Ms Kamini Jaiswal, Ms Bina Gupta, Ms Divya Roy, Prateek Jalan, Preetesh Kapur, S.N. Terdal and S. Muralidhar, Advocates, with them) for the appearing parties.

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Page 19 Wednesday, September 26, 2018
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SCC Online Web Edition: http://www.scconline.com
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Page 20 Wednesday, September 26, 2018
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The Judgments of the Court were delivered by

SHAH, J.— These writ petitions under Article 32 of the Constitution of India have been filed challenging the validity of the Representation of the People (Amendment) Ordinance, 2002 (4 of 2002) ("the Ordinance" for short) promulgated by the President of India on 24-8-2002†.

2. There was an era when a powerful or a rich or a strong or a dacoit aged more than 60 years married a beautiful young girl despite her resistance. Except to weep, she had no choice of selecting her mate. To a large extent, such situation does not prevail today. Now, young persons are selecting mates of their choice after verifying full details thereof. Should we not have such a situation in selecting a candidate contesting elections? In a vibrant democracy — is it not required that a little voter should know the biodata of his/her would-be rulers, law-makers or destiny-makers of the nation?

3. Is there any necessity of keeping in the dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape *or* has acquired the wealth by unjustified means? Maybe, that he is acquitted because the investigating officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what was seen by them.

4. Is there any necessity of permitting candidates or their supporters to use unaccounted money during elections? If assets are declared, would it not amount to having some control on unaccounted election expenditure?

5. It is equally true that right step in that direction is taken by amending the Representation of the People Act, 1951 (hereinafter referred to as "the Act") on the basis of judgment rendered by this Court in *Union of India* v. *Assn. for Democratic Reforms*[1]. Still however, question to be decided is — whether it is in accordance with what has been declared in the said judgment.

6. After concluding hearing of the arguments on 23-10-2002, the matter was reserved for pronouncement of judgment. Before the judgment could be pronounced, the Ordinance was repealed and on 28-12-2002, the Representation of the People (Third Amendment) Act, 2002†† ("the Amended Act" for short) was notified to come into force with retrospective effect. Thereafter, an amendment application was moved before us challenging the validity of Section 33-B of the Amendment Act which was granted because there is no change in the cause of action nor in the wording of Section 33-B of the Amended Act, validity of which is under challenge. At the request of learned counsel for the respondent Union of India, time to file additional counter was granted and the matter was further heard on 31-1-2003.

† Ed.: For text of this Ordinance see 2003 Current Central Legislation, Part II, at p. 3

1 (2002) 5 SCC 294 [Ed.: Coram : M.B. Shah, B.P. Singh and H.K. Sema, JJ.]

†† Ed.: For text of this Act see 2003 Current Central Legislation, Part II, at p. 131

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Page 21 Wednesday, September 26, 2018
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93

7. It is apparent that there is no change in the wording (even fullstop or comma) of Sections 33-A and 33-B of the Ordinance and Sections 33-A and 33-B of the Amended Act. The said sections read as under:

"33-A. *Right to information.*—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether—

(*i*) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(*ii*) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

33-B. *Candidate to furnish information only under the Act and the rules.*—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

8. For the directions, which were issued in *Assn. for Democratic Reforms*[1] it is contended that some of them are incorporated by the statutory provisions but with regard to the remaining directions it has been provided therein that no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, despite the directions issued by this Court. Therefore, the aforesaid Section 33-B is under challenge.

9. At the outset, we would state that such exercise of power by the legislature giving similar directions was undertaken in the past and this Court in unequivocal words declared that the legislature in this country has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the courts. For this, we would quote some observations on the settled legal position having direct bearing on the question involved in these matters:

(*A*) Dealing with the validity of the Bombay Provincial Municipal Corporation (Gujarat Amendment and Validating Provisions) Ordinance,

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Page 22 Wednesday, September 26, 2018
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1969, this Court in *Municipal Corpn. of the City of Ahmedabad* v. *New Shrock Spg. and Wvg. Co. Ltd.*[2] observed thus: (SCC p. 285, para 7)

> "7. *This is a strange provision.* Prima facie that provision appears to command the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. That provision attempts to make a direct inroad into the judicial powers of the State. The Legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. *By exercise of those powers, the Legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts.*" (emphasis supplied)

Further, Khanna J. in *Indira Nehru Gandhi* v. *Raj Narain*[3] succinctly and without any ambiguity observed thus: (SCC p. 84, para 190)

> "*190.* A declaration that an order made by a court of *law is void is normally part of the judicial function and is not a legislative function.* Although there is in the Constitution of India no rigid separation of powers, by and large the spheres of judicial function and *legislative function have been demarcated and it is not permissible for the Legislature to encroach upon the judicial sphere. It has accordingly been held that a Legislature while it is entitled to change with retrospective effect the law which formed the basis of the judicial decision, it is not permissible to the Legislature to declare the judgment of the court to be void or not binding....*" (emphasis supplied)

It is also settled law that the legislature may remove the defect which is the cause for invalidating the law by the Court by appropriate legislation if it has power over the subject-matter and competence to do so under the Constitution.

(*B*) Secondly, we would reiterate that the primary duty of the judiciary is to uphold the Constitution and the laws without fear or favour, without being biased by political ideology or economic theory. Interpretation should be in consonance with the constitutional provisions, which envisage a republic democracy. Survival of democracy depends upon free and fair election. It is true that the elections are fought by political parties, yet election would be a farce if the voters are unaware of the antecedents of candidates contesting elections. Their decision to vote either in favour of *A* or *B* candidate would be without any basis. Such election would be neither free nor fair.

2 (1970) 2 SCC 280
3 1975 Supp SCC 1

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For this purpose, we would refer to the observations made by Khanna, J. in *Kesavananda Bharati* v. *State of Kerala*[4] which read thus: (SCC p. 821, para 1535)

> "That all constitutional interpretations have political consequences should not obliterate the fact that the decision has to be arrived at in the calm and dispassionate atmosphere of the courtroom, that Judges in order to give legitimacy to their decision have to keep aloof from the din and controversy of politics and that the fluctuating fortunes of rival political parties can have for them only academic interest. *Their primary duty is to uphold the Constitution and the laws without fear or favour and in doing so, they cannot allow any political ideology or economic theory, which may have caught their fancy, to colour the decision.*" (emphasis supplied)

(*C*) It is also equally settled law that the court should not shirk its duty of performing its function merely because it has political thicket. Following observations (of Bhagwati, J., as he then was) made in *State of Rajasthan* v. *Union of India*[5] (at SCC pp. 660-61, para 149) were referred to and relied upon by this Court in *B.R. Kapur* v. *State of T.N.*[6]: (SCC p. 302, para 53)

> "*53.* ... 'But merely because the question has a political complexion, that by itself is no ground why the court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore, fail to be political. ... *So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so.* It is necessary to assert in the clearest possible terms, particularly in the context of recent history, that the Constitution is *supreme lex*, the paramount law of the land, and there is no department or branch of Government above or beyond it.' " (emphasis supplied)

Submissions

10. It is contended by learned Senior Counsel Mr Rajinder Sachar and Mr P.P. Rao for the petitioners that Section 33-B is, on the face of it, arbitrary and unjustifiable. It is their contention that the aforesaid section is on the face of it void as a law cannot be passed which violates/abridges the fundamental rights of the citizens/voters, declared and recognised by this Court. It is submitted that without exercise of the right to know the relevant antecedents of the candidate, it will not be possible to have free and fair elections. Therefore, the impugned section violates the very basic features of the

4 (1973) 4 SCC 225
5 (1977) 3 SCC 592
6 (2000) 7 SCC 231

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Page 24 Wednesday, September 26, 2018
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Constitution, namely, republic democracy. For having free and fair elections, anywhere in the territory of this country, it is necessary to give effect to the voters' fundamental right as declared by this Court in the above judgment.

11. It has been contended that, in our country, at present about 700 legislators and twenty-five to thirty Members of Parliament are having criminal record. It is also contended that almost all political parties declare that persons having criminal record should not be given tickets, yet for one or the other reason, political parties under some compulsion give tickets to some persons having criminal records and some persons having no criminal records get support from criminals. It is contended by learned Senior Counsel Mr Sachar that by issuing the Ordinance, the Government has arrogated to itself the power to decide unilaterally for nullifying the decision rendered by this Court without considering whether it can pass legislation which abridges fundamental right guaranteed under Article 19(1)(*a*). It is his submission that the Ordinance is issued and thereafter the Act is amended because it appears that the Government is interested in having uninformed ignorant voters.

12. Contra, learned Solicitor-General Mr Kirit N. Raval and learned Senior Counsel Mr Arun Jaitley, appearing on behalf of the intervener, with vehemence, submitted that the aforesaid Ordinance/Amended Act is in consonance with the judgment rendered by this Court and the vacuum pointed out by the said judgment is filled in by the enactment. It is also contended by learned Senior Counsel Mr Jaitley that voters' right to know the antecedents of the candidate is not part of the fundamental rights, but it is a derivative fundamental right on the basis of interpretation of Article 19(1)(*a*) given by this Court. It is submitted that the Ordinance/Amended Act is in public interest and, therefore, it cannot be held to be illegal or void. In support of their contentions, learned counsel for the parties have referred to various decisions rendered by this Court.

Whether Ordinance/Amended Act covers the directions issued by this Court

13. Before dealing with the rival submissions, we would refer to the following directions (SCC p. 322, para 48) given by this Court in *Assn. for Democratic Reforms case*[1]:

> "48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:
>
> (*1*) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.
>
> (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is

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Page 25 Wednesday, September 28, 2016
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97

framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

14. The learned counsel for the respondent submitted that the directions issued by this Court are, to a large extent, implemented by the aforesaid Amended Act. It is true that some part of the directions issued by this Court are implemented. Comparative chart on the basis of judgment and Ordinance would make the position clear:

Subject	*Discussion in judgment dated 2-5-2002*	*Provisions under the impugned Ordinance/Amended Act*
Past criminal record	*Para 48(1)* All past convictions/acquittals/discharges, whether punished with imprisonment or fine.	*Section 33-A(1)(ii)* Conviction of any offence (except Section 8 offence) and sentenced to imprisonment of one year or more. No such declaration in case of acquittals or discharge. (Section 8 offences to be disclosed in nomination paper itself)
Pending criminal cases	*Para 48(2)* Prior to six months of filing of nomination, whether the candidate has been accused of any criminal offence punishable with imprisonment of two years or more, and charge framed or cognizance taken.	*Section 33-A(1)(i)* Any case in which the candidate has been accused of any criminal offence punishable with imprisonment of two years or more, and charge framed.
Assets and liabilities	*Para 48(3)* Assets of candidate (contesting the elections), spouse and dependants.	*Section 75-A* *No such declaration by a candidate who is contesting election.* After election, elected candidate is required to furnish information relating to him as well as his spouse and dependent children's assets to the Speaker of the House of the People.

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Page 26 Wednesday, September 26, 2018
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	Para 48(4) Liabilities, particularly to Government and public financial institutions.	No provision is made for the candidate contesting election. However, after election, Sections 75-A(1)(*ii*) and (*iii*) provide for elected candidate.
Educational qualifications	*Para 48(5)* To be declared	No provision.
Breach of provisions	No direction regarding consequences of non-compliance.	*Section 125-A* Creates an offence punishable by imprisonment for six months or fine for failure to furnish affidavit in accordance with Section 33-A, as well as for falsity or concealment in affidavit or nomination paper. *Section 75-A(5)* Wilful contravention of rules regarding asset disclosure may be treated as breach of privilege of the House.

15. From the aforesaid chart, it is clear that a candidate is not required to disclose (*a*) the cases in which he is acquitted or discharged of criminal offence(s); (*b*) his assets and liabilities; and (*c*) his educational qualification. With regard to assets, it is sought to be contended that under the Act the candidate would be required to disclose the same to the Speaker after being elected. It is also contended that once the person is acquitted or discharged of any criminal offence, there is no necessity of disclosing the same to the voters.

Finality of the judgment

16. Firstly, it is to be made clear that the judgment rendered by this Court in *Assn. for Democratic Reforms*[1] has attained finality. The voters' right to know the antecedents of the candidates is based on interpretation of Article 19(1)(*a*) which provides that all citizens of this country would have fundamental right to "freedom of speech and expression" and this phrase is construed to include fundamental right to know relevant antecedents of the candidate contesting the elections.

17. Further, even though we are not required to justify the directions issued in the aforesaid judgment, to make it abundantly clear that it is not *ipse dixit* and is based on sound foundation, it can be stated thus:

— Democratic republic is part of the basic structure of the Constitution.

— For this, free and fair periodical elections based on adult franchise are a must.

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Page 27 Wednesday, September 26, 2018
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SCC Online Web Edition: http://www.scconline.com
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— For having unpolluted healthy democracy, citizens-voters should be well informed.

18. So, the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. A little man — a citizen — a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is a necessity.

19. Further, in context of Section 8 of the Act, the Law Commission in its Report submitted in 1999 observed as under:

> "5.1. The Law Commission had proposed that in respect of offences provided in sub-section (1) [except the offence mentioned in clause (*b*) of sub-section (1)], a mere framing of charge should serve as a disqualification. This provision was sought to be made in addition to existing provision which provides for disqualification arising on account of conviction. *The reason for this proposal was that most of the offences mentioned in sub-section (1) are either election offences or serious offences affecting the society and that the persons committing these offences are mostly persons having political clout and influence.* Very often these elements are supported by unsocial persons or group of persons, with the result that no independent witness is prepared to come forward to depose against such persons. In such a situation, it is proving extremely difficult to obtain conviction of these persons. *It was suggested that inasmuch as charges were framed by a court* on the basis of the material placed before it by the *prosecution including the material disclosed by the charge-sheet, providing for disqualification on the ground of framing of the charge-sheet would be neither unjust nor unreasonable or arbitrary.*"

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Page 28 Wednesday, September 26, 2018
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The Law Commission also observed:

"6.3.1. There has been mounting corruption in all walks of public life. *People are generally lured to enter politics or contest elections for getting rich overnight. Before allowing people to enter public life the public has a right to know the antecedents of such persons.* The existing conditions in which people can freely enter the political arena without demur, especially without the electorate knowing about any details of the assets possessed by the candidate are far from satisfactory. *It is essential by law to provide that a candidate seeking election shall furnish the details of all his assets (movable/immovable) possessed by him/her, wife/husband, dependent relations, duly supported by an affidavit.*

6.3.2. Further, in view of recommendations of the Law Commission for debarring a candidate from contesting an election if charges have been framed against him by a court in respect of offences mentioned in the proposed Section 8-B of the Act, it is also necessary for a candidate seeking to contest election to furnish details regarding criminal case, if any, pending against him, including a copy of the FIR/complaint and any order made by the court concerned.

6.3.3. In order to achieve the aforesaid objectives, it is essential to insert a new Section 4-A after the existing Section 4 of the Representation of the People Act, 1951, as follows:

"4-A. *Qualification for membership of the House of the People, the Council of States, Legislature Assembly of a State or Legislative Council.*—A person shall not be qualified to file his nomination for contesting any election for a seat in the House of the People, the Council of States, Legislature Assembly or Legislative Council of a State unless he or she files—

(*a*) a declaration of all his assets (movable/immovable) possessed by him/her, his/her spouse and dependent relations, duly supported by an affidavit; and

(*b*) a declaration as to whether any charge in respect of any offence referred to in Section 8-B has been framed against him by any criminal court.' "

20. It is to be stated that similar views are expressed in the Report submitted in March 2002 by the *National Commission to Review the Working of the Constitution* appointed by the Union Government for reviewing the working of the Constitution. Relevant recommendations are as under:

"*Successes and failures*

4.4 During the last half-a-century, there have been thirteen general elections to the Lok Sabha and a much large number to various State Legislative Assemblies. We can take legitimate pride in that these have been successful and generally acknowledged to be free and fair. *But, the experience has also brought to the fore many distortions, some very serious, generating a deep concern in many quarters. There are constant*

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Page 29 Wednesday, September 26, 2018
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references to the unhealthy role of money power, muscle power and mafia power and to criminalisation, corruption, communalism and casteism.

4.12. *Criminalisation*

4.12.2. The Commission recommends that the Representation of the People Act be amended to provide that *any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a Member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence and unless cleared during that one year period,* he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his antecedents, it should be derecognised and deregistered.

4.12.3. Any person convicted for any heinous crime like murder, rape, smuggling, dacoity etc. should be permanently debarred from contesting for any political office.

4.12.8. The Commission feels that the proposed provision laying down that a person charged with an offence punishable with imprisonment which may extend to five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges were framed in a court of law should equally be applicable to sitting Members of Parliament and State Legislatures as to any other such person.

4.14. *High cost of elections and abuse of money power*

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

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Page 30 Wednesday, September 26, 2018
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corruption and the consequences of widespread corruption are even more serious than many imagine. Electoral compulsions for funds become the foundation of the whole superstructure of corruption.

4.14.3. Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the Income Tax Authorities. *The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.* EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission.

Any violation or misreporting should be dealt with strongly.

4.14.4. *The Commission recommends that every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and liabilities along with those of his close relations annually. Law should define the term 'close relatives'.*

4.14.6. *All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public.* Further, as a follow-up action, the particulars of the assets and liabilities so given should be audited by a special authority created specifically under law for the purpose. *Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office.*

Candidates owing government dues

4.23. *It is recommended that all candidates should be required to clear government dues before their candidatures are accepted.* This pertains to payment of taxes and bills and unauthorised occupation of accommodation and availing of telephones and other government facilities to which they are no longer entitled. The fact that matters regarding government dues in respect of the candidate are pending before a court of law should be no excuse."

21. Mr P.P. Rao, learned Senior Counsel has drawn our attention to the "*Ethics Manual for Members, Officers and Employees of the U.S. House of Representatives*", which *inter alia* provides as under:

"*Financial interests and investments of Members and employees, as well as those of candidates for the House of Representatives, may present*

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Page 31 Wednesday, September 28, 2016
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conflicts of interest with official duties. Members and employees need not, however, divest themselves of assets upon assuming their positions, nor must Members disqualify themselves from voting on issues that generally affect their personal financial interests. Instead, public financial disclosure provides a means of monitoring and deterring conflicts.

All Members, officers, and employees are prohibited from improperly using their official positions for personal gain. Members, officers, candidates, and certain employees must file annual financial disclosure statements, summarizing financial information concerning themselves, their spouses, and dependent children. Such statements must indicate outside compensation, holdings and business transactions, generally for the calendar year preceding the filing date.

Who must file

The following individuals must file financial disclosure statements:

— Members of the House of Representatives;

— candidates for the House of Representatives;

When to file

Candidates who raise or spend more than $ 5000 for their campaigns must file within 30 days of doing so, or by May 15, whichever is later, but in any event at least 30 days prior to the elections in which they run.

Termination reports must be filed within 30 days of leaving government employment by Members, officers, and employees who file financial disclosure statements.

POLICIES UNDERLYING DISCLOSURE

Members, officers, and certain employees must annually disclose personal financial interests, including investments, income, and liabilities. *Financial disclosure provisions were enacted to monitor and to deter possible conflicts of interest due to outside financial holdings*. Proposals for divestiture of potentially conflicting assets and mandatory disqualification of Members from voting rejected as impractical or unreasonable. *Such disqualification could result in the disenfranchisement of a Member's entire constituency on particular issues*. A Member may often have a community of interests with his constituency, may arguably have been elected because of and to serve these common interests, and thus would be ineffective in representing the real interests of his constituents if he were disqualified from voting on issues touching those matters of mutual concern. In rare instances, the House rule on abstaining from voting may apply where a direct personal interest in a matter exists.

At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows his personal

SCC ONLINE True Print
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Page 32 Wednesday, September 26, 2018
Printed For: Mr Sarim Naved
SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

104

economic interests to impair his independence of judgment in the conduct of his public duties.

The House has required public financial disclosure by rule since 1968 and by statute since 1978.

SPECIFIC DISCLOSURE REQUIREMENTS

The Ethics in Government Act of 1978 mandated annual financial disclosure by all senior Federal personnel, including all Members and some employees of the House. The Ethics Reform Act of 1989 totally revamped these provisions and condensed what had been different requirements for each branch into one uniform title covering the entire Federal Government. Financial disclosure statements must indicate outside compensation, holdings, and business transactions, generally for the calendar year preceding the filing date. In all instances, filers may disclose additional information or explanation at their discretion."

22. At this stage, it would be worthwhile to note some observations made by the Committee on State Funding of Elections headed by Shri Indrajit Gupta as Chairman and others, which submitted its Report in 1998. In the concluding portion, it has mentioned as under:

"*Conclusion*

1. Before concluding, the Committee cannot help expressing its considered view that its recommendations being limited in nature and confined to only one of the aspects of the electoral reforms may bring about only some cosmetic changes in the electoral sphere. *What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullying the purity of electoral contests and affecting free and fair elections.* Meaningful electoral reforms in other spheres of electoral activity are also urgently needed if the present recommendations of the Committee are to serve the intended useful purpose."

23. From the aforesaid Reports of the Law Commission, National Commission to Review the Working of the Constitution, conclusion drawn in the Report of Shri Indrajit Gupta and the Ethics Manual applicable in an advance democratic country, it is apparent that for saving the democracy from the evil influence of criminalisation of politics, for saving the election from muscle and money power, for having true democracy and for controlling corruption in politics, the candidate contesting the election should be asked to disclose his antecedents including assets and liabilities. Thereafter, it is for the voters to decide in whose favour he should cast his vote.

24. Further, we would state that this Court has construed "freedom of speech and expression" in various decisions and on the basis of tests laid therein, directions were issued. In short, this aspect is discussed in paras 31, 32 and 33 of our earlier judgment which read as under: (SCC pp. 314-15)

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Page 33 Wednesday, September 26, 2018
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SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

105

"31. In *State of U.P.* v. *Raj Narain*[7] the Constitution Bench considered a question — whether privilege can be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar Pradesh and certain documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh? The Court observed that: (SCC p. 453, para 74)

> 'The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.'

The Court pertinently observed as under: (SCC p. 453, para 74)

> '74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. *The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.* They are entitled to know the particulars of every public transaction in all its bearing.'

32. In *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*[8] this Court dealt with the validity of customs duty on the newsprint in context of Article 19(1)(*a*). The Court observed (in para 32) thus: (SCC p. 664)

> 'The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.'

33. The Court further referred (in SCC p. 665, para 35) the following observations made by this Court in *Romesh Thappar* v. *State of Madras*[9]: (SCR p. 602)

> '(The freedom) lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But ... "it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits".'

Again in SCC pp. 685-86, para 68, the Court observed:

> '"*The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves.*" (Per Lord Simon of Glaisdale in *Attorney General* v.

7 (1975) 4 SCC 428
8 (1985) 1 SCC 641 : 1985 SCC (Tax) 121
9 AIR 1950 SC 124 : 1950 SCR 594 : 1950 Cri LJ 1514

SCC ONLINE True Print
SCC Online Web Edition, Copyright © 2018
Page 34 Wednesday, September 25, 2018
Printed For: Mr Sarim Naved
SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

106

Times Newspapers Ltd.[10] Freedom of expression, as learned writers have observed, has four broad social purposes to serve: (*i*) it helps an individual to attain self-fulfilment, (*ii*) it assists in the discovery of truth, (*iii*) *it strengthens the capacity of an individual in participating in decision-making* and (*iv*) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. *All members of society should be able to form their own beliefs* and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. *Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration.*' " (emphasis supplied)

25. Even with regard to telecasting of events such as cricket, football and hockey etc, this Court in *Secy., Ministry of Information and Broadcasting, Govt. of India* v. *Cricket Assn. of Bengal*[11] held (at SCC p. 224, para 75) that "the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained". The Court further held as under: (SCC p. 229, para 82)

> "82. ... *True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations.* This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1-1/2 per cent of the population has an access to the print media which is not subject to pre-censorship." (emphasis supplied)

26. The aforesaid passage leaves no doubt that right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information, all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce. On this aspect, no further discussion is required. However, we would narrate some observations made by Bhagwati, J. (as he then was) in *S.P. Gupta* v. *Union of India*[12] while dealing with the contention of right to secrecy that: (SCC p. 274, para 66) "*There can be little doubt that exposure to public gaze and*

10 (1973) 3 All ER 54 : 1974 AC 273 : (1973) 3 WLR 298 (HL)
11 (1995) 2 SCC 161
12 1981 Supp SCC 87

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Page 35 Wednesday, September 26, 2018
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SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

107

scrutiny is one of the surest means of achieving a clean and healthy administration." (emphasis supplied) Further, it has been explicitly and lucidly held thus: (SCC p. 273, paras 64-65)

> "64. Now it is obvious from the Constitution that we have adopted a democratic form of government. Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their Government is doing. *The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government.* It is only if people know how Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. 'Knowledge' said James Madison, 'will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular Government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both'. The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the Government is increasingly growing in different parts of the world.
>
> 65. The demand for openness in the Government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and not taking any interest in the Government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. *This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the Government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of Government — an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open Government where there is full access to information in regard to the functioning of the Government.*"
>
> (emphasis supplied)

It was further observed: (SCC p. 275, para 67)

> "67. ... The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(*a*). ... The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public

108

SCC ONLINE True Print
SCC Online Web Edition, Copyright © 2016
Page 35 Wednesday, September 28, 2016
Printed For: Mr Sarim Naved
SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

interest. It is in the context of this background that we must proceed to interpret Section 123 of the Indian Evidence Act."

27. From the aforesaid discussion it can be held that it is expected by all concerned and as has been laid down by various decisions of this Court that for survival of true democracy, the voter must be aware of the antecedents of his candidate. Voter has to cast intelligent and rational vote according to his own criteria. A well-informed voter is the foundation of democratic structure. That information to a voter, who is the citizen of this country, is one facet of the fundamental right under Article 19(1)(*a*).

Article 145(3) of the Constitution of India

28. Mr Arun Jaitley, learned Senior Counsel and Mr Kirit N. Raval, learned Solicitor-General submitted that the question involved in these petitions is a substantial question of law as to the interpretation of the Constitution and, therefore, the matter may be referred to a Bench consisting of five Judges.

29. In our view, this contention is totally misconceived. Article 19(1)(*a*) is interpreted in numerous judgments rendered by this Court. After considering various decisions and following tests laid therein, this Court in *Assn. for Democratic Reforms*[1] arrived at the conclusion that for survival of the democracy, right of the voter to know antecedents of a candidate would be part and parcel of his fundamental right. It would be the basis for free and fair election which is a basic structure of the Constitution. Therefore, the question relating to interpretation of Article 19(1)(*a*) is concluded and there is no other question which requires interpretation of the Constitution.

30. Dealing with a similar contention, a five-Judge Bench of this Court in *State of J&K* v. *Thakur Ganga Singh*[13] succinctly held thus: (AIR p. 359, para 7)

> "7. What does interpretation of a provision mean? Interpretation is the method by which the true sense or the meaning of the word is understood. The question of interpretation can arise only if two or more possible constructions are sought to be placed on a provision — one party suggesting one construction and the other a different one. But where the parties agree on the true interpretation of a provision or do not raise any question in respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution. On an interpretation of Article 14, a series of decisions of this Court evolved the doctrine of classification. As we have pointed out, at no stage of the proceedings either the correctness of the interpretation of Article 14 or the principles governing the doctrine of classification have been questioned by either of the parties. Indeed accepting the said doctrine, the appellants contended that there was a valid classification under the rule while the respondents argued contra. The learned Additional Solicitor-General contended, for the first time, before us that the appeal raised a new facet of the doctrine of equality, namely, whether

13 AIR 1960 SC 356 : (1960) 2 SCR 346

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Page 37 Wednesday, September 26, 2018
Printed For: Mr Salim Naved
SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

109

an artificial person and a natural person have equal attributes within the meaning of the equality clause, and, therefore, the case involves a question of interpretation of the Constitution. This argument, if we may say so, involves the same contention in a different garb. If analysed, the argument only comes to this: as an artificial person and a natural person have different attributes, the classification made between them is valid. *This argument does not suggest a new interpretation of Article 14 of the Constitution, but only attempts to bring the rule within the doctrine of classification.* We, therefore, hold that the question raised in this case does not involve any question of law as to the interpretation of the Constitution." (emphasis supplied)

31. The aforesaid judgment is referred to and relied upon in *Sardar Sardul Singh Caveeshar* v. *State of Maharashtra*[14].

32. From the judgment rendered by this Court in *Assn. for Democratic Reforms*[1] it is apparent that no such contention was raised by the learned Solicitor-General, who appeared in appeal filed on behalf of the Union of India that question involved in that matter was required to be decided by a five-Judge Bench, as provided under Article 145(3) of the Constitution. The question raised before us has been finally decided and no other substantial question of law regarding the interpretation of the Constitution survives. Hence, the matter is not required to be referred to a five-Judge Bench.

Whether impugned Section 33-B can be considered as validating provision

33. The learned counsel for the respondent submitted that by the impugned legislation, most of the directions issued by the Court are complied with and vacuum pointed out is filled in by the legislation. It is their contention that the legislature did not think it fit that the remaining information as directed by this Court is required to be given by a contesting candidate.

34. This submission is, on the face of it, against well-settled legal position. In a number of decisions rendered by this Court, similar submission is negatived. The legislature has no power to review the decision and set it at naught except by removing the defect which is the cause pointed out by the decision rendered by the Court. If this is permitted it would sound the death knell of the rule of law as observed by this Court in various decisions. In *P. Sambamurthy* v. *State of A.P.*[15] this Court observed: (SCC p. 369, para 4)

"4. ... It is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent

14 AIR 1965 SC 682 : (1964) 2 SCR 378 : (1965) 1 Cri LJ 608 sub nom *Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra*

15 (1987) 1 SCC 362 : (1987) 2 ATC 502

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Page 38 Wednesday, September 26, 2018
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110

institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. *Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The proviso to clause (5) of Article 371-D is therefore clearly violative of the basic structure doctrine.*" (emphasis supplied)

35. In *Cauvery Water Disputes Tribunal, In re*[16] the Court referred to and relied upon the decision in *P. Sambamurthy*[15]. In that case, the Court dealt with the validity of the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 issued by the Government of Karnataka giving overriding effect that notwithstanding anything contained in any order, report or decision of any court or tribunal except the final decision under the provisions of sub-section (2) of Section 5 read with Section 6 of the Inter-State Water Disputes Act, 1956 shall have any effect and hold that the Ordinance in question which seeks directly to nullify the order of the Tribunal impinges on the judicial power of the State and is, therefore, ultra vires. After referring to the earlier decisions, the Court observed thus: (SCC pp. 141-42, paras 74 & 76)

"74. ... It would be unfair to adopt legislative procedure to undo a settlement which had become the basis of a decision of the High Court. *Even if legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the specific settlement which had been held to be valid and enforceable* by a High Court. *The object of the Act was in effect to take away the force of the judgment* of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.

* * *

76. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. *Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal.*" (emphasis supplied)

36. Further, in *Municipal Corpn. of the City of Ahmedabad* v. *New Shrock Spg. and Wvg. Co. Ltd.*[2] this Court (in SCC pp. 285-86, para 7) held thus:

"But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts. The limits of the power of Legislatures to interfere with the directions issued by courts were considered by several decisions of this

16 1993 Supp (1) SCC 96 (2)

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Page 39 Wednesday, September 26, 2018
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Court. In *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality*[17] our present Chief Justice speaking for the Constitution Bench of the Court observed:

> 'Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. *Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.* Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law.' (emphasis supplied)

In *Mahal Chand Sethia* v. *State of W.B.*[18] Mitter, J., speaking for the Court stated the legal position in these words:

> 'The argument of counsel for the appellant was that *although it was open to the State* Legislature by an Act and the Governor by an ordinance *to amend* the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, *it was incompetent for either of them to validate an order of transfer which had already been quashed* by the issue of a writ of certiorari by the High Court and the order of transfer being virtually dead, could not be resuscitated by the Governor or the Legislature and the validating measures could not touch any adjudication by the Court.
>
> ... *A court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence of the Legislature or if it infringed the rights enshrined in Part III of the Constitution. Needless to add it can strike down or declare invalid any Act or direction of a State Government*

17 (1969) 2 SCC 283
18 1969 UJ (SC) 616

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Page 40 Wednesday, September 28, 2016
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112

which is not authorised by law. The position of a Legislature is however different. It cannot declare any decision of a court of law to be void or of no effect." (emphasis supplied)

37. For the purpose of deciding these petitions, the principles emerging from various decisions rendered by this Court from time to time can *inter alia* be summarised thus:

— the Legislature can change the basis on which a decision is rendered by this Court and change the law in general. However, this power can be exercised subject to constitutional provision, particularly, legislative competence and if it is violative of fundamental rights enshrined in Part III of the Constitution, such law would be void as provided under Article 13 of the Constitution. The legislature also cannot declare any decision of a court of law to be void or of no effect.

38. As stated above, this Court has held that Article 19(1)(*a*) which provides for freedom of speech and expression would cover in its fold right of the voter to know specified antecedents of a candidate, who is contesting election. Once it is held that a voter has a fundamental right to know the antecedents of his candidate, that fundamental right under Article 19(1)(*a*) could be abridged by passing such legislation only as provided under Article 19(2) which provides as under:

"19. *Protection of certain rights regarding freedom of speech, etc.*—(1)

* * *

(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

39. So legislative competence to interfere with a fundamental right enshrined in Article 19(1)(*a*) is limited as provided under Article 19(2).

40. Learned counsel for the respondents have not pointed out how the impugned legislation could be justified or saved under Article 19(2).

Derivative fundamental right

41. Learned Senior Counsel Mr Jaitley developed an ingenious submission that as there is no specific fundamental right of the voter to know the antecedents of a candidate, the declaration by this Court of such fundamental right can be held to be derivative, therefore, it is open to the legislature to nullify it by appropriate legislation.

42. In our view, this submission requires to be rejected as there is no such concept of derivative fundamental rights. Firstly, it should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this Court has interpreted Articles 14, 19

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Page 41 Wednesday, September 26, 2018
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113

and 21 and given meaning and colour so that the nation can have a truly republic democratic society. This cannot be undone by such an Ordinance/Amended Act. For this, we would refer to the discussion by Mohan, J. in *Unni Krishnan, J.P.* v. *State of A.P.*[19] while considering the ambit of Article 21, he succinctly placed it thus: (SCC pp. 668-69, paras 25-27)

"25. In *Kesavananda Bharati* v. *State of Kerala*[4] Mathew, J. stated therein that the *fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience.* It is relevant in this context to remember that in building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles.

26. In *Pathumma* v. *State of Kerala*[20] it has been stated:

'*The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than accentuate their meaning and content by process of judicial construction.... Personal liberty in Article 21 is of the widest amplitude.*'

27. In this connection, it is worthwhile to recall what was said of the American Constitution in *Missouri* v. *Holland*[21]:

'[W]hen we are dealing with words that also are constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters.' "

(emphasis supplied)

43. Thereafter, the Court pointed out that several unenumerated rights fall within the ambit of Article 21 since personal liberty is of the widest amplitude and categorized them (in SCC pp. 669-70, para 30) thus:

"(1) The right to go abroad. *Satwant Singh Sawhney* v. *D. Ramarathnam, A.P.O.*[22]

(2) The right to privacy. *Gobind* v. *State of M.P.*[23] In this case reliance was placed on the American decision in *Griswold* v. *Connecticut*[24] (US at p. 510).

(3) The right against solitary confinement. *Sunil Batra* v. *Delhi Admn.*[25] (SCC at p. 545).

(4) The right against bar fetters. *Charles Sobraj* v. *Supdt., Central Jail*[26]

19 (1993) 1 SCC 645
20 (1978) 2 SCC 1
21 252 US 416, 433 : 64 L Ed 641 (1919)
22 AIR 1967 SC 1836 : (1967) 3 SCR 525
23 (1975) 2 SCC 148 : 1975 SCC (Cri) 468
24 381 US 479 : 14 L Ed 2d 510 (1965)
25 (1978) 4 SCC 494 : 1979 SCC (Cri) 155
26 (1978) 4 SCC 104 : 1978 SCC (Cri) 542

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Page 42 Wednesday, September 26, 2018
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(5) The right to legal aid. *Madhav Hayawadanrao Hoskot* v. *State of Maharashtra*[27].

(6) The right to speedy trial. *Hussainara Khatoon (I)* v. *Home Secy., State of Bihar*[28].

(7) The right against handcuffing. *Prem Shankar Shukla* v. *Delhi Admn.*[29]

(8) The right against delayed execution. *T.V. Vatheeswaran* v. *State of T.N.*[30]

(9) The right against custodial violence. *Sheela Barse* v. *State of Maharashtra*[31].

(10) The right against public hanging. *Attorney General of India* v. *Lachma Devi*[32].

(11) Doctor's assistance. *Parmanand Katara* v. *Union of India*[33].

(12) Shelter. *Shantistar Builders* v. *Narayan Khimalal Totame*[34].

44. Further, learned Senior Counsel Mr Sachar referred to the following decisions of this Court giving meaning to the phrase "freedom of speech and expression":

(1) *Romesh Thappar* v. *State of Madras*[9]

> Freedom of speech and expression includes freedom of propagation of ideas which is ensured by freedom of circulation.
>
> [AIR Headnote (*ii*)]

(2) *Brij Bhushan* v. *State of Delhi*[35]

> Pre-censorship of a journal is restriction on the liberty of press.
>
> (AIR para 9)

(3) *Hamdard Dawakhana* v. *Union of India*[36]

> *Advertisements* meant for propagation of ideas or furtherance of literature or human thought is a part of freedom of speech and expression.
>
> (AIR p. 563, para 17)

(4) *Sakal Papers (P) Ltd.* v. *Union of India*[37]

> Freedom of speech and expression carries with it the right to *publish* and circulate one's ideas, opinions and views.
>
> (AIR p. 311, para 29)

27 (1978) 3 SCC 544 : 1978 SCC (Cri) 468
28 (1980) 1 SCC 81 : 1980 SCC (Cri) 23
29 (1980) 3 SCC 526 : 1980 SCC (Cri) 815
30 (1983) 2 SCC 68 : 1983 SCC (Cri) 342
31 (1983) 2 SCC 96 : 1983 SCC (Cri) 353
32 1989 Supp (1) SCC 264 : 1989 SCC (Cri) 413
33 (1989) 4 SCC 286 : 1989 SCC (Cri) 721
34 (1990) 1 SCC 520
35 AIR 1950 SC 129 : (1950) 51 Cri LJ 1525
36 AIR 1960 SC 554 : 1960 Cri LJ 735
37 AIR 1962 SC 305

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Page 43 Wednesday, September 26, 2018
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(5) *Bennett Coleman and Co. v. Union of India*[38]

Freedom of press means right of citizens *to speak, publish and express their views as well as right of people to read.*

(SCC p. 815, para 45)

(6) *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[8]

"Freedom of expression, as learned writers have observed, has four broad social purposes to serve: (*i*) it helps an individual to attain self-fulfilment, (*ii*) it assists in the discovery of truth, (*iii*) it strengthens the capacity of an individual in participating in decision-making and (*iv*) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change."

(SCC p. 686, para 68)

(7) *Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana*[39]

Freedom of speech and expression includes right of *citizens to exhibit films on Doordarshan.*

(SCC p. 414, para 5)

(8) *S. Rangarajan v. P. Jagjivan Ram*[40]

Freedom of speech and expression means the right to express one's opinion by words of mouth, writing, printing, picture *or in any other manner.* It would thus include the freedom of communication and the right to propagate or publish opinion.

(SCC p. 582, para 8)

(9) *LIC of India v. Manubhai D. Shah*[41]

Freedom of speech and expression is a natural right which a human being acquires by birth. It is, therefore, a basic human right (Article 19 of Universal Declaration of Human Rights relied on.) Every citizen, therefore, has a right to air his or her views through the printing and/or electronic media or through any communication method.

(SCC pp. 648 & 650, paras 5 & 8)

(10) *Secy., Ministry of Information and Broadcasting, Govt. of India v. Cricket Assn. of Bengal*[11]

"3. (*b*) The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. *A successful democracy posits an 'aware' citizenry.* Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them."

(emphasis supplied)

(SCC p. 300, para 201)

(11) *S.P. Gupta v. Union of India*[12]

Right to know is implicit in the right of free speech and expression. *Disclosure of information regarding functioning of the Government must be the rule.*

(SCC p. 275, para 67)

38 (1972) 2 SCC 788
39 (1988) 3 SCC 410
40 (1989) 2 SCC 574
41 (1992) 3 SCC 637

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Page 44 Wednesday, September 26, 2018
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116

(12) *State of U.P.* v. *Raj Narain*[7]

> Freedom of speech and expression includes the right to know every public act, everything that is done in a public way, by their public functionaries. (SCC p. 453, para 74)

(13) *Dinesh Trivedi, MP* v. *Union of India*[42]

> Freedom of speech and expression *includes right of the citizens to know about the affairs of the Government.* (SCC p. 313, para 16)

45. There are many other judgments which are not required to be reiterated in this judgment. All these developments of law giving meaning to freedom of speech and expression or personal liberty are not required to be reconsidered nor could there be legislation so as to nullify such interpretation except as provided under the exceptions to fundamental rights.

46. Learned counsel for the respondents relied upon *R. Rajagopal* v. *State of T.N.*[43] and submitted that in the said case the Court observed that right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21. In that case, reliance was placed on *Kharak Singh* v. *State of U.P.*[44], *Gobind* v. *State of M.P.*[23] and other decisions of English and American courts and thereafter, the Court held that the petitioners have a right to publish what they alleged to be a life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy for the consequences in accordance with law. For this purpose, the Court held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. The Court also pointed out an exception namely: [SCC p. 650, para 26(2)]

> "This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media."

47. From the aforesaid observations learned Solicitor-General Mr Raval and learned Senior Counsel Mr Jaitley contended that rights which are derivatives would be subject to reasonable restriction. Secondly, it was sought to be contended that by insisting for declaration of assets of a candidate, right

42 (1997) 4 SCC 306
43 (1994) 6 SCC 632
44 AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329

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Page 45 Wednesday, September 26, 2018
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SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

117

to privacy is affected. In our view, the aforesaid decision nowhere supports the said contention. This Court only considered — to what extent a citizen would have right to privacy under Article 21. The Court itself has carved out the exceptions and restrictions on absolute right of privacy. Further, by declaration of a fact, which is a matter of public record that a candidate was involved in various criminal cases, there is no question of infringement of any right of privacy. Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right of privacy. This is the necessity of the day because of statutory provisions of controlling widespread corrupt practices as repeatedly pointed out by all concerned including various reports of the Law Commission and other committees as stated above.

48. Even the Prime Minister of India in one of his speeches has observed to the same effect. This has been reproduced in *B.R. Kapur case*[6] by Pattanaik, J. (as he then was) (in SCC p. 314, para 74) as under:

> "Mr Divan in course of his arguments, had raised some submissions on the subject — '*Criminalisation of Politics*' and 'participation of criminals in the electoral process as candidates and in that connection, he had brought to our notice the order of the Election Commission of India dated 28-8-1997. ... — 'Whither Accountability', published in *The Pioneer*, Shri Atal Behari Vajpayee had called for a national debate on all the possible alternatives for systematic changes to cleanse our democratic governing system of its present mess. He has expressed his dissatisfaction that neither Parliament nor the State Vidhan Sabhas are doing, with any degree of competence or commitment, what they are primarily meant to do: legislative function. According to him, barring exceptions, those who get elected to these democratic institutions are neither trained, formally or informally, in law-making nor do they seem to have an inclination to develop the necessary knowledge and competence in their profession. He has further indicated that those individuals in society who are generally interested in serving the electorate and performing legislative functions are finding it increasingly difficult to succeed in today's electoral system and the *electoral system has been almost totally subverted by money power, muscle power, and vote bank considerations of castes and communities.* Shri Vajpayee also had indicated that the corruption in the governing structures has, therefore, corroded the very core of elective democracy. According to him, the certainty of scope of corruption in the governing structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and coalitions often without the popular mandate. *Yet they capture and survive in power due to inherent systematic flows.* He further stated that casteism, corruption and politicisation have eroded the integrity and efficacy of our civil service structure also. *The manifestos,*

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Page 46 Wednesday, September 26, 2016
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118

policies, programmes of the political parties have lost meaning in the present system of governance due to lack of accountability."

(emphasis supplied)

49. Further, this Court while dealing with the election expenses observed in *Common Cause* v. *Union of India*[45] thus: (SCC p. 761, para 18)

"*18.* ... Flags go up, walls are painted, and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air taxis. *The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows.* In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

(emphasis supplied)

50. To combat this naked display of unaccounted/black money by the candidate, declaration of assets is likely to have a check on violation of the provisions of the Act and other relevant Acts including the Income Tax Act.

51. Further, the doctrine of parliamentary sovereignty as it obtains in England does not prevail here except to the extent and in the fields provided by the Constitution. The entire scheme of the Constitution is such that it ensures the sovereignty and integrity of the country as a republic and the democratic way of life by parliamentary institutions based on free and fair elections.

52. In *P.V. Narasimha Rao* v. *State (CBI/SPE)*[46] this Court observed thus: (SCC p. 673, para 47)

"*47.* ... Parliamentary democracy is a part of the basic structure of the Constitution. ... It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. (See: *Sub-Committee on Judicial Accountability* v. *Union of India*[47], SCC at p. 719.)"

53. In *C. Narayanaswamy* v. *C.K. Jaffer Sharief*[48] the Court observed (in SCC p. 186, para 22) thus:

"If the call for 'purity of elections' is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons who have made contributions and investments for the success of

45 (1996) 2 SCC 752
46 (1998) 4 SCC 626 : 1998 SCC (Cri) 1108
47 (1991) 4 SCC 699
48 1994 Supp (3) SCC 170

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Page 47 Wednesday, September 28, 2016
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SCC Online Web Edition: http://www.scconline.com
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119

the candidate concerned at the election. But this has to be taken care of by Parliament."

54. In *T.N. Seshan, CEC of India* v. *Union of India*[49] this Court observed thus: (SCC p. 623, para 10)

> "10. The preamble of our Constitution proclaims that we are a Democratic Republic Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country."

55. As observed in *Kesavananda Bharati case*[4] the fundamental rights themselves have no fixed content and it is also to be stated that the attempt of the Court should be to expand the reach and ambit of the fundamental rights. The Constitution is required to be kept young, energetic and alive. In this view of the matter, the contention raised by the learned counsel for the respondents, that as the phrase "freedom of speech and expression" is given the meaning to include citizens' right to know the antecedents of the candidates contesting election of MP or MLA, such rights could be set at naught by the legislature, requires to be rejected.

Right to vote is a statutory right

56. Learned counsel for the respondents vehemently submitted that right to elect or to be elected is a pure and simple statutory right and in the absence of statutory provision neither has the citizen a right to elect nor has he a right to be elected because such right is neither a fundamental right nor a common law right. It is, therefore, submitted that it cannot be held that a voter has any fundamental right of knowing the antecedents/assets of a candidate contesting the election. Learned Solicitor-General Mr Raval also submitted that on the basis of the decision rendered by this Court, the Act is amended by the impugned Ordinance/Amendment Act. However, for the directions which are left out, the presumption would be — it is deliberate omission on the part of the legislature and, therefore, there is no question of it being violative of Article 19(1)(*a*). He submitted that law pertaining to election depends upon statutory provisions. Right to vote, elect or to be elected depends upon statutory rights. For this purpose, he referred to the decision in *N.P. Ponnuswami* v. *Returning Officer*[50], *G. Narayanaswami* v. *G. Pannerselvam*[51] and *C. Narayanaswamy* v. *C.K. Jaffer Sharief*[48].

57. There cannot be any dispute that the right to vote or stand as a candidate for election and decision with regard to violation of election law is not a civil right but is a creature of statute or special law and would be subject to the limitations envisaged therein. It is for the legislature to examine and provide provisions relating to validity of election and the jurisdiction of the Court would be limited in accordance with such law which creates such Election Tribunal.

49 (1995) 4 SCC 611
50 AIR 1952 SC 64 : 1952 SCR 218
51 (1972) 3 SCC 717

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120

58. In the case of *N.P. Ponnuswami*[50] a person whose nomination paper was rejected, filed a writ of certiorari, which was dismissed on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of Article 329(*b*) of the Constitution.

59. In the case of *G. Narayanaswami*[51] this Court was dealing with an election petition wherein the issue which was required to be decided was whether the respondent was not qualified to stand for election to the graduates' constituency on all or any of the grounds set out by the petitioner in paras 7 to 9 of the election petition. The Court referred to Article 171 and thereafter observed that the term "electorate" used in Articles 171(3)(*a*), (*b*) and (*c*) has neither been defined by the Constitution nor in any enactment by Parliament. The Court thereafter referred to the definition of "elector" given in Section 2(1)(*a*) of the RP Act and held that considering the language as well as the legislative history of Articles 171 and 173 of the Constitution and Section 6 of the RP Act, there could be a presumption of deliberate omission of the qualification that the representative of the graduates should also be a graduate.

60. Similarly, in *C. Narayanaswamy case*[48] the Court was dealing with the validity of an election of a candidate on the ground of alleged corrupt practice as provided under Section 123(1)(*A*) of the Act and in that context the Court held that right of a person to question the validity of an election is dependent on conditions prescribed in the different sections of the Act and the rules framed thereunder. The Court thereafter held that as the Act does not provide that any expenditure incurred by a political party or by any other association or body of persons or any individual other than the candidate or his election agent, it shall not be deemed to be expenditure in connection with the election or authorised by a candidate or his election agent for the purpose of sub-section (1) of Section 77 read with Rule 90.

61. Learned counsel further referred to the decision in *Jyoti Basu* v. *Debi Ghosal*[52] wherein similar observations are made by this Court while deciding election petition: (SCC p. 696, para 8)

> "8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. ... Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. ... We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or

52 (1982) 1 SCC 691 : (1982) 3 SCR 318

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Page 49 Wednesday, September 28, 2016
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equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?"

a 62. It has to be stated that in an election petition challenging the validity of election, rights of the parties are governed by the statutory provisions for setting aside the election but this would not mean that a citizen who has right to be a voter and elect his representative in the Lok Sabha or Legislative Assembly has no fundamental right. Such a voter who is otherwise eligible to cast vote to elect his representative has statutory right under the Act to be a b voter and has also a fundamental right as enshrined in Chapter III. Merely because a citizen is a voter or has a right to elect his representative as per the Act, his fundamental rights could not be abridged, controlled or restricted by statutory provisions except as permissible under the Constitution. If any statutory provision abridges fundamental right, that statutory provision would be void. It also requires to be well understood that democracy based on adult c franchise is part of the basic structure of the Constitution. The right of an adult to take part in election process either as a voter or a candidate could be restricted by a valid law which does not offend constitutional provisions. Hence, the aforesaid judgments have no bearing on the question whether a citizen who is a voter has fundamental right to know the antecedents of his candidate. It cannot be held that as there is deliberate omission in law, the d right of the voter to know the antecedents of the candidates, which is his fundamental right under Article 19(1)(*a*), is taken away.

63. Mr Raval, learned Solicitor-General submitted that an enactment cannot be struck down on the ground that the Court thinks it unjustified. Members of Parliament or the Legislature are representatives of the people e and are supposed to know and be aware of what is good and bad for the people. The Court cannot sit in judgment over their wisdom. He relied upon the decision rendered by this Court in *P. Nalla Thampy Terah (Dr)* v. *Union of India*[53] wherein the Court considered the validity of Section 77(1) of the Act and referred to *Report of the Santhanam Committee on Prevention of Corruption*, which says: (SCC p. 198, para 10)

f "The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the government party. It is, therefore, essential that the conduct of g political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognised that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathisers of the parties concerned."

h

53 1985 Supp SCC 189

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Page 50 Wednesday, September 26, 2018
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122

64. The Court also referred to various decisions and thereafter held thus: (SCC pp. 199-200, para 13)

"*13*. We have referred to this large data in order to show that the influence of big money on the election process is regarded universally as an evil of great magnitude. *But then, the question which we, as Judges, have to consider is whether the provision contained in Explanation I suffers from any constitutional infirmity and, particularly, whether it violates Article 14*. On that question we find it difficult, reluctantly though, to accept the contention that Explanation 1 offends against the right to equality. Under that provision, (*i*) a political party or (*ii*) any other association or body of persons or (*iii*) any individual, other than the candidate or his election agent, can incur expenses, without any limitation whatsoever, in connection with the election of a candidate. Such expenses are not deemed to be expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purposes of Section 77(1)." (emphasis supplied)

65. Learned Solicitor-General heavily relied upon para 19, wherein the Court observed thus: (SCC p. 204)

"*19*. The petitioner is not unjustified in criticising the provision contained in Explanation 1 as diluting the principle of free and fair elections, which is the cornerstone of any democratic polity. *But, it is not for us to lay down policies in matters pertaining to elections. If the provisions of the law violate the Constitution, they have to be struck down*. We cannot, however, negate a law on the ground that we do not approve of the policy which underlies it." (emphasis supplied)

66. From the aforesaid discussion it is apparent that the Court in that case was dealing with the validity of Explanation 1 and was deciding whether it suffered from any constitutional infirmity, particularly, whether it was violative of Article 14. The question of Article 19(1)(*a*) was not required to be considered and the Court had not even touched it. At the same time, there cannot be any dispute that if the provisions of the law violate the constitutional provisions, they have to be struck down and that is what is required to be done in the present case. It is made clear that no provision is nullified on the ground that the Court does not approve the underlying policy of the enactment.

67. As against this, Mr Sachar, learned Senior Counsel rightly referred to a decision rendered by this Court in *Bennett Coleman & Co.* v. *Union of India*[38] where similar contentions were raised and negatived while imposing restrictions by the Newspaper Control Order. The Court's relevant discussion is as under: (SCC pp. 809-10, paras 31-33)

"*31*. Article 19(1)(*a*) provides that all citizens shall have the right to freedom of speech and expression, Article 19(2) states that nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said

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Page 51 Wednesday, September 26, 2018
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123

sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. *Although Article 19(1)(a) does not mention the freedom of the press, it is the settled view of this Court that freedom of speech and expression includes freedom of the press and circulation.*

32. In the *Express Newspapers case*[8] it is said that there can be no doubt that liberty of the press is an essential part of the freedom of speech and expression guaranteed by Article 19(1)(*a*). The press has the right of free propagation and free circulation without any previous restraint on publication. *If a law were to single out the press for laying down prohibitive burdens on it that would restrict the circulation, penalise its freedom of choice as to personnel, prevent newspapers from being started and compel the press to government aid. This would violate Article 19(1)(a) and would fall outside the protection afforded by Article 19(2).*

33. In *Sakal Papers case*[37] it is said that the freedom of speech and expression guaranteed by Article 19(1) gives a citizen the right to propagate and publish his ideas to disseminate them, to circulate them either by words of mouth or by writing. This right extends not merely to the matter it is entitled to circulate but also to the volume of circulation. In *Sakal Papers case*[37] the Newspaper (Price and Page) Act, 1956 empowered the Government to regulate the prices of newspapers in relation to their pages and sizes and to regulate the allocation of space for advertisement matter. The Government fixed the maximum number of pages that might be published by a newspaper according to the price charged. The Government prescribed the number of supplements that would be issued. This Court held that the Act and the Order placed restraints on the freedom of the press to circulate. *This Court also held that the freedom of speech could not be restricted for the purpose of regulating the commercial aspects of activities of the newspapers.*"

(emphasis supplied)

68. The Court also dealt with the contention that newsprint policy does not directly deal with the fundamental right mentioned in Article 19(1)(*a*). It was also contended that regulatory statutes which do not control the content of speech but incidentally limit the ventured exercise are not regarded as a type of law. Any incidental limitation or incidental restriction on freedom of speech is permissible as the same is essential to the furtherance of important governmental interest in regulating speech and freedom. The Court negatived the said contention and in para 39 held thus: (SCC p. 812)

> "39. Mr Palkhivala said that the tests of pith and substance of the subject-matter and of direct and of incidental effect of the legislation are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. In our view this is a sound and correct approach to interpretation of legislative measures and State action in relation to fundamental rights. *The true test is whether the*

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Page 52 Wednesday, September 26, 2018
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124

effect of the impugned action is to take away or abridge fundamental rights. If it be assumed that the direct object of the law or action has to be direct abridgement of the right of free speech by the impugned law or action it is to be related to the directness of effect and not to the directness of the subject-matter of the impeached law or action. The action may have a direct effect on a fundamental right although its direct subject-matter may be different." (emphasis supplied)

The Court observed in SCC para 80 at p. 823:

"The faith in the popular Government rests on the old dictum, 'let the people have the truth and the freedom to discuss it and all will go well'. The liberty of the press remains an 'Art of the Covenant' in every democracy."

69. Further, the freedom of speech and expression, as has been held repeatedly, is basic to and indivisible from a democratic polity. It includes right to impart and receive information. (*Secy., Min. of Information & Broadcasting*[1].) Restriction to the said right could be only as provided in Article 19(2). This aspect is also discussed in SCC para 151 (p. 270) thus:

"*151.* Article 19(1)(*a*) declares that all citizens shall have the right of freedom of speech and expression. Clause (2) of Article 19, at the same time, provides that nothing in sub-clause (*i*) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with the foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. The grounds upon which reasonable restrictions can be placed upon the freedom of speech and expression are designed firstly to ensure that the said right is not exercised in such a manner as to threaten the sovereignty and integrity of India, security of the State, friendly relations with the foreign States, public order, decency or morality. Similarly, the said right cannot be so exercised as to amount to contempt of court, defamation or incitement of an offence. Existing laws providing such restrictions are saved and the State is free to make laws in future imposing such restrictions. The grounds aforesaid are conceived in the interest of ensuring and maintaining conditions in which the said right can meaningfully and peacefully be exercised by the citizens of this country."

70. Hence, in our view, right of a voter to know the biodata of a candidate is the foundation of democracy. The old dictum — let the people have the truth and the freedom to discuss it and all will go well with the Government — should prevail.

71. The true test for deciding the validity of the Act is — whether it takes away or abridges fundamental rights of the citizens. If there is direct abridgement of the fundamental right of freedom of speech and expression, the law would be invalid.

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Page 53 Wednesday, September 26, 2018
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72. Before parting with the case, there is one aspect which is to be dealt with. After the judgment in *Assn. for Democratic Reforms case*[1] the Election Commission gave certain directions in implementation of the judgment by its Order No. 3/ER/2002/JS-II/Vol-III, dated 28-6-2002. In the course of arguments, learned Solicitor-General as well as learned Senior Counsel appearing for the Intervener (BJP) pointed out that Direction 4 is beyond the competence of the Election Commission and moreover, it is not necessary to give effect to the judgment of this Court. The said direction reads as follows:

> "Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:
>
> Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the Returning Officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under Section 36(2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character."

73. While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in *Assn. for Democratic Reforms case*[1] the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the "documentary proof". Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time *prima facie* it appears that the Election Commission is required to revise its instructions in the light of directions issued in *Assn. for Democratic Reforms case*[1] and as provided under the Representation of the People Act and its Third Amendment.

74. Finally, after the amendment application was granted, the following additional contentions were raised:

> J. Notice should be issued to the Attorney-General as vires of the Act is challenged.

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Page 54 Wednesday, September 26, 2018
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126

2. Parliament in its wisdom and after due deliberation has amended the Act and has also incorporated the directions issued by this Court in its earlier judgment in *Assn. for Democratic Reforms*[1] including the direction for declaration of assets and liabilities of every elected candidate for a House of Parliament. They are also required to declare assets of their spouse and dependent children.

75. The contention that notice is required to be issued to the Attorney-General as vires of the Act is challenged, is of no substance because "Union of India" is the party-respondent and on its behalf learned Solicitor-General is appearing before the Court. He has forcefully raised the contentions which were required to be raised at the time of hearing of the matter. So, service of notice to the learned Attorney-General would be nothing but empty formality and the contention is raised for the sake of raising such contention.

76. Further, we have also reproduced certain recommendations of the National Commission to Review the Working of the Constitution in the earlier paragraphs and have also relied upon the same. In the Report, the Commission has recommended that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a Member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence. The Commission has also recommended that every candidate at the time of election must declare his assets and liabilities along with those of his close relatives and all candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office. Many such other recommendations are reproduced in earlier paragraphs.

77. With regard to the second contention, it has already been dealt with in previous paragraphs.

78. What emerges from the above discussion can be summarised thus:

(*A*) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the Court is not binding or is of no effect.

It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.

(*B*) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish

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Page 56 Wednesday, September 28, 2016
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SCC Online Web Edition: http://www.scconline.com
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127

any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(*a*) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

(*C*) The judgment rendered by this Court in *Assn. for Democratic Reforms*[1] has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(*D*) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(*E*) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.

79. In the result, Section 33-B of the Amended Act is held to be illegal, null and void. However, this judgment would not have any retrospective effect but would be prospective. Writ petitions stand disposed of accordingly.

P. VENKATARAMA REDDI, J.— The width and amplitude of the right to information about the candidates contesting elections to Parliament or the State Legislature in the context of the citizen's right to vote broadly falls for consideration in these writ petitions under Article 32 of the Constitution.

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Page 56 Wednesday, September 28, 2016
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128

While I respectfully agree with the conclusion that Section 33-B of the Representation of the People Act, 1951 does not pass the test of constitutionality, I have come across a limited area of disagreement on certain aspects, especially pertaining to the extent of disclosures that could be insisted upon by the Court in the light of legislation on the subject. Moreover, the importance and intricacies of the subject-matter and the virgin ground trodden by this Court in *Union of India* v. *Assn. for Democratic Reforms*[1] to bring the right to information of the voter within the sweep of Article 19(1)(*a*) has impelled me to elucidate and clarify certain crucial aspects. Hence, this separate opinion.

I. (1) Freedom of expression and right to information

81. In the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly in the firmament of Part III. We must take legitimate pride that this cherished freedom has grown from strength to strength in the post-independence era. It has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional courts. Barring a few aberrations, the executive government and the political parties too have not lagged behind in safeguarding this valuable right which is the insignia of the democratic culture of a nation. Nurtured by this right, press and electronic media have emerged as powerful instruments to mould the public opinion and to educate, entertain and enlighten the public.

82. Freedom of speech and expression, just as the equality clause and the guarantee of life and liberty, has been very broadly construed by this Court right from the 1950s. It has been variously described as a "basic human right", "a natural right" and the like. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and viewpoint and debates on matters of public concern. The importance which our Constitution-makers wanted to attach to this freedom is evident from the fact that reasonable restrictions on that right could be placed by law only on the limited grounds specified in Article 19(2), not to speak of inherent limitations of the right.

83. In due course of time, several species of rights unenumerated in Article 19(1)(*a*) have branched off from the genus of the article through the process of interpretation by this Apex Court. One such right is the "right to information". Perhaps, the first decision which has adverted to this right is *State of U.P.* v. *Raj Narain*[7]. "The right to know", it was observed (at SCC p. 453, para 74) by Mathew, J.

> "which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security".

It was said very aptly: (SCC p. 453, para 74)

> "74. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few

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Page 57 Wednesday, September 26, 2018
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129

secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries."

84. The next milestone which showed the way for concretizing this right is the decision in *S.P. Gupta* v. *Union of India*[12] in which this Court dealt with the issue of High Court Judges' transfer. Bhagwati, J. observed: (SCC p. 275, para 67)

"The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(*a*). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception...."

85. People's right to know about governmental affairs was emphasized in the following words: (SCC p. 273, para 64)

"No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only if people know how Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy."

86. These two decisions have recognized that the right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1)(*a*). The pertinent observations made by the learned Judges in these two cases were in the context of the question whether the privilege under Section 123 of the Evidence Act could be claimed by the State in respect of the Blue Book in the first case i.e. *Raj Narain case*[7] and the file throwing light on the consultation process with the Chief Justice, in the second case. Though the scope and ambit of Article 19(1)(*a*) vis-a-vis the right to information did not directly arise for consideration in those two landmark decisions, the observations quoted supra have a certain amount of relevance in evaluating the nature and character of the right.

87. Then, we have the decision in *Dinesh Trivedi* v. *Union of India*[42]. This Court was confronted with the issue whether background papers and investigatory reports which were referred to in *Vohra Committee's Report* could be compelled to be made public. The following observations of Ahmadi, C.J. are quite pertinent: (SCC p. 313, para 16)

"16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute."

88. The proposition expressed by Mathew, J. in *Raj Narain case*[7] was quoted with approval.

89. The next decision which deserves reference is the case of *Secy., Ministry of I&B* v. *Cricket Assn. of Bengal*[11]. Has an organizer or producer of

130

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Page 58 Wednesday, September 26, 2018
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any event a right to get the event telecast through an agency of his choice, whether national or foreign? That was the primary question decided in that case. It was highlighted that the right to impart and receive information is a part of the fundamental right under Article 19(1)(*a*) of the Constitution. On this point, Sawant, J. had this to say at SCC p. 251, para 122(*ii*):

> "122. (*ii*) The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property...."

90. Jeevan Reddy, J. spoke more or less in the same voice: (SCC p. 300, para 201)

> "3. (*b*) The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them."

91. A conspectus of these cases would reveal that the right to receive and impart information was considered in the context of privilege pleaded by the State in relation to confidential documents relating to public affairs and the freedom of electronic media in broadcasting/telecasting certain events.

I. (2) Right to information in the context of the voter's right to know the details of contesting candidates and the right of the media and others to enlighten the voter

92. For the first time in *Union of India* v. *Assn. for Democratic Reforms*[1] which is the forerunner to the present controversy, the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(*a*). There can be no doubt that by doing so, a new dimension has been given to the right embodied in Article 19(1)(*a*) through a creative approach dictated by the need to improve and refine the political process of election. In carving out this right, the Court had not traversed a beaten track but took a fresh path. It must be noted that the right to information evolved by this Court in the said case is qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though to a certain extent, there may be overlapping. The right to information of the voter/citizen is sought to be enforced against an individual who intends to become a public figure and the information relates to his personal matters. Secondly, that right cannot materialize without the State's intervention. The State or its instrumentality has to compel a subject to make the information available to the public, by means of legislation or orders having the force of law. With respect, I am unable to share the view that it stands on the same footing as right to telecast

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Page 59 Wednesday, September 26, 2018
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131

and the right to view sports and games or other items of entertainment through television (vide observations at para 38 of *Assn. for Democratic Reforms case*[1]). One more observation at SCC p. 314, para 30 to the effect that "the decision-making process of a voter would include his right to know about public functionaries who are required to be elected by him" needs explanation. Till a candidate gets elected and enters the House, it would not be appropriate to refer to him as a public functionary. Therefore, the right to know about a public act done by a public functionary to which we find reference in *Raj Narain case*[7] is not the same thing as the right to know about the antecedents of the candidate contesting the election. Nevertheless, the conclusion reached by the Court that the voter has such a right and that the right falls within the realm of freedom of speech and expression guaranteed by Article 19(1)(*a*) can be justified on good and substantial grounds. To this aspect, I will advert a little later. Before that, I would like to say that it would have been in the fitness of things if the case (*UOI* v. *Assn. for Democratic Reforms*[1]) was referred to the Constitution Bench as per the mandate of Article 145(3) for the reason that a new dimension has been added to the concept of freedom of expression so as to bring within its ambit a new species of right to information. Apparently, no such request was made at the hearing and all parties invited the decision of the three-Judge Bench. The law has been laid down therein elevating the right to secure information about a contesting candidate to the position of a fundamental right. That decision has been duly taken note of by Parliament and acted upon by the Election Commission. It has attained finality. At this stage, it would not be appropriate to set the clock back and refer the matter to the Constitution Bench to test the correctness of the view taken in that case. I agree with my learned Brother Shah, J. in this respect. However, I would prefer to give reasons of my own — may not be very different from what the learned Judge had expressed, to demonstrate that the proposition laid down by this Court rests on a firm constitutional basis.

93. I shall now proceed to elucidate as to how the right to know the details about the contesting candidate should be regarded as a part of the freedom of expression guaranteed by Article 19(1)(*a*). This issue has to be viewed from more than one angle — from the point of view of the voter, the public viz. representatives of the press, organizations such as the petitioners which are interested in taking up public issues and thirdly, from the point of view of the persons seeking election to the legislative bodies.

94. The trite saying that "democracy is for the people, of the people and by the people" has to be remembered forever. In a democratic republic, it is the will of the people that is paramount and becomes the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult suffrage held by means of secret ballot. It is through the ballot that the voter expresses his choice or preference for a candidate. "Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue", as observed by this Court in *Lily*

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Page 60 Wednesday, September 26, 2018
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132

Thomas v. Speaker, Lok Sabha[54] (SCC pp. 236-37, para 2) quoting from *Black's Law Dictionary*. The citizens of the country are enabled to take part in the government through their chosen representatives. In a parliamentary democracy like ours, the Government of the day is responsible to the people through their elected representatives. The elected representative acts or is supposed to act as a live link between the people and the Government. The people's representatives fill the role of law-makers and custodians of the Government. People look to them for ventilation and redressal of their grievances. They are the focal point of the will and authority of the people at large. The moment they put in papers for contesting the election, they are subjected to public gaze and public scrutiny. The character, strength and weakness of the candidate is widely debated. Nothing is therefore more important for sustenance of democratic polity than the voter making an intelligent and rational choice of his or her representative. For this, the voter should be in a position to effectively formulate his/her opinion and to ultimately express that opinion through ballot by casting the vote. The concomitant of the right to vote which is the basic postulate of democracy is thus twofold: first, formulation of opinion about the candidates and second, the expression of choice by casting the vote in favour of the preferred candidate at the polling booth. The first step is complementary to the other. Many a voter will be handicapped in formulating the opinion and making a proper choice of the candidate unless the essential information regarding the candidate is available. The voter/citizen should have at least the basic information about the contesting candidate, such as his involvement in serious criminal offences. To scuttle the flow of information — relevant and essential — would affect the electorate's ability to evaluate the candidate. Not only that, the information relating to the candidates will pave the way for public debate on the merits and demerits of the candidates. When once there is public disclosure of the relevant details concerning the candidates, the press, as a media of mass communication and voluntary organizations vigilant enough to channel the public opinion on right lines will be able to disseminate the information and thereby enlighten and alert the public at large regarding the adverse antecedents of a candidate. It will go a long way in promoting the freedom of speech and expression. That goal would be accomplished in two ways. It will help the voter who is interested in seeking and receiving information about the candidate to form an opinion according to his or her conscience and best of judgment and secondly, it will facilitate the press and voluntary organizations in imparting information on a matter of vital public concern. An informed voter — whether he acquires information directly by keeping track of disclosures or through the press and other channels of communication — will be able to fulfil his responsibility in a more satisfactory manner. An enlightened and informed citizenry would undoubtedly enhance democratic values. Thus, the availability of proper and relevant information about the candidate fosters and promotes the freedom of speech and expression both from the point of view of imparting and receiving the information. In turn, it would lead to the preservation of the integrity of

[54] (1993) 4 SCC 234.

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Page 61 Wednesday, September 26, 2018
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133

electoral process which is so essential for the growth of democracy. Though I do not go to the extent of remarking that the election will be a farce if the candidates' antecedents are not known to the voters, I would say that such information will certainly be conducive to fairness in election process and integrity in public life. The disclosure of information would facilitate and augment the freedom of expression both from the point of view of the voter as well as the media through which the information is publicized and openly debated.

95. The problem can be approached from another angle. As observed by this Court in *Assn. for Democratic Reforms case*[1] a voter "speaks out or expresses by casting vote". Freedom of expression, as contemplated by Article 19(1)(*a*) which in many respects overlaps and coincides with freedom of speech, has manifold meanings. It need not and ought not to be confined to expressing something in words orally or in writing. The act of manifesting by action or language is one of the meanings given in *Ramanatha Aiyar's Law Lexicon* (edited by Justice Y.V. Chandrachud). Even a manifestation of an emotion, feeling etc. without words would amount to expression. The example given in *Collin's Dictionary of English Language* (1983 Reprint) is: "tears are an expression of grief", is quite apposite. Another shade of meaning is: "a look on the face that indicates mood or emotion; e.g.: a joyful expression". Communication of emotion and display of talent through music, painting etc. is also a sort of expression. Having regard to the comprehensive meaning of the phrase "expression", voting can be legitimately regarded as a form of expression. Ballot is the instrument by which the voter expresses his choice between candidates or in respect to propositions; and his "vote" is his choice or election, as expressed by his ballot (vide *A Dictionary of Modern Legal Usage*, 2nd Edn., by A. Garner Bryan). "Opinion expressed, resolution or decision carried, by voting" is one of the meanings given to the expression "vote" in the *New Oxford Illustrated Dictionary*. It is well settled and it needs no emphasis that the fundamental right of freedom of speech and expression should be broadly construed and it has been so construed all these years. In the light of this, the dictum of the Court that the voter "speaks out or expresses by casting a vote" is apt and well founded. I would only reiterate and say that freedom of voting by expressing preference for a candidate is nothing but freedom of expressing oneself in relation to a matter of prime concern to the country and the voter himself.

I. (3) Right to vote is a constitutional right though not a fundamental right but right to make choice by means of ballot is part of freedom of expression

96. The right to vote for the candidate of one's choice is of the essence of democratic polity. This right is recognized by our Constitution and it is given effect to in specific form by the Representation of the People Act. The Constituent Assembly Debates reveal that the idea to treat the voting right as a fundamental right was dropped; nevertheless, it was decided to provide for it elsewhere in the Constitution. This move found its expression in Article 326 which enjoins that

SCC Online Web Edition, Copyright © 2016
Page 62 Wednesday, September 28, 2016
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134

the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one* years of age, and is not otherwise disqualified under the Constitution or law on the ground of non-residence, unsoundness of mind, crime, corrupt or illegal practice — shall be entitled to be registered as voter at such election.

However, case after case starting from *Ponnuswami case*[50] characterized it as a statutory right. "The right to vote or stand as a candidate for election", it was observed in *Ponnuswami case*[50] (AIR p. 71, para 18) "is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it". It was further elaborated in the following words:

> "Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

97. In *Jyoti Basu v. Debi Ghosal*[52] this Court again pointed out in no uncertain terms that: (SCC p. 696, para 8)

> "8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right."

With great reverence to the eminent Judges, I would like to clarify that the right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely the RP Act. That, in my understanding, is the correct legal position as regards the nature of the right to vote in elections to the House of the People and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor-General that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an integral part of any fundamental right, remains to be squarely met. Here, a distinction has to be drawn between the conferment of the right to vote on fulfilment of requisite criteria and the culmination of that right in the final act of expressing choice towards a particular candidate by means of ballot. Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted. Freedom of voting as distinct from right to vote is thus a

* Now 18 years

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Page 63 Wednesday, September 26, 2018
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TruePrint™ source: Supreme Court Cases

135

species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom. None of the decisions of this Court wherein the proposition that the right to vote is a pure and simple statutory right was declared and reiterated, considered the question whether the citizen's freedom of expression is or is not involved when a citizen entitled to vote casts his vote in favour of one or the other candidate. The issues that arose in *Ponnuswami case*[50] and various cases cited by the learned Solicitor-General fall broadly within the realm of procedural or remedial aspects of challenging the election or the nomination of a candidate. None of these decisions, in my view, go counter to the proposition accepted by us that the fundamental right of freedom of expression sets in when a voter actually casts his vote. I, therefore, find no merit in the submission made by the learned Solicitor-General that these writ petitions have to be referred to a larger Bench in view of the apparent conflict. As already stated, the factual matrix and legal issues involved in those cases were different and the view, we are taking, does not go counter to the actual ratio of the said decisions rendered by the eminent Judges of this Court.

98. Reliance has been placed by the learned Solicitor-General on the Constitution Bench decision in *Jamuna Prasad Mukhariya* v. *Lachhi Ram*[55]. That was a case of special appeal to this Court against the decision of an Election Tribunal. Apart from assailing the finding of the Tribunal on the aspect of "corrupt practice", Sections 123(5) and 124(5) (as they stood then) of the RP Act were challenged as ultra vires Article 19(1)(*a*). The former provision declared the character assassination of a candidate as a major corrupt practice and the latter provision made an appeal to vote on the ground of caste a minor corrupt practice. The contention that these provisions impinged on the freedom of speech and expression was unhesitatingly rejected. The Court observed that those provisions did not stop a man from speaking. They merely prescribed conditions which must be observed if a citizen wanted to enter Parliament. It was further observed that the right to stand as a candidate and contest an election is a special right created by the statute and can only be exercised on the conditions laid down by the statute. In that context, the Court made an observation that the fundamental right chapter had no bearing on the right to contest the election which is created by the statute and the appellant had no fundamental right to be elected as a Member of Parliament. If a person wants to get elected, he must observe the rules laid down by law. So holding, those sections were held to be *intra vires*. I do not think that this decision which dealt with the contesting candidate's rights and obligations has any bearing on the freedom of expression of the voter and the public in general in the context of elections. The remark that "the fundamental right chapter has no bearing on a right like this created by statute" cannot be divorced from the context in which it was made.

55 AIR 1954 SC 686 : (1955) 1 SCR 608

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Page 56 Wednesday, September 28, 2016
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136

99. The learned Senior Counsel appearing for one of the interveners (BJP) has advanced the contention that if the right to information is culled out from Article 19(1)(*a*) and read as an integral part of that right, it is fraught with dangerous consequences inasmuch as the grounds of reasonable restrictions which could be imposed are by far limited and therefore, the Government may be constrained to part with certain sensitive informations which would not be in public interest to disclose. This raises the larger question whether apart from the heads of restriction envisaged by sub-article (2) of Article 19, certain inherent limitations should not be read into the article, if it becomes necessary to do so in national or societal interest. The discussion on this aspect finds its echo in the separate opinion of Jeevan Reddy, J. in *Cricket Assn. case*[1]. The learned Judge was of the view that the freedom of speech and expression cannot be so exercised as to endanger the interest of the nation or the interest of the society, even if the expression "national interest" or "public interest" has not been used in Article 19(2). It was pointed out that such implied limitation has been read into the First Amendment of the US Constitution which guarantees the freedom of speech and expression in unqualified terms.

100. The following observations of the US Supreme Court in *Gitlow* v. *New York*[56] are very relevant in this context: (US p. 666)

> "It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents the punishment of those who abuse this freedom."

101. Whenever the rare situations of the kind anticipated by the learned counsel arise, the Constitution and the courts are not helpless in checking the misuse and abuse of the freedom. Such a check need not necessarily be found strictly within the confines of Article 19(2).

II. Sections 33-A and 33-B of the Representation of the People (Third Amendment) Act, 2002 — whether Section 33-A by itself effectively secures the voter's/citizen's right to information — whether Section 33-B is unconstitutional

II. (1) Sections 33-A and 33-B of the Representation of the People (Third Amendment) Act

102. Now I turn my attention to the discussion of the core question, that is to say, whether the impugned legislation falls foul of Article 19(1)(*a*) for limiting the area of disclosure and whether Parliament acted beyond its competence in deviating from the directives given by this Court to the Election Commission in *Democratic Reforms Assn. case*[1]. By virtue of the Representation of the People (Third Amendment) Act, 2002 the only information which a prospective contestant is required to furnish apart from the information which he is obliged to disclose under the existing provisions

56 69 L Ed 1138 : 268 US 652 (1925)

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Page 65 Wednesday, September 25, 2018
Printed For: Mr Sarim Naved
SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

137

is the information on two points: (*i*) whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed; and (*ii*) whether he has been convicted of an offence [other than the offence referred to in sub-sections (1) to (3) of Section 8] and sentenced to imprisonment for one year or more. On other points spelt out in this Court's judgment, the candidate is not liable to furnish any information and that is so, notwithstanding anything contained in any judgment or order of a court OR any direction, order or instruction issued by the Election Commission. Omission to furnish the information as per the mandate of Section 33-B and furnishing false information in that behalf is made punishable. That is the sum and substance of the two provisions, namely, Sections 33-A and 33-B.

103. The plain effect of the embargo contained in Section 33-B is to nullify substantially the directives issued by the Election Commission pursuant to the judgment of this Court. At present, the instructions issued by the Election Commission could only operate in respect of the items specified in Section 33-A and nothing more. It is for this reason that Section 33-B has been challenged as ultra vires the Constitution both on the ground that it affects the fundamental right of the voter/citizen to get adequate information about the candidate and that Parliament is incompetent to nullify the judgment of this Court. I shall briefly notice the rival contentions on this crucial issue.

II. (2) Contentions

104. The petitioners' contention is that the legislation on the subject of disclosure of particulars of candidates should adopt in entirety the directives issued by this Court to the Election Commission in the pre-Ordinance period. Any dilution or deviation of those norms or directives would necessarily violate the fundamental right guaranteed by Article 19(1)(*a*) as interpreted by this Court and therefore the law, as enacted by Parliament, infringes the said guarantee. This contention has apparently been accepted by my learned Brother M.B. Shah, J. The other viewpoint presented on behalf of the Union of India and one of the interveners is that the freedom of the legislature in identifying and evolving the specific areas in which such information should be made public cannot be curtailed by reference to the ad hoc directives given by this Court in the pre-Ordinance period and the legislative wisdom of Parliament, especially in election matters, cannot be questioned. This is the position even if the right to know about the candidate is conceded to be part of Article 19(1)(*a*). It is for Parliament to decide to what extent and how far the information should be made available. In any case, it is submitted that the Court's verdict has been duly taken note of by Parliament and certain provisions have been made to promote the right to information vis-à-vis the contesting candidates. Section 33-B is only a part of this exercise and it does not go counter to Article 19(1)(*a*) even though the scope of public disclosures has been limited to one important aspect only.

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Page 66 Wednesday, September 26, 2018
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138

II. (3) Broad points for consideration

105. A liberal but not a constricted approach in the matter of disclosure of information in relation to candidates seeking election is no doubt a desideratum. The wholesale adoption of the Court's diktats on the various items of information while enacting the legislation would have received public approbation and would have been welcomed by the public. It would have been in tune with the recommendations of various commissions and even the statements made by eminent and responsible political personalities. However, the fact remains that Parliament in its discretion did not go the whole hog, but chose to limiting the scope of mandated disclosures to only one of the important aspects highlighted in the judgment. The question remains to be considered whether in doing so, Parliament outstepped its limits and enacted a law in violation of the guarantee enshrined in Article 19(1)(*a*) of the Constitution. The allied question is whether Parliament has no option but to scrupulously adopt the directives given by this Court to the Election Commission. Is it open to Parliament to independently view the issue and formulate the parameters and contents of disclosure, though it has the effect of diluting or diminishing the scope of disclosures which, in the perception of the Court, were desirable? In considering these questions of far-reaching importance from the constitutional angle, it is necessary to have a clear idea of the ratio and implications of this Court's judgment in *Assn. for Democratic Reforms case*[1].

II. (4) Analysis of the judgment in Assn. for Democratic Reforms case[1]*— whether and how far the directives given therein have an impact on the parliamentary legislation — approach of the Court in testing the legislation*

106. The first proposition laid down by this Court in the said case is that a citizen/voter has the right to know about the antecedents of the contesting candidate and that right is a part of the fundamental right under Article 19(1)(*a*). In this context, M.B. Shah, J. observed that [SCC p. 322, para 46(7)]

> "Voter's speech or expression in case of election would include casting of votes, that is to say, *voter speaks out or expresses by casting vote*."

It was then pointed out that the information about the candidate to be selected is essential as it would be conducive to transparency and purity in the process of election. The next question considered was how best to enforce that right. The Court having noticed that there was a void in the field in the sense that it was not covered by any legislative provision, gave directions to the Election Commission to fill the vacuum by requiring the candidate to furnish information on the specified aspects while filing the nomination paper. Five items of information which the Election Commission should call for from the prospective candidates were spelt out by the Court. Two of them relate to criminal background of the candidate and pendency of criminal cases against him. Points 3 and 4 relate to assets and liabilities of the candidate and his/her family. The last one is about the educational qualifications of the candidate.

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Page 67 Wednesday, September 26, 2018
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139

The legal basis and the justification for issuing such directives to the Commission has been stated thus (vide SCC p. 309, paras 19-20):

> "19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.
>
> 20. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted."

Again, at para 49 it was emphasized: (SCC p. 322)

> "49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible...."

107. Thus, the Court was conscious of the fact that the Election Commission could act in the matter only so long as the field is not covered by legislation. The Court also felt that the vacuum or void should be suitably filled so that the right to information concerning a candidate would soon become a reality. In other words, till Parliament applied its mind and came forward with appropriate legislation to give effect to the right available to a voter-citizen, the Court felt that the said goal has to be translated into action through the media of the Election Commission, which is endowed with "residuary power" to regulate the election process in the best interests of the electorate. Instead of leaving it to the Commission and with a view to give quietus to the possible controversies that might arise, the Court considered it expedient to spell out five points (broadly falling into three categories) on which the information has to be called for from the contesting candidate. In the very nature of things, the directives given by the Court were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. The five directives cannot be considered to be rigid theorems — inflexible and immutable — but only reflect the perception and tentative thinking of the Court at a point of time when the legislature did not address itself to the question.

108. When Parliament, in the aftermath of the verdict of this Court, deliberated and thought it fit to secure the right to information to a citizen only to a limited extent (having a bearing on criminal antecedents), a fresh look has to be necessarily taken by the Court and the validity of the law made has to be tested on a clean slate. It must be remembered that the right to get information which is a corollary to the fundamental right to free speech and expression has no fixed connotation. Its contours and parameters cannot be precisely defined and the Court in my understanding, never meant to do so. It

140

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Page 66 Wednesday, September 26, 2018
Printed For: Mr Sarim Nawad
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is often a matter of perception and approach. How far to go and where to stop? These are the questions to be pondered over by the legislature and the Constitutional Court called upon to decide the question of validity of the legislation. For instance, many voters/citizens may like to have more complete information — a sort of biodata of the candidate starting from his school days such as his academic career, the properties which he had before and after entering into politics, the details of his income and tax payments for the last one decade and sources of acquisition of his and his family's wealth. Can it be said that all such information which will no doubt enable the voter and public to have a comprehensive idea of the contesting candidate, should be disclosed by a prospective candidate and that the failure to provide for it by law would infringe the fundamental right under Article 19(1)(*a*)? The preponderance of view would be that it is not reasonable to compel a candidate to make disclosures affecting his privacy to that extent in the guise of effectuating the right to information. A line has to be drawn somewhere. While there cannot be a lip service to the valuable right to information, it should not be stretched too far. At the same time, the essence and substratum of the right has to be preserved and promoted, when once it is brought within the fold of fundamental right. A balanced but not a rigid approach, is needed in identifying and defining the parameters of the right which the voter/citizen has. The standards to be applied to disclosures vis-à-vis public affairs and governance AND the disclosures relating to personal life and biodata of a candidate cannot be the same. The measure or yardstick will be somewhat different. It should not be forgotten that the candidates' right to privacy is one of the many factors that could be kept in view, though that right is always subject to overriding public interest.

109. In my view, the points of disclosure spelt out by this Court in *Assn. for Democratic Reforms case*[1] should serve as broad indicators or parameters in enacting the legislation for the purpose of securing the right to information about the candidate. The paradigms set by the Court, though pro tempore in nature as clarified supra, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(1)(*a*). Though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens at large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is crucial, by any objective standards, is not denied. It is for the Constitutional Court in exercise of its judicial review power to judge whether the areas of disclosure carved out by the legislature are reasonably adequate to safeguard the citizens' right to information. The Court has to take a holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens' right to information to know about the personal

SCC Online Web Edition, Copyright © 2018
Page 59 Wednesday, September 26, 2018
Printed For: Mr Sarim Naved
SCC Online Web Edition: http://www.scconline.com
TruePrint™ source: Supreme Court Cases

141

details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. It is not a proper approach to test the validity of legislation only from the standpoint whether the legislation implicitly and word to word gives effect to the directives issued by the Court as an ad hoc measure when the field was unoccupied by legislation. Once legislation is made, this Court has to make an independent assessment in the process of evaluating whether the items of information statutorily ordained are reasonably adequate to secure the right of information to the voter so as to facilitate him to form a fairly clear opinion on the merits and demerits of the candidates. In embarking on this exercise, as already stated, this Court's directives on the points of disclosure even if they be tentative or ad hoc in nature, cannot be brushed aside, but should be given due weight. But, I reiterate that the shape of the legislation need not be solely controlled by the directives issued to the Election Commission to meet an ad hoc situation. As I said earlier, the right to information cannot be placed in straitjacket formulae and the perceptions regarding the extent and amplitude of this right are bound to vary.

III. Section 33-B is unconstitutional

III. (1) The right to information cannot be frozen and stagnated

110. In my view, the constitutional validity of Section 33-B has to be judged from the above angle and perspective. Considered in that light, I agree with the conclusion of M.B. Shah, J. that Section 33-B does not pass the test of constitutionality. The reasons are more than one. Firstly, when the right to secure information about a contesting candidate is recognized as an integral part of fundamental right as it ought to be, it follows that its ambit, amplitude and parameters cannot be chained and circumscribed for all times to come by declaring that no information, other than that specifically laid down in the Act, should be required to be given. When the legislation delimiting the areas of disclosure was enacted, it may be that Parliament felt that the disclosure on other aspects was not necessary for the time being. Assuming that the guarantee of right to information is not violated by making a departure from the paradigms set by the Court, it is not open to Parliament to stop all further disclosures concerning the candidate in future. In other words, a blanket ban on dissemination of information other than that spelt out in the enactment, irrespective of the need of the hour and the future exigencies and expedients is, in my view, impermissible. It must be remembered that the concept of freedom of speech and expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by law. New situations and the march of events may demand the flow of additional facets of information. The right to information should be allowed to grow rather than being frozen and stagnated; but the mandate of Section 33-B prefaced by the non obstante clause impedes the flow of such information conducive to the freedom of expression. In the face of the prohibition under Section 33-B, the Election Commission which is entrusted

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Page 70 Wednesday, September 26, 2018
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142

with the function of monitoring and supervising the election process will have to sit back with a sense of helplessness in spite of the pressing need for insisting on additional information. Even the Court may at times feel handicapped in taking necessary remedial steps to enforce the right to information. In my view, the legislative injunction curtailing the nature of information to be furnished by the contesting candidates only to the specific matters provided for by the legislation and nothing more would emasculate the fundamental right to freedom of expression of which the right to information is a part. The very objective of recognizing the right to information as part of the fundamental right under Article 19(1)(*a*) in order to ensure free and fair elections would be frustrated if the ban prescribed by Section 33-B is taken to its logical effect.

III. (2) Impugned legislation fails to effectuate right to information on certain vital aspects

111. The second reason why Section 33-B should be condemned is that by blocking the ambit of disclosures only to what has been specifically provided for by the amendment, Parliament failed to give effect to one of the vital aspects of information viz. disclosure of assets and liabilities and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression. The right to information which is now provided for by the legislature no doubt relates to one of the essential points but in ignoring the other essential aspect relating to assets and liabilities as discussed hereinafter, Parliament has unduly restricted the ambit of information which the citizens should have and thereby impinged on the guarantee enshrined in Article 19(1)(*a*).

III. (3) How far the principle that the legislature cannot encroach upon the judicial sphere applies

112. It is a settled principle of constitutional jurisprudence that the only way to render a judicial decision ineffective is to enact a valid law by way of amendment or otherwise fundamentally altering the basis of the judgment either prospectively or retrospectively. The legislature cannot overrule or supersede a judgment of the Court without lawfully removing the defect or infirmity pointed out by the Court because it is obvious that the legislature cannot trench on the judicial power vested in the courts. Relying on this principle, it is contended that the decision of the Apex Constitutional Court cannot be set at naught in the manner in which it has been done by the impugned legislation. As a sequel, it is further contended that the question of altering the basis of judgment or curing the defect does not arise in the instant case as Parliament cannot pass a law in curtailment of fundamental right recognized, amplified and enforced by this Court.

113. The contention that the fundamental basis of the decision in *Assn. for Democratic Reforms case*[1] has not at all been altered by Parliament, does not appeal to me. I have discussed at length the real scope and ratio of the judgment and the nature and character of directives given by this Court to the Election Commission. As observed earlier, those directions are pro tempore in nature when there was a vacuum in the field. When once Parliament

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143

stepped in and passed the legislation providing for right of information, maybe on certain limited aspects, the void must be deemed to have been filled up and the judgment works itself out, though the proposition laid down and observations made in the context of Article 19(1)(*a*) on the need to secure information to the citizens will hold good. Now the new legislation has to be tested on the touchstone of Article 19(1)(*a*). Of course, in doing so, the decision of this Court should be given due weight and there cannot be a marked departure from the items of information considered essential by this Court to effectuate the fundamental right to information. Viewed in this light, it must be held that Parliament did not by law provide for disclosure of information on certain crucial points such as assets and liabilities and at the same time, placed an embargo on calling for further informations by enacting Section 33-B. That is where Section 33-B of the impugned Amendment Act does not pass the muster of Article 19(1)(*a*), as interpreted by this Court.

IV. Right to information with reference to specific aspects

114. I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the contesting candidates broadly on three points, namely, (*i*) criminal record, (*ii*) assets and liabilities, and (*iii*) educational qualification. The Third Amendment to the RP Act which was preceded by an ordinance provided for disclosure of information. How far the Third Amendment to the Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(*a*), is the question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in *Assn. for Democratic Reforms case*[1].

IV. (1) Criminal background and pending criminal cases against candidates — Section 33-A of the RP (Third Amendment) Act

115. As regards the first aspect, namely, criminal record, the directives in *Assn. for Democratic Reforms case*[1] are twofold: (SCC p. 322, para 48)

> "(*1*) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.
>
> (2) Prior to six months of filing of nomination, whether the candidate is an accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law."

As regards the second directive, Parliament has substantially proceeded on the same lines and made it obligatory for the candidate to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the competent court. However, the case in which cognizance has been taken but charge has not been framed is not covered by clause (*1*) of Section 33-

144

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Page 72 Wednesday, September 26, 2018
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A(i). Parliament having taken the right step of compelling disclosure of the pendency of cases relating to major offences, there is no good reason why it failed to provide for the disclosure of the cases of the same nature of which cognizance has been taken by the Court. It is common knowledge that on account of a variety of reasons such as the delaying tactics of one or the other accused and inadequacies of the prosecuting machinery, framing of formal charges gets delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account, the voter/citizen shall not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The citizen's right to information, when once it is recognized to be part of the fundamental right under Article 19(1)(*a*), cannot be truncated in the manner in which it has been done. Clause (*i*) of Section 33-A(I) therefore falls short of the avowed goal to effectuate the right of information on a vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in clause (*i*) of Section 33-A.

116. Coming to clause (*ii*) of Section 33-A(I), Parliament broadly followed the pattern shown by the Court itself. This Court thought it fit to draw a line between major/serious offences and minor/non-serious offences while giving Direction 2 (vide para 48). If so, the legislative thinking that this distinction should also hold good in regard to past cases cannot be faulted on the ground that the said clause fails to provide adequate information about the candidate. If Parliament felt that the convictions and sentences of the long past relating to petty/non-serious offences need not be made available to the electorate, it cannot be definitely said that the valuable right to information becomes a casualty. Very often, such offences by and large may not involve moral turpitude. It is not uncommon, as one of the learned Senior Counsel pointed out that the political personalities are prosecuted for politically related activities such as holding demonstrations and visited with the punishment of fine or short imprisonment. Information regarding such instances may not be of real importance to the electorate in judging the worth of the relative merits of the candidates. At any rate, it is a matter of perception and balancing of various factors, as observed supra. The legislative judgment cannot be faulted merely for the reason that the pro tempore directions of this Court have not been scrupulously followed. As regards acquittals, it is reasonable to take the view that such information will not be of much relevance inasmuch as acquittal prima facie implies that the accused is not connected with the crime or the prosecution has no legs to stand. It is not reasonable to expect that from the factum of prosecution resulting in acquittal, the voters/citizens would be able to judge the candidate better. On the other hand, such information in general has the potential to send misleading signals about the honesty and integrity of the candidate.

117. I am therefore of the view that as regards past criminal record, what Parliament has provided for is fairly adequate.

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145

118. One more aspect which needs a brief comment is the exclusion of offences referred to in sub-sections (1) and (2) of Section 8 of the RP Act, 1951. Section 8 deals with disqualification on conviction for certain offences. Those offences are of serious nature from the point of view of national and societal interest. Even the existing provisions viz. Rule 4-A inserted by the Conduct of Elections (Amendment) Rules, 2002 makes a provision for disclosure of such offences in the nomination form. Hence, such offences have been excluded from the ambit of clause (ii) of Section 33-A.

IV. (2) Assets and liabilities

119. Disclosure of assets and liabilities is another thorny issue. If the right to information is to be meaningful and if it is to serve its avowed purpose, I am of the considered view that the candidate entering the electoral contest should be required to disclose the assets and liabilities (barring articles of household use). A Member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a "public servant" within the meaning of the Prevention of Corruption Act as ruled by this Court in the case of *P.V. Narasimha Rao* v. *State*[46]. They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family members viz. spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money, a malady which nobody can deny, has been pervading the political spectrum of our democratic nation. As regards liabilities, the disclosure will enable the voter to know, inter alia, whether the candidate has outstanding dues payable to public financial institutions or the Government. Such information has a relevant bearing on the antecedents and the propensities of the candidate in his dealings with public money. "Assets and liabilities" is one of the important aspects to which extensive reference has been made in *Assn. for Democratic Reforms case*[1]. The Court did consider it, after an elaborate discussion, as a vital piece of information as far as the voter is concerned. But, unfortunately, the observations made by this Court in this regard have a been given a short shrift by Parliament with little realization that they have a significant bearing on the right to get information from the contesting candidates and such information is necessary to give effect to the freedom of expression.

120. As regards the purpose of disclosure of assets and liabilities, I would like to make it clear that it is not meant to evaluate whether the candidate is financially sound or has sufficient money to spend in the election. Poor or rich are alike entitled to contest the election. Every citizen has equal accessibility in the public arena. If the information is meant to mobilize

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146

public opinion in favour of an affluent/financially sound candidate, the tenet of socialistic democracy and the concept of equality so firmly embedded in our Constitution will be distorted. I cannot also share the view that this information on assets would enable the public to verify whether unaccounted money played a part in contesting the election. So long as Explanation 1 to Section 77 of the RP Act, 1951 stands and the contributions can legitimately come from any source, it is not possible for a citizen/voter to cause a verification to be made on those lines. In my opinion, the real purposes of seeking information in regard to assets and liabilities are those which I adverted to in the preceding paragraph. It may serve other purposes also, but, I have confined myself to the relevancy of such disclosure vis-à-vis right to information only.

121. It has been contended with much force that the right to information made available to the voters/citizens by judicial interpretation has to be balanced with the right of privacy of the spouse of the contesting candidate and any insistence on the disclosure of assets and liabilities of the spouse invades his/her right to privacy which is implied in Article 21. After giving anxious consideration to this argument, I am unable to uphold the same. In this context, I would like to recall the apt words of Mathew, J., in *Gobind* v. *State of M.P.*[23] While analysing the right to privacy as an ingredient of Article 21, it was observed: (SCC p. 155, para 22)

> "22. There can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an *important countervailing interest is shown to be superior*." (emphasis supplied)

It was then said succinctly: (SCC pp. 155-56, para 22)

> "If the court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State-interest test. Then the question would be whether a State interest is of such paramount importance as would justify an infringement of the right."

It was further explained: (SCC p. 156, para 23)

> "[P]rivacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values."

By calling upon the contesting candidate to disclose the assets and liabilities of his/her spouse, the fundamental right to information of a voter/citizen is thereby promoted. When there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves the larger public interest. The right to know about the candidate who intends to become a public figure and a representative of the people would not be effective and real if only truncated information of the assets and liabilities is given. It cannot be denied that the family relationship and social order in our country is such that the

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Page 75 Wednesday, September 26, 2018
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147

husband and wife look to the properties held by them as belonging to the family for all practical purposes, though in the eye of law the properties may distinctly belong to each of them. By and large, there exists a sort of unity of interest in the properties held by spouses. The property being kept in the name of the spouse *benami* is not unknown in our country. In this situation, it could be said that a countervailing or paramount interest is involved in requiring a candidate who chooses to subject himself/herself to public gaze and scrutiny to furnish the details of assets and liabilities of the spouse as well. That is one way of looking at the problem. More important, it is to be noted that Parliament itself accepted in principle that not only the assets of the elected candidates but also his or her spouse and dependent children should be disclosed to the constitutional authority and the right of privacy should not come in the way of such disclosure; but, the hitch lies in the fact that the disclosure has to be made to the Speaker or Chairman of the House after he or she is elected. No provision has been made for giving access to the details filed with the presiding officer of the House. By doing so, Parliament has omitted to give effect to the principle, which it rightly accepted as a step in aid to promote integrity in public life. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of other family members, Parliament refrained from making a provision for furnishing the information at the time of filing the nomination. This has resulted in jeopardizing the right to information implicitly guaranteed by Article 19(1)(*a*). Therefore, the provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the presiding officer has failed to effectuate the right to information and the freedom of expression of the voters/citizens.

IV. (3) Educational qualifications

122. The last item left for discussion is about educational qualifications. In my view, the disclosure of information regarding educational qualifications of a candidate is not an essential component of the right to information flowing from Article 19(1)(*a*). By not providing for disclosure of educational qualifications, it cannot be said that Parliament violated the guarantee of Article 19(1)(*a*). Consistent with the principle of adult suffrage, the Constitution has not prescribed any educational qualification for being Member of the House of the People or Legislative Assembly. That apart, I am inclined to think that the information relating to educational qualifications of contesting candidates does not serve any useful purpose in the present context and scenario. It is a well-known fact that barring a few exceptions, most of the candidates elected to Parliament or the State Legislatures are fairly educated even if they are not graduates or postgraduates. To think of illiterate candidates is based on a factually incorrect assumption. To say that well-educated persons such as those having graduate and postgraduate qualifications will be able to serve the people better and conduct themselves in a better way inside and outside the House is nothing but overlooking the stark realities. The experience and events in public life and the legislatures

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148

have demonstrated that the dividing line between the well educated and less educated from the point of view of his/her calibre and culture is rather thin. Much depends on the character of the individual, the sense of devotion to duty and the sense of concern to the welfare of the people. These characteristics are not the monopoly of well-educated persons. I do not think that it is necessary to supply information to the voter to facilitate him to indulge in an infructuous exercise of comparing the educational qualifications of the candidates. It may be that certain candidates having exceptionally high qualifications in specialized field may prove useful to the society, but it is natural to expect that such candidates would voluntarily come forward with an account of their own academic and other talents as a part of their election programme. Viewed from any angle, the information regarding educational qualifications is not a vital and useful piece of information to the voter, in ultimate analysis. At any rate, two views are reasonably possible. Therefore, it is not possible to hold that Parliament should have necessarily made the provision for disclosure of information regarding educational qualifications of the candidates.

V. Conclusions

123. Finally, the summary of my conclusions:

(*1*) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(*a*). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.

(*2*) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(*a*). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

(*3*) The directives given by this Court in *Union of India v. Assn. for Democratic Reforms*[1] were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

(*4*) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

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149

(5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(*a*).

(8) The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.

124. Accordingly, the writ petitions stand disposed of without costs.

DHARMADHIKARI, J.— I have carefully gone through the well-considered separate opinions of Brothers M.B. Shah and P.V. Reddi, JJ. Both the learned Judges have come to a common conclusion that Section 33-B inserted in the Representation of the People Act, 1951 by Amendment Ordinance 4 of 2002, which on repeal is succeeded by the Third Amendment Act of 2002, is liable to be declared invalid being violative of Article 19(1)(*a*) of the Constitution.

126. I am in respectful agreement with the above conclusion reached in common by both the learned Brothers. I would, however, like to supplement the above conclusion.

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Page 78 Wednesday, September 26, 2018
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150

127. The reports of the advisory commissions set up one after the other by the Government to which a reference has been made by Brother Shah, J., highlight the present political scenario where money power and muscle power have substantially polluted and perverted the democratic processes in India. To control the ill-effects of money power and muscle power the commissions recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of the Act here and there, but a much improved election system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money and physical force of criminals do not make democracy a farce — the citizen's fundamental "right to information" should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act.

128. Making of law for election reform is undoubtedly a subject exclusively of the legislature. Based on the decision of this Court in the case of *Assn. for Democratic Reforms*[1] and the directions made therein to the Election Commission, the Amendment Act under consideration has made an attempt to fill the void in law but the void has not been filled fully and does not satisfy the requirements for exercise of fundamental freedom of the citizen to participate in election as a well-informed voter.

129. Democracy based on "free and fair elections" is considered as a basic feature of the Constitution in the case of *Kesavananda Bharati*[4]. Lack of adequate legislative will to fill the vacuum in law for reforming the election process in accordance with the law declared by this Court in the case of *Assn. for Democratic Reforms*[1] obligates this Court as an important organ in constitutional process to intervene.

130. In my opinion, this Court is obliged by the Constitution to intervene because the legislative field, even after the passing of the Ordinance and the Amendment Act, leaves a vacuum. This Court in the case of *Assn. for Democratic Reforms*[1] has determined the ambit of fundamental "right of information" to a voter. The law, as it stands today after amendment, is deficient in ensuring "free and fair elections". This Court has, therefore, found it necessary to strike down Section 33-B of the Amendment Act so as to revive the law declared by this Court in the case of *Assn. for Democratic Reforms*[1].

131. With these words, I agree with Conclusions (*A*) to (*E*) in the opinion of Brother Shah, J. and Conclusions (*1*), (*2*), (*4*), (*5*), (*6*), (*7*) and (*9*) in the opinion of Brother P.V. Reddi, J.

132. With utmost respect, I am unable to agree with Conclusions (*3*) and (*8*) in the opinion of Brother P.V. Reddi, J., as on those aspects, I have expressed my respectful agreement with Brother Shah, J.

151
Annexure - P-6

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110 001.

No. 3/ER/2003/JS-II Dated : 27th March, 2003

ORDER

1. Whereas, the superintendence, direction and control, *inter alia*, of all elections to Parliament and to the Legislature of every State are vested in the Election Commission by Article 324 (1) of the Constitution of India;

2. And whereas, the Hon'ble Supreme Court of India had, by its order dated 2nd May, 2002, in Civil Appeal No.7178 of 2001 – Union of India Vs Association for Democratic Reforms and another, held as follows: -

"(1) The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

(2) The limitation on plenary character of power is when the Parliament or state legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, art 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar's* case (AIR 1986 SC 111), the court construed the expressions 'superintendence, direction and control' in art 324(1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed

liberally empowering the Election Commission to issue such orders.

(3) The word 'elections' includes the entire process of election which consists of several stages and it embraces many steps, some of which have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate (sic) (elector) according to his thinking and opinion. As stated earlier, in *Common Cause* case [(1996) 2 SCC 752], the court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on affidavit a candidate is required to disclose the assets held by him at the time of election, voter can decide whether he could be re-elected even in case where he has collected tons of money.

XXX XXX

(4) To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

(5) The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to art 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:-

> (1) Everyone shall have the right to hold opinions without interference.
>
> (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(6) Cumulative reading of plethora of decisions of this court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this court would have ample jurisdiction under art 32 read with arts 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.

(7) Under our Constitution, Art 19(1)(a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.";

3. And whereas, the Hon'ble Supreme Court, by its aforesaid order dated 2nd May, 2002, had directed as follows: -

"The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under art 324 of the Constitution of India from each candidate seeking election to Parliament or a state legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:-

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balances etc) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.";

154

4. And whereas, the Hon'ble Supreme Court, in its aforesaid order dated 2nd May, 2002, further observed that 'the Election Commission has from time to time issued instructions in order to meet with the situation where the field is unoccupied by the legislation' and had further directed that 'the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months';

5. And whereas, the Election Commission had, in pursuance of the above referred Judgement and Order dated 2nd May, 2002 of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, directed by an Order dated 28th June, 2002, *inter alia*, in para 14 of the said Order as follows:-

"(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to all the five matters, specified by the Hon'ble Supreme Court and quoted in para 5 above (reproduced in para 3 herein), in an affidavit, the format whereof is annexed hereto as Annexure-1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may

also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the returning officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the returning officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under section 36 (2) of the Representation of the People Act 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character.

(5) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(6) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.";

6. And whereas, the President of India promulgated the Representation of People (Amendment) Ordinance, 2002 (No.4 of 2002) on the 24th August, 2002 further to amend the Representation of the People Act, 1951 inserting Sections 33A and 33B and 125A and amending Section 169 of the Representation of the People Act, 1951;

7. And whereas, by virtue of Section 33B of the said Ordinance, the Order of the Election Commission dated the 28th June, 2002, was rendered ineffective and the said Section 33B read as under:-

> "Section 33B.- Notwithstanding anything contained in any judgement, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder.";

8. And whereas, the Government of India by notification dated 3rd September, 2002 amended the Conduct of the Elections Rules, 1961 to give effect to the said Ordinance;

9. And whereas, the Association for Democratic Reforms, People's Union for Civil Liberties, and Lok Satta, filed three separate writ petitions before the Hon'ble Supreme Court of India challenging the constitutional validity of the Presidential Ordinance dated 24th August, 2002;

10. And whereas, the by Notification dated the 28th December, 2002, the Representation of the People Act, 1951 was amended by the Representation of the People (Third Amendment) Act, 2002 which substituted the aforesaid Ordinance dated 24th August, 2002;

11. And whereas, the said petitioners filed applications to treat the said writ petitions as challenging the constitutional validity of the Representation of the People (Third Amendment) Act, 2002;

12. And whereas, the Hon'ble Supreme Court in its order/judgement, dated the 13th March, 2003 declared Section 33B of the Amended Act as illegal, null and void;

13. And whereas, the following directions were issued in the Judgement of Hon'ble Mr. Justice P.V. Reddi, which was concurred by Mr. Justice D.M. Dharmadhikari:-

157

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6. The right to information provided for by the Parliament under Section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by Court from the ambit of disclosure.

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9. The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgement regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction No.4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.";

14. And whereas, the Judgement of Hon'ble Mr. Justice M.B. Shah, also held that Section 33B was illegal, null and void and further that the Election Commission would be required to revise its instructions in the light of the directions therein as under:-

"It is true that the aforesaid directions issued by the Election Commission is not under challenge but at the same time *Prima facie* it appears that the Election Commission is required to revise its instructions in the light of directions issued in *Association for Democratic Reforms case (supra)* and as provided under the Representation of the People Act and its 3rd Amendment.";

15. And whereas, by virtue of the Judgement dated the 13th March, 2003 of the Supreme Court declaring Section 33B of the Representation of the People Act, 1951 to be illegal, null and void, the earlier instructions of the Election Commission dated 28th June, 2002 would continue to be operative subject to the aforementioned directions of the Supreme Court, and are therefore required to be revised and reissued;

16. Now, therefore, the Election Commission, in pursuance of the above referred order dated 13th March, 2003, of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control, *inter alia*, of conduct of elections to Parliament and State Legislatures, hereby issues, in supersession of its earlier order dated 28th June, 2002, its revised directions as follows:-

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to the matters specified by the Hon'ble Supreme Court and quoted in paras 13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexure-1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(5) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

17. For the removal of doubt, it is hereby clarified that the earlier direction contained in para 14 (4) of the earlier order dated 28th June, 2002, in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the order dated 13th March, 2003 of the Apex Court. It is further clarified that apart from the affidavit in Annexure-I hereto referred to in para 16 (1) above, the candidate shall have to comply with all the other requirements as spelt out in the Representation of the People Act, 1951, as amended by the Representation of the People (Third Amendment) Act, 2002, and the Conduct of Elections Rules, 1961, as amended by the Conduct of Elections (Amendment) Rules , 2002.

18. In so far as elections to the Legislative Assembly and Legislative Council of the State of Jammu and Kashmir are concerned, the directions of the Election Commission contained in the preceding para 16 shall be deemed to have been issued under the provisions of section 138 of the Constitution of Jammu and Kashmir which are akin to Article 324 (1) of the Constitution of India and vest the superintendence, direction and control of the conduct of all elections to either House of the Legislature of that State in the Election Commission.

19. All Returning Officers shall ensure that the copies of affidavit prescribed herein by the Commission shall be delivered to the candidates along with the forms of nomination papers as part of the nomination paper.

By order,

(A.K.MAJUMDAR)
SECRETARY
ELECTION COMMISSION OF INDIA

160

Annexure-I

Affidavit to be furnished by candidate alongwith nomination paper

Before the Returning Officer
for election to _____ (name of the House)
from _____ constituency
(name of the constituency)

I, _____, son/daughter/wife of _____
aged _____ years, resident of _____
candidate at the above election, do hereby solemnly affirm and state on oath as under:-
(Strike out whichever not applicable)

(1) The following case(s) is/are pending against me in which cognizance has been taken by the court:-

(i) Section of the Act and description of the offence for which cognizance taken :

(ii) The Court which has taken cognizance :

(iii) Case No. :

(iv) Date of order of the Court taking cognizance :

(v) Details of appeal(s) / application(s) for revision, etc., if any, filed against above order taking cognizance :

(2) That I give hereinbelow the details of the assets (immovable, movable, bank balance, etc.) of myself, my spouse and dependents*:

A. Details of movable assets

(Assets in joint name indicating the extent of joint ownership will also have to be given)

S. No.	Description	Self	Spouse(s) Name(s):	Dependent-1 Name:	Dependent-2 Name:	Dependent-3, etc. Name:
(i)	Cash					
(ii)	Deposits in Banks, Financial Institutions and Non-Banking Financial Companies					
(iii)	Bonds, Debentures and Shares in companies					
(iv)	Other Financial instruments NSS, Postal Savings, LIC, Policies, etc.					
(v)	Motor Vehicles (details of make, etc.)					
(vi)	Jewellery (give details of weight and value)					
(vii)	Other assets, such as values of claims/ interests					

Note : Value of Bonds / Shares / Debentures as per the latest market value in Stock Exchange in respect of listed companies and as per books in the case of non listed companies should be given.

*Dependent here means a person substantially dependents on the income of the candidate.

162

B. Details of Immovable assets

[Note : Properties in joint ownership indicating the extent of joint ownership will also have to be indicated]

S. No.	Description	Self	Spouse(s) Name(s):	Dependent-1 Name:	Dependent-2 Name:	Dependent-3, etc. Name:
(i)	Agricultural Land - Location(s) - Survey number(s) - Extent (Total measurement) - current market value					
(ii)	Non-Agricultural Land - Location(s) - Survey number(s) - Extent(Total measurement) - current market value					
(iii)	Buildings (commercial and residential) - Location(s) - Survey / door number(s) - Extent (Total measurement) - current market value					
(iv)	Houses / Apartments, etc. - Location(s) - Survey / door number(s) - Extent (Total measurement) - current market value					
(v)	Others (such as interest in property)					

(3) I give hereinbelow the details of my liabilities / overdues to public financial institutions and government dues :-

[Note : Please give separate details for each item]

S.No.	Description	Name and address of Bank / Financial Institution(s) / Department(s)	Amount outstanding as on .....
(a) (i)	Loans from Banks		
(ii)	Loans from financial institutions		
(iii)	Government dues (other than income tax and wealth tax) (No Due Certificate to be enclosed in case holding or having held any public office)		
(b) (i)	Income Tax including surcharge [Also indicate the assessment year upto which Income Tax Return filed. Give also Permanent Account Number (PAN)]		
(ii)	Wealth Tax [Also indicate the assessment year upto which Wealth Tax return filed.]		
(iii)	Sales Tax [Only in case of proprietary business]		
(iv)	Property Tax		

164

(4) My educational qualifications are as under :-

(GIVE DETAILS OF SCHOOL AND UNIVERSITY EDUCATION)

(Name of School / University and the year in which the course was completed should also be given.)

DEPONENT

VERIFICATION

I, the deponent abovenamed, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief; no part of it is false and nothing material has been concealed therefrom.

Verified at _____ this the _____ day of _____, 200__.

DEPONENT

ANNEXURE P-7

Ministry of Law and Justice

(Legislative Department)

NOTIFICATION

New Delhi the 1st August, 2012

S.O. 1732(E)-In exercise of powers conferred by section 169 of th Representation of the People Act 1951(43 of 1951), the Central Government, after consulting the election Commission, hereby makes the following rules further to amend the Conduct of Election Rules, 1961, namely:-

1. (1) These rules may be called the Conduct of Elections Amendment) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Conduct of Election Rules 1961, for Form 26 and the entries relating thereto the following From and entries shall be substituted, namely:-

FORM 26

See rule 4A)

Please fix your Recent passport Size photograph here

Affidavit to be filed by the candidate alongwith nomination paper before the returning officer for election to .....(Name of the House from .....constituency(name of the constituency).

PART-A

I son/daughter/wife of Aged Years, resident of (mention full postal address),

a candidate at the above election do hereby solemnly affirm and state on oath as under:-

(1) I am a candidate set up by .....(** name of the political party)/*am contesting as art. Independent candidate. (**strike out whichever is not applicable)

(2) My name is enrolled in .....(Name of th constituency and the State), at Serial No. .....in Part No. .....

(3) My contact telephone number(s) is/are.....ad my e-mail id (if any) is.....

(4) Details of Permanent Account Number (PAN) ad status of filing of Income Tax return:

Sl. No.	Names	PAN	The financial year for which the last Income-tax return has been filed	Total income shown in Income-tax return (in Rupees)
1.	Self			
2.	Spouse			
3.	Dependent-1			
4.	Dependent-2			
5.	Dependent-3			

5. I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s) he shall furnish the following information:-

(i) The following case (s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years of more:-

a	Case/First Information Report No./Nos. together with complete details of concerned Police Station/District/State.	
b	Section(s) of the concerned Act(s) and short description of the offence(s) for which charged	
c	Name of the Court, Case No. and date of order taking cognizance:	
d	Court(s) which framed the charge(s)	
e	Date(s) on which the charge(s) was/were framed	
f	Whether all or any of the proceeding(s) have been stayed by any Court(s) of competent jurisdiction	

(ii) The following case(s) is/are pending against me in which cognizance has been taken by the court (other than the cases mentioned in item (i) above:-

a	Name of the Court, Case No. and date of order taking cognizance	
b	The details of case where the court has taken cognizance, section(s) of the Act(s) and description of the offence(s) for which cognizance taken	
C	Details of Appeal(s)/Application(s) for revision (if any) filed against the above order(s)	

(6) I have been/have not been convicted of an offence(s) (other than any offence(s) referred to in sub-section (I) or sub-section (2) or covered in sub-section (3) f section 8 of the Representation of the People Act, 1951 (43 of 1951) and sentenced to imprisonment for one year or more.

If the deponent is convicted and punished as aforesaid, he shall furnish the following information.

In the following cases, I have been convicted and sentenced to imprisonment by a court of law:

a	The details of cases, section(s) of the concerned Act(s) and description of the offence(s) for which convicted:	
b	Name of the Court(s) Case No. and date(s) of order(s):	
c	Whether any appeal was/has been filed against the conviction order. If so details and the present status of the appeal:	

(7) That I give herein below the details of the assets (movable and immovable etc.) of myself, my spouse and all dependents:

A. Details of movable assets:

Note: 1. Assets in joint name indicating the extent of joint ownership will also have to be given.

Note: 2. In case of deposit/Investment, the details including Serial Number, Amount, date of deposit, the scheme. Name of the Bank/Institution and Branch are to be given

Note: 3. Value of Bonds/Share Debenture as per current market value in Stock exchange in respect of listed companies and as per books in case of non-listed companies should be given .

Note: 4 Dependent here has the same meaning as assigned in Explanation(v) under section 75A of the Representation of the People Act, 1951

Note: 5. Details including amount is to be given separately in respect of each investment

Sl. No	Description	Self	Spouse	Dependent-1	Dependent-2	Dependent-3
(i)	Cash in hand					
(ii)	Details of deposit in Bank accounts(FDR Rs. Term Deposit and all other types of deposits including saving accounts), Non-Banking Financial Companies and Cooperative societies and the amount in each such deposit					
(iii)	Details of investment in Bonds, debentures/shares and units in companies/Mutual funds and others and the amount					
(iv)	Details f investment in NSS, Postal Saving, Insurance policies and investment in any Financial instruments in Post Office or Insurance Company and the amount.					
(v)	Personnel loans/advances given to any person or entity including firm company, Trust etc. and other receivables from debtors and the amount					
(vi)	Motor Vehicles/Aircraft/s Yachts/Ships Details of Make, registration					

	number etc. year of purchase					
	And amount)					
vii	Jewellery, bullion and valuable thing(s) (give details of weight and value)					
viii	Any other assets such as value of claims/interest					
Ix	Gross Total Value					

B. Details of Immovable Assets:-

Note: 1. Properties in joint ownership indicating the extent of Joint ownership will also have to be indicated

Note 2. Each land or building or apartment should be mentioned separately in this format.

	And amount)					
(i)	Agricultural Land Location(s) Survey number(s)					
	Area (total measurement in acres)					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property					
	Cost of Land (in case of purchase) at the time of purchase					
	Any investment on the land by way of development, construction etc.					
	Approximate current market value					
(ii)	Non Agricultural Land: Location(s) Survey number(s)					
	Area (total measurement in sq. ft.					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property					
	Cost f Land (in case of purchase at the time of purchase					
	Any investment on the land by way of development. Construction etc.					

	Approximate current market value.					
(iii)	Commercial Buildings. (including apartments) Location(s) Survey number(s)					
	Area (total measurement in sq. ft.					
	Built-up Area (total measurement in sq. ft.					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property.					
	Cost of property (in case of purchase) at the time of purchase					
	Any investment on the property by way of development. Construction etc.					
	Approximate current market value					
iv	Residential Buildings (including apartments): Location(s) Survey Number(s)					
	Area (total measurement in sq. ft.					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property					
	Cost of property (in case of purchase) at the time of purchase					
	Any investment on the land by way of development. Construction etc.					
	Approximate current market value.					
v	Others (such as interest in property)					
vi	Total of current market value of (i) to (v) above					

8. I give herein below the details of liabilities/dues to public financial institutions and government:-

Note: Please give separate details of name of bank, institution, entity f individual and amount before each item)

Sl.	Description	Self	Spouse	Depend	Depend	Depend

No				ent-1	ent-2	ent-3
(i)	Loan or dues to Bank/financial institution(s) Name of the Bank of financial institution, Amount outstanding Nature of Loan					
1	Loan or dues t any other individuals/entity other than mentioned above Name9s), Amount outstanding, nature f loan					
	Any other liability					
	Grand total of liabilities					
ii	Government dues: Dues to departments dealing with government accommodation					
	Dues to departments dealing with government accommodation.					
	Dues to department dealing with supply of water					
	Dues to department dealing with supply of electricity					
	Dues to department dealing with supply of telephones/mobiles					
	Dues to department dealing with government transport (including aircrafts and helicopters					
	Income tax dues					
	Wealth tax dues					
	Service tax dues					
	Municipal/Property Tax dues					
	Sales Tax dues					
	Any other dues					
iii	Grand total of all Government dues					
iv	Whether any other liabilities are in dispute. If so, mention the amount involved and the authority before which it is pending					

9. Details of profession or occupation:

(a) Self

(b) Spouse

10. My education qualification is as under:-

Give details of highest School/University education motioning the full form of the certificate/diploma/degree course, name of the School/College/University and the year in which the course was completed.

PART-B

(11) ABSTRACT OF THE DETAILS GIVEN IN (1) TO (10) OF PART-A

1	Name of the candidate	Sh. /Smt./Kum.				
2.	Full postal address					
3.	Number and name of the constituency and State					
4.	Name of the political party which set up the candidate (otherwise write 'independent')					
5.	(i) Total number of pending cases where charges have been framed by the Court for offences punishable with imprisonment for two years or more					
6.	Total Number of cases in which convicted and sentenced to imprisonment for one year or more except for offences referred to in sub-section (1), (2) or (3) of section 8 of Representation of the People Act 1951					
7.		PAN of	Year for which last income Tax return filed	Total incol shown		
	(a) Candidate					
	(b) Spouse					
	(c) Dependents					
8.	Details f Assets and Liabilities in Rupees					
	Description	Self	Spouse	Deptndent-1	Dependent-II	Depende III
A.	Moveable Assets (Total value):					
B.	I. Purchase Price of self-acquired immovable property					
	II. Development /Construction cost of immovable property after purchase (If applicable)					

	III. Approximate Current market price of-					
	(a) Self-acquired assets (Total Value) (b) Inherited assets (Total Value)					
9.	Liabilities					
	(i) Government dues (Total)					
	(ii) Loans from Bank, Financial Institutions and others (Total)					
10.	Liabilities that are under dispute					
	(i) Government dues (Total)					
	(ii) Loans from Bank Financial Institutions and others (Total)					
11.	Highest educational qualification : (Give details of highest School/University/Education mentioning th full form of the certificate/diploma/degree course, name of th School/College/University and the year in which the course was completed.)					

VERIFICATION

I, the deponent, above named do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has bee concealed therefrom. I further declare that:-

(a) There is no case of conviction or pending case, against me other than those mentioned in items 5 ad 6 of Part A and B above.

(b) I, my spouse or my dependents do not have any asset. Or liability other than those mentioned in items 7 and 8 of Part A items 8, 9 and 10 of Part B above.

Verified at .....this the .....day of .....

DEPONENT

Not: 1. Affidavit should be filed latest by 3.00 PM on the last day of filing nominations.

Note 2. Affidavit should be sworn before an Oath Commissioner of Magistrate of the First Class or before a Notary Public.

Note 3: All column should be filled up and no column to be left blank. If there is no information to furnish in respect of any item, either "Nil" or "Not applicable" as the case may be, should be mentioned.

Note: 4 The Affidavit should be either typed or written legibly and neatly.

F.No. H. 11019(6)/2012-Leg.II

Dr. SANJAY SINGH Addl. Secy.

Note: The principal rules were published vide notification number S.O. 859 dated the 15th April, 1961 and last amended vide notifications-

(1) Number S.O. 728(E), dated the 8th May, 2007

(2) Numbr S.O. 425(E) datd 23rd February, 2011

True copy

176

Annexure-P-

By Speed Post

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 3/4/2012/SDR Dated:-24th August, 2012

To,

Chief Electoral officers
of all State and Union Territories

Sub:- Affidavit to be filed by the candidates with their nomination paper- modification of format - regarding.

Sir/Madam,

The candidates at elections to the Parliament and the State Legislatures hitherto wererequired to file two affidavits: one, in Form -26 appended to Conduct of Elections Rules 1961 and the other, in the Form prescribed by the Commission, vide its Order No. 3/ER/2003 dated 27.03.2003, as subsequently modified by the letter of even number dated 25.02.2011. In the affidavits, the candidates are required to declare information about their criminal background, if any, assets, liabilities and educational qualifications.

2. On a proposal moved by the Commission for amalgamating the two affidavits into one format, the Govt. has amended Form 26 so as to include in it all the information that was sought in the two separate affidavits. The Ministry of Law and Justice have notified the revised format of Form 26 in the Gazette of India on 01.08.2012. A copy of the said notification dated 1st August, 2012 is enclosed herewith.

3. In view of the amendment to Form-26, all candidatesshall, hereafter, file only oneaffidavit in the revised Form 26 notified on 01.08.2012(at elections to the Parliament and State Legislatures). The requirements to be followed while filing the affidavit have been mentioned in the notes given at the end of the format. Further, as already directed in the Commission's letter No. 3/ER/2011/SDR, dated 1st September, 2011, the affidavit should be on stamp paper of such denomination as prescribed under the State Act on the subject.

4. The Commission has directed that the revised format of the affidavit should be brought to the notice of the Returning Officers for all elections conducted by the Commission, including elections to RajyaSabhaand Legislative Councils (in the States having Legislative Council) with instructions to ensure that this is brought to the notice of all concerned.You may kindly ensure that all the Returning Officers, including Returning Officers for elections to Council of States and Legislative Councils, receive a copy of this letter along with the notification of amended Form-26 and acknowledgement of receipt be obtained from every Returning Officer in the State. A consolidated

certificate that all the Returning Officers have received the instructions may be forwarded to the Commission within one month of receipt of this letter,

5. You are also requested to furnish a copy of this letter along with copy of the enclosed notification to every political party (including registered unrecognized parties) having headquarters in your State/UT, including the State Units of recognized National and State political parties.

Yours faithfully,

(Ashish Chakraborty)
Secretary

Annexure-P-9

By Speed Post

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 3/4/2012/SDR Dated-26th September, 2012

To,

The Chief Electoral Officer
Of all State / UTs

Sub: Affidavit to be filed by the candidates with their nomination paper- regarding.

Sir,

Kindly refer to the Commission's letter of even number dated 24th August, 2012, forwarding a copy of the Gazette of India No. 1433 dated 01.08.2012 publishing the notification S.O. 1732 (E) dated 01.08.2012 issued by the M/o Law and Justice to substitute the "Form 26" appended to C.E. Rules, 1961.

2. Item 5 of Part A and Part B of the revised Form 26 relates to information regarding criminal antecedents to be furnished by the candidates. It is clarified that in item (5)(ii) of the said Part A & Part B of Form-26 the details of all pending cases in which cognizance has been taken by the Court, irrespective of the quantum of punishment or framing of charges will have to be disclosed by the candidate. This may be brought to the notice of all candidates when they file their nomination in all future general/bye-elections in the State. A copy of this letter may be forwarded to all ROs in the State/UT, including ROs for election to the Rajya Sabha and State Legislative Council (wherever applicable).

3. You are also requested to bring the aforesaid clarification to the notice of every political party (including registered unrecognized parties) having headquarters in your State/UT, including the State Units of recognized national and State political parties.

Kindly acknowledge receipt.

Yours faithfully,

(Ashish Chakraborty)
Secretary

179
Annexure R10

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110 001

No. 4/2014/SDR-Vol.I Dated: 26th April, 2014

To

The Chief Electoral Officer of
All Sates and UTs

Sub: Filing of false affidavit in Form-26 reg.

Sir/Madam,

You are aware that the format of affidavit in Form-26 appended to the Conduct of Elections Rules, 1961, was amended with effect from 1/8/2012. Now the candidates are required to make declarations about assets and liabilities including that of spouse and dependents, candidate's criminal antecedents and educational qualifications, in the affidavit in Form 26.The affidavit in Form 26 is provided under section 33A and any false declaration or concealing of information in the affidavit in Form 26 will attract the provisions of section 125A. Under the said Section 125A, furnishing of any false information or concealing of information in the affidavit in Form 26 is an electoral offence punishable with imprisonment upto six months, or with fine, or both.

2. Prior to the amendment id Form 26 in August 2012, the affidavit regarding declaration about assets, liabilities, criminal antecedents and educational qualification was given in the format prescribed by the Commission. In the case of complaints about false statement in the said affidavit, the Commission, vide its circular letter No.3/ER/2004, dated 2/6/2004, had clarified that if complaints were filed before the Returning Officer raising the issue of false declaration in the affidavit and if the RO was prima facie satisfied about the merits of the complaint, then the RO was to file a complaint before the competent Court under Section 177 of IPC read with Section 195 of Cr.P.C.

3. Now that the affidavit is in Form 26 under secion 33A of the R.P. Act, 1951, making false declaration/concealing of information in the affidavit would be covered under Section 125A of the Act. Under Section 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent

jurisdiction with petition for action under Section 125A in the case of any false declaration or concealing of information in the affidavit in Form 26.

4. Therefore, it will be no longer necessary under the Cr.PC for the Returning Officer to move the competent court in relation to any complaint about a false affidavit. The complainant himself can be the complainant before the court as well.

5. The above instructions may be brought to the notice of all DEOs and ROs for elections to both the Houses of Parliament and State Legislature for their guidance so that in the event of complaints about false statements in the affidavit in Form 26, the complainant can be informed that it would be open for him to move the appropriate court of law for action under Section 125 A of the RP Act 1951.

Kindly acknowledge receipt.

Yours faithfully,

(K.F. Wilfred)
Principal Secretary

181

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली–110001

सं. 4/2014/एस डी आर – खण्ड – I दिनांक : 28 अप्रैल, 2014

सेवा में,

सभी राज्यों और संघ शासित क्षेत्रों
के मुख्य निर्वाचन अधिकारी।

विषय: फार्म–26 में असत्य शपथ–पत्र दाखिल करना – तुलनात्मकी।

महोदय/महोदया

1. आप यह जानते हैं कि निर्वाचनों का संचालन नियम, 1961, से संलग्न फार्म–26 में शपथ–पत्र का प्रारूप दिनांक 1.8.2012 से संशोधित किया गया था। अब अभ्यर्थियों से यह अपेक्षा की जाती है कि वे फार्म 26 में शपथ–पत्र में अपने पति/पत्नी एवं आश्रितों सहित परिसम्पत्तियों और देयताओं, अभ्यर्थियों के आपराधिक पूर्ववृत्त एवं शैक्षिक योग्यताओं की घोषणा करें। फार्म 26 में शपथ–पत्र, धारा 33क के अंतर्गत उपबंधित है और फार्म–26 में शपथ पत्र में किसी भी प्रकार की असत्य घोषणा करने या सूचना छिपाने पर धारा 125क के प्रावधान लागू होंगे। उक्त धारा 125क के अधीन, फार्म–26 में शपथ–पत्र में किसी भी प्रकार की असत्य सूचना प्रस्तुत करना या सूचना छिपाना एक निर्वाचन अपराध है जो छः महीने तक की कैद या जुर्माने से या दोनों से दण्डनीय है।

2. अगस्त–2012 में फार्म–26 में संशोधन करने से पूर्व, परिसम्पत्तियों, देयताओं, आपराधिक पूर्ववृत्तों और शैक्षिक योग्यताओं के बारे में की जाने वाली घोषणा का शपथ–पत्र आयोग द्वारा निर्धारित प्रपत्र में दिया जाता था। उक्त शपथ–पत्र में असत्य कथन से संबंधित शिकायतों के मामले में आयोग ने दिनांक 2.6.2004 के अपने परिपत्र संख्या 3/ई आर/2004 के तहत यह स्पष्ट किया था कि यदि रिटर्निंग आफिसर के समक्ष शपथ–पत्र में असत्य घोषणा के मुद्दे को उठाते हुए शिकायतें दर्ज कराई गई हैं और यदि रिटर्निंग आफिसर प्रथम–दृष्टया शिकायत की सत्यता से संतुष्ट हो गए हैं, तो रिटर्निंग आफिसर द्वारा आपराधिक प्रक्रिया संहिता की धारा 195 के साथ पठित भारतीय दंड संहिता की धारा 177 के तहत सक्षम न्यायालय में शिकायत दर्ज करवाई जानी होती थी।

3. अब, यह शपथ–पत्र लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 33क के तहत फार्म–26 में होने के कारण शपथ–पत्र में असत्य घोषणा करना/सूचना को छिपाना उक्त अधिनियम की धारा 125क के तहत आएगा। धारा 125क के तहत ऐसा कहीं भी अनुबंधित नहीं है कि इस धारा के तहत आने वाली शिकायतों को संबंधित लोक सेवक (इस मामले में रिटर्निंग आफिसर) द्वारा ही दर्ज कराया जाएगा। अतः फार्म–26 में शपथ–पत्र में कोई असत्य घोषणा करने या सूचना छिपाने के बारे में अब कोई भी पीड़ित व्यक्ति सक्षम क्षेत्राधिकार की न्यायपालिका/न्यायालय में धारा 125क के तहत कार्यवाई प्रारंभ को सुनिश्चित करने हेतु आवेदन दायर कर सकेगा।

4. : अतः अपराधिक प्रक्रिया संहिता के तहत रिटेनिंग आफिसर को अपना पक्ष रखने का कोई नैसर्गिक अधिकार नहीं होगा। न्यायालय के समक्ष विभागाध्यक्षों स्वयं विभाग उपस्थ कर सकता है।

5. उपर्युक्त अनुच्छेदों में वर्णित के दोनों मुख्य विषय विभागाध्यक्षों के निर्धारण हेतु धारा-रयोन के लिए एक्ट्रा विभाग निर्धारण अधिकारियों एवं रिटेनिंग आफिसरों के ध्यान में लाया जाए गांठ भाग-26 में अध्याय-पर.नें अवसर कथन के बारे में विभागों लिए जाने पर विभागाध्यक्षों को यह सूचित किया जा रहा कि सर्व लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 125क के तहत कार्यवाई करने हेतु चुनाव न्यायालय में जा सकता है।

कृपया इसकी पावती भेजें।

भवदीय,

(के. एक. निकेत)

प्रधान सचिव

183
Annexure P-11

FORM 26

Affidavit to be filed by the candidate along with nomination paper before the returning officer for election to House of People (Name of House) from Constituency

PART-A

I, Devendra Fadnavis son of Gangadhar Fadnavis aged about 44 years, resident of 276, Dharampeth, Trikoni Park, Nagpur-10 a candidate at the above, election, do hereby solemnly affirm and state on oath as under:-

(1) I am a candidate set up by Bhartiya Janta Paty

(2) My name is enrolled in 56-West Nagpur Constituency Maharashtra at Serial No.269 in Part No.229

(3) My contact telephone number is - 0712-2533446 My email ID is - officeofmla@gmail.com

and my social media accounts are -

1) Facebook - www.facebook.com/devendra.fadnavis

2) Twitter - www.twitter.com/Dev_Fadnavis

3) Website - www.devendrafadnavis.in

(4) .....

(5) I am not accused of any offence(s) punishable with imprisonment for two years or more in pending case(s) in which a charge(s) has been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s) he shall furnish the following information:-

(i) The following case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more:-

(a)	Case/First Information Report No. together with complete details of concerned police station/ District/State	FIR No.252/91 P.S. Sitabuldi Nagpur
(b)	Section (s) of the concerned Act(s) and short description of the offence(s) for which charged	147, 148, 324 I.P.C.
(c)	Name of Court, Case No. and date of, order taking cognizance	J.M.F.C. No.2 Nagpur cognizance taken on 16/07/1991
(d)	Court(s) which framed the charge(s)	J.M.F.C.No.2 Nagpur
(e)	Date(s) on which the charge(s) was/were framed	01/04/06
(f)	Whether all or any of the proceeding(s) No have been stayed by any Court(s) of competent jurisdiction	No

185

(ii) The following case(s) is/are pending against me in which cognizance has been taken by the court (other than the cases mentioned in item (i) above) :-

(a)	Name of the Court, Case No. and date of order taking cognizance	P.S. Sitabuldi, J.M.F.C. No.2 Case No.11390/09, Dt.10/08/2009 Case No.10009/09 Dt.16/07/2009 Case No.164/98, Dt.13/02/1998 Case No.1303/96, Dt.05/10/1996 Case No.573/93, Dt.20/05/1993 Case No.219/98, Dt.26/02/1998 Case No.962/09, Dt.21/01/2009 Case No.18282/06 Dt.21/09/2006
(b)	The details of cases where the court has taken cognizance , section (s) of the Act(s) for description of the offence(s) for which cognizance taken	Section 135 B.P. At 143, 147,148, 323 IPC, 143, 427, IPC, all cases are registered for agitations
(c)	Details of Appeal(s)/ Applications for revision (if any) filed	N.A.

	against the above order(s)	

(a)	Name of the Court, Case No. and date of order taking cognizance	P.S. Sadar, J.M.F.C. No.6, Case No.28/04, Dt.13/02/2004 Case No.13871/08 Dt.22/09/2008 Case No.14170/09, Dt.24/09/2009
(b)	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which cognizance taken	Section/143, 147,148,323, 427, IPC, 135, BP. All cases are registered for agitations
(c)	Details of Appeal(s)/ Applications for revision (if any) filed against the above order(s)	- N.A.

(a)	Name of the Court, Case No. and date of order taking cognizance	P.S. Dhantoli, J.M.F.C.No.2, Case No.5652/09, Dt.25/04/2009 Case No.945/2000 Dt.15/03/2000
(b)	The details of cases	Section/188, 171 (g 34), IPC, 135,

	where the court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which cognizance taken	B.P. all cases are registered for agitations
(c)	Details of Appeal(s)/ Applications for revision (if any) filed against the above order(s)	N.A.

(a)	Name of the Court, Case No., and date of order taking cognizance	P.S. Ganeshpeth, J.M.F.C.No.1 Case No.14315/09, Dt.29/09/2009 Case No.4240/10 Dt.05/05/2010
(b)	The details of cases where the court has taken cognizance, section (s) of the) and description of the offence(s) for which cognizance taken	Section/3,4, 135, B.P. all cases are registered for agitations.
(c)	Details of Appeal(s)/ Applications for revision	N.A.

188

	(if any) filed against the above order(s)	

(a)	Name of the Court, Case No.and date of order taking cognizance.	P.S. Ambazari, C.J.M. Case No.331/05, Dt.27/04/2005 Case No.333/05 Dt.27/06/2005
	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which cognizance taken	Section/188 IPC all cases are registered for agitations.
(c)	Details of Appeal(s)/ Applications for revision (if any) filed against the above order(s)	N.A.

(a)	Name of the Court, Case No. and date of order	P.S. Koradi, J.M.F.C.No.6

	taking cognizance	Case No.2815/09, Dt.04/03/2009
(b)	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which cognizance taken	Section/188,IPC, all cases are registered for agitations
(c)	Details of Appeal(s)/ Applications for revision (if any) filed against the above order(s)	N.A.

(a)	Name of the Court, Case No. and date of order taking cognizance	P.S. Kotwali, J.M.F.C. No.8, Case No.427/99, Dt.13/08/2009
(b)	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which cognizance taken	Section/134, 135, B.P. Act all cases are registered for agitations
(c)	Details of Appeal(s)/ Applications for	N.A.

	revision (if any) filed against the above order(s)	

(a)	Name of the Court, Case No. and date of order taking cognizance	P.S. Wadi, J.M.F.C. No.8, Case.No.305/99, Dt.30/09/1999 Case No.307/99, Dt.08/10/1999
(b)	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which cognizance taken	Section/188, 134, 135, IPC, all cases are registered for agitations
(c)	Details of Appeal(s)/ Applications for revision (if any) filed against the above order(s)	N.A.

(6) I have not been convicted of an offence(s) (other than any offence(s) referred to in sub-section (1) or sub-section (2) or covered in sub-section (3), of Section 8 of the Representation of the People Act, 1951 (43 of 1951) and sentenced to imprisonment for one year or more.

If the deponent is convicted and punishable as aforesaid, he shall furnish the following information:

In the following cases, I have convicted and sentenced to imprisonment by a court of law:

(a)	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which convicted	N.A.
(b)	Name of the Court(s), Case No. and date(s) of order(s)	N.A.
(c)	Punishment imposed	N.A.
(d)	Whether any appeal was/has been filed against the conviction order, if so, details and the present status of the appeal	N.A.

(7) to

(10).....

PART-B

(11) ABSTRACT OF THE DETAILS GIVEN (1) TO (10) OF PART –A:

1	Name of the Candidate	Devendra Gangadhar Fadnavis
2	Full Postal Address	276,Trikoni Park, Dharampeth,Nagpur-10
3	Number & name of the Constituency & State	52-Nagpur South-West LAC, Maharashtra
4	Name of the political party which set up the candidate(otherwise write Independent)	Bhartiya Janta Patry
5	(i)Total number of pending cases where charges have been framed by the court for offences punishable with imprisonment for two years or more	1 (ONE)
	(ii) Total number of pending cases where the court(s) have taken cognizande (other than the cases mentioned in item (i) above)	21 (Tweenty One)
6	Total Number of cases in which convicted and sentenced to imprisonment	Nil

192

	for one year or more (except for offences referred to in sub-section (1),(2)or (3) of section 8 of Representation of the People Act,1951)			
7	Names	PAN of	Year for which last income Tax return filed	Total income shown
1	Self 'Devendra Fadnavis'	AAEPF-3124E	2013-2014	419,345.00
2	Spouse Mrs.Amruta Fadnavis	AGKPR-3249Q	2013-2014	1,299,816.00
3	Dependent-1 Divija Fadnavis	N.A.	N.A.	N.A.
(8) to (11).....				

DEPONENT

Sd/-

Devendra Gangadhar Fadnavis

VERIFICATION

I, Devendra Gangadhar Fadnavis the deponent above named do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part it is false and nothing material has been concealed there from. I further declare that (a) there is no case of conviction or pending case against me other than those mentioned in item 5 and 6 of part A and B above (b) I, my spouse , or my dependants do not have any asset or liability, other than hose mentioned in item 7 and 8 of item 8,9 and 10 of part B above.

Verified at Nagpur this the 26th Day of September 2014

DEPONENT

Sd/-

Devendra Gangadhar Fadnavis

(Notary Seals)

"TRUE COPY"

194
Annexure-P-12

2

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
COURT NO. 6, N A G P U R

CRIMINAL CASE NO: M.C.A. No. 3550 /2014

COMPLAINANT: Shri Satish Mahadeorao Uke,
Age 35 years, Occupation: Advocate,
R/o Parwati Nagar, Nagpur-27

-VERSUS-

ACCUSED: Shri Devendra Gangadharrao
Fadanvis, Age: 44 years, Occu:
Politics, R/o 276,
Dharampeth, Nagpur-10

COMPLAINT FOR ACTION UNDER SECTION 200 OF CRIMINAL PROCEDURE.

The complainant submits that,

1. I, the complainant being alart voter of Maharashtra Legislative Assembly Election Constituency 52 – South-North, Nagpur, I have legal right in concern to voting and fundamental rights. I have cast my vote in the election took place in 2014 in this election Constituency. The election machinery on its website (internet) so also the election officer on his notice board has published the affidavits of contesting candidates, wherein as a candidate the affidavit of the Non-applicant is also included. As the information given by candidates on oath in the affidavits treating it to be true, the voters had decided to whom the votes shall be cast comparing

the contesting candidates. Therefore, a candidate, accused contesting the election has been benefited and succeeded. Even today, the affidavit submitted by the accused before the Election Officer has been published and available on the internet website of the Election Commission of India and Chief Election Officer, Maharashtra State Mantralaya, Mumbai.

2. On 02/10/2014 I came to know that, in the election 2014 the Non-applicant before the Election Officer of Maharashtra Legislative Assembly Election Constituency 52 – South-North, Nagpur, has submitted affidavit by intentionally concealing the important fact of pendency of two criminal cases against him in the Court. This affidavit has been prepared on Stamp paper of Rs. 100. This affidavit has been sworn before Nitin Telgote Advocate and Notary, resident of Gajanan Prasad Apartment, behind Bhagwati Lawns, Trimurti Nagar (Renge Nagar), Nagpur on 26th September, 2014, having Serial No. 230. On this affidavit the accused has identified himself i.e. deponent identified himself. This affidavit is dated 26/09/2014. In this affidavit, verification in English has clearly been mentioned and it has been mentioned oath therein that the information thereof is true & correct, there being no false, nothing has been concealed.

3. The above accused-deponent has passed 5 years Law Degree Course in 1992 from Dr. Ambedkar Law College, Amravati Road, Nagpur, by which this deponent / accused is well-versed with law. According to information received, the deponent/ accused is registered with Bar Council of Maharashtra & Goa and is holding professional decree. So also he has been registered as Member District Court Bar Association, Nagpur.

4. On 02/10/2014, in the concerned affidavit herein presented by returned candidate –accused before the returning officer of the 2014's election of the Maharashtra Legislative Assembly's Officer of Maharashtra Legislative Assembly Election Constituency 52 South-West Nagpur, I the complainant verified on the basis of received information , have seen and came to know that two cases in which the Court has taken cognizance have been intentionally concealed by accused though having knowledge of the same. These two cases are as under:-

i) Regular Criminal Case No. 343/2003 Madanlal Parate ..Vs.. Shashikant Dastak and others in which the accused in this complaint is the accused No.4 and the offence registered under sections 217, 218, 220, 425, 420, 466, 467, 468, 469, 470, 474, 109, 506 read with

section 34 of I.P.C. Information is available on the District Court website, that this case is pending before the 21st Civil Judge, Junior Division. Further fixed date in this case is 24/12/2014 before the J.M.F.C. Corporation Court No.2, Nagpur, also received information that Criminal Application No. 297/2011 (APL) is pending before the Hon'ble High Court, Nagpur Bench, Nagpur.

ii) In Regular Criminal Case No. 231/1996 Madanlal Parate ..Vs.. Devendra Fadanvis, the accused in the complaint is accused and this case is under section 500 of I.P.C. In this case on 11/06/1997 the accused by submitting bond of Rs. 3000 and bail bond before the J.M.F.C. Court No.6, Nagpur has even got himself released on bail. This case is pending before the J.M.F.C. Court No.6, Nagpur and is further fixed for 17/11/2014. Even the information in this regard is available on the internet website of the District Court.

5. Though the accused is knowing about both of the criminal cases above, in order to conceal the same from voters people (including me), has not mentioned the same in affidavit submitted in year 2014 before the Election Officer, Maharashtra Legislative Assembly Election Constituency 52 -

South-North, Nagpur. In this way, the accused has deprived the voters from their right to get known the entire information of candidate taking part in election. By concealing the information of the above two criminal cases, the accused has mentally cheated the voters (even to me, the complainant) and by intentionally concealing the information necessary as per provision of law, has committed an act punishable under Section 125-A of the Representation of the People Act 1951.

In this election, the accused got the valuable votes (which cannot be counted in terms of money) of the voters by misguiding them and the Non-applicant has been succeeded. This act has intentionally been committed by the accused though he is aware of the Act. The accused has committed this punishable act, though he was supposed to look after the interest of voters, loss of legal & fundamental rights and valuable votes of voters.

6. Against the above acts of the accused, on Dt. 02/10/2014 I gave Complaint along with concerned proofs to the Observer of Election 52 - South-West, Nagpur Election Constituency, District Election Officer and Returning Officer. On this complaint the Returning Officer Shri Dilip Sawarkar on 14/10/2014, vide Letter No. Prastu /NNA-52/OD-663/2014 informed me-the complainant that, by issuing letter to the

complainant under signature and seal, mentioned therein that, on submission of contrary information by affidavit against the affidavit sworn by the accused candidate, such affidavit will be published with the affidavit of the concerned candidate. I have informed the complainant that, on submission of proper affidavit action will be taken accordingly. Thereafter, I the complainant immediately on 04/10/2014 i.e. on the same day submitted the affidavit before the Election Officer and obtained the acknowledgement of receipt. Thereafter, as the election officer as per his letter failed to take action against the accused, on 07/10/2014 I the complainant issued legal notice to the returning officer . Thereafter, again on 08.10.2014 issued notices to the Election Commission of India and Chief Election Officer, Maharashtra State alongwith Election Observer and returning officer Shri Dilip Sawarkar. Despite this, as no action was taken against the accused, again on 09/10/2014 I requested the returning officer by meeting him, but I received unexpected answer from him, therefore in this regard I submitted most urgent complaint to Hon'ble Chief Election Officer, Maharashtra State, Hon'ble Observer, District Election Officer and likewise submitted to the Divisional Commissioner, Nagpur Division, Nagpur. Thereafter, on 17/10/2014 again issued legal notice to the Election Officer, Shri Dilip Sawarkar. I have submitted

separate application in concern to collusion and criminality of accused and election officer herein.

In concern to other subject the Election Commission of India vide Letter No. 61/MT-LA/2014/670 Dt. 14th October, 2014 informed me the complainant and sent the copy of Direction No. 4/2014/SDR-Vol-I Dt. 26/04/2014 for information. This letter has been received by me the complainant on 18/10/2014. As per the Election Commission of India Direction No. 4/2014/SDR-Vol-1 Dt. 26/4/2014, I can even file this complaint against accused directly before this Hon'ble Court for action and as the office of Election Officer i.e. spot of occurrence in the complaint is situated within the jurisdiction of this Hon'ble Court, complaint is being filed for appropriate justice.

Prayer: It is prayed that,

1) the concern information in relation with the accused in Criminal Cases as mentioned in Paragraph No.4 of the complaint, may kindly be called from the concerned criminal cases and Courts;

2) Original affidavit be called from the office of District Election Officer submitted to the returning Officer by the accused as candidate for election held in 2014 of 52 - South-West Nagpur Maharashtra Legislative Assembly;

3) as the office of election officer is within the jurisdiction of this Hon'ble Court, process order be issued to the accused by taking cognizance of the complaint,

4) after recording proper evidence in concern to this complaint, the accused be punished under section 125-A of the Representation of the People Act, 1951.

Particular of Witnesses:

1) Applicant himself,

2) District Election Officer, Nagpur

3) Election Officer,

4) Shri Nitin Telgote, Notary

5) Adv. Madanlal Parate, Giripeth, Nagpur.

6) Voters of 52, South-West Nagpur Legislative Assembly Constituency and other concerned.

NAGPUR

DT/- 20/10/2014 Complainant

Verification

I, Shri Satish Mahadeorao Uke, age 35 years, Occ: Advocate, R/o Parwati Nagar, Nagpur-27, makes statement on oath that the information mentioned in paragraphs No.1 to 6 is true and correct to my knowledge and belief. Hence signed at Nagpur today on 20/10/2014

DEPONENT.