

P.B.

IN THE SUPREME COURT OF INDIA
[UNDER ORDER XVI RULE 4(1) (A)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
SPECIAL LEAVE PETITION (C) NO. 2482 OF 2011
(WITH PRAYER FOR INTERIM RELIEF)

(Against impugned final judgment and order dated 30.09.2011 passed by
the Hon'ble High Court of Delhi at New Delhi in Writ Petition (Civil) No.
2511 of 2011.)

IN THE MATTER OF:-

ASHOK SHANKARRAO CHAVAN

...PETITIONER

VERSUS

DR. MADHAVRAO KINHALKAR AND OTHERS

...RESPONDENTS

PAPERBOOKS
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ADVOCATE FOR THE PETITIONER:

MR. NAVEEN KUMAR

RECORD OF PROCEEDINGS

[illegible]

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

'A'

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2011

IN THE MATTER OF:

ASHOK SHANKARRAO CHAVAN

...PETITIONER

VERSUS

DR. MADHAVRAO KINHALKAR AND OTHERS

...RESPONDENTS

OFFICE REPORT ON LIMITATION

- ✓ 1. This Petition is within the period of limitation.
2. The Petition is barred by time and there is delay ofdays in filing the same against Order dated 30.09.2011 and application for condonation ofdays delay has been filed.
3. There is delay ofdays in Re-filing the petition and application for condonation ofdays delay in Re-filing has been filed

NEW DELHI.

(SECTION OFFICER)

DATED:

LISTING PROFORMA IN THE SUPREME COURT OF INDIA

A-1

1. Nature of the matter Civil
2. (a) Name(s) of Petitioner(s)/Appellant(s) Ashok Shankarrao Chavan
(b) e-mail ID NA
3. (a) Name(s) of Respondent (s) Mahavrao Kinhalkar & Ors.
(b) e-mail ID NA
4. Number of case S.L.P. (C) No. /2011
5. (a) Advocate(s) for Petitioner(s) Mr. Naveen Kumar
(b) e-mail ID naveenkumar_1971@yahoo.co.in
6. (a) Advocate(s) for Respondent (s) NA
(b) e-mail ID NA
7. Section dealing with the matter XII
8. Date of the impugned Order/Judgment 30.09.2011
- 8A. Name of Hon'ble Judges
Hon'ble Mr. Justice Dipak Mishra
Hon'ble Mr. Justice Sanjiv Khanna
- 8B. In Land Acquisition Matters :
i) Notification/Govt. Order No. u/s. 4,6) NA
Dated NA Issued by Centre/State of NA
- ii) Exact purpose of acquisition & village involved NA
- 8C. In Civil Matters :-
i) Suit No., Name of Lower Court : NA
Date of Judgment NA
- 8D. In Writ Petitions:-
"Catchword" of other similar matters NA
- 8E. In case of Motor Vehicle Accident Matters :
Vehicle No. NA
- 8F. In Service Matters
(i) Relevant service rule, if any NA
(ii) G.O./Circular/Notification, if applicable or in question NA
- 8G. In Labour Industrial Disputes Matters :
I.D. Reference/Award No., if applicable NA
Nature of urgency Stay
9. In case it is a Tax matter :
a) Tax amount involved in the matter NA

A-2

- b) Whether a reference/statement of the case was called for or rejected
NA
- c) Whether similar tax matters of same parties filed earlier (may be for earlier/other Assessment Year?)
NA
- d) Exemption Notification/Circular No
NA
11. Valuation of the matter :
NA
12. Classification of the matter :
(Please fill up the number & name of relevant category with sub category as per the list circulated)
No. of Subject Category with full name : Election Matter
No. of sub-category with full name : 903
13. Title of the Act involved (Centre/State) R.P. Act, 1951
14. (a) Sub-Classification (indicate Section/Article of the Statute) NA
(b) Sub-Section involved NA
(c) Title of the Rules involved (Centre/State) NA
(d) Sub-classification (indicate Rule/Sub-rule of the Statute) NA
15. Point of law and question of law raised in the case
NA
16. Whether matter is not to be listed before any Hon'ble Judge?
Mention the name of the Hon'ble Judge
NA
17. Particulars of identical/similar cases, if any
a) Pending cases NA
b) Decided cases with citation NA
- 17A. Was SLP/Appeal/Writ filed against same impugned Judgment/order earlier? If yes, particulars
NA
18. Whether the petition is against interlocutory/final order/decreed in the case
Final
19. If it is a fresh matter, please state the name of the High Court and the Coram in the impugned Judgment/Order
High Court of Delhi at New Delhi
Hon'ble Mr. Justice Dipak Mishra
Hon'ble Mr. Justice Sanjiv Khanna
20. If the matter was already listed in this Court :
a) When was it listed? NA
b) What was the Coram? NA
c) What was the direction of the Court NA
21. Whether a date has already been fixed either by Court or on being mentioned for the hearing of matter? If so, please indicate the date fixed
NA
22. Is there a caveat? If so, whether a notice has been issued to him?
NA
23. Whether date entered in the Computer?
NA
24. If it is a criminal matter, please state :

A-3

- | | | |
|------|--|----|
| a) | Whether accused has surrendered | NA |
| b) | Nature of offence, i.e. convicted under Section with Act | NA |
| c) | Sentence awarded | NA |
| d) | Sentence already undergone by the accused | NA |
| 24e) | (i) FIR/RC/etc. | NA |
| | Date of Registration of FIR etc. | NA |
| | Name & place of the Police Station | NA |
| | (ii) Name & place of Trial Court | NA |
| | Case No. in Trial Court and Date of Judgment | NA |
| | (iii) Name and place of 1st Appellate Court | NA |
| | Case No. in 1st Appellate Court & date of Judgment | NA |

New Delhi.
Date: 21st October, 2011.

Naveen
(Naveen Kumar)
Advocate for Petitioner
Code No. 1725

CHECK LIST

A - 4

1. (i) Whether the S.L.P. (Civil) has been filed in Form No.28 with certificate as per Notification dated 17.6.1997. ✓
YES/NO
- (ii) Whether the prescribed court fee has been paid. ✓
YES/NO/NA
2. (i) Whether proper and required number of paper-books (1+3) have been filed? ✓
YES/NO
- (ii) Whether brief list of dates/events has been filed? ✓
YES/NO
- (iii) Whether paragraphs and pages of paper books have been numbered consecutively and correctly noted in Index? ✓
YES/NO
3. Whether the contents of the petition/appeal, applications and accompanying documents are clear, legible and typed in double space on one side of the paper. ✓
YES/NO
4. Whether the petition and application bear the signatures of the Counsel/In-person. ✓
YES/NO
5. Whether an affidavit of the petitioner in support of the petition/appeal/application has been filed, properly attested and identified. ✓
YES/NO
6. If there are any vernacular documents/portions/lines and translations of such documents are not filed, whether application for exemption from filing official translation, with affidavit and court fee has been filed. ✓
YES/NO/NA
7. If a party in the court below has died, whether application for bringing LR's on record indicating the date of death, relationship, age and address affidavit and court fee has been filed. ✓
YES/NO/NA
8. (i) Whether the Vakalatnama has been properly executed by the petitioners/appellants and accepted and identified by the Advocate and Memo of Appearance filed. ✓
YES/NO
- (ii) If a petitioner is represented through power of attorney, whether the original power of attorney in English/translated copy has been filed and whether application for permission to appear before the court has also been filed? ✓
YES/NO/NA
9. Whether the petition/appeal contains a statement in terms of Order XVI/XXI of Supreme Court Rules as to whether the petitioner has filed any petition against the impugned order/judgment earlier, and if so, the result thereof state in the petition. ✓
YES/NO
10. Whether certified copy of the impugned judgment has been filed and if certified copy is not available, whether an application for exemption from filing certified copy has been filed. ✓
YES/NO

11. Whether the particulars of the impugned judgment passed by the Court(s) below are uniformly written in all the documents. YES/NO ☒ A-5
12. (i) Whether the addresses of the parties and their representation are complete and set out properly and whether detailed cause title has been mentioned in the impugned judgment and if not, whether the memo of parties has been filed, if required? YES/NO ☒
- (ii) Whether the cause title of the petition/appeal corresponds to that of the impugned judgment and names of parties therein? YES/NO ☒
13. Whether in case of appeal by certificate the appeal is accompanied by judgment and decree appealed from and order granting certificate. YES/NO ☒
14. If the petition/appeal is time barred, whether application for condonation of delay mentioning the number of days of delay, with affidavit and court fee has been filed. YES/NO ☒ NA
15. Whether the Annexures referred to in the petition are true copies of the documents before the Court below and are filed in chronological order as per list of dates. YES/NO ☒
16. Whether the petition/appeal is confined only to the pleadings in the Court/Tribunal below and YES/NO ☒
- If not whether application for taking additional grounds/documents with affidavit and court fee has been filed. YES/NO ☒ NA
17. (i) In SLP/Appeal against the order passed in Second Appeal whether copies of the orders passed by the Trial Court and First Appellate Court have been filed. YES/NO ☒ NA
- (ii) If required copy of the judgment/order/notification/award etc. is not filed, whether letter of undertaking has been filed in civil matters? YES/NO ☒ NA
18. In matters involving conviction whether separate proof of surrender in respect of all convicts or application for exemption from surrendering has been filed (Please see judgment dated 16.6.2006 in CrI. Appeal No. 685/2006 entitled Mayuram Subramanian Srinivasan Versus C.B.I.) (Copy of surrender proof to be included in the paper books.). YES/NO ☒ NA
- Whether in case where proof of surrender/separate certificate from the jail authority has not been filed, an application for exemption from filing separate proof of surrender has been filed. YES/NO ☒ NA
19. In case of quashing of FIR whether a copy of the petition filed before the High Court under Section 482 of Cr.P.C. has been filed. YES/NO ☒ NA
20. In case of anticipatory bail whether a copy of FIR or translated copy has been filed. YES/NO ☒ NA

21. (i) Whether the Complete Listing Proforma has been filed in, signed and included in the paper-books.

✓
YES/NO A-6

(ii) If any identical matter is pending/disposed of by Supreme Court, whether complete particulars of such matters have been given?

✓
YES/NO/NA

DATE: 21.10.2011.

NAVEEN
(NAVEEN KUMAR)
Advocate-on-Record
For the Petitioner

SYNOPSIS

B

The Petitioner by the instant Special Leave Petition assails the impugned order of the Hon'ble High Court of Delhi dated 30.09.2011 in W.P. Civil No. 2511 of 2011 wherein Hon'ble High Court held that the Learned Election Commission has jurisdiction under section 10A of the Representation of People's Act 1951 (the "Act") to conduct an enquiry in order to determine whether the return of election expenses maintained and filed by the Petitioner, a candidate in election is false and whether that candidate has incurred expenses beyond the prescribed limit under the Act. To the best of the Petitioner's knowledge the Learned Election Commission has never (prior to the year 2009) conducted such an enquiry under section 10A of the Act and the Petitioner is one of first few elected candidates against whom such an enquiry is being conducted notwithstanding the fact that the District Election Officer after going through the accounts of the Petitioner gave its report that the Accounts of Election Expenditure filed by the Petitioner is within time and in the manner required by section 10 A of the Act.

That Respondent No. 1, one of the rival contestants at the abovementioned general Election from the same Constituency, along with other Respondents submitted complaints to the Learned Election Commission alleging that the Petitioner got several advertisements published in various newspapers, in particular, Lokmat, Pudhari, Maharashtra times and Deshonnati, during the Election campaign period which appeared in those newspapers in the garb of news eulogizing the Petitioner and his achievements as Chief Minister of Maharashtra. Further, the Respondent No.1 has made the same and identical allegations in an Election Petition filed before the Hon'ble Bombay High Court, Aurangabad bench which is still pending. The Learned Election Commission

C

enquired from each of the News Paper Publications and each of those newspaper publications categorically and very clearly denied in writing the allegations made by the Respondents.

It was alleged by the Respondents that a huge expenditure was incurred by the Petitioner for getting those advertisement published as news and that the expenditure incurred or authorized on the publication of those alleged paid news was not included by the Petitioner in his account of Election expenses maintained under section 77 of the Act and lodged with the District Election Officer, Nanded under section 78 of the said Act.

The District Election Officer after going through the accounts of the Petitioner gave its report that the Accounts of Election Expenditure filed by the Petitioner are within time and in the manner required by the law and certified that the accounts filed by the Petitioner are in accordance with the provisions of section 10A of the Act.

The Learned Election Commission also sought and obtained through the Chief Election Officer, Maharashtra, the comments of the four newspapers namely Lokmat, Pudhari, Maharashtra Times and Deshonnati on the allegations of publishing 'paid news' relating to the Petitioner. All the newspapers publications denied the allegation of any payment having been made to them by the Petitioner for the publication of the alleged "paid news".

That Petitioner made a preliminary objection as to the maintainability of the complaints before the Learned Election Commission, raising the question of the Learned Election Commission's very jurisdiction to go into the complaints.

D

The Learned Election Commission heard the Respondents and the Petitioner and passed its order on the issue of jurisdiction in favor of the Respondents and against the Petitioners, on 2nd April 2011.

The Petitioners preferred a Writ petition against the Order of the Learned Election Commission. The Petitioner submitted that the Constitutional bench decision of the Apex Court in *Sucheta Kriplani v. S.S. Dulat* [AIR 1955 S.C.758] is a binding precedent which clearly states that the learned Election Commission does not have jurisdiction to enquire whether the accounts filed by a returned candidate is true or false. However the Hon'ble High Court held that the decision of Full bench in *L.R. Shivaramagowda v. T.M. Chandrashekar* [AIR 1999 SC 252] is a binding precedent. The Respondent's argument was that the law has changed in relation to maintenance of accounts since the decision in *Sucheta Kriplani's* case. On the other hand in the Writ Petition the Petitioner argued and submitted that the amendment in the law is not a substantial amendment as the 'pith and substance' of the law remains the same after amendment as it was before the amendment. The wording of Section 10 A of the Act remained similar to the wording of the old section 7(c) of the Act and Rule 114 of the Conduct Of Election Rule 1961 which was decided by the Constitutional bench in *Sucheta Kirplani's* case (cited above). The amendment is superficial in nature and does not alter the position in law as far as lodging of accounts, corrupt practices, powers of the Commission and the High Court are concerned. The Petitioner also submitted that Learned Election Commission's decision that it has jurisdiction under section 10A of the Act to enquire whether accounts filed are true or false disregards the fact that such an interpretation leads to an anomalous situation wherein the Commission is given powers which is otherwise in the exclusive domain of the High Court.

E

The Petitioner submitted that the Constitutional bench decision in *Sucheta Kriplani v. S.S. Dulat* is a binding precedent while the decision in *L.R. Shivaramagowda v. T.M. Chandrashekar* is of a smaller bench which did not refer nor cite the decision of the constitutional bench in *Sucheta Kirplani's* case and therefore to that extent should be treated as per incuriam.

The Hon'ble Delhi High Court summarily disposed off the Writ Petition by its Judgment dated 30.09.2011 and held that the Decision of *L. R. Shivaramagowda v. T.M. Chandrashekar* is binding upon it.

Hence, the present Special Leave Petition.

LIST OF DATES

- | | |
|------------|---|
| 22.10.2009 | Date of announcement of the results of Maharashtra State Assembly Election of the year 2009. |
| 17.11.2009 | Date of lodging of accounts of Election expenses with the District Election Officer. |
| 24.11.2009 | Report filed by the District Election Officer certifying that the accounts filed by the Petitioner are in the manner required by and under the law and within the time stipulated under the Act. A true copy of Report dated 24.11.2009 submitted by the District Election Officer, Nanded to the Election Commission of India is annexed hereto as ANNEXURE P-1 (Page <u>35-37</u>). |
| 02.12.2009 | Respondent No. 1, Dr. Madhavrao Kinhalkar, one of the rival |

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contestants at the abovementioned general Election from 85 Bhokar Assembly Constituency, along with other Respondents herein filed a complaint dated 02.12.2009 with the Election Commission against the Petitioner for filing false and incorrect Election expenditure accounts.

The Respondent's complaint to the Election Commission alleged that the Petitioner got several advertisements published in various newspapers, in particular, Lokmat, Pudhari, Maharashtra times and Deshonnati, during the Election campaign period which appeared in those newspapers in the garb of news eulogizing the Petitioner and his achievements as Chief Minister of Maharashtra. A true copy of complaint dated 02.12.2009 filed by the respondent No.1 before the Learned Election Commission of India is annexed hereto as **ANNEXURE P-2** (Page 38-41).

04.12.2009

Dr. Madhavrao Kinhalakar, files a petition under section 80 of Representation of People Act, 1951.

The Respondent No.1 prayed in the Election Petition to declare the Election of the Petitioner as void and hold the Respondent No.1 as elected candidate. The allegation of "paid news" made in the Election petition is similar and identical to the contents of the Complaint made by the Respondent no.1 to the Learned Election Commission.

The said Election petition is pending adjudication before the

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Aurangabad Bench of the Hon'ble Bombay High Court. A true copy of Election Petition No. 11 of 2009 dated 04.12.2009 filed by the Respondent No. before the High Court of Judicature at Bombay Bench at Aurangabad is annexed hereto as ANNEXURE P-3 (Page 42-73).

16.01.2010 Letter from Hon'ble Election Commission of India, informing the Petitioner about the complaint received from the Respondents, alleging *inter-alia*, that the Petitioner has under-valued the cost of the Election propaganda through newspaper advertisements etc. The letter further required the Petitioner to submit its reply to the Commission. A true copy of Letter dated 16.01.2010 sent by the Election Commission of India to the Petitioner is annexed hereto as ANNEXURE P-4 (Page 74-76).

29.01.2010 The Petitioner filed a reply dated 29.01.2010 to the letter of the Election Commission dated 16.01.2010 and the Complaints of the Respondents. A true copy of reply dated 29.01.2010 submitted by the Petitioner before the Learned Election Commission of India is annexed hereto as ANNEXURE P-5 (Page 77-81).

10.04.2010/
15.04.2010/
17.04.2010/
20.04.2010 The Election Commission also sought and obtained comments through the Chief Election Officer, Maharashtra and the comments of the four newspapers namely Lokmat, Pudhari, Maharashtra Times and Deshonnati on the allegations of publishing 'paid news' by these newspapers

H

relating to the Petitioner. The newspapers denied the allegation of any payment having being made to them by the Petitioner for the publication of the alleged "paid news".

All the newspapers specifically stated that the news articles that were the impugned 'paid news' were in fact news or editorials or supplements published by them. The true copies of letters dated 10.04.2010 of "PUDHAR", dated 15.04.2010 of "LOKMAT", dated 17.05.2010 of "DESHONNATI" and dated 20.04.2010 of "MAHARASHTRA TIMES" submitted before the Learned Election Commission of India are annexed hereto as ANNEXURE P-6 (Colly.) (Page 82-98).

In the mean time various communications took place between the Petitioner, Respondents and the Learned Election Commission.

25.05.2010/
22.06.2010

In addition to the reply dated 29.01.2010 filed by the petitioner, the petitioner also submitted the letter dated 25.05.2010 and 22.06.2010 before the Learned Election Commission of India. The true copies of letters written by the Petitioner dated 25.05.2010 and 22.06.2010 submitted before the Learned Election Commission of India are annexed hereto as ANNEXURE P-7 (Colly.) (Page 99-118).

02.04.2011

The Election Commission passed an order on the preliminary

I

issue of jurisdiction. The Learned Election Commission held that it has the Jurisdiction to hear the complaint and dismissed the preliminary objection of the Petitioner. A true copy of order dated 02.04.2011 passed by the Learned Election Commission of India is annexed hereto as ANNEXURE P-8 (Page 119-170).

18.04.2011 Aggrieved by the decision of the Learned Commission, the Petitioner preferred a Writ Petition (Civil) No. 2511 of 2011 in the Hon'ble High Court of Delhi at New Delhi inter alia alleging that the Commission does not have jurisdiction to entertain a complaint concerning falsity of accounts lodged with the Commission under section 10A of the Representation of people Act 1951. It is pertinent to mention that the Hon'ble High Court was pleased to issue notice and stay the proceedings before the Learned Election Commission. A true copy of W.P. (Civil) No. 2511 of 2011 dated 18.04.2011 filed by the Petitioner before the Hon'ble High Court of Delhi at New Delhi is annexed hereto as ANNEXURE P-9 (Page 171-194).

21.04.2011 The Hon'ble High Court vide its order dated 21.04.2011 issued "Notice" and also granted "Stay" of further proceedings before the Learned Election Commission. A true copy of order dated 21.04.2011 passed by the Hon'ble High Court of Delhi at New Delhi in W.P. (Civil) No. 2511 of 2011 is annexed hereto as ANNEXURE P-10 (Page 195-196).

02.06.2011

J

The Hon'ble High Court of Delhi, upon prayer by the Petitioner issued notice and impleaded Union of India as a party to the Writ Petition (Civil) No. 2511 of 2011, by its order dated 02.06.2011. A true copy of order dated 02.06.2011 passed by the Hon'ble High Court of Delhi at New Delhi in W.P. (Civil) No. 2511 of 2011 is annexed hereto as ANNEXURE P-11 (Page 197-198).

11.07.2011
July, 2011

The Petitioner filed a detailed written submissions and additional written submissions detailing each and every argument and depicting clearly that there has been no change in the law even after the amendment and also that the decision of *L.R. Shivaramagowda v. T.M. Chandrashekar* is erroneously decided and must not be relied upon. On behalf of Petitioner The true copies of written submissions dated 11.07.2011 and additional written submissions dated July, 2011 filed on behalf of the Petitioner before the Hon'ble High Court of Delhi at New Delhi in W.P. (Civil) No. 2511 of 2011 are annexed hereto as ANNEXURE P-12 (Colly.) (Page 199-233).

30.09.2011

The Hon'ble Delhi High Court summarily disposed off the Writ Petition by its Judgment dated 30.09.2011 rejecting the contentions of the Petitioner and stating that the Decision of *L. R. Shivaramagowda v. T.M. Chandrashekar* [AIR 1999 SC 252] is binding upon it, notwithstanding the Constitutional

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bench decision of the Hon'ble Supreme Court in the case of Sucheta Kriplani v. Shri S.S. Dulat & Ors. [AIR 1955 S.C.758]. It is submitted that the Hon'ble High Court further erred in law in stating that the Commission had powers under Section 10A of the Act disregarding the fact that such an interpretation leads to an anomalous situation wherein the Commission is given power which is otherwise in the exclusive domain of the High Court.

21.05.2011

Hence, the present Special leave Petition

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 3rd August, 2011

Judgment pronounced on: 30th September, 2011

WRIT PETITION (CIVIL) No. 2511/2011

Ashok Shankarrao Chavan

Through: Dr.A.M. Singhvi, Sr.Adv. with
Mr.Abhimanyu Bhandari, Mr.Anubhav
Singhvi & Mr.Samanvya Dhar Dwivedi
Advs.

..... Petitioner

versus

Madhavrao Kinhalkar and ors.

..... Respondents

Through: Mr.K.K. Venugopal, Sr.Adv. with Mr.Dilip
Annasaheb Taur, Adv. for Resp. 1
Mr.Saurabh Shyam Shamshery &
Mr.Bhupender Yadav, Advs. for Resp. 2&3
Mr.P.R. Chopra, Adv. for Resp.4.
Mr.A.S. Chandhiok, ASG with Ms.Sonia
Sharma, Mr.Mirza Aslam Beg, Mr.Ritesh
Kumar, Mr.Piyush Sanghi and Mr.Sumit
Goyal, Advs. for Resp.-5

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

- | | | |
|---|---|-----|
| 1 | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2 | To be referred to the Reporter or not? | Yes |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

WP (C) No.2511/2011

page 1 of 18



DIGITALLY SIGNED DATA
VERIFIED / TRUE COPY

Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the legal substantiality of the order dated 2nd April, 2001 passed by the Election Commission of India (for short 'the Commission') wherein the Commission has expressed the view that it has jurisdiction under Section 10A of the Representation of People Act, 1951 (for brevity 'the 1951 Act') to embark upon the issue of alleged incorrectness or falsity of the return of election expenses maintained by the respondent, a candidate in election, under Section 77(1) and 77(2) lodged by him in exercise of power under Section 78 of the 1951 Act.

2. As a pure question of law arises, we shall refer in brief to the facts of the case. The petitioner was a returned candidate at general election to the Maharashtra Legislative Assembly held in September-October, 2009 from 85, Bhokar Assembly constituency and at that point of time he was the Chief Minister of Maharashtra. Certain complaints were filed before the Commission stating, inter alia, that the account submitted by the petitioner is not correct and there should be an enquiry against him under Section 10A of the 1951 Act. After notice, the present petitioner entered contest and raised a preliminary issue with regard to the maintainability of the nature of complaints before the Commission on the foundation that the

WP (C) No.2511/2011

page 2 of 18

ATTESTED

Radhika

**Examiner Judicial Department
High Court of Delhi**



DIGITALLY SIGNED DATA

Amir
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Commission has no jurisdiction to go into the truthfulness or falsity of the expenditure. The Commission thought it appropriate to advert to the preliminary objection raised by the petitioner to address to the same and placing reliance on the decision in *L.R. Shivaramgowda v. T.M. Chandrashekar*, AIR 1999 SC 252 and interpreting various provisions of the 1951 Act and the Rules, namely, the Conduct of Elections Rules, 1961 (hereinafter referred to as 'the 1961 Rules') has opined, as we have indicated hereinbefore.

3. We have heard Dr.A.M. Singhvi, learned senior counsel along with Mr.Abhimanyu Bhandari, learned counsel for the petitioner and Mr.K.K. Venugopal, learned senior counsel along with Mr.Dilip Annasaheb Taur; Mr.Saurabh Shyam Shamsheery; Mr.P.R. Chopra; and Mr.A.S. Chandhiok, the learned Additional Solicitor General along with Ms.Sonia Sharma, learned counsel for the respondents.

4. Dr.A.M. Singhvi, the learned senior counsel appearing for the petitioner has submitted that the Election Commission can only make an enquiry with regard to the filing of the accounts, as contemplated under the Act, and while doing so, he has to be guided by the rules which are prescribed under the Act. It is urged by him that the Rule 89 has to be appositely appreciated in the context of Section 10A and Sections 77 and 78. It is urged by him that Section 100 of the 1951 Act

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confers power on the High Court to set aside the election and if the said jurisdiction is conferred on the Election Commission to enter into the veracity of the truth and falsity of the accounts, there will be a dual adjudicatory process. Dr. Singhvi, learned senior counsel has also submitted that the decision rendered in *L.R. Shivaramgowda* (supra) has not taken note of the Constitution Bench decision in *Sucheta Kripalani v. Shri S.S. Dulat, ICS, Chairman of the Election Tribunal, Delhi & Ors.*, AIR 1955 SC 758. He has commended us to paragraph 13 of the said decision.

5. Mr. Venugopal, learned senior counsel, Mr. Saurabh Shyam Shamshery, Mr. Chopra and Mr. Chandhiok, the learned Additional Solicitor General, learned counsel for the respondents have submitted that there has been a change in the provision when the decision in *Sucheta Kripalani* (supra) was delivered by the Constitution Bench and hence, the ratio laid down therein would not be applicable. The learned counsel appearing for the respondents would further submit that the decision in *L.R. Shivaramgowda* (supra) lays down the law clearly and the same being a binding precedent, the Commission has correctly appreciated the ratio laid down therein and held that it has jurisdiction to conduct an enquiry.

6 To appreciate the rivalised submission raised at the Bar, it is appropriate to refer to Section 10A of the 1951 Act. It reads as under: -

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

- (a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and
- (b) has no good reason or justification for the failure,

the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order."

[Underlining is ours]

7. Sections 77 and 78, which occur in Chapter 8 that deals with Election Expenses, are as follows -

"77. Account of election expenses and maximum thereof. -

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

Explanation 1. - For the removal of doubts, it is hereby declared that -

- (a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a



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candidate of that political party or his election agent for the purposes of this sub-section;

- (b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.- For the purposes of clause (a) of *Explanation 1*, the expression "leaders of a political party", in respect of any election, means, -

- (i) where such political party is a recognised political party, such persons not exceeding forty in number, and
- (ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name,



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during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

- (2) The account shall contain such particulars, as may be prescribed.
- (3) The total of the said expenditure shall not exceed such amount as may be prescribed.

78. Lodging of account with the district election officer. -

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

[Emphasis supplied]

8. Section 100, which deals with grounds for declaring election to be void, is reproduced below: -

"100. Grounds for declaring election to be void. -

- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion -
 - (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

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- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
 - (c) that any nomination has been improperly rejected; or
 - (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected –
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied –

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

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(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void."

[Emphasis added]

9. In this context, we may refer to Rule 86 of the 1961 Rules which reads as follows:

"86. Particulars of account of election expenses. -

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

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

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

(c) the amount of the expenditure -

(i) the amount paid;

(ii) the amount outstanding;

(d) the date of payment;

(e) the name and address of the payee;

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- (f) the serial number of vouchers, in case of amount paid;
 - (g) the serial number of bills, if any, in case of amount outstanding;
 - (h) the name and address of the person to whom the amount outstanding is payable.
- (2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.
 - (3) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).
 - (4) It shall not be necessary to give the particulars mentioned in item (e) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (2)."

10. In this context, we may profitably refer to Rule 89 of the 1961 Rules. It is as follows: -

"89. Report by the district election officer as to the lodging of the account of election expenses and the decision of the Election Commission thereon. -

- (1) As soon as may be after the expiration of the time specified in section 78 for the lodging of the accounts of



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election expenses at any election, the district election officer shall report to the Election Commission -

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

(2) Where the district election officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act and these rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

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

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

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



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

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

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

11. In the case of *L.R. Shivaramgowda* (supra), a three-Judge Bench of the Apex Court has opined thus –

"17. Learned counsel for the first respondent made an attempt to show that the pleading contains the relevant material facts. According to him, paragraph 39 of the election petition sets out the expenses incurred by the appellant per vehicle per day and the total number of vehicles used by him. It was also contended that the price of the newspaper Nagamangala Mitra per copy was mentioned and the total number of copies purchased for distribution to the voters was also mentioned. It was argued that those were the material facts and by themselves they proved that the appellant had incurred an expenditure exceeding the prescribed limit. We are unable to accept this contention. After



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setting out those figures, the averment found in the election petition is only to the effect that the said cost incurred by the appellant had not been furnished in his statement of account. The fact that in the last part of the said sentence, it was alleged that there was on contravention of Section 123(6) of the Act, would not come to the aid of the first respondent to contend that the relevant material fact of excessive expenditure over and above the prescribed limit had been pleaded. We must also refer to the fact that for the purpose of Section 100(1)(d)(iv), it is necessary to aver specifically that the result of the election insofar as it concerns a returned candidate has been materially affected due to the said corrupt practice. Such averment is absent in the petition.

18. We shall now proceed to the second limb of the argument of the appellant's counsel. The High Court has held that the appellant had not maintained true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. 'Corrupt practices' have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) & (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Election Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1)(b) of Section 100 relates



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to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section 3 of Section 77 i.e. the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77(1) & (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall Under Section 100(1)(b). The attempt here by the first respondent is to bring it within Section 100(1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Section 77(1) & (2) will in no case affect, and much less materially, the result of the election.

19. This view has been expressed by this Court in Dalchand Jain v. Narayan Shankar Trivedi, (1969) 3 SCC 685. A Bench of three Judges held that it is only sub-section (3) of Section 77 which can be invoked for a corrupt practice under Section 123(6) and the contravention of Section 77 sub-section (1) & (2) or the failure to maintain correct accounts with the prescribed particulars does not fall under Section 123(6). The Bench has referred to several earlier decisions of the High Court and the decision of this court in C.A. No. 1321 of 1967 dated 22-3-1968.

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22. It was argued by learned counsel for the first respondent that the aforesaid view would enable any successful candidate at an election to snap his fingers at the law prescribing the maximum limit of expenditure and escape from the provisions of Section 77(3) by filing false accounts. According to him, if the aforesaid construction of Sections 77 and 123(6) is to be adopted, there will be no sanction against a candidate who incurs an expenditure exceeding the maximum prescribed limit. Referring to Section 10(A) of the Act, which enables the Election Commission to disqualify a person who had failed to lodge an account of election expenses within the time and in the manner required by or under the Act and had no good reason or justification for the failure, he contended that the said Section provides only for a situation arising out of failure to lodge an account and not a situation arising from a failure to maintain true and correct accounts. We are unable to accept this contention. In our opinion, sub-section (a) of Section 10(A) takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Section 77(2) provides that the accounts shall contain such particulars as may be prescribed. Rule 86 of the conduct of Election Rules provides for the particulars to be set out in the account. The said Rule prescribes that a voucher shall be obtained for every item of expenditure and for lodging all vouchers along with the account of TC election expenses. Rule 89 provides that the District Election Officer shall report to the Election Commission, the name of each contesting candidate, whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged and whether in his opinion such account has been lodged within the time and in the manner required by the Act and the Rules. That Rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act after adopting the procedure mentioned therein. If an account is found to be incorrect or untrue by the Election Commission after enquiry under Rule 89, it could be held that the candidate had failed to lodge his account within



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the meaning of Section 10(A) and the Election Commission may disqualify the said person. Hence, we do not find any substance in the argument of learned counsel for the first respondent."

[Underlining is ours]

12. In the case of *Sucheta Kripalani* (supra), in paragraph 13 it has been held thus –

"It is a question of form and not of substance. If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other document by some other person and the charges so preferred will be enquired into by the Tribunal."

13. What is urged by learned counsel for the petitioner that Section 100(1)(d)(iv) confers exclusive power on the High Court to express an opinion with regard to non-compliance of the provisions of the Act and such non-compliance must materially affect the election and if the power is vested with the Commissioner to go into the truth or falsity of the accounts, it will bring an anomalous situation. The learned counsel would contend that it will create a dent in a democracy and bring the election law to jeopardy. It is also propounded with immense vehemence that the Rule 89 really provides the time factor and format but it does not confer any power on the Commission to get into the truth or falsehood of the accounts. We have reproduced the provisions of the Act and the Rules and extensively



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quoted from the decision in *L.R. Shivaramgowda* (supra). We find as the three-Judge Bench was specifically dealing with the language employed in Section 10A and in that context opined in a categorical manner that sub-section (a) of Section 10A takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Their Lordships have analysed the scope and ambit of Rule 89 and clearly laid down that the Rule enables the Election Commission to decide whether a contesting candidate fails to lodge the account of election expenses within the time and in the manner required by the Act and if an account is found to be incorrect or untrue by the Election Commission after enquiry under the Rule, it could be held that the candidate had failed to lodge his account within the meaning of Section 10A of the Act. Be it noted, their Lordships have said so when a contention was raised that a successful candidate at an election can snap his fingers at the law by filing false accounts. If the decision is read as a whole and not in a disjointed manner the principle is clear that the Commission can go into the truthfulness or untruthfulness of the accounts.

How far the Commission can go will be a question of degree. It will be in the realm of exercise of power. It is extremely difficult to say that Rule 89 basically has nothing to do with the provisions of the Act and deals with adjective sphere totally discarding the substantive part. If Sections 77 and 78 and Rules 86 and 89



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are appositely construed, it would be clear that there is a check with regard to the conduct of the contesting candidates as well as the elected candidates. A distinction has to be drawn for setting aside an election by the court and causation of an enquiry by the Commission.

14. In view of our aforesaid analysis, we are of the considered opinion that the decision in *L.R. Shivaramgowda* (supra) is a precedent in the field and the Commission has correctly appreciated and understood the law laid down therein and, therefore, we concur with the view expressed by it.

15. Consequently, the writ petition, being devoid of merit, stands dismissed. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

SEPTEMBER 30, 2011
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Authorized Under Section 70
Indian Evidence Act

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IN THE SUPREME COURT OF INDIA
(UNDER ORDER XVI RULE 4(1) (A))
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION
(UNDER ARTICLE 136 OF CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2011
(WITH PRAYER FOR INTERIM RELIEF)

IN THE MATTER OF:

POSITION OF PARTIES

Sh. Ashok Shankarrao Chavan
R/o 1-2-197, Shivaji Nagar,
District Nanded,
Maharashtra

Petitioner

Petitioner

Versus

1. Dr. Madhavrao Kinhalkar
Ex. Home Minister (M.S.)
"Safalya Niwas", Wammannagar,
Purana Road, Nanded,
Maharashtra

Respondent
No.1

Contesting
Respondent No.1

2. Dr. Kirit Somaiya
Vice-President BJP Maharashtra,
9-C, Neelam Nagar, Mulund (E),
Mumbai - 400081

Respondent
No.2

Contesting
Respondent No.2

3. Sh. Mukhtar Abbas Naqvi
Member of Parliament (R.S.)
C-1, 12-A, Pandara Park,
New Delhi - 110 003

Respondent
No.3

Contesting
Respondent No.3

4. Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi 110001

Respondent
No.4

Proforma
Respondent No.4

5. Union of India
Through Chief Secretary
Ministry of Law and justice
Shastry Bhawan,
New Delhi 110001

Respondent
No.5

Proforma
Respondent No.5

To,

The Hon'ble Chief Justice of India
And his Companion Judges of the
Hon'ble Supreme Court of India

MOST RESPECTFULLY SHOWETH:-

1. The above-named Petitioner has filed the present Special Leave Petition to Appeal under Article 136 of the Constitution against the impugned final judgment and order dated 30.9.2011 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (Civil) No. 2511 of 2011, whereby the Hon'ble Court dismissed the said Writ Petition filed by the Petitioner.
- 1A. The Hon'ble High Court, upon prayer made by the Petitioner issued notice and impleaded Union of India as a party to the Writ Petition filed by the Petitioner by its order dated 02.06.2011. A copy of order is annexed with the present SLP. It is submitted that at page 2 in para 1 of the impugned order dated 30.09.2011, due to inadvertent typographical error, the date of order passed by the Learned Election Commission is mentioned 02.04.2001 instead of 02.04.2011.
2. QUESTIONS OF LAW

The following substantial questions of law of public importance arise for consideration of this Hon'ble Court:-

 - A. Whether under section 10A of the Representation of People Act 1951 the Learned Election Commission of India has jurisdiction to conduct an enquiry to determine whether the return of Election expenses maintained and lodged by the Petitioner, a candidate in Election, are true or false?
 - B. Whether the Hon'ble High Court erred in law while upholding the decision of the Commission and conferring upon the Commission the Jurisdiction to go into falsity of accounts when such a power is solely vested with the Hon'ble High Court?

- C. Whether the Learned Election Commission has the jurisdiction to conduct an enquiry under section 10A of the Act even after the District Election Officer has certified that the provisions of the Act have been complied with?
- D. Whether the Hon'ble High Court was correct in law in holding the Decision of *L.R. Shivaramagowda v. T.M. Chandrashekar* as a binding precedent while at the same time disregarding the decision of a larger bench in *Sucheta Kriplani v. Shri S.S. Dulat* solely on the basis that there has been a change in the law due to amendment in the Act, even though the wordings of the relevant provisions of the law remain the same?
- E. Whether the term "manner" and "form" as used in section 10A of the Act a question of form or substance?
- F. Whether violation of section 77(1) and 77(2) of the Act is covered under section 100 of the Act?
- G. Whether there can be multiplicity and/or overlapping of jurisdiction in relation to the issue of filing of false accounts, under section 10A by the Learned Election Commission as well as under section 100 by the Hon'ble High Court under the Representation of People Act 1951?
- H. Whether the enquiry contemplated under Rule 89 of the Conduct Of Election Rule 1961 (The Rules 1961) and the report to be submitted by District Election Officer a time-bound procedure?
- I. Whether section 10A of the Representation of People Act 1951 provides for an extension of enquiry under Rule 89 of the Rules 1961 after the

enquiry under the said rule is over and the District Election Officer has given its report to the Learned Election Commission?

- J. Whether the Learned Election Commission was correct in going beyond the scheme of Rule 89 in re-conducting an enquiry that was already conducted by the District Election Officer?
- K. Whether a Judgment of the Apex Court, which hasn't taken into consideration an earlier judgment of a larger bench of the Apex Court on the same subject matter, is a binding precedent?
- L. Whether powers conferred to Learned Election Commission under section 10A of the Representation of People Act 1951 is ultra vires to the Constitution of India read with Part VI of the Representation of People Act 1951 which confers powers to High Court to set aside the election of an elected Candidate?

3. DECLARATION IN TERMS OF RULE 4(2)

The Petitioner states that no other Petition seeking Special Leave to Appeal has been filed by him against the impugned judgment and order dated 30.9.2011 passed by the Hon'ble High Court of Delhi at New Delhi.

4. DECLARATION IN TERMS OF RULE 6

The Annexures (P-1 to P-12) produced along with the Special Leave Petition are true copies of the respective original 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

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The leave to appeal is sought for *inter alia* on the following grounds, which are set out without prejudice to each other:-

- A. The Learned Election Commission has no jurisdiction to decide a complaint under Section 10 A of the Representation of the People Act 1951 (hereinafter referred to as the "Act") where the allegation raised and placed in issue is the falsity or correctness of a filed return. To the best of Petitioner's knowledge, no enquiry has ever been conducted in the History of independent India by the Learned Election Commission under section 10A of the 1951 Act to determine whether the accounts filed by an elected candidate is true or false prior to 2009. Moreover, in cases where the allegation is in pith and substance (like in the present case) about an alleged corrupt practice or violation of any provision of the Act then the jurisdiction to hear such an allegation lies exclusively with the Hon'ble High Court under section 80A and section 100 of the Act. No jurisdiction is conferred to the Learned Election Commission. Section 10A of the Act should be read with Section 78 of the Act. Section 10 A reads as:

"10A. Disqualification for failure to lodge account of election expenses.

If the Election Commission is satisfied that a person-

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

(b) has no good reason or justification for the failure,

the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order."

- B. The Hon'ble High Court further erred in law by not considering that Section 10A and Section 78 of the Act are procedural in nature. If the allegation that an elected candidate has incurred or authorised expenditure in excess of what is prescribed under section 77 of the Act and or has filed false accounts, can be enquired into by the Learned Election Commission pursuant to Sec.10A of the Act, then this would create a by-pass route to the mandatory requirements of section 80(A) of the Act which requires each Respondents to approach the Hon'ble High Court and satisfy certain mandatory requirements before filing the Election Petition.
- C. It is submitted that the Hon'ble High Court has been granted power under Article 329 (b) of the Constitution of India read with section 80 and 80A of the Representation of People Act 1951, to look into matters relating to election petitions.
- D. It is thus very clear that both as per Constitution and as per Representation of People Act 1951 any matter and/or issue relating to elections shall be called into question only through an Election Petition which shall be solely entertained by the Hon'ble High Court and not by Learned Election Commission. Respondents have played a mischief of filing a complaint before the Learned Election Commission which raises the same allegation of "paid news" made in the Election petition filed by the Respondent no.1 which is still pending before the Hon'ble High court of Bombay at Aurangabad bench. Only the Hon'ble High Court has jurisdiction to go into the issue of whether accounts filed by an elected candidate are true or false as filing of false accounts which materially affects the election is a violation of Section 100 of the Act.

- E. Section 10A of the 1951 Act does not give the Learned Election Commission a power to adjudicate. The powers contemplated are non-adjudicatory in nature. It only gives the Learned Election Commission power to declare a candidate disqualified if the candidate has failed to lodge his accounts in the manner required by or under this Act and has no reason or justification for the same. As per section 10A read with section 78 of the 1951 Act, it is very clear that Learned Election Commission has jurisdiction to declare a candidate disqualified if the District Election Officer after due enquiry reports that the accounts have not been lodged within the time and manner required by the Act.
- F. The complaint is not maintainable under section 10(A) of the Act. There are two essential ingredients to Sec. 10(A) of the Act. The Section requires that the Learned Election Commission should be satisfied (i) that the candidate has failed to lodge the account of Election expenses within the time and in the manner required by or under the Act and (ii) has no good reason or justification for the failure. The District Election Officer has already confirmed that account of Election expenses were lodged in a manner as required under the Act.
- G. The Hon'ble High Court further overlooked the ultra vires encroachment by the Learned Election Commission under section 10A of the 1951 Act into the powers of the High Court. As per the Constitution of India and as per Part VI of the 1951 Act only a High Court has the jurisdiction to look into electoral matters. If the Learned Election Commission does so, then the same shall be violative of the Constitution as well as the 1951 Act itself. Thus if Section 10A is construed to provide the Commission

adjudicatory powers to enquire into whether an elected candidate has filed true or false accounts then such a provision is ultra vires the Constitution and is in further Conflict with the 1951 Act as well.

- H. The Hon'ble Delhi High Court further erred in law when it dismissed the Writ Petition as by doing so it affirmed creation of multiple and overlapping jurisdictions to conduct enquiry in relation to lodging of accounts. Section 100 gives Hon'ble High Court the jurisdiction to entertain issues in relation to falsity of accounts while section 10A read with section 78 of the Act and Rule 89 of the Rules, is very clear that the Learned Election Commission has the power to act on the basis of the 'Report' submitted to it by the District Election officer, who shall be the authority to ensure that the accounts lodged are within time and in the manner required under the Act. The Learned Election Commission does not have authority to extend the enquiry contemplated under Rule 89 read with section 78 of the Act.
- I. The power conferred under section 10A is very limited in nature. It just concerns itself with the fact whether the accounts were lodged and whether there were any irregularities of such a nature for example incorrect format, omission to mention dates etc. as required by the rules. Also, as per the report of the District Election Officer the Petitioner has lodged its accounts in the manner required by law which was totally disregarded and ignored by both the Commission and the Hon'ble High Court of Delhi.
- J. In *Sucheta Kriplani Vs. S.S. Dulat* [AIR 1955 S.C.758] The Hon'ble Supreme Court stated:

"12. That places the matter beyond doubt. The trial of an Election petition is conducted by an Election Tribunal and this section makes it incumbent on the Tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission. The duty of the Election Commission is merely to decide under Rule 114(4) whether any candidate has, among other things, "failed to lodge the return of Election expenses in the manner required by the Act and these rules".

13. It is a question of form and not of substance. If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other document by some other person and the charges so preferred will be enquired into by the Tribunal.

14. If the return is not in proper form, disqualification ensues but the Election Commission is invested with the power to remove the disqualification under Rule 114(6). If it does, the position becomes the same as it would have been had the Election Commission decided that the form was proper in the first instance. That would still leave the question of falsity for determination by the Tribunal in cases where the issue is properly raised."

(Emphasis added)

K. The Hon'ble Delhi High Court erred in ignoring the decision merely because the Representations of People's Act has been amended. It is submitted that such ignorance is erroneous in law because Rule 114(4) made under the erstwhile Act is similarly worded as Sec. 10(A). Both the old Rule 114(4) and Sec. 10(A) catch "failure to lodge" the return of Election expenses in the manner required by the Act.

- L. The table below makes it very clear that the essence and substance of the law was same both pre and post amendment and as such the contention that the Case of *Sucheta Kriplani* is not applicable solely because there has been an amendment in the Act is untenable.

<u>Statutory provision prior to the amendments</u>	<u>Statutory provision after the amendments</u>
124. Minor Corrupt Practices: The following shall also be deemed to be corrupt practices for the purposes of this Act 124(4). The making of any return of Election expenses which is false in any material particular or the making of the declaration verifying any such return.	100. Grounds for declaring Elections to be void: 100(1). Subject to the provisions of Sub section 2, if the High Court is, of the opinion 100(1)(d). That the result of the Elections, insofar as it concerned a returned candidate has been materially affected
100. Grounds for declaring Election to be void: 100(2)(a). That the Election of a returned candidate has been procured or induced. Or the result of the Elections has been materially effected, by any corrupt or illegal practice.	100(1)(d)(iv). By any non compliance with the provisions of the constitution or of this Act or of any rules or orders made under this Act

- M. It is very clear that in both the scenarios i.e. pre amendment as well as post amendment submission of false accounts would set aside the Election if it "materially affected" the results of the Election. In both the cases the power to set aside the Election rests with the Hon'ble High

Court only and in no case does it rest with Learned Election Commission.

- N. The Hon'ble High Court of Delhi has further erroneously assumed that under section 10A the Commission has power to deal with violations of section 77(1) &(2), disregarding the clear mandate of law given in section 100 of the Act that violations of section 77(1) &(2) which materially affects the results of the Election shall be dealt exclusively by Hon'ble High Court and not the Learned Election Commission.
- O. The Hon'ble High Court ignored the decision of larger bench of Hon'ble Supreme Court in the case of *Sucheta Kriplani* and referred and relied upon the decision of a smaller bench in *L.R. Shivaramagowda*. The Hon'ble High Court further ignored the fact that the decision of *L.R. Shivaramagowda* is per incurium to the extent that it had not even considered or referred to the earlier decision of *Sucheta Kriplani*.
- P. The Hon'ble High Court of Delhi also erred in law by overlooking the multiplicity of proceedings that the Respondents have initiated. The Hon'ble High Court of Bombay is considering the matter titled as *Dr. Madhavrao B. Kinhalkar V/s A.S. Chavan and Others*, being Election petition No. 11/2009 as one of the grounds canvassed before the Hon'ble High Court is challenge to the return of Election expenses of the Petitioner on the grounds of alleged excess expenditure. Thus, the question regarding the validity of the Petitioner's return of Election expenses is sub-judice before the Hon'ble High Court of Bombay at Aurangabad bench.

6. GROUND FOR INTERIM RELIEF:-

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- (1) The Petitioner craves leave of this Hon'ble Court to refer to the averments, statements and submissions made in the accompanying Petition for Special Leave to Appeal at the time of hearing of this application, the same are not being repeated herein for the sake of brevity.
- (2) The Petitioner has been advised to state that the Petitioner has prime facie good case in his favour and balance of convenience also lies in its favour. The Petitioner will suffer irreparable loss and injury, if operation of impugned order is not stayed.

7. MAIN PRAYER:-

It is, therefore, most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

- a) Grant Special Leave to Appeal to the Petitioner against the Impugned Final Judgment and Order dated 30.9.2011 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (Civil) No. 2511 of 2011;
- b) Pass such other and further order (s) as the Hon'ble Court deems fit and proper in the interest of justice and in the facts and circumstances of the present case.

8. PRAYER FOR INTERIM RELIEF :-

It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be graciously pleased to:-

- a) Grant ad-interim ex-parte stay against the operation of the Impugned Final Judgment and Order dated 30.9.2011 passed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (Civil) No. 2511 of 2011;
- b) Grant ad-interim ex-parte injunction in favour of the Petitioner staying any further proceedings before the Learned Election Commission;
- c) Pass such other and further order (s) as the Hon'ble Court deems fit and proper in the interest of justice and in the facts and circumstances of the present case.

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

DRAWN BY:-
Mr. Abhimanyu Bhandari &
Mr. Samanvya Dhar Dwivedi
Advocates

FILED BY:-

Date of Drafting: 17.10.2011.
Date of Filing: 21.10.2011.
Place: New Delhi.

(NAVEEN KUMAR)
Advocate-on-Record
For the Petitioner

32

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

S.L.P. (C) NO.

OF 2011

IN THE MATTER OF:-

Ashok Shankarrao Chavan

...Petitioner

Versus

Dr. Madhavrao Kinhalkar and others

...Respondents

C E R T I F I C A T E

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal/Commission whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out the grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of instructions given by the Petitioner(s)/Authorised person by the Petitioner, whose affidavit is filed in support of the Special Leave Petition.

FILED BY:-

Date of Filing: 21st October, 2011.
Place: New Delhi.

(NAVEEN KUMAR)
Advocate-on-Record
For the Petitioner

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

33

SPECIAL LEAVE PETITION (CIVIL) NO.

OF 2011

IN THE MATTER OF:

Ashok Shankarrao Chavan

...Petitioner

Versus

Madhavrao Kinhalkar and others

...Respondents

AFFIDAVIT

Affidavit of Sh. Ashok Shankarrao Chavan, S/o Sh. Shankarrao Chavan, aged about 52 years, R/o 1-2-197, Shivaji Nagar, District Nanded, Maharashtra, presently at New Delhi, do hereby solemnly affirm and state as under :-

1. I am the Petitioner in the abovementioned matter. I am well conversant with the facts and circumstances of the present matter and therefore competent to swear the present affidavit.
2. The contents and averments made in accompanying Special Leave Petition para 1 to 8 (pages 1 to 31), as well as Synopsis and List of Dates (pages B to K) alongwith the SLP have been prepared under my instructions. I have gone through the same, and I say that the same are true and correct to the best of my knowledge and belief.
3. The Annexures annexed with the accompanying Special Leave Petition are true copies of their respective originals.


DEPONENT

VERIFICATION :

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Verified at New Delhi on this the 19th day of October, 2011,
that the contents of this affidavit are true and correct to the best
of my knowledge as derived from the records of this case and no
part of it is false and nothing material has been concealed
therefrom.

Depono

DEPONENT

ANNEXURE XLIV
(CHAPTER XVII, PARA -11, 1)
(REPORT OF ELECTION COMMISSION OF INDIA)
LODGING OF ELECTION EXPENSES ACCOUNTS
ELECTION TO THE MAHARASHTRA LEGISLATIVE ASSEMBLY

ANNEXURE-P/

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Maharashtra Legislative Assembly
Serial No. and Name of Constituency 85 BHOKAR
Date of declaration of result 22/10/2009
Last date for lodging of Accounts of election expenses: 21/11/2009
Name of elected candidate: SHRI ASHOK SHANKARRAO CHAVAN

Sr. No.	Name (Party candidate) and address of contesting Candidate	Whether Accounts have been lodged	Date of lodging of account	Whether lodged in time	Whether lodged in the manner required by law	If not a brief statement of defects noticed	Total expense Incurred as per account filed	Remarks
01	02	03	04	05	06	07	08	09
01.	Ashok Shankarrao Chavan (IndianNational Congress) Shivaji Nagar, Nanded	Yes	17.11.2009	Yes	Yes	Nil	685192	-

02.	Galbhare Bapurao (Bahujan Samaj Party) H.No.1-10-08, Krushnai Niwas, Hingoli Gate Town Market Area, Nanded	Yes	13.11.2009	Yes	Yes	Nil	244297	-
03.	Kshinangar Bhimrao Mariba (Shivsena) H.No.107, Kolha Tq. Mudkhed Dist. Nanded	Yes	16.11.2009	Yes	Yes	Nil	299885	-
04.	Hulgunge Kishanrao Vihoba (Swatantra Bharat Pakksha) At. Yelegaon PO, Moghali, Tq. Bhokar Dist. Nanded	Yes	07.11.2009	Yes	Yes	Nil	97726	-
05.	Kinhalkar Dr. Madhavrao Bhulangrao (Independent) Manlula Nagar, Bhokar Tq. Bhaokar Dist., Nanded	Yes	18.11.2009	Yes	Yes	Nil	734209	-
06.	Jadhav Vishnu Maroti (Independent) Rama Mata Ambedkar Nagar, Shivaji Nagar, Nanded Tq. Dist. Nanded	Yes	06.11.2009	Yes	Yes	Nil	3220	-

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07.	Narayan Suryawanshi (Independent) H. No. 11-10.718 Osman Nagar Road, J-3, Hudco, Nanded - 431603	Yes	05.11.2009	Yes	Yes	Nil	17813	-
08.	Pathan Jafar Ali Khar (Independent) Ali, H. No. 19-4-1064, Nr. Nagar Palika School, Madina Nagar, Nanded	Yes	18.11.2009	Yes	Yes	Nil	5200	-
09.	Patil Vijay Kumaran Bhriputappa (Independent) Usha Heights Usha Nagar, Malegaon Road, Turudar Kh. Nanded	Yes	17.11.2009	Yes	Yes	Nil	20406	-
10.	Kshirsagar Balaji Digambar (Independent) At Belsar, Post Loan, Tq. Ardhapur Dist. Nanded	Yes	16.11.2009	Yes	Yes	Nil	6475	-

SEAL

Place: Nanded
Date: 24.11.2009

TRUE COPY

Sd/-
Collector & Dist. Election Officer,
Nanded

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ANNEXURE-P 2

Address:

Dr. Madhavrao Kinhalkar
Ex. Home Minister (M.S.)
Independent Candidate 85, Bhokar
Constituency (M.S. A.E. 2009)
"Safalya" Niwas, Warnannagar,
Purna Road, Nanded,

Date: 02.12.2009

The

Chief Election Commissioner
Election Commission of India
Nirvachan Sadan, Ashoka Road,
New Delhi — 110001

[Through: — The District Election Officer, Nanded, Maharashtra
State]

Sub: Regarding submission of false information about the
election expenditure, by Mr. Ashok Shankarrao Chavan
the candidate of Indian National congress party, in
Maharashtra State assembly elections 2009.

R/Sir,

I the undersigned Dr. Madhav Kinhalkar was one of the
candidates, contesting the, election from 85, Bhokar
constituency, for the state assembly elections 2009. Mr.
Ashok Chavan was also one of the candidate from the same
constituency, who was declared as the elected candidate, by
the appropriate authorities, on 22nd Oct 2009.

I have gone through the information about the election
expenses of Mr. Ashok Chavan, submitted to the Dist.

Election Officer, Nanded, and found it very much disproportionate.

After the model code of conduct for the state assembly election 2009 came in to existence, the media has given unprecedented coverage to Mr. Ashok Chavan & his leadership qualities. The media has praised him like a legend.

This media coverage is simulating advertisements in actual sense. Any contesting candidate, having such a profound media coverage, during the election period (Which in real sense is expected to follow the model code of conduct), is just like a breach in the code of conduct.

To my surprise, the election commission has ignored this major event. We as citizens of India & myself as a Contesting candidate from Bhokar constituency, expect that the election commission should be vigilant & keen for such breach in the model code of conduct but unfortunately nothing appeared to the surface.

'Dainik Lokmat', which has the highest circulation figures in the country & 'Dainik Pudhari' & 'Maharashtra times', have given unprecedented coverage to Mr. Ashok Chavan & his qualities as a leader, which nearly accounts upto 154 pages. Of the newspapers!

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The vigilant & renowned press authority Mr. P.Sainath has raised questions about this profound media coverage about Mr. Chavan, in the Daily "The Hindu" but still the election commission is surprisingly keeping silence. The silence of the election commission is highly unexplainable & confusing.

I hope that it's the moral duty of the election commission to look into this matter with almost seriousness & the election commission should reach up to the expectations of the public.

The immediate action from the election commission is mandatory at this moment of time.

If the enquiry of this important & serious matter reveals that, such profound media coverage should be accounted as the election expenditure of the contesting candidate Mr. Ashok Chavan, then the expenditure report submitted by him, automatically becomes untrue. This goes without saying that in that situation, the election gets disqualified!

I hope that election commission exists for public interest & for lawful events during elections.

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People expect justice, from the election commission.
Election commission should be serious enough to look into
this matter very seriously, & act immediately accordingly.

Such unprecedented media coverage definitely affects
the election results & hence as a contesting candidate from
the same constituency, I myself strongly feel that the election
was not held in a fair environment.

This media coverage is highly questionable, surprising
and illegal too!

I here with request the appropriate authorities to
keenly look in to this burning issue & take appropriate action
as per the law of land.

Yours sincerely

Sd/-
Dr. Madhav Kinhalkar
Independent Candidate
85, Bhokar Constituency
(M.S.A.E. 2009)

TRUE COPY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ELECTION PETITION NO.11 OF 2009

DISTRICT: NANDED

Dr. Madhavrao
S/o. Bhujangrao Kinhalkar,
Age: 51 years, Occu.: Medical Practitioner
R/o: 'Saphalya', Waman Nagar,
Puma Road, Nanded, Taluka and
District: Nanded

... Petitioner

-Versus-

- 1) Ashok
S/o Shailkarrao Chavan,
Age: 50 years, The Hon'ble Chief
Minister of the State of Maharashtra,
R/o: Shivaji Nagar, Nanded,
Taluka and District: Nanded,
Presently residing at 'Varsha',
Malbar Hills, Mumbai.
- 2) The Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi- 110 001,
Through its Secretary.
- 3) The Returning Officer,
85, Bhokar Legislative Assembly
Constituency and District Collector,
Nanded, having his office at
Collectorate, Nanded Taluka
and District: Nanded.
- 4) Bapurao
S/o Nagorao Gajbhare,
Age: 41 years, R/o: Krushnai Niwas,
Hingoli Gate, Nanded,
Taluka and District: Nanded.

- 5) Bhimrao
S/o Mariba Kshirsagar,
Age: 40 years, R/o: Village Kolha,
Taluka: Mudkhed,
District: Nanded.
- 6) Kishanrao
S/o Vithoba Hulgunde,
Age: 60 years,
R/o: Village Elegaoon,
Taluka: Bhokar,
District: Nanded.
- 7) Vishnu
S/o Maroi Jadhav,
Age: 36 years,
R/o: Rama Mata Ambedkar Nagar,
Nanded, Taluka and
District: Nanded
- 8) Narayan Suryawanshi,
Age: 64 years,
R/o: House No.11-10-716,
HUDCO, Nanded,
Taluka and District: Nanded.
- 9) Pathan Jafar Ali Khan,
Age: 64 years,
R/o: House No. 9-4-1064,
Near Municipal School,
Madina Nagar, Nanded,
Taluka and District: Nanded.
- 10) Vijaykumar
S/o Shripatappa Patil,
Age: 58 years,
R/o: Usha Heights, Usha Nagar,
Malegaon Road, Nanded,
Taluka and District: Nanded.
- 11) Balaji
S/o. Digambar Kshiragar,
Age: 40 years,
R/o: At village Belsar,
Post: Lon, Taluka: Ardapur,
District: Nanded

... Respondents

PETITION UNDER SECTION 80 OF THE REPRESENTATION OF
THE PEOPLE ACT, 1951

THE PETITIONER NAMED ABOVE MOST HUMBLY SUBMITS
AS UNDER:

- 1) That, the petitioner is approaching this Hon'ble High Court in order to challenge the result of the Petition election to 85-Bhokar Legislative Assembly Constituency (LAC) in the recently held General Elections to the Legislative Assembly of the State of Maharashtra. The results were declared on 22nd of October, 2009 and the Respondent No.1 namely Ashok s/o Shankarrao Chavan of the Indian National Congress was declared as elected.
- 2) That, the petitioner is resident of Nanded and is the citizen of India. The petitioner belongs to a reputed family and is son of the renowned freedom fighter and social worker and has strong roots and status in the society. The petitioner is a former member of Maharashtra. Legislative Assembly and was Minister of State and has educational qualifications of M.B.B.S., having post graduated in Medical Science and is a practicing Doctor. The petitioner is a registered Medical Practitioner in the city of Nanded for the more than 20 years. The petitioner is filing this Election Petition and challenging the validity of Electronic Voting Machines (for short, 'EVM').

- 3) That the Respondent No.2/ The Election Commission of India is the appropriate and competent authority for conducting of all the elections to Parliament and the Legislature of every State and of elections to the offices of President and Vice President held under the Constitution. The Superintendents, direction and control of the electoral roles for and the conduction of all elections vests in a Commissioner referred to as the Election Commission. The Respondent No.2/ The Election Commission of India has conducted elections for the Maharashtra Legislative Assembly in the month of October 2009 and the Respondent No.3/ The Returning Officer, is the Election Returning Officer for 85-Bhokar LAO. In the said election for the purposes of casting vote, the Respondent No.3/ The Returning Officer has used EVM and it was not by way of the conventional voting system of ballot papers.
- 4) That, the petitioner had filled-in the Nomination form as an independent candidate and contested the elections for member of Maharashtra Legislative Assembly from the above-said 85-Bhokar LAO, The Respondent Nos.1 and 4 to 11 had also filed their respective nomination forms to contest the above- said elections from the afore-said constituency. As far as Respondent No.1 is concerned, he was official candidate of Indian National Congress, the Respondent No.2/ The Election Commission of India was an official candidate of Bahujan

Samaj Party, the Respondent No. 4 was official candidate of Shivsena, the Respondent No.5 was official candidate of Swantantra Bharat Paksha; while the respondent of Respondent Nos. i.e. 7 to 11 contested the above-said election as independent candidates.

- 5) That, the petitioner had won elections on two earlier occasions from the same Bhokar constituency with handsome margin and on, two occasions (i.e. elections which took place in 2004 and now in 2009), had lost. The petitioner humbly submits that he is a active social and political worker since long and his social work in the above-said Bhokar LAC is of wider acclaim and, therefore, he has number of loyal supporters. In the above-said background, the petitioner had a strong hope to win the elections this time as was very much confident to get majority of votes due to his shear hard work and contribution to social and political life.
- 6) That, the petitioner says and submits that the Election Commission announced the programme of Maharashtra Legislative Assembly Elections- 2009. As per the said programme, the election nomination notification was issued on 18.09.2009. The last date for submitting nomination form, was 25.09.2009. The last date for withdrawal of nomination form was 29.09.2009 till 3:00 p.m. The petitioner submits that the date for polling was fixed on 13.10.2009 from 7:00

a.m. to 5:00 p.m. and the date for declaration of results was fixed on 22.10.2009. On the said date after completion of counting, the Respondent No.1 came to be declared as elected from the afore-said 85-Bhokar LAO. The true copy of the declaration in above-regard at Bhokar on 22.10.2009 by the Respondent No.3/ The Returning Officer alongwith copy of Return of Election and copy of Final Result Sheet as issued from the office of Respondent No3/ The Returning Officer is annexed herewith and marked as ANNEXURE- 'A' collectively.

- 7) That, the petitioner was very much shocked and surprised to know his defeat with this much being margin as according to the official counting results, the Respondent No.1 has secured 79.65% of actual votes while the petitioner could secure only 8.79% of actual votes. It is further humbly submitted that the Respondent No.4 seems to have secured 4.10 % and the Respondent No.5 4.20% of actual votes, while the remaining Respondent Nos.6 to 11 could get jointly 3.16% of votes only. This shows that the petitioner came to be defeated by Respondent No.1 by a margin of more than one lakh votes and which was in fact impossible thing to happen in this election as there are several areas in Bhokar LAC, where the performance of petitioner was estimated by independent experts to be extremely good. Apart from this, there was a strong ante-incumbency working against the Respondent No.1 in the entire constituency. In fact, there

was virtually a wave against the Respondent No.1 who did not even hold as many election rallies as compared to the petitioner and however, surprisingly, could manage to get polled highest number of votes by using his official position and office. In the results in question, the petitioner has been polled extremely low percentage of votes in the strong-hold areas, while the Respondent No.1 is being polled exceptionally high votes, which is shocking. The returned candidate i.e. the Respondent No.1 received 1,20,849 votes, while the petitioner got only 13,346 votes and who was at No.2 and, as such, the margin was more than one lakh.

- 8) That, after getting the information and all possible details, the petitioner could see the votes polled in favour of Respondent No.1 at 260 booths in Bhokar LAC. The percentagewise votes at the respective booths is as under:

- 1) At 42 booths- 90 to 99.9% of votes in favour of Respondent No.1
- 2) At 171 booths- 70 to 90% of votes in favour of Respondent No.
3. At 41 booths- 52 to 70% of votes in favour of Respondent No.1

From the above-said data, it can be very seen and observed that out of 260 booths from Bhokar LAC, the

Respondent No. 1 could get 70 to 99.99% of votes at 213 booths. In the humble opinion of the petitioner, if the electoral history of Nanded district as a whole is considered for last 50 years, such percentage of votes to one candidate on so many booths at one time was impossible to be polled. It was more shocking for the petitioner as during the course of campaign, his actual experience and the actual polling and the results were definitely at great variance. And this according to the petitioner has been due to the fact that the EVMs could be rigged and tampered with, it is under these circumstances that the petitioner after careful study has submitted detailed representations to the office of Respondent No.3/ The Returning Officer on 24.10.2009 alongwith a copy of representation submitted by his election agent on 06.10.2009 to the office of Respondent No.2/ The Election Commission of India, wherein strong apprehensions were expressed about the manipulation in the EVMs by the Returning Officer to 85-Bhokar LAC. It would not be of place to mention here that the apprehensions of illegal and corrupt practices of Respondent No.1 with the help of favourable Presiding Officers and supporting staff for every polling booth were also conveyed. It is in this background that the office of Respondent No.3/ The Returning Officer informed the petitioner that his above- said application dated 24.10.2009 cannot be considered and hence came to be disposed of. The true copies of the above-referred Letter dated 24.10.2009 by

the petitioner to the office of Respondent No.3/ The Returning Officer' alongwith copy of Letter dated 06.10.2009 from his election agent to the office of Respondent No.2/ The Election Commission of India and further the copy of Letter dated 27.10.2009 to the petitioner from the office of Respondent No.3/ The Returning Officer are annexed herewith and marked as ANNEXURE - 'B' collectively.

- 9) That, in the said elections EVMs were used for polling of the votes in the humble submission of the petitioner, the EVMs are not tamper proof at all, Taking into the consideration of the possibility of tampering/manipulation, the Respondent No.2/ The Election Commission' of India has issued detailed guidelines to check the varsity of the machine at different stages during the election process. In fact, there is no method of checking/ verifying that internally the components of the machine are properly working and/or the same are not manipulated and/or tampered with. The internal testing of the machine is done by an employee of the manufacturing company. Therefore, if one is able to exert some influence on the said employee, then at that stage itself, the scope for manipulation can be inserted. It is significant to note that subsequent to this stage, there is no check on the internal components of the machine i.e. as to whether the same are proper or not, or if they are manipulated. The Respondent No.2/ The Election Commission of India was in fact required

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to issue a press note, on 08.08.2009 in regard with this subject of EVMs and this was of course in addition to its earlier circular dated 11.08.2008 to the Chief Electoral Officers of all the States and Union Territories in respect of additional transparency measures while using EVMs in the elections. The true copies of the above-said Press Note issued from the office of Respondent No.1/ The Election Commission of India dated 08.08.2009 and its earlier Circular dated 11.08.2009 are annexed herewith and marked as ANNEXURE -'C' collectively.

- 10) That, the non-observance of the rules and orders by the Respondent No.3/ The Returning Officer has materially affected the validity of the concerned election, which has been rendered liable to be set aside. There are several other effects/defaults committed by or at the instance of the Respondent No.1, which also render the entire election in bad in law and consequently liable to be interfered with. The petitioner humbly submits that he has been in public life since long and has been contesting elections since last more than 20 years and was a member of Maharashtra Legislative Assembly for two terms and also a Minister of State in the Government of Maharashtra. Even when the petitioner lost in the last election, the margin of loss was very slender. In fact, the electoral success of petitioner in the past demonstrates his popularity in and around Bhokar where he has his own

popular base and a very high social standing. This is primarily because the petitioner has always scrupulously followed high ethical standards in his public and social life. The petitioner has promoted various educational and social organizations engaged in the service of the society and always fought for the welfare of the poor and down trodden as well as the neglected and under privileged. Due to his unrelenting fight for the cause of the common masses, he has developed a very strong and wide popular base in Bhokar constituency. The petitioner humbly submits that he has a number of supporters who have loyally stood by him and voted for him at each successive election. There are several localities in the Bhokar LAO in which there is almost en-masse voting in favour of petitioner at each election and on the basis of these attributes, the he was very much confident of winning the recently held elections.

- 11) That, in the afore-said backdrop, the petitioner then could get the result of the election, it left him and his supporters completely stunned and shocked in as much as the petitioner received an extremely low percentage of vote. The petitioner submits that the votes polled by him were very low that even the strongest of his rivals would never imagine such negligible figure of the petitioner. It is submitted that the petitioner has received very few votes even in his strong holds, which is next to impossible. At the same time, the

Respondent No.1 who is the returned candidate has been polled exceptionally high votes even in areas where there had been a strong movement against his right from the grass route levels. Thus, all in one, the result of the election was extremely surprising and shocking. The disparity in the votes polled was even more shocking.

- 12) That, in the afore-said backdrop, it is further submitted that the petitioner had received information about the unreliability of the, EVMs used at the elections. The petitioner had strong apprehensions about the possibility of tampering with the EVM's. During the election process, prior to the date of voting, the EVMs were not properly kept by Respondent No.3/ The Returning Officer leaving huge scope for manipulation and tampering of EYMs. After the votes were polled and before the counting were held i.e. on 22.10.2009, in this time interregnum also, the EVMs which contained the votes recorded were not kept in "Strong Rooms" as required by law. Even after the elections were declared on 22.10.2009, the prescription of law as regards the after and security of the EVMs has not been followed by the Respondent No.3/ The Returning Officer. Apart from this, several other safe guards, for instance, conduct of mock poll etc. were not complied with by the Respondent No.3/ The Returning Officer thereby leaving a huge scope for doubt that 11 this was done with deliberate and malafide intention to assist a particular

candidate in manipulating the EVMs. There are other surrounding circumstances which support the above submission of the petitioner and which are detailed in the subsequent paragraphs.

- 13) That, on the basis of the information gathered by the petitioner, he has says that, in so far as the EVMs are concerned, there is every possibility that these machines can be rigged and/or manipulated and/or tampered with and if it is done by skill-full hand, it can be within shortest possible time to taper with the EVMs. Moreover, there are several stages during the election process when these EVMs are open to tampering, especially in absence sufficient safeguards being observed by the Returning Officer. All though the law provides for these safeguards, but in actual practice none have been followed. In other words, instructions regarding safeguards are followed more in breach that in observance, as has happened in the instance case. The petitioner has studied this aspect and collected certain data from the newspapers as well as on internet and which substantiates and fortifies his contention regarding tampering of EVMs. The true copies of the above-referred relevant data as collected by the petitioner through his studies and on internet are annexed herewith and marked as ANNEXURE -'D' collectively.

- 14) That, from the above-referred data and knowledge and study as acquired by the petitioner through various modes, he is of the humble opinion that even by using Microsoft windows on a Compac P.C., and EVM could be simulated and programmed to add votes to a certain candidate, no matter who has been voted. The petitioner humbly submits that there are inherent risks in employing EVMs at the elections and that the machines could be programmed in such a manner that even if a voter punches the candidate of his choice, the vote would keep on adding in favour of the programmed winner. The petitioner, further humbly submits that it is possible to rig the EVM in this fashion even by using a remote control. Moreover the EVMs which are manufactured could contain several flaws including faulty logic, incorrect algorithms, erroneous data flows, errors in circuit designs, mistakes in the software code, mistakes or malicious backdoors in data bases and so on. According to petitioner, there are several possibilities of tampering with EVMs as even the software module of the EVM could be written in a manner which could pass all trials and manipulate the results of the actual voting. The petitioner further humbly submits that the EVM could be programmed in such a fashion so that at a specific end of hours of polling, it would transfer more than 45% of the votes of five lowest candidates to a favoured candidate. There is further possibility that by using electro-magnetic pulse generator

near an EVM, its memory could also be erased. In humble opinion of Petitions, petitioner, all electronic circuits are susceptible to electro-magnetic interference and as such, even in the "Strong Room", the EVMs are not safe, since an expert who knows the resonance frequency of the circuit could remotely send signals from a distance away. Furthermore, it is possible in the natural course of handling of the EVMs and their transportation from one place to another that its components could be reset. It has, therefore, been suggested that all EVMs should have paper backup. The petitioner himself has scientifically studied this aspect i.e. formulas and the commands given to computer and could prove the same. This scientific study has been summarized and also been put in a tabular chart by the petitioner to substantiate his genuine and legitimate grievance. The petitioner on his personal research could send all the above-said study in summarized form alongwith tabular chart to all the concerned and to media, but in vain. The true copies of the above-referred scientific summary in concise form alongwith tabular chart are annexed herewith and marked as ANNEXURE- 'E' collectively.

- 15) That, the petitioner humbly points out that even in the United States of America, which has much more, advanced, educated and sophisticated population' than ours, there is move against use of EVMs without safeguards like 'Paper

Trail'. Concerns have been expressed that these EVMs are unreliable and vulnerable to tampering. Several instances have been detected when the machine manufacturing company has come under a shadow of doubt due to fraudulent activity vis-à-vis the machine. Considering the strong possibilities of tampering of the machines and non-reliability thereof, there is an emphasis on what is known as 'Paper Trail'. It is opined that the provision for 'Paper Trail' acts as a check against possible tampering/manipulation of EVMs. Thus, it is absolutely clear that the EVMs are open to manipulation and/or tampering. Consequently, the claim of the manufacturers of the machine as also that of the Respondent No.2/ The Election Commission of India that the machine are tamper proof is as hollow as anything could be.

- 16) That, the petitioner from his all possible studies and the discussions and expert opinion from various persons in this sphere of science could get a positive information that the EVMs can very easily be opened and that the seals thereon can easily be duplicated and/or manipulated and, as such, the EVMs are not tamper proof at all. The petitioner humbly submits that the machine being an electronic gadget, it is open to manipulation in the same manner as any other electronic gadget and all this makes it more than clear that the EVMs are not full proof at all.

- 17) That, the petitioner humbly submits that it is only taking into consideration that the possibility of tampering/manipulation that the Respondent No.2/ The Election Commission of India seems to have issued detailed guidelines to check the varsity of the machine at different stages during the election process. At the outset, the petitioner would submit that the safeguards so enumerated by Respondent No.2/ The Election Commission of India are all external and there is no method of checking/verifying that internally the components of the machine are properly working and/or the same are not manipulated and/or tampered with. the petitioner humbly submits that subsequent to internal testing of the machine by an employee of the manufacturing company, there is no check on the internal components of the machine -i.e. as to whether the same are proper or not or if they are manipulated. It may be argued that during the election process at several stages, demonstration of the machines is taken and if there is some tampering as aforesaid, then it would be detected easily. However, the petitioner is of the strong opinion on the basis of his research and study that an EVM could be programmed to accurate record votes for three hours and it would be then instructed to assign 70% of all subsequent votes cast to each ever candidate was leading at the end of first three hours, irrespective of whichever button later voter's press. The petitioner humbly submits that the according to his opinion since public demonstration shall last

less than three hours, a manipulated/tampered EVM would easily pass such test. Similarly, the machine could be programmed to assign all votes after the first few ones to a particular candidate and as per the knowledge of petitioner, it has so happened in a local election in the United States of America. In the light of all this it is clear that the safeguards are easier to breach than they are enforced by the Respondent No.2/ The Election Commission of India. Consequently, a lot of scope is left for manipulation and tampering. To fortify and to substantiate the contentions raised by the petitioner in this regard i.e. scope of manipulation and tampering with the EVMs, the petitioner would be in a position to demonstrate the same through the assistance of technical experts.

- 18) That, it is further submitted that the Respondent No.2/ The Election Commission of India has issued guidelines and has framed statutory rules and provided for checking of machines at different stages during the election process. The initial stage is the preparation of the EVMs by the Returning Officers, the next stage is that of mock poll, and then of conducting trials even during the course of actual polling. It is apparent that, all these provisions are made so as to minimize the possibility of tampering and atleast to bring about a sense of fairness and transparency in the entire process. In fact, from the tenor of the provisions, it is evident

that the same are mandatory in nature. However, in the instant case, the Respondent No.2/ The Election Commission of India Returning Officer miserably failed to observe the procedure as required by law. First of all, right from day one, the machines were not kept properly in safe custody as required by the relevant provisions. However, the Rooms in which the machines were kept by the Respondent No.3/ The Returning Officer were 'Strong Rooms' only for the namesake. Furthermore, the mock-poll was never conducted by Respondent No.2/ The Election Commission of India nor by any of the Presiding Officers as provided by the rules and regulations in this regard. Even the preparation of machines is not done in accordance with law. Although the law requires that the mock-poll should be conducted before the actual election starts, at none of the polling booths in the entire 85-Bhokar LAO, this was done. Thus, there is a clear breach of the statutory and mandatory provisions of law which has materially affected the purity and fairness of the election process. In other words, it has vitiated the entire process and therefore the election itself needs to be set aside.

- 19) That, the petitioner submits that the vulnerability of the EVMs to tampering and/or manipulation has always been of prime concern through out, the democracies 'where such machines have been employed during the elections. The emphasis is on securing the machines right from the stage of

their preparation till after the counting has been completed. The petitioner would like to state here that even in the instructions issued by the Respondent No.2/ The Election Commission of India to the Respondent No.3/ The Returning Officer and other concerned officers involved in the election process, several provisions have been made so as to secure the EVMs against the tampering/ manipulating. In the Hand Book for Returning Officers issued by the Election Commission of India in the year 2004, it is provided that each and every machine which is to be employed during the course of elections has to be thoroughly tested for its 100% error-free functioning at the time of poll. In Chapter XII of this Hand Book, it is clearly specified that the process of preparation of voting machine has to be done in the presence of candidates. A bare perusal of the said Hand Book will make it clear that all through out; the emphasis is on ensuring 100% error-free functioning of the machine at the time of poll. Thus, it is more than clear that a very vital and in fact mandatory requirement in law has not, been complied with by the Respondent No.3/ The Returning Officer.

- 20) That, the petitioner humbly submits that there is no competent authority independent of the machine manufacturing company to verify the reliability of the machines and for certification thereof as being tamper proof and as such, there is a huge scope for manipulation which

may result in a sophisticated high jacking of the vote, as has apparently happened in the present case at the instance of Respondent No.1 rendering the entire election process doubtful. The petitioner further submits that the security measures in respect of 'Strong Rooms' to be fully guarded at all times by a senior police officer and not below the rank of Dy.S.P. and that central police force should be used for such guard duty and that the doors of the 'Strong Rooms' supposed to have double lock and be kept under a seal have not been followed. No prior notice as mandated by law was given to the petitioner about the date and time of opening of the 'Strong Rooms, though clause 18.1 and 18.4 of the Hand Book requires Respondent No. 3 to issue such notice. This failure which is a clear violation of the statutory rules and guidelines, which rendered the election concerned liable to be set aside. Moreover, there is every possibility that the personnel of the machine manufacturing company may have acted under the influence of Respondent No.1 and at his instance and for his benefit; they could easily have programmed the machines in such a fashion so as to benefit Respondent No.1. In the present case, there are several indicators that the tampering of the machine has been done at this level at the instance of Respondent No.1 who is the returned candidate. The petitioner submits that the Respondent No.3/ The Returning Officer did not follow the mandatory rules and orders during the election process

which has materially affected the validity of election and the results are rendered liable to be set aside and this all is done with deliberate and malafide intention to assist Respondent No.1 in manipulating the EVMs;

- 21) That, in the humble submission of the petitioner, the manipulation of EVMs was apparently done at the instance of Respondent No.1/ returned candidate. The circumstances narrated hereinabove lead to no other conclusion. The testing of the EVMs used at the concerned elections by an independent body of experts is extremely important for arriving at a concrete conclusion in this regard. The petitioner humbly request this Hon'ble Court to direct such inspection/ testing of the EVMs by an independent body of experts. This may kindly be done at the threshold itself, so that the manipulation done by or at the instance of Respondent No.1 could be detected.
- 22) That, the Respondent No.1 through his statement of election expenditure has stated to have spent a mere Rs.5,379/- on newspaper advertisements and Rs.6,000/- on cable television advertisements. These figures are clearly at odds with the unprecedented media coverage the Respondent No.1 got during the election campaign. The petitioner has gathered more than 50 full newspaper pages, many of them in colour, focused exclusively on Respondent No.1, his leadership, his

party and government. These appeared in large newspapers including one ranking amongst India's highest circulation daily. However, they were not marked as advertisements. By his own account, the Respondent No.1 has spent less Rs.7,00,000/- on election campaign during the assembly polls when the spending limits imposed on contestants is Rs.10,00,000/-. Section 77 of the Representation of the People Act, 1951 (for short, 'the said Act'), stipulates that candidates must submit their campaign expenses accounts to the District. Election Officer within 30 days of the declaration of results apart from a signed statement and summary, the candidate must submit the accounts in the formal 'Register for maintenance of day-to-day accounts of election expenditures by contesting candidates'. The Respondent No.1 has in fact received astonishing media coverage during the campaign and the newspapers carrying those many full pages on him nowhere marked them as advertisement. In other words, this material ran as 'News' but in this case, it has been actually advertising for which the Respondent No.1 must have spent crores of rupees.

- 23) That, the Respondent No.1 has stated in his statement and summary of accounts that he placed six newspaper advertisements, which were in a minor daily 'Satyaprabha' in Nanded district. However, the flood of full pages on Respondent No.1 and his party, hailing this as the 'Era of

Ashok' and the 'Era of Development' ran in Marathi newspapers like Lokmat. As it was in fact advertising, it must have cost lakhs of rupees to Respondent No.1 as 'Lokmat' fourth largest daily in the country and top circulated one in Maharashtra (NRS-2006). The petitioner humbly submits that the huge mismatch between the accounts stated of Rs.5,379/- and dozens of full pages of news in national dailies, these were definitely 'Paid News' at the hands of the Respondent No.1 worth of crore of rupees. The petitioner therefore humbly submits that the above-said incurring or authorizing of expenditure is in contravention of Section 77 of the said Act and thus it is deemed to be a corrupt practice for the purposes of the said Act as comes within the purview of Section 123 Sub-Section 7 of the said Act. It is in the light of these circumstances that the petitioner has submitted detailed representations on 02.12.2009 to the respective offices of Respondent Nos.2 and 3 and requested to take necessary and appropriate action as per law. The true copy of the statement and summary of campaign expenses accounts of Respondent No.1 alongwith representations dated 02.12.2009 to the respective offices of Respondent Nos.2 and 3 are annexed herewith and marked as ANNEXURE - 'F' collectively.

- 24) That, in view of the afore-said, it is more than clear the concerned election is affected by large scale manipulations,

tampering of votes and hit by corrupt practice of Respondent No.1. At any rate it is clear that there is a total non-observance of the statutory provisions which are also mandatory in nature. It is further evident that the genuineness of the elections has been materially affected by the non-observance of the rules on the part of Respondent No.2/ The Election Commission of India. Since the entire election process has been vitiated, the results thereof are equally vitiated as well and therefore are required to be set aside. The petitioner is therefore, is approaching this Hon'ble High Court in its present jurisdiction and also prays for further direction to the Election Commission of India to introduce a more comprehensive and effective safeguards in the EVMs, as such, directions would be in the paramount interest of justice, equity and fair play.

- 25) That, the cause of action for filing the instance petition arose on 22.10.2009 when the Respondent No.1 was declared by the Respondent No.3/ The Returning Officer, The instant petition, is thus, within the period of limitation as prescribed by law.
- 26) That, the petitioner files documents as per list enclosed with the instant petition. The petitioner craves leave of this Hon'ble Court to refer to rely upon the said documents at the time of hearing of the instant petition. The petitioner further craves

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of this Hon'ble Court to file such other documents as may be found necessary during the course of trial of the instant petition.

- 27) That, the cause of action for filing the instant petition has arisen at Nanded i.e. within the jurisdiction of this Hon'ble High Court and therefore the instant petition is maintainable and triable by this Hon'ble Court.
- 28) That, the petitioner is depositing Rs.2,000/- (Rs. Two thousand only) towards security for the cost as required under Rule 25 of the Rules framed by the Hon'ble High Court of Judicature in regards to Election Petition under the Representation of People Act, 1951. The requisite court fees of Rs.500/- is being with this Election Petition.
- 29) That, the petitioner has not approached this Hon'ble High Court or any other Court including the Hon'ble Apex Court in the instant matter at an time hereinabove.

Hence this petition.

PRY A E R S

It is, therefore, most humbly prayed that this Hon'ble Court be kindly pleased to grant following reliefs.

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- A) Kindly hold and declare that the election of the Respondent No.1. — Ashok s/o Shankarrao Chavan from 85-Bhokar Legislative Assembly Constituency, District Nanded is void and the same may further kindly be quashed and set aside.
- B) Kindly hold and declare that the petitioner Dr. Madhavrao s/o Bhujangrao Kithalkar is elected from 85-Bhokar Legislative Assembly Constituency, District Nanded
- C) Kindly allow the instant petition with cost and,
- D) Kindly grant any other and further relief and/or pass such other and further orders as to this Hon'ble Court may appear just and proper in the facts and circumstances of the case as also in the paramount interest of justice, equity and fair play.

PETITIONER

Sd/-

(Dr. Madhavrao S/o
Bhujangrao Kithalkar)

Date: 04.12.2009
Place: Aurangabad

Submitted through:

Sd/-
(RAJENDRRAA DESHMUKKH)

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Sd/-
(HARSHAD H. PADALKAR)
Advocates for the Petitioner

VERIFICATION

I, Dr. Madhavrao s/o Bhujangrao Kinhalkar, Age: 51 years, Occu.: Medical Practioner R/o. 'Saphalya, Waman Nagar, Purna Road, Nanded, Taluka and District Nanded, the petitioner herein, do hereby state that I am fully acquainted with the facts of the case. I further say that the contents of above paragraphs 1 to 11, 23 to 29 of the above petition are true to my own knowledge. I further say that the contents of the above paragraphs 12 to 1 are based upon the information received by me and believed by me, to be true. I further say that the contents of above paragraphs Nos.15 to 22 are partly based on my personal knowledge and partly on information received by me who I further believe to be true.

Hence verified and signed at Aurangabad on this 4th day of December, 2009.

Date: 04.12.2009
Place: Aurangabad

DEPONENT

Sd/-
(Dr. Madhavrao S/o
Bhujangrao Kinhalkar)

Identified & explained by:

Sd/-
(RAJENDRRAA DESHMUKKH)

70

Sd/-
(HARSHAD H. PADALKAR)
Advocates for the Petitioner

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ELECTION PETITION NO.11 of 2009

DISTRICT: NANDED

Dr. Madhavrao S/o Bhujangrao Kinhalkar

... Petitioner

-Versus-

Ashok S/o Shankarrao Chavan and others

... Respondents

AFFIDAVIT IN SUPPORT OF THE PETITION

I, Dr. Madhavrao s/o. Bhujangrao Kinhalkar, Age: 5.1 years, Occu. Medical Practioner R/o: 'Saphalya', Waman Nagar, Purna Road, Nanded, Taluka and District: Nanded, the petitioner herein, do hereby Lake oath and state on solemn affirmation as under:-

1. That, the above petition has been drafted by my counsel as per my instructions and the information provided by me.
2. I have read the above petition and after having fully understood the contents of the above paragraphs 1 to , I further say that the contents, are true and correct to the best of my knowledge and belief.

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Hence, verified and signed at Aurangabad on 4th day of
December, 2009.

DEPONENT

Sd/-
(Dr. Madhavrao S/o
Bhujangrao Kinhalkar)

Identified & explained by:

Sd/-
(RAJENDRRAA DESHMUKKH)

Sd/-
(HARSHAD H. PADALKAR)
Advocates for the Petitioner

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ELECTION PETITION NO.11 of 2009

DISTRICT: NANDED

Dr. Madhavrao
S/o Bhujangrao Kinhalkar

... Petitioner

-Versus-

Ashok

S/o Shankarrao Chavan and others ... Respondents

AFFIDAVIT OF CORRUPT PRACTICE FORM NO.25

(RULE-94A)

I, Dr. Madhavrao s/o. Bhujangrao Kinhalkar, Age: 5.1 years,
Occu. Medical Practioner R/o: 'Saphalya', Waman Nagar, Purna
Road, Nanded, Taluka and District: Nanded, the petitioner herein,
do hereby Lake oath and state on solemn affirmation as under:-

- 1) That, the statements made in paragraph Nos.12 to 22 and
particulars of such corrupt practice mentioned in paragraph
Nos.12 to 22 of the same petition are true and correct to the
best of my knowledge.

DEPONENT

Sd/-
(Dr. Madhavrao S/o
Bhujangrao Kinhalkar)

Identified & explained by:
Sd/-
(RAJENDRRAA DESHMUKKH)

Sd/-
(HARSHAD H. PADALKAR)
Advocates for the Petitioner

TRUE COPY

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ANNEXURE- P-4

By Speed Post

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

=====

No.76/MT-LA/85/2009/419 Dated: 16th January 2010

To

Shri Ashok Shankarrao Chavan,
Shivaji Nagar,
District Nanded,
Maharashtra

Subject: General Election to Maharashtra Legislative Assembly,
2009- 85- Bhokar AC. - reg.

Sir,

I am directed to state that general election to Maharashtra Legislative Assembly 2009 was held in the month of September- October, 2009 and that you were a contesting candidate from 85- Bhokar A.C.

2. In connection with that election, you have lodged your account of election expenses with the District Election Officer, Nanded on 17.11.2009 as required by Section 78 of the Representation of the People Act, 1951.
3. The Commission has received some complaints from the Bharatiya Janata Party alleging inter alia that you have

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under-valued the cost of your election propaganda through
new paper etc.

4. The Commission has directed that your reply on the allegations/contentions made in the complaints of the BJP may be furnished to the Commission urgently and in any case by 1st February, 2010. Copies each of the complaints, on with their enclosures, are being forwarded herewith, as per the list enclosed.

Yours faithfully,

Sd/-
(ANUJ JAIPURIAR)
Under Secretary

Enclosures: As above

LIST OF COMPLAINTS

Complaint received from	Dated	Number of pages
1. Shri M.A. Naqvi and others of BJP	30.11.2009	5
2. Dr. Madhavrao Kinhalkar	02.12.2009	2
3. Dr. Kirit Somaiya and others of BJP	02.12.2009	8
4. Dr. Kirit Somaiya	04.12.2009	2
5. Dr. Kirit Somaiya	07.12.2009	9
6. Dr. Kirit Somaiya	06.01.2010	1
Total pages		----- 27 -----

TRUE COPY

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ANNEXURE-P-5

Ashok Shankarrao Chavan,
'Varsha',
Bhausahab Hire Marg,
Malbar Hill, Mumbai-400 006

Date: 29.01.10

To,

The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
New Delhi-110001

Reference: Letter No.76/MT-LA/85/2009/419 dated
16.01.2010, received from Shri Anuj Jaipurkar,
Under Secretary to the Election Commission of
India.

Sir,

The undersigned is in receipt of the letter under reference
and proceeds to reply the same as under:

1. The complaints referred to in your letter are vague and
without any details and more so, are based on incorrect
information and devoid of any factual basis.
2. I say that I have submitted a true and correct account of my
election expenses including those incurred on
advertisements.
3. I am not concerned with any news that may have appeared in
any newspapers. The publications, which are alleged to be
advertisements in various newspapers are referred to by the
complainants in their complaints are merely news items and
are not advertisements. I have neither given the same, nor

have they been given by me or my election agent nor under our authority.

4. I say that the alleged 'advertisements' referred thereto in the complaints are nothing but independent assessment of the media and newspapers regarding the achievements and functioning of our government. The said news items were published of their own volition by the said newspapers either by the reports or institutions. I am in no way concerned with said publication. Moreover there is no appeal made to the voters in any of the said news items. I say that the said publications are news items and not advertisements and therefore no bills were raised by the newspapers. If the same had been 'advertisements' as alleged the concerned newspapers would have raised bills for the same, which they have not done.
5. I say that, Congress (I) contested the election, under the leadership of the CHIEF Minister. As such probably the newspapers while making their own assessment of the working of the Congress (I) Government have along with the news published my photographs as at the relevant time and prior to that I was the Chief Minister of the State of Maharashtra.
6. Besides, in the said news items referred in the complaint, votes are not solicited, whereas wherever votes are solicited

in the advertisements given by me I have paid and accounted for the same and submitted accounts to the authority. If the media has in the said news items independently assessed my working, qualities, as also the achievements of the Government, I am not responsible for the same. None of the news items were at my behest and I had no control over the working and functioning of media or the content of the news that they choose to publish in their publications.

7. I say that, during election process, observers are always present and they supervise the election, check the accounts of the candidates and they can report to the Election Commissioner if they find any irregularity.
8. I say that the complaints are filed by the political parties and the unsuccessful candidates out of sheer frustration. False and frivolous allegations are made in the complaints which are utterly vague, without particulars and devoid of merit.
9. ✓ I have strictly adhered to all the norms and rules of election. The expenses by me for my election are correctly and sincerely accounted. The record of such expenses is strictly maintained and is also submitted and lodged with District Election Officer as per Section 78 of the Representation of People Act. The same was also verified by the concerned officers, authorities and no irregularity has been found.

10. I respectfully say and submit that as per Article 329(b) of the Constitution of India "no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature". As per Section 80 of the Representation of People Act, the election of a returned candidate can be challenged only by filing an election petition before the Hon'ble High Court. As such, in view of these provisions, i.e. Article 329(b) of the Constitution of India and Section 80 of the Representation of People Act, 1951 the complaints, referred to in your letter could not have been made by those complainants to the Election Commission, nor are same tenable by the Election Commission. On this account alone the complaints under reference deserve to be dropped.
11. It is also reported in the newspapers and media that one Dr. Madhav Kinhalakar has filed an Election Petition in the High Court, on similar grounds. As such, the matter is sub-judice before the Hon'ble Court. On this count also, when the matter in issue is sub-judice in an Election Petition, your good self may not entertain the complaints.

In view of the aforesaid premise the complaints under reference are liable to be and should be rejected/dismissed.

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Yours,

Sd/-
(Ashok Shankarrao Chavan)

TRUE COPY

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ANNEXURE-P-6(Colly)

PUDHAR
THE LEADER IN A LEADING MARK

THE DIAMOND JUBILEE DAILY

=====

Head Office: Pudhari Bhawan, 2318 'C' Ward, Bhausingji Road,
Kolhapur-416002, Maharashtra-India, Ph: 2543111, 2, 3, Fax:
0231-2543124, 25 GRAM: PUDHARI, KOLHAF

=====

Ref. No.478/10.11

10.04.2010

To,

The Chief Electoral Officer,
Maharashtra State,
General Administration Department,
Room No.624 (Anney),
Mantralaya,
Mumbai —400032.

Subject: General Elections to Maharashtra Legislative Assembly
2009. Alleged Complaints regarding election Expenses
of Shri Ashok Chavan on "Paid News".

Sir,

I am in receipt of your Letter No.CEL/O
10/CR324/10/XXXIII dated 6th April 2010 and would like to
elucidate on the points raised therein as under: —

Sr. No.	Query	Reply
1.	Whether it is a sponsored article or a paid article	Neither sponsored nor paid
2.	Whether it was inserted	No, not inserted through

	through the instrumentalities of any political party or advertising agency.	any political Party or Advertising Agency
3.	If so, the amount paid	Does not arise
4.	If so, the agency which paid for it	Does not arise

It would be worth while to amplify factual position as under:

In all, you have sent four clippings from Daily Pudhari dated 07.10.2009 & 12.10.2009. At the very outset, I would like to state that a Newspaper publishes news of Public interest particularly so during election period. In doing so, by & large, no discrimination is made by us between the news relating to any particular political Party. Nevertheless, every news paper has its inclination towards a political party and Pudhari is no exception to that. The Founder editor of Daily Pudhari (Late) Padmashri Dr.G.G.Jadhav was a staunch congress man and had close relations with Mahatma Gandhiji & Dr.B.R.Ambedkar. He was also a Member of Legislative Council representing Congress Party.

The Government of India, Deptt. of Posts issued a commemorative postage Stamp in honour of Late

Dr.G.G.Jadhav on the occasion of his Birth Centenary, which was released on 18.11.2009, at the hands of H.E.Smt.Pratibhatai Patil President of India, at a function in Rashtrapati Bhavan.

Daily Pudhari, a 72 years Old Marathi Newspaper is known for its frank and candid views and generally publisher of balanced news rising above the political affiliation.

Nevertheless, there is no denying the fact that, it has a leaning towards congress party, as is the case with other Marathi Newspapers which are inclined towards some or the other political parties. For example "Sakal" is pro NCP party and gives prominence to news relating to Shri Sharad Pawar, "Lokmat" founded by SM Darda, a Congress man and presently managed by Darda family who happen to be Ministry of State Cabinet and Rajya Sabha lean towards Congress Party Similarly "Samna" another Marath Newspaper is the mouth piece of Shiv Sena as is Tarun Bharat, a staunch supporter of BJP.

During election period every political party publishes its election manifesto, arranges election campaigns, including public meetings, their leaders give interviews to the reporters arrange press conference. In the routine course, each News Paper covers all such events and gives due publicity, the only difference being the degree and extent of coverage depending

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on Newspapers political inclination as explained above. This is done as a matter of routine because such publication is at the behest of the readers on their demand to satisfy their curiosity.

On a closer scrutiny of the clippings, published by Pudhari, it will be seen that article published on 7 October 2009 Swaampurna Maharashtra is a gist of the Manifesto of Congress Party. Two articles dt. 11.10.2009 & 12.10.2009 (Part I & Part II respectively) is the interview with the Chief Minister by reporter. Another article dated 11.10.2009 is a factual report of public meeting of Smt. Sonia Gandhi at Kolhapur. All these are part of routine coverage. Pudhari in its avowed object of giving a reasonably fair treatment to other political Parties have published gist of manifesto of other parties vis-à-vis news in their favour. With a view to substantiate this contention of Daily Pudhari, we enclose herewith few additional clippings as under:

1.	Date First lead	29 September 2009
	First lead	Setkancha Satbara Kora, Garibana Arakshan
		Shivsena B.J.P. Alliance-Manifesto
2.	Date	13 September 2009
		Ugharala Tisra Dola-RLDF (Ridalose) Chya

		Sarbajanik Shabhechi Batmi
3.	Date	16 September 2009
		2 Rupay Kilone Dhanya - Tisnya Aghachidi 31 Ashwane Republican Left Democratic Front (RLDF)-Manifesto
4.	Date	29 September 2009
		Nibadduke akhada muslim samajachi sarb pachkanun upeksha
5.	Date	29 September 2009
		Aghachini Rajbat ulthun taka-kha munde Public meeting of BJP General Secretary for Sena-BJP candidates.
6.	Date	3 October 2009
		Garibana 3 rupey darant 25 kilo dhanya congress rastribadita 21 kalmi sayukta jahimama
7.	Date	3 October 2009
		Utitcha Hati satta devun parivartan ghadva - sushma swaraj Public meeting of BJP leader for Sena-BJP candidate
8.	Date	3 October 2009
		Garibachya tatatish ghas - congres aghadi sarkarla gadha Sikva- Public meeting of BJP Leader for Sena-BJP candidate.

9.	Date	8 th October 2009
		Jatiya Rajkaran karchanyana Bajula Sara-Pawar Public meeting for NCP candidate.
10.	Date	8 th October 2009
		Congrasichi rajyasatta ulthun taka-Modi Public meeting of Gujarat-C.M. for Sena- BJP candidates.

All the above mentioned clippings would indicate that, Pudhari has not don special favour to any political party, rather, have tried to air the views of ever political party.

To publish the manifesto is obligatory on the part of every newspaper irrespective of party alienation, but still some of the newspapers do not publish the news items of opposition parties, but Pudhari has published the manifestoes of all the parties. Herewith, we are enclosing Xerox copies of the photographs of news items published by us covering manifestoes of NCP/BJP/SHIVSENA/ RLDF. As such question of sponsored news or paid news does not arise.

The NCP, Congress parties were sending the news items/articles from the party office of their respective parties and we had published these articles of various parties, so the question of paid news does not arise and such type of articles

are also published in all other newspapers in Maharashtra
i.e. Lokmat / Punyanagari / Maharashtra Times etc.

There was an article on the five years performance of the Congress NCP Government in two parts, covering the work done by the Congress Party during their tenure of Five Years. These articles have been covered on election page for the information of Readers. Other newspapers also have published these articles.

Secondly the AKHADA i.e. the Election news, if you see all the newspapers during the month of Lok Sabha Elections and during the Assembly Elections as well, you will observe that we have given so many pages on election news and articles, because the readership is more for the political news. The sale of any newspaper is mostly based on two news items one is Political news and other one is Crime. As such, you will find that, Political coverage is more in those days and you will also notice that, our circulation during the election period went up because readers are more interested in reading the political news. During both the election period i.e. Lok Sabha and Vidhansabha, there is election fever and naturally you will find that, all the media whether it is Print or Electronic, the coverage is totally on election. As such, if you see our files, you will find that all the pages are covered

with election articles and news only as it has got more readership during that particular period.

Now as far as page No.1 is concerned, you will agree that it is nothing but the news of Sonia Gandhi election campaign public meeting, which has got news value and the same is published by even all the newspapers e.g. Sakal, Lokmat, Punyanagari etc. etc. during that period. During that period, we have also published the public meeting campaign of Narendra Modi, Sushama Swaraj Munde - for Shivsena BJP candidate, Sharad Pawar for NCP candidate and all leaders of RLDF. The photographs cuttings are attached for your kind perusal. Considering the above facts, I would like to re-iterate as follows:

1. No news or article is sponsored or paid article.
2. It was not inserted through the instrumental of any political party or advertising agency.
3. As it is an article the question of payment I amount does not arise.
4. The Payment is not done so the question of any agency for paying the same does not arise.

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I hope and trust that, the above clarification meets all your queries.

In case, you need any more information or any further clarification in the matter you are most welcome to write to us.

Thanking you,

Yours faithfully,
Pudhari Publications Pvt. Ltd.

Sd/-
Pratapsinh G. Jadhav
Chairman & Managing Director
(Awarded Padmashree by a President of India)

TRUE COPY

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ANNEXURE-P-6 (Colly)

Ref No.

LOKMAT

April 15, 2010

To,

Shri Dehashish Chkrabarty
Chief Electoral Officer,
Office of the Chief Electoral Officer,
Maharashtra State,
General Administration Department,
Room No. 624 (Annex),
Mantralaya, Mumbai — 400 032

Subject: General Elections of Maharashtra Legislature
Assembly 2009- Complaints regarding election
expenses of Shri Ashok Chavan on 'Paid News'.

Ref. Your letter No.CEL 1010/CR 324/10/ XXXIII
dated 6th April, 2010.

Sir,

We have carefully perused your letter cited above and also the enclosures to the letter, which are publications of various editions of Lokmat'. The enclosures to the letter are the supplements published by Lokmat in its various editions on different dates as mentioned in your above cited letter. Lokmat Group published these supplements in the wake of General Elections of Maharashtra Legislative Assembly.

The objective of publishing these supplements was to acquaint the people of Maharashtra about the achievements and the developments brought about by the Congress led government in Maharashtra during its tenure under the leadership of the sitting Chief Minister. Educating and updating people about the development and the socio-political events are some of the prime responsibilities and objectives of media. These supplements published by 'Lokmat' were an enterprise to carry out this responsibility of 'Lokmat' as a media major in the state.

The other factor that motivated us to publish the supplements highlighting the accomplishments of the Congress led government in Maharashtra is the alignment of our group's ideology with that of the Congress Party. Our founder, Late Jawaharlalji Darda was a one of the leaders of the congress party who were at the forefront during the freedom 'struggle. He held important ministries in the cabinet of Maharashtra state and was an exemplary statesman. Our Chairman and Managing Director, Shri Vijay Darda is a Member of Parliament (Rajya Sabha) and represents the congress party in the upper-most house of the nation, He is a member of several high- level parliamentary committees. Shri Rajendra Darda, elected to the Legislative Assembly of Maharashtra State from the Aurangabad (East) constituency, is the Industries Minister in the present Maharashtra

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Government. Our Group strongly believes that Congress is the only party which offers a secular option to the electorate. This would give you a glimpse of the reason that drive us to reach out to the people of Maharashtra to present before them such content which highlights and promotes the congress party and its leaders.

We trust, this information would suffice your purpose. But in case your office requires any further co-operation at our end, please find us always eager to assist your good office.

Yours sincerely

Sd/-
(NILESH SINGH)
Publisher,
Lokmat Newspapers Pvt. Ltd.

TRUE COPY

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ANNEXURE-P-6 (Colly)

Prakash Pohare
Managing Director

DESHONNATI
www.deshonnati.com
Email: prakashpohare@deshonnati.com

Date: 17.04.2010

To,

The Chief Electoral Officer,
Office of Chief Electoral Officer,
Maharashtra State,
General Administration Department,
Room No. 624 (Annex)
Mantralaya,
Mumbai 400 032

Sir,

This is to acknowledge the Receipt of your communication dated 06.04.2010. The communication solicits information/comments from my end relating to the publications dated 15.09.2009 and 08.10.2009 in newspaper "Deshonnatihi".

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

Thanking you,

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Yours faithfully,

Sd/-
(Prakash Pohare)

TRUE COPY

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ANNEXURE-P-6 (Colly)

April 20, 2010

THE TIMES OF INDIA GROUP

The Chief Electoral Officer,
Maharashtra State,
General Administration Department,
Room No 624 (annex)
Mantralaya,
Mumbai- 400032

Dear Sir,

We are in receipt of your letter bearing No. CEL 1010/CR 324/ 10/ XXXIII, dated April 6, 2010, one copy of which is addressed to Shri Samir Jain as "Owner" and another copy addressed to Shri R. Venkata Kesavan, as "Publisher", Maharashtra Times with regard to articles published in our publication, Maharashtra Times dated 27, September 2009 in respect of Hon'ble Chief Minister of Maharashtra, Mr. Ashok Chavan. In this regard, we wish to clarify that Shri Samir Jain is neither the owner nor in control of the printing and publishing, of the publication, Maharashtra Times and hence the said letter has been wrongly addressed to him which you may please note. We are, therefore, responding on behalf of Shri R. Venkata Kesavan, Publisher, Maharashtra Times, for the letter addressed to him.

We, Bennett, Coleman and Co. Ltd. are a well known media services conglomerate in India and a responsible corporate citizen. We have a heritage of over 150 years and

Maharashtra Times is one of our publications well known in India and abroad. We firmly believe in the Constitution of India and do everything within our means to strengthen our rich and diverse society through responsible media coverage. As a responsible corporate, we ensure that correct and balanced information reaches the right set of people at correct time.

We appreciate the pivotal role played by your office in fostering best electoral principles and practices as enshrined in the Constitution of India and Representation of the People Act, 1951, in the large and diverse democratic set up of our country. We cater to the requirements of our readers and cover news and current affairs in a manner so as to fulfill the aspirations of the readers, while complying with the applicable laws. As a complete newspaper during elections we cover newsworthy items, personalities, information, analysis of political parties/ personalities so as to keep our readers informed and fulfill our duties as the fourth pillar of democracy.

In relation to the election of said Hon'ble Chief Minister of Maharashtra, Mr. Ashok Chavan, we categorically confirm that the three impugned articles are not advertisement nor have been sponsored or paid for by him or on his behalf by any other person including any political party.

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We are, therefore in compliance of your letter responding in seriatim to your queries as mentioned below:

1. The said articles are neither sponsored nor paid articles.
2. The said articles were not published at the instance of any political party or any advertising agency.
3. In view of our response in para 1 and 2 hereinbefore we reiterate that the said articles are not advertisements and hence no monetary consideration was paid to us for the said articles.
4. We confirm that no agency was involved in the publication of the said articles.

We trust this meets your requirements. However in case you have any further queries in relation to the said articles, then we will surely provide full co-operation and support.

Thanking you,

Yours faithfully,

For Maharashtra Times & on behalf of
Bennett, Coleman & Company Limited

Sd/-
Authorized Signatory

TRUE COPY

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ANNEXURE-P-7(Colly)

Date: 25.05.2010

From:

Shri, Ashok Shankarrao Chavan,
Shivaji Nagar,
Nanded.

To,

The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.

Sub: General Election to Maharashtra Legislative Assembly,
2009 (85-Bhokar Assembly Constituency).

Ref: No.76/MT-LA/85/2009/419 dated 16th January, 2010.

Sir,

1. I refer to your above mentioned letter and my reply to that letter dated 27th January, 2010. I hereby reiterate and endorse my earlier representations in my reply dated 27th January, 2010. First, I again submit that each and every publication which is alleged to be an advertisement in various newspapers by the complainants are not advertisements.

Secondly, I have never given the same, nor have they been given by me or by my election agent or under our authority. Thirdly, I never had nor do have control over the

working and functioning of the press and the media nor over the content of the news that they chose to publish in their publications. Lastly but not least, I have fully complied with the provisions of Section 78 of the Representation of People Act, 1951 which has been acknowledged by the Collector & District Election Officer, Nanded in its report dated 24.11.2009 (see Annexure I)

In addition to my reply dated 27th January, 2010, I would like to state and submit the following:

I

2. Subsequent events:

The subsequent developments are that I am served with the summons from the High Court in Election Petition No.11/2009 (Dr.Madhavrao S.Kinhalkar Vs. A.S. Chavan & Others) (See Annexure II) Accordingly, I have caused my appearance before the High Court on or before 1st April, 2010. Election Commission of India and the Returning Officer are also impleaded as party respondents Nos.2 and 3 in this Petition. One of the grounds canvassed before the High Court is challenge to my return of election expenses on the ground of alleged excess expenditure. Thus, the question regarding the 'validity of my return of election expenses is now res sub-judice before the High Court.

3. Legal consequences:

The return of election expenses in question one and the same before the Election Commission as well as before the High Court. As stated above the Election Commission has already acknowledged and accepted that I have already lodged my account of election expenses as required by Section 78 of the Representation of the People Act, 1951 (the "R.P. Act 1951"). The points directly and substantially at issue before the Election Commission and the High Court is the allegation by third parties (the Petitioner before the High Court and the complainants before the Election Commission) that the election expenses incurred/authorized by me is in excess to what is prescribed by the rules and also in excess to what I have accounted for in my accounts lodged pursuant to Section 78 of the Act. It is a settled policy of law that the same subject matter and the same cause of action cannot be adjudicated in two separate parallel trials simultaneously, by two different forums. It cannot be entertained and adjudicated upon by multiple forums. The policy of law - as well as - the propriety and reason demands that the possibility of two contradictory verdicts by two different forums should be avoided. It is also policy of law to protect any person from being vexed by multiplicity of the trials. There cannot be duplication of trials on the same issue by the multiple forums at one and the same time. Hence, it would be inappropriate to continue this proceeding and it deserves to be and it be dropped.

II

4. Constitutional Scheme:

Art. 329.

Bar to interference by courts in electoral matters:—

Notwithstanding anything in this Constitution

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

[Emphasis Supplied]

Article 329 (b) is the mother provision of law relating to election disputes. It ordains total prohibition, - save and except — as permitted by clause (b) of Article 329. Article 329(b) places a blanket ban on the challenges by other modes except by filing an "Election Petition".

5. Legislative Scheme Under R.P. Act. 1951:

A

Section 100 of R.P. Act 1951 covers the whole basket of grievances relating to all electoral malpractices/corrupt practices etc. The section is exhaustive of all the grievances regarding election. In compliance with the constitutional mandate, flowing from Article 329 (b), Section 80 again issues a statutory Injunction restraining any challenge to the validity of the election except by an 'Election Petition' presented in accordance with the provisions of Part-VI of the Act. Section 80A of Part-VI of the R.P. Act 1951 further states that the court having jurisdiction to try an election petition shall be the High Court, Section 81 of Part-VI of the R.P. Act 1951 sets out mandatory requirements that any petitioner who wants to file an election petition before the relevant High Court has to satisfy and comply with prior to filing an election petition. Therefore in light of the above it settled law that (i) it is within the exclusive domain and jurisdiction of the High court as an Election Court to give all appropriate reliefs and to do complete justice between the parties and (ii) that an election petition has to satisfy and be filled in compliance with the mandatory provisions of Section 80A of the R.P. Act.

B

Ss.77 (1), 77 (2), 78, R/w Rule 89 R/w S.10-A constitute a family of cognate provisions of law.

6. There will be non-compliance of S.78, if

- (a) Account is not lodged within the period fixed; and
- (b) It is not in the manner prescribed for lodging it.

Rule 89 (c) of conduct of Election Rules, 1961 (Hereinafter referred to as Rules) requires the District Election Officer (DO) to report to Election Commission (EC) whether such account has been lodged (i) with time and (ii) in the manner required under the Act and Rules. In cases of non-compliance with S.78 R/w Rule 89, further inquiry could be initiated U/s.10A of Act R/w Rule 89 (5) and (8) of the Rules. Section 78 is procedural; whereas Section 123 (6) is substantive. Non-maintenance of separate and correct account at all or failure to lodge accounts by itself would not constitute a corrupt practice within meaning of S.123 (6). Therefore S.123 (6) should be read as a reference to S. 77 (3), Contravention of S.77 (1) and sub section (2) does not amount to corrupt practice. Hence, the disqualification U/s 10-A is defeasible by Election Commission U/s. 11 — as it is restricted to non-compliance with S.78 relating to accounts and is unrelated to expenditure incurred or authorized in contravention of what is prescribed under the R.P. Act 1951 as referred to in S.123 (6) of the R.P Act 1951. It would not be out of place to mention that If complainants are allowed to allege that an elected candidate has incurred or authorized

expenditure in excess of what is prescribed under Section 77 of the R.P. Act 1951 before the Election Commission pursuant to Section 10A of the R.P. Act 1951, then this would allow complainants to avoid and bypass the mandatory requirements of Section 80 and 80 A of the R.P. Act 1951 which requires each complainant to approach an High Court and satisfy certain mandatory requirements before filing an election petition, An allegation of corrupt practice is a serious allegation and it is humbly submitted that the High Court is the correct forum for the complainants to make such allegations as required by the R.P. Act 1951.

I refer to the decision of the Supreme Court in Sucheta Kirplani Vs. S.S. Dulat [AIR 1955 Sc 758], where the apex court stated as follows:

"... The trial of an election petition is conducted by an Election Tribunal and this section makes it incumbent on the Tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission. The duty of the Election Commission is merely to decide under Rule

114(4) whether any candidate has, among other things,

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

As stated above I have already fully complied with the provisions of Section 78 of the Representation of People Act, 1951 and rules made thereunder which has been acknowledged and accepted by the Collector & District Election Officer, Nanded in its report dated 24.11.2009 (see Annexure 1).

III

7. Submissions:

- a) The District Election Officer (DEO) has submitted Report dated 24th November 2009 to EC as to lodging of the account of Election Expenses and the date of lodging of account, vide Rule 89 (1) (C) of Rules 1961. The DEO has recorded his positive satisfaction about the compliance of requirements of Section 78 of the Act. Even otherwise the return of accounts so submitted cannot be faulted. In the fact situation - having regard to the text and the context of the cognate provisions of law, - there is no jurisdiction or

justification to continue to embark upon an enquiry under S.10A r/w R.89.

- b) In pith and substance, the complaints allege incurring of excess expenditure by crossing over the permissible limits under the law (vide S.123 (6)). An Election Court is a Special Court having superior efficacy. The Election Court i.e. High Court alone has exclusive jurisdiction to entertain and try the dispute in this behalf. By necessary implication, the jurisdiction of all other Forums stand eclipsed and excluded. Election Petition contemplates full-fledged trial.
8. For the reasons stated in earlier lines, the complaints so made are misconceived and merit no consideration. The complaints do not call for any further investigation and deserve to be rejected at the threshold itself. In the event the Election Commission decides that the proceedings are maintainable and that it has the jurisdiction to continue with the proceedings, then I request the Election Commission to grant me an opportunity to give me a hearing so that I and/or my legal counsel can make oral arguments before the Election Commission.
9. IT IS, THEREFORE, PRAYED THAT:

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That, the proceedings may be dropped, as not maintainable.

Thanking you,

Yours faithfully,

Sd/-
Ashok Shankarrao Chavan

Encl: 1) Copy of DEO, Nanded's Report dt.24.11.2009
(Annexure I)

2) Copy of the Election Petition No.11/2009 (Annexure II)

TRUE COPY

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ANNEXURE-P-7 (Colly)

Date: 22nd June, 2010

From:

Shri Ashok Shankarrao Chavan
Shivaji Nagar, Nanded,
Maharashtra

To,

The Chief Election Commissioner of India,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.

Sub: General Election to Maharashtra Legislative Assembly,
2009 (85- Bhokar Assembly Constituency) —
Complaint Regarding Election Expenses.

REF: i) ECI Letter No.76/MT-LA/85/2009/1316, Dt.
26.05.2010.

ii) ECI Letter No.76/MT-LA/85/2009/1273, Dt.
09.0.2010.

iii) Rejoinders Submitted by Dr. Kirit Somaiya, Shri
Mukhtar Abbas Naqvi and Dr. Madhavrao
Kinhalkar.

Dear Sir,

The undersigned is in receipt of above cited letters and
the rejoinders submitted by Dr. Kirit Somaiya, Shri Mukhtar

Abbas Naqvi and Dr. Madhavrao Kinhalkar (the "Rejoinders")
and proceeds to reply the same as under:

1. The observation in the Rejoinders are imprecise, ambiguous and based on an incorrect understanding of the correct legal position and is further devoid of any factual basis. The complainants have based their Rejoinders on distorted and misconceived issues with mala fide intent. Each and every allegation made in the complainants' Rejoinders referred above is false, reckless and devoid of any truth.
2. At the very outset, the undersigned reiterates and endorses his earlier written representations made to the Election Commission dated 27.01.2010 and 25.05.2010.
3. The undersigned submits that for the reasons stated in the submission of 25.05.2010 the proceedings should be dropped and terminated as not maintainable.
4. The undersigned reiterates and categorically contends that he is not concerned with any news that may have appeared in any newspaper. The publications which are alleged to be advertisements in various newspapers as referred in the complaint are merely news items and are not advertisements. It has neither been given by the undersigned nor by his election agent or any other person under his authority. The

///

veracity of this fact now stands testified as true and correct by the concerned various newspapers who have categorically enumerated the above stated fact that the alleged articles are neither advertisements nor have been sponsored or paid for by the undersigned or on his behalf by any other person including any political party. It is clearly stated in the reply filed by the newspaper Pudhari that in routine course each newspaper covers all election events and gives due publicity to all political parties. This is done as a matter of routine because such publication is at the behest of the readers on their demand to satisfy their curiosity, so no question of paid news arise at all. On this ground alone the complaint deserves to be dismissed. The complaint is based on misleading and false allegations and hence, is liable to be dismissed in limini.

5. The undersigned submits that all the newspapers in which the impugned articles were published have stated that the alleged advertisements are news articles and not paid or complimentary articles. The complainants are stretching their imagination too far with the mala fide intent to harass the undersigned by such complaint which has no factual and legal basis. The newspapers have submitted in their reply that news articles of all parties are published by them and all parties are given coverage at the time of the elections. Therefore the alleged advertisements referred are nothing but

independent assessment of media which cuts across all party lines uniformly.

6. It would not be out of place to mention that the observers are independent persons who are always present to supervise the election and also check the accounts of the candidates and report any irregularity to the Election Commission. In the present case in the absence of there being any irregularity nothing was reported and therefore this issue raised by the complainants is frivolous and merits no attention.
7. The undersigned states that the High Court of Bombay is seized of the matter titled as Dr. Madhavrao B. Kinhalkar Vs. A.S. Chavan & others being Election Petition No.11/2009 as one of the grounds canvassed before the High Court is challenge to the return of election expenses of the undersigned on the ground of alleged excess expenditure. Thus, the question regarding the validity of the undersigned's return of election expenses is sub-judice before the High Court.
8. The return of election expenses in question is one and the same before the Election Commission as well as before the High Court. As stated above the Election Commission has already acknowledged and accepted that the undersigned have already lodged his account of election expenses as

required by Section 78 of the Representation of the People Act, 1951 (the 'R.P. Act 1951'). The issue before the Election Commission and the High Court is identical i.e. the election expenses incurred/authorized by the undersigned is in excess to what is prescribe by the rules and also in excess to what have been accounted for in the accounts lodged pursuant to Section 78 R.P. Act 1951. It is a settled policy of law that the same subject matter and the same cause of action cannot be adjudicated in two separate parallel proceedings simultaneously, by two different forums. The judicial propriety demands that two contradictory verdicts by two different forums should be avoided. It is also policy of law to protect any person from being vexed by multiplicity of the trials, Hence, it would be inappropriate to continue this proceeding and it deserves to be dropped at the outset.

9. The Constitutional Scheme envisaged under Article 329 emphasizes that there is bar to interference by courts in electoral matters as under:

Notwithstanding anything in this Constitution

- (b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and

in such manner as may be provided for by or under any law made by the appropriate Legislature. [Emphasis Supplied]

Article 329 (b) thus places a blanket ban on the challenges by any other mode except in the form of an Election Petition".

10. The undersigned submits that the complainant has erroneously contended that the undersigned has tried to bypass the provisions, guidelines and rules under the R. P. Act, 1951. Section 100 of the R.P. Act 1951 relates to electoral mal-practices / corrupt practices etc. The section is exhaustive of all the grievances regarding election. In compliance with the constitutional mandate, flowing from Article 329(b), under Section 80 mandates a statutory injunction restraining any challenge to the validity of the election except by an 'Election Petition' presented in accordance with the provisions of Part-VI of the Act. Section 80A of Part-VI of the R.P. Act 1951 further states that the court having jurisdiction to try an election petition shall be the High Court. Therefore in view of the above the legislative intent is clear that (i) it is within the exclusive domain and jurisdiction of the High Court as an Election Court to give all appropriate reliefs and to do complete justice between the parties and (ii) that an election petition has to satisfy and be

filled in compliance with the mandatory provisions of Section 80A of the RP. Act.

11. The undersigned submits that contravention of Section 77 sub section (1) and (2) of the R.P. Act 1951 amounts to corrupt practice as defined under section 123(6) of the Act. If complainants are allowed to allege that an elected candidate has incurred or authorized expenditure in excess of what is prescribed under Section 77 of the RP. Act 1951 before the Election Commission for pursuing the remedy available under Section 10A of the R.P. Act 1951, then it would allow complainants to avoid and bypass the mandatory requirements of Section 80 and 80 A of the R.P. Act 1951 which requires each complainant to approach a High Court and satisfy certain mandatory requirements before filing an election petition. An allegation of corrupt practice is a serious allegation and it is humbly submitted that the High Court is the appropriate forum for the complainants to make such allegation as required by the statutory intent under the R.P. Act 1951.
12. The complainants have erred in appreciating that there is non-compliance of Section 78 R.P. Act 1951 only if
 - (a) Account is not lodged within the period fixed; and
 - (b) It is not in the manner prescribed for lodging it.

Further Rule 89 (c) of conduct of Election Rules, 1961 (Hereinafter referred to as Rules) requires the District Election Officer (DEO) to report to Election Commission (EC) whether such account has been lodged (i) within time and (ii) in the manner required under the Act and Rules. In cases of noncompliance with Section 78 read with Rule 8, further inquiry could be initiated under section 10A of Act read with Rule 89 (5) and (8) of the Rules. As mentioned hereinabove the undersigned has fully complied with the provisions of Section 78 of the R.P. Act, 1951 and Rules made thereunder which has been acknowledged and accepted by the Collector & District Election Officer, Nanded in its report dated 24.11.2009.

13. The District Election Officer (DEC.) submitted a report dated 24.11.2009 to EC relating to lodging of the account of Election Expenses and the date of lodging of account, as per Rule 89 (1) (c) of Rules 1961. The DEC recorded his positive satisfaction about the compliance of requirements of Section 78 of the R.P. Act, 1951. Hence, the disqualification under section 10-A of the R.P. Act 1951 which is restricted to non-compliance with Section 78 of the R.P. Act 1951 and strictly relates to accounts only cannot be invoked as satisfaction of the DEC has already been recorded in the present case.

14. The undersigned states that in pith and substance an Election Court is a Special Court having superior efficacy. The Election Court i.e. the High Court as per the statutory mandate alone has exclusive jurisdiction to entertain and try any such dispute. In this regard the undersigned seeks to refer to the five bench decision of the Supreme Court in Sucheta Kirplani Vs. SS Dulat [AIR 1955 SC 758], where the Apex court stated as follows:

"....The trial of an election petition is conducted by an Election Tribunal and this section makes it incumbent on the Tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission, The duty of the Election Commission is merely to decide under Rule 114(4) whether any candidate has, among other things,

"failed to lodge the return of election expensesin the manner required by the Act and these rules".

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15. For the reasons stated above, the complaints so made are misconceived and merit no consideration. The complaints do not call for any further investigation and deserve to be rejected at the threshold.

In view of the factual and legal position as enumerated above and the reply submitted by the respective newspapers, the undersigned requests the Election Commission to reject/dismiss the complaints made by the complainants.

Yours faithfully,

Sd/-
Ashok Shankarrao Chavan

TRUE COPY

Election Commission of India

Nirvachan Sadan, Ashoka Road, New Delhi 110001

No: 76/MT-LA/85/2009.

Dated: 2nd April, 2011

To,

1. Shri Ashok Shankarrao Chavan,
1-2-197, Shivaji Nagar,
District Nanded,
Maharashtra.
2. Dr. Kirti Somaiya,
Vice-President, BJP Maharashtra,
9C, Neelam Nagar, Mulund (E),
Mumbai-400081
3. Shri Mukhtar Abbas Naqvi,
C-11, 12A,
Pandhara Park,
Delhi-110003
4. Dr. Madhavrao Kinhalkar,
Ex. Home Minister (M.S),
"Safalya Niwas", Wammannagar,
Purana Road, Nanded,
Maharashtra

Subject:

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

I am directed to forward herewith a copy of Commission's order dated 2nd
April 2011 in the above matter.

You may kindly note that the next hearing in the matter has been fixed for
the 29th April 2011 at 4:00 P.M in the Commission's Secretariat.

Yours faithfully



(Malay Mallick)

Under Secretary



भारत निर्वाचन आयोग
Election Commission of India

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

BEFORE THE ELECTION COMMISSION OF INDIA

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

Order

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

2. The complainants, namely, (i) Shri Mukhtar Abbas Naqvi, Member of Parliament, Bharatiya Janata Party, and five others, (ii) Dr. Madhavrao Kinkhalkar, one of the rival contestants at the aforesaid general election from 85-Bhokar Assembly Constituency, and (iii) Dr. Kirit Somaiya, Vice-President, Bharatiya Janata Party, Maharashtra, and four others, in their complaints submitted to the Election Commission towards the end of November, 2009 and beginning of December, 2009, alleged that Shri Ashok Chavan (hereinafter referred to as 'respondent') got several advertisements

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published in various newspapers, in particular, Lokmat, Pudhari, Maharashtra Times and Deshonnati, during the election campaign period which appeared in those newspapers in the garb of news eulogizing him and his achievements as Chief Minister of Maharashtra. It is alleged by them that a huge expenditure was incurred or authorized by the respondent for getting those advertisements published as news, which they described, and is now a well known phenomenon, as "Paid News", and that the expenditure incurred or authorized on the publication of those paid news was not included by the respondent in his account of election expenses maintained under section 77 of the Representation of the People Act, 1951 (hereinafter referred to as '1951-Act') and lodged with the District Election Officer, Nanded under section 78 of the said Act. The complainants alleged that the respondent showed only an expense of Rs.5,379/-, as the expenses on newspapers advertisements in his account, whereas the expenditure on the abovementioned paid news ran into several crores and it was suppressed from his return of election expenses. In the complaint dated 30th November, 2009 of Shri Mukhtar Abbas Naqvi and others, it was specifically prayed that the account of election expenses of the respondent should be enquired into and action should be taken against him under section 10A of the 1951-Act.

3. All the abovementioned complaints were referred to the respondent by the Commission on 16th January, 2010, seeking his comments. The respondent submitted his reply to these complaints on 29th January, 2010, refuting all the allegations of complainants. The respondent's reply was thereafter referred to the complainants for their rejoinders, if any, on 5th and 9th February, 2010. After the receipt of rejoinders from the complainants in February-March, 2010, the Commission decided to hear the parties on 11th June, 2010. Meanwhile, the Commission also obtained, through the Chief Electoral Officer, Maharashtra, the comments of the abovementioned four newspapers, namely, Lokmat, Pudhari, Maharashtra Times and Deshonnati, on the allegations of publishing 'paid news' by them relating to the respondent. Suffice to say at this stage that all the above four newspapers denied the allegation of any payment having being made to them by the respondent for the publication of the impugned 'paid news'. They all stated that the impugned 'paid news' were in fact news or editorials or supplements published by them gratuitously as they have either links with, or leanings towards, the Congress Party and the respondent.

4. The hearing scheduled to be held on 11th June, 2010 was postponed to 9th July, 2010 at the request of the respondent. The matter was accordingly heard by the Commission on the 9th July, 2010 and the learned counsels for Dr. Kinhalkar and Dr. Somaiya made their submissions. It was observed at

the hearing that certain documents submitted by the parties in the months of May and June were not properly exchanged between them, and the hearing was adjourned to 20th July, 2010. The hearing fixed for 20th July, 2010 was subsequently postponed as the parties wanted some further time for submitting their comments/replies in regard to the abovementioned documents exchanged between them at the hearing on the 9th July, 2010. The hearing was then fixed on 1st October, 2010, but was again postponed to 29th October, 2010 at the request of Dr. Somaiya.

5. The matter was then further heard by the Commission on 29th October, 12th November, 19th November, 2010, 4th January, 6th January, 4th February and 10th February, 2011. At these hearings, Dr. Madhavrao Kinhalkar was represented by Shri U. Lalit, learned senior counsel, and Dr. Kirit Somaiya and Shri Mukhtar Abbas Naqvi were represented by Shri Ram Jethmalani, learned senior counsel. The respondent's case was taken up by Shri Abhishek Manu Singhvi, learned senior counsel.

6. Shri U Lalit and Shri Ram Jethmalani argued the whole case and dwelt at length on the merits of the case as sought to be made out by them. However, Shri Abhishek Manu Singhvi, in his reply, confined his arguments to the question of maintainability of the present complaints before the Commission, raising the question of the Commission's very jurisdiction to go into the complaints as the preliminary issue. He contended that the

question of incorrectness or falsity of the return of election expenses of the respondent could be gone into only by the High Court in an election petition under Sections 80 and 100 and not by the Election Commission under Section 10A of the 1951-Act. He stressed that the Commission should first decide the question of its jurisdiction before going into the disputed questions of fact and law raised in the complaints. In support of his contention that the Commission was obliged to first decide this preliminary issue before going into the merits, he relied upon the decision of the Hon'ble Supreme Court in *Smt. Ujjam Bai Vs. State of Uttar Pradesh* [1963 (1)SCR 778]. He also relied on the provisions of Order 14, Rule 2 of the Civil Procedure Code which provide that the issue of law relating to jurisdiction should be decided first and submitted that though that rule was amended in 1976, the main substance of the rule remained as before the amendments and was still applicable as was held by the Madras High Court in *Mitsubishi France Vs. Neyveli Lignite Corporation Ltd. and Another* (AIR 1985 Mad 300).

- ✓. The Commission sees quite a force in the above submission of Shri Singhvi, though it needs to be pointed out that Shri Singhvi ought to have raised this preliminary issue at the commencement of the hearing in July, 2010 itself and not at the fag end of the long hearings for five days when the learned counsel for the complainants had already made their detailed

submissions on the merits of the case and Shri Singhvi was expected in the normal course to reply to those submissions of the complainants on merits. Nevertheless, that preliminary issue having been raised by the learned counsel for the respondent, the Commission has to decide it first as insisted upon by the learned counsel for the respondent. In the above referred case of *Smt. Ujjam Bai* (supra), a seven Judges Constitution Bench of the Hon'ble Supreme Court observed (in para 76) that :

'..... the question, whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable "at the commencement, not at the conclusion of the enquiry" *Rex Vs. Bolten* [(1841) 1 QB 66] the tribunal must itself decide as to the collateral fact when, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not.'

In the case of *Mohinder Singh Gill and Another Vs. Chief Election Commissioners and Others* (AIR 1978 SC 851) also, a Constitution Bench of the Hon'ble Supreme Court observed (in para 9) that :

'Indeed, we should have expected the High court to have considered the basic jurisdictional issue first, and not last as it did, and avoided sallying forth into a discussion and decision on the merits, self-

contradicting its own holding that it had no jurisdiction even to entertain the petition.'

8. Shri Singhvi's contention that the Commission has no jurisdiction to enquire into the allegations made in the complaints is mainly based on a decision rendered by a Constitution Bench of the Hon'ble Supreme Court in 1955 in *Sucheta Kriplani Vs. S.S. Dulat* (AIR 1955 SC 758). The Apex Court held in that case that, to enquire into the falsity of a return, the jurisdiction is that of the Election Tribunal trying an election petition and not of the Election Commission.

9. Shri Singhvi pointed out that the one of the present complainants, Dr. Kinhalakar, has filed an election petition (No. 11 of 2009) before the Aurangabad Bench of the Bombay High Court in which he has raised this very issue of alleged suppression of expenditure on the publication of advertisements in newspapers and, therefore, it was for the High Court to enquire into the matter and not for the Election Commission, as has been held by the Hon'ble Supreme Court in *Sucheta Kriplani's* case (Supra). He further submitted that he was aware of the decision of the Hon'ble Supreme Court in *L.R. Shivaramagowda Vs. T.M. Chandrashekar* (AIR 1999 SC 252), where the Supreme Court has observed that the question of incorrectness or falsity of the return of election expenses lodged by a candidate can be raised before the Election Commission under section 10A

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of the 1951-Act. However, he submitted that the above decision of the Supreme Court in *Shivaramagowda's* case was per incuriam inasmuch as the three Judges Bench which rendered that decision in 1999 did not take note of the earlier decision of the Constitution Bench in *Sucheta Kriplani's* case which was binding on the three Judges Bench. He also submitted that on the well established principle of *stare decisis* all judicial and quasi judicial authorities when confronted with two mutually contradictory judgements of the same superior court have to follow the judgement of the larger Bench and, accordingly, the Commission should go by the judgement of the Constitution Bench in *Sucheta Kriplani's* case (supra).

10. In reply, the complainants submit that they are not challenging or questioning the election of the respondent to the Maharashtra Legislative Assembly on the ground of any corrupt practice, for which a separate election petition has been filed by one of the complainants. Their case is that the account of election expenses submitted by the respondent is not "correct" account and as such it does not conform to the "manner required by or under the Act", and that any falsity in the account can be enquired into by the Commission under Section 10A as has been held by the Hon'ble Supreme Court in *Shivaramagowda's* case (supra).

11. In order to appreciate in right perspective the ratio of the decision of the Hon'ble Supreme Court in *Sucheta Kriplani's* case (supra), it would be

appropriate to take note of the legal and factual position as obtained in 1955 when the said decision was rendered by the Constitution Bench of the Apex Court in that case. Let us first have a look at the legal provisions as then obtaining.

12. The law then provided under section 44 of the Representation of the People Act, 1951 (as originally enacted), that every election agent of a candidate shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of expenditure in connection with election as may be prescribed. Section 76 (1) of the said Act further provided that 'within the prescribed time after every election, there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate, a return of election expenses of that person signed by him and his election agent'.

13. Sub-section (2) of that section further provided that 'every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath or solemn affirmation before a magistrate'.

14. Sub-section (3) of that section is not relevant as it made some enabling provision for filing the return by a candidate who for some reason was out of India during the relevant period.

Section 77 read as follows:-

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'77. Maximum election expenses, etc. – The maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with election shall be such as may be prescribed.'

15. Rule 111 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 (hereinafter '1951-Rules') prescribed the particulars which were to be shown in the book of accounts to be maintained by every candidate. That rule read as follows:-

'111. Accounts of election agents – The books of accounts to be kept by an election agent under section 44 shall contain a statement –

(a) of all payments made or authorised by the candidate or by his election agent or made on behalf of the candidate or in his interests by any other person with the consent of the candidate or his election agent for expenses incurred on account of, or in connection with, the conduct and management of the election, and

(b) of all unpaid claims in respect of such expenses of which the candidate or his election agent is aware.'

16. Rule 112 (1) of the said Rules laid down that the return of election expenses shall be lodged by every candidate with the Returning Officer within 45 days from the date of publication of result of election to which the expenses related.

Sub-rule (2) of Rule 112 prescribed the form in which that return was to be lodged and also the documents and declarations which were to accompany the said return.

17. Under Rule 112(4), at the time when any return of election expenses was lodged with the Returning Officer, he was to note on the return the date on which it was lodged and also to certify thereon whether or not in his opinion the return had been lodged within the time and in the manner required by the Act and these rules.

18. Under Rule 113, the Returning Officer, within two days from the date of receipt of the return, was required to give a notice as to the date, time and place at which the return could be inspected by the interested persons and copies thereof taken on payment of such fee as was to be fixed by the Election Commission.

19. Rule 114 laid down the procedure as to how the returns of election expenses of candidates were to be examined and how the Election Commission was to proceed where any candidate had defaulted in making the return. The said Rule is reproduced below for ease of reference:-

'114. Decision of Election Commission regarding persons who have defaulted in making the return of election expenses and have thereby incurred disqualifications and publication of the list of such persons - (1) Within ten days from the expiration of the time specified in sub-rule (1) of rule 112 for the lodging of the return of

election expenses of candidates at any election, the Returning Officer shall submit for the information of the Election Commission a statement containing the names of all candidates and their election agents together with a report whether they have lodged their returns of election expenses and, if so, the respective dates on which such returns have been lodged and shall, in the said report, invite attention to returns which in his opinion have not been lodged within the time and in the manner required by the Act and these rules.

(2) As soon as may be after the expiration of the time specified in sub-section (3) of section 76 in the case of every candidate to whom the provisions of the said sub-section apply, the Returning Officer shall also forward for the information of the Election Commission a statement containing the name of such candidate and of his election agent and also containing a report whether any declaration under the said sub-section has been lodged by the candidate after his return to India and if so the date on which the said declaration has been lodged and shall, in the said report, invite attention to every such declaration which in his opinion has not been lodged within the time and in the manner required by the Act and these rules.

(3) Immediately after the submission of the statement referred to in sub-rule (1) or in sub-rule (2) the Returning Officer shall publish a list by affixing a copy thereof in some conspicuous place in his office notifying therein the names of all candidates and their election agents who have been reported by him under sub-rule (1) or sub-rule (2), as the case may be, to have failed to lodge their return of election expenses within the time and in the manner required.

(4) As soon as may be on the receipt of the statement referred to in sub-rule (1) or sub-rule (2), the Election Commission shall consider

the report of the Returning Officer, decide whether any candidate or election agent has failed to lodge the return of election expenses within the time and in the manner required by the Act and these rules and the candidate and the election agent have thereby incurred disqualifications under clause (c) of section 7 or under section 143.

(5) Not later than forty days from the expiration of the time specified in sub-rule (1) of rule 112 for the lodging of the return of election expenses or of the time specified in sub-section (3) of section 76 for the lodging of the declaration by the candidate after his return to India, as the case may be, the Election Commission shall cause to be published in the Official Gazette and in such other manner as it may direct a list containing the names of all candidates and their election agents who have, according to the decision given by the Election Commission under sub-rule (4), failed to lodge the returns of election expenses within the time and in the manner required by the Act and these rules and have thereby incurred the disqualifications referred to in that sub-rule.

(6) Any candidate or election agent whose name is included in the list referred to in sub-rule (5) may within fifteen days from the date of publication of the list in the Official Gazette submit a representation in writing to the Election Commission for the removal of the disqualification referred to in sub-rule (4) incurred by such candidate or election agent with an explanation as to why default has been made in making the return of election expenses, and shall at the same time send a copy thereof to the Returning Officer. Alongwith such copy the candidate or the election agent shall, if he has not already done so, submit a return of election expenses to the Returning Officer in the manner required by the Act and these rules. The Returning Officer

shall within five days of the receipt thereof forward to the Election Commission the said copy and return (if any) with such comments as he wishes to make thereon.

(7) As soon as may be on receipt of the representation under sub-rule (6) and after such inquiry as it thinks fit, the Election Commission shall decide whether or not the disqualification incurred by the candidate or the election agent should be removed.'

20. Rule 115 provided for the notification of names of candidates who were disqualified by the Election Commission in accordance with the provisions of Rule 114 under section 7(c) or section 143 of the 1951-Act. Schedule V read with Rule 117 of the said Rules prescribed the maximum limits of election expenses that could be incurred or authorized by a candidate or his election agent under section 77.

21. In this context, provisions of sections 7(c), 8(b), 123(7) and 124(4) of the 1951-Act also need to be taken special note of. Section 7 which laid down several disqualifications for being chosen as, and for being, a member of either House of Parliament or of a State Legislature provided, in clause (c), as follows:-

'A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or of the Legislative Council -

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

Disqualification under section 7(c) was subject to saving mentioned in section 8(1)(b) which read as follows:-

'(1) Notwithstanding anything in section 7 –

(a) xxxxxxxx

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

22. Section 123 prescribed certain major corrupt practices at elections.

Clause (7) of that section provided as follows:-

'The following shall be deemed to be corrupt practices for the purposes of this Act:-

xxxxxxxxxxxxxxxxxxxxx

(7) The incurring or authorizing by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule made thereunder.'

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23. At that time, sections 124 and 125 prescribed some minor corrupt practices and illegal practices also. Clause (4) of section 124 is relevant in the present case and the same read as follows:-

'The following shall also be deemed to be corrupt practices for the purposes of this Act:-

(4) The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying such return.'

24. Sections 140 and 143 also have special relevance to this case and the same are also reproduced as follows:-

'140. Corrupt and illegal practices entailing disqualification – (1) The following corrupt or illegal practices relating to elections shall entail disqualification for membership of Parliament and of the Legislature of every State, namely:-

- (a) corrupt practices specified in section 123 or section 124, and
- (b) illegal practices specified in section 125.

(2) The period of such disqualification shall be six years in the case of a corrupt practice, and four years in the case of an illegal practice, counting from the date on which the finding of the Election Tribunal as to such practice takes effect under this Act.

'143. Disqualification arising of failure to lodge return of election expenses – If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which the provisions of Chapter VIII of Part V apply, or if such return is found, either upon the trial of an election petition under

Part VI or by any court in a judicial proceeding to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which the return was required to be lodged.'

25. The law further provided in section 80 that an election could be called in question by means of an election petition in accordance with the provisions of Part VI of the 1951-Act. Such election petitions which were then filed before the Election Commission were tried by Election Tribunals constituted by the Commission under section 86. Section 100 of the Act laid down the grounds on which an election could be declared void by a Tribunal in the trial of an election petition. Relevant provisions of section 100(2) are reproduced below for ease of reference:-

- (2) Subject to the provisions of sub-section (3), if the Tribunal is of opinion -
- (a) that the election of a returned candidate has been procured or induced or the result of the election has been materially affected, by any corrupt or illegal practice; or
 - (b) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent; or
 - (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this

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Act or any other Act or rules relating to the election, or by any mistake in the use of any prescribed form; the Tribunal shall declare the election of the returned candidate to be void.'

26. Now, we come to the factual matrix of *Sucheta Kriplani's* case. Smt. Sucheta Kriplani contested and won the election to the House of the People from New Delhi Parliamentary Constituency at the first general election held in 1951-52. On 6th March, 1952, she filed her return of election expenses, which was found to be defective. On 7th April, 1952, the Election Commission published a notification disqualifying her under the above quoted Rule 114(5) of the 1951-Rules, on the ground that she had failed to lodge the return of election expenses in the manner required and that she had thereby incurred the disqualification under the abovementioned Sections 7(c) and 143 of the 1951-Act. She thereafter submitted a fresh return on 30th April, 1952 under Rule 114(6) and the same was accepted by the Commission on 7th May, 1952. Consequently, her disqualification was removed by the Commission under Rule 114(7). Meanwhile, one of the rival candidates, Smt. Manmohini, filed an election petition questioning the election of Smt. Kriplani on several grounds of corrupt practices, including the minor corrupt practice under section 124 of filing a false return of election expenses. During the trial of the election petition, Smt. Kriplani submitted before the Election Tribunal that her return of election expenses

had been accepted by the Election Commission and the Commission had removed her disqualification and that the Election Tribunal could not, therefore, go into the question of falsity of her return of election expenses in the trial of the election petition. That contention of Smt. Kriplani was rejected by the Election Tribunal and also by the Punjab High Court. In the appeal filed before the Hon'ble Supreme Court, the Constitution Bench of the Apex Court observed and held as follows:-

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

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

'(12) THAT places the matter beyond doubt. The trial of an election petition is conducted by an Election Tribunal and this section makes it incumbent on the Tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission. The duty of the Election Commission is merely to decide under R. 114 (4) whether any candidate has, among other things.

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

'It is a question of form and not of substance.' If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other documents by some other persons and the charges so preferred will be enquired into by the Tribunals.'

27. The 1951-Act, as originally enacted in 1951 and which formed the basis of the above judgement of the Hon'ble Supreme Court, underwent significant changes in 1956 in the light of the experience at the first general elections in 1951-52. After those general elections, a Bill called the 'Representation of the People (Second Amendment) Bill, 1955', was moved in the House of the People on 3rd August, 1955 and was referred to a Select Committee under the Chairmanship of Pandit Thakur Das Bhargava. The Select Committee was authorized to consider even the matters other than those dealt with in that Bill but relating to matters covered by the Representation of the People Acts, 1950 and 51. The Select Committee, in its report submitted on 15th January, 1956, observed, *inter alia*, that the provisions relating to major and minor corrupt practices and illegal practices in Sections 123, 124 and 125 of the 1951-Act were rather complicated and should be simplified. The Committee recommended that:

'.....illegal practices should be done away with, that the classification of corrupt practices between major and minor should be

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abolished, that there should be only one class of corrupt practices to be called 'corrupt practices' simpliciter and clauses (3) and (4) of existing section 123 should not be corrupt practices at all; and that of the various items in existing section 124, item (5) only should be regarded as a corrupt practice and items (2), (3) and (4) should not be corrupt practices at all.'

In accordance with the above recommendations of the Select Committee, the provisions of Sections 123 to 125 were recast and enacted by the Representation of the People (Second Amendment) Act 1956. By that amending Act, only Section 123 was retained containing provisions relating to corrupt practices, all classified in one category. Sections 124 and 125 defining minor corrupt practices and illegal practices were omitted altogether. Under Section 123, so recast in 1956, seven classes of acts of commission and omission were considered as corrupt practices, namely; (1) bribery; (2) undue influence; (3) systematic appeal on the ground of religion, caste, etc; (4) publication of false statement relating to a candidate; (5) free conveyance of voters; (6) **incurring of election expenditure in excess of the prescribed limit**; and (7) seeking assistance of government servants. Thus, the making of any return of election expenses which was **false** in any material particular which was a minor corrupt practice under section 124(4) ceased to be a corrupt practice and only the incurring of election expenditure

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in excess of prescribed limit under Section 77 alone remained a corrupt practice.

28. Section 143, which provided for disqualification of a candidate and his election agent, if found guilty by an Election Tribunal of filing a false account of election expenses, was also omitted. Furthermore, the above quoted Sections 7(c) and 8(1)(b) which originally provided for disqualification for failure to lodge the account of election expenses were subsequently replaced by the present Section 10A in 1966 (by Act 47 of 1966). The present Section 10A now reads as under:-

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

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

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

29. Further, Sections 77 and 78 were recast in 1956 itself as follows:-

'77. Account of election expenses and maximum thereof. – (1)

Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification

calling the election and the date of declaration of result thereof, both dates inclusive.

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

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

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

30. These sections underwent some further changes in 1966, 1974, 1975, 2003 and 2004, inserting mainly some Explanations to Section 77(1) as to what should be deemed to be expenditure incurred or authorized by a candidate and which items of expenditure should not form part of his account, and clarifying that the account of election expenses should be maintained from the date of filing of his nomination by a candidate and that it should be lodged with the District Election Officer instead of Returning Officer. Section 77 read as follows in 1999, when the Hon'ble Supreme Court rendered its decision in Shivaramagowda's case (supra):-

'77. Account of election expenses and maximum thereof. - (1) Every candidate at an election shall, either by himself or by his

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election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent, between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Explanation 1 - Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purpose of this sub-section.

Provided that nothing contained in this Explanation shall affect -

- (a) any judgment, order or decision of the Supreme Court whereby the election of a returned candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974 (Ord. 13 of 1974);
- (b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement.

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Explanation 3 – For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate or by this election agent for the purpose of this sub-section.

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

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

31. Another important change, and relevant for the purpose of determining the preliminary issue here, made in 1956 was in the grounds on which the election of a returned candidate may be declared void under Section 100 by an Election Tribunal (High Court from 1966 onwards). The said Section 100 as amended read as follows:-

‘100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 9[or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
 (c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) xxxxx

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

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then the High Court may decide that the election of the returned candidate is not void.'

Consequently, the relevant rules prescribing the particulars to be shown in the return of election expenses and the procedure for submission of the reports by the Returning Officer to the Election Commission were also changed by the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, which were subsequently further changed and replaced by the existing Conduct of Elections Rules, 1961. The law underwent further changes in 1966 when it was provided that the returns of election expenses would be filed with the District Election Officer instead of the Returning Officer and the Election Petitions would be tried by the High Courts instead of Election Tribunals. The existing rules which are relevant for consideration of the present issue in this case, i.e., Rules 86 to 89 of the Conduct of Elections Rules, 1961, are reproduced below for ready reference:-

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

- (a) the date on which the expenditure was incurred or authorised;
- (b) the nature of the expenditure (as for example, travelling, postage or printing and the like);

(c) the amount of the expenditure—

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- (i) the amount paid;
- (ii) the amount outstanding;

(d) the date of payment;

(e) the name and address of the payee;

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

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

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

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

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

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

'87. Notice by district election officer for inspection of accounts.—The district election officer shall, within two days from the date on which the account of election expenses has been lodged

by a candidate under section 78, ~~cause a notice to be~~ affixed to his notice board, specifying—

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

'88. Inspection of account and the obtaining of copies thereof.—

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

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

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

(2) Where the district election officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act and these rules, he shall with every

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such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

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

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

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

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

(7) The district election officer shall, within five days of the receipt thereof, forward to the Election Commission the copy of the

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representation and the account (if any) with such comments as he wishes to make thereon.

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

32. The Commission is now to take a view whether, in the wake of the abovementioned changes made in the law after 1955 and till date, the decision of the Hon'ble Supreme Court in *Sucheta Kriplani's case* (supra) in 1955 still holds the field or the later decision of the Hon'ble Supreme Court in *Shivaramagowda's case* (supra) in 1999 is the current law declared by the Apex Court under Article 141 of the Constitution.

33. It is important to note here that the Commission is dealing, in the present case, with the question of the Commission's jurisdiction and powers under section 10A which applies in relation to all candidates – whether returned or defeated – and not merely returned candidates, though the respondent in the present case incidentally happens to be a returned candidate.

34. Post 1955 amendments, the question of jurisdiction of the High Courts while trying election petitions in which the issues relating to the expenditure incurred or authorized by candidates and the submission of returns by them has come up for consideration before the Hon'ble Supreme Court in a catena of cases. Interpreting the provisions of Section 77 vis-à-vis Section 123(6), the Hon'ble Supreme Court held in 1968 in *Shri Krishan Vs. Sat Narain and Others* (37 ELR 13) that :

'Section 77 of the Act imposes an obligation upon every candidate to maintain a separate and correct account of all expenditure incurred or authorised in connection with the election, and the account must contain particulars prescribed. The section also enacts that the total of the expenditure shall not exceed the prescribed amount. S. 123(6) makes incurring or authorizing of expenditure in contravention of s. 77 a corrupt practice; failing to maintain an account or maintaining an account not containing particulars prescribed is not declared a corrupt practice. By s. 123(6) it could only be intended to refer to sub-s. (3) of s. 77.'

Again, in *Dalchand Jain Vs. Narayan Shankar Trivedi and Another* [1969

(3) SCC 685], the Hon'ble Supreme Court held that :

'(14) SECTION 123 (6) lays down that "the incurring or authorizing of expenditure in contravention of Section 77" is a corrupt practice. Every contravention of Section 77 does not fall within Section 123(6). Section 77 consists of three parts. Section 77, Ss. (1) requires the candidate to keep a separate and correct account of all election

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

'(15). Section 124(4) as it stood before its amendment by Act XXVII of 1956 provided that the making of any return which was false in material particulars was a minor corrupt practice. That provision has now been deleted and the submission of an incorrect return of expenses is no longer a corrupt practice.'

35. The law is now thus well settled that the High Court in an election petition is concerned with the corrupt practice under Section 123(6) where it is alleged that the candidate has suppressed some items of expenditure or undervalued them and if the expenditure on those suppressed or undervalued items is taken into account the total expenditure of the candidate incurred or authorized by him in connection with his election would exceed the

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prescribed limit of election expenses under Section 77(3) and not with the violations of Sections 77(1) and 77(2), i.e., failure to maintain a correct and true account of election expenditure.

36. A question then arises as to what is the remedy for a person who alleges that a candidate has filed a false account of his election expenses in which some items of expenditure have been suppressed or undervalued but the total expenditure remains below the prescribed ceiling and is not covered by the corrupt practice under Section 123(6). This question is squarely answered by the Hon'ble Supreme Court in *L.R. Shivaramagowda Vs. T.M. Chandrashekar* (AIR 1999 SC 252). The Hon'ble Apex Court has held in that case:

'(18) WE shall now proceed to the second limb of the argument of the appellant's counsel. The High Court has held that the appellant had not maintained true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. 'Corrupt practices' have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section, the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of

Elections Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) and (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Elections Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1) (b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1) (b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77 i. e. the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77 (1) and (2) would also fall within the scope of Section 123 (6). Consequently, it cannot fall under Section 100 (1) (b). The attempt here by the first respondent is to bring it within Section 100 (1) (d) (iv). The essential requirement under that sub-section is that the result of the election in so far as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required

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by Section 77 (1) and (2) will in no case affect, and much less materially, the result of the election.

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(22) IT was argued by learned counsel for the first respondent that the aforesaid view would enable any successful candidate at an election to snap his fingers at the law prescribing the maximum limit of expenditure and escape from the provisions of Section 77 (3) by filing false accounts. According to him, if the aforesaid construction of Sections 77 and 123 (6) is to be adopted, there will be no sanction against a candidate who incurs an expenditure exceeding the maximum prescribed limit. Referring to Section 10 (A) of the Act which enables the Election Commission to disqualify a person who had failed to lodge an account of election expenses within the time and in the manner required by or under the Act and had no good reason or justification for the failure, he contended that the said Section provides only for a situation arising out of failure to lodge an account and not a situation arising from a failure to maintain true and correct accounts. We are unable to accept this contention. In our opinion, sub-section (a) of Section 10 (A) takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Section 77 (2) provides that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules provides for the particulars to be set out in the account. The said Rule prescribes that a voucher shall be obtained for every item of expenditure and for lodging all vouchers along with the account of election expenses. Rule 89 provides that the District Election Officer shall report to the Election Commission, the name of each contesting

candidate, whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged and whether in his opinion such account has been lodged within the time and in the manner required by the Act and the Rules. That Rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act after adopting the procedure mentioned therein. If an account is found to be incorrect or untrue by the Election Commission after enquiry under Rule 89, it could be held that the candidate had failed to lodge his account within the meaning of Section 10 (A) and the Election Commission may disqualify the said person' (emphasis supplied by us).

37. In view of the above categorical decision of the Hon'ble Supreme Court, in *Shivaramagowda's case*, no one should be left in any manner of doubt that the Election Commission is fully empowered under Section 10A to go into the question of incorrectness or falsity of the return of election expenses filed by a candidate. The contention of the respondent that the above decision of the Hon'ble Supreme Court is *per incuriam* inasmuch as three member Bench of the Apex Court while dealing with that case did not take note of the earlier decision of the Constitution Bench in *Sucheta Kriplani's case* (supra), in our considered opinion, cannot be accepted. The relevant law which was prevailing in 1955 when the decision in *Sucheta Kriplani's case* was rendered was subsequently significantly changed and

was substantially different from the law which now prevails after the abovementioned amendments in 1956, 1966, etc. We are not convinced with the submissions of the learned senior counsel for the respondent that the law even after the aforesaid amendments continues substantially to be the same as it obtained in 1955 and that the said amendments have only made some cosmetic changes and not substantive changes. Suffice to point out that the very provision in Section 124(4) making the filing of a false return of election expenses, which was a minor corrupt practice in 1955 and could be tried by the Election Tribunal in an election petition, has now ceased to be any corrupt practice under the existing law and the Election Tribunal (now High Court) can go into the question of incorrectness or falsity of a return of election expenses only where it is additionally averred that the expenditure allegedly incurred or authorized and not shown in the return has resulted in the exceeding of the prescribed ceiling of election expenses. The mere filing of an incorrect or false return cannot be a subject matter of enquiry by the High Court in an election petition, as has been conclusively settled by the Hon'ble Supreme Court in the cases of *Shri Krishan Vs. Sat Narain and Others*, *Dalchand Jain Vs. Narayan Shankar Trivedi and Another* (supra), etc.

38. Having regard to the above, it also cannot be validly contended by the learned counsel for the respondent that the Commission has to follow the

decision of the Constitution Bench of the Hon'ble Supreme Court in *Sucheta Kriplani's* case and not the decision of the three member Bench of that Court in *Shivaramagowda's* case. As noticed above, *Sucheta Kriplani's* case was decided on the facts and law as they existed in 1955, whereas the law on the point has since undergone significant changes and the decision in *Shivaramagowda's* case has been rendered by the Hon'ble Supreme Court taking the present law into account.

39. Thus, in our considered view, the decision of Hon'ble Supreme Court in the case of *Shivaramagowda* (supra) conclusively settles the issue that the question of incorrectness of falsity of return of election expenses can be gone into and enquired by the Election Commission under Section 10A. In this context, the Commission would like to point out the provisions of Article 141 of the Constitution which lays down and mandates unambiguously as follows:-

'141. Law declared by Supreme Court to be binding on all courts.— The law declared by the Supreme Court shall be binding on all courts within the territory of India.'

It cannot be disputed that the Election Commission is exercising quasi judicial powers in the present proceedings where the civil rights of the candidates concerned are involved with serious consequences of disqualification. Therefore, the Election Commission is bound by the law

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laid down by the Hon'ble Supreme Court in *Shivaramagowda case* (supra) and any view by the Commission to the contrary that it has no jurisdiction, as the respondent wants us to take, would amount to disobedience of the law declared by the Hon'ble Supreme Court in the above case of *Shivaramagowda*.

40. The contention of the learned senior counsel for the respondent that even after the amendments to law in 1956, 1966, etc., the question of incorrectness or falsity of return of election expenses can be agitated before the High Court in an election petition under Sections 80 and 100 and not before the Election Commission under Section 10A is also not tenable in view of the fact that under the existing law, an election petition can be filed only against the election of a returned candidate and not a defeated candidate. It should not be forgotten that the Commission is considering here not the limited question whether the Commission can go into the alleged incorrectness or falsity of return of election expenses of the respondent, a returned candidate, but the much wider question of the Commissioner's jurisdiction under Section 10A which applies to all candidates, both elected and defeated. Under Section 100(1)(d)(iv), on which a great reliance was placed by the learned senior counsel, the non-compliance with the provisions of the Representation of the People Act, 1951, can be a ground for challenging the election, if such non-compliance

has materially affected the result of the election, insofar as it concerns a returned candidate. The contention that under Section 100(1)(d)(iv) the non-compliance with Sections 77(1) and 77(2) can be agitated has also been answered and negatived by the Hon'ble Supreme Court in *Shivaramagowda's* case (supra). The Hon'ble Supreme Court has held that:

'It cannot by any stretch of imagination be said that non-compliance with Section 77 (1) and (2) would also fall within the scope of Section 123 (6). Consequently, it cannot fall under Section 100 (1) (b). The attempt here by the first respondent is to bring it within Section 100 (1) (d) (iv). The essential requirement under that sub-section is that the result of the election in so far as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Section 77 (1) and (2) will in no case affect, and much less materially, the result of the election.'

41. Further, section 100(1)(d)(iv) does not speak of any effect of non-compliance on the result of election insofar as a **defeated** candidate is concerned. On the other hand, Section 10A deals with **all** contesting candidates, whether returned or defeated. Under Section 10A, even the question of incorrectness or falsity of the return of election expenses of a defeated candidate can be raised before the Election Commission. Any view that the incorrectness or falsity of the return of election expenses of a candidate can be gone into only by the High Court and not by the Election

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Commission would defeat the salutary purpose and object underlying Section 10A and make its provisions otiose.

42. Furthermore, an election petition can be filed under the existing law either by a candidate at the impugned election or by a voter in the constituency concerned. Other than the abovementioned persons, no one can approach a High Court with an election petition. If the contention of the respondent is accepted, Dr. Kirit Somaiya and Shri Mukhtar Abbas Naqvi, who are also the complainants in the present case, apart from Dr. Kinkhalkar, have nowhere to go with their present complaints and are remediless insofar as their present grievances against the respondent are concerned.

43. For the reasons mentioned above, the preliminary issue raised by the learned senior counsel for the respondent questioning the very jurisdiction of the Election Commission under Section 10A to go into the complaints made by the complainants in the present case alleging suppression of expenditure by the respondent incurred or authorised on 'paid news' in his return of election expenses and lodging thereby an incorrect or false return is rejected and it is hereby held that the Commission has the necessary jurisdiction under section 10A to go into and make an enquiry as regards the alleged incorrectness or falsity of his return of election expenses.

44. The learned senior counsel for the respondent has also raised an alternative plea that invoking of the provisions of Section 10A has certain

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pre-conditions to be met. Firstly, there should be a report from the District Election Officer under Rule 89(2) that the return of election expenses of the candidate was, in his opinion, not lodged in the manner required by law, and, secondly, the Commission had to take a decision on the basis of such report of the District Election Officer that the return suffered from the said defect. He stated that the report dated 17.11.2009 of the District Election Officer Nanded, showed that the return of election expenses lodged by the respondent was in the manner required by law and the Commission had thus no ground for proceeding to make any enquiry in matter of that return. The Commission is not convinced with the above submission either of the learned senior counsel. The Commission is not bound by the opinion of the District Election Officer. Rather, Rule 89(5) itself provides that, on consideration of the report of the District Election Officer, the Commission may decide that the return of election expenses of a candidate has not been filed within the time and manner required by law. Any view that the Commission has to act only as per the opinion of the District Election Officer would militate against the statutory provisions of Section 10A where the power to decide that a candidate has failed to lodge his return of election expenses in the manner required by law has been vested in the Election Commission and not in the District Election Officer. If the District Election Officer fails to point out any defect in the return of election expenses of a

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candidate, the Commission cannot hold its hands back and refuse to look into the alleged incorrectness or falsity of the return if brought to its notice

by any other interested party. In fact, in an appropriate case, the Commission can even question the District Election Officer if he fails to bring out the true position in relation to the account filed by a candidate. It may be relevant to point out here that even in the present case the District

Election Officer, Nanded, submitted a supplementary letter dated

01.12.2009, with reference to a news article published in Marathi Daily

Loksatta dated 01.12.2009 regarding the election expenditure return

submitted by the respondent and forwarded the complete account of election

expenses of the respondent to the Commission 'for further necessary action'.

45. It may be pertinent to point out here that a similar contention was made with regard to the Commission's power to direct repoll under Sections 58 and 64A of the 1951-Act. It was contended that Commission could order repoll under those sections only when there was a report from the Returning Officer recommending repoll and that the Commission could direct repoll only at the polling stations so recommended by the Returning Officer. That contention was rejected by the Hon'ble Supreme Court in *Mohinder Singh Gill's* case (supra). The Hon'ble Court observed:

'116. Mr. Rao submits referring to Ss. 58 and 64A of the Act, that the Chief Election Commissioner has no power to cancel the poll in the

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entire constituency. He submits that this is a case of complete lack of power and not merely illegal or irregular exercise of power. He points out that there is a clear provision under S. 58 of the Act. for reordering of poll at a polling station. Similarly under S. 64A there is provision for declaring the poll at a polling station void when the Election Commission is satisfied that there is destruction or loss etc. of ballot papers before counting. Counsel submits that while law has provided for situations specified in S. 58 with regard to loss or destruction of ballot boxes and under S. 64A with regard to loss and destruction of ballot papers before counting of votes no provision has been made for such an unusual exercise of power as the cancellation of the poll in the entire constituency after it has already been completed peacefully. It is, therefore; argued that this is a case of complete lack of power of the Commission to pass the impugned order.

'117. It is clear even from S. 58 and S. 64A that the legislature envisaged the necessity for the cancellation of poll and ordering of repoll in particular polling stations where situation may warrant such a course. When provision is made in the Act to deal with situations arising in a particular polling station, it cannot be said that if a general situation arises whereby numerous polling stations may witness serious mal-practices affecting the purity of the electoral process, that power can be denied to the Election Commission to take an appropriate decision. Although Section 58 and S. 64A mention "a polling station" or "a place fixed for the poll" it may, where necessary embrace multiple polling stations.

'118. Both under S. 58 and under S 64A the poll that was taken at a particular polling station can be voided and fresh poll can be ordered

by the Commission. These two sections naturally envisage a particular situation in a polling station or a place fixed for the poll and cannot be said to be exhaustive. The provisions in Ss. 58 and 64A cannot therefore be said to rule out the making of an order to deal with a similar situation if it arises in several polling stations or even sometimes as a general feature in a substantially large area. It is, therefore, not possible to accept the contention that the Election Commission has no power to make the impugned order for a re-poll in the entire constituency.

The Madras High Court also observed to the same effect in a recent case reported as *All India Anna Dravida Munnetra Kazhagam Vs. State Election Commissioner* [2007(1) CTC 705]:

'In the words of the Supreme Court in *Mohinder Singh Gill's* case, there may be circumstances which are not covered under the statute which require the interference of the Election Commission to ensure a free and fair poll. It is no doubt true that the Election Commission is not expected to act arbitrarily. However, it would not be correct to state that unless a report is made by a Polling Officer, a Presiding Officer, a Returning Officer or a District Election Officer, the State Election Commissioner is powerless to direct repolling even if he is satisfied that free and fair election has not taken place. The Election Commission is empowered to act upon such reports, but it does not mean that it is powerless bereft of such reports. The onerous duty is cast on the Election Commission to hold a free and fair election. If the Commission receives any information about the impurity of the election — such information can be the report of the officials,

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complaints by candidates, agents or voters and even newspaper reports - it can and should act.'

46. Another objection raised by the learned senior counsel for the respondent was that there was no valid notice to the respondent in the present case that the Commission was proceeding under Section 10A inasmuch as there was no reference to Section 10A in its letter dated 16.01.2010 whereby the respondent was asked to give his comments on the complaints of the said complainants referred to him. It is true that in the forwarding letter dated 16.01.2010 of the Commission, a reference to Section 10A was not invited; it was, however, clearly mentioned in that letter that the Commission had received certain complaints alleging *inter alia* that he had undervalued the cost of his election propaganda through newspaper advertisements, etc. in his accounts of election expenses. Further, in the complaint dated 30.11.2009 of Shri Mukhtar Abbas Naqvi and others, which was forwarded to the respondent with the said letter dated 16.01.2010, it was specifically mentioned by them that action may be taken against the respondent under Section 10A and other relevant provisions of the law. Can it then be said that the respondent was kept in the dark as to what was the subject matter of the enquiry against him and under what provision of law? The reply dated 29.01.2010 of the respondent clearly shows that he was fully aware of the nature of enquiry against him. In para

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(2) of his said reply, he stated that 'I have submitted a true and correct account of my election expenses including those incurred on advertisements'. Similarly, in para (9), he has again stated that :

'.....The expenses incurred by me for my election are correctly and sincerely accounted. The record of such expenses is strictly maintained and is also submitted and lodged with District Election Officer as per section 78 of the Representation of the People Act. The same was also verified by the concerned officers, authorities and no irregularity has been found'.

Furthermore, in his said reply, he raised the issue of the Commission's jurisdiction and contended that the matter could be enquired into by the High Court and not by the Election Commission. In view of these facts, the respondent cannot have a grievance that he was not even aware of the provisions of law under which the Election Commission was making an enquiry and taken by surprise as to his defence in the present case.

47. It also needs to be noted that under section 10A, the Commission has to arrive at satisfaction on two counts, namely, (a) that the candidate has failed to lodge an account of election expenses within the time and in the manner required by or under this Act (1951-Act), and (b) that the candidate has no good reason or justification for the above failure. For coming to the satisfaction on the first count, the Commission may make such enquiry as it thinks fit. It is well established principle of law that an authority which is

vested with certain statutory powers is deemed to be vested with all implied powers also which are necessary to effectuate the power expressly granted. In this context, it would apt to take note of the following observation of the Constitution Bench of the Hon'ble Supreme Court in *Mohinder Singh Gill's case* (supra) (para 89):

'Necessary implications: Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. Thus it has been stated, "An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty..... That which is clearly implied is as much a part of a law as that which is expressed." The reason behind the rule is to be found in the fact that legislation is enacted to establish broad or general standards. Matters of minor detail are frequently omitted from legislative enactments, and "if these could not be supplied by implication the drafting of legislation would be an interminable process and the true intent of the legislature likely to be defeated."

The present enquiry by the Commission in the instant case is for the purpose of coming to its satisfaction on the first count. If the Commission is satisfied on the first count that there has been a failure on the part of the respondent in lodging his account of election expenses in the manner required by law, then the respondent would require a notice whether he has

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any good reason or justification for the said failure and whether he should be disqualified under Section 10A. Therefore, the objection of the respondent that the notice to him is deficient and not in accord with Section 10A and Rule 89 is not sustainable.

48. Lastly, the learned senior counsel for the respondent also pointed out that the complainant, Dr. Kinhalkar, has filed an Election Petition No. 11 of 2009 before the Aurangabad Bench of the Bombay High Court in which the same issue of the alleged expenditure by the respondent on paid news has been raised. He submitted that the same issue could not be adjudicated upon parallelly by two authorities as the possibility of the two authorities coming to contradictory findings or conclusions could not be ruled out. According to him, this amounted to 'forum hunting' by the complainant which should not be permitted by the Commission. This contention also holds no water. As pointed out above, the jurisdiction of the High Court trying an election petition under Sections 80 and 100 and that of the Election Commission under Section 10A have been held by the Hon'ble Supreme Court in *Shivaramagowda's* case (supra) to operate in different fields. Besides, it cannot be lost sight of that Dr. Kinhalkar, who is the petitioner in the election petition before the Bombay High Court, is not the only complainant in the present case – there are two other complainants as well, namely, Shri Mukhtar Abbas Naqvi and others, and Dr. Kirit Somaiya and others. They

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could not approach, and have not approached any court to agitate their grievances in the present matter.

49. In view of the foregoing, the Commission is of the considered view that the Commission has undoubted jurisdiction under section 10A to go into the question of alleged incorrectness or falsity of the return of election expenses maintained by the respondent under Sections 77(1) and 77(2) and lodged by him under Section 78 of the Representation of the People Act, 1951.

50. Accordingly, the Commission hereby decides that the matter would be further heard on merits, and the next hearing for the purpose shall be held on 29th April, 2011 (Friday), at 04.00 p.m. in the Commission's Secretariat.

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

Sd/-
(DR. S.Y.QURAISHI)
CHIEF ELECTION COMMISSIONER

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

NEW DELHI THE 2ND APRIL, 2011

*Attended
true copy*

TRUE COPY

87/2/4/11

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Annexure-P-9

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 2511 OF 2011

IN THE MATTER OF:

Sh. Ashok Shankarrao Chavan
R/o 1-2-197, Shivaji Nagar,
District Nanded,
Maharashtra.

...Petitioner

VERSUS

1. Dr. Madhavrao Kinhalakar
Ex. Home Minister (M.S.)
"Safalya Niwas", Wammannagar,
Purana Road, Nanded,
Maharashtra
2. Dr. Kirit Somaiya
Vice-President BJP Maharashtra,
9-C, Neelam Nagar, Mulund (E),
Mumbai - 400081
3. Sh. Mukhtar Abbas Naqvi
Member of Parliament (R.S.)
C-1, 12-A, Pandara Park,
New Delhi - 110 003

...Contesting Respondent

4. Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi 110001

...Proforma Respondent

PETITION UNDER ARTICLE 226 READ WITH ARTICLE
227 OF THE CONSTITUTION OF INDIA, 1950,
CHALLENGING INTER-ALIA, THE CONSTITUTIONAL
VALIDITY OF THE ELECTION COMMISSION TO REMOVE
AN ELECTED CANDIDATE UNDER SECTION 10A OF THE
REPRESENTATION OF PEOPLE ACT, AS ULTRA VIRES
OF ARTICLE 329 (B) OF THE CONSTITUTION OF INDIA.

TO

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HON'BLE THE CHIEF JUSTICE AND
HIS COMPANION JUDGES OF THE HON'BLE
HIGH COURT OF DELHI AT NEW DELHI

THE HUMBLE PETITION OF THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH

1. That the petitioner is law abiding citizen and as such entitled to evoke the Writ jurisdiction of this Hon'ble Court. The petitioner by the instant writ petition assails the impugned order of the Election Commission in No. 76/MT-LA/85/2009 In Re: Account of election expenses of Shri Ashok Shankarrao Chavan, returned Candidate from 85- Bhokar Assembly constituency at the general election to the Maharashtra Legislative Assembly, 2009 - Scrutiny of account under section 10A of the Representation of People Act, 1951. A copy of order dated 02.04.2011 passed by the Learned Election Commission of India is annexed to the present writ petition as ANNEXURE-P/1.
2. That Respondent No. 1, Dr. Madhavrao Kinhalkar, one of the rival contestants at the abovementioned general election from 85 Bhokar Assembly Constituency, Respondent no. 2, Dr. Kirit Somaiya, Vice President, Bhartiya Janata Party, Maharashtra along with four others, Respondent no. 3 is Shri Mukhtar Abbas Naqvi, Member of Parliament, Bhartiya Janata Party, submitted complaints to the Election Commission towards the end of November 2009 and Beginning of December 2009 alleging that the petitioner got several advertisements published in various newspapers, in particular, Lokmat, Pudhari, Maharashtra times and Deshonnati, during the election campaign period which appeared in those newspapers in

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the garb of news eulogizing the petitioners and his achievements as Chief Minister of Maharashtra. A copy of letter/complaint dated 02.12.2009 written/filed by the respondent No.1 to the Learned Chief Election Commissioner is annexed with the present writ petition as ANNEXURE-P/2.

- 3 It was alleged by the respondents that a huge expenditure was incurred by the petitioner for getting those advertisement published as news, which the respondents described, as a well-known phenomenon of "paid news" and that the expenditure incurred or authorized on the publication of those paid news was not included by the petitioner in his account of election expenses maintained under section 77 of the Representation of People Act, 1951 and lodged with the District Election Officer, Nanded under section 78 of the said act. The Respondents allege that the petitioner has only shown an expense of Rs. 5,739 (Rupees Five thousand seven hundred and thirty nine) as the expenses on newspapers advertisements in his account, whereas the expenditure on the abovementioned paid news ran into several crores and it was suppressed in the election returns of the petitioner.
4. In a complaint dated 30th November 2009, addressed to the Election commission, the Respondent no. 3 and four others specifically prayed that the account of election expenses of the petitioner should be enquired into and action taken against the petitioner under section 10A of the Representation of People Act, 1951.

5. The complaints were referred to the petitioner by Election Commission on 16th January 2010. The petitioner submitted his reply to the commission on 29th January 2010 refuting the allegations of the complainants. The Petitioner's reply was thereafter referred to the respondents for rejoinders on 5th and 9th February 2010. A copy of letter dated 16.01.2011 written by the Election Commission of India to the Petitioner and the reply submitted by the Petitioner dated 29.01.2011 are annexed to the present writ petition as ANNEXURE-P/3 (COLLY).
6. After the receipt of the rejoinders from the respondents in February - March 2010, the commission decided to hear the parties on 11th June 2010. Various Communications between the Election Commission and other parties in the writ petition are annexed to the present writ petition as ANNEXURE-P/4 (COLLY).
7. The Election Commission also sought and obtained comments through the Chief Election Officer, Maharashtra, the comments of the four newspapers namely Lokmat, Pudhari, Maharashtra Times and Deshonnati on the allegations of publishing 'paid news' by these newspapers relating to the petitioner. All the newspapers denied the allegation of any payment having being made to them by the petitioner for the publication of the alleged "paid news". All the newspaper stated that the impugned 'paid news' were in fact news or editorials or supplements published by them gratuitously as they have 'links with or leanings towards, the congress party and' the petitioner. The replies of various newspapers, namely, Pudhar, Lokmat, Deshonnati, and Maharashtra Times are annexed to the present writ petition as ANNEXURE P/5 (COLLY).

8. That petitioner made a preliminary objection as to the maintainability of the complaints before the election commission, raising the question of the Election Commission's very jurisdiction to go into the complaints.
9. The Election Commission heard the Respondents and the Petitioner and passed its order on the issue of jurisdiction in favor of the respondents and against the petitioners, on 2nd April 2011.
10. The present writ petition is sought for inter alia on the following grounds, which are set out without prejudice to each other:-

GROUNDS

THE LEARNED ELECTION COMMISSION ERRED IN HOLDING THAT THE LAW IN SUCHETA KRIPLANI'S MATTER WOULD NOT APPLY.

- A. That the learned commission erred in holding that Sucheta Kriplani's Judgment was not applicable in the present case. Sucheta Kriplani Vs. S. S. Dulat (AIR 1955 SC 758).
- B. It is submitted that the pith and substance of the complaint filed by the respondent is that the permissible limits of expenditure has been breached. It is submitted that the petitioner states that the learned Election commission has no jurisdiction to decide the complaint where the allegation raised and placed in issue is the

falsity of a return and that allegation is reasonably connected with other allegations about a corrupt practice.

- C. It is submitted that section 10A and Section 78 of the act are procedural in nature. It is submitted that if the respondents herein are allowed to allege that an elected candidate has incurred or authorized expenditure in excess of what is prescribed under section 77 of the Act before the learned election commission pursuant to section 10A of the act, then this would allow the respondents to by-pass the mandatory requirements of section 80A of the act which requires each complainant to approach the Hon'ble High Court and satisfy certain mandatory requirements before filing the election petition.
- D. It is submitted that the learned election commission erred in holding that the Ratio in Sucheta Kriplani's matter is not relevant because of certain amendments in the Representation of People Act. It is submitted that the decision in Sucheta Kriplani's matter cannot be ignored merely on the basis that the Representation of people's act has been amended. It is submitted that Rule 114(4) made under the erstwhile act is similarly worded as section 10A. Both the old rule 114(4) and section 10A catch failure to lodge the return of election expenses in the manner required by the act.
- E. Section 77(1), Section 77(2), Section 78 r/w rule 89 R/w Section 10A constitute a family of cognate provisions of law. It is submitted that there will be non-compliance with section 78 of the act, if

- a. Account is not lodged within the period fixed and
 - b. It is not in the manner prescribed for lodging it.
- F. It is submitted that if the respondents are allowed to allege that an elected candidate has incurred or authorized expenditure in excess of what is prescribed under section 77 of the act before the election commission, pursuant to section 10A of the Act then this would allow the respondents to avoid and bypass the mandatory requirements of section 80 and Section 80A of the act, which requires each person to approach an High Court and satisfy certain mandatory requirement before filing an election petition.
- G. The Hon'ble Supreme Court had held that :

"The trial of an election petition is conducted by an Election Tribunal and this section makes it incumbent on the tribunal to enquire into the falsity of a return when that matter is raised and placed in issue and the allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the tribunal and not of the election commission. The duty of the election commission is merely to decide rule 114(4) whether any candidate has, among other things,

"failed to lodge the return of election expenses in the matter required by the act and these rules"

- H. It is submitted that as the relevant provision of the law remains the same, the learned election commission erred in holding that the Sucheta Kriplani's judgment would not be relevant.

I. The table below sets out the comparison between the old act and the new act.

<u>Statutory provision prior to the amendments</u>	<u>Statutory provision after the amendments</u>
124.Minor Corrupt Practices: The following shall also be deemed to be corrupt practices for the purposes of this Act (4) The making of any return of election expenses which is false in any material particular or the making of the declaration verifying any such return. 100.Grounds for declaring election to be void (2)(a)That the election of a returned candidate has been procured or induced. Or the result of the elections has been <u>materially effected</u> , by any corrupt or illegal practice.	100.Grounds for declaring elections to be void: (1)Subject to the provisions of Sub section 2, if the high court is of the opinion : (d) That the result of the elections, insofar as it concerned a returned candidate has been <u>materially affected</u> (iv) By any non compliance with the provisions of the constitution or of this Act or of any rules or orders made under this Act [Thus violation of section 77(1) and (2) is covered by section 100 (1) (d) (iv)]

A true copy of "The Representation of the People Act", 1951 (Old Act) is annexed with the present writ petition as ANNEXURE-P/6.

As set out in the table above, prior to the amendment of the Act, submitting false accounts would only set an election aside if it "materially affected" the results. Similarly even post amendment, submitting false accounts would only set an election aside if it materially affects the result of an Election. In both the cases, it is submitted the issue can only be decided by the Hon'ble High court.

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J. It is submitted that the learned election commission erred in following the ratio of L. R. Shivaramagowda vs. T. M. Chandrashekhar, AIR 1999 SC 252, which was *per-in curium* the ratio laid down in Sucheta Kriplani's case.

K. The Petitioner also submits that it is settled law that if there are two judgments of the same Court which are contrary to each other than a subordinate Court or Tribunal should apply the decision of a larger Bench or if the strength of the Bench of both the Benches are the same then the decision made by the earlier Bench shall be followed. In **Wee Aar Constructive Builder Vs. Simplex Concrete Piles (India) Limited**, 167 (2010) DLT 723 (Para 12 and 13) the Court stated:

"If the freedom to pick and choose between two decisions of the Supreme Court of India is bestowed on subordinate courts, it would run counter to Article 141 of the Constitution of India which simply and concisely states that - 'the law declared by the Supreme Court shall be binding on all Courts within the territory of India'. In Government of Andhra Pradesh v. A.P. Jaiswal AIR 2001 SC 499 it has been enunciated that - 'consistency is the corner stone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedence, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice'. This is precisely what their Lordships had said in S.I. Rooplal v. Lt. Governor MANU/SC/0776/1999 : AIR 2000 SC 594, viz. - 'A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.'"

Keeping this perception of the law in perspective, the approach to be taken by the court, when confronted with Nilkantha and Essar Constructions, is no longer a legal nodus. This is for two reasons. Firstly, contrary to the position narrated in the later case, an application:

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for condonation of delay in filing Objections to the Award had been preferred in the earlier decision. Secondly, the smaller and the later Bench had no freedom other than to apply the law laid down by the earlier and larger Bench.

- L. Similarly in **Continental Carbon India Limited Vs. Modi Rubber Limited** (2009) 152 Comp. Case 398 (Delhi) (Para 15) the court stated that :

"There are several reasons as to why the said decision cannot be relied upon in support of the Respondent's case. The first reason is that the said decision did not notice the earlier Division Bench decision in the case of Director General of Income-tax v. BIFR (supra) nor did it notice the Supreme Court decision in the case of Banarasi Debi v. ITO MANU/SC/0105/1964 : (1964) 53 ITR 100 (SC) and CWT v. Kundal Lal Behari Lal MANU/SC/0246/1974 : (1975) 99 ITR 581 (SC) : AIR 1976 SC 1150 wherein the specific expression "issue/issued" was considered and was found to mean, in the least, "dispatch of a copy of the order" and also to mean, in some cases, "served". Therefore, the said decision in Textile Labour Union, Nadiad (supra) would have to be regarded as one rendered per incuriam."

- M. Similarly in **Eider PW1 Paging Limited and Eider PW1 communications limited Vs Union of India and Others 2010** (115) DRJ 263, (Para 10) the court held that :

"In my opinion, though the observations in para 4 of the aforesaid judgment seem to go in favor of the petitioner, however the judgment is of a Bench of two judges of the year 2003 and wherein the earlier judgment of three judges in the case of Ram Rattan (Supra), which holds that impounding is mandatory has not been considered. A decision of the Supreme Court of a three judge Bench prevails over the decision of a two judge bench vide Union of India Vs Raghubir Singh 1989 (2) SCC 754."

- N. The Petitioner also submits that in **L.R. Shivaramagowda v. T. M. Chandrashekhar, Etc., [AIR 1999 SC 252]** it appears the decision of a larger bench in **Sucheta Kriplani's** case [cited above] was neither argued nor referred to and therefore to that extent

the decision of the apex court could be treated as 'per incuriam'.

In this regard in the case of **State of Uttar Pradesh and Another v. Synthetic Chemicals and Another**, [(1991)4SCC139 (Para - 4)] the Hon'ble Supreme Court of India was of the opinion that:

"Incuria literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium.' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority'. 1944 1KB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

THAT THE MATTER OF FILING OF FALSE RETURNS IS
SUBJUDICE BEFORE THE HIGH COURT

- O. That admittedly, the respondents have also filed an election petition before the Hon'ble Bombay High Court, Aurangabad Bench. It is also admitted that in the election petition, the respondents have raised identical plea as they have raised before the Learned Election Tribunal. A copy of Election Petition No. 11 of 2009, filed by the respondent No.1-Dr. Madhavrao Kinhalakar, before the Hon'ble High Court of Bombay at Aurangabad Bench is annexed to the present writ petition as ANNEXURE-P/7.
- P. That as the matter is sub-judice before the Hon'ble High Court, i.e. at a Judicial body at a higher pedestal than the Learned Election Commission, it would have been proper and correct for the Learned Election Commission to refrain itself from hearing the complaints against the petitioner.

- Q. That it is submitted that the final findings of the learned election commission, if different from that of the Hon'ble Aurangabad Bench of the Bombay High Court will lead to unnecessary and avoidable situation.
- R. That it is for this reason, it is submitted, it would be prudent for the learned election commission not to hear the present matter as the same issue is pending adjudication before the Hon'ble High Court of Bombay, Aurangabad Bench.
- S. In these circumstances, it is submitted that the learned Election commission erred in holding that it has jurisdiction to decide the issue of falsity of returns when the same issue is pending adjudication before the Aurangabad bench of the Bombay High Court.

THAT THE DISQUALIFICATION U/S 10A IS TANTAMOUNT TO
REMOVAL OF AN ELECTED CANDIDATE THAT CAN ONLY BE DONE
BY THE HIGH COURT AND NOT BY A TRIBUNAL

- T. That Article 329 (b) of the Constitution of India places a blanket ban on the challenges made by any other mode except by way of an election petition. It is submitted further that section 100 of the representation of people act, covers the gamut of grievances relating to all electoral malpractice and corrupt practices.
- U. For ready reference the provision is reproduced below:

Art 329. *Bar to interference by courts in electoral matters:-*

Notwithstanding anything in the constitution

(b) *No election to either house of the parliament or to the house or either house of the legislature of a state shall be called into question except by an election petition presented to such an authority and in such manner as may be provided for by or under any law made by the appropriate legislature.*

V. It is submitted that Article 329 (b) is the mother provision of law relating to election disputes. It ordains total prohibition - save and except - as permitted by clause b of article 329. Article 329 (b) places a blanketed ban on the challenges by other modes except by filing an "election petition"

W. Section 100 of the representation of people act, 1951 covers the whole basket of grievances relating to all electoral malpractices and corrupt practices. The section is exhaustive of all the grievances regarding elections. In compliance with the constitutional mandate, flowing from Article 329(b), section 80 again issues a statutory injunction restraining any challenge to the validity of the election except by an "election petition" presented in accordance with part VI of the Act. Section 80A of part VI of the act further states that the court having jurisdiction to try an election petition shall be the High Court. Section 81 of Part VI of the act sets out mandatory requirements that any petitioner who wants to file an election petition before, the relevant high court has to satisfy and comply with prior to filing of the election petition. Therefore in light of the above it is settled law that it is within the exclusive jurisdiction of the High Court as an election court to give all appropriate relief and to do complete justice between parties

- X. That an election petition has to satisfy and be filled in compliance with the mandatory provision of Section 80A of the representation of people act.
- Y. Removal, if any of the petitioner on the ground pretext of disqualification because of filing of alleged false returns would tantamount to removal of an elected candidate.
- Z. It is submitted that such a removal requires extreme judicious use of power and the same can only be done by a judicial authority such as the High Court and not be the election commission. It is submitted that identical issue is also pending before the Aurangabad Bench of the Bombay High Court.
- AA. It is submitted that the powers of the election commission are limited to the extent that the commission will supervise the conduct of the elections and remove and aberrations, if any before the election of an candidate. It is humbly submitted that once a candidate had been election, any removal of the returned candidate can only happen through an election petition before the High Court.
- BB. It is submitted therefore that the learned election commission erred in holding that it can disqualify an elected candidate under section 10A.

THE LEARNED ELECTION COMMISSION DOES NOT HAVE THE JURISDICTION TO CONDUCT A ROVING ENQUIRY

CC. That admittedly the Learned election commission has not sent a show cause notice to the petitioner.

DD. That the learned Election Commission can only proceed under section 10A, as per the rules specified therein.

EE. That there is no provision either in law or precedent that allows the Learned Election commission to conduct an enquiry before sending a show cause notice as per section 10A of the Representation of People Act, 1951. It is humbly submitted that the learned election commission can only proceed under section 10A on the basis of the report of the District Election officer under rule 89 of the conduct of Election rules. There is no provision of law under the Representation of people Act or the rules therein, where the learned election commission can conduct a roving enquiry such as the present one.

FF. That admittedly the present proceeding before the Learned Election Commission are proceeding *before* the initiation of proceeding under section 10A of the representation of people act, 1951. It is submitted that such an enquiry is without jurisdiction and patently illegal. It is further submitted that the entire proceedings before the learned election commission is liable to be quashed.

THE IN THE ALTERNATE, SHOW CAUSE NOTICE ISSUED TO THE PETITIONER WAS NOT PROPER

GG. That any enquiry under section 10A of representations of People Act, 1951 is to be conducted by the learned Election Commission

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in accordance with the election rules, 1961. Rule 89 sets out the procedure to be adopted in connection with an enquiry with regard to violation of Section 78 of the act or section 10A of the Act.

HH. The above stated rules require that once the election commission has decided that the contesting candidate has failed to lodge his account of election expenses then it shall call upon the candidate to show cause why he should not be disqualified u/s 10A of the act.

II. The relevant content of the letter dated 16th January 2010 from the learned Election tribunal is as follows:

- "3. The commission has received some complaints from the Bhartiya Janata Party alleging inter-alia that you have under-valued the cost of your election propaganda through newspaper advertisement etc.
4. The Commission had directed that your reply on the allegations/ contentions made in the complaints of the BJP may be furnished to the commission urgently and in any case by 1st of February 2010."

JJ. That nowhere in the said letter it is mentioned that the election commission is satisfied that the candidate has failed to lodge his account of election expenses nor state that this is a show cause notice and that failure of the respondent to this notice could lead to disqualification u/s 10A of the Act.

KK. That as the learned commission did not sent a show cause notice to the petitioner in the manner specified in law, it is humbly submitted that the entire proceeding before the learned election commission is vitiated and is liable to be quashed.

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THAT THE LEARNED COMMISSION CANNOT IGNORE THE
OPINION OF THE DISTRICT ELECTION OFFICER

LL. That Rule 89(7) of the Conduct of election rules, 1961 required that the District election officer may provide such comments as he wishes to make on any representation made by the respondent pursuant to rule 89(6) of the Conduct of Election rule 1961.

MM. That any such report submitted by the District election officer shall play a very crucial role in deciding whether the petitioner has submitted his election account as required under section 78 of the Act. Admittedly, in the case of the petitioner no adverse report was submitted by the district election officer against. The district election officer has submitted a report to the Election commission that the Election accounts have been field by the petitioner in the manner required by law. A copy of report submitted by the District Election Officer, Nanded is annexed with the present writ petition as ANNEXURE-P/8.

NN. That in the absence of any such report of non-compliance of filing of proper account expenditure account by the petitioner, the learned election commission erred in holding that it can enquire independently of the procedure as established under Rule 89.

OO. That the learned Election Commission erred in holding that it can ignore the report of the district election officer. It is

submitted that the Election Commission before starting a proceeding under section 10A against a candidate has to satisfy itself with respect to the filing of the account expenditure by the candidate.

PP. That the learned Election Commission failed to realize that the law dealing with the issue of alleged filing of false returns are covered under the rule 89 of the Conduct of Election rules. It is submitted that the learned Election commission has no power to conduct any enquiry, prior to issue of notice under section 10A. It is submitted that had the election commission were to have any such power of a roving enquiry the same would have been expressly stated in the statute. It is submitted that the learned election commission erred in ignoring the report of the learned District election officer, with respect to the filing of election expenses.

It is stated that no similar writ petition has been filed by the petitioner before this Hon'ble Court and/or Hon'ble Supreme Court of India or any other High Court.

PRAYER

In the facts and circumstance of the case and in the interest of justice, the petitioner most humbly prays that this Hon'ble Court may be please to:

- a) to issue a writ, order or direction in the nature of certiorari or any other appropriate writ, order or direction, calling for the original records of the enquiry; and

- b) Quashing and setting aside of the order dated 2nd April 2011 passed by the Learned Election Commission of India;
- c) Holding the said enquiry as being without jurisdiction.
- d) Or in the alternate hold that the Learned Election Commission has no jurisdiction to decide on the issue of filing alleged false accounts;
- e) Hold and declare that Section 10A is ultra-vires Article 329 (b) of the constitution, vis-à-vis returned candidates.
- f) Pass any other and such further orders as this Hon'ble Court may deem fit.

Petitioner

Through



Anubhav Singhvi, Adv.
(AXON PARTNERS LLP)
Advocates & Solicitors
Counsel for the Petitioner.
Suite 603, Silver Arch,
22 Feroz Shah Road,
New Delhi - 110 001

Place: New Delhi.
Date: 18.04.2011.

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IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI
CIVIL WRIT PETITION NO. 2511 OF 2011

IN THE MATTER OF:

Sh. Ashok Shankarrao Chavan

...Petitioner

Versus

Dr. Madhavrao Kinhalkar & others

...Respondents

AFFIDAVIT

Affidavit of Sh. Ashok Shankarrao Chavan, S/o Sh. Shankarrao Chavan, aged about 52 years, R/o 1-2-197, Shivaji Nagar, District Nanded, Maharashtra, presently at New Delhi.

I, the above named deponent do hereby solemnly affirm and state as under :-

1. I am the Petitioner in the abovementioned matter. I am well conversant with the facts and circumstances of the present matter and therefore competent to swear the present affidavit.
2. The accompanying writ petition has been prepared by my counsel under my instructions, contents of which are true and correct to the best of my knowledge and belief.
3. The annexures annexed with the accompany writ petition are true copies their respective original.



Ashok Shankarrao Chavan
4. IDENTIFIED
HAS SIGNED IN MY PRESENCE

VERIFICATION :

Verified at New Delhi on this the 18 day of April, 2011, that the contents of this affidavit are true and correct to the best of my knowledge as derived from the records of this case and no part of it is false and nothing material has been concealed therefrom.

Ashok Shankarrao Chavan
Sh. Shankarrao Chavan
Anand Singh
720

Deponent
DEPONENT

Deponent
DEPONENT

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IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M. NO.

OF 2011

IN

WRIT PETITION (CIVIL) NO. 2511 OF 2011

IN THE MATTER OF:

Sh. Ashok Shankarrao Chavan

...Petitioner

Versus

Dr. Madhavrao Kinhalkar & others

...Respondents

APPLICATION UNDER SECTION 151 CODE OF CIVIL PROCEDURE
ON BEHALF OF THE PETITIONER FOR AD-INTERIM EX-PARTE
INJUNCTION AGAINST THE ORDER DATED 2ND APRIL 2011 PASSED
BY THE LEARNED ELECTION COMMISSION OF INDIA.

MOST RESPECTFULLY SHOWETH:

1. That the present writ petition is being filed under Article 226 of the constitution challenging *inter-alia* the order date 2nd April 2011 of the learned election commission and also the constitutional validity of section 10A of the Representation of People Act, 1951 vis-à-vis returned candidates.
2. That the petition raised important question of law, as to whether an enquiry and/or subsequent action under section 10A is ultra-vires article 329 (b) of the constitution with respect to returned candidates.

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3. That the fact and circumstances giving rise to the instant writ petition have been stated in the accompanying petition and the same be treated as part and parcel of the present application. For the sake of brevity the same are not being repeated herein and crave the leave of this Hon'ble court to rely upon the same at the time of hearing of this application.
 4. It is most respectfully submitted that the petitioners are praying for an ad interim ex-parte injunction staying the impugned order dated 2nd April 2011 and also seeking an injunction from continuing further proceedings before the learned election commission.
 5. That the petitioner adopt the ground raised in the writ petition for the purpose of this present application for interim relief and the same may be treated as part and parcel of this application and the same is not being repeated herein for the sake of brevity.
 6. That the petitioner will suffer irreparable harm if the proceeding before the Learned Election Commission is not stayed. It is submitted that the present petition is prima facie in favor of the petitioner and against the respondent, and the petitioner has a very strong chance of succeeding in the present matter.
 7. That the respondent shall not suffer any irreparable harm as the same and identical issue is also pending adjudication before the Aurangabad bench of the Bombay High Court. Therefore the balance of convenience is also in favor of the petitioner and against respondent.

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8. That the present application is made bonafide and in the interest of justice.


PRAYER

In the facts and circumstances of the case and in the interest of justice, it is most humbly prayed that this Hon'ble Court may be pleased to:

- a) grant ad-interim ex-parte injunction in favor of the petitioner and against the respondent, staying the operation of the order dated 2nd April 2011.
- b) grant ad-interim ex-parte injunction in favor of the petitioner staying any further proceedings before the Learned Election Commission;
- c) pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Petitioner

Through



Anubhav Singhvi, Adv.
(AXON PARTNERS LLP)
Advocates & Solicitors
Counsel for the Petitioner
Suite 603, Silver Arch,
22 Feroz Shah Road,
New Delhi - 110 001

Place: New Delhi.
Date: 18.04.2011.

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IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI
CIVIL WRIT PETITION NO. OF 2011

IN THE MATTER OF:

Sh. Ashok Shankarrao Chavan

...Petitioner

Versus

Dr. Madhavrao Kinhalkar & others

...Respondents

AFFIDAVIT

Affidavit of Sh. Ashok Shankarrao Chavan, S/o Sh. Shankarrao Chavan, aged about 52 years, R/o 1-2-197, Shivaji Nagar, District Nanded, Maharashtra, presently at New Delhi.

I, the above named deponent do hereby solemnly affirm and state as under :-

1. I am the Petitioner in the abovementioned matter. I am well conversant with the facts and circumstances of the present matter and therefore competent to swear the present affidavit.
2. The accompanying application has been prepared by my counsel under my instructions, contents of which are true and correct to the best of my knowledge and belief.

[Signature]
I IDENTIFY THE DEPONENT WHO
HAS SIGNED IN MY PRESENCE

VERIFICATION :

[Signature]
18 APR 2011 DEPONENT

Verified at New Delhi on this the _____ day of April, 2011, that the contents of this affidavit are true and correct to the best of my knowledge as derived from the records of this case and no part of it is false and nothing material has been concealed therefrom.

[Signature]
Ashok Shankarrao Chavan
S/o, Sh. Shankarrao Chavan
R/o 1-2-197, Shivaji Nagar,
District Nanded, Maharashtra,
presently at New Delhi.
That the contents of the affidavit
which have been read & explained to
him are true & correct to his knowledge.
[Signature]
Oath Commissioner Delhi
18 APR 2011 DEPONENT

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Annexure-P-10

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ W.P.(C) 2511/2011

ASHOK SHANKARRAO CHAVAN

..... Petitioner

Through: Mr.A.M.Singhvi, Sr. Adv with
Mr.Abhimanyu Bhandari,
Mr.Anubhav Singhvi,
Mr.Kumar Saurav, Advocates

versus

MADHAVRAO KINHALKAR & ORS

..... Respondents

Through None

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

%

21.04.2011

CM No.5340/2011 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

WP(C) No.2511/2011

Issue notice on the question of admission and final disposal,
returnable on 1st June, 2011.

Apart from the ordinary mode, learned counsel for the petitioner is
directed to effect service dasti.

W.P.(C) 2511/2011

Page 1 of 2

RK 21/4/11
Court Master
High Court of Delhi
New Delhi

This is an application for stay.

Issue notice of this application, returnable on 1st June, 2011.

As an ad interim measure, it is directed that there shall be stay of further proceedings in the impugned order passed by the Election Commission in Case No.76/MT-LA/85/2009 till the next date of hearing.

A copy of order be given dasti under the signatures of the Court Master.

CHIEF JUSTICE

APRIL 21, 2011
SV

SANJIV KHANNA, J

Attested True Copy
Apta
21/4/11
Court Master
High Court of Delhi
New Delhi

W.P.(C) 2511/2011

Page 2 of 2

TRUE COPY

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2511/2011

ASHOK SHANKARRAO CHAVAN Petitioner
Through: Dr. A.M. Singhvi, Sr. Adv. with
Mr. Abhimanyu Bhandari, Mr. Kumar Saurabh, Advocates

versus

MADHAVRAO KINHALKAR and ORS Respondents
Through: Mr. Krishnan Venugopal, Sr. Adv. with
Mr. Dilip Annasaheb Taur, Adv. for Respondent No.1
Mr. S.S. Shamshery, Adv. for R-2 and 3
Mr. S.K. Mendiratta, Ms. Meenakshi Arora, Mr. P.R. Chopra, Advts.
for Respondent No.4/ECI

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

02.06.2011

Heard Dr. A.M. Singhvi, learned senior counsel along with
Mr. Abhimanyu Bhandari for the petitioner, Mr. Krishnan Venugopal,
learned senior counsel along with Mr. Dilip Annasaheb Taur for
respondent No.1, Mr. S.S. Shamshery for respondent Nos. 2 and 3
and Ms. Meenakshi Arora for respondent No.4 in part.

Put up for further hearing on 13th July, 2011 at 2:15PM. Learned
counsel for the parties are requested to file their written WP (C)
No.2511/2011 note of submissions by 10th July, 2011. Needless to
say, counter affidavits, if any required, be filed by 20th June, 2011.
Rejoinder affidavit, if any, be filed by 1st July, 2011.

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Be it noted, an oral prayer has been made to implead the competent authority of the Union of India. Learned counsel appearing for the petitioner is permitted to do so after mentioning. As per the order passed by the Court on 2nd June, 2011. A copy of the writ petition along with annexures be supplied to Ms. Sonia Sharma, learned standing counsel for the Union of India who undertakes to file the counter affidavit by 20th June, 2011. Rejoinder affidavit to the said counter affidavit, if any, be filed by 1st July, 2011.

Be it noted, the timeframe given shall not be extended under any circumstances. We may also hasten to clarify that none of the counsel appearing in the case shall seek any adjournment. The interim order passed on 21st April, 2011 shall remain in force till the next date of hearing.

Call on date fixed.

CHIEF JUSTICE

JUNE 02, 2011/pk

SANJIV KHANNA, J

TRUE COPY

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Annexure-P-12 (Gally.)

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 2511 OF 2011

IN THE MATTER OF:

SH. ASHOK SHANKARRAO CHAVAN

...PETITIONER

VERSUS

DR. MADHAVRAO KINHALKAR & OTHERS

...RESPONDENTS

WRITTEN ARGUMENTS ON PRELIMINARY OBJECTIONS RAISED
ON BEHALF OF THE PETITIONER

MOST RESPECTFULLY SHOWETH

THAT THE LEARNED ELECTION COMMISSION HAS NO JURISDICTION TO
DECIDE A COMPLAINT MADE UNDER SECTION 10 A OF THE REPRESENTATION
OF THE PEOPLE ACT 1951 (HEREINAFTER REFERRED TO AS THE "ACT")
WHERE THE ALLEGATION RAISED AND PLACED IN ISSUE IS THE FALSITY OR
CORRECTNESS OF A FILED RETURN.

- A. The Petitioner submits that the Learned Election Commission has no jurisdiction to decide a complaint under Section 10 A of the Representation of the People Act 1951 (hereinafter referred to as the "Act") where the allegation raised and placed in issue is the falsity or correctness of a filed return. Moreover, in cases where the allegation is in pith and substance (like in the present case) about an alleged corrupt practice then the jurisdiction to hear such an allegation lies exclusively with the Hon'ble High Court. Section 10A of the Act should be read with Section 78 of the Act. Section 78 states as under:-

Sec.78 Lodging of account with the district election officer - (1) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of these two dates, lodge with the [District Election Officer] on

account of his election expenses which shall be true copy of the account kept by him or by his election agent under Section 77.

Both Sec.10A and Sec.78 of the Act are procedural in nature. If Respondents are allowed to allege that an elected candidate has incurred or authorised expenditure in excess of what is prescribed u/s 77 of the Act, before the Learned Election Commission pursuant to Sec.10A of the Act, then this would allow Respondents to by-pass the mandatory requirements of Sec. 80(A) of the Act which requires each Respondents to approach the Hon'ble High Court and satisfy certain mandatory requirements before filing the Election Petition.

B. The Petitioner submits that the Learned Election Commission does not have jurisdiction to hear the complaint made by the Respondent against the Petitioner. The Petitioner also submits that the present complaint is not maintainable u/s 10(A) of the Act.

Sec.10 (A) of the Act states as follows:-

Sec.10 (A) "Disqualification for failure to lodge account of election expenses - If the Election Commission is satisfied that a person-

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

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

There are two essential ingredients to Sec.10(A) of the Act. The Section requires that the Learned Election Commission should be satisfied (i) that the candidate has failed to lodge the account

of election expenses within the time and in the manner required by or under the Act and (ii) has no good reason or justification for the failure.

The District Election Officer has already confirmed that account of election expenses were lodged in a timely manner as required under the Act.

In Sucheta Kriplani Vs. S.S. Dulat [AIR 1955 S.C.758] The Hon'ble Supreme Court stated:

"12. That places the matter beyond doubt. The trial of an election petition is conducted by an Election Tribunal and this section makes it incumbent on the Tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission. The duty of the Election Commission is merely to decide under Rule 114(4) whether any candidate has, among other things, "failed to lodge the return of election expenses in the manner required by the Act and these rules".

13. It is a question of form and not of substance. If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other document by some other person and the charges so preferred will be enquired into by the Tribunal.

14. If the return is not in proper form, disqualification ensues but the Election Commission is invested with the power to remove the disqualification under Rule 114(6). If it does, the position

becomes the same as it would have been had the Election Commission decided that the form was proper in the first instance. That would still leave the question of falsity for determination by the Tribunal in cases where the issue is properly raised." (emphasis added)

C. This decision cannot be ignored merely because the Representations of People's Act has been amended. This is because Rule 114(4) made under the erstwhile Act is similarly worded as Sec. 10(A). Both the old Rule 114(4) and Sec. 10(A) catch "failure to lodge" the return of election expenses in the manner required by the Act. Therefore it is not surprising that to the knowledge of the Petitioner, the Learned Election Commission has never other than in this case (and some other cases in and around the same time) either under Rule 114(4) of the erstwhile Act or under section 10 (A) of the Act ever conducted an enquiry to determine whether accounts filed are false or correct.

D. The table below sets out the comparison between the old act and the new act.

<u>Statutory provision prior to the amendments</u>	<u>Statutory provision after the amendments</u>
<p>124. Minor Corrupt Practices: The following shall also be deemed to be corrupt practices for the purposes of this Act</p> <p>(4) The making of any return of election expenses which is</p>	<p>100. Grounds for declaring elections to be void:</p> <p>(1) Subject to the provisions of Sub section 2, if the high court is of the opinion :</p>

<p>false in any <u>material</u> particular or the making of the declaration verifying any such return.</p>	<p>.....</p>
<p>100. Grounds for declaring election to be void</p>	<p>(d) That the result of the elections, insofar as it concerned a returned candidate has been <u>materially affected</u></p>
<p>(2) (a) That the election of a returned candidate has been procured or induced. Or the result of the elections has been <u>materially effected</u>, by any corrupt or illegal practice.</p>	<p>(iv) By any non compliance with the provisions of the constitution or of this Act or of any rules or orders made under this Act</p> <p>(Thus violation of section 77(1) and (2) is covered by section 100 (1) (d) (iv)]</p>

E. As set out in the table above, prior to the amendment of the Act, submitting false accounts would only set an election aside if it "materially affected" the results. Similarly even post amendment, submitting false accounts would only set an election aside if it materially affects the result of an Election. In both the cases, it is submitted the issue can only be decided by the Hon'ble High court.

F. The Petitioner submits that the jurisdiction of the Election Commission u/s 10A of the Act is very limited in nature to the extent that it should only be concerned with the fact whether the accounts were lodged and whether there were any irregularities of such a nature for example incorrect format, omission to mention dates etc. as required by the rules. If a candidate fails to lodge his accounts within the prescribed time

period or in the manner (i.e. format) required by the rules then the Hon'ble Commission can adjudicate whether there are "good reason or justification for the failure". In this case the Petitioner has filed his accounts in the manner and within the time period prescribed by the rules.

G. The Respondents also argues that only a violation of Section 77(3) of the Act tantamounts to a corrupt practice. However, the respondents state that violation of Section 77(1) and Section 77(2), does not tantamount to a corrupt practice and therefore the Election Commission under Section 10A of the Act has jurisdiction to hear any violation of Section 77(1) and Section 77(2).

H. The Petitioner submits that nowhere in the Act or in the body of the provision of Section 10A it is stated that the Election Commission shall have jurisdiction to adjudicate any violation of Section 77(1) and Section 77(2). On the contrary it is made clear by section 100 of the Act that any violation of section 77(1) and section 77(2) which "materially affects" the elections of a returned candidate shall be a matter which will be within the exclusive jurisdiction of the Hon'ble High Court.

I. The respondents have also argued that decision in *Sucheta Kriplani* should not to be followed because the Act has been subsequently amended and therefore submitting accounts which are false and which materially affects the result of an election is not covered by Section 100. The Petitioner humbly submits that such is not the case. Just like in *Sucheta Kriplani* case, even today, submitting false accounts which materially effects the result of an election is a matter which can only be adjudicated by the High Court.

J. In *L R Shivaramagowda vs. T.M. Chandrashekhar* AIR 1999 SC 252 the court was unable to invoke Section 100(1) (d) (iv) because the candidate in that case had failed to plead that the result of the election insofar as it concerned the returning candidate had been materially effected by the non-compliance of the provision of section 71 of the act. The court stated:

"10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void under section 100 (1) (d) (iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the act or of the Rules/ we have already extracted paragraph 39 of the election petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to file true and correct accounts of expenditure. In the absence of either averments it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts." (emphasis added)

K. Furthermore, in all other judgments cited by the Respondent the Hon'ble court was only concerned with what constitutes a corrupt practice. The main issue was with respect to violation under section 123 (4) and 123(6). It is pertinent to state that nowhere the issue of falsity of accounts and jurisdiction under section 10(A) of the Act was argued nor mentioned in those judgments and therefore to the knowledge of the Petitioner there is no other judgment of the apex court where the decision in *Sucheta Kriplani* has been analyzed, distinguished or

overruled.

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L. The respondents also argue that an election petition may result in declaration of election as void but will not result in disqualification of that candidate. This submission of the respondents is totally erroneous. Once a candidate's election has been set aside because of corrupt practice or because of violation of any provision of the Act which has materially affected the result of election then disqualification of that candidate from contesting any other election for 6 years will follow pursuant to Section 8(A) of the Act. Thus, if an election is set aside by the Hon'ble High Court, then not only the election is set aside but the candidate also faces disqualification for 6 years (double the period of disqualification provided under Section 10A)

M. It needs to be also pointed out that the expenses incurred in the **L.R. Shivaramagowda** case, cited above, would not have breached the limit prescribed under the rules. The very nature of the allegation in the case before us is that the Petitioner has allegedly spent in excess of the limit in connection with the alleged advertisements. This not an allegation of a mere irregularity in omitting minor expenses, on the contrary the attempt in this present case is to bring the allegation of corrupt practice under Section 10A of the Act, when it is an allegation which should be brought under Section 100.

N. The Petitioner also submits that it is settled law that if there are two judgments of the same Court which are contrary to each other then a subordinate Court or Tribunal should apply the decision of a larger Bench or if the strength of the Bench of both the Benches are the same then the decision made by the earlier Bench shall be followed. In **Wee Aar Constructive Builder Vs Simplex Concrete Piles (India) Limited**, 167 (2010) DLT 723

(Para 12-13) the Court stated:

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If the freedom to pick and choose between two decisions of the Supreme Court of India is bestowed on subordinate courts, it would run counter to Article 141 of the Constitution of India which simply and concisely states that – "the law declared by the Supreme Court shall be binding on all Courts within the territory of India". In Government of Andhra Pradesh v. A.P. Jaiswal AIR 2001 SC 499 it has been enunciated that – "consistency is the corner stone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedence, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice". This is precisely what their Lordships had said in S.I. Rooplal v. Lt. Governor MANU/SC/0776/1999 : AIR 2000 SC 594, viz. – "A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement."

Keeping this perception of the law in perspective, the approach to be taken by the court, when confronted with Nilkantha and Essar Constructions, is no longer a legal nodus. This is for two reasons. Firstly, contrary to the position narrated in the later case, an application for condonation of delay in filing Objections to the Award had been preferred in the earlier decision. Secondly, the smaller and the later Bench had no freedom other than to apply the law laid down by the earlier and larger Bench.

- O. Similarly in **Continental Carbon India Limited Vs. Modi Rubber Limited (2009) 152 CompCase 398 (Delhi) (Para 15)** the court stated

"There are several reasons as to why the said decision cannot be relied upon in support of the Petitioner's case. The first reason is that the said decision did not notice the earlier Division Bench decision in the case of Director General of Income-tax v. BIFR (supra) nor did it notice the Supreme Court decision in the case of Banarasi Debi v. ITO MANU/SC/0105/1964 : (1964) 53 ITR 100 (SC) and CWT v. Kundal Lal Behari Lal MANU/SC/0246/1974 : (1975) 99 ITR 581 (SC) : AIR 1976 SC 1150 wherein the specific expression "issue/issued" was considered and was found to mean, in the least, "dispatch of a copy of the order" and also to mean, in some cases, "served". Therefore, the said decision in Textile Labour Union, Nadiad (supra) would have to be regarded as one rendered per incuriam."

- P. Similarly in **Eider PW1 Paging Limited and Eider PW1 communications limited Vs Union of India and Others 2010 (115) DRJ 263, (Para 10)** the court held

"In my opinion, though the observations in para 4 of the aforesaid judgment seem to go in favor of the petitioner, however the judgment is of a Bench of two judges of the year 2003 and wherein the earlier judgment of three judges in the case of Ram Rattan (Supra), which holds that impounding is mandatory has not been considered. A decision of the Supreme Court of a three judge Bench prevails over the decision of a two judge bench vide Union of India Vs Raghubir Singh 1989 (2) SCC 754."

Q. The Petitioner also submits that in *L.R. Shivaramagowda v. T. M. Chandrashekhar, Etc.*, [AIR 1999 SC 252] it appears the decision of a larger bench in *Sucheta Kriplani's* case [cited above] was neither argued nor referred to and therefore to that extent the decision of the apex court could be treated as '*per incuriam*'. In this regard in the case of *State of Uttar Pradesh and Another v. Synthetic Chemicals and Another*, [(1991)4SCC139 (Para - 4)] the Hon'ble Supreme Court of India was of the opinion that:

"Incuria literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium.' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority'. 1944 1KB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

R. In the above mentioned case the Hon'ble Supreme Court of India also referred to a 1961 Judgment of the same Court namely, *Jaisri Sahu v. Rajdewan Dubey and Others*, [AIR1962SC83], in this case the Court was of the opinion that,

*"... It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Seshamma v. Venkata**

Narasimharao I.L.R. [1940] Mad. 454, that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, third edition, Vol. 22, para. 1687, pp. 799, 800 :-

"The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords." [Para 15]

- S. The Petitioner therefore submits that in light of the above decision the principles laid down in Sucheta Kriplani's case [cited above] by a larger bench is binding and cannot be tempered or ignored by relying on a decision of the apex court where the decision of the larger bench was not referred to.

Procedure Under Rule 89 has to be followed:

- T. As stated earlier the Petitioner reiterates that the procedure under Rule 89 of the conduct of election rule 1961 has to be adopted. In **L. R. Shivaramagowda Vs. T.M. Chandrashekar Etc. [AIR 1999 SC 252]** the Hon'ble Supreme Court specifically stated referring to rule 89 that,
- "That rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within time and in the manner required by the Act after adopting the procedure mentioned therein."* (Para. 22) (emphasis added)

U. The above Rules require that the Learned Election Commission has to first decide whether the contesting candidate has failed to lodge his accounts of election expenses and then it shall call upon the candidate to show cause why he should not be disqualified under Section 10(A) of the Act.

V. Under Rule 89(4) the Learned Election Commission has to first decide after it receives the DEO report as to whether any candidate has failed to lodge election expenses. Then under Rule 89(5) once the Learned Election Commission has decided that a contesting candidate has failed to lodge his account of election expenses in the manner required by the Act then only it shall call upon the candidate to show cause why he should not be disqualified under section 10 (A) of the Act.

W. The Petitioner submits that under Rule 89(5), the learned Commission has to first decide whether the contesting candidate has failed to lodge the account of election expenses within the time stipulated and in the manner prescribed as per the rules. As stated above it is clear from the letter dated January 16, 2010 that the Learned Election Commission has merely forwarded the complaints made by certain B.J.P. members. The Rules require the Learned Election Commission to first decide whether the returning officer has failed to lodge election expense accounts before issuing any show cause notice to the Petitioner.

X. The Learned Election Commission in its letter No. 76/2003/JS II, dated 28.5.2004 addressed to the Chief Electoral Officer of all States and Union Territories stated that:

"...In his report, the DEO will give necessary details in respect of all contesting candidates and give his remarks whether the account has been lodged within the time and in the manner required by law..."

"..The commission, on receipt of the report from the DEOs, issues show cause notices to the candidates who have failed to lodge

their account of election expenses within the time and in the manner required by law, under Rule 89 (5) of the Conduct of Election Rules, 1961. The show cause notices to the defaulting candidates are served through the DEO concerned and after serving notices, the DEO is to send acknowledgement receipts obtained from the candidates with his supplementary report under rule 89 (7). Within 5 days after the expiry of the 20 days' period mentioned in Rule 89 (6) of Conduct the Election Rules, 1961. The defaulting candidate maybe disqualified under section 10A of the Representation of People Act, 1951, for three years. The period of disqualification starts from the date of order of disqualification irrespective of the period consumed in issuing the order." (emphasis added)

- Y. The only Report produced by the District Election Officer is the Report dated 24th November, 2009 which was produced and submitted to the Learned Election Commission pursuant to Rule 89(1) of the Conduct of Election Rules, 1961. The report clearly states that the Petitioner has submitted his account of election expenses within the time and in the manner required by the Act and the Rules. That Report also clearly mentions that the Petitioner has made "NIL" "defaults" and no "Remaks" have been made. On the basis of this report it is clear that the Petitioner has complied with the provisions of Sec.78 of the Act.
- Z. Under these circumstances, there is no scope for any further enquiry u/s 10A of the Act. It would not out of place to mention that there is no evidence in place which shows that the Petitioner failed to lodge his accounts in the manner required by the Act. On the contrary the Report of the District Election Officer clearly states that the accounts were submitted within the prescribed time and manner as required by the provisions of the Act.

**THAT THE MATTER OF FILING OF FALSE RETURNS IS
SUBJUDICE BEFORE THE HIGH COURT**

AA. The Petitioner submits that his case is of a very different nature. This is not a case where the Petitioner has failed to submit his accounts within the prescribed time period. The respondents in their written submissions before the Learned Election Commission alleges that:

"the respondents submits that near about 47 full pages of News (many of them in colour) were centered on Shri. Ashok Chavan and his qualities. As per market rates, it could have cost Rs.1.5 crore to Rs.2.00 crores, but in fact, as per statement of Shri. Ashok Chavan, he has spent only Rs.5,000/- and odd amount of advertisements through newspapers, which no can believe and is against the provisions of the said Act, more particularly in contravention of Section 77 of the said Act."

BB. The complaint therefore in its very essence is that the Petitioner has allegedly spent close to Rs.1.5 crores which is way beyond the prescribed limit of expenses that any candidate can incur under the Act. This is therefore not a case of mere failure to lodge accounts in a timely manner. This is an allegation that vast sums of money has been spent on the Petitioner's election campaign which is beyond the limit of expenses which is prescribed under the Act. Similarly Shri M. A. Naqvi and others members of the BJP have alleged in their complaint dated 30/11/2009 that the money spent by the Petitioner is in the tune of crores.

CC. In pith and substance the Respondents allege that, the permissible limits of expenditure under the law, has been breached. It would not be out of place to mention that even the Learned Election Commission in its circular dated 8th June, 2010 [No.491/Media/2010] has stated that

"the practice of paid news has to be seen as an attempt to circumvent the provisions of Sections 77 and 123(6) of R.P. Act 1951 which prescribe accounting and ceiling of election expenses and make exceeding such prescribed limits a corrupt practice in elections." (emphasis added)

DD. At this stage it is also pertinent to mention that the High Court of Bombay is seized of the matter titled as Dr. Madhavrao B. Kinhalkar V/s A.S. Chavan and Others, being election petition No. 11/2009 as one of the grounds canvassed before the High Court is challenge to the return of election expenses of the Petitioner on the grounds of alleged excess expenditure. Thus, the question regarding the validity of the Petitioner's return of election expenses is sub-judice before the High Court.

EE. The return of election expenses in question is one and the same before the election commission as well as before the High Court. As stated above the Election Commission has already acknowledged and accepted that the Petitioner have already lodged his account of election expenses as required by section 78 of the Act. The issue before the election Commission and the High Court is identical, i.e. the election expenses incurred/authorised by the Petitioner is in excess to what is prescribed by the rules and also in excess to what have been accounted for in the accounts lodged pursuant to Sec. 78 of R.P. Act, 1951. The Petitioner at para 23 of the Election Petition states:

"The Petitioner humbly submits that the huge miss match between the accounts stated of Rs. 5379 and dozens of full pages of news in national dailies, these were definitely "Paid News" at the hands of Petitioner No.1, worth of crores of rupees. The petitioner therefore humbly submits that the above said incurring or authorizing of expenditure is in contravention of Section 77 of the said Act and thus it is deemed to be a corrupt practice for the purposes of the said Act as comes within the

purview of section 123 sub-section 6 of the said Act" (emphasis added)

FF. It is the settled policy of law that same subject matter and the same cause of action cannot be adjudicated in two separate parallel proceedings simultaneously, by two different forums. The judicial propriety demands that two contradictory verdicts by two different forums should be avoided. It is also policy of law to protect any person from being vexed by multiplicity of trials. Hence it would be inappropriate to continue this proceeding and it deserves to be dropped at the outset. It would not be out place to mention that if the Hon'ble High Court decides the election petition in favour of the Respondents then not only will the Petitioner's election be set aside he may also face disqualification under Section 8-A of the Act.

GG. The respondents argue that an election petition may result in declaration of election as void but will not result in disqualification of candidates. This submission of the respondents is totally erroneous. Once a candidate's election has been set aside because of corrupt practice or because of violation of any provision of the Act which has materially affected the result of election then disqualification of that candidate from contesting any other election for 6 years will follow pursuant to Section 8(A) of the Act. Thus, if an election is set aside by the Hon'ble High Court, then not only the election is set aside but the candidate also faces disqualification for 6 years. The respondents is arguing the same matter and the same allegation before the Hon'ble High Court of Bombay and before the Learned Election Commission.

HH. In these circumstances, it is submitted that the learned Election commission erred in holding that it has jurisdiction to decide the issue of falsity of returns when the same issue is pending adjudication before the Hon'ble Aurangabad bench of the Bombay High Court.

THE LEARNED ELECTION COMMISSION DOES NOT HAVE THE
JURISDICTION TO CONDUCT A ROVING ENQUIRY

II. That Article 329 (b) of the Constitution of India places a blanket ban on the challenges made by any other mode except by way of an election petition. It is submitted further that section 100 of the representation of people act, covers the gamut of grievances relating to all electoral malpractice and corrupt practices.

JJ. It is submitted that Article 329 (b) is the mother provision of law relating to election disputes. It ordains total prohibition - save and except - as permitted by clause b of article 329. Article 329 (b) places a blanked ban on the challenges by other modes except by filing an "election petition"

KK. Section 100 of the representation of people act, 1951 covers the whole basket of grievances relating to all electoral malpractices and corrupt practices. The section is exhaustive of all the grievances regarding elections. In compliance with the constitutional mandate, flowing from Article 329(b), section 80 again issues a statutory injunction restraining any challenge to the validity of the election except by an "election petition" presented in accordance with part VI of the Act. Section 80A of part VI of the act further states that the court having jurisdiction to try an election petition shall be the High Court. Section 81 of Part VI of the act sets out mandatory requirements that any petitioner who wants to file an election petition before the relevant high court has to satisfy and comply with prior to filing of the election petition. Therefore in light of the above it is settled law that it is within the exclusive jurisdiction of the Hon'ble High Court as an election court to give all appropriate relief and to do complete justice between parties

LL. That an election petition has to satisfy and be filled in compliance with the mandatory provision of Section 80A of the representation of people act.

MM. Removal, if any of the petitioner on the ground pretext of disqualification because of filing of alleged false returns would tantamount to removal of an elected candidate.

NN. It is submitted that such a removal requires extreme judicious use of power and the same can only be done by a judicial authority such as the Hon'ble High Court and not be the election commission. It is submitted that identical issue is also pending before the Hon'ble Aurangabad Bench of the Bombay High Court.

OO. It is submitted that the powers of the election commission are limited to the extent that the commission will supervise the conduct of the elections and remove and aberrations, if any before the election of an candidate. It is humbly submitted that once a candidate had been election, any removal of the returned candidate can only happen through an election petition before the High Court.

PP. It is submitted therefore that the learned election commission erred in holding that it can disqualify an elected candidate under section 10A.

THE IN THE ALTERNATE, SHOW CAUSE NOTICE ISSUED TO THE PETITIONER WAS NOT PROPER

QQ. That admittedly the Learned election commission has not sent a show cause notice to the petitioner.

RR. That the learned Election Commission can only proceed under section 10A, as per the rules specified therein.

SS. That there is no provision either in law or precedent that allows the Learned Election commission to conduct an enquiry before sending a show cause notice as per section 10A of the Representation of People Act, 1951. It is humbly submitted that the learned election commission can only proceed under section 10A on the basis of the report of the District Election officer under rule 89 of the conduct of Election rules. There is no provision of law under the Representation of people Act or the rules therein, where the learned election commission can conduct a roving enquiry such as the present one.

THAT THE LEARNED COMMISSION CANNOT IGNORE THE
OPINION OF THE DISTRICT ELECTION OFFICER

TT. That Rule 89(7) of the Conduct of election rules, 1961 required that the District election officer may provide such comments as he wishes to make on any representation made by the respondent pursuant to rule 89(6) of the Conduct of Election rule 1961.

UU. That any such report submitted by the District election officer shall play a very crucial role in deciding whether the petitioner has submitted his election account as required under section 78 of the Act. Admittedly, in the case of the petitioner no adverse report was submitted by the district election officer against. The district election officer has submitted a report to the Election commission that the Election accounts have been filed by the petitioner in the manner required by law. A copy of report submitted by the District Election Officer, Nanded is annexed with the present writ petition as ANNEXURE-P/8.

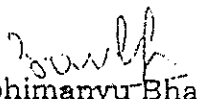
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VV. That in the absence of any such report of non-compliance of filing of proper account expenditure account by the petitioner, the learned election commission erred in holding that it can enquire independently of the procedure as established under Rule 89.

WW. That the learned Election Commission erred in holding that it can ignore the report of the district election officer. It is submitted that the Election Commission before starting a proceeding under section 10A against a candidate has to satisfy itself with respect to the filing of the account expenditure by the candidate.

XX. That the learned Election Commission failed to realize that the law dealing with the issue of alleged filing of false returns are covered under the rule 89 of the Conduct of Election rules. It is submitted that the learned Election commission has no power to conduct any enquiry, prior to issue of notice under section 10A. It is submitted that had the election commission were to have any such power of a roving enquiry the same would have been expressly stated in the statute. It is submitted that the learned election commission erred in ignoring the report of the learned District election officer, with respect to the filing of election expenses.

Submitted by


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Dtd. :- 11-07-2011

True Copy

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Annexure - P. 12 (Copy)
IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 2511 OF 2011

IN THE MATTER OF:

SH. ASHOK SHANKARRAO CHAVAN

...PETITIONER

VERSUS

DR. MADHAVRAO KINHALKAR & OTHERS

...RESPONDENTS

Additional Written Submissions on behalf of the Petitioner

MOST RESPECTFULLY SHOWETH:

1. The Petitioner has already submitted detailed Written Arguments and the same are not being repeated herein for the sake of brevity. The Petitioner hereby reiterates each and every argument stated in his already submitted written arguments besides those in this present Rejoinder Arguments.
2. The key issue that arises is the interpretation of the phrase "within the time and in the manner required by or under this Act". The issue arises as to what is meant by the words "manner required by or under this Act". The Petitioner submits that the term 'manner' means the prescribed form and the modes and style of presentation as required by the Act and the Rules. The Act and the Rules have provided for a specific kind of information in a specific form and the accounts have to be lodged in that particular form/manner.

3. The Petitioner submits that the term 'manner' has been given a very specific meaning by the courts in a number of cases whereby manner means the form, the mode and the style of presentation.

4. As per Wharton's Law Lexicon (Fifteenth Edition):

"'Manner' in Black's Law Dictionary, the word Manner has been defined to mean that "a way, mode, method of doing anything, or mode of proceeding in any case or situation". As per Webster's International Dictionary, Manner means methods or mode or style. In the Stroud's Dictionary it is stated that the words 'manner and form' refer only "to the mode in which thing is to be done or time for doing it.

Manner means method of procedure and to provide for an appeal is to provide for a mode of procedure for an appeal is to provide for a mode of procedure.

Manner and form: the words manner and form refer only to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it."

5. In the case of *STO v. K.I. Abraham* AIR 1967 SC1823 Hon'ble Supreme Court has clearly opined as follows: (See Paragraph 4)

"In our opinion, the phrase "in the prescribed manner" occurring in s. 8(4) of the Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in s. 8(4) does not take in the time-element. In other words, the section does not authorize the rule-

making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer. The view that we have taken is supported by the language of s. 13(4)(g) of the Act which states that the State Government may make rules for "the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished." This makes it clear that the Legislature was conscious of the fact that the expression "in the manner" would denote only the mode in which an act was to be done, and if any time-limit was to be prescribed for the doing of the act, specific words such as "the time within which" were also necessary to be put in the statute. In Stroud's Judicial Dictionary it is said that the words "manner and form" refer only "to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it." (Emphasis added)

6. The above decision has been followed in the case of *Jachani Rashtreeya Seva Peetha v. State of Karnataka* AIR 2000 Kant 91 wherein the Hon'ble High Court has stated that: (See Paragraph 41 and 44)

"41. In Black's Law Dictionary, the word 'Manner' has been defined to mean that "a way, mode, method of doing anything, or mode of proceeding in any case or situation". Similarly, the word 'Condition' has been defined inter alia to mean "A qualification, restriction, or limitation modifying or destroying the original act with which it is connected; an event, fact or the like that is necessary to the occurrence of some other, though not its cause; a prerequisite; a stipulation". (Emphasis added)

The Hon'ble Court further opined that:

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"44. It is of considerable importance to note here that in the Stroud's Dictionary it is stated that the words 'manner and form' refer only "to the mode in which a thing is to be done and do not introduce anything from the act referred to as to things which is to be done or time for doing it". This meaning of the word 'manner' has been adopted with approval by the Supreme Court in the case of Sales Tax Officer, Ponkunnam v K.I. Abraham, wherein the third proviso to Rule 6(1) of the Central Sales Tax (Kerala) Rules, 1957, providing for time limit for filing declaration, was declared to be ultra vires the power of the State Government since the enabling provision under Section 8(4) of the Central Sales Tax Act had merely delegated the powers to prescribe the manner in which the declaration in Form 'C' was required to be filed."

7. All the above indicate that "manner" means the form. It is not a question of substance. This is in tandem with the principle laid down in Sucheta Kriplani's case (AIR 1955 SC 758) where the court said it is not a question of substance but a question of form. In the above mentioned case the Hon'ble Supreme Court categorically stated that: (See Paragraph 13)

"It is a question of form and not of substance. If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other document by some other person and the charges so preferred will be enquired into by the Tribunal." (Emphasis added)

8. Even Rule 89(8) indicates that all one needs to check is whether or not the accounts have been lodged. Rule 89(8) states:-

"the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified in section 10A for a period of three years from the date of the order and cause the order to be published in the official Gazette." (Emphasis added)

Therefore all that the EC is required to look into is whether or not accounts have been lodged.

9. The phrase 'within the time and in the manner required by Act' is as old as our democracy. This phrase is used in various Statutes, Acts, Rules and regulations and each of the phrase only catches failure to lodge.

- Delhi Municipal Corporation (Election of Councilor) Rules 1970 (Rule 92-H) states as follows:

"92H. Disqualification for failure to Lodge Account of election Expenses:- If the Election Commission is satisfied that a person:-

- a. has failed to lodge an account of election expenses within the time and in the manner require by these rules, and
- b. has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of six years form the date of the order."

- West Bengal Municipal Elections Act 1994 (Section 34) states as follows:

" 34. If the Commission is satisfied that a person:

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

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

10. All the above cited Acts only catch the failure to lodge the accounts in the prescribed format. None of the Acts or Statutes provide for disqualification if the accounts filed are false. Even section 10A of the Representation of the People's Act 1951, which is identical to the above cited Acts, talks about mere lodging of accounts and does not deal with falsity of accounts. However there are a few special legislations that catch filing of false accounts. The Kerala Panchayati Raj Act 1994, Section 33 (b) specially provides that disqualification can follow if the accounts lodged are false.

"33. Disqualification for failure to lodge account of election expenses -- If the State Election Commission is satisfied that a person:

(a) has failed to lodge an account of election expense within the prescribed time and manner and has no sufficient reason or justification for such failure;
or

(b) The accounts lodged are false;

(c) Has incurred election expenses exceeding the prescribed limit the State Election Commission shall,

by order published in the Gazette, declare him to be disqualified for a period of five years from the date of the order."

Similarly Andhra Pradesh Local bodies Electoral reforms Act 1989 (Section 19) states as follows:

"19. If the Election Authority is satisfied that a candidate:

(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act or has submitted a false or in correct account of election expenses; and

(b) has no good reason or justification for the failure if shall by notification declare him to be disqualified for contesting any election for a period of six years from the date of the notification."

The above clearly shows that the term "within the time and in the manner required under this Act" does not catch filing of false accounts. It is because of this reason that the above cited two Acts have specifically provided for filing false accounts which result in disqualification.

There is no substantive change in law post Sucheta Kriplani's case

11. Its extremely important to dispel the myth that the law has changed after the Sucheta Kriplani case. Filing false accounts was caught by Section 100(2)(a) of the Old Act at Page 168 in Volume-I. Now it is caught by 100 (1)(d)(iv). Just filing false accounts was not enough to set an election aside even under

the Old Act. One had to show that the accounts filed had "materially affected" the outcome of the election. This is the same requirement under the new Act.

12. The decision in Sucheta Kriplani's case cannot be ignored merely because the Representations of People's Act has been amended. This is because Rule 114(4) and Section 7(c) under the erstwhile Act is similarly worded as Sec. 10(A). Both the old Rule 114(4), section 7(c) and Sec. 10(A) catch "failure to lodge" the return of election expenses in the manner required by the Act. Therefore it is not surprising that to the knowledge of the Petitioner, the Learned Election Commission has never in the independent history of India other than in this case (and some other cases in and around the same time) either under Rule 114(4) of the erstwhile Act or under section 7(c) of the old Act or 10 (A) of the Act ever conducted an enquiry to determine whether accounts filed are false or correct. The Learned Election Commission has always maintained even for more than 10 years after the decision in Shivarama Gowda's (1999) case that S.10 A and similar sections in the old act only caught mere "failure to lodge".
13. As stated above, prior to the amendment of the Act, submitting false accounts would only set an election aside if it "materially affected" the results. Similarly even post amendment, submitting false accounts would only set an election aside if it materially affects the result of an Election. In both the cases, it is submitted the issue can only be decided by the Hon'ble High

court.

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14. The Petitioner submits that the jurisdiction of the Election Commission u/s 10A of the Act is very limited in nature to the extent that it should only be concerned with the fact whether the accounts were lodged and whether there were any irregularities of such a nature for example incorrect format, omission to mention dates etc. as required by the rules. If a candidate fails to lodge his accounts within the prescribed time period or in the manner (i.e. format) required by the rules then the Learned Commission can adjudicate whether there are "good reason or justification for the failure". In this case the Petitioner has filed his accounts in the manner and within the time period prescribed by the rules.
15. The Respondents also argues that only a violation of Section 77(3) of the Act tantamounts to a corrupt practice. The Petitioner fully agrees that violation of 77(3) is caught by 100(1)(b). However, the respondents state that violation of Section 77(1) and Section 77(2), does not tantamount to a corrupt practice and therefore the Election Commission under Section 10A of the Act has jurisdiction to hear any violation of Section 77(1) and Section 77(2).
16. The Petitioner submits that nowhere in the Act or in the body of the provision of Section 10A it is stated that the Election Commission shall have jurisdiction to adjudicate any violation of Section 77(1) and Section 77(2). On the contrary it is made clear by section 100 of the Act that any violation of section 77(1)

and section 77(2) which "materially affects" the elections of a returned candidate shall be a matter which will be within the exclusive jurisdiction of the Hon'ble High Court.

17. The respondents have also argued that decision in *Sucheta Kriplani* should not to be followed because the Act has been subsequently amended and therefore submitting accounts which are false and which materially affects the result of an election is not covered by Section 100. The Petitioner humbly submits that such is not the case. Just like in *Sucheta Kriplani* case, even today, submitting false accounts which materially effects the result of an election is a matter which can only be adjudicated by the High Court.

18. In *L R Shivaramagowda vs. T.M. Chandrashekhar AIR 1999 SC 252* the court was unable to invoke Section 100(1) (d) (iv) because the candidate in that case had failed to plead that the result of the election insofar as it concerned the returning candidate had been materially effected by the non-compliance of the provision of section 77 of the act. The court stated:

"10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void under section 100 (1) (d) (iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the act or of the Rules/ we have already extracted paragraph 39 of the election petition which is the only relevant paragraph. One will search in vain for an

averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to file true and correct accounts of expenditure. In the absence of either averments it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts." (emphasis added)

19. The above quoted judicial pronouncement is in line with the decision in Sucheta Kriplani's case where the apex court stated:

"14. If the return is not in proper form, disqualification ensues but the Election Commission is invested with the power to remove the disqualification under Rule 114(6). If it does, the position becomes the same as it would have been had the Election Commission decided that the form was proper in the first instance. That would still leave the question of falsity for determination by the Tribunal in cases where the issue is properly raised." (emphasis added)

In L.R. Shivaramagowda's case the violation of s.77(1) & (2) was not properly raised.

20. Furthermore, in all other judgments cited by the Respondent (including the case of *Dalschand Jain v. Narayan Shankar Trivedi and Anr.* (1969) 3 SCC 685) the Hon'ble court was only concerned with what constitutes a corrupt practice. The main issue was with respect to violation of section 77(3) and 123(6). It is pertinent to state that nowhere the issue of falsity of

accounts and jurisdiction under section 10(A) of the Act was argued nor mentioned in those judgments and therefore to the knowledge of the Petitioner there is no other judgment of the apex court where the decision in Sucheta Kriplani has been analyzed, distinguished or overruled. The Petitioner has cited numerous judgments, which do not even discuss or cite Section 10 (A) of the Act. All those decisions rightly hold that a violation of 77(3) is a corrupt practice and caught by section 100(1)(b). However, violation of 77(1) and (2) are caught by section 100(1)(d)(iv). The petitioner submits that violations of all sub-sections of 77 are all caught by section 100 of the Act. Even in Sucheta kirplani's days filing a "false account" could only set aside an election if it "materially affected" the result of the election because filing of false accounts was a minor corrupt practice and a minor corrupt practice could only set aside an election if it materially affected the result of that election. Even today violation of 77(1) and (2) (failure to maintain correct accounts) will lead to an election being set aside if it "materially affects" the outcome of the election. There is no substantive change in law.

21. The respondents also argue that an election petition may result in declaration of election as void but will not result in disqualification of that candidate. This submission of the respondents is totally erroneous. Once a candidate's election has been set aside because of corrupt practice or because of violation of any provision of the Act which has materially affected the result of election then disqualification of that candidate from contesting any other election for 6 years will

follow pursuant to Section 8(A) of the Act. Thus, if an election is set aside by the Hon'ble High Court, then not only the election is set aside but the candidate also faces disqualification for 6 years (double the period of disqualification provided under Section 10A)

22. Thus the Petitioner submits that decision in Sucheta Kriplani's case is a binding precedent because of the following reasons:

- a) The decision of a Constitutional bench is binding on all courts till the same is overruled by a larger bench;
- b) The decision in Sucheta Kriplani's case was never cited in L.R. Shivaramagowda's case and therefore to that extent the decision in L.R. Shivaramagowda's case is per incuriam and therefore is not a binding precedent; and
- c) The observation in L.R. Shivaramagowda's case is strictly Obiter dicta and therefore not binding while the ratio in Sucheta Kriplani's case is binding on all Courts;

The Petitioner relies on the following decisions to support the above argument made in paragraph 22 of this written submissions:

1. Sidharam Satlingappa Mhetre v. State of Maharashtra, 2011 (1) SCC 694;
2. Wee Aar Constructive Builder v. Simplex Concrete Piles (India) Limited, 167 (2010) DLT 723;
3. Continental Carbon India Limited v. Modi Rubber Limited, 2009 152 Comp. Case 398 (Delhi);

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4. Eider PW1 Paging Limited and Eider PW1 Communications Limited v. Union of India and Others, 2010 (115) DRJ 263;
5. State of Uttar Pradesh and Another v. Synthetic Chemicals and another, 1991 (4) SCC 139;
6. Jalsri Sahu v. Rajdewan Dubey and others, AIR 1962 SC 83; and
7. The Relevant Extract from the Book "The Commentary on the Constitution of India" by Acharya Dr. Durga Das Basu (Eighth Edition - Volume 5 - 2009).

SUBMITTED BY :

Dr. D. Das July, 2011

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 29882 OF 2011

IN THE MATTER OF:

Ashok Shankarrao Chavan

...Petitioner.

VERSUS

Madavrao Kinhalkar & others

...Respondents.

COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA
[Respondent No. 5]

I, Jose Thomas, son of Late Shri Thomas, aged about 58 years and at presently working as Deputy Secretary to the Government of India, Ministry of Law & Justice, Legislative Department, Shastri Bhawan, New Delhi, do hereby solemnly affirm and state as under:-

1. I am Deputy Secretary to the Government of India, Ministry of Law and Justice, Legislative Department and as such I am conversant with the facts and circumstances of this case and competent to swear this affidavit on behalf of Union of India. I have read and understood the contents of Special Leave Petition.
2. That the deponent respectfully submits that the Union of India through Ministry of Law and Justice, Legislative Department is a proforma party in this case and the issue involved is purely a question of law.
3. That the deponent craves leave of this Hon'ble Court to submit this counter affidavit as a short reply on behalf of the Union of India limited to the question of law as to whether the Election Commission of India, under section 10A of the Representation of the People Act, 1951 has jurisdiction and power to conduct an enquiry and to look into the correctness or falsity of the return of elections expenses maintained and filed by a candidate in an election.

4. That I am advised to say that a plain reading of section 10A of the Representation of People Act, 1951 and Rule 89 of the Conduct of Election Rules, 1961 indicates that power of the Election Commission to disqualify a person arises only in the event of failure to lodge an account of election expenses and not for any other reasons including the correctness or otherwise of such accounts.

5. That in view of the above, it is respectfully prayed that the said Special Leave Petition may be disposed of with appropriate orders.



DEPONENT

VERIFICATION :-

I, the above named deponent, do hereby verify that the contents of this affidavit are true and correct to my knowledge based on record and nothing material has been concealed there from.

Verified at New Delhi on this ____ day of February, 2013.



DEPONENT