

(1994) 11 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 32175 of 1994

B.L. Shankar

APPELLANT

Vs

Chief Election Commissioner

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Conduct of Election Rules, 1961 — Rule 86
Representation of the Peoples Act, 1951 — Section 77

Citation : (1995) ILR (Kar) 1027 : (1995) 2 KarLJ 408

Hon'ble Judges : Raveendran, J

Bench : Single Bench

Advocate : Ko. Channabasappa, for the Appellant; Jayaram and Jayaram, Sanjeev Ahuja, for R-1 and M.B. Prabhakar, for R-2, for the Respondent

Judgement

Raveendran, J

1. The first petitioner is the General Secretary of a recognised Political party and Second Petitioner is an Independent candidate for election to the State Legislative Assembly. Both are voters in Karnataka. They seek quashing of two orders issued by the Election Commission of India (the first respondent herein) that is, Order No. 76/93/J.S.II dated 17.12.1993 and order No. 76/ES 003/94 JS II dated 31.8.1994 (Annexures A and B) containing the instructions for guidance of contesting candidates in regard to maintenance of day to day expenses as required by Section 77 of the Representation of Peoples Act, 1951 ("Act" for short) and Rule 86 of the Conduct of Election Rules 1961 ("Rules" for short).

2. As reference to the directions contained in the said orders and the reasons for issue of such directions is necessary, the relevant portions of the said two orders are extracted below;

ORDER No. 76/93/J.S.II dated 17.12.1993.

XX XX XX 5. The increasing role of money power in elections is too well known and is end of maladies which sometimes reduces the process of election into a

mere farce by placing some privileged candidates with financial resources in a distinctly advantageous position as compared to other candidates. The result of such an election cannot reflect the true choice of the people. The system also sometimes deprives qualified and able persons of the prerogative to represent the masses.

6. It is commonly perceived that the above quoted provisions of law (Section 77) have become utterly inadequate to check the corrupting influence of money power.

7. It is relevant to cite from a recent Judgment of the Supreme Court in this context (Civil Appeal No. 2115 of 1993, Gudakh Yeshwantrao Kankarrao v. E.V. alias Belasaheb Vikhe Patil and Ors. with Civil Appeal Nos. 2116 of 1993, 2444 of 1993 and 1758 of 1993).

"The existing law does not measure upto the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or any one else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of every one. If this be not feasible, it may be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality."

8. The Hon"ble Court has further expressed the fond wish in the above quoted Judgment that the "duty of the top echelons of leadership at the State and national level of all political parties is to set the trend for giving the needed information to the electorate by adopting desirable standards so that it percolates to the lower levels and provides a congenial atmosphere for a free and fair poll".

9. While the Commission, as early as February 1992 has sent to the Government of India a detailed and self-contained note on electoral reforms proposing among other things suitable amendment of the aforesaid provisions of law relating to election expenses to make them really effective and meaningful and has since then been eagerly waiting for an acknowledgment of its proposals from the Govt., the Commission has, in the meanwhile, carefully considered ways and means to render the accounts of election expenditure submitted by the candidates as little in close to the truth as possible, within the bounds.

10. The Commission directs as follows:

10.1. The proforma prescribed for filing the returns of election expenditure vide

Commissions letter No. 76/81, dated 18th September, 1981 stands modified as Annexure-I of this order. The revised proforma consists of two parts - Part I for maintaining the account from day to day and Part II for showing the total expenditure with required details on various items listed therein.

10.2) Each candidate while lodging the return of his election expenditure in the prescribed proforma shall also file an affidavit on oath, as in Annexure-II, that the expenditure shown as nil, if any, on items listed in Part II of the proforma or left blank herein, has not been incurred by him, but by others mentioned in Explanation (1) to Section 77(1) of the Representation of the People Act, 1951. The affidavit will also clearly state that all election expenditure on listed items relating thereto has been completely and unexceptionally included in the return and there is nothing that has not been disclosed.

10.3) It is clarified here that while the above quoted provisions of law do not oblige a candidate to maintain a separate and correct account of the expenditure incurred by those mentioned in the said Explanation (1), there is no exemption from listing out the tangible items of election expenditure by them which constituted a part of his election campaign - viz., posters, public meetings, gates, arches, video displays etc. etc. and to satisfy that expenditure on these items was not incurred or authorised by him.

10.4) Since the return of election expenditure filed by a candidate has to reflect the "Correct" account of "all" election expenses, the District Election Officer, before accepting the account of the candidate as being in accordance with the manner prescribed, shall conduct such enquiry as he deems necessary, and at the time of communicating his report to the Commission as required under Rule 89 of the Conduct of Elections Rules, 1961, certify to the Commission, with reference to the documents filed before him and as verified by him through an appropriate enquiry that the statement of accounts is in the manner prescribed.

10.5) The Commission intends to super check the authenticity of the returns filed through the above procedure and shall hold the candidates personally responsible for any lapse or misrepresentation."

ORDER No. 76/ES.003/94 JS II dated 31st August, 1994.

--XX XX 03) It is significant to note that the above quoted provisions of law and rules prescribe inter alia that a true and faithful account of all relevant expenditures will be "kept" "from day to day".

04) The Commission being deeply aware of the increasingly vitative role of unaccounted financial resources in elections and the fragility of the existing law in curbing such vitiation, and to render the accounts of election expenses to be lodged u/s 78 of the Representation of the People Act, 1951 truly and comprehensively reflective of the actual expenditure, has prescribed a procedure and proforma for lodging of accounts of election expenses vide its order No. 76/93/J.S.II dated 17th December, 1993, a copy of which is attached.

05). The super checks conducted by the Commission in pursuance of para 10.5 of the above mentioned order dated 17th December, 1993 in a number of cases of accounts lodged by candidates at some recent elections have revealed, inter alia that many candidates do not "keep" a true record of day-to-day election expenditures as specifically required by the provisions of law and rules quoted above. In some cases the date wise details and vouchers filed in support thereof have been found to have been concocted, fabricated and put together in order to give a mere semblance of the fact that "a separate and correct account of all expenditure" was kept "from day to day".

6. The Commission is convinced that order No. 76/93/J.S.II dated 17th December 1993 needs to be further fortified by additional regulatory measures. The Commission in exercise of its power under Article 324 of the Constitution and in pursuance of Section 77 of the Representation of the Peoples Act and Rule 86 of the Conduct of Elections Rules 1961, directs as follows :

(1) A register in a standard proforma as shown in Annexure-I to this order shall be issued to each candidate by the District Election Officer immediately after his nomination for keeping the day to day account of expenditure.

(2) This register shall be duly authenticated by the District Election Officer at the time of issue.

(3) All day to day account shall be faithfully recorded in this register, and in no other document, by the candidate or his agent authorised by him in this behalf.

(4) All documents such as vouchers, receipts, acknowledgments etc., in support of the expenditures incurred shall be obtained from day to day, as the expenditure is incurred and maintained in the correct chronological order along with the aforesaid register.

(5) The day to day account maintained in the aforesaid register together with the supporting documents shall be made available for inspection at any time during the process of election by the District Election Officer, Returning Officer, Election Expenditure Observer appointed by the Commission or any other such authority nominated by the Commission in this behalf. Failure to produce this register on demand will be considered as a major default.

(6) While lodging the accounts of election expenditures u/s 78 of the Representation of People Act, 1951, the candidate shall file the prescribed register as a part of the proforma earlier prescribed vide Commission's order No. 76/93/J.S.II dated December 17, 1993."

XXX XXX XXX 3. CONTENTIONS OF PETITIONERS:

The contentions of the petitioners, in brief are :

3.1) Under Article 324 of the Constitution of India, the Election Commission has been entrusted with the power of superintendence, direction and control of the conduct of the election. But the Election Commission cannot arrogate to itself,

any legislative power, by virtually making laws in the guise of passing orders, relating to election to House of Parliament and State Legislature. Any order passed by the Election Commission should be within the parameters laid down by the Parliament in the "Representation of People Act, 1951" and "The Conduct of Election Rules, 1961". While the Election Commission may issue directions in regard to any matter not expressly covered by any law made by Parliament, it cannot issue directions, in regard to matters which are specifically provided for either in the Act or the Rules, by requiring anything contrary to or in addition to what is required by or provided for in the Act and the Rules. Any such transgression by the Election Commission should be held to be void.

3.2) The aforesaid two orders dated 17.12.1993 and 31.8.1994 are not merely regulatory, in supervising directing and controlling elections, but are virtually in the nature of amendments to the Act and the Rules thereby encroaching upon the legislative powers of the Parliament. The two orders introduce obligations which are contrary to the Statutory provisions and at all events, they seek to regulate matters which are specifically regulated by the Act and the Rules and to that extent they are transgressions. While the evil of money power should not play any role in the elections and should be curbed to enable free and fair elections to the Legislature, the Election Commission cannot arrogate to itself, powers, which are not traceable either to the Act or the Rules or Article 324 of the Constitution of India.

3.3) The said two orders transgress the statutory provisions by :

- (a) requiring the candidates to maintain day to day accounts;
- (b) requiring the candidates to maintain accounts in the Registers supplied by the Election Commission;
- (c) requiring the candidates to file affidavits as prescribed in the Annexure to the order dated 17.12.1993;
- (d) providing for inspection of accounts of the candidates before they are lodged or submitted by the candidates as provided u/s 78 of the Act; and
- (e) requiring candidates to maintain and submit accounts in regard to expenditure incurred by Political Parties, association or body of persons or individuals in connection with the election of a candidate.
- (f) requiring anything to be done or not to be done, which is not provided either in Section 77 of the Act or Rule 86 of the Rules,

3.4) The said orders, in particular, paras 9 and 10-3 of the order dated 17.12.1993 and para 6 of the order dated 31.8.1994, clearly show that they transgress the limits of law and exceed the provision of Section 77 of the Act and Rule 86 of the Rules. Para 9 of the Order states that the Election Commission had suggested certain amendments to Election Law and as there is no response from the Government, the Commission was issuing directions contained in Para 10;

that is, Para 10 of the order dated 17.12.1993 virtually contain the amendments to law sought by the Election Commission, but not made by the Parliament. Similarly in para 6 of the order dated 31.8.1994 speaks of additional regulatory measures to fortify the existing directions and measures. Hence the two orders are liable to be struck down.

4. CONTENTIONS OF RESPONDENTS:

4.1) The learned Counsel for the first respondent contended that the Petition itself is not maintainable for the following two reasons:

(a) The Petition is in the nature of a Public Interest Litigation is maintainable only if it is intended to promote and vindicate public interest which demands that there should be violation of Constitutional or legal rights of a Section of the public who are poor, ignorant or in a socially or economically disadvantaged position. Having regard to the principles relating to Public Interest Litigation, the present Petition is not maintainable;

(b) Only a person affected by the two orders, that is, a candidate in the election can approach challenging the two orders. As neither of the petitioners is an affected candidate the Petition is not maintainable.

(c) The election process having admittedly commenced, Article 329(b) is a bar to this Petition.

4.2) Dealing with merits, learned Counsel for the first respondent submitted that the requirements to be fulfilled by the two impugned orders do not create or cast any fresh obligations, but merely enforce the law contained in the Act and the Rules. Nor can they be treated as threats to candidates, as they are only steps taken by the Election Commission to enforce and implement the provisions of the Act and the Rules which cast a duty on the candidates to maintain accounts. Enforcement of a law cannot be prevented by contending that such enforcement would be harsh on the subject or cause hardship to the subject. Even if the orders are construed as referring to matters which are not specifically provided for in Section 77 and Rule 86 or other Provisions of the Act and the Rules, they merely fill up blanks in law or gaps which are left uncovered and the Election Commission has the power to issue such directions under Article 324. Proper and effective implementation of any existing law cannot, by any stretch of imagination be termed as usurpation of legislative power to make laws. Having regard to the provisions of the Act, the Rules and the Indian Penal Code, inspection of accounts even prior to lodging of the accounts was permissible and in fact, absolutely necessary. The two orders should not be viewed as a threat to the candidate, but as putting the candidate on notice about proper implementation of the Act and the Rules in the interest of maintaining purity of elections.

5. POINTS FOR CONSIDERATION:

5.1) On these contentions, the Points that arise for Consideration are as follows :

- (i) Whether the petitioners have no locus standi to maintain this Petition;
- (ii) Whether the two orders dated 17.12.1993 and 31.8.1994 are in accordance with law or do they transgress the limits prescribed in Section 77 of the Act and Rule 86 of the Rules and Article 324 and therefore liable to be quashed;
- (iii) Whether Article 329(b) of the Constitution of India is a bar for consideration of the Petition or grant of any relief under Article 226.

5.2) The first Point does not require lengthy consideration. The learned Counsel for the Election Commission has proceeded on the assumption neither of the petitioners is a candidate in the ensuing election. But factually this assumption is erroneous. The second petitioner is stated to be an Independent candidate for election to the Arabhavi Constituency and therefore, he has sufficient interest to maintain this Petition. Even otherwise, where it is alleged that a public authority has acted in violation of any Constitutional or statutory obligation, resulting in any injury to public interest, any member of public acting bona fide and having sufficient interest can maintain an action for redressal against such public injury vide Decision of the Supreme Court in S.P. Gupta Vs. President of India and Others, It is therefore, to be held that the Petition is maintainable.

Re:Point (ii):

6. It is necessary to refer to the relevant provisions of law to consider the validity of the said two orders of the Election Commission.

6.1) Chapter VIII of the Act and the Rules deal with election expenses. Section 77 deals with the account of election expenses and maximum thereof, relevant portion of which is extracted below:

"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 authorised 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 of both days 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 purposes of this sub-section:

Proviso (a) (b) : omitted as not relevant Explanation 3: omitted as not relevant.

(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."

6.2) Section 78 requires every candidate at an election to lodge with the District Election Officer an account of his election expenses within thirty days from the date of election of the returned candidate.

6.3) Rule 86 prescribing the particulars of accounts of election expenditure to be kept by the candidates is extracted below:

"86: PARTICULARS OF ACCOUNT OF ELECTION EXPENSES:

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

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

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

(c) the amount of the expenditure-(i) the amount paid; (ii) the amount outstanding.

(d) the date of payment;

(e) the name and address of the payee;

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

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

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

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

(3) All 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 obtained under Sub-rule (2)."

6.4) Rule 90 prescribes the maximum election expenses which can be incurred or authorised in an election.

6.5) Section 10A requires the Election Commission to disqualify a candidate for a period of three years, if he fails to lodge an account of the election expenses within the time and in the manner required. Section 7(b) defines "disqualified"

as being disqualified for being chosen and for being a Member of either House of Parliament or Legislative Assembly or Legislative Council of a State.

6.6) Section 123 enumerates the corrupt practices for the purpose of the Act. Incurring or authorising expenditure in contravention of Section 77 shall be deemed to be a corrupt practice for the purpose of the Act, vide Sub-section (6) of Section 123. Section 100 lists the grounds for declaring an election to be void. Under Sub-section (1)(b), if the High Court is of the opinion that any corrupt practice has been committed by a returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent, the election of the returned candidate shall be declared as void. Under Sub-section (1)(d)(ii) and (iv), if the result of the election in so far as it concerned a returned candidate has been materially affected by any corrupt practice committed in the interests of the returned candidate, by an agent other than his election Agent or by any non-compliance with the provisions of the Constitution or of the Act or any Rules or the orders made under the Act, then also, the election of the returned candidate can be declared as void by the High Court.

6.7) Apart from these provisions, two Sections from the Indian Penal Code are also relevant. Section- 171(H) deals with illegal payment in connection with an election and Section 171(I) relates to failure to keep election accounts. They are extracted below.

"171-H. ILLEGAL PAYMENTS, IN CONNECTION WITH AN ELECTION:

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I: FAILURE TO KEEP ELECTION ACCOUNTS:

Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with election fails to keep such accounts shall be punished with fine Which may extend to five hundred rupees."

7. Sub-section (1) of Section 77 of the Act requires every candidate at an election to keep separate and correct account of all expenditure in connection with the election incurred or authorised 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. The object of Section 77 was dealt in great detail by the Supreme

Court in *Shri Kanwar Lal Gupta Vs. Amar Nath Chawla and Others*, decided on 3.10.1974 and the Supreme Court held that the limit on expenditure cannot be evaded by the candidate by not spending any money of his own but leaving it to the political party sponsoring him or his friends and supporters to spend an amount far in excess of the limit and thereby frustrate the object of imposing a ceiling on expenditure. Explanation (1) to Sub-section (1) of Section 77 was inserted on 19.10.1974 to set at naught the above Decision of the Supreme Court, The said Explanation clarifies that any expenditure incurred or authorised 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 expenditure in connection with the election, incurred or authorised by the candidate or his election agent, for the purpose of Sub-section (1).

7.1) The effect and validity of the Explanation (1) of Section 77 was considered by the Supreme" Court in *Dr. P. Nalla Thampy Terah Vs. Union of India (UOI) and Others*, The Supreme Court while upholding the validity of the Explanation held :

"We have referred to this large data in order to show that the influence of big money on the election process is regarded universally as an evil of great magnitude. But then, the question which we, as Judges, have to consider is whether the provision contained in Explanation 1 suffers from any Constitutional infirmity and, particularly, whether it violates Article 14. On that question we find it difficult, reluctantly though, to accept the contention that Explanation 1 offends against the right to equality. Under that provision, (i) a political party or (ii) any other association or body of persons or (iii) any individual, other than the candidate or his election agent, can incur expenses, without any limitation whatsoever, in connection with the election of a candidate. Such expenses are not deemed to be expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purposes of Section 77(1).

xxx xxx xxx Counsel for the petitioner urged that Explanation 1 renders the main provision in Section 77(1) nugatory, by taking away with one hand what is given by the other. Assuming that this is so, the Explanation would not become unconstitutional for that reason. The argument really bears upon the interpretation of the Section and the Explanation, and not upon the validity of the Explanation. We do not agree that the Explanation denudes the Section of its meaning and makes it purposeless. Section 77(1) deals with the expenditure "incurred or authorised by" a candidate or his election agent, in connection with the election. It is obligatory to keep a separate and correct account of such expenditure. Explanation 1 deals with the expenditure incurred or authorised by a political party or any other association or body of persons or by an individual other than the candidate or his election agent. It is not obligatory for the candidate or his election agent to keep a separate and correct account of such expenditure. That is because of two reasons. In the first place, such expenditure

is not incurred or authorised by the candidate or his election agent and therefore, in the very nature of things, they cannot keep an account of that expenditure. Secondly, the argument that expenditure of the kind described in Explanation-1 must be deemed to be incurred or authorised by the candidate or his election agent, is met by the provision in the Explanation that it shall not be so deemed. Section 77(1) on the one hand and Explanation 1 on the other, deal with two different situations wherefor, the latter cannot render the former meaningless.

xxx xxx xxx It is essential that the limited range of Explanation 1 ought not to be enlarged. The ceiling placed on election expenses is a basic commandment of the Act, not a pious edict. Its object is to keep a check on the expenditure incurred by candidates on their own elections, directly or through their election agents. They cannot be permitted to resort to subterfuges in order to evade the restraint imposed by Ss,77(1) and 77(3) of the Act. Homage to the principle of free and fair election has to be real, nor formal.

7.2) The effect of Section 77 and Explanation 1 thereto, came up for consideration before the Supreme Court again in two cases in GODAKH YASHWANTRAO KANKAR RAO v. E.V. ALIAS BELASAHEB VIKHE PATIL AND ORS.C.A. Nos. 2115 with 2116, 2444 & 1758 of 1993 DD 19.11.1993, the relevant portion of which is extracted in para 7 of the impugned order dated 17.12.1993 extracted above. The second Decision is C. Narayanaswamy Vs. C.K. Jaffer Sharief and Others, wherein the Supreme Court observed thus :

"As the law stands in India today anybody including a smuggler, criminal or any other anti social element may spend any amount over the election of any candidate in whom such person is interested, for which no account is to be maintained, or to be furnished and any such expenditure shall not be deemed to have been expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purpose of Sub-section (1) of Section 77, so as to amount to a corrupt practice within the meaning of Sub-section (6) of Section 123. It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidate cannot fight the election without proper funds. At the same time it cannot be accepted that such funds should come from hidden sources which are not available for public scrutiny. According to us, Sub-section (6) of Section 123 declaring "incurring or authorising of expenditure in contravention of Section 77" a corrupt practice has lost its significance and utility with the introduction of Explanation 1 aforesaid which encourages corruption by underhand methods. If the call for "purity of elections" is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons, who have made contributions and investments for the success of the candidate concerned at the election. But this has to be taken care of by the Parliament."

8. Let me next refer to some Decisions dealing with the powers of Election Commission. In *All Party Hill Leaders' Conference, Shillong Vs. Captain W.A. Sangma and Others*, the Supreme Court held that the Election Commission is empowered on its own right under Article 324 to make directions in general in widest terms necessary and also in specific cases, in order to facilitate free and fair elections with promptitude. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, the Supreme Court held that power of Election Commission under Article 324(1) is plenary in character and Article 324 vests the whole responsibility for elections and consequently the necessary powers to discharge that function in the Election Commission. Article 324 operates in areas left unoccupied by legislation and the words "superintendence", "direction" and "control" as well as "conduct of all elections" are the broadest terms which would include the power to make all provisions for free and proper elections. Article 324, on the face of it, vests vast functions, which may be powers or duties, essentially administrative and marginally even judicative or legislative. The Supreme Court further observed that: "Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality, but in keeping with the guidelines of the Rules of Law and not stultifying the Presidential Notification nor existing legislation. More is not necessary to specify; less is insufficient to leave unsaid".

8.1) In *Kanhiya Lal Omar Vs. R.K. Trivedi and Others*, the Supreme Court reiterated that the words "superintendence", "direction" and "control" of the conduct of elections occurring in Article 324(1) are wide enough to include all powers necessary for the smooth conduct of elections and Article 324 operates in areas left unoccupied by legislation. The Supreme Court further observed:

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

8.2) These Decisions make it clear that while Election Commission has undoubtedly the power and authority to issue orders and directions in connection

with superintendence, direction and control and conduct of elections, it cannot make laws in the garb of issuing orders under Article 324, contrary to any statute. In other words, Election Commission is entitled to do everything necessary for proper conduct of elections so long as the directions are not contrary to the provisions of the Constitution, Representation of Peoples Act, 1951, Conduct of Election Rules, 1960 or other statutory provisions.

9) In the light of the above principles, let me now examine whether the two orders dated 17.12.1993 and 31.8.1994 issued by the Election Commissioner transgress the provisions of Section 77(1) or Rule 86.

10) The first transgression complained is that the Election Commission cannot require the candidates to maintain day-to-day accounts. It is contended that Section 77 does not contemplate maintaining of accounts from day to day and all that is required is that a candidate should maintain and lodge a true account of his expenses. It is pointed out that Section 77 does not use the word "day to day". Section 77(1) requires the candidate, either by himself or by his election Agent to keep a separate and correct account of all expenditures in connection with the election incurred or authorised by him or by his election Agent, between the day on which the candidate has been nominated and the date of declaration of result of the election. Section 77(2) provides that the account shall contain such particulars as may be prescribed. Rule 86 requires the account of election expenses to be kept by a candidate or his election Agent u/s 77 shall contain the particulars specified therein in respect of each item of expenditure from day-to-day. Section 171-I of Indian Penal Code provides that failure to "keep accounts of expenses" incurred at or in connection with an election as required by any law, shall be punished in the manner provided therein. Section 171-I therefore contemplates inspection to find out whether accounts are "kept". The words "to keep accounts" means to maintain continuously, that is, to enter or write accounts regularly, from day to day. When expenditure is incurred day-to-day, accounts will also have to be maintained day-to-day. To keep accounts" does not mean that the candidate can write the accounts at the end of the period for which the account is required to be maintained or keep accounts sporadically. Black's Law Dictionary (6th Edition Page 868) defines "to keep" books is to maintain books continuously and methodically for the purposes of a record. Hence, having regard to the specific provisions of Section 77(1) and (2) of the Act and Rule 86 of the Rules and Section 171-I of Indian Penal Code, requirement relating to maintaining "day-to-day" accounts cannot be termed as a transgression.

11) The next complaint is in regard to the requirement relating to maintaining accounts in the Registers supplied by the Election Commission. The Order dated 31.8.1994 requires the candidate or his Agent authorised by him to faithfully record the day-to-day account in the Register supplied by the District Election Officer and in no other document. The Proforma of the Register (given in Annexure I to the Order dated 31.8.1994) shows what is to be maintained in the

Register is nothing more than what is required under Rule 86. The Register does not require entering or maintaining accounts in a different manner nor require the candidates to do anything not provided in Section 77 or Rule 86. The requirement to maintain accounts in the Registers supplied by the Commission, will ensure a uniform accounting practice, highlighting what is required u/s 77 and Rule 86 and also ensure day-to-day accounting and make verification and inspection of accounts easy and convenient. It will also ensure that accounts are not maintained in loose sheets of paper or books, the authenticity of which cannot be verified later and will prevent additions, alterations substitutions or tampering. The entire idea behind the requirement is to facilitate easy verification and inspection of accounts by the District Election Officer, Returning Officer or Election Expenditure Observer or other Authority appointed by the Commission, ensuring that the accounts are properly maintained without giving room for any falsification/fabrication of accounts. Thus the requirement is merely an effective way of implementing the provisions relating to maintenance of accounts and is not a transgression of any law.

12) The third complaint is in regard to requiring candidates to file Affidavits as per the Proforma contained in Annexure II to the Order dated 17.12.1993. The Affidavit to be submitted merely requires affirmation that the accounts are properly maintained, and is in conformity with the requirements of Section 77 and Rule 86. Furnishing of such affidavit is part of the process of maintaining accounts and nothing more. The Election Commission is fully justified and empowered in requiring furnishing of such affidavits.

13) The fourth complaint is in regard to provision for inspection of accounts before they are lodged by the candidate u/s 78. There are two different and distinct consequences for not maintaining Accounts. The first relates to the obligation of lodging of an accounts of his election expenses (a true copy of the account kept by him u/s 77) with the District Election Officer within 30 days from the date of election of the returned candidate. If a candidate does not lodge an account as contemplated u/s 78, he incurs disqualification as provided u/s 10A. The second relates to the obligation to maintain accounts regularly or properly, failing which the candidate commits an offence u/s 171-I of Indian Penal Code and becomes liable for punishment, provided in the Section 171-I. The consequence of not lodging accounts u/s 78 and consequence of not maintaining the accounts u/s 77 & Rule 86, are distinct and separate. Further, a person who does not maintain accounts also stands the risk of his election being declared void u/s 100(1)(h)(iv). If the accounts cannot be inspected before their submission, as contended by Petitioners, then it is not at all possible to find out whether a person has "kept" accounts or not. If the requirement relating to inspection of accounts, is to be held as not provided for or not authorised, then it would mean that there can be no offence at all u/s 171-I of the Indian Penal Code. Section 171-I of Indian Penal Code clearly implies a power in the Authority controlling elections or persons authorised by such Authority, to inspect the Accounts and prosecute the candidate if accounts are not kept.

14) The fifth transgression complained of is that while Section 77 and Rule 86 contemplate and require the candidate to maintain and submit accounts in regard to the expenditure incurred by himself or his election Agent, the Election Commission has exceeded its powers and jurisdiction by requiring the candidates to maintain and submit accounts in regard to the expenditure incurred by the political party to which the candidate belongs or by any association or body of persons interested in the success of the candidate. It is contended that whatever be the position of law before the Amendment by Act 58 of 1974 introducing Explanation 1 to Section 77(1) with effect from 19.10.1974, the position now is that, any expenditure incurred by any political party or any association or body of persons or any individual other than the candidate or his election agent, shall not be deemed to be expenditure in connection with the election Agent; and therefore, Election Commission cannot require the candidate to maintain account in regard to expenditure by a political party or others referred to in Explanation 1 to Section 77(1).

14.1) The said Explanation will have to be read keeping it in juxtaposition with Section 171-H of Indian Penal Code which provides that whoever, without the general or special authority in writing of a candidate, incurs or authorises expenditure on account of the holding of any public meeting, or upon any advertisement, circulation or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to Rs. 500/-. While Section 171-H makes it an offence for any person to incur any expenditure for the purposes mentioned therein without the authority of the candidate, Explanation No. 1 to Section 77 provides that any expenditure incurred by a political or other person mentioned therein will not be deemed to be expenditure authorised by the candidate or his election agent. The Parliament in its legislative wisdom did not choose to omit Section 171-H from IPC, while introducing Explanation (1) to Section 77(1) of the Act. Hence these provisions will have to be read harmoniously.

14.2) A careful reading of Explanation (1) to Section 77(1) would show:

(a) that the Explanation refers and relates only to expenditure incurred by any political party or others (other than the candidate or his election Agent) not authorised by the candidate or his election Agent; and it does not apply to any expenditure by any political party or others mentioned in the Explanation, which is authorised by the candidate or his election Agent, as any expenditure authorised by the candidate or his election Agent becomes part of the candidate's Election expenses.

(b) The Explanation does not empower, authorise, enable any political party or association or body of persons or individuals, to incur expenditure on behalf of the candidate, without the authority of the candidate. All that the Explanation provides is that if any expenditure is incurred by a political party or by others (other than the candidate or an election agent), it should not be deemed to be expenditure in connection with the election, incurred or authorised by the

candidate or his election agent.

(c) The insertion of Explanation (1) is to ensure that a candidate does not incur disqualification or is not accused of any corrupt practice on account of his political party or any third party spending money for his election, without his authority, thereby putting the candidate to the risks consequent upon exceeding the ceiling limit prescribed under Rule 90.

14.3) It therefore follows that if any expenditure is incurred by a political party or any other association or body of persons or by any individual, and if such expenditure is authorised by the candidate, then it becomes a part of candidate's election expenses. If on the other hand, any political party or any association or body or persons or any individual incurs any expenditure in connection with the election of a candidate, and the candidate does not authorise such expenditure, then the same will not become part of the candidate's election expenditure; but such expenditure would be an unauthorised expenditure or "illegal payment" u/s 171-H of Indian Penal Code and the person committing such illegal act will be subject to punishment as provided therein.

14.4) Introduction of Explanation (1) to Section 77(1) does not take away the effect of Section 171-H under which any expenditure without the general or special authority in writing of a candidate is illegal act. The position that emerges is thus; If a Political party or any other person incurs any expenditure, and if it is authorised, it will be a part of election expenditure of the candidate and will have to be accounted in the manner prescribed. If it is not authorised, then the candidate has no obligation to keep an account in that behalf and the candidate will not incur any disqualification or other consequences on account of such expenditure, but a person who incurs such expenditure commits an offence punishable u/s 171-H of Indian Penal Code.

14.5) Having reached the conclusion that any expenditure incurred by a political party or by any other person, in connection with the election of the candidate, if authorised by the candidate, becomes a part of his election expenditure, the question is whether he should keep account of such expenditure or he can ignore that expenditure for the purpose of his accounting. The candidate will have to maintain accounts of the expenditure incurred or authorised by him or his election agent. Neither Section 77 nor Rule 86 makes any distinction between election expenses which can be traced to the candidate and election expenses which can be traced to a political party or others. Once any expenditure is treated as election expenses of the candidate, whatever may be the source, the candidate becomes liable to maintain accounts in respect of such expense, even if it is incurred by any political party or others. The requirement that the candidate should account for all expenditure authorised by him, which may include any expenditure incurred by a political party, is thus justified.

15. Even though the Preamble to the two impugned orders of the Election Commission may give room for an impression that the Commission is requiring

something new, not provided under any existing law, an analysis of the directions contained in the orders will demonstrate that what is required to be performed by the two orders is not anything new, but what is contemplated and provided for in Section 77(1) of the Act, Rule 86 of the Rules and Section 171-H and 171-I of IPC. The impugned orders do not transgress or exceed what is contained in the said provisions. They are wholly within the competence of the Election Commission having regard to Article 324. They merely implement the existing law in regard to maintaining of accounts by candidates at Elections. The two orders may put the candidates to some inconvenience of requiring them to maintain accounts day-to-day in an elaborate manner, but such requirement is well within the power of the Election Commission. The hardship or inconvenience that may be caused to the candidates in requiring them to maintain proper accounts is a very small price to be paid in the interest of purity of elections. There is thus no merit in any of the contentions urged by the petitioners to challenge the said two orders.

RE: POINT (iii):

16. The learned Counsel for the Election Commission submitted that the process of election having commenced, Article 329-B of the Constitution is a bar for grant of any relief in this Petition. The petitioners contend that the subject matter of this Petition is the validity of the two impugned orders issued by the Election Commission, prior to the commencement of the election process and that examination of the validity of the said Orders and the decision thereon, will not come in the way of elections nor will it postpone any election nor will it affect any election. As I have upheld the validity of the two impugned orders and therefore rejecting the Petition, it is not necessary to examine the question whether this Court can consider the validity of such orders passed by the Election Commission when the election process is on.

In view of the foregoing, this Petition is rejected.