

(2012) 04 JH CK 0121

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 1801 of 2012

Jay Shankar Pathak

APPELLANT

Vs

Election Commission of India and others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1A), 19(2), 226, 324, 327
General Clauses Act, 1897 — Section 21, 21
Penal Code, 1860 (IPC) — Section 171(B)
Representation of the People Act, 1951 — Section 10, 100, 10A, 12, 123(1)

Citation : AIR 2012 Jhar 58 : (2012) 2 JCR 237 : (2012) 2 JLJR 272

Hon'ble Judges : Prakash Tatia, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Sumeet Gadodia and A.K. Mahto, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Tatia, C.J.—These two writ petitions have been preferred to challenge the action of the Election Commission of India-respondent no.1, whereby the Election Commission has issued a notification dated 30th March, 2012, whereby counting the votes of the Biennial election to the Council of States from the State of Jharkhand scheduled to be taken at 5.00 p.m. on 30th March, 2012 has been stayed until a specific written clearance is given by the Election Commission of India to the Returning Officer -cum-Secretary In-charge for Biennial election to the Council of States from Jharkhand and to the Chief Electoral Officer, Jharkhand, Ranchi. The Election Commission of India further directed that result of counting of votes shall also not be declared without the specific clearance of the Election Commission. By this notification dated 30th March, 2012, the above authorities were directed to send the detail and comprehensive report about the conduct of poll with special reference to any untoward incident, so as to reach the Commission immediately after poll. The above authorities were also directed by the Commission that clearance for the counting and declaration of result will be given by the Commission after scrutiny of their reports in the proforma

(Annexure-B) regarding difficulty in completion of counting and disposal of all objections in writing. The petitioners also challenged the Annexure-3 of the same date, i.e., 30th March, 2012, the proceedings of the Election Commission by which the Election Commissioner under Article 324 of the Constitution of India read with Section 21 of General Clauses Act, 1897 and other enabling power recommended to the President of India to rescind the notification no. 318/1/2012 (1) dated 12th March, 2012 calling upon the elected members of Jharkhand Legislative Assembly to elect two members of the Council of States. W.P.(PIL) No. 1801 of 2012 has been preferred by Jay Shankar Pathak as Public Interest Litigation and gave his background that he has faith in democratic set up of the country, including the system of political party and he is a primary member of Indian National Congress, which is one of the oldest political party of the country. He is a permanent resident of State of Jharkhand and is involved in social activities, which he has performed in the capacity of either member of a political party or in individual capacity. The petitioner stated that this petition is public interest litigation, challenging the decision of the respondent-Election Commission of India, whereby the respondent-Election Commission on allegation of use of money power and horse trading coming into play of the election of the two members of the Council of States (Rajya Sabha) from the State of Jharkhand has cancelled the entire election process itself. The petitioner in writ petition itself has admitted before schedule date of election i.e., 30th March, 2012, certain letters were written by the Members of Parliament to the Commission bringing to the notice of the commission the involvement of money power/horse trading coming into play in the aforesaid election and the Election Commission after taking note of the aforesaid letter has issued direction to the Chief Secretary of the State of Jharkhand and other concerned officer to keep strict vigilant watch over the situation. According to the writ petitioner, in view of the aforesaid direction, strict and vigilant watch was observed by the concerned officers of the State of Jharkhand. In the said process of strict and vigilant watch, it came to the notice of the Election Commission of India that certain money/cash are scheduled to be transferred/transported from Jamshedpur to Ranchi in connection with election of one R.K. Agarwal, who was contesting election as Independent candidate. In the writ petition, it is stated that pursuant to the aforesaid information, search and seizure operation was carried out in a car running from Jamshedpur to Ranchi and cash of Rs. 2.15 Crores was recovered and on prima facie inquiry it was reported that the aforesaid cash was unaccounted and same was carried to be handed over to said R.K. Agarwal. However, on schedule date of polling, out of 81 Members of the Jharkhand State Legislative Assembly, 79 Members had cast their votes but they were not counted in view of the direction issued by the Election Commission, referred above.

The petitioner further pleaded that pursuant to the direction of the Election Commission to furnish detailed comprehensive report about conduct of poll with special reference to any untoward incidence, report was furnished by the Chief

Electoral Officer-respondent no.2 to the Election Commission and thereafter the Election Commission in their proceeding dated 30th March, 2012 exercising power under Article 324 of the Constitution of India read with Section 21 of the General Clauses Act, 1897 has recommended for rescinding the entire election process. The petitioner pleaded that to best his knowledge, in view of the said recommendation made by the Election Commission, Her Excellency, President of India has rescinded its notification dated 12th March, 2012, whereby and whereunder the election of two Members of the Council of States (Rajya Sabha) was notified. However, the notification rescinding the earlier Notification dated 12th March, 2012 is not available with the petitioner and, therefore, petitioner prayed that respondent-Commission be directed to produce the Notification rescinding the election dated 30th March, 2012. The petitioner alleged that action of the respondent-Commission in canceling the entire process of election on the allegation of use of money and horse trading and on certain irregularity committed by the three voters during the process of casting their votes, as recommended for canceling of the election process itself, wholly without jurisdiction and is bad.

2. W.P.(C) No. 1802 of 2012 has been preferred by Shri Pradeep Kumar Balmuchu, who was one of the candidates to the election referred above, as he was a candidate set up by political party being Indian National Congress for the election of the Council of States (Rajya Sabha) from the State of Jharkhand. He after giving the facts relating to the schedule of the election and giving names of the candidates whose nominations were found valid, after withdrawal of the candidature by all others, submitted in the writ application that certain allegations were leveled and letters were written by one or other Members of Parliament to the Election Commission, mentioning therein about the apprehension regarding money power play/horse trading coming into play of the election process i.e., polling by the Members of the Jharkhand State Legislative Assembly and submitted the same facts which have been pleaded in W.P.(PIL) No.1801 of 2012 with submission that through newspaper, petitioner came to know that recommendation made by the respondent-Election Commission has been accepted by Her Excellency the President of India and notification has been issued, rescinding the earlier notification dated 12th March, 2011, however copy of the said notification could not be obtained by the petitioner and, therefore, the petitioner-Pradeep Kumar Balmuchu also prayed for calling the aforesaid notification from the respondents for placing the same before this Court.

3. Learned counsel for the petitioners, arguing both the matters, submitted that the Parliament specifically framed law dealing with situations relating to horse trading and of involvement of money power in the conduct of election and if it is brought to the notice of the Election Commission that either candidate or his agent or his representative is/are indulging in horse trading in process of election, action can be taken by the Election Commission in exercise of law framed by Parliament, including initiation of criminal proceeding under Indian Penal Code as well as under the provisions of the Representation of the People

Act, 1951(in short "R.P. Act, 1951"). Furthermore, the bribery has been defined in Section 123(1) of the R.P. Act, 1951 and bribery, one of the corrupt practice enumerated u/s 123(1) of the Act of 1951 and if candidate is found to have indulged himself in one of the corrupt practice, including bribery, his election can be declared void in an appropriate Election petition u/s 100 of the Act of 1951. Therefore, the Legislature enacted adequate safeguards in order to ensure free and fair election and has laid down the law relating to or in connection with the election and specifically provided therein for initiation of appropriate criminal proceeding and providing therein for annulling the election of candidate who has been declared elected by adopting such measure of corrupt practice.

4. Therefore, according to the learned counsel for the petitioner, the Election Commission could not have stopped the process of election by giving reference to recovery of Rs.2.15 Crores which alleged to may have been used in connection with election on behalf of one of the Independent candidate, namely, R.K. Agarwal and this incident could not vitiate the entire election process and, therefore, recommendation of the Election Commission to the President of India is not tenable in the eyes of law. Learned counsel for the petitioners vehemently submitted that the Election Commission of India was well aware that the Parliament has already considered the allegation of involvement of money power in election and specifically in Biennial election to the Council of States held in March-April, 2000 and the Ethics Committee of the Parliament in para-19 of its report presented to Parliament on 8th December, 1998, recommended that issue relating to open ballot system for elections to the Rajya Sabha be examined, because of the allegation of money power made in Media in respect of above election of the Council of States, as held in March-April, 2000. Then the Ethics Committee of the Parliament observed:

(3) In the light of the above, aforesaid issues were examined in depth by the Government and it has been decided to do away with the requirement of residence of a particular State or Union Territory for contesting election to the Council of States from that State or Union Territory and also to introduce open ballot system for elections to the Council of States.

5. Learned counsel for the petitioners submitted that because of that reason only, proviso has been added u/s 59 of the R.P. Act, 1951 that the votes at every election to fill a seat or seats in the Council of States shall be given by open ballot. The Ethics Committee's further recommendation to allow the candidates from outside the States or Union Territories for contesting election of the Council of states from the State of Union Territories was also accepted. Learned counsel for the petitioners vehemently submitted that the Parliament after considering the Ethics Committee's report and issue of allegation of money power in Rajya Sabha election itself and to meet with that situation has amended the law and dispensed with the requirement of resident of a particular State or Union Territory for contesting the election to the Council of States and has made provisions for open ballot in Rajya Sabha Poll. The Election Commission cannot

prescribed any other procedure, like which has been adopted on the allegation of involvement of money power and by saying the involvement of horse trading, so as to recommend for rescinding the election notification itself to the President of India.

6. Learned counsel for the petitioner vehemently submitted that the Constitution Bench of the Hon"ble Supreme Court, in detail, the said amendment in the Act of 1951 and considered the issue of resident or domicile in the electing State and the issue of open ballot voting in the case of Kuldip Nayar Vs. Union of India (UOI) and Others, and upheld the constitutional validity of the amendment brought about in R.P. Act, 1951 through the Representation of the People(Amendment) Act, 2003 (Act 40 of 2003) after holding that these two measures may proven cross-voting and voting for illegal consideration. Therefore, the Election Commission could have taken the steps in accordance with law and not in derogation to law.

7. It is also submitted that as the scheme of the R.P. Act, 1951, upon committing of an offence punishable under various sections of various Acts enumerated in clause (a to n) and punishment is upto the extent of sentence given in clause (I) and (II) under sub-section(1) of Section 8 and the person committing such offence under sub-section (3) of Section 8 are disqualified to contest the election. Section 8A and 9 prescribed the disqualification on the ground of corrupt practice and deals with the persons who have been dismissed because of corruption or disloyalty. Sections 9,10 and 10A also prescribe disqualification of the persons from contesting the election. In chapter IV disqualification for voting also has also been declared by the statutory provision. All above clauses of the provisions have been shown to us by the learned counsel for the petitioners to demonstrate that R.P. Act, 1951 is complete Code and take care of offenders and prevent them from entering into the Parliament or Legislative Assemblies.

8. In addition to the above, learned counsel for the petitioners drew our attention to Section 58A and submitted that the Election Commission has power to adjourn the poll or even countermand the election but such power is on the ground enumerated under sub-section (1) of Section 58A, which includes cases of booth capturing, which may takeplace at a polling station or at a place fixed for the poll or booth capturing takes place in any place for counting of votes and result of the counting at that place cannot be ascertained and upon receiving of the report of Returning Officer about such booth capturing, the Election Commission may declare the poll at that polling station or place to be void and may fix any other day for the fresh poll for that polling station. Not only this, under clause (b) of sub-section (2) of Section 58A, the Election Commission can countermand the election of that constituency. Therefore, for countermanding of the election also, there is a provision in the R.P. Act, 1951 but making a recommendation for rescinding the notification issued for the election is not provided anywhere in the Act of 1951. Learned counsel for the petitioners submitted that Election Commission has been given power of superintendence and has power to issue

direction and control over the preparation of electoral rolls and responsible for conduct of all elections to the Parliament and Legislative Assemblies of every State and even to the office of the President and Vice President under Article 324 of the Constitution of India but any of the above powers can be exercised only in accordance with law and particularly when the issue of money power, which may have been termed as horse trading by the Election Commission of India in the present case and has been already considered by the Parliament and only provisions have been provided by the Parliament by amending the R.P. Act, 1951 removing the requirement of resident and domicile in the State of election and provided procedure for open ballot then that procedure alone could have been resorted by the Election Commission and in case of any of voter, as alleged in the case that three of the Voters, namely, Shri Vishnu Bhaiya (JVM), Shri K.N. Tripathy of Indian National Congress and Shri Suresh Paswan (RJD) shown their ballot to the person other than their representatives or agent and thus violated the prescribed voting system, which is contrary to Rule 39AA. Then in that situation, the Polling Officer of the polling under the direction of the Presiding Officer could have taken back the ballot paper from the voter and could have marked "cancelled" over the ballot paper, but it was not done by the Presiding Officer or the Polling Officer. However, because of this reason, the Election Commission could not have recommended for rescinding the election notification itself. Because of the reason that consequence of showing the marked ballots to unauthorized persons has its own consequence under the proviso to Section 59 read with Rule 39A and 39AA. Learned counsel for the petitioner relying the judgment of the Hon"ble Supreme Court, delivered in Kuldeep Nayar's case (supra) submitted that the Hon"ble Supreme Court has considered in paragraph 441 and notice the difference between the elections to the Council of States and General elections. The Hon"ble Supreme Court observed that in General elections, electorates have to vote in a secret manner without fear and if their votes would be disclosed to anyone it may result in victimization. For voter in general election, there is no party affiliation and hence the choice is entirely with the voter. The Hon"ble Supreme Court held that so is not in the case when elections are held to the Council of States as the electors are elected Members of the Legislative Assemblies, who, in turn, have party affiliation. Then in para-451 observed that it cannot be forgotten that existence of political parties is an essential feature of our Parliamentary democracy and that it can be a matter of concern for Parliament if, it finds that electors were resorting cross voting under the garb of conscience voting, flouting party discipline in the name of secrecy of voting. This would weaken the party discipline over the errant legislators. Political parties are the sine qua non of parliamentary democracy in our country and the protection of party discipline can be introduced as an essential feature of purity of elections in case of indirect elections.

9. Relying upon earlier decision of the Constitution Bench of the Hon"ble Supreme Court, delivered in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, submitted that where a

candidate has reached the end of the battle and the whole poll is upset, he has right to notice and to be heard. Therefore, before taking any decision by the Election Commission, the Election Commission should have heard the petitioner, particularly, Pradeep Kumar Balmachu, who is the candidate in the present Rajya Sabha election, which has been recommended to be cancelled by the Election Commission to the President of India. The petitioner, Pradeep Kumar Balmachu, submitted representation to the Election Commission on 31st March, 2012 and also submitted representation of the same date i.e., 31st March, 2012 to Her Excellency, the Hon''ble President of India. Then before taking a decision even by the Election Commission for sending a recommendation for rescinding the election notification dated 12th March, 2012, the petitioner should have been given an opportunity, which has not been given. Therefore, that recommendation deserves to be quashed and set aside. Learned counsel for the petitioners relied upon the same judgment of Mohinder Singh Gill's case (Supra) whereby the Hon''ble Supreme Court after setting down the limits to the plenary powers of the Election Commission held that when Parliament and State Legislature has made any valid law relating to or in connection with elections, the commission, shall act in conformity with, not in violation, such provisions and further held in paragraph 75 that people's faith in democratic process is hyper-sensitive, it is republican realism to keep alive audi alteram even in emergencies, even amidst the clash of arms. Therefore, even in the case of re-poll the principle of natural justice is required to be observed.

10. The learned counsel for the petitioners relying upon the another decisions of the Hon''ble Supreme Court delivered in the case of Union of India (UOI) Vs. Association for Democratic Reforms and Another, submitted that the functions of the Election Commission in the matter of conduct of election is quasi judicial and where the authorities exercise quasi judicial power then there is no application of provision of Section 21 of the General Clauses Act as said by the Hon''ble Supreme Court in paragraph 37 of the above judgment. In contravention to the law laid down by the Hon''ble Supreme Court, the Election Commission recommended rescinding of the election notification dated 12th March, 2012 by taking help of Section 21 of the General Clauses Act, 1987. Therefore, also it is illegal and liable to be quashed. Learned Counsel for the petitioners further submitted even if three members of the legislative assembly being voter, have committed irregularities then only course open to the Election Officer was to cancel their ballot papers by exercising power under Rule 39 A but because of that reason the entire election process cannot be cancelled. During course of argument, learned counsel for the petitioners vehemently submitted that it is yet to be proved that the cash of Rs. 2.15 crores recovered from a car coming from Jamshedpur to Ranchi and belong to one Independent candidate's relative was, in fact, the money for giving it to the electoral and, therefore, without there being any enquiry on the facts alleged, without lodging a criminal case for bribery and without investigation and without conviction the poll which was already conducted fairly and Election Commission succeeded in preventing the

money power and horse trading then in that situation the Election Commission could not have recommended for rescinding the election notification as the decision of the Election Commission is self contradictory in view of its measure taken for preventing the money power and horse trading successfully and even then recommending the rescinding the election notification.

11. We have already mentioned but it would be appropriate to recapitulate that the writ petitioner, Jay Shankar Pathak, has filed the election petition on almost the similar ground in the form of Public Interest Litigation. In addition to the submissions referred above which covers the contention of the writ petitioner, Jay Shankar Pathak, the said writ petitioner submitted that the Election Commission in cancelling the entire election process would indirectly give benefits to the wrong doers and the Election Commission acted contrary to their own commendable efforts that it prevented the money power and horse trading, yet after completing the entire election process is sought to be cancelled to benefit the wrong doers who are interested it to be either unfair election or it to be rescinded. The writ petitioner, Jay Shankar Pathak, submitted that several elections have been held in the democratic set up of the country and in many elections even large scale of irregularities like booth capturing and even commission of offence under the Indian Penal Code, including murder in connection with the election process have been found. In the aforesaid background the Election Commission intervened in the matter earlier also and ordered for re polling in the aforesaid situation. However, to the best of the knowledge of the petitioner, it is for the first time in the Indian history after independence that election is sought to be cancelled by Election Commission. It is also submitted that the Election Commission by cancelling the election of the State of Jharkhand acted arbitrarily and discriminated the State of Jharkhand from that of other States of the country and the discrimination is that in similar situation referred above in the State of Uttar Pradesh and Punjab the Commission did not cancel the election and took only remedial measures as provided under law but ensure that the election is conducted fair and transparent manner. Because of the action of the Election Commission, the people at large of the State of Jharkhand would suffer as they would not be adequately represented in the Upper House of the Parliament as well as even the reputation of the Jharkhand would be lowered down in the country because of such steps taken by the country.

12. We have considered the aforesaid contention of the learned counsel for the petitioners and perused the record and considered the relevant provisions of law and the judgments relied upon by the learned counsel for the petitioners.

13. At the outset, we may observe here that one petition by Pradeep Kumar Balmuchu is a "Personal Interest Litigation" as he was the candidate in the Biennial election of the Rajya Sabha from the Jharkhand and set up by a national political party. Sri Pradeep Kumar Balmuchu is also at present President of Jharkhand Pradesh Congress, Ranchi whereas petitioner Jay Shankar Pathak is a

primary member of the same political party, Indian National Congress, who is neither voter nor the candidate but claimed that he is public spirited person and has filed this petition in Public Interest Litigation. Both the petitioners in unambiguously with clarity admitted that election in question i.e., Biennial election to fill up the two vacancies of Rajya Sabha seat, Hon''ble President of India issued notification no. 318/1/2012(1) dated 12th March, 2012. The last date for filing nomination was 19th March, 2012; the date fixed for scrutiny was 20th March, 2012; the last date for withdrawal of candidature was 22nd March, 2012 and 30th March, 2012 was the date for poling, if necessary. After withdrawal of nomination five contesting candidates remained. Two candidates were from National political parties and one of whom is the petitioner, Pradeep Kumar Balmuchu and another was Sanjiv Kumar from the JMM and two independent candidates namely, Sri P.K. Dhoot and Sri R.K. Agarwal.

14. Both the petitioners in the writ petitions admitted that after filing of the nomination papers by the respective candidates, certain allegations were levelled and letters were written by one or other members of Parliament to the Election Commission mentioning therein about the apprehension regarding money power/ horse trading coming into play in the election process i.e., poling by the members of the Jharkhand State Legislative Assembly. Both the writ petitioners further admitted that the Election Commission of India promptly acted and took remedial measure and wrote a letter to the Chief Secretary of the State of Jharkhand directing him and all other officers of the State to keep strict and vigilant watch on the situation so as to prevent any money power/ horse trading coming into play. The Election Commission also directed Chief Electoral Officer and Returning Officer to take strict action against anybody indulged in such activity. The apprehension of money power/horse trading involved in the election was taken seriously. That on 30th March, 2012 the Commissioner of Income Tax, Jharkhand Region reported to the Election Commission that he received information from reliable source that cash would be transported from Jamshedpur to Ranchi for the purpose of distribution in connection with the election. This information was also the reason for taking immediate action and with the help of district police and Income Tax Department successfully intercepted one Innova Car carrying huge amount of Rs. 2.15 crores and during course of inquiry of course the said cash found in vehicle remained unexplained and was seized. The petitioners" further stated that one Sudhanshu Tripathy, who was intercepted in that car and who was found carrying unaccounted cash for the purpose of distribution in connection with the election of Sri R.K. Agarwal, an Independent candidate in the Biennial election. It is also submitted by the petitioners that the said unaccounted huge cash of Rs. 2.15 crores alleged to have been handed over to one Saumitra Sah, son-in-law of the said Sri R.K. Agarwal, who was contesting election as an independent candidate. Taking into account of the event, the Election Commission directed the Chief Electoral Officer for biennial election to the council of States from Jharkhand to send a detailed and comprehensive report about the conduct of poll with special reference to any

untoward incidence and Election Commission directed the Returning Officer and Chief Electoral Officer to not to continue with the counting of the votes as well as result of counting shall not be declared without specific clearance of the Commission. The petitioners" then in unequivocal term with clarity and unambiguously admitted in the writ petition, itself that "..... after having received the preliminary information regarding alleged malpractice and/or horse trading being carried out by one or the other candidate during the course of election, itself took adequate measures for bringing the aforesaid incident to light. It is in the backdrop of the steps taken by the respondent-Election Commission itself that unaccounted cash to the tune of Rs. 2.15 crores was recovered, which was being transported for the purpose of facilitating the election of one or the other candidate namely, R.K. Agarwal. Thus, the Election Commission was successful in preventing the attempt of horse trading and money, being made by the said candidate in the conduct of free and fair election." (from paragraph 33 of W.P. (C) NO. 1802 of 2012). Similar is the pleading of writ petitioner, Jay Shankar Pathak, in his alleged Public Interest Petition, in paragraph 19 ".....that it is only due to the efforts of the Election Commission that money power/horse trading could not play role in the election process. On one hand, the Election Commission succeeded in conducting election in fair and transparent manner and on the other hand, it has cancelled the said election process itself, which is wholly arbitrary and illegal."

Therefore, both the writ petitioners knew it well that in Biennial election for two members of the Council of States (Rajya Sabha), to be elected by the members of the Jharkhand State Legislative Assembly, immediately after start of the Election process, it became known, if not to all, but to large number of persons, including public representatives and members of Parliaments and office bearers of Political parties that in this election major role may be of money power and horse trading. One of the members of the Parliament Sri Gurudas Dasgupta on 26th March, 2012 submitted a representation to the Commission in which he mentioned that the Electronic and Print Media suggested strong and tangible apprehension about "money power" coming into play to decide the destiny of such an important democratic process to the detriment of the interests of the State and it's people. Shri Gurudas Dasgupta cited various reports taken from the Print & Electronic Media expressing serious apprehension about horse trading to garner votes of vulnerable MLAs to enter one of the most prestigious institution of Indian democracy, the Council of States. Shri Gurudas Dasgupta further stated that in order to attract the nation's attention to this imminent threat to Indian democracy, raised the matter on the Floor during its proceeding dated 26th March, 2012 as a special mention. He also referred to the past history of the last Biennial election for Rajya Sabha from in 2010. He pointed out that there is a bizarre trend of the people with enormous financial clout influencing the MLAs in Jharkhand to vote in their favour and the Jharkhand Vigilance Commissioner had under instruction from the election Commission of India filed an FIR against four MLAs, namely, Shri Rajesh Ranjan, Shri Uma Shankar Akela,

Shri Simon Marandi and Shri Teklal Mahto for accepting the money for voting in favour of certain candidates at that election. He prayed to the Commission to take serious notes of the reports and concern about the grave aberrations being attempted by section of contestants in Jharkhand with a view to unleashing money power for ensuring the outcome of Rajya Sabha election in their favour and demanded that the present process of Biennial election from the State of Jharkhand be cancelled and fresh notification be issued for denovo process. In proof of his allegation, Shri Gurudas Dasgupta submitted a list of two independent candidates, who had been proposed by several MLAs belonging to recognized political parties, when those parties had themselves set up their candidates for the elections. The above are duly recorded in the recommendation of the Election Commission dated 30th March, 2012

On 27th March, 2012, Shri Babulal Marandi, Member of Parliament (Ex-chief Minister of Jharkhand) called on the Commission with a delegation and presented a memorandum signed jointly by him and Dr. Ajoy Kumar, Member of Parliament, echoing the same apprehension of "horse trading" as was raised by Shri Gurudas Dasgupta in his letter. Shri Babulal Marandi stated that "barbarous attempt to manipulate our Parliamentary system through dubious means being made by certain people possessing money power, which if allowed, is sure to be replicated in other States as well" and appeal to the Commission to take note of the situation and cancel the ongoing process for election to Rajya Sabha in Jharkhand immediately.

Not only the above, but yet another letter was received by the Commission from another Member of Parliament, Shri Sharad Yadav on 27th March, 2012 raising same apprehension of horse trading and money power being used and resorted by some candidates for garnering votes of some vulnerable MLAs to secure their election.

15. In view of such situation, the steps were taken by the Election Commission which has been lauded by both the petitioners in their pleading in the writ petition itself. Yet, both petitioners want that the Election Commission should be directed to declare the result of poling. Both the petitioners in their pleadings, nowhere disputed the facts alleged by the vigilant Members of Parliament and even former Chief Minister of the Jharkhand State itself, therefore, it is clear that allegation of the play of money and horse trading in the present election was not the allegation abruptly raised and it is not that, without verification of any fact the Election Commission proceeded to take a decision recommending the rescinding of the election notification to the President of India. It is unfortunate that one of the writ petitioner-Jay Shankar Pathak found public interest in declaration of the result of the Rajya Sabha in above fact situation and submitted that people of the State of Jharkhand is entitled to same treatment and lenient view which has been taken by the Election Commission in other States in the matter of preventing play of money power and horse trading for the process of election. Such plea is shocking that how any person can say that why the strong

action for play of money power and horse trading is taken in his State and is not taken in other State. It is very shocking that any person can say that by taking strong and possible steps to curb play of money power and horse trading in Rajya Sabha election will lower down the prestige of the State. Virtually it is shouting from the top of the roof by the petitioner-Jay Shabkar Pathak that why he should be the cleanest and why his State has been chosen for the eradication of the corrupt practice in the process of election. We are surprised that how he has declared himself as person entitled to espouse cause on behalf of the people of the State of Jharkhand. It is way to improve the image of Jharkhand. It appears that by this present action by Election Commission and its officers and the officer of Income Tax Department working in Jharkhand State reached to such a high pedestal and justified their position has not impressed the petitioner Jay Shankar Pathak and he saw that the loudable efforts be sacrificed by surrendering to criminally corrupt election process. The petitioner can presume, whatever money is intercepted is the only money which was in circulation for vote and by one successful effort of Commissioner and good officer of I.T. Department, the apprehension based upon cogent evidence be ignored and his impression, because of any reason that "all is clear after raid" be accepted. That too, when he himself did not raise any objection before the Election Commission that horse trading be stopped, if had knowledge of these facts of involvement of money power in the election and if he had no knowledge about these facts then how is connected with this matter is serious question.

16. In this context, it will be relevant to take help of the judgment of Hon''ble Supreme Court cited by the learned counsel for the petitioner to understand what is the election and what is the election process and what is the importance of the parliamentary form of the Government and importance of Rajya Sabha and purity is needed in the election process of the Members of Rajya Sabha.

The Hon''ble Supreme Court in the case of Kuldip Nayar (Supra) while considering the challenge to removal of requirement of residence or domicile in the electing State of the election of Rajya Sabha observed that "However, on account of the realities faced by the young Indian Union, a Council of States (the Rajya Sabha) in the Union Parliament was seen as an essential requirement for a federal order." The Hon''ble Supreme Court further held that right of bicameralism in Parliamentary forms has been functionally associated with need for effective federal structures and nexus between role of upper house and better Centre-State coordination and protection of interests of the constituent units of the Union. Rajya Sabha is a forum to which experienced public figures get excess without going through din and bustle of a general election. It acts as a revising chamber over Lok Sabha and helps in improving Bills passed by Lok Sabha. In paragraph 452 of the above judgment, the Hon''ble Supreme Court held "parliamentary democracy and multi-party system are an inherent part of the basic structure of the Indian Constitution." Because of this reason of importance of the House, the Hon''ble Supreme held in paragraph 451 that

Para 451:

It cannot be forgotten that existence of political parties is an essential feature of our parliamentary democracy and that it can be a matter of concern for Parliament if it finds that electors were resorting cross voting under the garb of conscience voting, flouting party discipline in the name of secrecy of voting.

In Paragraph 459 while considering the amendment in issue has observed that the Parliament brought amendment through the Representation of People (Amendment) (Act 40 of 2003) on the basis of the need to avoid cross-voting and wipe out evils of corruption as also to maintain the integrity of our democratic set up, it can also be justified by the State as a reasonable restriction under Article 19 (2) of the Constitution, on the assumption that voting in such an election amounts to freedom of expression under Article 19-1A of the Constitution. The Hon"ble Supreme Court in paragraph 462 observed that ".....it was reported that some members indulged in cross-voting for consideration. Breach of discipline of political parties for collateral and corrupt consideration removes the faith of the people in a multi-party democracy."

17. We need not to give more instances in support of need of free and fair election from the help of very many judgments and from the judgment of Kuldeep Nayar (Supra) but we are of the considered opinion that the present issue raised by the writ petitioners certainly question the power of Election Commission in taking a step to rescind the election, even in gravest to gravest his rarest to rarest case as it is the only step of such great consequence taken by the Election Commission after independence of country and in our opinion, the decision is fully supported by reason and based upon cogent trustworthy evidence, though limited to purpose, so as to not to give chance to any person to enjoy high status of being Member of Parliament. It is true some innocent and honest candidate may have to suffer as all are not corrupt but such honest person should sacrifice his oppornuty in larger public interest. The petitioners assailed the action of the Commission, ignoring the facts that the petitioners themselves in their writ petition specifically admit that there was apprehension of money play and horse trading in the Rajya Sabha election from the State of Jharkhand and that apprehension has not been raised by the person not unconnected with the people but has been raised by the sitting member of Parliament and former Chief Minister of this very State who are deeply connected and may have personal knowledge about reason for apprehension and the knowledge gathered from Media. They even gave example of earlier election of the Rajya Sabha with allegation of same money play and horse trading. The constitutional authority, the Election Commission very ably and effectively monitored the matter and acting swiftly and fast, the Income Tax authorities unearthed the wrong, yet the question has been raised without pleading that the action of the Election Commission has totally prevented money play and horse trading in the election and the petitioners inferred so by their imagination, they should not have shown other than imagination to anybody. The question has been raised that only one

person was caught with money of Rs.2.15 crores then inference of the argument of the learned counsel for the petitioners leads to declare that apart from this instance of money play and horse trading and rest all the process was pure and fair. However, both the petitioners, who earlier had no knowledge of what was going on and if had any knowledge, then they did not raise the alarm, may claim that there is no other instance of money play and horse trading then what has seen the light of day by presuming that since one has been caught by Income Tax Department, the others cannot flee away or successfully use the money.

18. Be that as it may be, yet we would like to examine the issue raised by the writ petitioners. The issue raised by the writ petitioners are that;

a.) Whether the Election Commission who has power under Article 324 relating to superintendence, direction, control and conduct of election which is a plenary power but these powers are subject to limitation i.e., law enacted by Parliament or any State legislature relating to or in connection with election and Whether the Commission in present situation acted in conformity with such laws and not in violation of such provisions.

b.) Whether the Commission has acted bonafidely and was required to follow the norms of principles of natural justice and fair play?

c.) Whether the Parliament has specially framed the law dealing with the aforesaid situation relating to horse trading/involvement of the money power in conduct of election and the Election Commission or the authorities have only power to take action under Indian Penal Code and under R.P. Act, 1951 relating to the offence of bribery?

d.) Whether the only way is to get election set at naught by filing election petition after declaration of result and there is no other remedy that the election commission, like seeking rescinding of the election notification from the President of India?

e.) Whether the Election Commission had only power to cancel the vote of those voters who have shown their ballots after mark to the unauthorized person and that fact cannot be taken into consideration while judging the entire process of the election?

f.) Whether the rescinding of the election will be giving benefit to the person indulged in the horse trading?

19. So far first question is concerned, the power of Election Commissioner 324 of the Constitution is concerned, the powers are very wide. The Election Commission which is a constitutional authority has been vested with the power of superintendence, direction and control of the preparation of the electoral roll and for conduct of all elections to Parliament and to the legislature of the States and of election to the office of President and Vice-President has been vested with all pervasive power. Interpreting Article 324 of the Constitution of India, the Hon'ble Supreme Court in the case of Mohinder Singh Gill in paragraph 38 and

39 held as follows:

38. Article 324, which we have set out earlier, is a plenary provision vesting the whole responsibility for national and State elections and, therefore, the necessary powers to discharge that function. It is true that Article 324 has to be read in the light of the constitutional scheme and the 1950 Act and the 1951 Act. Shri Rao is right to the extent he insists that if competent legislation is enacted as visualised in Article 327 the Commission shake itself from the enacted prescriptions.

The Hon"ble Supreme Court observed :-

And the Supremacy of valid law over the commission argues itself. No one is an imperium in imperio in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Article 324, likewise his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system.

39..... 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 rule of law and not stultifying the Presidential notification for existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324 in our view operates in areas left unoccupied by legislation and the words "superintendence, direction and control" as well as "conduct of all elections" are the broadest terms Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may manipulate the system into elected despotism.- instances of such phenomena are the tears of history. To that the retort may be that the Judicial branch, the appropriate stage with the potency of its benignant power and within the leading srings of legal guidelines, can call the bluff, quash the action and bring order in process. Whether we make a triumph or travesty of democracy depend on the man as much as on the Great National Parchment. When high functionary like the Commissioner is vested wide powers the law expects him to act farelly and legally. Article 324 is geared to accomplishment of free and fare election expeditiously.

And in paragraph 40 of the said judgment, the Hon"ble Supreme Court held that the Supreme Court in earlier rulings and other High Courts have held Article 324 plenary power which enabled the Commission to Act even in the absence of specific legislation though not contrary to valid legislation. Ordering a re-poll for a whole constituency under compulsion of circumstances may be directed for the conduct of elections and can be saved by Article 324-provided it is bona fide necessary for the vindication of the free verdict of the electoral and the abandonment of the previous poll was because it failed to achieve that goal. Therefore, in view of the observations made by the Hon"ble Supreme Court in paragraph 39 of the said case, the Election Commission can exercise its power

under Article 324 in the areas left unoccupied by legislation and in view of the said judgment of the Hon''ble Supreme Court the word "superintendence, direction and control" as well as "conduct of business" are the broadest term. The Election Commission may be called upon to prompt action to reach the goal of free and fair election and apprehension against this proposition has been rejected by the Hon''ble Supreme Court by declaring that the retort may be that the judicial branch, at the appropriate stage with the potency of its benignant power and within the leading strings of legal guidelines, can call the bluff, quash the action and bring order into the process. However, the Hon''ble Supreme Court reiterated the fact that such high functionary like the Election Commission, as has been the view shown by the Hon''ble Supreme Court in the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and held that such authorities vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair election expeditiously. However, such power if misused certainly the Court has power to strike down the act. Therefore, in the present case, the Election Commission was right in it's wisdom to take immediate action and recommend cancellation of election notification itself that fresh election may be conducted expeditiously.

20. Now the question arises whether any law enacted by the Parliament to take full care of this situation of allegation of large scale horse trading and huge money play in the process of election and the Election Commission has acted contrary to that specific law on the subject by recommending the rescinding of the election notification.

Learned counsel for the petitioners drew our attention to the Election Commission's impugned recommendation, recommending the rescinding of the election by the Hon''ble President of India and submitted that Election Commission itself was conscious that the Parliament has considered this aspect of the matter of horse trading and money power in the process of election and thereafter amended Section 59 of the R.P. Act, 1951 and inserted Rule 39A and 39AA and quoted the recommendation of the Ethics Committee by the parliament, which we would also like to quote :

2. The Ethics Committee of the parliament in paragraph-19 of its first report presented to parliament on 8th December, 1988 recommended that the issue relating to open ballot system for elections to the Rajya Sabha be examined. The issue has again given rise to concerns in the wake of allegations of money power made in the media in respect to biennial elections to the Council of States held in March-April, 2000.

3. In the light of the above, the aforementioned issues were examined in depth by the government and it has been decided to do away with the requirement of residence of a particular State or Union Territory for contesting election to the Council of States from the State or Union Territory and also to introduce open ballot system for elections to the Council of States.

21. According to the learned counsel for the petitioners, when the law has been made by the Parliament to deal with the situation of money power play in the election and particularly by taking example from the election of the Rajya Sabha and provided that this situation can be taken care of by providing open ballot system and by deleting the provisions of requirement of having residence of a particular State or Union Territory for contesting the election for the Council of States from that State or Union Territory then the Election Commission could not act beyond the measures taken by the Parliament enactment. If the parliament consciously did not frame any rule more than what it had done after considering the issue of allegation of money power play in election, then the Parliament has excluded all other and more measure in dealing with this issue of money power play and horse trading. It is also submitted that the various provisions are there where any person indulging in the bribing can be prescribed and if one is elected by means of bribe, his election can be set aside. "Bribing" is a corrupt practice as defined in Section 123(1) of the R.P. Act, 1951 and person involved in the bribing can be prosecuted even if he only attempted to bribe u/s 171(B) of the Indian Penal Code. If a person has shown ballot to unauthorized person then his vote can be cancelled. Therefore, these are the measures which alone could have been taken by the Election Commission.

22. After considering the submission of the learned counsel for the petitioners, we are of the considered opinion that the Parliament has not amended Section 59 and inserted Rule 39A and Rule 39AA as a measure to deal with all contingency of money power play and horse trading in the election process. The two steps taken of the removal of the requirement of residence of a member of a State or Union Territory for contesting election to the Council of States from that State or Union Territory and provided for open ballot, may be two of the mode prescribed so as to reduce the chance of money power play and horse trading in the process of election. What will happen, when outsider is involved such immoral, unethical and criminal activities? This is only a one of narrow question to find out that whether above amendments are the only answer to the grave problem of play of money power? It is true that validity of the amendment has been upheld by the Hon''ble Supreme Court in the case of Kudeep Nayar(Supra). At this juncture, we would like to observe that issue before the Hon''ble Supreme Court, in that case, was with respect to the challenge of the abovesaid amendment only made by the Representation of the People Act(Amendement (Act 40 of 2003) by which requirement of residence/domicile has been dispensed with and open ballot was declared to be valid mode of fair poling. While considering this issue, the Hon''ble Supreme Court already considered the issue of cross-voting and corruption in the voting and corrupt consideration. However, it was confined to subject of affiliation of the member of the political party. The Hon''ble Supreme Court in para-459 clearly observed that amendment has been brought in on the basis of the need to avoid cross-voting and wipe out evils of corruption as also to maintain the integrity of our democratic set up. The Hon''ble Supreme Court took note of the fact that it has already been noted by the Parliament that

in election to Council of States, members elected on behalf of the political parties misused the secret ballot and cross-voting. It was reported that some members indulged in cross voting for consideration. Then it was observed that breach of discipline for collateral and corrupt consideration removed the faith of the people in a multi party democracy.

23. We may reiterate that the issue raised before the Hon''ble Supreme Court in Kuldeep Nayar''s case(Supra) was with respect to challenge to the validity of the amendment, which we referred above, and in that context the Hon''ble Supreme Court held that the members of legislative assembly may indulge in cross-voting, which may be against the whip of the political party and against the party discipline and therefore, the party''s representative may see the ballot marked by the electoral to maintain the discipline of the party and avoid the cross-voting.

24. There was no issue involved in the case of Kuldeep Nayar of seeking cancellation of election notification on allegation of horse trading and money power play. In the case in hand, according to the writ petitioner themselves the allegation of money power play is upon independent candidate and not on any party candidate (we are not deciding or holding any of the candidates or member of legislative assembly guilty and considering the allegation only) and as per the law laid down by the Hon''ble Supreme Court in the judgment of Kuldeep Nayar the voters who are the members of political party alone are required to show the ballot paper to parties representative and not to others. Three members of the political party shown ballot paper to unauthorized persons. And one of allegation with proof presented before the Commission was that several political parties MLAs proposed to independent candidates. Such facts were taken into account by the Election Commission, which independently may not be of importance but in background of facts of present case are very important. Their votes have not been cancelled, may be due to mistake of the officer conducting the election, but fact is that those votes had been cast. The open vote may secure the discipline of political party and may avoid the cross voting in horse trading and money power play to some extent but while interpreting the power of the high functioning authority like Election Commission, we cannot hold that apart from what has been provided by the said amendment of removal of condition of domicile and open vote system is full and complete answer to the grave problem. Now the time has come to look into the availability of huge funds which availability has been proved in this case and not disputed by the politicians rather admitted by them and there is allegation of paying money to the party itself (fact yet not proved). If it happens so, then in that situation, the amendments are of no use because they take care of securing the discipline of the members of the political party within the political party. It may avoid the corruption if party is strong as the party can reject any wrong doers by claiming that all had cast votes in favour of such person who was not indulged in horse trading. This is not imaginary but the allegation has come in almost all newspapers in circulation in the State of Jharkhand with one voice and have raised doubt without any bias and ill-feeling about the involvement of not only members to political party but offer of money

to parties (we wish so may not be true) but in future such cases may come through also whether Election Commission to pray god only as observed by the Supreme Court in the case of M.S. Gill (Supra). We can take judicial notice of the newspaper reportings because of the fact that, that was unanimous voice of media in State and the language used by the media was not derogatory, defamatory or with any bias for one or others. Not only this but the Election Commission has also taken note of the media report shown by one of the members of Parliament Gurudas Dasgupta and it is also reported in the media that the seized amount was not only the amount which has been sent from Jamshedpur to Ranchi and petitioners themselves admitted in their petition that, at least, Rs. 2.15 crores was intercepted by the Income Tax Department and that was sent for the votes. Assuming that none of the party was involved in illegal consideration for vote of its member then also in the fact situation where the involvement of the money was so much and out of which some of the money has been intercepted by the vigilant cell of the Income Tax Department on the instruction of the Election Commission and the Election Commission has presumed that it was a grave case of large scale horse trading and money power play and took the extraordinary steps in extraordinary situation and which is not contrary to any statutory provisions of law and which action is based on substantive material evidence, then at this juncture, it would be relevant to quote from the judgment of the Hon"ble Supreme Court delivered in the case of M.S. Gill (Supra), wherein the Hon"ble Supreme Court observed that

once the appointment is made by the President the Election Commission remain insulated from extraneous influences and that cannot be achieved unless it has an amplitude of powers in the conduct of elections-of course in accordance with the existing laws but where these are absent, and yet a situation has to be tackled the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situations. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the elections process is completed properly in a free and fair manner. "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 implied and that are necessary to the exercise of the power of the performance of the dutythat which is clearly implied in as much a part of a law as that which is expressed."

25. In our opinion, the Election Commission did what the Hon"ble Supreme Court expects from high functionary authority like Election Commission that, even if the law and the rules are absent even then if Election Commission comes across such a situation and he is to tackle that situation then he should not remain with folded hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situations. The Hon"ble Supreme Court has

clearly held that the question raised by the petitioner that Election Commission must exercise his power independently in all matters relating to the conduct of free and fair elections and see that election process is completed properly in a free and fair manner.

The Hon^{ble} Supreme Court further in paragraph 115 of M.S Gill's case (Supra) clearly held that the Election Commission is entitled to exercise certain powers under Article 324 itself on its own right, in an area not covered by the act and rules. Whether the power is exercised in an arbitrary or capricious manner is a completely different question.

26. In these cases, we are of the considered opinion that the Election Commission has acted befitting to its office by taking extraordinary steps of stopping the counting promptly and stopping the result of the poll and forthwith recommended for rescinding the election notification to Her Excellency the President of India. The Election Commission recommendations are since based on facts and materials and this Court is not appellate Court to re-examine the evidence and material to find out the correctness in the process of the Election Commission. The petitioners also rightly did not pray for appreciating the evidence which were considered by the Election Commission and very interestingly none of the fact narrated in the recommendation of the Election Commission, made in recommendation to rescind the election notification has been disputed by the petitioners and yet the petitioners assailed the recommendation of the Election Commission to the President of India. The petitioners even did not dispute, rather say admitted that three of the Members of the legislative Assembly violated the rules and it inadvertently or for any reason their votes have not been cancelled by the Incharge of the election. So, is in addition to the fact that the petitioners themselves have stated in the writ petitions that money was meant for the election in question and intercepted by the Income Tax Department and thereby only this money could not be paid to the relevant persons to the influence and pollute the election of the two seats of the Rajya Sabha. How there can be any cause of action to the writ petitioners in these circumstances to take the help of technicalities of the law, but the writ petitioners ignored the fact that Article 226 of the Constitution of India is the extraordinary equitable jurisdiction of the High Court and it is not an ordinary jurisdiction of any Court where on the basis of legal right, one can claim the relief which cannot be denied by the court on account of misconduct of the party and that relief cannot be denied on equitable ground. There are number of cases, which already lay down that even if there is illegality the High Court in writ jurisdiction i.e., in extraordinary equitable jurisdiction need not to correct that illegality if the conduct of the petitioner disentitles him from the relief. So is the position in this case. The petitioners after admitting all the fault and flaws in election process to the extent of making the entire election process corrupt with no limit of corruption involving crores of rupees out of which only a few crores of rupees has been intercepted, still challenged the action of Election Commission, such conduct of petitioners is condemned.

27. Now, the learned counsel for the petitioners has raised another legal issue that the election as a whole could not have been cancelled without affording an opportunity of hearing to the writ petitioners.

Before proceeding to decide this issue we make it clear that the challenge in this petition is to the recommendation of the Election Commission made to President of India. The Commission itself has not countermanded the election. Such recommendation of Commission may be accepted by the Her Excellency President of India. We may recapitulate here that the Election Commission is vested with the power under Article 324 of the Constitution of India and is discharging this responsibility by following procedures provided in the Representation of Peoples Act, 1951. In the Act there is no provision for submitting a request for rescinding of the election notification to the President of India. Section 12 of the Act of 1951 provides that on the recommendation of the Election Commission the President shall by one or more notification published in the Gazette of India call upon the elected members of the legislative assembly of each of the State concerned to elect Members in accordance with the provisions of Act of 1951 for Council of States. Learned counsel for the petitioners submitted that Section 12 clearly indicate that on recommendation of the Election Commission the President shall issue notification for election and, therefore, it is mandatory upon the President of India to accept the recommendation of Election Commission. Therefore, according to the learned counsel for the petitioners by the same analogy the President of India shall be bound by the recommendation made by the Election Commission by which the Election Commission has requested for rescinding the election. The argument is far fetched as well as far away from the law. We are not going to interpret the word "shall" used in Section 12 with reference to the action to be taken the President of India, on recommendation of the Election Commission and if it is held that the word "shall" mandate duty upon President of India to accept the recommendation of the Election Commission even then that principle cannot be applied on recommendation submitted by the Election Commission to the President of India in its administrative function and the Hon"ble President of India can either accept or can reject the recommendation of the Election Commission for want of any law putting a command upon the highest office in India i.e., upon the President of India, which can take away the discretion of the President of India in the matter of such serious issue of cancellation of notification issued by the President of India itself. Therefore, the contention of the petitioners that the recommendation is binding upon the President of India is rejected.

28. Learned counsel for the petitioner submitted that the order to start the process of election is quasi judicial order as held by the Hon"ble Supreme Court in the case of Mohinder Singh Gill (Supra), therefore, an appropriate hearing should have been given to the petitioner which not having been given even on demand of the petitioner. In the case of M.S. Gill (Supra), the facts were entirely different. That was the case of booth capturing and order was passed by the

Election Commission for re-poll and not for a new election, which clearly indicated by the Supreme Court in paragraph 13, wherein it has been specifically made clear that the order of Election Commission was for re-poll and fresh poll and not a new election. The Election Commission has power to countermand the election u/s 58 A sub-section 2 of Clause (b) but Section 58A has no application to the facts in the case in hand and learned counsel for the petitioner also rightly submitted that there was none of the contingency as given u/s 58 A sub-section 2 of Clause (b) and, therefore, no order countermanding could have been passed by the Election Commission. The Election Commission also has power to order for adjournment of poll and re-poll. All those powers may be exercised under Statutory provisions of R.P. Act, 1951 and if some of those orders, may be quasi judicial, but it could not be held that every order of the Election Commission is quasi judicial order, if it relates to the Election and particularly when Election Commission is addressing to President of India in such matter. As we have noticed that the recommendation of Election commission to the President of India has not been under any specific provision of the Act of 1951 or but is specific provision of the Constitution of India i.e. Article 324, which cast duty upon the Election Commission to conduct the election, obviously with utmost fairness and purity. The power to superintendence, direction and control includes to take appropriate steps by the Election Commission and it is not necessary for the Election Commission to merely order for re-poll in a case when allegation of corrupt practice in entire process of election has been substantiated by the evidence and Election Commission satisfied that without cancellation of entire election there cannot be free and fair election for the post of the Rajya Sabha then this decision is under Article 324 of the Constitution of India and is taken in administrative and supervisory jurisdiction of the Election Commission for which no opportunity of hearing can be demanded by anybody. We may further expand the issue of principles of natural justice and of requirement of hearing. The principle of natural justice require opportunity of hearing to the parties who may be effected by the decision of the authority. If any election is cancelled by the Election Commission who is the effecting party? Only candidate? Whether public is not the affected party? Whether the Election Commission should hear the candidates only in a matter where there is allegation of corruption at highest possible extent and persons who are to be represented by candidate selected in such polluted election are not required to be heard and take decision after hearing only candidates who may satisfy the authority only ex-parte, in absence of public hearing?

We are leaving these questions open and living for consideration in appropriate case because in case in hand, we are of the opinion that for taking a decision by the Election Commission on the basis of substantial piece of evidence and taking a decision in administrative side by the Election Commission the petitioners, in the facts of the case, were not entitled to any opportunity of hearing, therefore, we need not to go into other questions referred above.

29. Now question arises whether ordering for declaration of three of the voters

who violated the rules by showing the ballot-papers to unauthorized persons left only recourse with Election Commission to cancel the votes at the time of polling itself and if had not been cancelled by the Officer conducting the election, the Election Commission while examining the broader issue, could have considered this fact as one of issue for taking the decision. We are of the considered opinion that when decision is taken for entire election and when here in this case, the entire election may be consisting of only two seats but was for the Council of States (Rajya Sabha), and election is by preferential vote, then it is immaterial if money has been paid for vote of one of the candidate, then certainly the second preference of such voter, who is corrupt, also pollute the election and it is difficult to collect any evidence that whether money was to paid for first preference or second preference. In that peculiar facts and circumstances, the Election Commission was required to look into the totality of the facts for taking an administrative decision. Therefore, showing of the ballot by the Members of Legislative Assembly to unauthorised persons may be for any other purpose. If these are only doubts, even then these doubts are very strong to pollute the process of election as election must pass the test of faith of people. Therefore, we are of the considered opinion that in the present facts and circumstances of the case, the Election Commission was not left with only option to cancel the votes of these candidates but was fully justified in feeling for cancellation of election. We are also of the considered opinion that other provisions for taking action against the persons involved in bribing for vote under Indian Penal Code or under R.P.Act, 1951 are not the only measure against the grave allegation of bribe to large number of voters, out of only few member of the voters. The prosecution and action under the R.P. Act, 1951 can be in addition to any of the other decision that may be taken by the Election Commission, which is needed necessarily in the fact situation.

30. We strongly deprecate the stand of the writ petitioner-Jay Shankar Pathak, who without any locus standi tried to become the spokes person of the people of the Jharkhand and claimed that since the strict action was not taken in the other State in the matter of illegal activity in the election, the strict action in Jharkhand cannot be taken. We doubt that Jharkhand people will not support such stand and may condemn it because people of the Jharkhand State, in fact, are in majority members of down trodden, members of scheduled caste and scheduled tribes, deprived from large number of facilities but hard worker and honest. The wrong doers in any election are not the face of the public of the State of Jharkhand. They are few and they can paint the face of the Jharkhand, and only that cancer has been shown to rest of India but real face of Jharkhand can be seen without much effort to find the innocent public of the Jharkhand. The petitioner, who filed the Petition in the name of Public Interest Litigation, failed to show that how the image of Jharkhand could improve by declaration of result of the Jharkhand Rajya Sabha in the fact situation where the petitioner himself admitted that money in fact shamelessly and without fear moved for election in spite of the fact that such persons activities already noticed and was known to all

and that the complaints have been made to the Election Commission of chances of money power play and horse trading and it was in full reporting by the media and newspaper report, yet the persons involved in painting the faces of the public of Jharkhand shown courage to transport the money and we doubt some of the money may have been reached to some of the persons and only some money, out of mare, that too, amounting to Rs. 2.15 crore has been seized. The said Jay Shankar Pathak might have been showing his loyalty to his party but not to the Jharkhand or other State or to the Nation.

31. In view of the above discussion, we are of the considered opinion that both the writ petitions are wholly misconceived and are liable to be dismissed and hence are dismissed.

32. However, the writ petition in the name of public interest litigation being W.P(PIL) No. 1801/2012 since has been filed against the public interest and without there being any basis and reason, which is a clear case of abuse of the process of Court, the same is dismissed with cost of Rs.1,00,000/-(Rs.one lac only) and the cost be deposited with the Jharkhand State Legal Services Authority. Since it is a grave case of involvement of money power, horse trading and influence relating to process of election of Council of States, wherein voters are Members of Legislative Assembly, we deem it proper to direct Election Commission to hand over the matter to the Central Bureau of Investigation so far as criminality of any of "the persons is involved.

Let a copy of this order be sent "to the Election Commission of India forthwith.