CASE NO.:
Appeal (civil) 7178 of 2001
Writ Petition (civil) 294 of 2001

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
AS&SOACNIOATTHIEORN FOR DEMOCRATIC REFORMS

DATE OF JUDGMENT: 02/05/2002

BENCH:
M.B. Shah, Bisheshwar Prasad Singh & H.K. Sema

JUDGMENT:

Shah, J.

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

Before dealing with the aforesaid questions, we would refer to the brief facts as alleged by the Petitioner-Association for Democratic Reforms in Writ Petition No.7257 of 1999 filed before the High Court of Delhi for direction to implement the recommendations made by the Law Commission in its 170th Report and to make necessary changes under Rule 4 of the Conduct of Election Rules, 1961. It has been pointed out that Law Commission of India had, at the request of Government of India, undertaken comprehensive study of the measures required to expedite hearing of election petitions and to have a thorough review of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") so as to make the electoral process more fair, transparent and equitable and to reduce the distortions and evils that have crept into the Indian electoral system and to identify the areas where the legal provisions required strengthening and improvement. It is pointed out that Law Commission has made recommendation for debarring a candidate from contesting an election if charges have been framed against him by a Court in respect of certain offences and necessity for a candidate seeking to contest election to furnish details regarding criminal cases, if any, pending against him. It has also suggested that true and correct statement of assets owned by the candidate, his/her spouse and dependant relations should also be disclosed. Petitioner has also referred Para 6.2 of the report of the Vohra Committee of the Government of India, Ministry of Home Affairs, which reads as follows:

"6.2 Like the Director CBI, the DIB has also stated that there has been a rapid spread and growth of

criminal gangs, armed senas, drug Mafias, smuggling gang, drug peddlers and economic lobbies in the country which have, over the years, developed an extensive network of contacts with the bureaucrats/Government functionaries at the local levels, politicians, media persons and strategically located individuals in the non State sector. Some of these Syndicates also have international linkages, including the foreign intelligence agencies. In this context the DIB has given the following examples

(i) In certain States like Bihar, Haryana and UP, these gangs enjoy the patronage of local level politicians, cutting across party lines and the protection of Governmental functionaries. Some political leaders become the leaders of these gangs, armed senas and over the years get themselves elected to local bodies, State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardising the smooth functioning of the administration and the safety of life and property of the common man causing a sense of despair and alienation among the people;

(ii) The big smuggling Syndicates having international linkages have spread into and infected the various economic and financial activities, including havala transactions, circulation of black money and operations of a vicious parallel economy causing serious damage to the economic fibre of the country. These Syndicates have acquired substantial financial and muscle power and social respectability and have successfully corrupted the Government machinery at all levels and yield enough influence to make the task of Investigating and Prosecuting agencies extremely difficult; even the members of the Judicial system have not escaped the embrace of the Mafia;

(iii) Certain elements of the Mafia have shifted to narcotics, drugs and weapon smuggling and established narco-terrorism networks specially in the States of J&K, Punjab, Gujarat and Maharashtra. The cost of contesting elections has thrown the politician into the lap of these elements and led to a grave compromise by officials of the preventive/detective systems. The virus has spread to almost all the centres in the country, the coastal and the border States have been particularly affected;

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

It is also contended that despite the Reports of the Law

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

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

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

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

3. Facts giving insight to candidate’s competence, capacity and suitability for acting as parliamentarian or legislator including details of his/her educational qualifications;

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

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

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

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

guidelines under Article 141 of the Constitution by taking into consideration 170th Report of Law Commission of India.

SUBMISSIONS:

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

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely

Articles 84, 102, 173 and 191,

Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

It is his submission that it is for the political parties to decide whether such amendments should be brought and carried out in the Act and the Rules. He further submitted that as the Act or the Rules nowhere disqualify a candidate for non-disclosure of the assets or pending charge in a criminal case and, therefore, directions given by the High Court would be of no consequence and such directions ought not to have been issued.

Supplementing the aforesaid submission, Mr. Ashwini Kumar, learned senior counsel appearing on behalf of intervenorIndian National Congress submitted that the Constituent Assembly had discussed and negatived requirement of educational qualification and possession of the assets to contest election. For that purpose, he referred to the Debates in the Constituent Assembly. He submitted that 3/4th of the population is illiterate and providing education as a qualification for contesting election was not accepted by the Constituent Assembly. Similarly, prescribing of property qualification for the candidates to contest election was also negatived by the Constituent Assembly. He, therefore, submitted that furnishing of information regarding assets and educational qualification of a candidate is not at all relevant for contesting election and even for casting votes. Voters are not influenced by the educational qualification or by possession of wealth by a contesting candidate. It is his say that the party whom he represents is interested in purity of election and wants to stop entry of criminals in politics or its criminalisation but it is for the Parliament to decide the said question.

It is submitted that delicate balance is required to be maintained with regard to the jurisdiction of the Parliament and that of Courts and once the Parliament has not amended the Act or the Rules despite the recommendation made by the Law Commission or the report submitted by the Vohra Committee, there was no question of giving any direction by the High Court to the Election Commission.

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

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

(b) all pending cases in which he is involved before any court of law in any offence, punishable with imprisonment for two years or more, and where the appropriate court has on prima facie satisfaction framed the charges against him for proceeding with the trial.

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

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

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

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

conviction;

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

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

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

(v) the educational qualifications of the candidate.

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

III. The information so furnished by each candidate in the prescribed format and supported by a duly sworn affidavit shall be disseminated by the Election Commission, through the respective Returning Officers, by displaying the same on the notice board of the Returning Officer and making the copies thereof available freely and liberally to all other contesting candidates and the representatives of the print and electronic media.

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

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

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

Mr. Rajinder Sachhar, learned senior counsel appearing on behalf of the petitioners relied upon the decision rendered by this Court in Vineet Narain and Others v. Union of India and Another [(1998) 1 SCC 226] and submitted that considering the widespread illiteracy of the voters, and at the same time their overall culture and character, if they are well-informed about the candidates contesting election as M.P. or M.L.A., they would be in a position to decide independantly to cast their votes in favour of a candidate who, according to them, is much more efficient to discharge his functions as M.P. or M.L.A. He, therefore, submitted that presuming that the High Court has no jurisdiction to pass orders to fill in the gaps, this Court can do so by exercising its powers under Article 142 which have the effect of law.

In Vineet Narain's case (Supra), this Court dealt with the writ petitions under Article 32 of the Constitution of India brought in public interest wherein allegation was against the Central Bureau of Investigation (CBI) of inertia in matters where accusation made was against high dignitaries. Primary question considered waswhether it was within the domain of judicial review and it could be an effective instrument for activating the investigating process which is under the control of the executive? While discussing the powers of this Court, it was observed:

"The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role."

[Emphasis supplied]

In paragraph 51, the Court pointed out previous precedents for exercise of such power:

"In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In Erach Sam Kanga v. Union of India [W.P. No. 2632 of 1978 decided on 20.3.1979] the Constitution Bench laid down certain guidelines relating to the Emigration Act. In Lakshmi Kant Pandey v. Union of India [(1984) 2 SCC 244] (In re, Foreign Adoption), guidelines for adoption of minor children by foreigners were laid down. Similarly in State of W.B. v. Sampat Lal [(1985) 1 SCC 317], K. Veeraswami v. Union of India [(1991) 3 SCC 655] Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584, Delhi Judicial Service Association v. State of Gujarat (Nadiad Case) [(1991) 4 SCC 406], Delhi Development Authority v. Skipper Construction Co. (P) Ltd. [(1996) 4 SCC 622] and Dinesh Trivedi, M.P. v. Union of India [(1997) 4 SCC 306] guidelines were laid down having the effect of law, requiring rigid compliance. In Supreme Court Advocates-on-Record Association v. Union of India (IInd Judges case) [(1993) 4 SCC 441], a nine-Judge Bench laid down guidelines and norms for the appointment and transfer of

Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in Vishaka v. State of Rajasthan [(1997) 6 SCC 241] elaborate guidelines have been laid down for observance in workplaces relating to sexual harassment of working women. In Vishaka (supra) it was said (SCC pp. 249-50, para 11)

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

"Objectives of the Judiciary:

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

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

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

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

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

Ms. Kamini Jaiswal, learned counsel appearing on behalf of respondents in support of the decision rendered by the High Court referred to the decision in Kihoto Hollohan v. Zachillhu and Others [1992 Supp (2) SCC 651] wherein while considering the validity of the Tenth Schedule of the Constitution, the Court observed "democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provisions for resolution of election disputes as also adjudication of disputes relating to subsequent dis-qualifications by an independant authority". She, therefore, contended that for free and fair elections and for survival of democracy, entire history, background and the antecedents of the candidate are required to be disclosed to the voters so that they can judiciously decide in whose favour they should vote; otherwise, there would not be true reflection of electoral mandate. For interpreting Article 324, she submitted that this provision outlines broad and general principles giving power to the Election Commission and it should be interpreted in a broad perspective as held by this Court in various decisions.

In these matters, questions requiring consideration are

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

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

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

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

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

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

Question No.1

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

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

maintaining purity of elections and healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decidedits result, if pending whether charge is framed or cognizance is taken by the Court? There is no necessity of suppressing the relevant facts from the voters.

The Constitution Bench of this Court in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi [(1978) 1 SCC 405] while dealing with a contention that Election Commission has no power to cancel the election and direct re-poll, referred to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless word:

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paperno amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men 'dressed in little, brief authority'. For 'be you ever so high, the law is above you'.

The moral may be stated with telling terseness in the words of William Pitt: 'Where laws end, tyranny begins'. Embracing both these mandates and emphasizing their combined effect is the elemental law and politics of Power best expressed by Benjamin Disraeli [Vivian Grey, BK VI Ch 7]:

I repeat . . . that all power is a trust that we are accountable for its exercise that, from the people and for the people, all springs, and all must exist."

Further, the Court in (para 23) observed thus:

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

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

".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.."

The Court further held:

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

The Court also held (in para 77) thus:

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

In concluding portion of paragraph 92, the Court inter alia observed thus:

"1(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

2(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition"

In concurring judgment, Goswami, J. with regard to Article 324 observed (in para 113) thus:

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

[Emphasis supplied]

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

Further, this Court in Kanhiya Lal Omar v. R.K. Trivedi and others [(1985) 4 SCC 628] dealt with the Constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 which was issued by the Election Commission in its plenary exercise of power under Article 324 of the Constitution read with Rules 5 and 10 of the Conduct of Election Rules, 1961. The challenge was on the ground that Symbols Order which is legislative in character could not be issued by the Commission because the Commission is not entrusted by law the power to issue such an order regarding the specification, reservation and allotment of symbol that may be chosen by the candidates at elections in parliamentary and Assembly constituencies. It was urged that Article 324 of the Constitution which vests the power of superintendence, direction and control of all elections to Parliament and to the Legislature of a State in the Commission cannot be construed as conferring the power on the Commission to issue the Symbols. The Court negatived the said contention and pertinently observed that "the word 'elections' in Article 324 is used in a wide sense so as to include the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process. India is a country which consists of millions of voters. Although they are quite conscious of their duties politically, unfortunately, a large percentage of them are still illiterate." The Court in paragraph 16 held:

"16. Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules, the power of the Commission under Article 324 (1) of the Constitution which is plenary in character can encompass all such provisions. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' as well as "conduct of all elections" are the broadest terms which would include the power to make all such provisions. {See Mohinder Singh Gill v. Chief Election Commissioner, New Delhi [(1978) 1 SCC 405] and A.C. Jose v. Sivan Pillai [(1984) 2 SCC 656]}.

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

Thereafter, this Court in Common Cause (A Registered Society) v. Union of India and others [(1996) 2 SCC 752] dealt with election expenses incurred by political parties and submission of return and the scope of Article 324 of the Constitution, where it was contended that cumulative effect of the three statutory provisions, namely, Section 293-A of the Companies Act, 1956, Section 13-A of the Income Tax Act, 1961 and Section 77 of the Representation of the People Act, 1951, is to bring transparency in the election funding and people of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It was contended that election in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election and that this vicious circle has totally polluted the basic democracy in the country. The Court held that purity of election is fundamental to democracy and the Commission can ask the candidates about the expenditure incurred by the candidates and by a political party and for this purpose. The Court also held:

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

Thereafter, the Court observed that under Article 324, the Commission can issue suitable directions to maintain the purity of election and in particular to bring transparency in the process of election. The Court also held (paragraph 26) thus:
"Superintendence and control over the conduct of election by the Election Commission include the scrutiny of all expenses incurred by a political party, a candidate or any other association or body of persons or by any individual in the course of the election. The expression "Conduct of election" is wide enough to include in its sweep, the power to issue directionsin the process of the conduct of an electionto the effect that the political

parties shall submit to the Election Commission, for its scrutiny, the details of the expenditure incurred or authorised by the parties in connection with the election of their respective candidates."

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

Question No.2

Right to know about the candidates contesting elections.

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

In State of Uttar Pradesh v. Raj Narain and Others [(1975) 4 SCC 428], the Constitution Bench considered a questionwhether privilege can be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar Pradesh and certain documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh? The Court observed that "the right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security". The Court pertinently observed as under: -

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

In Indian Express Newspapers (Bombay) Private Ltd. and Others etc. v. Union of India and others [(1985) 1 SCC 641], this Court dealt with the validity of customs duty on the newsprint in context of Article 19(1)(a). The Court observed (in para 32) thus:

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

The Court further referred (in para 35) the following observations made by this Court in Romesh Thappar v. State of Madras (1950 SCR 594): -

"(The freedom) lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processses of popular government, is

possible. A freedom of such amplitude might involve risks of abuse (But) "it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits".

Again in paragraph 68, the Court observed: -

".The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves." (Per Lord Simon of Glaisdale in Attorney-General v. Times Newspapers Ltd. (1973) 3 All ER 54). Freedom of expression, as learned writers have observed, has four broad social purposes to serve: (I) it helps an individual to attain self-fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration."

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

In Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others [(1995) 2 SCC 161], this Court considered the question of right to telecast sports event and after considering various decisions, the Court referred to Article 10 of the European Convention on Human Rights which inter alia states as follows (para 36):

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

Thereafter, the Court summarised the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2) thus: -

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

The Court dealt with the right of telecast and [in paragraph 75] held thus: -

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

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

The Court also observed"a successful democracy posits an 'aware' citizenry."

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

In Dinesh Trivedi, M.P. and Others v. Union of India and Others [(1997) 4 SCC 306], the Court dealt with a petition for disclosure of a report submitted by a Committee established by the Union of India on 9th July 1993 which was chaired by erstwhile Home Secretary Shri N.N. Vohra which subsequently came to be popularly known as Vohra Committee. During July 1995, a known political activist Naina Sahni was murdered and one of the persons arrested happened to be an active politician who had held important political posts and newspaper report published a series of articles on the criminalisation of politics within the country and the growing links between political leaders and mafia members. The attention of the masses was drawn towards the existence of the Vohra Committee Report. It was suspected that the contents of the Report were such that the Union Government was reluctant to make it public.

In the said case, the Court dealt with citizen's rights to freedom of information and observed "in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare". The Court also observed "democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant".

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

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

"16. (1) Every person shall, where such person is a member of the Service at the commencement of these rules, before such date after such commencement as may be specified by the Government in this behalf, or, where such person becomes a member of the Service after commencement, on his first appointment to the Service submits a return of his assets and liabilities in such form as may be prescribed by the Government giving the full particulars regarding: -

(a) the immovable property owned by him, or inherited or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) shares, debentures, postal Cumulative Time Deposits and cash including bank deposits inherited by him or similarly owned, acquired or held by him;

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

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

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

It is also submitted that even the Gazetted Officers in all government services are required to disclose their assets and thereafter to furnish details of any acquisition of property annually. In our view, it is rightly submitted that in a democratic form of government, MP or MLA is having higher status and duty to the public. In P.V. Narasimha Rao v. State (CBI/SPE) [(1998) 4 SCC 626], the Court inter alia considered whether Member of Parliament is a public servant? The Court [in para 162] held thus: -

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

The aforesaid underlined portion highlights the important status of MP or State Legislature.

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

exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her spouse's and dependants' assetsimmovable, moveable and valuable articlesit would have its own effect. This Court in Vishaka v. State of Rajasthan [(1997) 6 SCC 241] dealt with incident of sexual harassment of a woman at work place which resulted in violation of fundamental right of gender equality and the right to life and liberty and laid down that in absence of legislation, it must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of independence of Judiciary in the LAWASIA region. The decision has laid down the guidelines and prescribed the norms to be strictly observed in all work places until suitable legislation is enacted to occupy the field. In the present case also, there is no legislation or rules providing for giving necessary information to the voters. As stated earlier, this case was relied upon in Vineet Narain's case (supra) where the Court has issued necessary guidelines to the CBI and the Central Vigilance Commission (CVC) as there was no legislation covering the said field to ensure proper implementation of rule of law.

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

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

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

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

election, voter can decide whether he could be re-elected even in case where he has collected tons of money.

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

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

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

"(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

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

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

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

The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking

election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

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

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

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

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

(5) The educational qualifications of the candidate.

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

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

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

There shall be no order as to costs.

.....J.
(M.B. SHAH)

.....J.
(BISHESHWAR PRASAD SINGH)

.....J.
(H.K. SEMA)

May 2, 2002.