

Common Cause a Registered Society

Vs

Union of India and Others

Writ Petn. (Civil) No. 24 of 1995

(Kuldip Singh, Faizanuddin JJ)

04.04.1996

JUDGEMENT

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KULDIP SINGH, J. :-

1. Common cause - a society registered under the Societies Registration Act, 1860 which takes up various matters of general public interest / importance for redress before the Courts- through its Director Mr. H. D. Shourie, has filed this public interest petition under Article 32 of the Constitution of India. The primary contention raised in the petition is that the 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 1950 is, to bring transparency in the election-funding. People of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It is contended that the mandatory provisions of law are being violated by the political parties with impunity. During the elections crores of rupees are spent by the political parties without indicating the source of the money so spent. According to Mr. Shourie the elections in this country are fought with the help of money-power which is gathered from black-sources. Once elected to power, it becomes easy to collect tons of black-money which is used for retaining power and for re-election. The vicious circle, according to Mr. Shourie, has totally polluted the basic democracy in the country.

2. Section 293-A of the Companies Act, 1956 (the Companies Act) is as under :

"293-A. (1) Notwithstanding anything contained in any other provisions of this Act -

(a) no Government company; and

(b) no other Company which has been in existence for less than three financial years.

shall contribute any amount or amounts, directly or indirectly,-

(i) to any political party; or

(ii) for any political purpose to any person.

(2) A company, not being a company referred to in Clause (a) or Clause (b) of subsection (1), may contribute any amount or amounts, directly or indirectly,-

(a) to any political party; or

(b) for any political purpose to any person :

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five percent of its average net profits determined in accordance with the provisions of Sections 349 and 350 during the three immediately preceding financial years.

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

Explanation : Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portions falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purpose, of this sub-section :

(3)

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed."

Section 13-A of the Income-tax Act, 1961 (the Income-tax Act) is reproduced hereunder :

"13-A. Any income of a political party which is chargeable under the head 'Income from house property' or 'Income from other sources' or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party :-

Provided that -

(a) such political party keeps and maintains such books of account and other documents as would enable the (Assessing) Officer to properly deduct its income therefrom;

(b) in repeat of each such voluntary contribution in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the account of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of Section 288.

Explanation....."

Section 77 of the Representation of the People Act, 1950 (the R. P. Act) is in the following term :

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

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

3. It is averred in the petition that most of the political parties in the country - registered and recognised by the Election Commission - have, for many years, been flouting the provisions of the Income-tax Act so much so that they have not been maintaining accounts as required under Section 13-A of the Income-tax Act. Most of the political parties have not been filing returns of income in violation of the mandatory provisions of law. According to the petitioner it is a matter of common knowledge that political parties receive large amounts of money by way of donations / contributions from companies on a qua pro quo basis. The companies invest to seek favours when the party is in power. Neither the companies nor the political parties show the contribution / donations in their account-books. The donations and contributions received by the political parties are obviously out-of-account and in the nature of black money which would not figure in the balance sheets of the companies concerned. There is, thus, patent violation of Section 293-A of the Companies Act and Section 13-A of the Income-tax Act.

4. The Union of India had filed counter affidavit dated October 7, 1995. Supplementary affidavit has also been filed on February 13, 1996. We may at this stage indicate the position regarding filing of returns of income by the political parties as disclosed by the Union of India in the two counter affidavits.

4A. All India Forward Block did not file any return of income. The department served notice under Section 142 (1) of the Income-tax Act to the party on September 21, 1995 and November 30, 1995. The party has not filed any return despite notice.

5. Bhartiya Janta Party did not file any return till December 28, 1995 when in response to the notice issued by the Income-tax Department on December 4, 1995, the party filed return of income for the assessment year 1995-96. The party also furnished information as required by the department for the accounting period ending March 31, 1993 and March 31, 1994. According to the department the returns of income filed by the party suffered from infirmities as it did not include accounts of the State units.

6. The Communist Party of India and the Communist Party of India (Marxist) have been filing their return of income regularly.

7. The Indian National Congress did not file any return of income. The income-tax department issued notice dated December 3, 1995 and letters dated November 30, 1995 and January 17, 1996. Shri Sita Ram Kesri, Treasure of the property, has filed an affidavit dated February 16, 1996 stating that the returns of income relating to the assessment years 1993-94, 1994-95 and 1995-96 have been filed on December 14, 1995.

8. The Janta Dal did not file any return of income for all these years. Despite notice issued by the department on September 21, 1995 and January 17, 1996 the return of income has not been filed.

9. The Janta Party (JP) and the Revolutionary Socialist Party have not been filing returns of income.

10. All India Anna Dravida Munnetra Kazagam (AIADMK) has filed returns of income for the assessment years 1979-80 to 1986-87. The party has not filed the returns for the years 1987-88 to 1995-96, however, the party has filed on January 10, 1996 a list of donations of Rs. 10,000 or more received during the period relevant to the assessment years 1988-89 to 1995-96.

11. Dravida Munnetra Kazhagam (DMK) has filed the returns of income form 1979-80 till 1995-96. Some of the returns, however, are not valid and some were filed belatedly.

12. Section 13-A of the Income-tax Act was introduced by way of amendment which came into force on April 1, 1979. The political parties were required to file return of income for every assessment year from 1979-80 onwards. Except the Communist Party of India, the Communist Party of India (Marxist), the DMK and the AIADMK, no other party has been filing return as income as returned under law. Notice were issued to the political parties some time in the year 1990 calling for returns of income for the assessment years 1986-87 and onwards. There is nothing on the record to show, why the income-tax department did not issue notice to the political parties for the period prior to 1986-87. The political parties have failed to file returns for all the years from April. 1, 1979 till the assessment year 1990-91 and thereafter till-date. The reason given by the Union of India, in the counter affidavit, for not taking any action against the parties is as under :-

"I submit that most of the State and national level political parties have not been filing their returns of income, and statutory notices issued have not been complied with as mentioned above. In some cases, in reply to statutory notice issued by the Assessing Officer, some political parties took a stand that they do not have any income which is liable to be taxed and their sources of income are only those which are specifically exempted by Section 13-A of the Income-tax Act and that, therefore, they are not required to file returns of their income. In cases where notices were issued as stated above, since there was no definite information available to the Assessing Officers that the parties were having incomes above taxable limits as per the provisions of the Income-tax Act, the proceedings initiated by issue of statutory notice were dropped with the observation that in case any information or additional facts come to the notice to the authorities concerned, action under Section 147 of the Income-tax Act would be taken."

13. It is obvious that there has been total inaction on the part of the Government to enforce the provisions of the Income-tax Act relating to the filing of a return of income by a political party. The provisions of Section 13-A of Income-tax Act read with Section 293-A of the Companies Act clearly indicate the legislative scheme the object of which is to ensure that there is transparency in the process of fund-collecting and incurring expenditure by the political parties. The requirement of

maintainable audited accounts by the political parties is mandatory and has to be strictly enforced. It was obligatory for the income-tax authorities to have strictly enforced the statutory provisions of the Income-tax Act. We may refer to Sections 139 (4B), 142 (1) and 276-CC of the income-tax which are relevant :-

139. (4B) The chief executive officer (whether such chief executive officer is known as Secretary or by any other designation) of every political party shall, if the total income in respect of which the political party is assessable (the total income for this purpose being computed under this Act without giving effect to the provisions of Section 13-A) exceeds the maximum amount which is not chargeable to income-tax, furnish return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act, shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

Inquiry before assessment.

142. (1) For the purpose of making an assessment under this Act, the (Assessing) Officer may serve on any person who has made a return under Section 139 (or in whose case the time allowed under sub-section (1) of that section for furnishing the return has expired) a notice requiring him, on a date to be therein specified,-

(i) where such person has not made a return (within the time allowed under sub-section (1) of Section 139) to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or)

(ii) to produce, or cause to be produced, such accounts or documents as the (Assessing) Officer may require, or

(iii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the (Assessing) Officer may require :

Provided that -

(a) the previous approval of the (Deputy) Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts;

(b) the (Assessing) Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

Failure to furnish returns of income 276-CC. If a person wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (1) of Section 139 or by notice given under (Clause (i) of sub-section (1) of Section 142) or Section 148, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceed one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with imprisonment of a term which shall not be less than three months but which may extend to three years and with fine :

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (1) of Section 139 -

(1) for any assessment year commencing prior to the 1st day of April, 1975; or

(ii) for any assessment year commencing on or after the 1st day of April, 1975, if -

(a) the return is furnished by him before the expiry of the assessment year; or

(b) the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees.)"

The political parties, therefore, are under a statutory obligation to furnish a return of income for each assessment year. To be eligible for exemption from income-tax they have to maintain audited accounts and comply with the other conditions envisaged under Section 13-A of the Income-tax Act. Admittedly most of the parties have done neither. It is not a matter where the parties have overlooked to file a return of income by accident once or twice. The political parties have - in patent violation of law - neither maintained audited accounts nor paid tax since 1979-80. Sub-section 4B of Section 139 of the Income-tax Act makes it obligatory for the Chief Executive Officer of every political party to furnish a return of income for each year in accordance with the provisions of the Income-tax Act. Section 142(1) were issued by the income-tax authorities to the defaulting political parties but despite that the returns of income have not been filed by the said parties. Failure to furnish a return of income has been made a criminal offence punishable under Section 276-CC of the Income-tax Act. It leaves no leeway. The mandatory provisions of the law have to be enforced. It is common knowledge that there is ostentatious use of money by political parties in the elections to further the prospects of candidates set up by them. Display of huge-cut-outs etc. of political leaders on roadsides, crossings, street corners, etc. at prominent places and printing of posters and pamphlets are some of the ways in which money-power is displayed by the parties. In many cases large-scale advertisement are also given in newspapers by political parties.

14. The General Elections-to decide who rules over 850 million Indians-are staged every 5/6 years since independence. It is an enormous exercise and a mammoth venture in terms of money spent. Hundreds and thousand of vehicles of various kinds are pressed on to the road in the 543 parliamentary constitutencies on behalf of thousands of aspirants to power, many days before the general elections are actually held. Millions of leaflets and many million of posters are printed and distributed or pasted all over the country. Banners by the lakhs are hoisted. Flags go up, walls are painted. and hundreds of thousands of loud speakers play-out the loud exhortations and extravagant

promises. VIPs and VVIPs come and go, some of them in helicopters and airtaxis. 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 bank 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.

15. Mr. R. V. Pandit - a writer, and an economic analyst - has intervened in this petition. Along with his intervention application, he has annexed an article written by him and published in the "Imprint" of September, 1988. In the said article, he highlights the corruption in this country in the following words :-

"I maintain a Savings Bank Account, and from this account drew crossed Account Payee cheques of varying sums of money towards election expenses of candidates I felt would serve the public cause. Armed with my Bank Pass Book, I have discussed the question of elections and corruption with almost all important office holders since Jawaharlal Nehru. From these discussions, I have drawn the conclusion that most politicians are not interested in honest money funding for elections. Honest money entails accountability. Honest money restricts spending within legally sanctioned limits (which are ridiculously low). Honest money leaves little scope for the candidate to steal from election funds. Honest money funding is limiting. While the politicians want money for election, more importantly, they want money for themselves - to stand, to hoard, to get rich. And this they can do only if the source of money is black..... The corruption in quest of political office and the corruption in the mechanics of survival in power has thoroughly vitiated our lives and our times. It has sullied our institutions..... The corrupt politician groomed to become the corrupt minister, and, in turn, the corrupt minister set about seducing the bureaucrat..... THINK OF ANY problem our society or the country is facing today, analyse it, and you will inevitably conclude, and rightly, that corruption is at the root of the problem. Prices are high. Corruption is the cause. Quality is bad. Corruption is the cause. Roads are pockmarked. Corruption is the cause. Nobody does a good job. Corruption is the cause. Hospitals kill. Corruption is the cause. Power-failures put homes in darkness, businesses into bankruptcy. Corruption is the cause. Cloth is expensive. Corruption is the cause. Bridges collapse. Corruption is the cause. Educational standards have fallen. Corruption is the cause. We have no law and order. Corruption is the cause. People die from poisoning, through food, through drink, through medicines. Corruption is the cause. The list is endless. The very foundation of our nation, of our society, is now threatened. And corruption is the cause."

16. According to Mr. Pandit the above quoted scenario has not improved, it has rather become worse. The General Elections bring into motion the democratic polity in the country. When the elections are fought with unaccounted money, the persons elected in the process can think of nothing except getting rich by amassing black money. They retain power with the help of black money and while in office collect more to spend the same in the next election to retain the seat of power. Unless the statutory provisions meant to bring transparency in the functioning of the democracy are strictly enforced and the election-funding is made transparent, the vicious circle cannot be broken and the corruption cannot be eliminated from the country.

17. We have no hesitation in holding that the political parties who have not been filing returns of income of several years have violated the statutory provisions of Income-tax Act. The income-tax authorities have been wholly re-miss in the performance of their statutory duties under law. It was mandatory for the income-tax authorities to have put in motion the statutory machinery against the defaulting political parties. The reasons for not doing so - as disclosed in the counter affidavits - are wholly extraneous and unjustified. The political parties are not above law are bound to follow the same.

18. A political party which is not maintaining, audited and authentic accounts and is not filing the return of income before in income-tax authorities cannot justifiably plead that it has incurred or authorised any expenditure in connection with the election of a party candidate. The expenditure "incurred or authorised in connection with the election of a candidate by a political party" can only be the expenditure which has a transparent source. Explanation 1 to Section 77 of the Income-tax Act does not give protection to the expenditure which comes from an unknown or black source. Bulk of income of a political party by way of contributions / donations is from companies. Section 293-A of the Companies Act makes it mandatory that such contributions / donations are made in a transparent manner as a provided under the said section. Similarly, Section 13-A of the Income-tax Act lays down that all income derived from contributions / donations is exempt from income-tax, only if a political party satisfies that (i) it keeps and maintains such books of accounts and other documents as would enable the assessing officer to properly deduce its income therefrom; (ii) it keeps and maintain a record of each voluntary contribution in excess of Rs. 10,000 and of the names and addresses of the names and addresses of persons who have made such contributions; and (iii) the accounts of political party are audited by a chartered accountant or other qualified accountant. Sub-section 4B has been inserted in Section 139 of the Income-tax Act by Taxation Laws (amendment) Act, 1978 under which every political party is obliged to file every year a return of total income voluntarily. The total income for this purpose is to be computed without giving effect to the provisions of Section 13-A of the Income-tax Act. If such total income exceeds the maximum amount which is not chargeable to tax, the liability of the political party to file return of income voluntarily arises. It is thus, obvious that Section 293-A of the Companies Act read with Section 13-A and other provisions of the Income-tax Act are with an avowed object of bringing transparency in the accounts and expenditure of the political parties. If a political party deliberately chooses to violate or circumvent these mandatory provisions of law and goes through the election process with the help of black and unaccounted money the said party, ordinary, cannot be permitted to say that it has incurred or authorised expenditure in connection with the election of its candidate in terms of Explanation I to Section 77 of the R. P. Act.

19. Adverting to Section 77 of the Income-tax Act, Mr. Kapil Sibal, learned counsel for the Election Commission has contended that the expenditure incurred by a political party in terms of Explanation I to Section 77 of the R. P. Act shall be presume to be authorised by the candidate himself but the said presumption would be rebuttable. The onus lies on the candidate to prove that the expenditure was in fact incurred / authorised by the party and it was not incurred by the candidate himself. We see considerable force in the contention of the learned counsel. There can be no dispute that the expenditure incurred by a candidate himself would squarely fall under Section 77 (1) of the R. P. Act. There can also be no dispute with the proposition that the expenditure actually incurred and spend by a political party in connection with the election of a candidate cannot be treated to be the expenditure under Section 77 (1) of the Act. The question, however, for determination is what rule of evidence is to be followed to attract the provisions of Explanation I to Section 77 of the R. P. Act? The said Explanation is in the nature of an exception to sub-section I of Section 77. A candidate in the election who wants to take the benefit of Explanation I to Section 77 of the R. P

Act - in any proceeding before the Court - must prove that the said expenditure was in fact incurred by the political party and not by him. Any expenditure in connection with the election of a candidate which according to him has been incurred by his political party shall be presumed to have been authorised by the candidate or his election agent. But the presumption is rebuttable. The candidate shall have to show that the said expenditure was in fact incurred by a political party and not by him. The candidate shall have to rebut the presumption by the evidentiary - standard as applicable to rebuttable presumptions under the law of evidence. An entry in the books of account of a political party maintained in accordance with Section 13-A of the Income-tax Act showing that the party has incurred expenditure in connection with the election of a candidate may by itself be sufficient to rebut the presumption. On the other hand, the ipse dixit of the candidate or writing at the bottom of the pamphlet, poster, cutout, hoarding, wall painting, advertisement and newspaper etc. that the same were issued by the political party may not by itself be sufficient to rebut the presumption. We, therefore, hold that the expenditure including that for which the candidate is seeking protection under Explanation I to Section 77 of R. P. Act) in connection with the election of a candidate - to the knowledge of the candidate or his election agent- shall be presumed to have been authorised by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law and to show that part of the expenditure or whole of it was in fact incurred by the political party to which he belongs or any other association or body of persons or by an individual (other than the candidate or his election agent). A constitution bench of this Court in *Dr. P. Nalla Thampy Terh v. Union of India*, 1985 (Supp) SCC 189 : (AIR 1985 SC 1133), speaking through Chandrachud, C. J. interpreted Explanation I to Section 77 as under (at pp. 1141-42 of AIR) :-

"While we are on this question, we would like to point out that if an expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the candidate or his election agent, Explanation 1 will not be attracted. It is only if the expenditure is in fact incurred or authorised by a political party or any other association or body persons, or by an individual (other than the candidate or his election agent) that the Explanation will come into play. The candidate cannot place his own funds in the power or possession of a political party, or a trade union or some other person and plead for the protection of Explanation I. The reason is that, in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, the expenditure is incurred by the candidate himself because, the money is his. What matters for the purpose of Explanation 1 is not whose hand it is that spends the money. The essence of the matter is, whose money it is. It is only if the money expended by a political party, for example, is not laid at its disposal by the candidate or his election agent that Explanation 1 would apply. In other words, it must be shown, in order that Explanation 1 may apply, that the source of the expenditure incurred was not the candidate or his election agent. What is important is to realise that Explanation 1 does not create a fiction. It deals with the realities of political situations. It does not provide that the expenditure in fact incurred or authorised by a candidate or his election agent, shall not be deemed to be incurred or authorised by them, if the amount is defrayed by a political party. This would be tantamount to creating a fiction. The object of the Explanation is to ensure that the expenditure incurred, for example, by a political party on its own, that is, without using the funds provided by the candidate or his election agent shall not be deemed to be expenditure incurred or authorised by the candidate or his election agent. If the expenditure is incurred from out of the funds provided by the candidate

or his election agent Section 77 (1) and not Explanation 1 would apply."

(Emphasis supplied)

20. Before parting with the point under discussion we made it clear that any expenditure incurred or authorised by a political party in respect of general propaganda or for the propagation of its election manifesto shall not be considered an expenditure to the incurred in connection with the election of the candidate / candidates belonging to the said party.

21. The second contention of Mr. Sibal is based on Article 324 of the Constitution of India. The said Article provides that the superintendence, directions and control of the preparation of the electoral rolls for and the conduct of elections to parliament and to the legislature of every state shall be vested in the Election Commission. According to Mr. Sibal the entire gamut of election is under the supervision and control of the Election Commission. The Commission can issue suitable directions to maintain the purity of election and in particular to bring transparency in the process of election. According to Mr. Sibal the purity of election is fundamental to democracy. The precise contention of Mr. Sibal is that contemporaneous details-during the period when the process of election is on - of the expenditure incurred by a political party in connection with the election of its candidates can be asked for by the Commission and should be filed by the political party before the Commission. We are inclined to agree with Mr. Sibal. This Court in *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi*, (1978) 1 SCC 405 : (AIR 1978 SC 851), speaking through Krishna Iyer, J. interpreted Article 324 as under (at pp. 869-70 of AIR):-

"We decide two questions under the relevant article, not argued, but as substantive pronouncements on the subject. They are :

- (a) What, in its comprehensive connotation, does the 'conduct' of elections mean or for that matter, the 'superintendence direction and control' of elections?
- (b) Since the text of the provisions is silent about hearing before acting, it is permissible to impart into Article 324 (1) an obligation to act in accord with natural justice?

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. Sri Rao is right to the extent he insists that if competent legislation is enacted as visualised in Article 327 the Commission cannot shake itself free from the enacted prescription. After all, as Mathew, J. has observed in *Indira Gandhi (supra)* (p. 523) (SCC p. 136, paras 325-6) :-

In the opinion of some of the Judges constituting the majority in *Bharati's case* (AIR 1973 SC 1461), Rule of Law is a basic structure of the Constitution apart from democracy.

The rule of law postulates the pervasiveness of the spirit of law throughout the whole range of Government in the sense of excluding arbitrary official action in any sphere.

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.

Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provisions in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor 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 mytic 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, 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. Whether we make a triumph or travesty of democracy depends on the man as much as on the Great National Parchment. Secondly, when a high functionary like the Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously. Moreover, as held in Virendra and Harishankar discretion vested in a high functionary may be reasonably trusted to be used properly, not perversely. If it is misused certainly the Court has power to strike down the act. This is well established and does not need further case law confirmation. Moreover, it is useful to remember the warning of Chandrachud, J.:

But the electorate lives in the hope that a sacred power will not so flagrantly be abused and the moving finger of history warns of the consequences that inevitably flow when absolute power has corrupted absolutely. The fear of perversion is not test of power.

The learned Addl. Solicitor General brought to our notice rulings of this Court and of the High Court which have held that Article 324 was, a plenary power which enable the Commission to act even in the absence of specific legislation though not contrary to valid legislation. Ordering a repoll 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 electorate and the abandonment of the previous poll was because it failed to achieve that goal. While we repel Sri Rao's broadside attack on Article 324 as confined to what the Act was conferred, we conceded that even Article 324 does not exalt the Commission into a law unto itself. Broad authority does not bar scrutiny into specific validity of the particular order.

Our conclusion on this fib of the contentions 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."

22. 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 directions - in the process of the conduct of an election - to the effect that the political parties shall submit to the Election Commission, for its scrutiny, the details of the expenditure incurred or authorised by the parties in connection with the election of their respective candidates.

23. We are informed that the Election Commission of India has from time to time issued instructions which have been published in the compendium of instructions on Conduct of Election (1996). The Election Commission would be justified in asking a political party to file before it the account of expenditure incurred or authorised by a political party in connection with the election of its candidates during the course of general election/elections.

24. We, therefore, hold and direct as under :

(1) That the political parties are under a statutory obligation to file return of income in respect of each assessment year in accordance with the provisions of the Income-tax Act. The political parties - referred to by us in the judgment - who have not been filing returns of income for several years have prima facie violated the statutory provisions of the Income-tax Act as indicated by us in the judgment.

(2) That the Income-tax authorities have been wholly remiss in the performance of their statutory duties under law. The said authorities have for a long period failed to take appropriate action against the defaulter political parties.

(3) The Secretary, Ministry of Finance, Department of Revenue, the Government of India shall have an investigation/inquiry conducted against each of the defaulter political parties and initiate necessary action in accordance with law including penal action under-Section 276-CC of the Income-tax Act.

(4) The Secretary, Ministry of Finance, Department of Revenue, Government of India shall appoint an inquiring body to find out why and in what circumstances the mandatory provisions of the Income-tax Act regarding filing of return of income by the political parties were not enforced. Any officer/officer found responsible and remiss in the inquiry be suitably dealt with in accordance with the rules.

(5) A political party which is not maintaining, audited and authenticated, accounts and has not filed the return of income for the relevant period, cannot, ordinarily, be permitted to say that it has incurred or authorised expenditure in connection with the election of its candidates in terms of Explanation 1 to Section 77 of the R. P. Act.

(6) That the expenditure, (including that for which the candidate is seeking protection under Explanation I to Section 77 of the R. P. Act) in connection with the election of a candidate - to the knowledge of the candidate or his election agent - shall be presumed to have been authorised by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law

and to show that part of the expenditure or whole of its was in fact incurred by the political party to which he belongs or by any other association or body of persons or by an individual (other than the candidate or his election agent). Only when the candidate discharges the burden and rebuts the presumption he would be entitled to the benefit of Explanation 1 to Section 77 of the R. P. Act.

(7) The expression "conduct of election" in Article 324 of the Constitution of India is wide enough to include in its sweep, the power of the Election Commission to issue - in the process of the conduct of elections - directions to the effect that the political parties shall submit to the Commission for its scrutiny, the details of the expenditure incurred or authorised by the political parties in connection with the election of their respective candidates.

25. The writ petition is allowed with costs in the above terms. We quantify the costs as Rs. 20,000 to be paid by the Union of India. Petition allowed.