SUPREME COURT OF INDIA

Pumo Agitok Sangma

Vs.

Pranab Mukherjee

(J.Chelameswar J.)

11.12.2012

JUDGMENT

J.Chelameswar, J.

1. I regret my inability to completely agree with the opinion of the majority delivered by Hon'ble the Chief Justice.

2.The pleadings and submissions relevant for the present purpose are elaborately mentioned in the judgment of Hon'ble the Chief Justice of India, therefore, I do not propose to reiterate the same.

3. The procedure that is required to be followed in an election petition calling in question the election of the respondent as the President of India is the subject matter of controversy. It is a long settled principle of law in this country that the elections to various bodies created under the Constitution cannot be questioned except in accordance with the law made by the appropriate legislation. Article 329 (b) declares that "no election to either House of Parliament or to the House or either House of the Legislature of a State (hereinafter collectively called 'legislative bodies') shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature". Similarly, Article 71[1] declares all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court. Article 71 (3) stipulates that Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President and such regulations by the Parliament is, however, subject to provisions of the Constitution. In other words, while the forum for adjudication of disputes pertaining to legislative bodies under the Constitution is required to be determined by the appropriate legislature, the forum for the adjudication of disputes pertaining to the election of the President and Vice-President is fixed by the Constitution to be this Court. Whereas various other matters like the grounds on which such elections could be challenged, the procedure that is required to be followed in an election dispute are required to be provided by law in the case of the members of the legislative bodies - by the appropriate legislature and in the case of the President and Vice-President - only by the

Parliament. In the context of the election disputes pertaining to the members of the legislative bodies, the authority to provide for such matters is vested in the appropriate legislature in view of the language of Article 329, Entry 11A of the III List, VII Schedule. Similarly, by virtue of Article 71 (3) read with Article 246 (1) and Entry 72 of List I to the VII Schedule, such power vests exclusively in the Parliament.

4. In exercise of such power, the Parliament made the Presidential and Vice- Presidential Elections Act, 1952, (hereinafter referred to as 'the Elections Act', for easy reference). Part III of the said Act deals with the disputes regarding the election. Section 14 declares that the only mode of questioning of the election of either the President or Vice- President is by presenting an election petition to this Court. Section 14A[2] prescribes that the election of either the President or Vice¬President could be challenged only on the grounds specified in Sections 18(1) and 19 of the Act. It also specifies the persons who are authorized to raise such a question. It limits the right to raise the question only to two categories of people –

> "(1) the candidates at such an election; (2) twenty or more electors in the case of the President and ten or more electors in the case of the Vice-President. The said Section stipulates a limitation of 30 days for presenting such an election petition reckoned from the date of publication of the declaration contemplated under Section 12 thereof. While Section 16 stipulates the reliefs that could be claimed in an election petition, Section 15 provides as follows:- "Form of petitions, etc., and procedure.- Subject to the provisions of this Part, rules made [whether before or after the commencement of the Presidential and Vice-Presidential Elections (Amendment) Act, 1977] by the Supreme Court under article 145 may regulate the form of election petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs.It can be seen from Section 15 that the Parliament purports to authorize this Court to frame rules dealing with various aspects of the election petitions such as (1) the manner in which the petitions are to be presented; (2) the persons who are required to be made parties thereto; (3) the procedure to be followed in conducting the election petitions; (4) the circumstances in which the petitions are to abate or may be withdrawn, and (5) the circumstances in which the petitioners may be substituted and may require security to be given for costs. Similarly, in the context of the election petition calling in question the election of a member of any one of the legislative bodies such procedure is meticulously provided for by the Parliament under the Representation of the People Act, 1951."

5. In my opinion both Sections 14(2) and 15 of the Elections Act, insofar as they purport to vest the jurisdiction in and authorize this Court to frame rules respectively with respect to the adjudication of the disputes pertaining to the election of the President, are superfluous because Articles 71 and 145 of the Constitution already expressly provide for the same.

6. Part V Chapter IV of the Constitution provides for the establishment, jurisdiction etc of this Court. Original jurisdiction of this Court obtains under Article 131 and 32 of the Constitution. Various other articles occurring in the said Part vest both civil and criminal appellate jurisdiction of this Court. Article 138[3] of the Constitution authorizes the Parliament to vest further jurisdiction in the Supreme Court by law. Such jurisdiction could either be original or appellate. It is axiomatic that the authority of the legislature (Parliament in the context of this case) to create jurisdiction takes within its sweep the authority to prescribe various matters which are necessary incidents of the jurisdiction such as, the limits of the jurisdiction – pecuniary, territorial etc., the procedure to be adopted in the exercise of such jurisdiction etc.

7.Since the Constitution itself vests jurisdiction in this Court under various heads and it also authorizes the Parliament to create/vest further jurisdiction in this Court by law, the Constitution recognized the need for regulating the procedure to be followed by this Court in exercise of such jurisdiction whatever be the source of such jurisdiction. Therefore, Article 145 is incorporated. Article 145 postulates that the Parliament may by law stipulate such procedure and in the absence of any such law this Court can prescribe the procedure with the approval of the President of India.

8. Article 145[4] of the Constitution authorizes this Court to make rules for regulating the practice and procedure of this Court with regard to its jurisdiction, either original or appellate vested in this Court either by the Constitution or law. Such authority of this Court is, however, expressly made subject to the provisions of any law made by the Parliament and also subject to the approval of the President of India.

9. The submission that the Code of Civil Procedure applies to the conduct of the election petition on hand in view of section 141 of the CPC, in my view, is required to be refuted. Because the procedure that is required to be followed by this Court while exercising jurisdiction conferred by either the Constitution or the Parliament by law could be laid down only by the Parliament and until the Parliament makes such a law, by the rules made by this Court. CPC is not a law made by the Parliament but an "existing law" within the meaning of the expression under Article 366 (10) and deriving its force from Article 372 of the Constitution.

10. The Code of Civil Procedure, 1908 ('the Code' for short) is an enactment "consolidating the laws relating to the procedure of the Courts of Civil Judicature". Though there is nothing express in the body of the Code which declares that the Code applies to the Courts of Civil Judicature, such a declaration is contained in the Preamble of the Code. By a long established practice and interpretation of the successive Codes, it is always understood that the Code of Civil Procedure applies to the proceedings only in a Court of Civil Judicature. The first Code was made in 1859 which was replaced by its successor (Act 10 of 1877). The brief history of the various enactments which regulated the procedure of the Courts of Civil Judicature is succinctly given in Mulla's Code of Civil Procedure, 7th Edition, at page 2[5]. What exactly is a Court of Civil Judicature is not defined either under the Code or under any other enactment. Such an expression is used in contradistinction to the courts exercising jurisdiction in criminal cases. Nor

the word 'court' is defined under the Code. 'Revenue Courts' and Courts constituted under the various laws dealing with Small Causes are not treated to be Courts to which the Code is automatically applicable. (See: Sections 5, 7 and 8) The expression 'Revenue Court' is defined in Section 5(2)[6]. The nature of the jurisdiction exercised either by the Revenue Courts or the Small Causes Courts cannot be said to be anything other than civil jurisdiction. Even then the Legislature in its wisdom thought it fit not to extend the application of Code to these Courts. Therefore, the submission of Mr. Ram Jethmalani, learned senior counsel for the petitioner, that in view of the declaration contained in Section 141 [7] of the Code, the Code applies to the conduct of the election petition under the Elections Act, in my opinion, is untenable.

11. Yet another reason for such a conclusion is that in the context of ouster of jurisdiction of civil courts under innumerable enactments, either of the Parliament or of the State Legislatures, this Court consistently took the view that this Court and the High Courts exercising jurisdiction under Article 32 or under Article 226 exercise jurisdiction vested in them by the Constitution and, therefore, the same cannot be taken away by any legislation short of a Constitutional amendment. The implication flowing thereby is that they are not ordinary civil courts within the meaning of such an expression employed in these various enactments attracting the bar of jurisdiction created by the statute. Therefore, I find it difficult to accept the submission that by virtue of the operation of Section 141 of the Code this Court is bound by the procedure contained in the Code while exercising its extraordinary jurisdiction under Article 71 of the Constitution of India.

12. Then the question remains as to what is the procedure that is required to be followed by this Court while adjudicating an election dispute under the Elections Act. This Court, in exercise of its authority under Article 145, made rules regulating the procedure of this Court, both in its original and appellate jurisdiction called the Supreme Court Rules, 1966, hereinafter referred to as 'the Rules'. Insofar as the election petitions under the Act are concerned, the procedure is prescribed under Order XXXIX which occurs in Part VII of the Rules. Rule 34[8] thereof stipulates that while adjudicating an election petition under the Act, this Court is required to follow (as nearly as may be) the procedure contained in Orders XXII to XXXIV of Part III of the Rules regulating the proceedings before this Court in exercise of its original jurisdiction[9]. Such a stipulation is expressly made subject to other provisions of Order XXXIX or any special order or direction by this Court. The stipulation that this Court is obliged to follow the procedure applicable to the proceedings under the original jurisdiction of this Court (Part III of the Rules) is made subject to the other provisions of Order XXXIX. In other words, if the procedure contained in Part III is inconsistent with any provisions contained in Part VII (Order XXXIX), this Court is not obliged to follow the procedure contained in Part III. Apart from that, in view of the clause "or any special order or direction of the Court" occurring under Rule 34 of Order XXXIX, it is always open to this Court in a given case not to follow the procedure contained thereunder Order XXXIX. The circumstances which justify the issuance of such "special orders or directions" by this Court require a separate examination as and when required.

13. Therefore, the question is -what is the procedure that is required to be followed by this

Court on the receipt of an election petition under the Act? Rules 13 to 15 of Order XXXIX prescribe the procedure to be followed by this Court. While Order XXIV Rule 1 occurring under Part III of the Rules mandates that when a suit is presented to this Court for adjudication in its original jurisdiction "summons shall be issued to the defendant to appear and answer the claim". Rule 13 [10] of Order XXXIX prescribes a different procedure. It reads as follows:-

> "Upon presentation of a petition the same shall be posted before a bench of the Court consisting of five Judges for preliminary hearing and orders for service of the petition and advertisement thereof as the Court may think proper and also appoint a time for hearing of the petition. Upon preliminary hearing, the Court, if satisfied, that the petition does not deserve regular hearing as contemplated in Rule 20 of this Order may dismiss the petition or pass any appropriate order as the Court may deem fit."

14.A plain reading of Rule 13 indicates that on the due presentation of an election petition under the Act to this Court, [1] the same shall be posted before a bench of five Judges for a preliminary hearing and orders; [2] such a hearing and orders are regarding the service of the petition and advertisement thereof. Because Rules 14[11] and 15[12] respectively stipulate that the notice of the presentation of the election petition under the Act is required to be served on the various persons specified under Rule 14. The said rule also provides for the method and manner of service. Whereas Rule 15 stipulates that the factum of the presentation of election petition under the Act shall be published in the Official Gazette and also advertised in newspapers at the expense of the petitioner, fourteen clear days before the date appointed for hearing. However, the obligations stipulated in Rule 14 and 15 are made expressly subject to orders to the contrary by the Court. It is for determining whether the normal procedure prescribed under Rule 14 and 15 discussed above is to be followed in a given case or not, an election petition under the Act is required to be listed for a preliminary hearing contemplated under Rule 13. Rule 13 further stipulates [3] upon such a preliminary hearing, if the Court comes to the conclusion that the petition does not deserve a regular hearing, contemplated under Rule 20, the Court may either dismiss the election petition or pass any appropriate orders as the Court deems fit.

15.Therefore, Order XXXIX Rule 13 prescribes a procedure contrary to the stipulation contained under Order XXIV Rule 1 which mandates that after due institution of an original suit before this Court, "summons shall be issued". It is worthwhile noticing that while Order XXIV requires summons to be issued, Order XXXIX Rule 14 contemplates that only a notice of the presentation of an election petition is to be issued. The distinction between summons and notice is very subtle but real which would be beyond the need and scope of this judgment to go into. I only take note of the distinction in the language of the abovementioned rules and the existence of a legal distinction pointed out.

16. It follows from the above discussion, Order XXXIX Rule 13 vests a discretion in the bench of five Judges before whom the election petition under the Act is posted for preliminary hearing to record a conclusion whether the petition deserves a notice under Rule 14 or publication under Rule 15 and a regular hearing under Rule 20 or any other appropriate order such as (perhaps) directing some formal defects in the petition to be cured etc. I do not propose to examine the full

scope and amplitude of such "appropriate order" for the purpose of this case as the same is not necessary.

17.However, it goes without saying that the discretion of the bench hearing the election petition to record a finding that the election petition does not deserve a regular hearing and, therefore, is required to be dismissed must be exercised on rational grounds known to law for clear and cogent reasons to be recorded. For such obligation is the only justification of the extraordinary degree of protection and immunities granted to the judiciary by our Constitution. Absence of rational grounds based on clear and cogent reasoning would lead to a popular misconception that this branch of the Constitutional governance is no different from the other two branches, a misconception which is certainly not conducive to the credibility (of the legal system) which is the ultimate strength of all judicial institutions.

18. Placing reliance on Order VII Rule 11 CPC, Shri Ram Jethmalani argued that an election petition can be rejected even prior to the stage of issuance of summons only when the election petition does not disclose a cause of action. He submitted that under any circumstances it cannot reasonably be argued that the election petition on hand does not disclose a valid cause of action. He further argued that the question whether the petitioner would be able to establish the truth of various allegations made by him in the election petition cannot be the subject matter of enquiry under Rule 13 but the enquiry can only be confined to - whether the allegations if proved do constitute sufficient cause of action to enable the petitioner to claim the relief such as that are claimed in the election petition?

19.On the other hand it is the case of the respondent that various factual allegations made in the election petition even if proved to be true do not disclose a cause of action entitling the petitioner to relief as claimed in the election petition.

20. To examine the correctness of the above rival submissions, I deem it appropriate to examine the circumstances under which this Court can dismiss an election petition under the Act at the stage of preliminary hearing even before issuing notice to the respondent under rule 13.

21.I am of the opinion that it is not possible to give an exhaustive list of the circumstances in which this Court can render the finding that an election petition does not require a regular hearing but it can be said that having regard to the fact that an election petition is not a common law proceeding but the creature of the statute, non-compliance with the mandatory requirements of the statute under which the right to question an election under the Elections Act is created is certainly one of the grounds on which election petition can be dismissed at the stage of preliminary hearing.

22. For example, the right to question an election under the Elections Act is available only to two categories of people as enumerated under section 14A which is already taken note. In a case where the election petition is presented by somebody other than who is entitled to question the election irrespective of the allegations made in the election petition the same is required to be

dismissed at the stage of preliminary hearing.

23. Similarly, section 14A declares that an election under the Act can be called in question only on the ground specified under sections 18[13] and 19[14]. Therefore, if the allegations made in the election petition even if assumed to be true do not constitute one or some of the grounds on which an election under the Act can be challenged, it would be certainly one of the grounds enabling this Court to reach a conclusion that the election petition does not deserve a regular hearing.

24. It is in this background the question whether the instant election petition is required to be dismissed even without issuing notice to the respondent is required to be determined?

25. The entire thrust of the arguments of the respondent — who appeared before this court even before this court directed issuance of notice upon him — is that the election petition does not disclose a valid cause of action calling for issuance of notice or publication contemplated under Rules 14 15and a regular hearing contemplated under Order XXXIX Rule 20.

26.To accept or reject the submission of the respondent it is necessary to examine the grounds on which election of the respondent is challenged.

27. The only ground on which the election of the respondent is challenged is that he was not eligible to contest the election to the office of President of India. Such a ground is certainly one of the grounds on which election of the respondent as the President of India could be challenged, as Section 18(1)(iii) stipulates that if this court is of the opinion that the nomination of the successful candidate has been wrongly accepted, this court shall declare the election to be void.

28. The next question is whether the election petition contains necessary allegations to substantiate the above mentioned ground on which the election is challenged? The allegations, as disclosed by the election petition in this regard, are twofold and are sufficiently elaborated in the judgements of My Lord the Chief Justice and my learned brother Justice Ranjan Gogoi. Therefore, I do not propose to reiterate the same.

29. The respondent does not dispute the fact that he was the Chairman of the Indian Statistical Institute, Kolkata and also the leader of the political party called Indian National Congress in the Lok Sabha. However, the respondent took a categoric stand that he had resigned from both the abovementioned offices before the crucial date i.e. on the date of scrutiny of the nomination papers (2nd July 2012) - a stand which is seriously disputed by the election petitioner by an elaborate pleading in the petition that the respondent did not in fact cease to hold the abovementioned offices by the crucial date.

30. The respondent also took a categoric stand that: apart from his having had relinquished the abovementioned two offices by the crucial date, neither of the abovementioned offices is an office the holding of which would make him ineligible to contest the election in question.

31. The issue that is required to be examined for the purpose of the order on the preliminary hearing under Rule 13 is whether the holding of either of the abovementioned two offices - if really held on the crucial date - would render the respondent ineligible to contest the election in question? If the answer is in the negative, this Court could dismiss the election petition on hand under Rule 13.
32. The answer to the issue in my opinion depends upon the answer to the question - Whether the said two offices are offices of profit which would in law render the respondent ineligible to contest the election in question? The question - Whether the respondent did infact hold those offices on the crucial date? is a question of fact which, in my opinion, cannot be the subject matter of enquiry at this stage.

33. To answer the first question, we must first examine what is the prohibition under the law which renders any person ineligible to contest the election in question.
34. Article 58 provides that:

> "Qualifications for election as President.—
>
> (1) No person shall be eligible for election as President unless he
> (a) is a citizen of India,
> (b) has completed the age of thirty five years, and
> (c) is qualified for election as a member of the House of the People
> (2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.
> Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor of any State or is a Minister either for the Union or for any State."

35. It can be seen from the above that holding of an office of profit either under the Government of India or the Government of any State or any local or other authority subject to the control of any of the said Governments inter alia would render the holder of such office of profit ineligible for election as President.

36. The respondent's defence is that neither of the offices held by him are offices of profit falling under Article 58 (2) which would render him ineligible to contest the election in question. According to him the office of the Chairman of Indian Statistical Institute, Kolkata - whether an office of profit or not stood declared [by a law made by the Parliament as contemplated under Article 102(1)(a)[15] i.e. the Parliament (Prevention of Disqualification) Act, 1959] - not to disqualify a person from either being chosen as or for being a member of the Parliament. Therefore, it is argued that even assuming that it is an office of profit falling under Article 58(2), the holding of such an office did not render him ineligible to contest the election in question because of the declaration made in the Parliament (Prevention of Disqualification)

Act, 1959 (hereinafter referred to as "the Disqualification Act, 1959") as the Constitution itself under Article 102(1)(a) authorises the Parliament to make such a law and Article 58(1)(c) declares that a person "qualified to be a member of the House of the People" is eligible to contest the Presidential election.

37. On the other hand it is argued by Shri Jethmalani that there is a difference in the language of Article 58(2) and Article 102(1)(a) both of which deal with certain offices of profit and the consequential disqualification attached to the holders of such offices to contest the election either to the office of President of India or to the Parliament respectively. The declaration made under the Disqualification Act, 1959 may in a given case confer sufficient legal immunity from the operation of the disqualification specified in Article 102(1)(a) to enable the holder of such a declared office to contest the election to either House of the Parliament but such declaration does not confer any immunity from the operation of the disqualification contained in Article 58(2).

38. Any person seeking to contest an election either to the office of the President of India or for the membership of anyone of the legislative bodies under the Constitution must satisfy certain eligibility criteria stipulated by the Constitution. Article 58 of the Constitution stipulates that no person shall be eligible for election as the President of India unless he is a citizen of India and is qualified for election as a member of the House of the People but has completed the age of 35 years. It must be noticed that the qualifications and disqualifications with regard to the membership of the Parliament are contained in Articles 84[16] and 102[17] respectively. Article 84 stipulates that to be qualified to be chosen as a member of Parliament, a person must be a citizen of India, he must also subscribe to an oath specified under the said Article read with the third Schedule to the Constitution and be aged not less than 25 years in the case of the House of the People and 35 years in the case of the Council of States. The Article also authorises that the Parliament may by law prescribe such other qualifications. Whereas Article 102 declares certain categories of person to be disqualified either for being chosen or for continuing after being chosen as a member of either House of Parliament. They are (1) persons holding any office of profit either under the Government of India or the Government of any State; (2) persons of unsound mind and stand so declared by a competent court; (3) any undischarged insolvents; (4) persons who are not citizens of India or those who acquired citizenship of any foreign State etc. Article 102 (e) authorises the Parliament to make laws prescribing further disqualifications for the membership of the Parliament. However, insofar as the first class of persons mentioned above (holders of offices of profit) Article 102(1)(a) authorises the Parliament to make a declaration by law the holding of such declared offices of profit would not be a disqualification for the membership of the Parliament. The explanation to Article 102 makes a categoric declaration that a person who is a Minister either of the Union or of a State shall not be deemed to be holding an office of profit contemplated under Clause (1)(a).

39.The Representation of the People Act, 1951, (hereinafter referred to as 'the R.P. Act, 1951') is a law made by the Parliament referable to Articles 84(c) and 102(e). In the context of the Parliament, Sections 3 and 4 prescribe that a person seeking an election to the Parliament shall

necessarily be an elector for a parliamentary constituency in India. In other words, various qualifications prescribed for registration as an elector in the electoral roll contemplated under Section 15 of the Representation of the People Act, 1950 must also be satisfied for a person to become eligible to contest for the Parliament. Sections 16 to 19 prescribe various qualifications and disqualifications in the context of registration of a person in an electoral roll. They pertain to the minimum age, qualifications, residence etc. Chapter III and IV of the R.P. Act, 1951 prescribe various disqualifications under Sections 8, 9, 9A, 11A thereof for becoming a member of any of the legislative bodies under the Constitution.

40. On an examination of the above provisions, it appears to | |me that eligibility and disqualification to become a member of | |parliament are two distinct things. In my view, any person who is| |eligible to become and not disqualified for becoming a member of | |Parliament would not automatically be eligible to contest the | |election to the office of the President of India. There is a | |difference in the eligibility criteria applicable to the election | |of the membership of Parliament and the election to the office of | |the President of India. |

41. While Article 58 declares that a person who is qualified to be elected as a member of a House of the People shall be eligible for the election of the President, it stipulates a higher age qualification of 35 years for a person seeking election to the President of India while it is sufficient under Article 84 (b) for a person seeking election to the House of the People to be not less than 25 years only. Another distinction is that: Article 102 (1)(a) declares that persons holding an office of profit either under the Government of India or of the Government of any State (unless they are protected by the law made by the Parliament) are disqualified for being chosen as members of the Parliament whereas Article 58 sub-clause (2) disqualifies persons holding office of profit not only specified under Article 102(a) but also under any local or any other authority which is subject to the control of either of the above mentioned two governments. In other words, the holding of an office of profit under any local or other authority is not a disqualification for membership of Parliament while it is a disqualification for the election to the office of the President of India.

42. One more distinction is that while an office of profit, the holding of which renders a person disqualified for being chosen as a member of Parliament, can be declared by the Parliament not to be an office of profit holding of which would disqualify the holder from becoming a member of Parliament. Such an authority is not expressly conferred on the Parliament in the context of the candidates at an election to the office of the President of India.

43. Therefore, when Article 58(1)(c) stipulates that no person shall be eligible for election as the President of India unless he is qualified to be a member of the House of the People, the protective declaration made by the Parliament referable to Article 102(1)(a) regarding certain offices of profit does not render holders of such offices eligible for contesting the Presidential election. Particularly, holders of office of profit under any “local or other authority” are positively disqualified for being elected as President of India. The said disqualification cannot be removed by the Parliament as Article 102(1)(a) does not authorise the Parliament to make any such declaration in the context of the holders of an office of profit under any local or other

authority subject to the control of either the Government of India or the State Government, obviously because the holding of such an office is not declared to be a disqualification under the Constitution for the membership of the Parliament. I accept the submission of Mr. Jethmalani. In my opinion, the Constitution prescribes more stringent qualifications for election to the office of President of India and the disqualification stipulated under Article 58(2) is incapable of being exempted by a law made by the Parliament.

44.My opinion derives support from a Constitution Bench decision of this Court in Baburao Patel and others v. Dr. Zakir Hussain and others AIR 1968 SC 904 wherein the interface between Articles 58 and 84 of the Constitution was examined. Challenging the election of Dr. Zakir Hussain as President of India, an election petition came to be filed in this Court wherein the Court noted thus:

> "9. The contention of the petitioners is that because of .... cl. (a) of Art. 84 it became necessary to take oath for a person standing for election to either House of Parliament in the form prescribed in the Third Schedule, a person standing for election as President had also to take a similar oath because Art. 58(1)(c) requires that a person to be eligible for election as President must be qualified for election as a member of the House of the People urged that no one is qualified for election as a member of the House of the People unless he makes and subscribes an oath in the form set out for the purpose in the Third Schedule, and therefore this provision applied to a person standing for election as President, for without such oath he would not be qualified to stand for election to the House of the People."

45. This Court in para 10 compared the language of Articles 58 and 84 of the Constitution and held as follows:

"reading them together it would follow that a person standing for election as President would require such qualifications as may be prescribed in that behalf by or under any law made by Parliament. Further as cl. (c) of Art. 58(1) lays down that a person standing for presidential election has to be qualified for membership of the House of the People, Article 102 (which lays down disqualifications for members of Parliament) would also be attracted except in so far as there is a special provision contained in Article 58(2). Thus cl. (c) of Article 58(1) would bring in such qualifications for members of the House of the People as may be prescribed by law by Parliament, as required by Article 84(c). It will by its own force bring in Article 102 of the Constitution, for that Article lays down certain disqualifications which a presidential candidate must not have for he has to be eligible for election as a member of the House of the People. But it is clear to us that, what is provided in clauses (a) and (b) of Article 58(1) must be taken from there and we need not travel to cls. (a) and (b) of Article 84 in the matter of citizenship and of age of the presidential candidate. Clauses (a) and (b) of Article 58(1) having made a specific provision in that behalf in our opinion exclude cls. (a) and (b) of Art. 84. This exclusion was there before the Amendment Act."

45. This Court refused to read the requirement of subscribing to the oath according to the form set out in Third Schedule of the Constitution for contesting the presidential election. For reaching such a conclusion this Court took note of the fact that prior to the 16th Constitutional amendment, the requirement of subscription to such an oath did not exist in the context of either the election to the Parliament or the office of the President. It was introduced by the 16th amendment as a necessary requirement for a person to be qualified to contest the election to the Parliament. The omission to make such an amendment that refers to the persons contesting election to the office of the President is a clear indication that the Constitution ever intended such a requirement to be applied for the presidential election also. In paragraph 12 this Court held thus:

> "Now if the intention of Parliament was that an oath similar in form to the oath to be taken by persons standing for election to Parliament had to be taken by persons standing for election to the office of the President there is no reason why a similar amendment was not made in Article58(1)(a). Further if the intention of Parliament was that a presidential candidate should also take an oath before standing for election, the form of oath should also have been prescribed either in the Third Schedule or by amendment of Article60, which provides for oath by a person elected as President before he takes his office. But we find that no change was made either in Article58(1)(a)or in Article60or in the Third Schedule prescribing the form of oath to be taken by the presidential candidate before he could stand for election. This to our mind is the clearest indication that Parliament did not intend, when making the Amendment Act, that an oath similar to the oath taken by a candidate standing for election to Parliament had to be taken by a candidate standing for election to the office of the President. So there is no reason to import the provision of Article84(a)as it stood after the Amendment Act into Article58(1)(a), which stood unamended. That is one reason why we are of opinion that so far as the election to the office of the President is concerned, the candidate standing for the same has not to take any oath before becoming eligible for election as President."

46. Therefore, I have no hesitation to reach to the conclusion that the declaration made by the Parliament in the Disqualification Act, 1959 would not provide immunity for a candidate seeking election to the office of the President of India if such a candidate happens to hold an office of profit contemplated under Article 58(2).

47. Assuming for the sake of argument that the declaration of law made by Parliament [contemplated and made under Article 102(a)] can obliterate the disqualification even with respect to a candidate at the presidential election, Article 102(a) authorises the parliament to make such a declaration with respect to only the offices of profit either under the Government of India or Government of any State but not with respect to the offices of profit under "local or other authorities". Therefore, the legal nature of Indian Statistical Institute and of the office of its Chairman is required to be examined.

48. Whether the office of the Chairman of the abovementioned Institute can be called an office of profit either under the Government of India or the State Government or local or other

authority attracting the prohibition under Article 58(2) and rendering the respondent ineligible to contest the election in question?

49. This Court in B.S. Minhas v. Indian Statistical Institute and others (1983) 4 SCC 582 held that the Indian Statistical Institute is an authority falling under Article 12 of the Constitution of India, therefore, 'State' for the purpose of Part-III of the Constitution. Under the scheme of Indian Statistical Institute Act, the Government of India has deep and pervasive control on the administration of the Institute. It also provides financial support to the Institute.

50. The said Institute is a body registered under the Societies Registration Act, 1860 whose activities to some extent are regulated by the enactment of the Parliament titled "The Indian Statistical Institute Act, 1959 (No.57 of 1959), hereinafter referred to as the Institute Act. The Preamble to the Act declares as follows:

> "An Act to declare the institution known as the Indian Statistical Institute having at present its registered office in Calcutta to be an institution of national importance and to provide for certain matters connected therewith."

51. It must be remembered that Entry 64 of List-I of the 7th Schedule read with Article 246 (1) authorises the Parliament to make laws with respect to: Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

52. Section 4 of the Institute Act authorises the Institute to grant degrees and diplomas for various disciplines specified therein. Section 5 authorises the Government to pay such sums as appropriated by the Parliament in each financial year to the Institute. The Act (Section 6) also obligates the Institute to get its accounts audited by such auditors as may be appointed by the Government of India in consultation with the Auditor-General of India and the Institute. Section 7[18] prohibits Institute from taking certain actions without the previous approval of the Government of India. The full details of the Act are not necessary for the present case.

53. But from the above it can be safely concluded that the Institute is an authority subject to the control of the Government of India within the meaning of Article 58(2).

54. As it can be seen from the Scheme of the Institute Act and the preamble that the administration of the society is still to be run in accordance with its bye-laws and regulations of the Society except insofar as those activities which are specifically regulated by the Act (57 of 1959). The office of the Chairman of the Institute is not an office created by any statute but is an office created by the bye- laws of the Society. The Chairman is required to be elected by a Council created under the regulations of the Society. Therefore, it is certainly not an office (profit or no profit) either under the Central or State Government.

55. The learned counsel for the petitioner very vehemently argued that the very fact that the

Parliament thought it fit to specifically include the office of the Chairman of the Indian Statistical Institute in the table annexed to the Disqualification Act, 1959 would ipso facto imply that the office in question is an office of profit. He relied upon M.V. Rajashekaran and others v. Vatal Nagaraj and others (2002) 2 SCC 704 at page 711 wherein this Court observed thus:

> " The fact that the office of the chairman or a member of a committee is brought within the purview of this Act implies that the office concerned must necessarily be regarded as an office of profit, but for the exclusion under the clause by the legislature, the holder of such office could not have been eligible for being chosen as a Member of the Legislature. The object of this provision is to grant exemption to holders of office of certain description and the provision in substance is that they will enjoy the exemption, even though otherwise they might be regarded as holders of offices of profit..."

56. It is argued by Shri Harish Salve appearing for the respondent that while interpreting the provisions of the Constitution, the understanding of the legislature regarding the fact whether a particular office is an office of profit need not necessarily be the correct understanding and this court is required to independently examine this question.

57. It is argued by Shri Salve that the office of the Chairman of the Indian Statistical Institute cannot be said to be either an office of profit either under the Government of India or the Government of a State, which would render the holder of such an office disqualified for becoming either a member of Parliament or the President of India.

58.The learned Attorney General argued that the Disqualification Act, 1959 is not a defining enactment. It nowhere defines what is an office of profit but an enactment made ex abundanti cautela to avoid any possible challenge to election of some of the members of the Parliament on the ground that they are holders of offices of profit and, therefore, this Court is still obliged to examine whether a particular office is an office of profit rendering the holder thereof ineligible to become a member of Parliament or the President of India.

59. This Court In M.V. Rajashekaran (supra) dealt with the question of office of profit under the State of Karnataka in the context of the election of one Nagaraj to the legislative council of Karnataka. Nagaraj was appointed a One-Man Commission by the State of Karnataka to study certain problems. In that capacity he was entitled to certain pay and reimbursement of day to day expenditure. Subsequently, while continuing in the office of One-Man Commission, Nagaraj filed his nomination for election to the Legislative Council of the State of Karnataka. On an objection raised, Nagaraj was disqualified to contest the election on the ground of his having had held an office of profit, the nomination of Nagaraj was rejected. Nagaraj successfully questioned the election of Rajashekaran and others on the ground that his nomination was illegally rejected. Rajashekaran appealed to this Court. The issue revolved around interpretation of Article 191, a provision corresponding to Article 102 in the context of the elections to the legislative assembly or legislative council of a State. The enactment called
Karnataka Legislature (Prevention of Disqualification) Act, 1956 was made by the State of

Karnataka to protect the holders of some of the offices from incurring disqualification on the ground that those offices were offices of profit contemplated under Article 191.

60. This Court opined that Nagaraj was holding an office of profit contemplated under Article 191 and therefore disqualified from contesting the election because Nagaraj was appointed a One-Man Commission by the Government of Karnataka and he was obliged to study the problem entrusted to him and submit a report to the Government; that the Government of Karnataka conferred the status of a Minister of the Cabinet rank on the office and made budgetary provision to defray the expenses of pay and day- to-day expenditure of Nagaraj. This Court also recorded the conclusion that:

> "remuneration that Nagaraj was getting cannot be held to be "compensatory allowance" within the ambit of section 2(b) of the Act and, therefore, he was holder of an office of profit."

61. During the process of examination of various provisions of the Karnataka Legislature (Prevention of Disqualification) Act, 1956, this Court made the observation relied upon by Shri Jethmalani. (para 55 supra) In my opinion, this Court in Rajashekaran's case never specifically examined the issue whether mere inclusion of office in an enactment preventing the disqualification falling under Article 191 or Article 102 (as the case may be) would imply in law that the office specified in such an Act is necessarily an office of profit. Therefore, the above extracted statement in my view does not constitute the ratio decidendi of the said judgment.

62.Even otherwise the inclusion of various offices in the Schedule of the Disqualification Act only reflects the understanding of the Parliament that those offices are offices of profit contemplated under Article 102(1)(a). But such an understanding is neither conclusive or binding on this Court while interpreting the Constitution. As argued by the learned Attorney General, such inclusion appears to be an exercise - 'ex majure cautela'.[19] It is the settled position of law that interpretation of the Constitution and the laws is "emphatically the province and duty" of the judiciary. Therefore, I reject the submission of Mr. Jethmalani.

63. Therefore, the meaning of the expressions —office of profit" and —office of profit under the State Government/Central Government" are required to be examined.

64. In Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa (1971) 3 SCC 870 this Court dealt with the question - what is an office of profit? and held as follows:

> "office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit.."

65. reiterating the principle laid down in Ravanna Subanna v. G.S. Kaggerappa, AIR 1954 SC 653 In Shibu Soren v. Dayanand Sahay and others (2001) 7 SCC 425 both the questions were considered.[20]

66. The question in the said case was whether the Chairman of the Interim Jharkhand Area Autonomous Council set up under section 20 of the Jharkhand Area Autonomous Council Act, 1994 was holding an office of profit under the State Government. This Court had to examine both the questions - whether the office in question was an office of profit at all and secondly whether it was an office of profit under the State Government? This Court confirmed the opinion of the High Court that the Chairman of the Interim Jharkhand Area Autonomous Council was not only an office of profit but an office of profit under the State Government. The Court noticed that the expression —office of profit" is not defined under law and, therefore, indicated the considerations relevant for determining the question whether a particular office is an office of profit. The Court reached to such a conclusion on consideration of various facts that the various amounts paid to Shibu Soren could not be said to be in the nature of —compensatory allowance" and was in the nature of remuneration or salary inherently implying an element of —profit" and of giving —pecuniary gain" to Shibu Soren and the office of the Chairman of Interim Council was temporary in nature with limited lifespan and the members of the Interim Council were appointed by the State to hold their offices at the pleasure of the State.

67. The test as pointed out by the Court was whether the office gives the incumbent some pecuniary gain other than as compensation to defray his out- of- pocket expenses which may have the possibility to bring that person under the influence of the executive. In coming to such conclusion this Court examined a number of earlier judgments on the issue.

68. Both the abovementioned cases and the earlier authorities cited therein examined the question as to what is an office of profit and what are the tests relevant to determine whether such an office is held under the Government but the question what is an office of profit under a local or other authority subject to the control of either the Central or State Government contemplated under Article 58(2) never fell for the consideration of this Court in those cases.

69. That leads me to the next question whether the office of the Chairman of the Indian Statistical Institute, Calcutta, which I already concluded to be an authority for the purpose of Article 58(2), is an office of profit as explained by this Court in various abovementioned judgments. I proceed on the basis that tests relevant for determining whether an office of profit contemplated under Article 58(2) are the same as the test laid down by this Court in the context of Article 102(1)(a). The answer to the said question depends upon the terms and conditions subject to which the respondent held that office. Whether the amounts if any paid to him in that capacity are compensatory in nature or amounts capable of conferring pecuniary gain are questions of fact which ought in my view to be decided only after ascertaining all the relevant facts which are obviously in the exclusive knowledge either of the respondent or the abovementioned institute. I must also state that the respondent in his short counter made a statement[21] that he did not derive pecuniary gain by holding the abovementioned office. After

such an appropriate enquiry into such conflicting statements of facts if it is to be concluded that the said office is an office of profit inevitably the question whether the respondent had tendered his resignation by the crucial date is required to be ascertained once again an enquiry into a question of fact.

70. Whether a decision on such questions of facts can be rendered on the basis of the affidavit of the respondent, the veracity of which is not subjected to any further scrutiny? The petitioner if permitted to inspect or seek discovery of records of the Indian Statistical Institute might or might not secure information to demonstrate truth or otherwise of the respondent's affidavit.

71. The issue is not whether the petitioner would eventually be able to establish his case or not. The issue is whether the petitioner is entitled to a rational procedure of law to establish his case? The stake in the case for the parties is enormous, nothing but the Presidency of this country. The Constitution creates only one forum for the adjudication of such disputes. All other avenues are closed. By holding that the petition does not deserve a regular hearing contemplated under Rule 20, in my opinion, would not be consistent with the requirement that justice must not only be done but it must also appear to have been done.

72. Adjudication of rights of the parties under the Anglo-Saxon jurisprudence, which we follow, requires the establishment of relevant facts which constitute the cause of action necessary for the party claiming a relief from the Court. Such facts are to be established by adducing evidence either oral or documentary. Recognizing the possibility (that in a given case) the party making an assertion of fact may not have within its control all the evidence necessary for proving such a fact, courts of civil judicature are empowered to order the discovery, inspection, production etc. of documents and also summon the persons in whose custody such relevant documents are available. (See: Section 30 read with Order XI etc. of the Code of Civil Procedure). Such empowerment is a part of a rational procedure designed to serve the ends ofjustice.

73.If the adjudication of the election petition requires securing of information which is exclusively available with the respondent and the Indian Statistical Institute and which may be relevant can the petitioner be told that he would not be able to secure such information on the ground that letter of the law does not provide for such opportunity? We have already come to the conclusion that the CPC does not apply to the election petition. The rules framed by this Court under Article 145 are silent in this regard. But the very fact that this Court is authorised to frame rules regulating the procedure applicable to trial of the election petitions implies that this court has powers to pass appropriate orders to secure such information. To hold to the contrary would be to tell a litigant who might as well have been the first citizen of this country (given a more favourable political regime) that the law of the Sovereign Democratic Republic of India does not afford even that much of a rational procedure which was made available by the foreign rulers to the ordinary citizens of this country - which is still available to an ordinary litigant of this country.

74. Similarly, accepting the statement of the respondent that he did not derive any pecuniary

benefit by virtue of his having had been Chairman of the Indian Statistical Institute without permitting the petitioner to test the correctness of that statement by cross-examining the respondent or confronting the respondent with such documents which the petitioner might discover if such a discovery is permitted would be a denial of equality of law to the petitioner guaranteed under Article 14 of the Constitution of India. Such facility is afforded to every litigant pursuing litigation in a court of civil judicature in this country. Therefore, I do not subscribe to the view that the election petition does not deserve a regular hearing.

75. At stake is not the Presidency of India but the constitutional declaration of equality and the credibility of the judicial process.

76. In view of the majority opinion that the election petition does not deserve a regular hearing I do not propose to examine the question whether the second office held by the respondent as Leader of the Lok Sabha is an office of profit attracting the disqualification under Article 58(2).

> "(1) Article 71. Matters relating to, or connected with, the election of a president or Vice President.—(1) All doubts and disputes arising out of or in connection with the election of a president or vice President shall be inquired into and decided by the Supreme court whose decision shall be final.
>
> (2) If the election of a person as President or Vice President is declared void by the Supreme court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration
>
> (3) Subject to the provisions of this constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice President.
>
> (4) The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.
>
> [2] 14A. Presentation of Petition.— (1) An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19, to the Supreme Court by any candidate at such election, or—
>
> i) in the case of Presidential election, by twenty or more electors joined together as petitioners;
>
> ii) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.

(2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12, but not later than thirty days from the date of such publication.

[3] Article 138. Enlargement of the jurisdiction of the Supreme Court –

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

[4] 145. Rules of Court, etc.—

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the Court;

(b) rules as to the procedure for hearing appeals, and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III; (cc) rules as to the proceedings in the Court under Article 139A;

(d) rules as to the entertainment of appeals under sub clause (c) of clause (1) of Article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to

the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of Article 317;

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts;

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five: Provided that, where the Court hearing an appeal under any of the provisions of this chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open Court

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion. The first Code of Civil Procedure was Act 8 of 1859. Prior to that, the procedure of the mofussil courts was regulated by special Acts and Regulations repealed by Act 10 of 1861; and the procedure of the Supreme Courts was under their own rules and orders and certain Acts, for example Act 17 of 1852 and Act 6 of 1854. The Code of 1859 applied to mofussil courts only. In 1862, the Supreme Court and the Courts of Sadder Diwani Adalat in the Presidency towns were abolished by the High Courts Act 1861 (24 and 25 Vic C 104) and the powers of those courts were vested in the chartered high courts. The Letters Patent of 1862 establishing the high courts extended to them the procedure of the Code of Civil Procedure, 1859. The Charters of 1865, which empowered the high courts to make rules and orders regulating proceedings in civil cases required them to be guided as far as possible by the provisions of the Code of 1859 and subsequent Amending Acts. Such Amending Acts were: Act 4 of 1860; 43 of 1860; 23 of 1861; 9 of 1863; 20 of 1867; 7 of 1870; 14 of 1870; 9 of 1871; 32 of 1871 and 7 of 1872. The next Code was Act 10 of 1877, which repealed that of 1859. This was amended by Act 18 of 1878 and 12 of 1879; then superseded by the Code of 1882 (Act 14 of 1882). This was amended by Acts 15 of 1882; 14 of 1885; 4 of 1886;

10 of 1886; 7 of 1887; 8 of 1887; 6 of 1888; 10 of 1888; 13 of 1889; 8 of 1890; 6 of 1892; 5 of 1894; 7 of 1895 and 13 of 1895, and then superseded by the present Code of Civil Procedure Section 5(2). 'Revenue Court' in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature. 141. Miscellaneous proceedings-The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. Subject to the provisions of this Order or any special order or directions of the Court, the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise of its original jurisdiction. [9] Various rules occurring in Part III of the Rules expressly provide for the application of certain specified provisions of the CPC to such original proceedings before this Court. [10] It may be mentioned that Rule 13, as it exists today, was substituted by GSR 407 dated 9th December, 1997, w.e.f. 20th December, 1997. Prior to such substitution, the Rule read differently. [11] Rule 14. Unless otherwise ordered, the notice of the presentation of the petition, accompanied by a copy of the petition, shall within five days of the presentation thereof

or within such further time as the Court may allow, be served by the petitioner or his advocate on record on the respondent or respondents, the Secretary to the Election Commission, the Returning Officer and the Attorney General for India. Such service shall be effected personally or by registered post, as the Court or Registrar may direct. Immediately after such service the petitioner or his advocate on re cord shall file with the Registrar an affidavit of the time and manner of such service.

[6] Rule 15. Unless dispensed with by the Judge in Chambers or the Registrar, as the case may be, notice of the presentation of the petition shall be published in the Official Gazette and also advertised in newspapers at the expense of the petitioner or petitioners, fourteen clear days before the date appointed for the hearing thereof in such manner as the Court or the Registrar may direct.
[7] Section 18. Grounds for declaring the election of a returned candidate to be void.—

(1) If the Supreme Court is of opinion,—

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate ; or

(b) that the result of the election has been materially affected— (i) by the improper reception or refusal of a vote, or (ii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act; or (iii) by reason of the fact that the nomination of any candidate (other than the successful

candidate), who has not withdrawn his candidature, has been wrongly accepted; shall declare the election of the returned candidate to be void.