PETITIONER:

COMMON CAUSEA REGISTERED SOCIETY

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 04/04/1996

BENCH:

KULDIP SINGH (J)

BENCH:

KULDIP SINGH (J)

FAIZAN UDDIN (J)

CITATION:

JT 1996 (3) 706

1996 SCALE (3)258

ACT:

HEADNOTE:

JUDGMENT:

THE 4TH DAY OF APRIL, 1996

Present:

Hon'ble Mr. Justice Kuldip Singh

Hon'ble Mr.Justice Faizan Uddin

D.P.Gupta, Solicitor General, Kapil Sibal, D.D.Thakur, Hardev Singh, Jitendra Sharma, H. N.Selve, G.L.Sanghi, Sr.Advs., P.Parmeswaran, B.B.Ahuja, S.N.Terdol, A.M.Khanwilkars, Ms.Madhu Moolchandani, Ms.G.Dara, Ms.Minakshi Vij. B.K.Pal, Maninder Singh, Rakesh Prasad, R.B.Misra, Kamlendra Misra, Sudhanshu, A.V.Rangam, A. Ranganadhan, Rakesh K.Sharma, Goodwill Indeevar, V. Krishnamurthy, T.H.Rish Kumur, P.R. Kovilan, P.K.Manohar, Dr.Roxane Swamy, Bharat Sangal, Ashok Mathur Brijhender Chahar and Vivek Gambhir, Advs. with them for the appearing parties.

H.D.Shurie, in-person. for the Petitioner.

J U D G M E N T

The following Judgment of the Court was delivered:

COMMON CAUSE

A REGISTERED SOCIETY

V.

UNION OF INDIA & OTHERS

JUDGMENT

Kuldip Singh, J

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 293A of the Companies Act 1956, Section 13A of the Income-tax Act 1961 and Section 77 of the Representation of 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.

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

"293A. (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 sub-section (1), may contribute any amount or amounts, directly or indirectly

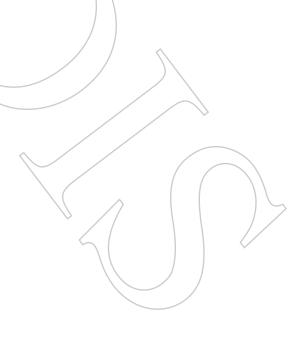
(a) to any political party; or

(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 contributed by a company financial year shall not exceed five percent of its average net profits determined in accordance with the provisions of sections 349 350 and during the three immediately preceding financial years.

Provided further that no such contribution shall be made by a resolution company unless а authorizing 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 sections be deemed to be justification in law for the making and acceptance of the contribution authorized 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 portion 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 contributed."

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

"13A. 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/

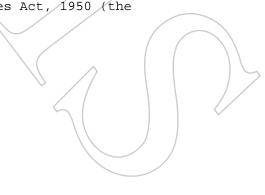
- (a) such political party keeps and maintains such books of account and other documents as would enable the [Assessing] Officer to properly deduce its income therefrom;
- (b) in respect of each such voluntary contribution in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and
- (c) the accounts of such political party are audited by an accountant as defined in Explanation below sub-section (2) of Section 288.

Explanation...."

Section 77 of the Representation of Peoples Act, 1950 (the RP 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 election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between [the on which he has been nominated] and the date declaration of the result thereof, both dates inclusive.

[Explanation 1. Notwithstanding any judgment, order or decision of any to the contrary, expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of



persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidates or by his election agent for the purposes of this subsection.

It is averred in the petition that most of the political parties in the country - registered and recognized 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 13A 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 quid pro quo basis. The companies invest to seek favours when the party is in power. Neither the companies nor the political parties show the contributions/donations in their account-books. The contributions received by the political donations and 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 293A of the Companies Act and Section 13A of the Income Tax Act.

The Union of India has 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.

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

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.

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

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, Treasurer of the party, 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.

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

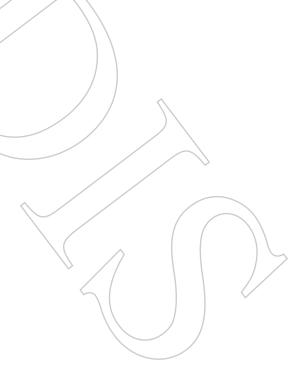
The Janta Party (JP) and the Revolution Socialist Party have not been filing return of income.

All India Anna Dravida Munnetra Kazagam (AIADMK) has filed return of income for the assessment years 1979-80 to 1986-87. The party has not filed the return for the year 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.

Dravida Munnetra Kazhagam (DMK) has filed the return of income from 197-80 till 1995-96. Some of the returns, however, are not valid and some were filed belatedly.

Section 13A 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 has been filing return of income as required under law. Notices 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 notices 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 reply to In some cases, statutory notices 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 13A 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 provisions of the Income Tax Act, the proceedings initiated by issue of statutory notices were dropped with the observation that in case any information or additional facts come to the notice to Authorities concerned, action under Section, 147 of the Income Tax Act would be taken.



It is obvious that there has been total in-action 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 134 of Income-tax Act read with Section 293A 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 maintaining 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 (48), 142(1) and 276 CC of the income tax which are relevant:

chief 139.(4B) The executive such officer (whether chief is known executive officer or by Secretary 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 computed under this Act without giving effect to the provisions of section 13A) exceeds the maximum amount which is not chargeable to income-tax, furnish a 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 all/ and prescribed provisions of this Act, shall, so fan as may be, apply as if it were a return required to be furnished under subsection (1).]

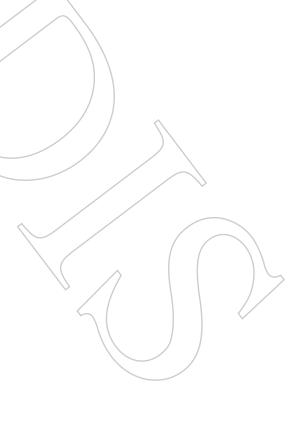
Inquiry before assessment.

142. (1) For the purpose of making an assessment under this Acc, 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.

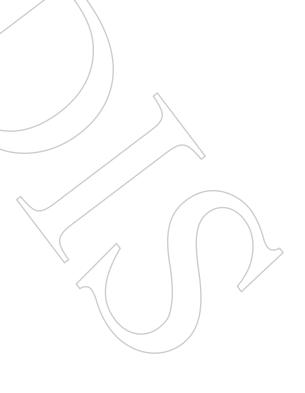
Failure to furnish returns of income 276CC, If a person willfully fails to furnish in due time. the return of income which he is required to furnish under. subsection (1) of section 139 or by notice given under [clause (i) of sub-section (1) of section 142] or section 148, he shall be punishable,

- (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds 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 subsection (1) of section 139

- (i) for any assessment year commencing prior to the 1st day of April, 1975; or
- (ii) for any assessment year
 of 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 incometax they have to maintain audited accounts and comply with the other conditions envisaged under Section 13A 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. - Subsection 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 Act. Section 142(1) provides for inquiry Income Tax assessment. It it not disputed that notices under before Section 142(1) were issued by the income tax authorities to defaulting political parties but despite that the returns of income have not been filed by the said parties to furnish a return of income has been made a Failure 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 road sides, crossings, street corners, etc. and setting up of arches, gates, hoardings, 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 advertisements are also given in newspapers by political parties.

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 thousands of vehicles of various kinds are pressed on to the roads in the 543 parliamentary constituencies on behalf of thousands of aspirants to power, many days before the general elections are actually held. Millions of leaflets and many millions 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 air-taxis. The political parties in their quest for power spend mora than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted.

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 conclusion that most politicians are not interested in honest money funding for elections. Honest money entails accountability. Honest money restricts Pending within legally sanctioned limits (which are ridiculously low). Honest money leaves little scope for candidate to steal from election money funding is funds. Honest limiting. While the politicians want money for election, importantly, they want money for themselves - to spend 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 It has sullied our our times. institutions The corrupt politician groomed to become the corrupt minister, and, in turns the corrupt minister set about seducing bureaucrat THINK OF ANY problem our society or the country is facing today, analysis 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 homes put businesses darkness, 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 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."

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 and more to spend the same in the next election to retain the seat of power. Unless the statutory provisions meant to being 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.

We have no hesitation in holding that the political parties who have not been filing returns of income for several years have violated the statutory provisions of Incomes 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 and are bound to follow the same.

A political party which is not maintaining, audited and authentic accounts and is not filing the return of income before the income tax authorities cannot justifiably plead that it has incurred or authorized any expenditure in connection with the election of a party candidate. The expenditure "incurred or authorized 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 293A of Companies Act makes it mandatory that contributions/donations are made in a transparent manner as provided under the said section. Similarly, Section 13A 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 maintains a record of each voluntary contribution in excess of Rs.10,000 and of the addresses of persons who have made such names and 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 13A 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 293A of the Companies Act read with Section 13A 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, ordinarily, cannot be permitted to say that it has incurred or authorized expenditure in connection with the election of its candidates in terms of Explanation I to Section 77 of the R.P. Act.

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 RP Act shall be presumed to be authorized 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 RP Act. There can also be no dispute with the proposition that the expenditure actually incurred and spent 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 The questions however, for determination is what Act. rule of evidence is to be followed to attract the provisions of Explanation I to Section 77 of the RP 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 1 to Section 77 of the RP Act - in any proceedings 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 authorized 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 13A of the Income Tax Act showing that the party has incurred expenditure in connection with the Section 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, cut-out, 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 RP 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 authorized 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. O. Nalla Thampy Terah vs. Union of India and others 1985 (Supp) SCC 189 speaking through Chandrachud, C.J. interpreted Explanation I to Section 77 as under :

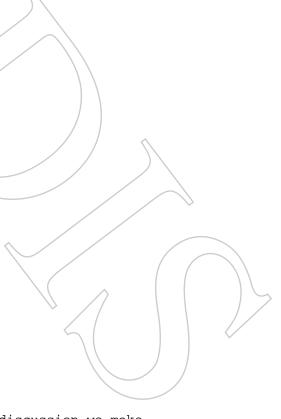
"While we are on this question, we would like to point out that if an expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the candidate or his election agent, Explanation 1 will not be attracted. It is only if the expenditure is in fact incurred or authorized by a political party or any other association or body of

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 1. reason is that, in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, expenditure is incurred by the candidate himself because, money is his. What matter 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 that source of the expenditure incurred was not the candidate or his election agent. What is important is to realise that Explanation 1 doss not create a fiction. It deals with the realities of political situations. It does not provide that the expenditure in fact incurred or authorized by a candidate or his election agent, shall not be deemed to be incurred or authorized by them, if the amount is defrayed by a political party. That would be tantamount to creating a fiction. The object of the Explanation is to ensure that the expenditure incurred, for example, bv political party on its own, that without using the funds provided by the candidate or his election agent shall not be deemed expenditure incurred to be authorized 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) pot Explanation 1 would apply."

(emphasis supplied)

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

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. 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 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 and Another Vs. The Chief Election Commissioner, New Delhi and Others (1978) 1 SCC 405 speaking through Krishna Iyer, J interpreted Article 324 as under:

We decide two questions under the relevant article, not arguendo, 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 provision is silent about hearing before acting, is it permissible to import 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 therefore, the necessary powers to discharge that function. It is true that Article 324 has to be read light of the in 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 visualized in Article 327 the Commission cannot shake itself free from the enacted prescriptions. After all as Mathew, J. observed in Indira Gandhi (supra) (p.523) (SCC p. 136, paras 335-6):

In the opinion of some of the judges constituting the majority in Bharati's cases Rule of Law is a basic structure of the Constitution apart from democracy

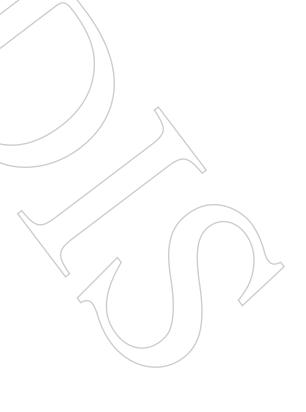
The rule of law postulates the pervasiveness of the spirit of law throughout the whole range of government in the sense of excluding arbitrary official action in any sphere.

And the supremacy of valid law over



itselfthe Commission argues No one is an imperium in imperio our constitutional order. It reasonable to hold the that Commissioner cannot defy the law armed by Article 324. Likewise, his functions are subject to the norms and he cannot Act of fairness 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 provision in Article 324 to take care of surprise situations- that power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. more is not necessary to/ specify: less insufficient tο leave unsaid. Article 324, in our view, operates areas left unoccupied by words legislation and the / 'superintendence, direction and control, as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; monster who may Frankenstein's 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 within the power and 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 the man as much as on the Great National Parchment. Secondly, when high functionary like Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free fair elections and expeditiously. moreover, as held in Virendra and Harishankar discretion vested in a high functionary may he 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 no test of power.

The learned Addl. Solicitor General brought to our notice rulings of this Court and of the High Courts which have held that Article 324 was a plenary power which enabled the Commission to act even in the absence of specific legislation though not contrary to legislation. Ordering valid 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 has conferred, we concede 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 limb of the contention is that Article 324 is wide enough to supplement the powers under the Act as here but subject to the several conditions on its exercise we have set out."

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 authorized by the parties n connection with the election of their respective candidates.

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 Elections (1996). The Election Commission would be justified in asking a political party to file before it the account of expenditure insured or authorized by a political party in

connection with the election of its candidates during the course of general election/election.

We, therefore, hold and direct as under:

- 1. That the political parties are under a statutory obligation to file return of income is 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 276CC 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/officers 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 authorized expenditure in connection with the election of its candidates in terms of Explanation 1 to Section 77 of the RP Act.
- 6. That the expenditure, (including that for which the candidate is seeking protection under Explanation to Section 77 of the RP 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 authorized 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 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 RP 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 authorized by the political parties in connection with the election of their respective candidates.

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.