

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 3rd August, 2011

% **Judgment pronounced on: 30th September, 2011**

+ **WRIT PETITION (CIVIL) No. 2511/2011**

Ashok Shankarrao Chavan Petitioner
Through: Dr.A.M. Singhvi, Sr.Adv. with
Mr.Abhimanyu Bhandari, Mr.Anubhav
Singhvi & Mr.Samanvya Dhar Dwivedi,
Advs.

versus

Madhavrao Kinhalkar and ors. Respondents
Through: Mr.K.K. Venugopal, Sr.Adv. with Mr.Dilip
Annasaheb Taur, Adv. for Resp. 1
Mr.Saurabh Shyam Shamshery &
Mr.Bhupender Yadav, Advs. for Resp. 2&3
Mr.P.R. Chopra, Adv. for Resp.4.
Mr.A.S. Chandhiok, ASG with Ms.Sonia
Sharma, Mr.Mirza Aslam Beg, Mr.Ritesh
Kumar, Mr.Piyush Sanghi and Mr.Sumit
Goyal, Advs. for Resp.-5

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the legal substantiality of the order dated 2nd April, 2001 passed by the Election Commission of India (for short 'the Commission') wherein the Commission has expressed the view that it has jurisdiction under Section 10A of the Representation of People Act, 1951 (for brevity 'the 1951 Act') to embark upon the issue of alleged incorrectness or falsity of the return of election expenses maintained by the respondent, a candidate in election, under Section 77(1) and 77(2) lodged by him in exercise of power under Section 78 of the 1951 Act.

2. As a pure question of law arises, we shall refer in brief to the facts of the case. The petitioner was a returned candidate at general election to the Maharashtra Legislative Assembly held in September-October, 2009 from 85, Bhokar Assembly constituency and at that point of time he was the Chief Minister of Maharashtra. Certain complaints were filed before the Commission stating, inter alia, that the account submitted by the petitioner is not correct and there should be an enquiry against him under Section 10A of the 1951 Act. After notice, the present petitioner entered contest and raised a preliminary issue with regard to the maintainability of the nature of complaints before the Commission on the foundation that the

Commission has no jurisdiction to go into the truthfulness or falsity of the expenditure. The Commission thought it appropriate to advert to the preliminary objection raised by the petitioner to address to the same and placing reliance on the decision in *L.R. Shivaramgowda v. T.M. Chandrashekar*, AIR 1999 SC 252 and interpreting various provisions of the 1951 Act and the Rules, namely, the Conduct of Elections Rules, 1961 (hereinafter referred to as 'the 1961 Rules') has opined, as we have indicated hereinbefore.

3. We have heard Dr.A.M. Singhvi, learned senior counsel along with Mr.Abhimanyu Bhandari, learned counsel for the petitioner and Mr.K.K. Venugopal, learned senior counsel along with Mr.Dilip Annasaheb Taur; Mr.Saurabh Shyam Shamshery; Mr.P.R. Chopra; and Mr.A.S. Chandhiok, the learned Additional Solicitor General along with Ms.Sonia Sharma, learned counsel for the respondents.

4. Dr.A.M. Singhvi, the learned senior counsel appearing for the petitioner has submitted that the Election Commission can only make an enquiry with regard to the filing of the accounts, as contemplated under the Act, and while doing so, he has to be guided by the rules which are prescribed under the Act. It is urged by him that the Rule 89 has to be appositely appreciated in the context of Section 10A and Sections 77 and 78. It is urged by him that Section 100 of the 1951 Act

confers power on the High Court to set aside the election and if the said jurisdiction is conferred on the Election Commission to enter into the veracity of the truth and falsity of the accounts, there will be a dual adjudicatory process. Dr.Singhvi, learned senior counsel has also submitted that the decision rendered in ***L.R. Shivaramgowda*** (supra) has not taken note of the Constitution Bench decision in ***Sucheta Kripalani v. Shri S.S. Dulat, ICS, Chairman of the Election Tribunal, Delhi & Ors., AIR 1955 SC 758***. He has commended us to paragraph 13 of the said decision.

5. Mr.Venugopal, learned senior counsel, Mr.Saurabh Shyam Shamshery, Mr.Chopra and Mr.Chandhiok, the learned Additional Solicitor General, learned counsel for the respondents have submitted that there has been a change in the provision when the decision in ***Sucheta Kripalani*** (supra) was delivered by the Constitution Bench and hence, the ratio laid down therein would not be applicable. The learned counsel appearing for the respondents would further submit that the decision in ***L.R. Shivaramgowda*** (supra) lays down the law clearly and the same being a binding precedent, the Commission has correctly appreciated the ratio laid down therein and held that it has jurisdiction to conduct an enquiry.

6. To appreciate the rivalised submission raised at the Bar, it is appropriate to refer to Section 10A of the 1951 Act. It reads as under: -

“10A. Disqualification for failure to lodge account of election expenses. – If the Election Commission is satisfied that a person –

- (a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and
- (b) has no good reason or justification for the failure,

the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.”

[Underlining is ours]

7. Sections 77 and 78, which occur in Chapter 8 that deals with Election Expenses, are as follows: -

“77. Account of election expenses and maximum thereof. –

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

Explanation 1. – For the removal of doubts, it is hereby declared that –

- (a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a

candidate of that political party or his election agent for the purposes of this sub-section;

- (b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.- For the purposes of clause (a) of *Explanation 1*, the expression “leaders of a political party”, in respect of any election, means, -

- (i) where such political party is a recognised political party, such persons not exceeding forty in number, and
- (ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name,

during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

- (2) The account shall contain such particulars, as may be prescribed.
- (3) The total of the said expenditure shall not exceed such amount as may be prescribed.

78. Lodging of account with the district election officer. –

- (1) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.”

[Emphasis supplied]

8. Section 100, which deals with grounds for declaring election to be void, is reproduced below: -

“100. Grounds for declaring election to be void. –

- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion –
 - (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected –
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied –

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

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- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.”

[Emphasis added]

9. In this context, we may refer to Rule 86 of the 1961 Rules which reads as follows:

“86. Particulars of account of election expenses. –

- (1) The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely: -
 - (a) the date on which the expenditure was incurred or authorised;
 - (b) the nature of the expenditure (as for example, travelling, postage or printing and the like);
 - (c) the amount of the expenditure –
 - (i) the amount paid;
 - (ii) the amount outstanding;
 - (d) the date of payment;
 - (e) the name and address of the payee;

- (f) the serial number of vouchers, in case of amount paid;
 - (g) the serial number of bills, if any, in case of amount outstanding;
 - (h) the name and address of the person to whom the amount outstanding is payable.
- (2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.
- (3) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).
- (4) It shall not be necessary to give the particulars mentioned in item (e) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (2).”

10. In this context, we may profitably refer to Rule 89 of the 1961 Rules. It is as follows: -

“89. Report by the district election officer as to the lodging of the account of election expenses and the decision of the Election Commission thereon. –

- (1) As soon as may be after the expiration of the time specified in section 78 for the lodging of the accounts of

election expenses at any election, the district election officer shall report to the Election Commission -

- (a) the name of each contesting candidate;
- (b) whether such candidate has lodged his account of election expenses and if so, the date on which such account has been lodged; and
- (c) whether in his opinion such account has been lodged within the time and in the manner required by the Act and these rules.

(2) Where the district election officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act and these rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

(3) Immediately after the submission of the report referred to in sub-rule (1) the district election officer shall publish a copy thereof affixing the same to his notice board.

(4) As soon as may be after the receipt of the report referred to in sub-rule (1) the Election Commission shall consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by the Act and these rules.

(5) Where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act and these rules it shall by notice in writing call upon the candidate to show cause why he should not be disqualified under section 10A for the failure.

(6) Any contesting candidate who has been called upon to show cause under sub-rule (5) may within twenty days of the receipt of such notice submit in respect of the matter a representation in writing to the Election Commission, and shall at the same time send to district election officer a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.

(7) The district election officer shall, within five days of the receipt thereof, forward to the Election Commission the copy of the representation and the account (if any) with such comments as he wishes to make thereon.

(8) If, after considering the representation submitted by the candidate and the comments made by the district election officer and after such inquiry as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified under section 10A for a period of three years from the date of the order, and cause the order to be published in the Official Gazette.”

11. In the case of *L.R. Shivaramgowda* (supra), a three-Judge Bench of the Apex Court has opined thus –

“17. Learned counsel for the first respondent made an attempt to show that the pleading contains the relevant material facts. According to him, paragraph 39 of the election petition sets out the expenses incurred by the appellant per vehicle per day and the total number of vehicles used by him. It was also contended that the price of the newspaper Nagamangala Mitra per copy was mentioned and the total number of copies purchased for distribution to the voters was also mentioned. It was argued that those were the material facts and by themselves they proved that the appellant had incurred an expenditure exceeding the prescribed limit. We are unable to accept this contention. After

setting out those figures, the averment found in the election petition is only to the effect that the said cost incurred by the appellant had not been furnished in his statement of account. The fact that in the last part of the said sentence, it was alleged that there was on contravention of Section 123(6) of the Act, would not come to the aid of the first respondent to contend that the relevant material fact of excessive expenditure over and above the prescribed limit had been pleaded. We must also refer to the fact that for the purpose of Section 100(l)(d)(iv), it is necessary to aver specifically that the result of the election insofar as it concerns a returned candidate has been materially affected due to the said corrupt practice. Such averment is absent in the petition.

18. We shall now proceed to the second limb of the argument of the appellant's counsel. The High Court has held that the appellant had not maintained true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. 'Corrupt practices' have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) & (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Election Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (l)(b) of Section 100 relates

to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section 3 of Section 77 i.e. the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77(1) & (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall Under Section 100(1)(b). The attempt here by the first respondent is to bring it within Section 100(1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Section 77(1) & (2) will in no case affect, and much less materially, the result of the election.

19. This view has been expressed by this Court in *Dalchand Jain v. Narayan Shankar Trivedi*, (1969) 3 SCC 685. A Bench of three Judges held that it is only sub-section (3) of Section 77 which can be invoked for a corrupt practice under Section 123(6) and the contravention of Section 77 sub-section (1) & (2) or the failure to maintain correct accounts with the prescribed particulars does not fall under Section 123(6). The Bench has referred to several earlier decisions of the High Court and the decision of this court in C.A. No. 1321 of 1967 dated 22-3-1968.

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22. It was argued by learned counsel for the first respondent that the aforesaid view would enable any successful candidate at an election to snap his fingers at the law prescribing the maximum limit of expenditure and escape from the provisions of Section 77(3) by filing false accounts. According to him, if the aforesaid construction of Sections 77 and 123(6) is to be adopted, there will be no sanction against a candidate who incurs an expenditure exceeding the maximum prescribed limit. Referring to Section 10(A) of the Act, which enables the Election Commission to disqualify a person who had failed to lodge an account of election expenses within the time and in the manner required by or under the Act and had no good reason or justification for the failure, he contended that the said Section provides only for a situation arising out of failure to lodge an account and not a situation arising from a failure to maintain true and correct accounts. We are unable to accept this contention. In our opinion, sub-section (a) of Section 10(A) takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Section 77(2) provides that the accounts shall contain such particulars as may be prescribed. Rule 86 of the conduct of Election Rules provides for the particulars to be set out in the account. The said Rule prescribes that a voucher shall be obtained for every item of expenditure and for lodging all vouchers along with the account of TC election expenses. Rule 89 provides that the District Election Officer shall report to the Election Commission, the name of each contesting candidate, whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged and whether in his opinion such account has been lodged within the time and in the manner required by the Act and the Rules. That Rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act after adopting the procedure mentioned therein. If an account is found to be incorrect or untrue by the Election Commission after enquiry under Rule 89, it could be held that the candidate had failed to lodge his account within

the meaning of Section 10(A) and the Election Commission may disqualify the said person. Hence, we do not find any substance in the argument of learned counsel for the first respondent.”

[Underlining is ours]

12. In the case of *Sucheta Kripalani* (supra), in paragraph 13 it has been held thus –

“It is a question of form and not of substance. If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other document by some other person and the charges so preferred will be enquired into by the Tribunal.”

13. What is urged by learned counsel for the petitioner that Section 100(1)(d)(iv) confers exclusive power on the High Court to express an opinion with regard to non-compliance of the provisions of the Act and such non-compliance must materially affect the election and if the power is vested with the Commissioner to go into the truth or falsity of the accounts, it will bring an anomalous situation. The learned counsel would contend that it will create a dent in a democracy and bring the election law to jeopardy. It is also propounded with immense vehemence that the Rule 89 really provides the time factor and format but it does not confer any power on the Commission to get into the truth or falsehood of the accounts. We have reproduced the provisions of the Act and the Rules and extensively

quoted from the decision in *L.R. Shivaramgowda* (supra). We find as the three-Judge Bench was specifically dealing with the language employed in Section 10A and in that context opined in a categorical manner that sub-section (a) of Section 10A takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Their Lordships have analysed the scope and ambit of Rule 89 and clearly laid down that the Rule enables the Election Commission to decide whether a contesting candidate fails to lodge the account of election expenses within the time and in the manner required by the Act and if an account is found to be incorrect or untrue by the Election Commission after enquiry under the Rule, it could be held that the candidate had failed to lodge his account within the meaning of Section 10A of the Act. Be it noted, their Lordships have said so when a contention was raised that a successful candidate at an election can snap his fingers at the law by filing false accounts. If the decision is read as a whole and not in a disjointed manner the principle is clear that the Commission can go into the truthfulness or untruthfulness of the accounts. How far the Commission can go will be a question of degree. It will be in the realm of exercise of power. It is extremely difficult to say that Rule 89 basically has nothing to do with the provisions of the Act and deals with adjective sphere totally discarding the substantive part. If Sections 77 and 78 and Rules 86 and 89

are appositely construed, it would be clear that there is a check with regard to the conduct of the contesting candidates as well as the elected candidates. A distinction has to be drawn for setting aside an election by the court and causation of an enquiry by the Commission.

14. In view of our aforesaid analysis, we are of the considered opinion that the decision in *L.R. Shivaramgowda* (supra) is a precedent in the field and the Commission has correctly appreciated and understood the law laid down therein and, therefore, we concur with the view expressed by it.

15. Consequently, the writ petition, being devoid of merit, stands dismissed. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

SEPTEMBER 30, 2011
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