IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.10525 and 10443 of 2019
W.M.P.No.11024 and 10970 of 2019

W.P.No.10525 of 2019

Coimbatore Jewellery Manufacturers Association
Rep. by its President Mr.B.Muthuvenkatram
(S/o.Bakthavatsalam, aged about 52 years) .. Petitioner

Vs.

1.The Chief Election Commissioner of India,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110001.

2.The State of Tamilnadu,
Rep. by its Chief Secretary,
Secretary, Chennai.

3.The Chief Electoral Officer &
Secretary to Government,
Secretary, Chennai.

4.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai.

5.The Additional Chief Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai - 600 005. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the 1st and 3rd respondents to issue appropriate directions/guidelines for carrying gold for manufacture and sale within or to a place outside the State of Tamil Nadu and issue appropriate directions to the authorities acting under the 3rd respondent to desist from harassing the members of the petitioner's association when the goods are accompanied with valid documents under the TNGST Act, 2017 during the period of operation of electoral code of conduct.

For Petitioner : Mr.S.Raveekumar

For R1 and R3 : Mr.Niranjan Rajagopalan

For R2 : Mr.E.Manoharan, Additional Government Pleader

For R5 : Mr.V.Haribabu, Special Government Pleader (T)

W.P.No.10443 of 2019:

The Madras Jeweller and Diamond Merchant's Association,
Rep. by its Honorary Secretary,
Mr.S.Santhakumar. .. Petitioner

Vs.

1.The Chief Election Commissioner
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110001.
2.The Chief Electoral Officer,
Public (Elections) Department,
Secretariat, Fort St. George,
Chennai.

3.The Director General of Police,
O/o. Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents 1 and 2 not to seize the stock in trade of the members of the Petitioner Association, which are duly accompanied by valid documents, during their transit from one place to another in the course of their normal business activity.

For Petitioner : Mr.Murali Kumaran, for M/s.Mcgan Law Firm

For R1 and R2 : Mr.Niranjan Rajagopalan

For R3 : Mr.E.Manoharan,
Additional Government Pleader

COMMON ORDER
(Order of this Court was made by S.MANIKUMAR, J.)

Coimbatore Jewellery Manufacturers Association, Coimbatore, represented by its President has filed writ petition No.10525 of 2019, for a Mandamus, directing the Chief Election Commissioner of India, New Delhi and the Chief Electoral Officer and Secretary to Government,, Chennai/first and third respondents herein, to issue appropriate directions/guidelines for carrying gold, for manufacture and sale within or to a place outside the State of Tamil Nadu and issue appropriate directions to the authorities, acting under the 3rd respondent, to desist from harassing the members of the petitioner's association when the goods are accompanied with valid documents under the Tamil Nadu Goods and Services Tax, Act, 2017, during the period of operation of electoral code of conduct.

2. The Madras Jeweller and Diamond Merchant's Association, represented by its Honorary Secretary, has filed W.P.No.10443 of 2019, for a Mandamus, directing the respondents 1 and 2 not to seize the stock in trade of the members of the Petitioner Association, which are duly accompanied by valid documents, during their transit from one place to another in the course of their normal business activity.

3. As both the writ petitions relate to a prayer, for issuance of writ of mandamus, as stated supra, averments and submissions being similar, they are taken up together and disposed of, by a common order.

Facts in W.P.No.10525 of 2019:

4. In W.P.No.10525 of 2019, petitioner has contended that members of the abovesaid association, are registered dealers, under the Tamil Nadu Goods and Services Tax, Act, 2017 and Income Tax Act, 1961 and dealing in gold and accessories of all kinds.

5. Petitioner has further contended that Coimbatore District is holding 3rd rank, in manufacturing of gold, jewellery ornaments in the country and the association members, manufacture 200Kg of finished ornaments per day, and the same would be supplied across the country and also globally. On 10.03.2019, the election code of conduct, came into force for the parliament and bye elections, 2019.

6. Petitioner has further contended that the members have to carry unfinished goods from one place to another, for manufacturing/completion and further they have to carry the same to different places in the country, for manufacturing, sale and supply. Every ornament has its unique style and quality depending upon the orders/market demand and same have to be exhibited to their buyers. During the previous elections, members of the said association, had bad experience through the revenue officials, who were deployed for maintaining the election code of conduct. Business activity of the members, came to a standstill, which not only caused loss to the manufacturers but also to the state exchequer.

7. On 10.03.2019, the petitioner has sent a representation to the Chief Election Commissioner of India, New Delhi, requesting that if members of the abovesaid association, are able to establish that the goods are carried for business, and not for any political related transactions, the same may not be detained. In the representation, it is stated that those documents, could be verified by sending them to the Commissioner of Goods and Services Tax or to the Commissioner of Income Tax or to the Income Tax Nodal Officers, for cross checking the same.

8. Petitioner has further contended that the goods along with proper documents should not be detained, during the process of verification and that the same would curtail flow of business of the members. According to him, flow of gold has reduced to 100 Kg in Coimbatore region, per day. Based on the representation dated 10.03.2019, the Chief Electoral Officer and the Secretary to the Government, Chennai/the third respondent herein, on 27.03.2019, gave certain instructions to the District Election Officers, with regard to the movement of goods through vehicles, during elections and requested to keep monitoring the movement of goods, as per the Goods and Services Act, 2017. Further, the Chief Electoral Officer and Secretary to the Government, Chennai/the third respondent herein, has also requested the Principal Secretary to the Government, Commercial Taxes and Registration Department, Chennai and the Additional Chief Secretary/Commissioner of Commercial Taxes, Chennai, respondent Nos.4 and 5, to take necessary action, as per the commissions' instruction and Goods and Services Tax Act, 2017. No action has been taken by the Principal Secretary to the Government, Commercial Taxes and Registration Department, Chennai and Additional Chief Secretary/Commissioner of Commercial Taxes, Chennai/the respondents 4 and 5 herein. The 3rd respondent, has not specified the documents required to be carried along with the goods. Also the instruction of the Election Commission of India, dated 29.05.2015, is not clear and does not relate to gold, dealt with by the manufacturers. GST

itself has come into force only in July, 2017.

9. In continuation of the earlier representation dated 10.03.2019, petitioner has sent another representation dated 29.03.2019, to add instructions in the Standard operating procedure, stating that manufactures belonging to this category, can get a prior No Objection Certificate from the Department of Goods and Services Tax, before the movement of goods for exhibit and sale, and if the same is incorporated in the SOP, it would be very useful for the manufacturers to convince the officers, at every check point, when the vehicle is stopped for verifying the genuineness of the documents. But both the representations, have not considered by the respondents. With the above averments, petitioner in W.P.No.10525 of 2019, has sought for a Mandamus, as stated supra.

Facts in W.P.No.10443 of 2019:

10. Madras Jewellers and Diamond Merchant's Association, petitioner in W.P.No.10443 of 2019, was incorporated in the year 1940 under Certificate Incorporation No. 63 of 1940-41, registered on the file of the Assistant Registrar of Joint Stock Companies, Chennai. One of the primary objects of the petitioner's Association is to safeguard the interest of its members and their business activities. There are more than 1250 of members, who are leading jewelers from the State of Tamilnadu registered, with the Petitioner's Association. Normally, business activities / trade of the members of the Petitioner Association, sale and purchase of Jewellery, in their showrooms, involve movement of stock in trade either by way of sale or branch transfer or transfers for the purpose of manufacture, refining and repair, from one place to another. Every such movement of trade is accompanied by valid documents.

11. The Chief Election Commissioner, Election Commission of India, New Delhi, the 1st respondent herein, has announced the date of general elections and bye-elections as 18.04.2019, for Loksabha and 18 State Legislative Assembly Constituencies, respectively, in the state of Tamil Nadu and brought the Election’s Model Code of Conduct, 2019 in operation in the state, since 10.03.2019 onwards. The 1st respondent vide its Order in File No.76/Instructions/EEPS/2015/Vol-ll dated 29.05.2015 issued instructions to all the Chief Electoral Officers of all the States and Union Territories, revised Standard Operating Procedures for deployment of the Flying Squads, Static Surveillance Teams etc., and for seizure and release of cash and other items during the election process, for necessary action and compliance. The Flying Squad and Static Surveillance Squad, comprise mostly of the officers under the Director General of Police, Chennai, the 3rd respondent. No new similar instructions have been issued by the 1st respondent for

the present election and the abovesaid instructions dated 29.05.2015 is being followed even in this elections. The abovesaid instructions have been issued by the 1st respondent to control, prevent and curtail all forms of intimidation, threat, influence and bribing of electors, in the interest of free and fair election. In that connection, Squads and Static Surveillance Team are formed and they are entrusted with the job of monitoring and taking action against malpractices. The abovesaid instructions dated 29.05.2015, does not specify anything, anywhere relating to seizure of stock in trade, comprising of bullion or jewellery or diamonds or any guidelines, regarding such seizure, are either available or framed. Since there are no guidelines / instructions framed or issued by the 1st respondent to the Chief Electoral Officer, Public (Elections) Department, Chennai, the 2nd respondent herein, with respect to seizure of stock in trade of the members of the petitioner's association, which are under transit, members of the Petitioner's Association are put to severe hardship and business loss, as the Flying Squads and Static Surveillance Team of the 2nd respondent are seizing the stock in trade of the members of the Petitioner, even though they are accompanied by proper valid documents as detailed hereunder:

(i) GST Invoice (or) Approval voucher (or) Issue voucher (or) Stock transfer invoice / memo.

(ii) Photocopy of GST Certificate.

(iii) Delivery challan.

(iv) Authorization letter endorsing the staff or logistics company.

12. The petitioner has further submitted that Flying Squads and Static Surveillance Teams, while intercepting the valuable gold, diamond and silver goods under transit, are not taking into consideration of the abovesaid valid documents, accompanying Gold, Diamond and Silver goods, and are seizing the goods, which are stock in trade of the members of the Petitioner's Association, despite proper explanation.

13. In order to sort out the issue, the Petitioner Association requested the Chief Electoral Officer, Public (Elections) Department, Chennai, the 2nd respondent, vide representations dated 15.03.2019 and 20.03.2019 respectively, to issue suitable guidelines to the Election officials, at the field level, for smooth conduct of their business i.e, not to seize the goods viz. Gold, Silver and Diamonds that are accompanied by the abovesaid valid documents, during their transit from one place to another, considering the fact that the goods, so accompanied by the above documents, are stock in trade and not the one which is transmitted, in violation to the Model Code of Conduct of Election. The representation dated 20.03.2019 made by the Petitioner's Association and others, were taken note of by the 2nd respondent, vide letter dated 27.03.2019, wherein

the 2nd respondent has issued a formal communication, instructing its subordinates to follow the earlier instruction in file No.76/Instructions/EEPS/2015/Vol-ll dated 29.05.2015, but the harassment continues, unabated.

14. According to the petitioner's association, though the 2nd respondent has promised to ensure that the petitioner's request would be implemented, the same is not done, seizure continues, causing severe hardships, to the members of the Petitioner's Association. According to the petitioner, press release of the 2nd respondent evidences the said fact.

15. According to the petitioner, authorities of the Chief Electoral Officer, Public (Elections) Department, Chennai, the 2nd respondent, are seizing the goods, which are stocks in trade of the members of the Petitioner's Association, though accompanied with valid documents. Police officials, entrusted only with the election duty, are also taking advantage of the present scenario and intercept the goods in transit, as per their whims and fancies, without any authority, and threatening the members of the Petitioner's Association, under the guise of seizure, for ransom. The above act of the Squads, functioning under the 2nd respondent, have to be regularized by the respondents 1 to 4, by issuing suitable instructions, to deal with Gold, Diamonds and Silver, stocks in trade. According to the petitioner's association, it is relevant to state that, when a similar question was raised in a batch of writ petitions viz., W.P.No.8103 of 2011 and other cases, a learned Single Judge of this Hon'ble Court vide order dated 01.04.2011, disposed of the Writ Petitions with the observations, extracted hereunder:

> "34. There is no dispute that the Representation of People Act, 1951 (in short Act, 1951) cast a mandate on every candidate to maintain the account of expenditure incurred during the election. The Election Commission has prescribed a detailed guideline called Instructions on Expenditure Monitoring in Elections. By instruction dated 17th March, 2011, issued by the Election Commission, standard operating procedure for dealing with unaccounted and other valuables have been prescribed. According to the instructions, if cash is being carried with proper documents or if it is for any other purpose and the person carrying those valuables satisfy the officers conducting the search and seizure, then those valuables shall be returned to the owner forthwith. It is well settled law that the duty o f the Election Commission, inter alia, is to prevent distribution of money to the public and Commission should take all steps to curb those activities. The election being a very important event for the State, the Election Commission has to maintain

law and order to ensure free and fair election and also curb the malpractices.

35............................

36. After giving our anxious consideration in the matter, we, therefore, dispose o f these writ petitions with the following directions and observations:-

(1) To ensure free and fair elections to the Legislative Assembly in the State of Tamil Nadu to be held in April, 2011, the authorities of the Election Commission shall follow the instructions contained in Expenditure Monitoring in Elections, and other guidelines issued time to time.

(2) The standard procedure for dealing in unaccounted cash and other valuables shall be followed, and In case some criminal linkage is found, the seizure shall be effected. However, it is made clear that if cash or other valuables are being carried with proper documents, then no seizure shall take place and the same shall be returned to the person concerned.

(3) The whole operation should be videographed and the flying squad shall ensure all politeness, decency and courtesy.

(4) But, in no case the distribution of money or other valuables to the public shall be permitted till the election is over.

(5) The Commission is also directed that for curbing large scale crimes, extraordinary security measures should be taken till the election results are announced, and the safety and security o f the Flying Squads shall be taken care."

16. Order of the learned Single Judge was approved by the Hon'ble First Bench of this Court, in order dated 09.04.2011 passed in W.P.Nos. 8289 and 8290 of 2011. Conclusive portion of order of the Hon'ble First Bench, dated 09.04.2011 is extracted hereunder:

"19. So far the instant case is concerned, after holding that the instructions contained in the Expenditure Monitoring in Elections does not amount to exercising excessive power by the Election Commission or encroaching upon the other area occupied by the Central or State Legislations, we dispose of these writ petitions reiterating the observations and directions given in the earlier writ petitions as quoted hereinbefore. In our opinion, no further directions need to be issued to the Election Commission except that they shall discharge their duties in accordance with the procedures established by law. No costs. Consequently, connected miscellaneous petitions are closed.”

17. Petitioner has contended that it is clear from the above orders of this Hon’ble Court that election officers cannot seize the goods, accompanied with valid documents detailed above. But, the election officers / squads are not following the directions of this Hon’ble Court, as no formal instructions have been issued to the squads of the respondents. Petitioner has contended that Article 19(1)(g) guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business. This freedom is not uncontrolled, as clause (6) of Article 19 authorises the legislation to impose reasonable restrictions on this right, in the interest of general public, in this case, for free and fair election. According to the petitioner's association, right to practice any profession, trade and business, should be permitted and not to adversely affect the business of the members of the association. When such being the case, seizure of the materials as stated above, has caused huge disruption, in the day today business activities of the members of the petitioner's association, and livelihood of thousands and thousand of people who are involved. Further, it does not stop here, inspite of all the relevant records being made available to the personnel of the respondents, gold and valuable goods are seized and kept with them, and most of these ornaments are very delicate, and with precious stones. During transit, if the same are not handled properly, they get damaged and the entire piece is of no use to the end customer, causing huge financial loss to the members herein and the entire business, becomes standstill. On the above averments, petitioner has filed W.P.No.10525 of 2019, for the prayer stated supra.

SUBMISSIONS:

18. Advancing the arguments on behalf of the petitioner in W.P.No.10443 of 2019 Mr.Murali Kumaran for M/s. Mcgan Law Firm submitted that under Section 131 of the Income Tax Act, 1961, flying squad and static surveillance team of the respondents 2 and 3, have no authority to seize gold or silver or any other valuable items transported, in the course of business of the members of the petitioner's association and therefore seizure is invalid.

19. Inviting the attention of this Court, to clause 7 of the Election Commission of India's notification dated 29.05.2015, Mr.Murali Kumaran, for M/s. Mcgan Law Firm, learned counsel for the petitioner in W.P.No.10443 of 2019, submitted that, flying squad and static surveillance Team, can seize goods, such as drugs, liquor, arms or gift items which are valued at more than Rs.10,000/- which are likely to be used for inducement of electors or another illicit articles found by the

Flying Squad or the Static Surveillance Teams, as the case may be. According to him, gold, silver or other such articles, are not mentioned in the above instructions, empowering the flying squad and static surveillance team to seize item, and in any event, bullion carried in the vehicles with valid documents, by the members of the petitioner's association, petitioner in W.P.No.10443 of 2019, cannot be said for inducement of voters in the elections. He further submitted that gold or silver or such other articles are carried in vehicles, with valid documents such as GST certificate, Stock ledger, Sale tax invoice or delivery bill along with the issue voucher, delivery challan, cash ledger (for cash transit), Proof-bank statement (for cash withdrawal) and Authorization of the staff by the company, and when after production of above documents, by the members of the petitioner's association, flying squads or static surveillance teams, indiscriminately seizure them, causing undue hardship, which infringes upon the fundamental right to trade and business of the members of the association. It is also his contention, despite a request being made by the petitioner's association to the Chief Electoral Officer, the 2nd respondent, in W.P.No.10443 of 2019, he has not issued any specific guidelines or instructions to the Flying Squads and Static Surveillance Team, as to when seizure, can be effected nor informed the members of the petitioner's association, as to what are the documents to be accompanied by the members of the petitioner's association, to carry gold or silver or such other goods, which would enable them to carry on their trade or business, without affecting free and fair elections.

20. Further contention of the learned counsel for the petitioner in W.P.No.10443 of 2019 is that before seizure, there should be a subjective satisfaction of the Flying Squad or the Static Surveillance Teams, as the case may be with reasons to be recorded, or else the seizure is illegal.

21. Mr.S.Raveekumar, learned counsel for Coimbatore Jewellery Manufacturers Association, Coimbatore, petitioner in W.P.No.10525 of 2019, while adopting the arguments of the former, added that Rule 68 of the Goods and Services Rules, 2017, is applicable to the case on hand.

22. Responding to the above, and inviting to the attention of this Court to the orders passed by the Hon'ble Division Bench of this Court in (i) the Chief Election Commissioner case reported in 2011 (6) CTC 129; (ii)Patty B.Jeganathan vs. The Chief Election Commissioner and others, reported in 2011-3-L.W. 272; and (iii) K.Manivannan vs. Election Commission of India, reported in 2011 (3) CTC 785, Mr.Niranjan Rajagopalan, learned counsel for the Election Commission of India, submitted that the issues raised by the petitioners, in the present writ petitions

are covered by the decisions of this Court, and that apart, a power point programme and instructions have already been issued to the Field Officers, Flying Squad and Static Surveillance Team, regarding seizure of valuable goods.

23. On the aspect of documents to be accompanied during transport, he submitted that suitable instructions have been issued to the Officers. He further submitted that on submission of valid documents, mandated under Rule 138 of the GST Rules, and upon verification of the same, goods seized are returned, no hardship is caused to the members of the petitioners' associations.

24. In this regard, he submitted a true copy of the programme, explaining that Election Commission of India, has already exhibited a power point presentation.

25. Inviting the attention of this Court to the instructions dated 29.05.2015 issued by the Election Commission of India, Mr.Niranjan Rajagopalan, learned counsel for the Chief Election Commission of India, New Delhi, submitted that if any person is affected by seizure, instructions have been issued that there is an appeal remedy available to the person aggrieved. For the abovesaid reasons, he prayed for dismissal of the writ petitions.

26. Heard the learned counsel for the parties and perused the materials available on record.

27. Before adverting to the rival submissions, let us consider the instructions, dated 29.05.2015, issued by the Election Commission of India, revised Standard Operating Procedure (SOP), for deployment of Flying Squads, Static Surveillance Teams, etc., for seizure and release of cash and other items, during election process, for necessary action and compliance. Chief Electoral Officers of all States and Union Territories have been requested by the Election Commission of India, New Delhi, 1st respondent herein, to bring it to the notice of all the election officials, Income-Tax Department, Police Department and Excise Department, for compliance. Instructions, dated 29.05.2015, are extracted hereunder:

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 76/Instructions/EEPS/2015/Vol.II
Dated: 2nd May, 2015

ORDER

Whereas, the Superintendence, direction and control of all elections to Parliament and the Legislature of every State is vested in the Election

Commission under Article 324 of the Constitution; and

Whereas, all forms of intimidation, threat, influence and bribing of electors must be prevented in the interest of free and fair election and; reports are received that money power and muscle power are being used during election process for inducement of electors by way of distribution of cash, gift items, liquor or free food; or for intimidation of electors by threat or intimidation; and

Whereas, distribution of cash or any item of bribe or use of muscle power for influencing electors are crime under sections 171 B and 171 C of IRC and also are Corrupt Practices under Section 123 of R P Act. 1951;

Now, therefore, for the purpose of maintaining purity of elections, the Election Commission of India hereby issues the following Standard Operating Procedure for Flying Squads, constituted for keeping vigil over excessive campaign expenses, distribution of items of bribe in cash or in kind, movement of illegal arms, ammunition, liquor, or antisocial elements etc in the constituency during election process;

Flying Squad (FS)

1. There shall be three or more Flying Squads (FS) in each Assembly Constituency/Segment. The FS shall start functioning from the date of announcement of election and shall continue till completion of poll.

2. The Flying Squad shall (a) attend to all model code of conduct violations and related complaints; (b) attend to all complaints of threat, intimidation, movement of antisocial elements, liquor, arms and ammunition and large sum of cash for the purpose of bribing of electors etc.; (c) attend to all complaints regarding election expenditure incurred or authorized by the candidates / political party; (d) videograph with the help of Video Surveillance Team (VST), all major rallies, public meetings or other major expenses made by political parties after the announcement of election by the Commission.

3. In Expenditure Sensitive Constituencies (ESC), there shall be more FSs, depending on the requirement. The FS shall not be given any other work during the period The names and mobile numbers of the Magistrate as head of the FS and other officials in FS shall be provided to the Complaint Monitoring Control Room and Call Centre, RO, DEO, General Observer. Police Observer Expenditure Observer and Assistant Expenditure Observer. In ESCs, CPF or State Armed

Police may be mixed in the FS, depending on the situation and the DEO shall take necessary steps in this regard The DEO shall constitute the FS with officers of proven integrity.

4 Whenever a complaint regarding distribution of cash or liquor or any other item of bribe or regarding movement of antisocial elements or arms and ammunition, is received, the FS shall reach the spot immediately, In case of suspicion of commission of any crime, the incharge Police Officer of FS shall seize cash or items of bribe or other such items, and gather evidence and record statement of the witnesses and the persons from whom the items are seized and issue proper Panchnama for seizure as per the provisions of CrPC to the person from whom such items are seized Fie shall ensure that case is submitted in the Court of competent jurisdiction within 24 hrs. The Magistrate of the FS will ensure that proper procedure is followed and there is no law and order problem.

5. The Magistrate of the FS shall send a Daily Activity report in respect of items of seizure of bribe or cash to the D E O. in a format as per Annexure - A, with a copy to R.O., S.P. and the Expenditure Observers, and shall also send Daily Activity report in respect of model code of conduct violations to RO, DEO, S.P. and General Observer in the format as given in Annexure-B. The S. P shall send daily activity report to Nodal Officer of Police Headquarter, who shall compile all such reports from the district and send a consolidated report in the same format (i.e.,; Annexure - A & B) on the next day by fax/ e-mail to the Commission with a copy to the CEO of the state.

6. The entire proceeding shall be video recorded The Incharge Officer of FS shall also file complaints/FIR immediately against (i) the persons, receiving and giving bribe; and (ii) any other person from whom contraband items are seized, or (iii) any other antisocial elements found engaged in illegal activity The copy of the complaint/FIR shall be displayed on the notice board of the R.O. for public information and be sent to the DEO, General Observer, Expenditure Observer and Police Observer. The Expenditure Observer shall mention it in the Shadow Observation Register, if it has links with any candidate's election expenditure.

7. In case, a complaint is received about distribution of cash, gift items, liquor or free food; or about threat/ intimidation of electors; or of movement of arms/ammunitions/ antisocial elements and

it is not possible for the FS to reach the spot immediately, then the information shall be passed on to the Static Surveillance Team, nearest to the spot or to the police station of that area, who shall rush a team to the spot for taking necessary action on the complaint. All seizures made by the police authorities either on re ce ip t of comp laints forwarded by FS or received independently shall a lso be re ported to the FS which shall incorporate such seizure reports in its Daily Activity Reports in relevant rows/columns and this is done to avoid duplication of reports of seizure.

8. Each FS shall announce through a Public address system, fitted onto its vehicle, the following in local language in the area under its jurisdiction: "As per section 171 B of Indian Penal Code, any person giving or accepting any gratification in cash or kind during election process, with a view to inducing the person to exercise his electoral right is punishable with imprisonment up to one year or with fine or with both. Further, as per section 171 C of Indian Penal Code, any person who threatens any candidate or elector, or any other person, with injury of any kind, is punishable with imprisonment up to one year or with fine or both. Flying Squads have been formed to register cases against both the giver and the taker of bribe and for taking action against those who are engaged in threat and intimidation of electors. All the Citizens are hereby requested to refrain from taking any bribe and in case, anybody offers any bribe or is having knowledge about the bribe or cases of threat/intimidation of electors, then he should inform on the toll free number.....................of the 24x7 Complaint Monitoring Cell of the district, set up for receiving the complaints".

9. As per Commission's instruction No. 23/1/2015-ERS, dated 21-02-2015, Booth Level Awareness Groups (BAGs) formed for purification and authentication of electoral rolls o f the booth will also be associated in collecting the evidences of malpractices taking place in their area either by mobile software developed by the Commission or otherwise. Whenever the BAG provides any information, the Flying Squad should reach the spot within shortest possible time and take necessary action and gather corroborative evidences.

10. The DEO shall publish pamphlets quoting the above in English or Hindi or local language and distribute through the flying squad in prominent places. Press release should also be issued by the DEO on the election expenditure monitoring measures.

11. After the announcement of elections, DEO shall make an appeal as mentioned in para 8 above in print and. electronic media for the benefit of general public about the monitoring mechanism, which is being put in place during election process.

12. All the vehicles used by the Flying Squads shall be fitted with the CCTV cameras/ webcams or shall have video cameras (keeping in view the availability and economic viability) for recording the interception made by the Flying Squads.

Static Surveillance Team (SST)

1. There shall be three or more Static Surveillance Teams in each Assembly Constituency/Segment with one executive magistrate and three or four police personnel in each team who shall be manning the check post. Depending on the sensitivity of the area, the CPF members will be mixed in the SSTs.

2. This team shall put check posts at Expenditure Sensitive pockets/hamlets, and shall keep watch on movement of illicit liquor, items of bribe, or large amount of cash, arms and ammunition and also movement of antisocial elements in their area The entire process of checking shall be captured in video or CCTV.

3 The Magistrate of the SST shall send Daily Activity report to the D E.O, with copy to R.O., S. P. and Expenditure Observer, General Observer, and Police observer in a format as per Annexure -C, on the same day. The S.P. shall send daily activity update to Nodal Officer of Police Headquarter, who shall compile all such reports from the district and send a consolidated report in the same format (i.e., Annexure - C) on the next day by fax/ e-mail to the Commission with a copy to the CEO of the state.

4. The checking by the SSTs shall be done in the presence of an Executive Magistrate and shall be video-graphed No such checking shall take place without the presence of Executive Magistrate. The video I CCTV record with an identification mark of date, place and team number shall be deposited with the R.O, on the next day who shall preserve the same for verification by the Commission at later point of time. It may also be widely advertised by the DEO that any member of the public can obtain a copy of the video/ CCTV record by depositing Rs, 300/-.

5. Whenever Check Posts are put at the borders of the district/State or at any other place by any agency, for any purpose, then the nearest SST shall be present there in such team, to avoid duplication of

checking in the area and reporting of seizure of cash or items of bribe has to be done by the SST.

6 Checking by SST on the major roads or arterial roads shall commence from the date of notification of election, The SSTs shall be controlled by the DEO and S.P. in consultation with General Observer and Expenditure Observers and the mechanism shall be strengthened in last 72 Hrs. before the poll, particularly in vulnerable areas or in Expenditure sensitive pockets and during such period, the SST shall not be dismantled under any circumstances.

7. During checking, if any cash exceeding Rs. 50,000/- is- found in a vehicle carrying a candidate, his agent, or party worker or carrying posters or election materials or any drugs, liquor, arms or gift items which are valued at more than Rs.10,000/-, likely to be used for inducement of electors or anyother illicit articles are found in a vehicle, shall be subject to seizure. The whole event of checking and seizure is to be captured in a videoICCTV, which will be submitted to the Returning Officer, everyday.

8. If any star campaigner is carrying cash up to Rs. 1 Lakh, exclusively for his/her personal use, or any party functionary is carrying cash with certificate from the treasurer of the party mentioning the amount and its end use, then the authorities in SST shall retain a copy of the certificate and will not seize the cash. If cash of more than 10 lakh is found in a vehicle and there is no suspicion of commission of any crime or linkage to any candidate or agent or party functionary, then the SST shall not seize the cash, and pass on the information to the Income-Tax authority, for necessary action under Income - Tax Laws.

9. During checking, if there is any suspicion of commission of crime, the seizure of cash or any item shall be done by the incharge Police Officer of the SST as per provision of CrPC in presence of the Executive Magistrate. The Police Officer in charge of SST shall file complaint/FIR in the Court, having jurisdiction, within 24 hours.

10. FS and SST shall be.polite, decent and courteous, while checking the baggage or vehicle The purse held by the ladies shall not be checked, unless there is a lady officer. The FS shall also supervise the functioning and proper conduct of SSTs during checking in their areas.

11. Advance training of FSs and SSTs should be done as per direction of the Commission The DEO and

the SP of the district shall ensure that the teams are constituted and properly trained The Nodal Officer at the Police Headquarters shall ensure that proper training and sensitisation of the police force is this regard is done.

12. In case of any grievance about the conduct of the FS or SST, the Authority, whom the person can appeal for redressal of grievance on misconduct or harassment shall be the Dy. DEO of the district (in charge of the Expenditure Monitoring Cell).

13. After seizure, the seized amount shall be deposited in such manner as directed by the Court and a copy of seizure of cash, in excess of Rs.10 lacs shall be forwarded to the Income Tax authority, engaged for the purpose. The DEO shall issue necessary instructions to the treasury units to receive the seized cash beyond office hours and on holidays also, in case it is required.

14 Wherever the FS or SST or police authorities receive information about any suspicious items in their area, including movement of huge amount of cash, they shall keep the respective Law enforcement agencies informed about such items.

15. All the vehicles, used by SSTs and FSs may be fitted with GPRS enabled tracking unit so that timely action by the teams can be monitored.

16 Release of Cash

(i) In order to avoid inconvenience to the public and genuine persons and also for redressal of their grievances, if any, a committee shall be formed comprising three officers of the District, namely, (i) CEO, Zila Parishad/CDO/P.D,DRDA (ii) Nodal Officer of Expenditure Monitoring in the District Election Office (Convenor) and (iii) District Treasury Officer. The Committee shall suo-motu examine each case of seizure made by the Police or SST or FS and where the Committee finds that no FIR/Complamt has been filed against the seizure or where the seizure is not linked Operating Procedure, it shall take immediate step'to order release of such cash etc. to such persons from whom the cash was seized after passing a speaking order to that effect. The Committee shall look into all cases and take decision on seizure.

(ii) The procedure of appeal against seizure should be mentioned in the seizure document and it should also be informed to such persons at the time of seizure of cash The functioning of this committee should be given wide publicity, including telephone no. of the convenor of the Committee.

(iii) All the information pertaining to release of cash, shall be maintained by the Nodal Officer expenditure monitoring in a register, serially date wise with the details regarding amount of Cash intercepted/seized and date of release to the person (s) concerned.

(iv) If the release of cash is more than Rs 10 (Ten) Lac, the nodal officer of Income Tax shall be kept informed before the release is effected.

(v) All cases of seizure of cash etc., effected by FS, SST or Police authorities shall immediately be brought to the notice of the Committee formed in the District and the Committee shall take action as per para (i) mentioned above. In no case, the matter relating to seized cash/ seized valuables shall be kept pending in malkhana or treasury for more than 7 (Seven) days after the date of poll, unless any FIR/Complaint is filed. It shall be the responsibility of the Returning Officer to bring all such cases before the appellate committee and to release the cash/valuables as per order of the appellate committee.

17. It is further informed that the EEMS software for Daily Activity Report, available in the Commission's website may be used for sending the report to the Commission.

By order,
sd/-
(S.K.Rudola)
Secretary.

28. Further instructions have been issued by the Election Commission of India, on 04.04.2016, to all the Chief Electoral officers of all States and Union Territories, as hereunder:

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 76/Instructions/EEPS/2016/Vol.II
Dated: 4th April, 2016

To
The Chief Electoral Officers of all States/UTs

Subject: Standard Operating Procedure for follow up action by the Flying Squads on receipt of complaints relating to storage of cash or other valuables etc. in any premise - Reg.

Madam/Sir,

I am directed to refer to the Commission's letter

No.76/Instructions/2015/EEPS /Vol.II dated 29th May 2015 and to state that the instructions therein provide a comprehensive SOP in respect of deployment of Flying Squads, SSTs etc for seizure and release of cash and other items during election process.

The SOP covers instances of complaints relating to movement of large sum of cash etc. suspected to be for the purpose of bribing of voters etc. However, it is seen that there is lack of clarity in respect of the procedure to be followed by the complaint monitoring cells and Flying Squads in respect of complaints relating to storage of large amount of cash at any premise which is suspected to be for illegal use in connection with election. Accordingly, it is decided that the following procedure may be strictly followed by the complaint monitoring cell, DEMC or the Expenditure Observer on receipt of such complaints or information that large amounts of cash or other valuables are lying at any premise which may be used for bribing of voters.

1. On receipt of any such complaint, the complaint monitoring cell will immediately inform the Expenditure Observer regarding the same.

2. The Expenditure Observer or the Nodal Officer, DEMC will coordinate with the Incharge of the Income Tax Team. If required the Nodal Officer of Income Tax (Investigation) may also be informed for taking appropriate action.

3. A team of Flying Squad will be immediately rushed to the spot. The team will deploy persons at some distance yet within sight from the premises for continuous surveillance of the premise till the team from Income Tax Department arrives or it is conclusively inferred from discreet enquiry that the information is not genuine. If required, videography can also be made.

4. Neither the Expenditure Observer, nor any member of the Flying Squad will enter the premise before arrival of the Income Tax Team.

5. Any action with regard to search and seizure will be undertaken by the Income Tax Department as per procedure laid down under the Income Tax Act. However, the members of the Flying Squad team or the Expenditure Observer may enter the premise if their services are required by the Income Tax team, which would be strictly under the provisions of the Income Tax Act including authorisation etc.

6. The DEO/ SP are expected to provide necessary assistance in execution of the search by the Income Tax team.

7. The Flying Squad team (teams) should be present in the vicinity for interception and checking of persons entering or coming out of the premise during the period of the search. Cash or valuables etc found in such vehicles/ with such persons may be seized by the Flying Squad as per laid down procedure.

8. It is clarified that the Expenditure Observer or the Flying Squad will not carry out any search of the premises on their own.

9. The instruction contained in para 4.2.8 of the Compendium of Instructions must be strictly complied by the Expenditure Observer. He shall co-ordinate with the Enforcement agencies and shall ensure that there is free flow and exchange of information among all agencies. On receipt of information from any agency, action is to be taken promptly by the law enforcement agency concerned.

You are requested to kindly bring it to the notice of the Income Tax Department, Police Department and all the election authorities for compliance.

Kindly acknowledge the receipt of this letter.

Yours faithfully,
Sd.-
(Satyendra Kumar Rudola)
Principal Secretary

29. As regards carrying of cash and transfer of money from one chest to another, operated by the banks, the Government of India, Ministry of Finance has addressed a letter, dated 20.02.2013, to the Election Commission of India, New Delhi, which is extracted hereunder:

F.No.60(2)/2008-BO.II
Government of India
Ministry of Finance
Department of Financial Services

3rd Floor, Jeevan Deep Building,
Parliament Street, New Delhi
Dated the 20th February, 2013

To

The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi.

(Kind Attention: Shri.S.K.Rudola, Secretary)

Subject: Transport of Clean and genuine cash by banks during elections - Reg.

Sir,

Kindly refer to the Election Commission of India's letter No. 75/EI. Ex/ITD/2012/EEPS/605 dated 29th May, 2012 on the above subject and reply of this Department vide letter of even number dated 06.11.2012, inter-alia, indicating that a Standard Operating Procedure will be evolved by the Indian Banks' Association and this Department will share the SOP with Election Commission so that the same become a part of the checking procedure of the election machinery thereby ensuring smooth transport of clean and genuine cash by banks during elections.

2. Indian Banks Association gathered the views/comments of select group of banks and based on the feedback received from banks and after deliberations, the Managing Committee of the IBA has finalized and circulated following guidelines for transportation of cash to all member banks for implementation.

- The bank shall ensure that the cash vans of outsourced agencies/companies carrying that bank's cash shall not, under any circumstances, carry cash of any third party agencies/individuals except the banks. Towards this, the outsourced agencies/companies shall carry letters/documents etc. issued by the banks giving details of the cash released by the banks to them and carried by them for filing the ATMs and delivering cash at other branches, banks or currency chests.

- The personnel of the outsourced agencies/companies accompanying cash van shall carry identity card issued by the respective agencies.

- The aforesaid procedure has been stipulated for the reason that during the period of election if the authorised officials of the Election Commission (District Election Officer or any other authorised official) intercepts the outsourced agency/company's cash van for inspection, the agency/company should be in a position to clearly show to the Election Commission through document and also physical inspection of the currency that they have collected the cash from the banks for the purpose of replenishing the bank's ATMs with cash or delivery of the cash to some other branches of the banks or currency chest on the instructions of the bank.

- The aforesaid procedure shall be part of the standard operating rules and procedure of banks for transport of cash.

3. Kindly find enclosed a copy of Circular dated 04.02.2013 issued by IBA to the member banks. We request you to kindly consider making these guidelines to become part of the checking procedure of the election machinery thereby ensuring smooth transport of clean and genuine cash by banks during elections.

Yours faithfully,
Sd/-
(D.D. Maheshwari)
Under Secretary to the Government of India

30. Further instructions, dated 14.01.2017, on the above aspect of carrying cash, issued by the Election Commission of India, read thus,

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No.76/ECI/INST/FUNC/EEM/EEPS/2017/Vol.IV

Dated: 14th January, 2017

To

The Chief Electoral Officers of
1) Goa
2) Manipur
3) Punjab
4) Uttar Pradesh
5) Uttarakhand

Subject: Transport of clean and genuine cash by banks and transfer of currency from one chest to another operated by the banks - reg.

Madam/Sir,

I am directed to refer to letter No.60(2)12008-BO.II., dated 20th February, 2013 of Dept. of Financial Services [Annexure-66 of Compendium of Instructions on Election Expenditure Monitoring (September.2016)l and to forward herewith a copy of D.O.No.713/2016-BOA, dated 9th January' 2017 received from Ms.Anjuly Chib Duggal, Secretary, Deptt. of Financial Services, M/o Finance with the request that the operating procedure for transportation of cash by banks and transfer of currency from one chest to another operated by the banks within the state or inter-state level as laid down in the above mentioned letters shall be followed scrupulously.

2. You are also requested to kindly advise the

Director Generals and Commissioners of Police to ensure adequate police protection for the safe, secure and speedy inter-State and Intra-State movement of currency from currency chests to the various bank branches/ATMs at some of the places where Banks may apprehend security concerns and while doing so, the police authorities shall have to keep the CEO informed in the poll going States.

However, the existing instructions/SOP for transportation of cash by banks issued vide letter No.60(2)/2008-BO.II, dated 20th February, 2013 (copy enclosed) should be continued to be followed."

31. Representation of Coimbatore Jewellery Manufacturers Association, represented by the President (petitioner in W.P.No.10525 of 2019), dated 10.03.2019, addressed to the Chief Election Commissioner of India, New Delhi, with a copy marked to the Election Commissioner, Tamil Nadu, reads thus,

"Coimbatore stands 3rd highest in manufacturing of gold jewellery ornaments in this country. Per day we manufacture 200 kgs of finished ornaments and we supply those ornaments across country and globally. W e came to know yesterday (10.03.2019) that the election code of conduct has been enforced for the parliament and by elections 2019.

It is well-known that gold jewellery is high value goods. As we are the manufacturers, we carry the unfinished goods from one place to other place for the completion of products. We carry the finished goods to different parts of the country for sale and supply. As every piece of gold jewellery has its unique style and quality, the principal manufacturers carry the goods and exhibit to their buyers for sales. During previous elections, we faced a lot of bad experiences through the revenue officers who were deployed to maintain the election code of conduct.

When we are being verified by the election officers at the time of transit of goods, if we are able to establish as a business goods and not for any political related transactions, we request the election officers to not detain the person or seize the goods. These documents can be sent to the Commissioner of GST or the Commissioner of Income Tax or the Income Tax Election Nodal Officer.

It is our kind request that the goods should not be detained or the process of verification should not affect the flow of the business. We request the election commission to execute an order to all the state election commissioners and district collectors stating that especially the gold jewellery manufacturers should not be detained, should not be flashed in the media or their goods to be seized, if the proper documents and identification of the business are established at the time of inspection.

For your kind information, the following supportive documents will be carried along with our goods during our transit period:

1) GST certificate
2) Stock ledger
3) Sale tax invoice or delivery bill along with the issue voucher
4) Delivery challan
5) Cash ledger (for cash transit)
6) Proof-bank statement (for cash withdrawal)
7) Authorization of the staff by the company

We have given the modus details of our business which satisfies the election code of conduct and for the smooth running of our usual business. We want the high office to assure that the officers who enforce election code of conduct will not affect the disciplined businessmen."

32. Representation of Madras Jewellers & Diamond Merchant's Association, represented by the Honorary Secretary (petitioner in W.P.No.10443 of 2019), dated 20.03.2019, addressed to the Chief Electoral Officer, Public (Elections) Department, Chennai, reads thus,

"We thank you for the courtesy extended to us when we called on you for discussing the difficulties being faced by the Jewellery trade in running day to day business, following implementation o f Model code of conduct in connection with the ensuing parliament elections. This is also further to our letter dated 15 March, 2019 on the subject.

We would like to inform you that while carrying/sending gold and diamond Jewellery, the following documents shall be sent by all the Jewellery traders, both wholesalers and retailers:

1. GST invoice (or) Approval voucher (or) Issue voucher (or) Stock transfer invoice/memo.
2. Photocopy of GST certificate
3. Delivery Challan
4. Authorization letter endorsing the staff or logistics company

These are the valid official documents for movement of gold and diamond Jewellery across India normally being followed and approved as per laid down procedures under the GST Act also.

Hence, if any body carries gold and diamond Jewellery along with all the above four documents, it can be safely assumed as valid movement of goods for trade purposes and hence they need not be seized by the election officials. We send herewith photocopies of the above four documents for your perusal.

We request to issue suitable guidelines to the election officials at the field level on the above issue for smooth conduct of our business."

33. In the above representations, dated 10.03.2019 and 20.03.2019, respectively, petitioners before us, have submitted that the documents stated supra, would be sufficient, for carrying goods manufactured and transported in their vehicles and therefore, contended that there should not be seizure. Representation of the petitioner in W.P.No.10525 of 2019, dated 29.03.2019, is extracted:-

COIMBATORE TEWELLERY MANUFACTURERS ASSOCIATION

Coimbatore,
29/03/2019

To
The Election Commissioner of India
New Delhi.

SUBJECT: Request to add our suggestions in your SOP (Search Operation Procedure)

Sir,

Our association comprises 400 registered manufacturers, we stand 3rd in manufacturing of gold jewellery in this country. We produce 200 kgs of new gold ornaments every day. we are supposed to deliver those goods pan India. We have seen your notification for SOP dated 29th May 2015, Commission's order no.76/Instructions/EEPS/2015/Vol.XIX and the letter from Chief Electoral Officer, Chennai dated 27th March 2019.

We appreciate the election commission taking certain efforts for ease of doing business. But we find that there is a missing order in the press SOP. Already in our memorandum we have cited that the principal manufacturers produce new gold ornaments and they market and exhibit to all their known stores across the country. We request the high office to include in your SOP stating that manufacturers belonging to this category can get a prior NOC from the Department of GST before movement of their goods for exhibit and sales. This system will help every manufacturer to convince the election officers at every check post when they stop the vehicle to find out genuineness.

We expect a positive and immediate response from your high office for the ease of doing business of our people.

Thank you

B.Muthuventatram, M.A., R.Ashokan, B.L.,
President, CJMA Secretary,
CJMA"

34. Adverting to the representation, dated 10.03.2019, the Chief Electoral Officer, Chennai, has issued instructions, dated 27.03.2019, to all the District Election Officers in the State, as hereunder:

> "I am enclose a copy of each of the references cited and to state that the petitioners have requested to issue necessary instructions to the election related officials for the free movement of goods within the state of Tamil Nadu as well as inter state without any interruption, during the present election period. I am to request you to take necessary action in the matter as per the instructions of the Election Commissions of India vide letter No.76/Instructions/EEPS/2015/Vol.II, dated 29.05.2015.
>
> 2. In this connection, I am also to request you to keep close monitoring of movements of goods, during the ensuing Elections based on the guidelines issued under GST Act, 2017.
>
> 3. I am, therefore, to request you to take necessary action as per the Commissioner's instructions and the guidelines under GST Act. I am also request you to contact the respective Joint Commissioner (Enforcement)/Deputy Commissioner (Enforcement) in the Commercial Tax Department to assist in this regard."

35. Let us consider, as to issues raised in the previous litigations, have been considered and answered by this Court.

36. In The Chief Election Commissioner reported in 2011 (6) CTC 129, a Suo-Motu W.P.No.8022 of 2011, dated 28.03.2011, was taken up as a Suo Motu Public Interest Litigation, by this Court, on the statement made by the Then Hon'ble Chief Minister of Tamil Nadu, regarding excessive restrictions imposed by the Election Commission. After considering the decisions of the

Hon'ble Supreme Court in N.P.Ponnuswami v. Returning Officer, Namakkal Constituency [AIR 1952 SC 64] Mohinder Singh Gill v. Chief Election Commissioner [(1978) 1 SCC 405]; Election Commission of India v. Shivaji and Others [(1988) 1 SCC 277]; and Election Commission of India v. Ashok Kumar [2000 (8) SCC 216], a Hon'ble Division Bench of this Court, in the Suo Motu Public Interest Litigation, at Paragraphs 11 and 12, held as follows:

> "11. So far as the activities of the Election Commission in making search and seizure in the name of implementing the model code of conduct is concerned, a Bench of this Court recently considered such question in a writ petition, being W.P. No.7011 of 2011. In that case, the petitioner challenged the seizure made by the respondent which amount was stated to have been carried for the purpose of making payment to the workers. The learned Judge, by order dated 22nd March, 2011, disposed of the writ petition with certain directions, relevant portion of the order is quoted hereinbelow :-
>
> 4.3. According to him, the effect of the rules is being published in all newspapers, both Tamil and English, and also shown in various television channels, so as to enable the people to understand the implication and follow the same in such event of seizure. He would also submit that since the respondents were not satisfied about the reason assigned for carrying huge quantity of amount the same was recovered by them and thereafter, the Deputy Director of Income Tax (Inv), Unit-IV(2), Chennai 600 034, by executing the warrant of authorisation under Section 132A of the Income Tax Act, 1961 has taken over the amount from the second respondent. Therefore, according to him, if only the petitioner justifies the purpose for which the amount was carried, the Deputy Director of Income Tax (Inv), Unit-IV(2), Chennai 600 034 would release the same.
>
> 5. Considering the above said facts and circumstances of the case, I am of the considered view that while it is the duty on the part of the respondents to see that the Election Code of Conduct is scrupulously followed, it must be ensured that under the guise of following the rules strictly, the innocent people should not be targeted and therefore, it is desirable that the Election Commission makes publication in the language known to the people of this State about the above said provisions. Moreover, as and when seizure is effected, it should be stated as to whom the citizen has to approach and what all particulars have to be furnished. It is also expected

that when a seizure order is made like the impugned notice, it is the duty on the part of the Election Officer to indicate in the said order as to the next course of action, viz., as to which authority he has to approach and so on, and these particulars are necessary not only to see that the Election Code of Conduct is properly implemented, but also to make sure that it will not have adverse effect on the innocent and genuine persons.

6. On the facts of the present case, since it is stated that the amount has been taken over by the Deputy Director of Income Tax (Inv), Unit-IV(2), Chennai - 600 034, the writ petition stands disposed of with a direction against the petitioner to approach the Deputy Director of Income Tax (Inv), Unit-IV(2), Chennai - 600 034 with all necessary records and the Deputy Director of Income Tax (Inv), Unit-IV(2), Chennai 600 034, on being satisfied about the records produced by the petitioner, shall pass appropriate orders within one week from the date when the petitioner approaches him with a copy of this order. No costs. Consequently, M.P.No.1 of 2011 is closed."

12. Taking into consideration all these facts, we do not find any merit in this writ petition, which is accordingly closed."

At the risk of repetition, it is worthwhile to extract the cases, considered in the Suo Motu Public Interest Litigation (cited supra),

"5. ...The first Constitutional Bench judgment is in the case of N.P.Ponnuswami Vs. Returning Officer, Namakkal Constituency, Namakkal, AIR 1952 SC 64. In that case the nomination paper of a candidate for the Madras Legislative Assembly from Namakkal Constituency was rejected by the Returning Officer after scrutiny. The said rejection order was challenged by way writ petition under Article 226 of the Constitution. The High Court dismissed the writ petition on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of the provisions contained under Article 329(b) of the Constitution. In the SLP filed by the candidate it was argued that the jurisdiction of the High Court is not affected by Article 329(b)of the Constitution. It was argued that the word election as used in Article 329 (b) means what is normally and etymologically means the result of polling for the final selection of the candidate. Hence, the action of the Returning Officer in returning the nomination paper can be questioned before the High Court under Article 226 of the

Constitution. Negativing the argument the Constitutional Bench firstly held:-

"7. These arguments appear at first sight to be quite impressive, but in my opinion there are weightier and basically more important arguments in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word election in Article 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In Srinivasalu v. Kuppuswami,(1928) AIR Mad 253 at 255, the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term election may be taken to embrace the whole procedure whereby an elected member is returned, whether or not it be found necessary to take a poll. With this view, my brother, Mahajan, J. expressed his agreement in Sat Narain v. Hanuman Prasad, (1945) AIR Lah.85; and I also find myself in agreement with it. It seems to me that the word election has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression conduct of elections in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(b). That the word election bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury Laws of England in the following passage (page 237 of Halsburys Laws of England, 2nd Edn. Vol.12) under the heading Commencement of the Election :

Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is reasonably imminent. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when the conduct and management of an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case.

The discussion in this passage makes it clear that the word election can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

In paragraph 18 of the judgement the Constitutional Bench came to the following conclusions:-

"18. The conclusions which I have arrived at may be summed up briefly as follows:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the election; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the election and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.

6. In another Constitutional Bench Judgment in Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi, (1978) 1 SCC 405 the law laid

down by the Supreme Court, which is summarized in paragraph 92 of the judgment, is quoted herein below:-

92. Diffusion, even more elaborate discussion, tends to blur the precision of the conclusion in a judgment and so it is meet that we synopsize the formulations. Of course, the condensed statement we make is for convenience, not for exclusion of the relevance or attenuation of the binding impact of the detailed argumentation. For this limited purpose, we set down our holdings:

(1)(a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

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

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

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice insofar as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order viz. elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunals adjudication.

(3) The conspectus of provisions bearing on the

subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidate if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other thing necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law.

7. In the case of Election Commission of India Vs. Shivaji and Others, (1988) 1 SCC 277 the Supreme Court followed the earlier view while interpreting Article 329 of the Constitution and held as under:-

"6. The disputes regarding the elections have to be settled in accordance with the provisions contained in Part VI of the Act. Section 80 of the Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. The expression election is defined by Section 2(d) of the Act as an election to fill a seat or seats in either House of Parliament or in the House or either House of the legislature of a State other than the State of Jammu and Kashmir. Thus a dispute regarding election to the Legislative Council of a State can be raised only under the provisions contained in Part VI of the Act. Section 80-A of the Act provides that the court having jurisdiction to try an election petition shall be the High Court. An election petition has to be presented in accordance with Section 81 of the Act. In view of the non obstante clause contained in Article 329 of the Constitution the power of the High Court to entertain a petition questioning an election on whatever grounds under Article 226 of the Constitution is taken away. The word election has by long usage in connection with the process of selection of proper representatives in democratic institutions acquired both a wide and a narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part

XV of the Constitution in which Article 329(b) occurs. In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64 this Court held that the scheme of Part XV of the Constitution and the Act seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being any dispute relating to the pre-polling stage. In the above decision this Court ruled that having regard to the important functions which the legislatures have to perform in democratic countries, it had always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections were over so that the election proceedings might not be unduly retarded or protracted. Hence even if there was any ground relating to the non-compliance with the provisions of the Act and the Constitution on which the validity of any election process could be questioned, the person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with Section 81 of the Act calling in question the election of the successful candidate within forty-five days from the date of election of the returned candidate but not earlier than the date of election. This view has been reaffirmed by this Court in Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman, (1985) 4 SCC 689 and in Inderjit Barua v. Election Commission of India, AIR 1984 SC 1911. Realising the effect of Article 329 (b) of the Constitution the High Court even though it had by oversight issued an interim order in Writ Petition No. 1459 of 1987 on 26-9-1987 postponing the last date for withdrawal of candidatures to 1-10-1987 dismissed the petition by its judgment dated 1-10-1987. The relevant part of its judgments reads as follows:

"The challenge must fail mainly on two grounds. First on the ground that the stage has reached of withdrawals of nominations for the said election which was in fact, fixed on 30th but has been postponed because of our orders as on today. Article 329(b) bars every challenge to any election including all the election process which commences from the date of notification in the Official Gazette, except by way of election petition under the Representation of the People Act. Mr.Chapalgaonkar, appearing for the respondent has relied upon a decision reported in Inderjit Barua v. Election Commission of India, AIR 1984 SC 1911 to support this plea that all election including every election process must be challenged only by way of election petition under the Representation of the People Act.

Having thus dismissed the petition on 1-10-1987 the court committed a serious error in entertaining a review petition in the very same writ petition on 16-10-1987 and passing an order staying election which had been earlier fixed for 18-10-1987 till further orders looking to the mandatory provisions of Section 30 of the Representation of the People Act. The High Court failed to recall to its mind that it was not its concern under Article 226 of the Constitution to rectify any error even if there was an error committed in the process of election at any stage prior to the declaration of the result of the election notwithstanding the fact that the error in question related to a mandatory provision of the statute relating to the conduct of the election. If there was any such error committed in the course of the election process the Election Commission had the authority to set it right by virtue of power vested in it under Article 324 of the Constitution as decided in Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405 and to see that the election process was completed in a fair manner.

8. The Constitution Bench decision rendered in N.P.Ponnuswamis case (AIR 1952 SC 64) was considered by the Supreme Court in the case of Election Commission of India Vs Ashok Kumar reported in 2000 (8) SCC 216. Their Lordships considered the jurisdiction of the High Court to entertain petitions under Article 226 of the Constitution of India to issue interim direction after commencement of electoral process. After taking into consideration of the decisions of the Constitution Bench in N.P.Ponnuswami vs. Returning Officer, Namkkal Constituency, AIR 1952 SC 64 and Mohinder Singh Gill v. Chief Election Commissioner, 1978 (1) SCC 405, the Supreme Court held as hereunder:-

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

9. Further, their Lordships, considering the facts of the case in Election Commission of India vs. Ashok Kumar (supra), wherein the ground alleged was malafide exercise of power, held as follows: -

".....Such a dispute could have been raised before and decided by the High Court if the dual test was satisfied:

(i) the order sought from the Court did not have the effect of retarding, interrupting, protracting or stalling the counting of votes and the declaration of the results as only that much part of the election proceedings had remained to be completed at that stage,

(ii) a clear case of mala fides on the part of Election Commission inviting intervention of the Court was made out, that being the only ground taken in the petition."

37. In K.Manivannan v. Election Commission of India reported in 2011 (3) CTC 785, the prayer and facts in W.P.No.6936 of 2011, are extracted hereunder:-

"In this writ petition, styled as a public interest litigation, the petitioner has prayed for the issue of Writ of Mandamus forbearing the respondents 2 to 59 from in any manner preventing or obstructing free movement or causing inconvenience to the travelling public in Light Motor Vehicles and in transport Corporation buses, and to the persons operating public carrier goods vehicles for carrying essential and basic articles, through various important Highways roads situated in the State of Tamil Nadu and by adopting illegal and arbitrary methods of search and seizure of their properties like cash, agricultural products, textiles, and other basic public utility items etc.

....

4. The petitioner's case is that the Election Commission of India, New Delhi has issued instructions dated 7.2.2011 bearing No.76/Instructions/2011/EEm to the first respondent with reference to Election Expenditure Monitoring in Annexure Part I and Part II. Clause 3 speaks about Election Expenditure Monitoring Mechanism. The above clause also refers to appointment of Expenditure Observers, Assistant Expenditure Observers, Video Surveillance Team, etc., to monitor the Election Expenditure incurred by the candidate during the course of election. Clause 3.1.8 indicates of deploying flying squad for tracking illegal cash transaction or distribution of liquor or bribing the voters. Clause 3.1.19 indicates that there will be one

or two surveillance team with three or four police personnel and one Magistrate in each team for manning the check post. According to the petitioner, the above clauses indicate that every endeavour should be made for tracking the complaints mentioned in the clauses.

5. The petitioner's further case is that based on the instructions issued by the Election Commission of India, respondents 4 to 31 have appointed respondents 32 to 59 as Nodal Officers of Flying Squad and Static Surveillance Teams in all the Districts in Tamil Nadu. But, significantly, neither the Instruction No.76, nor the orders of the District Collector appointing the Nodal Officers for the Flying Squad authorize them to detain the travelling public carrying cash for their personal/business purpose in Light Motor Vehicles or in any transport methods. According to the petitioner, they have also not been given any authority to intercept and harass the travelling public using the highways under the pretext of acting as per the instruction of the first respondent to seize the cash components from the travelling public. It is alleged that the respondents have thoroughly misconstrued the instruction of the Election Commission of India and are acting in an arbitrary manner by seizing the cash from the travelling public. It is common knowledge that the business man travelling in cars and other vehicles used to carry cash from one place to another across Tamil Nadu. Some times it is also meant for the patients who undergo surgery in Super Specialty Hospitals. As long as the travelling public carries legal valid currency, the respondents cannot arbitrarily seize the same. The newspaper reports and clippings shown in various Television Channels reveal that the respondents have been treating all the amounts carried on by the travelling public as if the same is meant for the Election Expenditure, and the adamant attitude of the respondents in not accepting the oral explanation of the travelling public. It is further alleged that the pubic at large who wanted to go for purchase clothes from leading textile shown situated in near by towns and also jewels to perform marriages are now put to severe hardship by the action of the respondents 4 to 59. Moreover, respondents 32 to 59 are filing cases for the sake of publicity in the media against the travelling public as if huge amounts, which are meant for election, have been seized. According to the petitioner, respondents 4 to 59 can act only in terms of the letter no.76 and there is nothing to indicate that power has conferred on them to conduct searches and seizure in the highways

in the State of Tamil Nadu. Since right of movement is a fundamental right of the citizen, and equally when those citizens carry money depending upon their requirement, the respondents 4 to 59 have no right to interdict or prevent free movement of the public.

6. The petitioner therefore contended that the attitude of the respondents 2 to 59 in harassing and causing inconvenience to the general public needs to be condemned. The instruction issued is meant to monitor the expenses and other illegal acts perpetrated by the candidates contesting the election. The respondents contrary to the well settled principles of Criminal Jurisprudence wantoned the innocent travelling public and other public carrying essential materials to prove otherwise. Even in the instructions given in Letter No.76, Election Commission has asked the Income Tax Department to take necessary action with regard to large scale cash movement, cash-gift distribution and influencing the voters by any political parties/entities/individual. When the Income Tax Department has been assigned the task, it is highly deplorable on the part of the respondents to cause inconvenience to the travelling public and other essential goods public carriers. Because of the act of the respondents, the public carriers and the public apprehend to carry goods or cash to purchase items from the nearby towns. The petitioner has, therefore, stated that the action of the respondents (Flying Squad) in preventing the travelling public is an unreasonable restriction imposed on the public and the public at large is put to great inconvenience and hardship due to the arbitrary action of the search and seizure made under the guise of Election Commission of India instructions."

Prayer and facts in W.P.No.7736 of 2011, are extracted hereunder:-

"10. This writ petition, styled as public interest litigation, has been filed directing the respondents to forbear from conducting search or seizure in the dwelling house, office or other premises used by the petitioner and other candidates for election purpose without the authority of law in derogation of Articles 14, 19 & 21 of the Constitution."

....

"11. The petitioner's case is that he has been nominated as a candidate by one of the political party for contesting the Legislative Assembly Election to be held on 13th April, 2011. He has been forced to file this Public Interest Litigation to restrain the respondents from taking indiscriminate and arbitrary action invading and infringing the fundamental rights guaranteed under the Constitution of India. The respondents on 22.03.2011 without prior intimation barged into my house and started searching the house on the information that free dhotis and sarees meant for distribution are lying in the petitioner's house. The search went for over an hour and finally the respondents informed that nothing as alleged was found in the house. During the search, videographers were also present. The incident was reported in the newspaper and was also telecasted in Jaya T.V. According to the petitioner, the respondents in order to harm his reputation not only in the society, but also amongst the voters, had carried such search.

12. It is the case of the petitioner that the video taken during the search somehow found its way to Jaya T.V channel and it is not known how the channel came in possession of the same, which the Election Commission is duty bound to explain. The petitioner's case that he being a sitting MLA and Minister for Fisheries is aware of the constitutional duty cast upon him and the necessity to have free and fair election. The respondents, without application of mind, have conducted search in his residence, which is a clear violation of Right of Privacy and right to live with dignity.

13. The petitioner states that his father is running a Welfare Society, which is situate opposite to his residence and the name board of the Society contains paintings of the Chief Minister of Tamil Nadu and the Deputy Chief Minister. The officials of the Flying Squad, who raided the house namely, Meshwaran and Ramamurthy, directed the petitioner to cover the name board, which is totally uncalled for and offends Article 19(1)(a) of the Constitution of India. Hence, the action of the Election Commission in conducting indiscriminate search and seizure without verifying the authenticity of the complaint amounts to arbitrary and capricious power of offending Article 14 of the Constitution of India. The videograph taken during the course of search, in the absence of any media, found its way to Jaya T.V channel which telecasted the same for which the Election Commission is liable to pay damages. The petitioner therefore seeks interim direction to the respondents to pay a sum of Rs.5 crores by way of damages for the loss of reputation suffered by him in view of the unfounded and unauthorized search in the dwelling house of the petitioner on 22.03.2011 by the Flying Squad Officials

of the first respondent."

W.P.No.7736 of 2011, deals with search and seizure, in the dwelling house, office or other premises used by the petitioner therein and other candidates, in W.P.No.8103 of 2011, petitioner therein has contended that,

> "14. In this writ petition, the petitioner has sought for issue of mandamus directing the respondents to forbear from conducting search or seizure in the office or any other premises of the petitioner without the authority of law or in derogation of Articles 14, 19 & 21 of the Constitution of India."

In W.P.No.8034 of 2011, a practising Advocate has sought for a Mandamus, directing the respondents therein, to put adequate number of check posts on major roads or arterial roads in Tamil Nadu for the purpose of checking and search of vehicles and persons by the Static Surveillance Team and the Flying Squads of respondents 1 and 2 in compliance with the Instructions on Expenditure Monitoring in Elections, more specifically paragraphs 4.6.1, 4.6.2, and 4.7.1 thereof issued by respondent no.1, and act strictly according to those instructions with a view to ensuring free and fair general election to the Legislative Assembly of Tamil Nadu, 2011. Case of the petitioner therein, in W.P.No.8034 of 2011, is extracted hereunder:-

> "7. In W.P. No.8034 of 2011, the petitioner, who is a practising advocate, has stated inter alia that notification regarding the General Elections was issued by the Election Commission of India on 19.03.2011. The Static Surveillance Team should keep a watch on large quantities of cash, illegal liquor, any suspicious item or arms being carried in the area. For this purpose, checking and search of vehicles and persons can be carried out by a team by putting check posts on major roads or arterial roads right from the date of notification. But, according to the petitioner, the respondents 1 and 2 have not so far put adequate number of check posts on major roads or arterial roads in the State of Tamil Nadu. The instructions issued are clear that if unexplained cash without proper documents are found in the possession of any person and is suspected to be used for bribing the voters, the same shall be seized and action be taken under the relevant provisions of the law.
>
> 8. According to the petitioner, the Flying Squad, as stated in paragraph 4.6.1 and 4.6.2 of the instructions will start functioning from the date of notification of election till the completion of poll. The District Educational Officer and the Superintendent of Police of the District will ensure that the teams are constituted and trained before the

notification of the election. The petitioner reliably learnt that there are no adequate number of Flying Squads in Tamil Nadu with a view to keep watch on all the constituencies including the sensitive constituencies. Whenever a complaint is received, the Flying Squad are required to reach the spot immediately and are required to gather necessary evidence and seize the items of bribe, gather evidence and record statement of witnesses and persons and to send a report immediately to the Returning Officer with a copy to the Superintendent of Police and the Assistant Expenditure Observer. Unfortunately, according to the petitioner, even after the issuance of the notification regarding the general election, respondents 1and 2 have not taken adequate measures to comply with the instructions in letter and spirit.

9. The petitioner, therefore, contended that even assuming there is inconvenience by Flying Squad such inconvenience can never be characterized to be interference with the personal liberty or freedom of a citizen. It is the contention of the petitioner that when searches promote public interest, inconvenience or discomfort to the persons, who are searched cannot be allowed to prevail over public interest in a democracy. According to the petitioner, such inconvenience should be tolerated by the responsible citizen in a democracy, as it is only a temporary phenomenon. The petitioner contends that respondents 1 and 2 should bear in mind the observations of the Supreme Court in Rajendran Chingaravelu's case (2010) 1 SCC 457 to act in accordance with the instructions contained in paragraphs 4.6.1, 4.6.2 and 4.7.2, failure of which would amount to failure of their constitutional duty under Article 324 of the Constitution of India."

In Manivannan's case (cited supra), a common counter affidavit has been filed by the Election Commission of India, and summarised thus:-

"16. The Election Commission of India has filed common counter affidavit contending inter alia that Article 324(1) of the Constitution provides for the superintendence, direction and control of the preparation of the electoral rolls, and the conduct of all elections to the Parliament and to the legislature of every State and of elections to the offices of President and Vice President held under the Constitution shall be vested in the Commission known as the Election Commission. The use of the words 'superintendence', 'direction' and 'control' would establish that the powers of the Commission with respect to the matters relating to elections are wide and absolute. Further the word 'Election' as referred to in the said Article covers all the steps for the conduct of elections.

17. It is stated by the respondents that the Constitution makers designedly made the Election Commission of India, an independent commission insulated from the legislature and executive. Therefore, in view of the scheme of the Constitution itself, the powers of the Commission cannot be exercised subservient to the Union Government or the State Government, and are comprehensive enough to take independent decisions without reference to the Union or State Government. The said powers include the power to fix the schedule of elections. In this connection, the respondent quoted para.91 in the case of Special Reference No.1 of 2002 reported in AIR 2003 SC 87.

18. It is stated by the respondent that to ensure complete control over the staff involved in election work, the Parliament enacted Section 13CC of the Representation of People Act, 1950 and Section 28-A of the Representation of People Act, 1951. Section 13CC of the Representation of People Act, 1950 provides that officers and staff employed in connection with the preparation, revision and correction of the electoral rolls and for the conduct of the elections and such officers and staff shall be during that period be subject to the control, superintendence and discipline of the Election Commission. Section 28-A of the Representation of People Act, 1951 provides that the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer appointed under that part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification for such election and ending with the date of declaration of the results of such election.

19. It is submitted by the respondent that the State Government had issued G.O.Ms.No.174 dated 07.03.2011 published on 19.03.2011 designating the entire police force, from Director General of Police to Constables for the conduct of the elections. Therefore, according to the respondent, it is within the Election Commission's discretion to use a particular officer and not to use a particular officer for the purpose of election and the same cannot be questioned by any authority.

20. As regards Section 77(1) of the Representation

of People Act, 1951, it is submitted by the respondent that it is mandatory for every candidate to maintain account of expenditure incurred during elections. Further, the same should be below the ceiling limit prescribed under Rule 86 of the Conduct of Election Rules, 1961. The Election Commission has prescribed a detailed guideline named "Instructions on Expenditure Monitoring in Elections" to achieve the objectives. The Commission has also issued standard operating procedure for dealing with unaccounted cash and other valuables through instructions dated 17.03.2011. Under these instructions, the teams which find unaccounted cash and other items have to first determine the criminality of the event. It is mentioned therein, that in case such a criminal linkage is found and the cash exceeds Rs.1,00,000/- the flying squads - static team shall effect seizure and deposit the cash in the treasury. It is also mentioned that if cash is being carried with proper documents or if it is for any emergency purpose, then no seizure shall take place and the same shall be returned to the owner. It is also instructed that the whole operation should be video graphed and the flying squad shall ensure all politeness, decency and courtesy. It is also mentioned that if no criminality is suspected in case of huge movement of cash, then Income Tax Department shall be informed for examining the case under Income Tax law.

21. It is submitted by the respondent that it is the duty of the Election Commission of India to prevent distribution of money to the public and the Commission should take all steps to prevent distribution of money. The power to issue guidelines named 'Instructions on Expenditure Monitoring in Elections' is directly traceable to Article 324 of the Constitution of India. The respondent submitted that the Supreme Court in the case reported in 2010 (1) SCC 457 has upheld search, though it may cause inconvenience. The elections being a very important event for the State, it is the duty of the Election Commission to see that proper law and order is maintained to ensure free and fair elections and also to see that money power does not affect the operation of democracy.

22. Countering the contentions made in W.P.No.6936 of 2011, it is submitted by the respondent that the said writ petition is not bona fide and the petitioner has no locus standi to question the action of the Election Commission. It is not the case of the petitioner in the above petition that he has been subjected to unnecessary harassment, and according to

the respondent, such wild allegations are not to be entertained.

23. Controverting the submission made in W.P.No.7736 of 2011, the respondent-Election Commission of India stated inter alia that the writ petition cannot be taken as a public interest litigation, since the petitioner is questioning the alleged search made in his house. According to the respondent, since the Returning Officer of the constituency received information that dhotis and saris are being distributed outside the house of the petitioner the Flying Squad attached to the constituency went to the spot and found lot of crowd outside the house of the petitioner. The squad was informed by the crowd that they are waiting to see the Minister. At that point of time, they were invited into the house, and they entered the first room where people were there, and the petitioner informed that he is not distributing anything and the Flying Squad did not go beyond the first room. The video footage also confirms the same. The Flying Squad head has also informed that he has not given any video recording to any political party or newspaper or T.V. channel.

24. According to the respondent, the footage of the said private channel is entirely different and not the same as the video taken by the election officials. As a matter of fact, under the revised guidelines dated 17.03.2011, any person can get the copies of the video by paying Rs.300/- to the Returning Officer. However, in the present case, the CD has not been obtained by any one. It is submitted by the respondent that it is the duty of the respondent to inspect or search any premises, if they have information, and the same cannot be questioned.

25. The respondent-State through its Chief Secretary, has filed a separate counter affidavit stating inter alia that the Government of Tamil Nadu would continue to provide necessary administrative support to the Election Commission for the conduct of free and fair election to the State Assembly. As per the various mandates contained in the Constitution of India and Representation of People Act, the State Government has made available its entire official machinery at the disposal and use of the Election Commission.

26. The submission of the respondent State is that though the Election Commission undoubtedly has powers over all the officials placed at its disposal, any order which is being passed unilaterally and without putting the officer on prior notice, should not be

construed as attributing bias on such officer nor should such a transfer order be a reflection on the integrity or efficiency of such officer. According to the respondent, in the instant case transfers have been effected starting with the Director General of Police (Law & Order), who has been selected following the Hon'ble Supreme Court directives and her appointment has also been recorded by the Division Bench of this Court as being done in complete compliance of the directive of the Supreme Court. The incumbent officer with a view to avoiding any friction between the Government and the Election Commission offered to go on leave. According to the respondent, this had considerable impact on the morale of the police force and such orders of the Election Commission could have been passed after a consultative process. The respondent submits that this unilateral order of the Election Commission based on their 'perception' about the individual officers should never form part of the service record of the officer nor should it be, in any manner, a disqualification from future service of such officers in the conduct of elections. According to the respondent, the advantage in the consultative process is that the Election Commission would have the benefit of the Government's views regarding the officers to be replaced or who will be the replacement. It is further stated by the respondent State that as regards search and seizure effected on the vehicles and the persons, it is the stand of the Government that such search and seizure should not be done in a manner which might affect the common man. The guidelines framed by the Commission is put into force, then the bonafide travelers carrying cash or valuables for their personal use are not subjected to any harassment."

In W.P.No.6936 of 2011, impleaded party has averred as hereunder:-

"28. It is the case of the petitioner-respondent that based on various reports received about large scale electoral malpractices, bribing, threats and inducements witnessed and widely reported in the media during the earlier bye-election in Thirumangalam, Pennagaram, etc., the Election Commission have taken several measures like frisking, mobile squads, Toll free call centres, Expenditure Monitoring Committees, Shadow Registers, Check posts to monitor carrying large amount of unaccounted cash, liquor and freebies at Highways, entrance points to constituencies, Railway Stations, Airports, etc. The present situation in Tamil Nadu, which is reported in the media, shows large scale violation of the model code of conduct. There are reports of allegations of distribution of money and freebies, threatening of the Flying Squads by certain political parties, hiding the dhotis and sarees in the farmhouses for distribution and distribution of bribe money under the garb of MGNREGS in certain constituencies, etc.

29. It is the further case of the petitioner that the Chief Election Officer has reported that almost 40,000 cases have been so far filed in Tamil Nadu, which show the enormity of the situation, wherein extraordinary measures needs to be taken. Therefore, the Election Commission, taking note of the serious situation, for the purpose of ensuring free and fair elections has decided to implement the rules vigorously, which effort by the Election Commission must be strengthened by implementation of the rules by all the law enforcing agencies.

30. It is further stated that for curbing the large scale crimes, extraordinary security measures are required to be put in place like that of frisking the passengers at the Airports for checking. It is not possible for the security personnel to be selective to arrive at a subjective satisfaction for conducting any search nor would it be reasonable to expect them to record reasons for arriving at such subjective satisfaction. Such control measures are within the ambit of law and cannot be termed excessive in the general sense. If there are particular instances of use of excessive power, it is always open to a citizen to challenge the same in a manner known to law. Generalized observations and unidentified sense of inconvenience cannot be the cause for imposing a total ban over the superintendence, monitoring and control of the election process by the Election Commission.

31. It is further stated that the petitioner denies the averments shown in the writ petition that it is quite common for public using the Highways to carry large sums of money on them. It is submitted by the petitioner that with the advent of credit cards and ATM's, the necessity of the public carrying large amounts of money practically ceased to exist. Further, Reserve Bank of India also frowns at such attitude and practice on the part of the public. It would be evident from the newspaper reports that it is only those persons, who carry large amount of money on them in cash have been subjected to action by the respondents. Lastly it is contended that this Court has on 23rd March, 2011, passed order directing the

Election Commission not to conduct any search and seizure without the authority arriving at subjective satisfaction. In case of reliable information, the authority shall arrive at a subjective satisfaction as shown in its order and effect search and seizure only after recording reasons. It is submitted that such directions will only make it extremely difficult for the respondent authorities to check electoral malpractices in a manner known to law. Unless the Election Commission is able to exercise its powers in a manner known to law, free and fair elections would become impossibility. If the order passed by the High Court restraining the Election Commission from search and seizure, it would seriously deter the Election Commission of India and its officers from discharging their constitutionally ordained duties."

After considering the above rival submissions, a Hon'ble Division Bench of this Court, vide common order in W.P.Nos.8103, 8034, 6939 and 7736 of 2011, dated 01.04.2011, between K.Manivannan vs. Election Commission of India, New Delhi, reported in 2011 (3) CTC 785, held thus:-

"33. The petitioner of W.P. No.6936/2011 claims to be a teacher, who, although not an affected person, but has taken the cause of the general public. However, it is a matter of great surprise that nothing has been said in the writ petition, which has been styled as public interest litigation that how the general public have been put to inconvenience and hardship due to the raid and seizure conducted by the officers of the Election Commission. The uncontroverted facts are that the officers of the Commission have seized huge amounts of cash and other articles carried by different persons in their vehicles. Curiously enough, not a single affected person, from whose possession cash or other articles have been seized while carrying the same in the vehicles or other mode of transportation, have come forward to challenge the action of the Election Commission.

34. There is no dispute that the Representation of People Act, 1951 (in short 'Act, 1951') cast a mandate on every candidate to maintain the account of expenditure incurred during the election. The Election Commission has prescribed a detailed guideline called 'Instructions on Expenditure Monitoring in Elections'. By instruction dated 17th March, 2011, issued by the Election Commission, standard operating procedure for dealing with unaccounted and other valuables have been prescribed. According to the instructions, if cash is being

carried with proper documents or if it is for any other purpose and the person carrying those valuables satisfy the officers conducting the search and seizure, then those valuables shall be returned to the owner forthwith. It is well settled law that the duty of the Election Commission, inter alia, is to prevent distribution of money to the public and Commission should take all steps to curb those activities. The election being a very important event for the State, the Election Commission has to maintain law and order to ensure free and fair election and also curb the malpractices.

35. The Supreme Court in number of decisions held that the powers of the Election Commission under Article 324 includes all other incidental powers, which are not specifically provided in additional to superintendence, direction and control in conducting the elections. If before the search and seizure, the authorities of the Election Commission is directed to arrive at a subjective satisfaction and record reasons, then the very purpose of search and seizure will be frustrated and it will amount to curbing the powers of the Election Commission conferred by the Constitution and the Representation of People Act."

38. On the aspect of seizure, a Hon'ble Division Bench of this Court, in K.Manivannan's case, reported in 2011 (3) CTC 785,, has categorically held that, if before the search and seizure, the authorities of the Election Commission is directed to arrive at a subjective satisfaction and record reasons, then the very purpose of search and seizure will be frustrated and it will amount to curbing the powers of the Election Commission conferred by the Constitution and the Representation of People Act.

39. In Patty B.Jeganathan vs. The Chief Election Commissioner and others, reported in 2011 3 L.W.272, a public interest litigation was filed to declare the Institutions of the Chief Election Commissioner (1st Respondent), in Letter No.76/2011, as ultra vires and to forbear the respondents 1 to 3 therein, from implementing Instruction No.4.6.1 to 4.7.5 issued by the Chief Election Commissioner, The Election Commission of India, New Delhi, the 1st respondent therein, in the said letter regarding Expenditure Monitoring in Elections, Flying Squads, Static Surveillance Team, Nodal Officer at Police Headquarters, etc. Instructions issued by the Election Commission of India, are extracted:-

4.6.1. Flying Squads:

This team will start functioning from the date of notification of election till the completion of poll.

In Expenditure Sensitive constituencies there may be more than one such teams, depending on the requirement. They will not be given any other work during this period. The DEO and the SP of the district will ensure that the teams are constituted and trained before the notification of the election. The names and mobile numbers of the officers and the Magistrate as head of the team are provided to the Complaint Centre, Assistant Expenditure Observer and Expenditure Observer and also published in local Media. In Expenditure Sensitive constituencies, a section of CPF and one Central Government or Central PSU employee of the district may be deployed, depending on the situation and the DEO will take necessary steps in this regard. The DEO will constitute the flying squads with officers of proven integrity and ensure that they are not engaged in any function other than the job assigned to them.

4.6.2. Whenever a complaint regarding distribution of cash or liquor or any other item is received, the flying squads shall reach the spot immediately. The squad will gather necessary evidence, seize the items of bribe, gather evidences and record statement of the witnesses and persons. The team will send a report immediately to the R.O. with a copy to the S.P. and the Assistant Expenditure Observer (Annexure-8). The entire proceeding shall be video recorded.

4.7.1. Static Surveillance Team:

This team will keep a watch on large quantities of cash, illegal liquor, any suspicious item or arms being carried in their area. For this purpose checking and search of vehicles and persons can be carried out by the surveillance team by putting check posts on major roads or arterial roads, right from the date of the notification. If unexplained cash without proper documents is found in the possession of any persona and is suspected to be used for bribing the voters, it shall be seized and action taken under the relevant provisions of the law. The whole event of checking and seizure is to be videographed by a video team, which will submit the copy of the video CD to the Assistant Expenditure Observer. The placements of these check posts is to be worked out in consultation with Assistant Expenditure Observer.

4.7.2. If the Expenditure Observer feels the necessity of more such teams, then the DEO will provide the man power for all such teams with logistics. One week before the day of poll, the surveillance activity shall be strengthened effectively and more number of teams shall be formed, depending on the requirements. The daily activity report is to be submitted. (Annexure - 9).

4.7.3. F.I.R. must be lodged immediately against the persons from whom any seizure is made. The cash seized, if any, should be deposited in the State Treasury within 24 hours. The Nodal Officer at Police Head Quarters will follow up the cases after seizure and send report to the Commission with copy to the CEO after the election, on the status of the cases in the Court.

4.7.4. The DEOs will publish an appeal to the public and political parties in Media immediately after the announcement of election, requesting them not to carry huge amount of cash during elections. If anybody has to carry huge cash during election in any constituency for any emergency purpose, he must carry proper documents to explain the source and end use of such cash. A sample appeal letter is enclosed at Annexure 10.

4.7.5. Nodal Officer at Police Headquarters:

One officer of the level of Inspector General at the Police Head Quarters of the State will be notified as the Nodal Officer for co-ordination with all law enforcement agencies and with the Commission. His office telephone number and mobile number will be intimated to the Expenditure Observer, Investigation Directorate, Excise Department and other law enforcement agencies during election. The seizure reports by the flying squads of the district will be complied by the SP and faxed to the Nodal Officer at Police Head Quarter within 24 hours. The Nodal Officer will compile the information for the State and send Daily Report to the Commission with copy to the CEO."

Contentions opposing the instructions and seizure, are extracted:-

"5. Mr.N.Jothi, learned counsel appearing for the petitioner in both the writ petitions made elaborate submissions and we gave patient hearing to him. Learned counsel submitted that under the guise of implementing electoral restrictions, the trading activities of tradesmen and the normal pursuit of life by the citizens of Tamil Nadu are brought under the control of the Election Commission of India, as if emergency has been proclaimed in the State of Tamil Nadu. It is contended that by the implementation of the impugned instructions the fundamental rights as contained in Articles 19(1)(d) and 19(1)(g) have been taken away. According to the learned counsel the instructions 4.6.1. to 4.7.5 are in the nature of curtailment of business and trading activities within the territory of Tamil Nadu and the same are contrary to the established law made by the Parliament or the State Legislature. It is contended that without any rhyme or reason the flying squads of respondents 1 and 2 with the assistance of the 3rd respondent are intercepting vehicles on public roads, entering into houses even after sun set and at odd hours and seizing money, materials, goods, trading goods, etc. without following or observing the established procedures. Learned counsel submitted that search and seizure can be conducted only in the manner as contained in Sections 99 to 105 of the Code of Criminal Procedure. Learned counsel submitted that the people of Tamil Nadu are entitled to lead their normal life with respect to their day to day activity of procurement of material, indulge in manufacturing process, transport of finished and unfinished goods, movement of goods, purchase of articles, sale of articles, transaction of money for their commercial activity, etc. Learned counsel submitted that the impugned instructions have been blindly issued by the respondents without any guidelines nor there is any practical approach in these instructions. Learned counsel further referred to Instruction No.4.7.3. and submitted that as per this instruction F.I.R. must be lodged immediately against the persons from whom any seizure is made. Learned counsel submitted that F.I.R. can be lodged only when a commission of a cognizable offence is made out. According to the learned counsel mere possession of money or goods in trade FIR cannot be lodged and carrying goods of merchandise is not a cognizable offence. Hence, the said instruction is only illegal and unconstitutional. Learned counsel further submitted that the dictating terms of instructions is nothing but a mockery of exercise of power by the Election Commission of India. Lastly, the learned counsel submitted that there is no acceptable manner of procedure contemplated to ascertain the purpose of the seizure or for its return. The instructions contained in the letter dated 07.02.11, is therefore, particularly Instruction Nos.4.6.1 to 4.7.5, are ultra vires to constitution and the respondents must be restrained from implementing these instructions."

Response of the Election Commission of India:-

"6. Mr.G.Rajagopal, learned Senior Counsel appearing for the respondents 1 and 2 referring to the common counter affidavit filed submitted that the petitioner's contention that the freedom of trade and movement of citizens are affected in the State of Tamil Nadu on account of measures taken by the

Election Commission of India is not correct. The learned Senior Counsel further submitted that no citizen can claim any right to carry unaccounted cash or other movables without supporting documents. Learned Senior Counsel submitted that the Election Commission of India is fully justified in issuing the impugned instructions dated 07.02.2011 as it is the constitutional duty of the Election Commission to conduct free and fair elections by preventing illegal distribution of cash and other articles to the voters, and to prevent the use of unaccounted money in the elections. Learned Senior Counsel submitted that the writ petitions cannot be entertained on general allegations, and if any individual citizen is aggrieved by the action of the Election Commission, he can agitate the same by specifically pointing out the violation. He further submitted that the search and seizures are carried out pursuant to the Election Commission's power under Article 324 of the Constitution of India. He submitted that the writ petitions are filed on certain assumption without furnishing any material particulars. Lastly, he submitted that the entire issue has been covered by the judgment of this Court dated 01.04.2011 passed in W.P.Nos.6936 of 2011 and 7736 of 2011, and therefore, no relief can be given in the present writ petitions."

After considering the rival submissions, at paragraph No.7 of the judgment, a Hon'ble Division Bench of this Court, discussed the powers of the Election Commission, as hereunder:-

"7. Before discussing the instructions under challenge, we must keep in mind the settled proposition of law that the general power of superintendence, direction, control and conduct of election is vested in the Election Commission under Article 324 of the Constitution of India. However, it is subject to any law either made by Parliament or State Legislature, as the case may be, provided it does not encroach upon the plenary power of the Commission under Article 324 in the area left unoccupied by the legislation. The words 'superintendence, control, direction as well conduct of all elections' are broadest terms. Article 324(1) of the Constitution confers residual power to the Commission relating to the electoral process and it empowers the commission to issue all directions necessary for the purpose of conducting smooth, free and fair elections and for this purpose Article 324(1) is to be construed liberally. Apart from the powers conferred by the Representation of Peoples Act and the Rules made thereunder, the Election Commission has ample power under Article 324(1) itself to make appropriate orders as to the conduct of election. Hence, the Election Commission has powers to issue directions in the process of conduct of elections 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 election of their representative candidates."

On the specific issue of seizure of gold, silver and unlicensed arms, a Hon'ble Division Bench of this Court, observed and ordered thus:-

"8. In the light of the aforesaid settled proposition of law, we shall now examine the instructions issued by the Election Commission, which is the subject matter of challenge in these writ petitions.

9. Instruction 4.6.1 speaks about the function and duties of the flying squad. According to this instruction, the flying squad will start functioning from the date of notification of election till the completion of poll. In sensitive constituencies, more than one flying squad team may be deployed and they shall not be given any other work during the election period. The flying squad shall be fully trained before the notification of the election. This instruction further provides that in expenditure sensitive constituencies, a section of CPF and one Central Government or Central PSU employee of the district may be deputed.

10. Instruction 4.6.2 speaks about the complaint regarding distribution of cash, liquor or any other item and the role of flying squad team. According to this instruction, if any information is received the team shall go to the spot immediately, and gather necessary evidence, seize the items and record the statements of the witnesses and persons. The team will send a report to the Returning Officer with a copy to the Superintendent of Police and the Assistant Expenditure Observer. The entire proceeding shall be video recorded.

11. Instruction 4.7.1 speaks about the Static Surveillance Team. According to this instruction, the team will keep a watch on large quantities of cash, illegal liquor, any suspicious item or arms being carried in their area and also carry out check in major or arterial roads right from the date of notification. If any person is found in possession of cash or other items without proper documents, the team

can seize the same and take action under the relevant provisions of law. The entire event must be videographed.

12. Instruction 4.7.2 states that if the Expenditure Observer feels the necessity of more teams, then the DEO shall provide the manpower and one week before the poll, the surveillance activity shall be strengthened effectively with adding of more number of teams, depending upon the requirements.

13. Instruction 4.7.3. speaks about the lodging of the FIR as soon as the seizure is made and the deposit of cash, if any, seized within 24 hours to the State Treasury. The Nodal Officer will follow up the cases after seizure and send the report to the Commission with copy to CEO after the election on the status of the cases in Court.

14. Instruction 4.7.4 states that DEOs shall publish appeal in media to the public and political parties not to carry huge amount of cash during elections. If anybody intends to carry, they can do so by carrying proper documents to explain the source and use of such cash.

15. Instruction 4.7.5 speaks about the Nodal Officer at Police Headquarters. According to this instruction, one officer at the level of Inspector General at the Police Headquarters of the State will be notified as Nodal Officer for co-ordination with enforcement agencies and with the Commission. His contact numbers shall be sent to the Expenditure Observer, Investigation Directorate, Excise Department and other law enforcement agencies during election. The seizure reports by the flying squad of each district will be complied by the respective Superintendents and will be faxed to the Nodal Officer within 24 hours, who in turn will compile the information for the State and send daily report to the Commission with a copy to the CEO.

16. From a bare perusal of the instructions, it does not appear that the power conferred to the Election Commission and its officers are arbitrary or against the constitutional guarantees provided to the citizens. The seizure of unaccounted cash or other movables or seizure of huge quantity of gold, silver and unlicensed arms by the Election Commission does not violate any of the fundamental rights, much less the rights guaranteed under Articles 19(1)(d) and 19 (1)(g) or Article 21 of the Constitution of India.

17. A similar question was raised in a batch of writ petitions viz., W.P.No.8103 of 2011 and other cases. This Court by its order dated 01.04.2011

disposed of the writ petitions and held as under:-

"34. There is no dispute that the Representation of People Act, 1951 (in short 'Act, 1951') cast a mandate on every candidate to maintain the account of expenditure incurred during the election. The Election Commission has prescribed a detailed guideline called "Instructions on Expenditure Monitoring in Elections". By instruction dated 17th March, 2011, issued by the Election Commission, standard operating procedure for dealing with unaccounted and other valuables have been prescribed. According to the instructions, if cash is being carried with proper documents or if it is for any other purpose and the person carrying those valuables satisfy the officers conducting the search and seizure, then those valuables shall be returned to the owner forthwith. It is well settled law that the duty of the Election Commission, inter alia, is to prevent distribution of money to the public and Commission should take all steps to curb those activities. The election being a very important event for the State, the Election Commission has to maintain law and order to ensure free and fair election and also curb the malpractices.

35..................

36. After giving our anxious consideration in the matter, we, therefore, dispose of these writ petitions with the following directions and observations:-

(1) To ensure free and fair elections to the Legislative Assembly in the State of Tamil Nadu to be held in April, 2011, the authorities of the Election Commission shall follow the instructions contained in "Expenditure Monitoring in Elections", and other guidelines issued time to time.

(2) The standard procedure for dealing in unaccounted cash and other valuables shall be followed, and in case some criminal linkage is found, the seizure shall be effected. However, it is made clear that if cash or other valuables is being carried with proper documents, then no seizure shall take place and the same shall be returned to the person concerned.

(3) The whole operation should be videographed and the flying squad shall ensure all politeness, decency and courtesy.

(4) But, in no case the distribution of money or other valuables to the public shall be permitted till the election is over.

(5) The Commission is also directed that for curbing large scale crimes, extra ordinary security measures should be taken till the election results are

announced, and the safety and security of the Flying Squads shall be taken care."

18. The activities of the Election Commission in making search and seizure in the name of implementing the Model Code of Conduct came up for consideration recently before a single Bench of this Court in W.P.No.7011 of 2011. In that case the petitioner challenged the seizure made by the respondents which amount was stated to have been carried for the purpose of making payment to the workers. The learned Judge disposed of the writ petition with certain directions. The relevant portion of the order is quoted hereinbelow:-

"4.3. According to him, the effect of the rules is being published in all newspapers, both Tamil and English, and also shown in various television channels, so as to enable the people to understand the implication and follow the same in such event of seizure. He would also submit that since the respondents were not satisfied about the reason assigned for carrying huge quantity of amount the same was recovered by them and thereafter, the Deputy Director of Income Tax(Inv), Unit-IV(2), Chennai - 600 034, by executing the warrant of authorization under Section 132A of the Income Tax Act, 1961 has taken over the amount from the second respondent. Therefore, according to him, if only the petitioner justifies the purpose for which the amount was carried, the Deputy Director of Income Tax(Inv), Unit-IV(2), Chennai - 600 034 would release the same.

5. Considering the above said facts and circumstances of the case, I am of the considered view that while it is the duty on the part of the respondents to see that the Election Code of Conduct is scrupulously followed, it must be ensured that under the guise of following the rules strictly, the innocent people should not be targeted and therefore, it is desirable that the Election Commission makes publication in the language known to the people of this State about the above said provisions. Moreover, as and when seizure is effected, it should be stated as to whom the citizen has to approach and what are all particulars have to be furnished. It is also expected that when a seizure order is made like the impugned notice, it is the duty on the part of the Election Officer to indicate in the said order as to the next course of action, viz., as to which authority he has to approach and so on, and these particulars are necessary not only to see that the Election Code of Conduct is properly implemented, but also to make

sure that it will not have adverse effect on the innocent and genuine persons.

6. On the facts of the present case, since it is stated that the amount has been taken over by the Deputy Director of Income Tax(Inv), Unit-IV(2), Chennai - 600 034 with all necessary records and the Deputy Director of Income Tax(Inv), Unit - IV(2), Chennai - 600 034, on being satisfied about the records produced by the petitioner, shall pass appropriate orders within one week from the date when the petitioner approaches him with a copy of this order. No costs. Consequently, M.P.No.1 of 2011 is closed."

19. So far the instant case is concerned, after holding that the instructions contained in the "Expenditure Monitoring in Elections" does not amount to exercising excessive power by the Election Commission or encroaching upon the other area occupied by the Central or State Legislations, we dispose of these writ petitions reiterating the observations and directions given in the earlier writ petitions as quoted hereinbefore. In our opinion, no further directions need to be issued to the Election Commission except that they shall discharge their duties in accordance with the procedures established by law. No costs. Consequently, connected miscellaneous petitions are closed."

40. Arguments of Mr.S.Ravikumar, learned counsel for the petitioner in W.P.No.10525 of 2019, is against the decision in K.Manivannan's case (cited supra), and therefore it is untenable. Hardship alleged to have been caused to the members of the petitioner's association, those who keep cash, at their residence or office or other such premises, carried in the vehicles, interception and search, have been dealt with in Manivannan's case extensively and turned down, accepting the powers of the Election Commission of India.

41. As regards seizure of gold and other valuable articles, the powers of the Election Commission of India, challenge to the instructions contained in No.76/Instructions/EEPS/2015/Vol.II, dated 02.05.2015, a Hon'ble Division Bench of this Court, in Patty B. Jeganathan v. Chief Election Commissioner reported in 2011 (3) LW 272, has upheld the powers, by stating that it does not appear that the powers conferred on the Election Commission and its officers are arbitrary or against the constitutional guarantees provided to the citizens. Hon'ble Division Bench has further held that seizure of the unaccounted cash or other movables or seizure of huge quantity of gold, silver and unlicensed arms, by the Election Commission, does not violate

any of the fundamental rights, much less, rights guaranteed under Articles 19(1)(d) and 19(1)(g) or Article 21 of the Constitution of India.

42. Contention of the petitioner in W.P.No.10525 of 2019, that gold is not included in the instructions of the Election Commission of India, New Delhi, and therefore, it cannot be seized, is untenable and contrary to the judgment of Patty B. Jeganathan's case, reported in 2011-3-L.W.272.

43. Rule 58 of the Central Goods and Service Tax (CGST) Rules, 2017, deals with records to be maintained by owner or operator of godown or warehouse and transporters, and the said rule is extracted hereunder:

> "58. Records to be maintained by owner or operator of godown or warehouse and transporters.-
>
> (1)Every person required to maintain records and accounts in accordance with the provisions of sub-section (2) of section 35, if not already registered under the Act, shall submit the details regarding his business electronically on the common portal in FORM GST ENR-01,either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person.
>
> (1A) For the purposes of Chapter XVI of these rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter: Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI.
>
> (2) The person enrolled under sub-rule (1) as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.
>
> (3) Every person who is enrolled under sub-rule (1) shall, where required, amend the details furnished in FORM GST ENR-01 electronically on the common portal either directly or through a Facilitation Centre notified by the Commissioner.
>
> (4) Subject to the provisions of rule 56,-

(a)any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the Goods and Services Tax Identification Number of the registered consigner and consignee for each of his branches.

(b) every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods.

(5) The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand."

44. Rule 138A of the Central Goods and Service Tax (CGST) Rules, 2017, deals with Documents and devices to be carried by a person-in-charge of a conveyance and the said rule is extracted hereunder:

"138A. Documents and devices to be carried by a person-in-charge of a conveyance.-

(1) The person in charge of a conveyance shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel:

Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A

of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill."

45. Contention of Mr.S.Raveekumar, learned counsel for the petitioner in W.P.No.10525 of 2019, that police officers are not empowered to seize gold in terms of Section 131 of the Income Tax Act, 1961, is not accepted, in the light of the powers of the Election Commission of India, to conduct a free and fair elections, as upheld by a Hon'ble Division Bench of this Court, in Patty B. Jeganathan v. Chief Election Commissioner reported in 2011 (3) LW 272.

46. Petitioner in W.P.No.10443 of 2019, has enclosed the proceedings of the Income Tax Department issued to the District Election Officers, Madurai and Karur and Returning Officer, Pollachi Parliamentary Constituency and District Revenue Officer, Coimbatore, directing that no action is warranted under the provisions of the Income Tax Act and the same are extracted hereunder:

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
O/o. The Assistant Director of Income Tax (Inv.) (OSD) - IB
- Second Floor, No.2, V.P.Rathinasamy Road
Bibikulam, Madurai-625002

C.No.SL/ADIT(lnv) (OSD)/MDU/2018-19
Date:21.03.2019

To
The District Election Officer,
Madurai.

Sir/Madam,

Sub: Income-tax (Inv.)-General Election to Madurai Parliament Constituency (32),2019 - Violation of

Model Code of Conduct - Jewels seizure - Case of M/s. Sequel Global Critical Logistics, Madurai - Submission of report -reg.

Ref: Letter from Nodal Officer (Expenditure)/ District Treasury Officer, Madurai dated 20.03.2019.

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Please refer to the above.

Summons and enquiries conducted with Shri.Manoj.M, Delivery Assistant, M/s. Sequel Global Critical Logistics, Madurai Branch regarding the seized gold ornaments.

The source with regard to the seized gold ornaments has been verified with the materials furnished by Shri. Manoj.M and no action is warranted under the provisions of Income-tax Act, 1961.

Yours faithfully,
Sd/- 21/3/19
(K.MAHADEVAN, IRS)

Assistant Director of Income-tax (Inv) (OSD)-18
Madurai.

Copy submitted to: the Additional Director of Income-tax (Inv.), Madurai.

Copy to :Shri Manoj.M, Delivery Assistant, M/s. Sequel Global Critics Logistics, Madurai.

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
O/o. the Assistant Director of Income-tax (Inv)(OSD)-33,
No.16 B, Chinna AndanKoil Street
Karur - 639 001.

C.No.LS /ADIT(Inv)(OSD)/KRR/2018-19
Dated:22.03.2019

To
The District Election Officer,
Karur.

Sir/Madam,

Sub: Income-tax(Inv) -General Election to Karur-Parliament Constituency (32), 2019 - Violation of Model Code of Conduct -Jewels seizure - case of M/s. Sequel Logistics,Madurai - submission of report - reg.

Ref: 1. Telephonic call received from 7845728234 on 19.03.2019 at 09:08 A.M & from 9952899749 on 19.03.2019 at 09:16 A.M (Election control room -Karur Legislative Assembly(134))

2.Oral Communication Received from District Election Officer, Karur dated 21.03.2019.

3.Mail received from PA Accounts Collectorate, Karur on 22.03.2019 at 12:23 P.M

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Please refer to the above.

Summons issued and enquiries conducted with Shri K.Shanmugaraj, delivery assistant, M/s. Sequel Logistics, No.4/328, Sarojini Street ,Iyyar Bungalow, Madurai regarding the seized jewels.

The source with regard to the seized Jewels has been verified with the materials furnished by Shri K.Shanmugaraj, delivery assistant , M/s. Sequel Logistics, Madurai and no action is warranted under the provisions of Income-tax Act, 1961.

Yours faithfully,
Sd/-
(Chilakamarthi Vijay Raju, IRS)
Assistant Director of Income-tax (Inv)(OSD)-33,
Karur.

Copy submitted to the Additional Director of Income-tax(Inv), Madurai.
Copy to: The Shri K.Shanmugaraj, delivery assistant, M/s. Sequel Logistics, Madurai

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GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
O/o. The Assistant Director of Income Tax (Inv.) (OSD)
30 Venkatesa Colony
Pollachi

C. No. 15/ADIT(lnv.) OSD/POY/2018-19 Date:

23.03.2019

To

The Returning Officer
21, Pollachi Parliamentary Constituency &
District Revenue Officer, Coimbatore.

Sir,

Sub: Income-tax (Inv.) - General Election to 21 Pollachi Parliamentary Constituency 2019 - Violation of Code of Conduct - Jewels seizure - Case of M/s. Sequel Logistics,Coimbatore - Submission of report.

Ref: Telephone call received from Smt. V. Sathya, Flying Squad Team B, 125 Udumalpet Assembly Constituency (Mobile No.9786979205) on 23.03.2019 at 4.00 p.m.

Please refer to the above.

Summons issued and enquiries conducted with Shri N.Ranjit Kumar, Delivery Assistant, M/s. Sequel Logistics, No.6/24-A, Rajiv Garden, Ramanathapuram, Coimbattore-641 028 regarding the seized jewels.

The source with regard to the seized jewels has been verified with the materials furnished by Shri. N.Ranjit Kumar, Delivery Assistant, M/s. Sequel Logistics, Coimbatore and no action is warranted under the provisions of Income-tax Act, 1961.

Yours faithfully,
Sd/-
(M.PRABHAKAR)
Assistant Director of Income-tax (Inv) (OSD)
Pollachi.

Copy submitted to: the Additional Director of Income-tax (Inv.), Coimbatore.

Copy to : Shri N.Ranjit Kumar, Delivery Assistant, M/s. Sequel Logistics.

47. Reading of the above shows that no sooner seizure is effected, immediately a letter or information is sent to the Nodal Officer (Expenditure) to the Income Tax Department and on verification of the documents produced, Income Tax Department has directed the District Election Officers, no further action

is warranted under the Income Tax Act, 1961. Contention of the petitioners that no seizure should be effected, in terms of the provisions of the Income Tax Act, 1961, cannot be countenanced, as the Nodal Officer, Flying Squads, Static Surveillance Teams, are empowered to seize and verify the genuineness of the documents, with the concerned department.

48. Whether gold, silver and other valuable articles, are carried with proper documents, question is, who is the competent authority to verify, and when the genuineness of the document produced. True that a Hon'ble Division Bench of this Court, has approved the decision of a learned Single Judge.

49. At this juncture, what are the Central Acts, which the petitioners rely on to contend that there is a violation of the instruction of the Election Commission of India, New Delhi? Income Tax Act, 1961 and the rules framed thereunder, Goods and Services Tax Act, 2017, and the rules framed thereunder. When the Hon'ble Division Bench of this Court, vide order dated 09.04.2011 in W.P.Nos.8289 and 8290 of 2011, in Patty B.Jeganathan v. The Chief Election Commissioner and others, reported in 2011-3-L.W.272, has categorically held that instructions contained in the Expenditure Monitoring in Elections, does not amount to exercising excessive power, by the Election Commission of India, or encroaching upon the other area occupied by the Central or State Legislature, contentions of the petitioners that no seizure can be effected is liable to be rejected. Decision of the Hon'ble Division Bench of this Court is squarely governs all the issues raised in the present writ petition.

50. Election Commission of India, New Delhi, has issued instructions on 29.05.2015, to all the Chief Electoral Officers, Income Tax Department, Police Department and Nodal Officers, to comply with the instructions dated 29.05.2015 to the revised standard operative procedure. Whether the instructions issued are irrational or arbitrary, when the Election Commission of India, is mandated to conduct a free and transparent elections.

51. On the aspect of arbitrariness, it is also useful to refer as to what Lord Cairns said in Julius vs. Lord Bishop of Oxford, in (1874-80) 5 AC 214 : 1847-80 All England Reporter 43 HL, considered in State (Delhi Admn.) Vs. I.K.Nangia and another, reported in (1980) 1 SCC 258, held thus:-

> "There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something, in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the

duty of the person in whom the power is reposed to exercise that power when called upon to do so."

52. Maxwell on Interpretation of Statutes, 11th Edn. at Page 231, referred to in I.K.Nangia's case is reproduced hereunder:-

> "Statutes which authorise persons to do acts For the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may" or "shall, if they think fit", or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have-to say the least-a compulsory force, and so could seem to be modified by judicial exposition. (Emphasis supplied)."

53. Though in Kumari Shrilekha Vidyarthi and Others vs. State of U.P. and Others, reported in (1991) 1 SCC 212, the Hon'ble Supreme Court considered a case relating to appointment to the office of Public Prosecutor/Law Officers, a State action, reference can be made to few paragraphs on the aspect of arbitrariness,

> "35. It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua lion to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.
>
> 36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act

and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you'. This is what men in power must remember, always.

37. Almost a quarter century back, this Court in S.G. Jaisinghani v. Union of India and Ors., [1967] 2 SCR 703, at p. 7 18-19, indicated the test of arbitrariness and the pit- falls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey--"Law of the Constitution"-Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in United States v. Wunderlick, (*), "when it has freed man from the unlimited discretion of some ruler ... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilker (*), "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."

38. After Jaisinghani's case (supra), long strides have been taken in several well-known decisions of this Court expanding the scope of judicial review in such matters. It has been emphasized time and again that

arbitrariness is anathema to State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. It is, therefore, obvious that irrespective of the nature of appointment of the Government Counsel in the districts in the State of U.P. and the security of tenure being even minimal as claimed by the State, the impugned circular, in order to survive, must withstand the attack of arbitrariness and be supported as an informed decision which is reasonable.

39. No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is Contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision Which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary."

54. In Shayara Bano vs. Union of India and others, reported in (2017) 9 SCC 1, at paragraph No.101, the Hon'ble Supreme Court, held thus:-

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

55. Though in Nikesh Tarchand Shah vs. Union of India and another, reported in 2018 (11) SCC 1, the Hon'ble Supreme Court, dealt with a case relating to legislation, principle laid down, can be applied to the case on hand.

"23. In so far as manifest arbitrariness is concerned, it is important to advert to the majority judgment of this Court in Shayara Bano v. Union of India and others, (2017) 9 SCC 1. The majority, in an exhaustive review of case law under Article 14, which dealt with legislation being struck down on the ground that it is manifestly arbitrary, has observed:

"87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is disproportionate, excessive or unreasonable, yet such challenge would fail on the very ground of the law being unreasonable, unnecessary or unwarranted. The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.

***

101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of

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This view of the law by two learned Judges of this Court was concurred with by Kurian, J. in paragraph 5 of his judgment."

56. Considering the decisions of the Hon'ble Supreme Court of India, we hold that the instructions issued by the Chief Election Commissioner of India, are not arbitrary, and at any stretch of imagination, action of the Flying Squad and Static Surveillance Team, can be held as violative of the code of conduct.

57. Notwithstanding the above, if any individual is aggrieved over the seizure, as per the instructions of the Election Commission of India, New Delhi, dated 29.05.2015, he can prefer an appeal to the competent authority.

58. Now let us consider the power point presentation of the instructions/power given to the Nodal/Field Officers, in the matter of production of valid documents,

Documents For Movement of Goods Through Vehicle

- TAX Invoice for taxable goods; or
- Bill of Supply for exempted goods; or
- Bill of Entry for Imported goods; or
- Delivery challan: and
- E Way Bill - where value of the taxable goods is Rs.50,000/- (for intra - State Supply) or Rs.1,00,000/ - (for inter-State supply).

GOODS AND VEHCILES LIABLE FOR DETENTION

Transporting goods without valid documents and E-way bill.

Transporting goods with defective documents.

WHAT ARE DEFECTIVE DOCUEMNTS

1. Incorrect and incomplete details of Consignor or Consignee or GSTN .

2. Discrepancy noticed in quantity of goods.

3. Issues relating to the Rate of tax, description and HSN code of the goods.

4. Discrepancy noticed in place of delivery.

5. Vehicle number not tallies with the E-way bill.

6. Movement of goods made for other than declared purpose.

OFFENCES AND PENALTIES

UNDER SECTION 122:

a) Offences:

(i) Transports any taxable goods without prescribed documents.

(ii) Supplies or transports or stores any goods which the tax payer has reasons to believe that such goods are liable to confiscation.

b) Penalty:

Rs. 10,000/- for CGST and Rs.10,000/- for SGST in case of Intra- State supply or an amount equivalent to the tax evaded, whichever is higher.

OFFENCES AND PENALTIES contd

SECTION 129: (Seizure of goods and vehicles)

When any person transports any goods in contravention of the GST Act or Rules , then the goods and the vehicle will be seized.

The goods will be released only on payment of tax and penalty, as below:-

1. If the owner of the goods comes forward:-

(a) Taxable Goods = Tax + penalty equal to tax.

(b) Exempted Goods = 2% of the value of the goods or Rs.25,000/-, whichever is less.

2. If the owner of owner of the goods does not come forward:-

(a) 50% of the value in respect of taxable goods.

(b 5% of value in respect of exempted goods or Rs.25,000/, whichever is less.

OFFENCES AND PENALTIES.... contd

SECTION 130 (Confiscation)

Offences liable for confiscation:

Supplies or receives goods in contravention of the Act to intended to evade tax.

Vehicles used to transport of goods in contravention of the Act.

Failed to pay tax and penalty levied under section 129, within one week.

Penalty:- Rs. 10,000/- for CGST and Rs. 10,000/- for SGST in case of Intra-State supply or an amount equivalent to the tax evaded, whichever is higher.

Fine:- Upto the market value of the goods less tax.

Condition:

A). Fine and penalty in respect of goods should not be less than,

i)In case of taxable goods: 50% of the value of the goods less tax.

ii).In case non-taxable goods: 5% of the value of the goods or Rs.25,000/-, whichever is less.

B). In respect of vehicle : A fine equivalent to tax.

If the fine and penalty are not paid within 3 months , then the goods and vehicle will be disposed of in auction.

59. Contention of the petitioners that the moment, the required documents, are produced, at the time of interception, gold or silver or other valuable articles, should not be seized by the Flying Squad/Static Surveillance Teams cannot be accepted, for the reasons that in a illustrative case, a vehicle carrying cash or gold or silver or any valuable items, is intercepted on road or in the process of search in residence or office or other premises, the authorities may not have the wherewithal in such places to verify the genuineness of the documents produced, and eventually they may to inform the concerned department, say for instance, the income tax department, as done in the above cases and on such verification of genuineness of the documents produced, and instructions from the Income Tax Department, not take further action, as recommended, gold and other valuable articles are returned immediately.

60. Contention that gold bullion cannot be seized, as it cannot be a item to induce votes, cannot be accepted, for the reason that whether it is in such form of bullion or converted into jewels, still it maintains the character of gold.

61. Learned counsel for the Election Commission of India submitted that it is open to the members of the petitioner's association to produce valid documents and seek for return of gold and other valuable articles.

62. In the light of the above discussion and decisions, mandamus sought for in both the writ petitions cannot be granted.

63. In the result, the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dm/skm

To

1.The Chief Election Commissioner of India,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110001.

2.Chief Secretary,
State of Tamilnadu,
Secretary, Chennai.

3.The Chief Electoral Officer &
Secretary to Government,
Secretary, Chennai.

4.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai.

5.The Additional Chief Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai - 600 005.

6.Director General of Police,
O/o. Director General of Police
Dr.RAdhakrishnan Salai,
Mylapore, Chennai 600 004.

+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No. 33608
+1cc to Mr.Megan Law Firm, Advocate, S.R.No. 33895
+2cc to Mr.G.R.Associates, Advocate, S.R.No. 33705
+1cc to the Government Pleader, S.R.No. 34258
+1cc to the Special Government Pleader(Taxes), S.R.No. 33371

W.P.Nos.10525 and 10443 of 2019
W.M.P.No.11024 and 10970 of 2019

PA(CO)
GN(20/05/2019)