M/S Amco Batteries Limited, Bangalore vs Collector Of Central Excise, Bangalore on 26 February, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1853, 2003 AIR SCW 1314, (2003) 5 ALLINDCAS 227 (SC), 2003 (2) SCALE 440, 2003 (3) ACE 26, 2003 (4) SCC 41, (2003) 1 KHCACJ 645 (SC), 2003 (2) SLT 335, (2003) 2 JT 291 (SC), (2003) 2 SCR 342 (SC), 2003 (2) JT 291, (2003) 153 ELT 7, (2003) 107 ECR 190, (2003) 2 SCALE 440, (2003) 2 SUPREME 267, (2003) 2 RECCIVR 203, (2003) 4 INDLD 443

Bench: M.B. Shah, D. M. Dharmadhikari

CASE NO.:
Appeal (civil) 5941-5942 of 1999

PETITIONER:
M/s Amco Batteries Limited, Bangalore

RESPONDENT:
Collector of Central Excise, Bangalore

DATE OF JUDGMENT: 26/02/2003

BENCH:
M.B. SHAH & D. M. DHARMADHIKARI

JUDGMENT:

J U D G M E N T Shah, J.

It is apparent that in taxation matters, amendments, clarifications, exemption notifications or their withdrawal play an important role in increasing litigation. Repeatedly, it is stated that law and procedure thereunder is required to be streamlined and simplified, yet clarifications, amendments and notifications are issued creating confusion and leaving Judges and Lawyers to search for their exact meaning. In such a state of affairs, in some cases, it is difficult to draw inference of fraud, wilful concealment or suppression of facts so as to attract penal consequences.

Short facts of the case are that appellant is engaged in manufacture of lead acid electric storage batteries and parts thereof falling under Tariff Heading 85.07 in its two factories, one at Hebbal and other at Mysore Road plant. Lead in the form of ingots is the main raw material required for manufacture of the batteries. During the course of manufacture of the parts, certain quantities of waste and scrap is sent to the job workers who manufacture ingots out of that and return its ingots to the appellant who use the same in the manufacture of their final products. The question is with regard to payment of excise duty on waste and scrap sent to the job workers. After issuance of show

cause notice and adjudicating the matter, the authority confirmed demand of duty and imposed penalty for the period from 1st March 1986 to 13th August 1989. That order was challenged before the Tribunal.

Admittedly, appellant obtains lead ingots from following four sources:

1) imports by appellant on payment of additional duty of customs.

2) Duty-paid lead ingots obtained through MMTC.

3) Ingots purchased from refiners.

4) Ingots received from job workers to whom waste & scrap of lead was sent without payment of duty to convert them into lead ingots.

For the purchase of ingots from first and second source, there is no dispute. With regard to the third source, namely, ingots purchased from refineries, it is exempted under Notification 37/81-CE. The relevant part of the said notification which is quoted by the Tribunal is as under:

"The Central Government hereby exempts lead unwrought, falling under heading No. 78.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), if such lead unwrought is produced out of one or more of the following materials, from the whole of the duty of excise leviable thereon, namely:

(a) old scrap of lead;

(b) scrap obtained from lead unwrought on which appropriate amount of duty of excise, or, as the case may be, the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) has been paid;

(c) lead waste and scrap, falling under heading No. 78.02 on which appropriate amount of duty of excise, or, as the case may be, the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), has been paid;

(d) lead ash, lead slag and lead residues."

Thereafter, scrap was exempted under notification No. 186/84-CE dated 1.8.1984. Relevant part of the Notification is as under:

"The Central Government hereby exempts wastes and scrap of lead, falling under sub-heading No. 7802.00 of the Schedule to the central Excise Tariff Act, 1985 (5 of 1986) from the whole of the duty of excise leviable thereon under section 3 of the Central Excise and Salt Act, 1944 (1 of 1944):

Provided that such waste and scrap

(i) are manufactured from goods, falling under the Heading Nos. 78.01 to 78.05 of the said Schedule on which the duty of excise leviable under the said section 3 of the additional duty leviable under the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has already been paid, or

(ii) arise from goods, falling under any Heading or sub-heading No. of the same Schedule other than Heading Nos. 78.01 to 78.05 thereof manufactured or produced in India.

Explanation: For the purpose of this notification all stocks of lead and products thereof in the country, except such stocks as are clearly recognisable as being non- duty-paid, shall be deemed to be lead and products thereof on which the duty has already been paid."

Further, by notification 246/87-CE dated 2.11.1987, 2nd proviso to the notification 186/84-CE (as amended) was added immediately before the existing Explanation. Said proviso is also reproduced below:

"Provided further that the exemption contained in this notification shall apply only if:-

No credit has been taken on the input from which such scrap has been generated under rule 57A of the Central Excise Rules, 1944; or

(ii) an amount equivalent to the credit taken, if any, on the input from which such scrap has been generated, has been debited back in the RG 23A account or the current account maintained by the assessee."

At the time of hearing of these appeals, learned counsel for the appellant has only submitted that there was no wilful suppression on the part of the appellant and hence, extended period under proviso to sub-section (1) of Section 11A of the Central Excise Act (hereinafter referred to as "the Act") ought not to have been invoked.

It is admitted that during the manufacture of batteries from the ingots received by first and second source, waste and scrap of lead emerges. Such scrap is removed by the appellant and sent to the job workers which are small units engaged in recovery/reclaiming of metal from the scrap. The recovered metal in the form of lead ingots is returned by the job workers to the appellant and the appellant uses the same for manufacture of batteries. Admittedly, there is no sale of scrap by the appellant to the job workers. The entire movement of the scrap to the job workers and receipt of the ingots from the job workers is recorded in the regular books of accounts and proper documentation is maintained in the form of delivery challans.

It has also been pointed out that lead ingots, scrap and batteries are all covered by the MODVAT scheme even during the relevant period. Since the scrap is ultimately used in the manufacture of batteries, even if any duty is paid/payable on the scrap, the same is available as MODVAT credit to the appellant. Thus the exercise of payment of excise duty was entirely revenue neutral.

From the facts stated above, particularly the fact that entire movement of waste and scrap to the job workers and receipt of ingots manufactured by the job workers is recorded in regular books of accounts and proper documentation is maintained in form of delivery challan and that there was no reason for the appellant to suppress as it was entitled to have facility of MODVAT Scheme, it would be difficult to hold that there was any wilful suppression on the part of the appellant which would empower the authorities to invoke extended period of limitation under proviso to Section 11A (1) of the Act. This has been made clear repeatedly by this Court. In M/s Padmini Products v. Collector of Central Excise, Bangalore [(1989) 4 SCC 275] this Court has held that something positive other than mere inaction or failure on the part of the manufacturer or producer of conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be established before it is saddled with any liability beyond the period of six months. The Court pertinently observed that mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not, would not attract Section 11-A of the Act.

In the present case also, there is no material on record from which it could be inferred or established that duty of excise was not levied or paid by reason of any fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or the Rules made thereunder with intent to evade payment of duty. It was a bonafide belief on the part of the appellant that scrap and waste, which was recovered while manufacturing batteries, was exempt from levy of excise duty. Further, appellant was entitled to get benefit of MODVAT scheme, therefore, there was no justifiable reason for the appellant to suppress any fact.

In the result, the appeals are partly allowed. The matters are remitted to the Adjudicating Authority to modify the demand by confining it to the period of six months prior to issue of show cause notice and pass consequential orders.

Ordered accordingly. There shall be no order as to costs.

IN THE SUPPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION SPECIAL LEAVE PETITION (CIVIL) NO. 16838 OF 2002 Federation of Railway Officers Association & Ors. Petitioners Versus Union of India Respondents [With SLP (C) No. 17306/2002] J U D G M E N T RAJENDRA BABU, J. :

> The petitioners before us filed a writ petition in the High Court of Delhi challenging the formation of seven railway zones. The petitioners contended that the notification issued for formation of new zones is violative of Section 3 of the Railways Act, 1989 (hereinafter referred to as 'the Act') as the same is not formed for the purpose of

efficient administration of the railways.

The petitioners relied upon a proceeding of the Railway Board and a note prepared for the consideration of the meeting to be held on November 30, 2001. There are several aspects considered in that note, namely, (i) that there is unprecedented financial crunch in the railways and recommendations made by the Railways Reforms Committee in 1984 to form new four Zones remained unimplemented on account of the same and the position has not improved but has only worsened; (ii) that on account of technological innovations by utilisation of Information Technology the Railways can centralise their operations and thus reducing the relevance of the new zones; (iii) that the Comptroller & Auditor General has recommended for reconsideration of the decision for creation of new zones and division from the point of view of financial viability; (iv) that the Standing Committee of Parliament on Railway have recommended for creation of new zones on the basis of work load, efficiency and effective management; (v) that the Railway Convention Committee recommended that instead of creating new zones expenditure to be incurred on the same could be better utilised for procurement of rolling stock, doubling and renewal of railway lines and in electrification programmes; (vi) that the management cadres and staff federations are not in favour of new zones and divisions; (vii) that Rakesh Mohan Committee has suggested that the formation of additional zones would be of dubious merit and would add substantial cost and be of little value to the system; (viii) that there would be tremendous dislocation in the zones, operating discipline, traffic accounts and staff matters that will affect the system adversely;

(ix) that the creation of zones or divisions apart from causing upheaval will also divert the railway's attention to restructure itself to be more competitive in the market; (x) that therefore, the Board was of the view that it would not be appropriate for formation of seven new zones in the context of financial crunch, the opinion expressed by the Parliamentary Committees and, therefore, calls for further examination of the matter. The petitioners also placed reliance upon the draft that has been prepared by the Member Secretary of the Committee to finalise the detailed territorial jurisdiction of new zones and stated that "Though the recommendations of the Study Group were accepted by the Railways in principle, the entire issue was further examined in the Railway Board and the final proposal was made for the creation of the six new zones, four as per the Report of the Study Group and two additional zones with the objective of the development of the backward areas particularly of Orissa and Bihar. Another zone of Bilaspur was added as it had heavy workload and in view of the continuous long pending demand of the region." It was very strongly contended that though Railway Reforms Committee had recommended in 1984 for formation of new zones, the situation has entirely changed in view of various factors referred to above and this was admitted position inasmuch as in Parliament the Minister for Railways answered that no study regarding utilisation of new zones had been conducted and even as late as on March 1, 2002 it was stated that owing to resource crunch the proposed new zones and divisions will only

> gradually become operational depending on the availability of the investable resources and, therefore, no time frame could be fixed. It was pointed that the expenditure in the creation of new zones would result in accumulation of fresh arrears regarding replacement of over aged assets, thereby affecting safety.

Reliance was also placed on a letter addressed by six former Chairmen of the Railway Board. In their joint letter to the Prime Minister sent on July 12, 2002 they stated that the creation of new zones would be operational debacle, a financial disaster and an administrative blunder and from considerations of sound management and operational efficiency, there is a case for reduction in the number of zonal rail headquarters. Therefore, it was contended that the decision in respect of at least three of the seven zones, namely, Hazipur, Bilaspur and Bhubaneswar is not based on any expert study whatsoever and is based on extreneous considerations not germane to efficiency in the railways. For reasons already stated, it was submitted that the recommendations of the Railways Reforms Committee has become outdated in view of the later developments. It was also contended that the formation of Hazipur zone was decided by the Government without any study or report of any expert body within three weeks of a new Railway Minister assuming office whose constituency was Hajipur and Bilaspur zone was announced in an election rally by Shri Atal Bihari Vajpayee, Prime Minister, again without any study or recommendation of any expert body. Therefore, it is submitted that the decision of the Government in this regard is mala fide. It was further contended that when the statute has provided the guidance in regard to the formation of a policy, the same should be based on proper information obtained from appropriate sources and in this context, the petitioners placed reliance on the decision of this Court in Bangalore Medical Trust vs. B.S. Muddappa, 1991 (4) SCC 54, and also pointed out that in Kasturi Lal Lakshmi Reddy vs. State of Jammu & Kashmir & Anr, 1980 (3) SCR 1338, Ramana Dayaram Shetty vs. International Airport Authority of India & Ors.,1979 (3) SCC 489; Ugar Sugar Works Ltd. vs. Delhi Administration & Ors., 2001 (3) SCC 635 and State of U.P. vs. U.P. University Colleges Pensioners' Association, 1994 (2) SCC 729, it was held that even policy decisions of the Government can be interfered with if it is arbitrary or mala fide and manifestly contrary to public interest. They, therefore, submitted that the action taken by the Government should be quashed in reversal of the judgment of the High Court.

Dr. D.P. Pal, the learned senior Advocate who appears in SLP (C) No. 17306/2002 , submitted that the provision of Section 3 of the Act provides for test as to formation of railway zones and the critical test is efficiency in the administration which is an objective test. The criterion being objective, the Court can examine the material on record to draw an inference one way or the other. The efficiency would increase only if it can reduce the cost of administration and the earnings in the zone will increase.

The learned Attorney General referred to the constitution of the Railway Reforms Committee on May 12, 1981 to recommend ways of enhancing the efficiency of the functioning of the Indian railways. At that time, there were nine zones in existence, namely, (i) Eastern Railways (Calcutta), (ii) South Eastern Railways (Calcutta), (iii) Central Railways (Bombay), (iv) Western Railways (Bombay), (v) Northern Railways (Delhi), (vi) Southern Railways (Madras), (vii) North Eastern Railways (Gorakhpur), (viii) North Eastern Frontier Railways (Gauhati), and (ix) South Central Railways (Secunderabad). Railway Reforms Committee proposed the addition of four new zones in

phases as follows : in Phase 1, East Central and North Western Railways; in Phase II, North Central Railways; and in Phase III, Southern Western Railways to be considered later. The Railway Reforms Committee also projected the need for 15 zones by the year 2000. It is submitted that the former Chairmen of the Railway Board, namely, Shri M.S. Gujral and Shri M.N. Bery were associated with the Railway Reforms Commission's deliberations as Member and Chairman of the Working Group of Structural Reorganisation. In February 24, 1994 the Minister of Railways in his Budget speech for the year 1984-85 stated that it was necessary to conduct a detailed study to rationalise the geographical distribution of existing zones and divisions and on May 6, 1994 a Study Group was set up consisting of Advisers of the Railway Board to go into the question of reorganisation of railway zones and divisions The Study Group after examination of the entire gamut of the issues pertaining to railway reorganisation recommended the setting up of four additional railways zones, namely, North Western Railway with its headquarters at Jaipur, South Western Railway with its headquarters at Bangalore, East Central Railway with its headquarters at Jabalpur and North Central Railway with its headquarters at Allahabad. The Minister for Railways in his Budget speech for the year 1995-96 stated that the Committee's recommendations had been accepted. The Union Cabinet, however, deferred the proposal of creating four zones and called for more material from the Ministry of Railways. Thereafter, the Union Cabinet headed by Shri Deve Gowda, then Prime Minister, considered these proposals in their meeting held on July 12, 1996 as to formation of six new railway zones and they are North Western Railway with its headquarters at Jaipur, South Western Railway with its headquarters at Bangalore, West Central Railway with its headquarters at Jabalpur, North Central Railway with its headquarters at Allahabad, East Coast Railway with its headquarters at Bhubneswar and East Central Railway with its headquarters at Hajipur. At the time of considering the same, the Union Cabinet took into account the financial viability, traffic growth and the norms of carving out a zone before deciding the creation of six new zones on July 16, 1996. Minister of Railways in his Budget speech for the year 1996-97 announced new six zones. Thereafter, on September 9, 1998 the Union Cabinet headed by Prime Minister Shri Atal Bihari Vajpayee approved the creation of a new seventh Zone with headquarters at Bilaspur. On February 22, 1999 the Union Cabinet also decided to move the headquarters of the South Western Railway from Bangalore to Hubli. From 1999 to 2001 the work of Zones had been progressing slowly and a debate was going on for and against the formation of new zones. During this period Railway Board had also expressed reservations in going ahead with formation of zones mainly due to financial crunch. On 29th November 2001 the Minister for Railways while responding to various questions raised in Parliament clarified as follows :-

> "In the year 1995 the Union Cabinet had deferred a proposal based on the recommendations of the RRC for creating 4 new Zones. However, in the year 1996, the Union Cabinet had examined and approved the proposal for creating 6 new zones. Subsequently, the Government decided to form the 7th Zone with headquarters at Bilaspur. It is not correct to allege that there had been no examination of the proposal. As far as opinions and observations on the new Zones are concerned, there have always been two opposing views. Further, the slow progress in this regard is attributable to a resource crunch. However, there was never any intention not to proceed with the creation of any of the new Zones as consecutive Governments (the United Front and the National Democratic Alliance governments)

had taken a policy decision to create the new Zones."

In December 2001 Railway Board initiated action for operationalisation of new zones. On June 4 and 14, 2002 the Railway Board met and decided to operationalise North Western Railway with its headquarters at Jaipur and East Central Railway with its headquarters at Hajipur by October 1, 2002 after finalising their respective jurisdictions. In the meanwhile, on July 5, 2002 a writ petition was filed by Biswajit Deb, petitioner in SLP No. 17306/2002, before the Calcutta High Court challenging the notification of setting up a new zone. The Calcutta High Court dismissed the said petition holding that setting up of new zone is purely a policy decision of the Railway Board to arrange their own administration which cannot be adjudicated in a Public Interest Litigation. The Delhi High Court in the case of petitioner herein in SPECIAL LEAVE PETITION (CIVIL) NO. 16838 OF 2002 held that the jurisdiction of the court in the matter of interference with policy decision of the Government is very limited; that the question whether such a decision should have been taken or whether such a decision would ultimately be beneficial to the Railway Administration in general is not a matter which is within the domain of the court. It is also noticed that the fact that there is no expert body decision in the matter would not call for consideration in a writ proceeding merely because the petitioner or some other persons may have different views in the matter.

On July 26, 2002 a detailed note of reorganisation of the railways was sent to the Union Cabinet to keep it apprised of the current situation and the views of the Standing Committee of Parliament on Railways (1996-97), the Railway Convention Committee (1996), Railway federations, the Deputy Comptroller and Auditor General (1999), the Comptroller and Auditor General (2001) and the comments of Rakesh Mohan Committee (2001) against the formation of additional railway zones were also placed before the Cabinet and the Cabinet did not review its previous decision. Two new zones, that is, North Western Railway with its headquarters at Jaipur and East Central Railway with its headquarters at Hajipur began functioning in accordance with the notification dated June 14, 2002 issued by the Railway Board. It is also pointed out that Parliament had approved the establishment of a Special Railway Fund of Rs. 17, 000 crores by Government to ensure the safety of the railways in accordance with the recommendations of the Railway Safety Review Committee Report, 2000. All the safety related tasks to be carried out on the basis of moneys drawn from this Fund have been listed and placed before Parliament and have been approved by Parliament as part of the Railway Budget.

The learned Attorney General also placed reliance on the decision of this Court in Rustom Cavasjee Cooper vs. Union of India, 1970 (3) SCR 530, wherein whether a right arising under Article 19(1)(g) is not protected against operation of any law imposed in the interest of general public to be reasonable restrictions on the exercise of the right conferred by the said sub-clause was considered. In this context, an argument was raised that the enactment of Bank Nationalisation was not in the larger interest of the nation but to subserve political ends, that is , not with the object to ensure better banking facilities, or to make them available to a wider public, but only to take control over the deposits of the public with the major banks, and to use them as a political lever against industrialists who had built up industries by decades of industrial planning and careful management and the Court's attention was invited to a mass of evidence from the speeches of the Deputy Prime Minister and of the Governor and the Deputy Governor of the Reserve Bank and also extracts from

the Reserve Bank Bulletins issued from time to time and other statistical information collected from official sources in support of the thesis of the petitioner that the performance of the named banks exceed the targets laid down by the Reserve Bank in its directives; that the named banks had effectively complied with the requirements of the law and they had served the diverse interests including small scale sector and so on. On the other hand, the learned Attorney General in that case contended that the commercial banks followed a conservative policy because they had to look primarily to the interests of the shareholders and on that account could not adopt bold policies or schemes for financing the needy and worthy causes and that if the resources of the banking industry are properly utilised for the weaker sections of the people economic regeneration of the nation may be speedily achieved; that 28% of the towns in India were not served by commercial banks; that there had been unequal development of facilities in different part of the country and deserving sections were deprived of the benefit of an important national resources resulting in economic disparities.

This Court held that Court is not the forum in which these conflicting claims may be debated; that whether there is a genuine need for banking facility in the rural areas, whether certain classes of the community are deprived of the benefit of the resources of the banking industry, whether administration by the Government of the commercial banking sector will not prove beneficial to the community and will lead to rigidity in the administration, whether the Government administration will eschew the profit motive and even if it be eschewed, there will accrue substantial benefits to the public, whether an undue accent on banking as a means of social regeneration, especially in the backward areas, is a doctrinaire approach to a rational order of priorities for attaining the national objectives enshrined in our Constitution and whether the policy followed by the Government in office or the policy propounded by its opponents may reasonably attain the national objectives are matters which have little relevance in determining the legality of the measure and it is again not for this Court to consider the relative merits of the different political theories or economic policies.

The learned Attorney General also relied upon the decision in BALCO Employees' Union (Regd.) vs. Union of India & Ors., 2002 (2) SCC 333, case wherein it is observed that :-

> "It is evident that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical."

The learned Attorney General also pointed out similar observations in Narmada Bachao Andolan vs. Union of India & Ors., 2000 (10) SCC 664. Dr. Pal insisted that the provisions of Section 3 of the Act provides the norms upon which a railway zone can be formed and that is administrative efficiency. Shri Prashant Bhushan and Dr. Pal have, as set forth earlier, contended that on the basis of the material placed by them the formation of zones now under challenge will only result in deterioration of the efficiency of administrative system and not improve, while the stand of the learned Attorney General is that the Government has taken note of the workload index, geographical spread, strength

of manpower, traffic streams and patterns for determining optimum size of a zone or a division and, in this context, territorial, ethnic, linguistic or such other considerations are not the basis for reorganisation of the railway zones.

In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters.

Tested in this background set forth above, what we have to see is whether Government has acted within the parameters of Section 3 of the Act or not. Section 3 of the Act mentions constitution of the railway zones for the purpose of efficient administration. Therefore, to find out what would constitute efficient administration we have to look to various matters on the basis of which the railway zones have been constituted and have been working. In this context, a Committee had been constituted by the Government known as Railway Reforms Committee which submitted its report in July 1984 after exhaustive consideration of various aspects. The Committee, after taking into consideration the workload and manpower along with the concepts of modernisation, computerisation and updating of technology, traffic pattern, evolved certain formula for the formation of zones. And the Committee further stated that "as for the criterion of geographical spread and the time taken to reach the remotest point of a Zone or Division from its headquarters, each case would have to be examined individually. This is so because the headquarters of the various Zones and Divisions are not always centrally located." Ultimately, the Committee concluded that the immediate requirement of additional zones is three if one goes by the criterion of workload and four if one goes by the criterion of manpower and as far as divisions were concerned, immediate requirement for additional Divisions would appear to be 15 by the criterion of workload and six by the criterion of manpower. The requirement of Zones and Divisions on the basis of the workload by the year 2000 would be even higher. But they did not finally suggest that the Zones and Divisions should be formed at that rate but indicated their interest for examining all those aspects of the matter.

Thereafter a Study Group was constituted consisting of several officers to critically analyse the impact of major developmental projects, to review or define criteria to be adopted while considering issues/demands relating to creation or reorganisation of Zones and Divisions amongst other aspects. They suggested that for addressing the issues relating to rationalisation of geographical distribution and reorganisation of Zones and Divisions, it was essential that there should be broad quantitative norms in consonance with the Railway Reforms Committee's recommendations made earlier. The workload index is now redefined as total transportation effort of a Zone/Division which is also adequately weighted for the financial performance of these units and should therefore be the over-riding criterion. It was also taken note of that the norm of 200 units by 2000 AD is the optimum value of the workload index both in the case of zones as well as divisions and this interpolated to 1992-93, that is, the last year for which estimated workload indices are presently

available. Besides workload, major decision variable is accessibility. They suggested that zones/Divisions which have workload indices in excess of criticality norm and also poor accessibility deserve immediate relief. Heavily worked zones/divisions which are compact, that is, where accessibility of the remote points/activity centres is good and, therefore, does not pose any administrative problem on this account, need not necessarily be truncated for providing relief. Further, in the case of lightly worked zones/divisions, accessibility alone will not be considered as a necessary and sufficient criterion for providing relief through reorganisation. They are also of the view that the average travelling time between Zonal and Divisional Headquarters and its remote activity centres by a representative Mail/Express train should be about 6 hours in either case. High workload with poor accessibility is the only necessary as well as sufficient condition for providing relief to such zones/divisions through the setting up of new zones and divisions which would arise only after full scope of territorial readjustments between existing, adjoining zones/divisions are fully explored or exhausted. They recommended formation of zones North-Western, South-Western, East- Central and North-Central. Adopting the same criteria as was done by the R.R.C, to which we have adverted already, this study group summed up in its report as follows :-

> "The identification of zones/ divisions which deserve attention/relief has been done on the basis of their workload. For computing a zonal / divisional workload index both physical as well as financial output indicators are taken into account. The norm of 200 workload units in 2000 AD (as had also been suggested by the RRC) is defined as the optimum value of the workload index.
>
> Besides workload the accessibility of activity centres/remote points from its respective zonal/divisional headquarters is the other important criterion. The norm in this case is defined as an average travelling time (between the zonal and the divisional headquarters and, also, between the divisional headquarters and its remote activity centres) of about six (6) hours.
>
> Based on the workload and accessibility norms defined above, zones/divisions which have workload indices in excess of the criticality norm and also poor accessibility have been identified for the purposes of providing relief through reorganisation/creation of new zones and divisions. Ethnic, linguistic and/or territorial (i.e. State Boundaries, etc.) considerations do not form the basis for evaluating issues pertaining to railway reorganisation.
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> The highlights of the Study Group are given in Annexure-I. M.R. in his Budget (1995-96) Speech on 14.3.95 had, inter alia conveyed that the Committee's recommendations had been accepted by this Ministry and we being processed further."

The credibility of the said report is questioned and its bonafides are doubted on behalf of the petitioners. The various factors considered by them are also certainly relevant for the efficient administration of the Railways. None of these factors taken note of by the study group can be stated to be irrelevant in this context. But what is to be seen is whether the report made by them would, in

essence, be not worthy of credit and not merely on imaginary basis such as they are officers of the Government and they would have worked under pressure of the Minister concerned to draw up a report to suit his whims. Therefore, we do not think, we can accept the attack made by the petitioners on the report of the study group.

Cabinet notes were prepared, inter alia, after referring to RRC report, report of the study group extracts of previous cabinet proceedings on the subject, views of the Parliamentary Standing Committee on RCC, views of Railway Federations, reports of Comptroller and Auditor General of India, comments of Rakesh Mohan Committee and proposal was made to set up six new zones - (1) North-Western Railway, headquarters Jaipur; (2) South-Western Railway, Headquarters Bangalore; (3) West-Central Railway, Headquarters Jabalpur; (4) North-Central Railway, Headquarters Allahabad; (5) East-Central Railway, Headquarters Hajipur and (6) East Coast Railway, Headquarters Bhubaneswar and various details regarding the workload, route kilometers and information regarding the accessibility and other criteria were fully furnished to the Cabinet. It is indicated that with the criterion of six new zones the accessibility of the Divisional Headquarters with Railway Headquarter will increase and the Indian Railway average will improve to 6.2 hours from the existing 8.9 hours. As regards the cost implication and strategy adopted detailed consideration was made. The impact of the Information Technology was also taken into account. Various views that had been expressed at different levels and in public both opposing and supporting the formation of new zones were also set forth. On July 12, 1996 the Cabinet authorised the Ministry of Railways to make suitable readjustments in the territorial jurisdiction of the zones.

It has been contended that the objective of developing backward areas or to meet public demand new zones have been formed and such a step will not be consistent with efficiency in administration. These two factors are noticed not in isolation but along with other criteria as to increase in traffic load and accessibility. Therefore, the contention ignores all the factors taken into consideration and is not tenable. Even otherwise, to meet the demands of backward areas cannot by itself be inconsistent with efficiency. When Railway is a public utility service it has to take care of all areas including backward areas. In doing so, providing service, efficient supervision and keeping the equipment and other material in good and workable condition are all important factors. Such services can be appropriately extended if there is an exclusive zone to cater to such areas. If more facilities become available in those zones naturally efficiency would go up. Therefore, the concept of "efficiency" should not be approached in a doctrinaire or pedantic manner. Thus formation of zones in backward areas for providing proper facilities and services will improve the efficiency and not retard it. Merely setting up of new zone in a backward area cannot be condemned only on the basis that it is being formed in a backward area, particularly when it fulfils other criterion to which we have already adverted.

Even if we assume that there is force in the material placed by the petitioners that by forming new railway zones efficiency in the railway administration would not enhance, the reasons given by the Government and material placed by them in support of forming new railway zones is no less or even more forceful. Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should reexamine to interfere with the

same. The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschew from considering irrelevant factors and act reasonably within the parameters of the law, courts would keep off the same. Even on the test suggested by Dr. Pal we cannot travel outside this principle to sit in appeal on the decision of the Government.

The decision in B.S.Muddappa's case is distinguishable both on principle and on facts from the present case. The question in that case is whether 'park' can be alloted to a trust for setting up of a private nursing home. There is no application of mind by any of the authorities as to whether setting up a nursing home in place of a 'park' would amount to an improvement as contemplated under the statute with which this court was concerned in that case. In the present case, the problem is entirely different. The question before the Court is whether formation of zones is for efficient administration of Railways. On this aspect we have considered the rival contentions including the material placed before the Government of India and the criteria evolved for formation of the zones. The test whether such formation of zones is for the purpose of efficient administration of Railways have been duly considered by the Government before taking decision while such consideration was lacking in Muddappa's case. Hence, that decision cannot be of any assistance to appellant. We have applied the principles set out in other decisions relied upon by the appellant to the facts of the case in reaching our conclusion in this matter.

However, Shri Prashant Bhushan sought to impress upon us that within three weeks of a new Railway Minister assuming office without any study or report or any expert body a new railway Zone Hazipur was announced and steps were taken to constitute such zone. But the material on record would indicate otherwise. Matter has been under consideration of the Government since 1981 as to reorganisation of the zones. Thereafter, a Study Group was formed to look into the matter to make its recommendations. It is only in 1996 a decision was taken by the Government for a zone at Hazipur. If formation of a zone at Hazipur as its headquarters fulfils the norms set up by the Government and there is enough statistical data in that regard, it becomes difficult for us to state that the same is mala fide. Allegations regarding malafides cannot be vaguely made and it must be specific and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.

The stand of the respondents is that in regard to East Central Zonal Railway and the North Western Zonal Railways efficiency has shown improvement for the months of October-November 2002 as compared to October-November 2001 which is as under :-

> Railway Revenue Tonnes Originating Earnings in In million Tonnes In crores %age variation %age variation East Central October 4.32 4.19 3.1 270.82 250.81 7.98 November 4.43 4.31 2.78 264.42 261.4 1.16 Oct + Nov 8.75 8.5 2.94 535.24 512.21 4.50 North Western October 1.34 1.12 19.64 97.65 74.74 November 1.23 1.23 89.25 73.91 20.75 Oct + Nov 2.57 2.35 9.36 186.9 148.65 25.73 Revenue Tonnes Originating Railway Month Variation October 1.34 1.12 0.22 North-Western November 1.23 1.23 Oct + Nov 2.57 2.35 0.22 October 2.24 2.47

-0.23 Western November 2.25 2.43

-0.18 Oct + Nov 4.49 4.9

-0.41 October 3.58 3.59

-0.01 Total November 3.48 3.66

-0.18 Oct + Nov 7.06 7.25

-0.19 If these figures furnished by respondents are correct then efficiency on formation of the zones has certainly not deteriorated.

Shri Prashant Bhushan contended that Bilaspur zone was formed subsequent to an announcement made by Shri Atal Bihari Vajpayee in his election speech, but the allegation as to when he had made such a speech is not set out either in the petition filed before the High Court or in these proceedings. Unless full details are given as to place, time or date, it would be very difficult for any one to deny the same, more so when Shri Atal Bihari Vajpayee has not been impleaded as a party in these proceedings.

It is next contended by Shri Prashant Bhushan that though there may have been justification for forming compact zones and they may be economically viable whether Hazipur or Bilaspur or Bhubaneswar should be made zonal Headquarters has not been adequately considered. The decision of the Central Government to locate the headquarters of South Western Railways at Hubli instead of Bangalore was the subject matter of challenge in Union of India & Ors. vs. Kannadapara Sanghatanegala Okkuta & Kannadigara & Ors. Though the High Court had quashed shifting of Headquarters from Bangalore to Hubli, this Court stated as follows :-

"it is not the function of the court to decide the location or the site of the Headquarters, it is the function of the Government."

If benefit of a zonal headquarters in a particular place is more suited than any other place in zone it would not affect the ultimate efficient functioning of the railway administration. Thus all contentions of the petitioners stand rejected.

These petitions stand dismissed.

..J. [S. RAJENDRA BABU] .J. [G.P. MATHUR] NEW DELHI, MARCH 13, 2003.

CIVIL APPELLATE JURISDICTION SPECIAL LEAVE PETITION (CIVIL) NO. 16838 OF 2002 Federation of Railway Officers Association & Ors. Petitioners Versus Union of India Respondents Dear brother, A draft judgment in the abovementioned matter is being circulated for favour of your kind consideration.

With warm regards, [S. RAJENDRA BABU] March 12 , 2003 Hon'ble Mr. Justice G.P.Mathur REPORTABLE J U D G M E N T In SPECIAL LEAVE PETITION (CIVIL) NO. 16838 OF 2002 Federation of Railway Officers Association & Ors. Petitioners Versus Union of India Respondents On Thrusday, March 13, 2003 By HON'BLE MR. JUSTICE S. RAJENDRA BABU IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION Writ Petition (Civil) No.490 of 2002 etc. People's Union for Civil Liberties (PUCL) and another Petitioners Vs. Union of India and another Respondents With Writ Petition Nos. 509/2002 & 515/2002 J U D G M E N T Dharmadhikari J.

I have carefully gone through the well considered separate opinions of Brothers MB Shah J. and P.V.Reddi JJ. Both the learned judges have come to a common conclusion that Section 33B inserted in the Representation of people Act, 1951 by Amendment Ordinance 4 of 2002, which on repeal is succeeded by 3rd Amendment Act of 2002, is liable to be declared invalid being violative of Article 19(1)(a) of the Constitution.

I am in respectful agreement with the above conclusion reached in common by both the learned brothers. I would, however, like to supplement the above conclusion.

The reports of the advisory Commission set up one after the other by the Government to which a reference has been made by Brother Shah J., highlight the present political scenario where money-power and muscle-power have substantially polluted and perverted the democratic processes in India. To control the ill-effects of money-power and muscle-power the Commissions recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of the Act here and there, but a much improved election system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money and physical force of criminals do not make democracy a farce - Citizen's fundamental 'right of information' should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the R.P. Act.

Making of law for election reform is undoubtedly a subject exclusively of legislature. Based on the decision of this Court in the case of Association for Democratic Reforms (supra) and the directions made therein to the Election Commission, the Amendment Act under consideration has made an attempt to fill the void in law but the void has not been filled fully and does not satisfy the requirements for exercise of fundamental freedom of citizen to participate in election as a well informed voter.

Democracy based on 'Free and fair elections' is considered as basic feature of the Constitution in the case of Keshvanand Bharati (supra). Lack of adequate legislative will to fill the vacuum in law for reforming the election process in accordance with the law declared by this Court in the case of Association for Democratic Reforms (supra), obligates this Court as an important organ in constitutional process to intervene.

In my opinion, this Court is obliged by the Constitution to intervene because the legislative field, even after the passing of the Ordinance and the Amendment Act, leaves a vacuum. This Court in the case of Association for Democratic Reforms (supra) has determined the ambit of fundamental 'right of information' to a voter. The law, as it stands today after amendment, is deficient in ensuring 'free and fair elections'. This Court has, therefore, found it necessary to strike down Section 33 B of the Amendment Act so as to revive the law declared by this Court in the case of Association for Democratic Reforms (supra).

With these words, I agree with conclusions (A) to (E) in the opinion of Brother Shah J. and conclusion Nos. (1), (2), (4), (5), (6), (7) & (9) in the opinion of Brother P.V. Reddi J.

With utmost respect, I am unable to agree with conclusion Nos. (3) & (8) in the opinion of Brother P.V. Reddy J., as on those aspects, I have expressed my respectful agreement with Brother Shah J.

J. [D.M. Dharmadhikari] New Delhi March 13, 2003.

J U D G M E N T Dharmadhikari J.

I have carefully gone through the well-considered opinion of Brother MB Shah J. I agree with his conclusion that Section 33B inserted in Representation of People 1951 by Amendment Ordinance 4 of 2002 followed by 3rd Amendment Act 2002 is liable to be declared invalid being violative of Article 19(1)(a) of the Constitution. I, however, consider it necessary to deal with some additional grounds urged on behalf of the parties after the Amendment Ordinance became the Act. I would, therefore, supplement the conclusion of Brother Shah J. on my own additional reasons. Since Brother Shah J. has covered in detail all legal questions involved with the assistance of various reports of the Commissions set up by the Government for introducing election reforms leading to the promulgation of the Ordinance and then passing of the third Amendment Act of 2002, I would straightway deal with some additional grounds urged separately by the counsel for the parties after the Amendment Ordinance was repealed and substituted by the Amendment Act.

On behalf of the petitioner it has been submitted that fundamental right to "freedom of speech and expression" has been held by this Court in the case of PUCL (supra) [2002(5) SCC 294] to include within it right of a citizen as a voter to know the relevant antecedents of the candidate at the election. In the case of Keshvanand Bharati [1973 (4) SCC 225] "fundamental rights" and "democratic form of Government" to be constituted through "a free and fair election," have been held to be basic features or structures of the Constitution and beyond the amending power of Parliament.

It is for achieving the constitutional principles that elaborate provisions are required to be made in the election laws for ensuring free and fair election. The importance of participatory role of the people in governance is the hallmark of a democratic republic to which the Constitution is committed by the preamble and the provisions contained in the Articles of the Constitution.

The petitioners submit that the law declared by this Court in the case PUCL (supra) is binding on the Legislature and the Executives under Articles 141 and 144 of the Constitution. The right of a citizen, to know about the relevant information of a candidate at an election for his effective participation as a voter in a democratic process, is a fundamental right duly recognised by this Court which is distinct from his legal or statutory right under the RP Act to vote or contest any election. On behalf of petitioners, the following political thought of Maddison is relied:-

> "A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both and a people who need to be their own governors, must arm themselves with the power that knowledge gives."

Counsel for the petitioner submits that people's court being the real democratic favourite forum, it is logical that this should be equipped with all facts regarding those it chooses to elect as its representatives.

Assailing the provisions of Section 33B inserted by Ordinance and Amendment Act to the RP Act of 1951 the contention advanced is that competence of the legislature to annul the effect of a judgment by altering the basis of the interpretation by Court can be conceded but where the court has held 'right to information' of a citizen regarding antecedents of a candidate at an election as part of his fundamental "right of speech and expression" under Article 19(1)(a) of the Constitution, legislature by amending the RP Act of 1951 cannot nullify such fundamental right recognized and declared by this Court.

On behalf of respondents i.e. Union of India and its authorities learned Solicitor General made strenuous efforts to support the provisions of the Amendment Ordinance and Amendment Act. It is submitted that in the case of PUCL (supra) the Court issued directions to the Election Commission to suitably make provisions for declaration of information by a candidate at an election regarding his criminal antecedents, if any, his qualifications and financial status because the Court found that in the provisions of the Act and the Rules, there were no provisions for imparting necessary information by the candidate to the voter. This legislative vacuum was filled by the Court in discharge of its constitutional obligation. It is submitted that firstly by the Ordinance and later by the Amendment Act the so- called legislative vacuum has been filed by the Parliament. Elections in future will now be regulated by the law newly enacted and not in accordance with the directions made by the Court to the Election Commission at the time when there did not exist any law or provision on the question of imparting of relevant information by the candidate to the voter.

On behalf of respondents, it is further submitted that in the Amendment Act, suitable provisions have been made for disclosure of criminal antecedents of a candidate. He has also to disclose his assets, not at the time of election, but only if he gets elected. The contention advanced is that once the legislature has filled the vacuum in law identified by the Court and earlier filled by directions of the Court to the Election Commission, the legislature could by enacting Section 33B as part of the RP Act 1951, give an over-riding effect to the amending law over any judgment of the Court or instructions issued by the Election Commission. It is argued that the judgment in the case of PUCL (Supra) of this Court itself contemplated that the directions of the Court requiring candidates to

supply requisite information to the voter at an election were to operate only till an appropriate legislation was made. Once such legislation is made by the Parliament, the decision of this Court in the case of PUCL (Supra) loses its efficacy because Amendment Act has filled the vacuum or void in the RP Act. The legislative wisdom of filling the vacuum in a particular manner cannot be a subject matter of judicial scrutiny when there is no violation of any fundamental right of the citizen.

Learned Solicitor General alternatively contended that assuming that a right to get relevant information by the voter from a candidate at an election is a fundamental right, the extent of operation of this right is the matter that the legislature alone can decide. It is submitted that even if this Court concludes that the extent of information required to be given by the provisions inserted by the Ordinance followed by the Amendment Act are not adequate, that by itself would constitute no ground to strike down the impugned Ordinance and the Act or Section 33B inserted to the Representation of People Act, 1951. The legislature has filled the void in law in the manner thought most appropriate and practical. It is asserted that this court should not insist that the legislative void has to be filled only in the manner indicated in the directions of this Court in the case of PUCL (supra).

Another alternative argument advanced on behalf of the Union of India is that this Court by interpretation of Article 19(1)(a) of the Constitution, cannot elevate a statutory right to vote of a voter under the RP Act of 1951 to a fundamental right when such a right is nowhere recognized by the Constitution. The under-mentioned decisions of this Court have been relied to support the submission that right to vote and right to contest at an election have always been recognized to be special law or statutory right and not a common law or constitutional right.

Ajab Singh vs. State of UP [2000(3) SCC 521 at 525]; Jyoti Basu vs. Debi Ghosal [1982 (1) SCC 691 paras 8,9 at page 696]; Jumuna Prasad Mukhariya vs. Lachhi Ram [1955 (1) SCR 608 at 609-610]; NP Ponnuswami vs. Returning Officer [1952 SCR 218 at 220, 236].

Learned Solicitor General emphatically submitted that in the case of PUCL(supra), equating the right of a voter to exercise his right of franchise to a fundamental right of speech and expression, is clearly in contradiction to the various decisions of equal and larger benches of this court where such a right of voter is only recognised as a statutory right. It is submitted in view of a clear conflict of opinions between three-judges bench decision of this Court in PUCL (supra) and benches consisting of equal strength of judges or larger benches in the case cited and noted above, it is necessary for this Court to refer the matter to a Constitution Bench on this very important and vital question of the nature of right of a voter in the ambit of a fundamental right under Article 19(1)(a) of the Constitution.

Elaborating his argument to question the correctness of the decision of this Court in the case of PUCL (supra) learned Solicitor General argued that only necessary information regarding a candidate can be insisted upon which would not affect the candidate's "right to privacy." It is also submitted that there are dangers inherent in enlarging "right to information" as being part of the right of "freedom of speech and expression."

It is pointed out that if "right to information" regarding the candidate is fundamental right under Article 19(1)(a), the only restriction that can be put on such right would be those which are mentioned in clause (2) of Article 19 such as in the interest of security of the State, friendly relations with foreign countries, public order, decency or morality. Placing interpretation on the contents of Article 19(1)(a) with clause (2) thereunder, it is submitted that right to information of a voter to the candidate is not conceived by the Constitution as a fundamental right. It is submitted that a candidate cannot be asked to disclose such information about him which is not required by the provisions of RP Act and which does not disqualify him from contesting the election. The educational qualifications are not required for a voter or candidate under the Constitution and the RP Act. The insistence, therefore, on the candidate to supply his educational bio-data is wholly irrelevant. Similarly, he cannot be asked to disclose his assets or financial status before he is elected at an election as such imparting of information affects his "right to privacy" and is likely to expose him to dangers from unknown quarters because of the disclosure of his wealth and means. It is questioned, "why should a candidate be asked to supply information of assets or wealth of his wife and dependants?" With the above submissions, the prayer made is that the question raised by the petitioners be referred for decision by a Constitution Bench in accordance with Article 145(3) of the Constitution.

The above-mentioned contentions advanced by the parties, which have been dealt with and answered by Brother Shah J. and with which I am in complete agreement, are not required to be dealt with by me separately. I would, however, like to add some additional reasons for our agreed conclusion.

. The subject of reform of election system is no doubt exclusively of legislature but the question is: will the judiciary remain a silent spectator to see the possible failure of democratic process? Where the legislature has failed to show the required legislative will to undertake essential legislative reforms as indicated by this court in the case of PUCL (supra), unfilled legislative void has to be filled by judiciary as part of its constitutional obligation and duty. The legislative void has been filed no doubt, only partially by the Amendment Act. The Constitution envisages and expects from independent judiciary a role of a "sentinel on the quivi" or in other words a "watchdog." The judiciary has to oversee the functions of the Legislature and Executive to ensure that constitutional principles are strictly adhered to and the laws are so framed and adequately implemented to uphold the basic structure of the Constitution. 'Free and fair elections' for a Parliamentary democracy are already identified to be the basic features of the Constitution. The impugned provisions of the Amendment Ordinance and Act show want of adequate legislative will in improving the election system on the lines suggested and in accordance with the law declared by this Court in the case of PUCL (supra). The judiciary is duty bound by constitution, therefore, to step in to fill the unfilled void in election law.

There can be no dispute on the legal proposition advanced on behalf of Union of India that "right to elect and get elected" for formation of a democratic Government is not recognised in the Constitution as fundamental right. In a series of decisions relied and dicussed by Brother Shah J. right to vote and contest at an election is recognised only as a legal right based on election law. But as has been held in the unanimous opinion of this Court in the case of PUCL (supra), 'a voter while

voting or contesting an election does not lose his fundamental right as a citizen.' The formation of a real democratic government through 'free and fair election' is the basic structure of the Constitution. The right of a citizen to participate effectively in an election can be exercised only if he is able to obtain relevant information about a candidate in whose favour he may choose to vote or not to vote. This 'right of information' of a citizen in a participatory democratic process is distinct from his statutory right as a 'voter' given to him in election law.

In my opinion this Court is obliged by the Constitution to intervene as the legislative field still leave a vacuum. On an issue of fundamental right, this Court would be guilty of failing in its duty if the void in law is allowed to be left unfilled to the detriment of rights of citizen. The law as it stands today after amendment is deficient in ensuring 'free and fair election.' With these additional reasons, I agree with the conclusion of Brother Shah J. that the provision of section 33B introduced to the RP Act 1951 by the Amendment Ordinance followed by the Amendment Act, is required to be struck down as violative of the Constitution.

The result would be that on the requirements regarding information to be imparted by the candidate to the voter at the election, the directions of this Court made to the Election Commission in the case of PUCL (supra) in so far as they are not covered by the Representation of Peoples Act 1951, as amended shall be followed as supplemental to the provisions of the aforesaid Act.and be read as supplemental to the provisions of RP Act .J [D.M. Dharmadhikari] New Delhi February , 2003.

IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO. 490 OF 2002 People's Union for Civil Liberties (PUCL) & another .. Petitioners Versus Union of India and another .. Respondents WITH WRIT PETITION (CIVIL) NO. 509 OF 2002 Lok Satta and others .. Petitioners Versus Union of India .. Respondent AND WRIT PETITION (CIVIL) No. 515 of 2002 Association For Democratic Reforms .. Petitioner Versus Union of India and another .. Respondents J U D G M E N T Shah, J.

These writ petitions under Article 32 of the Constitution of India have been filed challenging the validity of the Representation of the People (Amendment) Ordinance, 2002 (No.4 of 2002) ("Ordinance" for short) promulgated by the President of India on 24th August, 2002.

There was an era when a powerful or a rich or a strong or a dacoit aged more than 60 years married a beautiful young girl despite her resistance. Except to weep, she had no choice of selecting her mate. To a large extent, such situation does not prevail today. Now, young persons are selecting mates of their choice after verifying full details thereof. Should we not have such a situation in selecting a candidate contesting elections? In a vibrant democracy is it not required that a little voter should know bio-data of his/her would be Rulers, Law-makers or Destiny-maker of the Nation?

Is there any necessity of keeping in dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape Or has acquired the wealth by unjustified means? May be that he is acquitted because Investigating Officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what was seen by them.

Is there any necessity of permitting candidates or his supporters to use unaccounted money during elections? If assets are declared, would it not amount to having some control on unaccounted election expenditure?

It is equally true that right step in that direction is taken by amending the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') on the basis of judgment rendered by this Court in Union of India v. Association for Democratic Reforms [(2002) 5 SCC 294]. Still however, question to be decided is whether it is in accordance with what has been declared in the said judgment?

After concluding hearing of the arguments on 23rd October, 2002, the matter was reserved for pronouncement of judgment. Before the judgment could be pronounced, the Ordinance was repealed and on 28th December 2002, the Representation of the People (3rd Amendment) Act, 2002 ("Amended Act" for short) was notified to come into force with retrospective effect. Thereafter, an amendment application was moved before us challenging the validity of Section 33B of the Amendment Act which was granted because there is no change in the cause of action nor in the wording of Section 33B of the Amended Act, validity of which is under challenge. At the request of learned counsel for the respondent-Union of India, time to file additional counter was granted and the matter was further heard on 31st January, 2003.

It is apparent that there is no change in the wording (even full stop or coma) of Sections 33A and 33B of the Ordinance and Sections 33A and 33B of the Amended Act. The said Sections read as under

> "33A. Right to information. (1) A candidate shall, apart from any information, which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether
>
> (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;
>
> (ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-

section (3), of section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2) at a conspicuous place at his office for the information of the electors relating to a

constituency for which the nomination paper is delivered."

33B. Candidate to furnish information only under the Act and the rules. Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

For the directions, which were issued in Association for Democratic Reforms (supra), it is contended that some of them are incorporated by the statutory provisions but with regard to remaining directions it has been provided therein that no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the Rules made thereunder, despite the directions issued by this Court. Therefore, the aforesaid Section 33B is under challenge.

At the outset, we would state that such exercise of power by the Legislature giving similar directions was undertaken in the past and this Court in unequivocal words declared that the Legislature in this country has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts. For this, we would quote some observations on the settled legal position having direct bearing on the question involved in these matters:

> A- Dealing with the validity of Bombay Provincial Municipal Corporation (Gujarat Amendment and Validating Provisions) Ordinance 1969, this Court in The Municipal Corporation of the City of Ahmedabad and another v. The New Shrock Spg. And Wvg. Co. Ltd. [(1970) 2 SCC 280] observed thus:-
>
> "7. This is a strange provision. Prima facie that provision appears to command the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. That provision attempts to make a direct inroad into the judicial powers of the State. The Legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those powers, the Legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts"

Further, Khanna, J. In Smt. Indira Nehru Gandhi v. Shri Raj Narain [1975 Supp. SCC 1] succinctly and without any ambiguity observed thus:

> "190. A declaration that an order made by a court of law is void is normally part of the judicial function and is not a legislative function. Although there is in the Constitution of India no rigid separation of powers, by and large the spheres of judicial function and legislative function have been demarcated and it is not

permissible for the Legislature to encroach upon the judicial sphere. It has accordingly been held that a Legislature while it is entitled to change with retrospective effect the law which formed the basis of the judicial decision, it is not permissible to the Legislature to declare the judgment of the court to be void or not binding.

It is also settled law that the Legislature may remove the defect which is the cause for invalidating the law by the Court by appropriate legislation if it has power over the subject matter and competence to do so under the Constitution.

B. Secondly, we would reiterate that the primary duty of the Judiciary is to uphold the Constitution and the laws without fear or favour, without being biased by political ideology or economic theory. Interpretation should be in consonance with the Constitutional provisions, which envisage a republic democracy. Survival of democracy depends upon free and fair election. It is true that the elections are fought by political parties, yet election would be a farce if the voters are unaware of antecedents of candidates contesting elections. Their decision to vote either in favour of 'A' or 'B' candidate would be without any basis. Such election would be neither free nor fair.

For this purpose, we would refer to the observations made by Khanna, J. in His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and another [(1973) 4 SCC 225], which read thus "That all constitutional interpretations have political consequences should not obliterate the fact that the decision has to be arrived at in the calm and dispassionate atmosphere of the court room, that judges in order to give legitimacy to their decision have to keep aloof from the din and controversy of politics and that the fluctuating fortunes of rival political parties can have for them only academic interest. Their primary duty is to uphold the Constitution and the laws without fear or favour and in doing so, they cannot allow any political ideology or economic theory, which may have caught their fancy, to colour the decision."

C. It is also equally settled law that the Court should not shirk its duty from performing its function merely because it has political thicket. Following observations (of Bhagwati, J., as he then was) made in State of Rajasthan v. Union of India [(1977) 3 SCC 592] were referred to and relied upon by this Court in B.R. Kapur v. State of Tamil Nadu [(2001) 7 SCC 231]:

"53. But merely because the question has a political complexion, that by itself is no ground why the court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore, fail to be political. So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so. It is necessary to assert the clearest possible terms, particularly in

the context of recent history, that the Constitution is suprema lex, the paramount law of the land, and there is no department or branch of Government above or beyond it."

SUBMISSIONS:

It is contended by learned Senior Counsel Mr. Rajinder Sachar and Mr. P.P. Rao for the petitioners that the Section 33B is, on the face of it, arbitrary and unjustifiable. It is their contention that the aforesaid section is on the face of it void as a law cannot be passed which violates/abridges the fundamental rights of the citizens/voters, declared and recognised by this Court. It is submitted that without exercise of the right to know the relevant antecedents of the candidate, it will not be possible to have free and fair elections. Therefore, the impugned Section violates the very basic features of the Constitution, namely, republic democracy. For having free and fair elections, anywhere in the territory of this country, it is necessary to give effect to the voters' fundamental right as declared by this Court in the above judgment.

It has been contended that, in our country, at present about 700 legislators and 25 to 30 Members of Parliament are having criminal record. It is also contended that almost all political parties declare that persons having criminal record should not be given tickets, yet for one or other reason, political parties under some compulsion give tickets to some persons having criminal records and some persons having no criminal records get support from criminals. It is contended by learned senior counsel Mr. Sachar that by issuing the Ordinance, the Government has arrogated to itself the power to decide unilaterally for nullifying the decision rendered by this Court without considering whether it can pass legislation which abridges fundamental right guaranteed under Article 19(1)(a). It is his submission that the Ordinance is issued and thereafter the Act is amended because it appears that the Government is interested in having uninformed ignorant voters.

Contra, learned Solicitor General Mr. Kirit N. Raval and learner senior counsel Mr. Arun Jaitley appearing on behalf of the intervenor, with vehemence, submitted that the aforesaid Ordinance/Amended Act is in consonance with the judgment rendered by this Court and the vacuum pointed out by the said judgment is filled in by the enactment. It is also contended by learned senior counsel Mr. Jaitley that voters' right to know the antecedents of the candidate is not part of the fundamental rights, but it is a derivative fundamental right on the basis of interpretation of Article 19(1)(a) given by this Court. It is submitted that the Ordinance/Amended Act is in public interest and, therefore, it cannot be held to be illegal or void. In support of their contentions, learned counsel for the parties have referred to various decisions rendered by this Court.

WHETHER ORDINANCE/AMENDED ACT COVERS THE DIRECTIONS ISSUED BY THIS COURT:

Before dealing with the rival submissions, we would refer to the following directions (para 48) given by this Court in Association for Democratic Rights case (supra):

"The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the pastif any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law.

If so, the details thereof?

(3) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(5) The educational qualifications of the candidate."

The learned counsel for the respondent submitted that the directions issued by this Court are, to a large extent, implemented by the aforesaid Amended Act. It is true that some part of the directions issued by this Court are implemented. Comparative Chart on the basis of Judgment and Ordinance would make the position clear:

Subject Discussion in Judgment dt.2.5.2002	Provisions Under Ordinance/Amended Act
Past criminal Record. All past convictions/acquittals/ discharges, whether punished or sentenced to imprisonment or fine.	Para 48(1) S.33A(1)(ii) Conviction of any offence (except S.8 offence) and with imprisonment of one year or more.
No such declaration in case of acquittals or discharge.	
	(S.8 offences to be disc nomination paper itself)
Pending criminal	Para 48(2) S.33A(1)(i)

cases. Prior to six months of filing of Any case in which the candidate has nomination, whether the been accused of any criminal offence candidate has been accused of punishable with imprisonment of any criminal offence punishable two years or more, and charge with imprisonment of two years framed.

or more, and charge framed or cognizance taken.

Assets and liabilities spouse and dependants.	Para 48(3) Assets of candidate (contesting the elections)	S. 75A election, elected candidate is required to furnish information relating to him as well as h spouse and dependent chi assets to the Speaker of the House	No such who is contest
	Para 48(4) Liabilities, particularly to		No pr

Government And public candidate contesting election. financial institutions.

However, after election, Section 75A(1)ii) & (iii) provides for elected candidate.

Educational Para 48(5) No provision.

Qualifications. To be declared.

Breach of No direction regarding S.125A Provisions consequences of Creates an offence punishable non-compliance. by imprisonment for six months or fine for failure to furnish affidavit in accordance with S.33A, as well as for falsity or concealment in affidavit or nomination paper.

S.75A(5) Wilful contravention of Rules regarding asset disclosure may be treated as breach of privilege of the House.

.

From the aforesaid chart, it is clear that a candidate is not required to disclose (a) the cases in which he is acquitted or discharged of criminal offence(s); (b) his assets and liabilities; and

(c) his educational qualification. With regard to assets, it is sought to be contended that under the Act the candidate would be required to disclose the same to the Speaker after being elected. It is also contended that once the person is acquitted or discharged of any criminal offence, there is no necessity of disclosing the same to the voters.

FINALITY OF THE JUDGMENT:

Firstly, it is to be made clear that the judgment rendered by this Court in Association for Democratic Reforms (Supra) has attained finality. The voters' right to know the antecedents of the candidates is based on interpretation of Article 19(1)(a) which provides that all citizens of this country would have fundamental right to "freedom of speech and expression" and this phrase is construed to include fundamental right to know relevant antecedents of the candidate contesting the elections.

Further, even though we are not required to justify the directions issued in the aforesaid judgment, to make it abundantly clear that it is not ipse dixit and is based on sound foundation, it can be stated thus Democratic Republic is part of the basic structure of the Constitution.

For this, free and fair periodical elections based on adult franchise are must.

For having unpolluted healthy democracy, citizens-voters should be well-informed.

So, the foundation of a healthy democracy is to have well- informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no over-dues of public financial institution or government dues. From this information, it would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. A little man a citizen a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as M.P. or M.L.A. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is the necessity.

Further, in context of Section 8 of the Act, the Law Commission in its Report submitted in 1999 observed as under:

"5.1 The Law Commission had proposed that in respect of offences provided in sub-section (1) (except the offence mentioned in clause (b) of sub-section (1), a mere framing of charge should serve as a disqualification. This provision was sought to be made in addition to existing provision which provides for disqualification arising on account of conviction. The reason for this proposal was that most of the offences mentioned in sub-section (1) are either election offences or serious offences affecting the society and that the persons committing these offences are mostly persons having political clout and influence. Very often these elements are supported by unsocial persons or group of persons, with the result that no independent witness is prepared to come forward to depose against such persons. In such a situation, it is proving extremely difficult to obtain conviction of these persons. It was suggested that inasmuch as charges were framed by a court on the basis of the material placed before it by the prosecution including the material disclosed by the charge-sheet, providing for disqualification on the ground of framing of the charge-sheet would be neither unjust nor unreasonable or arbitrary."

The Law Commission also observed: -

6.3.1. There has been mounting corruption in all walks of public life. People are generally lured to enter politics or contest elections for getting rich overnight. Before allowing people to enter public life the public has a right to know the antecedents of such persons. The existing conditions in which people can freely enter the political arena without demur, especially without the electorate knowing about any details of the assets possessed by the candidate are far from satisfactory. It is essential by law to provide that a candidate seeking election shall furnish the details of all his assets (movable/immovable) possessed by him/her, wife- husband, dependant relations, duly supported by an affidavit.

6.3.2. Further, in view of recommendations of the Law Commission for debarring a candidate from contesting an election if charges have been framed against him by a Court in respect of offences mentioned in the proposed section 8-B of the Act, it is also necessary for a candidate seeking to contest election to furnish details regarding criminal case, if any, pending against him, including a copy of the FIR/complaint and any order made by the concerned court.

6.3.3. In order to achieve the aforesaid objectives, it is essential to insert a new section 4-A after the existing section 4 of the Representation of the People Act, 1951, as follows "4-A. Qualification for membership of the House of the People, the Council of States, Legislature Assembly of a State or Legislative Council A person shall not be qualified to file his nomination for contesting any election for a seat in the House of the People, the Council of States Legislature Assembly or Legislative Council of a State unless he or she files

(a) a declaration of all his assets (movable/immovable) possessed by him/her, his/her spouse and dependent relations, duly supported by an affidavit, and

(b) a declaration as to whether any charge in respect of any offence referred to in section 8B has been framed against him by any Criminal Court."

It is to be stated that similar views are expressed in the report submitted in March 2002 by the National Commission to Review the Working of the Constitution appointed by the Union Government for reviewing the working of the Constitution. Relevant recommendations are as under:

> "Successes and Failures 4.4 During the last half-a-century, there have been thirteen general elections to Lok Sabha and a much large number to various State Legislative Assembles. We can take legitimate pride in that these have been successful and generally acknowledged to be free and fair. But, the experience has also brought to fore many distortions, some very serious, generating a deep concern in many quarters. There are constant reference to the unhealthy role of money power, muscle power and mafia power and to criminalisation, corruption, communalism and casteism.
>
> 4.12 Criminalisation 4.12.2 The Commission recommends that the Representation of the People Act be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the Court in that offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his antecedents, it should be derecognised and deregistered.
>
> 4.12.3. Any person convicted for any heinous crime like murder, rape, smuggling, dacoity etc. should be permanently debarred from contesting for any political office.
>
> 4.12.8 The Commission feels that the proposed provision laying down that a person charged with an offence punishable with imprisonment which may extend to five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges were framed in a Court of law should equally be applicable to sitting members of Parliament and State Legislatures as to any other such person.
>
> 4.14 High Cost of Elections and Abuse of Money Power.
>
> 4.14.1 One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result,

it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country. The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. No matter how we look at it, citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many imagine. Electoral compulsions for funds become the foundation of the whole super structure of corruption.

4.14.3 Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities. The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well- wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads. The EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission.

Any violation or misreporting should be dealt with strongly.

4.14.4 The Commission recommends that every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and liabilities along with those of his close relations annually. Law should define the term 'close relatives'.

4.14.6 All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Further, as a follow up action, the particulars of the assets and liabilities so given should be audited by a special authority created specifically under law for the purpose. Again, the legislators should be required under law for the purpose. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office.

Candidates owning Government Dues 4.23 It is recommended that all candidates should be required to clear government dues before their candidatures are accepted. This pertains to payment of taxes and bills and unauthorised occupation of accommodation and availing of telephones and other government facilities to which they are no longer entitled. The fact that matters regarding Government dues in respect of the candidate are pending before a Court of Law should be no excuse.

Mr. P.P. Rao, learned senior counsel has drawn our attention to the 'Ethics Manual for Members, Officers and Employees of the U.S. House of Representatives', which inter alia provides as under

"Financial interests and investments of Members and employees, as well as those of candidates for the House of Representatives, may present conflicts of interest with official duties. Members and employees need not, however, divest themselves of assets upon assuming their positions, nor must Members disqualify themselves from voting on issues that generally affect their personal financial interests. Instead, public financial disclosure provides a means of monitoring and deterring conflicts.

All Members, officers, and employees are prohibited from improperly using their official positions for personal gain. Members, officers, candidates, and certain employees must file annual Financial Disclosure Statements, summarizing financial information concerning themselves, their spouses, and dependent children. Such statements must indicate outside compensation, holdings and business transactions, generally for the calendar year preceding the filing date.

Who must File The following individuals must file Financial Disclosure Statements: -

? Members of the House of Representatives; ? Candidates for the House of Representatives;

When to File Candidates who raise or spend more than $5,000 for their campaigns must file within 30 days of doing so, or by May 15, whichever is later, but in any event at least 30 days prior to the elections in which they run.

Termination reports must be filed within 30 days of leaving government employment by Members, officers, and employees who file Financial Disclosure Statements.

POLICIES UNDERLYING DISCLOSURE Members, officers, and certain employees must annually disclose personal financial interests, including investments, income, and liabilities. Financial disclosure provisions were enacted to monitor and to deter possible conflicts of interest due to outside financial holdings. Proposals for divestiture of potentially conflicting assets and mandatory disqualification of Members from voting rejected as impractical or unreasonable. Such disqualification could result in the disenfranchisement of a Member's entire constituency on

particular issues. A Member may often have a community of interests with his constituency, may arguably have been elected because of and to serve these common interests, and thus would be ineffective in representing the real interests of his constituents if he were disqualified from voting on issues touching those matters of mutual concern. In rare instances, the House Rule on abstaining from voting may apply where a direct personal interest in a matter exists.

At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows his personal economic interests to impair his independence of judgment in the conduct of his public duties.

The House has required public financial disclosure by rule since 1968 and by statute since 1978.

SPECIFIC DISCLOSURE REQUIREMENTS The Ethics in Government Act of 1978 mandated annual financial disclosure by all senior Federal personnel, including all Members and some employees of the House. The Ethics Reform Act of 1989 totally revamped these provisions and condensed what had been different requirements for each branch into one uniform title covering the entire Federal Government. Financial Disclosure Statements must indicate outside compensation, holdings, and business transactions, generally for the calendar year preceding the filing date. In all instances, filers may disclose addition information or explanation at their discretion."

At this stage, it would be worth-while to note some observations made by the Committee on State Funding of Elections headed by Shri Indrajit Gupta as Chairman and others, which submitted its report in 1998. In the concluding portion, it has mentioned as under

"CONCLUSION:

1. Before concluding, the Committee cannot help expressing its considered view that its recommendations being limited in nature and confined to only one of the aspects of the electoral reforms may bring about only some cosmetic changes in the electoral sphere. What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullying the purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed if the present recommendations of the Committee are to serve the intended useful purpose."

From the aforesaid reports of the Law Commission, National Commission to Review the Working of the Constitution, Conclusion drawn in the report of Shri Indrajit Gupta and Ethics Manual applicable in an advance democratic country, it is apparent that for saving the democracy from the evil influence of criminalisation of politics, for saving the election from muscle and money power, for having true democracy and for controlling corruption in politics, the candidate contesting the election should be asked to disclose his antecedents including assets and liabilities. Thereafter, it is for the voters to decide in whose favour he should cast his vote.

Further, we would state that this Court has construed 'freedom of speech and expression' in various decisions and on basis of tests laid therein, directions were issued. In short, this aspect is discussed in paragraphs 31, 32 and 33 of our earlier judgment which read as under:

> "31. In State of Uttar Pradesh v. Raj Narain and Others [(1975) 4 SCC 428], the Constitution Bench considered a questionwhether privilege can be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar Pradesh and certain documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh? The Court observed that "the right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security". The Court pertinently observed as under: -
>
> "In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing."

32. In Indian Express Newspapers (Bombay) Private Ltd. and Others etc. v. Union of India and others [(1985) 1 SCC 641], this Court dealt with the validity of customs duty on the newsprint in context of Article 19(1)(a). The Court observed (in para 32) thus:

> "The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic country cannot make responsible judgments."

33. The Court further referred (in para 35) to the following observations made by this Court in Romesh Thappar v. State of Madras (1950 SCR 594): -

> "(The freedom) lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse (But) "it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding

the proper fruits".

Again in paragraph 68, the Court observed: -

> ".The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves (Per Lord Simon of Glaisdale in Attorney-General v. Times Newspapers Ltd. (1973) 3 All ER 54). Freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps an individual to attain self-fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration."

Even with regard to telecasting of events such as cricket, football and hockey etc., this Court in Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal [(1995) 2 SCC 161] held that "the right to freedom of speech and expression also includes right to educate, to inform and to entertain and also the right to be educated, informed and entertained." The Court further held as under:-

> "82. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non- information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 per cent of the population has an access to the print media which is not subject to pre- censorship.."

The aforesaid passage leaves no doubt that right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce. On this aspect, no further discussion is required. However, we would narrate some observations made by Bhagwati, J. (as he then was) in S.P. Gupta v. Union of India [1981 Supp. SCC 87], while dealing with the contention of right to secrecy that "there can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean

and healthy administration". Further, it has been explicitly and lucidly held thus:

> "64. Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. "Knowledge" said James Madison, "will for ever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it, is but a prologue to a force or tragedy or perhaps both." The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world.
>
> 65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government -an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government."

It was further observed "67. .The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a).The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. It is in the context of this background that we must proceed to interpret Section 123 of the Indian Evidence Act."

From the aforesaid discussion it can be held that it is expected by all concerned and as has been laid down by various decisions of this Court that for survival of true democracy, the voter must be aware of the antecedents of his candidate. Voter has to caste intelligent and rational vote according to his own criteria. A well informed voter is the foundation of democratic structure. That information to a

voter, who is the citizen of this country, is one facet of the fundamental right under Article 19(1)(a).

ARTICLE 145 (3) OF THE CONSTITUTION OF INDIA Mr. Arun Jaitley, learned Senior Counsel and Mr. Kirit N. Raval, learned Solicitor General submitted that the question involved in these petitions is a substantial question of law as to the interpretation of the Constitution and, therefore, the matter may be referred to a Bench consisting of Five Judges.

In our view, this contention is totally misconceived. Article 19(1)(a) is interpreted in numerous judgments rendered by this Court. After considering various decisions and following tests laid therein, this Court in Association for Democratic Reforms (supra) arrived at the conclusion that for survival of the democracy, right of the voter to know antecedents of a candidate would be part and parcel of his fundamental right. It would be the basis for free and fair election which is a basic structure of the Constitution. Therefore, the question relating to interpretation of Article 19(1)(a) is concluded and there is no other question which requires interpretation of Constitution.

Dealing with the similar contention, Five Judge Bench of this Court in State of Jammu & Kashmir and others v. Thakur Ganga Singh and another [(1960) 2 SCR 346] succinctly held thus:

> "What does interpretation of a provision mean? Interpretation is the method by which the true sense or the meaning of the word is understood. The question of interpretation can arise only if two or more possible constructions are sought to be placed on a provision one party suggesting one construction and the other a different one. But where the parties agree on the true interpretation of a provision or do not raise any question in respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution. On an interpretation of Art.14, a series of decisions of this Court evolved the doctrine of classification. As we have pointed out, at no stage of the proceedings either the correctness of the interpretation of Art. 14 or the principles governing the doctrine of classification have been questioned by either of the parties. Indeed accepting the said doctrine, the appellants contended that there was a valid classification under the rule while the respondents argued contra. The learned Additional Solicitor General contended, for the first time, before us that the appeal raised a new facet of the doctrine of equality, namely, whether an artificial person and a natural person have equal attributes within the meaning of the equality clause, and, therefore, the case involves a question of interpretation of the Constitution. This argument, if we may say so, involves the same contention in a different garb. If analysed, the argument only comes to this: as an artificial person and a natural person have different attributes, the classification made between them is valid. This argument does not suggest a new interpretation of Art. 14 of the Constitution, but only attempts to bring the rule within the doctrine of classification. We, therefore, hold that the question raised in this case does not involve any question of law as to the interpretation of the Constitution."

The aforesaid judgment is referred to and relied upon in Sardar Sardul Singh Caveeshar v. State of Maharashtra [(1964) 2 SCR 378].

From the judgment rendered by this Court in Association for Democratic Reforms (supra), it is apparent that no such contention was raised by the learned Solicitor General, who appeared in appeal filed on behalf of the Union of India that question involved in that matter was required to be decided by five-Judge Bench, as provided under Article 145(3) of the Constitution. The question raised before us has been finally decided and no other substantial question of law regarding the interpretation of the Constitution survives. Hence, the matter is not required to be referred to five-Judge Bench.

WHETHER IMPUGNED SECTION 33-B CAN BE CONSIDERED AS VALIDATING PROVISION:

> The learned counsel for the respondent submitted that by the impugned legislation, most of the directions issued by the Court are complied with and vacuum pointed out is filled in by the legislation. It is their contention that the Legislature did not think it fit that the remaining information as directed by this Court is required to be given by a contesting candidate.
>
> This submission is, on the face of it, against well settled legal position. In a number of decisions rendered by this Court, similar submission is negatived. The legislature has no power to review the decision and set it at naught except by removing the defect which is the cause pointed out by the decision rendered by the court. If this is permitted it would sound the death knell of the rule of law as observed by this Court in various decisions. In P. Sambamurthy v. State of A.P. [(1987) 1 SCC 363] this Court observed:
>
> "4. .. it is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law, and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The provisio to clause (5) of Article 371-D is, therefore, clearly violative of the basic structure doctrine."

In Re. Cauveri Water Disputes Tribunal [1993 Supp (1) SCC 96 (II)] the Court referred to and relied upon the decision in P. Sambamurthy (supra). In that case, the Court dealt with the validity of the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 issued by the Government of Karnataka giving overriding effect that notwithstanding anything contained in any order, report or decision of any Court or Tribunal except the final decision under the provisions of sub-Section (2) of Section 5 read with Section 6 of the Inter-State Water Disputes Act, 1956 shall have any effect and

held that the Ordinance in question which seeks directly to nullify the order of the Tribunal impinges on the judicial power of the State and is, therefore, ultra vires. After referring to the earlier decisions, the Court observed thus:

> "74. it would be unfair to adopt legislative procedure to undo a settlement which had become the basis of a decision of the High Court. Even if legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the specific settlement which had been held to be valid and enforceable by a High Court. The object of the Act was in effect to take away the force of the judgment of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.
>
> 76. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal."

Further, in The Municipal Corporation of the City of Ahmedabad and another etc. etc. v. The New Shrock Spg. And Wvg. Co. Ltd. etc. etc. [(1970) 2 SCC 280] this Court (in para 7) held thus:

> "But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts. The limits of the power of Legislatures to interfere with the directions issued by courts were considered by several decisions of this Court. In Shri Prithvi Cotton Mills Ltd. and Another v. The Broach Borough Municipality and others [(1969) 2 SCC 283], our present Chief Justice speaking for the Constitution Bench of the Court observed:
>
> "Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition of course, is that the Legislature must possess the power to impose the tax for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or

> invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometime this is done by providing for jurisdiction where jurisdiction had not been properly invested before.
>
> Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law."

In Mahal Chand Sethia v. State of West Bengal [Crl. A. No.75 of 1969, decided on 10.9.1969], Mitter, J., speaking for the Court stated the legal position in these words:

> "The argument of counsel for the appellant was that although it was open to the State legislature by an Act and the Governor by an Ordinance to amend the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, it was incompetent for either of them to validate an order of transfer which had already been quashed by the issue of a writ of certiorari by the High Court and the order of transfer being virtually dead, could not be resuscitated by the Governor or the Legislature and the validating measures could not touch any adjudication by the Court.
>
> ..A court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence of the Legislature or if it infringed the rights enshrined in Part III of the Constitution. Needless to add it can strike down or declare invalid any Act or direction of a State Government which is not authorised by law. The position of a Legislature is however different. It cannot declare any decision of a court of law to be void or of not effect."

For the purpose of deciding these petitions, the principles emerging from various decisions rendered by this Court from time to time can inter alia be summarised thus:

> the legislature can change the basis on which a decision is rendered by this Court and change the law in general. However, this power can be exercised subject to Constitutional provision, particularly, legislative competence and if it is violative of fundamental rights enshrined in Part-III of the Constitution, such law would be void as provided under Article 13 of the Constitution. Legislature also cannot declare any decision of a Court of law to be void or of no effect.
>
> As stated above, this Court has held that Article 19(1)(a) which provides for freedom of speech and expression would cover in its fold right of the voter to know specified antecedents of a candidate, who is contesting election. Once it is held that voter has a fundamental right to know antecedents of his candidate, that fundamental right under Article 19(1)(a) could be abridged by passing such legislation only as provided under Article 19(2) which provides as under:

> "19. Protection of certain rights regarding freedom of speech, etc.(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

So legislative competence to interfere with a fundamental right enshrined in Article 19(1)(a) is limited as provided under Article 19(2).

Learned counsel for the respondents have not pointed out how the impugned legislation could be justified or saved under Article 19(2).

DERIVATIVE FUNDAMENTAL RIGHT Learned senior counsel Mr. Jaitley developed an ingenious submission that as there is no specific fundamental right of the voter to know antecedents of a candidate, the declaration by this Court of such fundamental right can be held to be derivative, therefore, it is open to the Legislature to nullify it by appropriate legislation.

In our view, this submission requires to be rejected as there is no such concept of derivative fundamental rights. Firstly, it should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since last more than 50 years, this Court has interpreted Articles 14, 19 and 21 and given meaning and colour so that nation can have a truly republic democratic society. This cannot be undone by such an Ordinance/Amended Act. For this, we would refer to the discussion by Mohan, J in Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and others [(1993) 1 SCC 645], while considering the ambit of Article 21, he succinctly placed it thus:

> "25. In Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225], Mathew J stated therein that the fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. It is relevant in this context to remember that in building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles.
>
> 26. In Pathumma v. State of Kerala [(1978) 2 SCC 1], it has been stated that:
>
> "The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than accentuate their meaning and content by process of judicial construction Personal liberty in Article 21 is of the widest amplitude."

27. In this connection, it is worthwhile to recall what was said of the American Constitution in Missouri v. Holland [252 US 416, 433]:

> "When we are dealing with words that also are constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters."

Thereafter, the Court pointed out that several unenumerated rights fall within the ambit of Article 21 since personal liberty is of widest amplitude and categorized them (in para 30) thus:

> "(1) The right to go abroad. Satwant Singh Sawhney v.

D. Ramarathnam A.P.O., New Delhi [(1967) 3 SCR 525] (2) The right to privacy. Gobind v. State of M.P. [(1975) 2 SCC 148]. In this case reliance was placed on the American decision in Griswold v. Connecticut [381 US 479, 510].

(3) The right against solitary confinement. Sunil Batra v. Delhi Administration [(1978) 4 SCC 494, 545].

(4) The right against bar fetters. Charles Sobraj v. Supdt. Central Jail [(1978) 4 SCC 104].

(5) The right to legal aid. M.H. Hoskot v. State of Maharashtra [(1978) 3 SCC 544].

(6) The right to speedy trial. Hussainara Khatoon v. Home Secretary, State of Bihar [(1980) 1 SCC 81].

(7) The right against handcuffing. Prem Shankar Shukla v. Delhi Administration [(1980) 3 SCC 526].

(8) The right against delayed execution. T.V.

Vatheeswaran v. State of T.N. [(1983) 2 SCC 68].

(9) The right against custodial violence. Sheela Barse v. State of Maharashtra [(1983) 2 SCC 96].

(10) The right against public hanging. A.G. of India v. Lachma Devi [1989 Supp (1) SCC 264].

(11) Doctor's assistance. Parmanand Katra v. Union of India [(1989) 4 SCC 286].

(12) Shelter, Shantistar Builders v. N.K. Totame [(1990) 1 SCC 520]."

Further, learned senior counsel Mr. Sachhar referred to the following decisions of this Court giving meaning to the phrase "freedom of speech and expression":

> "(1) Romesh Thappar v. State of Madras [AIR 1950 SC 124] Freedom of speech and expression includes freedom of propagation of ideas which is ensured by freedom of

circulation. [Head note (ii)] (2) Brij Bhushan and Another v. The State of Delhi [AIR 1950 SC 129] Pre-censorship of a journal is restriction on the liberty of press.

(3) Hamdard Dawakhana and Another etc. v. Union of India [AIR 1960 SC 554] Advertisements meant for propagation of ideas or furtherance of literature or human thought is a part of Freedom of Speech and Expression.

(4) Sakal Papers (P) Ltd. and Others etc. v. Union of India [AIR 1962 SC 305] Freedom of Speech and Expression carries with it the right to publish and circulate one's ideas, opinions and views.

(5) Bennett Coleman and Co. and Ors. etc. v. Union of India and Others [1972 (2) SCC 788] Freedom of Press means right of citizens to speak, publish and express their views as well as right of people to read. (Para 45) (6) Indian Express Newspapers (Bombay) (P) Ltd. and Others v. Union of India and Others [1985 (1) SCC 641] "Freedom of expression, as learned writers have observed, has four broad social purposes to serve:

(I) it helps an individual to attain self fulfillment,

(ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change."

(7) Odyssey Communications P. Ltd. v. Lokvidayan Sanghatana and Others [1988 (3) SCC 410].

Freedom of Speech and Expression includes right of citizens to exhibit film on doordarshan.

(8) S. Rangarajan v.P. Jagjivan Ram and others [1989 (2) SCC 574] Freedom of Speech and Expression means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and the right to propagate or publish opinions.

(9) LIC v. Mannubhai D. Shah [1992 (3) SCC 637] Freedom of speech and expression is a natural right which a human being acquires by birth. It is, therefore, a basic human right (Art. 19 of Universal Declaration of Human Rights relied on). Every citizen, therefore, has a right to air his or her views through the printing and/or electronic media or through any communication method.

(10) Secy. Ministry of Information and Broadcasting, Govt. of India and Others v. Cricket Association of Bengal and Others [1995 (2) SCC 161] "The right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity

of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them."

(11) S.P. Gupta v. Union of India and Another [1981 Suppl. SCC 87 at 273] Right to know is implicit in right of free speech and expression. Disclosure of information regarding functioning of the government must be the rule.

(12) State of U.P. v. Raj Narain and Others [1975 (4) SCC 428] Freedom of speech and expression includes the right to know every public act, everything that is done in a public way, by their public functionaries.

(13) Dinesh Trivedi, MP and others v. Union of India and others [(1997) 4 SCC 306] Freedom of speech and expression includes right of the citizens to know about the affairs of the Government."

There are many other judgments which are not required to be reiterated in this judgment. All these developments of law giving meaning to freedom of speech and expression or personal liberty are not required to be re-considered nor there could be legislation so as to nullify such interpretation except as provided under the exceptions to Fundamental Rights.

Learned counsel for the respondents relied upon R. Rajagopal alias R.R. Gopal and another v. State of T.N. and others [(1994) 6 SCC 632] and submitted that in the said case the Court observed that right to privacy is not enumerated as fundamental right in our Constitution but has been inferred from Article 21. In that case, reliance was placed on Kharak Singh v. State of UP [(1994) 1 SCR 332], Gobind v. State of M.P. [(1975) 2 SCC 148] and other decisions of English and American Courts and thereafter, the Court held that petitioners have a right to publish what they alleged to be a life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy for the consequences in accordance with law. For this purpose, the Court held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. The Court also pointed out an exception namely:

> "This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

From the aforesaid observations learned Solicitor General Mr. Raval and learned senior counsel Mr. Jaitley contended that rights which are derivatives would be subject to reasonable restriction. Secondly, it was sought to be contended that by insisting for declaration of assets of a candidate, right to privacy is affected. In our view, the aforesaid decision nowhere supports the said contention. This Court only considered to what extent a citizen would have right to privacy under Article 21. The court itself has carved out the exceptions and restrictions on absolute right of privacy. Further, by declaration of a fact, which is a matter of public record that a candidate was involved in various criminal cases, there is no question of infringement of any right of privacy. Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right of privacy. This is the necessity of the day because of statutory provisions of controlling wide spread corrupt practices as repeatedly pointed out by all concerned including various reports of Law Commission and other Committees as stated above.

Even the Prime Minister of India in one of his Speeches has observed to the same effect. This has been reproduced in B.R. Kapur's case (supra) by Pattanaik, J. (as he then was) (in Para 74) as under:

".. Mr. Diwan in course of his arguments, had raised some submissions on the subject "Criminalisation of Politics" and participation of criminals in the electoral process as candidates and in that connection, he had brought to our notice the order of the Election Commission of India dated 28.8.1997. . "Whither Accountability", published in The Pioneer, Shri Atal Behari Vajpayee had called for a national debate on all the possible alternatives for systematic changes to cleanse our democratic governing system of its present mess. He has expressed his dissatisfaction that neither Parliament nor the State Vidhan Sabhas are doing, with any degree of competence or commitment, what they are primarily meant to do: legislative function. According to him, barring exceptions, those who get elected to these democratic institutions are neither trained, formally or informally, in law making nor do they seem to have an inclination to develop the necessary knowledge and competence in their profession. He has further indicated that those individuals in society who are generally interested in serving the electorate and performing legislative functions are finding it increasingly difficult to succeed in today's electoral system and the electoral system has been almost totally subverted by money power, muscle power, and vote bank considerations of castes and communities. Shri Vajpayee also had indicated that the corruption in the governing structures has, therefore, corroded the very core of elective democracy. According to him, the certainty of scope of corruption in the governing structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and coalitions often without the popular mandate. Yet they capture and survive in power due to inherent systematic flows. He further stated that

> casteism, corruption and politicisation have eroded the integrity and efficacy of our civil service structure also. The manifestos, policies, programmes of the political parties have lost meaning in the present system of governance due to lack of accountability."

Further, this Court while dealing with the election expenses observed in Common Cause v. Union of India and others [(1996) 2 SCC 752] observed thus:

> "18 Flags go up, walls are painted and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxies. The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

To combat this naked display of unaccounted / black money by the candidate, declaration of assets is likely to have check of violation of the provisions of the Act and other relevant Acts including Income Tax Act.

Further, the doctrine of the Parliamentary sovereignty as it obtains in England does not prevail here except to the extent and in the fields provided by the Constitution. The entire scheme of the Constitution is such that it ensures the sovereignty and integrity of the country as a Republic and the democratic way of life by parliamentary institutions based on free and fair elections.

In P.V. Narasimha Rao v. State (CBI/SPE) [(1998) 4 SCC 626], this Court observed thus "47 Parliamentary democracy is part of the basic structure of the Constitution. It is settled law that in interpreting the constitutional provision the Court should adopt a construction which strengthens the foundational features and basic structure of the Constitution. [See: Sub-Committee on Judicial Accountability v. Union of India [(1991) 4 SCC 699]."

In C. Narayanaswamy v. C.K. Jaffer Sharief and others [1994 Supp. (3) SCC 170] the Court observed (in para 22) thus:

> ".If the call for "purity of elections" is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons who have made contributions and investments for the success of the candidate concerned at the election. But this has to be taken care of by Parliament.

> In T.N. Seshan, CEC of India v. Union of India and others [(1995) 4 SCC 611], this Court observed thus "10. The Preamble of our Constitution proclaims that we are a Democratic Republic Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country."

As observed in Kesavananda Bharati's case (supra), the fundamental rights themselves have no fixed content and it is also to be stated that the attempt of the Court should be to expand the reach and ambit of the fundamental rights. The Constitution is required to be kept young, energetic and alive. In this view of the matter, the contention raised by the learned counsel for the respondents, that as the phrase 'freedom of speech and expression' is given the meaning to include citizens' right to know the antecedents of the candidates contesting election of MP or MLA, such rights could be set at naught by legislature, requires to be rejected.

RIGHT TO VOTE IS STATUTORY RIGHT:

> Learned counsel for the respondents vehemently submitted that right to elect or to be elected is pure and simple statutory right and in the absence of statutory provision neither citizen has a right to elect nor has he a right to be elected because such right is neither fundamental right nor a common law right. It is, therefore, submitted that it cannot be held that a voter has any fundamental right of knowing the antecedents/assets of a candidate contesting the election. Learned Solicitor General Mr. Raval also submitted that on the basis of the decision rendered by this Court, the Act is amended by the impugned Ordinance/Amendment Act. However, for the directions which are left out, the presumption would be it is deliberate omission on the part of Legislature and, therefore, there is no question of it being violative of Article 19(1)(a). He submitted that law pertaining to election depends upon statutory provisions. Right to vote, elect or to be elected depends upon statutory rights. For this purpose, he referred to the decision in N. P. Punnuswami v. Returning Officer [1952 SCR 218], G. N. Narayanswami v. G. Pannerselvam and others [(1972) 3 SCC 717] and C. Narayanaswamy v. C.K. Jaffer Sharief and others [1994 Supp. (3) SCC 170].
>
> There cannot be any dispute that the right to vote or stand as a candidate for election and decision with regard to violation of election law is not a civil right but is a creature of statute or special law and would be subject to the limitations envisaged therein. It is for the Legislature to examine and provide provisions relating to validity of election and the jurisdiction of the Court would be limited in accordance with such law which creates such election Tribunal.
>
> In the case of N. P. Punnuswami (supra), a person whose nomination paper was rejected, filed a writ of certiorari, which was dismissed on the ground that it had no jurisdiction to interfere with the order of the Returning officer by reason of Article 329(b) of the Constitution.

In the case of G. N. Narayanswami (supra), this Court was dealing with the election petition wherein the issue which was required to be decided was whether the respondent was not qualified to stand for election to the Graduates constituency on all or any of the grounds set out by the petitioner in paragraphs 7 to 9 of the election petition. The Court referred to Article 171 and thereafter observed that the term 'electorate' used in Article 171(3)(a)(b)(c) has neither been defined by the Constitution nor in any enactment by Parliament. The Court thereafter referred to the definition of 'elector' given in Section 2(1)(a) of the RP Act and held that considering the language as well as the legislative history of Articles 171 and 173 of the Constitution and Section 6 of the RP Act, there could be a presumption of deliberate omission of the qualification that the representative of the Graduates should also be a graduate.

Similarly, in C. Narayanaswamy's case (supra), the Court was dealing with the validity of an election of a candidate on the ground of alleged corrupt practice as provided under Section 123(1)(A) of the Act and in that context the Court held that right of a person to question the validity of an election is dependent on a conditions prescribed in the different Sections of the Act and the Rules framed thereunder. The Court thereafter held that as the Act does not provide that any expenditure incurred by a political party or by any other association or body of persons or any individual other than the candidate or his election agent, it shall not be deemed to be expenditure in connection with the election or authorised by a candidate or his election agent for the purpose of sub-section (1) of Section 77 read with Rule 90.

Learned counsel further referred to the decisions in Jyoti Basu & ors. v. Debi Ghosal & ors. [(1982) 1 SCC 691] wherein similar observations are made by this Court while deciding election petition:

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. .. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?

It has to be stated that in an election petition challenging the validity of election, rights of the parties are governed by the statutory provisions for setting aside the election but this would not mean that a citizen who has right to be a voter and elect

his representative in the Lok Sabha or Legislative Assembly has no fundamental right. Such a voter who is otherwise eligible to cast vote to elect his representative has statutory right under the Act to be a voter and has also a fundamental right as enshrined in Chapter-III. Merely because a citizen is a voter or has a right to elect his representative as per the Act, his fundamental rights could not be abridged, controlled or restricted by statutory provisions except as permissible under the Constitution. If any statutory provision abridges fundamental right, that statutory provision would be void. It also requires to be well understood that democracy based on adult franchise is part of the basic structure of the Constitution. The right of adult to take part in election process either as a voter or a candidate could be restricted by a valid law which does not offend Constitutional provisions. Hence, the aforesaid judgments have no bearing on the question whether a citizen who is a voter has fundamental right to know antecedents of his candidate. It cannot be held that as there is deliberate omission in law, the right of the voter to know antecedents of the candidates, which is his fundamental right under Article 19(1)(a), is taken away.

Mr. Raval, learned Solicitor General submitted that an enactment can not be struck down on the ground that Court thinks it unjustified. Members of the Parliament or the Legislature are representatives of the people and are supposed to know and be aware of what is good and bad for the people. The Court can not sit in the judgment over their wisdom. He relied upon the decision rendered by this Court in Dr. P. Nalla Thampy Terah v. Union of India & Ors. [1985 Suppl. SCC 189], wherein the Court considered the validity of Section 77(1) of the Act and referred to report of the Santhanam Committee on Prevention of Corruption, which says (para 10): "The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the Government party. It is, therefore, essential that the conduct of political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognised that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathisers of the parties concerned."

The Court also referred to various decisions and thereafter held thus:

"13. We have referred to this large data in order to show that the influence of big money on the election process is regarded universally as an evil of great magnitude. But then, the question which we, as Judges, have to consider is whether the provision contained in Explanation 1 suffers from any constitutional infirmity and, particularly, whether it violates Article 14. On that question we find it difficult, reluctantly though, to accept the contention that Explanation 1 offends against the right to equality. Under that provision, (i) a political party or (ii) any other association or body of

> persons or (iii) any individual, other than the candidate or his election agent, can incur expenses, without any limitation whatsoever, in connection with the election of a candidate. Such expenses are not deemed to be expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purposes of Section 77(1)."

Learned Solicitor General heavily relied upon paragraph 19, wherein the Court observed thus:

> "The petitioner is not unjustified in criticising the provision contained in Explanation 1 as diluting the principle of free and fair elections, which is the cornerstone of any democratic polity. But, it is not for us to lay down policies in matters pertaining to elections. If the provisions of the law violate the Constitution, they have to be struck down. We cannot, however, negate a law on the ground that we do not approve of the policy which underlies it."

From the aforesaid discussion it is apparent that the Court in that case was dealing with the validity of the Explanation-I and was deciding whether it suffered from any Constitutional infirmity, particularly, whether it was violative of Article 14. The question of Article 19(1)(a) was not required to be considered and the Court had not even touched it. At the same time, there cannot be any dispute that if the provisions of the law violate the Constitutional provisions, they have to be struck down and that is what is required to be done in the present case. It is made clear that no provision is nullified on the ground that the Court does not approve the underlying the policy of the enactment.

As against this, Mr. Sachar, learned senior counsel rightly referred to a decision rendered by this Court in Bennett Coleman & Co. & Ors. v. Union of India & Ors. [(1972) 2 SCC 788], where similar contentions were raised and negatived while imposing restrictions by Newspaper Control Order. The Court's relevant discussion is as under:

> "31. Article 19(1)(a) provides that all citizens shall have the right to freedom of speech and expression, Article 19(2) states that nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State; friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Although Article 19(1)(a) does not mention the freedom of the Press, it is the settled view of this Court that freedom of speech and expression includes freedom of the Press and circulation.
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> 32. In the Express Newspapers case (supra) it is said that there can be no doubt that liberty of the Press is an essential part of the freedom of speech and expression guaranteed by Article 19(1)(a). The Press has the right of free propagation and free circulation without any previous restraint on publication. If a law were to single out the Press for laying down prohibitive burdens on it that would restrict the circulation, penalise its freedom of choice as to personnel, prevent newspapers from being started

> and compel the press to Government aid. This would violate Article 19(1)(a) and would fall outside the protection afforded by Article 19(2).
>
> 33. In Sakal Papers case (supra) it is said that the freedom of speech and expression guaranteed by Article 19(1) gives a citizen the right to propagate and publish his ideas to disseminate them, to circulate them either by words of mouth or by writing. This right extends not merely to the matter it is entitled to circulate but also to the volume of circulation. In Sakal Papers case (supra) the Newspaper (Price and Page) Act, 1956 empowered the Government to regulate the prices of newspapers in relation to their pages and sizes and to regulate the allocation of space for advertisement matter. The Government fixed the maximum number of pages that might be published by a newspaper according to the price charged. The Government prescribed the number of supplements that would be issued. This Court held that the Act and the Order placed restraints on the freedom of the press to circulate. This Court also held that the freedom of speech could not be restricted for the purpose of regulating the commercial aspects of activities of the newspapers."

The Court also dealt with the contention that newsprint policy does not directly deal with the fundamental right mentioned in Article 19(1)(a). It was also contended that regulatory statutes which do not control the content of speech but incidentally limit the ventured exercise are not regarded as a type of law. Any incidental limitation or incidental restriction on freedom of speech is permissible as the same is essential to the furtherance of important governmental interest in regulating speech and freedom. The Court negatived the said contention and in para 39 held thus:

> "39. Mr. Palkhivala said that the tests of pith and substance of the subject-matter and of direct and incidental effect of the legislation are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. In our view this is a sound and correct approach to interpretation of legislative measures and State action in relation to fundamental rights. The true test is whether the effect of the impugned action is to take away or abridge fundamental rights. If it be assumed that the direct object of the law or action has to be direct abridgement of the right of free speech by the impugned law or action it is to be related to the directness of effect and not to the directness of the subject matter of the impeached law or action. The action may have a direct effect on a fundamental right although its direct subject- matter may be different."

The Court observed in Paragraph 80 at page 823:

> " The faith in the popular Government rests on the old dictum, "let the people have the truth and the freedom to discuss it and all will go well." The liberty of the press remains an "Art of the Covenant" in every democracy."

Further, the freedom of speech and expression, as has been held repeatedly, is basic to and indivisible from a democratic polity. It includes right to impart and receive information. [Secretary,

Min. of Information & Broadcasting (supra)]. Restriction to the said right could be only as provided in Article 19(2). This aspect is also discussed in paragraph 151 (page 270) thus:

> "Article 19(1)(a) declares that all citizens shall have the right of freedom of speech and expression. Clause (2) of Article 19, at the same time, provides that nothing in sub-clause (i) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with the foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. The grounds upon which reasonable restrictions can be placed upon the freedom of speech and expression are designed firstly to ensure that the said right is not exercised in such a manner as to threaten the sovereignty and integrity of India, security of the State, friendly relations with the foreign States, Public order, decency or morality. Similarly, the said right cannot be so exercised as to amount to contempt of court, defamation or incitement of an offence. Existing laws providing such restrictions are saved and the State is free to make laws in future imposing such restrictions. The grounds aforesaid are conceived in the interest of ensuring and maintaining conditions in which the said right can meaningfully and peacefully be exercised by the citizens of this country."

Hence, in our view, right of a voter to know bio-data of a candidate is the foundation of democracy. The old dictum let the people have the truth and the freedom to discuss it and all will go well with the Government should prevail.

The true test for deciding the validity of the Act is whether it takes away or abridges fundamental rights of the citizens? If there is direct abridgment of fundamental right of freedom of speech and expression, the law would be invalid.

Before parting with the case, there is one aspect which is to be dealt with. After the judgment in Association for Democratic Reforms case, the Election Commission gave certain directions in implementation of the judgment by its Order No.3/ER/2002/JS- II/Vo1-111, dated 28th June, 2002. In the course of arguments, learned Solicitor General as well as learned senior counsel appearing for the intervenor (B.J.P.) pointed out that direction no.4 is beyond the competence of the Election Commission and moreover, it is not necessary to give effect to the judgment of this Court. The said direction reads as follows:

> "Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the returning officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

> Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the returning officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under section 36(2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character."

While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Association for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the returning officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission is not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Association for Democratic Reforms case (supra) and as provided under the Representation of the People Act and its 3rd Amendment.

Finally, after the amendment application was granted, following additional contentions were raised:

> 1. Notice should be issued to the Attorney General as vires of the Act is challenged.
>
> 2. Parliament in its wisdom and after due deliberation has amended the Act and has also incorporated the directions issued by this Court in its earlier judgment in Association for Democratic Reforms (supra) including the direction for declaration of assets and liabilities of every elected candidate for a House of Parliament. They are also required to declare assets of their spouse and dependent children.

The contention that notice is required to be issued to the Attorney General as vires of the Act is challenged, is of no substance because 'Union of India' is party respondent and on its behalf learned Solicitor General is appearing before the Court. He has forcefully raised the contentions which were required to be raised at the time of hearing of the matter. So, service of notice to learned Attorney General would be nothing but empty formality and the contention is raised for the sake of raising such contention.

Further, we have also reproduced certain recommendations of the National Commission to Review the Working of the Constitution in the earlier paragraphs and have also relied upon the same. In the report, the Commission has recommended that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of Parliament or Legislature of a State on the expiry of a period of

one year from the date the charges were framed against him by the Court in that offence. The Commission has also recommended that every candidate at the time of election must declare his assets and liabilities along with those of his close relatives and all candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office. Many such other recommendations are reproduced in earlier paragraphs.

With regard to the second contention, it has already been dealt with in previous paragraphs.

What emerges from the above discussion can be summarised thus:

> (A) The legislature can remove the basis of a decision rendered by a competent Court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Court. A declaration that an order made by a Court of law is void is normally a part of the judicial function. Legislature cannot declare that decision rendered by the Court is not binding or is of no effect.

It is true that legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any Court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the Rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that candidate would not be bound to furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in Association for Democratic Reforms (supra) has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions are, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this

country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter-III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.

In the result, Section 33-B of the Amended Act is held to be illegal, null and void. However, this judgment would not have any retrospective effect but would be prospective. Writ petitions stand disposed of accordingly.

.....J. (M.B. SHAH) ..J. (D.M. DHARMADHIKARI) New Delhi;

March 13, 2003.