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ELECTION LAW

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I INTRODUCTION

THIS YEAR survey is somewhat eventful as we have come across a couple of issues which are unprecedented. The first issue that we have taken up is unusual inasmuch as it has not arisen directly from any contentious election dispute, and yet it constitutes the very basis of elections in a democratic society. The basic issue in this respect is, how to arrest the increasing criminalization of politics especially in the face of obdurate unwillingness of the successive governments and the Parliament of India in meeting this menace.

Criminalization of politics is an anti-thesis of the very spirit of democratic processes. If money and muscle power replace the voter's right to free choice, the whole democratic process stands polluted. If our own law-makers are corrupt to the core, the hope of getting the just law instantly vanishes. Perhaps the most alarming feature of the present-day politics is that the incident of criminalization is no more an isolated political phenomenon. Instead of incidents of criminalization being fewer, it has become entrenched and institutionalized. This is evident from the increasing rate of criminalization of politics.[1]

How to meet the menace of increasing criminalization of politics? In the usual constitutional course, there are two main methods of meeting the menace**:** The first and foremost is to go in for a course of correction through the enactment of a proper law that would eschew or plug the loopholes facilitating resort to criminal practices. This is the formal method of encountering the impending challenge. It can be accomplished by our elected representatives who are responsible for law making, whenever and wherever needed, including constitutional amendments. However, this is not happening, as stated above. The reason for inaction is not too far to seek. If the large number of elected representatives themselves are carrying the taint of criminality, it would indeed be futile to expect from them any positive initiative in this direction.

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1 See generally, *infra*, note 2.

The second course available is rather informal, through the exploration of constitutional values by the Supreme Court. This is done through the interpretation of existing constitutional provisions innovatively. But, then, this process has its own inherent limitations. It is operative only where there is some ambiguity or inconsistency or a gap in the existing constitutional provisions. However, there is one direct judicial course which is available to the Supreme Court, that is by critically examining whether the present criminal practices in any way violate the rights of the citizens guaranteed by the Constitution. It is in this respect the Supreme Court is carrying their relentless crusade against criminalization of politics.

The Supreme Court started this crusade now more than two decades ago, when through its five-judge bench judgment, realizing that the government and the Parliament were in no mood to take upon the task of decriminalization, by ingeniously devising the strategy of strengthening the citizen's right to vote with the fundamental right to speech and expression and thereby enabling the voter to vote on the basis of informed decisions. That, in turn, entailed the disclosure of criminal antecedents by the election candidates.[2]Since this issue has emerged before the Supreme Court in rather unusual way, in our present survey we have taken note of the development somewhat in detail under the rubric, "Increasing Criminalization of politics in India: How to decriminalize it by strengthening Voter's right to informed decision-making?"[3]

The second issue, which is again a very unusual one, that has come for our survey relates to the Returning Officer, who is one of the key persons in maintaining the purity of the whole election process, which is said to be 'the heart and soul of democracy'. Such apeculiar issue has arisen in a case in which the election judge has ordered prosecution of the Returning Officer where there was no basis of the charge against him either of 'intentional falsehood' in the performance of his functions, or expedient to do so in the interest of justice. This issue has been dealt with in the section, "Returning Officer: Whether the Election Court is justified in ordering his prosecution for perjury while voiding the election of the returned candidate?"[4]

The third issue that has come for our current survey is also somewhat unusual, inasmuch as such an issue has not hitherto come before the Supreme Court. It relates to public concern in respect of the Electoral Bonds Scheme, 2018, which was introduced by the Central Government by a notification dated January 2, 2018 in exercise of the power conferred by section 31(3) of the Reserve Bank of India Act, 1934. Since this scheme led to the successive notifications along with amendments through the Finance Act of 2017 to the various other relevant statutes, including the Representation of Peoples Act 1951, a critical issue came to the forewhether it made the electoral process opaque and thereby seriously impacting the whole democratic

2 See generally, Virendra Kumar, "Citizen's Right to Vote: Role of the Supreme Court in empowering citizenry to bring about 'a systemic change' through NOTA for cleansing our body politic (A juristic critique of constitutional development)," *Journal of the Indian Law Institute* 56(1) (2014) 25- 46.

3 See, *infra,* part II.

4 See, *infra,* part III.

process. This issue has been examined under, "Electoral Bonds Scheme: Whether anonymity of the donors of political parties under Section 29C in The Representation of the People Act, 1951 is destructive of democracy which otherwise thrives on openness and transparency?"[5]

The fourth issue that has come up for considerationrelates to whether, and under what circumstances, an election petition can be dismissed is not relatively a new one.[6] However, the newness of the issue lies in the approach, how to construe the requirements of the election petition which are seemingly 'technical in nature', and yet are not be considered 'hyper technical' while dismissing the election petition *in limine*. This is what has been dealt with in the given fact matrix under the title, "Election Petition: Whether it can be dismissed at the very threshold on account of non-filing of an affidavit in Form 25 (prescribed under Rule 94A of Conduct of Election Rules, 1961) as provided under Section 83(1) of the Representation of People Act 1951?"[7]

II INCREASING CRIMINALIZATION OF POLITICS IN INDIA: HOW TO DECRIMINALIZE IT BY STRENGTHENING VOTER'S RIGHT TO INFORMED DECISION-MAKING?

The extent to which the Supreme Court could go in decriminalize politics bylaying down the guidelines in respect of mandatory disclosureof antecedents, and that whether non-adheringto those guidelinescould result in contempt of court? This pivotal issue has come up for consideration before the Supreme Court in *Brajesh Singh* v. *Sunil Arora*.[8]The fact matrix of *Brajesh Singh* may be abstracted as under:

In public interest litigation, a contempt of court petition was filed by the Appellant, alleging that the respondents, whowere candidates in the elections held to the Bihar Legislative Assembly, have not adhered to the guidelines issued by the

5 See, *infra,* part IV.

6 See, Virendra Kumar, Election Law "Dismissal of Election Petition in limine: How to determine the non-disclosure of cause of action, one of the pivotal grounds of dismissal?" LIV *ASIL* 351-401 (2018); Virendra Kumar, Election Law "Whether election petition discloses any 'cause of action': ambit of court's enquiry," LIII *ASIL* 349-353 (2017); Virendra Kumar, Election Law "Corrupt Practices under the Representation of the People Act, 1951: When does an election petition is held to disclose triable issues?" LII *ASIL* 482-488 (2016); Virendra Kumar, Election Law "Election Petition: When could it be said to disclose 'no cause of action'" LI *ASIL* at 524-530 (2015); Virendra Kumar, Election Law "Nomination paper: when does it amount to its proper or improper rejection by the returning officer?" L *ASIL* 545-550 (2014); Virendra Kumar, Election Law "Cause of action: when it is said to be disclosed in an election petition," XLVIII *ASIL* 414-418 (2012); Virendra Kumar, Election Law "An election petition lacking material facts as required to be stated in terms of Section 83(1): whether could be dismissed summarily without trial," XLVI *ASIL* 358-363 (2010); Virendra Kumar, Election Law "Material facts and particulars," XXXVI *ASIL* 245-248 (2001); Virendra Kumar, "Dismissal of election petition in limine," XXXV *ASIL* 282-284 (1999); Virendra Kumar, Election Law "Modus operandi for determining cause of action," XXIII *ASIL* 412-415 (1987) at; and Virendra Kumar, Election Law "Rejection of nomination paper," XXI *ASIL* 409-418 (1985).

7 See, *infra*, Section V.

8 MANU/SC/0515/2021,per Rohinton Fali Nariman and B.R. Gavai, JJ. Herein after, *Brajesh Singh*.

Supreme Court vide their order dated February 13, 2020.[9] The said guidelines, which, in turn, were based on the directions recently issued by a Constitution Bench of this court.[10] The emerging plea of the Appellant is that the respondents were required to adhere to them in full measure, and, therefore, their non-compliance with the sameboth in letter and spirit amounted to contempt of court.

Since the guidelines issued in question were based on the directions given by the Constitution Bench of the Supreme Court in *Public Interest Foundation,* which were in consonance with the earlier decisions of the Supreme Court, those need to be reproduced for determining the issue in the instant case:[11]

i. Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

ii. It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

iii. If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

iv. The political party concerned shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

v. The candidate as well as the political party concerned shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.

What are the background considerations that prompted the Supreme Court to issue the mandatory directions to be observed by all the election candidates? For determining the issue of contempt of court, the Supreme Court in the instant case has dealt with the reasons that prompted it to make the Constitution Bench directions as the very basis of framing the guidelines for the Bihar Legislative Assembly elections (2020). We may abstract the following reasons from the judgment under our survey:

> The first and foremost reason is that the Supreme Court was "cognizant of the increasing criminalization of politics in India."[12] In the last four

9 The order was passed in the case of *Rambabu Singh Thakur v. Sunil Arora and Ors*. (Contempt Petition (Civil) No. 2192 of 2018 in Writ Petition (Civil) No. 536 of 2011) MANU/SC/0172/2020: (2020) 3 SCC 733. See, *id*. para 2 read with para 4.

10 *Public Interest Foundation and Ors. v. Union of India and Anr*. MANU/SC/1048/2018: (2019) 3 SCC 224. Hereinafter, *Public Interest Foundation.*These guidelines were issuedby the Constitution Bench after setting out Section 8 of the Representation of People Act, 1951 and copiously referring to the 244th Law Commission Report titled "Electoral Disqualifications" of February 2014.

11 *Public Interest Foundation*, para 116, cited in *Brajesh Singh*, para 5.

12 See, *id.*, para 6.

general elections to Lok Sabha, for instance, the cited statement of the "alarming increase in the incidence of criminals" is: "In 2004, 24% of the Members of Parliament had criminal cases pending against them; in 2009, that went up to 30%; in 2014 to 34%; and in 2019 as many as 43% of MPs had criminal cases pending against them."[13]

The second reason is the realization of the necked fact; namely, "the lack of information about such criminalization amongst the citizenry," and that in order "to remedy this information gap," mandatory directions crystalized by the Supreme Court Constitution Bench to arrest the incident of criminalization were required to be implemented in letter and spirit.[14]

The third reason is, since the political parties offer no explanation as to why candidates with pending criminal cases are selected as candidates, it was considered imperative to apprise the political parties that the directions to reveal the antecedents of their election candidates were made *mandatory* by the Supreme Court in exercise of their constitutional powers under Articles 129 and 142 of the Constitution of India.[15]

The fourth reason relates to compelling the political parties to offer explanation "as to why other individuals without criminal antecedents could not be selected as candidates,"[16] and that such an explanation "shall be with reference to the qualifications, achievements and merit of the candidate concerned, and not mere 'winnability' at the polls."[17]

The fifth reason required the full publication of information regarding criminal antecedents within the "timelines"; that is, "during the period starting from the day following the last date for withdrawal of

13 *Ibid.*

14 *Ibid.*

15 Constitution of India , 1950, art. 129: invests the Supreme Court with special status and powers by stating that the Supreme Court "shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself;" whereas under art. 142, the Supreme Court, in the exercise of its jurisdiction, is empowered to ensure the enforcement of its decrees and orders throughout the territory of India that are passed by it and considered "necessary for doing complete justice in any cause or matter pending before it," "until provision in that behalf is so made, in such manner as the President may by order prescribe."

16 *Brajesh Singh*, para 6.

17 *Ibid*. With a view to strengthen this directive, ECI issued a new Form C-7 in which the political parties have to publish the reason for selection of candidates with criminal antecedents in addition to all other relevant information. Also, in another new Form C-8, the political parties were required to report compliance of this Court's Order and the directions contained therein within 72 hours of selection of the candidate. Importantly, it was made clear by the ECI that any non-compliance or failure to abide by the directions of this court would be treated as a failure to follow directions as contemplated under Cl. 16-A of the Election Symbols (Reservation and Allotment) Order, 1968. See, *id.,* para 7.

> nomination and up to 48 hours before ending with the hour fixed for conclusion of poll."[18]

With the intent of realizing the underlying value of the said guidelines, those were duly communicated to the election candidates by the Election Commission of India (ECI).[19]After having done that, the ECI announced the poll Schedule for the Assembly Elections to be held in the State of Bihar. Accordingly, elections were held in three phases, leading ultimately to the declaration of results.[20]

In pursuance of the ECI's communicating Supreme Court's direction, the compliance report was submitted to ECI by Chief Electoral Officer, Bihar, which revealed the following startling facts:

> (a) Out of 10 recognized political parties which contested General Elections to the Bihar Legislative Assembly-2020, 08 political parties submitted information about criminal antecedents of the contesting candidates in Format C-8 to the Commission and only 02 political parties namely Communist Party of India (Marxist) and Nationalist Congress Party that fielded 04 and 26 candidates respectively with criminal antecedents, did not furnish the requisite information in the prescribed format to the Commission.[21]
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> (b) As many as a total of 469 candidates with criminal antecedents participated in the said General Elections for the Legislative Assembly of Bihar 2020 on the symbol of 10 recognized political parties, i.e.including Communist Party of India (Marxist) [04] and Nationalist Congress Party [26] which did not file the Format C-8 with the Election Commission of India.[22]

The Supreme Court also took note of the report of an NGO, The Association for Democratic Reforms (ADR),[23] which issued a report on the three phases of the Bihar Assembly Elections as under:[24]

18 *Id.*, para 9.

19 The Election Commission of India (ECI) issued directions to the president/ general secretary/ chairperson/ convenor of all recognized National and State Political Parties *vide* letter no. 3/4/ 2020/SDR/Vol. III dated March 6, 2020. Instructions in this regard were also issued to the Chief Electoral Officers of all States and Union Territories *vide* letter no. 3/4/2020/SDR-Vol. III dated March 19, 2020 and letter no. 3/4/2019/ SDR-Vol. IV dated Sep.16, 2020. Furthermore, the Commission also published "the Guidelines on Publicity of Criminal Antecedents by Political Parties and Candidates" in August, 2020 encapsulating all the instructions and Formats issued in this regard. The Commission also directed the Chief Electoral Officer, Bihar *vide* letter no. 464/BH-LA/ES-I/2020/173 dated October 17, 2020 to ensure compliance with the above noted directions of the Supreme Court in the General Elections to Bihar Legislative Assembly-2020 held between Oct. 28, 2020 and Nov. 7, 2020. See, *id.*, para 3.

20 See, *Brajesh Singh*, para 10.(The results were declared on Nov. 10, 2020).

21 See, *id.*, para 3.

22 *Ibid*.

23 ADR came into existence in 1999 when a group of Professors from the Indian Institute of Management (IIM) Ahmedabad and Bangalore, with the singular objective to improving governance and strengthen democracy by continuously working mainly in the area of Electoral and Political Reforms.

24 See, *Brajesh Singh*, para 11.

(1) In the Reportdated 20.10.2020 on Phase I, revealed that 31% of the candidates have criminal antecedents, out of which 23% have serious criminal cases against them.

(2) Likewise, on 27.10.2020, another report was issued qua Phase II, it was found that 34% of total candidates have criminal antecedents, 27% having serious criminal cases against them.

(3) In the report dated 02.11.2020, for Phase III, it was found that 31% of total candidates have criminal antecedents, 24% having serious criminal cases against them.

(4) It was also found that the percentage of candidates contesting having criminal antecedents to the total contesting candidates was 32% (Total Contestants 3733: Contestants with criminal cases 1201).

(5) Even more disturbing is the percentage of winning candidates having criminal antecedents jumping to 68% of the total number of candidates who won as MLAs-163 out of 241. This was a 10% rise from the Assembly Elections of 2015 where the percentage of winning candidates having criminal antecedents to the total number of winning candidates stood at 58%. Equally disturbing is the fact that 51% of winning candidates have serious criminal cases against them i.e., cases related to murder, kidnapping, attempt to murder, crime against women including rape, etc.

In this backdrop, the Supreme Court has proceeded to decide the contempt petition in the instant case. In this respect, the Supreme Court has examined the history of legitimacy of framing mandatory directions/guidelines to be adhered in all elections.It has re-examined the provisions of section 8 of the Representation of People Act, 1951,which provides for disqualification on conviction for certain offences.[25] On perusal, it is found: "A reading of section 8 would show that, apart from certain grievous offences and convictions thereunder, it is only upon conviction of a minimum period of two years for other offences that a candidate gets disqualified from standing for election."[26]And since the process of conviction is extremely tardy, the undertrials take undue advantage of such a process, and stand "for election after election simply because their cases have not been decided in a timely manner."[27]In this background, the spadework done bythe Supreme Court in of *Union of India* v. *Association for Democratic Reforms*.,[28] and how the aftermath of that judgmentthat led to introduction of sections 33-A and 33B into the Act of 1951,[29] and that section 33-B was struck down by a three-judge bench in *People's Union for Civil Liberties (PUCL)* v. *Union*

25 See, *id*., para 12.

26 *Ibid*.

27 *Ibid*.

28 MANU/SC/0394/2002; (2002) 5 SCC 294 (Hereinafter, *Association for Democratic Reforms), cited in Brajesh Singh,* para 12.

29 See, *Brajesh Singh*, para 13.

of India,[30]were recapitulated. It also took note of the judgment in *Satish Ukey* v. *Devendra Gangadharrao Fadnavis*[31] in which, while considering the amendment made in 2012 to the Conduct of Election Rules, 1961, the Supreme Court had made the principle-statement:

> 24. A cumulative reading of Section 33-A of the 1951 Act and Rule 4-A of the 1961 Rules and Form 26 along with the letters dated 24-8-2012, 26-9-2012 and 26-4-2014, in our considered view, make it amply clear that the information to be furnished Under Section 33-A of the 1951 Act includes not only information mentioned in clauses (i) and (ii) of Section 33-A(1), but also information, that the candidate is required to furnish, under the Act or the Rules made thereunder and such information should be furnished in Form 26, which includes information concerning cases in which a competent court has taken cognizance [Entry 5(ii) of Form 26]. This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed [Entries 5(i) and 6 of Form 26 respectively].

All this updated development led to the five-judge bench of the Supreme Court in *Public Interest Foundation* to issue directions, which constituted the prime basis of the order of the Supreme Court made on February 13, 2020,[32]the non-adherence of which is the subject of present contempt petition.For due disposal of the contempt petition, in the instant case the Supreme Court also recalled the expression of "sense of anguish followed by hope", expressed by the Constitution Bench in the concluding paragraphs of their judgment.[33]

The matter of anguish is that admittedly there are certain gaps or lacunae in our legislative law that permits people with criminal record to enter our Parliament or legislative bodies, and that the Election Commission cannot deny such a candidate to contest the election on the symbol of a party.Such gaps or lacunae "can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation"(para 117),butmercifully this has not hitherto happened."The nation continues to wait, and is losing patience."[34] "Cleansing the polluted stream of politics is obviously not one of the immediate pressing concerns of the legislative branch of government."[35]What, then, is the way out? Here comes the sagacious suggestion of the Constitution Bench bearing a pragmatic approach:

30 MANU/SC/0234/2003: (2003) 4 SCC 399, cited in *Brajesh Singh*, para 14.

31 MANU/SC/1352/2019: (2019) 9 SCC 1, para 24, cited in *Brajesh Singh*, para 15.

32 See generally, supra note 3.

33 See, *Public Interest Foundation*, paras 117-119, cited in *Brajesh Singh*, para 16.

34 *Brajesh Singh*, para 17.

35 *Ibid*.

> "It must also be borne in mind that the law cannot always be found fault with for the lack of its stringent implementation (of the directions issued by the Court) by the authorities concerned." It is "the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that 'we shall be governed no better than we deserve', and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision-making and informed choice by the citizenry." "Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy." [para 117].

Concomitant of this pragmatic approach is the expression of hope:

> "A time has come that Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the Accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation. It is true that false cases are foisted on prospective candidates, but the same can be addressed by Parliament through appropriate legislation. The nation eagerly waits for such legislation, for the society has a legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonised when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even conceive of the idea of entering into politics. They should be kept at bay." [Para 118]
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> "We are sure, the law-making wing of the democracy of this country will take it upon itself to cure the malignancy. We say so as such a malignancy is not incurable. It only depends upon the time and stage when one starts treating it; the sooner the better, before it becomes fatal to democracy. Thus, we part." [Para 119].

This indeed was the very basis of the directions contained in the order made on February 13, 2020 and the question is whether its violation constitutes the contempt of court. In order to decide this question, several basic issues were raised and pleaded on behalf of respondentsfor the consideration of the court. We may abstract the following few pleadings:One, the Supreme Court "in a bid to control criminalisation in politics," cannot venture any further than provided under Clause 16-A of the Symbols Order, and "hold that a candidate is to be debarred from contesting if there are charges

framed against him/her in a pending criminal case."[36] Two, violation of the Supreme Court order under clause 16-A of the Symbols Order must be limited to extreme situations of consistent and persistent failure, refusal or defiance to follow the lawful directions and instructions of the ECI, and shouldn't be invoked for a single or isolated non-compliance of a direction without intention to refuse to comply with the direction, and that even in an extreme case of non-compliance, the approach of the ECI should be proportionate to the extent of such non-compliance.[37] Three, besides the issue of constitutional validity of clause 16-A of the Symbols Order,[38] the withdrawal or suspension of recognition through clause 16-A "is akin to de-registration of a political party as it denies the party the right to exclusive use the election symbol assigned to it."[39] If so, "the power must be exercised by the ECI proportionate to the extent of breach of its directions and must not be used in respect of every breach of a direction passed by it."[40]

Bearing in mind the various argumentative pleas, it is emphatically stated by the Supreme Court that the total thrust of the directions in their Order of February 13, 2020 was to direct all political parties "to upload on their websites detailed information regarding individuals with pending criminal cases who have been selected as candidates, along with the reasons for such selection, and also as to why other individuals without criminal antecedents could not be selected as candidates,"[41] and that the reasons adduced for selection "shall be with reference to qualifications, achievements and merits of the candidate concerned and not mere 'winnability' at the polls."[42]And the prime purpose of the issued directions is "only to provide information to the voter so that his right to have information as to why a particular political party has chosen a candidate having criminal antecedents and as to why a political party has not chosen a candidate without criminal antecedents, is effectively guaranteed."[43] Such a direction in anyway did not take away the right of a political party to nominate a candidate, say, who had been in their view "falsely implicated in some criminal matters by his rivals," but otherwise "highly meritorious." In such a situation, the political party only needed to say so as the reason for his selection.[44]

For maximizing the time needed by the electorates for making their informed choice about the candidate for the exercise of their right to vote, "the details as to information regarding candidates are required to be published within 48 hours of

36 See, *Brajesh Singh*, para 22, a plea raised on behalf of respondent no. 5.

37 See, *id*., para 23, a plea raised on behalf of respondent no. 8.

38 See, *Brajesh Singh*, para 24, a plea raised on behalf of respondent no. 9. It was argued that Cl. 16-A being an unfettered power vested with the ECI and such power having not been expressly conferred on the ECI by either the Constitution of India or the legislature, the Cl. needs to be held to be *ultra vires* and therefore is liable to be struck down.

39 *Ibid*.

40 *Ibid.*

41 *Id.*, para 25.

42 *Ibid*.

43 *Id.*, para 26.

44 See, *id.*, para 28.

selection of the candidate or not less than two weeks before the first date for filing of nominations, whichever is earlier."[45]This measure is not impractical or hypothetical, inasmuch as it is perfectly in consonance with the provisions of section 30 of the basic Act of 1951.[46]

The basic objective of issuing guidelines is to strengthen the informed decision making of the electorates, and not to intrude upon the legislative domain for adding any disqualification in any manner whatsoever. In this respect, it is vehemently stated that in view of the language employed in section 7(b) read with Sections 8 to 10-A of the Act of 1951, "it is clear as noon day, and there is no ambiguity," that the "legislature has very clearly enumerated the grounds for disqualification and the language of the said provision leaves no room for any new ground to be added or introduced."[47] This stance is further reinforced by observing that although there is no denial of the fact the Election Commission under Article 324 of the Constitution has "the plenary power" "to supervise the conduct of free and fair election," and that "its view has to be given weightage," nevertheless it "has to act in conformity with the law made by Parliament and it cannot transgress the same."[48] Thus, disallowing a candidate to contest election against whom charges have been framed for heinous and/or grievous offences "would tantamount to adding a new ground for disqualification which is beyond the pale of the judicial arm of State,"[49] and that "that any attempt to the contrary would be a colourable exercise of judicial power for it is axiomatic that 'what cannot be done directly ought not to be done indirectly' which is a well-accepted principle in the Indian Judiciary."[50] Be that as it may, "it is not constitutionally permissible" to do so, "as the protector of the constitutional ethos, it cannot usurp the power which it does not have."[51]

Having thus settled, that the objective of the issued guidelines is in no wayto read or add any implied limitations, "which would indirectly provide for disqualification of a candidate,"[52] but to augment the voter's right to make informed choice. With this avowed objective, the Supreme Court has closely examined and evaluated the facts pointed out in the contempt petition[53]along with the counter-affidavits, if any, submitted by the respondent political partiesfor determining whether they are guilty of violating the order of the court, and if so, to what extent and with what consequences.

45 See, *id*., para 29, citing para 4.4 of the Order dated Feb.13, 2020.

46 See, *id*., paras 32 and 33.

47 See, *id*., paras 39 and 40, citing Constitution Bench in Public Interest Foundation, para 25.

48 See, *id*., para 44, citing Constitution Bench in Public Interest Foundation, para 71.

49 See, *id.*, para 48, citing Constitution Bench in Public Interest Foundation, paras 95 and 96, while analyzing the provisions of the Symbols Order.

50 *Ibid.*

51 *Id.*, para 50.

52 See*, id*., para 55.

53 Contempt Petition (Civil) 656/2020, see, *id.*, para 58.

A perusal of affidavits and counter affidavits of each one the respondent political parties, who put up their appearance,[54] reveal the reasons rendered by them in prescribed Forms C1 and C2, which specifies the format for publication of criminal antecedents of candidates nominated by the political parties respectively published in newspapers. However, on their critical evaluation, the affidavits and counter-affidavits filed by all the parties excepting one[55]were found to be filed 'in a vague and mechanical manner.'[56]Thus, for failing to follow the directions of the Supreme Court 'in letter and spirit', they have been held in contempt of the Supreme Court's Order dated 13.02.2020.[57] Taking the overall view of the contempt issue, the Supreme Court held:[58]

> Though we have held the Respondent No. 3 to 9, 11 and 12 guilty of having committed contempt of our Order dated 13.02.2020, taking into consideration that these were the first elections which were conducted after issuance of our directions, we are inclined to take a lenient view in the matter. However, we warn them that they should be cautious in future and ensure that the directions issued by this Court as well as the ECI are followed in letter and spirit. We direct the Respondent Nos. 3, 4, 5, 6, 7 and 11 to deposit an amount of INR 1 Lakh each in the account created by the ECI as specified in this judgment in paragraph 73(iii) within a period of 8 weeks from the date of this judgment. Insofar as Respondent Nos. 8 and 9 are concerned, since they have not at all

54 Excepting the Communist Party of India (Marxist) [Respondent No. 8], all the other following political parties entered their appearance and filed the counter affidavits: Janata Dal United [Respondent No. 3], Rashtriya Janta Dal (Respondent No. 4), the Lok Janshakti Party [Respondent No. 5],the Indian National Congress [Respondent No. 6], the Bharatiya Janata Party [Respondent No. 7], the Nationalist Congress Party [Respondent No. 9], the Bahujan Samaj Party [Respondent No. 10], the Communist Party of India [Respondent No. 11], and Rashtriya Lok Samta Party [Respondent No. 12].

55 The Bahujan Samaj Party [respondent no. 10]: In this case on the basis of Counter Affidavit dated July 13, 2021 and Additional Affidavit dated July 13, 2021, it was found that the membership of one of the candidates with criminal antecedents whose details were not submitted to the ECI has since been cancelled and the said candidate has been expelled from the party on Apr.14, 2021 for submitting false affidavits to the party itself. As far as the other candidate identified by the Chief Elector Officer, Bihar is concerned, it was submitted by the party that the requisite details have been submitted but had not been accounted for by the Chief Electoral Officer, Bihar. On perusal of the aforementioned affidavits, the Supreme Court is satisfied by the explanation given qua the 2 candidates. However, in view of that explanation, the Court cautioned the Respondent No. 10 "not to pay lip service to our directions but to follow them in letter and spirit in the future including the directions contained in this judgment." See, *Brajesh Singh*, para 66.

56 For instance, in the case of Rashtriya Janta Dal (respondent no. 4), for non-compliance of directions issued by this court was not acceptable as the party had cited 'winnability' as the only reason for selection of candidates, "which is in the teeth of Supreme Court directions.""This being the case, we are of the view that respondent no. 4 is in contempt of the order dated Feb.13, 2020 for failing to follow the directions of this court in letter and spirit."*Id.*, para 60.

57 *Id.*, para 69.

58 See, *id.*, para 69. This being the case, we are of the view that respondent no. 4 is in contempt of the Order dated Feb. 13,2020 for failing to follow the directions of this court in letter and spirit.

> complied with the directions issued by this Court, we direct them to deposit an amount of INR 5 Lakh each in the aforesaid account within the aforesaid period.

Likewise, the ECI itself was said to be in contempt in not having promptly notified the Supreme Court of the non-following of its directions in the order dated February 13, 2020.[59]However, the attending circumstances revealed that notwithstanding the delay, the ECI still filed their report "at the earliest possible time given the fact that the ECI had to compile a great deal of data and then present it to this Court."[60] In view of this fact situation, the Supreme Court has observed: "We must, however, caution the ECI to do so as promptly as possible in future so that prompt action may be taken by this Court, it being understood that the ECI must by itself take prompt action in accordance with the directions contained in this Order."[61]

Having thus dispensed with the contempt issue by imposing the token fine on the erring political partiesfor indulging in'criminalization of politics', the Supreme Court,sheer out of helplessness, once again appealed to the conscience of the Government and the Parliament of India, by stating candidly that by adhering to the doctrine of separation of powers, the apex court cannot control increasing criminalization of politics "by issuing directions which do not have foundation in the statutory provisions."[62]This stark constitutional reality have made the top court to appeal once again:[63]

> This Court, time and again, has appealed to the law-makers of the Country to rise to the occasion and take steps for bringing out necessary amendments so that the involvement of persons with criminal antecedents in polity is prohibited. All these appeals have fallen on the deaf ears. The political parties refuse to wake up from deep slumber. However, in view of the constitutional scheme of separation of powers, though we desire that something urgently requires to be done in the matter, our hands are tied and we cannot transgress into the area reserved for the legislative arm of the State. We can only appeal to the conscience of the law-makers and hope that they will wake up soon and carry out a major surgery for weeding out the malignancy of criminalisation in politics.

Bound by the proverbial '*lakshmanrekha', "*in order to make the right of information of a voter *more effective and meaningful*," the Supreme Court has issued the following further direction,[64] which may be abstracted /stated as under:

i. All political parties are obliged to have a special 'homepage' with a caption, "candidates with criminal antecedents,"for publishing the

59 *Id.,* para 69.
60 See, *id.*, para 19.
61 *Ibid.*
62 *Id.*, para 70.
63 *Id.,* para 71.
64 *Id.*, para 72.

"criminal antecedents" of their election candidates,"making it easier for the voter to get to the information that has to be supplied."[65]

ii. "The ECI is directed to create a dedicated mobile application containing information published by candidates regarding their criminal antecedents, so that at one stroke, each voter gets such information on his/her mobile phone."[66]

iii. "The ECI is directed to carry out an extensive awareness campaign to make every voter aware about his right to know and the availability of information regarding criminal antecedents of all contesting candidates. This shall be done across various platforms, including social media, websites, TV ads, prime time debates, pamphlets, etc."[67]

iv. A special "fund" must be created for meeting the expenses for carrying out "an extensive awareness campaign""within a period of 4 weeks into which fines for contempt of Court may be directed to be paid."[68]

v. For fructifying the aforesaid objectives, "the ECI is also directed to create a separate cell which will also monitor the required compliances so that this Court can be apprised promptly of non-compliance by any political party of the directions contained in this Court's Orders, as fleshed out by the ECI, in instructions, letters and circulars issued in this behalf."[69]

vi. The details as to information regarding candidates, which are required to be published, shall be published within 48 hours of the selection of the candidate and not prior to two weeks before the first date of filing of nominations, as directed earlier by the Supreme Court (vide their order of 13.02.2020 in paragraph 4.4).[70]

vii. Failure to submit compliance report by a political part with the ECI, who, in turn, shall bring such non-compliance by the political party to the notice of this Court as being in contempt of this Court's Orders/ directions, which shall "in future be viewed very seriously."[71]

This is how the contempt petition has been eventually disposed of by the Supreme Court. [72]

III RETURNING OFFICER: WHETHER THE ELECTION COURT IS JUSTIFIED IN ORDERING HIS PROSECUTION FOR PERJURY WHILE VOIDING THE ELECTION OF THE RETURNED CANDIDATE?

65 See, *id.*, para 73.
66 *Id.*, para 73(i).
67 *Id.*, para 73(ii).
68 *Id*., para 73(iii).
69 *Ibid.*
70 *Id*., para 73(iv).
71 *Id.,* para 73(v).
72 *Id*., para 73(vi).

This issue has come up before the three-judge Bench of the Supreme Court in the case of *N.S. Nandiesha Reddy* v. *Kavitha Mahesh*,[73] which arose from the election held in 2008 to the Karnataka State Legislative Assembly.[74] The Supreme Court has disposed of two connected appeals by one single judgment, as both the Appellants[75]had assailed the judgment of the single judge of the high court (acting as the election tribunal). By the judgment and order passed in 2012, the Single Judgeheld the election of the returned candidate as void, and also in the course of the said order he directed the registrar general of the high court to register a complaint against the returning officer before the competent court for proceeding in accordance with law for the purpose of provisions of section 193 Indian Penal Code, 1860.[76]The singular reason for invoking the criminal proceedings against the Returning Officer was that while he was being examined as a witness (PW. 3) in the election petition, he had given "false evidence before the Court."[77]

However, the Returned Candidate (RC),"immediately thereafter," filed an appeal in the Supreme Court, which, in turn, "had granted stay of the impugned order while issuing notice on 11.06.2012."[78] Following the lead of the RC, the RO had also filed an appeal in the Supreme Court against the initiation of criminal proceedings against him.[79]Since at the time of taking the casein 2021, the RC had already "completed the term of the Assembly for which he was elected," his appeal did not survive for consideration, and, therefore, his prayer for reversal of the impugned order of the Election Tribunal had itself become "infructuous."[80] In this situational context, the entire focus of the Supreme Court judgment revolves around in determining whether initiation of criminal proceedings against the Returning Officer at the instance of

73 *Id*., para 75.

74 MANU/SC/0499/2021 (Civil Appeal Nos. 4821 and 6171 of 2012), per N.V. Ramana, C.J.I., A.S. Bopanna and Hrishikesh Roy, JJ. Hereinafter, simply*Nandiesha Reddy.*

75 *Nandiesha Reddy*, para 3.

76 Appellant (the returned candidate (Nandiesha Reddy) in C.A. No. 4821/2012, and appellant (the returning officer (Ashok Mensinkai) in C.A. No. 6171/2012).

77 Indian Penal Code, S.1931860 dealing with punishment for false evidence, inter alia, provides: "Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

78 *Nandiesha Reddy*, para 1.

79 *Id*., para 3.As a sequel to the stay of the impugned order in the case of Returned Candidate, the same would apply to the case of returning officer by virtue of its relatedness to the former case. In retrospect, this is evident from the observation of the Supreme Court made: "It is no doubt true that the election petition itself is predicated on the allegation against the Appellant in C.A. No. 6171/2012 to the effect that as a Returning Officer for the said election he had wrongly refused to accept the nomination papers sought to be submitted by the election Petitioner which amounts to improper rejection of the nomination papers in terms of Section 100(1) (c) of the Act. The consequence of the same has befallen on the elected candidate," id., para 6.

80 This is evident from the CA No. of his appeal - 6171/2012, against the CA No. of the RC's appeal, which is 4821/2012.

Election Court for making "inconsistent statements" by him in the course of his evidence is justified.[81]

The Supreme Court has taken up this issue by stating that since the dispute in the appeal of the RC has already become infructuous, "we restrict our consideration limited to the question as to whether the Appellant in C.A. No. 6171/2012 (Ashok Mensinkai) should be exposed to criminal prosecution and whether it is expedient to do so in a matter of the present nature."[82]Thus, in order to consider the desirability of exposing the RO to criminal prosecution, the Supreme Court has begun to examine the root cause of initiation of the proceedings themselves, namely, "the inconsistent statements" made by the RO in the course of election proceedings. On perusal of the factual matrix,[83] one of the facts of 'inconsistency' related to: "whether the election Petitioner had actually submitted her nomination paper and the Appellant had declined to receive the same."[84] The version of the election petitioner had found favour with the judge of the election tribunal over that of the RO, and that had led him to void the election of the RC and initiate criminal proceedings against the RO.

However, in order to examine the legitimacy of favouring the petitioner over RO, the three-Judge Bench of the Supreme Court has made a critical scrutiny of the statements of the RO to find out for themselves, how the election judge could "come to a conclusion that the Appellant has uttered deliberate or intentional falsehood in the course of Court proceedings."[85]For this purpose, the Supreme Court has specifically perused his two Orders,reproduced by him in his final impugned order,[86]showing serious 'inconsistency' in the mode and manner of RO's deposition, which prompted the election judge to order deponent's criminal prosecution. To wit, for instance:[87]

> "The witness is not very sure of what development took place and the manner of his deposition is inconsistent every second and minute keeps varying and to support his version that he had conducted in accordance with Rules and Regulations and in a proper manner states that a certain development had taken place around some time, but goes back on the earlier version that the last nomination paper was received at 2.58 pm

81 See, *Nandiesha Reddy*, para 3 read with para 6.

82 The whole thrust of the respondent's plea on this count; namely, in justifying criminal action against the Returning Officerhas been summed up by the Supreme Court: "The Respondent party-in-person however, contends that the Appellant had by not accepting the nomination, denied an opportunity for the Respondent to contest the elections and in such circumstance the learned Judge had noted the inconsistent statements made by the Appellant in the course of his evidence to justify his illegal action. The learned Judge has therefore rightly arrived at the conclusion to direct prosecution and such order does not call for interference is her contention."*Id*., para 5.

83 *Id.*, para 6.

84 See, *id.*, paras 7 and 8, providing the narratives of the statements made by the RO and the election petitioner respectively.

85 See, *id.*, para 9.

86 *Ibid.*

87 The two orders - Order Passed In The Morning Session and Order Passed In The Afternoon Session, extracted in, *id*., para 9.

> but later mentioned it was after 3 pm and on being cautioned by the court, goes back to the earlier version of 2.58 pm etc."

From this abstracted statement, the election judge instantly inferred that the RO "lacks credibility for deposing before the court on oath and requires to be dealt with in accordance with law and being a public servant who has taken oath to depose truth and only truth before this court has been attempting to depose incorrect and false statements which per se is not only perjury within the meaning of section 191 of Indian Penal Code, 1860 but also committing contempt of court."[88]With this exposition, the Election Judge added: "Further cross-examination of the witness is stopped at this stage to enable the witness to procure relevant necessary, official records"that would enable him "to depose before this Court correctly with precision, unambiguity and then appear with such records before this Court" later "to complete this exercise."[89]

In the light of the election record, the prime issue to be resolved with absolute certainty was 'whether the last nomination paper was received by the RO at 2.58 p.m. or after 3 p.m.?'Since the shifting version of the RO was noticed by the Election Judge that prompted him say that RO's "deposition is inconsistent every second and minute keeps varying," the Supreme Court has evaluated RO's quivering versionin the light of the earlier statements made by the election Petitioner herself and the extent to which they were corroborated by the election record.[90]On this aspect, the Supreme Court has clearly and categorically stated that they "do not see any deliberate falsehood uttered by the appellant, much less is there any inconsistency."[91] This conclusion is premised on the verifiable record that reveals:[92]

> "The statement made by the Appellant was that he received the nomination paper of Smt. Ambujakshi i.e. the last candidate at 2.58 pm and it had taken him about 7-8 minutes to go through the papers, after which she had to take an oath as stated in para-40 of his further cross-examination. If that be the position, the statement would mean that the last nomination paper of Smt. Ambujakshi was presented at 2.58 pm and when the process was over it was past 3.00 pm. Only after that he had met the election Petitioner that is between 3 pm and 3.15 pm."

Likewise, the Supreme Court has found the cogent reason for another so-called discrepant statement made the by the RO: "Even with regard to the statement that he [RO] had met the general observer on three occasions and later stated it was on two

88 *Ibid.*

89 *Ibid.*

90 *Ibid.*

91 See, *id.*, para 11: The primacy of this statement is emphasized by the Supreme Court by observing, "The extracted portion of the earlier order dated June 15, 2011 indicates an observation made by the learned Judge to indicate that he has gone back on the version wherein he had stated that the last nomination paper was received at 2.58 pm but later mentioned it was after 3.00 pm and on being cautioned by the court he goes back to the earlier version of 2.58 pm etc."

92 *Ibid.*

occasions are to be noted in the context that the evidence was being tendered after more than three years and all inconsequential events cannot be recalled with precision."[93]Moreover, the Supreme Court has not been able to find any other discrepancy deciphered by the Election Court by observing: "The further evidence of the Appellant is referred in para 81 to 87 of the order, but learned Judge has not pointed out any deliberate or intentional falsehood arising therefrom."[94] In addition to, the RO had received as many as 18 nomination papers on the last day before the closing hour, "there was no particular reason to refuse the election Petitioner's nomination, nor has motive been suggested or established."[95] Thus, mere acceptance of the Petitioner's version by the election judge that the RO had refused to accept her nomination paper before the closing hours, that "by itself does not indicate that Appellant had uttered falsehood intentionally and deliberately before the court so as to initiate action Under Section 193 Indian Penal Code."[96]In fact, the veracity of the RO's statement would have been fully and finally confirmed only if the Judge of the election tribunal had chosen to refer to the appended video-recorded proceedings of the day in the office of the RO.[97] On this count, the Supreme Court has ponderingly observed: "The learned Judge did not choose to refer to the same to come to a definite conclusion as to whether the election Petitioner had actually met the Returning Officer, if so, the actual time and in that context a finding was not recorded that the depiction in the video-recording is quite contrary to the statement of the Returning Officer so as to indicate that he had uttered deliberate falsehood."[98]

Apart from perversity on factual matrix, the impugnedjudgment is also not legally tenable. How come the judge of the election court could order initiation of criminal proceedings against the RO is indeed a mystery! There were no legal bases for such an action.The Supreme Court has painfully pointed out very many lacunae, which may be usefully abstracted.

> The criminal proceedings were initiated against the RO without giving him an opportunity to put up his version in the discharge of official function. Firstly, "it is not a case where the Appellant was a party-Respondent to the election petition where his written version was available,"[99] rather, on the contrary,"he was examined as a witness by the election Petitioner as PW3."[100]It is not clear at all, how the Judge of the Election Court had chosen "to call him as a court witness by interrupting the cross-examination and posing questions to him."[101]

93 *Ibid.*

94 *Ibid*.

95 *Ibid.*

96 *Id*., para 12.

97 *Ibid*.

98 The video-recorded proceedings of the day were marked as Exhibit P21 to P24 in the proceedings. See, *ibid.*

99 *Ibid*.

100 *Id*., para 13.

101 *Ibid*.

> Certainly, it was not the case "where the Petitioner had filed an application Under Section 340 of Code of Criminal Procedure, 1973 seeking action."[102] "If that was the case the Appellant would have had an opportunity to file his version in reply to the application."[103]

Secondly, departing from the basic principles of criminal jurisprudence, the election court Judge "had not put the Appellant on notice on the allegation of committing perjury and provided him an opportunity nor has the learned Judge come to the conclusion that one of the versions is deliberate or intentional falsehood and that therefore, action is necessary to be taken against him."[104]"On the other hand, the learned Judge during the course of passing the final order has made certain observations and directed that the Registrar General shall file a complaint."[105]

It is a judicially affirmed principle that the "mere factthat a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury Under Section 193 Indian Penal Code but it must be established that the deponent has intentionally given a false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding."[106]Even more, "such a prosecution for perjury should be taken only if it is expedient in the interest of justice."[107]

In the light of the threadbare comparative analysis, the three-judge bench of the Supreme Court has held that "the manner in which the learned Judge has concluded that the Appellant in C.A. No. 6171/2012 was inconsistent in his statements in the course of his evidence tendered by him as PW3 is not justified."[108] Accordingly, "the conclusion reached that he is to be prosecuted, without the findings being recorded regarding deliberate or intentional falsehood cannot be sustained."[109] "Hence the direction issued to the registrar general of the high court to initiate the proceedings by lodging a criminal complaint also cannot be sustained in the facts and circumstances arising in this case."[110]

Recognizing the pivotal role of the RO "for maintaining purity of the election process which is the heart and soul of democracy," the Supreme Court has emphatically stated that "it is also to be noted, merely because of that position the Returning Officer

102 *Ibid*.

103 *Ibid*.

104 *Ibid.*

105 *Ibid*.

106 *Ibid*.

107 *Id*., para 14, citing *KTMS Mohammad* v. *Union of India*, MANU/SC/0349/1992: 1992 3 SCC 178 (para 37), followed in *Amarsang Nathaji* v. *Hardik Harshadbhai Patel.,* MANU/SC/1516/2016 (para 6): 2017 1 SCC 113: "The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution Under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860)."

108 *Ibid*.

109 *Id*., para 16.

110 *Ibid.*

in the instant case need not be exposed to prosecution."[111]More so, when there was no "intentional falsehood" on the part of RO, nor it was "expedient in the interest of justice to initiate an inquiry and expose the Appellant to criminal prosecution." [112] It is indeed a puzzle, which has been noted by the Supreme Court, that how the plea of 'refusal to receive a nomination' could be construed by the election Judge as 'an improper rejection'?' To wit: [113]

> [T]he instant case is not a case where the nomination paper which was complete in all respect was filed and it had been improperly rejected in the scrutiny stage. The allegation of the election Petitioner is that the Returning Officer had refused to receive the nomination paper, which the learned Judge in the ultimate analysis has accepted and termed the same as an improper rejection. Even that be so, to indicate that the non-acceptance alleged by the election Petitioner was a deliberate action by the Returning Officer with a specific purpose, it has neither been pleaded nor proved in the course of the proceedings so as to penalise the Appellant to face yet another proceeding.

Even in the case of 'improper rejection', the election Judge is found to be on a very 'sticky wicket.'For instance, the observation of the Supreme Court on this count is:[114]

> The Assembly Constituency concerned is a vast constituency which had nearly four lakh voters on the electoral rolls. The election Petitioner had not placed material to indicate that she had contested in any earlier election or had wide support base in the election concerned and it is in that view she had been shut out from the contest. Further there is no allegation that the Returning Officer was acting at the instance or behest of any other candidate who was feeling threatened by the participation of the election Petitioner in the election process.

Against this backdrop, the Supreme Court, even at the cost of repetition, has recalled the plea of the Petitioner:[115]

> "On the other hand, the election Petitioner, as per her own case was seeking to present the nomination paper which was incomplete and even in that circumstance, she had come to the office of the Returning Officer only at 2.00 pm on the last day for filing nomination which was to close at 3.00 pm. Thereafter she made attempts to complete the formalities in filling up the nomination paper and having failed had still presented the nomination paper since according to her the needful could have been done within 24 hours. In such a case it cannot be said

111 *Ibid*.
112 *Id.*, para 17, citing *Amarsang Nathaji, supra* note106.
113 *Id*., para 18.
114 *Ibid.*
115 *Ibid*.

> that the Returning Officer with an ulterior motive had declined to receive the nomination paper and to cover up his folly was seeking to tender false evidence before the Court and thereby to justify his illegal action. In fact, the Appellant had received the other nomination papers submitted to him on the last day even as late as 2.58 pm. It is also the consistent view of this Court that the success of a candidate who has won at an election should not be lightly interfered with. *In any event it ought not to have been made the basis to initiate prosecution by terming the Appellant as unreliable witness.* Further, we notice that the Appellant was aged 59 years as on 15.06.2011 while recording his deposition and a decade has passed by and now would be 69 years. As pointed out by the learned Counsel for the Appellant, the Appellant has retired from service about eight years back. For all these reasons also, we find that any proceeding against the Appellant is also not expedient apart from not being justified." (Emphasis added)

Resultantly, the three-Judge Bench while allowing the appeal of the RO, the impugned order to the registrar general of the high court to register the complaint against the appellant, the then returning officer before the competent court for proceeding in accordance with law for the purpose of provisions of section 193 of the Indian Penal Code,1860 has been set aside.[116]

IV ELECTORAL BONDS SCHEME: WHETHER ANONYMITY OF THE DONORS OF POLITICAL PARTIES UNDER SECTION 29C IN THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS DESTRUCTIVE OF DEMOCRACY WHICH OTHERWISE THRIVES ON OPENNESS AND TRANSPARENCY?

This issue has come up before the Supreme Court Bench of three judges led by the Chief Justice in a PIL in *Association for Democratic Reforms* v. *Union of India (UOI)*[117] In this case, two NGOs, the Association for Democratic Reforms and Common Cause have joined together[118] and come up with Public Interest Litigation praying for issuing a writ of declaration or any other appropriate writ declaring, *inter alia*,[119]section 137 of the Finance Act, 2017, and the corresponding amendment carried out in section 29C of the Representation of the People Act, 1951 as being unconstitutional, illegal

116 *Id*., para 19.

117 *Ibid*.

118 MANU/SC/0225/2021 (Interlocutory Application No. 183625 of 2019 and Interlocutory Application No. 36653 of 2021 in Writ Petition (C) No. 880 of 2017), per S.A. Bobde, C.J.I., A.S. Bopanna and V. Ramasubramanian, JJ. Hereinafter, simply *Association for Democratic Reforms*.

119 Writ Petition (C) No. 333 of 2015 and Special Leave Petition (C) No. 18190 of 2014 were tagged on Oct. 3, 2017, see, *id.*, para 2.

and void.[120] Another prayer made was for theissue a writ of mandamus or any other appropriate writ "directing that no political parties would accept any donation in cash."[121]The Association for Democratic Reforms and another person in their writ petition[122] specifically also pleaded for:[123]"(i) a declaration that all national and regional political parties are public authorities under the Right to Information Act, 2005; (ii) a direction to the Election Commission of India to collect all information concerning the finances of political parties; (iii) a direction to all national and regional political parties to mandatorily disclose complete details about their income, expenditure, donations and funding as well as full details of the donors."

In 2019, after considering the matter including the amendments in the different statutes brought in by the Finance Act, 2016 and 2017, the Supreme Court passed an interim order stipulating,[124]*inter alia*, that "for the present"it would be "just and proper" that"all the political parties who have received donations through electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against the each Bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit."[125]All such documentsin respect of Electoral Bonds received by a political party till the prescribed relevant date,[126] would remain in the custody of the Election Commission of India and would abide "by such orders as may be passed by the Court."[127]

In this background, since the Electoral Bonds Scheme, 2018, which was introduced by the Central Government by a notification dated January 2, 2018 in exercise of the power conferred by section 31(3) of the Reserve Bank of India Act, 1934, the Supreme Court has considered the successive notifications along with amendments through the Finance Act of 2017 to the various other relevant statutes, including the Representation of Peoples Act 1951.[128] In this circumstantial situation, the petitioners, Association for Democratic Reforms, filed applications "seeking an interim direction to the Respondents not to open any further window for sale of

120 Other statutory provisions to be declared unconstitutional and null and void included:S. 135 of the Finance Act 2017 and the corresponding amendment carried out in S. 31 of the Reserve Bank of India Act, 1934; S. 11 of the Finance Act, 2017 and the corresponding amendment carried out in S. 13A, the Income Tax Act, 1961; S. 154 of the Finance Act, 2017 and the corresponding amendment carried out in S. 182 of the Companies Act, 2013 and S. 236 of Finance Act, 2016 and the corresponding amendment carried out in S. 2(1)(j)(vi) of the Foreign Regulations Contribution Act, 2010.

121 See, *Association for Democratic Reforms,* para 1.

122 *Ibid.*

123 Writ Petition (C) No. 333 of 2015.

124 See, *Association for Democratic Reforms,* para 2

125 On Apr.12, 2019 the Supreme Court passed an interim order in common in Writ Petition (C) Nos. 333 of 2015, 880 of 2017 and two other writ petitions.

126 *Association for Democratic Reforms,* para 13 read with paras 11 and 12.

127 The stipulated date was May 15, 2019, see, *id.*, para 14, read with para 15(4).

128 *Id.*, para 14.

Electoral Bonds under the Electoral Bond Scheme, 2018 and to prevent the Respondents from any further sale of Electoral Bonds."[129] In the instant case, the present application was filed in I.A. No. 36653 of 2021 "on the premise that the window for the sale of fresh bonds is likely to be opened at present on April 1, 2021."[130] Although, the Supreme Court as a "normal Rule of procedure and practice," disapproved the filing of applications for the same interim relief every time the window for the purchase under the Scheme is opened, nevertheless in view of "the seriousness of the issues raised," the applications for interim relief has been considered in the instant case.[131]

In the light of the factual matrix, the Supreme Court has undertaken the critical analysis of the Electoral Bond Scheme itself.[132] In this respect, the court has considered the response of Reserve Bank of India (RBI) to the Electoral Bonds Scheme, which described it as "an enduring reform, consistent with the Government's digitization push" with "the twin advantage of (i) providing anonymity to the contributor; and (ii) ensuring that consideration for transfers is through banking channels and not cash or other means."[133] However, with a view to fructify the 'twin advantage' objective, RBI made certain "recommendations," which had been substantially "accepted and incorporated in the Scheme."[134]The eventual version of the Electoral Bonds Scheme reveal the following features (quoted in full as read by the Supreme Court):[135]

> (i) only political parties registered Under Section 29A of the Representation of the People Act, 1951 and secured not less than 1% of the votes polled in the last general election to the House of the people or the legislative assembly shall be entitled to receive the bond; (ii) the bond can be encashed by an eligible political party only through a bank account with the authorized bank; (iii) the extant instructions issued by RBI regarding KYC norms and the bank's customer shall apply for the buyers of the bond and the authorized bank may also call for any additional KYC document; (iv) the bond shall be valid for 15 days from the date of issue and no payment will be made to any payee political party if the bond is deposited after the expiry of the validity period; (v) all payments for the issue of the bonds shall be accepted in Indian rupees, through demand draft or cheque or through electronic clearance system or direct debit of the buyers' account; (vi) the bond can be encashed only by depositing the same in the designated bank account of the eligible political party; (vii) the face value of the bonds

129 For instance, during the year 2019, the schedule for the months of March, April and May, 2019 had been announced to be (i) 1.3.2019 to 15.3.2019; (ii) 1.4.2019 to 20.4.2019; and (iii) 6.5.2019 to 15.5.2019. See, *id.,* para 15(4).

130 See, *id*., para 15(6).

131 *Ibid.*

132 *Id*., para 15(11).

133 See, *id.,* paras 15(12) to 15(14).

134 See, *id.,* para 15(16).

135 See, *id*., para 15(17).

shall be counted as income by way of voluntary contribution received by an eligible political party for the purpose of exemption from income tax Under Section 13A of the Income Tax Act, 1961.

Although the central issue raised in original petition, namely, whether there is complete anonymity in the financing of political parties by corporate houses, both in India and abroad, is yet be finally decided after full-fledged consideration of the matter, nevertheless at the stage of interimstage, it is evidently clear that funding of political parties *via* electoral bond scheme does not seem to beopaque in absolute terms. To wit: "If the purchase of the bonds as well as their encashment could happen only through banking channels and if purchase of bonds are allowed only to customers who fulfill KYC norms,[136] the information about the purchaser will certainly be available with the SBI which alone is authorised to issue and encash the bonds as per the Scheme."[137] "Moreover, any expenditure incurred by anyone in purchasing the bonds through banking channels, will have to be accounted as an expenditure in his books of accounts. The trial balance, cash flow statement, profit and loss account and balance sheet of companies which purchase Electoral Bonds will have to necessarily reflect the amount spent by way of expenditure in the purchase of Electoral Bonds."[138]

As far as the information to the Election Commission is concerned, in terms of the interim order passed earlier by the Supreme Court on April 12, 2019, all information concerning finances of all national and regional political parties, along with complete details about their income, expenditure, donations and funding as well as full details of donors, are already there with the Election Commission in sealed cover.[139]

The Supreme Court has devoted considerable time and space in dealing with the issue whether the operation of the companies donating huge amount to political parties under the Electoral Bonds Scheme is beyond public gaze.This notion has been dispelledby citing several statutory safeguards, which may be abstracted as under:

i. The purchase of the bonds as well as their encashment could happen only through banking channels and, accordingly,the purchase of bonds are allowed only to customers who fulfill KYC norms, and, thus, the information about the purchaser will certainly be available with the SBI, which alone is authorised to issue and encash the bonds as per the Scheme.[140]

ii. Any "expenditure incurred by anyone in purchasing the bonds through banking channels, will have to be accounted as an expenditure in his books of accounts," showing the "trial balance, cash flow statement,

136 *Id.*, para 15(17).

137 A non-KYC compliant application or an application not meeting the requirements of the scheme shall be rejected. See, *id*., para 16(18).

138 *Id*., para 16(22). It is subject to one exception namely when demanded by a competent court or upon registration of criminal case by any law enforcement agency. See, *id*., para 16(18).

139 *Id*., para 16(22).

140 See the reply of the Election Commission that it has received sealed covers from various political parties (National, State and registered and unregistered parties), as per direction of the Supreme Court on Feb. 3, 2020 in I.A. No. 183625 of 2019,*id*., para 16(19).

profit and loss account and balance sheet of companies which purchase Electoral Bonds will have to necessarily reflect the amount spent by way of expenditure in the purchase of Electoral Bonds."[141]

iii. A full picture of financial statements [given under Section 129(1)] should give "a true and fair view of the state of affairs of the company," complying with "the accounting standards"[notified under Section 133], which, in turn, "are to be placed at every Annual General Meeting of the company."[142]

iv. "The financial statements of companies registered under the Companies Act, 2013 which are filed with the Registrar of Companies, are accessible online on the website of the Ministry of Corporate Affairs for anyone," and the same "can also be obtained in physical form from the Registrar of Companies upon payment of prescribed fee."[143]

v. "Since the Scheme mandates political parties to file audited statement of accounts and also since the Companies Act requires financial statements of registered companies to be filed with the Registrar of Companies, the purchase as well as encashment of the bonds, happening only through banking channels, is always reflected in documents that eventually come to the public domain."[144]

In view of all the statutory sanctions as abstracted above, if anyone is keen on knowing the 'inner view' of the transactions or deals between the donor company and the political party,"[a]ll that is required is a little more effort to cull out such information from both sides (purchaser of bond and political party) and do some 'match the following'."[145]"Therefore, it is not as though the operations under the Scheme are behind iron curtains incapable of being pierced," has, thus, the Supreme Court clinched the issue of anonymity.[146]

With this elucidation, the Supreme Court has considered one of the most contentious issues raised by the Petitioners'; namely,"that though the first purchase may be through banking channels for a consideration paid in white money, someone may repurchase the bonds from the first buyer by using black money and hand it over to a political party."[147] The Supreme Court's response to this contention is sharp and clear:[148]

141 See, *id.*, para 15(22).

142 *Ibid*. Under S. 128(1) of the Companies Act, 2013 every company shall prepare and keep books of accounts and financial statement for every financial year. See*, id.,* para 15(23), citing the provisions of this Section in extenso.

143 See, *id*., para 15 (24). Under S. 137 of the Companies Act, 2013, a copy of the financial statement, along with all the documents duly adopted at the annual general meeting are required to be filed with the registrar of companies.

144 See, *id.*, para 15 (25).

145 *Ibid.*

146 *Ibid.*

147 *Ibid*.

148 *Id.*, para 15(26).

> But this contention arises out of ignorance of the Scheme. Under Clause 14 of the Scheme, the bonds are not tradable. Moreover, the first buyer will not stand to gain anything out of such sale except losing white money for the black.

There was another similar "apprehension" of the Petitioners: "that foreign corporate houses may buy the bonds and attempt to influence the electoral process in the country."[149] This has been dispelled by the apex court by observing that such an apprehension "is also misconceived,"[150] inasmuch as "[u]nder Clause 3 of the Scheme, the Bonds may be purchased only by a person, who is a citizen of India or incorporated or established in India."[151]

In conclusion, the Supreme Court has, thus, observed that "in the light of the fact that the Scheme was introduced on January 2, 2018; that the bonds are released at periodical intervals in January, April, July and October of every year; that they had been so released in the years 2018, 2019 and 2020 without any impediment; and that certain safeguards have already been provided by this Court in its interim order dated April 12, 2019, we do not see any justification for the grant of stay at this stage."[152] Accordingly, the apex court has declined to entertain two stay applications moved by ADR to stop the sale of the electoral bonds ahead of elections in West Bengal, Tamil Nadu, Assam, Kerala and Puducherry. This is how both the applications filed for stay of Electoral Bond Scheme, 2018 notified by Central Government and interim direction to Respondents not to open any further window for sale of Electoral Bonds under Electoral Bond Scheme, 2018 have been eventually dismissed.[153]

V ELECTION PETITION: WHETHER IT CAN BE DISMISSED AT THE VERY THRESHOLD ON ACCOUNT OF NON-FILING OF AN AFFIDAVIT IN FORM 25 (PRESCRIBED UNDER RULE 94A OF CONDUCT OF ELECTION RULES, 1961) AS PROVIDED UNDER SECTION 83(1) OF THE REPRESENTATION OF PEOPLE ACT 1951?

This issue has come before the Supreme Court in *A. Manju* v. *Prajwal Revanna.*[154] In this case, the appellant was a candidate from a Parliamentary Constituency in the State of Karnataka in the 2019 elections, whereas the respondent no. 1, the returned candidate.[155] The appellant preferred an election petition under section 81 of the Representation of People Act, 1951 (hereinafter simply the 'RP Act') challenging the election of the respondent-returned candidate (RC). The appellant sought a declaration that RC's election was liable to be declared void on account of his having filed a false

149 *Ibid.*

150 *Id.,* para 15(27).

151 *Ibid*.

152 *Ibid*.

153 *Id.*, para 15(28).

154 *Ibid.*

155 (A Civil Appeal No. 1774 of 2020, decided on: Dec.13, 2021), MANU/SC/1243/2021), AIR 2022 SC 196: (2022)3 SCC 269, per Sanjay Kishan Kaul and M.M. Sundresh, JJ. Hereinaftr, *Manju*.

affidavit and consequently the he (appellant) should be declared as duly elected on account of his having secured the second highest votes. This petition was resisted by the RC at the threshold who filed an application under Order VII Rule 11 read with section 151 of the Code of Civil Procedure, 1908 (hereinafter simply the 'said Code')[156] and section 86(1) of the RP Act seeking dismissal of the election petition on account of non-compliance of section 81(3) and the proviso to section 83(1) of the RP Act.[157]The high court allowed the application of the RC and accordingly dismissed the petition of the appellant-petitioner at the threshold. The impugned order of dismissal is before the Supreme Court.

For eventual decision-making, the Supreme Court has first located the pivotal part of the judgment of the high court, which resulted in an adverse order against the appellant.[158]This related to the requirement of submission of Form 25.[159]On this count, the plea of the RC that filing of Form 25 would arise only if the allegations made in the election petition pertained to section 123 of the RP Act.[160] This pleawas repelled by the High Court, for in its view"the use of the phrase 'any corrupt practice' in the proviso to Section 83 of the RP Act covers allegations of every manner of corrupt practice envisaged under the RP Act."[161]"In any case, the high court was of the view that the appellant had alleged undue influence and improper acceptance of respondent no. 1's nomination under sections 123 and 100 of the RP Act respectively."[162]" Accordingly, the appellant's submission that the allegations against respondent no. 1 were confined only to section 33A of the RP Act was liable to be rejected."[163] This premise led the High Court to examine the consequences of non-submission of Form 25, and held that in the fact matrix of the case at hand, in which the election petitioner had not filed any affidavit,[164] is similar to the one of *G.M. Siddeshwar* v. *Prasanna Kumar*,[165] wherein a three-judge bench of the Supreme Court enumerated the following three principlesunder which an election could be dismissed *in limine*:[166]

156 The appellant was sponsored by the Bharatiya Janata Party, and the respondent no. 1 by Janatha Dal Secular Party. Both of them were the candidates from one and the same parliamentary Constituency. Respondent nos. 2 to 6 were sponsored by local/regional parties but, as transpired from the elections, were not serious contestants in real terms.

157 It provides that an application on behalf of defendant, seeking rejection of the plaint of the plaintiffas it does not disclose any cause of action in favour of the plaintiff.

158 *Supra* note 154, *Manju*, para 3.

159 *Id*., para 10.

160 *Ibid.*

161 *Ibid.*

162 *Ibid.*

163 *Ibid*.

164 *Ibid*.

165 *See,* the dictum laid down in *Ponnala Lakshmaiah* v. *Kommuri Pratap Reddy,* MANU/SC/0529/2012 *:*AIR 2012 SC 2638, the absence of an affidavit or an affidavit in a form other than the one stipulated, would not itself cause prejudice to the election Petitioner so long as the deficiency was cured. It seems, it is assumed here that some sort of affidavit other than in the prescribed format must have been submitted. Cited in, *id.*, para 11.

166 MANU/SC/0220/2013: (2013) 4 SCC 776.

(i) Total non-compliance of Section 83 of the RP Act means that a petition cannot be described as an election petition and must be dismissed at the threshold;

(ii) if defects are curable, then the petition cannot be dismissed summarily as Section 86 of the RP Act sanctioned dismissal only for non-compliance with Sections 81, 82 & 117 of the RP Act; and

(iii) a determination of the gravity of defects would have to be made in the facts of each case, to determine whether there had been non-compliance with an integral part of Section 83 or not.

In the light of these three principles, the high court opined that Form 25 was an integral part of the election petition and its complete absence would mean that there was total non-compliance of section 83 of the RP Act.[167] The election petition was, thus, held as not maintainable.On this holding, after hearing the counsel from both sides, the Supreme Court hasunveiled their own "Conclusion", which may be abstracted as under:

> (a) Intrinsically, "election law is technical in nature."[168] However, keeping in view the very purpose of holding electionsunder an independent body like the Election Commission of Indiais to ensure that that success in the elections is obtained not by concealment of material, which would have been germane in determining the opinion of the electorate.[169]Bearing this basic principle in mind, "while the requirements to be met in the election petition may be technical in nature, *they are not hyper-technical*, as observed in the *PonnalaLakshmaiah1* case"–this view "have received the imprimatur of a larger Bench."[170]Acting on this exposition of not construing technical as hyper-technical, in the fact matrix of the present case the Supreme Courthas affirmed the view of the High Court to the extent of not holding the non-signing and verification of the index and the synopsis resulting into dismissal of election petition.[171]
>
> (b) However, the High Court is not right in its eventual conclusion that the non-submission of Form 25 would lead to the dismissal of the election petition at the threshold. This is so, because, in view of the Supreme Court, "the observations made in *Ponnala Lakshmaiah*[172]case which have received the imprimatur of the three Judges Bench in *G.M. Siddeshwar*[173] case appear not to have been appreciated in the correct

167 *Supra* note 154 , para 11.

168 *Ibid.*

169 *Id*., para 19.

170 See, *ibid.*

171 *Ibid.* These observations have received the imprimatur of a larger Bench of three Judges in *G.M. Siddeshwar* case, see, *supra* note165(Emphasis added).

172 See, *id*., para 20.

173 *Ponnala Lakshmaiah* v. *Kommuri Pratap Reddy*., MANU/SC/0529/2012 : AIR 2012 SC 2638,

perspective."[174]"In fact, the *G.M. Siddeshwar* case has been cited by the learned Judge to dismiss the petition," said the Supreme Court.[175]This stance of the High Court is just the opposite to the reading of the dictum in *G.M. Siddeshwar* by the Supreme Court.[176]How and where the High Court went wrong in construing the dictum of *G.M. Siddeshwar*? On this count the response of the Supreme Court is illuminating.

(c) On the perusal of the impugned judgment of the High Court, the Supreme Court has observed: "We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the Appellant were not confined only to Section 33A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of Respondent No. 1 were also pleaded as violation of the mandate Under Sections 123 and 100 of the RP Act."[177] If this is so, where did the High Court go wrong in insisting that it was mandatory for the election Petitioner to file an affidavit in Form-25? The Supreme Court has answered this question rather searchingly:[178]

If we look at the election petition, the prayer Clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the Appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge, i.e., Ponnala Lakshmaiah[179] as well as G.M. Siddeshwar,[180] ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the Appellant to cure this defect by filing an affidavit in the prescribed form.

174 See, *supra*, note 165.

175 See, *id*., para 23.

176 *Ibid.*

177 The *G.M. Siddeshwar* case, in reaching the conclusion that non-compliance with proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied, i.e., even in the absence of compliance, the petition would still be called an election petition, the inspiration was drawn from the Constitution Bench judgment of the Supreme Court in *MurarkaRadhey Shyam Ram Kumar v. Roop Singh Rathore*, MANU/SC/0122/1963: AIR 1964 SC 1545: (1964) 3 SCR 573, which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the Petitioner's petition summarily and such an affidavit can be permitted to be filed later. See, *id*., para 22.

178 *Id*., para 22.

179 *Id.*, para 23.

180 See, *supra*, note 172.

(d) On behalf of the RC a distinction was sought to be made between "the absence of an affidavit and a defective affidavit," to justify the dismissal of the election petition in the absence of affidavit in Form-25.[181] The Supreme Court has dispelled the misgiving by observing that such a distinction "pre-supposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective,"[182]and that "would be very narrow reading of the provisions."[183] In this respect, the exposition of the Supreme Court is:[184]

> Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the Appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of Respondent No. 1.

In the light of the above, the Supreme Court has summed up their conclusion by observing:[185]

(i) The appellant has stated his case "clearly and in no uncertain terms with supporting material in the election petition."[186]

(ii) "Whether the violation is made out by Respondent No. 1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold."[187]

(iii) The impugned order of the High Court is "set aside" and the application of the RC "would stand dismissed with liberty to the Appellant to file an appropriate affidavit in Form 25 within fifteen (15) days from the date of the judgment."[188]

(iv) "The further proceedings in the election petition are required to be taken up urgently as almost two and a half years have gone on the preliminary skirmishes rather than the meat of the matter, which we are sure the learned Single Judge of the High Court would so do."[189]

This is how the appeal has been allowed leaving the parties to bear their own costs.[190]

181 See*, supra,* note 165.
182 See, *id*., para 24.
183 *Ibid.*
184 *Ibid.*
185 *Ibid*.
186 See, *id*., paras 25, 26, and 27.
187 *Id*., para 25.
188 *Ibid*.
189 *Id.*, para 26.
190 *Ibid.*

VI CONCLUSIONS

The four issues that we have dealt with in our present survey have emanated from the judgments delivered by the Supreme Court in four election cases during the year 2021. The Supreme Court in *Brajesh Singh,* in view of studied silence of the government and the Parliament of India in the matters of electoral reforms,[191] carried forward the crusade of de-criminalising the election process by vigorously strengthening the right of the citizens to get information[192] "*more effective and meaningful*" by issuing further directions,[193]which would, of course, not to be considered in anyway disqualifying a candidate standing for election.[194]Here the strategy is simple: In meeting the menace of increasing criminalization of politics, the Supreme Court has chartered upon a new course through educating the masses in respect of criminal antecedents of election candidates, by making it obligatory for them to expose themselves about their criminal past. And doing so is perfectly constitutional. In this respect, the Supreme Court is simply sharpening the strategy that it developed more than two decades (2002) by putting the election candidates to shame in public view!We may simply term this as the Supreme Court's valiant efforts to de-criminalizing the electoral process.

The second issue, which is somewhat unusual in nature, is dealt by the Supreme Court in *Nandiesha Reddy*.[195]In this case, the returning officer was exposed to criminal prosecution, as if to say, for doing one's own job to carry forward the democratic process. Elections were held in 2008, election of RC was set aside by the election tribunal in 2012. However, soon after the election tribunal's judgment, instant appeal was filed in the Supreme Court. The apex court, as if for doing instant justice, had "granted stay of the impugned order while issuing notice on 11.06.2012."[196]The eventual reversal of the judgment by the Supreme Court in 2021 was, therefore, of academic interest for straightening the legal course on principle.

191 See, *id.*, para 27.

192 See, *supra*, notes 34 and 35, and the accompanying text in Section II.

193 The right to get information in democracy "is recognised all throughout and it is a natural right flowing from the concept of democracy," See *Association for Democratic Reforms,* para 46(5), cited in *Brajesh Singh*, para 12.This assertion is supported both by the International Covenant on Civil and Political Rights, seeArticle 19(1) and (2) of the International Covenant on Civil and Political Rights, inter alia, provide: "(1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice…."The same resonance is heard under the law of Constitution of India:Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA can be derived from the fundamental right guaranteed under art. 19(1)(a) of our Constitution, which provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. See generally, *supra*, note 2.

194 See, *supra,* notes 65-71 in Section II.

195 See, *Brajesh Singh,* para 57.

196 See generally, *supra*, Section III.

Setting aside the election of the returned candidate is linked with the election tribunal judge exposing the returning officer to criminal prosecution. If the latter was perverse, it was duly reflected on the substantive judgment of voiding the election of the RC. Though such a correlation is not expressed directly or expressly, but is vividly made clear in the judgment. Perhaps, in retrospect, that such a perversity was writ large in the very holding of the Election Court, and, therefore, as if in anticipation, the Supreme Court took no time to put a hold on the judgement right at the threshold in 2012, although the judgment was to be decided and reversed on merit much later, almost a decade after in 2021!

The emerging lesson that this judgment teaches us is: how to unearth the truth from a judgment, which is perverse both in law and on facts, and that invoking criminal proceedings against the RO, for no rhyme or reason, is absolutely uncalled for! It virtually amounted to derailing the democratic processes institutionally.

The third issue emanating from the three-Judge bench judgment in *Association for Democratic Reforms* has dealt with the question of public concern, whether anonymity of the donors of political parties in respect of electoral bonds scheme is destructive of democracy, which otherwise thrives on openness and transparency.[197]In the light of smooth sailing of the Electoral Bonds Scheme since its introduction in the year 2018, with intermittent safeguards interjected by the courts, there remains no room for entertaining any misgivings about the said scheme. Accordingly, the apex court rightly declined to put on hold the ongoing Electoral Bond Scheme, 2018, notified by Central Government.[198]

How to construe the requirements of the election petition, which are seemingly 'technical in nature', and yet are not be considered 'hyper technical' while dismissing the election petition *in limine* is the fourth issue that has come up for consideration before the Supreme Court in *A. Manju.*[199]The emerging crystalized question for resolution is, whetheran election petition can be dismissed at the very threshold on account of non-filing of an affidavit in Form 25 (prescribed under Rule 94A of Conduct of Election Rules, 1961) as provided under Section 83(1) of the Representation of People Act 1951?"[200]This pointed question has been answered by the Supreme Court by systematically stating one by onethe facts, followed by the relevant law, juxtaposition of the pleas of the appellant-petitioner and respondent-returned candidate, and then evaluation in the backdrop of the decision of the high court. This is how the whole narrative of the judgment has been conceived by the Supreme Court for crystalizing the issue to be resolved.[201]

197 See, *Nandiesha Reddy*, para 3
198 See generally, *supra,* Part IV.
199 *Ibid.*
200 See generally, *supra*, Part V.
201 *Ibid.*
202 See, *A. Manju*, para 9.