2021 INSC 388

REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

CONTEMPT PETITION (CIVIL) NO. 656 OF 2020

IN

CONTEMPT PETITION (CIVIL) NO.2192 OF 2018
IN
WRIT PETITION (CIVIL) NO.536 OF 2011

BRAJESH SINGH ... PETITIONER

VERSUS

SUNIL ARORA & ORS. ...RESPONDENTS

WITH

M.A. DIARY NO.2680 OF 2021
IN
CONTEMPT PETITION (CIVIL) No. 2192 of 2018
IN
WRIT PETITION (CIVIL) NO. 536 OF 2011

J U D G M E N T

Per Court

1. A contempt petition has been filed in this Court on 06.11.2020, by the Petitioner herein, who has brought to the notice of this Court the flouting of its directions given *vide* Order dated 13.02.2020. The Petitioner describes himself in the said petition as follows:

> "That the Petitioner above named is an Advocate registered with Bar Council of Delhi and presently practicing in the Delhi and basically belonging from the Nalanda District of the State

of Bihar. As an Officer of the Court and also as a law abiding citizen of this Country the Petitioner has self-obligated duty to apprise this Hon'ble Court regarding wilful disobedience of its order if happening somewhere and especially in the State of Petitioner itself and also where the Said Order is related with the large interest of the people who are going to exercise their Constitutional Right "Right to Vote"."

2. This Court issued notice on the said contempt petition on 11.02.2021 and recorded that the Election Commission of India [hereinafter referred to as "ECI"] has filed its report in compliance with the Order dated 13.02.2020. Vide a subsequent Order dated 17.03.2021, this Court had directed that Shri K.V. Viswanathan, learned Senior Advocate, be appointed to assist this Court as Amicus Curiae. Shri Viswanathan has since filed a detailed list of dates and submissions.

3. This contempt petition arises out of elections that were held to the Bihar Legislative Assembly in October/November, 2020. The report of the ECI first sets out extracts from our Order dated 13.02.2020 and then brings to the notice of the Court that:

> "In compliance of above directions, the Commission 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 06.03.2020. 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 19.03.2020 and Letter No. 3/4/2019/ SDR-Vol.IV dated 16.09.2020. 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 [Annexed herewith as Annexure R/1].

The Commission also directed the Chief Electoral Officer, Bihar *vide* Letter No. 464/BH-LA/ES-I/2020/173 dated 17.10.2020 to ensure compliance with the above noted directions of the Hon'ble Supreme Court in the General Elections to Bihar Legislative Assembly-2020 held between 28.10.2020 and 07.11.2020 [Annexed herewith as Annexure R/2]

In compliance of the directions given by the Hon'ble Supreme Court *vide* Judgement and Order dated 13.02.2020 and in pursuance to Commission's directions dated 17.10.2020, as per the report submitted by CEO Bihar [Annexed herewith as Annexure R/3] 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 [Annexed herewith as Annexure R/4] 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.

It is pertinent to note that the Commission issued the Press Note announcing the schedule of the General Elections for Bihar Legislative Assembly on 25.09.2020. As per the said schedule, the last date for making nominations was as under:

S.No.	**Phase**	**Last date for filing nominations**
1.	Phase I	08.10.2020
2.	Phase II	16.10.2020
3.	Phase III	20.10.2020

The following eight political parties have submitted the requisite information in the prescribed format in phase wise manner as below:

S.No.	Name of Political Party	(For Phase 1) Submitted via Party's letter bearing date as below	(For Phase 2) Submitted via Party's letter bearing date as below	(For Phase 3) Submitted via Party's letter bearing date as below
1.	Bhartiya Janata Party (BJP)	23.10.2020	23.10.2020	29.10.2020
2.	Janata Dal (United) [JD(U)]	15.10.2020	21.10.2020	04.11.2020
3.	Rashtriya Lok Samata Party (RLSP)	30.10.2020	30.10.2020	30.10.2020
4.	Bahujan Samajwadi Party (BSP)	07.10.2020 09.10.2020 10.10.2020	15.10.2020 16.10.2020 17.10.2020 19.10.2020	20.10.2020 22.10.2020
5.	Indian National Congress (INC)	22.10.2020	22.10.2020	24.10.2020
6.	Lok Janshakti Party (LJP)	24.10.2020	24.10.2020	26.10.2020
7.	Communist Party of India (CPI)	15.10.2020	22.10.2020	15.10.2020
8.	Rashtriya Janata Dal (RJD)	20.10.2020	21.10.2020	21.10.2020

As per the Format C7 and C8 submitted by these 08 Political Parties, a total of 427 candidates with criminal antecedents participated in the General Elections for the Legislative Assembly of Bihar 2020 on the symbol of these political parties.

As per the Report received from CEO, Bihar, a total of 469 candidates with criminal antecedents participated in the General Elections for the Legislative Assembly of Bihar 2020 on the symbol of 10 recognised 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

The details of the information submitted in format C-7 & C-8 by the political parties in respect of candidates having criminal antecedents who contested in General Election to Legislative Assembly of Bihar, 2020 is annexed herewith as Annexure R/5."

4. Order dated 13.02.2020 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)[1] was passed alleging therein disregard of the directions issued by a Constitution Bench of this Court [hereinafter referred to as 'Constitution Bench'] in ***Public Interest Foundation and others v. Union of India and another[2].***

5. The directions issued by the Constitution Bench in ***Public interest Foundation (supra)*** are thus:

"**116.** Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:

[1] **(2020) 3 SCC 733**
[2] **(2019) 3 SCC 224**

116.1. 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.

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

116.3. 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.

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

116.5. 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."

6. The directions contained in our Order dated 13.02.2020 may first be set out:

"1. This contempt petition raises grave issues regarding the criminalisation of politics in India and brings to our attention a disregard of the directions of a Constitution Bench of this Court in *Public Interest Foundation and Ors. v. Union of India and Anr.* (2019) 3 SCC 224.

2. In this judgment, this Court was cognisant of the increasing criminalisation of politics in India and the lack of information about such criminalisation amongst the citizenry. In order to remedy this information gap, this Court issued the following directions:

"116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:

116.1. 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.

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

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3. On a perusal of the documents placed on record and after submissions of counsel, it appears that over the last four general elections, there has been an alarming increase in the incidence of criminals in politics. 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.

4. We have also noted that the political parties offer no explanation as to why candidates with pending criminal cases are selected as candidates in the first place. We therefore issue the following directions in exercise of our constitutional powers under Articles 129 and 142 of the Constitution of India:

1) It shall be <u>mandatory</u> for political parties [at the Central and State election level] to upload on their website detailed information regarding individuals with pending criminal cases (including the nature of the offences, and relevant particulars such as whether charges have been framed, the concerned Court, the case number etc.) who have been selected as candidates, along with the reasons for such selection, as also as to why other individuals without criminal antecedents could not be selected as candidates.

2) The reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned, and not mere "winnability" at the polls.

3) This information shall also be published in:

(a)One local vernacular newspaper and one national newspaper;

(b)On the official social media platforms of the political party, including Facebook & Twitter.

4) These details shall be published within 48 hours of the selection of the candidate or not less than two weeks before the first date for filing of nominations, whichever is earlier.

5) The political party concerned shall then submit a report of compliance with these directions with the Election Commission within 72 hours of the selection of the said candidate.

6) If a political party fails to submit such compliance report with the Election Commission, the Election Commission shall bring such non-compliance by the political party concerned to the notice of the Supreme Court as being in contempt of this Court's orders/directions.

5. With these directions, these Contempt Petitions are accordingly disposed of."

7. It may be mentioned that pursuant to this Order, the ECI issued a letter dated 06.03.2020 addressed to all National and State level recognised political parties asking them to comply with the directions of the Supreme Court, and also 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 Form C-8, the political party was then 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 Clause 16-A of the Election Symbols (Reservation and Allotment) Order, 1968 [hereinafter referred to as the "Symbols Order"].

8. A sequel to this letter was issued on 19.03.2020 by the ECI addressed to all Chief Electoral Officers urging that they in turn should urge political parties to file Form C-7 and C-8 promptly and that any non-compliance shall have to be reported by the last day of making nominations so that non-compliance by political parties could then be submitted by the ECI before this Court.

9. On 16.09.2020, the ECI issued another letter wherein timelines were also prescribed for publication of information regarding criminal antecedents during the period starting from the day following the last date for withdrawal of nomination and upto 48 hours before ending with the hour fixed for conclusion of poll. It prescribed three block periods within which such disclosures had to be made – (1) within the first four days of withdrawal; (2) within the 5th to 8th days; and (3) from the 9th day till the last day of the campaign or the second day prior to the date of the poll.

10. Armed with these instructions, the ECI, on 25.09.2020, announced the poll schedule for the Assembly Elections to be held in the State of Bihar.

Elections were to be held in three phases with results that were ultimately to be declared on 10.11.2020.

11. On 17.10.2020, the ECI sought details from the Chief Electoral Officer, Bihar regarding candidates contesting in Phase I of the said elections, who had criminal antecedents. The Association for Democratic Reforms issued a report dated 20.10.2020 on the Bihar Assembly Elections Phase I, wherein it found that 31% of the candidates have criminal antecedents, out of which 23% have serious criminal cases against them. Likewise, on 27.10.2020, another report was issued qua Phase II, wherein it was found that 34% of total candidates have criminal antecedents, 27% having serious criminal cases against them. Also, by a report dated 02.11.2020, for Phase III of the Bihar Assembly Elections, it was found that 31% of total candidates have criminal antecedents, 24% having serious criminal cases against them. 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). 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. It is in this backdrop that the present contempt petition has to be decided.

12. Section 8 of the Representation of People Act, 1951 [hereinafter referred to as the "Act of 1951"], states as follows:

> "**8. Disqualification on conviction for certain offences.-**
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> (1) A person convicted of an offence punishable under-
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> (a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or
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> (b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or
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> (c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or
>
> (d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place)

of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or

(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991; or

(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971), ; or

(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002)

shall be disqualified, where the convicted person is sentenced to –

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(2) A person convicted for the contravention of –

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation. —In this section, —

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Durgs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954)."

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. This Court has time and again referred to the long periods in which persons are undertrials, and the unsatisfactory result of undertrials taking advantage of the law and standing for election after election simply because their cases have not been decided in a timely manner. Given the fact that false cases can be filed, the Law Commission of India recommended that if charges are framed for offences in which punishment is for a period of two years or more, a law should be made amending Section 8 so that this can be incorporated therein, thereby reducing at one fell stroke the huge criminalisation that is found in politics in this country. Apart from this, this Court has held that the least that can be done, given the present state of the law, is that at least information as to acquittals, discharge or conviction in relation to criminal offences in the past be set out by way of affidavit so that a voter has the right to know full

particulars of the candidate for whom he is going to vote, including whether the candidate has committed criminal offences in the past. To this effect, this Court in ***Union of India v. Association for Democratic Reforms and Another***[3], directed as follows:

> "**22.** For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens — voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided — its result, if pending — whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters.
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>
> **46.** To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:
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> 1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth

[3] **(2002) 5 SCC 294**

conduct of elections and the word “elections” is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

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4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

“(*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.”

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7. Under our Constitution, Article 19(1)(*a*) 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. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. **The little man may think over before making his choice of electing law-breakers as law-makers**.

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

(*1*) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

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

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

(*4*) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(*5*) The educational qualifications of the candidate."

13. As an aftermath of this judgement, Sections 33-A and 33-B were introduced into the Act of 1951. These sections provided:

"**33-A. Right to information.**—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether—

(*i*) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(*ii*) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

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

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

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

14. A challenge to these Sections was made, and Section 33-B struck down by a Three-Judge Bench in ***People's Union for Civil Liberties (PUCL) v. Union of India and Another***[4]. Shah, J. concluded:

"**78.** What emerges from the above discussion can be summarised thus:

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

[4] **(2003) 4 SCC 399**

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

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

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

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

(*D*) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is

one of the surest means to cleanse our democratic governing system and to have competent legislatures.

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

Reddi, J. in a separate judgment concluded:

"**123.** Finally, the summary of my conclusions:

(*1*) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(*a*). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.

(*2*) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(*a*). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

(*3*) The directives given by this Court in *Union of India* v. *Assn. for Democratic Reforms* were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due

weight and substantial departure therefrom cannot be countenanced.

(*4*) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

(*5*) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(*6*) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

(*7*) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(*a*).

(*8*) The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

(*9*) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still

hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."

Dharmadhikari, J. in a separate judgment agreed with Reddi, J., and Shah J. on the invalidity of Section 33-B of the Representation of People Act, 1951, while choosing to disagree with propositions 3 and 8 in the opinion of Reddi, J. Section 33-B, therefore, stood struck down.

15. In 2012, an important amendment was made to the Conduct of Election Rules, 1961, and Form 26 was also amended. This Court in ***Satish Ukey v. Devendra Gangadharrao Fadnavis and Another***[5], referred to the aforesaid amendment as follows:

"**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]."

[5] **(2019) 9 SCC 1**

16. In ***Public Interest Foundation (supra)***, a Five-Judge Bench of this Court, 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, issued directions contained in paragraph 116, as referred to in our Order dated 13.02.2020. The Court ended with a sense of anguish followed by hope as follows:

> "**117.** These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps or lacunae in a law or legislative enactment which 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. It must also be borne in mind that the law cannot always be found fault with for the lack of its stringent implementation by the authorities concerned. Therefore, 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.
>
> **118.** We have issued the aforesaid directions with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. 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.
>
> **119.** 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."

17. The nation continues to wait, and is losing patience. Cleansing the polluted stream of politics is obviously not one of the immediate pressing concerns of the legislative branch of government. As a sequel to this judgment the directions contained in the order dated 13.02.2020 were then made.

18. Shri K.V. Viswanathan, learned amicus curiae placed before us some of the facts stated hereinabove. In addition, he also referred to revised guidelines issued by the ECI on 26.02.2021 in which the criteria for publishing in a newspaper was specified. He then analysed the report of the ECI and submitted that given our contempt jurisdiction under Article 129 read with Article 142 of the Constitution of India we are not bound by the provisions of the Contempt of Courts Act, 1971 and can not only impose sentences, fines, but can also reprimand authorities and persons

for acting contrary to our directions. He picked up, at random, some examples which showed how all the political parties have been flouting our directions in letter and spirit, fielding persons whose criminal antecedents show that they have been charge-sheeted or charged with serious offences, with no real reason as to why such person has been preferred over other more deserving candidates. This chart is appended to our judgment as Annexure-I hereto. In addition, he argued that Forms C-1, C-2, C-7 and C-8 were either not filled (2 out of 10 parties admittedly have not filled up Forms C-7 and C-8) or have been filled without disclosing particulars. He then copiously referred to the Symbols Order and argued that if we were to give teeth to our Order dated 13.02.2020, the ECI ought to issue directions under clause 16-A of the Symbols Order by giving a post-decisional hearing (after the ECI amends clause 16-A to provide as such), and then suspending or withdrawing recognition to National and/or State political parties who flout the directions contained in our Order dated 13.02.2020. He has also made certain valuable suggestions which shall be reflected in the directions issued by this judgment.

19. Shri Vikas Singh, learned senior advocate appearing on behalf of the ECI, referred to our Order dated 11.02.2021 in which this Court had issued notice in the present contempt petition and argued that the ECI had filed its report in compliance of the Order dated 13.02.2020. To therefore

argue, as has been argued by the learned petitioner and as suggested by Shri Viswanathan that the ECI is itself in contempt in not having promptly notified this Court of the non-following of its directions in the Order dated 13.02.2020 is absolutely baseless. As a matter of fact, he argued that the contempt petition itself was filed 4 days before the result was declared, and it is therefore misleading to say that it was only after the contempt petition was filed that the ECI gave its report to the Court. As can be seen, this report is dated 01.02.2020 and has been filed 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.

20. He then urged that apart from directions that could be issued under clause 16-A of the Symbols Order, electors, that is, those who are entitled to vote at an election are also given the right to approach the Court in an election petition under Section 81 read with Section 100 of the Representation of the People Act, 1951 on the ground that the election of the returned candidate is materially affected by rejection of an application filed by such elector for being nominated by such political party as he was better suited to represent the particular political party in view of our Order dated 13.02.2020. He then urged that such election petition so filed could be considered on merits, as a violation of our Order would amount to undue influence which is a “corrupt practice” under Section 123(2) read with Section 100(1)(b) of the Representation of the People Act, 1951. He

also urged that the Model Code of Conduct requires that the ECI shall ordinarily announce the date of an election not more than three weeks prior to the date on which notification is likely to be issued. In the case of the Bihar Assembly Elections 2020, the poll schedule was announced only 5 days prior to the notification for the first phase of election. He therefore exhorted this Court to direct the ECI to follow the Model Code of Conduct in this behalf so that a political party can announce its candidates two weeks prior to the notification, which is the first date of filing of nomination. Simultaneously, details of candidates in terms of paragraph 4.3 of our Order dated 13.2.2020 can then be published well in advance. He also pointed out a judgment of this Court in ***Pravasi Bhalai Sangathan v. Union of India and Others***[6] and paragraph 29 thereof, where a direction has been made that a reference be made to the Law Commission to study as to whether the ECI should be conferred the power to de-recognize a political party in cases in which hate speech is involved.

21. Shri Harish Salve, learned senior advocate also appeared for the ECI and submitted that there are no instructions on behalf of the ECI on directing the ECI to follow the Model Code of Conduct so that a political party can announce its candidates two weeks prior to the notification, which is the

[6] **(2014) 11 SCC 477**

first date of filing of nomination, as has been submitted by Shri Vikas Singh. He also added that any such direction may be contrary to Section 30 of the Representation of People Act, 1951. Given the fact that two learned senior advocates are arguing for the same party at cross purposes and given the fact that Shri Vikas Singh later argued that his submission was as an Officer of the Court and not on instructions, we are of the view that it is hazardous to follow the course of action advocated by Shri Vikas Singh.

22. Shri Shrish Kumar Mishra, learned counsel appearing on behalf of Respondent No. 5 referred to the written submissions dated 22.07.2021 and submitted that while clause 16-A of the Symbols Order may be put to use for refusing to follow lawful directions issued by the ECI, this Court must not, in a bid to control criminalisation in politics, venture any further and hold that a candidate is to be debarred from contesting if there are charges framed against him/her in a pending criminal case. He further submitted that in order to ensure expeditious disposal of criminal trials, it would be imperative to increase the number of judges through an All Indian Judicial Services which is in line with the existing All India Civil Services.

23. Shri P.V. Surendranath, learned senior advocate appearing on behalf of Respondent No. 8, referred to written submissions dated 22.07.2021 and submitted that direction 4.4 contained in our Order dated 13.02.2020 will

have to be modified in order to accommodate the date of withdrawal of nomination by a candidate within the timeline prescribed for publication of Form C-7 and C-8. He further submitted that the invocation of 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 consequently must not be invoked for a single or isolated non-compliance of a direction without intention to refuse to comply with the direction. He also submitted that even in an extreme case of non-compliance, the approach of the ECI must be proportionate to the extent of such non-compliance. He further submitted that the measures as suggested by the learned Amicus Curiae regarding a situation where only one candidate has applied for a particular seat may not be acceded to as the nomination of a candidate is the prerogative of the party and is based on various factors which are considered by the party before selection of the candidate. This apart, he submitted that the measure suggested by the learned Amicus Curiae on directions to be given to the General Secretary of each party to submit a separate affidavit detailing compliance of the directions issued by the ECI may not be acceded to as this is in the domain of the legislature and that it will lead to a situation where the General Secretary of the party having submitted such an affidavit based on information given to them by the candidates may now be vulnerable to prosecution under Section 125-A

of the Representation of People Act, 1951 for no fault of their own. He further argued that this Court must not read clause 16-A of the Symbols Order to include a post-decisional hearing as it would prejudicially affect democracy based on a multi-party system.

24. Shri Kapil Sibal, learned senior advocate appearing on behalf of Respondent No. 9 referred to written submissions dated 22.07.2021 and submitted that the withdrawal or suspension of recognition through clause 16-A of the Symbols Order 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. He further submitted that clause 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 clause needs to be held to be *ultra vires* and therefore is liable to be struck down. Without prejudice to the argument on the *vires* of clause 16-A, he submitted that given the ramifications of the withdrawal or suspension of recognition, 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. He also submitted that this Court must not accede to the suggestion of the learned Amicus Curiae that the benefit of clause 10-A of the Symbols Order must not be available to a party when the loss of recognition is pursuant to an action taken by the

ECI under clause 16-A of the Symbols Order, as such an interpretation is not contemplated in the language of either clause 10-A or clause 16-A.

25. We will first consider the directions in our Order dated 13.02.2020. Vide directions contained in paragraph 4.1, we had directed the 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. Further, through paragraph 4.2 of the said Oder, we had directed that the reasons as to the selection shall be with reference to qualifications, achievements and merits of the candidate concerned and not mere "winnability" at the polls.

26. The aforesaid directions have been given in furtherance of the directions already given by the Constitution Bench in ***Public Interest Foundation (supra)***, so as to enable the voter to have an informed choice while exercising his right to vote. By the said direction, what has been directed by us, 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. We are of the view that such a requirement would only

enable the voter to have complete information and exercise his right to vote effectively.

27. There are various factors which a political party takes into consideration while selecting a candidate. As a citizen who possesses requisite qualifications and is not disqualified under any of the provisions of the Constitution or the Act of 1951, has a right to contest an election and a voter has a right to vote a candidate of his choice, a political party would also have the discretion to choose a candidate of its choice.

28. As has already been considered in various judgments, a possibility of a rival implicating someone falsely, as a political vendetta, is not unknown in the country. Take a situation wherein otherwise a highly meritorious candidate has been falsely implicated in some criminal matters by his rivals. As against this, a person who has a clean record, but totally unknown to the electorate in that area, applies for a ticket of a political party. In such a situation, a political party can always give a reason that a candidate with criminal antecedents is found to be more suitable than a person who does not have criminal antecedents. The reasons could be many. If the political party is of the prima facie opinion that such a candidate has been falsely implicated, it can say so. What has been provided by us in paragraph 4.2 of the Order dated 13.02.2020 is that the reasons should not be with regard to “mere winnability at the polls”. As such, though a political party would have the freedom of selecting

candidates of its choice, though having criminal antecedents, what would be required is to give reasons in support of such selection, and the reasons could be dependent on various factors including qualifications, achievements and other merits. At the cost of repetition, such a direction is only to enable a voter to have all the necessary information, so that he can exercise his right to franchise in an effective manner. The directions in no way impinge upon the right of a political party to choose a candidate of its own choice.

29. The direction contained in paragraph 4.4 of the Order dated 13.02.2020 requires that the details as to information regarding candidates are required to be published within 48 hours of selection of the candidate or not less than two weeks before the first date for filing of nominations, whichever is earlier.

30. Arguments have been advanced before us with regard to the practicability of implementation of the direction contained in paragraph 4.4. To consider the said submissions, it will be relevant to refer to Section 30 of the said Act of 1951:

> "**30. Appointment of dates for nominations, etc.**—As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint —
>
> (a) the last date for making nominations, which shall be the seventh day after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday ;

(c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the fourteenth day after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed."

31. Perusal of Section 30 of the said Act of 1951 would require that the ECI shall, by notification in the Official Gazette, appoint the last date for making nominations, which shall be the seventh date after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday. Clause (b) of Section 30 of the said Act of 1951 would require that the date for the scrutiny of nominations shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday. Clause (c) of Section 39 of the said Act of 1951 would require that the last date for the withdrawal of candidature shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day, which is not a public holiday.

32. A combined reading of clauses (a) to (c) of Section 30 of the said Act of 1951 would reveal that the last date for withdrawal of candidature would be around 10 days from the date of notification published by the ECI in the Official Gazette.

33. It is a ground reality that in most of the cases the candidates are finalised by the political parties between the period commencing from the date of notification till the last date of withdrawal. Direction No. 4.4 requires the details to be published within 48 hours of the selection of the candidate or not less than two weeks before the first date for filing of nominations, whichever is earlier. There should be no difficulty insofar as requirement to publish the details within 48 hours from the selection of candidate is concerned.

34. It could thus be seen that in the light of the statutory provision as it exists, it would not be possible to follow the direction to publish the details prior to two weeks before the first date of filing of nomination.

35. No doubt Shri Vikas Singh, learned Senior Counsel, who first addressed this Court as a counsel for the ECI and later on as an Officer of the Court, made a suggestion that the political parties could be directed to finalise their candidates before a substantial period and as such, such a direction could be complied with. In our view, unless the competent legislature takes a call on the issue and makes suitable statutory provisions, it will not be permissible for this Court to lay down such a guideline.

36. It has been strenuously submitted by Shri Viswanathan, the learned Amicus Curiae who has been supported by Shri Vikas Singh, that, this Court should issue a direction to the ECI to invoke powers under Clause 16-A of the Symbols Order and take requisite action under the said clause to suspend, subject to terms and conditions, or withdraw recognition of such political party. Such a request has been vehemently opposed by all the counsel appearing on behalf of the political parties. It has been submitted that the direction would empower the ECI to suspend or withdraw recognition of political party even for a small lapse on the part of a candidate or an office bearer of a political party in a District or a State.

37. For appreciating the submissions made by the learned Amicus Curiae, it will be apposite to refer to some of the observations made by the Constitution Bench in ***Public Interest Foundation*** **(supra)**:

> "**8.** In *Lily Thomas* v. *Union of India* [*Lily Thomas* v. *Union of India*, (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 : (2013) 3 SCC (Cri) 641 : (2013) 2 SCC (L&S) 811] , it has been held : (SCC p. 669, para 26)
>
> > "*26*. Articles 102(1)(*e*) and 191(1)(*e*) of the Constitution, on the other hand, have conferred specific powers on Parliament to make law providing disqualifications for membership of either House of Parliament or Legislative Assembly or Legislative Council of the State other than those specified in sub-clauses (*a*), (*b*), (*c*) and (*d*) of clause (1) of Articles 102 and 191 of the Constitution. We may note that no power is vested in the State Legislature to make law laying down disqualifications of membership of the Legislative Assembly or Legislative Council of the State and power is vested in Parliament to make law laying down disqualifications also in respect of Members of the

> Legislative Assembly or Legislative Council of the State. For these reasons, we are of the considered opinion that the legislative power of Parliament to enact any law relating to disqualification for membership of either House of Parliament or Legislative Assembly or Legislative Council of the State can be located only in Articles 102(1)(*e*) and 191(1)(*e*) of the Constitution and not in Article 246(1) read with Schedule VII List I Entry 97 and Article 248 of the Constitution. We do not, therefore, accept the contention of Mr Luthra that the power to enact sub-section (4) of Section 8 of the Act is vested in Parliament under Article 246(1) read with Schedule VII List I Entry 97 and Article 248 of the Constitution, if not in Articles 102(1)(*e*) and 191(1)(*e*) of the Constitution."
>
> We have no hesitation in saying that the view expressed above in *Lily Thomas* [*Lily Thomas* v. *Union of India*, (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 : (2013) 3 SCC (Cri) 641 : (2013) 2 SCC (L&S) 811] is correct, for Parliament has the exclusive legislative power to lay down disqualification for membership."

38. It would thus be clear that the Constitution Bench has approved the view expressed by this Court in the case of ***Lily Thomas v. Union of India and Others***[7], that the legislative power of parliament to enact any law relating to disqualification for membership of either House of Parliament or Legislative Assembly or Legislative Council of the State can be located only in Articles 102(1)(e) and 191(1)(e) of the Constitution and not in Article 246(1) read with Schedule VII List I Entry 97 and Article 248 of the Constitution.

[7] **(2013) 7 SCC 653**

39. It will be relevant to further refer to paragraphs 24 and 25 of the judgment of the Constitution Bench in ***Public Interest Foundation (supra)***, which read thus:

> "**24.** ***It is well settled in law that the court cannot legislate***. Emphasis is laid on the issuance of guidelines and directions for rigorous implementation. With immense anxiety, it is canvassed that when a perilous condition emerges, the treatment has to be aggressive. The petitioners have suggested another path. ***But, as far as adding a disqualification is concerned, the constitutional provision states the disqualification, confers the power on the legislature, which has, in turn, legislated in the imperative***.
>
> **25.** ***Thus, the prescription as regards disqualification is complete is in view of the language employed in Section 7(b) read with Sections 8 to 10-A of the Act. It is clear as noon day and there is no ambiguity. 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***."
>
> [emphasis supplied]

40. It could thus be clearly seen that the Constitution Bench has, in unequivocal terms, held that the Court cannot legislate. It is further held that the prescription as regards disqualification is complete in view of the language employed in Section 7(b) read with Sections 8 to 10-A of the Act of 1951. The Constitution Bench goes on to say that it is clear as noon day and that there is no ambiguity. It has further held 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.

41. After considering the 18th report presented to the Rajya Sabha on 15th March, 2007 by the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Electoral Reforms (Disqualification of Persons from contesting Election on Framing of Charges against them for Certain Offences), the 244th Law Commission Report titled "Electoral Disqualifications" as well as various judgments of this Court, the Constitution Bench has reproduced the recommendations of the Law Commission in paragraph 59, which reads thus:

> "**59.** The eventual recommendations and proposed sections by the Law Commission read as follows:
> "1.***
> 2. The filing of the police report under Section 173 CrPC is not an appropriate stage to introduce electoral disqualifications owing to the lack of sufficient application of judicial mind at this stage.
> 3. The stage of framing of charges is based on adequate levels of judicial scrutiny, and disqualification at the stage of charging, if accompanied by substantial attendant legal safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics.
> 4. The following safeguards must be incorporated into the disqualification for framing of charges owing to potential for misuse, concern of lack of remedy for the accused and the sanctity of criminal jurisprudence:
> (*i*) Only offences which have a maximum punishment of five years or above ought to be included within the remit of this provision.
> (*ii*) Charges filed up to one year before the date of scrutiny of nominations for an election will not lead to disqualification.
> (*iii*) The disqualification will operate till an acquittal by the trial court, or for a period of six years, whichever is earlier.

(*iv*) For charges framed against sitting MPs/MLAs, the trials must be expedited so that they are conducted on a day-to-day basis and concluded within a one-year period. If trial not concluded within a one-year period then one of the following consequences ought to ensue:

- The MP/MLA may be disqualified at the expiry of the one-year period; or

- The MP/MLA's right to vote in the House as a Member, remuneration and other perquisites attaching to their office shall be suspended at the expiry of the one-year period.

5. Disqualification in the above manner must apply retroactively as well. Persons with charges pending (punishable by five years or more) on the date of the law coming into effect must be disqualified from contesting future elections, unless such charges are framed less than one year before the date of scrutiny of nomination papers for elections or the person is a sitting MP/MLA at the time of enactment of the Act. Such disqualification must take place irrespective of when the charge was framed.

***

1. There is large-scale violation of the laws on candidate affidavits owing to lack of sufficient legal consequences. As a result, the following changes should be made to the RPA:

(*i*) Introduce enhanced sentence of a minimum of two years under Section 125-A of the RPA Act on offence of filing false affidavits.

(*ii*) Include conviction under Section 125-A as a ground of disqualification under Section 8(1) of the RPA.

(*iii*) Include the offence of filing false affidavit as a corrupt practice under Section 123 of the RPA.

2. Since conviction under Section 125-A is necessary for disqualification under Section 8 to be triggered, the Supreme Court may be pleased to order that in all trials under Section 125-A, the relevant court conducts the trial on a day-to-day basis.

3. A gap of one week should be introduced between the last date for filing nomination papers and the date of scrutiny, to give adequate time for the filing of objections to nomination papers."

42. After reproducing the aforesaid recommendations, the Constitution Bench has expressed its anguish as under:

> "**60.** ***The aforesaid recommendations for proposed amendment never saw the light of the day in the form of a law enacted by a competent legislature but it vividly exhibits the concern of the society about the progressing trend of criminalisation in politics that has the proclivity and the propensity to send shivers down the spine of a constitutional democracy***."
>
> [emphasis supplied]

43. The Constitution Bench further observed thus:

> "**61.** Having stated about the relevant aspects of the Law Commission Report and the indifference shown to it, the learned counsel for the petitioners and intervenors have submitted ***that certain directions can be issued to the Election Commission so that the purity of democracy is strengthened. It is urged by them that when the Election Commission has been conferred the power to supervise elections, it can control party discipline of a political party by not encouraging candidates with criminal antecedents.***"
>
> [emphasis supplied]

44. After considering various judgments of this Court on the scope of power of the ECI under Article 324 of the Constitution, the Constitution Bench observed thus:

> "**71.** ***The aforesaid decisions are to be appositely appreciated. There is no denial of the fact that the Election Commission has the plenary power and its view has to be given weightage. That apart, it has power to supervise the conduct of free and fair election. However, the said power has its limitations. The Election Commission has to act in conformity with the law made by Parliament and it cannot transgress the same***."
>
> [emphasis supplied]

45. The Constitution Bench thereafter in paragraphs 72 and 73 recorded the suggestions given by the learned Senior Counsel appearing for the petitioner in Writ Petition (Civil) No. 800 of 2015 for giving directions to the ECI to deal with systemic growth of the problem of criminalisation of politics and the political system and recorded thus:

> "**74.** Mr Venugopal's submission has been supported by Mr Dinesh Dwivedi, learned Senior Counsel appearing for the petitioners in Writ Petition (Civil) No. 536 of 2011 and Mr Sidharth Luthra, learned Amicus Curiae, ***to the effect that if the Court does not intend to incorporate a prior stage in criminal trial, it can definitely direct the Election Commission to save democracy by including some conditions in the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as "the Symbols Order"). The submission is that a candidate against whom criminal charges have been framed in respect of heinous and grievous offences should not be allowed to contest with the symbol of the party. It is urged that the direction would not amount to adding a disqualification beyond what has been provided by the legislature but would only deprive a candidate from contesting with the symbol of the political party***."
>
> [emphasis supplied]

46. Thereafter, the Constitution Bench records the objection of the learned Attorney General of India to the aforesaid suggestion, which reads thus:

> "**75.** The aforesaid submission is seriously opposed by the learned Attorney General. It is the case of the first respondent that Section 29-A of the Act does not permit the Election Commission of India to deregister a political party. To advance this view, the Union of India has relied upon the decision of this Court in *Indian National Congress (I)* v. *Institute of Social Welfare* [*Indian National Congress (I)* v. *Institute of Social Welfare*, (2002) 5 SCC 685] .

76. It is also the asseveration of the first respondent that the power of this Court to issue directions to the Election Commission of India have been elaborately dealt with in *Assn. for Democratic Reforms* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294] wherein this Court held that Article 32 of the Constitution of India only operates in areas left unoccupied by legislation and in the case at hand, the Constitution of India and the Representation of the People Act, 1951 already contain provisions for disqualification of Members of Parliament. ***Therefore, directing the Election Commission to (a) deregister a political party, (b) refuse renewal of a political party or (c) to not register a political party if they associate themselves with persons who are merely charged with offences would amount to adopting a colourable route, that is, doing indirectly what is clearly prohibited under the Constitution of India and the Representation of the People Act***.

77. It is also contended on behalf of the Union of India that ***adding a condition to the recognition of a political party under the Symbols Order would also result in doing indirectly what is clearly prohibited***. To buttress this stand, the Union of India has cited the decisions in *Jagir Singh* v. *Ranbir Singh* [*Jagir Singh* v. *Ranbir Singh*, (1979) 1 SCC 560 : 1979 SCC (Cri) 348] and *M.C. Mehta* v. *Kamal Nath* [*M.C. Mehta* v. *Kamal Nath*, (2000) 6 SCC 213].

78. Further, it has been submitted by the first respondent ***that Section 29-A(5) of the Act is a complete, comprehensive and unambiguous provision of law and any direction to the Election Commission of India to deregister or refuse registration to political parties who associate themselves with persons merely charged with offences would result in violation of the doctrine of separation of powers as that would tantamount to making addition to a statute which is clear and unambiguous***.

79. As per the first respondent, "pure law" in the nature of constitutional provisions and ***the provisions of the Act cannot be substituted or replaced by Judge-made law***. To advance the said stand, the first respondent has cited the judgments of this Court in *State of H.P.* v. *Satpal Saini* [*State*

of H.P. v. *Satpal Saini*, (2017) 11 SCC 42] and *Kesavananda Bharati* v. *State of Kerala* [*Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225] wherein the doctrine of separation of powers was concretised by this Court. It is the contention of the first respondent that answering the present reference in the affirmative would result in violation of the doctrine of separation of powers.

80. The first respondent has also contended that the presumption of innocence until proven guilty is one of the hallmarks of Indian democracy and the said presumption attaches to every person who has been charged of any offence and it continues until the person has been convicted after a full-fledged trial where evidence is led. Penal consequences cannot ensue merely on the basis of charge.

81. Drawing support from the judgment of this Court in *Amit Kapoor* v. *Ramesh Chander* [*Amit Kapoor* v. *Ramesh Chander*, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , it is averred by the first respondent that the standard of charging a person is always less than a prima facie case i.e. a person can be charged if the facts emerging from the record disclose the existence of all the ingredients constituting the alleged offence and, therefore, the consequences of holding that a person who is merely charged is not entitled to membership of a political party would be grave as it would have the effect of taking away a very valuable advantage of the symbol of the political party.

82. It has been further contended by the first respondent that every citizen has a right under Article 19(1)(*c*) to form associations which includes the right to be associated with persons who are otherwise qualified to be Members of Parliament under the Constitution of India and under the law made by Parliament. Further, this right can only be restricted by law made by Parliament and any direction issued by the Election Commission of India under Article 324 is not law for the purpose of Article 19(1)(*c*).

83. The first respondent also submits that the Act already contains detailed provisions for disclosure of information by a candidate in the form of Section 33-A which requires every

candidate to disclose information pertaining to offences that he or she is accused of. This information is put on the website of the Election Commission of India and requiring every member of a political party to disclose such information irrespective of whether he/she is contesting election will have serious impact on the privacy of the said member.

84. Relying upon the decisions in *Union of India* v. *Deoki Nandan Aggarwal* [*Union of India* v. *Deoki Nandan Aggarwal*, 1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248] and *Supreme Court Bar Assn.* v. *Union of India* [*Supreme Court Bar Assn.* v. *Union of India*, (1998) 4 SCC 409] , the first respondent has submitted ***that Article 142 of the Constitution of India does not empower this Court to add words to a statute or read words into it which are not there and Article 142 does not confer the power upon this Court to make law***.

85. As regards the issue that there is a vacuum which necessitates interference of this Court, the first respondent has contended that this argument is untenable as the provisions of the Constitution and the Act are clear and unambiguous and, therefore, answering the question referred to in the affirmative would be in the teeth of the doctrine of separation of powers and would be contrary to the provisions of the Constitution and to the law enacted by Parliament."

[emphasis supplied]

47. The Constitution Bench thereafter analysed the provisions of the Symbols Order and observed thus:

"**95.** What comes to the fore is that when a candidate has been set up in an election by a particular political party, then such a candidate has a right under sub-clause (3) of Clause 8 to choose the symbol reserved for the respective political party by which he/she has been set up. An analogous duty has also been placed upon the Election Commission to allot to such a candidate the symbol reserved for the political party by which he/she has been set up and to no other candidate.

> **96.** Assuming a hypothetical situation, where a particular symbol is reserved for a particular political party and such a political party sets up a candidate in elections against whom charges have been framed for heinous and/or grievous offences ***and if we were to accept the alternative proposal put forth by the petitioners to direct the Election Commission that such a candidate cannot be allowed to contest with the reserved symbol for the political party, it would tantamount to adding a new ground for disqualification which is beyond the pale of the judicial arm of the State. Any attempt to the contrary will 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***."
>
> [emphasis supplied]

48. It could thus clearly be seen that the Constitution Bench has specifically rejected the alternative proposal made by the counsel for the petitioners and the learned Amicus Curiae therein with regard to a direction to the ECI to the effect that a candidate against whom charges have been framed for heinous and/or grievous offences cannot be allowed to contest with the reserved symbol for the political party. The Constitution Bench thus observed that it would tantamount to adding a new ground for disqualification which is beyond the pale of the judicial arm of State. It observed 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.

49. Thereafter, after considering various judgments of this Court, the Constitution Bench observed thus:

> "**105.** Thus analysed, ***the directions to the Election Commission as sought by the petitioners runs counter to what has been stated hereinabove. Though criminalisation in politics is a bitter manifest truth, which is a termite to the citadel of democracy, be that as it may, the Court cannot make the law***.
>
> **106.** ***Directions to the Election Commission, of the nature as sought in the case at hand, may in an idealist world seem to be, at a cursory glance, an antidote to the malignancy of criminalisation in politics but such directions, on a closer scrutiny, clearly reveal that it is not constitutionally permissible. The judicial arm of the State being laden with the duty of being the final arbiter of the Constitution and protector of constitutional ethos cannot usurp the power which it does not have***."
>
> [emphasis supplied]

50. The Constitution Bench therefore observes that though criminalisation in politics is a bitter manifest truth, which is a termite in the citadel of democracy, the Court cannot make law. It observes that the directions to the ECI, of the nature as sought in the case at hand, may in an idealistic world, seem, at a cursory glance, to be an antidote to the malignancy of criminalisation in politics, but such directions, on a closer scrutiny, clearly reveal that it is not constitutionally permissible. It goes on to say that as the protector of the constitutional ethos, it cannot usurp the power which it does not have.

51. In paragraph 107, the Constitution Bench recommends that Parliament bring out a strong law whereby it is mandatory for the political parties to

revoke membership of persons against whom charges are framed in heinous and grievous offences and not to set-up such persons in elections. However, the Constitution Bench being not oblivious to the issue of criminalisation of politics and the right of the voters to be aware about the antecedents of the candidates who contest in the election observed thus:

> "**115.** In *PUCL* v. *Union of India* [*PUCL* v. *Union of India*, (2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769 : (2014) 2 SCC (L&S) 648] , the Court held that the universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thereby participate in the governance of our country. It has been further ruled that for democracy to survive, it is essential that the best available men should be chosen as the people's representatives for the proper governance of the country. ***The best available people, as is expected by the democratic system, should not have criminal antecedents and the voters have a right to know about their antecedents, assets and other aspects. We are inclined to say so, for in a constitutional democracy, criminalisation of politics is an extremely disastrous and lamentable situation. The citizens in a democracy cannot be compelled to stand as silent, deaf and mute spectators to corruption by projecting themselves as helpless***. The voters cannot be allowed to resign to their fate. The information given by a candidate must express everything that is warranted by the Election Commission as per law. ***Disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified. It has to be remembered that such a right is paramount for a democracy. A voter is entitled to have an informed choice. If his right to get proper information is scuttled, in the ultimate eventuate, it may lead to destruction of democracy because he will not be an informed voter having been kept in the dark about the candidates who are accused of heinous offences***. In the present scenario,

> the information given by the candidates is not widely known in the constituency and the multitude of voters really do not come to know about the antecedents. Their right to have information suffers."
>
> [emphasis supplied]

52. After observing the aforesaid, the Constitution Bench has issued the directions, which are already reproduced hereinabove.

53. It could thus be seen that a suggestion similar to one which is made to us with regard to directing the ECI for suspending or withdrawing the recognition of political parties which flout the directions, was made before the Constitution Bench by the learned counsel for the petitioner and the Amicus Curiae therein. The Constitution Bench after elaborately considering the said issue, held that issuing such a direction would amount to entering into the legislative arena and as such, such a direction could not be issued. In our view, in the teeth of the observations made by the Constitution Bench in paragraph 96, though some suggestions made by Shri Viswanathan are laudable, it will not be possible for us to accede to them.

54. It will also be relevant to refer to paragraph 40 of the judgment of this Court in the case of ***Indian National Congress (I) v. Institute of Social Welfare and Others***[8]:

> "**40.** It may be noted that Parliament deliberately omitted to vest the Election Commission of India with the power to deregister a political party for non-compliance with the

[8] **(2002) 5 SCC 685**

conditions for the grant of such registration. This may be for the reason that under the Constitution the Election Commission of India is required to function independently and ensure free and fair elections. An enquiry into non-compliance with the conditions for the grant of registration might involve the Commission in matters of a political nature and could mean monitoring by the Commission of the political activities, programmes and ideologies of political parties. This position gets strengthened by the fact that on 30-6-1994 the Representation of the People (Second Amendment) Bill, 1994 was introduced in the Lok Sabha proposing to introduce Section 29-B whereunder a complaint could be made to the High Court within whose jurisdiction the main office of a political party is situated for cancelling the registration of the party on the ground that it bears a religious name or that its memorandum or rules and regulations are no longer conforming the provisions of Section 29-A(5) or that the activities are not in accordance with the said memorandum or rules and regulations. However, this Bill lapsed on the dissolution of the Lok Sabha in 1996 (see p. 507 of *How India Votes: Election Laws, Practice and Procedure* by V.S. Rama Devi and S.K. Mendiratta)."

55. It will further be relevant to refer to paragraph 137 in the judgment of this Court in ***Manoj Narula v. Union of India***[9]:

"**137.** In this respect, the Prime Minister is, of course, answerable to Parliament and is under the gaze of the watchful eye of the people of the country. ***Despite the fact that certain limitations can be read into the Constitution and have been read in the past, the issue of the appointment of a suitable person as a Minister is not one which enables this Court to read implied limitations in the Constitution***."

[emphasis supplied]

56. It could thus be clearly seen that the Constitution Bench in the above case has held that though certain limitations can be read into the Constitution,

[9] **(2014) 9 SCC 1**

the issue of appointment of a suitable person as a Minister is not one which enables the Court to read implied limitations into the Constitution.

57. In our view, for the same reasons, it will not be permissible for this Court to read any implied limitations and issue directions which would indirectly provide for disqualification of a candidate.

58. We now come to the facts pointed out to us by the Petitioner in Contempt Petition (Civil) 656/2020 and learned Amicus Curiae.

59. As far as Janata Dal United [Respondent No. 3] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020 has pointed out that the reasons given by the party for the nomination of a candidate from the Belaganj Assembly are inadequate and not in consonance with the Order of Supreme Court dated 13.02.2020. Further, it has been pointed out to this Court by the learned Amicus Curiae in his report dated 09.04.2021 that the party has filed Form C1 and C2, which specifies the format for publication of criminal antecedents of candidates by the candidates and political parties respectively in newspapers, in a vague and mechanical manner. The Respondent No. 3 has not entered appearance or filed any counter affidavit to controvert this fact as on date of this Order. This being the case, we are of the view that the Respondent No. 3 is in contempt of the Order dated 13.02.2020 for failing to follow the directions of this Court in letter and spirit.

60. As far as the Rashtriya Janta Dal [Respondent No. 4] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020 and the Learned Amicus Curiae in his report dated 09.04.2021 have pointed out that the party has specifically provided 'winnability' as the only reason for selection of its candidates as against those without criminal antecedents. Shri Ajay Vikram Singh, learned counsel appearing on behalf of Respondent No. 4 has taken us through the Counter Affidavit dated 10.04.2021 and Additional Affidavit dated 13.07.2021 and submitted that the party had failed to adhere to the format specified by the ECI due to an inadvertent and bona fide mistake on part of its State Committee and that reasons were given by the party based on its own understanding of the form. On perusal of the aforementioned affidavits, we are of the view that the reason cited by Respondent No. 4 for non-compliance of directions issued by this Court is not acceptable and that the party has cited 'winnability' as the only reason for selection of candidates, which is in the teeth of our directions. This being the case, we are of the view that Respondent No. 4 is in contempt of the Order dated 13.02.2020 for failing to follow the directions of this Court in letter and spirit.

61. As far as the Lok Janshakti Party [Respondent No. 5] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020 has pointed out, from the chart prepared by the ECI in its report dated 02.01.2020, that the party has given identical reasons for nomination of 5 candidates and further

that the publications have not been made in the format that has been prescribed. Further, it has been pointed out that the party has published the details in newspapers which are of low circulation in derogation of the Order dated 13.02.2020. This apart, the learned Amicus Curiae has pointed out in his report dated 09.04.2021 that party has filled Form C1 and C2, which specifies the format of publication of criminal antecedents in newspapers, in a vague and mechanical manner. Shri Shrish Kumar Mishra, learned counsel appearing on behalf of Respondent No. 5 took us through the Counter Affidavit dated 12.07.2021 and has submitted to this Court that the Forms, as required, have been published in various English, Urdu and Hindi newspapers. On perusal of the affidavits as aforementioned, it is undisputed that the party has given identical reasons for selection of 5 of its candidates and has also filled Form C2 in a mechanical manner. This being the case, we are of the view of Respondent No. 5 is in contempt of the Order dated 13.02.2020 for failing to follow the directions of this Court in letter and spirit.

62. As far as the Indian National Congress [Respondent No. 6] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020 has pointed out that the criminal antecedents have been published in newspapers which are of low circulation and that the forms in which details of criminal antecedents have to be published have been filled in a mechanical manner. The learned Amicus Curiae has pointed out in his report dated

09.04.2021 that the party has given reasons along the lines of 'winnability' for the selection of candidates that have been accused of serious offences such as Section 307, Indian Penal Code and Section 506, Indian Penal Code. Shri Nishant Patil, learned counsel appearing on behalf of Respondent No.6 took us through the Counter Affidavit dated 14.07.2021 and submitted that the party had followed all directions issued by this Court and that therefore they were not in contempt of our directions On perusal of the affidavits as aforementioned, we are of the view that Respondent No. 6 has not followed our directions contained in our Order dated 13.02.2020 in letter and spirit. This being the case, we are of the view of Respondent No. 6 is in contempt of the Order dated 13.02.2020.

63. As far as the Bharatiya Janata Party [Respondent No. 7] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020, has pointed out that the criminal antecedents have been published in newspapers which are of low circulation and that the forms in which details of criminal antecedents have to be published have been filled in a mechanical manner. The ECI through its report dated 01.02.2020 has pointed out that while the party had submitted Form C-8 for 77 candidates, it was identified by the Chief Electoral Officer, Bihar that the party had published criminal antecedents in Form C-7 only for 76 candidates. The learned Amicus Curiae has pointed out in his report dated 09.04.2021 that the party has provided reasons for selection of candidates, by referring to

serious offences such as offences under Section 386 of the Indian Penal Code and Section 506 of the Indian Penal Code and portraying them as cases that are of a trivial nature. Shri Shailesh Madiyal, learned counsel appearing on behalf of Respondent No. 7 referred to written submissions dated 22.07.2021 and submitted that Form C-7 for one of its candidates was not submitted due to an inadvertent error and that the party was otherwise wholly compliant with the directions contained in Order dated 13.02.2020. He further submitted that the party has provided reasons for selection of its candidates which are in line with our directions and that they must not therefore be held to be in contempt. On perusal of the aforementioned affidavits, we are of the view that the reason given by the party for failing to submit Form C-7 in respect of one of its candidates is not acceptable and that the party has not provided reasons for selection of its candidates which are in line with our directions. This being the case, the Respondent No. 7 is in contempt of the Order dated 13.02.2020.

64. As far as the Communist Party of India (Marxist) [Respondent No. 8] is concerned, the ECI in its report dated 01.02.2020 has pointed out that the party is one of the two parties that has not submitted the Form C7 or C8 for any of its candidates and therefore is fully non-compliant with our Order dated 13.02.2020. Shri P.V. Surendranath, learned senior advocate appearing on behalf of Respondent No. 8 took us through the counter affidavit dated 09.07.2021 and submitted that the election

process for the State of Bihar was coordinated by the State Committee of the party and that Form C7 and C8 were not submitted due to oversight on part of the State Committee. He further submitted that the party has attempted to comply with the directions of this Court insofar as declaration of information regarding criminal cases in newspapers and the website of the party is concerned and that the aforementioned act of non-compliance should be viewed as an isolated incident and its unconditional apology be accepted. On perusal of the aforementioned affidavits, we are of the view an oversight on part of the State Committee of the party cannot be a ground for non-compliance of the directions passed by this Court. This being the case, the Respondent No. 8 is in contempt of the Order dated 13.02.2020.

65. As far as the Nationalist Congress Party [Respondent No. 9] is concerned, the ECI in its report dated 01.02.2020 has pointed out that the party is one of the two parties that has not submitted the Form C7 or C8 for any of its candidates and therefore is fully non-compliant with our Order dated 13.02.2020. Shri Kapil Sibal and Shri Ritin Rai, learned senior counsel appearing on behalf of Respondent No. 9 took us through the counter affidavit dated 09.07.2021 and submitted that the party had on 09.03.2020 issued directions to all Presidents/Convenors of the State/Union Territory units of the party to ensure compliance of our Order dated 13.02.2020, however due to the dissolution of the party's State

Committee on 20.07.2020, the directions of this Court could not be complied with in the Bihar Elections. They further submitted that 18 candidates who had been identified by the party as having pending criminal cases had published their criminal antecedents in newspapers and that the aforementioned non-compliance be seen as an isolated incident and its apology be accepted. On perusal of the aforementioned affidavits, we are of the view that the dissolution of the State Committee of the party a few months prior to the election in the State of Bihar cannot be a ground for non-compliance of the directions passed by this Court. The Respondent No. 9 is in complete defiance of the directions contained in our Order dated 13.02.2021 and is therefore in contempt of the Order.

66. As far as the Bahujan Samaj Party [Respondent No. 10] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020 has pointed out that the criminal antecedents have been published in newspapers which are of low circulation and that the forms in which details of criminal antecedents have to be published have been filled in a mechanical manner. The ECI through its report dated 01.02.2020 has pointed out that the party had only submitted requisite details for 27 candidates, while the Chief Electoral Officer, Bihar had found that there were 2 more candidates who had criminal antecedents. The learned Amicus Curiae has pointed out in his report dated 09.04.2021 that the party, in order to flout our directions, has justified the selection of some candidates who

have been accused of heinous offences such as Section 376, Indian Penal Code by stating that there no other applications which have been received for the candidature to that constituency. Shri Dinesh Dwivedi, learned senior advocate appearing on behalf of Respondent No. 10 took us through the Counter Affidavit dated 13.07.2021 and Additional Affidavit dated 13.07.2021 and submitted 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 14.04.2021 for submitting false affidavits to the party itself. As far as the other candidate identified by the Chief Elector Officer, Bihar is concerned, it has been submitted by the party that the requisite details have been submitted but have not been accounted for by the Chief Electoral Officer, Bihar. On perusal of the aforementioned affidavits, we are satisfied by the explanation given qua the 2 candidates. However, we must caution 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.

67. As far as the Communist Party of India [Respondent No. 11] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020 has pointed out that that the criminal antecedents have been published in newspapers which are of low circulation and that the forms in which details of criminal antecedents have to be published have been filled in a mechanical

manner. The learned Amicus Curiae has pointed out in his report dated 09.04.2021 that the party, in order to flout our directions, has justified the selection of some candidates who have been accused of serious offences such as offences under Section 307, Indian Penal Code and Section 506, Indian Penal Code by stating that the cases “do not have any substance”. Shri B.K. Pal, learned counsel appearing on behalf of Respondent No. 11 has referred to the written arguments dated 22.07.2021 and submitted that the party has followed all directions issued by this Court and that any omission pointed out in the filling up of Form C-7 or C-8 may not be viewed as a wilful violation of our directions. On perusal of the aforementioned affidavits, we are of the view that the Respondent No. 11 has not followed the directions contained in our Order dated 13.02.2020 in letter and spirit. This being the case, the Respondent No. 11 is in contempt of the Order dated 13.02.2020.

68. As far as Rashtriya Lok Samta Party [Respondent no. 12] is concerned, the Petitioner in Contempt Petition (Civil) 656/2020 and the learned Amicus Curiae in his report dated 09.04.2021 have pointed out that the party has given the same reason for nominating 5 of its candidates. Respondent No. 12 has not entered appearance or filed any counter affidavit to controvert this fact. This being the case, it is undisputed that the party has given identical reasons for selection of 5 of its candidates in a stereotyped manner. Therefore, we are of the view that Respondent

No. 12 is in contempt of our Order dated 13.02.2020 for failing to follow the directions of this Court in letter and spirit.

69. 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 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.

70. Insofar as the ECI is concerned, we accept the argument of Shri Vikas Singh that they cannot said to have committed any contempt of our Order dated 13.02.2020 as the circumstances pointed out by him clearly show that the ECI did bring to our notice the flouting of our directions contained in the said order. 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.

71. No one can deny that the menace of criminalisation in the Indian political system is growing day by day. Also, no one can deny that for maintaining purity of political system, persons with criminal antecedents and who are involved in criminalisation of political system should not be permitted to be the law-makers. The only question is, whether this Court can do so by issuing directions which do not have foundation in the statutory provisions.

72. 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.

73. In furtherance of the directions issued by the Constitution Bench in ***Public Interest Foundation (supra)*** and our Order dated 13.02.2020, in order to make the right of information of a voter more effective and meaningful, we find it necessary to issue the following further directions:

(i) Political parties are to publish information regarding criminal antecedents of candidates on the homepage of their websites, thus making it easier for the voter to get to the information that has to be supplied. It will also become necessary now to have on the homepage a caption which states "candidates with criminal antecedents";

(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;

(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. A fund must be created for this purpose within a period of 4 weeks into which fines for contempt of Court may be directed to be paid;

(iv) For the aforesaid purposes, 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;

(v) We clarify that the direction in paragraph 4.4 of our Order dated 13.02.2020 be modified and it is clarified that the details 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; and

(vi) We reiterate that if such a political party fails to submit such compliance report with the ECI, the ECI 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.

74. We are extremely indebted to Shri K.V. Viswanathan, learned Amicus Curiae who has assisted this Court in the highest traditions of the Bar. We thank him for his valuable assistance.

75. Contempt Petition (Civil) 656/2020 and M.A.(Diary No. 2680/2021) is disposed of in terms of this judgment.

…….....J.
[ROHINTON FALI NARIMAN]

…….....J.
[B.R. GAVAI]

New Delhi;
August 10, 2021.

ANNEXURE – I

(References are to page numbers in the ECI's affidavit)			
Sr. no. And Page No.	**Name of the candidate and Name of the Political Party**	**Nature of some grave offences against the Candidate**	**Reason for selection o Candidate**
2. **(Page 20)**	Shri Rajeshwar Raj **Bhartiya Janta Party (BJP)**	Abetment of offence punishable with death or Imprisonment for life- u/s 115 and 114 of IPC Criminal Intimidation u/s 506 of IPC	He is having a Degree in M LLB. He is a social wo **His Criminal Anteced are trivial in nature.**
4. **(Page 22)**	Shri Birendra Singh **Bhartiya Janta Party (BJP)**	Extortion by putting a person in fear of death or of Grievous hurt, in order to commit extortion- u/s 386 of IPC Criminal Breach of trust by a clerk or servant- u/s 408 of IPC	**Criminal Cases are not serious in nature.** He is a known social and poli worker having very reputation in the society.
5. **(Page 23)**	Shri Pawan Kumar Yadav **Bhartiya Janta Party (BJP)**	Extortion by putting a person in fear of death or of Grievous hurt, in order to commit extortion- u/s 386 of IPC Criminal Intimidation u/s 506 of IPC Forgery of valuable security, will, etc. u/s 467 of IPC	He is a well known s worker having very reputation in the society he has been tirelessly wor for welfare and develop of the villages. He contributed a lot in

		Forgery for purpose of cheating u/s 468 of IPC	construction of Bandh on rivers. He has been hel poor children in education through financi and also to underprivil persons.
6. **(Page 24)**	Shri Manoj Kumar **Janata Dal (United) [JD(U)]**	Theft in dwelling house- u/s 380 of IPC Mischief by fire or explosive with intent to destroy house, etc.- u/s 436 of IPC Voluntary causing grievous hurt- u/s 325 of IPC	He is a popular organic fa from Bihar. His contribu in the field of chemical organic agriculture unparalleled in the stat Bihar. He is seed aver too large collection of n seeds.
9. **(Page 27)**	Shri Narendra Narayan Yadav **Janata Dal (United) [JD(U)]**	Murder- u/s 302 of IPC Criminal Conspiracy- u/s 120(B) of IPC Using arms and ammunition- u/s 27 of Arms act	He is a Social Worker. He worked among downtrodden people weaker sections of the soc He has motivated poor pe in the society to send children to school.

11.	Shri Lokesh Ram **Rashtriya Lok Samata Party (RLSP)** **(RLSP has given the same reason for selection of all their candidates at Sr. nos. 11 to 15)**	Refusing to sign statement- u/s 180 of IPC Rioting- u/s 147 & 148 of IPC Lurking house trespass or house breaking by night- u/s 456 of IPC Criminal Breach of trust- u/s 406 of IPC	He is doing social work many years. The charges no substance, are politi motivated as per the den of the local works peopl the constituency.
12. **(Page 30)**	Shri Ram Pukar Sinha **Rashtriya Lok Samata Party (RLSP)**	Attempt to murder- u/s 307 of IPC Kidnapping or abducting in order to murder- u/s 364 of IPC Voluntary causing hurt by dangerous weapons or means- u/s 324 of IPC	He is doing social work many years. The charges no substance, are politi motivated as per the den of the local works peopl the constituency.
13. **(Page 31)**	Shri Chandrika Paswan **Rashtriya Lok Samata Party (RLSP)**	Disobedience to order duly promulgated by public servant- u/s 188 of IPC	He is doing social work many years. The charges no substance, are politi motivated as per the den of the local works peopl the constituency.

14. **(Page 31)**	Shri MahendrParsad Singh **Rashtriya Lok Samata Party (RLSP)**	Voluntarily causing hurt- u/s 323 of IPC Wrongful Restraint- u/s 341 of IPC Voluntarily causing grievous hurt- u/s 325 of IPC Theft- u/s 379 of IPC	He is doing social work many years. The charges no substance, are politi motivated as per the den of the local works peopl the constituency.
15. **(Page 32)**	Shri Ramesh Kumar urf Ramesh Kumar Mehta **Rashtriya Lok Samata Party (RLSP)**	Cheating and dishonestly inducing delivery of property- u/s 420 of IPC Dishonouring of cheque for insuffiency, etc., of funds in the account- u/s 138 of NI Act	He is doing social work many years. The charges no substance, are politi motivated as per the den of the local works peopl the constituency.
17. **(Page 34)**	Shri Sanjay Ram **Bahujan Samajwadi Party (BSP)**	Rape- u/s 376 of IPC Procuration of minor girl- u/s 366A of IPC Kidnapping- u/s 363 of IPC Solemnising a child marriage, Permitting or promoting a child marriage- u/s 9,10,11 of Prohibition of Child Marriage Act.	**No other Applica received.**
20. **(Page 37)**	Md. Zama Khan	Attempt to murder- u/s 307 of IPC Voluntary causing grievous hurt- u/s 325 of IPC	In comparison to candidates and their histo was found to be suitable b

	Bahujan Samajwadi Party (BSP)	Voluntary causing hurt or grievous hurt to deter public servant - u/s 332,333 of IPC	the candidate stated that FIR has been lodged ag him due to Political vindi
23. **(Page 38)**	Shri Siddharth Saurav **Indian National Congress (INC)**	Attempt to murder- u/s 307 of IPC Voluntary causing grievous hurt- u/s 325 of IPC Criminal Conspiracy- u/s 120(B) of IPC Criminal Intimidation u/s 506 of IPC.	The candidate is current M
24. **(Page 39)**	Shri Murari Prasad Gautam **Indian National Congress (INC)**	Culpable Homicide not amounting to murder- u/s 304 Causing hurt or grievous hurt by act endangering life or personal safety of others- u/s 337, 338 of IPC	He is BA from Ma University and has a c track record.
35. **(Page 44)**	Shri Ram Narayan Yadav **Communist Party of India (CPI)**	Attempt to murder- u/s 307 of IPC Voluntary causing hurt to extort property, or to constrain to an illegal to an act- u/s 327 of IPC Theft in dwelling house- u/s 380 of IPC Theft after preparation made for causing death, or restrain in order to the committing of the theft- u/s 382 of IPC	He is doing social work many years. Charges c have any substance and politically motivated as pe demand of the local people in the constituency

		Extortion by putting a person in fear of death or of Grievous hurt, in order to commit extortion- u/s 386 of IPC Criminal Intimidation- u/s 506 of IPC	
36. **(Page 44)**	Shri Mukesh Kumar Raushan **Rashtriya Janata Dal (RJD)**	Attempt to murder- u/s 307 of IPC Voluntary causing hurt or grievous hurt to deter public servant - u/s 332,333 of IPC Causing grievous hurt by act endangering life or personal safety of others- u/s 338 of IPC Voluntary causing grievous hurt to extort property, or to constrain to an illegal act- u/s 329 of IPC Criminal Intimidation- u/s 506 of IPC	He is very popular in and is very active development and w his area. His Ed Qualification is M.A. candidate in Party is as him.
40. **(Page 47)**	Shri Avinash Manglam **Rashtriya Janata Dal (RJD)**	Theft in dwelling house- u/s 380 of IPC Mischief by fire or explosive substance with intent to destroy house, etc.- u/s 436 of IPC	He is very popular in and is very active welfare of the socie intermediate pass.

***In Direct violation of this Hon'ble Courts order dt 13.02.2020 which said @ para 4(2) that mere winn selecting acandidate with criminal antecedent.**