

BEFORE THE ELECTION COMMISSION OF INDIA

In re: Account of election expenses of Smt. Umlesh Yadav, returned candidate from 24-Bisauli Assembly Constituency at the general election to the Uttar Pradesh Legislative Assembly, 2007-Scrutiny of account under section 10A of the Representation of the People Act, 1951.

Order

This case arises out of the adjudication of the Press Council of India No.14/58-59/07-08-PCI dated 31.03.2010 on a complaint dt. 1.7.2010 by Shri Yogendra Kumar, a contesting candidate from 24-Bisauli Assembly constituency at the General Election to the Legislative Assembly of U.P. in 2007 against “Dainik Jagran” and “Amar Ujala” for publishing paid news in their newspapers, on 17.4.2007, i.e. eve of elections with a view to furthering the prospects of Smt. Umlesh Yadav a rival contesting candidate from the said 24-Bisauli Assembly Constituency.

2. A complaint was filed on 1.7.2010 before the Press Council of India (PCI hereinafter) by the said Shri Yogendra Kumar, against two Hindi dailies, namely, `Amar Ujala` and `Dainik Jagran`, having circulation in Badayun district, alleging therein that these news papers had published `Paid News` items in their

newspapers on 17.4.07, i.e., just a day before the day of poll, in favour of Smt. Umalesh Yadav, a contesting candidate sponsored by the Rashtriya Privartan Dal from 24-Bisauli Assembly constituency in the said general election.

3. The PCI, after conducting due enquiry, forwarded a copy of their adjudication order no. 14/58-59/07-08-PCI, dated 31st March 2010, to the Election Commission with the following observation:

“The Council on perusal of record and the report of the Inquiry Committee held the respondent newspapers Amar Ujala and Dainik Jagran guilty of ethical violations and adopting the observations of the Inquiry Committee, it cautioned the media to refrain from publishing news masquerading as advertisements and vice versa. It also decided that adjudication along with all the case papers may be sent to the Election Commission of India for such action as deemed fit by them.”

4. On perusal of the records and order of PCI, it is noticed that the newspaper, i.e., ‘Amar Ujala’ in response to the show cause notice dated 09/08/2007 of the PCI submitted-

“that the matter complained of is not a news item but was an advertisement and was clearly distinguishable from the news items. As the entire advertisement was published inside boundary line while the news item is never published inside the boundary line. Moreover at the bottom of the entire advertisement the word ADVT was published which clearly shows that it is an advertisement.”

Similarly, the newspaper, 'Dainik Jagran' submitted to the PCI in response to the show cause notice that the impugned publication was not a news item but an advertisement as was indicated by the word 'ADVT' in bold letters at the bottom with an appeal issued by a candidate to poll votes in her favour. It was also stated that the material for publication was got written by the candidate herself through her own man and was not written by their correspondent.

5. The PCI, after examining the comments, observed:

“The format of impugned material was such that it would appear as a news report to the layman and the word ADVT printed at the lowest end rather appeared to accompany a small boxed appeal by the candidate. There was beyond doubt a possibility of confusing the voters when the elections were just a day away and all campaigning had stopped. The act was not only unethical by journalistic standards but also in violation of the election laws.”

6. The Commission, on the basis of documents made available by the PCI, agreed with the PCI that the publication in 'Amar Ujala', dated 17/04/2007 captioned, "*Charon oar Patang Hi Patang Hai*" and the publication in Dainik Jagran, dated 17/04/2007 captioned, "*Bisauli Ke Chunvavi Aasman Par Patang hi Patang*" are cases of 'Paid News'. The Commission thereupon called for specific information from the Chief Electoral Officer, UP vide its letter dated 4th May, 2010 about the expenditure incurred by Smt. Umlesh Yadav, candidate of Rashtriya Parivartan Dal from 24- Bisauli AC on the advertisements in the newspapers dated

17-04-2007 (Amar Ujala and Dainik Jagran). The Commission also asked whether any intimation under section 127 A of the Representation of the People Act, 1951 was received by the District Election Officer, Badayuan in respect of the advertisements referred to above. In reply, it was reported by the District Election Officer, Badayun that the expenditure for the above referred advertisements published on 17.4.2007 was not clear from the account of election expenditure submitted by Smt. Umlesh Yadav, nor was any intimation under section 127A of Representation of the People Act, 1951 received from the said publishers for the advertisements.

7. The Commission then issued notice no.491/EN/2010, dated 22.06.2010 to Smt. Umlesh Yadav, MLA, Rashtriya Parivartan Dal, to show cause why the expenditure incurred in the release of the aforesaid advertisements had not been reflected in the account filed by her under section 78 of the Representation of the People Act, 1951 and why the account filed by her should not be treated as having not been filed in the manner required under the law. She was also asked to explain why should she not be disqualified under section 10A of the said Act for a period of three years from the date of the order of the Commission for not lodging the true account of her election expenses.

8. Shri Yogendra Kumar, the complainant before the PCI, filed a petition dated 01.07.2010 before the Election Commission requesting for being impleaded and

giving him an opportunity to become a party in the case. The request of Shri Yogendra Kumar was granted by the Commission.

9. In response to ECI notice, Smt. Umlesh Yadav replied to the Commission vide her letter dated 18.07.2010 that the articles published in the said newspaper were neither ordered by her nor by her election agent nor she spent any amount for publication of the said advertisements. Vehemently denying any amount of expenditure on the advertisements, she stated that the question of reflecting any amount, as such, in her election expenses account did not arise. She alleged that the publication of the advertisements may be handiwork of some opponent party people to malign her image and to somehow get her disqualified through vicious means. She maintained that she was not responsible for the publication of the advertisement and she did not have any knowledge of any expenses. She further prayed that if her reply was found unsatisfactory, she might be given an opportunity for personal hearing for clarification.

10. The Commission asked the Editors of 'Dainik Jagran' and Amar Ujala vide its letters dated 19.08.2010 to send copies of all relevant documents pertaining to the issue of aforesaid news/advertisements published on 17.04.2007 by or on behalf of Smt. Umlesh Yadav in their newspapers including the original/printed copy of the newspaper containing the said advertisements. In reply to the Commission's letter, the 'Amar Ujala' Publications furnished copy of the

newspaper dated 17.04.07, containing the said advertisement along with the copy of the Bill No.124504 dt. 17.4.2007 worth Rs.8000/- for the said advertisement. It also filed second (office) copy of the bill payment receipt dt. 20.4.2007 amounting to Rs.19,550/-, issued in the name of Shri D.P. Yadav, Sahaswan and it was reported that the payment in respect of the said advertisement had been received in cash. Similarly, the Editor, 'Dainik Jagran' furnished a copy of the newspaper dated 17.04.2007, containing the said advertisement along with the copy of the Bill No.05260 dated 17.4.07 worth Rs.21,250/- , raised in the name of Shri D.P.Yadav. The receipt was issued in the name of one Sh. Pramod Mishra and the client name was Sh. D.P. Yadav, MLA.

11. As prayed for by Smt. Umlesh Yadav, the Commission gave a personal hearing in the matter on 25th March,2011 to both Smt. Umlesh Yadav, and Shri Yogendra Kumar, the complainant. In the hearing, the learned Counsel of Smt. Umlesh Yadav once again maintained that neither Smt. Umlesh Yadav nor her authorized agent had ordered for the publication of the advertisement in 'Dainik Jagran' or 'Amar Ujala'. He further emphasized that the aforesaid captioned publications in 'Amar Ujala' and 'Dainik Jagran' on 17-04-2007 were news items and not an advertisement and that the only advertisement given by her party was a small block advertisement of the size 7"x6" for which it paid Rs. 840/- only vide their bill number 124504, dated 17-04-2007. It was further alleged that the

newspaper, 'Dainik Jagran' and 'Amar Ujala' in order to escape action from the PCI against them, prepared a fabricated bill of the same number and date for Rs. 8000/- and furnished the same before the Election Commission.

12. Mr. Yogendra Kumar, the complainant, reiterated his allegation that the amount spent by Smt. Umlesh Yadav on paid news was not accounted for by the candidate in her account of election expenses submitted under section 78 of the R.P.Act, 1951 and hence contended that she should be disqualified under section 10A of the said Act.

13. The Commission has carefully considered the above submissions of Smt. Umlesh Yadav and Shri Yogendra Kumar and has also perused carefully all the relevant documents on record. On perusal of the news items under reference in both the newspapers, the Commission has observed that whereas the name of Smt. Umlesh Yadav appeared frequently in the news publications in 'Dainik Jagran' on 17.4.07, in 'Amar Ujala' Publication dt. 17.4.07 only the name of Shri D.P.Yadav, along with his party symbol appeared and the name of Smt. Umlesh Yadav did not figure therein. It is further observed that for the news item in 'Danik Jagran', an amount of Rs. 21,250/- (Rupees Twenty One Thousand Two Hundred and Fifty only) was paid according to that newspaper. In the bill, the client's name is mentioned as Shri D.P. Yadav, who was the President of Rashtriya Parivartan Dal and which has sponsored Smt. Umlesh Yadav as their party candidate.

14. The question now for consideration of the Commission is whether the aforesaid expenditure of Rs.21,250/- on the publication of said advertisements or 'Paid News' can be said to have been incurred or authorized by Smt. Umlesh Yadav within the meaning of Section 77(1) of the R.P. Act, 1951 and ought to have been included in her return of election expenses filed under Section 78 of that Act.

15. Interpreting the provisions of Section 77 of the R.P. Act, 1951, the Supreme Court held in *Common Cause Vs. Union of India*.....

“the expenditure (including that for which the candidate is seeking protection under explanation 1 to Section 77 of the RP Act, in connection with the election of a candidate - to the knowledge of the candidate or his election agent - shall be presumed to have been authorized by the candidate or his election agent.”

16. The first question now for consideration of the Commission is whether the aforesaid expenditure of Rs.21,250/- on the publication of the said advertisement or “paid news” in ‘Dainik Jagran’ on 17.04.2007 can be said to have been incurred or authorized by Smt. Umlesh Yadav within the meaning of section 77(1) of the Representation of the People Act, 1951 and ought to have been included in her return of election expenses filed under section 78 of the said Act.

For facility of reference, the said sections 77 and 78 are reproduced below:-

“77. Account of election expenses and maximum thereof.—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between²[the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

³[*Explanation 1.*—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

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

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

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

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

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

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.]

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

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

17. Explaining the object underlying the provisions of the said section 77, the Hon'ble Supreme Court observed in *Kanwar Lal Gupta Vs. Amar Nath Chawla* (AIR 1975 SC 308):

“Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislature wisely interdicted not only the incurring but also the authorising of excessive expenditure by a candidate. When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in, it would be reasonable to infer, save, in special circumstances, that he impliedly authorised the political party to incur such expenditure

and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money.”

18. The said section 77 underwent some changes in 1974, 1975 and 2003. By the amendments made in 1974 and 1975, the expenditure incurred by the political party sponsoring the candidate or any other person was exempted from the purview of the expenditure incurred or authorized by the candidate. While interpreting the scope of the said section 77, as it stood in 1996, and considering the question as to what is includible in the account of election expenses of a candidate, the Hon'ble Supreme Court held in *Common Cause Vs. Union of India and Others* (AIR 1996 SC 3081):

“That the expenditure, (including that for which the candidate is seeking protection under Explanation I to Section 77 of the RP Act) in connection with the election of a candidate - to the knowledge of the candidate or his

election agent -shall be presumed to have been authorized by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law and to show that part of the expenditure or whole of its was in fact incurred by the political party to which he belongs or by any other association or body of persons or by an individual (other than the candidate or his election agent). Only when the candidate discharges the burden and rebuts the presumption he would be entitled to the benefit of Explanation 1 to Section 77 of the RP Act.”

19. In the wake of the above judgment of the Supreme Court in the case of *Common Cause*, section 77 underwent a further change in 2003 and the said section as so amended has been reproduced above. From the perusal of the said section 77, as it stands now, it will be observed that what is now exempted from the purview of the expenditure incurred or authorized by the candidate or his/her election agent is only the expenditure incurred on the travel of leaders of the political party for general party propaganda and all other expenditure by the party in connection with, or relatable to, the election of any particular candidate is deemed to be incurred or authorized by him/her and should form part of account of his/her election expenses under section 77 of the Act.

20. Having regard to the above position of the present law, even if it be assumed that Smt. Umlesh Yadav had not herself incurred the expenditure on the publication of the paid news in Dainik Jagran on 17.04.2007, it shall be deemed to

have been authorized by her as it was incurred by her party, i.e., Rashtriya Parivartan Dal. Pertinent to point out here that the newspaper (Dainik Jagran) in their statement before the Press Council of India stated that the material for publication of the “paid news” under reference was got written by the candidate and not by their correspondent. In view of the above, the expenditure of Rs.21,250/- paid by her party to the Dainik Jagran for the abovementioned publication of paid news with a view to furthering her prospects in the election ought to have been included by her in her account of election expenditure. As the said expenditure has admittedly not been shown in her account of election expenditure filed on 08.06.2007 under section 78 of the said Act, the said account of election expenditure is obviously not the correct or true account as required to be maintained by her under section 77(1) of the Act.

21. The next question for consideration is whether an account of election expenditure lodged under section 78 with the District Election Officer which is not true or is incorrect can be said to have been filed in the manner required by law within the meaning of section 10A of the Act and whether by lodging such incorrect and untrue account the penal provisions of the said section 10A entailing disqualification are attracted. For ease of reference, the said section 10A is reproduced below:

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

(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and

(b) has no good reason or justification for the failure,

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

22. The term ‘disqualified’ used in the said section 10A has been defined in section 7(b) of the said Act to mean “disqualified for being chosen as, and for being, a Member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State”.

23. The scope of the above section 10A came to be considered by the Supreme Court in *LR Shivaramagowda vs. TM Chandrasekhar* (AIR 1999 SC 252). The Supreme Court held that an incorrect or untrue account of election expenses could not be said to have been lodged in the manner required by law and that the Election Commission could go into the question of the correctness or falsity of account of election expenses lodged by a candidate under the said section 10A. The Supreme Court held in that case as follows:

“18. We shall now proceed to the second limb of the argument of the appellant’s counsel. The High Court has held that the appellant had not

maintained true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. „Corrupt practices“ have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) & (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Election Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1)(b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section 3 of Section 77 i.e. the

incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77(1) & (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall Under Section 100(1)(b). The attempt here by the first respondent is to bring it within Section 100(1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Section 77(1) & (2) will in no case affect, and much less materially, the result of the election.

.....

22. It was argued by learned counsel for the first respondent that the aforesaid view would enable any successful candidate at an election to snap his fingers at the law prescribing the maximum limit of expenditure and escape from the provisions of Section 77(3) by filing false accounts. According to him, if the aforesaid construction of Sections 77 and 123(6) is to be adopted, there will be no sanction against a candidate who incurs an expenditure exceeding the maximum prescribed limit. Referring to Section 10(A) of the Act, which enables the Election Commission to disqualify a person who had failed to lodge an account of election expenses within the time and in the manner required by or under the Act and had no good reason or justification for the failure, he contended that the said Section provides only for a situation arising out of failure to lodge an account and not a situation arising from a failure to maintain true and correct accounts. We are unable to accept this contention. In our opinion, sub-section (a) of Section 10(A) takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act.

Section 77(2) provides that the accounts shall contain such particulars as may be prescribed. Rule 86 of the conduct of Election Rules provides for the particulars to be set out in the account. The said Rule prescribes that a voucher shall be obtained for every item of expenditure and for lodging all vouchers along with the account of TC election expenses. Rule 89 provides that the District Election Officer shall report to the Election Commission, the name of each contesting candidate, whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged and whether in his opinion such account has been lodged within the time and in the manner required by the Act and the Rules. That Rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act after adopting the procedure mentioned therein. If an account is found to be incorrect or untrue by the Election Commission after enquiry under Rule 89, it could be held that the candidate had failed to lodge his account within the meaning of Section 10(A) and the Election Commission may disqualify the said person. Hence, we do not find any substance in the argument of learned counsel for the first respondent.”

24. Following the above dictum of the Supreme Court, the Election Commission passed an order on 2nd April, 2011 in an another case of similar nature of ‘paid news’ against Shri Ashok Chavan, a member of the Maharashtra Legislative Assembly, pending before it, that it can go into the correctness or falsity of the account of election expenses filed by Shri Chavan. The matter was taken by Shri Ashok Chavan to the Delhi High Court. The writ petition (No. W.P.(C) 2511 of

2011) filed by Shri Chavan has, however, been dismissed by the Delhi High Court on 30th September, 2011 holding that:

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

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

25. Thus, the question is now well settled and no longer *res integra* that an account of election expenses which is not true or is incorrect cannot be said to have been filed in the manner required by law and that for filing such incorrect return of election expenses the candidate can be disqualified by the Election Commission under section 10A of the Representation of the People Act, 1951.

26. In the context of the above, another aspect which needs to be kept in view is that by suppressing expenditure on ‘paid news’ and filing an incorrect or false account, the candidate involved is guilty of not merely circumventing the law relating to election expenses but also of resorting of false propaganda by projecting a wrong picture and defrauding the electorate. The Press Council of India has rightly observed in its adjudication order in the present case that ‘The format of the impugned material was such that it would appear as a news report to the layman

and word ADVT printed at the lowest end rather appeared to accompany a small boxed Appeal by the candidate. There was beyond doubt a possibility of confusing the voters when the elections were just a day away and all campaigning has stopped.’ Such an attempt by the candidate to mislead the electorate runs grossly counter to, and in the face of, the Supreme Court’s solemn declaration in *People’s Union for Civil Liberties vs Union of India and others* (AIR 2003 SC 2363) that the electorate should be made aware of the candidate’s antecedents, assets, liabilities and educational qualifications so that they can make an informed choice about their representative while exercising their franchise.

27. The Commission is conscious of the fact that the present case relates to the general election to the Uttar Pradesh Legislative Assembly in 2007, and, though the law does not prescribe any time-limit for taking action under section 10A, the Karnataka High Court has observed in *Guinness Hote Paksha Rangaswamy vs Chief Election Commissioner* (AIR 2000 Kant 117) that the Commission should dispose of such cases with reasonable promptitude and within a reasonable time. The Commission is, however, of the considered opinion that the above observation of the Karnataka High Court does not apply to the present case because of its peculiar circumstances. As mentioned in the very opening paragraph of this order, the present case was brought to the Commission’s notice only on 15.04.2010 by the Press Council of India vide their adjudication order no. 14/58-59/07-08/PCI,

dated 05.04.2010. The parties had then to be given notice permitting them to file their replies, allowing them further time for the purpose on their requests and hearing them on various dates. Though the Commission was in a position to pronounce its order after the conclusion of the hearing on 25th March, 2011, it did not consider it appropriate to do so at that time as its order dated 2nd April, 2011 about its powers to enquire into such cases under section 10A was under challenge by Shri Ashok Chavan in the Delhi High Court (as mentioned in paragraph 24 above) and the Delhi High Court had stayed the operation of that order on 21st April, 2011. It was only on 30th September, 2011 that the Delhi High Court has been pleased to dismiss the said writ petition challenging the Commission's powers and to vacate the stay order.

28. Thus , having due regard to the totality of the facts and circumstances and the law on the subject contained in section 10A read with sections 77 and 78 of the Representation of the People Act, 1951, the Commission is of the considered opinion, and accordingly holds, that Smt. Umlesh Yadav did not maintain a correct and true account of her election expenditure under section 77 in connection with her election to the Uttar Pradesh Legislative Assembly from 24-Bisuali Assembly Constituency held in April, 2007 and by filing such incorrect account of her election expenses with the District Election Officer, Badayun on 8th June, 2007 under section 78, she failed to lodge her account of election expenditure in the

manner required by law within the meaning of section 10A of the said Act. The Commission is also satisfied that she has no good reason or justification for the said failure as, instead of admitting her failure, she has denied to have filed an incorrect account and defended her act of having filed an incorrect account. To some people, the view of the Commission that the suppression of expenditure of Rs. 21,250/- by Smt. Umlesh Yadav in her account of election expenses amounts to failure on her part to file her true and correct account inviting action under the said section 10A might appear too harsh. The Commission is, however, bound by the law made by Parliament and is duty bound to follow the same, particularly where the law so enacted does not give any discretion to the Commission or leeway in the matter of its application. In this context, it would be apt to invite a reference to the following decision of the Hon'ble Supreme Court in *A.C. Jose Vs. Sivas Pillai and Others* (AIR 1984 SC 921):

“25. To sum up therefore, the legal and constitutional position as follows:

(a) when there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,

(b) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to

supplement rather than supplant the law (both statute and Rules) in the matter of superintendence direction and control as provided by Art. 324.”

29. Accordingly, the Election Commission has no option but to declare her disqualified for the said failure for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of any State under the said section 10A of the Representation of the People Act, 1951 for a period of three years from the date of this order.

ORDERED ACCORDINGLY

Sd/-

(V.S.SAMPATH)
ELECTION COMMISSIONER

Sd/-

(DR. S.Y.QURAIHI)
CHIEF ELECTION COMMISSIONER

Sd/-

(H.S. BRAHMA)
ELECTION COMMISSIONER

New Delhi the 20th October, 2011