[2012] 11 S.C.R. 585

PURNO AGITOK SANGMA

v.

PRANAB MUKHERJEE

(Election Petition No. 1 of 2012)

DECEMBER 5, 2012 AND DECEMBER 11, 2012

[ALTAMAS KABIR, CJI, P. SATHASIVAM, SURINDER SINGH NIJJAR, J. CHELAMESWAR AND RANJAN GOGOI, JJ.]

Constitution of India, 1950:

Art. 58(2) – Qualifications for election as President of India – Expression 'office of profit' – Connotation of – Respondent holding office of Chairman of Council of Indian Statistical Institute, Kolkata – Held (Per majority): In order to be an office of profit, the office must carry pecuniary benefits or must be capable of yielding pecuniary benefits, which is not so in respect of Chairman, ISI – It was not such a post, which was capable of yielding any profit so as to make it, in fact, an office of profit – In any event, by the 2006 amendment to s. 3 of the Parliament (Prevention of Disqualification) Act, 1959, the holder of the post of Chairman, ISI has been excluded from disqualification for contesting the Presidential election– Parliament (Prevention of Disqualification) Act, 1959 – s. 3.

Art. 58(2) – Qualification for election as President of India – 'Office of profit' – Respondent holding the post of Leader of House in Lok Sabha – Held (Per majority): The disqualification contemplated on account of holding the post of Leader of the House was with regard to the provisions of Art.102(1)(a) of the Constitution, besides being the position of the leader of the party in the House, which did not entail the holding of an office of profit under the Government – In any event, since the respondent had tendered his resignation

from the said post prior to filing of his nomination papers, which was duly acted upon by the Speaker of the House, challenge thrown by petitioner to respondent's election as President of India on the said ground loses its relevance – Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998.

Art. 58 – Presidential election – Held: Supreme Court has repeatedly cautioned that election of the returned candidate should not be lightly interfered with unless circumstances so warrant.

Supreme Court Rules, 1966:

*O. 39, rr. 13 and 20 – Election petition challenging the election of respondent to the post of President of India – Held (Per majority): In the facts and circumstances of the case, the election petition does not deserve a full and regular hearing as contemplated under r. 20 of O. 39 – Thus, the election petition cannot be set down for regular hearing and is dismissed under r. 13 of O. 39 (J. Chelameswar and Ranjan Gogoi, JJ. **dissenting**) – Presidential and Vice Presidentil Elections Act, 1952 – ss. 14 to 20 – Supreme Court Rules, 1966 – O. 39, rr. 13 and 20 – Code of Civil Procedure, 1908 – s. 141 – Constitution of India, 1950 – Art. 71 r/w Seventh Schedule, List I, Entry 72.*

The petitioner, who lost the Presidential election to the respondent, filed the instant election petition under Art. 71 of the Constitution of India, 1950 read with O. 39 of the Supreme Court Rules 1966, challenging the election of the respondent to the post of the President of India on the ground that the respondent, at the time of filing of the nomination papers as a candidate for the Presidential election, held the office of Chairman of the Council of Indian Statistical Institute, Kolkata and was also the Leader of the House in the Lok Sabha; and since both the offices were offices of profit, the respondent

stood disqualified from contesting the Presidential election in view of Art. 58(2) of the Constitution. The challenge was based mainly on the allegation that on the date of filing of nominations, the respondent held "offices of profit", namely (i) Chairman of the Indian Statistical Institute, Kolkata; and (ii) Leader of the House in the Lok Sabha. The stand of the respondent was that he was holding neither of the posts on the date of filing of nominations i.e. 28.6.2012, as he had resigned from both the posts on 20.6.2012.

The election petition was listed for hearing on preliminary point in terms of O. 39, r.13 of the Supreme Court Rules, 1966, as to whether the petition deserved a hearing as contemplated by r.20 of O. 39 of the 1966 Rules.

Dismissing the petition, the Court

HELD: PER ALTAMAS KABIR, CJI (for himself and for P. SATHASIVAM AND S.S. NIJJAR, JJ.)

1.1. Clause (1) of Art. 71 of the Constitution of India, 1950 provides that all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final. Clause (3) of Art. 71 provides that subject to the provisions of the Constitution, Parliament may, by law, regulate any matter, relating to or connected with the election of a President or Vice-President. In addition, the Presidential and Vice-Presidential Elections Act, 1952 (the Act) was enacted with the object of regulating certain matters relating to or connected with elections to the Office of President and Vice-President of India. Part III of the said Act, which contains ss.14 and 14A, as also ss.17 and 18, deals with disputes regarding elections to the posts of President and Vice-President of India. Sections 14 and 14A of the Act

A specially vest the jurisdiction to try election petitions thereunder with the Supreme Court in the manner indicated therein. Sections 17 and 18 empower the Supreme Court to either dismiss the election petition or to declare the election of the returned candidate to be
B void or to declare the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected. [para 47] [628-E-H; 629-A-B]

1.2. In view of sub-s. (3) of s.14 of the Act, the Supreme Court has framed Rules under Art. 145 of the
C Constitution. Rule 13 of O. 39 of the Supreme Court Rules, 1966 provides that upon presentation of a petition relating to a challenge to election to the post of the President of India, the same is required to be posted before a Bench of the Court consisting of five Judges for preliminary
D hearing and to consider whether the petition deserved a regular hearing, as contemplated in r. 20 of O. 39 and, in that context, such Bench may either dismiss the petition or pass appropriate order as it thought fit. [para 48] [629-C-E]

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2.1. In order to be an office of profit, the office must carry various pecuniary benefits or must be capable of yielding pecuniary benefits such as providing for official accommodation or even a chauffeur driven car, which is
F not so in respect of the post of Chairman of the Indian Statistical Institute, which was, in fact, the focus and *raison d'etre* of petitioner's stand. In fact, the said office was also not capable of yielding profit or pecuniary gain. It can also not be said that once a person is appointed as Chairman of the Indian Statistical Institute, the Rules
G and Bye-laws of the Society did not permit him to resign from the post and that he had to continue in the post against his wishes. There is no contractual obligation that once appointed, the Chairman would have to continue in such post for the full term of office. There is no such
H compulsion under the Rules and the Bye-laws of the

Society either. In any event, by the 2006 amendment to s. 3 of the Parliament (Prevention of Disqualification) Act, 1959, the holder of the post of Chairman of the Institute has been excluded from disqualification for contesting the Presidential election. [para 55, 58 and 59] [631-D; 632-G-H; 633-A-C]

Shibu Soren Vs. Dayanand Sahay & Ors. **2001 (3) SCR 1020 = (2001) 7 SCC 425; and** *Jaya Bachchan Vs. Union of India & Ors.* **2006 (2) Suppl. SCR 110 = (2006) 5 SCC 266;** *M.V. Rajashekaran & Ors. Vs. Vatal Nagaraj & Ors.* **2002 (1) SCR 412 = (2002) 2 SCC 704;** *Ravanna Subanna Vs. G.S. Kaggeerappa* **AIR 1953 SC 653;** *Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani* **1976 (3) SCR 832 = (1977) 1 SCC 70;** *Karbhari Bhimaji Rohamare Vs. Shanker Rao Genuji Kolhe & Ors.* **1975 (2) SCR 753 = (1975) 1 SCC 252;** *Pradyut Bordoloi Vs. Swapan Roy* **2000 (5) Suppl. SCR 525 = (2001) 2 SCC 19;** *Ashok Kumar Bhattacharyya Vs. Ajoy Biswas & Ors.* **1985 (2) SCR 50 = (1985) 1 SCC 151** *Consumer Education & Research Society vs. Union of India & Ors.* **2009 (13) SCR 664 = (2009) 9 SCC 648;** *Kanta Kathuria Vs. Manak Chand Surana* **1970 (2) SCR 835 = (1969) 3 SCC 268;** *Indira Nehru Gandhi Vs. Raj Narain* **1976 SCR 347 = 1975 (Supp) SCC 1;** *Union of India & Ors. Vs. Gopal Chandra Mishra & Ors.* **1978 (3) SCR 12 = (1978(2) SCC 301;** *Moti Ram Vs. Param Dev* **1993 (2) SCR 250 = (1993) 2 SCC 725 – referred to.**

2.2. In regard to the office of the Leader of the House, it is quite clear that the respondent had tendered his resignation from membership of the House before he filed his nomination papers for the Presidential election. However, the disqualification contemplated on account of holding the post of Leader of the House was with regard to the provisions of Art.102(1)(a) of the Constitution, besides being the position of the leader of the party in the House, which did not entail the holding

A of an office of profit under the Government. In any event, since the respondent had tendered his resignation from the said post prior to filing of his nomination papers, which had been duly acted upon by the Speaker of the House, the challenge thrown by the petitioner to the B respondent's election as President of India on the said ground loses its relevance. [para 56] [631-E, G-H; 632-A-B]

2.3. The Constitutional Scheme, as mentioned in the Explanation to Clause (2) of Art. 58 of the Constitution, C makes it quite clear that for the purposes of said Article, a person would not be deemed to hold any office of profit, *inter alia,* by reason only that he is a Minister either for the Union or for any State. Art. 102 of the Constitution contains similar provisions wherein in the Explanation to D Clause (1) it has been similarly indicated that for the purposes of the said clause, a person would not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister, either for the Union, or for such E State. [para 57] [632-C-E]

2.4. The argument that the provisions of Art. 102, as well as Art. 58 of the Constitution could not save a person elected to the office of President from F disqualification if he held an office of profit, loses its significance in view of the fact that, as would appear from the materials on record, the respondent was not holding any office of profit either under the Government or otherwise at the time of filing his nomination papers for G the Presidential election. [para 57] [632-E-F]

2.5. In the facts and circumstances of the case, the election petition does not deserve a full and regular hearing as contemplated under r. 20 of O. 39 of the Supreme Court Rules, 1966. It can also not be said that H s.141 of the Code of Civil Procedure, 1908 is required to

be incorporated into a proceeding taken under O. 39 of the Supreme Court Rules read with Part III of the Presidential and Vice-Presidential Elections Act, 1952, which includes ss.14 to 20 of the said Act and Art. 71 of the Constitution of India. This Court is not inclined, therefore, to set down the election petition for regular hearing and the same is dismissed under r. 13 of O. 39 of the Supreme Court Rules, 1966. [para 60 and 62] [633-E-F, H; 634-A]

Mange Ram Vs. Brij Mohan & Ors. **1983 (3) SCR 525 = (1983) 4 SCC 36 – referred to.**

2.6. This Court has repeatedly cautioned that the election of a candidate who has won in an election should not be lightly interfered with unless circumstances so warrant. [para 61] [633-G]

Charan Lal Sahu Vs. Neelam Sanjeeva Reddy **1978 (3) SCR 1 = (1978) 2 SCC 500;** *Mithilesh Kumar Vs. R. Venkataraman & Ors.* **1988 SCR 525 = (1987) Supp. SCC 692 – cited.**

Per Chelameswar, J.:

It cannot be said that the instant election petition does not deserve a regular hearing. Reasons for such view shall be pronounced shortly. [646-G]

Per Ranjan Gogoi, J. (Dissenting, but partly concurring):

1.1. The short question that has arisen for determination in the election petition, at this stage, is whether the same deserves a regular hearing under r. 20 of O. 39 of the Supreme Court Rules, 1966. [para 2] [634-C]

1.2. Art. 71 of the Constitution provides for matters relating to, or connected with, the election of the

A President or the Vice President. In exercise of the power conferred by Art. 71(3) read with Entry 72 of List I of the Seventh Schedule to the Constitution, Parliament has framed the Presidential and Vice-Presidential Election Act, 1952, s.14 (1) whereof provides that no election shall be B called in question except by presenting an election petition to the authority specified in sub-s. (2) i.e. the Supreme Court. Section 14(3) provides that every election petition shall be presented in accordance with the provisions contained in Part III of the Act and such Rules C as may be made by the Supreme Court under Art. 145 of the Constitution. [para 9-10] [637-C, D-F]

1.3. By virtue of powers conferred by Art. 145 of the Constitution, the Supreme Court has framed the Supreme Court Rules, 1966 (the Rules), r. 34 of O. 39 whereof D provides that the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Supreme Court in the exercise of its original jurisdiction. The said procedure is contained in O. 23 of Part III of the Rules. Order 23, r. 1 contemplates E institution of a suit by means of a plaint. After dealing with the requirements of a valid plaint, O.23, r.6 provides that a plaint shall be rejected (a) where it does not disclose a cause of action; and (b) where the suit appears from the statement in the plaint to be barred by any law. [para 11 F and 13] [638-B; 639-D-F]

1.4. A preliminary hearing for determination of the question as to whether an election petition deserves a regular hearing under r.20 did not find any place in the G Rules till insertion of r.13 in the present form w.e.f. 20.12.1997. Order 23, r. 6 was a part of the Rules alongwith r. 13 as it originally existed. Thus, insertion of r. 13 providing for a preliminary hearing was made despite the existence of the provisions of O. 23, r. 6 and the availability of the power to reject a plaint and dismiss the H suit (including an election petition) on the twin grounds

mentioned in r. 6 of O. 23. [para 13 and 15] [639-C-D; 640-C-D] A

1.5. Therefore, a preliminary hearing under O.39, r. 13 would require the Court to consider something more than the mere disclosure or otherwise of a cause of action on the pleadings made or the question of maintainability of the election petition in the light of any particular statutory enactment. A further enquiry, which obviously must exclude matters that would fall within the domain of a regular hearing under r. 20, would be called for in the preliminary hearing under r. 13 of O. 39. In the course of such enquiry the Court must be satisfied that though the election petition discloses a clear cause of action and raises triable issue(s), yet, a trial of the issues raised will not be necessary or justified inasmuch as even if the totality of the facts on which the petitioner relies are to be assumed to be proved there will be no occasion to cause any interference with the result of the election. It is only in such a situation that the election petition must not be allowed to cross the hurdle of the preliminary hearing. If such satisfaction cannot be reached, the election petition must be allowed to embark upon the journey of a regular hearing under r. 20 of O. 39 in accordance with the provisions of Part III of the Rules. This is the scope and ambit of the preliminary hearing under O. 39, r.13 of the Rules and it is within these confines that the question raised by the parties, at this stage, have to be answered. [para 15] [640-D-H; 641-A] B C D E F

2.1. Under the provisions of the Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998 and the Rules framed thereunder, no remuneration to the Leader of the House or the Leader of the Legislature Party in the House is contemplated beyond the salary and perquisites payable to the holder of such an office if he is a Minister of the Union (in the instant case, the respondent was a Cabinet Minister of G H

A the Union). That apart, either of the offices is not under the Government of India or the Government of any State or under any local or other authority as required under Art. 58 (2) so as to make the holder of any such office incur the disqualification contemplated thereunder. Both
B the offices in question are offices connected with the Lok Sabha. Any incumbent thereof is either to be elected or nominated by virtue of his membership of the House or his position as a Cabinet Minister, as may be. The election petition insofar as the said offices are
C concerned, therefore, does not disclose any triable issue for a full length hearing under O. 39, r. 20 of the Rules. [para 16] [641-B-E]

2.2. With regard to the office of the Chairman of the Council of Indian Statistical Institute, Kolkata, the
D question whether the said office carries any remuneration and/or perquisites or the same is under the control of the Union Government as also the question whether the respondent had resigned from the said office on 20.6.2012, are all questions of fact which are in
E dispute and, therefore, capable of resolution only on the basis of such evidence as may be adduced by the parties. The Court, therefore, will have to steer away from any of the said issues at the present stage of consideration which is one under O. 39, r.13. Instead, for
F the present, the Court may proceed on the basis that the office in question is an office of profit which the respondent held on the relevant date. In this regard the specific issue that has to be gone into is whether the office of the Chairman, ISI, Kolkata has been exempted
G from bringing any disqualification by virtue of the provisions of the Parliament (Prevention of Disqualification) Act 1959, as amended. For an effective examination of the issue, the provisions of Arts. 58, 84 and 102 of the Constitution would require a detailed
H notice and consideration. [para 17-18] [641-F-H; 642-B-D]

2.3. Article 58(1)(c) requires a Presidential candidate to be qualified for election as a Member of the House of the People. It cannot be said that whosoever is qualified for election as a Member of the House of the People under Art. 84 and does not suffer from any disqualification under Art. 102 becomes automatically eligible for election to the office of the President. Nor can it be said that the provisions of Arts. 58, 84 and 102 of the Constitution envisage a composite and homogenous scheme. The similarities as well as the differences between Art. 58, on the one hand, and Arts. 84 and 102, on the other, are too conspicuous to be ignored or over looked. Insofar as Art. 102 (1)(a) is concerned, though holding an office of profit is a disqualification for election as or being a Member of either House of Parliament, such a disqualification can be obliterated by a law made by Parliament. Under Art. 58(2) though a similar disqualification (by virtue of holding an office of profit) is incurred by a Presidential candidate, no power has been conferred on Parliament to remove such a disqualification. Keeping in view that the words in the Constitution should be read in their ordinary and natural meaning so that a construction which brings out the true legislative intent is achieved, Art. 58 has to be read independently of Arts. 84 and 102 and the purport of the two sets of Constitutional provisions has to be understood to be independent of each other. [para 19-20] [644-F-G; 645-C-H]

Baburao Patel v. Dr. Zakir Hussain **(1968) 2 SCR 133 - relied on**

2.4. Therefore, the Parliament (Prevention of Disqualification) Act, 1959 as amended by the Amendment Act No.31 of 2006 has no application insofar as election to the office of the President is concerned. The disqualification incurred by a Presidential candidate on account of holding of an office of profit is not

A removed by the provisions of the said Act which deals with removal of disqualification for being chosen as, or for being a Member of Parliament. If, therefore, it is assumed that the office of Chairman, ISI is an office of profit and the respondent had held the said office on the B material date(s), consequences adverse to the respondent, in so far as the result of the election is concerned, are likely to follow. The said facts will, therefore, be required to be proved by the election petitioner. [para 21] [646-B-D]

C 2.5. Thus, no conclusion that a regular hearing in the instant case will be a redundant exercise or an empty formality can be reached so as to dispense with the same and terminate the election petition at the stage of its preliminary hearing under O. 39, r.13. The election petition, D therefore, deserves a regular hearing under O. 39, r. 20 in accordance with what is contained in the different provisions of Part III of the Supreme Court Rules, 1966. [para 21] [646-D-E]

E DECEMBER 11, 2012:

Per Chelameswar, J. (Dissenting, but partly concurring):

1.1. It is a long settled principle of law that the elections to various bodies created under the F Constitution cannot be questioned except in accordance with the law made by the appropriate legislation. Art. 71 of the Constitution of India declares that all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and G decided by the Supreme Court. While the forum for adjudication of disputes pertaining to legislative bodies under the Constitution is required to be determined by the appropriate legislature, the forum for the adjudication of disputes pertaining to the election of the President and H the Vice-President is fixed by the Constitution to be this

Court. In exercise of power under Art. 71(3) read with Art. 246(1) and Entry 72 of List I of the Seventh Schedule, Parliament made the Presidential and Vice-Presidential Elections Act, 1952, ('the Elections Act'), s.14 whereof declares that the only mode of questioning the election of either the President or the Vice-President is by presenting an election petition to this Court. Section 14A prescribes that the election of either the President or the Vice-President could be challenged only on the grounds specified in ss.18(1) and 19 of the Act. Further, Art. 145 of the Constitution authorizes this Court to make rules for regulating the practice and procedure of this Court with regard to its jurisdiction, either original or appellate vested in this Court either by the Constitution or law. [para 3,4 and 8] [647-C, E; 648-A-B-E-F; 649-A-B; 651-C; 652-A]

1.2. It cannot be said that the Code of Civil Procedure, 1908 applies to the conduct of the election petition on hand in view of s.141 thereof. The procedure that is required to be followed by this Court while exercising jurisdiction conferred by either the Constitution or Parliament by law could be laid down only by Parliament and until Parliament makes such a law, by the rules made by this Court. CPC is not a law made by Parliament but an "existing law" within the meaning of the expression under Art. 366 (10) and deriving its force from Art. 372 of the Constitution. Further, this Court and the High Courts are not ordinary civil courts within the meaning of such an expression employed in various enactments attracting the bar of jurisdiction created by the statute. Therefore, it cannot be said that by virtue of the operation of s.141 of the Code, this Court is bound by the procedure contained in the Code while exercising its extraordinary jurisdiction under Art. 71 of the Constitution. [para 9 and 11] [652-B-D; 654-D-F]

A 1.3. This Court, in exercise of its authority under Art. 145, has made rules regulating the procedure of this Court, both in its original and appellate jurisdiction called the Supreme Court Rules, 1966 ['the Rules']. Insofar as the election petitions under the Elections Act are B concerned, the procedure is prescribed under O. 39 which occurs in Part VII of the Rules. Rule 34 thereof stipulates that while adjudicating an election petition under the Elections Act, this Court is required to follow (as nearly as may be) the procedure contained in Orders C 22 to 34 of Part III of the Rules regulating the proceedings before this Court in exercise of its original jurisdiction. Such a stipulation is expressly made subject to other provisions of O.39 or any special order or direction by this Court. The stipulation that this Court is obliged to follow D the procedure applicable to the proceedings under the original jurisdiction of this Court (Part III of the Rules) is made subject to the other provisions of O. 39. Thus, if the procedure contained in Part III is inconsistent with any provisions contained in Part VII (O. 39), this Court is not obliged to follow the procedure contained in Part III. Apart E from that, in view of r. 34 of O. 39, it is always open to this Court in a given case not to follow the procedure contained under O. 39. [para 12] [655-A-F]

1.5. Rules 13 to 15 of O. 39 prescribe the procedure F to be followed by this Court on the receipt of an election petition under the Act. A plain reading of r.13 of O. 39 indicates that on the due presentation of an election petition under the Act to this Court: [1] the same shall be posted before a bench of five Judges for a preliminary G hearing and orders; [2] such a hearing and orders are regarding the service of the petition and advertisement thereof. Rules 14 and 15 respectively stipulate that the notice of the presentation of the election petition under the Act is required to be served on the various persons H specified under r.14. An election petition under the Act is

required to be listed for a preliminary hearing contemplated under r.13. Rule 13 further stipulates [3] upon such a preliminary hearing, if the Court comes to the conclusion that the petition does not deserve a regular hearing, contemplated under r.20, the Court may either dismiss the election petition or pass any appropriate orders as it deems fit. [para 13-14] [655-G; 656-A-B-C-D]

1.6. Therefore, O. 39, r. 13 prescribes a procedure contrary to the stipulation contained under O. 24, r.1 which mandates that after due institution of an original suit before this Court, "summons shall be issued". It is worthwhile noticing that while O. 24 requires summons to be issued, O. 39, r.14 contemplates that only a notice of the presentation of an election petition is to be issued. The distinction between summons and notice is very subtle but real. [para 15] [657-E-F]

2.1. Order 39. r. 13 vests a discretion in the bench of five Judges before whom the election petition under the Act is posted for preliminary hearing to record a conclusion whether the petition deserves a notice under r.14 or publication under r.15 and a regular hearing under r.20 or any other appropriate order such as (perhaps) directing some formal defects in the petition to be cured etc. However, the discretion of the bench to record a finding that the election petition does not deserve a regular hearing and, therefore, is required to be dismissed must be exercised on rational grounds known to law for clear and cogent reasons to be recorded. [para 16-17] [657-G-H; 658-A-B-C]

2.2. It is not possible to give an exhaustive list of the circumstances in which this Court can render the finding that an election petition does not require a regular hearing but for the purpose of the case is hand it can be said that if the allegations made in the election petition

A even if assumed to be true do not constitute one or some of the grounds on which an election under the Act can be challenged, it would be certainly one of the grounds enabling this Court to reach a conclusion that the election petition does not deserve a regular hearing. In the instant B case, the only ground on which the election of the respondent is challenged is that he was not eligible to contest the election to the office of President of India. Such a ground is certainly one of the grounds on which election of the respondent as the President of India could C be challenged, as s.18(1)(c) of the Elections Act stipulates that if this Court is of the opinion that the nomination of the successful candidate has been wrongly accepted, this Court shall declare the election to be void. [para 21,23 and 27] [659-C, G; 660-A-B; 661-C]

D 3.1. The respondent does not dispute the fact that he was the Chairman of the Indian Statistical Institute, Kolkata and also the leader of the political party called Indian National Congress in the Lok Sabha. However, the respondent took a categoric stand that he had resigned E from both the offices before the crucial date i.e. on the date of scrutiny of the nomination papers (2.7.2012) – a stand which is seriously disputed by the election petitioner by an elaborate pleading in the petition that the respondent did not, in fact, cease to hold the offices by F the crucial date. The respondent also took a categoric stand that apart from his having had relinquished the two offices by the crucial date, neither of the abovementioned offices is an office the holding of which would make him ineligible to contest the election in question. [para 29-30] G [661-F-H; 662-A]

3.2. The issue that is required to be examined for the purpose of the order on the preliminary hearing under r. 13 of O.39 of the Rules is whether the holding of either of the two offices – if really held on the crucial date – would H render the respondent ineligible to contest the election in

question? Further, the question would be, whether the two offices are offices of profit. The question – whether the respondent did in fact hold those offices on the crucial date is a question of fact which cannot be the subject matter of enquiry at this stage. [para 31-32] [662-B-D]

3.3. Article 58 provides that holding of an office of profit either under the Government of India or the Government of any State or any local or other authority subject to the control of any of the said Governments *inter alia* would render the holder of such office of profit ineligible for election as President. The respondent's defence is that neither of the offices held by him are offices of profit falling under Art. 58 (2) which would render him ineligible to contest the election in question. [para 34-36] [662-E; 663-B-D]

3.4. Any person seeking to contest an election either to the office of the President of India or for the membership of anyone of the legislative bodies under the Constitution must satisfy certain eligibility criteria stipulated by the Constitution. Any person who is eligible to become and not disqualified for becoming a member of Parliament would not automatically be eligible to contest the election to the office of the President of India. There is a difference in the eligibility criteria applicable to the election of the membership of Parliament and the election to the office of the President of India. Claues (2) of Art. 58 disqualifies persons holding office of profit not only specified under Art. 102 (1) (a) but also under any local or any other authority which is subject to the control of either of the two governments. Further, while an office of profit, the holding of which renders a person disqualified for being chosen as a member of Parliament, can be declared by the Parliament not to be an office of profit holding of which would disqualify the holder from

A **becoming a member of Parliament. Such an authority is not expressly conferred on the Parliament in the context of the candidates at an election to the office of the President of India.Thus, the Constitution prescribes more stringent qualifications for election to the office of**
B **President of India and the disqualification stipulated under Art. 58(2) is incapable of being exempted by a law made by Parliament. [para 38, 40-43] [665-A-B; 667-C-D; F-G; 668-A-B-F]**

C *Baburao Patel and others v. Dr. Zakir Hussain and others* **1968 SCR 133 = AIR 1968 SC 904 – relied on**

3.5. The declaration made by Parliament in the Disqualification Act, 1959 would not provide immunity for a candidate seeking election to the office of the President
D **of India if such a candidate happens to hold an office of profit contemplated under Art. 58(2). Even otherwise, the legal nature of Indian Statistical Institute and of the office of its Chairman is required to be examined. The office of the Chairman of the Institute is not an office created by**
E **any statute but is an office created by the bye-laws of the Society. The Chairman is required to be elected by a Council created under the regulations of the Society. Therefore, it is certainly not an office (profit or no profit) either under the Central or State Government. [para 46-**
F **47 and 54] [671-D-E, G; 673-C-D]**

B.S. Minhas v. Indian Statistical Institute and others **1984 (1) SCR 395 = (1983) 4 SCC 582; and** *M.V. Rajashekaran and others v. Vatal Nagaraj and others* **2002 (1) SCR 412 = (2002) 2 SCC 704 - referred to.**
G

3.6. Besides, the inclusion of various offices in the Schedule of the Disqualification Act only reflects the understanding of the Parliament that those offices are offices of profit contemplated under Art. 102(1)(a). But
H **such an understanding is neither conclusive nor binding**

on this Court while interpreting the Constitution. Such inclusion appears to be an exercise – '*ex majure cautela*'. Interpretation of the Constitution and the laws is "emphatically the province and duty" of the judiciary. Therefore, the meaning of the expressions "office of profit" and "office of profit under the State Government/ Central Government" are required to be examined. [para 62-63] [676-D-F; 677-A-B]

Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa **(1971) 3 SCC 870;** *Ravanna Subanna v. G.S. Kaggerappa*, **AIR 1954 SC 653;** *Shibu Soren v. Dayanand Sahay and others* **2001 (3) SCR 1020 = (2001) 7 SCC 425 - referred to.**

3.7. The office of the Chairman of the Indian Statistical Institute, Kolkata, which is an authority for the purpose of Art. 58(2), is an office of profit as explained by this Court in various judgments. Assuming that the tests relevant for determining whether an office of profit contemplated under Art. 58(2) are the same as the test laid down by this Court in the context of Art. 102(1)(a), the answer to the said question depends upon the terms and conditions subject to which the respondent held that office. Whether the amounts if any paid to him in that capacity are compensatory in nature or amounts capable of conferring pecuniary gain are questions of fact which ought to be decided only after ascertaining all the relevant facts which are obviously in the exclusive knowledge either of the respondent or the Institute. The respondent in his short counter made a statement that he did not derive pecuniary gain by holding the said office. The veracity of such statement has not been subjected to any further scrutiny. After an appropriate enquiry into such conflicting statements of facts if it is to be concluded that the said office is an office of profit, inevitably the question whether the respondent had tendered his resignation by the crucial date is required to be ascertained – once again

A an enquiry into a question of fact. [para 69-70] [679-C-F; 680-A-C]

3.8. The petitioner if permitted to inspect or seek discovery of records of the Indian Statistical Institute might or might not secure information to demonstrate B truth or otherwise of the respondent's affidavit. The issue is not whether the petitioner would eventually be able to establish his case or not. The issue is whether the petitioner is entitled to a rational procedure of law to establish his case. The Constitution creates only one C forum for the adjudication of such disputes. All other avenues are closed. By holding that the election petition does not deserve a regular hearing contemplated under r.20 would not be consistent with the requirement that justice must not only be done but it must also appear to D have been done. [para 70-71] [680-D-F]

3.9. If adjudication of the election petition requires securing of information which is exclusively available with the respondent and the Indian Statistical Institute E and which may be relevant, the petitioner cannot be told that he would not be able to secure such information on the ground that letter of the law does not provide for such opportunity. The CPC does not apply to the election petition. The rules framed by this Court under Art. 145 are F silent in this regard. But the very fact that this Court is authorised to frame rules regulating the procedure applicable to trial of the election petitions implies that this Court has powers to pass appropriate orders to secure such information. [para 73] [681-C-E]

G 3.10. Similarly, accepting the statement of the respondent that he did not derive any pecuniary benefit by virtue of his having had been Chairman of the Indian Statistical Institute without permitting the petitioner to test the correctness of that statement by cross-examining the H respondent or confronting the respondent with such

documents which the petitioner might discover if such a discovery is permitted would be a denial of equality of the law to the petitioner guaranteed under Art. 14 of the Constitution. Such facility is afforded to every litigant pursuing litigation in a court of civil judicature in this country. Therefore, it cannot be said that the election petition does not deserve a regular hearing. [para 74] [681-G-H; 682-A]

Case Law Reference:

Per Altamas Kabir, CJI.		
2001 (3) SCR 1020	**referred to**	**para 16**
2006 (2) Suppl. SCR 110	**referred to**	**para 17**
2002 (1) SCR 412	**referred to**	**para 18**
1978 (3) SCR 1	**cited**	**para 22**
1988 SCR 525	**cited**	**para 24**
1983 (3) SCR 525	**referred to**	**para 28**
AIR 1953 SC 653	**referred to**	**para 28**
1976 (3) SCR 832	**referred to**	**para 29**
1978 (3) SCR 12	**referred to**	**para 30**
1993 (2) SCR 250	**referred to**	**para 31**
2009 (13) SCR 664	**referred to**	**para 37**
1970 (2) SCR 835	**referred to**	**para 38**
1976 SCR 347	**referred to**	**para 38**
1975 (2) SCR 753	**referred to**	**para 39**
Per Ranjan Gogoi, J.		
(1968) 2 SCR 133	**relied on**	**para 20**

A **Per J. Chelameswar, J.**

1968 SCR 133	**relied on**	**para 44**
1984 (1) SCR 395	**relied on**	**para 49**
B **2002 (1) SCR 412**	**relied on**	**para 55**
(1971) 3 SCC 870	**referred to**	**para 64**
AIR 1954 SC 653	**referred to**	**para 64**
2001 (3) SCR 1020	**referred to**	**para 65**

C CIVIL ORIGINAL JURISDICTION : Under Article 71 of the Constitution of India.

Election Petition No. 1 of 2012.

D Goolam E. Vahanvati, A.G., Ram Jethmalani, Satya Pal Jain, Harish N. Salve, Pravin H. Parekh, S.S. Shamshery, Dheeraj Jain, P.V. Yogeswaran, Lata Krishnamurthi, P.R. Mala, Subhashish R. Soren, Pranav Diesh, Karan Kalia, Ashish Dixit, V.M. Vishnu, Bharat Sood, Bhakti Vardhan Singh, Devadatt E Kamat, Rohit Sharma, Anoopam N. Prasad, Nizam Pasha, Anandh Kannan, Sameer Parekh, E.R. Kumar, Sonali Basu Parekh, Rajat Nair, Vishal Prasad, Utsav Trivedi, Abhishek Vinod Deshmukh (for Parekh & Co.) Meenakshi Arora for the appearing parties.

F The Judgments & Order of the Court was delivered by

ALTAMAS KABIR, CJI. 1. The Petitioner herein was a candidate in the Presidential elections held on 19th July, 2012, the results whereof were declared on 22nd July, 2012. The G Petitioner and the Respondent were the only two duly nominated candidates. The Respondent received votes of the value of 7,13,763 and was declared elected to the Office of the President of India. On the other hand, the Petitioner received votes of the value of 3,15,987.

H

2. The Petitioner has challenged the election of the Respondent as President of India on the ground that he was not eligible to contest the Presidential election in view of the provisions of Article 58 of the Constitution of India, which is extracted hereinbelow :-

> **"58. Qualifications for election as President.-** (1) No person shall be eligible for election as President unless he -
>
> (a) is a citizen of India,
>
> (b) has completed the age of thirty-five years, and
>
> (c) is qualified for election as a member of the House of the People.
>
> (2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.
>
> ***Explanation.***-For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor of any State or is a Minister either for the Union or for any State."

3. According to the Petitioner, at the time of filing the nomination papers as a candidate for the Presidential elections, the Respondent held the Office of Chairman of the Council of Indian Statistical Institute, Calcutta, hereinafter referred to as the "Institute", which, according to him, was an office of profit. It appears that at the time of scrutiny of the nomination papers on 2nd July, 2012, an objection to that effect had been raised before the Returning Officer by the Petitioner's authorized representative, who urged that the nomination

A papers of the Respondent were liable to be rejected. In response to the said submission, the representative of the Respondent sought two days' time to file a reply to the objections raised by the Petitioner. Thereafter, on 3rd July, 2012, a written reply was submitted on behalf of the B Respondent to the objections raised by the Petitioner before the Returning Officer, along with a copy of a resignation letter dated 20th June, 2012, whereby the Respondent claimed to have resigned from the Chairmanship of the Institute. A reply was also filed on behalf of the Respondent to the objections C raised by Shri Charan Lal Sahu. The matter was, thereafter, considered by the Returning Officer at the time of scrutiny of the nomination papers on 3rd July, 2012, when the Petitioner's representative even questioned the genuineness of the resignation letter submitted by the Respondent to the President D of the Council of the Institute, Prof. M.G.K. Menon.

4. Having considered the submissions made on behalf of the parties, the Returning Officer, by his order dated 3rd July, 2012, rejected the Petitioner's objections as well as the objections raised by Shri Charan Lal Sahu, and accepted the E Respondent's nomination papers. Accordingly, on 3rd July, 2012, the Petitioner and the Respondent were declared to be the only two duly nominated candidates for the Presidential election.

F 5. Immediately after the rejection of the Petitioner's objection to the Respondent's candidature for the Presidential elections, on 9th July, 2012, a petition was submitted to the Election Commission of India, under Article 324 of the Constitution, praying for directions to the Returning Officer to G re-scrutinize the nomination papers of the Respondent and to decide the matter afresh after hearing the Petitioner. The Election Commission rejected the said petition as not being maintainable before the Election Commission, since all disputes relating to Presidential elections could be inquired into and decided only by this Court. Thereafter, as indicated H

hereinabove, the Presidential elections were conducted on 19th July, 2012, and the Respondent was declared elected to the Office of the President of India on 22nd July, 2012.

6. Aggrieved by the decision of the Returning Officer in accepting the nomination papers of the Respondent as being valid, the Petitioner has questioned the election of the Respondent as the President of India under Article 71 of the Constitution read with Order XXXIX of the Supreme Court Rules, 1966, and, in particular, Rule 13 thereof. The said Rule, which is relevant for a decision in this petition, reads as follows :-

> "13. Upon presentation of a petition the same shall be posted before a bench of the Court consisting of five Judges for preliminary hearing and orders for service of the petition and advertisement thereof as the Court may think proper and also appoint a time for hearing of the petition. **Upon preliminary hearing, the Court, if satisfied, that the petition does not deserve regular hearing as contemplated in Rule 20 of this Order may dismiss the petition or pass any appropriate order as the Court may deem fit.**"
>
> **[Emphasis supplied]**

7. In keeping with the provisions of Rule 13 of Order XXXIX of the Supreme Court Rules, 1966, which deals with Election Petitions under Part III of the Presidential and Vice-Presidential Elections Act, 1952, the Election Petition filed by the Petitioner was listed for hearing on the preliminary point as to whether the petition deserved a hearing, as contemplated by Rule 20 of Order XXXIX, which provides as follows :

> "20. Every petition calling in question an election shall be posted before and be heard and disposed of by a Bench of the Court consisting of not less than five Judges."

8. Mr. Ram Jethmalani, learned Senior Advocate,

A appearing for the Petitioner, submitted that the Respondent's election as President of India, was liable to be declared as void mainly on the ground that by holding the post of Chairman of the Indian Statistical Institute, Calcutta, on the date of scrutiny of the nomination papers, the Respondent held an office of
B profit, which disqualified him from contesting the Presidential election.

9. Mr. Jethmalani urged that apart from holding the office of the Chairman of the aforesaid Institute, the Respondent was
C also the Leader of the House in the Lok Sabha which had been declared as an office of profit. Urging that since the Respondent was holding both the aforesaid offices, which were offices of profit, on the date of filing of the nomination papers, the Respondent stood disqualified from contesting the Presidential election in view of Article 58(2) of the Constitution.
D

10. Mr. Jethmalani submitted that Article 71 of the Constitution provides that all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme
E Court whose decision is to be final. Mr. Jethmalani submitted that there were sufficient doubts to the Respondent's assertion that on the date of filing of his nomination papers, he had resigned both from the office of Chairman of the Indian Statistical Institute, Calcutta, and as the Leader of the House
F in the Lok Sabha, on 20th June, 2012. Mr. Jethmalani urged that the doubt which had been raised could only be dispelled by a full-fledged inquiry which required evidence to be taken and cross-examination of the witnesses whom the Respondent might choose to examine. Accordingly, Mr. Jethmalani
G submitted that the instant petition would have to be tried in the same manner as a suit, which attracted the provisions of Section 141 of the Code of Civil Procedure, which reads as follows:

H "**141. Miscellaneous Proceedings.** - The procedure provided in this Code in regard to suit shall be followed,

as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation – In this Section the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."

In addition, learned counsel also referred to Rule 34 of Order XXXIX of the Supreme Court Rules, 1966, which provides as follows :-

"Order XXXIX, Rule 34

Subject to the provisions of this Order or any special order or direction of the Court, the procedure of an Election Petition shall follow as nearly as may be the procedure in proceedings before the Court in exercise of its Original Jurisdiction."

11. Mr. Jethmalani pointed out that in the Original Jurisdiction of the Supreme Court, provided for in Order XXII of the Supreme Court Rules, 1966, the entire procedure for institution and trial of a suit has been set out, providing for all the different stages in respect of a suit governed by the Code of Civil Procedure. Mr. Jethmalani submitted that the making of the procedure for trial of Election Petitions akin to that of the Original Jurisdiction of the Supreme Court, was a clear indication that the matter must be tried as a suit, if under Rule 13 of Order XXXIX, the Court consisting of 5 Judges was satisfied at a preliminary inquiry that the matter deserved a regular hearing, as contemplated in Rule 20 of the said Order.

12. For the sake of comparison, Mr. Jethmalani referred to Section 87 of the Representation of the People Act, 1951, laying down the procedure for the trial of Election Petitions and providing that every Election Petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of

A suits. Mr. Jethmalani urged that in matters relating to election disputes it was the intention of the Legislature to have the same tried as regular suits following the procedure enunciated in Section 141 C.P.C.

B 13. Mr. Jethmalani then drew our attention to Article 102 of the Constitution and, in particular, Clause 1(1)(a) thereof, which, inter alia, provides as follows :-

"**102.** (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament

C –

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

D (b).....

(c).....

(d).....

E (e).....

Explanation: *For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by* F *reason only that he is a Minister either for the Union or for such State."*

14. Mr. Jethmalani submitted that language similar to the above, had been incorporated in Article 58(2) of the G Constitution, which also provides that a person shall not be eligible for election as President, if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority, subject to the control of any of the said Governments. Mr. Jethmalani submitted that as in Explanation to Article 102, the Explanation to Clause (2) of H Article 58 also indicates that a person shall not be deemed to

hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State. Mr. Jethmalani urged that Article 102 cannot save a person elected to the Office of President from disqualification, if he holds an office of profit.

15. Mr. Jethmalani submitted that from the annexures to the affidavit filed on behalf of the Respondent it was highly doubtful as to whether the Respondent had actually resigned from the post of Chairman of the Institute on 20th June, 2012, or even from the Membership of the Congress Party, including the Working Committee, and from the office of the Leader of the Congress Party in Lok Sabha on the same date, as contended by him. Mr. Jethmalani submitted that from the copy of the letter addressed to Professor M.G.K. Menon, President of the Institute, it could not be ascertained as to whether the endorsement made by Professor Menon amounted to acceptance of the Respondent's resignation or receipt of the letter itself. Learned counsel urged that this was another case of "doubt" within the meaning of Article 71 of the Constitution of India which required the Election Petition to be tried as a suit for which a detailed hearing was required to be undertaken by taking evidence and allowing for cross-examination of witnesses.

16. It was also submitted that the expression "office of profit" has not been conclusively explained till today under the Presidential and Vice-Presidential Elections Act, 1952, nor any other pre-independence statute, and the same required to be resolved by this Court. In this regard, Mr. Jethmalani referred to the decision of a three-Judge Bench of this Court in the case of *Shibu Soren Vs. Dayanand Sahay & Ors.* [(2001) 7 SCC 425], in which the aforesaid expression came to be considered and in interpreting the provision of Articles 102(1)(a) and 191(1)(a), this Court held that such interpretation should be realistic having regard to the object of the said Articles. It was observed that the expression "profit" connotes an idea of some pecuniary gain other than "compensation". Neither the quantum

of amount paid, nor the label under which the payment is made, may always be material to determine whether the office is one of profit. This Court went on further to observe that mere use of the word "honorarium" cannot take the payment out of the concept of profit, if there is some pecuniary gain for the recipient. It was held in the said case that payment of an honorarium, in addition to daily allowances in the nature of compensatory allowances, rent-free accommodation and chauffeur driven car at State expense, were in the nature of remuneration and is a source of pecuniary gain and, hence, constituted profit. Mr. Jethmalani urged that it was on the basis of such observation that the Election Petition in the said case was allowed.

17. Mr. Jethmalani also referred to the decision of this Court in the case of *Jaya Bachchan Vs. Union of India & Ors.* [(2006) 5 SCC 266], wherein also the phrase "office of profit" fell for interpretation within the meaning of Article 102 and other provisions of the Constitution with regard to use of the expression "honorarium" and its effect regarding the financial status of the holder of office or interest of the holder in profiting from the office. It was observed that what was relevant was whether the office was capable of yielding a profit or pecuniary gain, other than reimbursement of out-of-pocket/actual expenses, and not whether the person actually received monetary gain or did not withdraw the emoluments to which he was entitled. The three-Judge Bench, which heard the matter, held that an office of profit is an office which is capable of yielding profits of pecuniary gain and that holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is "holding an office of profit". However, the question whether a person holds an office of profit has to be interpreted in a realistic manner and the nature of the payment must be considered as a matter of substance rather than of form. Their Lordships further observed that for deciding the question as to whether one is holding an office of profit or not, what is relevant

is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained any monetary gain therefrom.

18. In the same connection, reference was also made to the decision of this Court in *M.V. Rajashekaran & Ors. Vs. Vatal Nagaraj & Ors.* [(2002) 2 SCC 704], where also the expression "office of profit" fell for consideration.

19. Mr. Jethmalani urged that having regard to the above, the Election Petition deserved a regular hearing, as contemplated in Rule 20 of Order XXXIX of the Supreme Court Rules, 1966.

20. Appearing for the Respondent, Mr. Harish Salve, learned Senior Advocate, submitted that election to the office of the President of India is regulated under the provisions of the Presidential and Vice-Presidential Act, 1952, hereinafter referred to as the "1952 Act", and, in particular Part III thereof, which deals with disputes regarding elections. Mr. Salve pointed out that Sections 14 and 14A of the Act specifically vest the jurisdiction to try Election Petitions under the 1952 Act with the Supreme Court, in the manner prescribed in the said sections. Accordingly, the challenge to a Presidential election would have to be in compliance with the provisions of Order XXXIX of the Supreme Court Rules, 1966, which deals with Election Petitions under Part III of the 1952 Act. Rule 13 of Order XXXIX of the Supreme Court Rules, therefore, becomes applicable and it enjoins that upon presentation of an Election Petition, the same has to be posted before a Bench of the Court consisting of five Judges, for preliminary hearing to satisfy itself that the petition deserves a regular hearing, as contemplated in Rule 20. For the sake of reference, Sections 14 and 14A of the 1952 Act, are extracted hereinbelow :-

> "**14.** (1) No election shall be called in question except by presenting an Election Petition to the authority specified in sub-section (2).

A (2) The authority having jurisdiction to try an Election Petition shall be the Supreme Court.

(3) Every Election Petition shall be presented to such authority in accordance with the provisions of this Part and
B of the rules made by the Supreme Court under article 145.

14A. (1) An Election Petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19, to the Supreme Court by any candidate at such election,
C or—

(a) in the case of Presidential election, by twenty or more electors joined together as petitioners ;

D

(b) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.

(2) Any such petition may be presented at any
E time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12, but not later than thirty days from the date of such publication."

F 21. Mr. Salve submitted that the nomination papers of the respective candidates had been scrutinized by the Returning Officer in accordance with the provisions of Section 5A of the 1952 Act. Referring to Sub-Section (3) of Section 5E, Mr. Salve submitted that after completing all the formalities indicated in
G Sub-Section (3), the Returning Officer had accepted the nomination papers of the Respondent as valid, which, thereafter, gave the Respondent the right to contest the election. Mr. Salve submitted that Section 14 of the 1952 Act was enacted under Clause (3) of Article 71 of the Constitution which provides that subject to the provisions of the Constitution,
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Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

22. Mr. Salve submitted that the election of the President and Vice-President has been treated on a different level in comparison with the election of Members of Parliament and other State Legislatures. While Article 102 deals with election of Members to the House, Article 58 deals with the election of the President and the Vice-President of India, which has to be dealt with strictly in accordance with the law laid down in this regard. In support of his aforesaid contention, Mr. Salve referred to a Seven-Judge Bench decision of this Court in the case of *Charan Lal Sahu Vs. Neelam Sanjeeva Reddy* [(1978) 2 SCC 500], where the alleged conflict between Article 71(1) of the Constitution with Article 58 thereof was considered by this Court and it was held that Article 58 only provides for the qualification regarding the eligibility of a candidate to contest the Presidential elections and had nothing to do with the nomination of a candidate which required 10 proposers and 10 seconders. The provisions of Sections 5B and 5C of the 1952 Act were also considered and held not to be in conflict with Article 14 of the Constitution. Article 71(3) of the Constitution was also seen to be a law by which Parliament could regulate matters connected with the Presidential elections, including those relating to election disputes arising out of such an election. Relying on its own earlier judgments, the Hon'ble Judges of the Bench held that there was no force in the attack to either Article 71(3) of the Constitution or the provisions of Sections 5B or 5C of the 1952 Act.

23. The Petitioner, C.L. Sahu, had also challenged the election of Shri Giani Zail Singh as President of India and such challenge was repelled by this Court upon holding that the Petitioner had no locus standi to file the same.

24. Mr. Salve lastly referred to the decision of this Court in *Mithilesh Kumar Vs. R. Venkataraman & Ors.* [(1987) Supp. SCC 692], wherein, on a similar question being raised,

A a five-Judge Bench of this Court reiterated its earlier views in the challenge made to the election of Shri Neelam Sanjeeva Reddy and Shri Giani Zail Singh as former Presidents of India.

25. Mr. Salve then urged that since the provisions of Order
B XXXIX of the Supreme Court Rules framed under Article 145 of the Constitution had been so framed in accordance with Section 14 of the 1952 Act, the provisions of Section 141 of the Code of Civil Procedure could not be imported into deciding a dispute relating to a challenge to the election of the President.

C 26. Mr. Salve submitted that Rule 13 of Order XXXIX of the Supreme Court Rules, 1966, stood substituted on 9th December, 1997, and the substituted provision came into effect on 20th December, 1997. In the Original Rule which came to be substituted, there was no provision for a preliminary hearing
D to be conducted to establish as to whether the Election Petition deserved a regular hearing. However, in view of repeated and frivolous challenges to the elections of almost all of the Presidents elected, the need for such an amendment came to be felt so as to initially evaluate as to whether such an Election
E Petition, challenging the Presidential election, deserved a regular hearing.

27. Mr. Salve then submitted that the post of Chairman of the Indian Statistical Institute, Calcutta, was not an office of profit
F as the post was honorary and there was no salary or any other benefit attached to the said post. Learned counsel submitted that even if one were to accept the interpretation sought to be given by Mr. Ram Jethmalani that the office itself may not provide for any direct benefit but that there could be indirect benefits which made it an office of profit, the said post neither
G provides for any honorarium nor was capable of yielding any profit which could make it an office of profit. Mr. Salve submitted that the law enunciated in the decisions cited by Mr. Ram Jethmalani in the case of *Shibu Soren* (supra) and *Jaya Bachchan* (supra) was good law and, in fact, the post which
H the Respondent was holding as Chairman of the Institute was

not an office of profit, which would disqualify him from being eligible to contest as a candidate for the office of President of India.

28. As to the holding of the post of Leader of the House, Mr. Salve submitted that the holder of such a post is normally a Cabinet Minister of the Government and is certainly not an appointee of the Government of India so as to bring him within the bar of Clause (2) of Article 58 of the Constitution of India. In support of his contention that the provisions of Section 141 CPC would not apply in the facts of this case, Mr. Salve referred to the decision of this Court in *Mange Ram Vs. Brij Mohan & Ors.* [(1983) 4 SCC 36], wherein the Code of Civil Procedure and the High Court Rules regarding trial of an Election Petition, were considered, and it was held that where necessary, the provisions of the Civil Procedure Code could be applied, but only when the High Court Rules were not sufficiently effective for the purpose of the production of witnesses or otherwise during the course of trial of the petition. Mr. Salve also referred to a three-Judge Bench decision of this Court in *Ravanna Subanna Vs. G.S. Kaggeerappa* [AIR 1953 SC 653], which was a case from Mysore relating to the election of a Councilor under the Mysore Town Municipal Act, 1951. Of the two questions raised, one of the points was with regard to the question as to whether the Appellant therein could be said to be holding an office of profit under the Government thereby attracting the provisions relating to disqualification. On a plain meaning of the expression "office of profit", Their Lordships, inter alia, observed that the word "profit" connotes the idea of pecuniary gain and if there really was a gain, its quantum or amount would not be material, but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. Their Lordships went on further to observe as follows :

> "From the facts stated above, it can reasonably be inferred that the fee of Rs.6 which the non-official Chairman is

A entitled to draw for each sitting of the Committee, he attends, is not meant to be a payment by way of remuneration or profit, but it is gain to him as a consolidated fee for the out-of-pocket expenses which he has to incur for attending the meetings of the Committee. B We do not think that it was the intention of the Government which created these Taluk Development Committees which were to be manned exclusively by non-officials, that the office of the Chairman or of the Members should carry any profit or remuneration."

C Mr. Salve urged that in the instant case as well, the post of Chairman of the Indian Statistical Institute, Calcutta, did not yield any profit to the holder of the post, which was entirely meant to be an honour bestowed on the holder thereof. Mr. Salve also referred to the decision of this Court in the case of D *Shibu Soren* (supra) which had already been referred to by Mr. Ram Jethmalani, and pointed out that Article 102(1)(a) of the Constitution of India deals with disqualification from being chosen as a Member of the two Houses or from being a Member of either House of Parliament and did not affect the E post of President of India.

29. The last decision referred to by Mr. Salve in the above context was that of this Court in *Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani* [(1977) 1 SCC 70], where also the F expression "office of profit" came to be considered. In paragraph 31 of the said decision, reference was made to the earlier decision of this Court in *Ravanna Suvanna's* case (supra) and the ratio of the said decision was tested in relation to Insurance Medical Practitioners. It was held that the petitioner did derive profit, but the question was whether he held G an office under the Government. Since mere incumbency in office is no disqualification, even if some sitting fee or insignificant honorarium is paid, it was ultimately held that the ban on candidature or electoral disqualification, must have a substantial link with the end, may be the possible misuse of

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position as Insurance Medical Practitioner in doing his duties as Municipal President.

30. On the other question with regard to the acceptance of the Respondent's resignation from the post of Chairman of the Institute held by the Respondent, Mr. Salve submitted that the alleged discrepancy in the signatures of the Respondent in his letter of resignation addressed to the President of the Institute with his other signatures, was no ground to suspect that the said document was forged, particularly when it was accepted by the Respondent that the same was his signature and that he used both signatures when signing letters and documents. In this regard, Mr. Salve referred to the Constitution Bench decision of this Court in *Union of India & Ors. Vs. Gopal Chandra Mishra & Ors.*[(1978(2) SCC 301], wherein the question as to when a resignation takes place or is to take effect, has been considered in some detail. While considering the various aspects of resignation, either with immediate effect or from a future date, one of the propositions which emerged from the ultimate conclusions arrived at by this Court was that in view of the provisions of Article 217(1)(a) and similar provisions in regard to constitutional functionaries like the President, Vice-President, Speaker, etc. the resignation once submitted and communicated to the appropriate authority becomes complete and irrevocable and acts ex proprio vigore. The only difference is when resignation is submitted with the intention of resigning from a future date, in such case it was held that before the appointed date such resignation could be rescinded.

31. The next case referred to by Mr. Salve in this regard is the decision rendered by this Court in *Moti Ram Vs. Param Dev* [(1993) 2 SCC 725], where a similar question arose with regard to resignation from the office of the Chairman of the Himachal Pradesh Khadi and Village Industries Board, with a request to accept the resignation with effect from the date of the letter itself. Considering the said question, this Court held

A that a person holding the office of Chairman of the said Board should resign from the said office and the same would take effect from the date of communication of the resignation to the Head of the Department in the Government of Himachal Pradesh.

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32. On a different note, Mr. Salve pointed out from the Election Petition itself that the allegations made in paragraph 2(XVI) were verified by the Petitioner, both in the verification and the affidavit affirmed on 20.8.2012, as being true and correct on the basis of information received and believed to be C correct. Mr. Salve submitted that under Rule 6 of Order XXXIX of the Supreme Court Rules, allegations of fact contained in an Election Petition challenging a Presidential election were required to be verified by an affidavit to be made personally by the Petitioner or by one of the Petitioners, in case there were D more than one, subject to the condition that if the Petitioner was unable to make such an affidavit for the reasons indicated in the proviso to Rule 6, a person duly authorized by the Petitioner would be entitled, with the sanction of the Judge in Chambers, to make such an affidavit. Mr. Salve submitted that in the instant E case there was no such occasion for the verification to be done by the Petitioner.

33. In regard to the post of "Leader of the House", Mr. Salve referred to the Practice and Procedure of Parliament, with F particular reference to the Lok Sabha, wherein with regard to the resignation from the membership of other bodies, in the case of the Leader of the House, the procedure followed was that when a Member of the Lok Sabha representing Parliament or Government Committees, Boards, Bodies, sought to resign G from the membership of that body by addressing the Speaker, he is required to address his resignation to the Chairman of that Committee, Board or Body and he ceases to be member of the Committee when he vacates that office. Mr. Salve submitted that by tendering his resignation to the Congress President and Chairperson of the Congress Party in Parliament

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on 20th June, 2012, with immediate effect, such resignation came into force forthwith and no further formal acceptance thereof was necessary.

34. Mr. Salve submitted that notwithstanding the submissions made in regard to the expression "holder of an office of profit", the said argument was also not available to the Petitioner, since by virtue of amendment to Section 3 of the Parliament (Prevention of Disqualification) Act, 1959, in 2006, the office of Chairman of the Institute was excluded from the disqualification provisions of Article 58(2) of the Constitution of India. Mr. Salve submitted that the aforesaid Act had been enacted to declare that certain offices of profit under the Government, including the post of Chairman in any statutory or non-statutory body, would not disqualify the holders thereof from being chosen as, or for being Members of Parliament as contemplated under Article 102(1)(a) of the Constitution. By virtue of the said amendment, a new Table was inserted after the Schedule to the Principal Act which would be deemed to have been inserted with effect from 4th April, 1959. The Indian Statistical Institute, Calcutta, has been placed at Serial No.4 of the Table. Accordingly, the submissions advanced by Mr. Jethmalani with regard to the Respondent holding an office of profit as Chairman of the Institute on the date of filing of nomination for election to the Office of President, were incorrect and the same were liable to be discarded.

35. Mr. Salve submitted that having regard to the submissions made on behalf of the parties, the Election Petition filed by Shri Purno Agitok Sangma did not deserve a regular hearing, as contemplated in Rule 20 of Order XXXIX of the Supreme Court Rules, 1966, and was liable to be dismissed.

36. The learned Attorney General, Mr. Goolam E. Vahanvati, firstly urged that the expression "office of profit" ought not to be interpreted in a pedantic manner and has to be considered in the light of the duties and functions and the benefits to be derived by the holder of the office. Mr. Vahanvati

A pointed out that the post of Chairman of the Institute was a purely honorary post, meant to honour the holder thereof. It did not require the active participation of the Chairman in the administration of the Institute, which was looked after by the President and his Council constituted under the Rules and
B Regulations of the Institute. Mr. Vahanvati also submitted that the post was purely honorary in nature and did not benefit the holder thereof in any way, either monetarily or otherwise, nor was there any likelihood of any profit being derived therefrom. Accordingly, even if Mr. Jethmalani's submission that on the
C date of filing of nominations the Respondent continued to hold the said office, it would not disqualify him from contesting the Presidential election.

37. In this regard, the learned Attorney General referred to the decision of this Court in *Consumer Education &*
D *Research Society vs. Union of India & Ors.* [(2009) 9 SCC 648], wherein the provisions of the 1959 Act, as amended by the Amending Act of 2006, regarding the disqualification of persons holding offices of profit from continuing as Members of Parliament, were under consideration. Considering the
E provisions of Articles 101(3)(a) and 103 in the Writ Petitions filed before this Court under Article 32 of the Constitution, the constitutionality of the Parliament (Prevention of Disqualification) Amendment Act, 2006, came to be questioned on the ground that the said Act retrospectively
F added to the list of "offices of profit" which do not disqualify the holders thereof for being elected as Members of Parliament. The Writ Petitioners contended that the amendment had been brought in to ensure that persons who had ceased to be Members of Parliament on account of incurring
G disqualifications, would be re-inducted to Parliament without election, which, according to the Writ Petitioners, violated the provisions of Articles 101 to 104 of the Constitution.

38. The said question was answered by this Court by holding that the power of Parliament to enact a law under
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Article 102(1)(a) includes the power of Parliament to enact such law retrospectively, as was held in *Kanta Kathuria Vs. Manak Chand Surana* [(1969) 3 SCC 268] and later followed in the decision rendered in *Indira Nehru Gandhi Vs. Raj Narain* [1975 (Supp) SCC 1]. Accordingly, if a person was under a disqualification at the time of his election, the provisions of Articles 101(3)(a) and 103 of the Constitution would not apply and he would continue as a Member of Parliament, unless the High Court in an Election Petition filed on that ground declared that on the date of the election, he was disqualified and consequently declares his election to be void. In other words, the vacancy under Article 101(3)(a) would occur only after a decision had been rendered on such disqualification by the Chairman or the Speaker in the House.

39. Reference was also made to the decision of this Court in *Karbhari Bhimaji Rohamare Vs. Shanker Rao Genuji Kolhe & Ors.* [(1975) 1 SCC 252], wherein this Court held that a Member of the Wage Board for the sugar industry constituted by the Government of Maharashtra, which was an honorary post and the honorarium paid to the Members was in the nature of a compensatory allowance, exercised powers which were essentially a part of the judicial power of the State. Such Members did not, therefore, hold an office under the Government.

40. Further reference was made to another decision of this Court in *Pradyut Bordoloi Vs. Swapan Roy* [(2001) 2 SCC 19], in which the post of a Clerk Grade I in Coal India Ltd., a Company having 100% shareholding of Government, was held not to be an office of profit, which disqualified its holder under Section 10 of the Representation of the People Act, 1951, or under Article 191(1)(a) of the Constitution of India. While deciding the case, this Court had occasion to observe that the expression "office of profit" had not been defined in the Constitution. It was observed that the first question to be asked in this situation was as to whether the Government has power

A to appoint and remove a person on and from the office and if the answer was in the negative, no further inquiry was called for. However, if the answer was in the positive, further inquiries would have to be conducted as to the control exercised by the Government over the holder of the post. Since in the said case, B the Government of India did not exercise any control on appointment, removal, service conditions and functioning of the Respondent, it was held that the said Respondent did not hold an office of profit under the Government of India, and his being a Clerk in the Coal India Ltd. did not bring any influence or C pressure on him in his independent functioning as a Member of the Legislative Assembly.

41. The learned Attorney General lastly cited the decision of this Court in *Ashok Kumar Bhattacharyya Vs. Ajoy Biswas & Ors.* [(1985) 1 SCC 151], where also what amounts to an D office of profit under the Government came up for consideration and it was held that the employees in the local authority did not hold offices of profit under the Government and were not, therefore, disqualified either under Articles 102(1)(a) and 191(1)(a) of the Constitution of India or the provisions of the E Bengal Municipal Act, 1932. Their Lordships held that on an analysis of the provisions of the Act, it was quite clear that though the Government exercised a certain amount of control and supervision, the respondent who was an Accountant Incharge of the Agartala Municipality in the State of Assam, was F not an employee of the Government and was at the relevant time holding an office of profit under a local municipality, which did not bring him within the ambit of Article 102(1)(a) of the Constitution.

G 42. The learned Attorney General submitted that the Disqualification Act is not a defining Act and was never meant to be and one cannot import the definition in the Schedule where only the Institute is mentioned. Sharing the sentiments expressed by Mr. Salve, the learned Attorney General submitted that the Election Petition was liable to be dismissed.

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43. Replying to the submissions made by Mr. Harish Salve and the learned Attorney General, Mr. Ram Jethmalani asserted that the 1959 Act was, in fact, a defining Act and falls under Entry 73 of the First List in the Seventh Schedule to the Constitution, which empowers the Parliament to legislate in regard to elections to Parliament, to the legislatures of the States and to the offices of President and Vice-President and the Election Commission. Mr. Jethmalani also reiterated that the Institute was controlled by the Central Government. The Act under which the Institute was formed was an Act by the Central Government and the post of Chairman must, therefore, be held to be an office of profit under the Central Government.

44. Reiterating his earlier stand that the Election Petition deserved to be regulaly heard, Mr. Jethmalani referred to the decision of this Court in *M.V. Rajashekaran's* case (supra), in which the Chairman of a One-man Commission, appointed by the Government of Karnataka to study the problems of Kannadigas and was accorded the status of a Minister of Cabinet rank and was provided by a budget of Rs.5 lakhs for defraying the expenses of pay and day-to-day expenditure of the Chairman, was held to be holding an office of profit under the Government. This Court observed that the question as to whether a person held an office of profit under the Government or not, would have to be determined in the peculiar facts and circumstances of the case.

45. Mr. Jethmalani lastly referred to the decision in the *Consumer Education & Research Society* case (supra), which had been referred to by the learned Attorney General, and drew the attention of the Court to the observations made in the judgment in paragraph 77, where it had been observed that what kind of office would amount to an office of profit under the Government and whether such an office of profit is to be exempted, is a matter to be considered by the Parliament. While making legislation exempting any office, the question whether such office is incompatible with his position as an M.P.

A and whether his independence would be compromised and whether his loyalty to the Constitution will be affected, has to be kept in mind to safeguard the independence of the Members of the legislature and to ensure that they were free from any kind of undue influence from the executive. Mr. Jethmalani B contended that since the Respondent had held office under the Central Government, it will have to be considered as to whether his functioning as the President of India would, in any way, be compromised or influenced thereby.

C 46. While replying, Mr. Jethmalani introduced a new dimension to his submissions by urging that the Rules and Bye-laws of the Institute did not permit a Chairman, once appointed, to resign from his post. Accordingly, even if the Respondent had tendered his resignation to the President, Dr. Menon, the same was of no effect and he continued to remain as the D Chairman of the Institute. He was, therefore, disqualified from contesting the Presidential election and his election was liable to be declared void and in his place the Petitioner was liable to be declared as the duly-elected President of the country.

E 47. The Constitution provides for the manner in which the election of a President or a Vice-President may be questioned. Article 71 provides for matters relating to or connected with the election of a President or a Vice-President. Clause (1) of Article 71 provides that all doubts and disputes arising out of or in F connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final. Sub-clause (3) provides that subject to the provisions of the Constitution, Parliament may, by law, regulate any matter, relating to or connected with the G election of a President or a Vice-President. In addition, the Presidential and Vice-Presidential Elections Act was enacted in 1952 with the object of regulating certain matters relating to or connected with elections to the Office of President and Vice-President of India. As indicated by Mr. Salve, Sections 14 and 14A of the 1952 Act, specially vest the jurisdiction to try Election H

Petitions thereunder with the Supreme Court in the manner indicated therein. In fact, Part III of the said Act deals with disputes regarding elections to the posts of President and Vice-President of India, which contains Sections 14 and 14A, as also Sections 17 and 18 which empower the Supreme Court to either dismiss the Election Petition or to declare the election of the returned candidate to be void or declare the election of the returned candidate to be void and the Petitioner or any other candidate to have been duly elected.

48. In view of Sub-section (3) of Section 14 of the Act, the Supreme Court has framed Rules under Article 145 of the Constitution which are contained in Order XXXIX of the Supreme Court Rules, 1966. As has been discussed earlier, Rule 13 of Order XXXIX provides that upon presentation of a Petition relating to a challenge to election to the post of President of India, the same is required to be posted before a Bench of the Court consisting of five Judges for preliminary hearing and to consider whether the Petition deserved a regular hearing, as contemplated in Rule 20 of Order XXXIX, and, in that context, such Bench may either dismiss the Petition or pass any appropriate order as it thought fit.

49. It is under the aforesaid Scheme that the present Election Petition filed by Shri Purno Agitok Sangma challenging the election of Shri Pranab Mukherjee as the President of India has been taken up for preliminary hearing on the question as to whether it deserved a regular hearing or not.

50. The challenge is based mainly on the allegation that on the date of filing of nominations, the Respondent, Shri Pranab Mukherjee, held "offices of profit", namely,

(i) Chairman of the Indian Statistical Institute, Calcutta; and

(ii) Leader of the House in the Lok Sabha.

In regard to the aforesaid challenges, Mr. Ram Jethmalani,

A appearing for the Petitioner, had urged that in order to arrive at a conclusive decision on the said two points, it was necessary that a regular hearing be conducted in respect of the Election Petition to ascertain the truth of the allegations made by the Petitioner. It was also submitted that the same required
B a full scale hearing in the manner as contemplated under Section 141 of the Code of Civil Procedure, as would be evident from Order XXXIX read with the provisions relating to the Original Jurisdiction of the Supreme Court, contained in Part III of the Supreme Court Rules, 1966.

C

51. On the other hand, it has been urged by Mr. Harish Salve, appearing for the Respondent, that on the date of filing of nominations, Shri Pranab Mukherjee was neither holding the Office of Chairman of the aforesaid Institute nor was he the Leader of the House in the Lok Sabha, inasmuch as, in respect
D of both the posts, he had tendered his resignation on 20th June, 2012.

52. There is some doubt as to whether the Office of the Chairman of the Indian Statistical Institute is an office of profit
E or not, even though the same has been excluded from the ambit of Article 102 of the Constitution by the provisions of the Parliament (Prevention of Disqualification) Act, 1959, as amended in 2006. Having been included in the Table of posts saved from disqualification from membership of Parliament, it
F must be accepted to be an office of profit. However, as argued by Mr. Salve, categorising the office as an "office of profit" did not really make it one, since it did not provide any profit and was purely honorary in nature. There was neither any salary nor honorarium or any other benefit attached to the holder of the
G said post. It was not such a post which, in fact, was capable of yielding any profit, which could make it, in fact, an office of profit.

53. The said proposition was considered in *Shibu Soren's* case (supra) where it was held that mere use of the word "honorarium" would not take the payment out of the concept of
H profit, if there was some pecuniary gain for the recipient in

addition to daily allowances in the nature of compensatory allowances, rent-free accommodation and chauffeur driven car at State expense.

54. Similar was the view expressed in *Jaya Bachchan's* case (supra) where also this Court observed that what was relevant was whether the office was capable of yielding a profit or pecuniary gain, other then reimbursement of out-of-pocket/ actual expenses and not whether the person actually received any monetary gain or did not withdraw the emoluments to which he was entitled. In other words, whether a person holding a post accepted the benefits thereunder was not material, what was material is whether the said office was capable of yielding a profit or pecuniary gain.

55. In the instant case, the office of Chairman of the Institute did not provide for any of the amenities indicated hereinabove and, in fact, the said office was also not capable of yielding profit or pecuniary gain.

56. In regard to the office of the Leader of the House, it is quite clear that the Respondent had tendered his resignation from membership of the House before he filed his nomination papers for the Presidential election. The controversy that the Respondent had resigned from the membership of the Indian National Congress and its Central Working Committee allegedly on 25th June, 2012, was set at rest by the affidavit filed by Shri Pradeep Gupta, who is the Private Secretary to the President of India. In the said affidavit, Shri Gupta indicated that through inadvertence he had supplied the date of the Congress Working Committee meeting held on 25th June, 2012, to bid farewell to Shri Mukherjee on his nomination for the Presidential Election being accepted. In any event, the disqualification contemplated on account of holding the post of Leader of the House was with regard to the provisions of Article 102(1)(a) of the Constitution, besides being the position of the leader of the party in the House which did not entail the holding of an office of profit under the Government. In any event, since

A the Respondent tendered his resignation from the said post prior to filing of his nomination papers, which was duly acted upon by the Speaker of the House, the challenge thrown by the Petitioner to the Respondent's election as President of India on the said ground loses its relevance. In any event, the B provisions of the Parliament (Prevention of Disqualification) Act, 1959, as amended in 2006, excluded the post of Chairman of the Institute as a disqualification from being a Member of Parliament.

C 57. The Constitutional Scheme, as mentioned in the Explanation to Clause (2) of Article 58 of the Constitution, makes it quite clear that for the purposes of said Article, a person would not be deemed to hold any office of profit, inter alia, by reason only that he is a Minister either for the Union or for any State. Article 102 of the Constitution contains similar D provisions wherein in the Explanation to clause (1) it has been similarly indicated that for the purposes of the said clause, a person would not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister, either for the Union, or for such E State. The argument that the aforesaid provisions of Article 102, as well as Article 58 of the Constitution, could not save a person elected to the office of President from disqualification, if he held an office of profit, loses much of its steam in view of the fact that as would appear from the materials on record, the F Respondent was not holding any office of profit either under the Government or otherwise at the time of filing his nomination papers for the Presidential election.

58. The various decisions cited on behalf of the parties in G support of their respective submissions, clearly indicate that in order to be an office of profit, the office must carry various pecuniary benefits or must be capable of yielding pecuniary benefits such as providing for official accommodation or even a chauffeur driven car, which is not so in respect of the post of Chairman of the Indian Statistical Institute, Calcutta, which was, H

in fact, the focus and raison d'etere of Mr. Jethmalani's submissions. A

59. We are also not inclined to accept Mr. Jethmalani's submissions that once a person is appointed as Chairman of the Indian Statistical Institute, Calcutta, the Rules and Bye-laws of the Society did not permit him to resign from the post and that he had to continue in the post against his wishes. There is no contractual obligation that once appointed, the Chairman would have to continue in such post for the full term of office. There is no such compulsion under the Rules and Bye-laws of the Society either. In any event, since the holder of the post of Chairman of the Institute has been excluded from disqualification for contesting the Presidential election, by the 2006 amendment to Section 3 of the Parliament (Prevention of Disqualification) Act, 1959, the submissions of Mr. Jethmalani in this regard is of little or no substance. B C D

60. We are not convinced that in the facts and circumstances of the case, the Election Petition deserves a full and regular hearing as contemplated under Rule 20 of Order XXXIX of the Supreme Court Rules, 1966. Consequently, Mr. Jethmalani's submissions regarding the applicability of Section 141 of the Code of Civil Procedure for trial of the Election Petition is of no avail. We are also not convinced that Section 141 of the Code is required to be incorporated into a proceeding taken under Order XXXIX of the Supreme Court Rules read with Part II of the Presidential and Vice-Presidential Elections Act, 1952, which includes Sections 14 to 20 of the aforesaid Act and Article 71 of the Constitution of India. E F

61. It may not be inappropriate at this stage to mention that this Court has repeatedly cautioned that the election of a candidate who has won in an election should not be lightly interfered with unless circumstances so warrant. G

62. We are not inclined, therefore, to set down the Election Petition for regular hearing and dismiss the same under Rule H

13 of Order XXXIX of the Supreme Court Rules, 1966.

63. In the facts and circumstances of the case, the parties shall bear their own costs in these proceedings.

RANJAN GOGOI, J. 1. I have had the privilege of going through the opinion rendered by the learned Chief Justice of India. With utmost respect I have not been able to persuade myself to share the views expressed in the said opinion. The reasons for my conclusions are as indicated below -

2. The short question that has arisen for determination in the Election Petition, at this stage, is whether the same deserves a regular hearing under Rule 20 of Order XXXIX of the Supreme Court Rules, 1966.

3. The Election Petition in question has been filed challenging the election of the respondent to the office of the President of India (hereinafter referred to as 'the President'). The election in which the petitioner and the respondent were the contesting candidates was held to the following Schedule:

Issue of Notification calling the election	**16 June 2012**
Last date for making Nominations	**30 June, 2012**
Date for scrutiny	**2 July, 2012**
Last date for withdrawal	**4 July, 2012**
Date of poll, if necessary	**19 July, 2012**
Date of counting, if necessary	**22 July, 2012**

4. Both the Election Petitioner as well as the respondent filed their nomination papers before the Returning Officer on 28.6.2012. A total of 106 nomination papers filed by 84 persons were taken up for scrutiny on the date fixed i.e. 2.7.2012. The petitioner objected to the validity of the nomination of the respondent on the ground that the respondent

on the said date i.e. 2.7.2012 was holding the office of the Chairman of the Council of Indian Statistical Institute, Kolkata (hereinafter referred to as the Chairman ISI) which is an office of profit. According to the petitioner, at the request of the representative of the respondent, the scrutiny of the nomination of the respondent was deferred to 3.00 p.m. of the next day i.e. 3.7.2012 with liberty to file reply, if any, by 2.00 p.m. Coincidentally, certain objections having been raised to the nomination of the Election Petitioner, consideration of the same was also deferred to 11.00 a.m. of 3.7.2012. All the remaining nomination papers were rejected on the date fixed for scrutiny i.e. 2.7.2012.

5. On the next date i.e. 3.7.2012 at the appointed time, i.e. 11.00 a.m. the scrutiny of the nomination papers of the Election Petitioner were taken up and Returning Officer accepted the same. Thereafter, within the time granted on the previous date i.e. 2.00 p.m., the respondent submitted a written reply to the objections raised by the petitioner alongwith a copy of a resignation letter dated 20.6.2012 by which the respondent claimed to have resigned from the office of the Chairman ISI. The scrutiny of the nomination papers of the respondent was taken up at 3.00 p.m. on 3.7.2012 and thereafter the same was accepted by the Returning Officer.

6. As per the Schedule of the election published by the Election Commission the poll took place on 19.7.2012 and the result of the counting was announced on 22.7.2012 declaring the respondent to be duly elected to the office of the President of India.

7. Contending that on all the relevant dates, including the date of scrutiny i.e. 2.7.2012, the respondent was holding the office of the Chairman of the Council of Indian Statistical Institute, Kolkata as well as the office of Leader of the House (Lok Sabha) and Leader of the Congress Party in the Lok Sabha, which are offices of profit, the present Election Petition has been filed on the ground that by virtue of holding the

A aforesaid offices of profit the respondent was not qualified to be a candidate for the election to the office of the President of India and that the nomination submitted by the respondent was wrongly accepted by the Returning Officer. According to the Election Petitioner, the election of the respondent was liable
B to be declared void on the said ground. In the Election Petition filed as well as in the short rejoinder that has been brought on record by the Election Petitioner the claim of the respondent that he had resigned from the office of the Chairman, ISI on 20.6.2012 has been disputed. According to the petitioner the
C resignation letter dated 20.6.2012 is forged and fabricated and has been subsequently brought into existence to counter the case put up by the Election Petitioner. Insofar as the other offices are concerned, according to the Election petitioner, though the respondent had resigned from the Union Cabinet
D on 26.6.2012, he continued to remain a Member of Parliament and the Leader of the Congress Legislature Party in the Lok Sabha up to 25.07.2012 i.e. date of assumption of office as President of India. In fact the Respondent was shown as a Member of Parliament and as the Leader of the House in the official Website of the Lok Sabha till 2.7.2012.
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8. The respondent i.e. the returned candidate has filed a short counter for the purposes of the preliminary hearing. According to the respondent the office of the Chairman, ISI, is not an office of profit as it does not carry any emoluments
F remuneration or perquisites. In any case, according to the respondent, he had submitted his resignation from the said office on 20.6.2012 which had been accepted by the President of the Institute on the same day. Insofar as the other two offices are concerned it is the case of the respondent that he had held
G the said offices by virtue of being a Cabinet Minister of the Union. According to the respondent, under the Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998 and the Rules framed thereunder the aforesaid offices do not carry any emoluments or perquisites
H or benefits beyond those attached to the office of a Cabinet

Minister of the Union. Furthermore, according to the respondent, he had resigned from the Congress Party and the office of the Leader of the Legislature Party in the Lok Sabha on 20.6.2012 and from the Union Cabinet on 26.6.2012. Therefore he had ceased to hold any office of profit on the relevant date i.e. date of scrutiny or acceptance of his nomination.

9. Article 71 of the Constitution provides for matters relating to, or connected with, the election of the President or Vice President. Clause (1) of Article 71 provides that all doubts and disputes arising out of or in connection with the election of a President or Vice President shall be inquired into and decided by the Supreme Court. Under Clause (3), Parliament has been empowered, subject to the provisions of the Constitution, to make laws to regulate any matter relating to or connected with the election of the President or Vice President.

10. In exercise of the power conferred by Article 71(3) read with Entry 72 of List I of the Seventh Schedule to the Constitution, Parliament has framed the Presidential and Vice-Presidential Election Act, 1952 (Act 31 of 1952). Part III of the aforesaid Act makes provisions with regard to disputes regarding elections. Section 14 (1) provides that no election shall be called in question except by presenting an election petition to the authority specified in sub-section (2) i.e. the Supreme Court. Section 14(3) provides that every election petition shall be presented in accordance with the provisions contained in Part III of the Act and such Rules as may be made by the Supreme Court under Article 145 of the Constitution. The next provision of the Act that would require specific notice is Section 15 which provides that the Rules made by the Supreme Court under Article 145 of the Constitution may regulate the form of Election Petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and

A may require security to be given for costs. The rest of the provisions of the aforesaid Act would not require any recital insofar as the present case is concerned.

11. By virtue of powers conferred by Article 145 of the
B Constitution, the Supreme Court Rules, 1966 (hereinafter referred to as the Rules) have been framed by the Supreme Court with the approval of the President of India in order to regulate the practice and procedure of the Court. Order XXXIX contained in Part VII of the Supreme Court Rules, 1966 deals with election petitions filed under Part III of the Presidential and
C Vice Presidential Elections Act, 1952. The provisions of Rule 13 (inserted w.e.f. 20.12.1997), Rule 20 and Rule 34 of Order XXXIX being relevant may be extracted hereinbelow:

"13. Upon presentation of a petition the same shall be
D *posted before a bench of the Court consisting of five Judges for preliminary hearing and orders for service of the petition and advertisement thereof as the Court may think proper and also appoint a time for hearing of the petition. Upon preliminary hearing, the Court, if satisfied,*
E *that the petition does not deserve regular hearing as contemplated in Rule 20 of this Order may dismiss the petition or pass any appropriate order as the Court may deem fit.]*

F XXXXX

20. Every petition calling in question an election shall be posted before and be heard and disposed of by a Bench of the Court consisting of not less than five Judges.

G XXXXX

34. Subject to the provisions of this Order or any special order or directions of the Court, the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise
H of its original jurisdiction."

12. Rule 13 of the Supreme Court Rules, 1966, as it existed prior to insertion of the present Rule 13 w.e.f. 20.12.1997 may also be extracted herein below for an effective determination of precise circumference of the '*preliminary hearing*' contemplated by Rule 13:

> *"Upon the presentation of the petition, the Judge in Chambers, or the Registrar, before whom, it is presented, may give such directions for service of the petition and advertisement thereof as he thinks proper and also appoint a time for the hearing of the petition."*

13. A preliminary hearing for determination of the question as to whether an election petition deserves a regular hearing under Rule 20 did not find any place in the Supreme Court Rules till insertion of Rule 13 in the present form w.e.f. 20.12.1997. Rule 34 of Order XXXIX provides that the procedure on an Election Petition shall follow, as nearly as may be, the procedure in proceedings before the Supreme Court in the exercise of its original jurisdiction. The procedure applicable to proceedings in the exercise of the original jurisdiction of the Supreme Court is contained in Order XXIII of Part III of the Supreme Court Rules. Order XXIII, Rule 1 contemplates institution of a suit by means of a plaint. After dealing with the requirements of a valid plaint, Order Rule 6 provides that a plaint shall be rejected

(a) where it does not disclose a cause of action;

(b) where the suit appears from the statement in the plaint to be barred by any law.

14. To make the narration complete it will be necessary to note that the other provisions of Part III of the Rules deal with the procedure that would apply to the disposal of a suit filed under Order XXIII Rule 1 and, inter alia, provide for :

(a) Issue and Service of Summons (Order XXIV)

(b) Written statement set off and counterclaims(Order

A XXV)

(c) Discovery and Inspection (Order XXVII)

(d) Summoning and Attendance of witnesses (Order XXIX)

B

(e) Hearing of the suit (Order XXXI)

15. Order XXIII, Rule 6, as noticed above, was a part of the Rules alongwith Rule 13 as it originally existed. In other words, insertion of the new Rule 13 providing for a preliminary C hearing was made despite the existence of the provisions of Order XXIII Rule 6 and the availability of the power to reject a plaint and dismiss the suit (including an Election Petition) on the twin grounds mentioned in Rule 6 of Order XXIII. Therefore a preliminary hearing under Order XXXIX Rule 13 would require D the Court to consider something more than the mere disclosure or otherwise of a cause of action on the pleadings made or the question of maintainability of the Election Petition in the light of any particular statutory enactment. A further enquiry, which obviously must exclude matters that would fall within the domain E of a regular hearing under Rule 20 would be called for in the preliminary hearing under Rule 13 of Order XXXIX. In the course of such enquiry the Court must be satisfied that though the Election Petition discloses a clear cause of action and raise triable issue(s), yet, a trial of the issues raised will not be F necessary or justified in as much as even if the totality of the facts on which the petitioner relies are to be assumed to be proved there will be no occasion to cause any interference with the result of the election. It is only in such a situation that the Election Petition must not be allowed to cross the hurdle of the G preliminary hearing. If such satisfaction cannot be reached the Election Petition must be allowed to embark upon the journey of a regular hearing under Order 20 Rule XXXIX in accordance with the provisions of Part III of the Rules. In my opinion, the above is the scope and ambit of the preliminary hearing under H Order XXXIX, Rule 13 of the Rules and it is within the aforesaid

confines that the question raised by the parties, at this stage, have to be answered.

16. At the very outset the issue with regard to the office of the Leader of the House and Leader of the Congress Party may be dealt with. Under the provisions of The Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998 Act and Rules framed there under no remuneration to the Leader of the House or the Leader of the Legislature Party in the House is contemplated beyond the salary and perquisites payable to the holder of such an office if he is a Minister of the Union (in the present case the Respondent was a Cabinet Minister of the Union). That apart, either of the offices is not under the Government of India or the Government of any State or under any local or other authority as required under Article 58 (2) so as to make the holder of any such office incur the disqualification contemplated thereunder. Both the offices in question are offices connected with the Lok Sabha. Any incumbent thereof is either to be elected or nominated by virtue of his membership of the House or his position as a Cabinet Minister, as may be. The Election Petition insofar as the aforesaid offices are concerned, therefore, do not disclose any triable issue for a full length hearing under Order XXXIX, Rule 20 of the Rules.

17. The next question is with regard to the office of the Chairman of the Council of Indian Statistical Institute, Kolkata. Whether the said office carries any remuneration and/or perquisites or the same is under the control of the Union Government as also the question whether the respondent had resigned from the said office on 20.6.2012 are all questions of fact which are in dispute and, therefore, capable of resolution only on the basis of such evidence as may be adduced by the parties. The Court, therefore, will have to steer away from any of the said issues at the present stage of consideration which is one under Order XXXIX, Rule 13. Instead, for the present, we may proceed on the basis that the office in question is an office of profit which the Respondent held on the relevant date

A (which facts, however, will have to be proved at the regular hearing if the occasion so arises) and on that assumption determine whether the election of the Respondent is still not void on the ground that, in view of the provisions of Article 58 (2) of the Constitution, the nomination of the Respondent had
B been wrongly accepted, as claimed by the respondent. In this regard the specific issue that has to be gone into as whether the office of the Chairman, ISI, Kolkata has been exempted from bringing any disqualification by virtue of the provisions of the Parliament (Prevention of Disqualification) Act 1959, as
C amended.

18. For an effective examination of the issue indicated above, the provisions of Articles 58, 84 and 102 of the Constitution would require a detailed notice and consideration. The said provisions are, therefore, extracted below:-

D

"Article 58 - Qualifications for election as President

(1) No person shall be eligible for election as President unless he—

E (a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

F

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said
G Governments.

Explanation.—For the purposes of this Article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor1[***] of any State or is a Minister either
H for the Union or for any State.

1. The words "or Rajpramukh or Uparajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, section 29 and Schedule.

Article 84 - Qualification for membership of Parliament

A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

> [1][(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]
>
> (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and
>
> (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

1. Substituted by the Constitution (Sixteenth Amendment) Act, 1963, section 3, for clause (a) (w.e.f. 5-9-1963)

Article 102 - Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

A (c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign
B State;

(e) if he is so disqualified by or under any law made by Parliament.

[1][Explanation.— For the purposes of this clause] a person
C shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

D 2(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

1. Substituted by the Constitution (Fifty-second Amendment) Act, 1985, section 3, for "(2) For the
E purposes of this Article" (w.e.f. 1-3-1985).

2. Inserted by the Constitution (Fifty-second Amendment) Act, 1985, section 3 (w.e.f. 1-3-1985).

19. Article 58(1)(c) requires a presidential candidate to be
F qualified for election as a Member of the House of the People. Does it mean that whosoever is qualified for election as a Member of the House of the People under Article 84 and does not suffer from any disqualification under Article 102 becomes automatically eligible for election to the office of the President?
G In other words, do the provisions of Articles 58, 84 and 102 of the Constitution envisage a composite and homogenous scheme?

20. Under Article 58(1)(b) a Presidential candidate must
H have completed the age of 35 years. At the same time, under

Article 58(1)(c) such a person must be eligible to seek election as a Member of the House of the People. Under Article 84(b) a candidate, seeking election to the House of the People must not be less than 25 years of age. In other words, a person qualified to be a Member of the House of the People but below 35 years of age will not be qualified to be a candidate for election to the office of the President. Similarly, to be eligible for membership of Parliament (including the House of the People) a candidate must make and subscribe an oath or affirmation according to the prescribed form. No such condition or stipulation is mandated for a Presidential candidate by Article 58. Insofar as Article 102 (1)(a) is concerned though holding an office of profit is a disqualification for election as or being a Member of either House of Parliament such a disqualification can be obliterated by a law made by Parliament. Under Article 58(2) though a similar disqualification (by virtue of holding an office of profit) is incurred by a Presidential candidate no power has been conferred on Parliament to remove such a disqualification. That apart, the Explanations to both Articles 58 and 102 contain provisions by virtue of which certain offices are deemed not to be offices of profit. The similarities as well as the differences between the two provisions of the Constitution are too conspicuous to be ignored or over looked. In a situation where Article 102(1)(a) specifically empowers Parliament to enact a law to remove the disqualification incurred for being a Member of Parliament by virtue of holding of an office of profit and in the absence of any such provision in Article 58 it will be impossible to read Article 58 alongwith Article 102 to comprehend a composite constitutional scheme. Keeping in view that the words in the Constitution should be read in their ordinary and natural meaning so that a construction which brings out the true legislative intent is achieved, Article 58 has to be read independently of Articles 84 and 102 and the purport of the two sets of Constitutional provisions have to be understood to be independent of each other. In fact such a view finds expression in an earlier opinion of this Court rendered in *Baburao Patel*

A *v. Dr. Zakir Hussain*[1] which is only being reiterated herein.

21. The net result of the above discussion is that the Parliament (Prevention of Disqualification) Act, 1959 as amended by the Amendment Act No.31 of 2006 has no B application insofar as election to the office of the President is concerned. The disqualification incurred by a Presidential candidate on account of holding of an office of profit is not removed by the provisions of the said Act which deals with removal of disqualification for being chosen as, or for being a Member of Parliament. If, therefore, it is assumed that the office C of Chairman, ISI is an office of profit and the Respondent had held the said office on the material date(s) consequences adverse to the Respondent, in so far as the result of the election is concerned, are likely to follow. The said facts, will therefore, be required to be proved by the election Petitioner. No D conclusion that a regular hearing in the present case will be a redundant exercise or an empty formality can be reached so as to dispense with the same and terminate the Election Petition at the stage of its preliminary hearing under Order XXXIX Rule 13. The Election Petition, therefore, deserves a E regular hearing under Order XXXIX Rule 20 in accordance with what is contained in the different provisions of Part III of the Supreme Court Rules, 1966.

ORDER

F **CHELAMESWAR, J.** I have had the advantage of reading the judgments of both My Lord the Chief Justice and my learned brother Justice Ranjan Gogoi. I regret my inability to agree with the conclusion recorded by the learned Chief Justice that the instant Election Petition does not deserve a regular hearing. I G shall pronounce my reasons for such disagreement shortly.

DECEMBER 11, 2012

CHELAMESWAR, J. 1. regret my inability to completely agree with the opinion of the majority delivered by Hon'ble the H Chief Justice.

2. The pleadings and submissions relevant for the present purpose are elaborately mentioned in the judgment of Hon'ble the Chief Justice of India, therefore, I do not propose to reiterate the same.

3. The procedure that is required to be followed in an election petition calling in question the election of the respondent as the President of India is the subject matter of controversy. It is a long settled principle of law in this country that the elections to various bodies created under the Constitution cannot be questioned except in accordance with the law made by the appropriate legislation. Article 329 (b) declares that "no election to either House of Parliament or to the House or either House of the Legislature of a State (hereinafter collectively called 'legislative bodies') shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature". Similarly, Article 71[1] declares all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court. Article 71 (3) stipulates that Parliament may by law

1. Article 71. Matters relating to, or connected with, the election of a president or Vice President.—(1) All doubts and disputes arising out of or in connection with the election with the election of a president or vice president shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice President, as the case may be, on or before the date of the decision of the decision of the Supreme Court shall not be invalidated by reason of that declaration

(3) Subject to the provisions of this constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice President.

(4) The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reasn among the members of the electoral college electing him.

A regulate any matter relating to or connected with the election of a President or Vice-President and such regulations by the Parliament is, however, subject to provisions of the Constitution. In other words, while the forum for adjudication of disputes pertaining to legislative bodies under the Constitution is B required to be determined by the appropriate legislature, the forum for the adjudication of disputes pertaining to the election of the President and Vice-President is fixed by the Constitution to be this Court. Whereas various other matters like the grounds on which such elections could be challenged, the C procedure that is required to be followed in an election dispute are required to be provided by law in the case of the members of the legislative bodies - by the appropriate legislature and in the case of the President and Vice-President – only by the Parliament. In the context of the election disputes pertaining to D the members of the legislative bodies, the authority to provide for such matters is vested in the appropriate legislature in view of the language of Article 329, Entry 11A of the III List, VII Schedule. Similarly, by virtue of Article 71 (3) read with Article 246 (1) and Entry 72 of List I to the VII Schedule, such power vests exclusively in the Parliament.

E

4. In exercise of such power, the Parliament made the Presidential and Vice-Presidential Elections Act, 1952, (hereinafter referred to as 'the Elections Act', for easy reference). Part III of the said Act deals with the disputes

F

2. 14A. Presentation of Petition.—(1) An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19, to the Supreme Court by any candidate at such election, or—

(1) in the case of Presidential election, by twenty or more electors joined G together as petitioners;

(ii) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.

(2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12, but not later than thirty days from the date of H such publication.

regarding the election. Section 14 declares that the only mode of questioning of the election of either the President or Vice-President is by presenting an election petition to this Court. Section 14A[2] prescribes that the election of either the President or Vice-President could be challenged only on the grounds specified in Sections 18(1) and 19 of the Act. It also specifies the persons who are authorized to raise such a question. It limits the right to raise the question only to two categories of people – (1) the candidates at such an election; (2) twenty or more electors in the case of the President and ten or more electors in the case of the Vice-President. The said Section stipulates a limitation of 30 days for presenting such an election petition reckoned from the date of publication of the declaration contemplated under Section 12 thereof. While Section 16 stipulates the reliefs that could be claimed in an election petition, Section 15 provides as follows:-

> "Form of petitions, etc., and procedure.- Subject to the provisions of this Part, rules made [whether before or after the commencement of the Presidential and Vice-Presidential Elections (Amendment) Act, 1977] by the Supreme Court under article 145 may regulate the form of election petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs."

It can be seen from Section 15 that the Parliament purports to authorize this Court to frame rules dealing with various aspects of the election petitions such as (1) the manner in which the petitions are to be presented; (2) the persons who are required to be made parties thereto; (3) the procedure to be followed in conducting the election petitions; (4) the circumstances in which the petitions are to abate or may be withdrawn, and (5) the circumstances in which the petitioners

A may be substituted and may require security to be given for costs. Similarly, in the context of the election petition calling in question the election of a member of any one of the legislative bodies such procedure is meticulously provided for by the Parliament under the Representation of the People Act, 1951.

B

5. In my opinion both Sections 14(2) and 15 of the Elections Act, insofar as they purport to vest the jurisdiction in and authorize this Court to frame rules respectively with respect to the adjudication of the disputes pertaining to the election of the President, are superfluous because Articles 71 and 145 of
C the Constitution already expressly provide for the same.

6. Part V Chapter IV of the Constitution provides for the establishment, jurisdiction etc of this Court. Original jurisdiction of this Court obtains under Article 131 and 32 of the
D Constitution. Various other articles occurring in the said Part vest both civil and criminal appellate jurisdiction of this Court. Article 138[3] of the Constitution authorizes the Parliament to vest further jurisdiction in the Supreme Court by law. Such jurisdiction could either be original or appellate. It is axiomatic
E that the authority of the legislature (Parliament in the context of this case) to create jurisdiction takes within its sweep the authority to prescribe various matters which are necessary incidents of the jurisdiction such as, the limits of the jurisdiction – pecuniary, territorial etc., the procedure to be adopted in the
F exercise of such jurisdiction etc.

7. Since the Constitution itself vests jurisdiction in this Court under various heads and it also authorizes the Parliament to create/vest further jurisdiction in this Court by law, the

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G 3. Article 138. Enlargement of the jurisdiction of the Supreme Court - (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and power with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides
H for the exercise of such jurisdiction and powers by the Supreme Court.

Constitution recognized the need for regulating the procedure to be followed by this Court in exercise of such jurisdiction whatever be the source of such jurisdiction. Therefore, Article 145 is incorporated. Article 145 postulates that the Parliament may by law stipulate such procedure and in the absence of any such law this Court can prescribe the procedure with the approval of the President of India.

8. Article 145[4] of the Constitution authorizes this Court to make rules for regulating the practice and procedure of this Court with regard to its jurisdiction, either original or appellate

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4. 145. Rules of Court, etc.—(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generallythe practice and procedure of the COurt including—

(a) rules as to the persons practising before the Court;

(b) rules as to the procedure for hearing appeals, and other matters pertaining to appeals including the time within which appeals to the Court are to be enteres;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(cc) rules as to the proceedings in the Court under Article 139A;

(d) rules as to the entertainment of appeals under sub clause (c) of clause (1) of Article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as the costs of and incident to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of procedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of Article 317;

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum nmber of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts;

A vested in this Court either by the Constitution or law. Such authority of this Court is, however, expressly made subject to the provisions of any law made by the Parliament and also subject to the approval of the President of India.

B 9. The submission that the Code of Civil Procedure applies to the conduct of the election petition on hand in view of section 141 of the CPC, in my view, is required to be refuted. Because the procedure that is required to be followed by this Court while exercising jurisdiction conferred by either the Constitution or the Parliament by law could be laid down only C by the Parliament and until the Parliament makes such a law, by the rules made by this Court. CPC is not a law made by the Parliament but an "existing law" within the meaning of the expression under Article 366 (10) and deriving its force from Article 372 of the Constitution.

D

10. The Code of Civil Procedure, 1908 ('the Code' for short) is an enactment "consolidating the laws relating to the procedure of the Courts of Civil Judicature". Though there is

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E (3) The minimum number of Judges who are to sit fo the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the F appeal involves a substantial question of law as the to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the dispose of the appeal in conformity with such opinion.

G (4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open Court

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion. H

nothing express in the body of the Code which declares that the Code applies to the Courts of Civil Judicature, such a declaration is contained in the Preamble of the Code. By a long established practice and interpretation of the successive Codes, it is always understood that the Code of Civil Procedure applies to the proceedings only in a Court of Civil Judicature. The first Code was made in 1859 which was replaced by its successor (Act 10 of 1877). The brief history of the various enactments which regulated the procedure of the Courts of Civil Judicature is succinctly given in Mulla's Code of Civil Procedure, 7th Edition, at page 2[5]. What exactly is a Court of Civil Judicature is not defined either under the Code or under any other enactment. Such an expression is used in contradistinction to the courts exercising jurisdiction in criminal cases. Nor the word 'court' is defined under the Code. 'Revenue Courts' and Courts constituted under the various laws dealing with Small Causes are not treated to be Courts to which the Code is automatically applicable. (*See*: Sections 5, 7 and 8)

5. The first Code of Civil Procedure was Act 8 of 1859. Prior to that, the procedure of the mofussil courts was regulated by special Acts and Regulations repealed by Act 10 of 1861; and the procedure of the Supreme Court was under their own rules and orders and certain Acts, for example Act 17 of 1852 and Act 6 of 1854. The Code of 1859 applied to mofussil Courts only. In 1862, the Supreme Court and the Courts of Sadder Diwani Adalat in the Presidency towns were abolished by the High Courts Act 1861 (24 and 25 Vic C 104) and the powers of those Courts were vested in the chartered high Courts. The Letters Patent of 1862 establishing the high Courts extended to them the procedure of the Code of Civil Procedure, 1859. The Charters of 1865, which empowered the high Courts to make rules and orders regulating proceedings in civil cases required them to be guided as far as possible by the provisions of the Code of 1859 and subsequent Amending Acts.

   Such Amending Acts were: Act 4 of 1860; 43 of 1860; 23 of 1861; 9 of 1863; 20 of 1867; 7 of 1870; 14 of 1870; 9 of 1871; 32 of 1871 and 7 of 1872.

   The next Code was Act 10 of 1877, which repealed that of 1859. This was amended by Act 18 of 1878 and 12 of 1879; then superseded by the Code of 1882 (Act 14 of 1882). This was amended by Acts 15 of 1882; 14 of 1885; 4 of 1886; 10 of 1886; 7 of 1887; 8 of 18887; 6 of 1888; 10 of 1888; 13 of 1889; 8 of 1890; 6 of 1892; 5 of 1894; 7 of 1895 and 13 of 1895; and then superseded by the present Code of Civil Procedure.

A The expression 'Revenue Court' is defined in Section 5(2)[6]. The nature of the jurisdiction exercised either by the Revenue Courts or the Small Causes Courts cannot be said to be anything other than civil jurisdiction. Even then the Legislature in its wisdom thought it fit not to extend the application of Code to these B Courts. Therefore, the submission of Mr. Ram Jethmalani, learned senior counsel for the petitioner, that in view of the declaration contained in Section 141[7] of the Code, the Code applies to the conduct of the election petition under the Elections Act, in my opinion, is untenable.

C

11. Yet another reason for such a conclusion is that in the context of ouster of jurisdiction of civil courts under innumerable enactments, either of the Parliament or of the State Legislatures, this Court consistently took the view that this Court and the High Courts exercising jurisdiction under Article 32 or D under Article 226 exercise jurisdiction vested in them by the Constitution and, therefore, the same cannot be taken away by any legislation short of a Constitutional amendment. The implication flowing thereby is that they are not ordinary civil courts within the meaning of such an expression employed in E these various enactments attracting the bar of jurisdiction created by the statute. Therefore, I find it difficult to accept the submission that by virtue of the operation of Section 141 of the Code this Court is bound by the procedure contained in the Code while exercising its extraordinary jurisdiction under Article F 71 of the Constitution of India.

12. Then the question remains as to what is the procedure

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6. Section 5(2). 'Revenue Court' in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings G relating to the tent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

7. 141. Miscellaneous proceedings—The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in H all proceedings in any Court of civil jurisdiction.

that is required to be followed by this Court while adjudicating an election dispute under the Elections Act. This Court, in exercise of its authority under Article 145, made rules regulating the procedure of this Court, both in its original and appellate jurisdiction called the Supreme Court Rules, 1966, hereinafter referred to as 'the Rules'. Insofar as the election petitions under the Act are concerned, the procedure is prescribed under Order XXXIX which occurs in Part VII of the Rules. Rule 34[8] thereof stipulates that while adjudicating an election petition under the Act, this Court is required to follow (as nearly as may be) the procedure contained in Orders XXII to XXXIV of Part III of the Rules regulating the proceedings before this Court in exercise of its original jurisdiction[9]. Such a stipulation is expressly made subject to other provisions of Order XXXIX or any special order or direction by this Court. The stipulation that this Court is obliged to follow the procedure applicable to the proceedings under the original jurisdiction of this Court (Part III of the Rules) is made subject to the other provisions of Order XXXIX. In other words, if the procedure contained in Part III is inconsistent with any provisions contained in Part VII (Order XXXIX), this Court is not obliged to follow the procedure contained in Part III. Apart from that, in view of the clause....."or any special order or direction of the Court" ..... occurring under Rule 34 of Order XXXIX, it is always open to this Court in a given case not to follow the procedure contained thereunder Order XXXIX. The circumstances which justify the issuance of such "special orders or directions" by this Court require a separate examination as and when required.

13. Therefore, the question is –what is the procedure that is required to be followed by this Court on the receipt of an

8. 34. Subject to the provisions of this Order or any special order or directions of the Court, the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise of its original jurisdiction.

9. Various rules occuring in Part III of the Rules expressly provide for the application of certain specified provisions of the CPC to such original proceedings before this Court.

A election petition under the Act? Rules 13 to 15 of Order XXXIX prescribe the procedure to be followed by this Court. While Order XXIV Rule 1 occurring under Part III of the Rules mandates that when a suit is presented to this Court for adjudication in its original jurisdiction "summons shall be issued
B to the defendant to appear and answer the claim". Rule 13[10] of Order XXXIX prescribes a different procedure. It reads as follows:-

> "Upon presentation of a petition the same shall be posted before a bench of the Court consisting of five Judges for
C preliminary hearing and orders for service of the petition and advertisement thereof as the Court may think proper and also appoint a time for hearing of the petition. Upon preliminary hearing, the Court, if satisfied, that the petition does not deserve regular hearing as contemplated in Rule
D 20 of this Order may dismiss the petition or pass any appropriate order as the Court may deem fit."

14. A plain reading of Rule 13 indicates that on the due presentation of an election petition under the Act to this Court, [1] the same shall be posted before a bench of five Judges for
E a preliminary hearing and orders; [2] such a hearing and orders are regarding the service of the petition and advertisement thereof. Because Rules 14[11] and 15[12] respectively stipulate that

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10. It may be mentioned that Rule 13, as it exists today, was substituted by GSR 407 dated 9th December, 1997, w.e.f. 20th December, 1997. Prior to such substitution,
F the Rule read differently.

11. Rule 14. Unless otherwise ordered, the notice of the presentation of the petition, accompanied by a copy of the petition, shall within five days of the presentation thereof or within such further time as the Court may allow, be served by the petitioner or his advocate on record on the respondent or respondent, the Secretary to the Election Commission, the Returning Officer and the Attorney General for India. Such
G service shall be effected personally or by registered post, as the Court or Registrar may direct. Immediately after such service the petitioner or his advocate on record shall file with the Registrar an affidavit of the time and manner of such service.

12. Rule 15. Unless dispensed with by the Judge in Chambers or the Registrar, as the case may be, notice of the presentation of the petition shall be published in the Official Gazette and also advertised in newspaper at the expense of the petitioner or petitioners, fourteen clear days before the date appointed for the hearing thereof
H in such manner as the Court or the Registrar may direct.

the notice of the presentation of the election petition under the Act is required to be served on the various persons specified under Rule 14. The said rule also provides for the method and manner of service. Whereas Rule 15 stipulates that the factum of the presentation of election petition under the Act shall be published in the Official Gazette and also advertised in newspapers at the expense of the petitioner, fourteen clear days before the date appointed for hearing. However, the obligations stipulated in Rule 14 and 15 are made expressly **subject to orders to the contrary by the Court**. It is for determining whether the normal procedure prescribed under Rule 14 and 15 discussed above is to be followed in a given case or not, an election petition under the Act is required to be listed for a preliminary hearing contemplated under Rule 13. Rule 13 further stipulates [3] upon such a preliminary hearing, if the Court comes to the conclusion that the petition does not deserve a regular hearing, contemplated under Rule 20, the Court may either dismiss the election petition or pass any appropriate orders as the Court deems fit.

15. Therefore, Order XXXIX Rule 13 prescribes a procedure contrary to the stipulation contained under Order XXIV Rule 1 which mandates that after due institution of an original suit before this Court, "summons shall be issued". It is worthwhile noticing that while Order XXIV requires summons to be issued, Order XXXIX Rule 14 contemplates that only a notice of the presentation of an election petition is to be issued. The distinction between summons and notice is very subtle but real which would be beyond the need and scope of this judgment to go into. I only take note of the distinction in the language of the abovementioned rules and the existence of a legal distinction pointed out.

16. It follows from the above discussion, Order XXXIX Rule 13 vests a discretion in the bench of five Judges before whom the election petition under the Act is posted for preliminary hearing to record a conclusion whether the petition deserves

A a notice under Rule 14 or publication under Rule 15 and a regular hearing under Rule 20 or any other appropriate order such as (perhaps) directing some formal defects in the petition to be cured etc. I do not propose to examine the full scope and amplitude of such "appropriate order" for the purpose of this B case as the same is not necessary.

17. However, it goes without saying that the discretion of the bench hearing the election petition to record a finding that the election petition does not deserve a regular hearing and, therefore, is required to be dismissed must be exercised on C rational grounds known to law for clear and cogent reasons to be recorded. For such obligation is the only justification of the extraordinary degree of protection and immunities granted to the judiciary by our Constitution. Absence of rational grounds based on clear and cogent reasoning would lead to a popular D misconception that this branch of the Constitutional governance is no different from the other two branches, a misconception which is certainly not conducive to the credibility (of the legal system) which is the ultimate strength of all judicial institutions.

E 18. Placing reliance on Order VII Rule 11 CPC, Shri Ram Jethmalani argued that an election petition can be rejected even prior to the stage of issuance of summons only when the election petition does not disclose a cause of action. He submitted that under any circumstances it cannot reasonably F be argued that the election petition on hand does not disclose a valid cause of action. He further argued that the question whether the petitioner would be able to establish the truth of various allegations made by him in the election petition cannot be the subject matter of enquiry under Rule 13 but the enquiry can only be confined to - whether the allegations if proved do G constitute sufficient cause of action to enable the petitioner to claim the relief such as that are claimed in the election petition?

19. On the other hand it is the case of the respondent that various factual allegations made in the election petition even if

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proved to be true do not disclose a cause of action entitling the petitioner to relief as claimed in the election petition.

20. To examine the correctness of the above rival submissions, I deem it appropriate to examine the circumstances under which this Court can dismiss an election petition under the Act at the stage of preliminary hearing even before issuing notice to the respondent under rule 13.

21. I am of the opinion that it is not possible to give an exhaustive list of the circumstances in which this Court can render the finding that an election petition does not require a regular hearing but it can be said that having regard to the fact that an election petition is not a common law proceeding but the creature of the statute, non-compliance with the mandatory requirements of the statute under which the right to question an election under the Elections Act is created is certainly one of the grounds on which election petition can be dismissed at the stage of preliminary hearing.

22. For example, the right to question an election under the Elections Act is available only to two categories of people as enumerated under section 14A which is already taken note. In a case where the election petition is presented by somebody other than who is entitled to question the election irrespective of the allegations made in the election petition the same is required to be dismissed at the stage of preliminary hearing.

23. Similarly, section 14A declares that an election under the Act can be called in question only on the ground specified under sections 18[13] and 19[14]. Therefore, if the allegations made

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13. Section 18. Grounds for declaring the election of a returned candidate to be void.—(1) If the Supreme Court is of opinion.,—

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or

(b) that the result of the election has been materially affected—

(i) by the improper reception or refusal of a vote, or

A in the election petition even if assumed to be true do not constitute one or some of the grounds on which an election under the Act can be challenged, it would be certainly one of the grounds enabling this Court to reach a conclusion that the election petition does not deserve a regular hearing.

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24. It is in this background the question whether the instant election petition is required to be dismissed even without issuing notice to the respondent is required to be determined?

25. The entire thrust of the arguments of the respondent C — who appeared before this court even before this court directed issuance of notice upon him — is that the election petition does not disclose a valid cause of action calling for issuance of notice or publication contemplated under Rules 14

D (ii) by any non-compliance with the provisions of the Constitution or of this Act or of this Act or of any rules or orders made under this Act; or

(iii) by reason of the fact that the nomination of any candidate (other than the sucessful candidate), who has not withdrawn his candidature, has been wrongly accepted ; or

E (c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate had been wrongly accepted;

the Supreme Court shall declare the election of the returned candidate to be void.

(2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IXA of the Indian Penal Code.

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14. Section 19. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodges an election petition had, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate had been duly elected and the Supreme Court is of opinion that in fact the petitioner or such candidate received a majority of the valid votes, G the Supreme Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected:

Provided that the petitioner or such candidate shall not be declated to be suly elected if it is proved that the election of such candidate would have been void if he had been the returned candidate and a petition had been H presented calling in question his election.

& 15 and a regular hearing contemplated under Order XXXIX Rule 20.

26. To accept or reject the submission of the respondent it is necessary to examine the grounds on which election of the respondent is challenged.

27. The only ground on which the election of the respondent is challenged is that he was not eligible to contest the election to the office of President of India. Such a ground is certainly one of the grounds on which election of the respondent as the President of India could be challenged, as Section 18(1)(iii) stipulates that if this court is of the opinion that the nomination of the successful candidate has been wrongly accepted, this court shall declare the election to be void.

28. The next question is whether the election petition contains necessary allegations to substantiate the above mentioned ground on which the election is challenged? The allegations, as disclosed by the election petition in this regard, are twofold and are sufficiently elaborated in the judgements of My Lord the Chief Justice and my learned brother Justice Ranjan Gogoi. Therefore, I do not propose to reiterate the same.

29. The respondent does not dispute the fact that he was the Chairman of the Indian Statistical Institute, Kolkata and also the leader of the political party called Indian National Congress in the Lok Sabha. However, the respondent took a categoric stand that he had resigned from both the abovementioned offices before the crucial date i.e. on the date of scrutiny of the nomination papers (2nd July 2012) - a stand which is seriously disputed by the election petitioner by an elaborate pleading in the petition that the respondent did not in fact cease to hold the abovementioned offices by the crucial date.

30. The respondent also took a categoric stand that: apart from his having had relinquished the abovementioned two offices by the crucial date, neither of the abovementioned

A offices is an office the holding of which would make him ineligible to contest the election in question.

31. The issue that is required to be examined for the purpose of the order on the preliminary hearing under Rule 13 is whether the holding of either of the abovementioned two offices - **if really held on the crucial date** - would render the respondent ineligible to contest the election in question? If the answer is in the negative, this Court could dismiss the election petition on hand under Rule 13.

C 32. The answer to the issue in my opinion depends upon the answer to the question – Whether the said two offices are offices of profit which would in law render the respondent ineligible to contest the election in question? The question – Whether the respondent did infact hold those offices on the D crucial date? is a question of fact which, in my opinion, cannot be the subject matter of enquiry at this stage.

33. To answer the first question, we must first examine what is the prohibition under the law which renders any person E ineligible to contest the election in question.

34. Article 58 provides that:

"Qualifications for election as President.— (1) No person shall be eligible for election as President unless he

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(a) is a citizen of India,

(b) has completed the age of thirty five years, and

(c) is qualified for election as a member of the House G of the People

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said H Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor of any State or is a Minister either for the Union or for any State."

35. It can be seen from the above that holding of an office of profit either under the Government of India or the Government of any State or any local or other authority subject to the control of any of the said Governments *inter alia* would render the holder of such office of profit ineligible for election as President.

36. The respondent's defence is that neither of the offices held by him are offices of profit falling under Article 58 (2) which would render him ineligible to contest the election in question. According to him the office of the Chairman of Indian Statistical Institute, Kolkata – whether an office of profit or not stood declared [by a law made by the Parliament as contemplated under Article 102(1)(a)[15] i.e. the Parliament (Prevention of

15. In the purported exercise of the power conferred under Article 102(1)(a), the Parliament from time to time made various enactments, last in the series is the Disqualification Act, 1959, which is also ameded from time to time, once in 1993 and later in 1996 and 2006. Section 3 of the said Act declares that none of the offices specified therein shall disqualify the holder thereof for being chosen as or for being a member of Parliament. Section 3 insofar as relevant reads as follows:

"3. Certain offices of profit not to disqualify.—It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament, namely,—..."

Various offices are specified in various sub-clauses from (a) to (m) of the said section to be offices which do not disqualify the holders thereof from becoming or being members of the Parliament. An analysis of these various clauses inserted from time to time (which to my mind indicates a haphazard tinkering with the act) shows that some offices are statutory, some of the offices are brought into existence by virtue of executive orders of the Goverment of India or the State Government. Relevant in the context is clause (k) of the said section which reads as follows:

"(k). the office of Chairman, Deputy Chairman, Secretary or Member (by wharever name called) in any statutory or non-statutory body specified in the Table;"

A Disqualification) Act, 1959] - not to disqualify a person from either being chosen as or for being a member of the Parliament. Therefore, it is argued that even assuming that it is an office of profit falling under Article 58(2), the holding of such an office did not render him ineligible to contest the
B election in question because of the declaration made in the Parliament (Prevention of Disqualification) Act, 1959 (hereinafter referred to as "the Disqualification Act, 1959") as the Constitution itself under Article 102(1)(a) authorises the Parliament to make such a law and Article 58(1)(c) declares
C that a person "qualified to be a member of the House of the People" is eligible to contest the Presidential election.

37. On the other hand it is argued by Shri Jethmalani that there is a difference in the language of Article 58(2) and Article 102(1)(a) both of which deal with certain offices of profit and
D the consequential disqualification attached to the holders of such offices to contest the election either to the office of President of India or to the Parliament respectively. The declaration made under the Disqualification Act, 1959 may in a given case confer sufficient legal immunity from the operation
E of the disqualification specified in Article 102(1)(a) to enable the holder of such a declared office to contest the election to either House of the Parliament but such declaration does not confer any immunity from the operation of the disqualification contained in Article 58(2).

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Though holding of an office of profit under any body - other than the Central Government or a State Government - is not a disqualification for a person seeking election to the Parliament, the Parliament chose to include within its sweep of the provisions of Disqualification Act, 1959 the various offices mentioned in Section 3 (k) read with the table annexed to the Schedule of
G the Act. Whether it is really necessary to bring such offices under the protective umbrella of the Act to avoid any challenge on the ground of the holders of such office being disqualified from seeking election to the Parliament, is a moot question.

There is a table attached to the Schedule of the Actwhich came to be inserted by Act 31 of 2006 consisting of 55 entries. Entry 4 therein is the 'Indian Statistical Institute, Calcutta' of which the respondent was admittedly
H the Chariman.

38. Any person seeking to contest an election either to the office of the President of India or for the membership of anyone of the legislative bodies under the Constitution must satisfy certain eligibility criteria stipulated by the Constitution. Article 58 of the Constitution stipulates that no person shall be eligible for election as the President of India unless he is a citizen of India and is qualified for election as a member of the House of the People but has completed the age of 35 years. It must be noticed that the qualifications and disqualifications with regard to the membership of the Parliament are contained in Articles 84[16] and 102[17] respectively. Article 84 stipulates that to be

16. Article 84—Qualifications for membership of Parliament—A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty five years of age and, in the cae of a seat in the House of the people, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

17. Article 102—Disqualifications for membership—(1) A person shall be disqualified for being chosen as, and for being a member of either House of Parliament-

(a) If he holds may office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent Court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or had voluntarily acquired the citizenship of a goreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualififed by or under any law made by Parliament.

Explanation.—For the purposes of this clause a person shall not be deemed to hold an officeof profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

A qualified to be chosen as a member of Parliament, a person must be a citizen of India, he must also subscribe to an oath specified under the said Article read with the third Schedule to the Constitution and be aged not less than 25 years in the case of the House of the People and 35 years in the case of the B Council of States. The Article also authorises that the Parliament may by law prescribe such other **qualifications**. Whereas Article 102 declares certain categories of person to be disqualified either for being chosen or for continuing after being chosen as a member of either House of Parliament. They C are (1) persons holding any office of profit either under the Government of India or the Government of any State; (2) persons of unsound mind and stand so declared by a competent court; (3) any undischarged insolvents; (4) persons who are not citizens of India or those who acquired citizenship D of any foreign State etc. Article 102 (e) authorises the Parliament to make laws prescribing further **disqualifications** for the membership of the Parliament. However, insofar as the first class of persons mentioned above (holders of offices of profit) Article 102(1)(a) authorises the Parliament to make a declaration by law the holding of such declared offices of profit E would not be a disqualification for the membership of the Parliament. The explanation to Article 102 makes a categoric declaration that a person who is a Minister either of the Union or of a State shall not be deemed to be holding an office of profit contemplated under Clause (1)(a).

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39. The Representation of the People Act, 1951, (hereinafter referred to as 'the R.P. Act, 1951') is a law made by the Parliament referable to Articles 84(c) and 102(e). In the context of the Parliament, Sections 3 and 4 prescribe that a G person seeking an election to the Parliament shall necessarily be an elector for a parliamentary constituency in India. In other words, various qualifications prescribed for registration as an elector in the electoral roll contemplated under Section 15 of the Representation of the People Act, 1950 must also be H satisfied for a person to become eligible to contest for the

Parliament. Sections 16 to 19 prescribe various qualifications and disqualifications in the context of registration of a person in an electoral roll. They pertain to the minimum age, qualifications, residence etc. Chapter III and IV of the R.P. Act, 1951 prescribe various disqualifications under Sections 8, 9, 9A, 11A thereof for becoming a member of any of the legislative bodies under the Constitution.

40. On an examination of the above provisions, it appears to me that eligibility and disqualification to become a member of parliament are two distinct things. In my view, any person who is eligible to become and not disqualified for becoming a member of Parliament would not automatically be eligible to contest the election to the office of the President of India. There is a difference in the eligibility criteria applicable to the election of the membership of Parliament and the election to the office of the President of India.

41. While Article 58 declares that a person who is qualified to be elected as a member of a House of the People shall be eligible for the election of the President, it stipulates a higher age qualification of 35 years for a person seeking election to the President of India while it is sufficient under Article 84 (b) for a person seeking election to the House of the People to be not less than 25 years only. Another distinction is that: Article 102 (1)(a) declares that persons holding an office of profit either under the Government of India or of the Government of any State (unless they are protected by the law made by the Parliament) are disqualified for being chosen as members of the Parliament whereas Article 58 sub-clause (2) disqualifies persons holding office of profit not only specified under Article 102(a) but also under any local or any other authority which is subject to the control of either of the above mentioned two governments. In other words, the holding of an office of profit under any local or other authority is not a disqualification for membership of Parliament while it is a disqualification for the election to the office of the President of India.

A 42. One more distinction is that while an office of profit, the holding of which renders a person disqualified for being chosen as a member of Parliament, can be declared by the Parliament not to be an office of profit holding of which would disqualify the holder from becoming a member of Parliament. B Such an authority is not expressly conferred on the Parliament in the context of the candidates at an election to the office of the President of India.

43. Therefore, when Article 58(1)(c) stipulates that no person shall be eligible for election as the President of India C unless he is qualified to be a member of the House of the People, the protective declaration made by the Parliament referable to Article 102(1)(a) regarding certain offices of profit does not render holders of such offices eligible for contesting the Presidential election. Particularly, holders of office of profit D under any "local or other authority" are positively disqualified for being elected as President of India. The said disqualification cannot be removed by the Parliament as Article 102(1)(a) does not authorise the Parliament to make any such declaration in the context of the holders of an office of profit under any local E or other authority subject to the control of either the Government of India or the State Government, obviously because the holding of such an office is not declared to be a disqualification under the Constitution for the membership of the Parliament. I accept the submission of Mr. Jethmalani. In my opinion, the Constitution F prescribes more stringent qualifications for election to the office of President of India and the disqualification stipulated under Article 58(2) is incapable of being exempted by a law made by the Parliament.

G 44. My opinion derives support from a Constitution Bench decision of this Court in *Baburao Patel and others v. Dr. Zakir Hussain and others* AIR 1968 SC 904 wherein the interface between Articles 58 and 84 of the Constitution was examined. Challenging the election of Dr. Zakir Hussain as President of

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India, an election petition came to be filed in this Court wherein the Court noted thus: A

> "9. The contention of the petitioners is that because of .... cl. (a) of Art. 84 ..... it became necessary to take oath for a person standing for election to either House of Parliament in the form prescribed in the Third Schedule, a person standing for election as President had also to take a similar oath because Art. 58(1)(c) requires that a person to be eligible for election as President must be qualified for election as a member of the House of the People. ..... urged that no one is qualified ..... for election as a member of the House of the People unless he makes and subscribes an oath in the form set out for the purpose in the Third Schedule, and therefore this provision applied to a person standing for election as President, for without such oath he would not be qualified to stand for election to the House of the People." B C D

This Court in para 10 compared the language of Articles 58 and 84 of the Constitution and held as follows:-

> " .... and reading them together it would follow that a person standing for election as President would require such qualifications as may be prescribed in that behalf by or under any law made by Parliament. Further as cl. (c) of Art. 58(1) lays down that a person standing for presidential election has to be qualified for membership of the House of the People, Article 102 (which lays down disqualifications for members of Parliament) would also be attracted except in so far as there is a special provision contained in Article 58(2). Thus cl. (c) of Article 58(1) would bring in such qualifications for members of the House of the People as may be prescribed by law by Parliament, as required by Article 84(c). It will by its own force bring in Article 102 of the Constitution, for that Article lays down certain disqualifications which a presidential E F G H

A candidate must not have for he has to be eligible for election as a member of the House of the People. But it is clear to us that, what is provided in clauses (a) and (b) of Article 58(1) must be taken from there and we need not travel to cls. (a) and (b) of Article 84 in the matter of
B citizenship and of age of the presidential candidate. **Clauses (a) and (b) of Article 58(1) having made a specific provision in that behalf in our opinion exclude cls. (a) and (b) of Art. 84.** This exclusion was there before the Amendment Act."

C This Court refused to read the requirement of subscribing to the oath according to the form set out in Third Schedule of the Constitution for contesting the presidential election.

45. For reaching such a conclusion this Court took note
D of the fact that prior to the 16th Constitutional amendment, the requirement of subscription to such an oath did not exist in the context of either the election to the Parliament or the office of the President. It was introduced by the 16th amendment as a necessary requirement for a person to be qualified to contest
E the election to the Parliament. The omission to make such an amendment that refers to the persons contesting election to the office of the President is a clear indication that the Constitution ever intended such a requirement to be applied for the presidential election also. In paragraph 12 this Court held thus:

F "Now if the intention of Parliament was that an oath similar in form to the oath to be taken by persons standing for election to Parliament had to be taken by persons standing for election to the office of the President there is no reason why a similar amendment was not made in Article 58(1)(a).
G Further if the intention of Parliament was that a presidential candidate should also take an oath before standing for election, the form of oath should also have been prescribed either in the Third Schedule or by amendment of Article 60, which provides for oath by a person elected as President
H before he takes his office. But we find that no change was

made either in Article 58(1)(a) or in Article 60 or in the Third Schedule prescribing the form of oath to be taken by the presidential candidate before he could stand for election. This to our mind is the clearest indication that Parliament did not intend, when making the Amendment Act, that an oath similar to the oath taken by a candidate standing for election to Parliament had to be taken by a candidate standing for election to the office of the President. So there is no reason to import the provision of Article 84(a) as it stood after the Amendment Act into Article 58(1)(a), which stood unamended. That is one reason why we are of opinion that so far as the election to the office of the President is concerned, the candidate standing for the same has not to take any oath before becoming eligible for election as President."

46. Therefore, I have no hesitation to reach to the conclusion that the declaration made by the Parliament in the Disqualification Act, 1959 would not provide immunity for a candidate seeking election to the office of the President of India if such a candidate happens to hold an office of profit contemplated under Article 58(2).

47. Assuming for the sake of argument that the declaration of law made by Parliament [contemplated and made under Article 102(a)] can obliterate the disqualification even with respect to a candidate at the presidential election, Article 102(a) authorises the parliament to make such a declaration with respect to only the offices of profit either under the Government of India or Government of any State but not with respect to the offices of profit under "local or other authorities". Therefore, the legal nature of Indian Statistical Institute and of the office of its Chairman is required to be examined.

48. Whether the office of the Chairman of the abovementioned Institute can be called an office of profit either under the Government of India or the State Government or local or other authority attracting the prohibition under Article 58(2)

A and rendering the respondent ineligible to contest the election in question?

49. This Court in *B.S. Minhas v. Indian Statistical Institute and others* (1983) 4 SCC 582 held that the Indian Statistical Institute is an authority falling under Article 12 of the Constitution of India, therefore, 'State' for the purpose of Part-III of the Constitution. Under the scheme of Indian Statistical Institute Act, the Government of India has deep and pervasive control on the administration of the Institute. It also provides financial support to the Institute.

50. The said Institute is a body registered under the Societies Registration Act, 1860 whose activities to some extent are regulated by the enactment of the Parliament titled "The Indian Statistical Institute Act, 1959 (No.57 of 1959), hereinafter referred to as the Institute Act. The Preamble to the Act declares as follows:

> "An Act to declare the institution known as the Indian Statistical Institute having at present its registered office in Calcutta to **be an institution of national importance** and to provide for certain matters connected therewith."

51. It must be remembered that Entry 64 of List-I of the 7th Schedule read with Article 246 (1) authorises the Parliament to make laws with respect to:

> "Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

52. Section 4 of the Institute Act authorises the Institute to grant degrees and diplomas for various disciplines specified therein. Section 5 authorises the Government to pay such sums as appropriated by the Parliament in each financial year to the Institute. The Act (Section 6) also obligates the Institute to get its accounts audited by such auditors as may be appointed by the Government of India in consultation with the Auditor-General

of India and the Institute. Section 7[18] prohibits Institute from taking certain actions without the previous approval of the Government of India. The full details of the Act are not necessary for the present case.

53. But from the above it can be safely concluded that the Institute is an authority subject to the control of the Government of India within the meaning of Article 58(2).

54. As it can be seen from the Scheme of the Institute Act and the preamble that the administration of the society is still to be run in accordance with its bye-laws and regulations of the Society except insofar as those activities which are specifically regulated by the Act (57 of 1959). The office of the Chairman of the Institute is not an office created by any statute but is an office created by the bye-laws of the Society. The Chairman is required to be elected by a Council created under the regulations of the Society. Therefore, it is certainly not an office (profit or no profit) either under the Central or State Government.

55. The learned counsel for the petitioner very vehemently argued that the very fact that the Parliament thought it fit to specifically include the office of the Chairman of the Indian

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18. Section 7. Prior Approval of Central Government necessary for certain action by the Institute.—Notwithstanding anything contained in the Societies Registration Act, 1860, or in the memorandum or rules and regulatins, the Institute shall not except with previous approval of the Central Government,

(a) alter, extend or abridge any of the purposes for which it has been established or for which it is being used immediately before the commencement of this Act, or amalgamate itself either wholly or partially with any other Institution or society; or

(b) alter or amend in any manner the memorandum or rules and regulations; or

(c) sell or otherwise dispose of any property acquired by the Institute with money specifically provided for such acquisition by the Central Government:

Provided that no such approval shall be necessary in the case of any such movable property or class of movable property as may be specified by the Central Government in this behalf by general or special order; or

(d) be dissolved.

A Statistical Institute in the table annexed to the Disqualification Act, 1959 would *ipso facto* imply that the office in question is an office of profit. He relied upon *M.V. Rajashekaran and others v. Vatal Nagaraj and others* (2002) 2 SCC 704 at page 711 wherein this Court observed thus:

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> "5. .... The fact that the office of the chairman or a member of a committee is brought within the purview of this **Act implies that** the office **concerned must necessarily be regarded as an office of profit**, but for the exclusion under the clause by the legislature, the holder of such office could
> C not have been eligible for being chosen as a Member of the Legislature. The object of this provision is to grant exemption to holders of office of certain description and the provision in substance is that they will enjoy the exemption, even though otherwise they might be regarded
> D as holders of offices of profit..."

56. It is argued by Shri Harish Salve appearing for the respondent that while interpreting the provisions of the Constitution, the understanding of the legislature regarding the
E fact whether a particular office is an office of profit need not necessarily be the correct understanding and this court is required to independently examine this question.

57. It is argued by Shri Salve that the office of the Chairman
F of the Indian Statistical Institute cannot be said to be either an office of profit either under the Government of India or the Government of a State, which would render the holder of such an office disqualified for becoming either a member of Parliament or the President of India.

G 58. The learned Attorney General argued that the Disqualification Act, 1959 is not a defining enactment. It nowhere defines what is an office of profit but an enactment made *ex abundanti cautela* to avoid any possible challenge to election of some of the members of the Parliament on the
H ground that they are holders of offices of profit and, therefore,

this Court is still obliged to examine whether a particular office is an office of profit rendering the holder thereof ineligible to become a member of Parliament or the President of India.

59. This Court In *M.V. Rajashekaran (supra)* dealt with the question of office of profit under the State of Karnataka in the context of the election of one Nagaraj to the legislative council of Karnataka. Nagaraj was appointed a One-Man Commission by the State of Karnataka to study certain problems. In that capacity he was entitled to certain pay and reimbursement of day to day expenditure. Subsequently, while continuing in the office of One-Man Commission, Nagaraj filed his nomination for election to the Legislative Council of the State of Karnataka. On an objection raised, Nagaraj was disqualified to contest the election on the ground of his having had held an office of profit, the nomination of Nagaraj was rejected. Nagaraj successfully questioned the election of Rajashekaran and others on the ground that his nomination was illegally rejected. Rajashekaran appealed to this Court. The issue revolved around interpretation of Article 191, a provision corresponding to Article 102 in the context of the elections to the legislative assembly or legislative council of a State. The enactment called Karnataka Legislature (Prevention of Disqualification) Act, 1956 was made by the State of Karnataka to protect the holders of some of the offices from incurring disqualification on the ground that those offices were offices of profit contemplated under Article 191.

60. This Court opined that Nagaraj was holding an office of profit contemplated under Article 191 and therefore disqualified from contesting the election because Nagaraj was appointed a One-Man Commission by the Government of Karnataka and he was obliged to study the problem entrusted to him and submit a report to the Government; that the Government of Karnataka conferred the status of a Minister of the Cabinet rank on the office and made budgetary provision to defray the expenses of pay and day-to-day expenditure of Nagaraj. This Court also recorded the conclusion that:

A "remuneration that Nagaraj was getting cannot be held to be "compensatory allowance" within the ambit of section 2(b) of the Act and, therefore, he was holder of an office of profit."

B 61. During the process of examination of various provisions of the Karnataka Legislature (Prevention of Disqualification) Act, 1956, this Court made the observation relied upon by Shri Jethmalani. (para 55 supra) In my opinion, this Court in *Rajashekaran's case* never specifically examined the issue whether mere inclusion of office in an enactment C preventing the disqualification falling under Article 191 or Article 102 (as the case may be) would imply in law that the office specified in such an Act is necessarily an office of profit. Therefore, the above extracted statement in my view does not constitute the *ratio decidendi* of the said judgment.

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62. Even otherwise the inclusion of various offices in the Schedule of the Disqualification Act only reflects the understanding of the Parliament that those offices are offices of profit contemplated under Article 102(1)(a). But such an E understanding is neither conclusive or binding on this Court while interpreting the Constitution. As argued by the learned Attorney General, such inclusion appears to be an exercise – '*ex majure cautela*'[19]. It is the settled position of law that interpretation of the Constitution and the laws is "emphatically

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19. Also see the short counter affidavit filed on behalf of the respondent, at page 11 para 33, wherein ir is stated:

"...Further the amendment to the said Act in the year 2006 was carried out in view of the judgment of this Hon'ble Court in the matter of Jaya Bachan reported in (2006) 5 SCC 266. The amendment to the Act was made ex G majore cautela- as is obvious from the Statement of Objects and Reasons to the amendment itself. The assumption that an express exclsion under that Act is conclusive of whether the office constitutes an Office of Profit, is patently untenable- a number of amendments were made ex majore cautela so as avoid any controversy in relation to the holders of such office. The mere fact that an office is excluded under that Act does not establish that for all other statutes and Art. 58, the Officer is necessarily an office of profit." H

the province and duty" of the judiciary. Therefore, I reject the submission of Mr. Jethmalani.

63. Therefore, the meaning of the expressions "office of profit" and "office of profit under the State Government/Central Government" are required to be examined.

64. In *Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa* (1971) 3 SCC 870 this Court dealt with the question – what is an office of profit? and held as follows:

> "14. ... office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit...."
>
> reiterating the principle laid down in *Ravanna Subanna v. G.S. Kaggerappa*, AIR 1954 SC 653.

65. In *Shibu Soren v. Dayanand Sahay and others* (2001) 7 SCC 425 both the questions were considered[20].

66. The question in the said case was whether the Chairman of the Interim Jharkhand Area Autonomous Council

20. Para 26. The expression "office of profit" has not been defined either in the Constitution or in the Representation of the People Act. In common parlance the expression "profit" connotes an idea of some pecuniary gain. If there is really sone gain, its label—"honorarium"—"remuneration"—"salary" is not material—it is the substance and not the form which matters and even the quantum or amount or "pecuniary gain" is not relevant—what needs to be found our is whether the amount of money receivable by the person concerned in connection with the office he holds, gives to him some "pecuniary gain", other than as "compensation" to defray his our-of-pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him.

A set up under section 20 of the Jharkhand Area Autonomous Council Act, 1994 was holding an office of profit under the State Government. This Court had to examine both the questions – whether the office in question was an **office of profit** at all and secondly whether it was an **office of profit** B **under the State Government?** This Court confirmed the opinion of the High Court that the Chairman of the Interim Jharkhand Area Autonomous Council was not only an office of profit but an office of profit under the State Government. The Court noticed that the expression "office of profit" is not defined C under law and, therefore, indicated the considerations relevant for determining the question whether a particular office is an office of profit. The Court reached to such a conclusion on consideration of various facts that the various amounts paid to Shibu Soren could not be said to be in the nature of D "compensatory allowance" and was in the nature of remuneration or salary inherently implying an element of "profit" and of giving "pecuniary gain" to Shibu Soren and the office of the Chairman of Interim Council was temporary in nature with limited lifespan and the members of the Interim Council were E appointed by the State to hold their offices at the pleasure of the State.

67. The test as pointed out by the Court was whether the office gives the incumbent some pecuniary gain other than as compensation to defray his out-of-pocket expenses which may F have the possibility to bring that person under the influence of

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Para 27. With a view to determine the office concerned is an "office of profit", the court must, howecer, take a realistic view. Taking a broad or general view, ignoring essectial details is not desirable not is it permissible to take G a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the objection of the enactment. Courts, therefore, while construing a statute avoid strict construction by construing the *entire* Act. (See with advantage *Ashok Kumar Bhattacharya* v. *Ajoy Biswas* (1985) 1 SCC 151, *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam* (1989) 3 SCC 709 and *CIT v. J.H.* Gotla (1985) H 4 SCC 343.

the executive. In coming to such conclusion this Court examined a number of earlier judgments on the issue.

68. Both the abovementioned cases and the earlier authorities cited therein examined the question as to what is an office of profit and what are the tests relevant to determine whether such an office is held under the Government but the question what is an office of profit under a local or other authority subject to the control of either the Central or State Government contemplated under Article 58(2) never fell for the consideration of this Court in those cases.

69. That leads me to the next question whether the office of the Chairman of the Indian Statistical Institute, Calcutta, which I already concluded to be an authority for the purpose of Article 58(2), is an office of profit as explained by this Court in various abovementioned judgments. I proceed on the basis that tests relevant for determining whether an office of profit contemplated under Article 58(2) are the same as the test laid down by this Court in the context of Article 102(1)(a). The answer to the said question depends upon the terms and conditions subject to which the respondent held that office. Whether the amounts if any paid to him in that capacity are compensatory in nature or amounts capable of conferring pecuniary gain are questions of fact which ought in my view to be decided only after ascertaining all the relevant facts which

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21. Without prejudice to the aforesaid, it is submitted that in any event the position of Chariman of ISI is not an Office of Profit in so far as the office does not enjoy any benefits and remuneration let alone any salary, emolument, perks etc. of any kind. It is submitted that ISI isa society registered under the Societies Registration Act. It is also governed by the ISI Act, 1954. The executive powers of the institute lie with the Director of ISI. Both the President and the Chairman of the Institute is, in protocol, ranked higher than the Director, ISI but both the President and the Chariman below him are neither entitled to nor receive any emoluments, perquisites or benefits from the Institute. As such, it is submitted that the office of Chariman of ISI is not an Office of Profit. The Chariman has no executive role. As such, the disqualification under Article 58 of the Constitution does not apply to the said office.

A are obviously in the exclusive knowledge either of the respondent or the abovementioned institute. I must also state that the respondent in his short counter made a statement[21] that he did not derive pecuniary gain by holding the abovementioned office. After such an appropriate enquiry into
B such conflicting statements of facts if it is to be concluded that the said office is an office of profit inevitably the question whether the respondent had tendered his resignation by the crucial date is required to be ascertained once again an enquiry into a question of fact.

C 70. Whether a decision on such questions of facts can be rendered on the basis of the affidavit of the respondent, the veracity of which is not subjected to any further scrutiny? The petitioner if permitted to inspect or seek discovery of records of the Indian Statistical Institute might or might not secure
D information to demonstrate truth or otherwise of the respondent's affidavit.

71. The issue is not whether the petitioner would eventually be able to establish his case or not. The issue is whether the
E petitioner is entitled to a rational procedure of law to establish his case? The stake in the case for the parties is enormous, nothing but the Presidency of this country. The Constitution creates only one forum for the adjudication of such disputes. All other avenues are closed. By holding that the petition does
F not deserve a regular hearing contemplated under Rule 20, in my opinion, would not be consistent with the requirement that justice must not only be done but it must also appear to have been done.

72. Adjudication of rights of the parties under the Anglo-
G Saxon jurisprudence, which we follow, requires the establishment of relevant facts which constitute the cause of action necessary for the party claiming a relief from the Court. Such facts are to be established by adducing evidence either oral or documentary. Recognizing the possibility (that in a given

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case) the party making an assertion of fact may not have within its control all the evidence necessary for proving such a fact, courts of civil judicature are empowered to order the discovery, inspection, production etc. of documents and also summon the persons in whose custody such relevant documents are available. (*See*: Section 30 read with Order XI etc. of the Code of Civil Procedure). Such empowerment is a part of a rational procedure designed to serve the ends of justice.

73. If the adjudication of the election petition requires securing of information which is exclusively available with the respondent and the Indian Statistical Institute and which may be relevant can the petitioner be told that he would not be able to secure such information on the ground that letter of the law does not provide for such opportunity? We have already come to the conclusion that the CPC does not apply to the election petition. The rules framed by this Court under Article 145 are silent in this regard. But the very fact that this Court is authorised to frame rules regulating the procedure applicable to trial of the election petitions implies that this court has powers to pass appropriate orders to secure such information. To hold to the contrary would be to tell a litigant who might as well have been the first citizen of this country (given a more favourable political regime) that the law of the Sovereign Democratic Republic of India does not afford even that much of a rational procedure which was made available by the foreign rulers to the ordinary citizens of this country - which is still available to an ordinary litigant of this country.

74. Similarly, accepting the statement of the respondent that he did not derive any pecuniary benefit by virtue of his having had been Chairman of the Indian Statistical Institute without permitting the petitioner to test the correctness of that statement by cross-examining the respondent or confronting the respondent with such documents which the petitioner might discover if such a discovery is permitted would be a denial of equality of law to the petitioner guaranteed under Article 14 of

A the Constitution of India. Such facility is afforded to every litigant pursuing litigation in a court of civil judicature in this country. Therefore, I do not subscribe to the view that the election petition does not deserve a regular hearing.

B 75. At stake is not the Presidency of India but the constitutional declaration of equality and the credibility of the judicial process.

76. In view of the majority opinion that the election petition does not deserve a regular hearing I do not propose to examine C the question whether the second office held by the respondent as Leader of the Lok Sabha is an office of profit attracting the disqualification under Article 58(2).

Election Petition dismissed.