

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi –110 001

No. 76/2007/JS-II

Dated: 29th March, 2007

To

The Chief Electoral Officers
of all States and Union Territories.

Subject:-Section 77 of the Representation of the People Act, 1951 - Election Expenditure of candidates - regarding.

Sir/Madam

Section 77(1) of the Representation of the People Act, 1951, provides that every candidate at an election shall keep it the correct account of all expenditure incurred or authorized by the candidate/his election agents in connection with the election of the candidate. The expenditure incurred on travel by leaders of a political party whose names have been communicated to the Commission and the Chief Electoral Officer as required under Explanation 2 to Section 77(1) is not deemed to be expenditure incurred or authorized by a candidate of that political party for the purposes of the said Section.

2. Some CEOs and Observers have sought clarifications about the effect of expenditure incurred by political parties on advertisements on the election expenditure accounts of the candidates.

3. In this context, attention is invited to the Commission's letter No. 76/2004/J.S.II, dated 10th April, 2004 (copy enclosed) on the issue of expenditure incurred by political parties in connection with election rallies, etc.

4. In the judgment of the Hon'ble Supreme Court, in *Kanwar Lal Gupta vs. Amar Nath Chawla* (A.I.R. 1975 SC 308), referred to in the abovementioned letter dated 10.4.04, the Hon'ble Supreme Court has held that the expenditure incurred by the political party, as distinguished from expenditure on general party propaganda, which can be identified with the election of a given candidate would be liable to be added to the expenditure of that candidate as being impliedly authorized by the candidate. The Apex Court has further held in that matter that a *party candidate does not stand apart from his*

political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate.

5. The expenditure incurred by a political party on advertisements, in connection with any election could be categorized into the following:

(i) Expenditure on general party propaganda seeking support for the party and its candidates in general, but, without any reference to any particular candidate or any particular class/group of candidates;

(ii) Expenditure incurred by the party, in advertisements etc. directly seeking support and/or vote for any particular candidate or group of candidates;

(iii) Expenditure incurred by the party which can be related to the expenditure for promoting the prospects of any particular candidate or group of candidates.

6. Applying the ratio of the judgment in *Kanwar Lal Gupta's case*, it is clarified that in the case of any advertisement by political parties, whether in print or electronic or any other media, falling in category (i) above, which is not relatable to the election of any particular candidate or a given group of candidates, the expenditure may be treated as expenditure of the political party on general party propaganda. In the cases of expenditure falling in categories (ii) and (iii) above, i.e. cases where the expenditure is relatable to the election of a particular candidate or a group of candidates, the expenditure shall be treated as expenditure authorized by the candidates concerned and such expenditure shall be accounted for in the election expenses accounts of the candidates concerned. In those cases where the expenditure is incurred by the party for the benefit of a given group of candidates, the expenditure is to be apportioned equally among the candidates.

7. The contents of this letter may be brought to the notice of all District Election Officers, Returning Officers, Election Observers, and other election authorities. This may also be brought to the notice of all the political parties in the State, including the State units of the recognized political parties.

8. Please acknowledge receipt of this letter.

Yours faithfully,

(K. F. WILFRED)
SECRETARY