

Dr. V.C. Misra Vs. Dr. Raj Kumar Sanjay Singh and ors.

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Court : Allahabad

Decided On : May-24-1985

Reported in : AIR1987All141

Judge : S. Saghir Ahmad, J.

Acts : [Representation of the people Act, 1951](#) - Sections 81(3) and 86(1)

Appeal No. : Election Petn. No. 10 of 1985

Appellant : Dr. V.C. Misra

Respondent : Dr. Raj Kumar Sanjay Singh and ors.

Advocate for Pet/Ap. : M.R. Misra, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S. Saghir Ahmad, J.

1. This is an election petition under the Representation of the People Act by which the petitioner has questioned the election of respondent 1 to the U.P. Assembly from 121-Amethi Assembly Constituency.

2. This petition was presented by the petitioner personally on 16-4-85 before the Additional Registrar of this Court. Before filing it before the Additional Registrar, the petition was presented before the Section Officer (Stamps), who made the following report (excluding the report with regard to the limitation and Court-fee).

'This is an election petition challenging the election of Dr. Sanjay Singh as M.L.A. from 121-Amethi Constituency.

Provisions of Section 82 of the Act in so far as array of parties is concerned have been complied with.

But provisions of Section 81(3) about the filing of copies in as many number as there are respondents (11 in number) have not been complied with as only 7 copies that too without annexures and schedules have been filed while there are 11 respondents.

Provisions of Section 83(2) have not been complied with inasmuch as schedules attached with the petition have not been verified as required under the provisions of Section 83(2) of the Act.

A list of document too has been filed. There are allegations of corrupt practices also which are supported by a separate affidavit.

Security money of Rs. 2,000/- has been deposited vide C.D./39 dated 15-4-85 as required under Section 117 of the Act.

The petition including affidavit, schedules, list of documents and afd is in 146 leaves.

Sd/- illegible 15.4.85 SO (S)'

3. Another report was made by the Section Officer (Stamps) on 16-4-85 which is to the following effect : --

'Revised report

11 duplicate copies along with schedules, list of documents and affidavit duly verified are alleged to be in compliance with provisions of Sections 81(3) and 82(2) of the Act. The defect pointed out earlier thus stands removed.

Sd/- Illegible

16-4-85 S.O.'.

4. I have myself scrutinised the election petition and its copies in the presence of the learned counsel for the petitioner.

5. The election petition in the instant case consists of the main petition, the affidavit and the annexures. Every para of the election petition has been verified before the oath commissioner so that every para is part of the affidavit. These paras contain reference to various annexures which have also been verified before the oath commissioner and contain his (oath ' commissioner's) seal and signature. There is an ordinary verification clause at the foot of the election petition and because every para of the election petition is part of the affidavit, there is a separate verification of these paras in para 2 of the affidavit.

6-7. The affidavit consists of three paras which (translated into English) are quoted below : --

'1. That the deponent is petitioner in the annexed election petition.

2. That the facts stated in paras 1 to 6, 8 to 16, 29 to 37, 42, 43, 44, 46 to 52 of the annexed election petition are true to my knowledge while the facts stated in 27, 28, 30, 39, 40, 42, 45 and 47 are believed by me to be true. The facts stated in para 7 are believed to be true on the information given by Sri Ram Baran.

3. That annexures 1 to 13. 15, 16, 17, 18, 19, 20, 21, 22, 25, 27, 28 annexed to the election petition are the certified copies of the original documents while annexures 14, 23, 24, 26 are the copies of the newspapers which are generally available to the public on payment of price and the deponent had himself procured them'.

8. The three paras of the affidavit have been verified on personal knowledge by the petitioner.

9. The resultant document is the 'election petition', i.e., the election petition consists of the main petition, the annexures and the affidavit. The three documents, namely, the petition, the annexures and the affidavit have been integrated to constitute one document.

10. The election petition proper also contains certain facts added by hand in various paras and it is to be examined whether these have been added in all the copies of the petition, and whether the copies in all other respects are complete copies and contain all the annexures. Then it is to be seen whether all the copies have been attested by the petitioner under his own signature to be true copies of the original.

11. This scrutiny is to be made to find out whether the mandatory provisions of Section 81 of the Act have been complied with or not, and, if not, should not the election petition be dismissed in limine at this stage without requiring the respondents to put in appearance and raise preliminary objections with regard to the maintainability of the petition.

12. In *Jagan Nath v. Jaswant Singh*, AIR 1954 SC 210, it has been laid down that an election contest is not an action at law or a suit in enquiry but is a purely statutory proceedings unknown to the Common Law and that the Court possesses no common law power.

13. In *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency*, AIR 1952 SC 64, it has been held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. This view was reiterated in *Charan Lal Sahu v. Nandkishore Bhatt*, AIR 1973 SC 2464 in which it was observed as under : --

'The right to challenge an election is a right provided by Article 329(b) of the Constitution, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State 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. The right conferred being a statutory right, the terms of that statute and to be complied with. There is no question of any common law right to challenge an election.,'

14. The question has therefore, to be decided only in the light of the relevant statutory provisions.

15. Part VI of the Act is headed as 'Disputes Regarding Elections.' Chapter I of this part which is headed as 'Interpretation' comprises of only one Section e.g. Section 79 which contains definitions of various words. Chapter II deals with the presentation of election petition. Section 80 lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of 'this part' which obviously means Part VI of the Act.

16. Section 81 is the relevant section which may be quoted below : --

'81. Presentation of petitions--(1) An election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the latter of those two dates.

Explanation -- In this sub-section, 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he had voted at such election or not.

(2)

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.'

Section 81(3) quoted above consists of two parts : --

(i) Every election petition shall be accompanied by as many copies as there are respondents mentioned in the petition, and

(ii) every copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

The consequence of non-compliance with the above provisions is indicated in Section 86(1) which may also be quoted below : --

'86 Trial of Election Petitions

(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.'

17. The language employed in the provisions contained in Section 81(3) and the consequence of non-compliance with that provision make it clear that the provisions are mandatory. Even then a question was raised that the requirement to file as many copies of the election petition as there were respondents was only directory. But this question was not decided by the Supreme Court either in *Ch. Subba Rao v. Member, Election Tribunal, Hyderabad*, AIR 1964 SC 1027 or in the earlier decisions in *Kamaraj Nadar v. Kunju Thevar*, AIR 1958 SC 687 and *Murarka v. Roop Singh*, AIR 1964 SC 1545. The question was also not answered in *Dr. Anup Singh v. Abdul Ghani*, AIR 1965 SC 815 in which the theory of substantial compliance was introduced which had already been relied upon in *Subba Rao's case* (supra) as also in *Dr. Anoop Singh's case* (supra).

18. The question was again raised in *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar*, AIR 1971 SC 342 but it was not considered necessary to decide it as the petition was dismissed on the ground that the copy supplied to the respondent was not the same as the original and that the defence of the respondent was prejudiced.

19. However, in *Satya Narain v. DhujaRam*, AIR 1974 SC 1185 it was laid down asunder :-- ,

'We are, therefore, clearly of opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under Section 86 of the

Act.'

20. The second part of Section 81(3) has also since been held to be mandatory. In *Sharif-Ud-Din v. Abdul Ghani Lone*, AIR 1980 SC 303, it has been observed by the Supreme Court as under : --

'It is true that Section 81(3) of the Act is purely procedural in character and that ordinarily procedural law should not be given that primacy by Courts as would defeat the ends of justice. But if a law even though it may be procedural in character insists that an act must be done in a particular manner and further provides that certain consequence should follow if the act is not done in that manner, courts have no option but to enforce the law as it is.'

21. Three other Supreme Court decisions, namely, *M. Karunanidhi v. H. V. Handa*, AIR 1983 SC 558; *Mithilesh Kumar v. Baidyanath*, AIR 1984 SC 305; *Rajendra Singh v. Smt. Usha Rani*, AIR 1984 SC 956 are judgments of equally effective judicial impact as the Supreme Court did not, in those cases, tolerate any departure from the mandatory requirements of law.

22. The provisions of Section 81(3) being mandatory, non-compliance thereof has to result in the dismissal of the election petition as contemplated by Section 86(1).

23. An election petitioner has, therefore, to comply with both the parts of Section 81(3), i.e., he has not only to file as many copies of the election petition as there are respondents, he has also to attest each copy under his own signature to be a true copy of the petition.

24. In three recent decisions of the Supreme Court, namely, *M. Karunanidhi v. H. V. Handa*, AIR 1983 SC 558, *Mithilesh Kumar Pandey v. Baidyanath Yadav*, AIR 1984 SC 305 and *Rajendra Singh v. Smt. Usha Rani*, AIR 1984 SC 956 the election petitions were dismissed for non-compliance of Section 81(3) as the

petitioner had filed incorrect copies with the election petition. In Rajendra Singh's case (supra) their Lordships of the Supreme Court observed that a perusal of Section 81(3) and Section 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if the election petitioner disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under Section 86.

25. If the petitioner does not file the required number of copies with the election petition or if he files incorrect or incomplete copies or copies which are not attested to be true copies under his signature, then the election petition has to be dismissed to give effect to the mandatory consequence indicated in Section 86(1) for non-compliance of an equally mandatory provision contained in Section 81(3). The power to dismiss a petition in limine can be exercised by the Court even at the very initial stage without requiring the respondent to answer a totally defective petition which is destined to be dismissed.

26. Their Lordships of the Supreme Court have already laid down in Ch. Subbarao v. Member, Election Tribunal, AIR 1964 SC 1027 as under : --

'When Section 81(3) requires an election petition to be accompanied by the requisite number of copies, it becomes a requirement for the presentation of the election petition to the Commissioner, and, therefore, a condition precedent for the proper presentation of the election petition. If there is a total and complete non-compliance with the provisions of Section 81(3) the election petition might not be an 'election petition' presented in accordance with the provisions of this part.....

If there had been such a non-compliance with the requirement of Sub-section (3), not merely the Election Commission under Section 85 but the Election Tribunal under Section 90(3) would prima facie not merely be justified but would be required to dismiss the election petition.' ..

27. There is no law which compels a Court to issue notice to the respondent even if non-compliance with the provisions of Section 81(3) is glaringly evident and to postpone the dismissal of the petition till preliminary objections are raised by the respondent in respect of defects which have already been noticed by the Court.

After having filed a defective petition, it is not open, in my opinion, to a petitioner to claim immunity from dismissal and plead that notices may first be issued to the respondents. It is, in my opinion, open to a Court to scrutinise the petition for the purpose of finding out whether the mandatory requirements contained in the Act have been complied with, and, in the case of non-compliance, to pass appropriate orders under Section 86(1) even at the earliest or, should I say, nascent stage of the petition.

28. It is in the light of above Supreme Court decisions that the present petition is to be examined.

29. Let me first consider the main petition.

30. The main petition is a typed document but it appears that before (it was) filed in court a number of additions were made in various paras by hand. They may be enumerated below and their effect may also be considered simultaneously with the consideration of the question whether the copies filed with the petition are the true copies of the original. These copies have been dealt with in the order in which they have been tacked and have been flagged by me as first, 2nd, 3rd copies and so on.

31. It appears that the copies of the petition have been typed in two sets. The first set consists of 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies which were typed with the original petition. The other set consists of 6th, 7th, 8th and 11th copies which were typed after the additions had been made by hand in the original petition so that the additions made in the original have been typed in these copies but even then some glaring mistakes have been made (which will be presently noticed) with the result that even all of these copies cannot be said to be true copies of the original. The scrutiny of the petition reveals that: --

(i) While describing opposite party 8 in the array of parties the word [^]flag** has been added after the word [^]jkejkt**

This word has not been added in the 2nd, 3rd, 5th, 6th, 7th, 8th, and 11th copies so that the name of opposite party 8 remains Ram Raj and not Ram Raj Singh.

(ii) While describing opposite party 9 the words [^]izHkkjh vf/kdkjh** +illegibleftYgk lqYrkuiwj** have been added at the end.

These words have not been added in the 2nd and 5th copies so that the description of the opposite party 9 as compared to the original remains as under :

--

ORIGINALCOPY (2nd and 5 th)jfoUnzukFk f=ikBh , - Mh-,e- fodkl Fkkuk dksrokyh uxj tuin lqYrkuiqj izHkkjh vf/kdkjh (illegible)ftYgk lqYrkuiqj AjfoUnzukFk f=ikBh , - Mh-,e- fodkl Fkkuk dksrokyh uxj tuin lqYrkuiqj(iii) In the last line of para 2 of the original petition the word f=ikBh has been scored out and has been substituted by the word f=osnh so that the name becomes 'Sri R.K. Trivedi' instead of 'Sri R. K. Tripathi'.

This has not been done in the 2nd, 4th, 5th and 9th copies in which the name remains R. K. Tripathi. This mistake may not be very material as the name of the Election Commissioner, Sri R.K. Trivedi, is expected to be known to all the candidates but it does reflect upon the character of the copies which are not the true copies of the original.

(iv) In para 3 of the original election petition the words [^]tkS frfFk pquko vk;qDr us fu/kkZfjr dh Fkh** have been added by hand at the end of the para but these words have not been added in 2nd and 5th copies.

(v) In para 12 of the original petition the words [^]149 ist 10** have been added by hand in the last but one line but these words have not been added in the 5th copy,

(vi) In para 13 of the original petition there is a correction made by hand in the word [^]fu;qfDr**. This is only a correction of the spelling mistake. It may, therefore, be ignored.

(vii) In para 14 of the original petition the word [^]os** has been added by hand between the words [^]lgk; flag**and [^]uxjkt**, in the second line but this addition is also liable to be ignored as it is of insignificant character.

(viii) In para 15, of the original petition the words [^]foi{kh ua- 1 o mlds lkFkh;ks us** (English translation : Opposite party 1 and his colleagues

have been added in the original petition by hand in the opening sentence. But this has not been added in the second and 5th copies. In 6th, 7th, 8th and 11th copies instead of foi{kh ua- 1 (opposite party 1 [^]foi{kh ua- 7** (opposite party 7) has been typed.

It is, inter alia, stated in this para of the petition that on 27-2-85 opposite party 1 and his colleagues had threatened to set fire to the petitioner's office and to tear and to remove the banners and to commit the murder of Sant Kumar and Girja Shanker. It is further stated that they removed the banners and the petitioner went to lodge a report at P. S. Thammaur the same day. Since the words [^]foi{kh ua- 1 o mlds 4 lkFkh;ksa us** (opposite party 1 and his colleagues) have not been mentioned in 2nd and 5th copies, there remains no allegation against the opposite party 1 in those, copies. In 6th, 7th, 8th and 11th copies, the words [^]foi{kh ua- 7** have been mentioned with the result that allegations have been made against opposite party 7 and not against opposite party i.

(ix) In para 17 of the election petition apart from a correction made in line 2 thereof, which may be ignored, the word [^]uxj** has been added after the word dksrokyh** in the last but one line, so as to specify that the report of the incident mentioned in this para was lodged at P. S. Kotwali Nagar (To say in English : Kotwali City) but this word has not been added in the 1st, 5th and 9th copies.

(x) In para 20 of the original petition the following words have been added by hand : --

(a) In line 3 the word [^]izfr** has been added by hand between the words [^]vksj** and [^],d**

(b) In the 4th line the word [^]d** has been changed by hand into the word [^]ds** and the word [^]bUpktZ** has been added immediately after the said word.

(c) In the 8th line the words [^]iksyhax ,st UV ugh** have been added between the words [^]dks** and [^]cuus**

(d) In the last but one line the word 'Y;' has been substituted by the word (illegible) '

(e) In the last line Annexure number has been corrected by hand and has been mentioned as '12'.

These additions have not been made in the first and 5th copies at all. Paras 20 and 21 have not at all been typed in the 9th copy and the 7th page (though not numbered) which was supposed to contain these paras is blank. Page 6 contains paras 16, 17, 18 and part of para 19, which should have been continued on page 7, but as stated earlier, the next page is blank and does not contain any para. The other side of this blank page has been numbered as page 8 and contains part of para 21, paras 22, 23, 24 and 25.

In the rest of the copies, all the additions have not been incorporated. In 6th, 7th, 8th and 11th copies the word 'izfr' has not been added and in its place small dots have been placed. Even the Annexure number has not been changed and remains, 'Annexure 7' as originally typed. It has not been changed to Annexure-12.

(xi) In para 21 of the original petition the word 'tcjnLrh' (English translation by force') has been added by hand in the 6th line and in the last line figure 12 has been changed to figure 13. The word 'tcjnLrh' occurring at the end of 4th line has been scored out.

These corrections have not been made in the 1st and 5th copies. 9th copy does not contain para 21 at all and the 7th page of the copy, which was supposed to contain this para, is, as mentioned earlier, blank.

In none of the copies except 6th, 7th, 9th and 11th, the figure 12 has been changed to 13.

(xii) In para 22 of the original election petition the word (illegible) has been deleted by hand. This has not been done in any of the copies.

(xiii) In para 23 of the original election petition the words (illegible) have been added by hand after the word (illegible) in the last but one line and in the last line

figure (illegible) has been added by hand after the word (illegible). The annexure number has been changed to Annexure-14.

This para contains reference of weekly newspaper ^{tuHkkjrh} by mentioning the dates and the number of the part, the specification becomes 'Weekly Newspaper Jan Bharati dated 5th, 12th March Part III 1985.'

In the 1st, 3rd, 4th, 6th, 7th, 8th, 9th, 10th and 11th copies the date has been mentioned but the part number has not been mentioned, i.e. figure '3' has not been mentioned after the word ^{v{kj} In the 5th copy even the date has not been mentioned.

In the 2nd, 3rd, 4th, 5th, 9th and 10th copies annexure number has not been changed to Annexure 14.

(xiv) In para 24 of the original election petition the words (illegible) have been added in the last but one line between the words (illegible) and (illegible) but this has not been done in the 5th copy so that the description of the newspaper in that copy remains incomplete. Annexure number 13, as originally typed, has been changed by hand to 15 but this has not been changed in the 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies.

(xv)(a) In para 28 of the original election petition the words (illegible) have been added at the end by hand.

(b) The word (illegible) occurring in the 6th line has been deleted by hand.

(c) Annexure number has been changed to 16. But the words referred to above in sub-para (a) have not been added in the 5th copy. In 6th, 7th, 8th and 11th copies these words have been added at the end of para 28 but instead of 13-2-85 the date mentioned is '12-2-85'. But the word (illegible) indicated in sub-para (b) above has not been deleted in any of the copies of the petition except in 6th, 7th, 8th, and 11th copies in which this word does not occur. Annexure number has not been changed to 16 in any of the copies and it remains Annexure-14.

(xvi) In para 29 of the original election petition the words (illegible) occurring at the end have been deleted by hand. But these words have not been deleted in any of the copies and in all the copies, in spite of deletion from the original it has been mentioned that a photostat copy has been filed as Annexure-15. In 6th, 7th, 8th, and 11th copies it has been referred to as Annexure-16.

(xvii) In para 30 of the original election petition Annexure No. 16, as originally typed, has been changed to Annexure-17 but this has not been done in the 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies.

(xviii) In para 31 of the original election petition Annexure number has been changed to 18 but this has not been done in 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies.

(xix) In para 32 of the original election petition the following changes have been made by hand : --

(a) In the 6th line the word (illegible) has been clarified by hand.

(b) In the 7th line the word (illegible) have been added between the words (illegible) 'and' (illegible)

(c) In the same line the word (illegible) has been changed to (illegible) and in the last line annexue number has been changed to Annexure-19.

But these changes have not been made in the 1st, 2nd, 3rd, 4th, 8th and 10th copies. In the 5th copy, the word (illegible) has been added in the 7th line but no other changes have been made.

(xx) In para 33 Annexure number has been changed to Annexure-20 but this has not been done in the 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies.

(xxi) In para 34 of the original election petition annexure number has been changed .by hand to Annexure-21 but this has not been done in 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies.

(xxii) In para 35 of the original election petition annexure number has been changed to Annexure-22 but this has not been done in the 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies.

(xxiii) In para 36 of the original election petition the words (illegible) have been added at the end. These words have also been added in all the copies but the annexure number has not been correctly mentioned in all the copies. In 1st, 2nd, 6th, 7th, 8th and 11th copies annexure number has been mentioned as Annexure-24 but in the 3rd, 4th and 5th copies annexure number has been mentioned as Annexure-25. Thus the annexure number given in all the copies does not tally with the annexure number given in this para of the petition.

(xxiv) The necessary corrections made in para 39 may be ignored.

(xxv) In para 44 of the original election petition following corrections have been made by hand : -- .

(e) In line 6th annexure number has been mentioned as annexure-24.

(b) In last line the word 'has' has been deleted and in its place the word 'has' has been mentioned.

In the 1st copy these corrections have been made but in the 6th line annexure number has not been changed to 24 and remains Annexure 22. These corrections have not been made in the 2nd, 3rd and the 4th copies. In 5th, 6th, 7th 8th and 11th copies annexure number has not been changed and it remains Annexure-22, These corrections have not been incorporated in 9th and 10th copies.

(xxvi) In para 45 of the original election petition the word (illegible) in the 5th line has been deleted and the word (illegible) has been added in the last line between the words (illegible) and (illegible) This is an insignificant addition and it may be ignored.

(xxvii) In para 45 the original election petition the date '18-10-84' has been mentioned after the word (illegible) in the 4th line and annexure number has been changed to Annexure-25 in the last line.

In the 1st copy the date mentioned is 10-10-85 while the annexure number has not been changed and it remains Annexure-23. In the 2nd copy although the date has been correctly mentioned, annexure number has not been changed and it remains Annexure-23. In the 3rd copy the date mentioned is '18-10-85 instead of '18-10-84 and the Annexure number has also not been changed. In the 4th copy the additions have been correctly made. In the 5th copy the date has been correctly mentioned as 18-10-84 but the annexure number has not been changed and it remains Annexure-23. In the 6th, 7th, 8th and 11th the date mentioned is '18-10-84', i.e., the year has not been mentioned. Annexure number has also not been changed in these copies and it has been mentioned as Annexure-22. In 9th copy instead of 18-10-84 the date mentioned is 18-10-85 and the annexure number has not been changed and, as it is mentioned, it remains Annexure-23. In the 10th copy the blank space after the word (illegible) has not been filled up and no date has been mentioned at all. Annexure number remains as Annexure-23. It will thus be seen that there is an obvious discrepancy in the date mentioned in the original petition as also in the copies. Annexure number also does not tally. In the original petition the annexure number is Annexure 25. In 6th, . 7th, 8th, and 11th copies annexure number is 22 while in the rest of the copies Annexure-23 has been mentioned.

(xxviii) In para 47 of the original election petition certain words have been deleted in the 8th line and they have been substituted by the word (illegible) Annexure number has been changed to Annexure-26. In the 1st and 2nd copies although the words have been deleted but the annexure number has not been changed. In the 3rd copy no corrections have been made, i.e., the words, which have been deleted in the original, have not been deleted in this copy and the annexure number has also not been changed. In the 4th copy of the corrections have been made but the annexure number has not been changed. In the 5th copy no corrections have at all been made. In the 9th copy the words, which have been deleted in the original, have been deleted but the annexure number has not been changed. In the 10th copy no corrections whatsoever have been made.

(xxix) In para 48 of the original election petition in line 3 the words (illegible) have been added. But these words have not been added in the 1st, 2nd, 3rd, 9th, and

10th copies.

The result is that although in the original petition it is mentioned that a number of 'Jeep' were used, the vehicle remains unspecified in the copies referred to above.

(xxx) In para 52 (illegible) it has been mentioned that the petitioner has deposited a sum of Rs. 2,000/- in the Government treasury and that its receipt was being filed herewith. There was a blank space after the words (illegible) and (illegible) These blank spaces have been filled up by hand and the receipt number and date have been mentioned as CD/39th and 15-4-85 respectively.

These corrections have not been made in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th copies and the blank spaces after the words (illegible) and (illegible) have not been filled up. It, therefore, does not appear from the copy of the election petition that the security amount of Rs. 2,000/- has at all been deposited.

32-33. The affidavit is also not the true copy of the original inasmuch as figures 29, 30 and 31 have been added after figure 26 in para 3 of the original affidavit but it has not been done in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th copies, but mere omission to mention three para numbers may not be material.

34. All the annexures have been made part of the election petition. They have been verified on oath and they bear the seal and signature of the oath commissioner. As pointed out earlier, they constitute an integral part of the election petition. But all the annexures have not been filed with the copies and there is a significant omission in not filing the issue of the weekly Magazine (illegible) dt. 31st March to 6th April, 1985 with any of the copies. Page 15 of this magazine is said to be relevant (vide para 44 of the petition) but have even the copy of page 15 of this magazine has not been filed with any of the copies of the petition.

35. The copies are, therefore, incomplete and they cannot be said to comply with the mandatory requirement of S. 81(3).

36. In *Smt. Sahodrabai Rai v. Ram Singhaharwar*, AIR 1968 SC 1079 the Supreme Court has indicated as to when a document filed as an annexure to the election petition can be treated to be part of the election petition so that non-supply of its copy to the respondent along with the copy of the election petition would result in the dismissal of the petition. In this case it was held that the pamphlet, which had already been reproduced in the election petition and was also filed as annexure to the petition was filed as a document and not as part of the election petition. Non-supply of the copy of this pamphlet was, therefore, held not to be fatal and the order dismissing the election petition for non-compliance, of the mandatory provision of Section 81(3) was set aside.

37. This case was considered by the Supreme Court itself in *M. Karunanidhi v. H. V. Handa*, AIR 1983 SC 558 (supra) and was explained and distinguished.

38. In para 33 (on page 571) of the report the Supreme Court has considered the decision in *Smt. Sahodrabai Rai's case* (AIR 1968 SC 1079) and has observed as under : --

'The High Court rests its conclusion on the decision of this Court in *Sahodrabai's case* AIR' 1968 SC 1079 (supra) but that decision, in our opinion, is inapplicable to the facts and circumstances of the present case. In *Sahodrabai's case*, supra, an election petition was filed together with a pamphlet as annexure thereto. A translation in English of the pamphlet was incorporated in the body of the election petition and it was stated that it formed part of the petition. A preliminary objection was raised that a copy of the pamphlet had not been annexed to the copy of the petition served on the returned candidate and therefore the election petition was liable to be dismissed under Sub-section (1) of Section 86 of the Act. The Madhya Pradesh High Court sustained the preliminary objection and dismissed the election petition. On appeal, this Court held that the words used in Sub-section (1) of Section 81 are only 'the election petition' and there was no mention of documents accompanying the election petition. Since the election petition itself reproduced the whole of the pamphlet in a translation in English, it could not be said that the averments with regard to the pamphlet were themselves a part of the petition and, therefore, the pamphlet had in fact been served on the returned candidate

although in a translation and not in the original. The Court then stated that even if it were not so, Sub-section (2) of Section 83 of the Act has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition, but in the accompanying schedules or annexures.'

39. In para 39 (on page 573) of the report the Supreme Court further observed as under : --

'The decision in Sahodrabai's case (AIR 1968 SC 1079), (supra), was that since the election petition itself reproduced the whole of the pamphlet in a translation in English, the pamphlet filed along with the petition had to be treated as a document and not as a part of the election petition and that being so, the court observed that it would be stretching the words of Sub-section (3) of Section 81 and Sub-section (2) of Section 83 too far to think that every document produced as evidence in the election petition becomes a part of the election petition proper.'

40. A perusal of the portion of the judgment of the Supreme Court, extracted above, would show that because the English translation of the pamphlet had already been reproduced in the election petition in Sahodrabai's case (AIR 1968 SC 1079), the pamphlet filed as an annexure to the election petition was not treated to be part of the election petition but as a separate document. The ground on which Sahodrabai's case has been distinguished by the Supreme Court in its latter decision in M. Karunanidhi's case (AIR 1983 SC 558) has to be kept in mind in deciding the instant case in which also the relevant page, i.e. page 15 of the weekly Ravivar dt. 31st March to 6th April, 1985 has not been reproduced in the election petition. It has already been held above that this magazine has been filed as part of the election petition. The decision in Sahodrabai's case would, therefore, not apply to this case which will be governed by the latter decision of the Supreme Court in M. Karunanidhi v. H. V. Handa and others (supra) in which the photograph annexed to the election petition was held to be a part of the petition and not a separate document. The non-supply of that photograph to the respondent along with the copy of the petition was found sufficient to result in the dismissal of the election petition.

41. The Supreme Court decisions in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* AIR 1964 SC 1545 (supra) as also *C.K. Subbarao v. Member, Election Tribunal* AIR 1964 SC 1027 (supra) do not apply to the facts of the present case. In the first case there was only two defects in the copy served on the appellant:

(1) the copy which was served on the appellant did not contain the signature of the petitioner at the foot of the petition though the original petition contained such signature and (2) the verification in the copy served on the appellant omitted to mention para 14-g(ii) in that part of the verification which related to averments stated to be true to the personal knowledge of the petitioner. The court held that the first defect was not a defect at all. When every page of the copy was attested to be a true copy under the signature of the petitioner, a fresh signature below the word 'petitioner' was not necessary. The second defect, i.e., a defect in the verification was held not to be fatal. The Supreme Court in that case also held that the word 'copy' occurring in Sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it. In the second case it was found that the election petition was type-written and the copies, which accompanied the petition, were carbon copies of the type-script. The copies bore two signatures in original of the election petition authenticating both the contents of the petition as well as the verification thereof. The petitioner did not, however, insert the words 'true copy' before or above his signatures. The Supreme Court held that there was substantial compliance of the requirement of Section 81(3) and that it was not necessary to use the words 'true copy' and the defect could not be said to be fatal.

42. The position in the instant case has already been explained above. The defects in the copies have been specified. The copies in the instant case are not the carbon copies of the original type-script as a number of facts were added in the original petition after a type-script was prepared and that four copies, namely, 6th, 7th, 8th and 11th copies were prepared after the additions had been made by hand in the original. But even then they contained many defects which have already been specified above. The copies in the instant case cannot be said to be true copies of the original and the defects pointed out earlier in these copies are

fatal and cannot save the petition from being dismissed in limine.

43. I may, at this stage, refer to a decision of the Punjab High Court in *Satya Narain v. Dhaja Ram*, AIR 1973 Punj & Har 431 in which it was laid down that an election petition must comply with the requirements of Sections 81, 82 and 117 of the Act at the time when it is originally presented to the authorised officer of the High Court and no such defect can be permitted to be rectified at any time thereafter even within the period of limitation. It also held that the rules of substantial compliance has no application to a case of non-compliance with Section 81(3). This decision has since been affirmed by the Supreme Court in *Satya Narain v. Dhuja Ram*, AIR 1974 SC 1185 in which it has been laid down that the provisions of Section 81(3) are mandatory and that in the absence of any provision under the Act or the Rules made thereunder the High Court Rules cannot confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defect in an election petition presented in the High Court beyond the period of limitation,

44. Let me now consider the question whether the petitioner has attested all the copies under his own signature to be true copies of the original election petition,

45. The 1st, 2nd, 3rd, 4th, 5th, 9th and 10th copies of the petition contain the words (illegible) and the signature of the petitioner on every page of the petition but the 6th, 7th, 8th and 11th copies which, as stated earlier, were typed subsequently do not contain the words (illegible) but they contain the signature of the petitioner on every page.

46. The annexure attached to the copies tell another story. Some photostat copies of the newspapers and the periodicals have been filed. They also bear the signatures of the petitioner but they do not contain the words (illegible) but these words, however, may be ignored because photostat copies of the original need not contain the words 'true copy' as it is obvious that they are the true copies. But the rest of the annexures are hand written or the carbon copies thereof. A good number of annexures have been written out on one page and most of the carbon copies are not legible. They do not contain the endorsement of true copies and have also not been signed except on the back of the page on which the original

verification clause of the election petition has been reproduced and below which is the signature of the petitioner. The words (illegible) or (illegible) appear on some of the annexures annexed to some of the copies but they do not appear on all the annexures of all the copies as signature of the petitioner on the back of the page of the annexure below the verification clause would not mean that the signature was placed for authenticating it to be a true copy. The position would have been different had the copies of these annexures been the carbon copies of the type-script prepared simultaneously with the original. But, as stated earlier, they have been written by hand and the copies are the carbon copies of the hand written copies of the annexures. The annexures have already been held by me above to be a part of the election petition and therefore it was required of the petitioner to attest under his own signature on every annexure that they were the true copies of the original.

47. The other requirement of Section 81(3) also has not, therefore, been complied with.

48. For the reasons stated above the petition is dismissed in limine.

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