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F.A. Sapa Etc., Etc., Vs. Singora and Others

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Court : Supreme Court of India

Decided On : May-10-1991

Reported in : AIR1991SC1557; JT1991(2)SC503; 1991(1)SCALE939; (1991)3SCC375; [1991]2SCR752a; 1991(2)LC692(SC)

Judge : A.M. Ahmadi,; V. Ramaswamy and; M. Fathima Beevi, JJ.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 1(3) - Orders 6, Rule 15(2) - Order 7, Rule 16 - Order 19, Rules 2 and 3; Representation of the People Act, 1951 - Sections 2, 8, 77, 80, 81(1), 82, 83(1), 85, 86(5), 87, 98, 100, 101, 117 and 123; Constitution of India - Articles 136 and 329; Conduct of Election Rules, 1961 - Rule 94A; Representation of the People Rules, 1951 - Rule 95-A; Representation of the People Act, 1961 - Sections 18

Appeal No. : Civil Appeal Nos. 179-189 of 1991 etc. etc.

Appellant : F.A. Sapa Etc., Etc.,

Respondent : Singora and Others

Advocate for Def. : B.L. Wadehra and ; M.K.D. Namboodiri, Advs.

Advocate for Pet/Ap. : A.M. Mazumdar,; L.M. Sanghvi,; S.K. Nandy,;

Prior history : From the Judgment and Order dated 3.9.1990 of the Gauhati High Court in Election Petition No. 7 of 1989

Judgement :
ORDER

A.M. Ahmadi, J.

1. Special leave granted in all SLPs.

2. Mizoram acquired Statehood on February 20, 1987. At the general election held on January 21, 1989, the respondents of this batch of appeals contested the State Assembly elections as candidates of the Mizo National Front (MNF) from different constituencies. The results of the election were declared on January 23, 1989. They lost to candidates fielded by the Indian National Congress (I). The unsuccessful MNF candidates challenged the election of the Congress (I) candidates mainly on the ground that they had indulged in and were guilty of corrupt practices. As many as fifteen such election petitions came to be filed in the Gauhati High Court on one single day, March 9, 1989. Although fifteen petitions were filed, one Congress (I) candidate had succeeded from two constituencies and one candidate belonged to the Mizo National Front (Democratic) Party. On service of notice of the filing of the election petitions, the returned candidates entered appearance and raised certain preliminary objections regarding the maintainability of each petition. On the basis thereof two preliminary issues were raised for consideration. The returned candidates moved for striking off the pleadings. Thereupon the original petitioners applied for amendment of their election petitions which was strongly opposed by the returned candidates. The preliminary objections, the applications for striking off the pleadings and the amendment applications were heard together.

3. The two preliminary issues raised by the learned Judge hearing the election petitions were (i) whether the election petitions were in conformity with the requirements of Sections 81 and 83 of the Representation of the People Act, 1951 (R.P. Act), and the Rules framed thereunder by the Gauhati High Court and (ii) whether Rule 1 and the other related rules and notes thereto enabling the filing of the Election Petition before the Stamp Reporter assigned to the election court by the learned Chief Justice were ultra vires Article 329 of the Constitution and

Section 169 read with Sections 80, 80A and 81 of the R.P. Act. So far as the first objection was concerned, the returned candidates contended that the election petitions were photo-copies and could not, therefore, be treated as election petitions as contemplated by law, the copies of petitions served on the returned candidates were not attested to be true copies of the original petitions as required by Section 81(3), the copies served on them with the annexures were not true copies of the original; the election petitions were not signed and verified in the manner laid down by the CPC inasmuch as the source of information had not been disclosed in the verification or the affidavit in Form 25 as required by Rule 94A of the Conduct of Election Rules, 1961 (the Rule) and no schedule of material particulars of corrupt practice had been annexed to the affidavit purporting to be under Form 25. In regard to the second objection the contention was that the presentation of the election petitions before the Stamp Reporter was inconsistent with Sections 80, 80A and 81 of the R.P. Act and Article 329 of the Constitution inasmuch as the law requires that an election petition shall be presented to the High Court. The learned Judge in the High Court overruled both the preliminary objections holding, in the case of the first, that there was substantial compliance with the requirements of the relevant provisions and on the second point he ruled that the presentation of the election petition to the Stamp Reporter appointed or authorised under the Rules was presentation in accordance with the Rules and the same did not conflict with Article 329(b) of the Constitution. Thus both the preliminary objections stood rejected.

4. The returned candidates had applied under Order VII Rule 16 of the CPC, (the Code), for striking out certain averments from the memo of the election petitions on the ground of failure to disclose a cause of action. A prayer was also made for dismissal of the petitions on that ground. The learned Judge in the High Court rejected this contention observing that under the election law the High Court is empowered to permit amendment of the election petition with a view to amplifying the averments bearing on the question of corrupt practice which it considers necessary for ensuring a fair and effective trial of the election dispute. In this view of the matter the learned Judge examined the averments of each paragraph in detail and directed the deletion or modification of certain paragraphs, the averments wherein were vague of bereft of necessary particulars. He directed that

paragraphs 6, 9, 12, 13, 21, 22, 38 and 40 shall stand deleted whereas paragraphs 3, 4, 5, 8, 14 to 20, 25 to 27, 30 to 37, 39 and 45 of the petition giving rise to CA No. 179 of 1991 shall stand modified. All allegations against the election agent or other agents of the returned candidates were ordered to be struck off. In other words he directed that the allegations of corrupt practice shall be confined to the returned candidates only. Similar orders were passed in the other election petitions subject to the variation in number of paragraphs, etc. For convenience we will take the pleadings of C.A. No. 179/91 as representative since we are told that the averments in each election petition are identical except for some variations here and there. Thus the learned Judge rejected the preliminary objections and partly allowed the application for striking off the averments in the election petitions and partly permitted certain amendments to the election petitions. It is against the said order that the returned candidates have approached this Court under Article 136 of the Constitution.

5. At the time of admission of these appeals two questions were formulated for examination and we will confine ourselves to them in the course of this Judgment. These two questions are as under:

(I) The Election. Petitions are liable to be dismissed in limine under Section 83 of the Representation of the People Act, 1951 as the affidavit filed by the Election Petitioner in each case is not strictly in conformity with Form 25, inasmuch as the verification as regards the averments based on knowledge and the averments based on information has not been made separately as required by the said Form prescribed under Rule 95-A of the Representation of the People Rules, 1951; and

(II) The copies of the Election petitions served on the petitioners herein (the respondents in the Election Petitions) not being true copies of the Election Petitions, the Election Petitions were not maintainable and were liable to be dismissed in limine in view of Section 81 read with Section 86 of the Representation of the People Act, 1951.

6. The appellants herein are the returned candidates. Election Petitions were filed against them challenging their election on more or less identical grounds. Since the Election Petitions are stated to be based on a single master copy, we would

refer to the averments of E.P. No. 7 of 1989 filed against the appellant F. Sapa of Civil Appeal No. 179 of 1991.

7. On a perusal of the cause title of the petition it becomes evident that the name of the constituency and the particulars of the petitioner and the respondents are left blank and filled in hand. The petition is stated to be under Sections 80 and 81 of the R.P. Act. Paragraph 1 furnishes the dates concerning the election programme and the particulars regarding the petitioner. In paragraph 2 the particulars regarding the total votes, votes polled by each candidate, etc., have been set out. While the various heads are typed, the figures are hand written. The various typed heads would show that particulars upto five respondents could be furnished even though in the said petition only three respondents figure. That is why the columns regarding three respondents have been filled in while serial Nos. 6 and 7 meant for respondents 4 and 5 have been left blank. This supports the appellant's say that one master copy of the election petition was prepared and thereafter particulars in respect of each petitioner were filled in hand. In paragraph 3 it is averred that the M.P.C.C.(I) had with the consent and knowledge of the returned candidate conceived and executed the entire election campaign of the returned candidate between December 31, 1988 and January 19, 1989. So also the returned candidate had on his own and with the help of M.P.C.C.(I), its functionaries and workers organised and addressed public meetings and undertook door to door canvassing to promote his chances for success. Thereafter the list of towns and villages where he held such meetings, etc.;, are written in hand in the blank space left for that purpose. This is also indicative of that fact) that a master copy was prepared to challenge all the fifteen elections. In paragraphs 4 and 5 the details regarding the compaign literature or material, such as stickers, hand-bills, pamphlets, press publications, etc., have been furnished. These have been produced with their English translations at Annexures I to VI(a). It is averred that this compaign literature was widely distributed throughout the length and breadth of the entire constituency between the aforestated dates and was also air dropped by helicopter on January 20, 1989 throughout the constituency. These were also read out and explained to the voters in the constituency during the aforesaid period. After making this averment in paragraph 6, the petitioner proceeds to add in paragraph 7 as under:

That by publishing printing, circulating, distributing and by reading out and explaining to the audiences including the electors and their family members throughout the length and breadth of the constituency as indicated above, Respondent No. 1 (returned candidate) has been guilty of corrupt practices under Section 123....

The details in regard to the M.P.C.C.(I)'s Election Manifesto produced at Annexure I (English translation-Annexure 1A) have been set out in paragraphs 8 to 22 along with comments, inferences, etc. In paragraph 23 there is a mention of Annexure II which is merely a repeat of Annexure I dealt with in the aforesaid paragraphs 8 to 22. In paragraph 24 reference is to Annexure III which is merely the summary of the Election Manifesto dealt with in the preceding paragraphs. Paragraphs 25 to 29 refer to the leaflet-Operation Josna-Annexure IV-and submission thereon. The next two paragraphs 30 and 31 contain reference is to a sticker-Annexure V-which appeals to the religious sentiments of those following the Christian faith and states: 'Let us vote Mizoram Congress (i) for Mizos and Christians'-which, it is contended, constitutes corrupt practice. Then come paragraphs 32 to 40 which relate to a leaflet-Annexure VI-entitled 'what our vote will bring about' and then proceeds to add 'Christian Government' and 'promise of visit of the holy land (Isreal)'. Then, after referring to the activities aforestated, it is alleged in paragraph 41 that this has materially affected the election prospects of the other contesting candidates also. Paragraphs 42, 43 and 44 refer to Press publications in 'India Today', 'Statesman and the Assam Tribune and Sentinals'. Paragraph 45 enumerates the grounds on which the election of the returned candidate is liable to be set aside. Paragraphs 45A to 47 deal with sundry items. This in brief is the nature of the Election Petition. The petition is verified as under:

I. SANGURA the petitioner herein verify that the facts mentioned in paragraphs 1, 2, 4, 5, 18, 19, 28, 35, 30, 33, 36, 38, 41, 42, 43, 44, 45, 45A, 46 & 47 are true to my knowledge and facts mentioned in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 26, 27, 29, 32, 34, 35, 37, 40 & 41 are based on information received and believed to be true. Grounds A, B & C and the legal submissions are based on legal advice. Verified at Guwahati on 7th March, 1989.

The verification is typed but the petitioner's name and the paragraph numbers at both the places are hand written. It will be seen from the above verification clause that paragraphs 3, 16, 17, 25, 31 & 39 have not been verified at all either as true to knowledge or on information and/or belief whereas paragraph 41 is mentioned at both the places. It may also be noted at this stage that in regard to the second part of the verification based on 'information received' and 'believed to be true' it is not clarified which of the paragraphs are based on 'information received' (nor is the source of information disclosed) and which are founded on 'believed to be true'.

8. Appended to the petition is the petitioner's typed affidavit, which runs into six paragraphs. The name of the petitioner, his age and address appear to be filled in on a typewriter. In paragraph 2 of the affidavit it is stated that the petitioner (unsuccessful candidate) has alleged several corrupt practices on the part of the Respondent No. 1 (the returned candidate), his election agent and other agents and virtually the same phrase is repeated in paragraph 3. Then in paragraph 4 it is stated: 'for brevity the details of the corrupt practices alleged by me which have been given in the Election Petition and are not being repeated in this affidavit and the same may be treated and read as part of this affidavit' and then the deponent proceeds to add 'The said particulars and details of corrupt practices are contained in paragraphs 4 to 40 of the Said election petition'. The word and figures '4 to 40' are written in hand after scoring out the words and figures '7 to 47'. Then comes paragraph 5 which may be reproduced:

That I solemnly state and affirm that all that has been stated in the election petition by way of corrupt practices as a correct to the best of my knowledge and to the information received by me and believed by me to be true.

It will be seen from the above that according to the election petitioner the particulars and details of the corrupt practices are contained in paragraphs 4 to 40 which also omits paragraph 3 which is, according to the returned candidate/appellant crucial. Then in paragraph 5 extracted above the election petitioner states that all that he has stated in regard to corrupt practices in his election petition (which according to paragraph 4 are contained in paragraphs 4 to 40) is 'correct to the best of my knowledge and to the information. received by me

and believed by me be true'. It is not stated which of the particulars contained in paragraphs 4 to 40 are true to his knowledge, which are based on information received (apart from disclosure of source of information) and which he believes to be true. The affidavit is totally silent in regard to paragraphs 1 to 3, and 41 to 47 of the election petition.

9. The returned candidate/the appellant herein, therefore, contends that paragraph 3 which is the most crucial paragraph in the entire election petition inasmuch as it discloses the names of towns and villages as well as the period during which the alleged corrupt practices were committed has been carefully, deliberately and scrupulously omitted both from the verification clause and the affidavit referred to hereinabove for reasons best known to the election petitioner and, contends the appellant, once this paragraph 3 is kept out of consideration, the Election Petition is, rendered 'a theoretical and unimaginative essay' on corrupt practice of appeal to religion. It is, therefore, contended that failure to mention paragraph 3 of the election petition in both the verification clause of the petition and the affidavit filed in support thereof is fatal and cannot be cured particularly after the expiry of the limitation period of 45 days.

10. The appellant further contends that the affidavit is not in Form No. 25 prescribed under Rule 94A of the Rules and hence the affidavit is no affidavit at all. Since Section 83 of the R.P. Act is mandatory and strict compliance thereof is expected of an election petitioner failure to adhere to Form No. 25 is fatal as the doctrine of substantial compliance has no place in election law but even if that doctrine could be invoked to rescue the election petitioner out of the situation in which he was placed himself, it was absolutely essential for him to clearly state in his affidavit which paragraphs of the Election Petition are based on his knowledge, which are based on information received and which are based on his belief. Since even this is missing it is difficult to say that there is substantial compliance assuming the doctrine has application. Counsel for the appellant fairly stated that if the averments in the election petition had been sworn to in the above manner it could perhaps be argued that failure to strictly follow Form 25 could be excused on the doctrine of substantial compliance and the procedural defect could be cured by an appropriate amendment. But, argued counsel, the doctrine could never be

pressed into service where the petitioner has failed to disclose which part of the allegations regarding corrupt practice are based on knowledge, which on information received and which on belief. Where there is failure to comply with even the basic requirements of an affidavit, there can be no question of substantial compliance; this being a case of non compliance, whatsoever. Where several paragraphs of the election petition remain unformed under the verification clause as well as the affidavit, the unworn allegation can have no legal existence and the election court cannot take cognizance thereof. The further allegation was that the election petitions being photocopies could not be entertained as valid election petitions; that copies of the election petitions served on the returned candidates were not attested as true copies of the original as required by Section 81(3) and that the election petitions and the schedule and annexures were not signed and verified as required by the Code. An election dispute founded on the allegation of corrupt practice being quasi-criminal in nature calls for strict adherence to the requirements of election law as is evident from Section 86(1) of R.P. Act which provides for dismissal of an election petition which fails to comply with the requirements of Sections 81, 82 or 117 of the said statute.

11. Before we set out the relevant provisions of the R.P. Act, reference may be made to Order VI Rule 15 of the Code which deals with verification of pleadings. This rule is divided into three parts: the first part begins with 'save as otherwise provided by any law for the time being in force' and then proceeds to add that every pleading shall be verified by the party or by one of the parties or by some other person acquainted with the facts of the case; the second part posits that every person verifying shall specify what he verifies of his own knowledge and what he verifies upon information received or believed to be true by reference to paragraph numbers and the third part states that the verification shall be signed by the party making it. It was, however, pointed out that by virtue of Sub-section (3) of Section 1, the Code extends to the whole of India except (a) the State of Jammu and Kashmir and (b) the State of Nagaland and the tribal areas. The explanation defines the expression 'tribal areas' as territories which, immediately before January 21, 1972 were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution. Paragraph 20 says that the areas specified in Parts I, II and III of the table shown below shall respectively be

the tribal areas within the State of Assam, the State of Meghalaya and the Union Territory of Mizoram. Part III which is relevant for our purpose comprises (1) the Chakma District (2) the Lakher District and (3) the Pawi District. During the British period the area was divided into North Lushai Hills and South Lushai Hills but was later amalgamated into a single District of Lushai Hill District and was made part of Assam and was placed under the administrative charge of a Superintendent. On our attaining independence, the Superintendent was replaced by a Deputy Commissioner but the District of Lushai Hills continued to be part of Assam. The Lushai Hill District was renamed Mizo District in 1954 by an Act of Parliament and was placed under a District council. After a spell of disturbances on the implementation of the North-Eastern Reorganisation Act, 1971, the Mizo District was upgraded into a Union Territory and was renamed Mizoram. It was divided into three districts, namely, (i) Aizawal (i) Lunglei and (iii) Chhimtuipui. The Mizo Hill District was replaced by Chakma, Lakher and Pawi Districts which find a mention in Part III of the Table to paragraph 20 of the Sixth Schedule to the Constitution. It was, therefore, argued that the provisions of the Code did not and do not apply to the State of Mizoram. In support of this contention reliance is placed on three decisions of this Court namely (1) Gurumayam S. Sarma V.K. Ongbi Anisija Devi, Civil Appeal No. 659 of 1957 dated February 9, 1961 (2) State of Nagaland v. Rattan Singh : 1967 CriLJ265 and (iii) V.L. Rohlus v. Deputy Commissioner, Aizawal : [1971]2SCR503 . It is unnecessary to notice these decisions in detail because Dr. Singhvi does not seriously question this proposition. But, contends Dr. Singhvi, if the Code did not apply to Mizoram in view of the above, it applied to an election petition because Section 83(1)(c) obligates that an election petition 'shall be signed by the petitioner and verified in the manner laid down in the Code for the verification of pleadings'. Therefore, even though the provisions do not extend to Mizoram by virtue of Section 1(3) of the Code, counsel submitted they are applicable by incorporation to election petitions by the thrust of Section 83(1)(c) of the R.P. Act to the extent indicated therein.

12. And now to the relevant provisions of the R.P. Act and the Rules framed thereunder. The expression 'corrupt practice' defined in Section 1(c) means any of the practices specified in Section 123. The various corrupt practices enumerated in Section 123 are (1) bribery, (2) undue influence, (3) an appeal by a candidate or

his agent or by another other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols, etc., (3A) the promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, (4) the publication of any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to another candidate, (5) the hiring or procuring of any vehicle or vessel or the use of such vehicle or vessel for the free conveyance of any elector to or from any polling station, (6) the incurring or authorising of expenditure in contravention of Section 77(7) the obtaining or procuring of any assistance from any Government servant of the class specified and (8) booth capturing. Sections 8 and 8A lay down that any person convicted for practising any corrupt practice by an order made by the High Court under Section 99 shall be disqualified for a period of six years in the case of the former in addition to being punished on conviction and for a period not exceeding six years in the case of the latter. Counsel for the appellant, therefore, contended that proof of allegations of corrupt practice would visit the returned candidate with certain serious consequences and must, therefore, be viewed seriously. Being quasi-criminal in nature courts have and must always insist on strict compliance with the provisions of law in that behalf and failure to do so must prove fatal. Laying this background, counsel for the appellants invited our attention to Sections 80 to 86 of the R.P. Act.

13. The R.P. Act is divided into XI parts. We are essentially concerned with Part VI entitled 'Disputes Regarding Elections' which is divided into V chapters. Chapter I is a single section chapter comprising Section 79 which defines certain expressions used in Part VI and Part VII dealing with corrupt practices and electoral offences. Chapter II entitled 'Presentation of election petitions to Election Commission' comprises Sections 80 to 85, Section 85 having since been repealed. Section 80 says no election shall be called in question except by an election petition presented in accordance with the provisions contained in that part. Section 80A, inserted by Act 47 of 1966, confers jurisdiction on the High Court to try an election petition. Section 81 deals with the presentation of such petitions. It reads as under:

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 the dates of their election are different, the later 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 has voted at such election or not.

(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.

Sub-section (2) of this section was omitted by Act 47 of 1966 when by the same statute the words 'Election Commission' were substituted by the expression 'High Court' with effect from December 14, 1966. Even though by the said Amendment Act jurisdiction was conferred on the High Court in place of the Election Commission, surprisingly the title of Chapter II continues to read 'Presentation of election petitions to Election Commission'. Parliament will do well to correct this slip by substituting the words 'High Court' for the expression 'Election Commission' to bring it in conformity with the changes introduced by Act 47 of 1966. Section 82 indicates the parties to be joined as respondents. Then comes Section 83 which reads thus:

83. Contents of petition.-(1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the CPC, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

On a plain reading of this provision it is manifest that it is incumbent on the petitioner to set forth 'full particulars of any corrupt practice' he alleges against the returned candidate. This should be accompanied by 'as full a statement as is possible' of the names of those who have indulged in such corrupt practice and the date and place of the commission thereof. Clause (c) of Sub-section (1) enjoins that the election petition shall not only be signed but also verified in the manner laid down in the Code. The proviso then prescribes an additional safeguard in cases where corrupt practice is alleged, as in the present case, namely, that the election petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. This provision reflects the anxiety of the legislature to ensure that allegations of corrupt practice are not lightly made; not only that but it ensures that the responsibility thereof is fixed on the petitioner himself by asking him to swear an affidavit in support thereof. 'Prescribed' says Section 2(g) means prescribed by rules made under the said Act. Form 25 is the form of the affidavit prescribed by Rule 94A of the Rules. Next Sub-section (2) of this section provides that any schedule or annexure to the petition shall also be signed and verified in the same manner as the petition itself. Section 84 sets out what relief the petitioner can claim in such an election petition. That brings us to chapter III entitled 'Trial of election petitions'. Only two sections from this chapter require to be noticed. The first is Section 86, the relevant part whereof reads:

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.

Explanation.-An order of the High Court dismissing an election petition under this Sub-section shall be deemed to be an order made under Clause (a) of Section 98.

(2) As soon as may be after an election petition has been presented to the High Court. It shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under Sub-section (2) of Section 80A.

The rest of the Sub-sections are not germane to the controversy before us. Section 87 outlines the procedure to be followed by the High Court in the trial of an election petition. It says that it shall be tried 'as nearly as may be', in accordance with the procedure applicable under the Code to the trial of suits. Since Sub-section (1) of Section 86 refers to Section 117 we may notice it at this stage. It provides for a deposit of Rs. 2,000 as security for the costs of the petition with which we are now concerned. Dr. Singhvi, therefore, emphasised that the law for the trial and resolution of election disputes found in the aforesaid provisions of this Act and the Rules made thereunder offers a self-contained Code and it is not necessary to look elsewhere except where provisions of any other law are incorporated in this statute by reference. He further submitted that since some of the election disputes could be quasi-criminal in nature, e.g., where corrupt practice is alleged, strict compliance with the provisions of the statute and Rules is expected by the legislature in such cases and even if the provisions are treated as directory as held by the learned Judge in the High Court, the degree of non-compliance which the Court will tolerate to ensure substantial compliance will not be the same as in an ordinary civil proceeding. He submitted that tested on this touchstone, this Court should hold that there is no substantial compliance for otherwise the election law would loss its sanctity and seriousness and vague charges of corrupt practice would be lightly made to vex the returned candidates and when faced with an objection attempts to cure the defects through applications for amendment of the pleadings would become the order of the day thereby defeating the very object of expeditious disposals of election petitions envisaged in Section 86(7) of the R.P. Act.

14. Dr. Singhvi took strong exception to the approach of the learned Judge in the High Court when he ruled that strict compliance with the provisions of Sections 81 and 83 of the R.P. Act was not necessary and that the procedural requirements thereunder were to be treated in the same manner as a suit or any other proceedings of a civil nature. He submitted that this approach of the learned Judge betrays an erroneous understanding that election petitions are also to be treated on par with ordinary civil proceedings, notwithstanding the quasi-criminal character of such proceedings, and it is this approach of the learned Judge which has led him to reach a conclusion unknown to election law. In particular he invited our attention to the following observations of the learned Judge which according to counsel betrays his fallacious approach:

I am not prepared to hold that simply because a petition before the court happens to be an election petition, the procedural requirements should be construed in a mechanical or pedantic manner without any regard to the object sought to be achieved thereby. The law does not require the court, while dealing with an election petition, to construe the pleadings in such a hyper technical manner and to make a microscopic examination thereof with a view to finding out a slip here or a deviation there which may be used as a ground for the rejection of the petition in limine in the name of maintaining the democratic process or the purity of election. In my opinion, the procedural requirements in an election case also should be construed in the same manner as in cases under the CPC The approach of the court should not be to reject the election petition, in limine on every possible pretext of non-compliance with one or more of the procedural requirements unless the law itself, in clear terms, mandates it to do so.

It is manifest from the above observations that the learned Judge took the view that the procedural requirements are intended to serve the object of providing a mechanism to reach the ultimate objective of dispensing justice in election disputes. According to him these provisions were merely adjectival and must, therefore, be construed liberally so as to advance the cause of justice and not to stifle it at the threshold. In support of this line of thought the learned Judge placed reliance on the observations of this Court in Raj Narain v. Indira Gandhi AIR 1973 SC 1302 wherein this Court has observed as under:

Rules of pleadings are intended as aids for fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the Court to ascertain that principle and implement it.

Let us examine if the criticism of the learned Counsel to the approach of the learned Judge is well founded.

15. It is fairly well settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means he must suffer for his misdeeds.

16. The mode for calling in question the election of a returned candidate is by presenting an election petition 'in accordance with the provisions of this Part' (Section 80). Such a petition has to be presented within 45 days from the date of election of the returned candidate. Sub-section (3) of Section 81 provides that such an election petition must be accompanied by as many copies thereof as there are respondents and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. This provision which explains how a copy of an election petition shall be attested, emphasises that such attestation will be under the petitioner's own signature. What the contents of an election petition shall be is enumerated in Section 83. It must contain a concise statement of material facts on which the petitioner relies but where a petition is founded on the allegation of corrupt practice, it shall set forth full particulars of the corrupt practice alleged by the petitioner, including as full a statement as possible of the names of the parties who have indulged in such corrupt practice together with the date and place of the commission thereof. Such an election petition as well as every schedule or annexure thereto must be signed by the petitioner and

verified in the manner provided by the Code for the verification of pleadings. But, in cases where the petitioner has alleged corrupt practice that is not enough, the proviso demands that the petition shall be accompanied by an affidavit in the prescribed form supporting the allegation of such corrupt practice and the particulars thereof. Therefore, an election petition in which corrupt practice is alleged stands on a different footing from an election petition which does not carry such an allegation. The legislature has taken special care to ensure that ordinary verification will not suffice, it must be supported by an affidavit in the prescribed form. Form 25 has been prescribed for such an affidavit under Rule 94A of the Rules. That rule says that the affidavit referred to in the proviso to Section 83(1) shall be in Form 25. The form of the affidavit requires the deponent to state which of the paragraphs of the election petition in which allegations of corrupt practice are made are based on his own knowledge and which are based on this information. Section 86(1) then mandates that the High Court 'shall' dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the R.P. Act. The language of this Sub-section is quite imperative and commands the High Court, in no uncertain terms, to dismiss an election petition which does not comply with the requirements Section 81 or Section 82. This mandate is, however, qualified by Sub-section (5) referred to earlier.

17. Election of a returned candidate can be rendered void on proof of the alleged corrupt practice. In addition thereto he would incur a subsequent disqualification also. This harshness is essential if we want our democratic process to be clean, free and fair. Eradication of corrupt practice from our democratic process is essential if we want it to thrive and remain healthy. Our democratic process will collapse if unhealthy corrupt practices like appeals to voters on basis of caste, creed, community, religion, race, language, etc., are allowed to go unchecked and unpunished. Use of corrupt practices in elections to secure short term gains at the cost of purity of our democratic process must be frowned at by every right thinking citizen. It is for that reason that the law has provided for double jeopardy to deter candidates, their agents and others from indulging in such nefarious practices. But while there is sufficient justification for the law to be harsh with those who indulge in such practices, there is also the need to ensure that such allegations are made

with a sense of responsibility and concern and not merely to vex the returned candidate. It is with this in view that the law envisages that the particulars of such allegations shall be set out fully disclosing the name of the party responsible for the same and the date and place of its commission. A simple verification was considered insufficient' and, therefore, the need for an affidavit in the prescribed form. These procedural precautions are intended to ensure that the person making the allegation of corrupt practice realises the seriousness thereof as such a charge would be akin to a criminal charge since it visits the party indulging in such practice with a two-fold penalty. That is why this Court described it as quasi-criminal in nature in Manphul Singh v. Surinder Singh : [1974]1SCR52 and reiterated the same in K.M. Mani v. P.J. Antony : [1979]1SCR701 . Hence the insistence that each ingredient of the charge must be satisfactorily proved before a verdict of guilt is recorded by the Court. In Mani's case this Court held that the allegations must be established beyond reasonable doubt and not merely by a preponderence of probability. It is, therefore, equally essential that the particulars of the charge or allegation are clearly and precisely stated in the election petition to afford a fair opportunity to the person against whom it is levelled to effectively counter the same.

18. The law in regard to the adjudication of an election dispute has been set out, as stated earlier, in Part VI of the R.P. Act, the provisions whereof constitute a self-contained Code. Therefore, an election petition calling in question the election of a returned candidate must be made in accordance with the provisions of this part of the statute. Under the provisions of this part an election petition calling in question the election of a returned candidate must be founded on one or more of the grounds specified in Sections 100 and 101 for any of the reliefs specified in Section 84 thereof. Section 100 specifies several grounds, one of them being commission of a corrupt practice by the returned candidate. Section 83(1)(a) stipulates that every election petition shall contain a concise statement of the 'material facts' on which the petitioner relies. That means the entire bundle of facts which would constitute a complete cause of action must be concisely stated in an election petition. Section 83(1)(b) next requires an election petitioner to set forth full 'particulars' of any corrupt practice alleged against a returned candidate. These 'particulars' are obviously different from the 'material facts' on which the petition is

founded and are intended to afford to the returned candidate an adequate opportunity to effectively meet with such an allegation. The underlying idea in requiring the election petitioner to set out in a concise manner all the 'material facts' as well as the 'full particulars', where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition.

19. Before the amendment of the R.P. Act by Act 27 of 1956, Section 83(3) provided for an amendment of an election petition insofar as 'particulars' of corrupt practice were concerned. By the 1956 amendment this provision was replaced by Section 90(5) which in turn came to be deleted and transferred as Sub-section (5) of Section 86 by the Amendment Act 47 of 1966. Section 86(5) as it presently stands empowers the High Court to allow the 'particulars' of any corrupt practice alleged in the petition to be amended or amplified provided the amendment does not have the effect of widening the scope of the election petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the election petition. In other words the amendment or amplification must relate to particulars of a corrupt practice already pleaded and must not be an effort to expand the scope of the inquiry by introducing particulars regarding a different corrupt practice not earlier pleaded. Only the particulars of that corrupt practice of which the germ exists in the election petition can be amended or amplified and there can be no question of introducing a new corrupt practice. It is significant to note that Section 86(5) permits 'particulars' of any corrupt practice 'alleged in the petition' to be amended or amplified and not the 'material facts'. It is, therefore, clear from the trinity of Clauses (a) and (b) of Section 83 and Sub-section (5) of Section 86 that there is a distinction between 'material facts' referred to in Clause (a) and 'particulars' referred to in clause (b) and what Section 86(5) permits is the amendment/amplification of the latter and not the former. Thus the power of amendment granted by Section 86(5) is relatable to Clause (b) of Section 83(1) and is coupled with a prohibition, namely, the amendment will not relate to a corrupt practice not already pleaded in the election petition. The power is not relatable to Clause (a) of Section 83(1) as the plain language of Section 86(5) confines itself to the amendments of 'particulars' of any corrupt practice alleged in the petition and does not extent to 'material facts'.

This becomes crystal clear on the plain words of the closely connected trinity of Sections 83(1)(a), 83(1)(b) and 86(5) and is also supported by authority. See Samant N. Balkrishnay. George Fernandez : [1969]3SCR603 and D.P. Mishra v. Kamal Narayan Sharma : [1971]1SCR8 . In Balwan Singh v. Lakshmi Narain [1969] 22 ELR 273 this Court held that if full particulars of an alleged corrupt practice are not supplied, the proper course would be to give an opportunity to the petitioner to cure the defect and if he fails to avail of that opportunity that part of the charge may be struck down. We may, however, hasten to add that once the amendment sought falls within the purview of Section 86(5), the High Court should be liberal in allowing the same unless, in the facts and circumstances of the case, the Court finds it unjust and prejudicial to the opposite party to allow the same. Such prejudice must, however, be distinguished from mere inconvenience, vide Raj Narain v. Indira Gandhi : [1972]3SCR841 . This much for the provisions of Section 83(1)(a) and (b) and Section 86(5) of the R.P. Act.

20. That brings us to Clause (c) of Sub-section (1) of Section 83, which provides that an election petition shall be signed by the petitioner and verified in the manner laid down by the Code for the verification of the pleadings. Under Section 83(2) any schedule or annexure to the pleading must be similarly verified. Order 6 Rule 15 is the relevant provision in the Code. Sub-rule (2) of Rule 15 says that the person verifying shall specify with reference to the numbered paragraphs of the pleading, what he verifies on his own knowledge and what he verifies upon information received and believed to be true. The verification must be signed by the person making it and must state the date on and the place at which it was signed. The defect in the verification can be (i) of a formal nature and not very substantial (ii) one which substantially complies with the requirements and (iii) that which is material but capable of being cured. It must be remembered that the object of requiring verification of an election petition is clearly to fix the responsibility for the averments and allegations in the petition on the person signing the verification and at the same time discouraging wild and irresponsible allegations unsupported by facts. Then comes the proviso which provides that in cases where corrupt practice is alleged in the petition, the petition shall also be supported by an affidavit in the prescribed form i.e. Form No. 25 prescribed by Rule 94A of the Rules. Lastly Sub-section (2) of Section 83 lays down that any

schedule or annexure to the petition shall also be similarly signed and verified. Two question arise: (i) what is the consequence of a defective or incomplete verification and (ii) what is the consequence of a defective affidavit? It was also said that the verification clause in regard to averments or allegations based on information ought to disclose the source of information which had not been done in this case.

21. It must at the outset be realised that Section 86(1) which lays down that the High court 'shall' dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 does not in terms refer to Section 83. It would, therefore, seem that the legislature did not view the non-compliance of the requirement of Section 83 with the same gravity as in the case of Sections 81, 82 or 117. But it was said that a petition which does not strictly comply with the requirements of Section 83 cannot be said to be an election petition within the contemplation of Section 81 and hence Section 86(1) was clearly attracted. In Murarka Redhey Shyam v. Roop Singh Rathore : [1964]3SCR573 one of the defects pointed out was that though the verification stated that the averments made in some of the paragraphs of the petition were true to the personal knowledge of the petitioner and the averments in some other paragraphs were verified to be true on advice and information received from legal and other sources, the petitioner did not in so many words state that the advice and information received was believed by him to be true. The Election Tribunal held that this defect was a matter which came within Section 83(1)(c) and the defect could be cured in accordance with the principles of the Code. This Court upheld this view in the following words:

It seems clear to us that reading the relevant sections in Part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the CPC, 1908, for the verification of pleadings as required by Clause (c) of Sub-section (1) of Section 83 is fatal to the maintainability of the petition.

It is thus clear from this decision which is binding on us that mere defect in the verification of the election petition is not fatal to the maintainability of the petition

and the petition cannot be thrown out solely on that ground. As observed earlier since Section 83 is not one of three provisions mentioned in Section 86(1), ordinarily it cannot be construed as mandatory unless it is shown to be an integral part of the petition under Section 81.

22. The proviso to Section 83(1) was inserted by Section 18 of Amendment Act 40 of 1961. It is attracted where the petitioner alleges any corrupt practice. In that case the election petition must be accompanied by an affidavit in the prescribed form i.e. Form No. 25. The affidavit is intended to support the allegation of corrupt practice and the particulars thereof pleaded in the election petition. Order 19 Rule 3 of the Code provides that affidavits should be confined to such facts as the deponent is able on his own knowledge to prove. Here again the submission was that the affidavit to be sworn in Form No. 25 prescribed by Rule 94A must be sworn consistently with Order 19 Rule 3 of the Code. The submission, therefore, was that the affidavit must disclose the source of information for otherwise it will be no affidavit at all. In this connection reliance is placed on the decision of this Court in State of Bombay v. Purushottam Jog Naik : 1952 CriLJ1269 wherein at page 681 this Court while dealing with the verification of the affidavit of the Home Secretary observed that when the matter deposed to is not based on personal knowledge the source of information should be clearly disclosed. Again in The Barium Chemicals Ltd. v. The Company Law Board [1966] Supp. SCR 311 Shelat, J. at page 352 reiterated that where allegations of mala fides are not grounded on personal knowledge but only on 'reason to believe', the source of information must invariably be disclosed. Same was the view expressed in the case of K.K. Nambiar v. Union of India : [1970]3SCR121 . Based on the law laid down in the aforesaid three cases the learned Counsel for the appellants submitted that an affidavit which on its to disclose the source of information has no efficacy in law and is not worth the paper on which it is written, more so in an election petition alleging corrupt practice, for otherwise it will fail to achieve the purpose, namely, to give an opportunity to the returned candidate to counter the allegation. According to the learned Counsel, the affidavit contemplated by the proviso to Section 83(1) is intended to be an integral part of the petition under Section 81 and failure to comply with the requirement of disclosing the source of information renders the petition liable to summary dismissal under Section 86(1) of the R.P. Act. Reliance

was placed on Jadav Gilua v. Suraj Narain Jha : AIR1974 Pat207 ; Sunder Industries Ltd. v. G.E. Works : AIR1982 Delhi220 ; K.K. Somanathan v. K.K. Ramachandran : AIR1988 Ker259 ; Kamalam v. Dr. Syed Mohamad : [1978]3SCR446 and Sukhwinder Pal v. State of Punjab : [1982]2SCR31 , which support this view.

23. In the case of Murarka Radhey Shyam, (supra) two election petitions were filed challenging his election to the House of the People. In those two petitions certain preliminary objections were raised touching on the maintainability of the petitions on the ground that there was failure to comply with the mandatory requirements of the R.P. Act. One of the preliminary objections with which we are presently concerned was non-compliance with Section 83 inasmuch as the affidavit in respect of corrupt practices which accompanied the petition was neither properly made nor in the prescribed form. The further submission was that an election petition under Section 81 must comply with the requirements of Section 83 for otherwise it cannot be rightly described as an election petition under Section 81 of the R.P. Act. This Court referred to the observation of the Election Tribunal, which reads as under:

The verification of the affidavit of the petitioner is apparently not in the prescribed form but reading as a whole the verification carries the same sense as intended by the words mentioned in the prescribed form. The mistake of the Oaths Commissioner in verifying the affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily, as the provisions of Section 83 are not necessarily to be complied with in order to make a petition valid and such and expressed its agreement therewith. It also held that the defect in the time and place of verification cannot be a fatal defect and can be remedied.

24. In Virendra Kumar Saklecha v. Jagjiwan and Ors. : [1972]3SCR955 Rule 7 of the M.P. High Court Rules provided that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is based on information or belief and must also state the source of information or belief. This Court held that the requirements of Form 25 were not consistent with Rule 7 which purported to give effect to Order 19 of the Code. In that case the affidavit

accompanying the petition did not disclose the source of information in respect of certain speeches alleged to have been made by the appellant which constituted corrupt practice nor were the notes thereof allegedly made by certain persons produced therewith. This Court while stating that it was not necessary to express any opinion on the question whether the non-disclosure of the source or ground of information in the affidavit can prove fatal, nevertheless observed that the grounds or sources of information are required to be stated since Section 83 states that an election petition shall be verified in the manner laid down by the Code and the affidavit was, therefore, required to be modelled as required by Order 19 of the Code. This decision is not an authority for the proposition that failure to disclose the source or ground of information would result in dismissal of the petition under Section 86(1) of the R.P. Act.

25. In Krishan Chand v. Ram Lal : [1974]1SCR349 the appellant, a voter questioned Ram Lal's election on the allegation that he, his election agent and some others with his consent, had committed various acts of corrupt practices detailed in paragraphs 11 and 12 of the petition. The petition was verified by the appellant and was accompanied by an affidavit wherein he stated that paragraphs 11 and 12 were based on information received and believed to be true. The respondent raised a preliminary objection that the petition was liable to be dismissed for non-compliance with the provisions of the R.P. Act read with the Code as the sources of information were not disclosed. In support of this contention reliance was placed on the decisions rendered under Order 6 Rule 15 and Order 19 Rule 2 of the Code. Dealing with this submission, this Court observed in paragraph 6 of the judgment as under:

At the outset it may be stated that the provision for setting out the sources of information where the allegations have been verified as having been made on information and knowledge of the petitioner is not a requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, which are applicable to the filing of an election petition. Under Sub-section (1) of Section 83 an election petition has to contain a concise statement of the material facts on which the petitioner relies; it has to set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to

have committed such corrupt practice and the date and place of the commission of each such practice and shall be signed by the petitioner and verified in the manner laid down in the CPC, 1908, for the verification of the pleadings, provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

Setting out Form 25 prescribed under Rule 94A, this Court proceeded to further observe:

There is nothing in this form which requires the petitioner to state under Clause (b) of Form 25 the source or sources of his information. The appellant has referred us to Order XI, Rule 13 of the Supreme Court Rules as also to Rule 12(A) of the Punjab High Court Rules, in which when the deponent in the affidavit filed in support of the petition states that he has made the allegations in the paragraph or paragraphs specified on information, he is required also to disclose the sources of information. But when there are specific rules made under the Act which govern the election petitions, no other rules are applicable. Nor is the disclosure of the source of information a requisite under Order VI, Rule 15(2) CPC On this ground alone the submission of the appellant can be rejected.

Thus this Court came to the conclusion that the election petition under Section 83(1)(b) must itself contain all the necessary material facts and in the affidavit in support the petitioner is required to say which of the allegations are based on personal knowledge and which are based on information received and believed to be true. If the source of information has not been set out and the opposite party finds it difficult to answer the allegations regarding corrupt practice, he can always apply for better particulars. In other words the failure to disclose or divulge the source of information was not considered fatal to the petition. This Court, therefore, concluded that the election petition did not suffer from any defect on that score.

26. Similar was the view taken by this Court in Z.B. Bukhari v. Brij Mohan [1975] Suppl. SCR 281 while dealing with the contention that the affidavit in support of the election petition founded on allegations of corrupt practice falling under Sub-

sections (3) and (3A) of Section 123 was not in proper form. Repelling this contention the Court held that a petition can only be dismissed for a substantial defect. In taking this view reliance was placed on Prabhu Narayan v. A.K. Srivastava : [1975]3SCR552 wherein this Court had negatived the contention that failure to disclose the sources of information would render the affidavit defective.

27. However, strong reliance was placed on this Court's decision in Kamalam v. Dr. Syed Mohamad : [1978]3SCR446 . In that case the respondent's election to the Lok Sabha was challenged alleging corrupt practice. The election petition was duly signed and verified by the appellant and was accompanied by the requisite affidavit in support of the allegations of corrupt practice and their particulars. The election petition and the affidavit were tied together as one document. The appellant's signature appeared at the foot of the affidavit but there was no such signature at the foot of the election petition itself. In this backdrop of facts this Court held that both the election petition and the affidavit constituted one single document. This Court after referring to Sections 81(3), 83 and 86(1) observed as under:

The context in which the proviso occurs clearly suggests that the affidavit is intended to be regarded as part of the election petition. Otherwise, it need not have been introduced in a section dealing with contents of an election petition nor figured as a proviso to a Sub-section which lays down what shall be the contents of an election petition. Sub-section (2) also by analogy supports this inference. It provides that any schedule or annexure to an election petition shall be signed by the petitioner and verified in the same manner as an election petition. It is now established by the decision of this Court in Sahodrabai Rai v. Ram Singh Aharwar : [1968]3SCR13 that Sub-section (2) applied only to a schedule or annexure which is an integral part of the election petition and not to a schedule or annexure which is merely evidence in the case but which is annexed to the election petition merely for the sake of adding strength to it.

After quoting from the decision in Sahodrabai's case at pages 19-20, this Court proceeded to state:

It would, therefore, be seen that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified, since it forms part of the election petition. The subject-matter of Sub-section (2) is thus a schedule or annexure forming part of the election petition and hence it is placed in Section 83 which deals with contents of an election petition. Similarly, and for the same reasons, the affidavit referred to in the proviso to Section 83, Sub-section (1) also forms part of the election petition. The election petition is in truth and reality one document consisting of two parts, one being the election petition proper and the other being the affidavit referred to in the proviso to Section 83, Sub-section (1). The copy of the election petition required to be filed under the first part of Sub-section (3) of Section 81, would, therefore, on a fair reading of that provision along with Section 83, include a copy of the affidavit.

The above observations have, however, to be read in the context of the controversy before the Court. The dispute between the parties was limited to the fulfilment of the last part of Section 81(3), viz., the requirement that every such copy of the election petition 'shall be attested by the petitioner under his own signature to be a true copy of the petition'. As pointed out earlier it was found as a fact that the signature was at the foot of the affidavit tied to the petition and not at the foot of the petition itself. The Court, therefore, came to the conclusion that since the affidavit constituted an integral part of the election petition, the requirement of the latter part of Section 81(3) was satisfied. The decision clearly turned on the special facts of that case.

28. From the text of the relevant provisions of the R.P. Act, Rule 94A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desire better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an

integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter.

29. A charge of corrupt practice has a two-dimensional effect; its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial. This is quite clear from the observations of this Court in the case of K.M. Mani v. P.J. Anthony : [1979]1SCR701 . While defective verification or a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. It must also be realised that delay in complying with the requirements of Section 83 read with the provisions of the Code or the omission to disclose the grounds or sources of information, though not fatal, would weaken the probative value of the evidence ultimately lead at the actual trial. Therefore, an election petitioner can afford to overlook the requirements of Section 83 on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. That is because as held in Mani's case the charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi-criminal in nature, the failure to supply full particulars at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure forms an integral part of the election petition itself,

strict compliance would be insisted upon.

30. The next objection is based on the language of Section 81 of the R.P. Act. This Section deals with the presentation of an election petition. Sub-section (1) thereof says that an election petition may be presented by any candidate at such election or any elector within 45 days from, but not earlier than, the date of the election of the returned candidate or if there are more than one returned candidate at the election and the dates of their election are different, the later of those dates. This Sub-section specifies on what ground or grounds the election of the returned candidate can be challenged, who can challenge the election and imposes a period of limitation for filing such a petition. Sub-section (2) of this section was omitted by Act 47 of 1966. Then comes Sub-section (3) which stipulates that 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. This Sub-section enjoins (i) supply of such number of copies of the petition as are respondents and (ii) every such copy must be attested by the petitioner under his own signature to be a true copy of the petition. There is no controversy regarding the first aspect, the controversy centers round the second part. It must be remembered that non-compliance with the requirement of Sub-section (1) or (3) of Section 81 can prove fatal in view of Section 86(1) of the R.P. Act. See Satya Narain v. Dhuja Ram : [1974]3SCR20 ; M. Karunanidhi v. Dr. H.V. Hande : [1983]2SCR629 ; Mithilesh Kumar Pandey v. Baidyanath Yadav : [1984]2SCR278 ; Rajender Singh v. Usha Rani : [1984]3SCR22 and U.S. Sasidharan v. K. Karunakaran : [1989]3SCR958 . It is quite obvious from these decisions that the requirements of Section 81(3) are mandatory and failure to comply with them would render the petition liable to summary dismissal under Section 86(1) of the R.P. Act.

31. The objection raised in the context of Section 81 is that the election petition in every case is a mere photocopy prepared from a typed one and the copy of the election petition served on the returned candidate in each case was not duly attested to be a true copy of the original as required by Section 81(3) and hence the petition was liable to be dismissed in limine under secion 86(1) of the R.P. Act.

Section 81(1) does not debar photo copying but Rule 1 of the Rules says that it shall be 'type-written or printed'. There is no dispute that a model election petition was prepared and got typed and prints thereof were taken out by the process of photocopying. These prints were used both as original election petitions as well as copies. The particulars in regard to each petition, e.g., the names of the parties, the voting pattern, the towns and villages where utterances amounting to corrupt practice were made, etc., were filled in and the court fee was affixed on one of them which constituted the original and photocopies thereof were filed before the Stamp Reporter in accordance with the Rules. The photocopy bearing the court fee stamps was indisputably signed by the election petitioner and was presented with sufficient copies to the Stamp Reporter. The original election petition is, therefore, a photocopy of the typed model and the copies are also photocopies prepared from the original petition. Evidently the underlying idea in providing that the election petition shall be type-written or printed is to ensure that the document is legible. There is no complaint that the document which is admitted as an election petition and the copies thereof are not legible. If that be so it is difficult to appreciate the objection that the photocopy should not be treated as an original petition even if it otherwise complies with the requirement of law. The High Court was, therefore, justified in treating the same as the original election petition.

32. The next objection raised by the appellants is that the copy of the petition served on each one of them is not attested to be a true copy of the original petition as required by Section 81(3) of the R.P. Act and Rule 1 of the Rules. Each copy is attested as 'certified true copy' and the petitioner has put his signature thereunder. This, contend the appellants, is not in conformity with Section 81(3) and, therefore, it is obvious that the mandatory requirement of Section 81(3) read with Section 86(1) is not satisfied. On a plain reading of Section 81(3) it becomes clear that the requirement of that provision is (i) the election petition should be accompanied by as many copies thereof as there are respondents mentioned in the petition and (ii) every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. There is no dispute in regard to the compliance of the first part. So far as the second part is concerned, all that the section requires is that the copy should be attested by the petitioner to be a true copy of the petition under his own signature. The requirement of this part of the provision is met by each copy

having been signed at the foot thereof by the concerned petitioner. What is essential is that the petitioner must take the responsibility of the copy being a true copy of the original petition and sign in token thereof. No particular form of attestation is prescribed; all that the Sub-section enjoins is that the petitioner must attest the copy under his own signature to be a true copy of the petition. By certifying the same as true copy and by putting his signature at the foot thereof, the petitioner of each election petition had clearly complied with the letter and spirit of Section 81(3) of the R.P. Act. In fact in Ch. Subba Rao v. Member E.T. Hyderabad [1969] 6 SCR 213 which was followed in Kamalam's case (supra) this Court had accepted the mere signature without the words like true copy, sufficient attestation under Section 81(3) of the R.P. Act. We are, therefore, in agreement with the finding recorded in this behalf by the High Court.

33. The next grievance of the appellants is that they were not served with a true copy of the election petition inasmuch as the annexures served therewith were not true copies of the original. Section 83(2) lays down that any schedule or annexure to the petition shall be signed by the petitioner and verified in the same manner as a petition. The grievance under this head is not that there is no compliance with Section 83(2) but that the annexure which was an integral part of the election petition was not a true copy of the original, inasmuch as certain pages found in the annexure produced with the petition were missing from the copies supplied to the returned candidates/appellants. It was strongly submitted that an annexure which is an integral part of the election petition is an important and vital document and failure to supply a true copy thereof clearly violates the mandatory requirement of Section 81(3) and renders the petition liable to be dismissed by virtue of Section 86(1) of the R.P. Act. As held in Sahodrabai' case (supra) where details of averments too compendious for inclusion in the petition are included in the schedule or annexure, the schedule or annexure in that case must be treated as integrated with the election petition and must comply with the requirement of Section 83(2) and Section 81(3) failing which the provision of Section 86(1) would stand attracted. But this does not apply to a schedule or annexure which produces a document as evidence in support of the allegation in the election petition. Such a schedule or annexure cannot be described as integrated with the election petition and defect in verification thereof would not prove fatal. In Sasidharan's case

(supra) the same principle has been reiterated. In the case the election petitioner referred to a video cassette showing progress of the constituency which also contained speeches of government servants. A copy of this document was not served on the opposite party alongwith the election petition. It was held that the said document formed part of the election petition and failure to supply a copy thereof along with the election petition was fatal. If a document does not form an integral part of the election petition but is merely referred to in the petition or filed in the proceedings as evidence of any fact, failure to supply a copy-thereof will not prove fatal. Therefore, the maintainability of an election petition, in the context of the point on hand will depend on whether the schedule or annexure to the petition constitutes an integral part of the election petition or not. If it constitutes an integral part it must satisfy the requirements of Section 81(3) and failure in that behalf would be fatal. But if it does not constitute an integral part of the election petition, a copy thereof, need not be served along with the petition to the opposite party. Much would, therefore, depend on whether the schedule or annexure was an integral part of the election petition or not; if the former, failure to serve it along with the petition to the returned candidate would be fatal but not so in the latter case. The appellants contend that it was an integral part of the election petition but the High Court did not go into this question; it solely relied on the Stamp Reporter's report. It then emphasised that no defect was noticed by the Stamp Reporter in the following words:

The stamp reporter, in the instant case, found the copies in order and made his endorsement accordingly. I do not find any reason not to rely upon the endorsement of the stamp reporter.

Therefore, the criticism that the High Court which was duty bound to apply its mind and decide the question judicially had abdicated in favour of the Stamp Reporter's decision extracted earlier. We are afraid this criticism is not wholly correct because the High Court has also observed that 'no specific omission or deviation in the copy from the original was pointed out' nor was it shown that the respondents were misled on that account. We have also closely scrutinised the application made by the returned candidate in the High Court and except for a general allegation that the annexure served along with the petition was not a true copy, no specific

allegation is found. However, in the special leave petition filed in this Court question No. (vi) states that certain pages were missing from the copy of the annexure served on the returned candidate. Then in paragraph 11 it is averred that pages 15 and 16 of Annexure II were missing. Since no such specific allegation was made in the application filed by the returned candidate, the High Court had no occasion to go into this allegation and to ascertain if the missing pages contained material forming an integral part of the election petition. We would not like to embark upon an inquiry in this behalf and would leave it to the appellants to agitate the question before the High Court. We would request the High Court to examine the contention on merits, if raised, and answer the same in accordance with law.

34. Although we have come to the conclusion that the defect in verification is not fatal and can be cured, no attempt has been made by the election petitioners to cure the same nor has the High Court directed the petitioners to do so. By way of a sample our attention was drawn to the election petition No. 7 of 1989 which has given rise to Civil Appeal No. 179 of 1991. The said petition has 47 paragraphs besides the prayer clause. The verification clause shows that paragraphs 1, 2, 4, 5, 18, 19, 28, 35, 30, 33, 36, 38, 41 to 47 of the election petition are on knowledge whereas paragraphs 7 to 15, 20, to 24, 26, 27, 29, 32, 34, 35, 37, 40 and 41 are on information received and believed to be true. It will be seen from the above that paragraphs 3, 6, 16, 17, 25, 31 and 39 are not verified at all. It was submitted by counsel for the appellants that paragraph 3 contained vital allegations regarding corrupt practice and since that paragraph has not been verified at all, the appellant is likely to be handicapped at the trial. It was contended that such was the position in as many as six petitions if not more. Further some of the paragraphs, e.g., 41 are verified under both heads of the verification clause, thereby causing confusion. In the affidavit sworn in compliance of the proviso to Section 83(1) it is stated that particulars and details of corrupt practice are contained in paragraphs 4 to 40 of the election petition. Then the petitioner states that what he has alleged by way of corrupt practice in the election petition is correct 'to the best of my knowledge and to the information received by me and believed by me to be true'. It is thus not clear which allegation of corrupt practice is based on his knowledge and which information he believes to be true. Besides when this affirmation is compared with

the verification clause of the election petition, the confusion is worst confounded. Similar is the case with the verification of the annexures. There is, therefore, considerable force in the submission of the learned Counsel for the appellants that even if the High Court concluded that the defect in verification/affirmation was not fatal, the High Court ought to have directed the petitioners to cure the defects within the time stipulated by it so that the appellants would know the exact position before the trial and would not be taken by surprise. We think the High Court committed an error in failing to give appropriate directions in the matter. More or less similar defects are also found in the verification/affirmation clause in the other election petitions/affidavits. We would, therefore, request the High Court to issue directions to the election petitioner of each petition to remove the defects within such time as it may allow and if they or any of them fail to do so, pass appropriate consequential orders in accordance with law.

35. The High Court has applied the correct test while permitting the amendments. The High Court has rightly pointed out that the power conferred by Section 86(5) cannot be exercised to allow any amendment which will have the effect of introducing a corrupt practice not previously alleged in the petition. If it is found that the proposed amendments are not in the nature of supplying particulars but raise new grounds, the same must be rejected but if the amendments are sought for removing vagueness by confining the allegations to the returned candidate only such an amendment would fall within the parameters of Section 86(5) of the R.P. Act. It was on this correct understanding of the legal position that the High Court scrutinised the amendment application. It was not shown at the hearing of these appeals that any particular averment introduced by way of an amendment had the effect of introducing a totally new allegation of corrupt practice not previously pleaded in the election petitions. Yet, if the appellants can point out any inconsistency, the High Court will remove the same.

36. These were all the submissions made before us. We have dealt with them in extenso and have clarified the legal position. We have suggested certain modifications in the impugned orders and have indicated the course of action to be adopted by the High Court. We need not recapitulate the modifications and the future course of action. The impugned order of the High Court in each petition will

stand modified to the extent it is inconsistent with the legal position explained hereinabove. The High Court will pass appropriate orders to remove the inconsistencies. The appeals will stand allowed only to the extent of the modifications/directions made by this order with no order as to cost in each election petition.

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