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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09.03.2017
Pronounced on: 20.12.2017

+ I.A. 13851/2009 IN EL.PET.20/2009

ADESH KUMAR GUPTA Petitioner
Through : Mr. P.D. Gupta, Sr. Advocate
with Ms. Simran Brar and Ms. Deveshi
Mishra, Advocates.

versus

SHRI D.K. MISHRA AND ANOTHER Respondents
Through : Mr. Arvind Nigam, Sr. Advocate
with Mr. Rajiv Kapur, Mr. Harish Barara,
Mr. R.S. Chauhan, Mr. Mikhil Sharda and
Mr. Akshay Bhandari, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

S. RAVINDRA BHAT, J.

Facts

1. Adesh Kumar Gupta, (hereafter referred to as “Adesh Gupta”) filed an election petition (El. Pet. 20/2009) under Section 80 of the Representation of the People Act, 1951 (hereafter the “Act”) challenging the election of Ajay Maken (hereafter the “Maken”) as a Member of Parliament from the New Delhi Parliamentary Constituency for the Lok Sabha elections of 2009. The Petitioner alleges that the Second Respondent, along with his election agent, and others with his approval, indulged in “corrupt practices” within the

meaning of the Act, and therefore seeks the relief that the Maken's election be declared as void. In his petition, Adesh Gupta leveled a number of allegations against Maken and his election agent with respect to various corrupt practices allegedly indulged by them. These allegations include, *inter alia*, that the Maken induced voters to vote for him by offering gratification in the form of food and water, that he sought assistance of government officers on poll duty to canvass for him during the polling, that he had exceeded the statutory limit of ₹25 lakhs fixed for election related expenditure, that he failed to keep correct accounts of the expenditure incurred by him, that he circulated pamphlets and posters without printing the name and address of the printer etc. These practices, alleged Adesh Gupta, ran afoul of the statutory provisions enshrined in Section 123(1), (2), (5), (6), (7) read with Section 127 (a) of the Act.

2. In response to this petition, Maken filed an Interlocutory Application invoking Order VII Rule 11 of the Code of Civil Procedure, 1908, praying that the election petition be dismissed in accordance with the mandate provided in Section 86 of the Act, which requires the High Court to dismiss an election petition which does not comply with the requirements of Section 81, 82 or 117 of the Act. Maken argued in his Application, that the petition had to be rejected by this court on various grounds, *inter alia* that not all pages and documents furnished to him along with the copies of the petition, contained the signatures of the Petitioner, that many portions of the documents filed with the petition were missing, copies of several pages of the annexures were dim or illegible, the petition was not

properly verified and the verification clause in the copy furnished to the second respondent did not contain signatures of the Petitioner.

3. This Court by order dated 30.05.2011, dismissed the application. The Court reasoned that it could not enquire into the question as to whether and to what extent the copy furnished to the Second Respondent was compliant with the requirements under Section 81(3), as that would in itself amount to a trial, in some respects. The Court relied on decisions of the Supreme Court in *Chandrakant Uttam Chodankar v. Dayanand Rayu Mandrakar*, (2005) 2 SCC 188 and in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, AIR 1964 SC 1545 to conclude that the application deserves to be dismissed and that at this stage, it would not be open to the Court to address the issue of compliance with Section 81(3), on merits. Aggrieved by the said decision of this Court, Maken preferred an appeal by way of Special Leave Petition to the Supreme Court.

4. In its decision dated 11.12.2012, the Supreme Court in part affirmed the view of this Court in declining to reject the plaint under Order VII Rule 11 CPC on the ground urged. At the same time, the Supreme Court remanded the matter back to this Court with the direction that this Court should render a finding as to whether the Petitioner complied with the requirements under Section 81(3) of the Act, before considering the merits of the petition. The operative part of the Supreme Court order states:

“5.The substance of the objections raised by the appellant herein in the abovementioned interlocutory

application is that the election petition filed by the 2nd respondent herein is liable to be dismissed on three counts:

Firstly, on the ground of non-compliance with Section 81(3);

Secondly, that the election petition does not reveal a complete cause of action as it does not contain all the material facts necessary to constitute to be the cause of action; and Thirdly, that one Vijay Goel who was also a candidate in the said election is also a necessary party as per the provisions of section 82 of the Act but not impleaded as the respondent.

14. [.....]The Appeal, insofar as the first issue identified by us in para 5 of the Judgment, is required to be allowed and remanded to the High Court for an appropriate consideration of the objections raised by the appellant herein, in accordance with law.”

5. By order dated 05.04.2013, this Court framed the following preliminary issues for consideration:

“Whether the Second Respondent proves that:

- (i) The Election Petition filed by the Petitioner is required to be dismissed on the ground that the copy served on the Second Respondent is not a true copy of the original petition within the meaning of Section 81(3) of the Representation of the People Act, 1950?*
- (ii) The Petitioner has complied with the order dated 17.07.2009 with respect to filing of the original documents with the petition and if not, what is the consequence?*
- (iii) Can the objection with respect to the amendment allowed by order dated 20.07.2010 (to the petition) can be heard and decided at this stage?”*

6. On subsequent hearings, evidence was led in order to decide the preliminary issues framed. During the course of hearings, the statements of both the Petitioner (Adesh Gupta) as well as the Second Respondent (Maken), along with the statement of one sub-divisional magistrate, were recorded.

Contentions of the parties

7. In the application to reject the election petition on grounds of non-compliance with the requirements of the Act, Maken contends that the copy supplied to him by the Petitioner was not a “true copy” of the petition within the meaning of Section 81(3). Specifically, the defects in the petition alleged by Maken have been set out in paragraph 3 of the earlier decision of this Court:

- “i) Not all pages and documents furnished to the Second Respondent, along with copies of the petition, contained signatures of the Petitioner;*
- ii) Many portions of the documents filed with the petition were missing;*
- iii) Copies of several pages of annexures (to the petition) furnished to the Second Respondent were dim or illegible;*
- iv) The election petition was not properly verified;*
- v) The verification clause in the copy furnished to the Second Respondent did not contain signatures of the Petitioner.”*

The learned senior counsel for Maken argued that these defects are incurable in nature and given the clear mandate of Section 81(3) -read with Section 86(1) of the Act, the Court must dismiss the petition on these grounds.

8. Mr. Arvind Nigam, learned senior counsel for Maken urged that since the right to challenge the election of an elected representative is solely the creature of statute, it is imperative that the requirements spelt out in the statute are unambiguously complied with. The mandate of the statute is clear; Section 81(3) of the Act states that every copy of the election petition furnished to the respondents must be attested to be a true copy of the petition. Section 86(1) further provides that the High Court “shall” dismiss an election petition which does not comply with the provisions of Section 81. It was urged, and submitted, that given the imperative wording used in Section 86(1), there was no scope for any discretion to be exercised by the Court, if the petition were found to not be a “true copy”, which it admittedly was not in this case. Learned senior counsel also submitted that an amendment could not cure the defects in the petition originally submitted to the Second Respondent as the statute did not prescribe any remedy by which defects (such as those mentioned in Section 81) could subsequently be cured by the election petitioner by way of amending the petition. In other words, the amendment cannot relate back to the date of institution of the original petition. *A fortiori*, the Court under Section 86 does not have the authority to ask the Petitioner to make appropriate amendments, in a manner that would frustrate the mandate of Section 86.

9. It is urged by learned senior counsel that *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, (1964) 3 SCR 573 is a clear authority for the proposition that the copy served on the respondent should be a true copy in the sense as to be so “*true that*

nobody can by any possibility misunderstand it". Emphasizing and reiterating the contentions in the application (for rejection of the petition) it was argued that the defects of omission: such as absence of attestation of true copy, gaps in the annexures supplied, are serious and cannot by any stretch of imagination result in a finding that the petitioner had even "substantially complied" with the letter of the law. It was argued, that whenever an unsuccessful candidate lays the charge of corrupt practice in an election petition, that challenges the election of someone else, the proceeding acquires a quasi-criminal character. Thus, the provisions of law require strict adherence, in respect of procedure and pleadings. Relying on *V. Narayanaswamy v. C.P. Thirunavukkarasu*, AIR 2000 SC 694, it was argued that there is no question of the court waiving or dispensing with any statutory requirement, which is non-derogable.

10. Opposing the application on behalf of the petitioner learned senior counsel Mr. P.D. Gupta, contended that all of Maken's objections are unfounded, technical and designed to deviate attention from the corrupt practices indulged by him, which were established through the election petition. It was submitted that Maken's objections regarding defects in the election petition are baseless, insubstantial and concocted. Learned senior counsel submitted that after the Registry of this Court returned the petition seeking some amendments, which were duly carried out by the petitioner, there remained no room for Maken to allege any material defects in the petition that could be hit by Section 81 of the Act. It is alleged that Maken did not produce the original copy of the petition sent to him by the Petitioner, but brought

to the Court a photocopied version of the same. The photocopy was prepared in a manner that the signatures of the Petitioner at the bottom of each page, attesting its veracity, were deliberately omitted/left out.

11. The Petitioner nonetheless contends, *arguendo* that any defects in the petition were merely of form and not of substance and did not affect the right of the Second Respondent to defend the allegations against him. Relying on the Supreme Court decisions in *F.A. Sapa v. Singora and Ors* (1991) 3 SCC 375 and *Murarka Radhey Shyam Ram Kumar* (supra), the learned counsel for the Petitioner contended that what the Court should require is “substantial compliance” with Section 81 and not punctilious adherence to each and every matter of procedure. The Court should necessarily be circumspect in dismissing a petition on narrow, technical grounds, without letting the issues raised thereunder to proceed to trial. On the issue of the petition being filed without a proper affidavit, the Petitioner relied on *Dr. Vijay Lakshmi Sadho v. Jagdish*, (2001) 2 SCC 247, to contend that defect in verification of an affidavit is curable and does not merit dismissal of an election petition *in limine* under Section 86(1) of the Act.

12. It was argued that the copies furnished by Maken, in support of the application seeking rejection of the petition, cannot be accepted, because they are not reflective of what was actually supplied to him when the election petition was originally served. Counsel endeavored to urge that the election petition was in order and that the Registry had notified some defects, which were cured.

Analysis and Conclusions

13. The first question that this Court needs to decide, relates to the interpretation of Section 81(3) of the Act. Section 81 (3) reads:

“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.”

Correspondingly, Section 86(1) of the Act provides as follows:

“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.”

14. At the outset, the Court must have regard to the fact that since election remedies were not an action at law or equity, but only created by way of a statutory right, strict compliance with the statute, i.e. the provisions of the Representation of the People Act, must be insisted upon by the Court. This would also be necessary in order to prevent any fishing or roving enquiry into the election of a candidate which would constitute interference in the democratic will of the people. In this context, a five judge bench of the Supreme Court in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, AIR 1964 SC 1027 held:

“Before, however, dealing with it, it will be convenient to refer to some of the submissions made to us by the learned Solicitor-General appearing for the contesting respondents. He submitted to us certain propositions

which however we consider really unexceptionable. He said that an election petition was not to be equated to an action at law or in equity, but that as the rights were purely the creature of statute, if the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to waive non-compliance. We consider these propositions are sound and it is in the light of these basic positions that we shall proceed to consider whether the omission to add the words "true copy" in the copies which were admittedly exact copies of the petition, constituted a non-compliance with s. 81(3) as to render the petition liable to be rejected under s. 90(3) of the Act."

Similarly, the Supreme Court in *V. Narayanaswamy v. C.P. Thirunavukkarasu*, AIR 2000 SC 694, held:

"It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance.

[...] Sections 31, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the Court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition.

[.....] Where several paragraphs of the election petition alleging corrupt practices remain unformed under the verification clause as well as the affidavit, the unsworn allegations could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the Court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the

provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance.

[.....]In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings, it is no part of duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by other side.”

15. The interpretation of Section 81(3) of the Act fell upon the Supreme Court in *Murarka Radhey Shyam (supra)*. The Court held:

“We are of the view that the word "copy" in sub-s. (3) of s. 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 (see Stroud's Judicial Dictionary, third edition, volume 4, page 3098).

This test enunciated by the Supreme Court has since come to be used in subsequent decisions as the test of “substantial compliance”; if a copy was substantially same as the original and did not contain any material or substantial variation, then it would be a true copy and would constitute sufficient compliance under Section 81(3).

Similarly, the Constitution Bench in *T.M. Jacob v. C. Poulouse*, AIR 1998 SC 2939 held:

“The expression 'copy' in section 81(3) of the Act, in our opinion, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. Indeed a copy which differs in material particulars from the original cannot be treated as a true copy of the original within the meaning of section 81(3)

of the Act and the vital defect cannot be permitted to be cured after the expiry of the period of limitation.”

16. The question of what would constitute substantial compliance and which kind of defects would be incurable under Section 81(3) has arisen before the Apex Court on a number of occasions. In *Rajendra Singh v. Smt. Usha Rani*, AIR 1984 SC 956, the Supreme Court was dealing with a situation where an entire page was missing from the election petition in the copy furnished to the Respondent. The Court held:

*“The mandate contained in Section 81(3) enjoins that there should be no difference of any kind whatsoever barring some typographical or insignificant omissions between the petition filed and the copy served on the respondent. If an entire page is missing in the petition but it is there in the copy served on the respondent, then it is manifest that the copy served was not an exact and true copy of the petition. The consequences of the mandatory provisions of Section 81(3) could not be got over by praying for an amendment of the election petition because that would defeat the very object and purpose of Section 81(3). It is not disputed that this discrepancy between the election petition and the copies served on the appellants was undoubtedly there. In these circumstances, the High Court was wrong and committed a serious error of law in allowing the amendment of the petition. The High Court should have tried to appreciate the tenor and spirit of the mandate contained in Section 81(3) of the Act. In the case of *Sharif-ud-Din v. Abdul Gani Lone* [1980] 1 SCR 1177 this Court dismissed the election petition only on the ground that the words "attested to be a true copy" were not signed by the election-Petitioner and held that this was not a sufficient compliance with the provisions of Section 89(3) of the Jammu & Kashmir Representation of the People Act,*

which is the same as Section 81(3) of the Act. In the instant case, the inconsistency is much greater than in Sharif-ud-Din's case.”

17. In *Dr. (Smt) Shipra v. Shanti Lal Khoiwal*, the Court was dealing with a case where the question was whether the copy of the election petition served on the respondents without attestation duly verified by the Notary/Oath Commissioner could be said to be a true and correct copy within the meaning of Section 81(3) of the Act. The Court held:

“8. When a Petitioner is enjoined to file an election petition accompanied by an affidavit duly sworn by the applicant duly verifying diverse allegations of corrupt practices imputed to the returned candidate and attested by the prescribed authority it would be obvious that the statute intended that it shall be performed in the same manner as prescribed in Form 25 read with Rule 94-A of the Rules. The attestation of the affidavit by the prescribed authority, therefore, is an integral part of the election petition.

10. Since the corrupt practices are required to be proved to the hilt, the element of vagueness would immediately vitiate the election petition. A true copy supplied with mistakes of vital and serious nature would, therefore, entail dismissal of the election petition. Each case has to be considered on its own facts and circumstances. No general principle of universal application could possibly be laid.

11. In Purshottam v. Returning Officer, Amravati and Ors. AIR 1992 Bom 227, the present question had directly arisen. In that case the copy contained omission of vital nature, viz., the attestation by the prescribed authority. The High Court had held that the concept of substantial compliance cannot be extended to overlook

serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy. We approve of the above view. Verification by a Notary or any other prescribed authority is a vital act which assures that the election Petitioner had affirmed before the notary etc. that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, form 25 mandates verification before the prescribed authority. The object appears to be that the returned candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity. Allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he became disqualified for election to a maximum period of six years under Section 8A, apart from conviction under Section 136(2). Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine qua non contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation.”

18. The decision in *Shipra (supra)* was however somewhat watered down in *T.M. Jacob (supra)* by the Constitution Bench of the Supreme Court. In that case, the Court held:

“Thus, from the 'facts' noted by Bharucha, J., it transpires that in Dr. Shipra's case the 'true copy' of the Election Petition furnished to the respondent gave an impression that the election Petitioner's affidavit supporting his allegations of corrupt practice had not been duly sworn and verified by the election Petitioner before the Notary, who also had not attested the same thereby rendering that document as 'no affidavit' at all in the eye of law. The defect found in the 'true copy' of the affidavit, was thus, not merely the absence of the name of the Notary or his seal and stamp but a complete absence of 'notarial endorsement' of the verification as well as absence of an "affirmation" or 'oath' by the election Petitioner. It was in that context that the Bench had found in Dr. Shipra's case that the returned candidate would have got the impression, on a perusal of the 'true copy' of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election Petitioner. It was precisely on account of this 'fatal' defect that K. Ramaswamy, J. opined that 'the principle of substantial compliance cannot be accepted in the fact situation'.

19. The whole position emerging after the long line of decisions of the Supreme Court, including the Constitution Bench's decision in *T.M. Jacob (supra)* was summarized by the Supreme Court in *T. Phunzathang v. Sri Hangkhanlian*, AIR 2001 SC 3924:

“From the above conclusion of this Court in Jacob's case, two principles can be deduced; (a) the Expression "copy in Section 81(3) of the Act means a copy which is

substantially the same as original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) If the copy differs in material particulars from the original same cannot be cured after the period of limitation.”

20. What these decisions of the Supreme Court instruct is that Section 81(3) requires every copy of the petition served on the respondents to be “substantially” the same as the original; in other words, substantial compliance to the extent that the copy served is as near to the original as is possible, is the threshold that the law requires. Such a threshold balances the right of the elected candidate and the mandate of the statute, and ensures that an election petition is not dismissed for the insignificant or highly technical procedural reasons. At the same time, while ascertaining whether there is compliance with Section 81(3), the Court cannot adopt a “one-size fits all” approach. Necessarily, as the Supreme Court points out in *Shipra (supra)*, there cannot be any principle of universal application and each case needs to be judged in light of its own facts and circumstances.

21. In the present case, the Court has carefully examined the record and has an overview of the evidence led by both sides, including the affidavit of Maken (marked as Ex R2WI-A) and his cross examination, on 09.12.2015; the petitioner’s affidavit –dated 11.02.2016); cross examination (recorded on 04.11.2016). Maken denied having received a copy of the petition, that conformed to what

was filed originally; to a suggestion by counsel for the petitioner, he clearly stated that “*some documents or parts thereof were blurred and illegible and some were not attested true copies.*” Again, in the cross examination, he deposed to having visited counsel the day after he was handed over the copy of the petition, by his mother, who received it in his absence. The petitioner, on the other hand, relied upon his evidence, where he testified to filing of the election petition, in his presence. The second witness relied upon by the petitioner was Mr. Sanjay Jha, Sub-divisional magistrate, who brought the records in the form of what exists in his office, of the petition when it was served on his office. He deposed that the copy of the petition did not exist in his office. What remained of the file was produced as Ex. R2/W2.

22. In the present case, the original petition was filed on 30.06.2009, and was returned on 02.07.2009. Thereafter the petition was re-filed. What was served on the Second Respondent was not what was originally filed on 30.06.2009, or the one re-filed on 02.07.2009. It is clearly borne out from the copy furnished to Maken, (the Second Respondent). The Petitioner did not duly sign all pages of the petition so served. The affidavit accompanying the petition in the required Form 25 (at page 38-39), was not verified. The verification clause in the copy served upon the Second Respondent also did not contain signatures of the Petitioner. Some pages of the annexures were not served. Many others were dim, illegible. In fact, the petitioner had filed an application for exemption from filing legible copies. In relation to the missing pages in the annexures as well as the fact that

some of these annexures were illegible, the decision of the Supreme Court in the case of *M. Karunanidhi v. Dr. H.V. Hande*, AIR 1983 SC 558 must be noticed:

“41. The preliminary issue and the appeal turn on a short point of construction. The question that arises is whether the words "copies thereof" in Sub-section (3) of Section 81 comprehend the election petition proper or do they also include a schedule or annexure annexed thereto. The controversy whether the photograph was a schedule or annexure in terms of Sub-section (2) of Section 83 or merely a document only in proof of the allegations in paragraph 18(b) must turn on a construction of Sub-section (3) of Section 81 read with Sub-section (2) of Section 83. It now appears to be well settled by Sahodrabai's case (supra) that Sub-section (2) of Section 83 applies only to a schedule or annexure which is an integral part of the election petition and not to a document which is produced as evidence of the election petition. [...]

42. The High Court rests its conclusion on the decision of this Court in Sahodrabai's case, 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 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.

43. It was observed that the details of averments may be too compendious for being included in the petition and may be set out in the schedule or annexure to the election petition. The Court then gave examples on which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. It then went on to say that such annexures or schedules are treated as integrated with the election petition and copies of them must be served on the returned candidate if the requirement regarding service of the election petition is to be wholly complied with. But that this rule was not applicable to documents which are merely an evidence in the case but which, for reasons of clarity and to lend force to a petition, are not kept back but are produced or filed with the election petition. [.....]

46. It follows as a necessary corollary that if the pamphlet had not been incorporated in the body of the election petition, the decision of the Court in Sahodrabai's case, supra, would have been otherwise. That precisely is the case here."

23. Thus, the decision in *Karunanidhi (supra)* is authority for the rule that annexures or schedules appended to the election petition

would also be treated as a part of the petition for the purpose of Section 81(3) and Section 86 of the Act, where the annexures and schedules contain details of the allegations of corrupt practices against the returned candidate. In such cases, the annexures would be treated as an integral part of the petition and consequently any variance with the original copy would attract the provisions of Section 81(3) and Section 86 of the Act.

24. In the present case, the copy of the petition served upon the Second Respondent, marked as Ex. R2 W1/A, clearly has some portions (i.e. pages 262, 263 and 300 which otherwise are part of the court file, and form part of the annexures). Pages 262 and 263 of the annexures contain copies of some of the Second Respondent's achievements detailed in his election manifesto, annexed to highlight certain allegations of corrupt practices against Maken, the second respondent. Page 300 of the annexure contains receipt of the High Court showing payment of the requisite fees for filing of the election petition. *These pages were missing in the copy furnished to the Second Respondent.* While pages 297 and 298 are missing in the copy furnished to the Second Respondent, on comparison with the original copy of the petition filed in the Court, it appears that the same was on account of a page numbering error in the original petition and hence for those pages, there is no variance with the original copy. Inasmuch however, that some pages in the annexures containing details of the corrupt practices alleged against the Second Respondent are missing, given the clear enunciation of the law by the Supreme Court in

Karunanidhi (supra), it is clear that such annexures would also be a part of the election petition. The fact these pages are missing would therefore mean that the copy furnished to the Second Respondent was not a “true copy” within the meaning of Section 81(3) of the Act. The Court also notices that a number of pages of the annexures detailing the charges of corrupt practices, in the copy furnished to the Second Respondent, are entirely illegible.

25. This court notices that the election petition, originally filed on 30 June, 2009, contained the following verification clause:

“I, Adesh Kumar Gupta, the Petitioner abovementioned, do hereby solemnly affirm, verify and declare on this day of 29.6.2009 at New Delhi, that the contents of paragraph nos. I (ii) to II (B), II (C), II (D), II (G), III and V are true and correct to my knowledge, para I (i), I (ii), II (A), II (E), II (F), IV and VI are correct on the basis of information and record received/collected from various officials who were connected with the election and legal advice received by me which I believe to be true and nothing material has been concealed from this Hon’ble Court”

26. In an application (IA 4055/2010) filed in March, 2010, the petitioner seeks amendment. One important amendment, which is sought is substitution of the verification clause. The clause sought to be substituted by amendment, is as follows:

“I, Adesh Kumar Gupta, the Petitioner abovementioned, do hereby solemnly affirm, verify and declare on this day of 30.6.2009/09.03.2009 at New Delhi, that paragraph nos. 1 to 8, I (ii), II (B), II (D), II (C), II (G), III and V are true and correct to my knowledge, para II (A), III, V, VI

are correct on the basis of information and record received/collected from various offices, para II (E), II (F), IV are true and correct on information received and believed to be correct. Last para is the prayer to this Hon'ble Court."

27. The application was not allowed by the court, as the second respondent, Maken, opposed it. The petitioner had urged that the amendment does not in any manner, materially change the cause of action, or prejudice the rights of the parties; obviously the second respondent denies this.

28. The nature of the original verification clause and its comparison with the amendment sought, reveals that there are significant variations. The demarcation between information known to the petitioner, and what is based on information received, and further, contents of information believed to be true, are absent in the original verification clause.

29. Having regard to all these circumstances, it is clear that the copy of the petition received by the Second Respondent, was at significant variance from the original copy, and was not duly verified, or signed by the Petitioner. This is also borne out, tacitly, from the conduct of the Petitioner, in wanting to file an amended copy of the first petition furnished to the Second Respondent. Apart from some pages in the annexures being missing it is also evident that some of the pages in the annexures are dim or illegible. While individually such defects in an election petition may be curable, taken together, all of these defaults can hardly be said to constitute "substantial

compliance” with Section 81(3), as per the law down in *Murarka Radhey Shyam (supra)* and the other decisions cited above.

30. It is evident that the copy furnished to the Second Respondent was not substantially a “true copy” of the petition that was filed in the Court; the defects in the copy of the petition furnished to the Second Respondent in this case are not merely cosmetic. While some of the defects (such as those of verification by signature or attestation by notary stamp) in the petition are undoubtedly, by and of themselves not fatal to its maintainability as per the decisions cited above and relied upon by the learned counsel for the Petitioner, unquestionably, assessed cumulatively the nature of defects in the copy furnished to the Second Respondent in the present case are such as to be fatal to the maintainability of the petition, resulting in its rejection. To that extent, none of the decisions relied upon by counsel for the Petitioner can serve to assist his cause in the present case. It is evident that while defects in verification of the petition or signature or attestation by notary would, in the absence of other defects, be individually curable in nature, as per the law laid down in the various Supreme Court decisions, the present case stands on a different footing as there are a number of other substantial defects in the petition also (as noted above). Moreover, in the absence of any credible evidence being adduced, the Petitioner’s allegation that Maken has not furnished the correct copy served upon him, but has produced a photocopied version of the same, the photocopy having been done with such dexterity as to show the defects alleged by the Second Respondent, also strains

credulity. In such a scenario, the Court would be duty bound to follow the mandate provided in Section 86(1) and dismiss the petition for want of compliance with Section 81. Were it to hold otherwise, the Court would in effect water down the mandatory language of Section 86(1) to an impermissible extent. The first preliminary issue framed by this Court, thus, is answered in favour of the Second Respondent.

31. In the circumstances, the application for rejection (IA 13851/2009, filed by Maken, the second respondent) under Sections 81 (3), 82 and 86(1) of the Act has to succeed; it is allowed. For the same reasons, the applications filed by the petitioner (IA Nos. 13850/2009, and IA 4055/2010- the latter seeking amendment on the vital omissions) deserve to, and are accordingly, rejected. As a consequence, the election petition (EP 20/2009) and the said two applications (13850/2009, and IA 4055/2010) are rejected. There shall be no order as to costs.

S. RAVINDRA BHAT, J

DECEMBER 20, 2017