

GAHC040013112024



**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

I.A.(Civil) 183(AP)/2024

Shri Tai Nikio

.....Applicant/Respondent

-VERSUS-

Shri Tadar Mangku

.....Opp. Party/Election Petitioner.

Advocates for the Petitioners: Mr. P.K. Tiwari, Sr. Advocate,
Mr. T. Lamgu

Advocates for the respondents : Mr. R. Biswas, Advocate,
Mr. D.J. Kapil, Advocate

Date of hearing : 29.11.2024

Date of Order : 23.12.2024.

**B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE
ORDER**

Heard Mr. P.K. Tiwari, learned Senior Counsel assisted by Mr. T. Lamgu,

learned counsel for the applicant. Also heard Mr. Rituraj Biswas and Mr. D.J. Kapil, learned counsels for the opposite party/election petitioner.

2. This application under Order VII Rule 11 of the Code of Civil Procedure, 1908, read with Section 86(1) of the Representation of the People Act, 1951 has been filed praying for dismissal of the Election Petition No. 7(AP)/2024 for non-compliance of the provisions of Sections 81 & 82 of the Representation of the People Act, 1951.

3. The Election Petition No. 7(AP)/2024 has been filed challenging the election of the applicant as an MLA from No.19 Nyapin (ST), Assembly Constituency in the 2024, Arunachal Pradesh Legislative Assembly Election for 11th Arunachal Pradesh Legislative Assembly. The election petition was filed on 16.07.2024 and came on board on 31.07.2024, on which date the notice was issued to the respondent making it returnable in 3(three) weeks. This Court has directed the election petitioner to take steps for service of notice upon the respondent by registered post with A/D within 2(two) days and the matter was directed to be listed on 22.08.2024. Pursuant to the said order, the steps for service of notice by registered post were taken on 02.08.2024 by the opposite party/election petitioner. On 22.08.2024, when the petition came on board, the service of notice reported not complete. Consequently, awaiting service report, the opposite party/election petitioner was permitted to take steps through dasti mode and the election petition was directed to be listed on 11.09.2024.

4. On 01.09.2024, the true copy of the election petition was received by Shri Tai Riaping, the son of applicant, through dasti mode showing completion of service on the applicant. Accordingly, the applicant through his counsel entered appearance on 11.09.2024, when the election petition came on board and on

the prayer of the counsel for the applicant, the election petition was directed to be listed on 27.09.2024.

5. Mr. P.K. Tiwari, learned Senior Counsel for the applicant contends that on the scrutiny of the election petition and the records of the case in the Registry of this Court indicates that the election petition suffers from the substantial defects. He submits that the records in the Registry do not show as to how the election petition was presented before whom. There is no report of the Stamp reporter showing compliance of the mandatory provision of Section 81 of the Representation of the People Act, 1951 read with Rule 1 of Chapter VIII A of the Gauhati High Court Rules. Therefore, there has been no presentation of the election petition as mandated by Section 81 of the Representation of the People Act, 1951 and Rule 1 of Chapter VIII A of the Gauhati High Court Rules.

6. Chapter VIII A Rule 1 (a) of the Gauhati High Court Rules, mandates that the election petition shall be accompanied by as many copies as there are respondents with one extra copy and as many envelopes bearing requisite postage stamps to enable service to be effected by registered post with acknowledgement due. It is contended that the records of the Registry do not show that required 2(two) numbers of true copies of the election petition fully attested by the petitioner under his own signature were filed on 16.07.2024 with as many envelopes bearing requisite postage stamps to enable service to be effected by registered post. It is only on 31.07.2024, when the election petition came on board and notice was issued by the Hon'ble Court with a direction to take steps for service by registered post with acknowledgement due within 2(two) days from 31.07.2024 that the election petitioner managed to furnish two extra so called true copies with as many envelopes bearing requisite

postage stamps to enable service by registered post with AD. Hence the presentation of election petition was not in conformity with the section 81 (3) of the Representation of the People Act, 1951 read with Chapter VIII A Rule 1 of the Gauhati High Court Rules. Since required number of extra copies of election petition with as many envelopes bearing requisite stamps were not filed within the prescribed period of 45 (forty five) days from the date of election i.e. 45 days from 02.06.2024 which expired on 17.07.2024 and extra copies of election petition with as many envelopes bearing requisite stamps were filed only on 31.07.2024 or within 2 days from 31.07.2024, which was well after expiry of prescribed 45 (forty five) days from filing of election petition, the late filing of extra copies (after expiry of 45 days from the date of election) was contrary to the mandate of Section 81 of the Representation of the people Act, 1951 read with Chapter VIII A Rule 1 (a) of the Gauhati High Court Rules.

7. Mr. P.K. Tiwari, learned Senior Counsel contended that the so called true copy of the election petition received by the respondent on 01.09.2024 through dasti mode though appears to be signed by the petitioner under his own signature but there is no recital that it is "a true copy of the petition." This is contrary to the mandate of Section 81 (3) of the 1951 Act.

8. Since election petition alleges corrupt practice, as per mandate of Proviso to Section 83 (1) of the Representation of the People Act, 1951, it has to be accompanied by an affidavit in Form 25 as prescribed in Rule 94 (A) of the Conduct of Election Rules 1961. The extra copy of election petition served on the respondent through dasti mode contains so called Form 25 affidavit bearing only the signature of the petitioner without any verification, attestation, endorsement of a prescribed authority. The absence of endorsement of a prescribed authority on Form 25 affidavit accompanying the extra copy of the

election petition renders the election petition as not conforming to Section 81 (3) of the 1951 Act and as such the election petition is liable to be dismissed for the said omission, as the copy of the election petition served on the respondent cannot be accepted as a true copy of the election petition filed before this Court.

9. It is contended by Mr. Tiwari, learned Senior Counsel that none of the annexures annexed with the election petition has been signed by the petitioner nor verification in support of such annexures have been signed in violation of Section 83(2) of the Representation of the People Act, 1951. It is only verification, affidavit and Form 25 affidavit annexed with the election petition have been signed by the petitioner and no other page of the election petition has been signed.

10. Mr. Tiwari, learned Senior Counsel further contends that paragraph 13 of the election petition does not indicate that security deposit under Section 117 of the Representation of the People Act, 1951 has been made. The details and particulars of the security deposit have been left blank. However, the challan showing the deposit of security is annexed as Annexure-28 but the verification in support of the said annexure has not been verified by the petitioner under his signature and even Annexure-28 has not been signed by the petitioner. Therefore, there has been no presentation of the election petition in terms of Section 81 of the Representation of the People Act, 1951 and it suffers from substantial defects. As such, the election petition is liable to be dismissed under Section 86 (1) of the Representation of the People Act, 1951 Act.

11. Mr. P.K. Tiwari, learned Senior Counsel, submits that there is a total non-compliance of Section 81(3) of the Representation of the People Act, 1951 as no extra copies with true copies with as many envelopes bearing requisite postage

stamps has been filed along with the election petition within 45 (forty five days) days of the date of election. Although, the name is written but there is no attestation. He submits that the Form-45 has not been notarised though the petitioner has shown to have put his signature. He submits that the election petition has not been signed and verified as required under Section 83(2) of the Representation of the People Act, 1951. Therefore, the learned senior counsel submits that in view of the above defects there has been no presentation of the election petition in terms of the Section 81 of the Representation of the People Act, 1951 and it suffers from substantial defects and accordingly, the election petition is liable to be dismissed under Section 86(1).

12. In support of his submissions, Mr. P.K. Tiwari, learned senior counsel for the applicant has placed reliance on the following judgements:-

- (i) **Satya Narain Vs. Dhuja Ram and Ors.** reported in **(1974) 4 SCC 237.**
- (ii) **Rajendra Singh Vs. Smt. Usha Rani and Ors.** reported in **(1984) 3 SCC 339.**
- (iii) **Manohar Joshi Vs. Damodar Tatyaba @ Dadsaheb Rupwate and Ors.** reported in **(1991) 2 SCC 342.**
- (iv) **Dr. Shipra (Smt) and Ors. Vs. Shanti Lal Khoiwal and Ors.** reported in **(1996) 5 SCC 181.**
- (v) **Harcharan Singh Josh Vs. Hari Kishan** reported in **(1997) 10 SCC 294.**
- (vi) **T.M. Jacob Vs. C. Poullose and Ors.** reported in **(1999) 4 SCC 274.**
- (vii) **Anil R. Deshmukh Vs. Onkar N. Wagh and Ors.** reported in **(1999) 2 SCC 205.**
- (viii) **Chandrakant Uttam Chodankar Vs. Dayanand Rayu mandrakar and Ors.** reported in **(2005) 2 SCC 188.**

13. Mr. R. Biswas, learned counsel for the opposite party/election petitioner submits that the election petition can be dismissed if it does not comply with the Section 81 or 82 or 117 of the Representation of the People Act, 1951 and not Section 83 of the Representation of the People Act, 1951. He submits that nothing has been shown that the copy of the election petition is insufficient. While referring to the checklist, he submits that it does not show any insufficiency in the copies of the election petition. The election petition was filed on 16.07.2024, which is within the limitation period of 45 (forty five) days along with requisite true copies of the election petition.

14. He submits that a copy of the High Court Rules, particularly the Chapter VIII A has been filed along with the election petition. The security deposit has been made in conformity with section 117 of the Act and the details have been filed with the election petition. Therefore, there is a due compliance of sections 81, 82 and 117 of the Representation of the People Act, 1951.

15. Mr. Biswas, learned counsel submits that on 16.07.2024, two requisite true copies of the election petition was filed, which has been verified and accepted by the Registry of this Court. Since the second copy, which was filed along with the first copy was sent by registered post and returned unserved, clearly indicates that the true copies as required under the provisions of the Representation of the Peoples Act, 1951, have been filed. The copies served through dasti mode are the true copy, which may not contain the signature in some pages which cannot be said to be insufficient as already two required true copies has been filed on 16.07.2024. Therefore, he submits that there is a total compliance of the Section 81 and 82 and the Gauhati High Court Rules and as such, the present interlocutory application praying for dismissal of the election

petition for non-compliance of the provision 81 and 82 of the said Act is liable to be dismissed.

16. Mr. Biswas, learned counsel, in support of his submissions has placed reliance on the following judgments:-

- (i) ***Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Ors.*** reported in ***1963 SCC Online SC 129.***
- (ii) ***Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad and Ors.*** reported in ***1964 SCC Online SC 168.***
- (iii) ***M. Kamalam Vs. Dr. V.A. Syed Mohammed*** reported in ***(1978) 2 SCC 659.***
- (iv) ***Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Ors.*** reported in ***(1984) 2 SCC 123....***
- (v) ***Anil R. Deshmukh Vs. Onkar N. Wagh and Ors.*** reported in ***(1999) 2 SCC 205.***
- (vi) ***T.M. Jacob Vs. C. Poullose and Ors.*** reported in ***(1999) 4 SCC 274.***
- (vii) ***T.Phungzathang Vs. Hangkhanlian And Ors.*** reported in ***(2001) 8 SCC 358.***
- (viii) ***Ram Prasad Sarma Vs. Mani Kumar Subba And Ors.*** reported in ***(2003) 1 SCC 289.***
- (ix) ***Chandrakant Uttam Chodhandkar Vs. Dayanand Rayu Mandrakar*** reported in ***(2005) 2 SCC, 188.***
- (x) ***Ponnalalakshmaiah Vs. Kommuri Pratap Reddy And ors.*** reported in ***(2012) 7 SCC 788.***
- (xi) ***Thangjam Arunkumar Vs. Yumkham Erabot Singh and Ors.*** reported in ***2023 SCC Online SC 1058.***

17. Heard the submissions of learned counsel for the parties and carefully

scrutinised the materials on record.

18. The present application has been filed by the applicant praying for dismissal of the election petition for non-compliance of the Section 81 and 82 of the Representation of the People Act, 1951. The defects alleged regarding defective filing is to the effect that there was no report from the stamp reporter showing compliance with Section 81 of the Representation of the People Act, 1951 and Rule 1 of Chapter VIII A of the Gauhati High Court Rules. The petitioner did not provide the required true copies of the election petition fully attested under the signature of petitioner along with necessary envelope bearing requisite postal stamp, which is a mandatory requirement as per the Chapter VIII A of the Gauhati High Court Rules. The extra copies of the election petition with required envelopes and postal stamp not filed within the prescribed 45 (forty five) days from the date of election, a legally mandated period, which expired on 17.07.2024. The copy was filed only on 31.07.2024. The true copy of election petition served on the respondent through dasti mode lacks recital stating it is a true copy of the petitioner, which is in violation of Section 81(3) of the Representation of the Peoples Act, 1951. The affidavit in Form 25 accompanying the election petition served through dasti mode lacks attestation or endorsement by prescribed authority, an omission which renders the petition non-compliant with Section 83(1) of the Representation of the People Act, 1951. The annexures annexed with the election petition have neither been signed by the petitioner nor verified, which violates Section 83(2) of the Representation of the People Act, 1951. The petition does not confirmed whether the mandatory security deposit under Section 117 of the Representation of the People Act, 1951 has been made. The details regarding the security deposit are left blank and the verification in support of the challan has not been signed or verified by

the petitioner. Therefore, questions to be determined are- as to whether there are defects in the election petition; whether there is non-compliance of provisions of the Act and Rules in filing and presentation of the election petition; and whether non-compliance with the same will visit the election petitioner with the penalty of dismissal of his petition under section 86(1) of the Act.

19. To appreciate the questions, it is apposite to refer and analyse the relevant provisions of the Representation of the Peoples Act, 1951 and the Gauhati High Court Rules.

20. Section 81 of the Representation of the People Act, 1951, is quoted herein below:-

“81. Presentation of petitions: (1) An election petition calling in question any election may be presented on one or more of the grounds specified in 8[sub-section (1)] of section 100 and section 101 to the 6[High Court] by any candidate at such election or any elector 9[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 3*** and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

21. Bare reading of the above provisions show that an election petition calling in question any election is to be presented on one or more of the grounds

specified in section 100 and section 101 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. Sub-Section (3) provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition. It further provides the manner in which such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

22. Section 86 (1) of the Representation of the Peoples Act, 1951, provides 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. Thus, an election petition may be dismissed in limine if the same does not comply with the provisions of section 81 or section 82 or section 117 and not on any other provisions.

23. Section 117 pertains to Security for costs which provide that at the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition. It also provides that during the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.

24. Chapter VIII A, rule 1 of Gauhati High Court Rules provides the manner in which election petition is to be presented which is quoted herein under:-

“1. An election petition under S. 80-A of Representation of Peoples Act may be presented duly verified in the form prescribed under Ss. 82 and 83 of the said Act before the stamp reporter of this Court with a Court fee of Rs. 6.00 affixed thereon,

within 45 days from 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 latter of those two dates. Every such petition shall be accompanied by-

(a) as many copies thereof as there are respondents mentioned in the petition together with one extra copy, all the copies being fully attested by the petitioner under his own signature to be a true copy of the petition and as many envelopes as there are respondents bearing requisite postage stamp to enable service to be effected by registered post with acknowledgment due;

(b) as many printed forms of notices, duly filled in, as there are respondents;

(c) an affidavit in support of the contents of the petition as prescribed in R.83(c) of the aforesaid Act where necessary, and

(d) a challan showing the deposit of Rs.2,000 (Rupees two thousand) into the State Bank of India, Gauhati Branch in favour of the Registrar of the Court, as security for the costs of the petition:

25. Bare reading of above rule, reflects that an election petition to be presented duly verified in the form prescribed under the Act before the stamp reporter of the Court with a Court fee affixed thereon, within 45 days from 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 latter of those two dates. Every such petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition together with one extra copy, all the copies being fully attested by the petitioner under his own signature to be a true copy of the petition and as many envelopes as there are respondents bearing requisite postage stamp to enable service to be effected by registered post with acknowledgment due.

26. On perusal of the record, it is seen that the election result was declared on 02.06.2024, the opposite party/election petitioner has filed the election petition

on 16.07.2024 and it came on board on 31.07.2024 and a notice was issued to the applicant/respondent. On 02.08.2024, steps for service of notice by registered post were taken by the Registry. On 22.08.2024, the election petition was listed again. However, it was noticed that the service of notice upon the applicant/respondent was not complete, thereby permitted the learned counsel for the applicant to take steps through dasti mode. Dasti mode accordingly was prepared and handed over to the petitioner by the Registry on 13.08.2024. The registered notice was issued to the applicant/respondent was returned unserved on 30.08.2024. On 01.09.2024, a true copy of the election petition was received by the applicant's son through dasti mode and on 11.09.2024, the learned counsel for the applicant/respondent has entered appearance.

27. Records reveals that the election petition along with one true copy of the election petition was filed on 16.07.2024, whereby, on issuance of notice on 31.07.2024, the other copy was sent by registered post to the applicant/respondent. The unserved copy, which is available in the record shows that it was filed on 16.07.2024, which has been properly attested and verified as required under the provisions of Section 81 of the Representation of the People Act, 1951 except an absence of signature of the prescribed authority.

28. It is an admitted position that two true copies of the election petitions were filed on 16.07.2024, however, the copy served to the applicant by dasti mode was not the true copy filed along with the main copy as the true copy by registered post was already sent and had returned unserved after service by dasti mode. The copy served on the applicant bears certain omission, but such omission is not fatal in the absence of any material to show that the true copies of the election petition were not filed with the election petition at the time of presentation as the record reveals that true copy was filed within the period of

limitation, i.e. 16.07.2024.

29. The checklist reflects, inter alia, that requisite court fee of Rs. 20/- is paid. At serial No. 19, which provide that copies of petition insufficient, has not been tick marked which indicates that copies of petition are sufficient. A challan of Rs.2000/- deposited into SBI as security for the costs of the petition and the details is filed with election petition. A copy of the High Court Rules- Chapter VIIIA, rule 1(a) is filed along with the election petition. The Stamp Reporter has checked and endorsed the same on 16.07.2024 to be laid.

30. From the said endorsement of the Assistant Registrar/Stamp Reporter, election petition was in order and therefore endorsed to be laid. It is evident, when the election petition was taken up for hearing on 31.07.2024, true copies of the same were filed at the time of presentation of election petition on 16.07.2024 and other true copy sent for notice upon the applicant which has returned unserved. The onus to prove that a copy of the election petition is not served on him, must be on the person who alleges such fact. Therefore, I am of the view that in presence of the endorsement of the Assistant Registrar/Stamp Reporter dated 16.07.2024 that the election petition was in order which would raise a presumption, it would be for the applicant to rebut such presumption and discharge his initial burden. In the present case, applicant having failed to discharge such onus, it is not open for the applicant to say that true copies of the election petitions were not filed at the time of presentation of election petition. It is not disputed that true copy of the election petition duly served on the applicant by dasti mode bears certain variations with that of the true copy filed alongwith election petition but same would not be fatal. In the absence of any material to show that true copies of the election petition was not filed at the

time of presentation of election petition, I am unable to hold that there was non-compliance of Section 81(3) of the Act.

31. It is seen that verification, affidavit and Form 25 at page 83-87 of the present application (a copy served to the applicant) bears only the signature of the election petitioner without the word "attested" and not notarized. However, it is found that in the election petition at page 62-66, bears the signature of the election petitioner without the word "attested" written but duly signed by the prescribed authority, i.e. Commissioner of Oath. In my view, omission of writing the word "attested" cannot be treated as defect of substantial nature and would not entail dismissal of the election petition under section 86 of the Act. Thus, it cannot lead to the conclusion that election petition should be rejected for non-compliance of section 81(3) of the Act even if copy served on the applicant may contains some minor variation which is not substantial in nature but can be treated to be true copy within the meaning of section 81(3) of the Act.

32. The second part of section 81(3) of the Act requires that every such copy should be attested by the election petitioner under his own signature to be true copies. It is satisfied if the copy is attested by the election petitioner to be true copies of the election petitions under his own signature and in my view the word "attested" need not be written. As noted herein earlier, Section 81(3) postulates that every copy of the election petition shall be attested by the election petitioner under his own signature to be a true copy of the petition. From a perusal of the defects which have been referred to herein earlier, it would be safe to conclude that such defects cannot be said to be of vital nature. I am not persuaded to the view that the defect in the present case is material or it was vital in nature or the absence of word "attested" could be treated to be

a ground for rejection of the election petition under Section 81(3) of the Act.

33. The Hon'ble Supreme Court has held that the expression 'copy' in Section 81(3) of the Act means a copy which is substantially the same as the 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. However, if the copy differs in material particulars from the original the same cannot be cured after the period of limitation.

34. Now, I would refer to the case laws relied on by the learned counsel for the parties.

35. In the case of **Satya Narain Vs. Dhuja Ram**, (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

“8. The short question is whether section 81(3) of the Act is mandatory and, if so, whether non-compliance with the same will visit the election' petitioner with the penalty of dismissal of his petition under section 86(1) of the Act. This question was mooted in Jagat Kishore Prasad Narain Singh v. Rajindra Kumar Poddar and Others(1) but the Court did not find it necessary to decide the same.

10. Now there are two parts in section 81(3). The first part 'provides that "every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition. The second part relates to the manner in which "such copy shall be attested by the petitioner under his own signature to be a true copy of the petition". We are concerned only with the first part in this appeal.

13. Keeping in the forefront the proper functioning of democracy, the principal object of the Act is purity of elections. When therefore, an election of a returned candidate is challenged under the Act, expeditious trial of the election dispute is sought to be enforced by the legislature making all safeguards against delay. Trial has to be necessarily expedited to rid the candidate as well as the constituency interested

in the result of the election, of any taint or suspicion of corrupt practices which are again clearly enumerated in the Act. To take, therefore, another important object of the Act, viz., expeditious disposal of an election petition, by section 86(6) "the trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons, to be recorded". Again under section 86(7), "every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial". Further section 87(1) introduces the Civil Procedure Code only subject to the provisions of the Act and of any rules made thereunder. Section 87(2) makes a deeming provision for application of the Evidence, Act only subject to the Act. Therefore, there is no scope for free play in the application of the provisions of those two Acts. The very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually and lightly permitting, all kinds of devices to delay the ultimate trial. The purpose of enclosing the copies of the election petition for all the respondents is to enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the 1st part of section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total, non-compliance with the same will entail dismissal of the election petition under section 86 of the Act."

36. In the case of **Rajendra Singh Vs. Smt. Usha Rani**, (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

"8. This being the position, it is manifest that the appellant did not receive the correct copies as contemplated by s. 81 (3) of the Act. The respondent has also not been able to prove that the copies served on the appellant were out of the 10 corrected copies which she had signed and filed. It appears that in view of a large

number of copies of the petition having been filed, there was an utter confusion as to which one was correct and which was not. It is obvious that if an election-petitioner files a number of copies, some of which may be correct and some may be incorrect, it is his duty to see that the copy served on the respondent is a correct one. A perusal of ss. 81 (3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election-petitioner disregards the mandate contained in s. 81 (3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under s. 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of s. 81 (3) which is sufficient to entail a dismissal of the election petition at the behest.

10. In these circumstances, therefore, in the instant case there was absolutely no justification for the learned Judge to have invoked the doctrine of benefit-of-doubt. We are satisfied that it has not been proved by the respondent that she filed correct copies of the election petition or, for that matter the appellant got the correct copy and not the incorrect one, in the face of the clear and categorical assertion by him that he did not receive the correct copy."

37. In the case of **Manohar Joshi Vs. Damodar Tatyaba @ Dadsaheb Rupwate**, (Supra), wherein the Hon'ble Supreme Court has held which is reproduced herein under:-

"9. It is clear from the reading of these two sections that even in the election petition where allegations of corrupt practices are made, full particulars of the alleged corrupt practice including as fuller a statement as possible and the names of the parties who are alleged to have committed such practice and the date and place of the commission of each such practice have to be furnished. What is further, the allegations of the corrupt practice have to be accompanied by an affidavit in support both of the allegations as well as the particulars thereof, and if there are any schedules or annexure to the petition in support of the corrupt practice, they have also to be signed

by the petitioner and verified by him in the same manner as the petition. This is a mandatory requirement. The object of the said provisions is obvious. The party and it includes not only the returned candidate but all other candidates against whom the corrupt practice is alleged, must have an adequate notice of the precise allegations made against him so that he has a proper opportunity to meet them."

38. In the case of **Dr. Shipra (Smt)**, (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

"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. The learned counsel for the appellant contended that the affidavit is not an integral part of the election petition. Substantial compliance would be sufficient. We find no force in the contention. True that the defects could be rectified on being pointed out by the Registry of the High Court. As per Rules 8 and 9 of the High Court Rules, the Registrar is enjoined to point out the defects but the same was not done. It is contended that the respondent was in any way misled or prejudiced. The defect was a curable one. Opportunity should have been given to the appellant to have the defects corrected. In case the appellant had not carried out the correction, that part of the allegations which mentioned in the election petition alone is required to be struck off. The election petition cannot be dismissed under Section 86 of the Act since it is duly presented under Section 81. It would be done only at the trial, on proof of prejudice or the omission or prejudice caused to the respondent. In this case that step was not taken. In support thereof, the counsel cited catena of decisions of this Court, viz., Manohar Joshi v. Nitim Bhaurao Patil & Anr. [(1996) 1 SCC 169]; Subhash Desai v. Sharad J. Rao & Ors. [(1994)] Supp. 2 SCC 446; Ch. Subharao v. Member, Election Tribunal, Hyderabad [(1964) 6 SCC 213]; Bhikaji Keshao Joshi & Anr. v. Brijlal Nandlal Biyani & Ors. [(1955) 2 SCR 428 at 429]; Murarka Radhey Shyam Ram Kumar v. Roop Singh

Rathore & Ors. [(1964) 3 SCR 579] and Sahodrabai Rai v. Ram Singh Aharwar [(1968) 3 SCR 13]. We have carefully gone through all the cited decisions and given our anxious consideration to the respective contentions. In none of the cases the present question had arisen. In all the cases, though the affidavit or the election petition contained allegations of corrupt practices and true copies were served, the omissions in the copies were not of material facts which become an integral part of the election petition or of the pleadings. Therefore, this Court had not insisted upon strict standard of the scrutiny as required under Section 86."

17. *The question that must be posed, as indicated by this Court's previous decisions, is Does the document purporting to be a true copy of the election petition mislead in a material particular? The "true copy" of the election petition furnished by the appellant (election petitioner) to the respondent (the successful candidate) did not show that the appellant's affidavit supporting his allegations of corrupt practice had been duly sworn or affirmed. Where corrupt practice is alleged, the election petitioner must support the allegation by making an affidavit in the format prescribed. An affidavit must be sworn or affirmed in the manner required by law, or it is not an affidavit. The document purporting to be a true copy of the election petition furnished by the appellant to the respondent gave the impression that the appellant's affidavit supporting his allegations of corrupt practice had not been sworn or affirmed and was, therefore, no affidavit at all; it misled in a material particular and its supply was, as the High Court held, fatal to the election petition.*

22. *Qazi, J. in Purushottam v. Returning Officer has, after referring to the above decision of this Court along with the other decisions and an unreported decision of the Bombay High Court in Election Petition No. 2 of 1990, held that the absence of the endorsement of the Notary on the copy of the affidavit accompanying the election petition renders the copy as not conforming to Section 81(3) of the Act, and the election petition is liable to be dismissed for the said omission.*

23. *In my opinion, the above decision lays down the law correctly and is squarely applicable herein. In particular, the following observations in the unreported*

decision of the Bombay High Court in Election Petition No. 2 of 1990 quoted in para 12 of the judgment of Qazi, J. are instructive and furnish sufficient basis to reach the said conclusion. The observations are to the following effect:

“50. That, however, leaves one question to be considered and it is whether the copy of the endorsement 'Affirmed and signed before me' by the Notary, designation of the Notary and the stamped endorsement regarding the affirmation which he made at the time of the making of the affidavit, were necessary and essential parts of the document and if these are omitted from the copy furnished, that would render the copy, which is furnished, incomplete, and the defect would be so glaring as to negative the inference that the copy was furnished. When Form No. 25 prescribes a particular form and the copy of that affidavit is to be furnished, it seems to me that the endorsement of the authority before whom the affirmation was made, together with his official designation and the stamped endorsement, are also essential and without them the copy cannot be regarded as true copy. It is not merely the contents of the affidavit which brings sanctity to the document but the affirmation that has been made, and without the affirmation, it can be no affidavit at all. I am not impressed by the submission of Shri Bobde that these endorsements were merely formal, because what is required under the proviso to sub-section (1) of Section 83 is an affidavit, and it should be possible for the respondent to ascertain whether, in fact, the contents were sworn, affirmed and signed before the Magistrate or the Notary or the person in whose presence the swearing of the affirmation was made, had authority to administer oath. The respondent will not be in a position to point out that the person, who is said to have administered the oath, was not in existence or had no authority to administer the oath or that the signature and the endorsement on the document purported to have been made by the alleged authority were fake. If the copies of the affidavit are not faithful and do not include these endorsements, a valuable right of the respondent is taken away and considering the purpose which the copy of the endorsement would serve, it cannot be said that this portion would not be integral part of the affidavit. Since these details form an integral part of the affidavit, furnishing a copy without that portion would not be furnishing a complete copy, and in

that event, merely because the returned candidate made an endorsement that it was a true copy, it cannot be regarded as a true copy. Considering the purpose that is to be served, I do not think that the lapse can be regarded as inconsequential."

39. In the case of **Harcharan Singh Josh Vs. Hari Kishan**, (Supra) the Hon'ble Supreme Court has held which is reproduced herein under:-

"2. It is not necessary for us to go into the grounds on which the election petition was dismissed by the High Court. Suffice it to state that the objections raised by the respondent regarding non-supply of the true copy of the affidavit is a formidable objections which merits acceptance in view of the recent judgment of this Court in Dr. (Smt.) Shipra etc.etc. vs. Shantilal Khoiwal etc. etc. [JI 1996 (4) SC 67]. Therein the copy of the affidavit supplied to the respondent was not attested by the Oath Commissioner. This Court, after considering the entire case law, held that the affirmation before the prescribed authority in the affidavit and the supply of its true copy is mandatory so that the returned candidates could not be misled in his understanding that imputation of the corrupt practices were prescribed authority. For that purposes, Form 25 prescribed by Section 83 requires verification before prescribed authority. The concept of substantial compliance has no application in such a case. It is seen that the copy of the affidavit supplied to the respondent does not contain the affirmation by the Oath Commissioner. Under these circumstances, the defect is not a curable defect. Therefore, the dismissal of the election petition on this ground is sustainable in law."

40. In the case of **Anil R. Deshmukh (Supra)** the Hon'ble Supreme Court has held which is reproduced herein under:-

"3. When the copies of the petition, documents and the affidavit were served on the respondents, the copy of the affidavit did not bear the endorsement of attestation found on the original or the seal or stamp of the attesting officer. The appellant signed below the rubber stamp endorsement "Attested as true copy". But for the absence of the notarial endorsement, it was a true copy of the original as it was a xerox copy. The

first respondent and the tenth respondent raised objections that the election petition should be dismissed in limine as the provisions of S. 83(1) of the Act were not complied with. Besides the contention that the copies of the affidavit served on them were not true copies, the tenth respondent con-tended that a true copy of the petition was not supplied to him as required by S. 81(3). The first respondent filed a separate application for dismissing the election petition for non-compliance with S. 81(3) of the Act.

5. The two issues were treated as preliminary issues and the High Court heard arguments on the same before the commencement of the trial. The Court found against the contention that true copy of the petition was not supplied. But the objection that the copy of the affidavit supplied was not a true copy in as much as it did not contain the endorsement of attestation was upheld. The High Court held that the defect was fatal to the election petition and dismissed the same for non-compliance of S. 83(1) read with Section 81 of the Act. For coming to the said conclusion the High Court relied on a previous judgment of the Court in Purushottam v. Returning Officer, Amravati, AIR (1992) Bombay 227 which was approved by this Court in Dr. (Smt.) Shipra v. Shanti Lal, [1996] 5 S.C.C. 181.

8. Section 86(1) of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117, Section 81 deals with the presentation of petitions. It is not the case of the respondent that there is any defect in presentation of the election petition as prescribed by sub-section (1) of Section 81. Their contention is that sub-s. (3) of Section 81 has not been complied with in this case. The said sub-(s) 3 read as follows :

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

Section 82 sets out the parties who shall be joined as respondents to a

petition. Section 83 deals with the contents of a petition. The Section requires an election petition to contain a concise statement of the material facts on which the petitioner relies and to set forth full particulars of any corrupt practice alleged by the petitioner. The petition is also required to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of the pleadings. Proviso to sub-s. (1)(c) states 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 allegations of such corrupt practice and the particulars thereof. According to the respondents, the petition having contained allegations of corrupt practices, the affidavit accompanying the same forms part of the petition and as there is a defect in the copy of the affidavit supplied to the respondent, it is not a true copy and there was thus non-compliance of sub-s. (3) of Section 81 read with the proviso to Section 83(1)(c). It was that argument which found favour with the High Court.

16. The scope of the ruling in Dr. (Smt.) Shipra's case (supra) came up for consideration in T.M. Jacob v. C. Poulouse and Others, [1998] 2 S.C.C. 31 before a bench of Three Judges. The Bench referred the matter to a larger Bench with the following observations :

"Having heard Shri Sorabjee, we are not too sure that the principle indicated in the said decision can apply to the facts of the present case but certain wide observations, in the opinion of Justice Paripoornan and Justice K. Ramaswamy may support the appellant's contentions. In our opinion, the matter would, there-fore, require reconsideration by a larger Bench to decide whether even in a case like the present one, the decision in Shipra (Dr.) v. Shantilal Khoiwal apply."

17. It is to be noticed that the reference is only with regard to the applicability of Dr. (Smt.) Shipra in cases like the one which arose before the said Bench. In the light of the rulings of the Constitution Bench referred to earlier, we have our own reservations on the correctness of the view expressed in Dr. (Smt.) Shipra's case

(supra) but it is unnecessary in the present case to dwell on the same. As pointed out earlier, Justice Ramaswamy has confined the ruling to the "fact-situation" in that case. In so far as the present case is concerned, there is a distinguishing factor which makes the ruling in Dr. (Smt.) Shipra's case (supra) inapplicable. We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance of the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act. Unfortunately, this aspect of the matter has been completely ignored by the High Court. Hence the order of the High Court dismissing the election petition in limine is unsustainable."

41. In the case of **Chandrakant Uttam Chodankar Vs. Dayanand Rayu mandrakar**, (Supra) the Hon'ble Supreme Court has held which is reproduced herein under:-

"22. It is an admitted position that true copies of the election petitions were served upon the Respondent No.1 by the Court Bailiff. In the absence of any material to show that the true copies of the election petitions were not filed with the election petitions at the time of their presentation and in view of our discussions herein earlier that no reliance could be placed on the copies relied on by the High Court, we are unable to sustain the orders of the High Court. We are also unable to agree with Mr.Thali that no reliance could be placed on the true copies served by the Court Bailiff because they were served after the expiry of the period of limitation. It is difficult to understand that the period of limitation shall start from the date of serving the copies and not from the filing of copies of the election petitions. From the records it does not appear that such copies were filed after the period of limitation.

23. For the reasons aforesaid, we may safely conclude that the election petitions were not liable to be rejected relying on the copies of the election petitions

alleged to have been served upon the Respondent No.1 especially when true copies of the same were duly supplied to the Respondent No.1. However, when two questions were framed by the High Court and answered in favour of the Respondent No.1, we feel it appropriate to decide the appeals also on question Nos. 1 and 2.

81. However, therein the binding decisions of the Constitution Bench in Murarka Radhey Shyam and Ch. Subbaraolo were not noticed. Satya Narain and Rajendra Singh therefore, in our opinion, do not lay down good law.

82. A somewhat similar view appears to have been taken in Dr. Shipra v. Shanti Lal Khoiwalt but in Anil R. Deshmukh v. Onkar N. Wagh the Court doubted the correctness of law rendered therein and held that there was sufficient compliance with the provision of sub-section (3) of Section 81 which would serve the legal requirements.

85. Concededly, the officers of the High Court are required to perform administrative functions one of which is to scrutinise the election petition so as to ascertain as to whether the petitions filed before the Court are free from any defect. Such an official act would draw a presumption of having been performed in the ordinary course of business in terms of Section 114(e) of the Evidence Act.”

42. In the case of **T.M. Jacob Vs. C. Poullose**, (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

“16. Thus, from the facts noted by Bharucha, J., it transpires that in Dr. Shipras case the true copy of the Election Petition furnished to the respondent gave an impression that the election petitioners 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. Shipras 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.

17. In Anil R. Deshmukh v. Onkar N. Wagh & Ors, JT 1999 (1) SC 135, the appellant had filed an election petition for declaring the election of the first respondent in that case as void and illegal and for declaring him as duly elected. The petition contained allegations of corrupt practice against the first respondent. An affidavit had been filed along with the election petition as required by the proviso to Section 83(1)(c) of the Act in support of the allegations of corrupt practice. The affidavit was duly affirmed by the election petitioner before the notary who had also attested the same and the notarial endorsement of attestation contained all the particulars required by law. However, when the copies of the election petition along with various documents and the affidavit were served on the first respondent, it was found that the copy of the affidavit did not bear the seal or stamp of the attesting officer, below the notarial endorsement after the verification of the affidavit. The appellant had, however, signed the copy of the affidavit below a rubber stamp endorsement to the effect attested as true copy. On account of the above omission, the first respondent and the tenth respondent therein contended before the High Court that the copies of the affidavit served on them were not true copies of the affidavit as required by Section 81(3) of the Act. The issue was tried as a preliminary issue. The High Court found that the copy of the affidavit supplied to the first respondent was not a true copy inasmuch as it did not contain the particulars of the notary below the endorsement made by the notary. The High Court following its previous judgment in Purshottam v. Returning Officer (supra) which had been approved by this Court in Dr. Shipras case held that the defect of omission of the particulars of the Notary on the copy of the affidavit served on the answering respondent was fatal and dismissed the election petition for non-compliance with Section 81(3) of the Act.

“24. Reliance on the above observations in Dr. Shipras case divorced from the context in which that judgment had been rendered, is neither fair nor proper.

35. The object of serving a true copy of an Election Petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in Election Petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is, thus, of substance and not of form.

36. 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.

37. We have already referred to the defect which has been found in the copy of the affidavit served on the appellant in the present case. There is no dispute that the copy of the affidavit served on the appellant contained the endorsement the effect that the affidavit had been duly signed, verified and affirmed by the election petitioner before a Notary.

39. Applying the test as laid down in Murarka Radhey Shyam Ram Kumars case (supra), to the fact situation of the present case, we come to the conclusion that the defects complained of in the present case were not such as could have misled the appellant at all. The non-mention of the name of the notary or the absence of the stamp and seal of the notary in the otherwise true copy supplied to the appellant could not be construed to be omission or variation of a vital nature and, thus, the defect, if at all it could be construed as a defect was not a defect of any vital nature attracting consequences of Section 86(1) of the Act. Under the circumstances, it must be held that there was no failure on the part of the election petitioner to comply with

the last part of sub-section (3) of Section 81 of the Act and, under the circumstances, Section 86(1) of the Act was not attracted and the election petition could not have been dismissed by reason of the alleged failure to comply with the provisions of Section 81 of the Act. In this connection, it is also relevant to note that the appellant, neither in the memo of objections nor in the written objections or in C.M.P.No.2903 of 1996 has alleged that he had been misled by the absence of the name, rubber stamp and seal of the notary on the copy of the affidavit supplied to him or that he had been prejudiced to formulate his defence.

*40. In our opinion it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81(3) of the Act with the consequences under Section 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in *Murarka Radhey Shyams* case (*supra*) are sound tests and are now well settled. We agree with the same and need not repeat those tests. Considered in this background, we are of the opinion that the alleged defect in the true copy of the affidavit in the present case did not attract the provisions of Section 86 (1) of the Act for alleged non-compliance with the last part of Section 81(3) of the Act and that there had been substantial compliance with the requirements of Section 81(3) of the Act in supplying true copy of the affidavit to the appellant by the respondent."*

43. In the case of **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore**, (*Supra*), the Hon'ble Supreme Court has held which is reproduced herein under:-

“8. We now go to the second point. But before we do so, it may perhaps be stated that certain defects in the verification of Election Petition No. 269 of 1962 have been brought to our notice, as they were brought to the notice of the Election Tribunal. One of these defects 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 the basis of advice - and information received by the petitioner from legal and other sources, the petitioner did not state in so many words that the advice and information received was believed by him to be true. The Election Tribunal took the view that this defect in verification was a matter which came within cl. (c) of sub-s. (1) of s. 83 and the defect could be removed in accordance With the principles of the Code of Civil Procedure, 1908. The Election Tribunal further held that such, a defect did not attract sub-s. (3) of s. 90 inasmuch as that sub-section does not refer to non-compliance with the provisions of s. 83 as a ground for dismissing an election petition. We agree with the view expressed by the Election Tribunal. We have pointed out that sub-s. (4) of (1) [1954] S.C.R. 892 s. 90 originally referred to three sections, namely, is 81, 83 and 117. It said that notwithstanding anything contained in s. 85 the Tribunal might dismiss an election petition which did not comply with the provisions of s. 81, s. 83 or s. 117. S. 90 .was amended by Act 27 of 1956. Sub-s. (3) then said that the Tribunal shall dismiss an election petition which does not comply with the provisions of s. 81, s. 82 or s. 117 notwithstanding that it has not been dismissed by the Election Commission under s. 85. There was a further amendment by Act 40 of 1961 and sub-s. (3) of s. 90 as it now stands has already been quoted by us in an earlier part of this judgment. 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 Code of Civil Procedure, 1908, for the verification of pleadings as required by cl. (c) of sub-s. (1) of s. 83 is fatal to the maintainability of the petition.

11. Having regard to the provisions of Part VI of the Act, we are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true

that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No. 269 of 1962 were not such as to mislead the appellant ; therefore there was no failure to comply with the last part of sub-s. (3) of s. 81. In that view of the matter sub-s. (3) of s. 90 was not attracted and there was no question of dismissing the election petition under that sub-section by reason of any failure to comply with the provisions of Section 81. This disposes of the second preliminary objection raised before us.

44. In the case of **Ch. Subbarao** (Supra) the Hon'ble Supreme Court has held which is reproduced herein under:-

“6. The subject of controversy in this appeal lies in a very narrow compass. But before we deal with it, it will be convenient to specify the precise defect which the learned Judges have held to be fatal to the maintainability of the Election Petition. As stated earlier, the Election Petition filed was accompanied by the number of copies required to accompany the petition under s. 81(3). The Election Petition was type-written and the copies which accompanied the petition were carbon copies of the type-script, so there was no question of the copies being other than 'true' copies. The copies bore two signature in original of the Election Petitioner authenticating both the contents of the petition as well as the verification thereof. The Petitioner did not however insert the words 'truecopy' before or above his signatures. The learned Judges of the High Court considered that this rendered the petition one not in accordance with s. 81(3) of the Act and it is on this ground that the Election, Petition filed by the appellant has been dismissed and it is the correctness of this decision that is canvassed in the appeal before us.

20. We are not impressed with this argument. While we are conscious of the need for expeditious disposal of election petitions, and for the strict enforcement of provisions designed to achieve this purpose, we cannot be oblivious to the circumstance that to read every requirement literally might equally defeat the purpose

for which Part VI is intended, viz., that elections are conducted in accordance with the relevant statutory provisions framed to ensure purity and orderliness and that the candidate who has not obtained a majority of valid votes or has obtained it in flagrant (1) [1964] 3 S.C.R. 573 breach of the statutory provisions in not held entitled to represent the constituency.

21. *The Court had to deal with a similar question of inter-pretation of words which appeared mandatory in Kamaraj Nadar v. Kunju Thevar(1). One of the points which arose for consideration was whether the requirement of s. 117 of the Act which then required the petitioner to enclose with the petition a Government treasury receipt of Rs. 100 in favour of the Secretary to the Election Commission had been complied with by the election petitioner and s. 90(4) of the Act which corresponded substantially to the present s. 90(3) required the Election Tribunal to dismiss a petition which did not comply with the provision, inter alia, of section 117. The petitioner in that case had made the deposit of the requisite amount in the institutions named in the section but the deposit was made in favour of the Election Commission and not in favour of the Secretary to the Com-mission as required by statute. It was contended that the petition did not conform to the provisions of section 117 and had therefore to be dismissed by the Tribunal. This Court rejected this submission and after adverting to the purpose of the provisions, held that this was fulfilled by the deposit made and that though the requirement as to deposit was mandatory, the same was complied with by the deposit made.*

27. *If the signature of the petitioner whose name is set out in the body of the petition is appended at the end, surely it authenticates the contents of the document. Now in regard to this the learned Judges of the High Court themselves observed after referring to the terms of s. 81(3):*

"No doubt, what is necessary is a substantial compliance with the requirement of attestation. For instance, if it is proved that the election petitioner has signed animo attestendi, and omitted the words 'true copy' by mistake or inadvertently, there is a substantial requirement of the compliance of s. 81(3). The same may be said if the

relative positions of the words 'true copy' and of the signature one below the other are not correct."

They however held that as there was no evidence of the signature having been appended animo attestendi, there was non-compliance with s. 81(3). The learned Solicitor-General while not disputing the correctness of the observations of the learned Judges just extracted pressed upon us that the signature at the end of the copy was meant only as a copy of that in the original petition and could not satisfy the requirement as to attestation of the copy. He also submitted that the position would have been different if there were two signatures instead of one at the end of the copy, even if the words 'true copy' were omitted to be put down. In that case, he said, one signature could be treated as representing the copy of the signature on the original and the other might be taken to have been made animo attestendi. We do not however consider that there is really need for so much refinement when one has to look at whether there is a substantial compliance with s. 81(3), seeing that a signature in origin signatures now found on the copies were intended to authenticate the document to which it is appended, viz., the copy, it would only mean that the copy did not reproduce the signature in the original. There is no compelling necessity to hold that the signatures were merely intended to be a copy of those on the original in order to spell out a noncompliance with the requirement of this provision. If the signature was not needed on the copy and a writing copying out the name of the signatory would suffice. The decision of this Court in Murarka's case (1) is authority for the position that the absence of a writing in the copy indicating the signature in the original would not detract the copy from being a true copy. In the circumstances, we consider that there has been substantial compliance with the requirement of s. 81(3) in the petition that was filed by the appellant and the learned Judges were in error in directing the dismissal of the petition.'

45. In the case of **Mithilesh Kumar Pandey Vs. Baidyanath Yadav** (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

"9.....In Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors.(1)

this Court made the following observations:-

"Having regard to the provisions of Part VI of the Act we are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person."

10. In other, words, this Court merely meant to indicate that where the variation is so minimal and insignificant that it is incapable of misleading any person as to the true purport of the allegation, it would be a substantial compliance of the provisions of s.81(3) of the Act.

46. In the case of **T.Phungzathang Vs. Hangkhanlian** (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

"26. Dr Shipra case was referred to, doubted and distinguished in Anil R. Deshmukh which also is a three-Judge Bench decision. Both these decisions were placed before the Constitution Bench in T.M. Jacob case, In Dr Shipra case the Constitution Bench decisions in Ch. Subbarao and Murarka Radhey Shyam have been just referred to, vide para 10, but not dealt with. In T.M. Jacob case the Constitution Bench has clearly held that the view taken in Dr Shipra case must be confined to the fact situation of that case and cannot be considered to be of general application. The statement of law in Anil R. Deshmukh case has been approved wherein the copy of the affidavit delivered to the respondent did not bear the endorsement of attestation or the seal or stamp of the attesting officer found on the original. But for the absence of the notarial endorsement, it was a true copy of the original as it was a xerox copy and was attested as "true copy" under the signature of the election petitioner. A copy along with notarial endorsement was later on 9 furnished to the respondent. Applying the theories of substantial compliance and of curability this Court held that the election petition was not liable to be dismissed in limine. In Harcharan Singh Josh v. Hari Kishan² the defect in the copy of the affidavit supplied to the respondent was the

same as is in the present case and a three-Judge Bench of this Court, solely by relying on Dr Shipra case held that the election petition was liable to be dismissed in limine. In Dr Shipra¹ and Harcharan Singh Josh² - both three-Judge Bench decisions, this Court has held the defect to be not curable and the concept of substantial compliance having no application in such a case. In Murarka Radhey Shyam case and T.M. Jacob case³ the Constitution Benches have held such a defect to be curable and the test of substantial compliance to be applicable. The very premise on which the decisions in Dr Shipra¹ and Harcharan Singh Josh² proceed, thus, runs counter to the view taken by the Constitution Bench. In view of the Constitution Bench decisions, Dr Shipra case and Harcharan Singh Josh case cease to be good law."

47. In the case of **Ram Prasad Sarma Vs. Mani Kumar Subba** (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

"16. From the various decisions noted above, it clearly emerges out that the correctness of the decision Dr. Shipra's case (supra) was doubted and it has been held by the Constitution Bench in the T.M. Jacob's case (supra) that it was confined to the facts of that case. Therefore it cannot be said that Dr. Shipra's case lays down any proposition of law of binding nature. The two decisions of the Constitution Benches, namely, Radhey Shyam Murarka and T.M. Jacob (supra) hold the field as well as the decision in the case of Sri T. Phungzathang (supra). The law as laid down in the above noted decisions would be the guiding precedents in deciding a question relating to a true copy of an affidavit.

17. The purpose of the provision to furnish a true copy of the petition is not to frustrate the cause of the petitioner approaching the Court by adhering strictly to technicalities of little consequence. On the other hand the anxiety is that the respondent must have correct idea of the allegations of corrupt practices made against him with some responsibility and that he may not be misled in any material respect by furnishing of a copy of the affidavit which may not be a correct copy having vital variation from the original. It is true that in the matters relating to elections and election petitions, strict compliance of the legal provisions is necessary and full care is

to be taken to see that rights of an elected representative are not lightly disturbed and rightly so. But an election petition is not to be thrown at the threshold on the slightest pretext of one kind or the other which may or may not have any material bearing on the factors to be strictly adhered to in such matters. It is substance not form which would matter. If it is permitted otherwise, the returned candidate would only be in the look out microscopically for any kind of technical lacuna or defect to abort the endeavour of the petitioner to bring to trial the issues relating to corrupt practices in the elections. The purpose of the law on the point cannot be to allow the returned candidate to avoid the trial of the issues of corrupt practices raised against him on the basis of any little defect which may not result in any vital variation between the original and the true copy so as to have the effect of misleading the returned candidate. As it is, the prevailing situation of elections and practices often said to be adopted now and then and here and there does not always give a very happy picture. Free, fair and fearless elections is ideal to be achieved and not to be defeated for the sake of pretentious and frivolous technicalities.

18. Shri Bachawat learned Senior Counsel for the respondent vehemently urged that the fact situation of the present case and the case of Dr. Shipra is the same and therefore, the High Court has rightly followed the decision in the case of Dr. Shipra. We have already made our observations in this regard. In any situation the matter has to be judged in the light of the decisions of the Constitution Benches referred to above. There is no precedent on facts. It is legal proposition flowing from the Judgment which has binding effect."

48. In the case of **Chandrakant Uttam Chodhandkar Vs. Dayanand Rayu Mandrakar** (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:-

"27. In view of our discussion made above and in the absence of any material to show that true copies of the election petitions were also not filed at the presentation of election petitions, we are unable to hold that there was non compliance of Section 81(3) of the Act inasmuch as the copies alleged to have been

supplied to the returned candidate were not true copies of the petitions.

31. *As noted hereinafter, Section 81(3) postulates that every copy of the election petition shall be attested by the election petitioner under his own signature to be a true copy of the petition. From a bare perusal of the defects which have been referred to herein earlier, we can safely conclude that such defects cannot be said to be of vital nature. According to Respondent No.1, (1) there was no signature of the election petitioners at page 10 of the petitions after the prayer clause and verifications. (2) the stamp in respect of the swearing of the affidavit was also absent on the copy of the election petitions and, (3) the affidavit accompanying the petition also does not bear the signature of the election petitioners.*

35. *The difference of opinion was settled by the Constitution Bench in Jacob's case by enunciating the principles as noted hereinabove. We have carefully examined the defects as noted herein earlier and on a careful examination of the defects we cannot be persuaded to the view that the defects in the present case also are material or it was vital in nature or the absence of stamp of attestation could be treated to be a ground for rejection of the Election Petitions under Section 81(3) of the Act. It may be mentioned herein that the decision of this Court in Anil R.Deshmukh case was approved by the Constitution Bench and in which it already distinguished the case of Dr.Shipra. It must not be forgotten that in the Constitution Bench decision of this Court, it was evident that "(a) the expression 'copy' in Section 81(3) of the Act means a copy which is substantially the same as the 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 the same cannot be cured after the period of limitation." The same principle was enunciated following the Constitution Bench decision of this Court in T.Phunyzatha Vs. H.K. & Ors. [2001 (8) SCC 358]. In this decision also it was held that the defects indicated in these cases for which dismissal of the election petition was sought for did not attract Section 86(1) of the Act for dismissal of the election petitions for non-compliance of Section 81(3) of the Act. For the reasons*

aforesaid and applying the principles laid down in the aforesaid decisions of this Court, we are of the view that the High Court ought not to have rejected the election petitions for non-compliance of the provisions of Section 81(3) of the Act as the defects shown by the Respondent No.1 cannot be said to be fatal and the copies which were alleged to have been served or supplied to the Respondent No.1 were wholly and substantially the same as the original. That apart, it is an admitted position, as noted herein earlier, true copies of the election petitions were duly served or supplied to the Respondent No.1. The question that was raised by the learned counsel for the Respondent No.1 before us was whether subsequent supply of such true copies on the Respondent No.1 could be treated to be a sufficient compliance of Section 81(3) of the Act. Apart from the conclusions made hereinbefore, we are also of the view that in view of the decision of this Court in this question needs to be decided in favour of the appellant and against the Respondent No.1.

41. On a careful reading of this provision, we are of the view that the said provision is not mandatory in nature. That is to say, the verification in the election petition although was defective but that cannot be said to be fatal to the maintainability of the petition. In view of our discussions made herein above to the extent that the election petitions were in order even if it was not so at the time of presenting the election petitions, there was no reason for the High Court to reject the election petitions at the preliminary stage on such a technical ground.

66. It is now well settled that the statutory requirements of Sections 81 and 83 would be met if substantial compliance thereof is made.

81. However, therein the binding decisions of the Constitution Bench in Murarka Radhey Shyam and Ch. Subbaraole were not noticed. Satya Narain and Rajendra Singh therefore, in our opinion, do not lay down good law.

82. A somewhat similar view appears to have been taken in Dr. Shipra v. Shanti Lal Khoiwal but in Anil R. Deshmukh v. Onkar N. Wagh the Court doubted the correctness of law rendered therein and held that there was sufficient compliance with the provision of sub-section (3) of Section 81 which would serve the legal

requirements.

85. Concededly, the officers of the High Court are required to perform administrative functions one of which is to scrutinize the election petition so as to ascertain as to whether the petitions filed before the Court are free from any defect. Such an official act would draw a presumption of having been performed in the ordinary course of business in terms of Section 114(e) of the Evidence Act.

90. Furthermore, there are materials on record to show that one of the copies supplied to the first respondent being a true copy which reached his hands before filing of the vakalatnama and even before any written statement was filed, the question of his being misled and thus becoming unable to meet the allegations contained in the election petition did not arise particularly having regard to the nature of allegations made in the election petition. In any event, there has been substantial compliance with the requirements of law.”

49. In the case of **Ponnalalakshmaiah Vs. Kommuri Pratap Reddy** (Supra), the Hon’ble Supreme Court has held which is reproduced herein under:-

“22. Even otherwise the question whether non-compliance of the proviso to Section 83 (1) of the Act is fatal to the election petition is no longer res-integra in the light of a three-Judge Bench decision of this Court in *Sardar Harcharan Singh Brar v. Sukh Darshan Singh & Ors.* (2004) 11 SCC 196. In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance of Sections 81, 82 and 117 of the Act only. Such being the position,

the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form.”

50. On careful consideration of the above case laws, it is clear and well settled position of law that the statutory requirements of Sections 81 and 82 would be met if substantial compliance thereof is made. The Hon'ble Supreme Court held that it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81 of the Act with the consequences under Section 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in *Murarka Radhey Shyam's* case are held to be sound tests and has settled the law.

51. Reverting back to the present case, on the consideration of the materials on record, as viewed herein above, this court finds from the check list, that there is a report from the Assistant Registrar/Stamp Reporter. The petitioner has provided the required true copies of the election petition fully attested (although not written the word "attested") under the signature of petitioner along with necessary envelope bearing requisite postal stamps at the time of presentation of election petition on 16.07.2024. The extra copies of the election petition with required envelope and postal stamps filed within the prescribed 45 (forty five)

days from the date of election. The true copy of election petition and the affidavit in Form 25 accompanying the election petition served through dasti mode may have some omissions however, same would not be fatal. The details of the security deposit under Section 117 of the Representation of the People Act, 1951 are made. In view of above, I am of the considered view that there is a substantial compliance of the requirement of the provisions of the Representation of the People Act, 1951 and Rule 1 of Chapter VIII A of the Gauhati High Court Rules and the alleged defects are not substantial in nature. Further variation between the election petition and the copy of the election petition served to the applicant by dasti mode would not prejudice in promulgating the defence. As held by the Hon'ble Supreme Court, the term true copy in Section 81(3) does not mean an exact copy but only one so true that no reasonable person could by any possibility misunderstood as the same has not been an original. Further, section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act.

52. For the forgoing reasons and applying the principles of law laid down by the Hon'ble Supreme Court, I am of the view that the above alleged defects cannot be said to be fatal and there is a substantial compliance of the provisions of the Act which does not entail rejection of election petition for non-compliance of the provisions of Section 81 of the Act. In the facts and circumstances of present case, there is a sufficient compliance with the provisions of Section 81, 82 and 117 of the Representation of the People Act, 1951.

53. In view of above, I do not find any defect of substantial nature in the election petition which warrants dismissal of the election petition for non-compliance as there is a substantial compliance of the provision of Sections 81,

82 and 117 of the Representation of the Peoples Act, 1951.

54. Consequently, the present interlocutory application is dismissed.

JUDGE

Comparing Assistant