

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**C.M. No.15-E of 2015 and 4-E of 2016 in/and
Election Petition No.12 of 2014.
Date of Decision: June 01, 2017**

Ramesh Khatri Lamberdar

.....PETITIONER(s).

VERSUS

Ms. Kavita Jain

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Petitioner in person with
Mr. D.D. Singla, Mr. Deepak Gautam and
Mr. Gurwinder Singh, Advocates.

Mr. S.P. Chahar, Advocate
for the respondent.

SURINDER GUPTA, J.

Petitioner Ramesh Khatri filed petition under Section 80-A of the Representation of People Act, 1951 (hereinafter referred to as 'the Act of 1951') challenging the election of Ms. Kavita Jain, who was declared as elected candidate in the assembly elections of Haryana Vidhan Sabha held on 15.10.2014 from 31-Sonipat constituency of which result was declared on 19.10.2014.

2. Election petition was filed on 02.12.2014 i.e. within a period of 45 days of the declaration of election result. On filing of election petition, certain deficiencies were found and objections were raised by the registry, which reads as follows:-

“The petition and its accompanying documents have been scrutinized under Rule 14(a) of Chapter 4-GG, High Court Rules and Orders Volume-V and the following defects have been found:-

1. As per Section 82 of the Representation of the People Act, 1951, only the returned candidate is required to be impleaded as respondent as the petitioner is seeking declaration of the election being void, but the petitioner has impleaded (1) Election Commission of India, (2) Haryana State Election Commission (3) Returning Officer and (4) District Election Officer as respondents No.1 to 4 in the petition which is not in conformity with the said Section of the Act.
2. **The statement of address of the petitioner has not been filed with the petition and its spare copies as required by Rule 12(h), Chapter 4-GG Punjab and Haryana High Court Rules and Orders, Vol.V.**
3. **All the spare copies of the petition have not been attested by the petitioner under his own signature to be true copy of the petition (Section 81(3) of the R.P. Act). Further one additional spare copy of the petition is neither attested by the petitioner under his own signature to be true copy of the petition, nor there is endorsement of Oath Commissioner on the copy of its affidavit.**
4. Affidavit in the prescribed form in support of the allegations of corrupt practice as alleged in the petition has not been filed as required under Section 83(1) of the Representation of People Act, 1951 whereas an affidavit of general nature has been filed with the election petition and its spare copies in which the address of the petitioner, as given, is as under:-

'Ramesh Khatri Lamberdar s/o late Shri Jai Ram Khatri, R/O 153A, Ward No.30 Brahamanan,

Sonipat, Haryana'

The '**Garhi**' word is missing in the affidavit which is given in the original memo of parties of the petition.

5. In the verification clause of the petition and its spare copies, para 23 has not been verified. Further at page 20 in the verification clause, it is written that 'Verified at Delhi' whereas the place of verification is written as "CHD". Further, before and after the verification clause, the name of the petitioner is firstly written as "Ramesh Kumar Khatri and then Ramesh Khatri Lamberdar."
6. Envelope for keeping the documents has not been filed as required by Rule 12(e) of High Court Rules & Orders Vol.-V.
7. Regd.A.D. Covers with postal stamps have not been filed as required by Rule 12(g) of High Court Rules & Orders Vol.V.
8. Court fee page has not been included in the index of the petition and its copies.
9. At page 8, 5th line correction of date i.e. 28.09.2014 has not been carried out in all the spare copies.
10. At page 19 para 22 of the petition and its spare copies, the year of declaration of result has wrongly been mentioned as 19th October, 2015.
11. In one additional copy of the petition, correction at page 4, 9, 10, 23, 24, 26 and 27 of respondent no.5 and at page 8 correction of date as well as respondent no.5 has not been carried out. Further at page 20, date i.e. 2nd has not been mentioned.
12. **Neither Form B nor any document/original annexures as mentioned in para no.23 of the petition, has been filed by the petitioner with the petition and its spare copies. Further Forum BB has also not been filed with the petition and its spare copies."**

3. Petitioner sought three weeks' time to remove the objections, which was allowed on 15.01.2015 and the petition was fixed for 25.02.2015. On 25.02.2015, petitioner again sought four weeks' time to remove the objections and the petition was ordered to be listed on 25.03.2015. On 25.03.2015, petitioner sought more time to remove the objections and the petition was listed for 29.04.2015. When the petition was taken up on 29.04.2015, petitioner submitted that he has moved application for amendment of petition on which the registry has raised certain objections which he will clear shortly and the petition was ordered to be listed on 20.05.2015.

4. Application for amendment of election petition was filed on 28.04.2015 and was re-filed on 19.05.2015. After removal of the objections, this application for amendment of election petition was taken on record vide order dated 12.08.2015.

5. Firstly, I proceed to decide this application filed by petitioner under Order 6 Rule 17 read with Section 151 Code of Civil Procedure (for short-CPC).

6. Act of 1951 is a special Act which governs the allowing of amendment. Section 81 of the Act deals with presentation of the election petition and reads as follows:-

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

candidate at the election and the dates of their election are different, the later of those two dates.

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

[* * * * *]

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

7. It is not disputed that along with the petition, petitioner had not filed copy of petition duly attested by him under his own signatures to be true copies as per provisions of Section 81(3) of the Act of 1951.

8. Section 83 of the aforesaid Act deals with the contents of the petition:-

“83. Contents of petition.—(1) An election petition—

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

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

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

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

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

9. This fact is not disputed that the petitioner had not given any particulars of corrupt practices alleged to have been committed by the respondent by filing any affidavit in support of his allegations.

10. Learned counsel for the petitioner has fairly admits that the schedules and annexures to the petition were also not signed by the petitioner and verified in the same manner as the petition.

11. Section 86 of the Act of 1951 deals with trial of election petition and reads as follows:-

“[86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

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

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

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(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.

(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.”

12. It is evident that an election petition which does not comply with the provisions of Section 81 of the Act of 1951 call for straightway dismissal as per provisions of Section 86 (1) of the aforesaid Act.

13. Section 86(5) allows the extent to which the permission for amendment of election petition can be allowed but no amendment of petition which will have introduced particulars of corrupt practices previously not mentioned, can be allowed. In this case, petitioner came up

with several corrupt practices, which were not pleaded in main petition, in the amended petition which could not be allowed as per the specific bar contained in Section 86(5) of the Act.

14. As already discussed, after the filing of the election petition, petitioner was apprised on 22.12.2014 about the defects in his petition but he took no steps to remove the same till 28.04.2015 when he moved the application seeking amendment of election petition. Even by that time, the petitioner had not removed objections No.3, 5, 6, 7, 8, 9, 11 (reproduced in para No.2 above) as raised by the registry.

15. Now, the first question which arise for consideration is as to whether the application moved by the petitioner seeking amendment of his petition can be allowed. To find an answer, reference can be made to enabling provision of Section 86(5) of the Act of 1951. For the sake of convenience, the above provision is again reproduced here as follows:-

“86(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.”

16. In para 6 to 20 of original election petition, the petitioner has dealt with process of conduct of election by the election commissioner and referred certain anomalies therein, not keeping or maintaining proper account of election expenses by the respondent, without giving any detail of the same etc. Perusal of para 16 of the election petition shows that

petitioner was not clear about the corrupt practices adopted by the respondent and wanted a detailed inquiry to find that there were glaring instances of misconduct by respondent.

17. Section 86(5) authorises this Court to allow any corrupt practices alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition. However, there is specific bar to allow any amendment of the petition which will have effect of introducing fresh plea of corrupt practices which were not alleged in the previous election petition.

18. Keeping in view the above provision relating to amendment of election petition, I proceed to take a note of the application filed by the petitioner under Order 6 Rule 17 read with Section 151 CPC. The amendment sought in para 5 (i) (v) (vi) (x) to (xxiii) do not deal with amendment of particulars of any corrupt practices alleged in the petition or to amplify the same. These amendments have been sought to rectify certain defects in the original petition. Amendment sought by way of para 5 (xxiv) relate to the amendment of prayer clause; 5 (xxv) to rectification of the verification clause; 5(xxvii) for inclusion of Form-B and Form-BB of the original election petition; 5(xxviii) with the address of petitioner; and 5 (xxix) with the address of respondent. As neither of the above amendment relate to give details or amplifying alleged corrupt practices, these amendments sought by the petitioner are not permissible as per provision of Section 86(5) of the Act of 1951.

19. Not contesting the bar under Section 86(5) of the Act of 1951, learned counsel for the petitioner has argued that the amended application

has already been allowed vide order dated 12.08.2015 and the respondent has also filed reply to the amended petition. This Court is not required to look into the application seeking amendment of petition and to decide the same as it will amount to review its order dated 12.08.2015, which reads as follows:-

“As per report of the registry all the objections have been removed by the petitioner.

The petitioner has filed the amended election petition. The application of the petitioner for placing on record the amended election petition is allowed. Amended election petition is taken on record.”

20. Learned counsel for petitioner has tried to impress that taking amendment application on record, should be taken as permitting application seeking amendment of election petition.

21. Perusal of the file and interim orders passed from time to time after filing of petition, shows that after filing of application seeking amendment of election petition, registry had raised number of objections and report was called from the Registry as to whether the petitioner had removed all the objections. On receipt of report that all the objections had been removed, vide order dated 12.08.2015 amended election petition was taken on record. This order nowhere reflects that permission to amend the petition was ever allowed. The submission of learned counsel for the petitioner to this effect are based on some misconception and are without merits.

22. Now, the next question which arise for consideration is as to whether the amendment of application filed by petitioner can be allowed, if

23. Learned counsel for the petitioner while relying on the observations in case of ***Avtar Singh Vs. Harcharan Singh Brar and others*** **1994 AIR (Punjab) 161** has argued that the defect in the verification of the petition can be allowed.

24. A look on the application and the amended petition filed by petitioner shows that either the petitioner is not clear as to what amendments he wants to make in the original petition or he has filed the amended petition under the impression as if he is filing a fresh petition.

25. For instance, para 3 of the original petition reads as follows:-

“3. That the Election Commission of India by means of a Notification in the Extra-ordinary Gazette dated 19th September 2014 made a notification calling upon holding of General Elections in all the Assembly Constituencies of the State of Haryana, wherein the prospective candidates were invited to file nominations by 27.09.2014. That the petitioner filed his nomination paper before the Returning Officer, Sonipat which was allowed after scrutiny. That the respondent No.5 Smt. Kavita Jain also filed her nomination form on behalf of Bhartiya Janta Party on 27.09.2014 which was also accepted after scrutiny.”

26. The petitioner has not sought amendment of this para vide application filed by him but in the amended petition, para 3 of original petition has been totally replaced and runs in more than 4 pages and has been further bifurcated in para 3(a) to 3 (f), whereby he has referred to certain corrupt practices on the part of respondent. In the same manner, para No.4 and 5, amendment of which has also not sought, have also been replaced in the amended election petition. Same is the fate of other

paragraphs of the amended election petition. On perusal of amended election petition, I find that these are not as per the amendment application filed by the petitioner, rather it is altogether a new election petition, which has been filed beyond the period of limitation of 45 days as provided under Section 81 of the Act of 1951. For example, petitioner has sought to amend para 10 of the election petition to include Kavita Jain return candidate as respondent. Similar amendment was sought in para No.9 and 13. Para 9 and 10 of the original election petition read as follows:-

9. That it is stated that there were glaring instances of Media being used for the gain of the respondent no.5 which is evident from the fact that in the Newspaper dated 08.10.2014 both newspapers Amar Ujala and Dainik Bhaskar were carrying similar photograph of the campaigning of the respondent no.5 including similar news contents however the election observers preferred to give blind eye for the same and no action was taken against the respondent no.5. It is pertinent to mention that the election commission in similar case issued notice to the candidate from INLD (Indian National Lok Dal) on 28.09.2014 for the instances of paid media.

10. That the institutionalised efforts of helping respondent no.5 started while the electors of the constituency were manipulated to give upper hand to respondent no.2. That one such example is the in Ward No.30 of the constituency the electors of Devi Lal Colony were added which were never in part of 31-Sonipat Constituency as the said Devi Lal colony always formed part of Gohana Constituency Revenue Estate village Mehalana and not 31-Sonipat Constituency.

Para 9 and 10 of the amended petition are as follows:-

“9. That it is also a settled rule that no Candidate can be allowed to campaign at government establishment but the respondent with her husband Vice President of BJP, Haryana Mr. Rajiv Jain and other BJP political workers was even allowed to campaign at the Railway Station at Sonipat on 02.10.2014 but according to “The Railways Act, 1989” no election campaign can take place on railway station in any manner. That all the complaints made to the election officer went in deaf ear. The true copy of the photos taken at the Railway Station is annexed as Annexure P/5.

10. That apart from this the Respondent Election Agent and husband Mr. Rajiv Jain with Mr. Krishna Gahlot from Rai Constituency also organised a Mega Rally on 04.10.2014 wherein the Home Ministry of the country Shri Rajnath Singh was the chief guest. It is stated that the said rally had a capacity to hold 50 thousand electoral of the Rai and Sonipat constituency. The Election Agent of the respondent namely Shri Rajiv Jain is the husband of the Respondent and Vice President of the BJP, in Haryana. That costs for holding such rallies including media coverage is approximately Rs. 50 lakh+ Administrative expenses alone which is beyond the prescribed limit. It is stated that respondent is guilty of spending way beyond the prescribed limit of ceiling under the law being in force.

Tuesday 07th October, 2014: BJP will do common development of all: Kavita Jain told that peoples are suffering from congress lies and INLD loot since last 15 years and now they have decided that BJP should come in power. Only BJP can after common development and social employment, she told that INLD rule is remembered for their rudeness, traision and unfairness. On the other side Rajiv Jain told in Raipur, Ahmedpur

that CM Hooda works to rob the farmers Ex.MLA Davidas, Lalit Batra Devender, Dr. Parveen etc, were present in campaign.”

27. Para 13 of the original petition, which runs in more than two pages, has been totally replaced with para 13 of the amended election petition, as follows:-

“13. That apart Haryana Vijay Rally, from this the Respondent also organised a Mega Rally on 08.10.2014 wherein the Prime Minister of the Country Shri Narendra Modi was the chief guest star campaign. In that rally, two special podiums were constructed. It is stated that the said rally had a capacity to hold lakh electoral and was also equipped with 2 Heli-pad part from facilities to cater to Lakhs people. That costs for holding such rallies including media coverage is approximately above Rs.06 (Six) Crore + Administrative expenses alone which is beyond the prescribed limit. It is stated that respondent is guilty of spending way beyond the prescribed limit of ceiling under the law being in force. The expenditure for which were not filed actual with the Returning Officer, Sonipat, Sec-77, R.P. Act, 1951. Petitioner sought information through RTI Act 2005/Haryana Right to Service Act, 12014 from District Election Officer, Sonapat for above said expenditure of above said rally but no information was provided till today.

Tuesday 07th October, 2014: BJP will do common development of all: Kavita Jain told that peoples are suffering from congress lies and INLD loot since last 15 years and now they have decided that BJP should come in power. Only BJP can after common development and social employment, she told that INLD rule is remembered for their rudeness, traision and unfairness.

On the other side Rajiv Jain told in Raipur, Ahmedpur that CM Hooda works to rob the farmers Ex.MLA Davidas, Lalit Batra Devender, Dr. Parveen etc, were present in campaign.”

28. Above are the only instances, almost all the paras of amended election petition are not as per the amendment sought by the petitioner and this strengthens my view that the amended petition has been filed as if fresh petition is being filed and not as per the amendment application. Such vague and unspecified amendment cannot be allowed particularly in view of provisions of Section 86(5) of the Act of 1951 which permits amendment only to some extent to amend and amplify the particulars of corrupt practices.

29. Much stress has been laid on the point that reply to the amended petition has been filed by the respondent. In my opinion, this fact is not going to effect the merits of the application filed by the petitioner. Respondent was supplied copy of the amended petition along with notice and she came up with reply to the amended petition but at the same time took objection that same is not as per the original petition and is not permissible to be made part of the record.

30. As a sequel of my discussion above, the application seeking amendment is without merits, hence, dismissed.

31. I am fully aware of the fact that petitioner had filed the petition of his own and not through his counsel. It was at later stage, when the application was filed by the respondent under Sections 81, 83 and 86 of the Act of 1951 read with Section 7 Rule 11 CPC was to be heard that the petitioner was assisted by his counsel Mr. D.D. Singla, Mr. Deepak Gautam

and Mr. Gurvinder Singh, Advocates. However, this fact, in no manner, can be considered to dilute the effect and application of provisions of Act of 1951 which apply with full force in all eventuality, whether petitioner is presenting his case in person or is assisted by counsel.

32. Now, I take the application filed by the respondent under Sections 81, 83 and 86 of the Act of 1951 read with Order 6 Rule 2, 4, 16 and Order 7 Rule 11 CPC for rejection/dismissal of the election petition.

33. Respondent-applicant has sought rejection/dismissal of the election petition on the grounds as follows:-

(i) Petition is frivolous and vexatious and it does not disclose any cause of action for filing and maintaining the election petition.

(ii) The election petition is defective and is not as per mandatory provisions of Section 83 of the Act of 1951, which is material infirmity.

(iii) Affidavit attached with the original election petition and the amended election petition are defective and have not been filed as per the prescribed Form 25 and as per Rule 94-A of the Conduct of Election Rules, 1961 (hereinafter referred to as 'the Rules of 1961').

(iv) The election petition do not comply with the provisions of Section 81, 82 and 83 of the Act of 1951. Several objections were raised by the Registry of this Court which were not rectified, petitioner filed amended election petition after much delay of the prescribed period of limitation of 45 days. Only recourse available to petitioner was to remove the infirmities in original election petition within the prescribed period of limitation of 45 days. If the objections/infirmities are not cleared/removed by the petitioner within 45 days, then the election petition is barred by limitation. In the

instant case, result of election was declared on 19.10.2014 and the limitation period of 45 days expired on 03.12.2014 but the infirmities/objections raised by the Registry of this Court were not removed by the petitioner within limitation period of 45 days.

(v) In original election petition, there are no averments with regard to the corrupt practices adopted by respondent to win the election. These were incorporated in the amended petition, which is not maintainable being violative of provisions of Section 86(5) of the Act of 1951.

(vi) The petitioner had not filed statement of address at the time of filing of the petition and the spare copies as required under Section 81 (3) of the Act of 1951, which is a material infirmity that cannot be rectified. He had also not attested the spare copies under his own signatures to be true copy of the petition nor there is endorsement of Oath Commissioner. The original petition was not accompanied by an affidavit in the prescribed form in support of the allegation of corrupt practices.

(vii) The original election petition was not accompanied with any schedule or Annexure or Form-B or Form-BB in gross violation of provisions of Section 83 of the Act of 1951 read with Rules 12(b)(c)(cc) of Chapter 4 Part GG Vol.(5) of Punjab and Haryana High Court Rules and Orders.

34. In reply, the petitioner contested the application denying all the averments in the application, inter-alia pleading that the petitioner has given complete details in the amended election petition complying all the Rules and provisions, which is well within limitation. He had also removed all the objections raised by the Registry of this Court.

35. I have heard learned counsel for the petitioner, learned counsel for the applicant-respondent on this application.

36. Learned counsel for the applicant-respondent has argued that the election petition was filed in gross violation of provisions of Section 81 of the Act of 1951 and is liable to be dismissed as per provisions of Section 86(1) of the aforesaid Act. As per provisions of Section 83 of the Act of 1951, petition is required to contain conscience statement of material facts on which the petitioner relies and set forth full particulars of corrupt practices, the petitioner alleges. Where the petitioner alleges any corrupt practices, the petition shall also be accompanied by affidavit in prescribed form in support of allegations. It also requires that any schedule or annexure shall also be signed by the petitioner and verified in the same manner as in the petition. The petition filed in this case was not in compliance of the provisions of Section 83 of the Act of 1951, as such, is liable to be dismissed. The petitioner has incorporated details of alleged corrupt practices in the amended petition which is not permissible as per provisions of Section 86(5) of the Act of 1951 as in the original petition, there was no allegation of alleged corrupt practices. The schedule and annexures mentioned in the election petition were not attached with the original election petition. These were attached with the amended election petition, as such, there is no compliance of provisions of Section 83(2) of the Act of 1951 calling for dismissal of the petition under Section 86(1) of the aforesaid Act. If the grounds mentioned in the election petition filed by the petitioner are taken to be true, then also no cause of action is disclosed or the ingredients of Section 100 of the Act of 1951 are complied. In

support of his contention, he has relied on the observations in cases of *Sharifud Din Vs. Abdul Gani Lone 1980 AIR (SC) 303*; *Satya Narain Vs. Dhaja Ram and others 1973 AIR (Punjab) 431*; *Gopal Parsad Shastri Vs. Mrs. Archana Kumar and others 1984 AIR (Delhi) 280*; *Boota Singh Vs. Sher Singh and others 1994 AIR (Punjab) 32*; and *Dr. Rakesh Kumar Vs. Sh. J.P. Negi and another 1992 AIR (H.P.) 21*.

37. Learned counsel for the petitioner fairly concedes that original election petition does not comply with mandatory provisions of Section 81 (3), 83 or even Section 100 of the Act of 1951. He argues that petitioner has rectified all the lapses in the amended election petition. The amended petition filed by the petitioner complies with all the mandatory requirements as per the Act of 1951.

38. Despite above submission of learned counsel for petitioner, I deem it appropriate to examine the petition to find if it complies with provisions of Section 81, 83, 100 of the Act of 1951.

39. Section 100 of the Act of 1951 prescribes grounds on which election of returned candidate can be declared to be void and reads as follows:-

“100. Grounds for declaring election to be void.—[(1)

Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963);
or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other

person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

[(2)] If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice [***] but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

[* * * * *]

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt [***] practices at the election; and

(d) that in all other respects the election was free from any corrupt [***] practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.”

40. Perusal of the original election petition filed by the petitioner shows that he had raised following pleas while challenging the election of respondent:-

“6. That the respondent no.5 under the Statutory Rules was obliged to file an affidavit stating the entire assets of the candidate along with her family members. That the respondent No.5 filed a detailed affidavit however she did not disclosed that apart from the assets stated in that affidavit she and her husband also had interest in educational institutions in other state, Bhagwan Mahavir Engineering College, Sonipat and Education Institute, Jagdishpur, Sonapat, Haryana.

7. It is stated all the newspapers being circulated in the District Sonapat, Haryana, where all but having all praises for the respondent No.2 all the front news pages after being used in put forth the case of the respondent no.2 to swing vote share in her favour. It is stated that no other independent candidate including the petitioner was given any share/space in media.

9. That it is stated that there were glaring instances of Media being used for the gain of the respondent no.5 which is evident from the fact that in the Newspaper dated 08.10.2014 both newspapers Amar Ujala and Dainik Bhaskar were carrying similar photograph of the campaigning of the respondent no.5 including similar news contents however the election observers preferred to give blind eye for the same and no action was taken against the respondent no.5. It is pertinent to mention that the election commission in similar case issued notice to the candidate from INLD (Indian National Lok Dal) on 28.09.2014 for the instances of paid media.

10. That the institutionalised efforts of helping respondent no.5 started while the electors of the constituency were manipulated to give upper hand to respondent no.2. That one such example is in Ward No.30 of the constituency the electors of Devi Lal Colony were added which were never in part of 31-Sonipat Constituency as the said Devi Lal colony always formed part of Gohana Constituency Revenue Estate village Mehalana and not 31-Sonipat Constituency.

12. That the respondent no.5 only indulged in door to door campaigning wherein more than 500 persons went with the respondent no.5 in gross violation of the electoral rules. That it is also a settled rule that no candidate can be allowed to campaign at government establishment but the respondent no.5 was even allowed to campaign at the railway station at Sonipat on 02.10.2014. That all the complaints made to the election officer went in deaf year (sic ear).”

41. It was also alleged that the petitioner had not kept proper account of expenses for the election. However, this fact has not been further elaborate.

42. It is evident that the petitioner had confined his plea while challenging the election of respondent to Section 100(1) Sub Clause (b) only which deals with corrupt practices by returned candidate or his election agent or by any other person with the consent of returned candidate or his election agent. The allegation that the proper account of expenses was not kept, is also vague and some of the objections raised, deal with conduct of election which is duty of the election commission and the respondent had no role in the same. It is evident from the perusal of the grounds raised by the petitioner that no cause of action to challenge the

election is disclosed.

43. In case of *Sharif Ud Din Vs. Abdul Gani Lone (supra)*, Apex Court while dealing with requirement of compliance of mandatory provisions, in similar enactment (Jammu & Kashmir Representation of People Act, 1957) elaborately discussed the effect of non-compliance of provisions of the Act and concluded in para 20 of the judgment as follows:-

20. We are, therefore, of the view that the requirement that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in section 94 of the Act. The High Court was, therefore, right in dismissing the petition on the above ground.”

44. Similar view was expressed by Coordinate Bench of this Court in *Satya Narain Vs. Dhaja Ram and others (supra)*, wherein it was observed that for the non-compliance of provisions of Section 81(3) of the Act of 1951, High Court has no option but to dismiss the election petition under Section 86(1) of the aforesaid Act.

45. Delhi High Court in case of *Gopal Parsad Shastri Vs. Mrs. Archana Kumar and others (supra)* has taken a similar view and observed in para 12 and 13 as follows:-

“12. After Sarif-ud-Din's decision by the Supreme Court, there is no manner of doubt that the provisions of Section 81 (3) read with Section 86(1) are mandatory in character and there is no option to the Court but to dismiss the petition once it finds that there is non-compliance with the requirement of

Section 81 (3). So I came to the conclusion that this petition must be dismissed because of this fatal flaw.

13. The truth is that Sections 81 (3) and 86 (1) are draconian in their severity. The legislature shows no mercy to a non-complier of Section 81 (3) “the wording is too strong to justify the milder view” (*Smit V Cammel Laired and Co. Ltd. 1940 AC 242 (263)* pe3r Lord Russel of Kilwen.”

46. Similar view was also expressed by this Court in *Boota Singh Vs. Sher Singh and others (supra)* and by Himachal Pradesh High Court in case of *Dr. Rakesh Kumar Vs. Sh. J.P. Negi and another(supra)*.

47. Learned counsel for the petitioners while conceding the factual position has referred to the observations of Apex Court in case of *Ajay Arjun Singh Vs. Sharadendu Tiwari and others 2016 (6) SCC 576* in support of his contention that filing of one affidavit is suffice and two separate affidavits, one in support of plea taken in petition and second for the corrupt practices which find mention in the petition are not mandatory.

Para 18 of the above citation reads as follows:-

“18. Subsequently, the same question again fell for consideration before a larger bench of this Court in *G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776*. The court disapproved the view taken in Mohammed Riyas case and held: 1. The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit in a case where resort to corrupt practices have been alleged against the returned candidate as required by the proviso to

Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of ***P.A. Mohammed Riyas v. M.K. Raghavan*** which suggests to the contrary, does not lay down correct law to this limited extent.

30. In any event, as in the present case, the same result has been achieved by the election petitioner by filing a composite affidavit, both in support of the averments made in the election petition and with regard to the allegations of corrupt practices by the returned candidate. This procedure is not contrary to law and cannot be faulted. Such a composite affidavit would not only be in substantial compliance with the requirements of the Act but would actually be in full compliance thereof. The filing of two affidavits is not warranted by the Act nor is it necessary, especially when a composite affidavit can achieve the desired result.”

48. The above observations are not relevant or helpful to the petitioner, in any manner. Admittedly, the petitioner has not filed duly signed copies, schedules, annexures and verification of the election petition was not in accordance with. This point that one affidavit or two affidavits are to be filed require consideration only if the point in issue had been the filing of one affidavit or two affidavits in support of petition. No such issue arise in this petition.

49. Learned counsel for the petitioner has also relied on the observation of Madras High Court in case of ***M.K. Azhagiri Vs. A. Lazar and others 2011 (37) R.C.R. (Civil) 582*** to submit that if the averment made

in the election petition constitutes material fact with full particulars and cause of action, Order 7 Rule 11 CPC cannot be invoked.

50. Here also learned counsel for the petitioner could not point out the averments in the election petition constituting material facts with full particulars of corrupt practices to make out cause of action, as such, observation in the aforesaid judgment by Madras High Court are not applicable to facts of this petition.

51. As a sequel of my above discussion, it is evident that the petition filed by the petitioner does not comply with the provisions of Section 81 (3) of the Act of 1951 and calls for its dismissal as per provisions of Section 86(1) of the aforesaid Act.

Ordered accordingly.

June 01, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No