

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

RESERVED ON: 06.05.2011
PRONOUNCED ON: 30.05.2011

+ EL. PET. 20/2009

ADESH KUMAR GUPTA Petitioner
Through: Sh. P.D. Gupta with Ms. Deepali Sharma, Ms. Simran
Brar, Sh. Raghav Awasthi and Sh. R.N. Karanjawala, Advocates.

versus

SH. D.K. MISHRA AND ANR. Respondents
Through: Sh. V.P. Singh, Sr. Advocate with Sh. M.I. Choudhary,
Sh. Rajeev Kapur and Sh. Harish, Advocates, for Resp. No.2.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

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I.A. Nos. 13850/2009

Allowed, subject to just exceptions.

**I.A. Nos. 13851/2009 (U/S 81(3), 82 and 86 of the Representation of the People Act, 1951) in
El. Pet. 20/2009**

1. This order will dispose of the application filed by the respondent (to the Election Petition), being I.A. No. 13851/2009.
2. The petitioner challenges the election of the second respondent to the New Delhi Parliamentary Constituency on the ground that he, his election agents, and others connected with

him had indulged in corrupt practices within the meaning of the expression, in the 2009 Lok Sabha Elections. It is alleged that the second respondent blatantly flouted the mandate of law by failing to keep correct and full accounts of his expenditure, thus violating Sections 77(1) and 77(3) of the Representation of the People Act, 1950 (hereafter “the Act”) which amounted to corrupt practice under Section 123(6). It is alleged that the expenditure exceeded the statutory limit of ₹ 25,00,000/- (Rupees twenty five lakhs) permissible in election expenses and, therefore, amounts to corrupt practice, which renders the election result, returning the second respondent to the said constituency void. The petitioner has filed a large number of documents, which include copies of brochures etc., alleged to have been issued at the behest or by the second respondent.

3. After notice was issued, the second respondent entered appearance and filed an application, (I.A. No. 13851/2009), stating that the petition had to be rejected for diverse reasons, including the following:

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

4. The applicant/second respondent argues that by virtue of Section 81(3) read with Section 86 of the Act the election petition is liable to be rejected. Learned counsel argues that the mandate of law is that the pleadings and documents filed in the proceedings challenging the election of returned candidate, should scrupulously adhere to the requirements spelt-out. It is submitted that Section 81(3) requires that every election petition has to be accompanied by as many copies as there are respondents and every copy has to be attested by the petitioner under his signature, to be a “true copy” of the petition. Elaborating, the learned senior counsel for the

second respondent urged that a copy is deemed not to be one if it contains a dim or illegible annexures or pleadings or some parts are missing. It is submitted that more importantly, the election petitioner was under an obligation to sign on every page of the petition filed before the Court, and ensure that such copies, with his signatures were furnished. It is urged that the application for rejection of the petition was filed on 23.10.2009, after which the election petitioner sought to move for amendment of the election petition along with a complete set of petition and the annexures, copies of which took care of the inadequacies outlined in the previous application for rejection.

5. It was argued that underlining the public interest in ensuring expeditious trial and disposal of election petitions, the Supreme Court in *Satya Narain v. Dhuja Ram* 1974 (4) SCC 237 had stated that the purpose of enclosing copies of election petition in a prescribed manner was to enable quick dispatch of the notice to the respondents and as a corollary, speedy adjudication of the dispute. If such requirements were to be treated not as imperative but only as optional, the object of the enactment would be defeated. It was submitted in this context that even the rules made by the High Courts, delegating power to the ministerial officers, such as the Registrars, Deputy Registrars etc. cannot prevail over the statutory prescription under Section 81(3). Learned senior counsel next relied upon the judgment reported as *Rajendra Singh v. Usha Rani* 1984 (3) SCC 339, and submitted that the Supreme Court had underlined that if an election petitioner files incorrect copies, he disregards the mandate under Section 81(3), and thereby risks the election petition itself being dismissed *in limini* under Section 86. Any breach in compliance with the mandatory provisions amounts to non-compliance.

6. Learned counsel further relied upon Section 82(b) of the Act and urged that any person, against whom allegations are made in the petition and who was also a candidate, should be impleaded as party to the election petition. It is submitted that apart from challenging the second respondent's election, the Election Petitioner also made allegations against Sh. Vijay Goel, who had contested as a BJP candidate; he was not made a party. Consequently, submitted the senior counsel, the petition has to fail on account of Section 86.

7. The Election Petitioner, in his reply, as well as submissions made on his behalf, urges that the application for rejection of the petition is misconceived. It is submitted that the records of this case reveal that the office of this Court had raised objections only once, when the petition

was presented; after the deficiencies pointed-out were cured, the petition was put-up before the Court, which proceeded to issue notice. In these circumstances, the petitioner is deemed to have complied with the requirements of law.

8. Learned counsel urged that as far as the allegations pertaining to signatures and verification in the petition are concerned, a look at the judicial record would reveal that the petition is signed and also verified in the prescribed manner. It was submitted that the Court cannot at this stage go into whether some of the documents or pages furnished to the respondents were dim as that would entail enquiry into the facts. Learned counsel urged that there is no dispute that after the alleged lacunae or deficiencies were pointed-out, a complete set was placed on the record and has been handed-over to the second respondent. In these circumstances, urged the election petitioner, ends of justice would lie in entertaining the request for rejection of the petition but not dismissing the application by the second respondent. Learned counsel relied upon the decision of the Supreme Court in *Chandrakant Uttam Chodankar v. Dayanand Rayu Mandrakar* 2005 (2) SCC 188.

9. The previous discussion would reveal that the petition challenges the election of the second respondent on the ground *inter alia* that the true and correct particulars about the expenditure incurred during the election and election campaign were not furnished. This, according to the election petitioner, amounts to a corrupt practice, entailing indulging of the election result. The second respondent in the application for rejection of the petition urges that the defects and deficiencies pointed-out are so fundamental as to amount to non-compliance with Section 81(3), 82(b) and 86 of the Act. The defects urged are the supply of copies without the Petitioner's signatures; the copy furnished to the second respondent containing dim or illegible pages or parts of documents; the verification clause being defective and the election petitioner not signing the verification clause in the affidavit filed in support.

10. In order to appreciate the rival contentions, it would be necessary to extract the following provisions of law – Section 81, 82 and 86 of the Representation of the People Act, 1950. They read as follows:

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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 3[, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]*

82. Parties to the petition.- *A petitioner shall join as respondents to his petition-*

(a) *where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*

(b) *any other candidate against whom allegations of any corrupt practice are made in the petition.]*

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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.

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11. In a five-Bench Judge decision of the Supreme Court, reported as *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* AIR 1964 SC 1545, an identical contention was made, i.e. that the copy furnished to the returned candidate was not a true copy. One of the grounds urged was that the verification was not proper in the copy furnished to the respondent/returned candidate. The Court rejected the contention, stating as follows:

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.....The same view was expressed in several other decisions and it is unnecessary to refer to them all. 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;

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12. It would be relevant now to discuss the two decisions relied upon by the petitioner, i.e. *Satya Narain (supra)* and *Rajendra Singh v. Usha Rani (supra)*. In *Satya Narain (supra)*, the Court held as follows:

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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(b) “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 there under. Section 87(2) makes a deeming provision for application of the Evidence Act only subject to the Acts. 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 first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under Section 86 of the Act.*

14. *We are, therefore, not required to consider the second submission of the learned Counsel for the appellant with regard to substantial compliance made on the basis of the provisions of Section 81(3) being directory. We may only add here that, in the absence of any provision under the Act or the rules made thereunder, the High Court Rules cannot confer upon the Registrar or the Deputy Registrar*

any power to permit correction or removal of defects in an election petition presented in the High Court beyond the period of limitation provided for under the Act. It may be noted that Section 169 of the Act provides that the Central Government is the authority to make rules after consulting the Election Commission and in sub-section (3) thereof the rules have to be laid before each House of Parliament in the manner provided therein. The only reference to the High Court Rules is found in Section 117 of the Act. At any rate, we do not feel called upon to pass on the High Court Rules referred to in the judgment of the High Court in this case.

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13. In *Rajendra Singh v. Usha Rani (supra)*, it was observed that:

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8. *This being the position, it is manifest that the appellant did not receive the correct copies as contemplated by Section 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 the 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 Sections 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 Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under Section 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 Section 81(3) which is sufficient to entail a dismissal of the election petition at the behest.*

9. *Hence, the mandate contained in Section 81(3) cannot be equated with Section 537 of the Code of Criminal Procedure which makes certain omissions as a curable irregularity. No such concept can be imported into the election law because the object of the law is that the electoral process should not be set at naught and an elected candidate should not be thrown out unless the grounds mentioned in the Act are clearly and fully proved. An election dispute concerns the entire constituency and in a parliamentary democracy it is of paramount importance that duly elected representatives should be available to share the responsibility in the due discharge of their duties. That is why the law provides time-bound disposal of election disputes and holds out a mandate for procedural compliance.*

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12. *These two connected appeals also involve more or less the same point of law as was involved in Civil Appeal No. 3702 of 1982, with the difference that in Civil Appeal No. 9 of 1983, J.P. Goyal, and in Civil Appeal No. 10 of 1983, Bishamber Nath Pande, (appellants) were declared elected to the Rajya Sabha on March 29, 1982. An election petition to set aside their election was filed on May 10, 1982 by the respondent (Raj Narain) making a number of allegations. When the case came up before the Court on July 5, 1982, an application was made by the respondents for amendment of the original petition by insertion of p. 17, which was allowed. The appellants filed a petition before the Election Judge for rejecting the election petition of the respondents because no amendment could be allowed which would have the effect of defeating or bypassing the provisions of Section 81(3) of the Representation of the People Act (for short, referred to as the "Act").*

13. *It may be stated here that Shri Bishamber Nath Pande has in the meantime been appointed as Governor of Orissa and has resigned his membership of the Rajya Sabha. Therefore, as requested at the Bar, his name is deleted from the category of appellants.*

14. *The main argument on behalf of the remaining appellants was that 11 copies of the election petition were filed on May 10, 1982 and although the copies which were served on them did contain p. 17 yet the original petition did not contain p. 17 and was sought to be added only by way of approaching the Court for amendment of the petition. It was further contended that the Court had no jurisdiction to accede to the prayer for amendment of the petition when at the time of filing the petition, the mandate contained in Section 81(3) was not complied with. In other words, the position seems to be that while the copies which were served on the appellants did contain p. 17 yet the original election petition did not contain p. 17. This being the admitted position, it could not be said that the copies served on the appellants were the correct and exact copies of the election petition. The provision of Section 81(3) is clear and specific and requires that every copy of the election petition must be a true and exact copy of the petition.*

15. *The learned Counsel for the respondent submitted that this is a highly technical objection and did not cause any prejudice to the appellants because so far as their copies were concerned they already contained p. 17. Mr. Bhandare, counsel for the appellants, however, submitted that this is beside the point and does not cure the invalidity of the election petition filed on May 10, 1982. The mandate contained in Section 81(3) enjoins that there should be no difference of any kind whatsoever barring some typographical or insignificant omissions between the petition filed and the copy served on the respondent. If an entire page is missing in the petition but it is there in the copy served on the respondent, then it is manifest that the copy served was not an exact and true copy of the petition. The consequences of the mandatory provisions of Section 81(3) could not be got*

over by praying for an amendment of the election petition because that would defeat the very object and purpose of Section 81(3). It is not disputed that this discrepancy between the election petition and the copies served on the appellants was undoubtedly there. In these circumstances, the High Court was wrong and committed a serious error of law in allowing the amendment of the petition. The High Court should have tried to appreciate the tenor and spirit of the mandate contained in Section 81(3) of the Act. In the case of Sharif-Ud-Din v. Abdul Gani Lone¹ this Court dismissed the election petition only on the ground that the words “attested to be a true copy” were not signed by the election petitioner and held that this was not a sufficient compliance with the provisions of Section 89(3) of the Jammu and Kashmir Representation of the People Act, which is the same as Section 81(3) of the Act. In the instant case, the inconsistency is much greater than in Sharif-Ud-Din case¹.

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14. In *Chandrakant Uttam Chodankar v. Dayanand Rayu Mandrakar* 2005 (2) SCC 188, the Supreme Court reviewed all the previous decisions, including *Satya Narain (supra)* and the Constitution Bench ruling in *Murarka Radhey Shyam Ram Kumar (supra)*. The Court stated that if election petitions are filed along with the requisite number of copies, some of which contain defects, that would not amount to a case of total non-compliance with Section 81(3) of the Act. The Supreme Court also was of the opinion that once the Registrar of the Court accepts the petition as valid along with requisite number of copies and after due notification of the defects, if any, the Court takes cognizance and issues notice, the matter would be taken out of the purview of Section 81(3) of the Act. The observations of the Supreme Court in *Chandrakant Uttam Chodankar (supra)* are to the following effect:

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Before parting with this judgment, we may recall the decisions of this Court on which strong reliance was placed by the learned counsel for Respondent 1. Relying on the decision in the case of Satya Narain v. Dhuja Ram Athree-Judge Bench of this Court held that when the period of limitation for filing an election petition was over, it was not open for the appellant to file documents or other materials for compliance with Sections 81(3) and 83(1)(c) of the Act. In that decision, this Court was considering whether first part of Section 81(3) of the Act was a pre-emptory provision and whether total non-compliance with it would entail dismissal of the election petitions under Section 86 of the Act. Relying on this decision of this Court, Mr. Thali argued that the High Court was fully justified in rejecting the election petitions on the ground that subsequent compliance would not entail the High Court to dismiss the election petitions. The

Supreme Court held in the fact situation of the said decision that there was non-compliance with Section 81(3) of the Act by not filing as many copies of the election petitions as there were respondents. In that factual situation, the Supreme Court has held that total non-compliance with the first part of Section 81(3) of the Act entails dismissal of the election petitions under Section 81(3) of the Act. The present case, however, stands on a different factual situation. In this case, it is not in dispute that election petitions were filed along with requisite number of copies thereof, but in the copies some defects as mentioned herein earlier, were alleged. It is not a case of total non-compliance with Section 81 of the Act as the requisite number of copies of election petitions were filed along with election petitions. The other decision on which Mr. Thali appearing for Respondent 1 also placed strong reliance was a decision of this Court in the case of Rajendra Singh v. Usha Rani. This decision is also distinguishable on facts. We have already held that the copies which were alleged to have been supplied to the learned counsel for Respondent 1 could not, at all, be relied on by the High Court. Therefore, in the facts and circumstances of this case, the principles laid down by this Court in the case of Rajendra Singh v. Usha Rani, cannot, at all, be applied. In view of our findings made hereinabove that the copies of the election petitions, which were alleged to have been served upon the learned counsel for Respondent 1 by the Registry of the High Court, could not, at all, be relied on and in view of the admitted fact that the bailiff of the High Court had subsequently served true copies of the election petitions on the learned counsel for Respondent 1, the High Court committed an error in rejecting the election petitions for non-compliance with the provisions of Sections 81(3) and 83(1)(c) of the Act.

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16. So far as the objection *vis-à-vis* Section 82(b) is concerned, while undoubtedly, the provision requires the impleadment of other parties against whom allegations are leveled, yet, in the facts of this case, the second respondent has not, in the opinion of the Court, made out a case for rejection. In this context, it would be useful to quote relevant part of the election petition which has triggered this ground for rejection:

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Youth for equality had also filed similar complaint with the Election Commissioner of India to take action that all hoarding put up at private places be pulled down and add the market cost on these site be added to the expenditure account of the candidate. The Copy of the Complaint to the Election Commissioner of India is marked and annexed.

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17. In view of the above and having regard to the decision in *Chandrakant Uttam Chodankar (supra)*, as well as *Murarka Radhey Shyam Ram Kumar (supra)*, this Court is of the opinion that in the present instance, the election petitioner had signed on the copies and, therefore, complied with the standard prescribed under Section 81(3). Similarly, the fact that the Registrar of this Court had initially notified some deficiencies which were cured, after which the matter was placed before the Court, which took cognizance of the petition, would mean that the election petitioner was absolved of any fault. There is no doubt that the election petition, as originally presented, was within the time prescribed by law. Moreover, this Court cannot, enquire into the question as to whether and if so, to what extent, the copies furnished to the second respondent were not compliant with Section 81(3) of the Act, that would amount to a mini trial – a procedure unknown to the Act and in fact contrary to its objective. While public interest lies in ensuring that suits or causes which are plainly barred by law, ought to be summarily rejected, equally the court should not be over zealous in the enforcement of provisions which are procedural, though aimed at expeditious trial, require substantial compliance. The larger Bench ruling in *Morarka* points to this, and the court is inclined to follow the adage that procedure is only a handmaiden, and not mistress of justice.

18. For the above reasons, the Court is of the opinion that the second respondent's application is unmerited; same is accordingly rejected.

19. I.A. No. 13851/2009 is accordingly dismissed.

El. Pet. 20/2009

List the petition for directions on 8th July, 2011.

(S. RAVINDRA BHAT)
JUDGE

MAY 30, 2011