

Satya Narain vs Dhuja Ram And Others on 21 December, 1973

Equivalent citations: 1974 AIR 1185, 1974 SCR (3) 20, AIR 1974 SUPREME COURT 1185, 1974 4 SCC 237, 1974 SCR 20, 1975 2 SCJ 508

Author: S.N. Dwivedi

Bench: S.N. Dwivedi, P. Jaganmohan Reddy, P.K. Goswami

PETITIONER:

SATYA NARAIN

Vs.

RESPONDENT:

DHUJA RAM AND OTHERS

DATE OF JUDGMENT 21/12/1973

BENCH:

DWIVEDI, S.N.

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REDDY, P. JAGANMOHAN

GOSWAMI, P.K.

CITATION:

1974 AIR 1185 1974 SCR (3) 20

1974 SCC (4) 237

CITATOR INFO :

E	1980 SC 303	(15,19)
R	1983 SC 558	(36,37,40)
R	1984 SC 305	(13)
R	1984 SC 956	(16,17)
F	1990 SC 924	(13)
R	1991 SC1557	(29)

ACT:

Representation of the People Act, (43 of 1951) Ss. 81 (3) and 86 (1)--Whether mandatory or directory--Non-filing of requisite number of copies within period of limitation--Effect of.

HEADNOTE:

The first part of s. 81 (3) of the Representation of the People Act, 1951, provides that every election petition shall be accompanied by as many copies thereof as there are

respondents mentioned in the petition, and s. 96 (1) provides that the High Court shall dismiss an election petition which does not comply with the provisions of S. 81. The appellant filed an election petition challenging the respondent's election to the State Legislative Assembly, but did not file the requisite-number of spare copies within the period of limitation.

The High Court dismissed the petition on the ground of non-compliance with the mandatory requirement of S. 81 (3).

Dismissing the appeal to this Court,

HELD:

(Per P. Jaganmohan Reddy and P. K. Goswami, JJ.) Whether a particular provision in a statute is mandatory or directory has to be construed from the scheme and object of the provisions. [25H]

The right to challenge an election is conferred under the Representation of the people Act, which is made in conformity with the provisions of Art. 329 (b) of the Constitution. It is a special right conferred under a self-contained special law and the Court will have to seek answers to the questions raised within the four corners of the Act. The power of the court are circumscribed by the provisions. it is not a common law right and an election petition cannot be equated with a plaint in a civil suit. Since the principal object of the Act is purity of elections, when an election is challenged under the Act, expeditious trial of the dispute is sought to be enforced by the Legislature making all safeguards against delay in getting rid of any taint in the result of the election. But 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 trial. The purpose of enclosing the copies of the election petition for all the respondents is to enable quick dispatch of the notice with the contents of the allegations for service on the respondents. if there is any halt or arrest in the progress of the case, the object of the Act will be completely frustrated. Therefore, the first part of section 81 (3) is a peremptory provision and total non-compliance with it will entail dismissal of the election petition under s. 86. [27H; 99E-G]

Jagat Kishore Prasad Narain Singh v. Rajindra Kumar Poddar and Others, [1971] 1 S.C.R. 821, Raza Buland Sugar Co. Ltd. V. Municipal Board Rampur [1965] S.C.R. 1970, Montreal Street Railway Company v. Normandin, [1917] L. R. A. C. 170. Charan Lal Sahu v. Nand Kishore Bhatt and Others, [1973] 2 S.C.C. 759, Ch Subba Rao v. Member, Election Tribunal [1964] 6 S.C.R. 213 and Dr. Anup Singh v. Abdul Ghani [1965] 1 S.C.R. 38, referred to.

Per Dwivedi J: The election petition is liable to be dismissed in view of the decision of this Court in Jagat Kishore Prasad Narain Singh v. Rajindra Kullar poddar and others, (1971) 1 S.C.R. 821. But this makes s. 86 (1) a

tyrannical master giving primacy to procedure over justice. But it is for Parliament to make a just choice between the social interest in the Supply of copies for expeditious disposal and the social interest in the Purity of election by excluding s. 81 (3) from the purview of S. 96 (1).

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JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 419 of 1973. From the Judgement and Order dated the 22nd December 1972 of the Punjab and Haryana High Court at Chandigarh in Election Petition No. 2 of 1972.

Hardyal Hardy, V. P. Chaudhry, Jitendra Sharma and Sharma Chaudhury and Rathi, for the appellant. M. N. Phadke, Bakhtawar Singh, D. N. Misra, and J. B. Dadachanji, for respondent No. 1.

The Judgment of P. JAGANMOHAN REDDY and P. K. GOSWAMI, JJ. was delivered by Goswami, J. S. N. Dwivedi, J. gave a separate Opinion.

GOSWAMI, J. This appeal under section 116A of the Representation of the People Act, 1951 (briefly the Act, is directed against the judgment and order passed by the High Court of Punjab and Haryana in Election Petition No. 2 of 1972 dismissing it on the preliminary ground that the appellant had failed to comply with the mandatory requirement of section 81(3) of the Act inasmuch as the requisite number of spare copies of the petition for the respondents were not filed along With the petition in the High Court. It was further held by the High Court that the said defect could not be cured subsequently even within the period of limitation prescribed for filing the election petition. The High Court further held that the spare copies were actually filed beyond the period of limitation. The facts may be briefly stated. In the general election to the Haryana Legislative Assembly held on March 11, 1972, the appellant and the four respondents were the contesting candidates for the Safidon Assembly Constituency No. 30; two candidates having already withdrawn from the contest. The counting of votes took place on March 12, 1972 and on the following day. The counting disclosed that the first respondent obtained 19570 votes as against 19462 votes secured by the appellant. The first respondent was, therefore, declared elected on March 13, 1972. The appellant filed an election petition in the High Court challenging the election of the first respondent on several grounds of corrupt practice within the meaning of section 123 of the Act. It is not necessary for the purpose of this case even to detail these. The election petition was presented by Mr. R. S. Mittal, Advocate incharge, to the Deputy Registrar (Judicial) of the High Court on April 18, 1972. The same was ordered to be put up for scrutiny on April 24, 1972. It is admitted that the application was filed on April 18, 1972, without the requisite spare copies and was, therefore, incomplete on the date of presentation. No schedules were also filed along with the petition but that point is not pressed before us by the respondent's counsel. It is also admitted that the limitation for filing the election petition was up to April 27, 1972. According to the appellant the spare copies were filed with the Superintendent of the Election Branch in the afternoon of April 24, 1972, well within the period' of limitation.

It may be necessary to briefly note the sequence of events for the purpose of appreciating the controversy raised between the parties as noted earlier, the election petition was presented personally by Mr. Mittal without the spare copies on April 18, 1972, and the Deputy Registrar had ordered it to be put up on April 24, 1972, for scrutiny according to the rules of the High Court. When the petition came up for scrutiny before the Deputy Registrar on April 24, 1972, Mr. Mittal appeared and requested for time to remove the defects pointed out by the office. It may be appropriate to extract that particular order :

"Present: Shri R. S. Mittal, Advocate. He has requested time to remove the defects pointed out by the office. Let it be refixed on 28-4-72, after the defects had been removed as agreed to by the counsel.

Sd/.

D. D. Khanna 24-4-72"

The next order passed by the Deputy Registrar on April 29, 1972, runs as follows:-

"Shri R. S. Mittal has informed me on the phone that he is indisposed and as such the case may not be taken up for scrutiny to-day. Put up tomorrow, the 29th April, 1972 for orders. Counsel may be informed.

Sd/-

D. D. Khanna 28-4-72" .

The High Court has observed that it is common case of both side that by the time the case was placed before the Deputy Registrar on April 29, 1972, the spare copies of the petition had been filed by the petitioner and the other defects had also been removed. The final order of scrutiny passed by the Deputy Registrar on April 29, 1972, is in the following terms:

"Present Shri R. S. Mittal., Advocate for petitioner. The petition was filed on 18-4-72 and the result in this case was declared on 13-3-72; hence it is within time. The petition is accompanied with the security receipt in the sum of Rs. 2,000/- deposited in this Court before filing of the petition under the rules. The petition was scrutinised and as the defects pointed out on the previous date have been removed, it is now prima facie in order. Issue notice for scrutiny of service for 22nd May, 1972, and for settlement of issues for 26th May, 1972.

Sd/-

D. D. Khanna 29-4-72".

The matter ultimately came up for hearing before the learned single Judge to whom this election petition was assigned. Several preliminary objections were taken by the sole contesting first respondent. The other respondents did not enter appearance' We are concerned with only one preliminary objection, namely, that the petition was not in conformity with section 81(3) of the Act inasmuch as the requisite spare copies thereof were not enclosed with the petition when it was originally presented on April 18, 1972, and that the election petition was liable to be dismissed. The learned counsel for the appellant, Mr. Hardyal Hardy, has made only the following two submissions before us :

(1) The requirement under section 81(3) of Representation of the People Act, 1951 that spare copies of an election petition shall accompany the petition, is directory and not mandatory-

(2) It is substantial compliance with the said directory provision if the spare copies of an election petition, instead of accompanying the petition, are filed before the petition is laid before the Judge for orders or even within the time that may be granted by the Judge for the purpose.

Before the High Court both sides examined witnesses. To establish his case, the appellant examined himself as PW 6, the Election Assistant, Shri O. P. Popli (PW 3), Deputy Registrar, Shri D. D. Khanna (PW 4), Shri R. S. Mittal, Advocate (PW 5), Shri Adish Chand Jain, Advocate (PW 7), Shri Jai Singh Dhillon, Advocate (PW 9) and Shri Jaswant Rai, Advocate (PW 10). All the Advocates except Shri Mittal were from Jind. Shri Mittal is an Advocate practicing in the High Court. Although the appellant summoned Shri Harsukh Rai Hantroo, Superintendent of the Election Branch, and was present' in court on 20th July, 1972, when the first four witnesses were also examined, Shri Mittal, who was conducting the case on behalf of the appellant, made a statement before the court that he gave up Shri Harsukh Rai Hantroo 'as unnecessary'. The respondent's counsel, however, submitted that he should be examined as a court witness and the court ordered for his examination on that very day observing that "in the interest of justice that the Superintendent of the Election Branch who was the only other official working between the Deputy Registrar (Judicial) on the one side and P.W. 3 on the other, should also be examined to clarify the matters so far as possible. . . . "

The respondent examined himself and R. W. Ch. Hari Ram, Senior subordinate Judge cum Chief Judicial Magistrate, Jind.

The appellant sought to establish before the High Court that the spare copies were submitted on April 24, 1972, by relying upon the endorsement of Shri Mittal, "objections removed, R. S. Mittal" (Ext PW 5/1) below the order of the Deputy Registrar of April 24, 1972, which we have already set out. There is no date given by Shri Mittal when he made his endorsement in the order sheet of the Registry. PW 3, who had initially scrutinised the petition and found the defects, was on leave on April, 24, 1972, and the Superintendent (CW 1) was only present. According to Shri Mittal, he went to the Election Office along with the appellant and his Clerk, Manphool Sharma, and filed these papers at 2-00 P M. on April 24, 1972, and made

also the above' endorsement (Ext. PW

511.) Although, however, Shri Mittal was conscious that the papers had to be filed within time to save the defective petition from being dismissed, curiously enough, he did not take the necessary care to get any official endorsement in the order sheet by the Deputy Registrar or even by the Superintendent of the Election Branch to the effect that the documents were filed and defects were removed on that day, namely, on 24th April, 1972, notwithstanding the further fact that he had earlier at 11.00 A.M. on the same day requested the Deputy Registrar for time to remove the defects and the next date was fixed on April 28, 1972. In face of the order of the Deputy Registrar of 24th April, Shri Mittal's responsibility as counsel was greater than he seemed to have thought. On April 28, 1972, Shri Mittal informed the Deputy Registrar over the phone that he was indisposed and requested for time till the next day which was given. He deposed that he had even informed the Deputy Registrar that scrutiny could be made in his absence since the defects had already been removed. On this particular aspect of the matter, the Deputy Registrar was silent in his evidence and although it was Shri Mittal again who personally examined the Deputy Registrar in court, he never put this question to him with regard to his informing him over the phone about removal of defects on 24th April. Again, from Shri Mittal's evidence it appears that, although he was feverish, he actually came to the Election Office on April 28, 1972, in connection with Election case No. 3 of 1972 (Sagar Ram v. Banarsi Das & Ors.) and removed certain defects in that case on that day, namely' 28th April, 1972 although that case was set down for April, 29, 1972, which date had been fixed by the Deputy Registrar in his presence on April 24, 1972. There is an endorsement in that case by Shri Mittal, this time, with date 28h April, 1972, below the order of the Deputy Registrar dated April 24, 1972, to the effect "objections removed". The records of that case were also called for in the High Court and were also shown to us here. It is pointed out that the endorsement in that case with date and the endorsement in Ext. PW 5/1 of Shri Mittal are with the same pen and ink as is even admitted by Shri Mittal. The respondent, therefore attaches great significance on the omission of the date in Ext. PW 511 and describes the endorsement as a suspicious entry. it is strenuously submitted by the respondent that the papers were not submitted on April 24, 1972, as alleged. Since Shri Mittal asserted in his evidence that he along with the appellant filed the spare copies of the petition in the afternoon of April, 24, 1972, the respondent by examining the Subordinate Judge (RW 1) sought to establish that the appellant as advocate actually appeared in his court at Jind on April, 24, 1972, in a contested civil suit (Kati Ram v. Ram Tirath, etc.-Civil Suit No. 422 of 1967 on behalf of the plaintiff where the defendant was cross- examined by him. The appellant denied this and stated that his junior, Shri Jai Singh Dhillon (PW 9) actually conducted the case on that day. This point, was also sought to be supported by examining two other Advocates appearing on behalf of the defendant in that suit, namely, Adish Chand Jain (PW 7) and Jaswant Rai (PW 10). It appears that Shri Dhillon even did not file his vakalatnama in that suit and at one stage when he had appeared on behalf of the appellant in that suit, it was recorded in the ,order

sheet, as was the practice of that court that he was appearing as proxy for the original counsel. There was, however, no such entry in the order sheet that he appeared on behalf of the appellant on April 24, 1972. From the evidence of RW 1, who deposed from the records of the suit produced in the court and gave some convincing reasons, the High Court was reasonably and, in our opinion, rightly satisfied that the appellant appeared in the court of the subordinate Judge, Jind, on April 24, 1972. The High Court has also rightly held that PWs 7 and 10 gave hazy evidence from their memory with regard to the appearance of the appellant in the suit on April 24, 1972. The High Court also found several infirmities and contradictions in the evidence of Shri Mittal. It is nobody's case that if the appellant appeared in the suit at Jind on 24th April he could be present in the Election Branch at Chandigarh at 2.00 P.M. on that day. PW3 has correctly deposed that "the words (objections removed) in the handwriting of Shri R.S. Mittal, Advocate and the signature of Shri R. S. Mittal thereunder were not there when he made the endorsement 'informed' (Ext PW 3/1) on April 28, 1972". Even the Deputy Registrar has admitted in his evidence that the endorsement "objections removed" in the handwriting of and above the signature of Mr. R. S. Mittal was not made in his presence. He also stated that "I do not recollect having seen this endorsement at the time I passed my order, dated April 28, 1972". The evidence of the Deputy Registrar consistent with that of PW 3 is rightly preferred by the High Court to the evidence of Shri Mittal, of the appellant and even of the Superintendent of the Election Branch who also deposed from memory. After again carefully examining the evidence of all the witnesses on this point, we have no reason to differ from the conclusion of the High Court that the requisite spare copies of the election petition were not submitted by the appellant on April 24, 1972.

We will, therefore, have to decide the first submission of the learned counsel for the appellant on the basis that the spare copies were not filed within the period of limitation. 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. Whether a particular provision in a statute is mandatory or directory has to be construed from the scheme and object of the provisions-

[1971] (1) SCR 821.

This Court observed in Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur(1) as follows:-

"The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses 'the word 'shall-as in the present case-is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making

the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory".

The Privy Council also in *Montreal Street Railway Company Normandin*,⁽²⁾ observed to the same effect:

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at.....

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. Part VI of the Act deals with disputes regarding election. Chapter 11 therein provides for presentation of election petitions while chapter III for trial of election petitions. The right to challenge an election is conferred under the Act which is made in conformity with the provisions of Article 329(B) of the Constitution. It is well settled that it is a special right conferred under a self-contained special law and the court will have to seek answer to the questions raised within the four corners of the Act and the powers of the court are circumscribed by its provisions. It is not a common law right and an election petition cannot be equated with a plaint in a civil suit.

We may, therefore, immediately read the material sections 80, 81(1) 84(3) and 86(1) which run as follows (1) [1965] (1) SCR 970, 975.

(2) 1917 L. R. A. C. 170 (quoted in 1965 (1) S.C.R. at pages 975-976.) Section 80 No election shall be called in question except by 'an election petition presented in accordance with the provisions of this Part."

Section 81(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 fortyfive days from, but not later 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 date s."

Section 81(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 of the petition".

Section 86(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".

Section 86 (1) refers to three sections, namely, section 81, section 82, which deals with parties to the petition and section 117 of the Act providing for security for costs. While dealing with section 117 of the Act this Court spoke through one of us (Reddy, J) in Charan Lal Salhu v. Nandkishore Bhatt and others(1), and held as follows :

"The right to challenge an election is a right provided by Article 329(b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a 'statutory right, the terms of that statute had to be (1) [1973] (2) S.C.C. 530,533.

complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law 'and must be subject to the limitations imposed by it. In N. P.Ponnuswami v. Returning Officer Namakkal Constituency and Others (1) it was pointed out that strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it".

'Similarly in Krishan Chander v. Ram Lal (2) dealing with section 82(b) of the Act and examining the scheme and the object of the pro-' visions this Court again held the same as mandatory. This Court observed:

"The provisions of sec. 82(b) would avoid any such delay as they make obligatory for a person filing an election petition when he makes an allegation of corrupt practice against any candidate to make him a party on pain of the petition being dismissed under section 86(1) if he omits to do..... This then is the rationale underlying the

mandatory requirements of section 82(b)".

It is true in Ch. Subba Rao v. Member Election Tribunal, Hyderabad(3) reiterating two earlier decisions viz. Kamaraj Nadar v. Kunju Thevar(4) and Murarka v. Roop Sing(5), the Court in' view of the peculiar facts ,add circumstances of that case and the nature of the defects held ,that section 81(3) was substantially complied with and left open the ,wider question whether section 81(3) or any part thereof is mandatory or directory. In a later decision in Dr. Anup Singh v. Shri Abdul Ghani and another(6), which followed Subba Rao's case (supra), ,this Court observed :

"An exactly similar matter came to be considered by this Court in Ch. Subba Rao v. Member, Election Tribunal (3).-In that case also the copies were signed by the petitioner but there was no attestation in the sense that the words "true copy" were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient (1) [1952] S.C.R. 218. (2) [1973] (2) S.C.C. 759,769. (3) [1964] (6) S.C.R. 213.(4) [1959] S.C.R. 583. (5) [1964] (3) S.C.R. 573.(6) [1965] (1) S.C.R. 38,41.

to indicate that the copy was attested as true copy, even though the words "true copy" were not written above the signature in the copies. This Court further held that there was substantial compliance with section 81(3) of the Act and the petition could not be dismissed under section 90(3)".

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 casualty 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.

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, In the result we find no reason to interfere with the decision of the High Court dismissing the election petition. The appeal is dismissed with costs.

DWIVEDI, J. I agree with my brethren that the requisite copies of the election petition were not filed in Court within the period of limitation by the appellant. I am constrained also to agree that for this procedural fault his election petition is liable to be dismissed in view of the decision of the Court in Jagat Kishore Prasad Narain Singh v. Rajindra Kumar Poddar and others(1). In that case Hegde J. said: "The law requires that a true copy of the election petition should be served on the respondents. That requirement has not been either fully or substantially complied with. Therefore we have no doubt in our mind that the election petition is liable to be dismissed under s.86 of the Act."

It makes me sad to read this requiem for this election petition. Over a century ago a slip in procedure by a litigant meant denial of justice to him. " Right down to the nineteenth century the choice of the wrong writ involved the loss of the action, even though all the merits were with the plaintiff." (2) Gradually, however, courts subordinated procedure to the claims of justice. In Ma Shwe Mva v. Maung Mo Maung, (3) Lord Buckmaster said : "All rules of court are nothing but provisions intended to secure proper administration of justice. It is therefore essential that they should be made to serve and be subordinate to that purpose. Speaking in the same vein, Justice Ameer Ali said : "Rules of procedure are not made for the purpose of hindering justice." (See (Raja) Indrajit Pratap Bahadur Sahi v. Amar Singh) (4) Our decision restores that primacy of procedure over justice. It makes S. 86(1) a tyrannical master. The rigidity of the rule of precedent ties me to its

chains. My only hope now is that Parliament would make a just choice between the social interest in the supply of copies by the election petitioner along with his election petition and the social interest in the purity of election by excluding s. 81(3) from the purview of s. 96(1) of the Act. Appeal dismissed.

V.P.S. (1) [1971] 1 S. C. R. 821. (2) Holdsworth: A History of English Law, 9, 248.

(3) A.I.R. 1922 P. C. 249 at p. 250.

(4) A.I.R. 1923 P. C. 128 at P. 135.