

Chandrakant Uttam Chodankar vs Shri Dayanand Rayu Mandrakar & Ors on 15 December, 2004

Equivalent citations: AIR 2005 SUPREME COURT 547, 2005 AIR SCW 19, 2004 (10) SCALE 429, 2004 (7) SLT 593, 2005 (3) SRJ 246, 2005 (2) SCC 188, (2005) 1 RECCIVR 273, (2004) 10 SCALE 429

Author: Tarun Chatterjee

Bench: N. Santosh Hegde, Tarun Chatterjee

CASE NO.:
Appeal (civil) 6622 of 2003

PETITIONER:
Chandrakant Uttam Chodankar

RESPONDENT:
Shri Dayanand Rayu Mandrakar & Ors.

DATE OF JUDGMENT: 15/12/2004

BENCH:
N. SANTOSH HEGDE & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T [With Civil Appeal No.6750 of 2003] TARUN CHATTERJEE, J.

The appellants in CA No.6622 of 2003 and CA No.6750 of 2003 are aggrieved by the dismissal of their Election Petition Nos. 1 and 2 of 2002 by the Bench of the High Court of Bombay on preliminary issues without any trial and have filed these two statutory appeals under section 116A of the Representation of the People Act, 1951 (in short "the Act") against two separate judgments of the same Bench of Bombay High Court. Since common questions of law and facts arose in both the appeals, they were heard together and are being disposed of by this common judgment. Facts of the two appeals being practically similar in nature are briefly stated:-.

In the Election Petition being Election Petition No.1 of 2002 of Chandrakant Uttam Chodankar out of which C.A. No. 6622/2003 arises, the appellant challenged the validity of the Assembly election of Siolim Constituency, Goa under section 86 of the Act in which he contested but the respondent No.1 was declared elected. The election of the returned candidate was questioned inter alia on the ground that the returned candidate (Respondent No.1) on the date of nomination and the date of election of the constituency in question was disqualified as he was the Chairman of Goa Khadi and Village Industries Board which is a statutory authority and, as such he was holding an office of profit under the Government of Goa . So far as the facts of the Election Petition No.2 of 2002 filed by the

other appellant Jose Philips Domingo D'Souza which has given rise to filing of C.A. No. 6750 of 2003 are concerned, only distinguishing factor was that in that petition, the constituency and the parties were different and in addition to the grounds taken in Election Petition No.1 of 2002 an additional ground for setting aside the Election Petition was also taken. Both the election petitions were filed on 16th of July 2002. The High Court issued notice to the parties on 2nd of August, 2002. However, on the date of preliminary hearing, Mr. Thali, learned counsel along with his junior appeared on behalf of the respondent No.1 in both the Election Petitions and waived notice on their behalf. For requisition of both the election petitions, it was alleged that the learned counsel for the Respondent No.1 had collected the election petitions on 2nd of August 2002 from the Registry of the High Court. On the basis of such copies of the Election Petitions filed applications under Order VII Rule 11 of the Code of Civil Procedure on 8th of September 2002 for their rejection on the ground that the election petitioners had failed to comply with the mandatory provisions of section 81(3), 83(1)(a)(c) and section 83 (2) of the Act. However, after the pleadings were complete, the following questions were framed:

- 1) Whether the returned candidates proved that the election petitions were liable to be rejected under section 81(1) read with section 86 of the Act by reason of it being barred by limitation?
- 2) Whether the returned candidates proved that the election petitions were liable to be rejected in limine under section 86 of the Act by reason of its non-compliance of sections 81(3), 83(1)(a)(c) and 83(2) of the Act?
- 3) Whether the respondent No.1 proved that the election petition was liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure read with section 86 of the Act by reason of non-disclosure of any cause of action?

However, out of the aforesaid three questions, the High Court held the question Nos.1 and 3 in favour of the election petitioners. Since no cross objection/Appeal has been filed by the respondent No.1 in both the appeals nor any argument was advanced by the Learned Counsel for Respondent No.1 challenging the findings of the High Court relating to question Nos. 1 and 3, we do not feel it necessary to examine the findings of the High Court relating to question Nos. 1 and 3. Therefore we restrict ourselves only in relation to Question No.2.

The High Court in its judgment however divided the Question No.2 into three parts which are as follows:

- (i) Whether the copies of the election petitions supplied by the appellants and alleged to have been served upon the learned counsel for the respondent No.1 by the Registry of the High Court were true copies of the election petitions?
- (ii) Whether the appellants had served copies of the election petitions to the number of respondents mentioned in the petitions in compliance with section 81 (3) of the Act or not ?

(iii) Whether the verification of the election petitions and document was made by the appellant or not ?

However, the High Court rejected both the election petitions of the appellants on question No.1 and 2 and rejected election petition NO.2 of 2002 also out of which CA No.6623 of 2003 has arisen, on an additional ground for non-compliance of section 83(1)(c) of the Act. Before we take up the aforesaid three questions for our decision, we feel it appropriate at this stage to refer to some of the relevant provisions of the Act.

Chapter II of the Act deals with Election Petitions to High Court.

Section 80 of the Act says that no election shall be called in question except by an election petition presented in accordance with the provisions of part VI of the Act..

Section 80A of the Act confers power on the High Court to try election petitions. Section 81 of the Act deals with presentation of election petition which reads as under:-

"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 or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates].

2[(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.]"

Section 82 deals with parties to the election petition. Since this provision is not relevant for our purpose, we do not think it necessary to deal with this section in this judgment. Then comes section 83 of the Act which deals with the contents of the Election Petitions. Section 83 is as follows:-

"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.]"

Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of section 81 or 82 or section 117 of the Act. There is yet another section which may also be relevant for our purpose. This is section 116A of the Act which deals with appeals to Supreme Court. Section 116A of the act reads as under:-

"116A. Appeals to Supreme Court (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under section 98 or section 99." (Emphasis supplied) A bare perusal of section 116A of the Act, it is clear that an appeal shall lie from an order made by the High Court to the Supreme Court on any question of law and fact. Therefore, under section 116A of the Act the Supreme Court is conferred with power not only to decide an appeal filed under this section on a question of law but it would also be open to the Supreme Court to decide the appeal on facts as well.

Keeping the power conferred on this Court under section 116A of the Act that is to say this Court is also conferred with power to decide an appeal on facts, let us first examine whether the High Court was justified in relying on the copies of the election petitions which were alleged to have been served on the Learned Counsel for the Respondent No.1 in dealing with the questions in hand.

In support of the prayer for dismissal of the election petitions, the Respondent No.1 examined one witness who was the junior of the Learned Counsel for Respondent No.1. In her affidavit evidence she had stated that the election petitions were listed on 2nd of August, 2002 and her senior Sri Vilas Thali on that date i.e. on 2nd of August, 2002 filed vakalatnamas on behalf of Respondent No.1. She also stated that the copies of the election petitions were served on the learned counsel for the respondent No.1 by the Registry of the High Court in her presence. She admitted that on 19th of August, 2002 the bailiff of the Court also served two copies of the election petitions and a notice of the High Court on the Learned Counsel for Respondent No.1. She further stated in her deposition that one copy of the election petitions was returned to the Assistant Registrar of the High Court while retaining the notice issued by the Court which accompanied a copy of the election petition. In cross-examination, she admitted that she had personal knowledge that her senior Mr.Thali had filed his vakalatnama on 2nd of August, 2002 on behalf of Respondent

No.1 in both the Election Petitions. However, it appears from the record that the vakalatnamas were signed by the Respondent No.1 on 4th of August, 2002 and the signed vakalatnamas were received by the Registry of the High Court on 6th of September, 2002. She also admitted that her senior Mr.Thali, did not make any endorsement of having received copies of the election petitions on behalf of Respondent No.1 in the ordersheet of the election petitions. The High Court, relying on these copies in its judgment inter alia held that the election petitions were liable to be rejected on the ground that the copies which were served on the learned counsel for the Respondent No.1 were not true copies of the election petitions. Keeping these facts in mind, let us now examine whether the copies which were alleged to have been supplied by the Registry of the High Court to the learned counsel for the Respondent No.1 could at all be relied on by the High Court. The copies of the election petitions which were alleged to have been supplied by the Registry of the High Court on the Learned Counsel for the Respondent No.1 were exhibited.

For the reasons mentioned hereinafter, we are of the view that no reliance could be placed by the High Court on the copies of the Election Petitions alleged to have been supplied by the Registry of the High Court to the learned counsel for the respondent No.1.

As said hereinabove, it is not in dispute that two true copies of the election petitions were duly served upon the Learned Counsel for Respondent No.1 by the bailiff of the High Court after the period of limitation for filing an election petition under section 86 of the Act was over. We have carefully examined the copies of the election petitions alleged to have been supplied to the learned counsel for the Respondent No.1. From the facts stated hereinafter, it would be difficult for us to hold that reliance could at all be placed by the High Court on such copies. The first reason is that the High Court ought to have drawn an adverse inference against the respondent No.1 for not filing the applications under Order VII Rule 11 of the Code of Civil Procedure immediately after receiving those copies from the Registry of the High Court as, according to us, the Respondent No.1 ought not to have waited for more than a month to file the applications under Order VII Rule 11 of the Code of Civil Procedure for rejection of election petitions when true copies were already served on the Respondent No.1. That apart, a perusal of the copies alleged to have been served on the Respondent No.1 indicates that copies of the election petitions which the petitioners did not submit for service were produced by the Respondent No.1 as having been served on the Respondent No.1 Even otherwise, from the facts narrated earlier, it is clear that on 2nd of August, 2002 the Learned Counsel for Respondent No.1 in both the election petitions had appeared before the High Court on behalf of Respondent No.1 without filing any vakalatnama. As said hereinafter, from the records, it also appears that the vakalatnamas were signed by the Respondent No.1 on 4th of August, 2002 and received by the Registry on 6th of September, 2002. On 19th of August, 2002, Court Bailiff served two true copies of election petitions on the Learned Counsel for the Respondent No.1. From the above, it is therefore clear that

the Learned Counsel for the Respondent No.1 had no authority to collect copies of the Election Petitions from the Registry of the High Court before 6th of September 2002 nor was it open to the Registry of the High Court to supply copies of the election petitions to the Learned Counsel for the Respondent No.1 before the vakalatnamas were filed on behalf of the respondent No.1 i.e. not before 6th of September 2002. Such being the admitted position, it is difficult to believe that such copies relied on by the learned counsel for the respondent No.1 were at all supplied by the Registry of the High Court to the learned counsel for the respondent No.1. For the reasons aforesaid, we are unable to hold that in fact the copies alleged to have been served or supplied to the learned counsel for the respondent No.1 were at all served or supplied by the Registry of the High Court. That apart, from the records, it does not appear that there was any endorsement from the side of the learned counsel for the respondent No.1 to show that he had received copies from the Registry on which they made out the case for rejection of election petitions. For the reasons aforesaid, we are therefore of the view that the High Court was not justified in rejecting the election petitions relying on the copies alleged to have been served or supplied to the learned counsel for the Respondent No.1 without there being any direction to file vakalatnamas from the High Court. It is an admitted position that true copies of the election petitions were served upon the Respondent No.1 by the Court Bailiff. In the absence of any material to show that the true copies of the election petitions were not filed with the election petitions at the time of their presentation and in view of our discussions herein earlier that no reliance could be placed on the copies relied on by the High Court, we are unable to sustain the orders of the High Court. We are also unable to agree with Mr.Thali that no reliance could be placed on the true copies served by the Court Bailiff because they were served after the expiry of the period of limitation. It is difficult to understand that the period of limitation shall start from the date of serving the copies and not from the filing of copies of the election petitions. From the records it does not appear that such copies were filed after the period of limitation.

For the reasons aforesaid, we may safely conclude that the election petitions were not liable to be rejected relying on the copies of the election petitions alleged to have been served upon the Respondent No.1 especially when true copies of the same were duly supplied to the Respondent No.1. However, when two questions were framed by the High Court and answered in favour of the Respondent No.1, we feel it appropriate to decide the appeals also on question Nos. 1 and 2.

Let us now turn to question No.1 first. In our view, the question No.1 needs to be decided in favour of the appellants for the reasons mentioned hereinbelow. As noted herein earlier, record shows that the election petitions as well as the question forms and answers were examined by the Registry of the High Court. Exhibit RW7 was the Examination Form which was duly filled in by the appellants. In this Examination Form Question No.3 was as follows: -

"Q.3 Whether copies of the Petition and accompanying papers are also supplied for being made available to the Respondents and, if the sets of these copies are duly attested by the Petitioner under his own signature as true copy?"

The answer to this question No.3 from the appellants was 'Yes'. In the Examination Form (RW7), the Assistant Registrar at the end made an endorsement on 19th of July, 2002 to the following effect:-

"The petition is in order. We may direct the petition to be registered as election petition." (Emphasis supplied).

From the aforesaid endorsement of the Assistant Registrar and in view of the answer given to question No.3 of the Examination Form which was duly examined by the Registry of the High Court and after such examination the note was appended saying that since election petitions were in order and therefore the Registry be directed to register the election petitions and further in view of the fact that from the order of the High Court dated 2nd August, 2002, it is evident, when the election petitions were taken up for preliminary hearing, the High Court noted appearance of the Learned Counsel for Respondent No.1 who appeared and waived service on behalf of Respondent No.1 in both the election petitions but did not say that vakalatnamas were filed nor from the said order it would be evident that any direction was made to file vakalatnamas, we are unable to hold that at the time of presentation of election petitions, true copies of the same were not filed which were subsequently served upon the Respondent No.1 by the Bailiff of the High Court. The High Court in its judgment held that the onus to prove supply of the copies was on the election petitioners and had drawn an adverse inference against the appellants for not examining the Assistant Registrar of the High Court. We are unable to accept this view of the High Court. It is no longer *res integra* that the onus to prove that a copy of the election petition is not served on him, must be on the person who alleges such fact. We are therefore of the view that in presence of the endorsement of the Assistant Registrar of the High Court dated 19th of July, 2002 that the election petitions were in order which would raise a presumption, it would be for the successful candidate/Respondent No.1 to rebut such presumption and discharge his initial burden. In this case, the Respondent No.1 having failed to discharge such onus, it is not open for the Respondent No.1 to say that true copies of the election petitions were not filed at the time of presentation of election petitions. It is not in dispute that true copies of the election petitions were duly served upon the Learned Counsel for the Respondent No.1 before the preliminary hearing of the Election Petitions. According to Mr.Thali, that could not cure the defect in supplying to the Respondent No.1 a true copy of the election petition as such petitions were served on the Respondent No.1 at a time when the elections petitions became barred.

In view of our discussion made above and in the absence of any material to show that true copies of the election petitions were also not filed at the presentation of election

petitions, we are unable to hold that there was non compliance of Section 81(3) of the Act inasmuch as the copies alleged to have been supplied to the returned candidate were not true copies of the petitions.

Even if the copies of the election petitions which were alleged to have been served on the Respondent No.1 could be accepted and relied upon then also, in our view, the High Court had committed an error in holding that the election petitions must be rejected for non-compliance of Section 81(3) of the Act on the ground that "true copies" of the Election Petitions were not served upon the respondent No.1. As noted herein earlier, the successful candidates/respondent No.1 in both the Election Petitions sought rejection of the election petitions inter alia on the following grounds:

- (1) Internal page 10 of Exhibit RW-1 which is the copy of the election petition after the prayer clause and verification there is no signature of the election petitioner.
- (2) The stamp in respect of the swearing of the affidavit was also absent on the copy of the election petition.
- (3) The affidavit accompanying the petition also does not bear the signature of the election petitioners.

The High Court found that after the prayer clause at internal page 10 of the election petition above the petitioner and beneath the verification there was no signature of the election petitioner above the word "petitioner" and held that the copy of the election petition would show that the election petition was neither signed and verified nor was it attested before any authority. The High Court also found that there was no endorsement of the officer before whom the election petitioner had signed. It was also found that there was absence of signature of the Advocate who had identified the election petition. The High Court further found that although an affidavit was filed by the appellants but the copy of the election petition however did not show that the affidavit was affirmed by the election petitioner and, there was also no signature of the election petitioner above the word "deponent". Accordingly the High Court held that the copies of the election petitions on which reliance was placed by the Respondent No.1 were found to be not true copies of the election petitions that were filed. In our view, the defects as shown above would not entail the High Court to dismiss the election petition under section 86 of the Act. Section 81(3) has two parts - The first part relates to filing of as many as copies of the election petitions as that of number of respondents in the same. The second part is that copy shall be attested by the petitioner under his own signature to be a true copy of the petition. In our view, the second part of section 81(3) of the Act requires that every such copy should be attested by the election petitioners under their own signature to be true copies. Second part of section 81(3) of the Act, in our view, is satisfied if the copy is attested by the election petitioner to be true copies of the election petitions under their own signature. In our view, the defects as noted above cannot lead us to hold that election petitions should be rejected for non-compliance of section 81(3) of the Act as copies served on the respondent No.1 cannot be treated to be "true copies" within the meaning of the second part of section 81(3). The High Court held that the election petitions were liable to be rejected on a finding that the above noted defects were vital in nature and therefore there was total non-compliance of section 81(3) of the Act. In our view, even the defects alleged as aforesaid in the election petitions could not be held to be vital in nature and thereby did not entail the High Court to dismiss the election petitions at the preliminary

stage for non-compliance of section 81(3) of the Act. Let us now examine whether election petitions were liable to be rejected for the defects shown above.

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

The Supreme Court in *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore* [AIR 1964 SC 1545] held as follows:-

"When every page of the copy served on the appellant was attested to be a true copy under the signature of the petitioner, a fresh signature below the word "petitioner"

was not necessary".

The principles laid down as aforesaid were also followed in *Anil R. Deshmukh Vs. Onkar Nath Singh* [1999 (2) SCC 205]. So far as the 2nd defect namely the stamp in respect of the swearing of the affidavit was absent on the copy of the petition is concerned, we are of the view that mere omission to stamp in respect of the swearing of the affidavit would not at all be material; when each and every copy of the petition was attested by the election petitioners. Reliance in this connection may be placed on the decision of this Court in the case of *Ram Prasad Sarma Vs. Mani Kumar Subba* [2003 (1) SCC 289]. Similar is the position in respect of defect No.3. From the record it appears that on each and every page a handwritten attestation in ink under the signature of the election petitioner was made by the election petitioners. Therefore, mere omission to sign by the election petitioners in the affidavit accompanying the petition would not also be material. From the above, we can only conclude that such defects in the copies of the election petitions cannot lead us to reject the election petitions. Even otherwise, the election petitions ought not to have been rejected by the High Court for non compliance of section 81(3) of the Act. What should be the meaning of 'true copy' in section 81(3) of the Act was considered by this Court in *Dr. Shipra (Smt.) & Ors. Vs. Shanti Lal Khoiwal & Ors.* [1996 (5) SCC 181] in which it was held that the defects of the aforesaid nature were not curable, and therefore, the election petition was liable to be dismissed on that ground. This decision of the Supreme Court, namely, *Dr. Shipra's* case was doubted in a latter decision in the case of *T.M. Jacob Vs. C. Poulouse and Others* [1999 (4) SCC 274] and the matter was referred to the Constitution Bench of this Court. The Constitution Bench in *T.M. Jacob's* case held-

"it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81(3) of the Act with the consequences under Section 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible

deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defect which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in *Murarka Radhey Shyam* case are sound tests and are now well settled. We agree with the same and need not repeat those tests. Considered in this background, we are of the opinion that the alleged defect in the true copy of the affidavit in the present case did not attract the provisions of Section 86(1) of the Act for alleged non-compliance with the last part of Section 81(3) of the Act and that there had been substantial compliance with the requirements of Section 81(3) of the Act in supplying "true copy" of the affidavit to the appellant by the respondent."

The difference of opinion was settled by the Constitution Bench in *Jacob's* case by enunciating the principles as noted hereinabove. We have carefully examined the defects as noted hereinabove and on a careful examination of the defects we cannot be persuaded to the view that the defects in the present case also are material or it was vital in nature or the absence of stamp of attestation could be treated to be a ground for rejection of the Election Petitions under Section 81(3) of the Act. It may be mentioned herein that the decision of this Court in *Anil R. Deshmukh* case was approved by the Constitution Bench and in which it already distinguished the case of *Dr. Shipra*. It must not be forgotten that in the Constitution Bench decision of this Court, it was evident that "(a) the expression 'copy' in Section 81(3) of the Act means a copy which is substantially the same as the original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) if the copy differs in material particulars from the original the same cannot be cured after the period of limitation." The same principle was enunciated following the Constitution Bench decision of this Court in *T. Phunyzatha Vs. H.K. & Ors.* [2001 (8) SCC 358]. In this decision also it was held that the defects indicated in these cases for which dismissal of the election petition was sought for did not attract Section 86(1) of the Act for dismissal of the election petitions for non-compliance of Section 81(3) of the Act. For the reasons aforesaid and applying the principles laid down in the aforesaid decisions of this Court, we are of the view that the High Court ought not to have rejected the election petitions for non-compliance of the provisions of Section 81(3) of the Act as the defects shown by the Respondent No.1 cannot be said to be fatal and the copies which were alleged to have been served or supplied to the Respondent No.1 were wholly and substantially the same as the original. That apart, it is an admitted position, as noted hereinabove, true copies of the election petitions were duly served or supplied to the Respondent No.1. The question that was raised by the learned counsel for the Respondent No.1 before us was whether subsequent supply of such true copies on the Respondent No.1 could be treated to be a sufficient compliance of Section 81(3) of the Act. Apart from the conclusions made hereinbefore, we are also of the view that in view of the decision of this Court in *Anil R. Deshmukh Vs. Onkar N. Wagh* [1999(2) SCC 205] this question needs to be decided in favour of the appellant and against the Respondent No.1. In paragraph 17 of the aforesaid decision this Court observed as follows:

"We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case, the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance with the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act" (Emphasis supplied).

Such being the position, we hold that the High Court was not justified in rejecting the election petitions for non-compliance of Section 81(3) of the Act.

Let us now take up the question No.2 raised before us which is in respect of the fact that the election petitions when presented were not accompanied with as many copies thereof as there were respondents mentioned in the petition. On this score, the High Court in both the appeals held in favour of respondent No.1 inter alia on the following findings:

a)The Additional Registrar of the High Court in its note/order did not disclose that when the election petitions were filed they were accompanied by as many copies thereof as there were respondents in the petition. Although, it was admitted that subsequently copies of the election petitions were duly filed.

b)There was nothing on record to show that the copies of the petitions when filed were accompanied by requisite number of copies.

It is not in dispute that copies of the election petitions were duly served on the learned counsel for the respondent No.1 in both the appeals on 19th August, 2002. As said herein earlier, according to Mr. Thali, since the copies were served on the respondent No.1 after the period of limitation no reliance could be placed on such copies. We have already held that the copies of the election petitions alleged to have been served /supplied to the learned counsel for the respondent No.1 on 2nd of August, 2002 could not be relied on. We have already seen earlier that in absence of any material to show that the election petitions were not presented with the requisite number of copies of the same and the admitted fact was that the Bailiff of the Court had served true copies of the election petitions on the Respondent No.1 in our view, the High Court had committed an error by placing the onus on the election petitioners to prove that the requisite number of true copies were filed. As said herein earlier, the onus to prove that a true copy is not served on the person, will be on the person alleging such a fact. In presence of a certificate of the Registry of the High Court that there was no defect in the writ petition which would certainly raise a presumption, it would be for the respondent to rebut that presumption and discharge his initial burden. In this case admittedly note of the Registry of the High Court clearly says that requisite number of copies had been duly filed and the election petition was in order. That being the position, we are unable to agree with Mr.Thali as well as the High Court that the onus was on the election petitioners to prove that true copies of the election petitions were duly filed by him. Furthermore, in view of our discussions herein earlier, the true copies have been duly filed as admitted by the Respondent No.1, even

subsequent to the filing of the election petitions and in view of the decision of this Court in Anil R.Deshmukh Vs. Onkar N.Wagh, we are also of the view that since true copies were duly filed before the preliminary hearing of the Election Petitions the defects even if there be any, were thus removed, the election petitions could not be rejected on these grounds.

For the reasons aforesaid, we are unable to sustain the judgment of the High Court in rejecting the election petitions for non filing of requisite number of copies thereof as well as the copies alleged to have been served on the Learned counsel for the respondents were not true copies. Accordingly, the two common questions as framed herein earlier and decided by the High Court in favour of the Respondent No.1, are decided in favour of the appellants. Therefore, the election petitions were not liable to be rejected on the reasons given hereinearlier.

Coming now to answer the question no.3 as posed herein earlier, we find in the appeal of Chandrakant Uttam Chodankar Vs. Shri Dayanand Rayu Mandrakar & Ors. (Election Petition No.1 of 2002 which gave rise to Civil Appeal No.6622 of 2003), the question no.3 was not pressed before the High Court and the Learned counsel appearing for the Respondent No.1 also did not advance any argument in support of such finding before us. However, in the other appeal, namely, in the appeal of Jose Philips Domingo D'Souza (Election Petition No.2 of 2003 which gave rise to Civil Appeal No.6750 of 2003), this question was pressed before the High Court and the High Court answered this question in favour of the Respondent No.1. Although, in Election Petition No.2 of 2002 which gave rise to CA No.6750 of 2003 High Court found this question in favour of the Respondent No.1, it may be kept on record that the learned counsel for the Respondent No.1 did not also advance any argument in support of the aforesaid finding of the High Court before us in this appeal. Since this question was decided in favour of Respondent No.1, we feel it appropriate to take up and decide this question as well. As noted herein earlier, the High Court on question No.3 held that the Election Petition No.2 of 2002 was liable to be rejected for non-compliance of section 83(1)(c) of the Act. We are however unable to sustain this finding arrived at by the High Court. Before we take up the question, we may consider Section 83(1) of the Act. Section 83 of the Act deals with the contents of the petition. Since in this case we are concerned with section 83(1)(c) of the Act, we at the risk of repetition refer to this section which is as follows:-

"83(1)(c) - "Election petition shall be signed by the petitioner and verify in the manner laid down in the Code of Civil Procedure, 1908 for the verification of the pleading."

On a careful reading of this provision, we are of the view that the said provision is not mandatory in nature. That is to say, the verification in the election petition although was defective but that cannot be said to be fatal to the maintainability of the petition. In view of our discussions made herein above to the extent that the election petitions were in order even if it was not so at the time of presenting the election petitions, there was no reason for the High Court to reject the election petitions at the preliminary stage on such a technical ground. The High Court held that Exhibit F which was a document filed alongwith election petition must be taken to be an integral part of the petition. The affidavit which was filed alongwith the election petition was sworn on 15th July, 2002 and the election petition was filed on 16th July 2002 which was admittedly the last date for filing the

election petitions. Exhibit F is a zerox copy of the affidavit which was received by the election petitioner. In the verification portion of this affidavit it was stated that the petitioners solemnly affirmed and verified that paragraphs 1 to 11 were true to their knowledge. Due to this defect it was held that the election petition was liable to be rejected for non compliance of section 83(1)(c) of the Act. From the record it appears that the election petitioner applied for copy on 11th July, 2002 and the same was ready for delivery on 16th July, 2002. According to High Court, Exhibit F could not be in possession of the election petitioner when the election petition was signed and verified and affidavit affirmed. According to Mr.Thali, learned counsel for the Respondent No.1, since election petition itself was filed on 16th July, 2002, Exhibit F could not come into possession of the Election Petitioners on 16th July, 2002. We are unable to accept this submission of Mr.Thali. It is not impossible that when on 16th July, 2002 the election petition was filed, it could be filed alongwith Exhibit F which came into possession of the election petitioner on the same day i.e. on 16th July, 2002. That apart, assuming that the Exhibit F was defective, even then mere defect in the verification as held herein earlier was not fatal for which the High Court was justified in rejecting the election petitions for non-compliance of section 83(1)(c) of the Act. In F.A. Sapa & Ors. Vs. Singora & Ors. [1991 (3) SCC 375] this Court expressed this view also. For the reasons aforesaid, we therefore hold that the question No.3 which was found in favour of Respondent No.1 by the High Court must be answered in favour of the appellants and against the Respondent No.1.

Before parting with this judgment, we may recall the decisions of this Court on which strong reliance was placed by the learned counsel for the respondent No.1. Relying on the decision in the case of Satya Narain Vs. Dhuja Ram & Ors. [1974 (3) SCC 20], a 3-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 of 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 for total non-compliance of 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 facts situation of the said decision that there was non-compliance of 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 of 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 hereinafter, were alleged. It is not a case of total non-compliance of 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 No.1 also placed strong reliance was a decision of this Court in the case of J.P.Goyal Vs. Raj Narain & Ors. [1984 (3) SCC 339]. 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 No.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 J.P.Goyal Vs. Raj Narain & Ors., 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 the Respondent No.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 the Respondent No.1, the High Court committed an error in rejecting the election petitions for non compliance of the provisions of Sections 81(3) and 83(1) (c) of the Act.

Accordingly, the judgments of the High Court are hereby set aside and the matters are remitted back to the High Court for final disposal of the two election petitions, namely Election Petition No.1 and 2 of 2002 at an early date preferably within four months from the date of filing of a copy of this order in the High Court. The High Court shall dispose of the election petitions without granting any unnecessary adjournment to the parties. The learned counsel for the Respondent No.1 prayed for some time to file written statement in the aforesaid two election petitions. Considering the facts and circumstances of the case, they are permitted in both the Election Petitions to file their written statement within a period of three weeks from the date of receiving a copy of this judgment, and reply, if any, may be filed within a week thereafter.

For the reasons aforesaid, the appeals are allowed to the extent indicated above. There will be no order as to costs.