

G.M.Siddeshwar vs Prasanna Kumar on 8 March, 2013

Equivalent citations: AIR 2013 SUPREME COURT 1549, 2013 (4) SCC 776, 2013 AIR SCW 1777, 2013 (1) ADR 170, 2013 (2) AIR KANT HCR 349, AIR 2013 SC (CIVIL) 1091, (2013) 2 RECCIVR 340, (2013) 3 SCALE 287, (2013) 3 CIVLJ 799, (2013) 3 KANT LJ 665, (2013) 3 MAD LJ 333, (2013) 4 MAD LW 151, (2013) 4 ANDHLD 131, (2013) 1 WLC(SC)CVL 531, (2013) 1 CLR 1050 (SC), 2013 (2) KLT SN 20 (SC)

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Bench: Madan B. Lokur, J. Chelameswar, R.M. Lodha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 2250-2251 OF 2013
Arising out of SLP(C) Nos. 14172-14173 OF 2010
G.M. Siddeshwar ... Appellant

Versus

Prasanna Kumar ... Respondent

WITH

CIVIL APPEAL NOS. 2252-2255 OF 2013
Arising out of SLP (C) Nos. 24886-24889 OF 2010

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.

2. The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of P.A. Mohammed Riyas v. M.K. Raghavan & Ors., (2012) 5 SCC 511 which suggests to the contrary, does not lay down correct law to this limited extent.

3. Another question that has arisen is that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form No. 25 prescribed by the Conduct of Election Rules, 1961, whether the election petition is liable to be summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951.

The facts:

4. The challenge in these appeals is to a judgment and order dated 24th February 2010 passed by a learned Single Judge of the High Court of Karnataka in Miscellaneous Civil No. 386/2010 and Miscellaneous Civil No. 1431/2010 in Election Petition No.2/2009. The decision is reported as Prasanna Kumar v. G.M. Siddeshwar & Ors, 2010 (6) KarLJ 78.

5. In Miscellaneous Civil No. 386/2010 the appellant (Siddeshwar) sought the dismissal/rejection of the election petition challenging his election to the 15th Lok Sabha from 13, Davangere Lok Sabha Constituency in the election held on 13th April 2009. It was submitted in the application that the provisions of Section 81(3) and Section 83 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) had not been complied with and therefore, in view of Section 86 of the Act read with Order VII Rule 11(a) of the Code of Civil Procedure (hereinafter referred to as the CPC), the election petition ought to be rejected/dismissed at the threshold.

6. For the present purposes, we are concerned with Section 83 and Section 86 of the Act and to the extent they are relevant, they read 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.” “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) to (7) xxx xxx xxx [presently not relevant]”

7. Among the grounds urged in the High Court and reiterated before us were that the proviso to Section 83(1) of the Act requires an affidavit to be filed in the prescribed form in support of the allegations of corrupt practice and the particulars thereof. Rule 94-A of the Conduct of Election Rules, 1961 prescribes Form No. 25 as the format affidavit. According to Siddeshwar, the affidavit filed by the election petitioner (Prasanna Kumar) did not furnish the material particulars on the basis of which allegations of corrupt practice were made and also that it carried a defective verification and therefore it was not an affidavit that ought to be recognized as such.

8. On the issue of non-compliance with the format affidavit, the High Court was of the view that though there was no verbatim compliance, but the affidavit filed by Prasanna Kumar was in substantial compliance with the prescribed format. Consequently, this contention was rejected. The High Court subsequently dealt with the absence of material particulars in the affidavit along with the second application.

9. The High Court also considered the contention that the verification in the affidavit in Form No.25 was defective but concluded that it was a curable defect and therefore, an opportunity should be given to Prasanna Kumar to cure the defect. It was held that if the defect is not cured the election petition is liable to be dismissed.

10. It was also contended that in view of Section 83(1)(c) of the Act, an election petition is required to be verified in the manner laid down in the CPC for the verification of pleadings. Order VI Rule 15(4) of the CPC requires that the person verifying the pleadings shall also furnish an affidavit in support of the pleadings. In the election petition, such an affidavit was not filed despite the affidavit being an integral part of the election petition. For this reason also, the election petition ought to be dismissed at the threshold.

11. In this regard, the High Court was of the view that there was no necessity of the election petitioner filing any other affidavit in support of the election petition and that the affidavit filed by Prasanna Kumar in Form No.25 substantially complied with the requirements of Rule 94-A of the Rules.

12. It was finally contended that Prasanna Kumar had leveled allegations of corrupt practices against Siddeshwar without any material particulars. As such, the election petition did not disclose a complete cause of action and was liable to be rejected under Order VII Rule 11(a) of the CPC. This

contention was considered with the second application.

13. In Miscellaneous Civil No. 1431/2010 Siddeshwar invoked the provisions of Order VI Rule 16 of the CPC for striking out some paragraphs of the election petition on the ground that allegations of corrupt practice were scandalous and vexatious. It was contended that on a deletion of the offending paragraphs, the election petition would not survive.

14. In regard to the objections raised, the High Court was of the opinion that some of the allegations made against Siddeshwar alleging corrupt practices did not contain material particulars apart from being vague and deficient. Consequently, a few paragraphs of the election petition were struck off by the Court under Order VI Rule 16 of the CPC. The remaining paragraphs were retained since the High Court was of the view that they required trial and could not be struck off at the initial stage. Consequently, the objections regarding absence of material particulars and absence of a cause of action were rejected.

15. Feeling aggrieved by the judgment and order passed by the High Court, Siddeshwar has preferred these appeals.

Reference to a larger Bench:

16. These matters were earlier heard by a Bench of two learned judges when it was contended by learned counsel for Siddeshwar, relying upon P.A. Mohammed Riyas (decided by a Bench of two learned judges) that since Prasanna Kumar had not filed an 'additional' affidavit as required by Order VI Rule 15(4) of the CPC in support of the election petition, the High Court ought to have dismissed it at the threshold. Learned counsel placed reliance on R.P. Moidutty v. P.T. Kunju Mohammad and Another, (2000) 1 SCC 481 in support of his contention that an election petition could be dismissed at the threshold if it did not disclose a cause of action.

17. On the other hand, learned counsel appearing for Prasanna Kumar relied upon a larger Bench decision in F.A. Sapa & Ors. v. Singora & Ors., (1991) 3 SCC 395 and contended that Mohammed Riyas was not in consonance with that decision. Reliance was also placed on G. Mallikarjunappa & Anr. v. Shamanur Shivashankarappa & Ors., (2001) 4 SCC 428 to contend that an election petition is not liable to be dismissed at the threshold under Section 86 of the Act for non-compliance with the provisions of Section 83 of the Act. It was contended that any defect in non-compliance with the provisions of Section 83 of the Act is a curable defect which can be removed and judged at the trial of the election petition.

18. After hearing learned counsel for the parties and considering the view expressed in Mohammed Riyas which apparently proceeded on the basis that in addition to an affidavit in Form No.25, an election petitioner was also required to furnish an 'additional' affidavit in support of the election petition in terms of Order VI Rule 15(4) of the CPC, it was felt that the issues raised ought be heard by a larger Bench of at least three Judges.

19. It was also noted that in Mallikarjunappa, a Bench of three judges of this Court held that an election petition was not liable to be dismissed in limine under Section 86 of the Act for non-compliance with the provisions of Section 83 thereof. It was observed that Mallikarjunappa had not been referred to or considered in Mohammed Riyas.

20. Accordingly, by an order passed on 19th July 2012 the issues raised were referred to a larger Bench of three judges. It is under these circumstances that the Special Leave Petitions were placed before us for consideration.

(i) Affidavit in terms of Order VI Rule 15(4) of the CPC:

21. The submission made by learned counsel is to the effect that in addition to an affidavit required to be filed in Form No.25 prescribed by Rule 94-A of the Rules in support of allegations made of corrupt practices by the returned candidate, an election petitioner is also required to file an affidavit in support of the election petition keeping in mind the requirement of Order VI Rule 15(4) of the CPC.

22. Order VI Rule 15 of the CPC reads as follows:

“15. Verification of pleadings.— (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

23. A plain reading of Rule 15 suggests that a verification of the plaint is necessary. In addition to the verification, the person verifying the plaint is “also” required to file an affidavit in support of the pleadings. Does this mean, as suggested by learned counsel for Siddeshwar that Prasanna Kumar was obliged to file two affidavits – one in support of the allegations of corrupt practices and the other in support of the pleadings?

24. A reading of Section 83(1)(c) of the Act makes it clear that what is required of an election petitioner is only that the verification should be carried out in the manner prescribed in the CPC. That Order VI Rule 15 requires an affidavit “also” to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone

document.

25. Mohammed Riyas dealt with the issue whether the election petitioner is required to file two affidavits – one affidavit in support of the allegations of corrupt practices and the second affidavit in compliance with the requirements of Order VI Rule 15(4) of the CPC. This is apparent from the submissions advanced by learned counsel appearing in the case.

26. It was contended by the election petitioner that two affidavits would be necessary in an election petition only where the election petitioner wanted the election of the returned candidate to be set aside on the ground of commission of corrupt practices under Section 100(1)(b) of the Act as well as on other grounds as set out in Section 100(1) of the Act. In other words, the argument was that two affidavits were required to be filed by the election petitioner. It is important to note that it was not argued (as in the present case) that Order VI Rule 15(4) of the CPC does not require the filing of an affidavit as a part of the requirement of verifying the election petition. An alternative contention was put forward that a single affidavit, satisfying the requirement of the Act, could also be filed. The contention put forward was as follows:

“The learned counsel submitted that two affidavits would be necessary only where an election petitioner wanted the election to be set aside both on grounds of commission of one or more corrupt practices under Section 100(1)(b) of the Act and other grounds as set out in Section 100(1). In such a case, two affidavits could possibly be required, one under Order 6 Rule 15(4) CPC and another in Form 25. However, even in such a case, a single affidavit that satisfies the requirements of both the provisions could be filed. In any event, when the election petition was based entirely on allegations of corrupt practices, filing of two affidavits over the selfsame matter would render one of them otiose, which proposition was found acceptable by the Karnataka High Court in *Prasanna Kumar v. G.M. Siddeshwar* [2010 (6) KarLJ 78].”

27. It was argued on behalf of the returned candidate that the election petitioner is required to file an affidavit in support of the pleadings and another affidavit in support of the allegations of corrupt practices by the returned candidate. In other words, the election petitioner is required to file two affidavits. The contention urged was as follows:

“Mr Rao contended that Section 83(1)(c) of the above Act requires the election petition to be signed by the petitioner and verified in the manner specified in CPC for the verification of pleadings. Referring to Order 6 Rule 15 of the Code, Mr Rao submitted that sub-rule (4) requires that the person verifying the pleading shall also furnish an affidavit in support of his pleadings, which was a requirement independent of the requirement of a separate affidavit with respect to each corrupt practice alleged, as mandated by the proviso to Section 83(1)(c) of the above Act.”

28. The conclusions of this Court are given in paragraphs 45 and 46 of the Report in the following words:

“45. Of course, it has been submitted and accepted that the defect was curable and such a proposition has been upheld in the various cases cited by Mr Venugopal, beginning with the decision in Murarka Radhey Shyam Ram Kumar case [AIR 1964 SC 1545] and subsequently followed in F.A. Sapa case [(1991) 3 SCC 375], Sardar Harcharan Singh Brar case [(2004) 11 SCC 196] and K.K. Ramachandran Master case [(2010) 7 SCC 428], referred to hereinbefore. In this context, we are unable to accept Mr Venugopal’s submission that despite the fact that the proviso to Section 83(1) of the 1951 Act provides that where corrupt practices are alleged, the election petition shall also be accompanied by an affidavit in the prescribed form, it could not have been the intention of the legislature that two affidavits would be required, one under Order 6 Rule 15(4) CPC and the other in Form 25. We are also unable to accept Mr Venugopal’s submission that even in a case where the proviso to Section 83(1) was attracted, a single affidavit would be sufficient to satisfy the requirements of both the provisions.

46. Mr Venugopal’s submission that, in any event, since the election petition was based entirely on allegations of corrupt practices, filing of two affidavits in respect of the selfsame matter, would render one of them redundant, is also not acceptable. As far as the decision in F.A. Sapa case is concerned, it has been clearly indicated that the petition, which did not strictly comply with the requirements of Section 83 of the 1951 Act, could not be said to be an election petition as contemplated in Section 81 and would attract dismissal under Section 86(1) of the 1951 Act. On the other hand, the failure to comply with the proviso to Section 83(1) of the Act rendered the election petition ineffective, as was held in Hardwari Lal case [(1972) 1 SCC 214] and the various other cases cited by Mr P.P. Rao.”

29. Unfortunately, the submissions made by the election petitioner were not discussed, but were simply rejected. No reasons have, unfortunately, been given by this Court for arriving at the conclusions that it did and rejecting the contentions of learned counsel for the election petitioner.

30. It seems to us that a plain and simple reading of Section 83(1)(c) of the Act clearly indicates that the requirement of an ‘additional’ affidavit is not to be found therein. While the requirement of “also” filing an affidavit in support of pleadings filed under the CPC may be mandatory in terms of Order VI Rule 15(4) of the CPC, the affidavit is not a part of the verification of the pleadings – both are quite different. While the Act does require a verification of the pleadings, the plain language of Section 83(1)(c) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in Section 83(1)(c) of the Act.

Recommendation of the Law Commission:

31. To get over the difficulty posed by the plain language of Section 83 of the Act, learned counsel for Siddeshwar referred to the imperatives of an affidavit in support of statements of fact made in a plaint, which would hopefully give some sanctity to the averments made therein. Reliance was placed on judgments of this Court as well as on the 163rd Report of the Law Commission of India

(LCI) on the Code of Civil Procedure (Amendment) Bill, 1997.

32. In this context, in *Dhananjay Sharma v. State of Haryana*, (1995) 3 SCC 757 it was held:

“The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The stream of justice has to be kept clean and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice.” A similar view was expressed in *Mohan Singh v. Amar Singh*, (1998) 6 SCC

686. The LCI referred to both these decisions and proposed the insertion of sub-section (2) in Section 26 of the CPC making it obligatory upon a plaintiff to file an affidavit in support of facts stated in the plaint. A similar provision was proposed in Order VI of the CPC by inserting sub-Rule (4) in Rule 15 thereof. In this context, the LCI had this to say:

“2.6.1. The response of members of the Bench as well as the Bar has been uniformly against the above proposals. The general view expressed by them is that such a provision would only add to the delays in disposal of suits. It was submitted that there are enough provisions in the existing law to deal with false and malicious averments in the pleadings and that this additional requirement would not make any difference.

“2.6.2. The Law Commission is, however, of the opinion that the proposed amendments are salutary and may, at least to some extent, check the tendency to make false averments in the pleadings. This tendency has certainly to be checked. Even if the parties in two to five per cent cases could be dealt with appropriately for making false statements in the pleadings, it would greatly help in arresting this tendency.....”

33. While the necessity of an affidavit in support of facts stated in a plaint may be beneficial and may have salutary results, but we have to go by the law as it is enacted and not go by the law as it ought to be. The CPC no doubt requires that pleadings be verified and an affidavit “also” be filed in support thereof. However, Section 83(1)(c) of the Act merely requires an election petitioner to sign and verify the contents of the election petition in the manner prescribed by the CPC. There is no requirement of the election petitioner “also” filing an affidavit in support of the averments made in the election petition except when allegations of corrupt practices have been made.

34. In any event, as in the present case, the same result has been achieved by the election petitioner filing a composite affidavit, both in support of the averments made in the election petition and with regard to the allegations of corrupt practices by the returned candidate. This procedure is not

contrary to law and cannot be faulted. Such a composite affidavit would not only be in substantial compliance with the requirements of the Act but would actually be in full compliance thereof. The filing of two affidavits is not warranted by the Act nor is it necessary, especially when a composite affidavit can achieve the desired result.

35. The Court must make a fine balance between the purity of the election process and the avoidance of an election petition being a source of annoyance to the returned candidate and his constituents. In *Azhar Hussain v. Rajiv Gandhi*, 1986 (Supp) SCC 315 this Court observed (in the context of summary dismissal of an election petition):

“So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly elected.” In light of the above, it is not possible to accept the view that the salutary intention of the LCI to ensure purity in the litigation process must extend to an election petition notwithstanding the mandate of Parliament as expressed in Section 83 of the Act.

Legislation by reference:

36. The final contention urged under this subject was that in view of the language used in Section 83(1)(c) of the Act, the doctrine of legislation by reference would need to be invoked in as much as any amendment to the CPC would be applicable to the working of the Act. It was argued that since an amendment was made to Rule 15(4) of Order VI of the CPC, that amendment has been legislated by reference in the Act and so the election petitioner would be bound by the terms thereof and would, therefore, not only need to sign and verify the contents of an election petition, but also file an affidavit in support thereof. Reliance was placed on a Constitution Bench decision in *Girnar Traders (3) v. State of Maharashtra*, (2011) 3 SCC 1. In that case, after an analysis of the entire case law on the subject, the Constitution Bench held:

“Having perused and analysed the various judgments cited at the Bar we are of the considered view that this rule [of legislation by reference] is bound to have exceptions and it cannot be stated as an absolute proposition of law that wherever legislation by reference exists, subsequent amendments to the earlier law shall stand implanted into the later law without analysing the impact of such incorporation on the object and effectuality of the later law. The later law being the principal law, its object, legislative intent and effective implementation shall always be of paramount consideration while determining the compatibility of the amended prior law with the later law as on relevant date.”

37. We are not inclined to debate the contention whether Order VI Rule 15 of the CPC has been legislated by reference or by incorporation into the Act for the reasons already indicated above, namely, that on a plain reading of Section 83 of the Act, only a verification and not an affidavit in support of the averments in an election petition is required, except when allegations of corrupt practices are made by the election petitioner. Any amendment in the CPC is of no consequence in this regard unless the meaning of 'verification' is amended to include an affidavit. Defective affidavit:

38. What exactly are the contents of an affidavit in Form No.25 as prescribed by Rule 94-A of the Rules? The format reads as follows:

"Form 25 (see Rule 94A) AFFIDAVIT I,, the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati (respondent No..... in the said petition) make solemn affirmation/oath and say-

a) that the statements made in paragraphs of the accompanying election petition about the commission of the corrupt practice of* and the particulars of such corrupt practice mentioned in paragraphs of the same petition and in paragraphs of the Schedule annexed thereto are true to my knowledge;

b) that the statements made in paragraphs of the said petition about the commission of the corrupt practice of* and the particulars of such corrupt practice given in paragraphs of the said petition and in paragraphs of the Schedule annexed thereto are true to my information:

c)

d)

e)

f) etc. Signature of deponent Solemnly affirmed/sworn by Shri/ Shrimati atthis..... day of 20.....

Before me, Magistrate of the first class/ Notary/Commissioner of Oaths.

*Here specify the name of the corrupt practice."

39. Prasanna Kumar's affidavit accompanying the election petition reads as follows:

"Form 25 (Rule 94-A) In The High Court of Karnataka at Bangalore (Original Jurisdiction) Between:

Prasanna Kumar

.... Petitioner

And

Sri G.M. Siddeshwar and Ors

.... Respondents

Affidavit

I, Prasanna Kumar, the petitioner in the accompanying Election petition, catting in question the election of Sri G.M. Siddeshwar (1st respondent in the said petition) make solemn and affirmation on oath and say-

(a) That I am an elector in 13 Davanagere Lokasabha Constituency in Harihar Assembly Segment and I am fully aware and acquainted with the facts of the case and swear to this affidavit,

(b) That the statements made in paragraphs 1, 2, 3, 5, 7, 8, 11, 12 and 13 & 14 of the accompanying Election Petition about the violation of the law during the conduct of election and the particulars mentioned in the above noted paragraphs are true to my knowledge and contents of paras 18, 19, 20 and 21 are based on legal advise;

(c) That the statements made in paragraphs 3, 4, 6, 8, 9, 10, 15 and 16 of the accompanying Election Petition about the commission of electoral offence of corrupt practices and the particulars mentioned in the said paragraphs of the petition are true to my knowledge and partly on Information.

(d) That Annexures - 1 to 14 and 18, 19, 20, 22, 23, 24 are true copies and 15, 16, 17, 21 are original copies.

Sd/-

Signature of the Deponent Solemnly affirmed/sworn to by Sri Prasanna Kumar at Bangalore, this the 18th day of June 2009.

Sd/- Identified by me Sd/- corrections: (nil).

sworn to before me”

40. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.

41. Recently, in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy*, (2012) 7 SCC 788 the issue of a failure to file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say:

“The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so.” We have no reason to take a different view. The contention urged by Siddeshwar is rejected.

(ii) Summary dismissal under Section 86 of the Act:

42. Undoubtedly, Section 86 of the Act makes no reference to Section 83 thereof and so, *prima facie*, an election petition cannot be summarily dismissed under Section 86 of the Act for non-compliance of the provisions of Section 83 thereof. This was briefly adverted to in *Hardwari Lal v.*

Kanwal Singh, (1972) 1 SCC 214 but that was in the context of dismissal of the election petition under the provisions of the CPC. The contention urged in *Hardwari Lal* was to the effect that since Section 83 of the Act does not find a mention in Section 86 thereof, an election petition could not be summarily dismissed for non-compliance of Section 83. A three-judge Bench of this Court held that since an election petition is required to be tried as nearly as possible in accordance with the procedure applicable under the CPC to the trial of suits, an election petition could nevertheless be dismissed if it did not disclose a cause of action.

43. The issue was, again, specifically raised in *Azhar Hussain*. The question considered was:

“Since the Act does not provide for dismissal of an election petition on the ground that material particulars necessary to be supplied in the election petition as enjoined by Section 83 of the Act are not incorporated in the election petition inasmuch as Section 86 of the Act which provides for summary dismissal of the petition does not advert to Section 83 of the Act there is no power in the court trying election petitions to dismiss the petition even in exercise of powers under the Code of Civil Procedure.”

44. While answering this issue, this Court referred to *Hardwari Lal*. It was held, relying on that decision that since powers under the CPC could be exercised by the Court, an election petition could be summarily dismissed if it did not disclose a cause of action. This is what this Court had to say:

“In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the

aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.”

45. In Mallikarjunappa the issue was considered yet again and it was held:

“An election petition is liable to be dismissed in limine under Section 86(1) of the Act if the election petition does not comply with either the provisions of “Section 81 or Section 82 or Section 117 of the RP Act”. The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non- compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso.”

46. More recently, the issue was again considered in Ponnala Lakshmaiah and relying upon Sardar Harcharan Singh Brar v. Sukh Darshan Singh, (2004) 11 SCC 196 it was held:

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

47. The issue having been considered several times by this Court must now be allowed to rest at that.

What is an election petition:

48. However, another aspect of this contention is that if the provisions of Section 83 of the Act are not complied with, then the election petition that has been filed cannot truly be described as an election petition.

49. In Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors. [1963] 3 SCR 573, the Constitution Bench dealt with the issue whether non- compliance with the proviso to Section 83(1)

of the Act was fatal to the maintainability of an election petition wherein allegations of corrupt practices were made. It was urged that the affidavit in respect of corrupt practices which accompanied the election petition was neither properly made nor in the prescribed form. A different facet of this argument was that an election petition must comply with the provisions of Section 83 thereof and if it did not, then it could not be called an election petition.

50. The Constitution Bench agreed with the Election Tribunal that a defect in the verification of an affidavit “cannot be a sufficient ground for dismissal of the petitioner's petition summarily, as the provisions of Section 83 are not necessarily to be complied with in order to make a petition valid and such affidavit can be allowed to be filed at a later stage also.” In other words, non-compliance with the proviso to Section 83(1) of the Act was not ‘fatal’ to the maintainability of an election petition and the defect could be remedied. It would follow that if an election petition did not comply with the proviso to Section 83(1) of the Act, it would still be called an election petition.

51. The broad principle laid down in *Murarka* was somewhat restricted by another Constitution Bench decision rendered in *Ch. Subba Rao v. Member, Election Tribunal, Hyderabad* [1964] 6 SCR 213. In that case, the Constitution Bench introduced two clear principles: firstly, that “if there is a total and complete non compliance with the provisions of Section 81(3), the election petition might not be “an election petition presented in accordance with the provisions of this part” within Section 80 of the Act” and secondly, that “if there is a substantial compliance with the requirement of Section 81(3), the election petition cannot be dismissed by the Tribunal under Section 90(3).”

52. In *T.M. Jacob v. C. Poulouse & Ors.*, (1999) 4 SCC 274 this Court reiterated the doctrine of substantial compliance as mentioned in *Murarka* *Radhey Shyam Ram Kumar* and *Ch. Subba Rao* and also introduced the doctrine of curability on the principles contained in the CPC. It was held that the defect in the affidavit in that case was curable and was not of such a fatal nature as to attract dismissal of the election petition at the threshold.

53. The doctrine of substantial compliance as well as the doctrine of curability were followed in *V. Narayanaswamy v. C.P. Thirunavukkarasu*, (2000) 2 SCC 294. This Court held that a defect in verification of an affidavit is not fatal to the election petition and it could be cured. Following *Moidutty* it was held that if the election petition falls foul of Order VI Rule 16 and Order VII Rule 11 of the CPC and does not disclose a cause of action then it has to be rejected at the threshold.

54. Somewhat more recently, in *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar*, (2009) 9 SCC 310 this Court reiterated this position in law and held:

“The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.”

55. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold. Integral part of an election petition:

56. An issue arises whether an affidavit required to be filed under the proviso to Section 83(1) of the Act is an integral part of an election petition and, if so, whether the filing of a defective affidavit would be fatal to the maintainability of an election petition. This would, in a sense, be an exception to the general rule mentioned above regarding a defect under Section 83 of the Act being curable.

57. In *Sahodrabai Rai v. Ram Singh Aharwar* [1968] 3 SCR 13 the question raised was as follows:

“Whether the election petition is liable to be dismissed for contravention of Section 81 (3) of the Representation of the People Act, 1951 as copy of Annexure ‘A’ to the petition was not given along with the petition for being served on the respondents.”

58. It was noted that the contents of the pamphlet, in translation, were incorporated in the election petition. It was also noted that the trial of an election petition has to follow, as far as may be, the provisions of the CPC. Therefore, this Court approached the problem by looking at the CPC to ascertain what would have been the case if what was under consideration was a suit and not the trial of an election petition.

59. It was held that where the averments are too compendious for being included in an election petition, they may be set out in the schedules or annexures to the election petition. In such an event, these schedules or annexures would be an integral part of the election petition and must, therefore, be served on the respondents. This is quite distinct from documents which may be annexed to the election petition by way of evidence and so do not form an integral part of the averments of the election petition and may not, therefore, be served on the respondents.

60. In *M. Kamalam v. Dr. V.A. Syed Mohammed*, (1978) 2 SCC 659 this Court followed *Sahodrabai Rai* and held that a schedule or an annexure which is an integral part of an election petition must comply with the provisions of Section 83(2) of the Act. Similarly, the affidavit referred to in the proviso to Section 83(1) of the Act where the election petition alleges corrupt practices by the returned candidate also forms a part of the election petition. If the affidavit, at the end of the election petition is attested as a true copy, then there is sufficient compliance with the requirement of Section 81(3) of the Act and would tantamount to attesting the election petition itself.

61. *F.A. Sapa and Others v. Singora and Others*, (1991) 3 SCC 375 a three-judge Bench of this Court reviewed the relevant provisions of the Act, Rule 94-A of the Rules, Form No. 25, the provisions of the CPC as well as the case law and arrived at the following conclusions:

“28. From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume of the case

law discussed above it clearly emerges

(i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier. Similarly the court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter.”

62. It was further laid down that even though a defective affidavit may not be fatal to the maintainability of an election petition, the High Court should ensure compliance before the parties go to trial so that the returned candidate can meet the allegations and is not taken by surprise at the trial.

63. What is the consequence of not curing the defect? In Moidutty a defect in verification of the election petition was pointed out by raising a plea in that regard in the written statement. Notwithstanding this, the election petitioner did not cure the defect. Under these circumstances it was held that until the defect in the verification was rectified the petition could not have been tried. Additionally, it was held that since there was a lack of material particulars regarding the allegations of corrupt practices, it was a case where the election petition ought to have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings.

64. This issue was again discussed in Umesh Challiyill v. K.P. Rajendran, (2008) 11 SCC 740 and this Court suggested the following solution:

“However, in fairness whenever such defects are pointed out then the proper course for the Court is not to dismiss the petition at the threshold. In order to maintain the sanctity of the election the Court should not take such a technical attitude and dismiss the election petition at the threshold. On the contrary after finding the defects, the Court should give proper opportunity to cure the defects and in case of failure to remove/cure the defects, it could result into dismissal on account of Order 6 Rule 16 or Order 7 Rule 11 CPC. Though technically it cannot be dismissed under Section 86 of the Act of 1951 but it can be rejected when the election petition is not properly constituted as required under the provisions of CPC but in the present case we regret to record that the defects which have been pointed out in this election petition were purely cosmetic and do not go to the root of the matter and secondly even if the Court found them of serious nature then at least the Court should have

given an opportunity to the petitioner to rectify such defects.”

65. Applying these principles to the facts of the present case, it seems quite clear that the affidavit filed by Prasanna Kumar in compliance with the requirements of the proviso to Section 83(1) of the Act was not an integral part of the election petition, and no such case was set up. It also seems quite clear that the affidavit was in substantial compliance with the requirements of the law. Therefore, the High Court was quite right in coming to the conclusion that the affidavit not being in the prescribed format of Form No.25 and with a defective verification were curable defects and that an opportunity ought to be granted to Prasanna Kumar to cure the defects.

66. No submissions were made with regard to the striking out, in accordance with Order VI rule 16 of the CPC, of specifically objectionable paragraphs in the election petition. In any event this is a matter for trial and we see no reason to take a view different from that taken by the High Court.

Conclusion:

67. There is no merit in these appeals and they are, accordingly dismissed, but without any costs.

..... J.

(R.M. LODHA) J.

(J. CHELAMESWAR) J.

(MADAN B. LOKUR) New Delhi, March 08, 2013