

Kamalam (M) vs Dr. V. A. Syed Mohamad on 8 March, 1978

Equivalent citations: 1978 AIR 840, 1978 SCR (3) 446, AIR 1978 SUPREME COURT 840, 1978 2 SCC 659, 1978 U J (SC) 276, 1978 2 SCWR 1, 1978 KER LT 349, 1978 3 SCR 446, 1978 (1) SCJ 366

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Jaswant Singh

PETITIONER:

KAMALAM (M)

Vs.

RESPONDENT:

DR. V. A. SYED MOHAMAD

DATE OF JUDGMENT 08/03/1978

BENCH:

BHAGWATI, P.N.

BENCH:

BHAGWATI, P.N.

SINGH, JASWANT

CITATION:

1978 AIR 840 1978 SCR (3) 446

1978 SCC (2) 659

CITATOR INFO :

R 1980 SC 303 (16)

RF 1983 SC 558 (38)

D 1991 SC1557 (21,26,31)

ACT:

Representation of the People Act, 1951, Ss, 81(3) 83 and 86(i)-Election Petition and affidavit were tied together as one document and two copies thereof filed for services on the respondent-Signature of the appellant by way of authentication appearing at the foot of the copy of the affidavit, but not separately appended at the foot of the copy of the election petition-Whether there was non-compliance with S. 81(3) and the election, petition liable to be dismissed u/s 86(1)-Interpretation of S. 81(3) in the light of Ss. 83 and 86(1).

HEADNOTE:

Sub section (3) of Section 81 of the Representation of the People Act, 1951 requires that 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. Where the petition alleges any corrupt practice, the proviso to S. 83(1) of the Act requires that "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."

The appellant, a rival candidate, challenged the election of the respondent to the Lok Sabha in the elections held on 19-3-1977 from Kozhikode constituency under the Representation of the People Act, 1951 alleging corrupt practice. The election petition was duly signed and verified by the appellant and it was accompanied by the requisite affidavit in support of the allegations of corrupt practice and their particulars. : The election petition and the affidavit were tied together as one document. The signature of the appellant by way of authentication appeared at the foot of the copy of the affidavit, but there was no such signature separately appended at the foot of the copy of the election petition. The respondent raised a preliminary objection against the maintainability of the election petition and contended that since the copy of the election petition was not attested by the appellant under her own signature to be a true copy, there was non-compliance with section 81, sub section (3) and hence the petitioner was liable to be dismissed vide Section 86, sub section (1). The High Court accepted the contention and dismissed the petition.

Allowing the appeal under section 116A of the Representation of the People Act, 1951, the Court.

HELD : (1) The election petition is in truth and reality one document consisting of two parts, one being the election petition proper and the other being the affidavit referred to in the proviso to section 83, sub-section (1). The context in which the proviso occurs clearly suggests that the affidavit is intended to be regarded as part of the election petition. Otherwise it need not have been introduced in a section dealing with contents of an election petition nor figured as a proviso to a subsection which lays down what shall be the contents of an election petition. The copy of the election petition required to be filed under the first part of sub section (3) of Section 81, would, therefore,, on a fair reading of that provision along with section 83, include a copy of the affidavit [450 H, 451 A, H, 452 A]

Sahodrabai Rai v. Ram Singh Aharwar, [1968] 3 SCR 13, applied.

(2) The law does not require that the authenticating signature must be made by the petitioner at any particular place in the copy of the election petition. It may be at

the top of the copy or in the middle or at the end. The place of signature is immaterial so long as it appears that it is intended to authenticate the copy. When original signature is made by the petitioner on the
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copy of the election petition, it can safely be presumed that the signature is made by the petitioner by way of authenticating the copy to be a true copy of the election petition. In the instant case the requirement of the last part of sub-section (3) of section 81 was complied with by the appellant in as much as the copy of the election petition was authenticated to be a true copy by the appellant by placing her signature at the foot of the copy of the affidavit which formed part of the copy of the election petition. [452 C-F]

Ch. Subba Rao v. Member, Election Tribunal, Hyderabad, [1964] 6 S.C.R. 213; followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1963 of 1977.

(Appeal from the Judgment and Order dated the 6th July, 1977 of the Kerala High Court in-Election Petition No. 6 of 1.977) V. M. Tarkunde, A. S. Nambiar & P. Nambiar, for the Appellant.

S. T. Desai, S. K. Mehta, K. R. Nagaraja & P. N. Puri, for the Respondent.

The Judgment of the Court was delivered by BHAGWATI, J. This appeal arises out of an election petition filed by the appellant in the High Court of Kerala challenging the election of the respondent to the Lok Sabha from Kozhikode constituency under the Representation of the, People Act, 1951 (hereinafter referred to, as, the Act). The election was held on 19th March, 1977 and the respondent having secured the majority of votes was declared elected to the, Lok Sabha on 20th March, 1977. The appellant, who was a rival candidate, filed an election petition in the High Court of Kerala challenging the election of the respondent on various grounds., one of which was commission of certain corrupt practices set out in the election petition. The election petition was duly signed and verified by the appellant and it was accompanied by the requisite affidavit in support of the allegations of corrupt practice and their particulars. The election petition and the affidavit were tied together as one document and two copies of this document were filed for service on the respondent. The signature of the appellant by way of authentication appeared at the foot of the copy of the affidavit, but there was no such signature separately .appended at the foot of the copy of the election petition. The respondent. therefore, on filing his appearance, raised a, preliminary objection against the maintainability of the election, petition- and contended that since the copy of the election petition was not attested by the appellant under her own signature to be a true copy, there was non-compliance with section 81, sub- section (3) and hence the election petition was liable to be dismissed under section 86, sub-section (1) of the Act. This preliminary objection was tried first, since if it was well founded, the High Court was bound to dismiss the election petition and could not

proceed to hear it on merits. The High Court delivered its judgment on this preliminary issue on 6th July, 1977, and held that what section 81, sub-section (3) requires is attestation of the copy of the election petition under the signature :of the petitioner and since in the present case, signature by way of attestation was on the copy of the affidavit and not on the copy of the election petition, there was non-compliance with section 81, sub-section (3) and the election petition was liable to be dismissed in limine under sub-section (1) of section 86. The appellant being aggrieved by the dismissal of the election petition, preferred the present appeal under S. 116A of the Act. The controversy between the parties in this appeal lies in a narrow compass. But before we deal with it, it would be convenient at this stage to refer to the relevant provisions of the Act which have a bearing on the arguments urged before us. Part VI of the Art is headed "Disputes Regarding Elections" and Chapter II in that part deals with the presentation of election petitions to the High Court Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. Section 80A lays down the forum which shall have jurisdiction to try an election petition and the High Court is designated as such forum. Then comes section 81 which is a little important. It reads "81. Presentation of petition.-

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

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

x x x (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."

The election petition here was accompanied by two copies thereof, though there was only one respondent mentioned in the election petition. There was admittedly compliance with the first part of sub-section (3) of section 81. The dispute between the parties was only as regards fulfilment of the last part of section 81, sub-section (3) which requires that every such copy shall be attested by the petitioner under his own signature to be a true copy of the election petition. The argument of the respondent was, and that is the argument which found favour with the High Court, that neither of the two copies of the election petition filed by the appellant was attested by her under her own signature to be a true copy of the election petition. There was undoubtedly signature of the appellant at the foot of the copy of the affidavit which was filed along with the election petition, but there being no signature by way of attestation on the copy of the election petition, there was noncompliance with sub-section (3) of section 81. We shall presently consider this argument, but in the meanwhile we may proceed with the summary of the relevant provisions of the Act. Section 82, which is the next section, lays down who shall be parties to an election petition. We need not refer to this section in detail since we are not concerned with it. Section 83 is, however, material and it

provides what shall be the contents, of an election petition. It reads "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 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."

It was in compliance with the proviso to section 83, sub- section (1) that along with the election petition an affidavit in the prescribed form was filed by the appellant in support of the allegations of corrupt practice set out in the petition and the particulars of such corrupt practice. The two copies of the election petition filed by the appellant also carried copies of this affidavit attached to them and the signature of the appellant appeared at the foot of each of the copies of the affidavit. Section 84 is not material and we may omit reference to it.

The next chapter, which is Chapter III, deals with the trial of the election petition, but here we are concerned only with sub-section (1) of section 86, since it is under this provision that the election petition of the appellant was dismissed by' the High Court. Section 86, subsection (1) reads as follows :

"86. Trial of election petitions.-

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

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

There can be no doubt that if the election petition of the appellant did not comply with the last part of sub-section (3) of section 81, the High Court was justified in dismissing the election petition under section 86, sub- section (1) : in fact it had no other option but to do so. The question,

therefore, is whether the appellant failed to comply with the requirement of the last part of sub-section (3) of section 81.

There were two copies of the election petition filed by the appellant and to each of these two copies was attached a copy of the affidavit. Both these copies were identical and hence we may look at either of them of the last part of sub-section (3) of s. 81. What that part requires is that every copy of the election petition filed by the petitioner "

shall be attested by the petitioner under his own signature to be a true copy of the petition." Now, one thing is clear as a result of the decision of this court in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*(1) that it is not necessary that there should be a 'statement in so many terms in the copy of the election petition that the signature of the petitioner has been put by way of authenticating it to be a true copy and it is enough that the copy of the election petition bears the signature of the petitioner, because when the petitioner has put his original signature on the copy of the election petition, it can only be for the purpose of attesting it as a true copy. But here in the present case the signature of the appellant appeared only at the foot of the copy of the affidavit and there was no signature of the appellant at any place in the copy of the election petition and there was thus, according to the respondent, noncompliance with the last part of sub-section (3) of section 81. The appellant, however, submitted that the affidavit was a part of the election petition and the copy of the election petition, therefore, consisted of two parts, one being copy of the election petition proper, if we may so call it, and the other being copy of the affidavit.

The signature of the appellant at the foot of the copy of the affidavit was, therefore, said the appellant, referable not only to the copy of the affidavit but also to the copy of the election petition proper and hence the requirement of the last part of sub-section (3) of section 81 was complied with by the appellant. These rival contentions raise an interesting question of law depending on the interpretation of section 81, sub-section (3) in the light of section 83 and section 86, sub-section (1).

Now, the first question which arises is as to what constitute an election petition for the purpose of section 81, sub-section (3). Is it confined only to election petition proper or does it also include a schedule or annexure contemplated in sub-section (2) of section 83 or a supporting affidavit referred to in the proviso to section 83, sub-section (1) ? To answer this question, we must turn to section 83 which deals with contents of an election petition. Sub-section (1) of that section sets out what an election petition shall contain and provides that it shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 for the verification of pleadings. The proviso requires that where the petitioner alleges any corrupt practice, (1) [1964] 6 S.C.R. 213.

prescribed form in support of the allegation of such corrupt practice the election petition shall also be accompanied by an affidavit in the and the particulars thereof. The context in which the proviso occurs clearly suggests that the affidavit is intended to be regarded as part of the election petition. Otherwise, it need not have been introduced in a section dealing with contents of an election

petition nor figured as a proviso to a subsection which lays down what shall be the contents of an election petition. Sub-section (2) also by analogy supports this inference. It provides that any schedule or annexure to an election petition shall be signed by the petitioner and verified in the same manner as an election petition. It is now established by the decision of this Court in *Sahodrabaj Rai v. Ram.Singh Aharwar*(1) that sub-section (2) applies only to a schedule or annexure which is an integral part of the election petition and not to a schedule or annexure which is merely evidence in the case but which is annexed to the election petition merely for the sake of adding strength to it. The scope and ambit of sub-section (2) was explained in the following words by Hidayatullah, J speaking on behalf of the Court in *Sahodarbaj's case* (supra) at pages 19-20 :

" We are quite clear that sub-section (2) of section 83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples from which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. For example, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is, to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of these averments and in proof thereof."

It would, therefore, be seen that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified. since it forms part of the election petition. The subject-matter sub-section (2) is thus a schedule or annexure forming part of the election petition and hence it is placed in section 83 which deals with (1) [1968] 3 S.C.R. 13.

contents of an election petition. Similarly, and for the same reasons, the affidavit referred to in the proviso to Section 83, sub-section (1) also forms part of the election petition. The election petition is in truth and reality one document consisting of two parts, one being the election petition proper and the other being the affidavit referred to in the proviso to section 83, sub-section (1). The copy of the election petition required to be filed under the first part of sub-section (3) of section 81, would, therefore, on a fair reading of that provision along with section 83, include a copy of the affidavit. That is why the appellant attached a copy of the affidavit to the copy of the election petition proper and filed the two as one single document along with the election petition. Now, it is true that no signature was appended by the appellant on the copy of the election petition proper and the

signature was placed only at the foot of the copy of the affidavit, but that, in our opinion, was sufficient compliance with the requirement of the last part of sub-section (3) of section 81. The copy of the affidavit was, for reasons already discussed, part of the copy of the election petition and when the appellant put his signature at the foot of the copy of the affidavit, it was tantamount to appending signature on the copy of the election petition. The law does not require that the authenticating signature must be made by the petitioner at any particular place in the copy of the election petition. It may be at the top of the copy or in the middle or at the end. The place of the signature is immaterial so long as it appears that it is intended to authenticate the copy. When original signature is made by the petitioner on the copy of the election petition, it can safely be presumed, as pointed out by this Court in *Ch. Subbarao* case (*supra*), that the signature is made by the petitioner by way of authenticating the document to be a true copy of the election petition. Now, here the appellant placed her signature in original at the foot of the copy of the affidavit and the copy of the affidavit was part of a composite document, namely, copy of the election petition, and hence the signature of the appellant must be regarded as having been appended on the copy of the election petition. In fact, the copy of the affidavit constituted the end-portion of the copy of the election petition and the signature placed by the appellant at the foot of the copy of the affidavit was, therefore, clearly referable to the entire copy preceding it and it authenticated the whole of the copy of the election petition to be a true copy. We cannot, in the circumstances, accept the contention of the respondent that the copy of the election petition was not attested by the appellant under her own signature to be a true copy of the petition. The requirement of the last part of sub-section (3) of section 81 was complied with by the appellant inasmuch as the copy of the election petition was authenticated to be a true copy 'by the appellant by placing her signature at the foot of the copy of the affidavit which formed part of the copy of the election petition. The High Court was clearly in error dismissing the election petition under sub-s. (1) of sec. 86.

We accordingly allow the appeal, set aside the judgment and order of the High Court and remand the election petition to the High Court with a direction to dispose it of on merits in accordance with law. The respondent will pay the costs of the appeal to the appellant.

S.R. Appeal allowed.