

Supreme Court of India

Badruddin Qureshi vs Prem Prakash Pandey And Ors. on 15 December, 1997

Equivalent citations: AIR 1999 SC 2002, (1998) 9 SCC 488

Bench: S Sen, M J Rao

ORDER

1. The Court dismissed the election petition on the ground that Form 25-C furnished by the petitioner was not verified by a Notary. The basis of the judgment appears to be an observation made in the judgment of this Court in the case of Shirpa (Dr) v. Shanti Lal Khoiwal, . It was a judgment delivered by a Bench of three Judges of this Court. Mr Justice Ramaswamy "In Purushottam v. Returning Officer, the present question had directly arisen. In that case the copy contained omission of vital nature, viz., the attestation by the prescribed authority. The High Court had held that the concept of substantial compliance cannot be extended to overlook serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy. We approve of the above view. Verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the Notary etc. that the statement containing imputation or corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and the affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, Form 25 mandates verification before the prescribed authority."

2. It appears from that judgment the observation "verification by a Notary or any other prescribed authority is a vital act" was inadvertently made because the rest of the paragraph quoted above makes it clear that the application has to be made by the party before the Notary. No affirmation or verification is required to be made by the Notary himself. This position was made clear in the concurrent judgment of Bharucha, J. at where it was observed: "Where corrupt practice is alleged, the election petitioner must support the allegation by making an affidavit in the format prescribed. An affidavit must be sworn or affirmed in the manner required by law, or it is not an affidavit. The document purporting to be a true copy of the election petition furnished by the appellant to the respondent gave the impression that the appellant's affidavit supporting his allegations of corrupt practice had not been sworn or affirmed and was, therefore, no affidavit at all; it misleads in a material particular and its supply was, as the High Court held, fatal to the election petition."

3. Mr Justice Paripoornan also wrote a separate judgment in which he held that: "the absence of the endorsement of the Notary on the copy of (he affidavit accompanying the election petition renders the copy as not conforming to Section 81(3) of the Act, and the election petition is liable to be dismissed for the said omission."

4. Therefore, we are of the view that the High Court was in error in rejecting the election petition on the ground that affidavit given in Form 25 [see Rule 94-A] was not in order because it had not been

verified by a Notary. No verification by the Notary is needed. The affidavit has been sworn before a Notary. The stamp of the Notary was affixed after the verification made by the party and it has been clearly stated that "sworn before me", The identity of the party has also been established. The Notary duly affixed his signature and seal. We have examined the original records of the case and we are of the view that the High Court has fallen into an error in holding that the Notary was required to verify the affidavit.

5. The judgment of the High Court is set aside. The matter will now go back to the High Court for disposal according to law. The appeal is disposed of as above. There shall be no order as to costs.