

Madan Mohan vs Arun Shourie & 11 Ors. on 22 January, 2010

Equivalent citations: AIR 2010 ALLAHABAD 66, 2010 (2) ALL LJ 32, 2010 (3) AKAR (NOC) 281 (ALL), 2010 (3) AKAR (NOC) 281 (ALL.), 2010 A I H C 1349

Author: Devi Prasad Singh

Bench: Devi Prasad Singh

{1}

AFR

Reserved

Court No. - 27

Case :- ELECTION PETITION No. - 4 of 2004

Petitioner :- Madan Mohan

Respondent :- Arun Shourie & 11 Ors.

Petitioner Counsel :- S.N. Shukla, Madan Mohan, O P
Srivastava, P.D. Gupta, Prabhat Kumar Tripathi

Respondent Counsel :- I.B. Singh, Anupam

Mehrotra, D.K. Upadhyay, Dr. L.P. Mishra, Jay Narayan

Pandey, Maninder Singh, P.D. Gupta, Ranjeet

Kumar, S.K. Chaudhary, Sanjay Singh, Satish Chandra

Mishra, V.K. Singh, Vinod Kumar Singh, Waseeq Uddin Ahmed

In re:

C.M. Application No. 55277 of 2009, for deciding preliminary issues
and

C.M. Application No. 1517 of 2004, application under Order 6 Rule
16 of the cpc.

And

C.M. Application No. 1518 of 2004, application under Order 7 Rule
11 and Section 151 of the C.P.C read with Section 83 (1) (a) and © of
the Representation of People Act 1951
and

C.M. Application No. 1528 of 2004, application under Order 7 Rule
11 and Section 151 of Cpc
and

C.M. Application No. 1527 of 2004, application under Order 6 Rule
16 of the cpc
and

C.M.Application No.1579 of 2004, application under Section 86 (1)
of the Representation of the People Act, 1951
and

C.M.Application No.1725 of 2004, application for summary
dismissal of election petition.
and

C.M.Application No.309 of 2005, application under Section 86 (1)
and

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C.M.Application No.515 of 2005, application for dismissal of
election petition.
and

C.M.Application No.517 of 2005, application under Section 86 (1)

Hon'ble Devi Prasad Singh,J.

1. Instant election petition has been filed challenging the result of biennial election of Rajya Sabha/Council of State, which was declared on 26.6.2004.

The present Election petition was filed on 13.07.2004. Thereafter, the matter was placed before the Hon'ble Chief Justice for nomination of Bench and in turn thereof, Hon'ble Mr. Justice N.K.Mehrotra was nominated. Subsequently, Hon'ble Mr. Justice O.P.Srivastava was nominated and thereafter Hon'ble Mr. Justice Shri Narayan Shukla was nominated to deal with the matter but later on His Lordship released the case and in turn this Bench has been nominated by the Hon'ble Chief Justice.

2. At the very threshold of arguments, Shri S.N.Shukla learned counsel for the election petitioner had not pressed the relief with regard to the validity/vires of amended provision contained in Section 3 of the Representation of Peoples Act, hence, question with regard to validity of amended Section 3 of the Representation of Peoples Act is not dealt with.

3. The election petitioner, Mr. Madan Mohan, whose nomination as Congress candidate was rejected by the returning officer, has challenged the election of respondents 1 to 11. They have been elected _____ {3} for Council of States (Rajya Sabha) by the elected members of the U.P. Legislative Assembly, notified by Election Commission of India under Section 39 of the Representation of the People Act, 1951 (RP Act/RPA") vide notification dated 4.6.2004, as amended by subsequent notifications dated 10.6.2004 and 23.6.2004, the result of which was declared on 26.6.2004.

4. Those declared elected for the Rajya Sabha are respondents 1 to 11 viz., (1) Mr. Arun Shourie (Bhartiya Janta Party-"BJP"); (2) Mr. Kamaal Akhtar (Samajwadi Party-"SP"); (3) Mr. Nand Kishore, (SP); (4) Mrs. Jaya Bachchan (SP); (5) Mr. Bhagwati Singh (SP); (6) Ms. Mayawati (Bahujan Samaj Party-"BSP"); (7) Dr. Murli Manohar Joshi (BJP); (8) Mr. Ram Narain Sahu (SP); (9) Mr. Satish Chandra Mishra (BSP); (10) Mr. Anil Ambani (Independent); & (11) Late Lalit Suri (Independent).

5. It has been informed by the learned counsel for the parties that during the pendency of the petition, Mrs. Jaya Bachchan (respondent

4), Ms. Mayawati (respondent 6) & Mr. Anil Ambani (respondent -11) have resigned and Mr. Lalit Suri (respondent -11) died.

6. Apart from respondents 1 to 11, who were "contesting candidates" and "elected the petitioner has also arrayed Sri Harendra Agarwal as respondent-12, who, along with the petitioner, had filed his nomination as Congress candidate at the election in question and his nomination as well as the nomination of petitioner were rejected. The respondent 12 and the petitioner were, therefore, not "contesting candidates" under S. 38 read with S. 82, RP Act.

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7. Apart from claiming declaration with regard to validity of nomination paper filed by the petitioner, the petitioner had also prayed for quashing of orders dated 19.6.2004 and 25.6.2004 passed by the returning officer. The petitioner has also claimed to declare the election return candidate and respondents no. 2,4,5,10,11 to be void. The following relief has been claimed by the petitioner under the election petition:-

"(1) Declare that the nomination paper filed by the petitioner was valid and to quash the orders dated 19.6.2004 and 25.6.2004 of the returning officer. (2) Declare that the election of the respondents 2,4,5,10 and 11 to the Council of States from the State of U.P is void.

(3) Declare the petitioner elected to the Council of States in view of the (I) and (ii) above, or in case relief no. 1 only is granted, then declare the entire results of the election void."

8. The applicants have raised common ground while challenging the maintainability of the election petition by moving present applications with submission that looking to the pleadings on record there is no sufficient material which may call for adjudication by this court and the averments contained in certain paragraphs are vague and the election petition should be dismissed on account of non- compliance of Sections 81,82 and 117 of the Representation of People Act, 1951 (in short "the Act"). Sub-section (1) of Section 86 of the Act empowers this Court to dismiss the election petition in the event _____ {5} of non-compliance of the statutory provisions. The procedure with regard to filing of the election

petition has been given in Section 86 of the Act.

9. It shall be appropriate to discuss the factual matrix with regard to controversy in question. The Election Petition was filed on 13.7.2004. On 27.7.2004 notices were issued to the respondents. For convenience the order dated 27.7.2004 is reproduced as under:-

"Hon'ble N.K.Mehrotra,J.

Heard Dr. Ashok Nigam, Senior Advocate assisted by Sri Prabhat Kumar Trivedi & Neeraj Chitravanshi and S.N.Shukla, Advocate.

Issue notice to opposite parties 1 to 12 returnable in six weeks.

Let counter affidavit be filed within six weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List after eight weeks."

10. Under Rule 6 (c) of Chapter XV-A of the Allahabad High Court Rules, it was obligatory on the part of petitioner to take steps for service of notice on respondents within seven days from the date of issuance of notice. Meaning thereby steps should have been taken on or before 3.8.2004.

11. However, petitioner had filed an application on 30.7.2004 for amendment of the election petition (Civil Misc. Application No. 993/2004 dt. 30.7.2004). While moving the amendment application the petitioner prayed to carry out certain amendment with regard to _____ {6} respondent no. 11 (Late Lalit Suri). Amendment broadly relates to Form-26 of the affidavit of respondent no. 11. as to whether it was sworn on oath or solemnly affirmed. Ground taken by the petitioner with regard to amendment is based on alleged typographical error in the original petition filed on 13.7.2004. Amendment application was allowed by the court vide order dated 3.8.2004, which is for convenience, reproduced as under:-

"Hon'ble N.K.Mehrotra,J.

Heard.

Allowed.

Let amendment be carried out within three days."

12. In pursuance to order dated 3.8.2004 the petitioner had carried out the amendment in the original election petition filed on 13-7-2004 as well as copies of the election petition. It has been stated by the respondents counsel that while allowing the amendment application on 3.8.2004 this Court had not directed to issue fresh notice keeping in view the amendment incorporated on

4.8.2004. It has also been stated that the petitioner had never served the copy of amended election petition. It has been stated that virtually petitioner had not complied with the order dated 27.7.2004 by taking step under the Allahabad High Court Rules. At no stretch of time the petitioner had served the copy of election petition which was originally filed on 13.7.2004.

13. The original paper book of the election petition contains 180 pages. Petitioner had indicated the numbers from 1 to 180 pages. On _____ {7} the other hand, it has been stated that page numbering made in the copy of the respondents is only from 1 to 36. Copy of annexures served on the respondents are beyond the page no. 36 i.e. from page no. 37 to 180. The submission is, the correct copy of the election petition has not been served on the respondents. The petitioner had given the list of 38 documents. It has been stated by the respondents that the document filed alongwith election petition is materially different from the list of documents indicated in the respondents copy. The 4th Column of list of the document has not been filled up in the copies provided to the respondents. The column of remark is blank in the original election petition. Each and every annexures with a heading i.e "Document No." has been indicated on the first page but same has not been done in the respondents' copy. Accordingly, the submission of the respondents is they have been not provided true copy of the election petition.

14. So far as page numbering of the election petition and its annexures are concerned, it has been stated by the petitioners that the annexures are not the part of election petition, hence, even if, there is some defects in numbering the pages, it shall not materially affect the maintainability of election petition. In response to an objection dated 13.12.2004, the petitioner stated that it was on 27.7.2004 Hon'ble Judge (Hon'ble Mr. Justice N.K.Mehrotra) had passed oral order to do the paging of the election petition.

15. However, a perusal of the order dated 27.7.2004 passed by the then Hon'ble Judge of this Court seized with the present election _____ {8} petition (Hon'ble Mr. Justice N.K.Mehrotra) does not disclose that his Lordship has directed the petitioner to correct the election petition by putting number on each and every pages including its annexures.

16. In view of these facts on record, it has been submitted that since the election petition was filed on affidavit, it was not permissible for the petitioner's counsel to indicate number on each and every page of election petition and its annexures after filing in the registry of the High Court.

17. Apart from above, petitioner has filed the certified copy of Form 26 and affidavit dated 17.6.2004. The affidavit dated 17.6.2004 in the shape of Form 26, was filed before the returning officer. It has been stated that in the original affidavit filed before returning officer the numbers "2 and 3" after number "1" in second line of the Para 2 of the affidavit were not mentioned. It has been done at later stage with blue ink. The omission of numbers "2 and 3" in the original affidavit dated 17.6.2004 was fatal, since, it renders the Form 26 invalid. A perusal of the certified copy of the Form 26, which is the copy of the affidavit sworn on 17.6.2004, indicates that "number 2 and 3" has been added at later stage by blue ink, which is according to respondents was done in the courts record

after filing of election petition. It has also been alleged that the copy of the Form 26 filed with the election petition is forged and is not the correct certified copy of the Form 26. In the original affidavit, filed before the returning officer, there were no tick marks whereas copy of Form 26 filed in the court bears 3 tick marks at page 1 and 2 tick marks on page 2 is on left _____ {9} hand side. While defending his action though the petitioner admits interpolation to some extent in Form 26 but a defence has been taken that a copy was handed over to him by legal advisor but the name of legal advisor has not been disclosed.

For convenience, Para 29,30,31 and 32 of the affidavit filed by the petitioner in response to objection raised by the respondents are reproduced as under:-

"29. That the contents of para 34 of the application are prima facie misconceived and untenable for the simple reason that the document filed with the election petitioner is a certified copy of the affidavit dated 17.6.2004 filed by the petitioner with his nomination paper. There is, therefore, no question of the affidavit dated 17.6.2004 filed with the election petition being forged or fabricated. As regards the words "2 or 3" in the margin of para 2 and □marks on the page 1 and 2 in the certified copy of this affidavit, these have not been made by the petitioner. The original affidavit was filed before the R.O. However, the certified copy of the same issued to the petitioner was handed over by the petitioner to his legal advisor for studying the case. While, studying the documents the legal advisor seems to have made certain marks and written digits 2 or 3 in the margin for his memory. This appears to have been overlooked at the time of filing the copy. In fact, the petitioner has himself accepted in para 30 (v) of the election petition the fact of omission of the words "or sub-section (2) or sub-section (3)" in para 2 of his affidavit dated 17.6.2004. And the tick marks in the certified copy of the affidavit also do not change it in any material way. The alleged interpolations in the certified copy are, thus, _____ {10} inconsequential and do not affect the maintainability of the election petition.

Above all, the list of documents is not a part of election petition but contains only the evidence, which the petitioner seeks to adduce to support his petition. These documents may be compared with the original documents to be summoned from Election Commission. Hence, even if there is an inadvertent marking on one of the documents, the same cannot affect the maintainability of the petition. Further, in document no. 19 page 95 of the list of documents, the same document has been enclosed on pages 96 & 97 wherein the correct copy of the document has been placed on record without the recording of digits 2 & 3 and the tick marks which have been objected by the applicant.

30 That the contents of para 35 of the application are wrong and are denied as such. It is denied that the petitioner has tried to shift the burden on his legal advisor. The petitioner had only stated the correct factual position. The makings in the certified copy cannot be called interpolations under the circumstances explained by the petitioner.

31. That the contents of para 36 are vehemently denied. The petitioner had not tried to shift the burden for any of the alleged lapses on anyone but has simply stated the factual position. The name of the legal advisor is not material for the veracity of the petitioner's statement and will be given if so desired by the Hon'ble Court. There was no vagueness in the averment of the petitioner.

32. That the contents of para 37 of the application are not admitted as stated. Though the markings by the legal advisor were overlooked by the petitioner through _____ {11} oversight while attesting the copy but this does not make him responsible for these as alleged by the applicant."

18. While filing Form 26 the petitioner had alleged to keep certain column blank. However, it appears that he had filed an affidavit on 18.6.2004 disclosing his academic qualification (Document no. 5). Affidavit was not accepted by the returning officer on the ground that the last date of submission of form was 17.6.2009 and after said date affidavit was not accepted. Petitioner's candidature were rejected by the returning officer on the ground that he had not filled up column of Form 26. The operative portion of the order dated 19.6.2004 (Document no. 14 to the election petition) passed by the Returning officer Shri Rajendra Prasad Pandey, is reproduced as under:-

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19. It has been stated that correction or interpolation done in the Form 26 has not been indicated in the affidavit. It has also been stated that after amendment of the election petition, the affidavit sworn and filed along with election petition originally does not fulfill the requirement of Section 81 (3) of the representation of Peoples Act. The petitioner had sworn the affidavit on 13.7.2004 but no fresh affidavit was filed keeping in view the amendment incorporated on 4.8.2004. It has also been submitted that affidavit filed alongwith election petition is not in Form 25. It is mandatory under section 83 read with Rule 94 A of the Representation of Peoples Act.

20. Since, the verification is not in accordance to Section 83 the election petition liable to be dismissed. It has been also submitted that the petitioner had taken certain plea before this court that without raising any objection returning officer particularly with regard to nomination of respondent no. 5 and defect alleged in the election petition with regard to nomination of respondent no. 2,4,10 and 11.

Statutory Provisions

21. Under Section 81 of the Act, an election petition may be filed within 45 days on the grounds specified in sub-section 1 of Section 100 and 101 of the Act. Section 82 of the Act deals to the parties to a petition and Section 83 of the Act deals with the contents of the election petition. Section 86 of the Act relates to trial of election petition and Section 87 of the Act provides that election shall be tried _____ {13} by the High Court as far as possible in accordance to the provisions contained in Code of Civil Procedure and the Evidence Act. Section 93 of the Act provides that the documentary evidence shall not be admissible at trial unless it is duly stamped or registered.

22. Section 100 of the Act contains the grounds on which the election may be declared void and Section 101 of the Act contains the grounds on which a candidate other than the returned candidate may be declared to have been elected.

23. Section 123 of the Act defines corrupt practice. Section 123-A of the Act provides penalty for filing false affidavit during the course of filing of the nomination papers.

24. A part from aforementioned statutory provisions, Rule 94-A of the Conduct of Election Rules, 1961 (in short, 'the Rules') is relevant for adjudication of the present controversy. Under Rule 94-A of the Rules, it is mandatory to fill up the Form-25 and submit it along with election petition, substantiate corrupt practice.

25. While filling the nomination paper, it is mandatory for the contesting candidates to file affidavit in format provided under Form

26. Petitioners nomination has been rejected because of non- compliance of Form 26. It shall be appropriate to reproduce Form 26, which is as under:-

"Form 26 (SEE RULE 4A) Affidavit to be furnished by the candidate before the returning officer for election to
(n a m e o f t h e H o u s e) {14} from
..... Constituency
(name of the constituency) I,, son/daughter/wife
of aged about years, resident of
..... candidate at the
above election, do hereby solemnly affirm/state on oath as under:-

1. I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s) he shall furnish the following information:

(i) Case/First information report No./Nos.....

(ii) Police station(s) District(s)

State(s)

(iii) Section(s) of the concerned Act(s) and short description of the offence(s) for which the candidate has been charged.....

(iv) Court(s) which framed the charge(s)

(v) Date(s) on which the charge(s) was/ were framed
.....

(vi) Whether all or any of the proceeding(s) have been stayed by any court(s) of competent jurisdiction

2. I have been/have not been convicted of an offence(s) [other than any offence(s) referred to in sub-section(1) or sub-section(2), or covered in sub-section(3), of section 8 of the Representation of the People Act, 1951 (43 of 1951)] and sentenced to imprisonment for one year or more.

If the deponent is convicted and punished as aforesaid, he shall furnish the following information:

(i) Case/First information report No./Nos.....

(ii) Count(s) which _____ {15}
punished

(iii)

station(s)

District(s)

..... State(s)

(iv) Section(s) of the concerned Act(s) and short description of the offence(s) for which the candidate has ever been charged.....
.....

(v) Date(s) on which the sentence(s) was/were pronounced
.....

(vi) Whether the sentence(s) has/have been stayed by any court(s) of competent jurisdiction
.....

Place Date Signature of Deponent VERIFICATION I, the above-named deponent, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therein.

Verified at this day of, 20.....

S i g n a t u r e o f d e p o n e n t
..... Note: The columns in this Form which are not applicable to the deponent may be struck off."

26. Present controversy relates to biennial election of Rajya Sabha/Apar House. Qualification for membership of the Council of States has been provided in Section 3 of the Act. In the original Section 3, it was provided that a person shall not be qualified to be chosen as a representative of any State or Union territory in the Council of States unless he is an elector for a Parliamentary {16} constituency. The provision was later on amended by Act No. 40 of 2003 with effect from 28.8.2003. In the amended provision, it has been provided that all those persons who are recorded as elector for a Parliamentary constituency in India shall be entitled to be chosen as representative of any State.

27. Though while filing the election petition a plea has been taken that some of the respondents have not been recorded as elector in the Parliamentary list of the State of U.P. but during the course of hearing, Sri S.N.Shukla, learned counsel for the petitioner had made a statement at bar that in view of the amended Section 3 of the Act the respondent no. 3 was qualified to contest the election hence he has given up the grounds.

28. However, Sri Anupam Mehrotra, learned counsel for the applicants, submits that in an election petition the grounds taken at the time of filing of the election petition can not be given up by oral statement as it will amount to amendment of the petition. It has been submitted by the respondents counsel that the petitioner has challenged the vires of the impugned amendment of Section 3 of the Act. It cannot be given up at bar during the course of hearing.

After hearing the learned counsel for the parties, this Court by an order dated 21.3.2006 had framed the 33 issues.

SERVICE OF COPY OF PETITION

29. Section 83 of the 'The Representation of the People Act, 1951 (in short hereinafter referred as the Act) provides that an election petition shall contain a concise statement of the material facts on _____ {17} which the petitioner relies and in case a plea is taken with regard to involvement of corrupt practice then the petitioner shall set forth full particulars with regard to corrupt practices indicating as far as possible the names of parties alleged to have committed such corrupt practices. It also provides that the election petition shall be verified in the manner laid down in the Code of Civil Procedure. In the event of allegation of corrupt practice the petition shall also be accompanied by an affidavit in the prescribed form in support of allegation of such practice.

Sub Section 2 of Section 83 further provides that the schedule or annexures filed with the election petition shall also be signed by petitioner and verified in the same manner.

30. Sub-Section 3 of Section 81 provides that every election petition shall be accompanied by as many copy thereof as there are respondents mentioned in the petition and every such copy shall be attested by petitioner under his own signature to be true copy of the petition.

31. In the present case, admittedly, election petition was filed on 13th July, 2004 and notices were issued by the Court on 27th July, 2004 under Chapter 15 A Rule 6 of the Rules of the Court. After issuance of notices the election petitioner should have filed process fee charges for publication within seven days from the date of order directing notices to be issued. In the event of default, it is incumbent upon the registry to place the matter before the Judge concerned who in turn may dismiss the election petition in the event of non-compliance of _____ {18} process subject to extension of time.

Instead of filing the process, the petitioner had moved an application for amendment on 30th July, 2004 to carry out the amendment with regard to respondent no. 11. Amendment was allowed on 3.8.2004.

32. It appears that the petitioner had not served the copy of amended election petition. While raising objection with regard to non-supply of copy of election petition it has been stated that the copy supplied to the respondents contains page number from 1 to 36 though in the court copy the page number has been indicated from 1 to 180. The list of document filed with the election petition contains handwritten seriatum and page number whereas the list of documents attached with the copy of the election petition served on the respondents does not contain such numbers.

33. It has also been stated that the documents filed with the election petition has not been duly verified in compliance of provisions contained in Sub-section 3 of Section 83.

34. The sum and substance of submission of Shri Anupam Mehrotra learned counsel for the respondents is that since, the copy of the election petition as exists in the court record has not been supplied, it suffers from substantial illegality and the petition is liable to be dismissed.

35. Hon'ble Supreme Court in the case of AIR 1964 SC 1545; Murarka Radhey Shyam vs. Roop Singh held that service of copy of election petition does not mean exact copy. Minor variation shall _____ {19} not affect the maintainability of election petition. The principle laid down by Hon'ble Supreme Court is that the copy should be as far as possible same as exists in the court record and nobody should misunderstand the contents of election petition because of such variation.

36. In AIR 1964 SC 1027, Ch. Subbarao Vs. Member, Election tribunal, the Constitution Bench of Hon'ble Supreme Court while interpreting the provisions contained in Sub-section 3 of Section 81 of the Act held that the condition precedent for maintainability of election petition is compliance of Sub-Section 3 of Section 81. In case, there is absolute non-compliance of sub section 3 of Section 81, it may result into dismissal of the election petition.

37. In 1984 (3) SCC 339, Rajendra Singh Vs. Smt. Usha Rani, Hon'ble Supreme Court held that amendment can not be allowed to cure the defects.

38. In 2005 (2) SCC 188, Chandrakant Vs. Dayanand, the judgment of Rajendra Singh (supra) has been distinguished but without considering the Constitution Bench judgment in the case of Murarka Radhey Shyam (supra).

39. In 1999 (4) SCC 274, TM Jacob Vs. C. Poullose, Constitution Bench of Hon'ble Supreme Court held that an impermissible deviation in the copy may call for dismissal of election petition. However, it has been held that election petition may not be dismissed for insignificant variation. The defect should be of vital nature.

40. In 2001 (8) SCC 358, T. Phungzathanz Vs. Hangkhanlian, _____ {20} three judges of Hon'ble Supreme Court had reiterated the test laid down in Murarka Radhey Shyam and Ch. Subbarao (supra)

41. In 2003 (1) SCC 289, Ram Prasad Sarma Vs. Mani Kumar Subba, their Lordship held that absence of Oath Commissioner's stamp shall not invalidate the election petition. An opportunity may be given to correct the error.

42. Shri S.N.Shukla learned counsel for the petitioner has raised two folds arguments. Firstly; he submitted that the page numbers in the list of document as well as in the entire election petition was done in pursuance to oral order passed by the court and secondly; he submitted that the list of documents or the document filed with the election petition are not the part and parcel of the election petition, hence the defect is not fatal.

43. Coming to the arguments advanced by the learned counsel for the petitioner and rebuttal submitted by Shri Anupam Mehrotra learned counsel for the respondents, there appears to be no dispute that in the court's record no order has been transcribed over the order sheet permitting the petitioner to transcribe the page number on the election petition. In the absence of any written order

on record submission of petitioner's counsel does not inspire confidence. It appears that either the petitioner or his counsel had laid their hand on the courts record without any permission from the election Judge. Moreover, election petition has been filed supported by an affidavit. The averments made in a petition duly verified by an affidavit can not be amended, interpolated or modified except through an amendment _____

{21} application and order passed thereon. In the absence of any order on record the action of the petitioner or his counsel transcribing the page numbers in the courts record seems to be an act without jurisdiction and nullity in law.

44. Learned counsel for the respondents had rightly relied upon the judgement of Hon'ble Supreme Court reported in 1982 (2) SCC 463, State of Maharashtra Vs. RS Nayak and 2004 (10) SCC 598, Ram Bali Vs. State of U.P. where their Lordship held that the statement of Judge transpired from the courts record cannot be contradicted by the statement at bar or by an affidavit or other statement. The court is bound to accept the statement of Judge recorded in the ordersheet. For any grievance appropriate remedy is to move appropriate application to be decided by same Hon'ble Judge who has passed the order. It shall be appropriate to reproduce relevant portion from the judgement of Ram Bali (supra), which is as under:-

"para 9--We notice that the High Court specifically records that only two points were urged before it. It has to be noted that the statement of as to what transpired at the hearing, the record in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in Court have been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges who have made record to make necessary rectification. That is only way to have the record corrected. It is not open to the appellant to contend before this Court to the c o n t r a r y . (S e e S t a t e o f _____ {22}

Maharashtra v. Ramdas Shrinivas Nayak and Anr. (1982 (2) SCC 463), Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors. (2003 (2) SCC 111), and Roop Kumar v. Mohan Thedani (2003 (6) SCC 595)."

45. Though learned counsel for the petitioner had tried to defend his cause with belated statement that on 27.7.2004 that Hon'ble Judge had permitted and directed the petitioner to transcribe the pages but the order sheet does not indicate that the Court had permitted the petitioner's counsel to transcribe page numbers in the courts record. Submission of petitioner's counsel seems to be in correct and false and may not be relied upon keeping in view the judgement of Hon'ble Supreme Court in the case of Rambali (supra).

46. The second limb of argument of petitioner's counsel is that the documents filed with the election petition are not the part of the election petition, hence, it was not necessary either to attest or show the page numbers. Submission of petitioner's counsel does not seem to be correct. While filing affidavit in support of election petition, the petitioner in para 3 of the affidavit himself had stated that he had checked and compared the documents filed with the election petition and certifies that

they are true copies of the originals. Para 3 of the affidavit dated 13-7-2004 filed in support of the election petition is reproduced as under:-

"That the deponent has checked and compared the documents filed along with the petition and certified that they are true copies of their originals."

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47. In view of above submission of petitioner's counsel that documents filed with the election petition are not the part and parcel of election petition is incorrect.

48. Learned counsel for the respondents Shri Anupam Mehrotra had rightly relied upon the judgment of Hon'ble Supreme Court reported in 2001 (7) SCC 98, Mulayam Singh Yadav vs. Dharam Pal where Hon'ble Supreme Court had held that annexures and schedule is the integral part of the election petition. It should be duly pleaded and supported by evidence. Since, in the said controversy the original cassette was not filed with the election petition, their Lordship of Hon'ble Supreme Court held that the election petition does not satisfy the requirement of Section 83 and may be dismissed under Section 86 of the Act. It shall be appropriate to reproduce relevant portion from the judgement of Mulayam Singh Yadav (supra), which is as under:-

"13. We are, therefore, satisfied that the video cassette mentioned and verified in Schedule 14 is an integral part of the election petition and that it should have been filed in Court along with copies thereof for service upon the respondents to the election petition. Whereas 15 copies thereof were filed for service upon the respondents, the video cassette itself was not filed. The election petition as filed was, therefore, not complete.

14. Section 81 contemplates the presentation of an election petition that is complete and satisfies the requirements of Section 83. An election petition that is not complete must, having due regard to the imperative mandate of Section 86, be dismissed. The present election petition must, therefore, be dismissed."

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49. In the present case, documents filed with the election petition has been treated by the petitioner himself as the part and parcel of the election petition under Para 3 of the Affidavit (supra). Accordingly, any vital defect in the document filed with the election petition may be a ground to dismiss the election petition at this very threshold. VERIFICATION OF AFFIDAVIT AND INTERPOLATION IN RECORDS

50. The petitioner, as held in the presiding paras, had lays his hands to courts record to transcribe the page numbers without moving any application for amendment for the purpose or without having any permission from the Court in writing, hence action of the petitioner is deprecated for the reasons disclosed hereinabove.

51. Sub-section 2 of Section 83 provides that schedules or the annexures shall be signed by the petitioner and verify in the same manner as petition. Schedule or list of documents filed with the election petition has been held to be part and parcel of the election petition (supra). Accordingly, in compliance of sub-section 2 of Section 83 it was incumbent upon the election petitioner to verify the schedules or the documents filed with the election petition in the manner laid down in the Code of Civil Procedure. But in the present case, all the schedule or documents filed with the election petition has not been verified.

52. Shri S.N.Shukla, learned counsel for the petitioner had tried to _____ {25} defend the petitioner's action on the ground that document filed with the election petition are not the part of election petition, hence, verification is not necessary. Arguments advance by the petitioner's counsel seems to be misconceived for the reasons discussed hereinabove. Keeping in view the affidavit filed in support of election petition it was incumbent upon the petitioner to verify the document.

53. Hon'ble Supreme Court in the case of reported in 2007 (1) SCC 341, Baldev Singh Vs. Shinder Pal Singh held that it shall be incumbent upon the petitioner to specifically state while affirming the pleadings on record specifying the true to his knowledge or belief. In the case of Baldev Singh (supra) Hon'ble Supreme Court had proceeded to held as under:-

Para 23-The verification of an election petition, it was trite, must be done strictly in terms of Order 6 Rule 15 of the Code of Civil Procedure. It was thus, incumbent on the part of the respondent herein to specifically state as to which statements made in the election petition were true to his knowledge and which were true to his belief. A factual averment made in the election petition cannot be both true to the knowledge and belief of the deponent."

54. In 2001 (8) SCC 33, 2001 (8) SCC 233, Hari Shanker Jain Vs. Sonia Gandhi, Hon'ble Supreme Court had observed that it shall be incumbent upon the election petitioner to disclose whether the pleading is on the basis of inspection of file or other source of knowledge. The source of knowledge should be disclosed.

55. While filing the affidavit in support of election petition learned counsel for the petitioner Shri S . N . S h u k l a i n p a r a 2 h a d s t a t e d w i t h _____ {26} regard to certain paras of the petition to be true in accordance to own personal knowledge and for remaining on the basis of information received and believed. So far as documents are concerned, in para 3 (supra) of the affidavit, it has been stated that they are true copies of the originals. No specific averment has been made with regard to source from which the petitioner had obtained the documents.

56. The returning officer had rejected the nomination paper on the ground that the petitioner has not disclosed the material fact required under Para 2 of the Form 26 (supra). Sub-section 3 of Section 8 of the Act provides that a person convicted of any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall be

$$\begin{array}{ccccccc} \text{" " - \# \dots} & (\square) & i & , \mathbb{Y} f \S f \mathbb{Y} f \S \mathbb{Y} &) \gg \kappa) & \% \circ & \\ & (\mathbb{Y}) & i \square & & (&) & \square \\ & \dagger & \mu & \cdot & i \dagger & \square & i \\ \square \dagger & & \mu & \mu'' & & & \end{array}$$
$$\begin{array}{ccccccc} \text{"} & - & \ddagger & \dots & (\square & i & , \forall f \S f \ 2 \& 3/ \ \forall f \S \forall \\ & & \%o & & (\forall) \setminus & i \ \square & (\quad) \quad) \\ \square. & & \dagger & & \mu & & . \quad i \ \dagger \\ \hline & \square & i & & \square \ \dagger & \mu & \mu'' \end{array} \quad \{27\}$$

58. Learned counsel for the petitioner does not dispute that numbers "2 and 3" added in the certified copy of the Form 26 filed with the election petition is not mentioned in the original record but tried to defend his action with the averment that because of lawyer's fault during the course of perusal of the record the numbers "2& 3"

has been added. Arguments advanced by the learned counsel for the petitioner does not inspire confidence and at the face of record seems to be false. In para 2 there is an arrow and a line has been drawn towards left side of the Form 26. There appears to be deliberate interpolation of record on the part of the petitioner. Affidavit filed in support of election petition sworn by the petitioner indicates that documents are true copy of the original. Even after pointing out by the respondent's counsel with regard to interpolation in Form 26, the _____ {28}

petitioner's counsel has not taken care to amend the affidavit to place the correct fact on record. Accordingly, petitioner seems to be guilty of interpolating the courts record as well as filing of false affidavit while preferring the present election petition. The returning officer while rejecting the petitioner's candidature vide order dated 19.6.2004 had observed that the petitioner had submitted unfilled Form 26 in

contravention of Section 36 of the Act. While filing the petition it appears that the petitioner had tried to interpolate the records and not approach this Court with clean hand.

59. Hon'ble Supreme Court in a case reported in 2000 (2) SCC 294, V. Narayanaswamy Vs. Thirunavukkarasu had held that in the absence of proper affidavit and substantial defect in the verification the election petition can not be proceeded on merit. The provisions contained in Section 83 as well as Rules has held to be mandatory. Their Lordship further held that the affidavit must conform not only with the form prescribed, in substance but should contain particulars as prescribed by the rules. It has also been held that material fact must be disclosed while preferring the election petition. It shall be appropriate to reproduce relevant portion from the judgment of V. Narayanaswamy(supra), which is as under :-

" para 23. It will be thus seed that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as _____ {29} to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non- compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It _____ {30} cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several

paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to

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pleadings."

60. In one another case reported in 2000 (1) SCC 481, R.P. Moidutty Vs. P.T. Kunju Mohammad and another, their Lordship had reiterated the aforesaid proposition of law and held that the source of information must be disclosed and election petition filed without proper verification may be dismissed at very threshold in case, no effort is made to correct the error raised by a party. It shall be appropriate to reproduce relevant portion from the judgement of R.P. Moidutty (supra), which is as under:-

"In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit casewhere the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings."

61. In the case of Mulayam Singh Yadav (supra) Hon'ble Supreme Court had held that the provisions contained in Sub-section 2 of Section 83 is mandatory. In view of above, at the face of record the

----- {32} petitioner had filed false and fabricated documents (certified copy of the Form 26) which is not the true copy of original.

Each and every document has also been not verified in the manner provided by the CPC in compliance of Sub-section 2 of Section 83. Accordingly, documents relied upon by the petitioner while assailing the election in question cannot be relied upon. The concise statement of fact required under the law seems to be not made in the election petition.

CORRUPT PRACTICE AND RELATED AFFIDAVIT

62. Sub-section 1 of Section 83 provides that the election petition shall consist the concise statement of material facts and shall also set forth full particulars of any corrupt practice which the petitioner alleges including the full statement as possible of the names of the parties alleged to have committed such corrupt practice, and the date and place of commission of each practice. The provisions of sub-section 1 further provides that where the petitioner alleges corrupt practice, the petition shall be accompanied by an affidavit in the prescribed form in support of allegation of such corrupt practice and particularly thereof.

The corrupt practice has been defined under Section 123 of the Act.

63. In para 9 and 31 to the writ petition allegation of corrupt practice has been raised. The averments contained in Para 9 and 31 has been sworn to be pleaded to be true as per information received. _____ {33} It shall be appropriate to reproduce the averments contained in Para 9 and 31 of the election petition, which is as under:-

"9. That the petitioner had objected t the nomination of the Respondents No. 4 (Mrs. Jaya Bachchan) on the ground that she was disqualified under Art. 102 of the Constitution as she was holding an office of profit under the State govt. as Chairman of the Film Development Council. Her nomination paper was, therefore, liable to be rejected. The reply dated 19.6.2004 along with an affidavit of Mrs. Jaya Bachchan of the same date was filed on her behalf on 19.6.2004, after the scrutiny had begun and was underway. The petitioner filed his rejoinder against it on the same day stating inter alia that her reply and her affidavit annexed with it do not state the date of her resignation, that the alleged office order accepting her resignation has been ante-dated under the pressure of the ruling party which had sponsored her candidature, that an inquiry be held by he R.O. By summoning the concerned file, and also that Mrs. Jaya Bachchan was not in Lucknow on the date of swearing of her affidavit.

31. That on the other hand, the R.O. Wrongly accepted the nomination paper of Respondent No. 4 Smt. Jaya Amitabh Bachchan despite here being disqualified under Art. 102 of the Constitution. The R.O. Did not make any summary inquiry as provided for in Section 36(2). He turned down the request of the petitioner to summon the file regarding her resignation despite categorical allegation that it was ante dated. The truth about it could be established only in an enquiry after summoning the concerned file and other connected record. The R.O. Wrongly

dismissed the objection to the petitioner on the _____ {34}
 ground that he did not furnish any documentary proof in support of his allegation. The petitioner could not produce the documentary proof because the concerned file and connected record were not in his possession and were in the possession of the State govt. Since the candidature of Mrs. Bachchan was sponsored by the ruling Samajwadi Party, the collusion of the State Govt. could not be ruled out. It was, therefore, incumbent upon the R.O. To inquire into the veracity of the objection of the petitioner by summoning the concerned file and connected record, which was available at, hand in the Secretariat. In fact, the ante-dating of the OM dated 31.5.2004 was established even from a mere perusal of it since its despatched no. has been obviously interpreted as it bears no. 407 . An examination of the receipt and despatch registers of letters and files would have clearly confirmed the interpolation."

64. Rule 94 A of the Conduct of Election Rule 1961 readwith Section 83 provides that affidavit referred in proviso of Sub-section of Section 83 shall be sworn before Magistrate of First class or notary or Commissioner of Oath and shall be in Form 25.

65. The purpose of Form 25 is to secure the purity in system and make accountable the person who is involved in corrupt practice. It has been provided also to discourage the filing of election petition on unfounded charges and to check the abuse of process of law. While filing the affidavit under form 25 it shall be incumbent upon the election petitioner to disclose the source of information and other particulars with regard to corrupt practice. It shall be appropriate to reproduce Form 25, which is as under:-

_____ {35} Form
 25 [See R.94-A] 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(*Here specify the name of corrupt practice) and the particulars of such corrupt practice mentioned in paragraphs.....of the same petition and 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(*Here specify the name of corrupt practice) 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.

(d)
etc.

Solemnly
Shri/Shrimati.....before

Signature of deponent
affirmed/sworn

by

me.....at.....thisday of20.....

M a g i s t r a t e o f t h e f i r s t c l a s s /
----- {36}
Notary/Commissioner of Oaths

66. In the present case the petitioner has not filed affidavit in the manner provided by the Form 25 though the contents of para 9 and 31 has been duly verified while filing affidavit in support of election petition.

67. Hon'ble Supreme Court in a case reported in 1999 (9) SCC 386, Jeet Mohinder Singh Vs. Harminder Singh Jassi held that wherever there is pleading of corrupt practice then filing of affidavit in the format provided under Form 25 is mandatory and it shall be necessary to disclose the source of information with regard to corrupt practice.

68. The aforesaid proposition of law with regard to mandatory nature of Form 25 has been affirmed by Hon'ble Supreme Court in a case reported in 2000 (8) SCC 191, Ravinder Singh Vs. Janmeja Singh; 2000 (1) SCC 481, R.P. Moidutty Vs. P.T. Kunju Mohammad and 2000 (2) SCC 294, V.Narayanaswamy Vs. Thirunavukkarasu.

69. In view of above, since petitioner had not filed affidavit as provided under Form 25 in compliance of Rule 94 A, the election petition suffers from substantial defect. In spite of lapse of almost four years the petitioner had not tried to rectify the error rather tried to defend his case relying upon the affidavit filed in support of election petition. In the absence of affidavit under Form 25 and non-discloser of source of knowledge or information the related pleadings cannot be _____ {37} taken into account for adjudication of controversy.

OBJECTION BEFORE RETURNING OFFICER

70. Section 36 of the Act provides the manner in which the returning officer shall examine the nomination papers. It also empowers the contesting candidates to file objection against the nomination paper and other candidates.

71. Learned counsel for the petitioner has not invited attention towards any material on record which may indicate that the petitioner had raised objection with regard to nomination of candidates who have been elected in the election in question.

72. Hon'ble Supreme Court in a case reported in AIR 1954 SC 520, Durga Shankar Mehta Vs. Raghuraj Singh (Constitution Bench) held that in case, no objection is raised against the candidature of other candidates the returning officer have got no alternate option but to accept the nomination and such nomination shall deem to be proper acceptance of nomination paper.

73. In 1997 (2) SCC 236, Bhogendra Jha Vs. Manoj Kumar Jha, their Lordship of Hon'ble Supreme Court held that nomination paper shall not ordinarily be rejected for a defect which is not of substantial character. It is the candidates duty to place relevant material before the returning officer.

74. In 1997 (2) SCC 228, Rafiq Khan Vs. Laxmi Narayan Sharma, Hon'ble Supreme court ruled that the substantial defects means the defect at the face of record. In the absence of substantial defect action of official shall presume to be lawful. Their Lordship of _____ {38} Hon'ble Supreme Court in the cases reported in 2003 (4) SCC 399, People's Union for Civil Liberties Vs. Union of India and 2002 (5) SCC 294, Union of India Vs. Association for Democratic Reforms had ruled for introduction of Form 26 and the related affidavit. In the absence of Form 26 filed with the returning officer containing relevant information it shall always be open to returning officer to reject the nomination. Nothing has been brought on record to indicate that how and under what manner in the absence of required information in Form 26 rejection of nomination shall not be lawful.

75. Much emphasis has been given by learned counsel for the respondents with regard to relief claimed by the petitioner and it has been submitted that the relief prayed by the petitioner can not be granted. There appears to be no material information which has been submitted by affidavit in prescribed format to set aside the order passed by the returning officer rejecting the petitioner's nomination paper or set aside the candidature of returned candidates on account of some flaw in their election. In the absence of any material supported with an affidavit in prescribed format the relief claimed by the petitioner does not seem to be sustainable.

CONCLUSION

76. Right to elect or to be elected or to raise dispute against the return candidate are governed by statutory provisions contained in the Representation of People Act and Rules thereunder. The provision contained in the act has got statutory force vide 2002 (3) SCC 521, Michael B Fernandes Vs. C.K.Jaffer Sharief.

_____ {39}

77. While relying upon the judgement of Hon'ble Supreme Court in a case reported in AIR 1996 SC 796 Manohar Joshi Vs. Nitin Bhaurao Patil and another petitioner's counsel tried to defend his case and submitted that once the registry had passed the election petition and found no defect and notices were issued it is not open for this court to reject the election petition while considering the application moved under Section 86 (1) of the Act or under Order 7 Rule 11 and Rule 16. The submission of the learned counsel for the petitioner seems to be misconceived. The defect are discussed hereinabove are fatal and no effort was made by the petitioner's counsel to rectify the

defect. Rather an attempt was made to tamper the courts record which is neither warranted nor justifiable rather it is reprehensible.

78. The judgment relied upon by the petitioner's counsel in the cases reported in AIR 1956 SC 140, Pratap Singh; AIR 1964 SC 1027, Ch. Subbarao; AIR 1972 SC 1302 Raj Narain Vs. Smt. Indira Nehru Gandhi; 2003 (1) SCC 289, Ram Prasad Sharma and 2005 (5) SCC 793, Anil Baluni does not seem to be applicable under the facts and circumstances of the present case. It is not a case where defect is minor but the defect is fatal and remain fatal since no effort was made to rectify the error apparent at the face of record.

79. Relying upon the judgements reported in 1999 (2) SCC 217, H.D.Revanna; 1999 (4) SCC 274, TM Jacob Vs. C. Poulse and others; 2003 (11) SCC 448, Bidesh Singh Vs. Madhu Singh and others; AIR 2005 SC 22, Harcharan Singh Barar Vs. Sukh {40} Darshan Singh and AIR 1964 SC 1545, Murrarka's case(supra) it has been submitted by the petitioner's counsel that the election could not be thrown out merely because of the filing of incorrect affidavit or because of defect which is of trivial nature. Power under sub section 1 of Section 86 can not be exercised by the Court. Argument advanced by the learned counsel for the petitioner seems to be misconceived. In the present case the defect as noticed and discussed hereinabove are fatal and the documentary evidence filed as well as pleading on record can not be taken into account for adjudication of dispute on merit.

80. It has also been stated by the petitioner's counsel that signature over the documents shall be sufficient compliance of statutory provisions and it is not necessary to make an endorsement with regard to attested true copy. Petitioner's counsel relied upon the judgement reported in AIR 1964 SC 1027, Ch. Subbarao Vs. Member, Election tribunal; AIR 1978 SC 840. The submission of petitioner's counsel seems to be misconceived.

81. In the present case a perusal of the election petition shows that initially there was no page number or indication of paper number which seems to be added at later stage without permission of Court as observed hereinabove. Document has been verified by Gazetted Officer Vidhan Sabha U.P. but it does not contain even the signature of petitioner. Though the election petition has been duly signed by the petitioner supported with the affidavit but neither the list of documents nor all the enclosure has been signed by the petitioner to draw an inference that it has been verified in accordance to provision {41} contained in Section 83. Accordingly, these documents may not be taken into account while adjudicating the dispute.

82. Attention has been invited by the respondent's counsel towards the fact that Document Nos. 2,4, 6 to 12, 15 to 23, 31 to 35, 37,38 are seems to have been verified and attested by petitioner with the remark "copy attested dated 13-7-2004". Document Nos. 1,26,28,29,30 are notary affidavits and it does not contain petitioner's signature. Document No. 27 is the nomination paper and it also does not contain signature. Document no. 25 is the Form No. 26 and it does not contain the signature of petitioner. Document nos. 24 and 14 with the heading "nirnay" does not contain the petitioner's

signature and Document nos. 13,5 and 3 contain the petitioner's signature but it seems to photostat copy of the original documents which contains petitioner's signature in the Photostat form. He has not signed these documents while filing the election petition.

82. In the present case, the petitioner had tampered the courts record and filed interpolated copy of Form 26. In the absence of any order passed by the Court in writing it was not open to the petitioner to tamper the courts record by transcribing page numbers. List of documents as well as documents filed with the election petition are the part of the petition cannot be taken into account unless they are verified and filed in accordance to statutory provisions. The petitioner had not approached this Court with clean hand.

83. No affidavit has been filed in Form 25 to substantiate the allegation with regard to corrupt practice pleaded in Para 9 and 31 of _____ {42} the writ petition.

Source of information knowledge with regard to allegation has not been disclosed. No objection was filed by the petitioner against the candidature of return candidate.

84. It has not been disputed that Form 26 was not filed with relevant information required under the Rules. However, while filing the election petition, the certified copy obtained from the returning officer have been interpolated by adding the numbers "2 & 3".

85. In view of above, the petitioner has been failed to disclose material information and also failed to correct the defects in spite of lapse of almost four years though the objection was filed and raised by the respondents long back. The defect in the election petition are fatal, hence, applications are liable to be allowed.

86. Though both the sides have raised certain other grounds and cited number of cases to defend their cause, but it is not necessary to consider other grounds and arguments raised by the parties' since the reasons discussed hereinabove are sufficient to allow the applications and in consequence dismiss the election petition.

87. From the facts and circumstances discussed in the presiding paras, conduct of the election petitioner has been found to be reprehensible. He had interpolated the court's record and filed forged documents to assert his claim. Accordingly, while allowing the applications and dismissing the election petition the petitioner is liable to pay cost.

88. In view of above, these applications are allowed in consequence thereof the election petition is dismissed with cost quantifies to Rs .

_____ {43} 50,000/- which shall be deposited in this Court within a period of three months and shall be remitted to the Mediation Center, Lucknow Bench of Allahabad High Court. In case, the cost is not deposited within the aforesaid period, it shall be recovered as arrears of land revenue by District Magistrate concern. Registry to take follow up action.

[Justice Devi Prasad Singh] 22nd January, 2010 Madhu
