

Mohammad Aslam @ Mohammad Aslam Raeeni vs Shri Ram Feran @ Ram Feran Pandey on 11 January, 2024

Author: Rajesh Singh Chauhan

Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2024:AHC-LK0:3005

AFR

Reserved

Court No. - 11

Civil Misc. Application/I.A. No.2 of 2022

In re;

Case :- ELECTION PETITION No. - 3 of 2022

Petitioner :- Mohammad Aslam @ Mohammad Aslam Raeeni

Respondent :- Shri Ram Feran @ Ram Feran Pandey

Counsel for Petitioner :- In Person, Mohd. Altaf Mansoor, Tanay Chaudhary

Counsel for Respondent :- Rajeiu Kumar Tripathi, Lalta Prasad Misra, Rajeiu Kumar Tripathi

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Dr. L.P. Misra, assisted by Sri Rajeiu Kumar Tripathi, learned counsel for the respondent on the objections so raised against the maintainability of the election petition and Mohd. Altaf

Mansoor, assisted by Sri Tanay Chaudhary, learned counsel for the election petitioner.

2. Since learned counsel for the respondent has submitted that his application for rejection/dismissal of the election petition may be considered as an application filed under Order VII Rule 11 CPC, therefore, that application which is bearing Civil Misc. Application/ I.A. No.2 of 2022 is being decided by means of the following order.

3. This is an election petition filed by Mohammad Aslam alias Mohammad Aslam Raeeni, the petitioner, through his counsel Mohd. Altaf Mansoor challenging the declaration of election dated 10.03.2022 issued by Returning Officer of 290-Shrawasti Constituency in the General Elections Uttar Pradesh- 2022 in favour of the respondent as duly elected Member of the State Legislative Assembly mainly on the ground of non-disclosure of criminal cases, non-disclosure of complete assets in the nomination paper, inconsistent educational qualification and inconsistent age in the nomination paper and other documents.

4. Notices were issued to the respondent in terms of Chapter XV-A Rule 5 & 6 of the Allahabad High Court Rules, 1952 on 21.04.2022. As per office report dated 24.05.2022, the election petitioner had made compliance of Rules 5 & 6 of the High Court Rules inasmuch as to serve notice upon the respondent. Notices through registered AD post has been issued. The notice was published in "Dainik Jagran" Hindi Newspaper. Besides, the notice has been sent through ordinary post. Hence, service of notice is sufficient in the light of Order V Rule 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") upon the respondent. On 30.05.2022, Sri Rajeiu Kumar Tripathi has filed Vakalatnama on behalf of the respondent. On 01.08.2022, an application for rejection/dismissal of the election petition has been filed by Dr. L.P. Misra alongwith Sri Rajeiu Kumar Tripathi, learned counsel for the respondent. On 17.08.2022, Mohd. Altaf Mansoor alongwith Sri Tanay Chaudhary has filed application for dismissal of the application filed by the respondent. On 01.11.2022, Dr. L.P. Misra has submitted that the application for rejection/dismissal of the election petition may be considered as application filed under Order VII Rule 11 of CPC. He has further submitted that the election petition is not maintainable inasmuch as there are some apparent defects in the election petition and those defects may be removed, if the election petitioner files any appropriate application to that effect. Mohd. Altaf Mansoor has submitted that he shall not file any application seeking cure of the defects, which have been pointed out by Dr. L.P. Misra.

5. Before advertng to the objections so raised by learned counsel for the respondent and reply thereto by learned counsel for the election petitioner, it would be pertinent to reproduce some relevant sections of the Representation of the People Act, 1951 (hereinafter referred to as "the Act" in short). Sections 8, 8-A, 33-A, 36 (6), 36 (8), 81, 82, 83, 86, 125-A of the Act and Rule 94-A of the Conduct of Elections Rules, 1961 are as under:-

"8. Disqualification on conviction for certain offences.-- [(1) A person convicted of an offence punishable under--

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to

maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) or the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of section 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub-section (2) of section 136 (offence of Fraudulently defacing or fraudulently destroying any nomination paper) of this Act; [or] [(j) section 6 (offence of conversion of a place or worship) of the Places of Worship (Special Provisions) Act 1991], [or] [(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971);] [or] [(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002),] 5 [shall be disqualified, where the convicted person is sentenced to--

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.] (2) A person convicted for the contravention of--

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 6 [1961 (28 of 1961)];, 8 [***] and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.] [(4)] Notwithstanding anything 2 [in sub-section (1), sub-section 2 and sub-section (3)] a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation.--In this section--

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for--

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be brought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodities Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

[8A. Disqualification on ground of corrupt practices.--(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, 4 [as soon as may be within a period of three months from the date such order takes effect], by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.] [33A. Right to information.--(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether--

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]

36. Scrutiny of nominations.--

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

[(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.]

81. Presentation of petitions.--(1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the 8 [High Court] by any candidate at such election or any elector 9 [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 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.

[Sub-section (2) omitted by Act 47 of 1966, sec 39 (b) (w.e.f. 14-12-1966)] [(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.] [82. Parties to the petition.--A petitioner shall join as respondents to his petition--

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.] [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) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.--For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be

recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.] [125A. Penalty for filing false affidavit, etc.--A candidate who himself or through his proposer, with intent to be elected in an election,--

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]"

[94A. Form of affidavit to be filed with election petition.--The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.]"

6. Learned counsel for the respondent has submitted that an election petition must contain the 'concise statement of material facts' capable of giving rise to a triable issue. He has further contended that the petitioner did not disclose 'concise statement of material facts'. Further, the election petition nowhere discloses that the respondent had knowledge about pendency of case; "having knowledge of the pendency of a criminal case is sine- qua-non of any disclosure if there is any material". Neither does the election petition disclose nor state that the offences mentioned in para 44 of the election petition falls within the ambit of Section 33-A (1)(i) of the Act. Offences mentioned in para 45 of the election petition does not at all disclose that the same falls within the ambit of Section 33-A (1)(ii) of the Act.

7. Learned counsel for the respondent has further submitted that the election petition does not contain "material particulars" which are mandatory to be stated as per Section 83(1) of the Act. There is no particulars about date, time, place or the victims of offences as mentioned in paras 44 & 45 of the election petition. No material particulars regarding 'undue influence' such as name and address of person so allegedly influenced and day, date, time and place of such influence is mentioned in election petition. Further, in reply to the allegations under Section 123 of the Act of 'undue influence' through 'corrupt practices' by respondent, the "material facts" with corresponding "material particulars" are lacking in election petition.

8. Therefore, in nutshell, the submission of the respondent's counsel is that the election petition lacks concise statement of material facts and full particulars of corrupt practice have not set forth as mandated by Section 83 (1) of the Act, therefore, the same shall be a petition without cause of action. Further, there was no factual foundation laid for the alleged corrupt practice and the election

petition is, therefore, liable to be dismissed. In support of his aforesaid arguments, learned counsel for the respondent has placed reliance upon the judgments of the Apex Court in re; Jyoti Basu and Others v. Debi Ghoshal and Others (1982) 1 SCC 691, Mithilesh Kumar Pandey v. Baidyanath Yadav and Others, (1984) 2 SCC 1, V. Narayanaswamy v. C.P. Thirunavukkarasu, (2000) 2 SCC 294 and Hari Shanker Jain v. Sonia Gandhi, (2001) 8 SCC 233.

9. In the case of V. Narayanaswamy (supra), Hon'ble Apex Court observed in para-23 as under:-

"23. It will be thus seen that an election petition is based on the rights, which are purely the creature of a 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 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 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 the 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 the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition."

10. Replying the aforesaid contention of the learned counsel for the respondent, learned counsel for the election petitioner highlights that the respondent nowhere mentioned in his application for rejection/ dismissal of the election petition that he had no knowledge about the cases, but he has only stated that the petitioner had not claimed that respondent has knowledge. Secondly, he submits that Section 33A (1)(ii) of the Act does not provide an exhaustive list of disclosures that are required to be filled with affidavit. He further submits that Form-26 as provided under Rule 4A of the Conduct of Elections Rules, 1961 which is required to be filed along with election papers does not refer to Section 33A of the Act while seeking disclosure of pending criminal cases against the petitioner. He submits that whether offence requires to be disclosed or not, is a matter of trial and cannot be decided at this stage. Learned counsel for the petitioner has stated that cause of action has been disclosed in para-37 of the election petition.

11. On that, learned counsel for the respondent has submitted that the petitioner has not approached the Court with clean hands and the election petition contains false statements and material facts have been concealed. Case No.2262 of 2003 was not pending against the respondent at the time of filling of nomination paper inasmuch as that as early on 25.06.1996 the case against the respondent was finalised on the basis of confession, as is evident from perusal of page no.358 of the election petition itself.

12. Further, in regard to Case No.65 of 2003, learned counsel for the respondent submits that it is evident from page no.385 of the election petition that the respondent was finally sentenced to a fine of Rs.3,000/- (Rupees Three Thousand only) vide judgment and order dated 06.12.2014 , hence it cannot be said that the case was pending at the time of filling of nomination paper. So far as cases mentioned in para-45 of the election petition for which the respondent is said to be convicted, the respondent submits that the petitioner has not disclosed in the election petition that any of such cases fall within the purview of Section 33-A (1) (ii) of the Act. In support of his contention, learned

counsel for the respondents has referred the judgment of the Apex Court in re; T. Arivandandam V. T.V. Satyapal & Another, (1977) 4 SCC 467, to state that the election petition containing false statement deserves to be dismissed at threshold.

13. In reply to the aforesaid argument of learned counsel for the respondent, learned counsel for the petitioner has submitted that non-disclosure of criminal antecedents by candidate in itself amounts to corrupt practice under undue influence. He submits that respondent has admitted that there existed a criminal case against him and he was aware about it. Further, there is no non-disclosure as the election petition itself includes the final judgement of the conviction of the respondent in the matter. It is pertinent to mention that the very admission of the conviction in the matter would reveal that the respondent was well aware of the existence of such conviction but has willingly chosen not to disclose the same in Form-26 filed along with nomination paper.

14. Further submission of learned counsel for the respondent is that Section 83 (1) (c) of the Act requires the election petition to be signed by the petitioner and verified in the manner specified in the CPC for the verification of pleadings, but there is an absence of proper affidavit and substantial defect in the verification, therefore, the election petition cannot be proceeded on merit. Learned counsel also submits that neither the election petition alone nor the supplementary affidavit has been signed and verified by the petitioner in the manner provided for in Section 83 (1) (c) of the Act read with Order VI Rule 14 and 15(2) of CPC. The petitioner has verified contents of various paragraphs of the election petition as "partly"/ verified on basis of "perusal of record" along with word "partly" and verified on "legal advice" again with word "partly". It is completely unascertainable that which part of such paragraphs with words "partly" has been verified on the basis of "personal knowledge" and which part of such paragraphs on the basis of "perusal of records" and which part of such paragraphs has been verified on the basis of "legal advice". Similar issue is pointed out for affidavit, that it is not in conformity with Form 25 referable to Rule 94-A of the Conduct of Election Rules, 1961. In support of his contention, reliance has also been placed upon the judgments of the Apex Court in re; Saritha S. Nair v. Hibi Eden, (2020) SCC OnLine SC 1006 and A. Manju v. Prajwal Revanna alias Prajwal R and Others, (2022) 3 SCC 269.

15. So as to strengthen his aforesaid arguments, Dr. L.P. Mishra has also cited the judgment of this Court rendered in re: Amit Yadav vs. Kunwar Jayesh Prasad & others, 2016 SCC OnLine All 3013, referring paras-25, 26, 31, 34, 36, 37, 38, 39, 40, 41, 42, 43 & 44 saying that his objections in the present case are more or less similar to the aforesaid case, which read as under:-

"25. The verification of the Election Petition reads as under :

"I, Amit Yadav, the petitioner in the above election petition, do hereby verify that the contents and statements made in paragraph nos. 1, 2, 3, 4, 5 partly, 6 partly, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 partly, 23 partly, 25 partly, 26 partly, 27 partly, 28 partly, 28 partly, 29, 30, 31, 33, 34, 35 partly, 36 partly, 37, 38 partly, 40, 41, 42, 43, 44, 45 and 46 of the election petition are true to my knowledge; and those contained in paragraph nos. 27 partly, 28 partly, 32 and 39 of the election petition are true on the basis of records and those contained in paragraph nos. 6 partly, 22

partly, 23 partly, 24, 25 partly, 26, 35 partly, 36 partly and 38 partly of this election petition are true on the basis of information received by the petitioner from his agents, workers and supporters, which all I believe to be true; and nothing material has been concealed and no part of it is false."

26. Similarly, verification of annexure no. 1, which is a dummy ballot paper, has been made by the election petitioner "as true to my knowledge on the basis of perusal of records, which all I believe to be true". Schedule I setting out the details of the ballot papers which were validly marked in favour of petitioner but are alleged to have been rejected by the returning officer has been verified as "true to my knowledge which all believe to be true." The document is in the form of a chart which contains details of table number, total number of votes in which the mark was made in front of petitioner's name, total number of votes in which the mark was made above the name of petitioner, total of column no. 3 and 4 and names of the petitioner's counting agent.

31. Learned Senior Counsel appearing for the respondent no. 1, the returned candidate pointing out the aforesaid verification contended that the same is not in accordance with the provisions of sub-rule (2) of Rule 15 of Order VI which requires that 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. It was further contended that the verification of annexure-1 as "true to my knowledge on the basis of perusal of records, which all I believe to be true" is not in the manner provided by sub-rule (2) of Rule 15 of Order VI. It was further submitted that verification of annexures and Schedules simultaneously as "true to my knowledge on the basis of perusal of records, which all I believe to be true" cannot be said to be in accordance with the of sub-rule (2) of Rule 15 of Order VI. Similarly, the verification of annexure-3 which is a complaint alleged to have been made by the election petitioner himself to the District Election Officer as "true to my knowledge on the basis of perusal of records, which all I believe to be true" is also not as per the provisions of the Code of Civil Procedure. He further pointed out that various paragraphs of the election petition have been verified by the election petitioner as partly true to his knowledge, partly true on the basis of record and partly on the basis perusal of record and partly on the basis of information received without specifying as to which part of the paragraph is true to the personal knowledge or based on perusal of record or on the basis of information received. He further pointed out that paragraph 5 of the election petition has been partly verified as true to my personal knowledge without specifying which part and the remaining part has not at all been verified and thus the election petition is liable to be rejected for defective verification.

34. The issue came up for consideration before the Hon'ble Apex Court in the case of F.A. Sapa v. Singora and others, After analyzing the provisions of Order VI Rule 15 C.P.C. and the provisions of the Act, 1950, in paragraphs 19 & 20, it has been held as under :

"19. That brings us to clause (c) of sub-section (1) of section 83 which provides that an election petition shall be signed by the petitioner and verified in the manner laid down by the Code for the verification of the pleadings. Under section 83 (2) any schedule or annexure to the pleading must be similarly verified. Order 6 Rule 15 is the relevant provision in the Code. Sub-rule (2) of Rule 15 says that the person

verifying shall specify with reference to the numbered paragraphs of the pleading, what he verifies on his own knowledge and what he verifies upon information received and believed to be true. The verification must be signed by the person making it and must state the date on and the place at which it was signed. The defect in the verification can be (i) of a formal nature and not very substantial (ii) one which substantially complies with the requirements and (iii) that which is material but capable of being cured. It must be remembered that the object of requiring verification of an election petition is clearly to fix the responsibility for the averments and allegations in the petition on the person signing the verification and at the same time discouraging wild and irresponsible allegations unsupported by facts. Then comes the proviso which provides that in cases where corrupt practice is alleged in the petition, the petition shall also be supported by an affidavit in the prescribed form i.e. Form No. 25 prescribed by Rule 94A of the Rules. Lastly sub-section (2) of section 83 lays down that any schedule or annexure to the petition shall also be similarly signed and verified. Two questions arise: (i) what is the consequence of a defective or incomplete verification and (ii) what is the consequence of a defective affidavit? It was also said that the verification clause in regard to averments or allegations based on information ought to disclose the source of information which had not been done in this case.

It must at the outset be realised that section 86 (1) which lays down that the High court 'shall' dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 does not in terms refer to section 83. It would, therefore, seem that the legislature did not view the non-compliance of the requirement of section 83 with the same gravity as in the case of section 81, 82 or 117. But it was said that a petition which does not strictly comply with the requirements of section 83 cannot be said to be an election petition within the contemplation of section 81 and hence section 86 (1) was clearly attracted. In *Murka Redhey Shyam v. Roop Singh Rathore*, one of the defects pointed out was that though the verification stated that the averments made in some of the paragraphs of the petition were true to the personal knowledge of the petitioner and the averments in some other paragraphs were verified to be true on advice and information received from legal and other sources, the petitioner did not in so many words state that the advice and information received was believed by him to be true. The Election Tribunal held that this defect was a matter which came within section 83 (1) (c) and the defect could be cured in accordance with the principles of the Code. This Court upheld this view in the following words (at p. 1549 of AIR) :

"It seems clear to us that reading the relevant sections in Part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings as required by Cl. (c) of sub-section (1) of S. 83 is fatal to the maintainability of the petition."

It is thus clear from this decision which is binding on us that mere defect in the verification of the election petition is not fatal to the maintainability of the petition and the petition cannot be thrown out solely on that ground. As observed earlier since section 83 is not one of three provisions mentioned in Section 86 (1), ordinarily it cannot be construed as mandatory unless it is shown to an integral part of the petition under Sec. 81. "

Again in paragraph 33 of the said reports, it has been observed as under :

"33. Although we have come to the conclusion that the defect in verification is not fatal and can be cured, no attempt has been made by the election petitioners to cure the same nor has the High Court directed the petitioners to do so. By way of a sample our attention was drawn to the election petition No. 7 of 1989 which has given rise to Civil Appeal No. 179 of 1991. The said petition had 47 paragraphs besides the prayer clause. The verification clause shows that paragraphs 1, 2, 4, 5, 18, 19, 28, 35, 30, 33, 36, 38, 41 to 47 of the election petition are on knowledge whereas paragraphs 7 to 15, 20, to 24 , 26, 27, 29, 32, 34, 37, 40 and 41 are on information received and believed to be true. It will be seen from the above that paragraphs 3, 6, 16, 17, 25, 31 and 39 are not verified at all. It was submitted by counsel for the appellants that paragraph 3 contained vital allegations regarding corrupt practice and since that paragraph has not been verified at all, the appellant is likely to be handicapped at the trial. It was contended that such was the position in as many as six petitions if not more. Further some of the paragraphs, e.g., 41 are verified under both heads of the verification clause, thereby causing confusion. In the affidavit sworn in compliance of the proviso to Section 83 (1), it is stated that particulars and details of corrupt practice are contained in paragraphs 4 to 40 of the election petition. Then the petitioner states that what he has alleged by way of corrupt practice in the election petition is correct 'to the best of my knowledge and to the information received by e and believed by me to be true'. It is thus not clear which allegation of corrupt practice is based on his knowledge and which information he believes to be true. Besides when this affirmation is compared with the verification clause of the election petition, the confusion is worst confounded. Similar is the case with the verification of the annexures. There, therefore, considerable force in the submission of the learned counsel for the appellants that even if the High Court concluded that the defect in verification/affirmation was not fatal, the High Court ought to have directed the petitioners to cure the defects within the time stipulated by it so that the appellants would know the exact position before the trial and would not be taken by surprise. We think the High Court committed an error in failing to give appropriate directions in the matter. More or less similar defects are also found in the verification/affirmation clause in the other election petitions/affidavits. We would, therefore, request the High Court to issue directions to the election petitioner of each petition to remove the defects within such time as it may allow and if they or any of them fail to do so, pass appropriate consequential orders in accordance with law.

36. However, on a careful perusal of consideration in F.A. Sapa (Supra), in my opinion, the law laid down by the Hon'ble Apex Court is not confined only to such petition where corrupt practice is alleged. It also deals with the defect in the verification of the petition as required by Order 6 Rule 15 C.P.C. and the consequence thereof and it has been held that mere defect in verification of the election petition is not fatal to the maintainability of the petition and the petition cannot be thrown out solely on that ground but rather an opportunity is to be provided to the election petitioner to remove the defect failing which the consequence shall follow. This becomes clear from the observations made in the paragraph 33 of the reports :

"More or less similar defects are also found in the verification/affirmation clause in the other election petitions/affidavits. We would, therefore, request the High Court to issue directions to the election petitioner of each petition to remove the defects within such time as it may allow and if they or any of them fail to do so, pass appropriate consequential orders in accordance with law."

37. The aforesaid view taken by me finds support from a subsequent decision of the Hon'ble Apex Court in the case of R.P. Moiduty vs. P.T. Kunju Mohammad . The said decision was rendered after considering the ratio of the decision in the case of F.A. Sapa (Supra). After considering the defect in the verification clause of the election petition which was more or less similar to the defect in verification of the pleadings in the case in hand, it was observed in paragraph 34 & 35 as under :

"34. The verification of the petition does not even satisfy the requirement of Order 6 Rule 15 CPC. The verification reads as under :

"VERIFICATION I, R.P. Moidutty, s/o Abubakker Haji, aged 54, petitioner in the above election petition do hereby declare that the averments in paras 1 to 17 are true and made from personal knowledge and on the basis of personal enquiry I believe that all the averments made in paras 1 to 17 are true.

Signed and verified on this the 21st day of June, 1996.

sd/-

Petitioner"

38. All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in F.A. Sapa v. Singora, the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured (see Murarka Radhey Shyam Rm Kumar v. Roop Singh Rathore

and A.S. Subbaraj v. M. Muthiah). 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....."

39. After making the aforesaid observations that unless the defect in verification of the petition is not rectified it cannot go for trial, the Hon'ble Apex Court further observed that in the case where allegation of corrupt practice has been made and affidavit, as required by provisions of Section 83 of the Act, 1950, is not filed in the required form, the same could not have been enquired into and tried at all.

40. The same view has again been reiterated by the Hon'ble Apex Court in the latest decision in the case of P.A. Mohammad Riyas vs. M.K. Raghavan & others, (2012) 5 SCC 511 and holding that although Section 83 of the Act, 1950 has not been mentioned in sub-section (1) of Section 86, in the absence of proper verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the election petition remained incomplete. In the said case before the Hon'ble Apex Court, although allegations of corrupt practice was made by the election petitioner against the returned candidate but the petition itself was not verified in the manner specified in Order VI Rule 15 of the Code as it was not accompanied by an affidavit as required by clause (4) of the said Rule. The argument advanced that since there was already an affidavit with respect to corrupt practice alleged in the petition as required by proviso to Section 83 (1) (c) of the Act, 1950 and filing of two separate affidavit; one under Order VI Rule 15(4) of the Code and other under the provisions of Section 83 (1) of the Act in respect of the same matter would render one of them otiose was rejected by the Hon'ble Apex court and it was held that the cause of action cannot be said to be complete in the absence of proper verification as contemplated in Section 83. The Hon'ble Apex Court held that the defect was curable but since opportunity to cure the defect was not availed, the judgment of the High Court dismissing the election petition was upheld and the appeal was dismissed. It may be relevant to quote the paragraph 46 & 47 of the reports, which reads as under :

"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 and the various other cases cited by Mr. P.P. Rao.

47. In our view, the objections taken by Mr. P. P. Rao must succeed, since in the absence of proper verification as contemplated in Section 83, it cannot be said that

the cause of action was complete. The consequences of Section 86 of the 1951 Act came into play immediately in view of sub-section (1) which relates to trial of election petitions and provides that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act. Although Section 83 has not been mentioned in sub-section (1) of Section 81, in the absence of proper verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the election petition remained incomplete. The petitioner had the opportunity of curing the defect, but it chose not to do so."

41. Reference in this regard may also be made to another decision of the Hon'ble Apex Court in the case of *Regu Mahesh v. Rajendra Pratap Bhanj Dev & another*. In the said case, an application was filed by the returned candidate before the Election Tribunal under Order VI Rule 16 and under Order VII Rule 11 of the Code and Section 83 of the Act, 1950 praying for rejection of the election petition. One of the ground taken in the said application was that verification done did not confirm the requirements as laid down in the Statute. One of the reasons for dismissal of the election petition by the Tribunal was that verification was extremely vague and it was not stated that what was the source of information, on which the pleadings were based and which part really was on the basis of personal knowledge and information was also not indicated. The Hon'ble Apex Court after noticing the provisions of Order VI Rule 15 of the Code observed that sub-rule (2) of Rule 15 prescribes, a person making a verification is required to specify by reference to the numbers of paragraphs of the pleadings what he believes on his own knowledge, and what he reveals upon information received and believed to be true. This, admittedly, was not done in the said case. After noticing the ratio of the decision of *F.A. Sapa (Supra)*, *H.D. Revana v. G. Puttaswamy Gowda* and *Vijay Laxmi Sadho (Dr) v. Jagdish* in paragraph 12, 15 & 16, it has been held as under:

"12. It is, therefore, a settled position in law that defect in verification or an affidavit is curable. But further question is what happens when the defect is not cured. There is a gulf of difference between a curable defect and a defect continuing in the verification affidavit without any effort being made to cure the defect."

15. The case at hand has great similarity with the decision in *R.P.Moidutty's case (supra)*. Not only defects in the verification/affidavit were pointed out, but they were pressed into service seeking dismissal of the election petition. The appellant stated in his reply that he was filing separate petition with permission for leave of the High Court for amending the verification. But that was not done and the appellant continued to stick to his stand that since corrupt practice was not alleged, there is no need for making any amendment. The importance of verification has been noted by this Court in several decisions. In *Virendra Kumar Saklecha v. Jagjiwan and Ors.*, it was noted as under:

"The importance of setting out the source of information in affidavits came up for consideration before this Court from time to time. One of the earliest decisions is *State of Bombay v Purushottam Jog Naik (AIR 1952 SC 317)* where this Court endorsed the decision of the Calcutta High Court In *Padmabati Desi v. Rasik Lal Dhar (ILR) 37 Cal. 259* and held that the sources of information should be clearly

disclosed. Again in Barium Chemicals Ltd. and Anr v. Company Law Board and Ors.. (AIR 1967 SC 295) this Court deprecated slipshod verifications in an affidavit and re-iterated the ruling of this Court in Bombay's case (supra) that verification should invariably be modeled on the lines of Order 19, Rule 3 of the Code 'Whether the Code applies in terms or not'. Again in A.K.K. Nambiar v. Union of India and Anr. (1969 (3) SCC 864), this Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the source of information. The other point of view is that the election petition will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered".

16. The Constitution Bench in State of Bombay v. Purushotham (AIR 1952 SC 317) noted as follows:

"The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modeled on the lines of Order 19, Rule 3 of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the source of information should be clearly disclosed. We draw attention to the remarks of Jenkins C.J. and Woodroffe, J, in Padmabati Dasi vs. Rasik Lal Dhar (37 Cal. 259) and endorse the learned Judges' observations". "

42. The law thus stand settled by the pronouncement of the Hon'ble Apex Court that in view of the provisions of Section 83 (1) (c) of the Act, 1950, an election petition is required to be verified in the manner as laid down in Order VI Rule 15 of the CPC for verification of the pleadings. Any such defect is curable. But in case the petitioner does not choose to remove the defect and persists in pursuing the petition without proper verification, such an election petition is liable to be dismissed at the threshold.

43. In the case in hand, as already noticed above, the verification clause of the election petition as well as schedule and annexures is not in accordance with the provision of Order VI Rule 15 and unless the defect in verification is rectified, the petition cannot be tried. Despite a specific objection in this regard having been pressed into service seeking dismissal of the election petition and the petitioner having contended that the defect is curable, neither any effort has been made to cure the defects nor any time has been sought for the said purpose. On the contrary, after the argument on this issue was over on 29.1.2015, hearing on issue no. 3 and 4 and the application under Order VI Rule 16 and Order VII Rule 11 continued till 31.10.2015 and also during the period the judgment was reserved, the petitioner neither made any effort to remove the defect in verification nor has made any prayer for grant of time for the purpose.

44. It is settled legal position by authoritative pronouncements that statutory requirement prescribed under the Statute relating to elections have to be strictly adhered and followed. Since election disputes are statutory proceedings unknown to common law and thus doctrine of equity does not apply to election disputes. All the technicalities prescribed under the Statute have been provided to safeguard the purity of election and the courts are under an obligation to enforce them with all rigours and not to dilute them. In view of above, on account of continuing defect in verification of the petition, the annexures and the schedule attached thereto, the petition cannot be said to be in compliance of provisions of Section 83 of the Act, 1950 and thus the cause of action remains incomplete, and the election petition is liable to be dismissed at the threshold and it is not necessary to enter into and examine the merits of other rival contentions advanced on behalf of contesting parties on two issues and applications."

(emphasis supplied)

16. The proviso to Section 83 (1) (c) of the Act requires a separate affidavit to be filed in Form 25 in support of each allegation of corrupt practice made in the election petition. Learned counsel for the respondent submits that in the instant case, the affidavit which has been filed is not at all in conformity with Form 25 referable to Rule 94-A of the Conduct of Election Rules, 1961.

17. Replying the aforesaid contention of the learned counsel for the respondent, learned counsel for the petitioner has submitted that verification of pleadings as mandated by CPC does not specifically bar the use of the word 'partly'. Further, in reply to Form 25, he submits that the Hon'ble Supreme Court in a line of judgements has already held that a defect in Form 25 is not fatal to the election petition and is curable in nature. He has placed reliance upon the judgment of the Apex Court in re; Umesh Challiyill v. K.P. Rajendran, (2008) 11 SCC 740, stating that election petition cannot be dismissed under Section 86 (1) of the Act at the outset on the ground of technical or cosmetic defects. He has also placed reliance upon the judgment of the Apex Court in re; G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776.

18. In addition to the aforesaid submissions, learned counsel for the respondent has also submitted that if there are defects in verification of pleadings and affidavits, on being pointed out, if the defects are refused to be cured, the election petition must fail and be dismissed in limine. Learned counsel has submitted that in the case of V. Narayanaswamy (supra), the Apex Court in para-27 has observed as under:-

"27. ...It is not that the appellant did not have the opportunity to correct his mistake which he could have easily done in the rejoinder filed by him to the counter-affidavit of the respondent or even his reply to the miscellaneous application (OA No. 298 of 1998). He had every opportunity even at that stage to supply the material particulars which admittedly were lacking and also to amend the verification and to file the affidavit in the form prescribed but for reasons best known to him, he failed to do so. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegation of corrupt practice and in the absence of those, the court has jurisdiction to dismiss the

petition. The High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct suo motu the furnishing of better particulars and requiring amendment of the petition for the purpose of verification and filing of proper affidavit. In a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. (See in this connection the Constitution Bench decision in Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani [AIR 1955 SC 610 : (1955) 2 SCR 428] SCR at p. 144.)"

19. Another judgment upon which reliance has been placed by the learned counsel for the respondent is R.P. Moidutty (supra), wherein the Apex Court has held in paragraph 35, which reads as under:-

"35. All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in F.A. Sapa v. Singora [(1991) 3 SCC 375 : AIR 1991 SC 1557] the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured (see Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore [AIR 1964 SC 1545 : (1964) 3 SCR 573] and A.S. Subbaraj v. M. Muthiah [5 ELR 21]). 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 the 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 case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings."

20. Learned counsel for the respondent has also placed reliance upon the judgments of the Apex Court in re; P.A. Mohammed Riyas v. M.K. Raghavan and Others, (2012) 5 SCC 511 [Overruled for this point], Azhar Hussain vs Rajiv Gandhi, 1986 AIR 1253, F.A. Sapa and Others v. Singora and Others, (1991) 3 SCC 375 and C.P. John v. Babu M. Palissery and Others, (2014) 10 SCC 547.

21. Dr. L.P. Misra, learned counsel for the respondent has stated that the objection against maintainability of election petition on the ground of defective verification was raised as back as on

01.08.2022 and despite lapse of more than a year such defects in the verification have not been removed or cured by the election petitioner. An opportunity to cure or remove the defects in verification was given to the election petitioner by this Hon'ble Court but as evident from the order dated 01.11.2022 passed by this Hon'ble Court/ Hon'ble Election Tribunal, the election petitioner declined to cure or remove the defects. The order dated 01.11.2022 is quoted below:-

Heard Dr. L.P. Misra, assisted by Sri Rajeiu Kumar Tripathi, learned counsel for the respondent on his application for rejection/ dismissal of the election petition.

Dr. L.P. Misra has taken grounds regarding maintainability of this election petition to contend that this election petition is not maintainable. He has submitted that the aforesaid application has been filed under Order VII Rule 11 of C.P.C.

Mohd. Altaf Mansoor, learned counsel for the petitioner has submitted that he shall not file any application seeking cure of the defect which has been pointed out by Dr. L.P. Misra."

22. In reply to the aforesaid objections of the learned counsel for the respondent, learned counsel for the petitioner has submitted that the application for dismissal of the election petition is not duly supported by affidavit and the objections of election petition are supported by defective affidavit which was sworn prior to the preparation of the objections by the respondent which render the affidavit invalid. Further, the Hon'ble Apex Court in re; G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, has held that there should be substantial compliance with the statutory format, there is no reason to summarily dismiss an election petition on this ground. An opportunity should be given to the election petitioner to cure the defect. Notably, the election petitioner denied this opportunity stating that his affidavit is in compliance with the format. Similarly, in the case of Saritha S. Nair (supra), the Hon'ble Apex Court has relied upon the judgment in re; Sardar Harcharan Singh Brar v. Sukh Darshan Singh, (2004) 11 SCC 196, wherein the Apex Court held that 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 Section 83 (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86 (1) of the Act would not be attracted to such a case.

23. Learned counsel for the petitioner has stated that it is mandated by the Hon'ble Supreme Court that there should be full disclosure of the material facts by the contesting parties. The election petitioner has reiterated the following as grounds for election petition that (i) non - disclosure of criminal cases (Para 44 & 45); (ii) respondent did not disclose complete assets in the nomination paper; (iii) inconsistent educational qualification (Para 40); and (iv) inconsistent age in the nomination paper and other documents (1965 or 1979).

24. Per contra, Dr. L.P. Misra has stated that omission to state a single material fact would lead to an incomplete cause of action and an election petition without material facts relating to a corrupt practice is not an election petition at all and such omission would amount to non-compliance of the

mandate of Section 83(1)(a) of the Act, which rendered the election petition ineffective.

25. In the case of *R.P. Moidutty v. P.T. Kunju Mohammad and Another*, (2000) 1 SCC 481, the Hon'ble Apex Court in para-17 has observed as under:-

"17. In *Azhar Hussain v. Rajiv Gandhi*, [1986 Supp SCC 315: (1986) 2 SCR 782] the corrupt practice alleged was referable to the returned candidate and as committed at the meetings organised during the election campaign. This Court held that dates and particulars of the meetings should be given so as to eliminate the possibility that witnesses could be procured later on for adducing evidence. In the context of the charge of corrupt practices referable to distribution of certain pamphlets, this Court held that the pleadings should have stated who had distributed the pamphlets when, where and to whom they were distributed and in whose presence. This Court further observed that no amount of evidence could cure the basic defect in the pleadings."

26. However, Mohd. Mansoor has submitted that the Criminal antecedents must be disclosed by candidate and published by the political parties. He placed reliance upon *Lok Pahari V. Election Commission of India and others* (2018) , *Brajesh Singh v. Sunil Arora* (2021) , *Nand Kishore Garg v. Jitendra Singh Tomar* (2020) and *Public Interest Foundation and others V. Union of India and Another* (2015) wherein the Apex Court has held that non-disclosure of criminal antecedents etc. shall be considered as 'undue influence' and it shall render the final result of the returned candidate invalid.

27. Mohd. Altaf Mansoor has stated that Section 86 of the Representative of People Act provides for summary dismissal of election petitions in three eventualities i.e. non-compliance of Sections 81, 82 & 117 of the Act and it cannot be summarily dismissed for non-compliance of Section 83 of the Act.

28. Mohd. Mansoor, learned counsel for the petitioner has also submitted that the respondent has alleged that the verification of the election petition is defective as the election petitioner has verified certain paragraphs partly on the basis of personal knowledge while partly on the basis of record or partly on the basis of legal advice. Replying the aforesaid contention, Mohd. Mansoor has stated that defects pertaining to verification would fall under the domain of Section 83 (1)(c) of the Act. He has further submitted that an Election Petition cannot be dismissed for violation of Section 83 as such an eventuality is not covered under Section 86 of the Act. Further, a dismissal under Order 7 Rule XI can also not be effectuated as the scope of dismissal under Order 7 Rule XI is limited to sub-Rule (a) read with Section 83(1)(a) of the Act.

29. Further, the object of verifying pleadings is to allow the respondent to know the source of the averments made in a plaint. In the instant matter, the respondent has not filed any written statement and therefore it cannot be said that any prejudice has been caused to him due to an alleged defective verification.

30. Mohd. Mansoor has also submitted that defect under Section 83(1) (c) of the Act is not fatal to the Election Petition as it is not a ground for dismissal under Section 86 or Order 7 Rule XI (a). This

position has been accepted by the Apex Court in a line of judgments such as *Sardar Harcharan Singh Brar v. Sukh Darshan Singh and Ors.*; (2004) 11 SCC 196, *G. Mallikarjunappa and another v. Shamanur Shiv Ashankarappa and ors.*; (2001) 4 SCC 428 and *Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others*; (2012) 7 SCC 788 and has culminated in the larger Bench decision of the Hon'ble Supreme Court in the case of *G.M. Siddeshwar v. Prasanna Kumar*; (2013) 4 SCC 776, which has settled this position of law.

31. Mohd. Mansoor, learned counsel for the petitioner has further submitted that the defect in Form-26 are not a ground for challenge under the provisions of the RP Act and, the Election Petition is barred by estoppel as no objections were raised at the stage of scrutiny regarding defects in Form-26.

32. Mohd. Altaf Mansoor, learned counsel for the petitioner has lastly submitted that the respondent has raised objection to the format of Form-25 filed along with the instant election petition alleging that it is not as per format of the 1961 Rules. In the case of *G.M. Siddeshwar Vs. Prasanna Kumar*; (2013) 4 SCC 776, a reference was made to a larger Bench of the Hon'ble Supreme Court regarding the requirement of an affidavit in Form-25 along with the requirement of an affidavit under Order 6 Rule XV (4) of the CPC. The Hon'ble Supreme Court held that the amendment of Order 6 Rule XV of CPC cannot be read into the R.P. Act. The Hon'ble Supreme Court while considering the issue laid down doctrine of substantial compliance has held that as long as the averments made in the election petition were on oath and the allegations vis-a-vis corrupt practice were on oath, the format of the affidavit cannot come in the way and cannot lead to a summary dismissal of the election petition. The Hon'ble Supreme Court while laying down the doctrine of substantial compliance also held that there is no requirement of filing two affidavits and even if one composite affidavit is filed along with election petition, the same would be enough. The Hon'ble Supreme Court relied on the doctrine of substantial compliance while holding that the requirement of filing an affidavit is to hold down the election petitioner to his words in case of allegations of corrupt practice so that he may not shy away from the same during the trial. It is substance of the affidavit that has to be seen by the Hon'ble Court and not the format. In the present petition, the election petitioner has filed two affidavits, one in Format-25 while the other as per the format of Chaptr 4 of the Allahabad High Court Rules. Therefore, it cannot be said that the election petitioner at any stage would shy away from the averments made in the election petition itself. The stand taken by the Hon'ble Supreme Court in the case of *G.M. Siddeshwar (supra)* is also reflected in a line of judgments such as *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Ors* (2004) 11 SCC 196 [para-14-15], *G.Mallikarjunappa and another Vs. Shamanur Shiv Ashankarappa and Ors.* (2001) 4 SCC 428 (paras-1, 7) and *Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and others* (2012) 7 SCC 788 (paras, 1, 20-22, 26, 28-31).

33. Heard learned counsel for the parties and perused the material available on record.

34. Though Mohd. Altaf Mansoor has argued so many points which not only touch the points of maintainability but the merits of the election petition also, yet, to me, the main question at this stage would be as to whether the High Court can dismiss the election petition, which does not comply with the provisions of Sections 81 or Section 82 or Section 117 of the Act in view of the provisions of

Section 86 of the Act or the election petition can be dismissed if the compliance of Section 83 of the Act has not been done in its letter and spirit.

35. Considering the aforesaid arguments, as per my considered opinion, if this question is decided against the election petitioner then there would be no need to go into the merits of the issue inasmuch as the merits of the issue can only be appreciated when the objections against the maintainability of petition so raised by the respondent are rejected. Not only the above, when the aforesaid objections are to be decided first, there is no substance on the arguments of Mohd. Altaf Mansoor that written statement has yet not been filed by the respondent as it would be seen at the time of appreciation of election petition on merits.

36. This has been admitted at the Bar that so as to answer the aforesaid question, the Apex Court in re; G.M. Siddeshwar (supra) has given an exhaustive guidelines and the aforesaid judgment is still holding the field and the same has consistently been followed by the Apex Court and by the other High Courts of the country till date.

37. In para-2 in re; G.M. Siddeshwar (supra), the Apex Court has held that if there is any defect in the contents of the election petition, an opportunity must be given to the election petitioner to cure the defects. Para-2 of the aforesaid judgment reads as under:-

"2. 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 25 prescribed by the Conduct of Elections 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."

[Emphasis supplied]

38. The Apex Court has clearly held that 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 with the provisions of Section 83 thereof but if the affidavit has not been filed properly or the verification thereof is defective, then the election petitioner may be given opportunity to cure the defect, as such defect cannot be held fatal to the maintainability of the election petition. Paras 37, 39, 52 & 62 of the judgment in re; G.M. Siddeshwar (supra) read as under:-

"37. 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.

39. 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 with the provisions of Section 83 thereof. This was briefly adverted to in *Hardwari Lal v. Kanwal Singh* [*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 CPC. The contention urged in *Hardwari Lal* [*Hardwari Lal v. Kanwal Singh*, (1972) 1 SCC 214] 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 with 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 CPC to the trial of suits, an election petition could nevertheless be dismissed if it did not disclose a cause of action.

52. 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.

62. 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 25 and with a defective verification were curable defects and that an opportunity ought to be granted to Prasanna Kumar to cure the defects."

[Emphasis supplied]

39. It would be pertinent to indicate here that on 01.11.2022, learned counsel for the respondent has pointed out the apparent and feasible defects in the election petition by submitting that such election petition has not been filed in compliance of Section 83 of the Act but submitted that those defects are curable in nature, therefore, the election petitioner may be given an opportunity to cure such defects by filing any appropriate application. However, learned counsel for the election petitioner has stated that he shall not be filing any application seeking cure of the defects, which have been pointed out by the learned counsel for the respondent. The aforesaid fact has been considered by this Court in its order dated 01.11.2022.

40. Therefore, at least, it is clear that some defects were pointed out by the learned counsel for the respondent and those defects have been elaborated in the application/objections filed by the learned counsel for the respondent against the maintainability of the present election petition but learned counsel for the election petitioner refused to file any application seeking cure of those defects. So, it

will have to be seen as to whether those defects are fatal to the maintainability of the election petition inasmuch as the Apex Court in re; G.M. Siddeshwar (supra) has held that although non-compliance with the provisions of Section 83 of the Act is curable defects, yet there must be substantial compliance therewith and if there is total and complete non-compliance with the provisions of Section 83 of the Act, the petition cannot be described as an election petition and may be dismissed at the threshold.

41. It would be pertinent to reproduce the affidavit filed by the petitioner in support of the election petition, which reads as under:-

"AFFIDAVIT IN SUPPORT OF ELECTION PETITION (In support of pleadings of the Election Petition as required under Order VI Rule 15(4) of The Code of Civil Procedure r/w Chapter XV-A of the Allahabad High Court Rules, 1952) 1, Mohhamad Aslam @ Mohhamad Aslam Raeeni, aged about 58 years, son of Mohammad Jahoor, resident of Village - Poore Khairi, Post Office Bhinga, District - Shrawasti, permanent resident of Keshav Nagar, Bhinga Dehat, Bhinga, District - Shrawasti, Religion - Muslim, Qualification - LL.B., Profession - Business, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the sole petitioner himself who is challenging the election of the returned candidate/ respondent and is fully conversant with the facts and circumstances of the case and, as such, fully competent to swear this affidavit.;

2. That the contents of the accompanying election petition under Section 80, 80-A/81 of the Representation of People Act, 1951 and paras 5, 6 (partly), 7 (partly), 8 (partly), 9, 10 (partly), 11 (partly), 12 (partly), 13 (partly), 15, 16, 17 (partly), 18 (partly), 19 (partly), 20 (partly), 21, 22 (partly), 23 (partly), 24 (partly), 25, 26, 27 (partly), 28, 29, 30 (partly), 31 (partly), 36 (partly), 38 (partly), 39 (partly), 40 (partly), 41 (partly), 42 (partly), 43 (partly), 44 (partly), 45 (partly), 46 (partly), 47 (partly), 48 (partly), 49 (partly), 50 (partly), 51 (partly), 52 (partly), 53 (partly), 54 (partly), 55 (partly), 56 (partly), 57 (partly), 58 (partly), 59, 60 (partly), 61 & 62 of this election petition are true to my personal knowledge that those of paras 1, 2, 3, 4, 5, 6 (partly), 7 (partly), 8 (partly), 10 (partly), 12 (partly), 17 (partly), 18 (partly), 19 (partly), 20 (partly), 22 (partly), 24 (partly), 27 (partly), 30 (partly), 36 (partly), 37, 38 (partly), 40 (partly), 41 (partly), 42 (partly), 44 (partly), 45 (partly), 49 (partly), 50 (partly), 51 (partly), 52 (partly), 53 (partly), 54 (partly) & 60 (partly) of this election petition are true and based on the records received and believed to be true and paras 6 (partly), 11 (partly), 13 (partly), 14, 23 (partly), 32, 33, 34, 35, 43 (partly), 50 (partly), 56 (partly), 57 (partly) & 58 (partly) of this election petition are based on legal advice and believed to be true and all paras and pleadings are verified.

3. That the Schedule No. 1 to 17 are filed along with accompanying election petition are photocopies of their respective originals, which I believe to be true copies.

Place; Lucknow Sd/-

Date: 18.04.2022

Deponent

Verification

I, the deponent above-named do hereby verify that the contents of paras 1 to 3 of this affidavit is true to my knowledge and no part of it is false and nothing material has been concealed in it, so help me God.

Place; Lucknow Sd/-

Date: 18.04.2022 Deponent"

42. It would be pertinent to reproduce the affidavit of the election petitioner filed in Form-25 in terms of Section 83 (1) of the Act, which reads as under:-

"AFFIDAVIT IN FORM 25 IN TERMS OF SECTION 83(1) OF THE REPRESENTATION OF PEOPLE ACT, 1951 READ WITH RULE 94A OF THE CONDUCT OF ELECTION RULES, 1961.

I, Mohhamad Aslam @ Mohhamad Aslam Raeeni the petitioner in the accompanying election petition calling in question the election of Shri Ram Feran @ Ram Feran Pandey (sole respondent in the said petition) make solemn affirmation/oath and say-

(a) that the statements made in paragraphs 14 (D) of the accompanying election petition about the commission of the corrupt practice of Undue Influence and the particulars of such corrupt practice mentioned in paragraphs 49, 50, 51, 52 of the same petition and in paragraphs....N/A... of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs 14 (D) of the said petition about the commission of the corrupt practice of Undue Influence and the particulars of such corrupt practice given in paragraphs 49, 50, 51, 52 of the said petition and in paragraphsN/A..... of the Schedule annexed thereto are true to my information;

Signature of deponent (Mohhamad Aslam @ Mohhamad Aslam Raeeni)"

43. As it has already been considered while perusing Section 83 of the Act that an election petition shall contain a concise statement of material fact on which the petitioner relies. It shall set-forth full particulars of any corrupt practice that the petitioner alleges including as full statement as possible in the names of parties alleged to have committed such corrupt practice and the date and place of commission of each such corrupt practice. It shall be signed by the petitioner and verified in the manner laid down in the C.P.C. for the verification of pleadings. It shall also be provided in the

Section that where the petitioner has alleged the corrupt practice, the petition shall also be accompanied by an affidavit in a prescribed Form in support of the allegation of such corrupt practice and particulars thereof.

44. The law is trite on the point that the purpose and object of verification by specifying numbered paragraphs as to which of them are verified to be true on the basis of 'personal knowledge' or which are believed to be true on the basis of 'information from other source or sources' and which of them are believed to be true on the basis of 'legal advice' and so on, so as to enable the other side to submit the reply of those statements effectively. In absence of such specified verification, no effective reply can be given by the other side.

45. While perusing the aforesaid affidavits and its verification, it is clear that there are some paras of affidavits, which are partly true to the 'personal knowledge' of the deponent and at the same time, those paragraphs are partly true on the basis of 'records' and also those paragraphs are partly true on the basis of 'legal advice'. Further, since the corrupt practice has been made ground to challenge the election of the respondent, as such, as per clear mandate provided under the proviso to Section 83 of the Act, the election petitioner was obliged to file an affidavit in the prescribed Form in support of allegations of such corrupt practice and particulars of such corrupt practice.

46. Rule 94-A of the Conduct of Elections Rules, 1961 provides Form 25 upon which the affidavit is to be sworn and filed by the election petitioner. Perusal of Form-25 shows that paragraphs (a) & (b) are having similar contents which do not segregate to which paragraphs are affirmed/verified to be true to 'personal knowledge' and as to which paragraph affirmed/verified to be true to the 'information of the election petitioner' and such mandatory requirement, as stated above, has not been complied with by the election petitioner. Therefore, it is clear that the election petition has been filed without proper verification and without the affidavit as required under the C.P.C. and Rules 11 & 12 of Chapter IV of the Allahabad High Court Rules as well as affidavit in Form-25. This Court in re; Amit Yadav (supra), after considering more or less similar and identical defects has observed that unless the defects in verification of the petition are not rectified, the issue cannot go for trial. Accordingly, the election petition so filed by Sri Amit Yadav was dismissed vide order dated 12.02.2016 (supra). This Court in re; Amit Yadav (supra) has held that on account of continuous defects in verification of the petition, the annexures and the scheduled attached thereto, the petition cannot be said to be in compliance of the provisions of Section 83 of the Act and thus, the cause of action remains incomplete and the election petition is liable to be dismissed at the threshold.

47. Though, learned counsel for the election petitioner has argued that the returned candidate/respondent hereto has not disclosed his criminal antecedents strictly in accordance with law while filling up his nomination paper and has also tried to demonstrate some more contents but all those arguments, material, submissions and contents may be seen if the election petition is tried on merits but when it is clear that the election petition cannot be said to be in compliance of the provisions of Section 83 of the Act and the cause of action remains incomplete, the election petition is liable to be dismissed at the threshold and it is not necessary to enter into and examine the merits of other rival contentions advanced on behalf of the election petitioner.

48. In any election petition, there are two stages; first is to verify as to whether the election petition has been filed properly, to be more precise, strictly following the provisions of Section 81 or 82 or 117 of the Act and without ignoring the requirements of Section 83 of the Act read with relevant provisions of C.P.C. and the cause of action should be clear and complete. It is trite that if any election petition does not succeed on this first part, it cannot be sent for its trial on merits. At the same time, the second stage would be if the election petition has been filed in compliance of aforesaid provisions of the Act and the cause of action is complete, then it will qualify to the next stage i.e. the complete trial of election petition on merits. If the election petition fails on its first stage, though there are some arguments of election petitioner to the effect that the returned candidate/respondent of the petition has not furnished his/ her complete detail and has not furnished his/her complete criminal antecedents, yet those submissions may not be tested on merits. In other words, to me, to try any election petition on merits, such election petition will have to qualify the first test, as observed above.

49. In view of the facts and circumstances of the instant case, I am of the considered opinion that this election petition does not qualify the first stage inasmuch as the election petition has not been filed making compliance of the provisions of Section 83 of the Act and the cause of action is incomplete. Therefore, it cannot go for trial and also it is not necessary to enter into and examine the merits of other rival contentions advanced by the learned counsel for the election petitioner.

50. Accordingly, the application for rejection/dismissal of the present election petition filed on behalf of the respondent is allowed and the instant election petition is dismissed.

[Rajesh Singh Chauhan,J.] Order Date :- 11.01.2024 RBS/Suresh/-