

Supreme Court of India

T.M. Jacob vs C. Poulouse & Ors on 15 April, 1999

Author: D A Anand

Bench: A.S.Anand Cji, S.B.Majmudar, V.Manohar Sujata, K.Venkataswami, V.N.Khare

CASE NO. :

Appeal (civil) 14555 of 1996

PETITIONER:

T.M. JACOB

RESPONDENT:

C. POULOSE & ORS.

DATE OF JUDGMENT: 15/04/1999

BENCH:

A.S.ANAND CJI & S.B.MAJMUDAR & V.MANO HAR SUJATA & K.VENKATASWAMI & V.N.KHARE

JUDGMENT:

JUDGMENT DELIVERED BY:

DR. A.S. ANAND, CJI DR. A.S. ANAND, CJI.

This appeal by special leave is directed against an order dated 18th September, 1996 passed by a learned Single Judge of the High Court of Kerala rejecting the application made by the appellant herein seeking dismissal of Election Petition No.8 of 1996 on various grounds. The brief facts are : The appellant (returned candidate) was elected to the Kerala State Legislative Assembly from Priavom Constituency No.79. While the appellant had secured 51873 votes, respondent No.1 (election petitioner) had received 44165 votes. After the result of the election was declared, the first respondent filed Election Petition No.8 of 1996 challenging the election of the appellant alleging that the election of the appellant stood vitiated by commission of various corrupt practices, as detailed in the Election Petition. The Election Petition was resisted by the appellant and on 29.7.1996 the appellant filed his written objections. Various objections were raised but for the purpose of this appeal we are concerned with the objection raised in paragraph 39 of the written objections to the effect that Annexure XV supplied to the appellant was not a true copy of Annexure XV filed with the Election Petition and the election petition was liable to be dismissed on that score alone for non-compliance with the requirements of Section 81(3) of the Representation of People Act, 1951 (hereinafter the Act). Respondent No.4 to the Election Petition also raised a preliminary objection on 30th of July, 1996. That objection however, has no relevance for the present appeal. Respondent No.1 filed his reply to the written objections on 6.8.1996 in which, inter alia, he asserted in paragraph 15 that copy of Annexure XV served on the appellant was a true copy of Annexure XV filed with the Election Petition and that there was no failure on his part to comply with Section 81(3) of the Act. On 6.8.1996, the appellant filed a petition, C.M.P. No.2903 of 1996, praying that the Election Petition be dismissed for non-compliance with the provisions of section 81(3) of the Act. The main objection raised in this petition also centered around Annexure XV, report in the newspaper Rashtra Deepika. Paragraphs 4 and 5 of C.M.P. No.2903 of 1996 read thus : 4. I have

filed my written statement of objections to the Election Petition on 29.7.1996. I have raised a preliminary objection to the maintainability of the petition under section 81(3) of the Representation of the People Act. Section 83 clauses (a) and (b) contemplate that an election petition shall contain a concise statement of the materials and also set forth full particulars of any corrupt practice. So whenever there is an allegation of corrupt practice may be contained in a document and the election petitioner may refer to such document. But when such document should be supplied to the opposite party. It forms an integral part of the election Petition.

5. In this case, the petitioner has produced Annexure XV a daily newspaper Rashtra Deepika to prove one of the corrupt practices. Though a report is mentioned in paragraph 36 of the Election Petition a copy of the report was not served on me. Hence I verified the original petition and found out that the averments in paragraph 36 of the Original Petition and the report in Annexure XV are entirely different. Non supply of the report to me is fatal to the maintainability of the Election Petition as Section 81 (3) of the Representation of the People Act provides for giving a true copy of the Election Petition to the respondent mandatorily. The copy served on this respondent does not tally with the original Election Petition submitted in the court. Even the contents of para 36 of the Election Petition do not tally with the statements made in the newspaper report in Rashtra Deepika filed by the petitioner with the Election Petition as filed in court. As a consequence there is a non-compliance of the requirements provided in section 81(3) of the R.P. Act which entails dismissal of the Election Petition as mandated by section 86 of the R.P. Act.

While C.M.P. No.2903 of 1996 was pending consideration, on 19.8.1996, the appellant filed yet another memo of objection through his Advocate, stating that the copy of the Election Petition served on him was defective. That Memo reads thus : MEMO SUBMITTED BY S. NARAYANAN POTI, ADVOCATE, FOR THE IST RESPONDENT IN THE ABOVE CASE.

I am herewith submitting the copy of the Election Petition No.8 of 1996 served on the 1st respondent for information of the Honble Court, especially copy of the affidavit in form 25 as per Rule 94( ) of the conduct of Election Rules 1961 in order to show that the verification of the Notary Public is not contained therein and therefore the copy is defective. Both the copies served on the 1st respondent are identical.

Respondent No.1 filed his reply both to the above memo as also to C.M.P. No.2903 of 1996 on 2nd of September, 1996. Apart from stating that objection regarding alleged defect in the supply of true copy of the petition had been raised after issues had been framed, it was maintained that the objection contained in the memo filed on 19.8.1996 appears to have been influenced by the observations made by this Court in Dr. (Smt.) Shipra & others v. Shanti Lal Khoiwal & others, (1996) 5 SCC 181 and had no validity. Respondent No. 1 stated in paragraph 3 of his reply : Admittedly in the copy returned by the first respondent the attestation part is conspicuously present. The petitioner has signed the same and the Advocate has also attested the same. Above the word Notary it has been shown as signed. Therefore the petitioner is advised to submit that the first respondent is not entitled to draw comfort from the Supreme Court decision as the affidavit in that case did not contain the attestation part at all. It is also understood that in that case the attestation in the original was done by the Notary by-hand (in manuscript) and therefore understandably the copies did not

contain the solemnisation and attestation by Notary. The present affidavit does not suffer from the grave lapse which was the subject matter of scrutiny before the Supreme Court.

It was further asserted that the petitioner had complied with Rule 94 A as well as form 25 of the Conduct of Election Rules, 1961 (for short the Rules) while filing the affidavit in support of the allegations of corrupt practice and that there had been no breach of section 81(3) of the Act. In paragraph 7 respondent No.1 stated : The petitioner submits that no prejudice has been caused to the first respondent. If he felt any difficulty in the copies supplied to him he would not have ventured into filing a detailed written statement of objections. The petitioner is advised to submit that the first respondent ought to have raised this objection before he filed his written statement of objections it should be presumed that every allegations contained in the E.P. including those pertaining to the allegation of the corrupt practices by the first respondent has been answered by him to his satisfaction in his written statement of objection. Therefore, it has to be understood that the first respondent has taken the copy of the E.P. served on him as an absolutely true copy as he has acted upon it in that manner. After that the first respondent is not entitled to turn back and erase the effect on the efforts he has already made to defend this case by going back in time and raising preliminary objections on maintainability at this stage of the proceeding.

In the circumstances the petitioner most humbly prays that this Honble Court may be pleased to reject the first respondents Memo dated 19-8-1996 on these and other grounds to be urged at the time of hearing duly allowing the continuation of the trial of the E.P.

On 13th August, 1996 at the suggestion of learned counsel for the parties, following additional issue was raised as issue No.1 Whether the Election Petition is liable to be dismissed for the reasons mentioned in C.M.P. 2903 of 1996 ?

In the High Court, in support of issue No.1, learned counsel for the appellant relied upon the judgment of this Court in Dr. Shipras case (supra). It was submitted that the vice which had been noted in Dr. Shipras case (supra) in the copy of the affidavit served on the returned candidate along with the copy of election petition in that case was also present in the present case inasmuch as the verification of the affidavit, on the copy of the affidavit, supplied to the appellant did not tally with the verification of the affidavit filed along with the election petition. It was pointed out that neither the name of the Notary, nor the stamp and seal of the Notary, had been fixed below the attestation of the verification on the copy of the affidavit, supplied to the appellant, though in the affidavit filed along with the election petition, the name, stamp and seal of the notary, after the attestation of verification by him were very much present and because of non-supply of true copy of the affidavit, the election petition suffered from the defect covered by section 81(3) of the Act. The High Court, however, did not agree and found that the vice which had been noticed in Dr. Shipras case was not present in the present case inasmuch as the omissions pointed out in the copy of the affidavit served on the appellant did not render that copy as not a true copy, and there had been substantial compliance with the provisions of Section 81(3) besides the alleged variation could not cause any prejudice to the appellant in formulating his defence. The second objection raised in the High Court, was about the alleged non-supply of true copy of Annexure XV to the appellant. Insofar as this second objection is concerned, the learned single Judge of the High Court compared the copy of

Annexure XV served on the appellant with the copy of Annexure XV as filed along with the Election Petition and found that the two were identical and that there was no variation between the two. The High Court, therefore, held that the Election Petition was not defective on that score either. The High Court accordingly rejected the preliminary objection and deciding issue No. 1 held that election petition was not liable to be dismissed on the grounds raised by the appellant. The order of the High Court has been put in issue by the appellant in this appeal by special leave. After leave was granted by this Court, the following order was made on 18.12.1997 : The main point urged by the learned counsel for the appellant is that a copy of the affidavit supplied to the appellant together with the notice of the Election Petition is not a true copy inasmuch as it does not indicate the name and designation of the Notary nor does it bear the seal and stamp of the Notary. On this basis, it is contended that there is non-compliance of Section 81(3) because of which the Election Petition is liable to be dismissed at the threshold under Section 86(1) of the Representation of People Act. Sh. Sorabjee, learned counsel for the appellant places reliance on the decision in *Dr. Shipra v. Shanti Lal Khoiwal* (1996) 5 SCC 181, particularly the opinion of Justice Paripoornan therein read with that of Justice K. Ramaswamy. Sh. Sorabjee submits that even though from the supplementary opinion of Justice Bharucha, contained in para 17 of the report, identity on this point may not be explicit but there being no reservation in the opinion of Justice Bharucha on this point, this view is to be construed as the unanimous decision of the three-Judge Bench.

Having heard Sh. Sorabjee, we are not too sure that the principle indicated in the said decision can apply to the facts of the present case but certain wide observations, in the opinion of Justice Paripoornan and Justice K. Ramaswamy, may support the appellants contentions. In our opinion, the matter would, therefore, require re-consideration by a larger Bench to decide whether even in a case like the present one, the decision in *Dr. Shipra v. Shanti Lal Khoiwal* (1996) 5 SCC 181 can apply.

The papers be laid before the Chief Justice for constitution of a larger Bench.

That is, how, this appeal has been placed before the Constitution Bench. We have heard Mr. Harish Salve, learned senior counsel appearing for the appellant and Dr. Rajeev Dhavan, learned senior counsel appearing for respondent No.1 and examined the record. From a perusal of the order of reference it is seen that the scope of the reference is rather limited to consider whether in a case like the present one the decision in *Dr. Shipras* case (supra) can apply keeping in view certain wide observations made in the opinions of Justice K. Ramaswamy and Justice Paripoornan in that case. It would, therefore, be desirable, at this stage, to first consider the fact situation as existing in *Dr. Shipras* case : A batch of appeals came to be dealt with in *Dr. Shipras* case. In all the appeals, the only question that arose for consideration was whether the copy of the election petition accompanied by supporting affidavit in Form 25 prescribed under Rule 94-A of the Conduct of Elections Rules, 1961, served on the respective respondents but not containing the verification of attestation made by the District Magistrate/Notary/Oath Commissioner, could be said to be a true and correct copy of the election petition as envisaged by section 81(3) of the Act ? K. Ramaswamy, J. who authored the lead judgment referred to various provisions of the Act and a number of judgments dealing with the scope of Section 81(3) read with Section 86(1) of the Act and approving the view of the Bombay High Court in *Purushottam v. Returning Officer*, AIR 1992 Bombay 227,

observed :

In *Purushottam v. Returning Officer* the present question had directly arisen. In that case the copy contained omission of vital nature, viz., the attestation by the prescribed authority. The High Court had held that the concept of substantial compliance cannot be extended to overlook serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy. We approve of the above view. Verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the Notary etc. that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and the affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, Form 25 mandates verification before the prescribed authority. The object appears to be that the returned candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity. Allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he became disqualified for election for a maximum period of six years under Section 8-A, apart from conviction under Section 136(2). Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine qua non contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact-situation. (Emphasis ours) Paripoornan, J. in his supplementing view, while also agreeing with the view of Bombay High Court in *Purushottams* case opined :

In my opinion, the above decision lays down the law correctly and is squarely applicable herein. In particular, the following observations in the unreported decision of the Bombay High Court in Election Petition No.2 of 1990 quoted in para 12 of the judgment of Qazi, J. are instructive and furnish sufficient basis to reach the said conclusion. The observations are to the following effect:

That, however, leaves one question to be considered and it is whether the copy of the endorsement Affirmed and signed before me by the Notary, designation of the Notary and the stamped endorsement regarding the affirmation which he made at the time of the making of the affidavit, were necessary and essential parts of the document and if these are omitted from the copy furnished, that would render the copy, which is furnished, incomplete, and the defect would be so glaring as to negative the inference that the copy was furnished. When Form No.25 prescribes a particular form and the copy of that affidavit is to be furnished, it seems to me that the endorsement of the authority before whom the affirmation was made, together with his official designation and the stamped endorsement, are also essential and without them the copy cannot be regarded as true copy. It is not merely the contents of the affidavit which brings sanctity to the document but the affirmation that has been made, and without the affirmation, it can be no affidavit at all. (Emphasis

ours) It is, however, not possible to ascertain from the opinions of K. Ramaswamy, J. or Paripoornan, J. whether the original affidavit filed along with the election petition in Dr. Shipras case was attested and verified in accordance with law and whether the defect in the copy of the affidavit supplied to returned candidate was only of the absence of notarial endorsement in the copy of the affidavit supplied to the respondents in the Election Petition or there was complete absence of the verification of the affidavit by the election petitioner as well as of attestation by the notary showing thereby that copy of the affidavit supplied to the respondent therein was neither verified by the election petitioner nor affirmed by him before the notary nor attested by the notary. However, Justice Bharucha, in his supplementing opinion while expressing agreement with Justice Ramaswamy pointed out the defect in that case in the following words :

The question that must be posed, as indicated by this Courts previous decisions, is : Does the document purporting to be a true copy of the election petition mislead in a material particular? The true copy of the election petition furnished by the appellant (election petitioner) to the respondent (the successful candidate) did not show that the appellants affidavit supporting his allegations of corrupt practice had been duly sworn or affirmed. Where corrupt practice is alleged, the election petitioner must support the allegation by making an affidavit in the format prescribed. An affidavit must be sworn or affirmed in the manner required by law, or it is not an affidavit. The document purporting to be a true copy of the election petition furnished by the appellant to the respondent gave the impression that the appellants affidavit supporting his allegations of corrupt practice had not been sworn or affirmed and was, therefore, no affidavit at all; it misled in a material particular and its supply was, as the High Court held, fatal to the election petition.

(Emphasis ours) Thus, from the facts noted by Bharucha, J., it transpires that in Dr. Shipras case the true copy of the Election Petition furnished to the respondent gave an impression that the election petitioners affidavit supporting his allegations of corrupt practice had not been duly sworn and verified by the election petitioner before the Notary, who also had not attested the same thereby rendering that document as no affidavit at all in the eye of law. The defect found in the true copy of the affidavit, was thus, not merely the absence of the name of the Notary or his seal and stamp but a complete absence of notarial endorsement of the verification as well as absence of an affirmation or oath by the election petitioner. It was in that context that the Bench had found in Dr. Shipras case that the returned candidate would have got the impression, on a perusal of the true copy of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election petitioner. It was precisely on account of this fatal defect that K. Ramaswamy, J. opined that the principle of substantial compliance cannot be accepted in the fact situation. In *Anil R. Deshmukh v. Onkar N. Wagh & Ors*, JT 1999 (1) SC 135, the appellant had filed an election petition for declaring the election of the first respondent in that case as void and illegal and for declaring him as duly elected. The petition contained allegations of corrupt practice against the first respondent. An affidavit had been filed along with the election petition as required by the proviso to Section 83(1)(c) of the Act in support of the allegations of corrupt practice. The affidavit was duly affirmed by the election petitioner before the notary who had also attested the same and the notarial endorsement of attestation contained all the particulars required by law. However, when the copies of the election petition along with various documents and the affidavit were served on the first respondent, it was found that the copy of the affidavit did not bear the seal or stamp of

the attesting officer, below the notarial endorsement after the verification of the affidavit. The appellant had, however, signed the copy of the affidavit below a rubber stamp endorsement to the effect attested as true copy. On account of the above omission, the first respondent and the tenth respondent therein contended before the High Court that the copies of the affidavit served on them were not true copies of the affidavit as required by Section 81(3) of the Act. The issue was tried as a preliminary issue. The High Court found that the copy of the affidavit supplied to the first respondent was not a true copy inasmuch as it did not contain the particulars of the notary below the endorsement made by the notary. The High Court following its previous judgment in *Purshottam v. Returning Officer* (supra) which had been approved by this Court in *Dr. Shipras* case held that the defect of omission of the particulars of the Notary on the copy of the affidavit served on the answering respondent was fatal and dismissed the election petition for non-compliance with Section 81(3) of the Act. On an appeal to this Court against the dismissal of the election petition, without trial, for non-compliance with the provisions of Section 81(3) read with Section 83(1) of the Act, learned counsel for the appellant submitted that the ruling in *Dr. Shipras* case had no application to the facts of that case and that the copy of the affidavit, served on the first respondent, did not suffer from the vice from which copy of the affidavit served on the returned candidate suffered in *Dr. Shipra's* case. Agreeing with the appellant, Srinivasan, J, speaking for a three Judge Bench to which one of us (CJI) was a party opined:

In the light of the rulings of the Constitution Bench referred to earlier, we have our own reservations on the correctness of the view expressed in *Dr. (Smt.) Shipras* case (supra) but it is unnecessary in the present case to dwell on the same. As pointed out earlier, Justice Ramaswamy has confined the ruling to the fact-situation in that case. In so far as the present case is concerned, there is a distinguishing factor which makes the ruling in *Dr.(Smt.) Shipras* case (supra) inapplicable. We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance of the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act. (Emphasis ours) The appeal was allowed and the election petition was directed to be tried on merits. In *Anil R. Deshmukhs* case (supra) Srinivasan, J. has correctly distinguished the case of *Dr. Shipra* bringing out the difference in the type of defects found in the two cases. Reverting now to the facts of the present case. A perusal of the copy of the affidavit served on the appellant shows that the copy of the affidavit supplied to the appellant contained the endorsement that the affidavit had been duly affirmed, signed and verified by respondent No.1 before a Notary. Under the affirmation by the notary, the word, Sd/- Notary were also written. What was, however, found missing in the copy of the affidavit was the name and address of the Notary as well as the stamp and seal of the Notary, before whom the affidavit had been so affirmed and who had attested the affidavit. The defect found in the present case is almost identical to the defect which had been found in the copy of the affidavit supplied to the first respondent in *Anil R. Deshmukhs* case (supra). The defect is materially different from the defect found in *Dr. Shipras* case, where the true copy of the election petition furnished by the election petitioner to the successful candidate did not show that the affidavit filed in support of the allegation of corrupt practices had been duly sworn or affirmed and verified by the election petitioner before a notary, whose attestation was also found

missing. The argument of the learned counsel for the appellant, both in the High Court and before us, is apparently based on the following observations made in the opinion of K. Ramaswamy and Paripoornan, JJ. in Dr. Shipras case : Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, Form 25 mandates verification before the prescribed authority. (K. Ramaswamy, J.) That, however, leaves one question to be considered and it is whether the copy of the endorsement Affirmed and signed before me by the Notary, designation of the Notary and the stamped endorsement regarding the affirmation which he made at the time of the making of the affidavit, were necessary and essential parts of the document and if these are omitted from the copy furnished, that would render the copy, which is furnished, incomplete, and the defect would be so glaring as to negative the inference that the copy was furnished. (Paripoornan, J.) (Emphasis ours) Reliance on the above observations in Dr. Shipras case divorced from the context in which that judgment had been rendered, is neither fair nor proper. In our opinion the principle indicated in Dr. Shipras case has to be considered as confined to the facts and circumstances of that case as opined by Ramaswamy, J. himself, when His Lordship observed :

The principle of substantial compliance cannot be accepted in the fact situation. (Emphasis ours) and cannot be considered to be of general application divorced from the fact situation of a given case. In The Commissioner of Income-tax v. M/s. Sun Engineering Works (P) Ltd., JT 1992 (5) SC 543, a Bench of this Court to which one of us (Anand, J.) was a party, observed :

It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete law declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.

We are in agreement with the above view. We, therefore, reject the argument of learned counsel for the appellant regarding the applicability of the observations from Dr. Shipras case to the fact situation in the present case. Thus, our answer to the reference is that the judgment in Dr. Shipras case is confined to the fact situation as existing in that case and has no application to the established facts of the present case and the wide observations made therein were made in the context of the facts of that case only. The next question which still arises for our consideration is whether the election petition in the present case was liable to be rejected in limine for non-compliance with section 81(3) read with section 86(1) of the Act on account of the defect in the true copy supplied to the respondent. The precise objection of Mr. Harish Salve, learned senior counsel based on section 81(3) of the Act as already noticed is that the true copy of the affidavit filed in support of the allegations of corrupt practice in form No.25 as required by Rule 94A had not been served on the



appellant inasmuch as in the copy served on the appellant, the name and other particulars of the Notary and the seal and stamp of the Notary, which had been affixed on the affidavit filed along with the Election Petition, were conspicuous by their absence. According to Mr. Salve, the variation between the affidavit filed by the election petitioner in support of the allegations of corrupt practice and the copy served on the appellant had rendered the copy as not a true copy of the original and notwithstanding the difference between Dr. Shipras case and the present one, the election petition ought to have been dismissed for non-compliance with Section 81(3) of the Act. For what follows we are not persuaded to agree. Section 81 of the Act deals with the presentation of election petitions. Sub-section (1) of section 81 provides that an Election Petition calling in question any election may be presented on one or more of the grounds specified in section 100(1) and section 101 to the High Court by any candidate at such election or by any elector within forty-five days from the date of the election of the returned candidate. Some of the relevant provisions of the Act are : 81(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.

Section 83 deals with the contents of the petition and the proviso to sub-section (1) of section 83 lays down:

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.

Section 86(1) provides : 86 (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.

Does the word copy occurring in section 81(3) of the Act mean an absolutely exact copy or does it mean a copy so true that nobody could by any possibility misunderstand it. This matter is no longer res integra. In *Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore & Others*, 1964 (3) SCR 573, a Constitution Bench of this Court elaborately dealt with this question after referring to a catena of authorities. It was held that the test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person. The Constitution Bench found as untenable the contention that since copies of the petition served on the returned candidate did not contain signatures of the petitioner below the word petitioner, on the copies of the petition served on the respondent, they had ceased to be true copies of the original petition, attracting the consequences of Section 86(1) of the Act. The Bench opined : Having regard to the provisions of Part VI of the Act, we are of the view that the word copy does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No.269 of 1962 were not such as to mislead the

appellant; therefore there was no failure to comply with the last part of sub-section (3) of section 81. In that view of the matter sub-section (3) of Section 90 was not attracted and there was no question of dismissing the election petition under that sub-section by reason of any failure to comply with the provisions of Section 81.

The Bench also opined : When every page of the copy served on the appellant was attested to be a true copy under the signature of the petitioner, a fresh signature below the word petitioner was not necessary. Sub-section (3) of Section 81 requires that the copy shall be attested by the petitioner under his own signature and this was done. As to the second defect the question really turns on the true scope and effect of the word copy occurring in sub-section (3) of Section 81. On behalf of the appellant the argument is that sub-s.(3) of s.81 being mandatory in nature all the requirements of the sub-section must be strictly complied with and the word copy must be taken to be an absolutely exact transcript of the original. On behalf of the respondents the contention is that the word copy means that which comes so near to the original as to give to every person seeing it the idea created by the original, alternatively, the argument is that the last part of sub-section (3) dealing with a copy is merely directive, and for the reliance is placed on the decision of this Court in *Kamaraja Nadar v. Kunju Thevar* (1959 SCR 583). We are of the view that the word copy in sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it (see *Strouds Judicial Dictionary*, third edition, volume 4, page 3098). In this view of the matter it is unnecessary to go into the further question whether any part of sub-section (3) of section 81 is merely directory. (Emphasis ours) Similar view was reiterated by another Constitution Bench in *Ch. Subbarao vs. Member, Election Tribunal, Hyderabad*, 1964(6) SCR 213, wherein it was held that the expression copy occurring in section 81(3) of the Act did not mean an exact copy but only one so true that no reasonable person could by any possibility misunderstand it as not being the same as the original. Agreeing with the view of the Constitution Bench in *Murarka Radhey Shyam Ram Kumars* case (*supra*), the Constitution Bench in *Ch. Subbarao's* case ruled that substantial compliance with section 81(3) was sufficient and the petition could not be dismissed where there had been substantial compliance with the requirements of Section 81(3) of the Act, in limine, under section 81(1) of the Act. We are in respectful agreement with the view expressed by the Constitution Bench in *Murarka Radhey Shyam Ram Kumars* case as well as in *Ch. Subbarao's* case. The object of serving a true copy of an Election Petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in Election Petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is, thus, of substance and not of form. The expression copy in section 81(3) of the Act, in our opinion, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. Indeed a copy which differs in material particulars from the original cannot be treated as a true copy of the original within the meaning of section 81(3) of the Act and the vital defect cannot be permitted to be cured after the expiry of the period of limitation. We have already referred to the defect which has been found in the copy of the affidavit served on the appellant in the present case. There is no dispute that the copy of the affidavit served on the appellant contained the endorsement the effect that the affidavit had been duly signed, verified and affirmed by the election petitioner before a Notary. Below the endorsement of attestation, it was also

mentioned : Sd/= . There, however, was an omission to mention the name and Notary particulars of the Notary and the stamp and seal of the Notary in the copy of the affidavit served on the appellant. There was no other defect pointed out either in the memo of objection or in C.M.P. No.2903 of 1996 or even during the course of arguments in the High Court or before us. Could this omission be treated as an omission of a vital or material nature which could possibly mislead or prejudice the appellant in formulating his defence? In our opinion No. The omission was inconsequential. By no stretch of imagination can it be said that the appellant could have been misled by the absence of the name and seal or stamp of the Notary on the copy of the affidavit, when endorsement of attestation was present in the copy which showed that the same had been signed by the Notary. It is not denied that the copies of the Election Petition and the affidavit served on the appellant bore the signatures of respondent No.1 on every page and the original affidavit filed in support of the Election Petition had been properly signed, verified and affirmed by the election petition and attested by the Notary. There has, thus, been a substantial compliance with the requirements of section 81(3) read with the proviso to section 83(1) (c) of the Act. Defects in the supply of true copy under section 81 of the Act may be considered to be fatal, where the party has been misled by the copy on account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such cases would attract the provisions of section 81(3) read with section 86(1) of the Act. Same consequence would not follow from non-compliance with Section 83 of the Act.

We are unable to agree with Mr. Salve that since proceedings in election petitions are purely statutory proceedings and not civil proceedings as commonly understood, there is no room for invoking and importing the doctrine of substantial compliance into section 86(1) read with section 81(3) of the Act. It is too late in the day to so urge. The law as settled by the two Constitution Bench decisions of this Court referred to above is by itself sufficient to repel the argument of Mr. Salve. That apart, to our mind, the Legislative intent appears to be quite clear, since it divides violations into two classes those violations which would entail dismissal of the election petition under section 86(1) of the Act like non compliance with section 81(3) and those violations which attract section 83(1) of the Act i.e. non-compliance with the provisions of section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in *Murarka Radhey Shyam* and *Ch. Subbarao* cases. 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. This position clearly emerges from the provisions of Section 83(1) and 86(5) of the Act, which read :

83. Contents of petition. (1) An election facts (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.

86. Trial of election 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.

Applying the test as laid down in *Murarka Radhey Shyam Ram Kumars* case (supra), to the fact situation of the present case, we come to the conclusion that the defects complained of in the present case were not such as could have misled the appellant at all. The non-mention of the name of the notary or the absence of the stamp and seal of the notary in the otherwise true copy supplied to the appellant could not be construed to be omission or variation of a vital nature and, thus, the defect, if at all it could be construed as a defect was not a defect of any vital nature attracting consequences of Section 86(1) of the Act. Under the circumstances, it must be held that there was no failure on the part of the election petitioner to comply with the last part of sub-section (3) of Section 81 of the Act and, under the circumstances, Section 86(1) of the Act was not attracted and the election petition could not have been dismissed by reason of the alleged failure to comply with the provisions of Section 81 of the Act. In this connection, it is also relevant to note that the appellant, neither in the memo of objections nor in the written objections or in C.M.P.No.2903 of 1996 has alleged that he had been misled by the absence of the name, rubber stamp and seal of the notary on the copy of the affidavit supplied to him or that he had been prejudiced to formulate his defence. Even during the arguments, learned counsel for the appellant was not able to point out as to how the appellant could have been prejudiced by the alleged omissions on the copy of the affidavit served on him.

In our opinion it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81(3) of the Act with the consequences under Section 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in *Murarka Radhey Shyams* case (supra) are sound tests and are now well settled. We agree with the same and need not repeat those tests. Considered in this background, we are of the opinion that the alleged defect in the true copy of the affidavit in the present case did not attract the provisions of Section 86 (1) of the Act for alleged non-compliance with the last part of Section 81(3) of the Act and that there had been substantial compliance with the requirements of Section 81(3) of the Act in supplying true copy of the affidavit to the appellant by the respondent.

Insofar as the alleged defect in the copy of Annexure XV furnished to the appellant is concerned, the objection was raised in written objections and reiterated in C.M.P.No.2903 of 1996. However, a comparison of the original Annexure XV with the copy thereof served on the appellant, by the learned single Judge of the High Court, indicated that both the documents were identical in nature. The objection, thus, was not based on any factual matrix. The learned Single Judge after comparing the original Annexure XV with the copy of Annexure XV served on the appellant came to the conclusion that there was no variation between the two. Our independent comparison of the two also leads us to the same result and we confirm the finding of the learned Single Judge in that

behalf. In fairness to Mr. Harish Salve, learned senior counsel for the appellant, however, we must record that after examining the original Annexure XV as filed along with the Election Petition and comparing it with the copy of Annexure XV supplied to the appellant, he did not press the challenge to the finding recorded by the High Court on that aspect, of course, reserving liberty to the appellant to raise all other points concerning Annexure XV at the trial of the election petition.

Thus, we find that the learned single Judge of the High Court was justified in rejecting the preliminary objection and holding that the election petition did not suffer from any defect which could attract the provisions of Section 86(1) of the Act. This appeal has no merits and is dismissed as such, but, in the peculiar facts and circumstances of the case without any order as to costs.

We request the High Court to expeditiously dispose of the election petition which is pending since 1996.