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SRI T. PHUNZATHANG
v.
SRI HANGKHANILIAN AND ORS.

AUGUST 28, 2001

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[DR. A.S. ANAND, CJ., R.C. LAHOTI AND N. SANTOSH HEGDE, JJ.]

Representation of People Act, 1951 : Sections 81(1), (3), 83(1)(c), 86(1) and 123.

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Conduct of Election Rules, 1961 : Rule 94(A) and Form 25.

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Election petition—Challenge of election result—Allegation of corrupt practice—Affidavit in support of corrupt practice—Copy supplied to respondent—Defect in—Endorsement made by Oath Commissioner attesting the affidavit, signature and rubber stamp not appearing on copy of affidavit supplied—Subsequently said omission rectified and copies containing entire verification supplied to respondent—Held, dismissal of election petition not valid.

Words and Phrases :

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'Copy'—Meaning of—In the context of Section 81(3) of the Representation of People Act, 1951.

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The appellant filed an election petition challenging the election of respondent No. 1. One of the grounds of challenge was that respondent No.1 had indulged in corrupt practice as contemplated in Section 123 of the Representation of People Act, 1951. Respondent No.1 filed an application contending that copies of the affidavits filed in support of the corrupt practices alleged in the election petition and supplied to him were defective as they did not contain due verification and attestation by the Oath Commissioner or by prescribed authority. The writ summons were complete in all respects excepting that the endorsement made by the Oath Commissioner attesting the affidavit sworn by the deponent before him, his signature and rubber stamp did not appear on the copy of affidavit delivered alongwith the copy of election petition to respondent No. 1. Consequently, it was contended that there was violation of the mandatory requirement of Section 81(3) and 83(1) of the Act and therefore the election petition was liable to be dismissed. In

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his application no grievance was raised by respondent No. 1 that the copy delivered to him was not in conformity with the original and, therefore, he was prejudiced in his defence. But in his next application respondent No.1 took objection in this regard. However, a few days before this application was taken up for hearing the plaintiff rectified the omission and supplied fresh copies of affidavits containing full particulars of the attestation/verification made in support of the affidavit to the respondents and their advocates. Relying on two judgments of this Court viz. *Dr. Shipra case** and *Harcharan Singh Josh's case*** the High Court dismissed the election petition on the ground of non-compliance with sub-section (3) of Section 81 read with Section 83(1)(c) of the Act.

In appeal to this Court it was contended on behalf of the appellant that (i) the High Court erred in placing reliance on the said two judgments; (ii) Section 81(3) does not contemplate the supply of a true copy in the sense that it should be an identical copy of the original filed before the Court; it would suffice if the copy supplied is substantially correct and the omissions are not such as would in any manner mislead the respondent in presenting his case or would prejudice his defence in any manner; (iii) the omission in the copy having been rectified by the supply of copies containing entire verification, the question of election petition being dismissed on technical ground did not arise.

Allowing the appeal, the Court

HELD : Per Hegde, J. (For himself and Dr. A.S. Anand, CJ)

1. The requirement 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 the election petition is of substance and not of form. [265-C]

2. The expression "copy" in Section 81(3) of the Representation of People Act, 1951 means a copy which is substantially the same as original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation. If the copy differs in material particulars from the original same cannot be cured after the period of limitation. [265-F-G]

3. In this case the only lacunae pointed out by the contesting respondent is that the copy supplied to him did not contain the verification or affirmation made by the Oath Commissioner or the Prescribed Authority as required in Form 25 and Rule 95A of the Conduct of Election Rules, 1961. It is not the

A case of respondent No.1 that the original affidavit filed alongwith the election petition in Form 25 did not contain such verification or affirmation. On the contrary, it is an admitted fact that such affirmation or verification was made in the original affidavit filed before the High Court. The omission pointed out by the respondent in his petition would not *ipso facto* entail dismissal of the election petition under Section 86(1) of the Act. By reason of such omission the copy supplied will not cease to be a 'true copy' and there is no possibility of any prudent person being in any manner misled in defending himself or being prejudiced in the defence of his case. Further, such omissions are only curable irregularities. [267-A-D]

C 4. On coming to know of the omission pointed out by the respondent, the appellant had, a few days before the starting of the arguments, supplied fresh copies of the affidavit containing the verification as found in the original affidavit in its entirety. The defects pointed out in the petition being curable, have been cured. Consequently the impugned judgment is set aside and the matter is remanded to the High Court for disposal of the election petition on merits. [267-E; 274-D]

**Dr. Shipra (Smt.) and Ors. v. Shanti Lal Khoiwal and Ors.*, [1996] 5 SCC 181, explained and held inapplicable.

***Harsharan Singh Josh v. Hari Kishan*, [1997] 10 SCC 294, overruled.

E *T.M. Jacob v. C. Poulose and Ors.*, [1999] 4 SCC 274 and *Anil R. Deshmukh v. Onkar N. Wagh*, [1999] 2 SCC 205, applied.

F *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Ors.*, [1964] 3 SCR 573 and *Ch. Subba Rao v. Member Election Tribunal, Hyderabad*, [1964] 6 SCR 213, referred to.

Per Lahoti J. (Supplementing) :

G 1. The copy of affidavit supplied to the respondent No.1 fulfilled the object which the copy is intended to serve. There was no such variation from the original, as was calculated to mislead the respondent. There was no scope of misunderstanding for the respondent. The respondent No.1 was not prejudiced. This is clear from the fact that no objection in this regard was taken in the first application. In the next application objection in this regard was taken and immediately the election petitioner made available to the respondent another copy of affidavit without defect. Thus the defect, if any, stood cured. [274-B-C]

T.M. Jacob v. C.Poulose and Anr., [1999] 4 SCC 274; *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, [1964] 3 SCR 573; *Anil R. Deshmukh v. Onkar, N. Wagh* [1999] 2 SCC 205 and *Ch. Subbarao v. Member, Election Tribunal Hyderabad*, [1964] 3 SCR 213, relied on. A

Dr. Shipra v. Shanti Lal Khoiwal, [1996] 5 SCC 181 and *Harcharan Singh Josh v. Hari Kishan*, [1997] 10 SCC 294, held no longer good law. B

2. When the defect in the original affidavit is removed at a later stage, copy of such affidavit would also be supplied to the respondent only at such later stage. If the view of the High Court in the order impugned is to be upheld, an election-petitioner having filed an affidavit fully satisfying the requirement of Section 83(1) proviso and Rule 94A in all respects but having made an omission in the copy of the affidavit delivered to the respondent would be placed in a position worse than an election-petitioner whose original affidavit filed with the election petition itself did not satisfy the requirement of section 83(1) proviso read with Rule 94A. This could not have been the intendment of law. Such an interpretation would, to say the least, make a mockery of justice. Non-compliance with Section 83 cannot be a ground for dismissal of the election petition under Section 86 and the defect, if any, is curable. C D

[273-D-F]

Manohar Joshi v. Nitin Bhaurao Patil and Anr., [1996] 1 SCC 169; *H.D. Revanna v. G. Puttaswamy Gowda and Ors.*, [1999] 2 SCC 217 and *Kamal Narain Sarma v. Dwarka Prasad Mishra and Ors.*, [1966] 1 SCR 478, referred to. E

3. Section 83(1) of the Representation of People Act, 1951 requires an election petition to plead material facts setting forth full particulars of alleged corrupt practice and to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso enacted to sub-section (1) requires 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. Rule 94-A (introduced by an amendment in the Rules w.e.f. 27th February, 1962) requires that an 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. Form 25 appended to the Rules requires the election petitioner to verify on solemn affirmation or oath the statements about the commission of corrupt practice and the particulars of such corrupt practice distinctly stating to what extent they are true to his knowledge and to what H

- A** extent they are true to his information. The requirement of proviso to Section 83(1) is an "affidavit in prescribed form". An endorsement by the specified officer before whom the affidavit is sworn is not the requirement mentioned in the Section. Rule 94A can be dissected into two parts : (i) the affidavit shall be in Form 25, and (ii) it shall be sworn before a Magistrate of the First Class or a Notary or a Commissioner of Oaths. What is prescribed is the form of affidavit. Swearing in before one of the three officers is mode and manner of swearing in the affidavit. The latter requirement does not relate to form of affidavit; it prescribes the persons recognised by the Act and the Rules as competent to administer oath to the deponent of affidavit for the purpose of Section 83(1) read with Rule 94A and suggests, for the sake of convenience and consistency, the manner of endorsement to be made by the Magistrate Notary or Commissioner of Oaths administering oath to the deponent. Such endorsement made by the officer administering oath to the deponent is not an integral part of the affidavit. Preparing, signing and swearing an affidavit are acts of the deponent; administering oath and making an endorsement in proof thereof on the affidavit are acts of the officer administering the oath.
- D** [269-F-G; 270-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4605 of 2000.

- E** From the Judgment and Order dated 27.6.2000 of the Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh High Court in E.P. No. 1 of 2000.

Amarendra Sharan, Ms. Poonam Kumari, Sapam Biswajit, Ms. Jayashree and Ashok Kumar Singh for the Appellant.

- F** T. Nanda Kumar Singh and Kh. Nobin Singh for the Respondent No.1.
Ms. S. Janani for the Respondent Nos. 4-9.

The Judgments of the Court were delivered by

- G** **SANTOSH HEGDE, J.** The appellant before us had preferred Election Petition No.1/2000 before the Imphal Bench of the Gauhati High Court challenging the declaration of the results made in favour of respondent No. 1 herein as the elected candidate in the elections held for the 48-Churachandpur Assembly Constituency in the 7th Manipur Legislative Assembly Election. One of the grounds of attack in the said petition was that respondent No.1
- H** indulged in corrupt practice as contemplated in Section 123 of the

Representation of People Act, 1951 (hereinafter referred to as 'the Act') among other grounds, hence, he had prayed that the declaration made in favour of respondent No.1 be set aside and he be declared as the elected candidate from the said Constituency. A

Respondent No.1 herein moved an application being Civil Miscellaneous (Election) Case No.3/2000 contending that the copies of the affidavits filed in support of the corrupt practices alleged in the election petition and supplied to him, did not contain due verification and attestation by the Oath Commissioner or by the Prescribed Authority, hence there was a violation of the mandatory requirement of Sections 81(3) and 83(1) of the Act and, therefore, the election petition in question was liable to be dismissed. It is to be noted herein that on coming to know of the Civil Misc. Petition, the plaintiff supplied fresh copies of the affidavits containing full particulars of the attestation/verification made in support of the affidavit filed in Form No.25 before the High Court to the respondents and their advocates, a few days before the Civil Miscellaneous Petition was taken up for hearing. B C

The High Court relying on the two judgments of this Court in *Dr. Shipra (Smt.) and Ors. v. Shanti Lal Khoiwal and Ors.*, [1996] 5 SCC 181 and *Harcharan Singh Josh v. Hari Kishan*, [1997] 10 SCC 294 accepted the contention of the first respondent and by its order dated 27.6.2000 dismissed the election petition under Section 86(1) of the Act on the ground of non-compliance of sub-section (3) of Section 81 read with Section 83(1)(C) of the Act. D E

In this appeal, it is contended on behalf of the appellant before us that the High Court erred in placing reliance solely on the judgments of this Court in *Dr. Shipra* and *Harcharan Singh Josh* (supra). It was contended that the judgment of this Court in *Dr. Shipra's* case had been explained by a Constitution Bench of this Court in the case of *T M Jacob v. C. Poulouse & Ors.*, [1999] 4 SCC 274 and the observation in *Dr. Shipra's* case has been held to be not universally applicable and is confined to the facts of that case only. While in regard to *Harcharan Singh Josh's* case, it was contended that in view of the judgment of the larger Bench in *Jacob's* case (supra), the *Josh's* case stands impliedly overruled. It was further contended that Section 81(3) does not contemplate the supply of a true copy in the sense that it should be an identical copy of the original filed before the court. According to the appellant, it would suffice that if the copy supplied is substantially correct and the omissions pointed are not such omissions as would in any manner mislead the respondent in presenting his case or would prejudice his defence H

A in any manner. At any rate, it was argued that the omission in the copy having been rectified by the supply of copies containing entire verification, the question of the election petition being dismissed on that technical ground did not arise. It was further contended that assuming for argument's sake that the defect pointed out by the respondents did vitiate that part of the election petition attracting the provisions of Section 86(1) of the Act even then since

B the defect pointed out was with reference to only one of the grounds raised in the election petition pertaining to corrupt practice, the entire election petition could not have been dismissed on that score because the said petition raised other substantial and independent grounds in regard to which respondents objections did not apply and they by themselves were sufficient to set aside

C the election of respondent No.1.

On behalf of the contesting respondents, it was contended before us that the judgment in *Dr. Shipra* (supra) has not been overruled by the Constitution Bench in *Jacob's case* (supra). It was further argued that the facts involved in the cases of *Dr. Shipra and Harcharan Singh Josh* (supra)

D were identical with the facts involved in the present case, hence, the ratio laid down in the said judgment squarely applied to the facts of the present appeal. It was also contended that the omissions or irregularities mentioned in Sections 81(1) and 83(1) are not of curable character, they being mandatory in nature, same cannot be condoned or cured by subsequent corrections.

E We have carefully considered the arguments addressed on behalf of the parties and perused the records.

So far as *Dr. Shipra's case* is concerned, this Court in *T.M. Jacob's case* (supra), in clear terms has held that the opinion expressed therein is applicable to the fact situation in that case only because the Constitution Bench came to the conclusion that the defect pointed out in *Dr. Shipra's case* pertained to those in the original affidavit filed before the Court in support of the allegations of corrupt practice and not with reference to the copies supplied to the respondents. This is clear from the following observations of the Constitution Bench in paragraph 16 of *Jacob's case*:

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G "Thus, from the "facts" noted by Bharucha, J., it transpires that in *Dr. Shipra case* the "true copy" of the election petition furnished to the respondent gave an impression that the election petitioner's 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

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affidavit`` at all in the eye of the 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. Shipra* 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``.*

(emphasis supplied)

Proceeding further, the Constitution Bench in *Jacob's* case (supra) reiterated its view of *Dr. Shipra's* case (supra) in the following words :

"27. We, therefore, reject the argument of learned counsel for the appellant regarding the applicability of the "observations`` from *Dr Shipra* case to the fact situation in the present case.

28. Thus, our answer to the reference is that the judgment in *Dr Shipra* 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." (See paras 27 & 28).

From the above law laid down by the Constitution Bench in *Jacob's* case, it is crystal clear that the principle found in *Dr. Shipra's* case is not universal in its application, per contra, it is confined to the facts of that case only.

Apart from holding that the views expressed in *Dr. Shipra* case are only confined to the fact-situation of that case in *Jacob's* case, the Constitution Bench turned down the contention advanced on behalf of the appellant that if the copy of the affidavit supplied to the respondent in an election petition does not contain the name and other particulars of the Notary or the stamp and seal of the Notary which had been affixed on the affidavit filed along with the election petition, the same would amount to violation of Section 81(3) of the Act, and such variation between the original affidavit filed before the High Court and the copy supplied to the respondent would render

A the copy as not a 'true copy' of the original, hence, the election petition is liable to be rejected.

While rejecting the above contention of the appellant in *Jacob's* case, the Bench placed reliance on two earlier judgments of the Constitution Bench of this Court in the cases of *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Ors.*, [1964] 3 SCR 573 and *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, [1964] 6 SCR 213. In the first of the above cases, i.e. *Murarka's* case, the Constitution Bench discussing the meaning of the words "true copies" as found in the Representation of the People Act had observed:

C "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....."

D "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-section (3) of Section 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

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for this reliance is placed on the decision of this Court in *K. Kamaraja Nadar v. Kunju Thevar*. 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 *Stroud's Judicial Dictionary, Third Edn., Vol. 4, p. 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`.

And after considering the similar views expressed by a latter Constitution Bench judgment in *Ch. Subbarao's* case, this Court in *Jacob's* case held 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 the 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. Having come to the said conclusion, this Court in *Jacob's* case held:

"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."

From the above conclusion of this Court in *Jacob's* case, two principles can be deduced; (a) The expression "copy in Section 81(3) of the Act means a copy which is substantially the same as original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) If the copy differs in material particulars from the original same cannot be cured after the period of limitation.

Having laid down the law as stated above, the Court in *Jacob's* case proceeded to apply the same to the facts of that case, and came to the conclusion that 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 an omission or variation of a vital

A nature and the defect, if at all it could be construed as a defect, not attracting the consequences of Section 86(1) of the Act. It further held that 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, hence, Section 86(1) was not attracted entailing the dismissal of the election petition.

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At this stage, it will be useful for us to refer to another judgment of this Court which had an occasion to consider *Dr. Shipra's* case in an almost similar fact situation as in this appeal i.e. the case of *Anil R. Deshmukh v. Onkar N. Wagh*, [1999] 2 SCC 205 which judgment was also relied on by the

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Constitution Bench in *Jacob's* case. In the case of *Deshmukh* (supra), one of the defects pointed out to attract the dismissal of the election petition was the absence of the endorsement of verification and the stamp and seal of the attesting officer on the copy of the affidavit supplied to the first respondent and the argument was that in absence of such endorsement in the copy supplied to that respondent will not make it to be a true copy. Negating the

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said contention and reversing the judgment of the High Court, this Court held that there was sufficient compliance of the provisions of Section 83 read with Section 81(3) of the Act because absence of notarial endorsement in the copies supplied to the respondent did not attract the dismissal of the election petition on the ground of non-compliance of the requirement of Section 81

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or 83 of the Act. In that case the Court took note of the fact that correct copies of the affidavit containing endorsement of verification etc. were served on the respondent as well as his counsel before the arguments were heard, hence, the irregularities were cured.

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Here we must notice that the judgment in *Deshmukh's* case (supra) was delivered prior to the judgment in *Jacob's* case and it had the benefit of examining the law laid down by this Court in *Dr. Shipra's* case, and finding it not applicable to the facts of its case, the Court distinguished the same. It also noticed the fact that by the law laid down in *Dr. Shipra's* case was already referred to a larger Bench on the ground that the same ran counter to the judgments of the Constitution Bench in the cases of *Murarka and*

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Subbarao (supra). It is to be noted here that this judgment in *Deshmukh* case was specifically approved in the Constitution Bench judgment of *Jacob's* case, and in para 20 of the said judgment it is stated thus : "In *Anil R. Deshmukh* case Srinivasan, J. has correctly distinguished the case of *Dr Shipra* bringing out the difference in the type of defects found in the two cases."

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In the above declared legal position, if we examine the case in hand,

we notice that the only lacunae pointed out by the contesting respondent in his application in Civil Miscellaneous Election Case No. 3/2000 is that the copy supplied to him did not contain the verification or affirmation made by the Oath Commissioner or the Prescribed Authority as required in Form 25 and Rule 94A of the Conduct of Election Rules, 1961. It is not the case of respondent No.1 that the original affidavit filed along with the election petition in Form 25 did not contain such verification or affirmation. On the contrary, it is an admitted fact that such affirmation or verification was made in the original affidavit filed before the High Court. Therefore, the question arising in this appeal is: would this omission as pointed out by the respondent in his petition, *ipso facto* entail dismissal of the election petition under Section 86(1) of the Act? In view of the law laid down in *Jacob's* case (*supra*), the answer then should be 'no' because by such omission the copy supplied will not cease to be a "true copy" and there is no possibility of any prudent person being in any manner misled in defending himself or being prejudiced in the defence of his case. Further, such omissions are only curable irregularities.

In this appeal, it is also to be noted that on coming to know of the omission pointed out by the respondent, the appellant had on 6.6.2000 a few days before the starting of the arguments supplied fresh copies of the affidavit containing the verification as found in the original affidavit in its entirety, hence, as was laid down in the case of *Deshmukh* (*supra*), it should be held that the defects pointed out in the petition being curable, have been cured.

Having come to the conclusion that the facts of the present appeal are fully covered by the Constitution Bench judgment of this Court in *Jacob's* case and *Deshmukh's* case, we will now discuss the applicability of *Harcharan Singh Josh's* case (*supra*) to the facts of this case bearing in mind that the High Court has relied on this case also to dismiss the election petition. It is true that in *Josh's* case, this Court extended the principle laid down in *Dr. Shipra's* case but then this Court in *Jacob's* case in clear terms held that the application of the principle found in *Dr. Shipra's* case is confined only to the facts of that case; meaning thereby that it is applicable only in cases where the original affidavit filed before the High Court contained the omissions and not to copies of the affidavit supplied to the respondents. Therefore, it is clear that the application of the principle in *Dr. Shipra's* case to the facts of *Josh's* case is clearly impermissible. In that view of the matter, the decision in *Josh's* case being contrary to *Jacob's* case, the same cannot be construed as a good law any more. Therefore, the High Court in the instant case could not

A have relied on Josh's case to dismiss the election petition.

B Before we conclude, we must note that the appellant had in support of his argument raised an additional contention to the effect that assuming that irregularities pointed out by the respondent in the copy of the affidavit supplied to him is an incurable defect, even then the election petition could not have been dismissed in its entirety because it had raised other substantial grounds questioning the declaration of result in favour of respondent No.1. In our opinion, it is not necessary for us to express any opinion on this issue because of the view expressed on the main contention argued in this appeal.

C For the reasons stated above, this appeal succeeds and the same is allowed. The impugned judgment and order is set aside and the matter is remanded to the High Court for disposal of the election petition on merits. No costs.

D **R.C. LAHOTI, J.** I am in respectful agreement with the order proposed by my learned brother N. Santosh Hegde, J, and place on record my concurrence with the reasoning and conclusion arrived at by him. However, I propose to assign additional reasons in support of the view taken by my learned brother.

E The relevant facts have been succinctly stated and relevant provisions of law quoted by my learned brother, yet a quick recap of the facts and relevant statutory provisions, as a prologue to this opinion of mine, would be in order. It is undisputed that the election petition filed by the appellant, putting in issue the election of respondent No. 1, alleges commission of corrupt practice by the respondent no.1 and also pleads grounds other than commission of corrupt practice, in support of the relief for declaring the election of returned candidates to be void. The election petition is signed and verified by the petitioner in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The petition is accompanied by an affidavit in Form 25 as required by proviso to sub-section (1) of Section 83 of the Representation of the People Act, 1951 (hereinafter, 'the Act') and F Rule 94-A of the Conduct of Election Rules, 1961 (hereinafter, 'the Rules'). G The affidavit so filed has been sworn before a Commissioner of Oaths and bears, to that effect, an endorsement, signature and rubber stamp of the Oath Commissioner administering oath to the deponent in the manner and form contemplated by Form 25. It is also not disputed that the set of the copies which accompanied the election petition at the time of filing and which was H delivered to the respondent no.1 alongwith the writ of summons was complete

in all respects excepting that the endorsement made by the Oath Commissioner attesting the affidavit to have been sworn by the deponent before him, his signature and rubber stamp do not appear on the copy of the affidavit delivered alongwith the copy of election petition to respondent No. 1 On 22.5.2000 an application was filed by respondent No. 1 before the learned Designated Election Judge under Sections 83 and 86 of the Act calling for dismissal of the election petition on the ground that the verification on the election petition was defective and material facts and particulars as to the alleged corrupt practice were not given but therein no grievance was raised that the copy delivered to the respondent no.1 was not in conformity with the original and, therefore, the respondent no.1 was prejudiced in his defence. On 5.6.2000 another application was filed by respondent no.1 wherein such an objection was taken. Soon on receipt of the copy of the application, served on the petitioner out of the Court, the counsel for the election petitioner delivered another set of copy of election petition with affidavit which had the endorsement and rubber stamp of the Oath Commissioner as it was on the original and this was done before the application came up for hearing before the learned designated Election Judge. However, the learned Judge felt that there was non-compliance of Section 83(1)(c) proviso read with Section 81(3) and hence the petition was liable to be dismissed under Section 86(1) of the Act.

Section 83(1) of the Act requires an election petition to plead material facts setting forth full particulars of alleged corrupt practice and to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso enacted to sub-section (1) requires 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. Rule 94-A (introduced by an amendment in the Rules w.e.f. 27th February, 1962) requires that an 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. Form 25 appended to the Rules requires the election petitioner to verify on solemn affirmation or oath the statements about the commission of corrupt practice and the particulars of such corrupt practice distinctly stating to what extent they are true to his knowledge and to what extent they are true to his information. The form also prescribes the following endorsement to appear below the signature of the deponent on affidavit:-

A “Solemnly affirmed/sworn by Shri/Shrimati.
at.....this.....
day of.....19.

B Before me,
 Magistrate of the first class/Notary/
 Commissioner of Oaths.”

C The requirement of Section 83(1) proviso is of an “affidavit in prescribed form”. An endorsement by the specified officer before whom the affidavit is sworn is not the requirement mentioned in the Section. Rule 94-A can be dissected into two parts: (i) the affidavit shall be in Form 25, and (ii) it shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths. What is prescribed is the form of affidavit. Swearing in before one of the three officers is mode and manner of swearing in the affidavit. The later requirement does not relate to form of affidavit; it prescribes the persons recognised by the Act and the Rules as competent to administer oath to the deponent of affidavit for the purpose of Section 83(1) read with Rule 94-A and suggests, for the sake of convenience and consistency, the manner of endorsement to be made by the magistrate, notary or commissioner of oaths administering oath to the deponent. Such endorsement made by the officer administering oath to the deponent is not an integral part of the affidavit.

D Preparing; signing and swearing an affidavit are acts of the deponent; administering oath and making an endorsement in proof thereof on the affidavit are acts of the officer administering the oath.

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F In *T.M. Jacob v. C. Poulouse and Anr.*, [1999] 4 SCC 274; the Constitution Bench has reaffirmed the law as stated earlier by two Constitution Benches in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, [1964] 3 SCR 573; and *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, [1964] 3 SCR 213 and has also explained and expanded the principles laid down by the earlier two Constitution Benches. In *T.M. Jacob’s* case, copy of the election petition delivered to the contesting respondent did not show that the verification of the Notary Public required as per Rule 94-

G A and Form 25 was contained in the original and, therefore, the copy was objected to as being defective and amounting to non-compliance with the requirements of Section 81(3) of the Act. The case was placed before the Constitution Bench specifically for reconsidering the Three-Judges Bench decision in *Dr. Shipra v. Shanti Lal Khoiwal*, [1996] 5 SCC 181 and while doing so the Constitution Bench also noticed another later Three-Judges Bench

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decision of this court in *Anil R. Deshmukh v. Onkar N. Wagh*, [1999] 2 SCC 205. The law laid down by the Constitution Bench may be summed up as under:-

- (i) The object of serving a “true copy” of an election petition and the affidavit filed in support of the allegations of corrupt practice of the respondent in the 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 of substance and not of form. (Para 35) A
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- (ii) 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. (Para 33) C
- (iii) The word “copy” does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. (Para 34) D
- (iv) Substantial compliance with Section 81(3) was sufficient and the petition could not be dismissed, *in limine*, under Section 86(1) where there had been substantial compliance with the requirements of Section 81(3) of the Act. (Para 34)
- (v) There is a distinction between non-compliance with the requirement of Section 81(3) and Section 83. A substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1) of the Act is enough. 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 provision of Section 81(3) read with Section 86(1) of the Act. The same consequence would not follow from non-compliance with Section 83 of the Act. (Para 37) E
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- (vi) The argument that since proceedings in election petition 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, cannot be accepted and has to be H

A repelled. (Para 38)

(vii) 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 Radhev 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 clearly emerges from the scheme of Sections 83(1) and 86(5) of the Act. (Para 38)

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(viii) 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 circumstance of each case and no hard and fast formula can be prescribed. The tests suggested in *Murarka Radhaye Shyam* case are sound tests and are now well settled. (Para 40)

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Dr. Shipra's case [1996] 5 SCC 181, was referred to, doubted and distinguished in *Anil R. Deshmukh* [1999] 2 SCC 205, which also is a three-Judge Bench decision. Both these decisions were placed before the Constitution Bench in *T.M. Jacob's* case. In *Dr. Shipra's* case, the Constitution Bench decisions in *Ch. Subbarao* and *Murarka Radhev Shyam* have been just referred to vide para 10 but not dealt with. In *T.M. Jacob's* case the Constitution Bench has clearly held that the view taken in *Dr. Shipra's* case must be confined to the fact-situation of that case and cannot be considered to be of general application. The statement of law in *Anil R. Deshmukh's* case has been approved wherein the copy of the affidavit delivered to the respondent did not bear the endorsement of attestation or the seal or stamp of the attesting officer found on the original. But for the absence of the notarial endorsement, it was a true copy of the original as it was a zerox copy and was attested as 'true copy' under the signature of the election-petitioner. A copy along with notarial endorsement was later on furnished to the respondent. Applying the theories of substantial compliance and of curability this Court held that the election petition was not liable to be dismissed *in limine*. In *Harcharan Singh Josh v. Hari Kishan*, [1997] 10 SCC 294, the defect in the copy of the affidavit supplied to the respondent was the same as is in the present case and

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a three-Judge Bench of this Court, solely by relying on *Dr. Shipra's* case held that the election petition was liable to be dismissed *in limine*. In *Dr. Shipra* and *Harcharan Singh Josh*—both three-Judge Bench decisions, this Court has held the defect to be not curable and the concept of substantial compliance having no application in such a case. In *Murarka Radhey Shyam's* case and *T.M. Jacob's* case the Constitution Benches have held such a defect to be curable and the test of substantial compliance to be applicable. The very premise on which the decisions in *Dr. Shipra* and *Harcharan Singh Josh* proceed, thus, runs counter to the view taken by Constitution Bench. In view of the Constitution Bench decisions, *Dr. Shipra's* case and *Harcharan Singh Josh's* case cease to be good law.

There is another angle from which the point at issue may be examined. In *Murarka Radhey Shyam's* case the Constitution Bench has held that where an affidavit is in the prescribed form but there is a mistake in the verification portion of the affidavit such mistaken verification of the oath commissioner cannot be a sufficient ground for dismissal of the election petition summarily as the provisions of Section 83 are not mandatorily to be complied with nor make a petition invalid and *such affidavit can be allowed to be filed at a later stage also*. Obviously when the defect in the original affidavit is removed at a later stage, copy of such affidavit would also be supplied to the respondent only at such later stage. If the view of the High Court in the order impugned before us is to be upheld, an election-petitioner having filed an affidavit fully satisfying the requirement of Section 83(1) proviso and Rule 94-A in all respects but having made an omission in the copy of the affidavit delivered to the respondent would be placed in a position worse than an election-petitioner whose original affidavit filed with the election petition itself did not satisfy the requirement of Section 83(1) proviso read with Rule 94-A. This could not have been the intendment of law. Such an interpretation would, to say the least, make a mockery of justice. That non-compliance with Section 83 cannot be a ground for dismissal of the election petition under Section 86 and the defect, if any, is curable, has been the view taken by three-Judge Bench in *Manohar Joshi v. Nitin Bhaurao Patil and Anr.*, [1996] 1 SCC 169 and also in *H.D. Revanna v. G. Puttaswamy Gowda and Ors.*, [1999] 2 SCC 217 wherein all the decisions available till then have been considered. In *Kamal Narain Sarma v. Dwarka Prasad Mishra and Ors.*, [1996] 1 SCR 478, affidavit was sworn in before the clerk of Court attached with the office of the District Judge empowered by the District Judge. Under Section 139(c) of Code of Civil Procedure for the purpose of administration of oaths on affidavits made under the Code of Civil Procedure. The Election

A Tribunal allowed a fresh affidavit to be filed in place of such affidavit treating it to be defective. On the matter reaching this Court, a Constitution Bench held that an extreme and technical view was not justified. The affidavit was held to be proper and the second affidavit was held to be not necessary.

B In the case before us, the copy of affidavit supplied to the respondent no.1 fulfilled the object which the copy is intended to serve. There was no such variation from the original, as was calculated to mislead the respondent. There was no scope of misunderstanding for the respondent. The affidavit satisfied the test of substantial compliance, as propounded in *Murarka Radhey Shyam* and reaffirmed in *T.M. Jacob*. The respondent no.1 was not prejudiced.

C This is clear from the fact that no objection in this regard was taken in the application dated 22.5.2000. In the next application dated 5.6.2000, objection in this regard was taken and immediately the election petitioner made available to the respondent another copy of affidavit without defect. Thus the defect, if any, stood cured as held in *Anil R. Deshmukh's* case.

D For the abovesaid additional reasons I agree with my learned brother that the judgment of the High Court has to be set aside and the case remanded to the High Court for trial and disposal of the election petition on merits.

T.N.A.

Appeal allowed.