

RAM PRASAD SARMA
v.
MANI KUMAR SUBBA AND ORS.

OCTOBER 29, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Election Laws; Representation of the Peoples Act, 1951; Sections 81(1), 81(3), 82 and 86 (1):

Election Petition—True copy of the affidavit does not contain Oath Commissioner's endorsement—Petition dismissed by High Court for non-compliance of provision of law—Correctness of—Held: In election matters strict compliance of legal provisions is necessary—But purpose of law is not to facilitate the returned candidate to avoid trial of issues of corrupt practices on the basis of any little defect—Mere omission in indicating the name/endorsement of Oath Commissioner would not be material when an averment that affidavit was sworn in support of allegation of corrupt practices, signed by the petitioner is available in true copy of the affidavit.

Election Petition—Necessary parties—Impleadment of—Notice to one of the candidates by incorrect name but at correct address—Effect of—Held, it is a case of spelling mistake, and of little consequence.

Appellant and respondents contested the Lok Sabha elections, 1999, in which Respondent No.1 was declared elected. Appellant challenged the election of Respondent No.1 on the ground of booth capturing and rigging. High Court dismissed the petition on the ground that copy of the affidavit supplied to Respondent No.1 did not contain the affirmation by the appellant/Oath Commissioner's endorsement, which amounts to non-compliance of Section 81(3) of the Representation of the Peoples Act, 1951 but it negatived the plea of limitation and non-impleadment of necessary parties. Hence these appeals.

Disposing of the appeals, the Court

HELD: 1.1. It is true that in the matters relating to elections and election petitions, strict compliance of the legal provisions is necessary and full care is to be taken to see that rights of an elected representative are not lightly disturbed. But an election petition is not to be thrown at the threshold on the

A slightest pretext of one kind or the other which may or may not have any material bearing on the factors to be strictly adhered to in such matters. It is substance not form which would matter. If it is permitted otherwise, the returned candidate would only be in the look out microscopically for any kind of technical lacuna or defect to abort the endeavour of the petitioner to bring to trial the issues relating to corrupt practices in the elections. The purpose of the law on the point cannot be to allow the returned candidate to avoid the trial of the issues of corrupt practices raised against him on the basis of any little defect which may not result in any vital variation between the original and the true copy so as to have the effect of misleading the returned candidate.

[484-G-H; 485-A, B]

C *T.M. Jacob v. C. Poulose and Ors.*, [1999] 4 SCC 274 and *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Ors.*, AIR (1964) S.C. 1545, followed.

D *Anil R. Deshmukh v. Onkar N. Wagh and Ors.*, [1999] 2 SCC 205 and *Sri T. Phungzathang v. Sri Hangkhanlian and Ors.*, (2001) 5 SCALE 599, relied on.

Dr. Shipra (Smt.) v. Shanti Lal Khoiwal, [1996] 5 SCC 181, overruled.

E 1.2. Mere omission of indicating the name of the Oath Commissioner or an endorsement in the true copy that the affidavit was attested by an Oath Commissioner bearing his stamp and seal etc. would not be material. Once an averment is there that affidavit was being sworn in support of allegations of corrupt practices and that the petitioner had put his signature thereon, *prima facie* fulfilment of such a legal requirement is adequately reflected even in absence of name and seal etc. of Oath Commissioner in the true copy.

[487-E, F]

G 1.3. In the Petition all the contesting candidates were impleaded as respondents who had contested the election; that along with the election petition, copy of Return of Election filed in Form 21E under Rule 64 of the Conduct of Election Rules, 1961 which contains the result of the election as well as the list of candidates. The said list is on record and the name of Respondent No.11 is indicated at Serial No.7 having contested as an independent candidate. It is thus evident that it is not as if the correct name is not available on the record of the case. Apparently, it seems to be a case of spelling mistake and it is of little consequence. [488-D, E, F]

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K. Kamaraja Nadar v. Kunju Thevar and Ors., AIR (1958) SC 687; *Shiv Chand v. Ujagar Singh and Anr.*, [1979] 1 SCR 520 and *Gorelal Shakya v. Maharaj Singh Yadav*, [1995] Supp. 3 SCC 407, referred to. A

2. The Judgment and order passed by the High Court dismissing the Election Petition under Section 86(1) of the Representation of Peoples Act for non-compliance with provisions of Sub-section (3) of Section 81 of the Act is set aside. The findings of the High Court repelling the two other grounds relating to limitation and mention of incorrect name of Respondent No.11 are upheld. [489-H; 490-A] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6593 of 2002. C

From the Judgment and Order dated 18.8.2000 of Assam High Court at Gauhati, in E.P. No. 1 of 1999 and C.M.C. No. 28 of 2000.

WITH

S.L.P. (C) 21349/2002 CC. 8664 of 2001. D

U.N. Bachawat, Ms. Sumita Hazarika, U. Hazarika, for Shivaji M. Jadhav, Alok Bachawat, Ms. Anajali Doshi, Ms. Ruchi Kohli and Sushil Kr. Jain, for the appearing parties.

The Judgment of the Court was delivered by E

BRIJESH KUMAR, J. The appellant Ram Prasad Sarma and Respondent No.1 Mani Kumar Subba, amongst others contested election, for No. 9 Tezpur Parliamentary Constituency, Assam in the elections held in the year 1999. Respondent No.1 Mani Kumar Subba was declared elected on 7.10.1999 from the aforesaid constituency. The appellant who secured the next highest number of votes, challenged the election of Respondent No.1 by filing an election petition under Section 80 of the Representation of the Peoples Act 1951 on the ground that large scale rigging and booth capturing had taken place at the instance of Respondent No.1 who adopted and resorted to corrupt practices in the election. Hence, election of Respondent No.1 was liable to be declared void. It was also prayed that the appellant may be declared as duly elected candidate from No. 9 Tezpur Constituency. Notice was issued to the respondents on the election petition. F G

The Respondent No.1 Mani Kumar Subba on receipt of the notice, moved an application under Section 86 of the Representation of the Peoples Act 1951 (hereinafter to be referred as the 'Act') praying for dismissal of the H

- A election petition at the threshold on three grounds, firstly that the election petition was filed beyond a period of 45 days which is the prescribed period of limitation for filing an election petition under Section 81 (1) of the Act. The next ground was that where the election petitioner prays for a declaration in his favour or in favour of any other candidate for having been duly elected from the constituency all the contesting candidates have to be impleaded as respondents in the election petition. One Shri Abul Khayer who had also contested the election was not impleaded as respondent instead one Abdul Khyer was impleaded as Respondent no.11. It amounted to non compliance of Section 82 of the Act. Thirdly, the true copy of the affidavit served upon the respondent No. 1 along with copy of the election petition does contain the attestation and stamp etc. of the Oath Commissioner. It violates Section 81 (3) of the Act.

The aforesaid relevant provisions may be perused, which read as follows:-

- D *Section 81. Presentation of petitions—*(1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of Section 100 and Section 101 to the High by any candidate at such election or any elector [within forty five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates]

E Explanation.....

- F (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.

- G *Section 82. Parties of the petition—*A petitioner shall join as respondents to his petition —

- (a) Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the

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petitioner and where no such further declaration is claimed, all the returned candidates; and A

- (b) Any other candidate against whom allegations of any corrupt practice are made in the petition.

Section 83. Contents of petition—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies; B
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleged 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
- (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. D

[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 allegations of such corrupt practice and the particulars thereof.]

- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. E

*Section 86(1). Trial of election petitions—*the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.” F

The appellant contested the plea of the dismissal of the election petition under Section 86 (1) of the Act. According to him there was no non compliance of any provision of the Act as alleged by Respondent No.1. The High Court negated the plea raised on behalf of the Respondent No.1 for dismissal of the election petition on the ground of limitation and non-impleadment of Abul Khayer as a respondent in the election petition. However, it was held that copy of the affidavit supplied to the Respondent No.1 does not contain the affirmation by the appellant before the Commissioner of oath or the Oath Commissioner’s endorsement. On this ground it was held that there was non compliance of Sub-section (3) of Section 81 of the Act. Hence, the petition H

A was dismissed under Section 86(1) of the Act.

It may be mentioned here that Respondent No.1 also filed S.L.P. (CC 8664/2001) against the findings of the High Court rejecting the pleas relating to limitation and non-impleadment of all the contesting candidates.

B On the SLP (CC 8664/2001) no order had been passed yet. The record of SLP is before the Court for its hearing with the appeal, it is submitted by learned counsel for Respondent No.1 that in any event the Respondent No.1 is entitled to support the order of dismissal of the election petition, in this appeal on the aforesaid two other grounds as well, as involved in SLP (CC 8664/2001). We have therefore heard the learned counsel for both the parties on all the three pleas raised by Respondent No.1 in his application for dismissal of the election petition under Section 86 (1) of the Act. We may take up first the plea relating to non supply of true copy of the affidavit with the election petition to Respondent No.1 on the basis of which it has been held that it violated sub-section (3) of Section 81 of the Act and order of dismissal of the election petition has been passed by the High Court.

D At the very outset it may be indicated that there is no dispute that the original election petition bears the signatures of the Oath Commissioner before whom the affidavit was sworn by the petitioner. But in the copies supplied to Respondent No.1 though attested to be true copy, it does not indicate about the endorsement of the Oath Commissioner on the affidavit. Therefore, the contention was that it was not the true copy of the affidavit accompanying with the election petition..

E In support of the above contention, learned counsel for Respondent No.1 placed reliance upon decisions of this Court reported in [1996] 5 SCC 181—*Dr. Shipra (Smt.) v. Shanti Lal Khoiwal*, and [1997] 10 SCC 294—*Harcharan Singh Josh v. Hari Kishan*.

F In the case of *Dr. Shipra (supra)* the fact position was that the true copy of the affidavit supplied to the returned candidate, a respondent, did not contain verification by the Notary who had attested the original affidavit filed along with the election petition. The question which arose for consideration was “.....whether copy of the affidavit supplied to the respondent without the attestation portion contained in it (though contained in the original affidavit) can be considered to be a true copy”? It was held that verification by a Notary or any other prescribed authority is a vital fact which assures that the election petitioner had affirmed before the Notary that the statement

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containing imputation of corrupt practices was duly and solemnly verified to be a correct statement to his knowledge or information as specified in the election petition and the affidavit filed in support thereof and the respondent would not be misled on that score. Such an omission in the copy supplied to the returned candidate as true copy is not a curable irregularity and concept of substantial compliance will not be applicable. The other decision relied upon is *Harcharan Singh Josh* (supra). In this case one of the grounds amongst or among others was that the affidavit supplied to the respondent was not a true copy of the affidavit since it did not contain the affirmation by the Oath Commissioner. This contention was upheld.

The High Court followed the decisions in the cases of *Dr. Shipra* and *Harcharan Singh Josh* (supra), while holding that the defect was not curable and the election petition was liable to be dismissed on that ground.

The High Court has also referred to the decision of Three Judges Bench of this Court reported in [1998] 2 SCC 31—*T.M. Jacob v. C. Poulose and Ors.* In this case the meaning of the word 'true copy' was considered in reference to furnishing of such a copy of the affidavit together with copy of election petition.. This Court had thought it fit to refer the matter to a larger Bench for re-consideration of the decision in the case of *Dr. Shipra* (supra). The decision of the Constitution Bench in the case of *T.M. Jacob v. C. Poulose and Ors.* is reported in [1999] 4 SCC 274. So far the fact situation is concerned, it may be indicated that in the end of the affidavit it contained the endorsement by the appellant that the affidavit had been duly affirmed, signed and verified by the Notary. Under the affirmation by the Notary, the words "Sd/- Notary" were written but name address or the stamp and seal of the Notary were missing. The Court considered the question as to whether the decision in the case of *Dr. Shipra* (supra) would be applicable in the case or not. This Court held that decision in the case of *Dr. Shipra* (supra) would not be applicable which was decided and confined to the fact situation as it existed in that case. In Paragraph 33 the Court observed thus:

"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 versus Roop Singh Rathore*, 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

A 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 the 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:

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“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.”

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The fact situation in the case of *Dr. Shipra* (supra) is enumerated in Paragraph 16 of the judgment which reads as under:

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“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 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 “path” 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”.

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On the question of substantial compliance the Constitution Bench in *T.M. Jacob's* case has further observed as follows:

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“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.*" A

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." B C

(emphasis supplied by us)

In the case of *Anil R. Deshmukh versus Onkar N. Wagh and Ors.*, [1999] 2 SCC 205, a Bench of Three Judges considered the question. The fact situation in that case as enumerated in Paragraph 3 of the Judgment is as under: D

"When the copies of the petition, documents and the affidavit were served on the respondents, the copy of the affidavit did not bear the endorsement of attestation found on the original or the seal or stamp of the attesting officer. The appellant signed below the rubber stamp endorsement "attested as true copy". *But for the absence of the notarial endorsement, it was a true copy of the original* as it was a xerox copy. The first respondent and the tenth respondent raised objections that the election petition should be dismissed *in limine* as the provisions of Section 83(1) of the Act were not complied with." E F

(emphasis supplied by us)

The Court in Paragraph 17 of the judgment dealt with the matter in reference to the decision in *Dr. Shipra's* case and held as under: G

"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. Shipra* case but it is unnecessary in the present case to dwell on the same. H

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B 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 with the provisions of Section 81(3) read with Section 83(1) (c) of the Act.

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E It is thus clear that the correctness of broad proposition as laid in the case of *Dr. Shipra (supra)*, was doubted in the case of *T.M. Jacob as well as Anil R. Deshmukh'* case (supra). The Constitution Bench in *T.M. Jacob's* case (supra) has indicated the correct position. Any defect of whatever nature, in the true copy supplied to the respondent would not render the petition liable to be dismissed under Section 86 of the Act. Such defects in supply of true copies are not always incurable. The main consideration which would weigh is that the returned candidate must get a correct idea of the allegations of corrupt practices so that it may be possible to understand and meet the charges levelled against him. The true copy supplied should also reflect that the part of the petition containing the allegations of corrupt practices has been verified and sworn by the petitioner on oath. The fact that the name, stamp, seal and signature of the Notary are not indicated or missing in the true copy is not material nor the absence of stamp of attestation by the Notary. We will deal with the facts of this case in that regard a little later.

G We may now consider the Constitution Bench decision in the case of *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and other* reported in AIR (1964) S.C. 1545 referred to in the case of *T.M. Jacob (supra)*. The two objections mainly raised by the returned candidate were that there was non-compliance of Section 81 (3) of the Act since copy of the election

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petition served on the respondent was not true copy of the original filed before the Election Tribunal nor was it properly attested to be a true copy under the signature of the petitioner. The other ground was that there was non compliance of Section 83 of the Act since the affidavit in respect of corrupt practices was neither properly made nor it was in the prescribed form. The Court held as under:-

“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-s. (3) of S. 81.”

(Emphasis supplied by us)

In respect of the other objection it was found that the Election Tribunal has rightly pointed out that due to the inexperience of the Oath Commissioner mistake had occurred in the verification part of the affidavit and he had endorsed ‘verified by me’ instead of “verified before me”. The signature of the deponent had also been obtained on at a wrong place The verification was also not apparently in the prescribed form. It is observed that “the mistake of the Oath Commissioner in verifying the affidavit cannot be a sufficient ground for dismissal of the petitioner’s petition summarily”. It was further pointed out that the defect can be remedied in accordance with the principles of Code of Civil Procedure relating to verification of pleadings accordingly even a correct affidavit could be filed later to rectify the defect.

In yet another decision reported in 2001 (5) SCALE 599—*Sri T. Phungzathang versus Sri Hangkhanlian and Ors.*, it has been held that the case of *Harcharan Singh Josh* (supra) does not lay the correct law. It has also been observed that an election petition accompanied by an affidavit has two parts out of which the verification part by the Oath Commissioner is not an integral part of the petition and the affidavit. If the copy furnished to the returned candidate does not contain the words as the true copy so far the attestation part by the Oath Commissioner is concerned, it would not violate the requirement of furnishing of true copy of the election petition and the affidavit thereof. This is also a decision by Three Judge Bench rendered on

A considering the decisions in the cases of *Dr. Shipra, Murarka Radhey Shyam and T.M. Jacob* (supra). It was held that in view of the two Constitution Bench decisions in the case of *Harcharan Singh Josh* (supra) cannot be held as laying down the correct law. The Court followed the decision in the case of *T.M. Jacob and Anil R. Deshmukh* (supra). The fact situation of the case was also quite akin to the case in hand. The allegations of corrupt practices were made. The original petition contains the affidavit with all necessary endorsement and attestation by the Oath Commissioner. But the copy supplied did not contain any such verification or affirmation. While ascribing additional reasons in support of the decision, one of us (R.C. Lahoti, J.), who was a member of the Bench observed that endorsement made by the officer administering oath to the deponent is not an integral part of the affidavit. Preparing, signing and swearing of an affidavit are act of deponent; administering oath and making an endorsement in proof thereof on the affidavit are acts of the officer administering the oath. The former relates to form of an affidavit which the latter is mode and manner of swearing in an affidavit. The latter part of the provision prescribes the person recognized by the Act or the Rules as competent to administer the oath to the deponent and his endorsement is not an integral part of the affidavit.

From the various decisions noted above, it clearly emerges out that the correctness of the decision *Dr. Shipra's* case (supra) was doubted and it has been held by the Constitution Bench in the *T.M. Jacob's* case (supra) that it was confined to the facts of that case. Therefore it cannot be said that *Dr. Shipra's* case lays down any proposition of law of binding nature. The two decisions of the Constitution Benches, namely, *Radhey Shyam Murarka and T.M. Jacob* (supra) hold the field as well as the decision in the case of *Sri T. Phungzathang* (supra). The law as laid down in the above noted decisions would be the guiding precedents in deciding a question relating to a true copy of an affidavit.

The purpose of the provision to furnish a true copy of the petition is not to frustrate the cause of the petitioner approaching the Court by adhering strictly to technicalities of little consequence. On the other hand the anxiety is that the respondent must have correct idea of the allegations of corrupt practices made against him with some responsibility and that he may not be misled in any material respect by furnishing of a copy of the affidavit which may not be a correct copy having vital variation from the original. It is true that in the matters relating to elections and election petitions, strict compliance of the legal provisions is necessary and full care is to be taken to see that

rights of an elected representative are not lightly disturbed and rightly so. But an election petition is not to be thrown at the threshold on the slightest pretext of one kind or the other which may or may not have any material bearing on the factors to be strictly adhered to in such matters. It is substance not form which would matter. If it is permitted otherwise, the returned candidate would only be in the look out microscopically for any kind of technical lacuna or defect to abort the endeavour of the petitioner to bring to trial the issues relating to corrupt practices in the elections. The purpose of the law on the point cannot be to allow the returned candidate to avoid the trial of the issues of corrupt practices raised against him on the basis of any little defect which may not result in any vital variation between the original and the true copy so as to have the effect of misleading the returned candidate. As it is, the prevailing situation of elections and practices often said to be adopted now and then and here and there does not always give a very happy picture. Free, fair and fearless elections is ideal to be achieved and not to be defeated for the sake of pretentious and frivolous technicalities.

Shri Bachawat learned Senior Counsel for the respondent vehemently urged that the fact situation of the present case and the case of *Dr. Shipra* is the same and therefore, the High Court has rightly followed the decision in the case of *Dr. Shipra*. We have already made our observations in this regard. In any situation the matter has to be judged in the light of the decisions of the Constitution Benches referred to above. There is no precedent on facts. It is legal proposition flowing from the Judgment which has binding effect.

Learned senior counsel for the respondent then submits that in the case in hand on the copy there is no stamp of the Notary, nor anything is mentioned about attestation by him nor that the affidavit was verified before the Oath Commissioner and was signed by him (Oath Commissioner). Therefore, it would be a different case from one in which in the true copy it was indicated that the affidavit was signed by the Notary and in another case where it was not so noted but copy of stamp of Notary may be there in the true copy without indicating that the affidavit was verified or signed by the Oath Commissioner as in those cases the returned candidate might know that the allegations relating to corrupt practices have been verified and attested before the Oath Commissioner even though it is not indicated in the true copy that it was signed by the Oath Commissioner. We are unable to appreciate the above submission. Mere indication of the stamp of Oath Commissioner without any indication in the true copy that the affidavit was attested before

- A the Oath Commissioner and signed by him (Oath Commissioner) will have no different effect from one where nothing is indicated about the stamp and verification before the Oath Commissioner because it is not necessary that mere stamp of the Oath Commissioner must lead to the inference that the affidavit was also sworn before and signed by the Oath Commissioner in attestation thereof. Therefore, such a case would be at the same footing as
- B where nothing is indicated regarding swearing of the affidavit before the Oath Commissioner.

- C We may now consider the fact situation of the present case in relation to attestation of the affidavit in support of the election petition before an Oath Commissioner. At the very outset, it may be indicated that the original election petition in the end bears the stamp and due attestation and signature of the Oath Commissioner. Above the stamp of the Oath Commissioner there are signatures of the petitioner above the word 'deponent'. Before that on Page 25 of the petition, a full verification of the affidavit has been made. Pages 25 and 26 of the petition are as under:

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Page 25

"AFFIDAVIT"

- E 1. That I am the instant petitioner in this case and as such I am acquainted with the facts and circumstances of the case for the purpose of swearing this affidavit in support of the contention of the corrupt practices taken recourse to by Respondent No.1 and Respondent No.7 more particularly by the respondent No.1, Congress candidate who has been declared elected.
- F 2. That the statements made in paragraph 1 of this affidavit is true to my knowledge.
- G 3. That the statements made in paragraphs 1, 4, 8, 9, 10 and 11 of the body of the petition are true to my knowledge and those made in paragraphs 2, 3, 5, 6, 7, 12 and 14 of this petition are true to my information based on records and further statements made on the body of the petition are true to my information gathered from polling agents of those Legislative Assembly Constituency segments numbering 40 in its segments whose appointment letters have furnished to the polling officers of 40 polling centres of each L.A. Constituency/Segments
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mentioned in the body of the petition and the rest are grounds and submission before this Hon'ble Court.

And in witness whereof, I put my signature on this 20th day of November 1999 at Guwahati.

Identified by

Sd/- ..

Sd/-

(Ram Prasad Sarmah)

(Sun Barman)

Deponent

(Advocate's Clerk)

20.11.99

SEAL

OATH COMMISSIONER"

The only grievance is that the stamp and the name of the Oath Commissioner is not indicated in the true copy of the affidavit. We feel that if it was there it would have been better but absence of stamp and the name of Oath Commissioner will not be a vital or material deviation from the original nor it may in any manner mislead the returned candidate. Prima facie on perusal of the heading of the affidavit and detailed verification of the contents of the paragraphs, as indicated above, would normally lead one to believe that the averments have been made on affidavit. In Paragraph one of the affidavit there is a specific mention that the petitioner was acquainted with the facts of the case for the purpose of swearing of the affidavit in support of contention of corrupt practices taken recourse to by Respondent No.1 and respondent No.7. In the end the petitioner signs as 'deponent' and he is identified by Advocate's Clerk. That being the position, mere omission of indicating the name of the Oath Commissioner or an endorsement in the true copy that the affidavit was attested by an Oath Commissioner bearing his stamp and seal etc. would not be material. Once an averment is there that affidavit was being sworn in support of allegations of corrupt practices and that the petitioner had put his signature, thereon, prima facie fulfillment of such a legal requirement is adequately reflected even in absence of name and seal etc. of Oath Commissioner in the true copy.

Learned senior counsel Shri Bachawat then referred to two other points

A raised by Respondent No.1 but repelled by the High Court. So far the first point is concerned, about the petition being time barred, he has very fairly given up the said point on being indicated referring to the original that the petition was filed on November 20, 1999 and not on 28.11.1999.

B The only other point which remains to be considered is that in the election petition name of Respondent No.11 has been indicated as "Shri Abdul Khyer" Nij Biswanath, Biswanathghat, District Sonitpur, Assam." According to Respondent No.1 Abul Khayer is the person who had contested the election but he has not been impleaded as a party instead some Abdul Khyer has been impleaded. The submission is that all the candidates who

C contested the election have thus not been impleaded as mandataorily required under Section 82 of the Act i.e. in cases where the petitioner prays for being declared as a successful candidate in the election. The High Court rejected the contention holding that the petitioner intended to implead Abul Khayer as Respondent No.11 to the election petition but it was only a mistake in spelling by reason of which he has been described as Abdul Khyer. Reliance

D was placed upon a decision of Orissa High Court reported in *ILR (1981) 1 Cuttack 39 (43)—Morsingh Tripathy v. Gurubaru Majhi and Ors.*

It may be noted that in Paragraph 1 of the Election Petition it has been mentioned that the respondents were the contesting candidates from 9-Tezpur Parliamentary Constituency that is to say that Respondent No.11 was also impleaded as one who had contested the election from the said constituency.

E There was every intention to implead such a person as a respondent. It may then be noted that along with the election petition, copy of Return of Election is required to be filed in Form 21E under Rule 64 of the Conduct of Election Rules 1961. It contains the result of the election as well as the list of candidates.

F The said list is on record as Annexure I to the election petition filed by the petitioner and the name of Abul Khayer is indicated at Serial No.7 having contested as an independent candidate. It is thus evident that it is not as if the correct name is not available on the record of the case. Apparently, it seems to be a case of spelling mistake. Instead of Abul letter 'd' got added extra hence typed as Abdul in the array of parties and the spelling of Khayer as 'Khyer' omitting 'a' after 'kh'. It is to be noted that address of Respondent

G No.11 is also indicated in the petition. It is not disputed that it is the address of the person who contested the election. In this Court there is an office report of service of notice on respondent No. 8 prepared on the basis of the report received from the Gauhati High Court. So far wrong spelling of Khyer

H is concerned it is of little consequence. Both words "Khyer" and "khayar"

would produce almost the same sound. Technically there may be difference but by way of example some may spell 'Banerjee' as 'Banerji' or 'Saksena' as 'Saxena' or the like. Therefore such difference in spelling of Khayar is but to be ignored. There is certainly some difference in 'Abul' and 'Abdul' but there is ample material on record to indicate that the same person who had contested election was meant to be impleaded e.g. the address of the person, the averment that the Respondents 7 to 18 had contested the election as well as the form of election return indicating names of all those who had contested the election and the names with correct spelling is on the record namely 'Abul Khayar'. The respondent therefore gets no advantage out of above-noted point sought to be made out. The parties have however placed reliance on certain decisions on the point. On behalf of Respondent No.1 reliance has been placed on *Gorelal Shakya v. Maharaj Singh Yadav*, [1995] Supp. 3 SCC 407 wherein Respondent No.10 was shown as Sanjay Kumar whereas correct name should have been Sanjiv Kumar. Similar arguments seems to have been advanced that notice was not served on the correct respondent and the person who ought to have been impleaded, has not been impleaded. The High Court dismissed the petition for non compliance of Section 82(a) of the Act. This Court upset the decision of the High Court observing that High Court had made a mountain out of a mole hill as it was a mere typographical mistake. Then this Court noted that in the body of the petition at one place his name was indicated as Sanjiv Kumar and at another place his name was indicated as Sanjay Kumar. It is submitted that in the present case no application for correcting the name was moved nor any written objection was filed to indicate that it was a typing error. We feel that absence of any such application will not adversely affect the petition for the reasons we have already indicated earlier. Another case relied upon by the learned counsel for the respondent is reported in AIR (1958) SC 687—*K. Kamaraja Nadar v. Kunju Thevar and Ors.* This is a case relating to non-joinder of necessary parties. We are not concerned here with such a point. This case therefore would be of no help to the respondent. The learned counsel for the appellant relies upon a case reported in [1979] 1 SCR. 520—*Shiv Chand v. Ujagar Singh and Anr.* to indicate the approach which the Court may adopt while dealing with a case under Section 86 (1) of the Act. It is observed that the test is whether the election petition complies with provisions of Section 82, not whether the election petitioner has failed to comply with Section 82. The substance of the matter must govern, because hyper technicality when the public policy of the Statute is fulfilled, cannot be permitted to play the procedural tyrant to defeat the vital judicial process, namely, investigation into the merits of the case. We find no force in this point too raised by Respondent No.1. No other point has

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A been urged.

B In the result, we allow the Civil Appeal No. 6593 of 2000 and set aside the judgment and order passed by the High Court dismissing the Election Petition under Section 86 (1) of the Representation of Peoples Act for non-compliance with provisions of Sub-section (3) of Section 81 of the Act. The findings of the High Court, however, repelling the two other grounds as raised by the respondent No. 1 relating to limitation and mention of the name of Abdul Khyer as respondent No. 11 are upheld. This disposes of SLP (C) 21349/2002 (CC 8664/01) also accordingly.

C Costs of the proceedings to be borne by the respondent No. 1.

S.K.S.

Appeals disposed of.