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CHANDRAKANT UTTAM CHODANKAR

v.

SHRI DAYANAND RAYU MANDRAKAR AND ORS.

DECEMBER 15, 2004

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[N. SANTOSH HEGDE, S.B. SINHA AND
TARUN CHATTERJEE, JJ.]

Representation of the People Act, 1951 : Section 86

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Section 81 and 83—Compliances of—Explained.

Interpretation of Statutes :

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*Mandatory provision—Strict construction—May not be called for,
having regard to the text and context of the statute.*

Words :

Shall—Use of—May not confer mandatory nature.

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India Evidence Act, 1872 :

*Section 114(e)—Official acts—Officer of the court—Endorsement made
by—Presumption of correctness—Challenge as to—Held, onus on the party
impeaching it.*

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Appellant filed election petitions challenging the election of the returned candidates. Counsel for the respondents appeared before the court and waived notice on their behalf. The election petitions were dismissed by the High Court for non-compliance of the mandatory provisions of the Section 81(3), 83(1)(a) and 83(1)(c), 83(2) of the Representation of the People Act, 1951. Hence this appeal.

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The respondent contended that the copies of the election petitions served had defects viz. (1) there was no signature of the election petitioners at page 10 of the petitions after the prayer clause and verifications. (2) the stamp in respect of the swearing of the affidavit was also

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absent on the copy of the election petitions and, (3) the affidavit accompanying the petition also does not bear the signature of the election petitioners, The copies which were alleged to have been served or supplied to the Respondent No. 1 were not the true copies.

Allowing the appeals, the Court

HELD : Per Chatterjee, J. (for himself & for Hegde, J.)

1.1. Under section 116A of the Act Supreme Court is conferred with power not only to decide an appeal filed under this section on a question of law but it would also be open to the Supreme Court to decide the appeal as facts as well. [925-E]

2.1. Learned Council for the Respondent No. 1 had no authority to collect copies of the Election Petitions from the Registry of the High Court before 6th of September 2002 nor was it open to the Registry of the High Court to supply copies of the election petitions to the Learned Counsel for the Respondent No. 1 before the vakalatnamas were filed on behalf of the respondent No. 1 i.e. not before 6th of September 2002. Such being the admitted position, it is difficult to believe that such copies relied on by the learned counsel for the respondent No. 1 were at all supplied by the Registry of the High Court to the learned counsel for the respondent No. 1. That apart, from the records, it does not appear that there was any endorsement from the side of the learned counsel for the respondent No. 1 to show that he had received copies from the Registry on which they made out the case for rejection of election petitions. Therefore, the High Court was not justified in rejecting the election petitions relying on the copies alleged to have been served or supplied to the learned counsel for the Respondent No. 1 without there being any direction to file vakalatnamas from the High Court. [927-E-H, 928-A]

2.2. It is no longer res integra that the onus to prove that a copy of the election petition is not served on him, must be on the person who alleges such fact. Thus in presence of the endorsement of the Assistant Registrar of the High Court dated 19th of July, 2002 that the election petitions were in order which would raise a presumption, it would be for the successful candidate/Respondent No. 1 to rebut such presumption and discharge his initial burden. In this case, the Respondent No.

A 1 having failed to discharge such onus, it is not open for the Respondent No. 1 to say that true copies of the election petitions were not filed at the time of presentation of election petitions. [929-F, G]

B 2.3. Second part of section 81(3) of the Act, requiring signature of the election petitioner is satisfied if the copy is attested by the election petitioner to be true copies of the election petitions under their own signature. The defects as noted above cannot lead as to hold that election petitions should be rejected for non-compliance of section 81(3) of the Act as copies served on the respondent No. 1 cannot be treated to be "true copies" within the meaning of the second part of section 81(3). [931-C, D]

C *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, AIR (1964) SC 1545; *Anil R. Deshmukh v. Onkar N. Wagh*, [1999] 2 SCC 205 and *Ram Prasad Sharma v. Mani Kumar Subba*, [2003] 1 SCC 289, relied on.

D 2.4. The defects alleged v.z (1) there was no signature of the election petitioners at page 10 of the petitions after the prayer clause and verifications. (2) the stamp in respect of the swearing of the affidavit was also absent on the copy of the election petitions and, (3) the affidavit accompanying the petition also does not bear the signature of the election petitioners, cannot be held to be vital in nature and thereby did not entail the High Court to dismiss the election petitions at the preliminary stage for non-compliance of section 81(3) of the Act, mere omission to sign by the election petitions in the affidavit accompanying the petition would not also be material. High Court ought not to have rejected the election petitions for non-compliance of the provisions of Section 81(3) of the Act as the defects shown by the Respondent No. 1 cannot be said to be fatal and the copies which were alleged to have been served or supplied to the Respondent No. 1 were wholly and substantially the same as the original. [931-G, H, 932-A, E, 934-A, B]

G *Dr. Shipra (Smt.) & Ors. v. Shanti Lal Khoiwal & Ors.*, [1996] 5 SCC 181; *T.M. Jacob v. C. Poulose and Others*, [1999] 4 SCC 274 and *T. Phunyzatha v. H.K. & Ors.*, [2001] 8 SCC 358, referred to.

H 2.5. The onus to prove that a true copy is not served on the person, will be on the person alleging such a fact. In presence of a certificate

of the Registry of the High Court that there was no defect in the writ petition which would certainly raise a presumption, it would be for the respondent to rebut that presumption and discharge his initial burden. In view of the note of the Registry that requisite number of copies had been duly filed and the election petition was in order. That being the position, the onus was on the election petitioners to prove that true copies of the election petitions were duly filed by him. Moreover, the side provision is not mandatory in nature. That is to say, the verification in the election petition although was defective but that cannot be said to be fatal to the maintainability of the petition. There was no reason for the High Court to reject the election petitions at the preliminary stage on such a technical ground. Mere defect in the verification was not fatal. [935-F-H, 937-B, C]

In F.A. Sopa & Ors. v. Singora & Ors., [1991] 3 SCC 375, relied on.

Satya Narain v. Dhruja Ram & Ors., [1974] 3 SCC 20 and *J.P. Goyal v. Raj Narain & Ors.*, [1984] 3 SCC 339, distinguished on facts.

Per S.B. Sinha, J. (concurring)

1.1. The defects alleged viz (1) there was no signature of the election petitioners at part 10 of the petitions after the prayer clause and verifications. (2) the stamp in respect of the swearing of the affidavit was also absent on the copy of the election petitions and, (3) the affidavit accompanying the petition also does not bear the signature of the election petitioners would not entail dismissal of the election petition at the threshold. The defects pointed are curable and only when despite opportunities granted, the defects are not cured, the election petition may be dismissed. Moreover, correctness or otherwise of a statement made in the election petition would not entail rejection at the threshold. A defective affidavit would not entail dismissal of the election petition. [942-E-G, 946-G-H, 947-A, C]

Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, AIR (1964) SC 1545; *Ch. Subbarao v. Member, Election Tribunal, Hyderabad and Others*, AIR (1964) SC 1027; *T.M. Jacob v. C. Poulose and Others*, [1999] 4 SCC 274 and *Ram Prasad Sarma v. Mani Kumar Subba*, [2003] 1 SCC 289, relied upon.

Dr. Vijay Laxmi Sabho v. Jagdish, AIR (2001) SC 600; *G.*

A *Mallikarjunappa and Another v. Shamanur Shivashankarappa and Others*, [2001] 4 SCC 428; *Kamalnath v. Sudesh Verma*, [2002] 2 SCC 410; *Regu Mahesh alias Reegu Maheshwar Rao v. Rajendra Pratap Bhanj Dev and Another*, [2004] 1 SCC 410; *Shipra (Smt.) & Ors. v. Shanti Lal Khoiwal & Ors.*, [1996] 5 SCC 181; *Satya Narain v. Dhuja Ram & Ors.*, [1974] 3 SCC 20; *Rajendra Singh Etc. v. Smt. Usha Rani and Others Etc.*, [1984] 3 SCC 339; *Anil R. Deshmukh v. Onkar N. Wagh*, [1999] 2 SCC 205; *Dr. Shipra (Smt.) & Ors. v. Shanti Lal Khoiwal & Ors.*, [1996] 5 SCC 181 and *T. Phungzathang v. Hangkhanlian and Others*, [2001] 8 SCC 358, referred to.

C 1.2. Statutory requirements of Sections 81 and 83 is met in substantial compliance thereof. [945-E]

2.1. Even where the expression 'shall' is used, the same may not be held to be mandatory. [947-F]

D *U.P. State Electricity Board v. Shiv Mohan Singh and Anr.*, (2004) 8 SCALE 475, relied upon.

3.1. Even a mandatory provision having regard to the text and context of the statute may not call for strict construction. [947-F]

E *Statutory Construction by Crawford*, referred to.

Nasiruddin and Others v. Sita Ram Agarwal, [2003] 2 SCC 577, relied upon.

F 4.1. Officer of the court are required to perform administrative functions which would draw a presumption of having performed in ordinary course of business in terms of Section 114(e) of the Indian Evidence Act. A presumption of correctness is attached and the burden of proof is on the person impeaching it. [952-C; 953-C]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6622 of 2003.

H From the Judgment and Order dated 18.7.2003 of the Bombay High Court at Goa in E.P. No. 1 of 2002.

WITH

Civil Appeal No. 6750 of 2003.

Ranjit Kumar, J.E.C. Peraria and Ms. Binu Tamta for the Appellant.

V.P. Thali, Mohit Chaudhary, Ms. Shalini Gupta for the M/s. K.L. Mehta & Co. for the Respondent No. 1.

M.N. Krishnamani, Bhavanishankar V. Gadnis, Mrs. B. Sunita Rao, Nitin Popli, Pani and Sushil K. Pathak for the Respondent No. 2.

The Judgments of the Court was delivered by

TARUN CHATTERJEE, J. : The appellants in CA No. 6622 of 2003 and CA No. 6750 of 2003 are aggrieved by the dismissal of their Election Petition Nos. 1 and 2 of 2002 by the Bench of the High Court of Bombay on preliminary issues without any trial and have filed these two statutory appeals under section 116A of the Representation of the People Act, 1951 (in short "the Act") against two separate judgments of the same Bench of Bombay High Court. Since common questions of law and facts arose in both the appeals, they were heard together and are being disposed of by this common judgment.

Facts of the two appeals being practically similar in nature are briefly stated:-.

In the Election Petition being Election Petition No. 1 of 2002 of Chandrakant Uttam Chodankar out of which C.A. No. 6622/2003 arises, the appellant challenged the validity of the Assembly election of Siolim Constituency, Goa under section 86 of the Act in which he contested but the respondent No. 1 was declared elected. The election of the returned candidate was questioned *inter alia* on the ground that the returned candidate (Respondent No. 1) on the date of nomination and the date of election of the constituency in question was disqualified as he was the Chairman of Goa Khadi and Village Industries Board which is a statutory authority and, as such he was holding an office of profit under the Government of Goa.

So far as the facts of the Election Petition No. 2 of 2002 filed by the other appellant Jose Philips Domingo D'Souza which has given rise to filing

A of C.A. No. 6750 of 2003 are concerned, only distinguishing factor was that in that petition, the constituency and the parties were different and in addition to the grounds taken in Election Petition No. 1 of 2002 an additional ground for setting aside the Election Petition was also taken.

B Both the election petitions were filed on 16th of July 2002. The High Court issued notice to the parties on 2nd of August, 2002. However, on the date of preliminary hearing, Mr. Thali, learned counsel along with his junior appeared on behalf of the respondent No. 1 in both the Election Petitions and waived notice on their behalf. For requisition of both the election petitions, it was alleged that the learned counsel for the Respondent No. 1 had collected the election petitions on 2nd of August 2002 from the Registry of the High Court. On the basis of such copies of the Election Petitions filed applications under Order VII Rule 11 of the Code of Civil Procedure on 8th of September 2002 for their rejection on the ground that the election petitioners had failed to comply with the mandatory provisions of section 81(3), 83(1)(a)(c) and section 83 (2) of the Act.

However, after the pleadings were complete, the following questions were framed:

- E 1) Whether the returned candidates proved that the election petitions were liable to be rejected under section 81(1) read with section 86 of the Act by reason of it being barred by limitation?
- F 2) Whether the returned candidates proved that the election petitions were liable to be rejected in limine under section 86 of the Act by reason of its non-compliance of sections 81(3), 83(1)(a)(c) and 83(2) of the Act?
- G 3) Whether the respondent No. 1 proved that the election petition was liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure read with section 86 of the Act by reason of non-disclosure of any cause of action?

H However, out of the aforesaid three questions, the High Court held the question Nos.1 and 3 in favour of the election petitioners. Since no cross objection/Appeal has been filed by the respondent No. 1 in both the appeals

nor any argument was advanced by the Learned Counsel for Respondent No. 1 challenging the findings of the High Court relating to question Nos. 1 and 3, we do not feel it necessary to examine the findings of the High Court relating to question Nos. 1 and 3. Therefore we restrict ourselves only in relation to Question No. 2. A

The High Court in its judgment however divided the Question No. 2 into three parts which are as follows: B

- (i) Whether the copies of the election petitions supplied by the appellants and alleged to have been served upon the learned counsel for the respondent No. 1 by the Registry of the High Court were true copies of the election petitions? C
- (ii) Whether the appellants had served copies of the election petitions to the number of respondents mentioned in the petitions in compliance with section 81 (3) of the Act or not ? D
- (iii) Whether the verification of the election petitions and document was made by the appellant or not ?

However, the High Court rejected both the election petitions of the appellants on question No. 1 and 2 and rejected election petition No. 2 of 2002 also out of which CA No. 6623 of 2003 has arisen, on an additional ground for non-compliance of section 83(1)(c) of the Act. E

Before we take up the aforesaid three questions for our decision, we feel it appropriate at this stage to refer to some of the relevant provisions of the Act. F

Chapter II of the Act deals with Election Petitions to High Court.

Section 80 of the Act says that no election shall be called in question except by an election petition presented in accordance with the provisions of part VI of the Act.. G

Section 80A of the Act confers power on the High Court to try election petitions. Section 81 of the Act deals with presentation of election petition H

A which reads as under:-

“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 Court] 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 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].

2[(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.]”

D Section 82 deals with parties to the election petition. Since this provision is not relevant for our purpose, we do not think it necessary to deal with this section in this judgment. Then comes section 83 of the Act which deals with the contents of the Election Petitions. Section 83 is as follows:-

E “83 Contents of petition — (1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

F (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

G (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:

H [Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the

prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

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

Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of section 81 or 82 or section 117 of the Act. There is yet another section which may also be relevant for our purpose. This is section 116A of the Act which deals with appeals to Supreme Court. Section 116A of the act reads as under:-

“116A. Appeals to Supreme Court—(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (*whether of law or fact*) from every order made by a High Court under section 98 or section 99.”

(*Emphasis supplied*)

A bare perusal of section 116A of the Act, it is clear that an appeal shall lie from an order made by the High Court to the Supreme Court on any question of *law and fact*. Therefore, under section 116A of the Act the Supreme Court is conferred with power not only to decide an appeal filed under this section on a question of law but it would also be open to the Supreme Court to decide the appeal on *facts* as well.

Keeping the power conferred on this Court under section 116A of the Act that is to say this Court is also conferred with power to decide an appeal on facts, let us first examine whether the High Court was justified in relying on the copies of the election petitions which were alleged to have been served on the Learned Counsel for the Respondent No. 1 in dealing with the questions in hand.

In support of the prayer for dismissal of the election petitions, the Respondent No. 1 examined one witness who was the junior of the Learned Counsel for Respondent No. 1. In her affidavit – evidence she had stated that the election petitions were listed on 2nd of August, 2002 and her senior Sri Vilas Thali on that date i.e. on 2nd of August, 2002 filed vakalatnamas on behalf of Respondent No. 1. She also stated that the copies of the election

A petitions were served on the learned counsel for the respondent No. 1 by the Registry of the High Court in her presence. She admitted that on 19th of August, 2002 the bailiff of the Court also served two copies of the election petitions and a notice of the High Court on the Learned Counsel for Respondent No. 1. She further stated in her deposition that one copy of the election petitions was returned to the Assistant Registrar of the High Court while retaining the notice issued by the Court which accompanied a copy of the election petition. In cross-examination, she admitted that she had personal knowledge that her senior Mr. Thali had filed his vakalatnama on 2nd of August, 2002 on behalf of Respondent No. 1 in both the Election Petitions. However, it appears from the record that the vakalatnamas were signed by the Respondent No. 1 on 4th of August, 2002 and the signed vakalatnamas were received by the Registry of the High Court on 6th of September, 2002. She also admitted that her senior Mr. Thali, did not make any endorsement of having received copies of the election petitions on behalf of Respondent No. 1 in the ordersheet of the election petitions. The High Court, relying on these copies in its judgment *inter alia* held that the election petitions were liable to be rejected on the ground that the copies which were served on the learned counsel for the Respondent No. 1 were not true copies of the election petitions. Keeping these facts in mind, let us now examine whether the copies which were alleged to have been supplied by the Registry of the High Court to the learned counsel for the Respondent No. 1 could at all be relied on by the High Court. The copies of the election petitions which were alleged to have been supplied by the Registry of the High Court on the Learned Counsel for the Respondent No. 1 were exhibited.

F For the reasons mentioned hereinafter, we are of the view that no reliance could be placed by the High Court on the copies of the Election Petitions alleged to have been supplied by the Registry of the High Court to the learned counsel for the respondent No. 1.

G As said hereinabove, it is not in dispute that two true copies of the election petitions were duly served upon the Learned Counsel for Respondent No. 1 by the bailiff of the High Court after the period of limitation for filing an election petition under section 86 of the Act was over. We have carefully examined the copies of the election petitions alleged to have been supplied to the learned counsel for the Respondent No. 1. From the facts stated hereinafter, it would be difficult for us to hold that reliance could

at all be placed by the High Court on such copies.

The first reason is that the High Court ought to have drawn an adverse inference against the respondent No. 1 for not filing the applications under Order VII Rule 11 of the Code of Civil Procedure immediately after receiving those copies from the Registry of the High Court as, according to us, the Respondent No. 1 ought not to have waited for more than a month to file the applications under Order VII Rule 11 of the Code of Civil Procedure for rejection of election petitions when true copies were already served on the Respondent No. 1. That apart, a perusal of the copies alleged to have been served on the Respondent No. 1 indicates that copies of the election petitions which the petitioners did not submit for service were produced by the Respondent No. 1 as having been served on the Respondent No. 1.

Even otherwise, from the facts narrated earlier, it is clear that on 2nd of August, 2002 the Learned Counsel for Respondent No. 1 in both the election petitions had appeared before the High Court on behalf of Respondent No. 1 without filing any vakalatnama. As said hereinafter, from the records, it also appears that the vakalatnamas were signed by the Respondent No. 1 on 4th of August, 2002 and received by the Registry on 6th of September, 2002. On 19th of August, 2002, Court Bailiff served two true copies of election petitions on the Learned Counsel for the Respondent No. 1. From the above, it is therefore clear that the Learned Counsel for the Respondent No. 1 had no authority to collect copies of the Election Petitions from the Registry of the High Court before 6th of September 2002 nor was it open to the Registry of the High Court to supply copies of the election petitions to the Learned Counsel for the Respondent No. 1 before the vakalatnamas were filed on behalf of the respondent No. 1 i.e. not before 6th of September 2002. Such being the admitted position, it is difficult to believe that such copies relied on by the learned counsel for the respondent No. 1 were at all supplied by the Registry of the High Court to the learned counsel for the respondent No. 1. For the reasons aforesaid, we are unable to hold that in fact the copies alleged to have been served or supplied to the learned counsel for the respondent No. 1 were at all served or supplied by the Registry of the High Court. That apart, from the records, it does not appear that there was any endorsement from the side of the learned counsel for the respondent No. 1 to show that he had received copies from the Registry on which they made out the case for rejection of election petitions. For the reasons aforesaid, we are therefore of the view that the High Court

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A was not justified in rejecting the election petitions relying on the copies alleged to have been served or supplied to the learned counsel for the Respondent No. 1 without there being any direction to file vakalatnamas from the High Court.

B It is an admitted position that true copies of the election petitions were served upon the Respondent No. 1 by the Court Bailiff. In the absence of any material to show that the true copies of the election petitions were not filed with the election petitions at the time of their presentation and in view of our discussions herein earlier that no reliance could be placed on the copies relied on by the High Court, we are unable to sustain the orders of the High Court. We are also unable to agree with Mr.Thali that no reliance could be placed on the true copies served by the Court Bailiff because they were served after the expiry of the period of limitation. It is difficult to understand that the period of limitation shall start from the date of serving the copies and not from the filing of copies of the election petitions. From the records it does not appear that such copies were filed after the period of limitation.

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E For the reasons aforesaid, we may safely conclude that the election petitions were not liable to be rejected relying on the copies of the election petitions alleged to have been served upon the Respondent No. 1 especially when true copies of the same were duly supplied to the Respondent No. 1. However, when two questions were framed by the High Court and answered in favour of the Respondent No. 1, we feel it appropriate to decide the appeals also on question Nos. 1 and 2.

F Let us now turn to question No. 1 first. In our view, the question No. 1 needs to be decided in favour of the appellants for the reasons mentioned hereinbelow. As noted herein earlier, record shows that the election petitions as well as the question forms and answers were examined by the Registry of the High Court. Exhibit RW7 was the Examination Form which was duly filled in by the appellants. In this Examination Form Question No. 3 was as follows: -

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H “Q.3 Whether copies of the Petition and accompanying papers are also supplied for being made available to the Respondents and, if the sets of these copies are duly attested by the Petitioner under his own signature as true copy?”

The answer to this question No. 3 from the appellants was 'Yes'. In the Examination Form (RW7), the Assistant Registrar at the end made an endorsement on 19th of July, 2002 to the following effect:-

"The petition is in order. We may direct the petition to be registered as election petition."

(Emphasis supplied).

From the aforesaid endorsement of the Assistant Registrar and in view of the answer given to question No. 3 of the Examination Form which was duly examined by the Registry of the High Court and after such examination the note was appended saying that since election petitions were in order and therefore the Registry be directed to register the election petitions and further in view of the fact that from the order of the High Court dated 2nd August, 2002, it is evident, when the election petitions were taken up for preliminary hearing, the High Court noted appearance of the Learned Counsel for Respondent No. 1 who appeared and waived service on behalf of Respondent No. 1 in both the election petitions but did not say that vakalatnamas were filed nor from the said order it would be evident that any direction was made to file vakalatnamas, we are unable to hold that at the time of presentation of election petitions, true copies of the same were not filed which were subsequently served upon the Respondent No. 1 by the Bailiff of the High Court. The High Court in its judgment held that the onus to prove supply of the copies was on the election petitioners and had drawn an adverse inference against the appellants for not examining the Assistant Registrar of the High Court. We are unable to accept this view of the High Court. It is no longer res integra that the onus to prove that a copy of the election petition is not served on him, must be on the person who alleges such fact. We are therefore of the view that in presence of the endorsement of the Assistant Registrar of the High Court dated 19th of July, 2002 that the election petitions were in order which would raise a presumption, it would be for the successful candidate/Respondent No. 1 to rebut such presumption and discharge his initial burden. In this case, the Respondent No. 1 having failed to discharge such onus, it is not open for the Respondent No. 1 to say that true copies of the election petitions were not filed at the time of presentation of election petitions. It is not in dispute that true copies of the election petitions were duly served upon the Learned Counsel for the Respondent No. 1 before the preliminary hearing of the Election Petitions. According to Mr.Thali, that could not cure the defect in supplying to the

A Respondent No. 1 a true copy of the election petition as such petitions were served on the Respondent No. 1 at a time when the elections petitions became barred.

B In view of our discussion made above and in the absence of any material to show that true copies of the election petitions were also not filed at the presentation of election petitions, we are unable to hold that there was non compliance of Section 81(3) of the Act inasmuch as the copies alleged to have been supplied to the returned candidate were not true copies of the petitions.

C Even if the copies of the election petitions which were alleged to have been served on the Respondent No. 1 could be accepted and relied upon then also, in our view, the High Court had committed an error in holding that the election petitions must be rejected for non-compliance of Section 81(3) of the Act on the ground that “true copies” of the Election Petitions were not served upon the respondent No. 1. As noted herein earlier, the successful candidates/respondent No. 1 in both the Election Petitions sought rejection of the election petitions *inter alia* on the following grounds:

E (1) Internal page 10 of Exhibit RW-1 which is the copy of the election petition after the prayer clause and verification there is no signature of the election petitioner.

(2) The stamp in respect of the swearing of the affidavit was also absent on the copy of the election petition.

F (3) The affidavit accompanying the petition also does not bear the signature of the election petitioners.

G The High Court found that after the prayer clause at internal page 10 of the election petition above the petitioner and beneath the verification there was no signature of the election petitioner above the word “petitioner” and held that the copy of the election petition would show that the election petition was neither signed and verified nor was it attested before any authority. The High Court also found that there was no endorsement of the officer before whom the election petitioner had signed. It was also found that there was absence of signature of the Advocate who had identified the election petition. The High Court further found that although an affidavit

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was filed by the appellants but the copy of the election petition however did not show that the affidavit was affirmed by the election petitioner and, there was also no signature of the election petitioner above the word “deponent”. Accordingly the High Court held that the copies of the election petitions on which reliance was placed by the Respondent No. 1 were found to be not true copies of the election petitions that were filed. In our view, the defects as shown above would not entail the High Court to dismiss the election petition under section 86 of the Act. Section 81(3) has two parts - The first part relates to filing of as many as copies of the election petitions as that of number of respondents in the same. The second part is that copy shall be attested by the petitioner under his own signature to be a true copy of the petition. In our view, the second part of section 81(3) of the Act requires that every such copy should be attested by the election petitioners under their own signature to be true copies. Second part of section 81(3) of the Act, in our view, is satisfied if the copy is attested by the election petitioner to be true copies of the election petitions under their own signature. In our view, the defects as noted above cannot lead us to hold that election petitions should be rejected for non-compliance of section 81(3) of the Act as copies served on the respondent No. 1 cannot be treated to be “true copies” within the meaning of the second part of section 81(3).

The High Court held that the election petitions were liable to be rejected on a finding that the above noted defects were vital in nature and therefore there was total non-compliance of section 81(3) of the Act. In our view, even the defects alleged as aforesaid in the election petitions could not be held to be vital in nature and thereby did not entail the High Court to dismiss the election petitions at the preliminary stage for non-compliance of section 81(3) of the Act. Let us now examine whether election petitions were liable to be rejected for the defects shown above.

As noted hereinafter, Section 81(3) postulates that every copy of the election petition shall be attested by the election petitioner under his own signature to be a true copy of the petition. From a bare perusal of the defects which have been referred to hereinafter, we can safely conclude that such defects cannot be said to be of vital nature. According to Respondent No. 1, (1) there was no signature of the election petitioners at page 10 of the petitions after the prayer clause and verifications. (2) the stamp in respect of the swearing of the affidavit was also absent on the copy of the election

A petitions and, (3) the affidavit accompanying the petition also does not bear the signature of the election petitioners.

The Supreme Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, AIR (1964) SC 1545 held as follows:-

B “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”.

C The principles laid down as aforesaid were also followed in *Anil R. Deshmukh v. Onkar Nath Singh*, [1999 (2) SCC 205]. So far as the 2nd defect namely the stamp in respect of the swearing of the affidavit was absent on the copy of the petition is concerned, we are of the view that mere omission to stamp in respect of the swearing of the affidavit would not at all be material; when each and every copy of the petition was attested by the election petitioners. Reliance in this connection may be placed on the decision of this Court in the case of *Ram Prasad Sarma v. Mani Kumar Subba*, [2003] 1 SCC 289. Similar is the position in respect of defect No. 3. From the record it appears that on each and every page a handwritten attestation in ink under the signature of the election petitioner was made by the election petitioners. Therefore, mere omission to sign by the election petitioners in the affidavit accompanying the petition would not also be material. From the above, we can only conclude that such defects in the copies of the election petitions cannot lead us to reject the election petitions.

E Even otherwise, the election petitions ought not to have been rejected by the High Court for non compliance of section 81(3) of the Act. What should be the meaning of ‘true copy’ in section 81(3) of the Act was considered by this Court in *Dr. Shipra (Smt.) & Ors. v. Shanti Lal Khoiwal & Ors.*, [1996] 5 SCC 181 in which it was held that the defects of the aforesaid nature were not curable, and therefore, the election petition was liable to be dismissed on that ground. This decision of the Supreme Court, namely, *Dr. Shipra’s* case was doubted in a latter decision in the case of *T.M. Jacob v. C. Poulouse and Others*, [1999] 4 SCC 274 and the matter was referred to the Constitution Bench of this Court. The Constitution Bench in *T.M. Jacob’s* case held-

H “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 defect 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 Shyam* case 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."

The difference of opinion was settled by the Constitution Bench in *Jacob's* case by enunciating the principles as noted hereinabove. We have carefully examined the defects as noted hereinafter and on a careful examination of the defects we cannot be persuaded to the view that the defects in the present case also are material or it was vital in nature or the absence of stamp of attestation could be treated to be a ground for rejection of the Election Petitions under Section 81(3) of the Act. It may be mentioned herein that the decision of this Court in *Anil R. Deshmukh* case was approved by the Constitution Bench and in which it already distinguished the case of *Dr. Shipra*. It must not be forgotten that in the Constitution Bench decision of this Court, it was evident that "(a) the expression 'copy' in Section 81(3) of the Act means a copy which is substantially the same as the 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 the same cannot be cured after the period of limitation." The same principle was enunciated following the Constitution Bench decision of this Court in *T. Phunyzatha v. H.K. & Ors.*, [2001] 8 SCC 358. In this decision also it was held that the defects indicated in these cases for which dismissal of the

A election petition was sought for did not attract Section 86(1) of the Act for dismissal of the election petitions for non-compliance of Section 81(3) of the Act. For the reasons aforesaid and applying the principles laid down in the aforesaid decisions of this Court, we are of the view that the High Court ought not to have rejected the election petitions for non-compliance of the provisions of Section 81(3) of the Act as the defects shown by the Respondent No. 1 cannot be said to be fatal and the copies which were alleged to have been served or supplied to the Respondent No. 1 were wholly and substantially the same as the original. That apart, it is an admitted position, as noted hereinafter, true copies of the election petitions were duly served or supplied to the Respondent No. 1. The question that was raised by the learned counsel for the Respondent No. 1 before us was whether subsequent supply of such true copies on the Respondent No. 1 could be treated to be a sufficient compliance of Section 81(3) of the Act. Apart from the conclusions made hereinbefore, we are also of the view that in view of the decision of this Court in *Anil R. Deshmukh v. Onkar N. Wagh*, [1999] 2 SCC 205 this question needs to be decided in favour of the appellant and against the Respondent No. 1. In paragraph 17 of the aforesaid decision this Court observed as follows:

E “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 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 supplied).

G Such being the position, we hold that the High Court was not justified in rejecting the election petitions for non-compliance of Section 81(3) of the Act.

H Let us now take up the question No. 2 raised before us which is in respect of the fact that the election petitions when presented were not accompanied with as many copies thereof as there were respondents mentioned in the petition. On this score, the High Court in both the appeals held

in favour of respondent No. 1 *inter alia* on the following findings:

- a) The Additional Registrar of the High Court in its note/order did not disclose that when the election petitions were filed they were accompanied by as many copies thereof as there were respondents in the petition. Although, it was admitted that subsequently copies of the election petitions were duly filed.
- b) There was nothing on record to show that the copies of the petitions when filed were accompanied by requisite number of copies.

It is not in dispute that copies of the election petitions were duly served on the learned counsel for the respondent No. 1 in both the appeals on 19th August, 2002. As said hereinafter, according to Mr. Thali, since the copies were served on the respondent No. 1 after the period of limitation no reliance could be placed on such copies. We have already held that the copies of the election petitions alleged to have been served /supplied to the learned counsel for the respondent No. 1 on 2nd of August, 2002 could not be relied on. We have already seen earlier that in absence of any material to show that the election petitions were not presented with the requisite number of copies of the same and the admitted fact was that the Bailiff of the Court had served true copies of the election petitions on the Respondent No. 1 in our view, the High Court had committed an error by placing the onus on the election petitioners to prove that the requisite number of true copies were filed. As said herein earlier, the onus to prove that a true copy is not served on the person, will be on the person alleging such a fact. In presence of a certificate of the Registry of the High Court that there was no defect in the writ petition which would certainly raise a presumption, it would be for the respondent to rebut that presumption and discharge his initial burden. In this case admittedly note of the Registry of the High Court clearly says that requisite number of copies had been duly filed and the election petition was in order. That being the position, we are unable to agree with Mr. Thali as well as the High Court that the onus was on the election petitioners to prove that true copies of the election petitions were duly filed by him. Furthermore, in view of our discussions herein earlier, the true copies have been duly filed as admitted by the Respondent No. 1, even subsequent to the filing of the election petitions and in view of the decision of this Court in *Anil R.*

A *Deshmukh v. Onkar N. Wagh*, we are also of the view that since true copies were duly filed before the preliminary hearing of the Election Petitions the defects even if there be any, were thus removed, the election petitions could not be rejected on these grounds.

B For the reasons aforesaid, we are unable to sustain the judgment of the High Court in rejecting the election petitions for non filing of requisite number of copies thereof as well as the copies alleged to have been served on the Learned counsel for the respondents were not true copies. Accordingly, the two common questions as framed herein earlier and decided by the High Court in favour of the Respondent No. 1, are decided in favour of the appellants. Therefore, the election petitions were not liable to be rejected on the reasons given hereinearlier.

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 D Coming now to answer the question No. 3 as posed herein earlier, we find in the appeal of *Chandrakant Uttam Chodankar v. Shri Dayanand Rayu Mandrakar & Ors.*, (Election Petition No. 1 of 2002 which gave rise to Civil Appeal No. 6622 of 2003), the question No. 3 was not pressed before the High Court and the Learned counsel appearing for the Respondent No. 1 also did not advance any argument in support of such finding before us. However, in the other appeal, namely, in the appeal of Jose Philips Domingo D'Souza (Election Petition No. 2 of 2003 which gave rise to Civil Appeal No. 6750 of 2003), this question was pressed before the High Court and the High Court answered this question in favour of the Respondent No. 1. Although, in Election Petition No. 2 of 2002 which gave rise to CA No. 6750 of 2003 High Court found this question in favour of the Respondent No. 1, it may be kept on record that the learned counsel for the Respondent No. 1 did not also advance any argument in support of the aforesaid finding of the High Court before us in this appeal. Since this question was decided in favour of Respondent No. 1, we feel it appropriate to take up and decide this question as well. As noted herein earlier, the High Court on question No. 3 held that the Election Petition No. 2 of 2002 was liable to be rejected for non-compliance of section 83(1)(c) of the Act. We are however unable to sustain this finding arrived at by the High Court. Before we take up the question, we may consider Section 83(1) of the Act. Section 83 of the Act deals with the contents of the petition. Since in this case we are concerned with section 83(1)(c) of the Act, we at the risk of repetition refer to this section which is as follows:-

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“83(1)(c)—“Election petition shall be signed by the petitioner and verify in the manner laid down in the Code of Civil Procedure, 1908 for the verification of the pleading.”

On a careful reading of this provision, we are of the view that the said provision is not mandatory in nature. That is to say, the verification in the election petition although was defective but that cannot be said to be fatal to the maintainability of the petition. In view of our discussions made herein above to the extent that the election petitions were in order even if it was not so at the time of presenting the election petitions, there was no reason for the High Court to reject the election petitions at the preliminary stage on such a technical ground. The High Court held that Exhibit F which was a document filed alongwith election petition must be taken to be an integral part of the petition. The affidavit which was filed alongwith the election petition was sworn on 15th July, 2002 and the election petition was filed on 16th July 2002 which was admittedly the last date for filing the election petitions. Exhibit F is a zerox copy of the affidavit which was received by the election petitioner. In the verification portion of this affidavit it was stated that the petitioners solemnly affirmed and verified that paragraphs 1 to 11 were true to their knowledge. Due to this defect it was held that the election petition was liable to be rejected for non compliance of section 83(1)(c) of the Act. From the record it appears that the election petitioner applied for copy on 11th July, 2002 and the same was ready for delivery on 16th July, 2002. According to High Court, Exhibit F could not be in possession of the election petitioner when the election petition was signed and verified and affidavit affirmed. According to Mr.Thali, learned counsel for the Respondent No. 1, since election petition itself was filed on 16th July, 2002, Exhibit F could not come into possession of the Election Petitioners on 16th July, 2002. We are unable to accept this submission of Mr.Thali. It is not impossible that when on 16th July, 2002 the election petition was filed, it could be filed alongwith Exhibit F which came into possession of the election petitioner on the same day i.e. on 16th July, 2002. That apart, assuming that the Exhibit F was defective, even then mere defect in the verification as held nerein earlier was not fatal for which the High Court was justified in rejecting the election petitions for non-compliance of section 83(1)(c) of the Act. In *F.A. Sapa & Ors. v. Singora & Ors.*, [1991] 3 SCC 375 this Court expressed this view also. For the reasons aforesaid, we therefore hold that the question No. 3 which was found in favour of Respondent No. 1 by the High Court must be answered in favour of the

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A appellants and against the Respondent No. 1.

B Before parting with this judgment, we may recall the decisions of this Court on which strong reliance was placed by the learned counsel for the respondent No. 1. Relying on the decision in the case of *Satya Narain v. Dhuja Ram & Ors.*, [1974] 3 SCC 20, a 3-Judge Bench of this Court held that when the period of limitation for filing an election petition was over, it was not open for the appellant to file documents or other materials for compliance of Sections 81 (3) and 83(1)(c) of the Act. In that decision, this Court was considering whether first part of Section 81 (3) of the Act was a pre-emptory provision and for total non-compliance of it would entail dismissal of the election petitions under section 86 of the Act. Relying on this decision of this Court, Mr. Thali argued that the High Court was fully justified in rejecting the election petitions on the ground that subsequent compliance would not entail the High Court to dismiss the election petitions. The Supreme Court held in the facts situation of the said decision that there was non-compliance of section 81(3) of the Act by not filing as many copies of the election petitions as there were respondents. In that factual situation, the Supreme Court has held that total non-compliance of the first part of section 81(3) of the Act entails dismissal of the election petitions under section 81(3) of the Act. The present case, however, stands on a different factual situation. In this case, it is not in dispute that election petitions were filed along with requisite number of copies thereof, but in the copies some defects as mentioned hereinafter, were alleged. It is not a case of total non-compliance of section 81 of the Act as the requisite number of copies of election petitions were filed along with election petitions. The other decision on which Mr. Thali appearing for Respondent No. 1 also placed strong reliance was a decision of this Court in the case of *J.P. Goyal v. Raj Narain & Ors.*, [1984] 3 SCC 339. This decision is also distinguishable on facts. We have already held that the copies which were alleged to have been supplied to the Learned Counsel for Respondent No. 1 could not, at all, be relied on by the High Court. Therefore, in the facts and circumstances of this case, the principles laid down by this Court in the case of *J.P. Goyal v. Raj Narain & Ors.*, cannot, at all, be applied. In view of our findings made hereinabove that the copies of the election petitions, which were alleged to have been served upon the Learned counsel for the Respondent No. 1 by the Registry of the High court, could not, at all, be relied on and in view of the admitted fact that the Bailiff of the High Court had subsequently served true copies of the election petitions on the Learned counsel for the

Respondent No. 1, the High Court committed an error in rejecting the election petitions for non compliance of the provisions of Sections 81(3) and 83(1) (c) of the Act. A

Accordingly, the judgments of the High Court are hereby set aside and the matters are remitted back to the High Court for final disposal of the two election petitions, namely Election Petition No. 1 and 2 of 2002 at an early date preferably within four months from the date of filing of a copy of this order in the High Court. The High Court shall dispose of the election petitions without granting any unnecessary adjournment to the parties. The learned counsel for the Respondent No. 1 prayed for some time to file written statement in the aforesaid two election petitions. Considering the facts and circumstances of the case, they are permitted in both the Election Petitions to file their written statement within a period of three weeks from the date of receiving a copy of this judgment, and reply, if any, may be filed within a week thereafter. B C

For the reasons aforesaid, the appeals are allowed to the extent indicated above. There will be no order as to costs. D

S.B. SINHA, J. : The Election Petitioners are the Appellants herein.

By reason of the impugned judgment and order dated 18.7.2003, the High Court dismissed the election petitions at the threshold. *inter alia*, on the grounds that : (i) the copy of the Election Petition supplied to the First Respondent was not the true copy of the original; (ii) enough number of true copies were not filed with the election petition by the Election Petitioners. E

For the purpose of proper appreciation of the question involved in these appeals, we may notice the following facts : F

The election petitions were filed on 16.07.2002. The main contention raised therein by the Appellants herein was disqualification of the elected candidate in terms of Article 191(1)(a) of the Constitution of India, as allegedly, in Civil Appeal No. 6622 of 2003, the First Respondent was the Chairman of the Goa Khadi and Village Industries Board, while in Civil Appeal No. 6750 of 2003, the First Respondent was the Chairman of the Goa State Schedule Caste and other Backward Classes Finance and Development Corporation Limited, incorporated under the Companies Act, 1956, G H

A a statutory authority and a company respectively over which the State of Goa has a complete control. A Form as contained in Form No. 7 was filled in by the Office, question No. 3 whereof relates as to whether copies of the Petition and accompanying papers are also supplied for being made available to the Respondents and, if the sets of these copies are duly attested by the Petitioner under his own signature as true copy? The Assistant Registrar made in endorsement therein (evidently upon scrutinizing the records) that there was 'no defect'. Question No. 19 to the effect "Any other objection raised by the Officer" in the said Examination Form was also answered in the negative.

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C The Election Petition was placed before the High Court on 01.08.2002 on which date notice was directed to be issued. The elected candidate being the First Respondent appeared and accepted the notice. Although, however, no Vakalatnama was filed, allegedly a copy of the election petition in each case was obtained from the Registry which is said to be not a true copy of the original. The Bailiff of the court served the notice on the Respondents on 19.07.2002. The Vakalatnama of the First Respondent is dated 04.08.2002. The said Vakalatnama was however, filed in the High Court on 06.09.2002. The First Respondent, however, instead of filing his reply to the said election petition, moved an application purported to be under Order 7 Rule 11 of the Code of Civil Procedure read with Section 86 of the Representation of the People Act, 1951, contending that :

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- E**
- (a) there is no endorsement indicating the date of filing.
- F**
- (b) there is no endorsement indicating that the petition was accompanied by as many copies as there are numbers of respondents.
- (c) neither index nor the petition is signed by the petitioner.
- G**
- (d) the petition is not signed by the petitioner's advocate as required by Section 83(1)(c) of the Representation of People Act, 1951.
- (e) the annexure to the petition are not verified by the petitioner in the same manner as the petition.
- H**
- (f) Hence there is no proper presentation of the petition as required under as mandate of Section 81(3), 83(1)(a)(c), 83(2)

and 117, entailing its summary dismissal under Section 86 of the Representation of People Act.” A

A reply to the said application was filed by the Appellants herein on 23.10.2002 denying and disputing the contentions raised therein. The High Court having regard to the rival contentions of the parties framed three issues, which are as under : B

- “1. Whether the respondent No. 1 proves that the election petition is liable to be rejected under Section 81(1) read with Section 86 of the Act by reason of it being barred by limitation ? C
2. Whether the respondent No. 1 proves that the election petition is liable to be rejected in limine under section 86 of the Representation of the People Act, 1951 by reason of its non-compliance with Section 81(3), 83(1)(a), 83(1)(c) and 83(2) of the said Act ? D
3. Whether the respondent No. 1 proves that the election petition is liable to be rejected under Order 7 Rule 11(a) of the CPC read with Section 87 of the said Act by reason of” non-disclosure of any clause of action ?” E

Issue No. 2 was sub-divided as Issue Nos. 2(A), 2(B) and 2(C), which are as under :

- 2(A). Whether the copies of the Election Petitions supplied by the appellants and alleged to have been served upon the learned counsel for the Respondent No. 1 by the Registry of the High Court were true copies of the Elections Petitions ? F
- 2(B) Whether the Appellants had served copies of the Election Petitions to the number of Respondents mentioned in the petitions in compliance with Section 81(3) of the Act or not ? G
- 2(C) Whether the verification of the Election Petitions and document was made by the Appellants ? H

A Issue Nos. 2(A) and 2(B) were decided against the Election Petitioner and in favour of the First Respondent.

B The High Court in its judgment noticed that Mr. Vilas Thali, the learned counsel appearing on behalf of the First Respondent admitted that his client had received subsequently two copies of the election petition through the Bailiff out of which one copy was returned and that the copy received by him subsequently is a true copy. The High Court further noticed that RW-1 in her evidence stated that the Vakalatnama was not filed on 02.08.2002 but in fact was filed on 06.09.2002 and the same was dated 04.08.2002.

C On Issue No. 2(A), the High Court opined that the said copy could not have been prepared by the First Respondent, the returned candidate, in order to secure the dismissal of the election petition. It was further opined that although the returned candidate was subsequently supplied the true copy of the election petition but thereby the defect as regard breach of Section 81 of the Representation of the People Act could not have been cured.

D The defects as contained in Ex. R.W.-1 (copy filed by the First Respondent which was said to have been received from the Registry) as noticed by the High Court are in the following terms :

E “A perusal of the copy of election petition at Exhibit R.W. 1 it is seen that it is signed by the election petitioner. However, after the prayer clause at internal page 10 of the petition above the word ‘petitioner’ similarly, on the same page, beneath the verification, there is no signature of the election petitioner above the word ‘petitioner’. Thus, the copy at Exhibit R.W.-1 would indicate that the election petition had neither signed, verified that the petitioner nor was it attested before any authority. There is no endorsement of attestation of the Officer before whom the petition was signed. Similarly, there is absence of the signature of the Advocate, who had identified the election petitioner. An affidavit has been filed by the election petitioner and the copy of the affidavit in Exhibit R.W.-1 does not show that the affidavit has been affirmed by the election petitioner. There is no signature of the election petitioner above the word ‘deponent’. There is no signature of the advocate, who has identified the election petitioner. Here is an absence of the

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affirmation endorsement put by the authority, who has adminis-
tered the oath including absence of signature and name of the
authority. For the aforesaid reason, therefore, the copy at Exhibit
R.W. 1, which is supplied to the respondent no. 1 returned candi-
date, is not a true copy of the election petition that is filed. The
Judgments of the Supreme Court, on which reliance is placed by
the learned counsel for the election petitioner, in may respectful
opinion in the facts of the present case, are, therefore clearly
distinguishable.” B

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On Issue No. 2(B), it was held that despite the endorsement of the
Additional Registrar in the Examination Form (Ex. RW-7) dated 18.07.2002,
and although Query No. 3 as regard filing the requisite number of copies
for service to the Respondents was answered in the affirmative, but the said
endorsement does not disclose that when the Election Petition was filed it
was accompanied by as many copies thereof as there were Respondents
mentioned in the petition. It was held that the order-sheet of the Additional
Registrar, dated 16th July, 2002, also did not indicate that the Election
Petition was accompanied by as many copies thereof as there were Respond-
ents. D

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The office endorsement, however, showed that the second set of copies
to be served by the registered post acknowledgement due was supplied by
the advocate for the election petitioner on 12.08.2002.

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It was further opined by the High Court that the additional correct
copies were filed subsequent to the expiry of the period of limitation and,
thus, the defect in the said petition could not be cured. Sub-issue 2(C),
however was answered in favour of the Election Petitioner.

The First Respondent examined an Advocate Ms. Gandhali N. Pednekar,
said to be junior of Mr. Vilas P. Thali as his witness being RW-1.

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We have been taken through the evidence of R.W. 1. She accepted that
on endorsement on the copy of the petition was made on behalf of the First
Respondent by Mr. Thali showing the receipt of the copy of the election
petition. She further accepted that she received the summons on 19.08.2002,
which was marked as Ex.RW.-5 being the original of Ex.RW-2. The notice
and the petition were also produced before the court and marked as Ex. RW-
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A 2 and Ex.RW-1. She furthermore admitted that the Examination Form dated 18.07.2002 was signed by the Section Officer (Judicial). She contradicted her stand as regard the date of the Vakalatnama being 02.08.2002, as admittedly the said Vakalatnama bore the date of 04.08.2002. Despite such admission based on the materials on records, she contended :

B “That on 02.08.2002, my senior, Advocate Vilas Thali, filed the vakalatnama on behalf of the Respondent No. 1” is correct”.

C When, however, her attention was drawn to the Vakalatnama, which was dated 04.08.2002, she stated that she would not be able to say whether the First Respondent had not received any summons to appear before the Court on 02.08.2002.

We may also notice the endorsement made by the Additional Registrar stating :

D “Petition is in order. We may admit the petition to the register as Election Petition.”

E The findings of the High Court, as noticed hereinbefore, must be scrutinized keeping in view the aforementioned fact situation obtaining herein.

F It is difficult to accept that although no Vakalatnama was filed by Mr. Thali on 02.08.2002, he would be supplied a copy of the petition by the Registry and that too without making an endorsement in that behalf, particularly when it is accepted that the bailiff served two copies upon the elected candidate which were true copies of the original. How an incorrect copy came in possession of the learned Advocate of the First Respondent herein is not a matter which would fall for our determination but we can record our satisfaction that sufficient number of true copies be presumed to have been filed having regard to the endorsement made by the Assistant Registrar. So far as the finding of the High Court to the effect that the additional copies were filed subsequent to the expiry of the period of Limitation is concerned, there does not appear to be any material brought on records in support thereof. The High Court, in our opinion, could not have opined that it would not be correct to hold that the said RW-1 did not accompany the learned for the First Respondent to the Registry, or did not

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receive the alleged incorrect copy of the petition from the Registry which was marked as Ex. R.W.-1, without taking into consideration the fact that without filing memo of *appearance vakalat*, he neither could have asked for nor could be supplied a copy of the election petition by the Registry. Furthermore, had such copies been taken from the Registry, there was no necessity for the Registry of the Court to serve two copies again on the First Respondent subsequently. Furthermore, had he received any copy from the Registry, he would have made an endorsement on the body of the election petition or acknowledge the same in the proceeding-sheet. In absence of any such material in our opinion, the High Court was not correct in arriving at a finding that Ex.RW-1 was supplied to Mr. Thali by the Registry of the High Court.

Furthermore, as the First Respondent herein received true copies of the Election Petition much prior to his appearance before the Court, there was no occasion for the Respondents to file applications purported to be under Order 7 Rule 11 of the Code of Civil Procedure read with Section 86 of the Representation of the People Act, 1951.

In any event, the defects said to be contained in RW-1 would not entail dismissal of the election petition at the threshold.

It is now well-settled that the statutory requirements of Sections 81 and 83 would be met if substantial compliance thereof is made.

A Constitution Bench of this Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Others.*, AIR (1964) SC 1545 interpreting sub-section (3) of Section 81 observed that the expression 'copy' contained therein would not mean an absolutely exact copy, but would mean that the 'copy' shall be so true that nobody can by any possibility misunderstand it. It was further opined :

"The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person."

In *Ch. Subbarao v. Member, Election Tribunal, Hyderabad and Others*, AIR (1964) SC 1027, the Constitution Bench accepted the submission of the learned counsel appearing for the Appellant therein to the effect that the election petition was not to be equated to an election at law or in equity, but as the rights are purely creature of the statute, if the statute renders any

A particular requirement mandatory, the courts possess and can exercise no dispensing power to waive non-compliance. The Constitution Bench following *Murarka Radhey Shyam* case (supra), held :

B “.....We do not however consider that there is really need for so much refinement when one has to look at whether there is a substantial compliance with the requirement of this provision. If the signatures now found on the copies were intended to authenticate the document to which it is appended, viz., the copy, it would only mean that the copy did not reproduce the signature in the original. There is no compelling necessity to hold that the signatures were merely intended to be a copy of those on the original in order to spell out a non-compliance with S.81(3), seeing that a signature in original was not needed on the copy and a writing copying out the name of the signatory would suffice.”

D The question came up for consideration again before a Constitution Bench in *T.M. Jacob v. C. Poullose and Others*, [1999] 4 SCC 274, wherein relying on or on the basis of the doctrine of ‘substantial compliance’ *vis-à-vis* the doctrine of ‘curability’, it was held :

E “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....”

G The same view has been reiterated in *Ram Prasad Sarma Etc. v. Mani Kumar Subba and Others*, [2003] 1 SCC 289.

H Sub-section (3) of the Section 81 or Section 38(1) of the Act although may or may not be mandatory but it is not in dispute that the defects pointed out therein, if any, would be curable. Only when despite opportunities granted such defects are not cured, as would appear from the discussions

made hereinafter, the election petition may be dismissed. Furthermore, correctness or otherwise of a statement made in the election petition would not entail rejection thereof at the threshold or would attract the provisions of Section 86 of the Act. A

Section 83 of the Act deals with contents of an election petition. Clause (a) of sub-section (1) of Section 83 provides that an election petition shall contain a concise statement of the material facts, whereas clause (b) thereof provides that in case of corrupt practice full particulars in relation thereto are to be set out. Clause (c) of sub-section (1) of Section 83 provides that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of the pleadings, i.e. Order 6 Rule 15 C.P.C. A defective affidavit would not entail in limine dismissal of the election petition. (See *Dr. Vijay Laxmi Sadho v. Jagdish*, AIR (2001) SC 600, *G. Mallikarjunappa and Another v. Shamanur Shivashankarappa and Others*, [2001] 4 SCC 428 and *Kamalnath v. Sudesh Verma*, [2002] 2 SCC 410. B C D

In *Regu Mahesh Alias Regu Maheswar Rao v. Rajendra Pratap Bharaj Dev and Another*, [2004] 1 SCC 46, this Court laid down the law in the following terms.

“it is, therefore, a settled position in law that defect in verification or an affidavit is curable. But further question is what happens when the defect is not cured. There is a gulf of difference between a curable defect and a defect continuing in the verification affidavit without any effort being made no cure the defect.” E

In this case it is not necessary for us to go into the question as to whether Section 83 is imperative in character or not inasmuch it is a settled law that even where the expression ‘shall’ is used, the same may not be held to be mandatory. Even a mandatory’ provision having regard to the text and context of the statute may not call for strict construction. F

In *U.P. State Electricity Board v. Shiv Mohan Singh and Anr.*, (2004) 8 SCALE 475, this Court stated the law in the following terms : G

“Ordinarily, although the word “shall” is considered to be imperative in nature but it has to be interpreted s directory if the H

A context or the intention otherwise demands. (See *M/s. Sainik Motors. Jodhpur and Others. v. State of Rajasthan*, AIR (1961) SC 1480, para 12).

B It is important to note that in Crawford ion Statutory Construction at page 539, it is stated :

C “271. Miscellaneous Implied Exceptions from the Respondents of Mandatory Statutes. In General-Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute though the use of various devices or principles. Most if not all of these devices find their jurisdiction in considerations of justice. It is a well known fact that that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient caliber to excuse or justify a technical violation of the law.”

D In *Nasiruddin and Others v. Sita Ram Agarwal*, [2003] 2 SCC 577, it is stated :

E “37. The court’s jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add words to a statute or read something into it which are not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression ‘shall or may’ is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of

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the legislature was that the provisions should be mandatory in character.”

Out attention, however, has been drawn to the two decisions of this Court which were not considered in *T.M. Jacob* (supra) being *Satya Narain v. Dhuja Ram and Others*, [1974] 3 SCR 20 201 and *Rajendra Singh Etc. v. Smt. Usha Rani and Others Etc.*, [1984] 3 SCC 339.

In *Satya Narain* (supra), Goswami, J. speaking for himself and P. Jaganmohan Reddy, J. opined that the very object of expeditious trial will be defeated if the presentation of the election petition should be casually and lightly, permitting all kinds of devices to delay the trial.

Although therein *Ch. Subba Rao* (supra) referred to but its attention was not drawn to the following dicta.

“The next to be considered stems from the submission as regards the object of Parliament in enacting sub-sec. (3) of S. 81 and that expeditious disposal of election petitions which was the object would be frustrated if substantial compliance with the provisions was held sufficient.

We are not impressed with this argument. While we are conscious of the need for expeditious disposal of election petitions. and for the strict enforcement of provisions designated to achieve this purpose, we cannot be oblivious to the circumstance that to read every requirement literally might equally defeat the purpose for which Part VI is intended viz., that elections are conducted in accordance with the relevant statutory provisions framed to ensure purity and orderliness and that the candidate who has not obtained a majority of valid votes or has obtained it in flagrant breach of the statutory provisions is not held entitled to represent the constituency.”

In *Rajendra Singh* (supra) this Court following *Satya Narain* (supra) opined :

“.....A persual of Sections 81(3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies

A at all and if an election-petitioner disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under Section 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, B the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of Section 81(3) which is sufficient to entail a dismissal of the election petition at the behest.

C 9. Hence, the mandate contained in Section 81(3) cannot be equated with Section 537 of the Code of Criminal Procedure which makes certain omission as a curable irregularity. No such concept can be imported into the election law because the object of the law is that D the electoral process should not be set at naught and an elected candidate should not be thrown out unless the grounds should mentioned in the Act are clearly and fully proved. An election dispute concerns the entire constituency and in a parliamentary that E democracy it is of paramount importance that duly elected representatives should be available to share the responsibility in the due discharge of their duties. That is why the law provides time-bound disposal of election disputes and holds out a mandate for procedural compliance."

However, therein the binding decisions of the Constitution Bench in *Murarka Radhey Shyam* (supra) and *Ch. Subba Rao* (supra) were not noticed. *Satya. Narain* (supra) and *Rajendra Singh* (supra), therefore, in our opinion, do not lay down a good law.

F A somewhat similar view appears to have been taken in *Smt. Dr. Shipra and Others v. Shanti Lal Khoiwal and Others.*, [1996] 2 SCC 181 but in *Anil R. Deshmukh v. Onkar N. Wagh and Others.*, [1992] 2 SCC 205 the court doubted the correctness of law rendered therein and held that there was sufficient compliance of the provisions of sub-section (3) of Section 81 G which would serve the legal requirements.

Yet again in *T. Phungzathang v. Hangkhanlian and Others.*, [2001] 8 SCC 358, a 3-Judge Bench of which one of us. (N. Santosh Hegde, J. was a member) upon considering some of the decisions referred to hereinbefore. H observed :

“17. In the above-declared legal position, if we examine the case in hand, we notice that the only lacuna pointed out by the contesting respondent in his application in Civil Miscellaneous Election Case No. 3 of 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 94-A of the Conduct of Elections Rules, 1961. It is not the case of Respondent 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 case (1999) 4 SCC 274 the answer then should be “no” because by such omission the copy supplied will not cease to be a “true copy” and there is not possibility of any prudent person being in any manner misled in defending himself of being prejudiced in the defence of his case. Further such omissions are only curable irregularities.”

The matter was considered from another angle by Lahoti, J. (as the learned Chief Justice then was) opining :

“There is another angle from which the point at issue may be examined. In *Muraraka Radhey Shyam* case AIR (1964) SC 1545 : [1964] 3 SCR 573 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 taken 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 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

A 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. his could not have been the intendment of law.

B Such an interpretation would, to say the least, make a mockery of justice..."

C Concededly, the officers of the High Court are required to perform administrative functions one of which is to scrutinize the election petition so as ascertain as to whether the petitions filed before the Court are free from any defect. Such an official act would draw a presumption of having been performed in ordinary course of business to terms of Section 114(e) of the Indian Evidence Act.

D In *Jugal Kishore Patnaik v. Ratnakar Mohanty*, AIR (196) SC 2130 Khanna, J. speaking for a 3-Judge Bench raised a presumption of correctness as regard endorsement made by an Officer of the Court in respect of the election petition stating :

E "We see no cogent ground to question the correctness of this endorsement which clearly lends support to the inference that the copy filed with the petition had been attested by the respondent and that the petition did not suffer from lack of compliance with the procedural requirement."

F One of us (N. Santosh Hegde, J.) in *B.S.E. Brokers Forum Bomaby and Others v. Securities and Exchange Board of India and Others.*, AIR (2001) SC 1010 laid down the law in the following terms :

G "...It is a well-established principle in law that so long as the impugned power is traceable to the concerned statute, mere omission or error in reciting the correct provision of law does not denude the power of the authority of taking a statutory action so long as its action is legitimately traceable to a statutory power governing such action. In such cases, this Court will always rely upon Section 114(e) of the Evidence Act to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold

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such State action...”

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The High Court not only failed to apply the correct legal principles in this behalf but in fact committed a manifest error in trying to fault with the endorsement made by the Additional Registrar in Form-7 (as noticed supra) without there being any material on the records brought by the parties to the contrary. It was for the First Respondent to adduce evidence and bring on records adequate material so as to enable the court to rebut the presumption of correctness of official work having been done in regular course of business. In any event, the court could not acted contrary to the said legal principles by drawing presumption against an official act.

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The burden to prove that the election petition was not maintainable or the same should be dismissed at the threshold by on the First Respondent. The said burden on the First Respondent became heavier having regard to the fact that the Registry of the High Court categorically arrived at a finding that the said election petition did not contain any defect. A wrong principle of law as regard burden of proof as also drawing a presumption which in law could not have been raised and failure to raise a presumption in terms of Section 114(e) of the Evidence Act, the High Court must be held to have committed a manifest error. It posed a wrong question and thus misdirected itself in law.

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Furthermore, there are materials on records to show that one of the copies supplied to the First Respondent being a true copy with reached his hands before filing of the Vakalatnama and even before any written statement was filed, the question of his being misled and thus becoming unable meet the allegations contained in the election petition did not arise particularly having regard to the nature of allegations made in the Election Petition. In any event, there has been substantial compliance of the requirements of law.

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For the supplemental reasons stated hereinbefore, I agree with the opinion of Brother Chatterjee, J. that the Appeals should be allowed and the matter be remitted to the High Court for determining the dispute on merits.

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B.K.

Appeals allowed.