Vijay Somani Vs Capt. Ajay Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 20, 2001

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 15
Representation of the People Act, 1951 â€" Section 81, 81(3), 86(1)(5)

Citation: AIR 2002 P&H 215 : (2002) 1 ILR (P&H) 504

Hon'ble Judges: J.S. Khehar, J

Bench: Single Bench

Advocate: Satya Pal Jain, Vijay Kumar Chaudhary and Dheeraj Bali, for the Appellant; Harbhagwan Singh J.S. Yadav and Arun Walia, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

J.S. Khehar, J.
The petitioner being a registered voter of the Rewari Assembly Consttutency contested election from the said

Constituency in the general election for which polling was held on 22-2-2000. Cap. Ajay Singh, respondent herein, was declared elected on

account of his having secured the highest votes. The petitioner Vijay Somani polled 21, 112 votes i.e. the second highest number of votes. Being

dissatisfied with the election of the respondent, the petitioner filed the instant election petition u/s 80, 81 read with Sections 100 and 123 of the

Representation of the People Act, 1951 for setting aside the election of Capt. Ajay Singh i.e. the respondent from the Rewari Assembly

Constitutency to the Haryana Lesgislative Assembly.

2. Consequent upon the filing of the written statement and the replication, this Court on 15-11-2000 framed the following four preliminary issues :-

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1) Whether the Election Petition is liable to be rejected U/O 7 Rule, 11 of C. P. C.having lacking in material facts and particulars in view of the

preliminary objections? OPR

2) Whether paras 2 to 6 (A) to (F) of the Election Petition are liable to be struck off the pleadings u/s 6 Rule, 16 of the C. P.C. as no cause of

action is disclosed and there is no triable issue made out? OPR

3) Whether the Election Petition is not properly verified in accordance with law? If so, what is its effect ? OPR

4) Whether the affidavit filed with the Election Petition is defective and is not an affidavit in the eyes of law ? if so, what is its effect ? OPR

C. M. No. 5-E of 2001 was filed on behalf of the respondent for framing an additional preliminary issue. The aforesaid C. M. was allowed on 17-

5-2001, whereupon issue No. 5 was framed as under :--

50 Whether a true copy of the election petition has not been supplied to the returned candidate/ respondent, and if so, with what effect?

Issue Nos. 1 & 2 :

3. Arguments on issues Nos. 1 and 2 were addressed collectively. The same are accordingly being disposed of together on account of the fact that

the subject matter of the aforesaid two issues is the same.

4. It is asserted by the learned counsel for the respondent that the contents of sub-paragraphs (A) to (F) of paragraph 6 of the election petition are

vague and lack material facts as well as material particulars. On the basis of the aforesaid assertion, it is contended that the election petition

deserves to be dismissed at the outset under the provisions of Order VII, Rule 11 of the CPC as the petition does not disclose a cause of action. It

is submitted that as the election petition does not disclose any cause of action, the trial of the instant petition would be an abuse of the process of

law. Additionally, it is submitted that paragraphs 2 to 6 (A) to (F) of the election petition are liable to be struck off the pleadings in terms of the

provision of Order VI, Rule 16 of the Code of Civil Procedure.

5. To substantiate his claim that the petition does not disclose material facts, learned counsel for the respondent has illustratively referred to the

averments made in para 6 (A) of the petition. The same is being extracted hereunder for facility of reference :-

That the respondent visited Mohalla ''Sanghi Ka Bas'' on 17-2-2000 in the evening at about 6.30 PM for a ''nukad'' (Corner) meeting and got

collected all the inhabitants of the locality for the purpose of soliciting their votes. On the appeal made by the respondent, the voters/inhabitants of

''Sanghi ka Bas'' complained about poor condition of a small patch of road running into 1400-1500 ft in length in their Mohalla Sanghi ka Bas. The

respondent assured the voters collected there that if they promise to vote for him on 22-2-2000 then he would get the road cemented before

elections and that the work for the purpose would be started immediately. Upon this Inducement the voters of the locality promised in one voice to

vote for the respondent if the construction work of the proposed cemented road was started the next day. In complicance with the aforesaid

promise of Inducement made by the respondent to the voters of Sanghi ka Bas, the work for the construction of cemented road in Mohalla Sanghi

ka Bas was started on the evening of 18-2-2000. The construction of Cemented road was got completed by late in the night, i.e. on 20-2-2000 at

about 1 A. M. This work was started only three days prior to the voting and completed before two days of the polling, the work of constructing

the said road was got done by the respondent through a contractor named Billu @ Daya Nand s/o Sh. Ram Dayal, r/o Mandayya (Kalaka), Distt.

Rewari. The earlier tarcoal road was broken which had many pot-holes. The new road was got constructed in order to proceure the votes of the

''Sanghi ka Bas'' Mohalla, Kewal Bazar Road, Rewari. The entire payment was made by the respondent. Three photographs showing construction

of this road and the cemented road are annexed herewith and are marked as Annexures P-1, P-2 and P-3. These photographs were taken by one

Mr. Sudesh Sehgal of Haryana Photo Studio, Rewari on 20-2-2000. The construction work was carried out in the presence of, amongst others,

one Mr. Sunil Kumar Tewari son of Shri Ram Parsad c/o S. T. D. Booth, Kewal Bazar, Rewari who informed the petitioner on 21-2-2000 during

his door to door canvassing. This action of the respondent amounts to a corrupt practice u/s 123(1) of the Representation of The People Act.

1951.

The following defects in the pleadings have been pointed out by the learned counsel for the respondent in para 6(A) :--

1) The petitioner has not stated the place in Mohalla Sanghi ka Bas, where the respondent arrived on 17-2-2000. In this behalf. It is pointed out

that Mohalla Sanghi ka Bas is like a small town Inhabited by about 5000 people. Mohalla Sanghi ka Bas is stated to comprise of scores of ''galis''

and ''nukads''. The petition does not disclose the ''gall'' or the ''nukad'', reference of which has been made in para 6(A);

ii) The petitioner has not stated the exact appeal made by the respondent, nor has the petitioner expressed the words in which the alleged

assurance was given by the respondent for getting the road cemented. The person who made a note of the statement allegedly made by the

respondent Including his promise has also not been disclosed;

iii) The petition also does not disclose the names of persons who were present at the alleged ''nukad'' meeting on 17-2-2000 in Mohalla Sanghi Ka

Bas who accepted to vote for the respondent consequent upon the assurance given by him;

iv) The petition also does not disclose the particulars of the contractor named Billu alias Daya Nand through whom the alleged construction of the

road was carried out by the respondent;

v) The petition also does not disclose time or place of payment allegedly made by the respondent to the contractor, nor the name of the person

who made the payment and not even the name of the person who received it. Even the mode of payment is stated to have not been disclosed.

On the basis of the aforesaid deficiencies in the factual narration contained in paragraph 6 (A) of the petition, the respondent seeks outright

rejection of the pleadings contained therein. So far as the averments made in remaining paragraphs are concerned, it is pointed out by the learned

counsel for the respondent that the same deficiencies occur in the said paragraphs also, and that the determination of the discrepancies pointed out

in paragraph 6(A) of the petition would also determine the discrepancies in the remaining paragraphs of the petition.

6. So far as preliminary issues Nos. 1 and 2 are concerned, the question to be answered is whether the election petition can be rejected at the

outset on account of nondisclosure of cause of action/material facts and particulars. Under the Representation of The People Act, 1951

(hereinafter referred to as ""the 1951 Act""), in Part VI provisions in respect of the disputes regarding elections have been laid out. In Chapter II of

Part VI, under Sections 80 to 84 the 1951 Act delineates the conditions relating to presentation of an election petition. Section 81 lays down the

grounds on which an election petition can be filed. It also prescribes the period of limitation for filing an election petition. Section 82 stipulates the

details of those who must be arrayed as respondents in election petition. Section 83 is titled as ''Contents of petition''. The title of the aforesaid

provision expressly discloses the purpose arid the scope thereof. Section 83 is being reproduced hereunder for facility of reference :--

83. Contents of petition :--(1) An election petition-

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

(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) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of

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

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

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

A perusal of Section 83 reveals that the election petition must not only disclose the material facts but also full particulars of any corrupt practice

alleged by the petitioner. The submission of the learned counsel for the respondent is that the pleadings are defective inasmuch as they do not

conform to the mandate of Section 83 of the 1951 Act inasmuch as the petition neither discloses the concise statement of material facts constituting

the corrupt practice nor indicates full particulars of the alleged corrupt practice:

7. While projecting his claim, learned counsel for the respondent has relied on a number of decisions of the Apex Court. While relying upon

Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, , learned counsel for the respondent has, drawn the attention of this Court to the following

observations made therein (at page 1587) :--

If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition

cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to

scrutinise the pleadings relating to corrupt practice in a strict manner.

Reliance is also placed on Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , to assert that u/s 83 of the 1951 Act it is

mandatory to narrate; firstly, the concise statement of material facts and secondly, the fullest possible particulars. In this behalf, learned counsel for

the respondent emphasised on the following observations recorded therein :-

.....Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and

further that he must also 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. The section

is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars.

Reliance was also placed on Shri Udhav Singh Vs. Madhav Rao Scindia, , to express the distinction between material facts and material

particulars. It is the case of the learned counsel for the respondent that not only material facts but also material particulars must be disclosed in an

election petition in terms of the mandate of Section 83 of the 1951 Act. In the aforesaid judgment, material facts and material particulars were

defined as under at Page 752 :--

All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are ""material facts"".

In the context of a charge of corrupt practice"", ""material facts"" would mean all the basic facts constituting the Ingredients of the particular corrupt

practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular

fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon

and the special circumstances of the case. In short. all those facts which are essential to clothe the petitioner with a complete cause of action are

material facts"" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)

(a).

For the same purpose, reliance was also placed on Azhar Hussain Vs. Rajiv Gandhi, to substantiate that the mandate of Section 83 required the

disclosure of material facts as well as particulars. To assert that material facts and particulars have not been disclosed in the petition in the instant

case, learned counsel for the respondent pointed out the following conclusions drawn in the aforesaid Judgment (at Page 1260; of AIR) :--

Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it enmerges from the numerous

decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression "material facts

and particulars" which the election petitioner shall Incorporate in his petition by virtue of Section 83(1) of the Act.

(1) What are material facts and particulars ?

Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered . Is whether the Court

could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition

on the basis of the facts pleaded in the petition. Manubhai Nandlal Amorsey Vs. Popatlal Manilal Joshi and Others,].

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to

clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded : Hardwari Lal

Vs. Kanwal Singh, .

(a) mode of assistance;

(b) measure of assistance; and (c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegations as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government

servants in election it is absolutely essential to plead the following :

(a) kind or form of assistance obtained or procured;

(b) In what manner the assistance was obtained or procured or attempted to be obtained or procured by the election -- candidate for promoting

the prospects of his election. [AIR 1972 SC 515]

(4) the returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the persons from whom the

actual and specific assistance was procured Hardwari Lal Vs. Kanwal Singh, .

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in

which the assistance was rendered. Hardwari Lal Vs. Kanwal Singh, .

(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from which assistance was

obtained or procured, the time and date of the same, all these will have to be set out in the particulars. Hardwari Lal Vs. Kanwal Singh,

While relying on Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, , learned counsel for the respondent points out that the legal position as

narrated in the foregoing judgments has remained unchanged. Learned counsel for the respondent has invited the attention of this Court to the

factual controversy in the said case where the election of the respondent to the Rajya Sabha from the Pondicherry Legislative Assembly was under

challenge due to corrupt practices within the meaning of Section 123(1)(B) (b) and Section 100(1)(d) of the 1951 Act. In the aforesaid case, it

was alleged that the respondent himself, his agents and other persons with his consent had taken MLAs belonging to DMK. Tamil Manila

Congress, Communist party of India. Pattali Makkal Katchi, Janata Dal and also an independent MLA out of Pondicherry. All the said MLAs

were entertained and brought back to Pondicherry a day before the date of election. It was alleged that the said MLAs were entertained as a

reward for voting for the respondent. The grievance of the petitioner was that he wanted to meet the MLAs who had been taken away by the

respondent but the said MLAs were first kept at Hotel Ashoka at Pondicherry and then taken to five star hotels in Mahabalipuram. While

considering the aforesaid allegations made against the respondent, the Apex Court, referring to the pleadings in the aforesaid case, observed as

under :--

It is not his case that he was prevented in any way from meeting any of these MLAs. It was a material fact to allege which he failed to do so. This

apart from the fact that the material particulars as to when the MLAs were taken to Hotel Ashoka and to other places, the names of the MLAs

and names of the hotels in Mahabalipuram, who took them there, who paid their bills and who brought them back are lacking. Appellant does not

show as to why he could not meet all those MLAs on October 2, 1997. Apart from one independent MLA other MLAs belonged to various other

political parties like DMK, TMC, CPI. PMK and Janata Dal, rather it can be assumed that the MLAs voted according to their political affiliations

On the basis of the aforesaid factual determination, the Court concluded : at Page 711

It will be thus seen that election petition not only lacked the material facts, it lacked material particulars, defective verification and the affidavit filed

was not in the form prescribed. Moreover, ingredients of corrupt practices, as defined in Section 123(1)(B) and 123(2) of the Act are also

lacking. It is also not the case of the appellant that any MLA whom the appellant could not meet, received any gratification, as defined, whether as

a motive or a reward for voting or refraining from voting, or there was any inducement or attempt to induce any such MLA to vote or refrain from

voting. Also it is not the case of the appellant that any undue influence was exercised with the free exercise of any electoral right of any MLA which

right, as noted above, has been defined in Clause (d) of Section 79 of the Act. There is no allegation if any particular MLA was induced to vote or

not to vote in a particular way because he was entertained or otherwise. The allegation is that appellant himself could not meet the MLAs and he

believed if he had been given a chance to meet them he would have influenced their vote in his favour and against their party of affiliations. There is

no allegation that the MLAs were prevented or influenced from freely exercising their electoral right. As stated earlier appellant did not show as to

why he could not meet the MLAs on October 2, 1997 when they were available in Pondicherry. Material fact must be that the appellant was

prevented from meeting the MLAs which he did not allege and as to how he was so prevented would constitute material particulars.

On the basis of the law laid down by the Apex Court, it is vehemently contended by the learned counsel for the respondent that material facts and

particulars delineated hereinabove having not been expressed in the instant election petition. The election petition thus must be deemed to be

defective in terms of the mandate of Section 83 of the 1951 Act, and as such ought to be rejected right away.

8. In order to controvert the submissions of the learned counsel for the respondent on issues Nos. 1 and 2, learned counsel for the petitioner

advanced a three-pronged attack. First, it is claimed that there is no deficiency in the election petition. In this behalf, it is submitted that the election

petition contains a concise statement of material facts and also sets forth full material particulars. In the aforesaid view of the matter, it is submitted

that preliminary Issues Nos. 1 and 2 raised on behalf of the respondent deserve to be rejected, Secondly. It is averred that there is certainly no

deficiency in material facts, and that even if there is any deficiency in material particulars, the same is not fatal. To substantiate this claim reliance

has been placed primarily on Sub-section (1) of Section 86 of the 1951 Act, thirdly, it is contended that even if this Court arrives at the conclusion

that there is deficiency in material particulars, the petitioner can be allowed to cure the said defects. In furtherance of the above contention, reliance

has been placed on Sub-section (5) of Section 86 of the 1951 Act as also the law declared by the Apex Court, in this behalf.

9. While advancing arguments, learned counsel for the petitioner extensively relied upon Sub-sections (1) and (5) of Section 86 of the 1951 Act.

The aforesaid sub-sections are extracted hereunder :--

86. Trial of election petition :-- (1) the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or

Section 82 or Section 117.

Explanation :-- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under

Clause (a) of Section 98.

(2) to (4) *****

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the

petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall

not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the

petition.

A perusal of Sub-section (1) reveals that an election petition can be dismissed if it does not comply with the conditions stipulated in Sections 81,

82 and 117 of the 1951 Act. While noticing the arguments advanced by the learned counsel for the respondent, hereinabove, it is evident that it is

not the case of the respondent that the election petition suffers from deficiencies postulated u/s 81, 82 or 117 of the 1951 Act. In the aforesaid

view of the matter, learned counsel submits that preliminary objections raised by the respondent through issues Nos. 1 and 2 are wholly

misconceived. Learned counsel for the petitioner has placed reliance on the decision rendered by the Apex Court in Sri H. D. Revanna v. Sri G.

Puttaswamy Gowda, as under at Page 772; of AIR :--

.....Significantly Section 86 does not refer to Section 83 and non-compliance of Section 83 does not lead to dismissal u/s 86. This Court has laid

down that non-compliance of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 or Order 7.

Rule 11. C.P.C.

Additionally, the attention of this Court has been invited to Sub-section (5) which expressly postulates that in case of a deficiency in material

particulars, the Court may allow the petitioner by subjecting him to terms such as costs etc. to amend the pleadings and to narrate full material

particulars in respect of the alleged corrupt practice, which had not previously been narrated in the petition. On the basis of the aforesaid sub-

section, it is contended that the deficiencies pointed out by the learned counsel for the respondent are not of a fatal nature.

10. So far as the judgments relied upon by the learned counsel for the respondent is concerned, it is conceded by the learned counsel for the

petitioner that the non-disclosure of material facts would be fatal to an election petition. However, in this behalf it is contended that the material

facts have been set out in the election petition. Additionally, reliance has been placed on the following observations made by the Supreme Court in

Shri Udhav Singh Vs. Madhav Rao Scindia, so as to express the distinction between material particulars and material facts, at Page 753.

It will thus be seen that all the ""material facts"" constituting a complete charge of corrupt practice u/s 123(2) against Shri Shiv Pratap Singh were

stated in the petition. The approximate date of administering the threat -- which was only a material particular as distinguished from a material fact

was also given. Only the place and the precise time of giving the threat were not stated. But these were, at best, onlymaterial particulars, and not

material facts"". The occasion for furnishing such particulars would have arisen only if the respondent had asked for them. Similarly, further and

better particulars of the address etc. of Shri Shiv Pratap Singh would fall within the category of particulars.

On the basis of the judgment relied upon by the respondent, learned counsel for the petitioner has illustratively drawn the attention of this Court to

the averments made in para 6 (A) of the election petition (which have been extracted above). Learned counsel for the petitioner, on an analysis of

the pleadings in paragraph 6(A) has posed a question, whether this Court would have given a verdict in favour of the election petitioner in case the

respondent had not appeared to oppose the election petition? According to the learned counsel for the petitioner, the aforesaid test is the only test

to determine whether there is a deficiency in material facts. If the answer to the aforesaid question is in the negative, it should be concluded that

there is no deficiency in the material facts, and if the answer is in the affirmative i.e. If the Court would have dismissed the election petition despite

the non-appearance of the returned candidate, the conclusion that should be drawn is that there is indeed a deficiency in the narration of the

material facts.

11. On a close perusal of facts narrated in paragraph 6 (A) and likewise in paragraphs 6 (B) to (F), there can be no doubt that if the election

petition had not been opposed by the respondent, this Court would have on the basis of the facts pleaded in the election petition given a verdict in

favour of the election petitioner. In view of the aforesaid conclusion drawn (on the basis of the para-meters drawn by the Supreme Court in Azhar

Hussain''s case (supra) It is held that there is no deficiency in material facts insofar as the pleadings of the instant election petition are concerned.

12. The factual position to be analysed in the instant case, therefore, is whether the petitioner has disclosed all the material particulars as envisaged

u/s 83(1)(b) of the 1951 Act. A persual of the aforesaid pro vision reveals that the petitioner is required to set forth ""as full a statement as

possible"", of the names of the parties who are alleged to have committed such corrupt practices and the date and place of commission of the

alleged corrupt practices. While making a reference to material facts the mandate, of Section 83 of the 1951 Act requires that the election petition

must contain a ""concise"" statement of material facts. The word ""concise"" means short or brief. So far as material particulars are concerned, Section

83 of the 1951 Act requires ""setting out full"" material particulars. The word ""full"" when examined in contra-distinction that the word ""concise

expresses the intention of the legislative authority, namely that material particulars must be set out as elaborately as possible so as to leave no

ambiguity about the exact nature of the material facts.

(1) The first submission of the learned counsel for the respondent in this behalf is that Mohalla Sanghi Ka Bas where the respondent held a meeting

on 17-2-2000 is like a small town inhabited by about 5000 people. The aforesaid Mohalla comprises of scroes of ''galis'' and ''nukads''. It is not

possible from the pleadings for one to arrive at the conclusion where the alleged meeting was actually held. The non-supply of the exact place

where the meeting was conducted is alleged to be a deficiency in the material particulars. As noticed above, Section 83(1Kb) of the 1951 Act

postulates, inter alia, that as full a statement as possible of the place of the commission of such corrupt pratice should be disclosed. Has the instant

election petition disclosed the place of the commission of the alleged corrupt practice in terms of the mandate of the provision? in my view, the

answer is in the negative. The replication does not deny the fact that the Mohalla Sanghi Ka Bas is indeed a large area inhabited by a large number

of persons. There is also no denial about the large number of ''galis'' and ''nukads'' therein, That being so, there is certainly a deficiency in the non-

disclosure of full particulars of the place where the alleged meeting had taken place.

(2) the second contention in this behalf is that the exact appeal made by the respondent to the voters during the course of the ''nukad'' meeting has

also not been disclosed. The petitioner has not expressly stated the words used by the respondent for soliciting votes in lieu of getting the road

cemented. The election petition neither discloses the assurance of the voters, nor the appeal of the respondent. If the exact nature of the statement

of the appeal and the assurance would determine whether the respondent actually committed a corrupt practice or not, then these facts would

constitute material particulars otherwise not. I am of the considered view that it is very material to determine the exact nature of the appeal as also

the exact nature of the assurance. In the absence thereof, tt would be difficult to arrive at the conclusion whether the respondent is indeed guilty of

the allegations levelled against him. That being so, in my view, the non-disclosure of the exact nature of the appeal made by the respondent as well

as the exact nature of assurance given by the voters constitutes a deficiency in material particulars.

(3) It is further alleged that the particulars of those who were present at the "nukad" meeting where the appeal was made by the respondent and

the assurance was given by the voters must be disclosed and the nondisclosure thereof amounts to non-disclosure of material particulars.

Undoubtedly, the appeal and the assurance would be relevant only if the voters to the particular election process were influenced by the

respondent. In the absence of the voters, neither the appeal, nor the assurance would be relevant, the election petition does not disclose the names

of the voters present during the course of said "nukad" meeting. In my view, the non-disclosure of the same amounts to non-disclosure of the

names of the voters who gave the assurance and to whom the respondent allegedly made an appeal amounts to non disclosure of material

particulars.

(4) It is pointed out that the non-deisclosure of full particulars of Billu @ Daya Nand through whom the alleged construction of the road was

carried out by the respondent also amounts to the non-disclosure of material particulars. It is not possible to accept the aforesaid objection. Full

particulars of the aforesaid individual have been disclosed inasmuch as paragraph 6(A) not only discloses his parentage but also his residential

address.

(5) the last objection in so far as the averments made in paragraph 6(A) is that the election petition does not discloses the time or place when the

payment was allegedly made by the respondent to the contractor, nor the name of the person who made the payment and not even the name of the

person who received it. It is certainly most relevant in the accusation levelled by the petitioner to establish that the road in question was got

cemented by the respondent. The only basis in the pleadings to establish that the respondent got the road cemented is that he paid the contractor

who executed the work in question. Viewed in the aforesaid context, the payment allegedly made by the respondent to the contractor assumes the

status of a material particular. It is thus incumbent upon the petitioner to disclose the fullest possible facts relating to the alleged payment by the

respondent to the contractor. Having not disclosed the aforesaid facts, the petitioner has, in my view again faltered in not stating full particulars in

connection with the alleged corrupt practice.

13. From the conclusions drawn above, it is evident that there are deficiencies in the narration of full material particulars in the election petition in so

far as the averments contained in paragraph 6 (A) are concerned. Similar deficiencies also exist in the averments made in paragraphs 6 (B) to (F).

14. Even if there is a deficiency in material particulars, according to the learned counsel for the petitioner, he must be afforded an opportunity to

make up the said deficiency. To substantiate his claim that the petitioner should be permitted to make up the aforesaid deficiencies, learned counsel

for the petitioner placed reliance also on ihe decision rendered by the Supreme Court in V.S. Achuthanandan Vs. P.J. Francis and Another, and

relied upon the following observations recorded therein :-- at Page 2048 - 2049 of AIR

It would, thus appear, that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the

learned trial Judge the allegations regarding corrupt practice were vague and did not disclose ""material facts and full particulars"" of the corrupt

practice alleged. It is evident that the learned trial Judge did not distinguish between the "material facts" and "material particulars" of allegations

regarding corrupt practices as defined u/s 123 of the Act. The law on the point is well settled which appears to have not been taken note of

appreciated by the learned trial Judge. After referring to various pronouncements of this Court including cases in Balwan Singh Vs. Lakshmi

Narain and Others, , Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, . Virendra Kumar Saklecha Vs. Jagjiwan and

Others, , Shri Udhav Singh Vs. Madhav Rao Scindia, . F.A. Sapa Etc., Etc., Vs. Singora and others, And Gajanan Krishnaji Bapat and another

Vs. Dattaji Raghobaji Meghe and others, and host of other authorities, this Court in L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc.,

held that while failure to plead "material facts" is fatal to the election petition and no amendment of the pleading is permissible to Introduce such

material facts after the time limit prescribed for filing the election petition, the absence of "material particulars" can be cured at a later stage by an

appropriate amendment.

Reliance was again placed on the decision rendered in Sri H. D. Revanna''s case (supra) on the following conclusions drawn therein :-- at page

774; of AIR

This Court has repeatedly pointed out the distiniction between ''material facts'' and ''particulars''. In so far as ''material facts'' are concerned, this

Court has held that they should be fully set out in the Election Petition and if any fact is not set out, the petitioner cannot be permitted to adduce the

evidence relating thereto later; nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an Election

Petition. As regards particulars, the consistent view expressed by this Court, is that the petition cannot be dismissed in limine for want of particulars

and if the Court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the

particulars. The Constitution Bench in Balwan Singh Vs. Lakshmi Narain and Others, held that an election petition was not liable to be dismissed in

limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the Tribunal

was of the view that particulars had not been set out the petitioner had to be given an opportunity to amend or amplify the particulars and that it

was only in the events of non-compliance with the order to supply the particulars, the charge could be struck out.

Collectively on the basis of the decision noticed above, it is submitted that even if this . Court arrives at the conclusion that there is a deficiency in

material particulars, the petitioner can be given an opportunity to amend the election petition and to supply further facts to make up the deficiency

in material particulars. In this behalf, reliance was also placed on the decision rendered in Roop Lal Sethi v. Nachhattar Singh. AIR 1982 SC

1559. The attention of the Court was invited to the following observations :--at Page 1567-1568

Clause (a) of Sub-section (1) of Section 83 of the Act enjoins that an election petition shall contain a concise statement of the material facts on

which the election petitioner relies. It is no part of the statement of claim of an election petitioner to anticipate the defence and to state what he

would have to say in answer to it. Clause (b) of Sub-section (1) of Section 83 interdicts that an election petitioner must set forth full particulars of

any corrupt practice on which he challenges the election of the returned candidate u/s 123(7) Including as full 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. It is more or less

based on Order VI, Rule 4 of the Code which reads :

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other

cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars [with dates and items if necesary]

shall be stated in the pleading

The High Court has ample power while trying an election petition to direct further and better particulars as to the nature of the claim or defence

under Order VI. Rule 5 of the Code which reads :

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading may in

all cases be ordered upon such terms, as to costs and otherwise, as may be just.

There can, therefore, be no doubt about the existing legal position based not only on Sub-section (5) of Section 86 of the 1951 Act but also based

on the judgments rendered by the Apex Court mentioned above that the deficiency in the material particulars can be rectified. Stated in other

words, an election petition cannot be dismissed merely on account of the fact that the petitioner has not fully disclosed material particulars, in the

election petition.

15. Undoubtedly, the mandate of Sub-section (5) of Section 86 of the 1951 Act as well as the various judgments relied upon by the learned

counsel for the petitioner unambiguously express that an election petition cannot be dismissed at the threshold on account of a deficiency in material

particulars and that the petitioner should be afforded an opportunity to make up the deficiency. Accordingly, while determining Issue Nos. 1 and 2.

It must be held that the Instant petition cannot be dismissed at this stage for the deficiencies thereof in the election petition.

Issue Nos. 3 and 4 :

16. Common arguments were addressed on these issues. They are accordingly being disposed of together, insofar as issue No. 3 is concerned, it

is contended by the learned counsel for the respondent that the verification on the election petition is defective and as such the election petition is

liable to be dismissed. Illustratively, it is submitted that the verification of paragraph 6(A) Is against the law of verification inasmuch as the pleadings

cannot be verified both by knowledge as also by information. It is submitted that the verification has either to be on the basis of personal

knowledge or on the basis of information received. On account of the fact that verification to the averments made in the petition has been made

both by knowledge as well as on information, it is submitted that the same is improper. Since the pleadings have not been properly verified, it is

contended that the instant petition cannot be said to be in proper form and as such, is liable to be dismissed. Learned counsel for the respondent

further points out that the verification of the other paragraphs of the writ petition are similarly defective for the same reason.

17. It would be material to notice that the Supreme Court in Virendra Kumar Saklecha v. Jagjiwan, AIR 1974 SC 1957, made the following

observations in respect of the contents of verification of the election petition and verification of the affidavit attached thereto at Page 1961 ;--

.....Section 83 of the Act states that an election petition shall be verified in the manner laid down in the Code. The verification is as to information

received. The affidavit is to be modelled on the provisions contained in Order 19 of the Code. Therefore, the grounds or sources of information

are required to be stated.

18. Verification of pleadings has essentially to be in the manner expressed in Order VI, Rule 15 of the Code of Civil Procedure. The aforesaid

provision is being extracted hereunder :--

15. Verification of pleadings :-- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot

by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the

case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what

he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

19. To understand the exact purport of the submission advanced by the learned counsel for the respondent, it is considered appropriate to extract

hereunder the verification of the facts averred in paragraph 6(A):--

.....that the contents of para 6 (A) are believed to be true and correct to my knowledge and are based upon information received from Billu alias

Daya Nand s/o Ram Dayal r/o Mandayya (Kalaka) District Rewari and also by Sudesh Sehgal, Photographer of Haryana Photo Studio.....

20. In response to the aforesaid averments made on behalf of the respondent, it is submitted by the learned counsel for the petitioner that the

contents of paragraph 6(A) have not been verified by the petitioner on the basis of his ""own knowledge"". The contents of the averments made in

paragraph 6(A) have been verified on the basis of information received from Billu alias Daya Nand s/o Ram Dayal, r/o Mandayya (Kalaka)

District Rewari and also on the basis of information drawn from Sudesh Sehgal, Haryana Photo Studio. While controverting the submission

advanced by the learned counsel for the respondent, it is contended that the knowledge of the petitioner was derived from the individuals referred

above and, therefore, the petitioner verified the source of his knowledge of the facts narrated in paragraph 6(A).

21. It is not possible for me to imbibe the argument addressed by the learned counsel for the petitioner. A close examination of the verification of

the averments in para 6 (A) of the election petition reveals that the petitioner has not clearly expressed whether he has verified the facts on the

basis of his own knowledge or on the basis of information received. The verification is similarly defective for the remaining pleadings also. The

verification in the election petition in my view also does not conform to Order VI, Rule 15 of the Code of Civil Procedure.

22. Insofar as issue No. 4 is concerned, it is submitted that the affidavit attached to the election petition is not in conformity with the provisions of

the CPC and Rules and Orders of the High Court. Illustratively, it is submitted that in the affidavit in respect of facts narrated in paragraph 6(A) it

has not been disclosed, which part of the averments made therein are true to the petitioner''s personal knowledge and which part thereof are true

on the basis of information received from the persons described therein. On the basis of the fact that the affidavit is defective, it is contended that

the instant election petition is liable to be rejected at this stage itself.

23. To substantiate his claim in respect of the defective affidavit, learned counsel for the respondent has relied upon the decision of the Apex Court

rendered in The State of Bombay Vs. Purushottam Jog Naik, wherein on the issue of verification of an affidavit the Court observed as under (at

Page 319 of AIR(:--

We wish, however, to observe that the verification of the affidavit produced here is defective. The body of the affidavit discloses that certain

matters were known to the Secretary who made the affidavit personally. The verification, however, states that everything was true to the best of his

information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit.

Verification should invariably be modelled on the lines of Order 19, Rule 3 of the Civil Procedure Code, whether the Code applies in terms or not.

And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed.

Reliance was again placed on Virender Kumar''s case (supra), relevant portion of which has already been extracted above while dealing with issue

No. 3.

Relying upon the decision rendered in Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, . Learned counsel for the

respondent seeks to substantiate his claim on the basis of the following observations recorded therein (at Page 2292 of AIR) :--

A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to

disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to

the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise.

While contesting the assertions made by the learned counsel for the respondent, learned counsel for the petitioner has invited the pointed attention

of this Court to Form 25 appended to the Conduct of Election Rules, 1961(hereinafter referred to as "the 1961 Rules"). The same is extracted

hereunder :--

[FORM]

I, ... the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati .....(respondent No.....in the said petition)

make solemn affirmation/oath and say -

(a) that the statements made in paragraphs .....of the accompanying election petition about the commission of the corrupt practice of.....and the

particulars of such corrupt practice mentioned in paragraphs .....of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs ..... of the said petition about the commission of the corrupt practice of .....and the particulars of such

corrupt practice given in paragraphs .....of the said petition and in paragraphs of the Schedule annexed thereto are true to my information;.....

It is submitted by the learned counsel for the petitioner that the affidavit appended to the election petition conforms to Form 25 appended to the

1961 Rules. To test the argument of the learned counsel for the petitioner, it is considered appropriate to extract hereunder paragraph 2 of the

affidavit appended to the election petition :--

That the statement made in para 6 (A) of the accompanying petition about the commission of corrupt practice of the Section 123(1) of the

Representation of People''s Act. 1951 and the particulars of such corrupt practices mentioned in para 6 (A) of the same petition are true and

correct to my personal knowledge and as per information received from Billu alias Daya Nand son of Ram Dayal resident of village Mandaya.

Distt. Rewari and also from Sudesh Sehgal, Photographer of Haryana Photo Studio, Rewari, which is believed to be true.

A perusal of paragraph 2 clearly indicates that the contention of the learned counsel for the petitioner is misconceived on the very face of the

record. The corrupt practices mentioned in paragraph 6 (A) have been depicted to be """.....true and correct to my personal knowledge...."" and also

on the basis of ""Information received from Billu alias Daya Nand son of Ram Dayal resident of Mandaya, District Rewari and also from Sudesh

Sehgal, Photographer of Haryana Photo Studio. Rewari....."" it is obvious that whatever has been verified on the basis of personal knowledge has

also been verified on the basis of the information received. The affidavit does not conform to the norms stipulated in the Judgment relied upon by

the learned counsel for the respondent. It also does not conform to Form 25 appended to the 1961 Rules. The aforesaid affidavit is, therefore,

wholly defective.

24. Despite the aforesaid deficiencies learned counsel for the petitioner has submitted that despite the fact that the verification is not in order or the

affidavit is not conform to the prescribed norms, it is not possible to accept the plea of the respondent that the instant election petition should be

dismissed at this stage itself. In this behalf, learned counsel for the petitioner has placed reliance on the decision rendered by the Apex Court in Sri

H.D. Revanna''s case (supra) wherein in paragraph 14. It has been held that defects in verification of an election petition and the affidavit attached

thereto are not fatal but curable. Therefore, in the totality of the matter despite my having arrived at the conclusion that the verification of the

election petition and the affidavit attached thereto are not in order, I find no substance in the claim of the respondent that the petition deserves

outright dismissal at this stage.

Issue No. 5 :

25. Last of all, it is contended that a true copy of the election petition has not been furnished to the respondent. In this behalf, the contention of the

learned counsel for the respondent is based on the fact that the copy of the affidavit sent by the petitioner to the answering respondent does not

show that it has been verified by an appropriate person in an appropriate manner. While submitting that the aforesaid defect is fatal to the election

petition, learned counsel has placed reliance on the decision rendered by the Supreme Court in Dr. (Smt.) Shipra, etc. etc. Vs. Shanti Lal Khoiwal,

etc. etc., . The question which was answered in the aforesaid decision of the Apex Court was posed in paragraph 8 and is ascertain-able from the

following observations (at Page 1693 of AIR) :--

.....When a petitioner is enjoined to file an election petition accompanied by an affidavit duly sworn by the applicant duly verifying diverse

allegations of corrupt practices imputed to the returned candidate and attested by the prescribed authority it would be obvious that the statute

intended that it shall be performed in the same manner as prescribed in Form 25 read with Rule 94-A of the Rules. The attestation of the affidavit

by the prescribed authority, therefore, is an integral part of the election petition. The question, therefore, is 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"?

The aforesaid question was answered in the following manner :--

Qazi, J. In Purushottam v. Returning Officer has, after referring to the above decision of this Court along with the other decisions and an

unreported decision of the Bombay High Court in Election Petition No. 2 of 1990, held that the absence of the endorsement of the Notary on the

copy of the affidavit accompanying the election petition renders the copy as not conforming to Section 81(3) of the Act, and the election petition is

liable to be dismissed for the said omission.

In my opinion, the above decision lays down the law correctly and is squarely applicable herein. In particular, the following observations in the

unreported decision of the Bombay High Court in Election Petition No. 2 of 1990 quoted in para 12 of the judgment of Qazi, J. are instructive and

furnish sufficient basis to reach the said conclusion. The observations are to the following effect :

That, however, leaves one question to be considered and it is whether the copy of the endorsement "Affirmed and signed before me" by the

Notary, designation of the Notary and the stamped endorsement regarding the affirmation which he made at the time of making of the affidavit,

were necessary and essential parts of the document and if these are omitted from the copy furnished, that would render the copy, which is

furnished, incomplete, and the defect would be so glaring as to negative the Inference that the copy was furnished. When Form No. 25 prescribes

a particular form and the copy of that affidavit is to be furnished, it seems to me that the endorsement of the authority before whom the affirmation

was made, together with his official designation and the stamped endorsement, are also essential and without them the copy cannot be regarded as

true copy. It is not merely the con tents of the affidavit which brings sanctity to the document but the affirmation that has been made, and without

the affirmation, it can be no affidavit at all. I am not impressed by the submission of Shri Bobde that these endorsements were merely formal,

because what is required under the proviso to Sub-section (1) of Section 83 is an affidavit, and it should be possible for the respondent to

ascertain whether, in fact, the contents were sworn, affirmed and signed before the Magistrate or the Notary or the person in whose presence the

swearing of the affirmation was made, had authority to administer oath. The respondent will not be in a position to point out that the person, who is

said to have administered the oath, was not in existence or had no authority to administer the oath or that the signature and the endorsement on the

document purported to have been made by the alleged authority were fake. If the copies of the affidavit are not faithful and do not include these

endorsements, a valuable right of the respondent is taken away and considering the purpose which the copy of the endorsement would serve, it

cannot be said that this portion would not be Integral part of the affidavit. Since these details form an integral part of the affidavit, fur nishing a copy

without that portion would not be furnishing a complete copy, and in that event, merely because the returned candidate made an endorsement that

it was a true copy, it cannot be regarded as a true copy. Considering the purpose that is to be served, I do not think that the lapse can be regarded

as inconsequential.

With respect, I would adopt the said observations as my own. The appeals deserves to be dismissed.

It is submitted by the learned counsel for the respondent that the aforesaid judgment has been affirmed by the Apex Court in T.M. Jacob Vs. C.

Poulose and Others, . On the basis of the determination in Dr. Shipra''s case (supra), learned counsel for the respondent contends that the instant

election petition cannot be proceeded with any further and the same is liable to be rejected at this stage itself.

26. As against the contention of the learned counsel for the respondent in respect of the non-supply of a true copy of the affidavit attached to the

election petition, learned counsel for the petitioner has only pointed out that the judgments relied upon by the learned counsel for the respondent

are inapplicable to the facts and circumstances of the instant case. On behalf of the petitioner, reliance has been placed on T. M. Jacob''s case

(supra) on which the respondent also seeks to substantiate his claim. It is submitted that during the determination of the controversy in T. M.

Jacob''s case, the Apex Court on an analysis of the decision rendered in Dr. Shipra''s case arrivtd at the conclusion that the copy of the affidavit

supporting his allegations of corrupt practices supplied to the respondent did not express that it has not been duly sworn and verified by the

election petitioner before a Notary. In other words in the copy of the affidavit supplied to the respondent in the election petition there was

complete absence of Notarial endorsement. The Supreme Court in Dr. Shipra''s case arrived at the conclusion that the defect found in the copy of

the affidavit was thus not merely absence of the name of the Notary or his seal and stamp but a complete absence of ""Notarial endorsement"" and

as such the absence of ""an affirmation"" or ""oath"" by the election petitioner. It was in the aforesaid context concluded by the Apex Court in T. M.

Jacob"s case (supra) that the Bench in Dr. Shipra"s case (supra) found 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 practices by the

election petitioner. In T. M. Jacob"s case (supra) the defects in the copy of the affidavit supplied to the respondent were highlighted in paragraph

41 of the judgment which is being extracted hereunder (at Page 1369 of AIR) :--

We have already referred to the defect which has been found in the copy of the affidavit served on the appellant in the present case. There is no

dispute that the copy of the affidavit served on the appellant contained the endorsement to the effect that the affidavit had been duly signed, verified

and affirmed by the election petitioner before a Notary. Below the endorsement of attestation, it was also mentioned :

Sd/-

Notary

There, however, was an omission to mention the name and particulars of the Notary and the stamp and seal of the Notary in the copy of the

affidavit served on the appellant, There was no other defect pointed out either in the memo of objection or in C. M. P. No. 2903 of 1996 or even

during the course of arguments in the High Court or before us. Could this omission be treated as an omission of a vital or material nature which

could possibly mislead or prejudice the appellant in formulating his defence ? in our opinion No. The omission was inconsequential. By no stretch

of imagination can it be said that the appellant could have been misled by the absence of the name and seal or stamp of the Notary on the copy of

the affidavit, when endorsement of attestation was present in the copy which showed that the same had been signed by the Notary. It. Is not

denied that the copies of the Election Petition and the affidavit served on the appellant bore the signatures of respondent No. 1 on every page and

the original affidavit filed in support of the Election Petition had been properly signed, verified and affirmed by the election petitioner and attested

by the Notary. There has, thus, been a substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1)(c) of

the Act. Defects in the supply of true copy under S, 81 of the Act may be considered to be fatal, where the party has been misled by the copy on

account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such

cases would attract the provisions of Section 81(3) read with Section 86(1) of the Act. Same consequence would not follow from non-compliance

with Section 83 of the Act.

27. To arrive at a conclusion in the Instant issue, this Court has to examine whether the defect in the affidavit is of the nature expressed in Dr.

Shipra''s case (supra) or of the nature in T. M. Jacob''s case (supra). In other words, the complete absence of Notarial endorsement in the copy of

the affidavit as in Dr. Shipra''s case would be fatal, whereas an indication that there is indeed a Notarial endorsement in the copy of the affidavit

supplied to the respondent as in T. M. Jacob''s case would not be fatal.

28. Learned counsel for the respondent has attached a xerox copy of the election petition furnished to the respondent with the written statement.

The veracily of the aforesaid xerox copy of the election petition attached with the written statement has not been disputed either in the replication

filed by him or during the course of arguments on behalf of the petitioner. A perusal of the xerox copy reveals a total absence of the attestation b*y

the Notary. It is evident from the xerox copy that there is no indication, whatsoever, on the copy of the election petition furnished to the respondent

that the affidavit had been sworn by the election petitioner before an Oath Commissioner or that the Oath Commissioner had attested the affidavit.

In the backdrop of the aforesaid factual position the legal position which would govern the present controversy is the one which has been

determined by the Supreme Court in Dr. Shipra''s case (supra) wherein also copy of the election petitioner''s affidavit furnished to the respondent

did not depict the affirmation of the affidavit in the presence of a Notary. That being so, the present defect in the election petition amounts to a non-

compliance of the mandate of Section 81 (3) of the 1951 Act which requires that the respondent must be furnished a true copy of the election

petition. A defect u/s 81 of the 1951 Act is an incurable defect in terms of Section 86(1) of the 1951 Act. Even according to the decision rendered

in Dr. Shipra''s case (supra) as well as in T. M. Jacob''s case (supra), the aforesaid defect is incurable. In the aforesaid view of the matter, I uphold

the contention of the respondent in the 5th preliminary issue raised by the respondent. Therefore, it is concluded that the respondent was not

furnished with a ''true copy'' of the election petition in terms of Section 81(3) of the 1951 Act. It is imperative for the High Court to dismiss an

election petition which does not comply with the provisions of Section 81 of the 1951 Act under the mandate of Section 86(1) of the 1951 Act.

The instant election petition is, accordingly, liable to be dismissed.

CONCLUSIONS :--

29. In view of the findings recorded above, the assertions made in respect of issue Nos. 1 and 2 to the effect that there is deficiency of material

facts in the election petition is held to be not acceptable in law. However, the plea that there are deficiencies in material particulars in the election

petition is upheld. Since there is only deficiency in material particulars and not in material facts, the plea of the respondent that the instant petition is

liable to be dismissed at this stage itself is declined. Although it has been concluded that the election petitioner can be afforded an opportunity to

make good the deficiency in material particulars upon terms as to costs or other-wise. It is considered inappropriate in view of the eventual

conclusion drawn in the instant case to delineate the terms on which the petitioner should be permitted to make up the deficiency in material

particulars.

30. The plea as raised by the respondent under issue Nos. 3 and 4 to the effect that the verification of the election petition and the affidavit

attached thereto are not in order, is upheld. It is, however, not possible to accept the prayer of the respondent to dismiss the election petition on

account of the defects in the verifications and the affidavit at this stage. Although it has been concluded that the election petitioner can be afforded

an opportunity to correct the verification and the affidavit upon such terms as to costs or otherwise, it is considered inappropriate in view of the

eventual conclusion which drawn in the instant case to delineate the terms on which the petitioner should be permitted to make up the deficiency in

the verification and the affidavit.

31. In furtherance of the plea raised in issue No. 6. It is held that the respondent was not furnished with a true copy of the election petition. In view

of the aforesaid defect, the prayer of the respondent that the election petition deserves to be dismissed at this stage is upheld.

32. In view of the aforesaid conclusions the instant election petition is dismissed.