

Dharam Yadav Alias D.P. Yadav Vs Dharmendra Yadav and Others

Court: Allahabad High Court

Date of Decision: Dec. 10, 2010

Acts Referred: Conduct of Elections Rules, 1961 " Rule 25(A), 94(A)
Representation of the People Act, 1951 " Section 117, 123(2), 123(7), 123(8), 135(A)

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prakash Krishna, J.

(1) On the Application No. 259866 of 2009 Paper No. A-9 (Under Order 6 Rule 16 Code of CPC For striking of certain paragraphs from the

Election Petition)

And

(2) On Application No.259867 of 2009 (Under Sections 81, 82, 83, and 86(1) of the Representation of People Act read with Order 7 Rule 11

C.P.C to dismiss the Election Petition in limine in view of the preliminary objections raised by the elected candidate).

1. By means of the above election petition filed under Sections 80, 80A/81 of the Representation of People Act 1951 (hereinafter referred to as

Act, 1951), the Petitioner has challenged the election of Parliamentary Constituency No. 23 -Badaun Parliamentary Constituency held on 16th of

May, 2009 which consists of five Legislative Assembly Constituencies namely (1) Gunnaur Legislative Assembly Constituency; (2) Bisauli

Legislative Assembly Constituency (reserve); (3) Sahasawan Legislative Assembly Constituency; (4) Bilsa Legislative Assembly Constituency; and

(5) Badaun Legislative Assembly Constituency. The Election Commission of India on 2nd of March, 2009 issued a notification u/s 14 of the Act to

constitute 15th Lok Sabha by providing that the election in country shall be held in five phases. The election of Badaun Parliamentary Constituency

took place in the fifth phase by inviting the nomination papers from 17th of April, 2009 to 24th of April, 2009, the date of scrutiny of nomination

papers was 25th of April, 2009, the date of withdrawal of nomination paper and allotment of symbol was 28th of April, 2009, the date of polling

was 13th of May, 2009 and the date of counting was 16th of November, 2009. The result was also declared on 16th of May, 2009 declaring

elected Dharmendra Yadav, the Respondent No. 1 herein, a candidate of Samajwadi Party. In the said Parliamentary Election, the election

Petitioner contested the election as Bahujan Samajwadi Party candidate.

2. By means of the present election petition, the Petitioner has sought that the declaration of election of Respondent No. 1, Sri Dharmendra Yadav

be set aside and be declared null and void. It may also be declared that he is guilty of committing corrupt practices of undue influence and booth

capturing u/s 123(2) and Section 123(8) read with Section 135A of the Act. The Petitioner also claimed that he may be declared duly elected

Member of Parliament from the said Parliamentary Constituency by excluding 1,06,719 bogus votes from 7,36,933 votes with all other ancillary

and consequential reliefs.

3. In response to the above petition, a reply has been filed by the elected candidate by denying the allegations levelled against his election. He also

preferred the aforesaid two applications for the dismissal of the election petition at its threshold.

4. The application No. 259867 of 2009 (A-10) has been filed on the pleas inter alia that the copies of the two affidavits - one in support of the

election petition and the another in prescribed format with regard to the allegations of corrupt practices, supplied to the elected candidate are not

the true copies of the original documents. The contention is that the copies of the affidavits supplied to him were drafted and typed out earlier

before swearing of the affidavits. In the copy received by him, there is no indication of any kind whatsoever that the affidavits had been sworn and

affirmed/verified by the Oath Commissioner. The swearing clauses of these affidavits as contained in the copies supplied to him do not manifest or

inform him that the deponent of the affidavits had sworn and verified these affidavits by the Oath Commissioner. The writings and cuttings are

initialled by the Petitioner himself and not by the Oath Commissioner. There is no indication anywhere in affirmation part the Oath Commissioner to

show that he had signed the documents of the affidavit. The copies supplied to him are not true copies of the original affidavit.

5. The further averment is that the affidavit on the prescribed format with regard to the allegations relating to corrupt practices has not been

properly sworn. Some of the parts of the particular paragraphs have been verified on the basis of information received from the workers,

supporters, agents, election agents and other persons. There is no specific source of knowledge verifying the each parts of the paragraphs of the

affidavit. Certain paragraphs of the affidavit have been sworn partly on personal knowledge and partly on information without specifying which part

of those paragraphs are based on personal knowledge and which part are based on information. The verification is contrary to the requirements of

Section 83(1) of the Act.

6. The third ground is that the particulars of material facts on which the election petition is based have not been disclosed.

7. In reply, the allegations made in the aforesaid two applications have been denied and contested them on the pleas inter alia that the election

Petitioner has disclosed all the material facts and particulars in respect of the allegations made in the election petition which constitute a complete

cause of action. The election petition is duly stamped and signed by the Oath Commissioner which bear signatures of the election Petitioner on

each page. The additions and cuttings in the affidavit, as per Allahabad High Court Rules have been initialled by the election Petitioner. In other

words, there is no defect in any of the affidavits either in swearing or verification and the affidavit of corrupt practices is in conformity with the

prescribed Rule 25A as required under Rule 94-A of the Conduct of Election Rules, 1961. The objections raised by the elected candidate as

preliminary objections are misconceived and are liable to be rejected with heavy cost.

8. Heard Sri S.P. Gupta, learned Senior Counsel assisted by Sri Saral Srivastava, Sri A.K. Gupta, Sri Rahul Agrawal, Advocates on behalf of the

Respondent No. 1 in support of the aforesaid two applications and Sri Ravi Kant, learned Senior Counsel assisted by S/S Sri N.K. Pandey, Sri

Sudha Pandey and Sri A.K. Mishra, Advocates.

9. The following points emerge for the disposal of these applications :

1. Whether the copy of election petition supplied to the Respondent is a "true copy" within the meaning of Section 83(1) of the Act as required by

the Rule 94-A of the Conduct of Election Rules.

2. Whether the election petition is liable to be rejected as according to the Respondent it has not been properly sworn and verified by the election

Petitioner? Some of the paragraphs have been partly sworn on personal knowledge and partly on the basis of the record or on the basis of

information received from the workers, supporters, agents, election agents and other persons.

3. Whether the election petition lacks material particulars of the corrupt practices and therefore, the election petition does not disclose a cause of

action?

10. Sri S.P. Gupta, learned Senior Counsel for the Respondent No. 1, submits that the copy of the affidavit served on the Respondent is not a

true copy"" of the affidavit filed along with the election petition. Elaborating the argument, he submits that the copy supplied to the Respondent

does not indicate that the affidavits have been sworn and affirmed/verified by the Petitioner before the Oath Commissioner. Even the cuttings and

additions including those which were to be written and signed by the Oath Commissioner had not been done by the Oath Commissioner but by the

Petitioner himself prior to the affirmation/verification of the affidavits.

11. Strong reliance has been placed on the following two Judgments of the Apex Court :

1. Dr. (Smt.) Shipra, etc. etc. Vs. Shanti Lal Khoiwal, etc. etc., ; and

2. T.M. Jacob v. C. Polous and Ors. 1999 (5) SCC 274.

12. To appreciate the point it is desirable to notice the factual aspect of the case. The affidavits have been sworn by the Petitioner before the Oath

Commissioner. For the sake of convenience, the relevant portion relating to the verification and swearing clause is reproduced below :

I, A.K. Mishra, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself to be the deponent,

is known to me from perusal of papers in his possession. I accordingly identify him.

(signature illegible)

ADVOCATE

(Thumb Impression of deponent)

Solemnly affirmed before me on this 29th day of June 2009 at about 5:00 P.M. by the deponent who is identified by the aforesaid

person/advocate.

I have satisfied myself by examining the deponent who understood the contents of this affidavit which have been read over and explained to him

before me.

OATH COMMISSIONER

(SEAL WITH INITIAL) (SEAL WITH INITIAL, DATE ETC.)

13. The relevant extract of the copy which has been supplied to the Respondent is also reproduced below :

I, A.K. Mishra, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself to be the deponent,

is known to me from perusal of papers in his possession. I accordingly identify him.

(signature illegible)

ADVOCATE

Solemnly affirmed before me on this 29th day of June, 2009 at about 5:00 P.M. By the deponent who is identified by the aforesaid

person/advocate.

I have satisfied myself by examining the deponent who understood the contents of this affidavit which have been read over and explained to him

before me.

OATH COMMISSIONER

14. In the said copy supplied to the Respondent, the date and time of swearing have been mentioned. The only objection is that the name of the

oath commissioner has not been mentioned in the copy nor there is any indication in the copy that the affidavit was sworn before the Oath

Commissioner as from the said document it cannot possibly be found out the factum of swearing as there is no name of the Oath Commissioner

and it lacks seal and signatures of the Oath Commissioner.

15. In this fact situation, the Court is called upon to determine as to whether the copy of the affidavit supplied to the Respondent is a "true copy",

as required under the relevant statutory provision or not.

16. Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, , a constitution bench judgment appears to be leading case on the

subject. Sub-section (3) of Section 81 was interpreted therein. The last part of the Sub-section says that "Every copy shall be attested by the

Petitioner under his own signature to be true of the petition." The grievance of the Appellant therein was that (1) The copy which was served on the

Appellant did not contain the signature of the Petitioner at the end of the petition though the original contained such signature, and the verification of

the copy served on the Appellant omitted to mention para 14-g (ii) in that part of the verification which related to averments stated to be true to the

personal knowledge of the Petitioner. The Court held that the word "Copy" in Sub-section (3) of Section 81 does not mean an absolute exact

copy but means that the copy shall be so true that nobody can by any possibility misunderstand it. After referring certain decisions, it has been held

as follows :

We are of the view that word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility

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

Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No. 269 of 1962 were not such

as to mislead the Appellant; therefore there was no failure to comply with the last part of Sub-section (3) of Section 81. In that view of the matter

Sub-section (3) of Section 90 was not attracted and there was no question of dismissing the election petition under that Sub-section by reason of

any failure to comply with the provisions of Section 81. This disposes of the second preliminary objection raised before us.

17. The question posed above is, thus, required to be answered in the light of the above ratio of the Apex Court. At this juncture, the learned

Senior Counsel for the Respondent placed strong reliance upon the judgment of Justice Bharucha J. in the case of Dr. Shipra v. Shanti Lal Khoiwal

(supra), paragraph 17 in particular. The paragraph relied upon is reproduced below :

17. The question that must be posed, as indicated by this Court's previous decisions, is: Does the document purporting to be a true copy of the

election petition mislead in a material particular? The "true copy" of the election petition furnished by the Appellant (election Petitioner) to the

Respondent (the successful candidate) did not show that the Appellant's affidavit supporting his allegations of corrupt practice had been duly

sworn or affirmed. Where corrupt practice is alleged, the election Petitioner must support the allegation by making an affidavit in the format

prescribed. An affidavit must be sworn or affirmed in the manner required by law, or it is not an affidavit. The document purporting to be a true

copy of the election petition furnished by the Appellant to the Respondent gave the impression that the Appellant's affidavit supporting his

allegations of corrupt practice had not been sworn or affirmed and was, therefore, no affidavit at all; it misled in a material particular and its supply

was, as the High Court held, fatal to the election petition.

18. However, the learned Senior Counsel, very fairly also brought to the notice of the Court the subsequent decision delivered in the case of T.M.

Jacob (supra) which is a decision by a Constitution Bench and was formed to reconsider the ratio as laid down in the case of Dr. Shipra (supra).

In the case of T.M. Jacob, the reference has been answered in the following words :

28. Thus, our answer to the reference is that the judgment in Dr. Shipra case is confined to the "fact situation" as existing in that case and has no

application to the established facts of the present case and the wide observations made therein were made in the context of the facts of that case

only.

19. Explaining the judgment in Dr. Shipra's case the Constitution Bench in T.M. Jacob (supra) observed as follows :

The defect found in the "true copy" of the affidavit in Dr. Shipra case¹ was not merely the absence of the name of the Notary or his seal and stamp

but a complete absence of "notarial endorsement" of the verification as well as absence of an "affirmation" or "oath" by the election Petitioner. It

was in that context that the Bench had found in Dr. Shipra case that the returned candidate would have got the impression, on a perusal of the "true

copy" of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election

Petitioner. It was precisely on account of this "fatal" defect that K. Ramaswamy, J. opined that "the principle of substantial compliance cannot be

accepted in the fact situation". Thus the judgment in Dr. Shipra case is confined to the "fact situation" as existing in that case....

20. The objection raised in the case of T.M. Jacob were similar to one as raised herein. The paragraph 30 of the judgment shows that an argument

was raised on the ground that the copy supplied to the elected candidate was not the true copy in as much as in the copy served on the elected

candidate, the name and other particulars of the notary and the seal and stamp of the notary, which had been affixed on the affidavit filed along with

the election petition were, conspicuous by their absence. The argument was that the variation between the affidavit filed by the election Petitioner in

support of the allegations of corrupt practices and the copies served on the Appellant therein had rendered the copy as not a "true copy" of the

original. The said argument was tested in the light of the Section 81(3) of the Act. In these facts situation, the word "copy" occurring in Section

81(3) of the Act means an absolutely exact copy or does it mean a copy so true that nobody can by any possibility misunderstand it was posed

and answered. In the light of the earlier Constitution Bench the judgment in the case of Murarka Radhe Shyam Ram Kumar (supra) against the

elected candidate holding that the test is that the word "copy" does not mean "an absolute exact copy", it means a copy so true that nobody can by

any possibility misunderstand it.

21. Coming to the facts of the present case, it cannot be possibly said that by not mentioning/putting the name of the Oath Commissioner in the

manner (i.e. Sd/-so and so), it cannot possibly be said that there is any possibility of misunderstanding that the affidavit has not been sworn. The

very fact that the copy of the affidavit served on the Respondent contains the date and time of swearing of the affidavit, gives sufficient indication

that the affidavit has been sworn in accordance with law. The law does not require that the copy should be an absolute exact copy. The non

mentioning of the word "Sd/-" above the words "Oath Commissioner" will not in any manner render it not a "true copy" of the original one specially

when the said copy has been attested by the election Petitioner under his signature as true copy.

22. Sri Ravi Kant, learned Senior Counsel, rightly points out the observations of the Apex Court in the case of Ram Prasad Sarma Vs. Mani

Kumar Subba and Others, that the correctness of decision in Dr. Shipra's case (supra) was doubted and it has been held by the Constitution

Bench in T.M. Jacob (supra) that it was confined to the facts of that case. It has been held that it cannot be said that Dr. Shipra's case lays down

any proposition of law of a binding nature. The two decisions of the Constitution Bench namely Murarka Radhe Shyam (supra) and T.M. Jacob

hold the field as well as the decision in the case of Sri T. Phunzathang Vs. Sri Hangkhanlian and Others, . The law laid down in these decisions

would be binding precedence in deciding a question relating to a "" true copy"" of an affidavit. It is apt to reproduce a portion from paragraph 15 which

in my considered view clinches the issue and was also strongly relied upon by the learned Senior Counsel for the election Petitioner :

...It has also been observed that an election petition accompanied by an affidavit has two parts out of which the verification part by the Oath

Commissioner is not an integral part of the petition and the affidavit. If the copy furnished to the returned candidate does not contain the words as

the true copy so far as the attestation part by the Oath Commissioner is concerned, it would not violate the requirement of furnishing of true copy

of the election petition and the affidavit thereof. This is also a decision by a three-Judge Bench rendered on considering the decisions in the cases

of Dr. Shipra, Murarka Radhey Shyam and T.M. Jacob. It was held that in view of the two Constitution Bench decisions the case of Harcharan

Singh Josh cannot be held as laying down the correct law. The Court followed the decision in the cases of T.M. Jacob and Anil R. Deshmukh. The

fact situation of the case was also quite akin to the case in hand. The allegations of corrupt practices were made. The original petition contains the

affidavit with all necessary endorsement and attestation by the Oath Commissioner. But the copy supplied did not contain any such verification or

affirmation.

23. Further reliance was placed on Chandrakant Uttam Chodankar Vs. Shri Dayanand Rayu Mandrakar and Others, . In this very case it was laid

down, following the earlier decisions in the cases of Jacob and T. Phungza Thang (supra), that an endorsement by Registry of the High Court that

election petitions were in order, a presumption that the petitions filed before the Court are free from any defect would arise. It would be for the

person alleging any defect to adduce evidence and bring on record adequate materials so as to enable the court to rebut the presumption of

correctness of official work having been done in regular course of business.

24. Viewed as above, I find no substance in the argument of the Respondent No. 1 that the copy of the election petition supplied to him is not a

true copy"" as from the copy supplied to him the name of the Oath Commissioner and his seal is not decipherable. The copy supplied to the

Respondent No. 1 gives sufficient indication, beyond pale of doubt that the affidavits filed in support of the election petition have been duly sworn

and verified by the Oath Commissioner at the given date, time and place.

25. Now, I take up the second and third points together as they were argued out simultaneously, mixed with each other. The contention of the

Respondent is that the affidavit filed in support of the election petition and the affidavit filed in support of the particulars relating to corrupt practices

have not been sworn properly as there is a defect which according to him is fatal in the verification clause. The contents of certain paragraphs have

been sworn partly on personal knowledge and partly on information etc. without specifying the part in particular. It was submitted that the election

petition is liable to be dismissed as it does not contain the material facts and its particulars. The averments relating to corrupt practices are vague

and general in nature. The charge of corrupt practices in an election is very serious charge and the Petitioner is duty bound to give the full

particulars of the said charge. Paragraphs 55, 73, 74, 75, 77, 79, 92, 97, 100, 101, 103, 105, 111, 116, 140, 141, 145 and 156 are some of the

paragraphs relating to the allegations of the corrupt practices against the Respondent. These paragraphs have been sworn partly on the basis of the

personal knowledge and partly on the basis of record and partly on the basis of information received from the workers, supporters, agents,

election agents and other persons. It has not been specified what is the precise nature of information. In absence of source of information the

verification even on the basis of information is totally invalid. The affidavit does not communicate or inform the Respondent No. 1 as to which part

has been sworn by personal knowledge and which part has been sworn on record and which part has been sworn on the basis of information

received from various persons.

26. The Court was taken though the various paragraphs beginning from paragraph 33 of the election petition. It was submitted that the particulars

of the persons whose electoral rights have been affected have not been stated. Date, time and place of corrupt practices have not been stated and

the allegations are general in nature. The facts showing the consent of the Respondent to the corrupt practices and undue influence have not been

given.

27. In paragraph 33 it has been stated that Member of Parliament of Samajwadi Party (SP) and candidate of Samajwadi Party from Pratapgarh

Parliamentary Constituency namely Sri Akshya Pratap Singh, the candidate of Samajwadi Party from Mirzapur Constituency namely Sri Bal

Kumar Patel who is none-else but the real brother of the Dacoit Dadua and workers and supporters from Mainpuri, Etawah, Rai Bareilly,

Pratapgarh, Allahabad were called by the Respondent No. 1 armed with weapons and fire arms who were continuously touring in the entire 23 -

Badaun Parliamentary Constituency and creating an atmosphere of terror amongst the voters of the said Parliamentary Constituency by showing

their weapons and arms to cast votes in favour of the Respondent No. 1 even before the date of polling. In subsequent paragraphs the allegations

in brief are that the Election Petitioner came to know that strong muscle men of the Samajwadi Party including its Ex-minister of the State

Government, Ex-member of Parliament and several Members of Legislative Assembly and ante-social elements from the District Etawah,

Mainpuri, Firozabad, Rai Bareilly, Pratapgarh, Allahabad were such persons, with the consent of Respondent No. 1 and with the consent of his

election agents who are continuously interfering in the election. The complaint was lodged by the election agent of the election Petitioner before the

date of polling with the Chief Election Commissioner, New Delhi through various fax messages given on the dates specified therein. Similar kind of

statements have been mentioned in the subsequent paragraphs of the petition.

28. The contention of the Respondent No. 1 is that these paragraphs have not been properly verified in the affidavit. Therefore, the submission is

that there is no proper verification of the election petition. The learned senior counsel for the Respondent has filed a detailed chart along with the

written arguments pointing out that the statements made in various paragraphs beginning with the paragraph 33, the material particulars of which

according to him have not been pleaded such as particular of the person whose electoral right was affected, date, time and place of commission of

corrupt practice etc.

29. In reply, Sri Ravi Kant, learned senior counsel for the election Petitioner refutes the above contentions and submits that the election petition has

been properly verified and sworn. It contains the requisite particulars of the material facts. Reading of the election petition as a whole discloses the

material particulars of corrupt practices adopted by the Respondent No. 1 in the election. Attention of the Court was invited towards the various

paragraphs of the election petition as also to the annexures filed along with it. He submits that with regard to the Bisauli Assembly Segment names

of various persons such as Sonu son of Shiv Kumar, r/o village Manu Nagar, P.S. Faizganj Behata, District Badaun, Gajraj Singh and various

other persons detailed therein have been given who are the workers and supporters of the Respondent No. 1 and who continuously extended the

threatening for not supporting and casting votes in favour of BSP candidate. Similarly, in paragraph 37 it has been stated that one Brijesh along

with the associates who are the workers and supporters of the Respondent No. 1 visited more than 12 villages under the said Assembly segment,

without having any valid vehicle pass issued by the Returning Officer and extended threats to the electors not to cast their votes in favour of BSP.

The photostat copy of the complaint sent by the election agent of the Petitioner has been enclosed as Schedule-4. The Court was taken through

other paragraphs such as paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46 etc. to show that the requisite material facts have been disclosed with

sufficient details such as names, date, place, vehicle number etc. etc.

30. A note be taken that along with the election petition, various documents have been enclosed. Some of them are the complaints which were sent

by the election agent of the Petitioner to the Chief Election Commissioner, New Delhi pointing out the details which according to the Petitioner

amounts to corrupt practice adopted by the returned candidate.

31. In paragraph 55 of the petition it has been pleaded that the illegal activities of threatening and terrorising the electors were completed in a pre-

planned mechanism. Local leaders of Samajwadi Party namely Ram Khelari Yadav, Ashok Kumar Yadav etc. with more than hundred persons

armed with illegal fire arms and Lathis loaded in unauthorised vehicles committed the illegal activities mentioned in the earlier paragraphs of the

election petition. The date, time and polling stations etc. have been given in Schedule-14.

32. In paragraph 73 onwards it has been stated that during the course of counting it was found that the Respondent No. 1 had secured more than

90 percent of the total votes polled at various polling stations detailed in Schedule-18. Similarly, in some polling stations extraordinary percentage

of votes were polled, the details whereof have been given in Schedule-18, vide para 75.

33. Schedule No. 14 is to the election petition in the form of a chart which contains the particulars and details of corrupt practice of undue

influence as defined u/s 123(2) of the Representation of People Act, 1951 committed by the Respondent No. 1, his agent, workers and

supporters, with the consent of Respondent No. 1 or with the consent of the election agent. It has the following columns :

1. Name & Number of Assembly Segment;
2. Date & Time;
3. Name and Place of the Polling Station/Centre/Booth where the corrupt practice was done;
4. Names and particulars of the persons who committed the corrupt practice;
5. Names and particulars of the persons in whose presence the corrupt practice was committed;

6. Name and particulars of the persons whose electoral rights have been infringed.

34. Schedule 17 to the election petition is the details of polling station/centre/ booths where more than 90 per cent or nearby votes were polled in

favour of the elected candidate of the total votes polled on 13th of May, 2009 and at the time of counting they were not withheld and referred to

the Election Commission of India for further instructions and orders in respect of 23-Badaun Parliamentary Constituency. From the said chart the

Petitioner has tried to demonstrate that the precise particulars with regard to the polling station, total votes polled by Respondent No. 1 and total

number of votes polled by the election Petitioner. The total votes polled in favour of the Respondent No. 1 was more than 90 per cent and at some

polling stations it was 98 per cent. Schedule 18 is chart which shows that at some polling stations abnormal polling took place and high percentage

of votes was secured by the Respondent No. 1.

35. In the Schedule No. 25 to the election petition, details and particulars of corrupt practice of booth capturing have been delineated in respect of

Gunnaur Assembly Segment. Schedule 29 contains the details and particulars of the booth capturing with respect of Basauli Assembly Segment.

Schedule 25 is in respect of Bilsa Assembly Segment.

36. I have noticed the contents of the election petition in brief for the purposes of disposal of the present applications. At this stage, the contents of

the election petitions are to be considered alone. The question which now falls for consideration is whether the election petition is liable to be

thrown on the ground that it does not contain the material particulars of corrupt practice or it is not properly verified and sworn by the Oath

Commissioner.

37. The learned Counsel for the Petitioner submits that there is no defect in the election petition and even if there is any such defect in the

verification or the swearing clause, it is curable.

38. The learned senior counsel for the Respondent No. 1 strongly relied upon Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, .

Submission is that the defect in verification and affirmation in the affidavit therein is similar to the present case. Reference was made to paragraph 7

of the report wherein the verification clause has been reproduced by the Apex Court.

39. The Petitioner has filed affidavit of corrupt practice in Form 25 as required under Rule 94-A of the Conduct of Election Rules 1961. The

paragraphs 1, 2 and 3 of the said affidavit are reproduced below :

1. That the Statements made in the Ground Nos. A, B & C of the election petition about the commission of corrupt practice of Booth Capturing

and the particulars of such corrupt practice of Booth Capturing within the meaning of Section 123(8) read with Section 135A of the

Representation of People Act 1951, mentioned in Paragraph Nos. 114, 115, 116 (Partly), 117, 123, 127, 128, 135, 140 (Partly), 141(Partly),

145(Partly), 156(Partly), 157, 158, 159, 160 161 and Schedule Nos. 23(Partly), 24 (Partly), 25(Partly), 26(Partly), 27(Partly), 28(Partly),

29(Partly) are based on my personal knowledge which I believe to be true; and those of Paragraph Nos. 118, 119, 120, 121, 122, 126,

140(Partly), 145(Partly) and Schedule Nos. 24(Partly) & 27(Partly) are about the commission of corrupt practice of Booth Capturing within the

meaning of Section 123(8) read with Section 135A of the Representation of People Act 1951, are based on records, which I believe to be true;

and those contained in Paragraph Nos. 116(Partly), 124, 125, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140(Partly),

141(Partly), 142, 143, 144, 145(Partly), 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156(Partly) and Schedule Nos. 23(Partly),

24(Partly), 25(Partly), 26(Partly), 27(Partly), 28(Partly), 29(Partly) are about the commission of corrupt practice of Booth Capturing within the

meaning of Section 123(8) read with Section 135A of the Representation of People Act 1951, are based on the information received from my

workers, supporters, agents, polling agents & election agent, which I believe to be true.

2. That the statement in respect of Ground No. D of this election petition made in Paragraph Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,

28, 29, 30, 31, 32, 55(Partly), 58 and Schedule No. 14(Partly) of the accompanying election petition are about the commission of corrupt

practice of undue influence within the meaning of Section 123(2) of the Representation of People Act 1951 are based on my personal knowledge,

and those contained in Paragraph Nos. 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55(Partly), 56, 57

and Schedule Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14(Partly) and Schedule No. 15 are based on the information received from my workers,

supporters, agents, polling agents and election agent, which I believe to be true.

3. That the statements in respect of Ground No. E made in Paragraph Nos. 5, 61 of the accompanying election petition and Schedule No.

16(Partly) are about the commission of corrupt practice of obtaining or procuring the assistance of government servant for the furtherance of the

prospects of the election of the returned candidate, u/s 123(7) of the R.P. Act 1951, are based on my personal knowledge, and those contained in

Paragraph Nos. 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 and Schedule No. 16(Partly) are based on information received from my workers,

supporters, agents, polling agents and election agent, which I believe to be true.

40. No doubt some of the paragraphs such as paragraph Nos. 116, 140, 141, 145, 156 etc. are sworn partly on personal knowledge of the

Petitioner. Similarly, certain paragraphs have been sworn partly on record. However, most of the paragraphs have been sworn on the personal

knowledge of the Petitioner or on record. Similarly, the few paragraphs have been sworn on the basis of information received from workers,

supporters, agents, polling agents and election agent which the Petitioner believes to be true. In para 2 of the affidavit, very few paragraphs namely

14 and 55 have been partly sworn on personal knowledge and partly are based on the information received from the workers, supporters etc. A

reading of the said affidavit would show that most of the paragraphs have been sworn either on personal knowledge or on record or on the

information received from the workers etc. This being so, the argument that the affidavit in Form 25 was sworn by the election Petitioner as was

sworn in the case of V. Narayana Swami (supra) cannot be accepted. On a comparison of the swearing clauses of the two affidavits would show

that in the case of V. Narayana Swami (supra) the statements made in paragraphs 7 to 10 were sworn on personal knowledge vide (a),

paragraphs 7 to 11 were sworn on information vide (b) and para 11 was sworn on information vide (c), which is not so here. The deponent in the

case of V. Narayana Swami (supra) had sworn the paragraph Nos. 7 to 10 on personal knowledge as well as on information. In this fact situation,

it was held that verification of the affidavit therein do not meet the requirements of the law. Here the factual scenario is different. The said decision

is distinguishable on facts. It was neither demonstrated nor argued by the learned senior counsel for the Respondent No. 1 that all the paragraphs

have been sworn both on personal knowledge and information as well.

41. In the above case, the Apex Court has noticed its earlier judgment and has observed that the our election law being statutory in character must

be strictly complied with since the election petition is not guided by an ever changing common law, principles of justice and notions of equity. Being

statutory in character it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process

must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have

secured his success at the election by corrupt means he must suffer for his misdeeds. An allegation of corrupt practice has serious consequence on

the right of the elected candidate. Proviso to Section 83 demands that the petition alleging the corrupt practice shall be accompanied by an affidavit

in the prescribed Form supporting the allegations of such corrupt practice and particulars thereof. In this very case, the Apex Court has considered

its earlier judgment in the case of T.M. Jacob (supra), Murarka Radhey Shyam Ram Kumar (supra) and D. Ramachandran Vs. R.V. Janakiraman

and Others, and has reproduced the following passage from the case of D. Ramachandran (supra) :

It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the Appellant if

the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition

should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court

cannot probe into the facts on the basis of the controversy raised in the counter.

Further, the case of Dr. Shipra (supra) was also considered.

42. In the case on hand, the Petitioner has given the source of information i.e. on his own knowledge or on the information received from his

election agents. The name of election agents can be deciphered very easily from the annexures filed along with the election petition. The election

agent has sent the fax messages to the Election Commissioner from time to time inviting his attention towards the unlawful activities which according

to the Petitioner were adopted by the the Respondent No. 1 to win the election. It cannot be said that the election petition has not been properly

verified or the affidavit filed in support thereof has not been properly sworn. There was a chain of events and the entire events cannot be dissected

in to several parts.

43. Applying the above principle of law to the facts of the present case, I am of the considered view that the election petition contains the material

facts and particulars. It gives rise to a triable issue as it discloses a cause of action. The averments made in election petition gives sufficient notice to

the Respondent No. 1 with regard to the corrupt practice (according to the Petitioner) adopted by him to get the success at the election. In other

words, it discloses a cause of action. It is not necessary to dilate on this issue any further in view of the latest pronouncement of the Apex Court

wherein it has considered its earlier judgments on the point: K.K. Ramachandran Master v. M.V. Sreyamakumar and Ors. (2010) 7 SCC 428

and has laid down that where a defect in the verification of the pleading is fatal is no longer in res integra in the light of its decision in F.A. Sapa

Etc., Etc., Vs. Singora and others, and Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Others, . In these cases it has been held that the

defect in verification or affidavit is curable. This supports the contention of the learned senior counsel for the election Petitioner. I will be failing in

my duty if the argument of the learned senior counsel for the Respondent No. 1 that in the said decision the earlier decision of larger bench of the

Apex Court holding that such a defect is not curable, is not noted. It is not necessary for this Court to say anything in this regard as the judgment of

the Apex Court in the case of K.K. Ramachandran Master (supra) is the latest one. Even otherwise also, a reading of the judgment of the Apex

Court in the case of V. Narayana Swami (supra) also gives an impression that the defects in verification of pleadings is curable. In this very case it

has noticed its earlier case in the case of Murarka Radhey Shyam Ram Kumar (supra) wherein a defect in the affidavit due to inexperience of oath

commissioner who had made mistake in the verification portion of the affidavit was ignored vide paragraph 12 of the report. In the case of T.M.

Jacob v. C. Polous and Ors. (supra) it has been laid down that the defect of type provided in Section 83 of the Act can be dealt with under the

doctrine of curability on the principle contained in the Code of CPC Paragraph 38 thereof, for the sake of convenience is reproduced below :

That apart, to our mind, the legislative intent appears to be quite clear, since it divides violations into two clauses-those violations which would

entail dismissal of the election petition u/s 86(1) of the Act lime non-compliance with Section 81(3) and those violations which attract Section

83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the

application of the doctrine of substantial compliance as expounded in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Ch.

Subbarao v. Member, Election Tribunal, Hyderabad cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be

dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure.

44. It is not out of place to refer Raj Narain Vs. Indira Nehru Gandhi and Another, . The Apex Court has cautioned that while a corrupt practice

has got to be strictly proved but it does not mean that a pleading in an election proceeding should receive a strict construction. Even the defective

charge as was observed by the Apex Court, does not vitiate a criminal trial unless it was proved that the same had prejudiced the accused. If a

pleading on a reasonable construction could sustain the action, the Court should accept that construction and be slow in dismissing the election

petition lest it frustrate an action only on technical grounds. Paras 16 & 18-19 is reproduced below :

16. ...While a corrupt practice has got to be strictly proved but from that it does not follow that a pleading in an election proceeding should receive

a strict construction. This Court has held that even a defective charge does not vitiate a criminal trial unless it is proved that the same has

prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts

are reluctant to frustrate an action on technical grounds. The charge of corrupt practice in an election is a very serious charge. Purity of election is

the very essence of real democracy. The charge in question has been denied by the Respondent. It has yet to be proved. It may or may not be

proved. The allegations made by the Appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the Appellant

should be refused an opportunity to prove his allegations? Should the court refuse to enquire into those allegations merely because the Appellant or

someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative....

18. ...if the allegations made regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be

allowed to be proved and further those allegations cannot be amended after the period of limitation for filing an election petition; but the court may

allow particulars of any corrupt practice alleged in the petition to be amended or amplified....

19. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of

chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a

juristic principle. It is the duty of the court to ascertain that principle and implement it.

45. More or less, the same view has been taken by the Apex Court in the following cases :

1. H.D. Revanna Vs. G. Puttaswamy and Others, ;

2. V.S. Achuthanandan Vs. P.J. Francis and Another, ;

3. Mahendra Pal Vs. Ram Dass Malanger and Others, ; and Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Others,

46. In G. Mallikarjunappa and Another Vs. Shamanur Shivashankarappa and Others, , it has been held as follows:

An election petition is liable to be dismissed in limine u/s 86(1) of the Act if the election petition does not comply with either the provisions of

Section 81 or Section 82 or Section 117 of the RP Act"". The requirement of filing an affidavit along with an election petition, in the prescribed

form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of

the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be

dismissed in limine u/s 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in

the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly ""defective"" affidavit, is required

to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

47. To sum up, there is preponderance of judicial opinion that such defects in verification are curable and at any rate, at least it cannot be a ground

to reject the election petition at its threshold.

48. The upshot of the above discussions is that there is no defect in verification of affidavits and if any, is curable and the petition does not merit

dismissal in limine u/s 86(1) of the Act.

49. Viewed as above, the applications are devoid of any substance and they are hereby rejected.

50. Since I am sitting in a Division Bench, the matter may be listed for further proceedings before another judge after obtaining nomination from the

Hon"ble the Chief Justice.