

(2002) 04 BOM CK 0028

In the Bombay High Court

Case No : Chamber Summons No. 509 of 2000 in Election Petition No. 2 of 1999
and Application No. of 2000 in Election Petition No. 2 of 1999

Prithviraj Sayajirao Deshmukh and Another

APPELLANT

Vs

Patangrao Shripatrao Kadam (Dr.) and Others

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11
Representation of the People Act, 1951 — Section 123(1), 123(2), 123(4), 81, 83

Citation : (2002) 3 ALLMR 343 : (2002) 5 BomCR 539

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : K.K. Singhavi, Satish R. Borulkar and V.P. Sawant, in application No. 3/2000 and respondent No. 1 in Election petition and M.M. Vashi and S.P. Thorat, for the appearing parties; L.M. Acharya and Ulhas T. Naik, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Deshmukh, J.—Application No. 3 of 2000 has been taken out by the respondent No. 1, Chamber Summons No. 509 of 2000 and Application No. blank of 2002 have been taken out by the petitioner.

2. The petitioner has filed this petition challenging the validity of the election of the respondent No. 1 as a member of Maharashtra Legislative Assembly from the Constituency bearing No. 270 Bhilwadi-Wangi Legislative Constituency. The voting in the said constituency took place on 5th September, 1999 and the results was declared on 6th October, 1999. The respondent No. 1 has been elected by about 1700 votes. In the petition, the petitioner challenges the validity of the election of the respondent No. 1 on the ground that the respondent No. 1 is guilty of corrupt practice within the meaning of the Representation of People Act, 1951. In the election petition, the petitioner had alleged that the respondent No. 1 has committed corrupt practice within the meaning of sub-section (1) of section 123, sub-section (2) of section 123 and

sub-section (4) of section 123 of the Act. The learned Counsel appearing for the petitioner, however, has made a statement, at the bar, that the petitioner is restricting his petition to the ground that the respondent No. 1 has committed corrupt practice within the meaning of the section 123(4) of the Act.

3. Application No. 3 of 2000 has been taken out by the respondent No. 1 for dismissal of the petition summarily for non compliance with the provisions of section 81 and section 83 of the Act as also under the provisions of Order 7, Rule 11(a) of the Civil Procedure Code. By prayer Clause (e) of the application, the respondent No. 1 seeks an order for striking of the contents of certain paragraphs of the petition for non-compliance with the provisions of Order 6, Rule 16 of the Civil Procedure Code.

According to the respondent No. 1, the affidavit which is required to accompany the election petition, which alleges corrupt practice against the returned candidate, is not in the prescribed form. In the present case, according to the respondent No. 1, the affidavit filed u/s 83 is an integral part of the petition and as the affidavit filed with the petition does not amount to an affidavit required to be filed u/s 83 of the Act, the election petition can not be termed as an election petition within the meaning of section 81 of the Act and therefore under the provisions of section 86 the petition is liable to be dismissed. In support of this proposition the learned Counsel appearing for the respondent No. 1 relies on the judgment of the Supreme Court in the case of F.A. Sapa Etc., Etc., Vs. Singora and others, .

The next submission of the respondent No. 1 is that the election petition has incorporated various document by reference without reproducing its contents in the body of the election petition. The documents referred to in the election petition form an integral part of the petition. The copies of those documents have neither been produced before the Court nor have the copies been supplied to the respondent No. 1, and therefore, the petition is liable to be dismissed under the provisions of section 86 of the Act. In support of this submission, the respondent No. 1 relies on a judgment of the Supreme Court in the case of Manohar Joshi Vs. Nitin Bhaurao Patil and Another, , and the judgment of the Supreme Court in the case of Mulayam Singh Yadav Vs. Dharampal Yadav and Others, .

It is further urged on behalf of the respondent No. 1 that the petition is liable to be dismissed as it does not comply with the mandatory requirement of furnishing material facts and particulars, which is required to be done under the provisions of section 83 of the Act and that it does not disclose cause of action and therefore the petition is liable to be dismissed.

4. It may be pointed out here that after Application No. 3 of 2000 was taken out by the respondent No. 1, the petitioner took out Chamber Summons No. 509 of 2000 seeking amendment in the petition.

5. When, I took up the matter for hearing and while the matter was being argued in reply by the learned Counsel appearing for the petitioner, one more application

for amendment of the petition was taken out.

6. In so far as the first ground on which the dismissal of the petition is sought by the respondent No. 1 is concerned, the submission of the petitioner is that the affidavit complies with the requirement of the Act. It is further submitted that even if it is assumed that it does not comply with the provisions of the Act, the petitioner is entitled to suitably amend the affidavit so as to bring it in conformity with the provisions of the Act.

7. So far as the second ground is concerned, it submitted that copies of the documents which are required to be submitted have been submitted by the petitioner and therefore, the respondent No. 1 is not justified in saying that there is any infirmity in the petition in that regard.

8. In so far as third ground is concerned, it is urged that all the facts which are necessary for constituting a corrupt practice within the meaning of section 123(4) of the Act have been stated in the petition, and therefore, it can not be said that the petition does not disclose cause of action. In support of the submission the learned Counsel submits that even if it is assumed that the affidavit filed along with the petition is defective then also requirement of filing an affidavit is contained in section 83 and a petition which does not comply with the requirement of section 83 can not be dismissed for non-compliance with the provisions of section 83 under the provisions of section 86 of the Act. In support of that submission, the learned Counsel relies on a judgment of the Supreme Court in the case of H.D. Revanna Vs. G. Puttaswamy and Others, . According to the petitioner, the affidavit filed along with the petition for complying with the requirement of section 83 is capable of being amended. According to the petitioner, the affidavit filed in support of the petition does not form an integral part of the petition and therefore, the petitioner is entitled to amend the same. In support of the Chamber Summons taken out seeking amendment in the petition as also the application, it is submitted that by the amendment application the petitioner is seeking to correct only typographical errors and mistake and therefore, this Court should permit the petitioner to amend the petition.

9. For the purpose of considering the application and the chamber summons, it is the provisions of sections 81, 83 and 86, which are relevant. Section 81 lays down that an election petition calling in question any election can be presented to the High Court on one or more of the grounds specified in sub-section (1) of section 100. One of the grounds on which an election can be challenged u/s 100 of the Act is that any corrupt practice has been committed by the returned candidate. Sub-section (3) of section 81 requires that every election petition shall be accompanied by as many copies thereof as there are respondents. Section 83, in so far as the petition which is based on corrupt practice of the returned candidate is concerned, specially provides that the petition shall state forthwith material facts constituting corrupt practice together with particulars thereof. Proviso to section 1 of section 83 lays down that such petition shall be

accompanied by an affidavit in the prescribed form in support of the allegation of corrupt practice as also particulars of such corrupt practice. Rule 94(A) of the Conduct of Election Rules, 1961 lays down that the affidavit referred to in proviso to sub-section (1) of section 83 shall be in Form 25. Perusal of Form -25 shows that in the affidavit the petitioner is required to state that which of the allegations relating to commission of corrupt practice of the returned candidate are true to his personal knowledge and which of such allegations are true to his information. Election petition is also required to be verified by the Election petitioner. Perusal of the petition shows that so far as the verification clause of the petition is concerned, the verification clause of the petition does not at all refer to the contents of paragraph 20(a) to 20(g), paragraph 23(a) to 23(h), paragraph 24(a) to 24(c) and paragraphs 52 to 57. Perusal of paragraph 20(a) shows that it contains allegations against the returned candidate and his supporters in relation to the corrupt practice u/s 123(4) of the Act. Similar is the case with paragraphs 23(b) to 23(g). Contents of paragraphs 23(a) to 23(h) also relates to the ground of corrupt practice u/s 123(4) of the Act. Similar is the case with paragraphs 24(a) to 24(c). The affidavit filed by the petitioner for complying with the requirement of proviso to sub-section (1) of section 83 of the Act is divided into seven paragraphs. So far as paragraph 1 is concerned, it relates to the corrupt practice alleged u/s 123(4) of the Act. So far as the paragraphs 2 & 3 are concerned, they relate to corrupt practice u/s 123(2) of the Act. The averments in paragraph 4 relate to corrupt practice u/s 127(7). The contents of paragraph 5 of the affidavit are of general nature. In so far as paragraph 6 is concerned, it does not relate to the averments in the petition, which are relevant for considering the corrupt practice u/s 123(4) of the Act. Paragraph 7 of the affidavit is also of general nature. It is said that the deponent repeats and reiterates every statement and averment made in the petition, as if it is incorporated in his affidavit and it is further stated that this affidavit is part and parcel of the election petition. In view of the statement made by the learned Counsel for the petitioner that he is restricting his petition to the corrupt practice u/s 123(4) of the Act, it is only paragraphs 1, 5 & 7 of the affidavit which are relevant for the purpose of deciding this application. As observed above, the verification clause of the election petition does not at all mention some of the paragraphs of the petition, which contain allegations of corrupt practice u/s 123(4). Those paragraphs, mention of which is committed from verification of the petition, are found to be mentioned in paragraph 1 of the affidavit and the petitioner states that contents thereof are true to his knowledge. Paragraph 1 of the affidavit reads as under :-

"That the statement made in paragraph Nos. 16, 17, 18, 19, 20-A, 20-B, 20-C, 20-D, 20-E, 20-F, 20-G, 22, 23, 23-A, 23-B, 23-C, 23-D, 23-E, 23-F, 23-G, 23-H, 35, 39, 41, 42, 43, 44, 47 and 48 of the accompanying election petition are about the commission of the corrupt practice of publication of statements of facts by the respondent No. 1, and/or his agents, and/or his persons and/or his supporters with the consent of respondent No. 1 and/or his election agent and/or

the supporters, which are false and which they believed or did not believe to be true in relation to the personal character or conduct of the petitioner within the meaning of section 123(4) r/w section 127-A of Representation of People Act, 1951 and particulars of such corrupt practices and the Electoral offences are mentioned out of the said paragraph and also particularly in paragraph Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 of the said petition and the paragraphs Nos. 16, 20-A, 23, 23-C, 23-E, 23-F, 24, 24-B, 24-C, 26, 28, 29, 30, 31, 33, 35, 36, 37 of the annexure annexed thereto are true to my knowledge.

10. Paragraph 5 of the affidavit states that the contents of the entire petition are true to the information given by the persons who have been named in those paragraphs of the petition, which the petitioner believes to be true. Paragraph 5 of the affidavit reads as under :-

"That the particulars of corrupt practices and electoral offences committed by the respondent No. 1 and/or his agents and/or his persons and/or his associates with the consent of the respondent No. 1 and/or his election agent as mentioned in the petition are true to my information and knowledge given to me by the persons named in the said paragraphs of the petition and I believe the same to be true."

11. Paragraph 7 of the affidavit incorporates the contents of the entire petition in the affidavit and states that the affidavit is a part and parcel of the election petition. Paragraph 7 of the affidavit reads as under :-

"I say that I am fully conversant with the facts of the case. I repeat, reiterate and confirm each and every statement, averment, and contentions made in the petition as if, incorporated herein verbatim for the sake of brevity. I say that this affidavit is a part and parcel of the above election petition."

12. Perusal of Form 25, in which the affidavit filed under the provisions of section 83 is required to be filed, shows that it requires the petitioner to segregate the paragraphs of the petition, which give the material facts constituting the corrupt practice and state whether the contents of those paragraphs are true to his personal knowledge or true to the information received by him, which he believes to be true and in relation to the paragraphs of the petition, which give particulars of the corrupt practice, the petitioner is required to state that those particulars are either true to his personal knowledge or true to the information received by him, which he believes to be true. Perusal of the relevant portion of the affidavit, which has been filed in the present case shows that the petitioner has not segregated the paragraphs which contain material facts and material particulars. He also does not indicate in the affidavit as to what portion of those paragraph is true to his personal knowledge and which portion is true to the information received by him. Therefore, it is clear that the affidavit filed by the petitioner does not comply with the requirement of proviso to sub-section (1) of section 83 of the Act. Therefore, the question that falls for consideration is whether for this reason the petition is liable to be dismissed or the petitioner is to be permitted to

amend his affidavit, so as to bring it in conformity with the requirements of provisions of proviso to sub-section (1) of section 83 of the Act. That there is a defect in the affidavit and that it does not comply with the requirement of proviso to sub-section (1) of section 83 is not really in dispute in the present case. It is clear from the application for amendment taken out by the petitioner that the defects in the affidavit are of such nature that they are not capable of being cured only by amendment in the affidavit, the entire affidavit is required to be substituted. Thus, the affidavit filed by the petitioner can not be termed as an affidavit which is to be filed u/s 83 of the Act. Both the sides i.e. the petitioner and the respondent No. 1 have relied on the judgment of the Supreme Court in the case of F.A. Sapa referred to above. Perusal of that judgment shows that the Supreme Court after considering the provisions of the Act and the various relevant judgments has observed in paragraph 27 of the judgment as follows :-

"From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Order 6, Rule 15 and Order 19, Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured, (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true, (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same, and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, u/s 81(3) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter."

13. It is clear from the above quoted paragraph from the judgment of the Supreme Court in F.A. Sapa's case that the defect in the affidavit filed to comply with the requirements of the proviso to sub-section (1) of section 83 is curable, unless the affidavit forms an integral part of the petition. It is, thus, clear that if an affidavit filed under proviso to sub-section (1) of section 83 forms an integral part, strict compliance is to be insisted upon. In paragraph 28 of the judgment in F.A. Sapa's case referred to above, the Supreme Court has observed thus :-

"Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the Court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure form an integral part of the election petition itself, strict compliance would be insisted upon."

There was considerable debate before me on the question whether in the present

case the affidavit filed by the petitioner forms an integral part of the petition or not. The respondent No. 1 relies on two aspects in support of the submission that the affidavit forms an integral part of the petition, namely (i) the verification clause of the petition totally omits the contents of the paragraphs of the petition, which contain allegations of corrupt practice u/s 123(4) of the Act and that verification is to be found only in the affidavit filed with the petition. Therefore, to find out whether the contents of those paragraphs have been verified by the petitioner, one has to refer to the affidavit filed with the petition. Therefore it is not possible to read the petition separately from the affidavit, (ii) The second aspect on which reliance is placed is the statement to be found in paragraph 7 of the affidavit, where the petitioner himself said that this affidavit is a part and parcel of the election petition. In my opinion, for deciding this question it will be appropriate to refer to the observations of the Supreme Court in its judgment in the case of M. Kamalam Vs. Dr. V.A. Syed Mohammed, . The Supreme Court referring to the provisions of section 81 and section 83 of the Act has observed thus in paragraph 5:-

"Now, the first question which arises is as to what constitute an election petition for the purpose of section 81, sub-section (3). Is it confined only to election petition proper or does it also include a schedule or annexure contemplated in sub-section (2) of section 83 or a supporting affidavit referred to in the proviso to section 83, sub-section (1) ? to answer this question, we must turn to section 83 which deals with contents of an election petition. Sub-section (1) of that section sets out what an election petition shall contain and provides that it shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso requires that where the petitioner alleges any corrupt practice, the election 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. The context in which the proviso occurs clearly suggests that the affidavit is intended to be regarded as part of the election petition. Otherwise, it need not have been introduced in a section dealing with contents of an election petition nor figured as a proviso to a sub-section which lays down what shall be the contents of an election petition. Sub-section (2) also by analogy supports this inference. It provides that any schedule or annexure to an election petition shall be signed by the petitioner and verified in the same manner as an election petition."

Thereafter, the Supreme Court considers its judgment in the case of Sahodrabai Rai Vs. Ram Singh Aharwar, . Wherein, the question that was considered by the Supreme Court was whether the annexures and documents which are filed with the petition constituted a part of the petition or not? Thereafter, the Supreme Court in the same paragraph observes thus :-

"It would, therefore, be seen that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified, since it forms part of the election petition. The subject matter of sub-section (2) is thus a

schedule or annexure forming part of the election petition and hence it is placed in section 83 which deals with contents of an election petition. Similarly, and for the same reasons, the affidavit referred to in the proviso to section 83 sub-section (1) also forms part of the election petition. The election petition is in truth and reality one document, consisting of two parts, one being the election petition proper and the other being the affidavit referred to in the proviso to section 83, sub-section (1). The copy of the election petition required to be filed under the first part of sub-section (3) of section 81, would, therefore, on a fair reading of that provision along with section 83, include a copy of the affidavit."

14. It is clear from the above quoted observations of the Supreme Court that the Supreme Court in clear terms held that election petition which is required to be filed under the first part of sub-section (3) of section 81 includes the affidavit required to be filed u/s 83 of the Act. It is, thus, clear that in the affidavit which is required to be filed under proviso to sub-section (1) of section 83 forms a part of the petition. It is further to be seen here that sub-section (1) of section 83 requires that every petition shall be signed and verified in the manner laid down in the Code of Civil Procedure. As observed, above, the verification clause of the petition does not refer to the paragraphs of the petition, which relate to the corrupt practice u/s 123(4). That defect in the verification clause is supplied by the affidavit which in terms refers to those paragraphs which are omitted from the verification clause of the petition and therefore, in my opinion, the learned Counsel appearing for the respondent No. 1 rightly submitted that it is for this reasons that the petitioner himself states that this affidavit should be treated as a part and parcel of the election petition. In my view, therefore, it would be safe to say that in so far as the present case is concerned, the affidavit filed under proviso to sub-section (1) of section 83 of the Act constitutes an integral part of the petition itself. Therefore, it must strictly comply with the requirement of the Act and the Rule. The affidavit filed in the present case does not either strictly or substantially comply with the requirement of the Act or the Rules. Therefore, the petition as framed and filed can not be said to be a petition filed u/s 81 of the Act. Hence, the petition is liable to be summarily dismissed u/s 86 of the Act. This takes me to the consideration of the application for amendment filed by the petition.

15. First application for amendment is Chamber Summons No. 509 of 2000. In so far as the present ground is concerned, the petitioner by that chamber summons seeks permission of the Court to file fresh affidavit in accord with Form 25 under Rule 94-A of the Act. A copy of the fresh affidavit, which the petitioner proposes to substitute in place of the affidavit already filed, is not filed with the chamber summons. Therefore, obviously, unless the petitioner puts before the Court an affidavit, which the petitioner proposes to substitute in place of the existing affidavit, the Court is not likely to consider the request of the petitioner to permit him to amend the petition, and therefore, obviously Chamber Summons No. 509 of 2000 is defective. In my opinion, the defect is obvious. Still though that Chamber Summons was taken out in the year 2000, the petitioner

did not take steps to rectify that mistake till Application No. 3 of 2000 was taken up for hearing by the Court and the arguments of the respondent No. 1 in support of that application were over. During the course of the argument of the learned Counsel appearing for the respondent No. 1, an application dated 27th March, 2002 was presented. This time, the petitioner has produced a copy of the affidavit which he proposes to substitute in place of his first affidavit. Powers of the Court to permit amendment in an election petition are provided in sub-section (5) of section 86 of the Act. Which permits the Court to allow an amendment of the election petition, only to the extent that particulars of corrupt practice are to be amended. In so far as the present case is concerned, in my opinion, once it is held by me that the affidavit filed in the present case forms an integral part of the petition, and once it is found that the affidavit filed along with the petition is not in the form in which it is required to be filed, the petition can not be said to be a petition filed u/s 81 of the Act and therefore, the petition would be liable to be summarily dismissed under the provisions of section 86 of the Act. If an affidavit filed in support, as per the requirement of proviso to sub-section (1) of section 83, cannot be termed as an affidavit for that purpose at all, then in my opinion, the petition itself would be defective and therefore, it would be liable to be dismissed u/s 86 of the Act. Judgment of the Supreme Court in the case of F.A. Sapa has been considered by the Supreme Court in its judgment in the case of V. Narayananswamy v. C.P. Thirunavukkarasu, AIR 2000 S.C.W. 225 and in paragraph 15 of its judgment the Supreme Court has observed thus -

"In F.A. Sapa Etc., Etc., Vs. Singora and others, the question before the High Court was whether the election petition was in conformity with the requirements of sections 81(5) and 83(6) of the Representation of the People Act, 1951 and the Rules framed thereunder. Preliminary objection raised by the appellant, the successful candidate, about the maintainability of the petition, was negatived by the High Court. Against that order he came to this Court. One of the questions before this Court was if the election petition was liable to be dismissed u/s 83 of the Act primarily on the ground that the affidavit filed by the original petitioner was not strictly in conformity with Form 25, inasmuch as the verification as regards the averments based on knowledge and the averments based on information had not been made separately as required by the said Form prescribed by Rule 95-A of the Rules. This Court considered various provisions of the Act, particularly Part VI entitled "Disputes Regarding Elections" and said that it constituted a self-contained Code. It was submitted by the appellant in that case that there was failure to comply with even the basic requirements of an affidavit and as a matter of fact it was a case of no compliance. This Court held that where several paragraphs of the election petition remain unverified under the verification clause as well as the affidavit, the unshorn allegation could have no legal existence and the Court could not take cognizance thereof."

16. Now, so far as the second ground of the respondent No. 1 urged for dismissal of the petition is concerned, it is pointed out that there are various documents which have been referred in the petition, copies of which have not been filed with

the petition. It is further pointed out that in paragraph 38 of the petition the petitioner has referred to the cassettes of the election meetings of the respondent No. 1. But copies of these cassettes have neither been filed with the petition nor have they been supplied to the respondent No. 1.

Paragraph 38 of the petition reads as under :-

"The petitioner will also crave leave to refer to and rely upon the cassettes of the election meetings of the respondent No. 1. From the said cassettes it will be revealed that number of employees of Bharati Vidyapeeth were engaged for the propaganda of respondent No. 1. The Bank employees of Bharati Bank also had taken part in the said election also can be ascertained from the said cassettes. The speeches given by the said respondent No. 1 and his supporters, agents and propagandists clearly shows that there are the examples of citations of corrupt practices adopted by the respondent No. 1 and his supporters. The respondent No. 1, his supporters and agents had taken full opportunity and change to malign the image of the petitioner by false criticism on the character and the conduct of the petitioner."

17. So far as law on this aspect of the matter is concerned, the Supreme Court in its judgment in Manohar Joshi" case referred to above, after referring to various judgment of he Supreme Court in paragraph 23 has observed thus :-

"The distinction brought out in the above decision is, that in a case where the document is incorporated by reference in the election petition without reproducing its contents in the body of the election petition, it forms an integral part of the petition and if a copy of that document is not furnished to the respondent with a copy of the election petition, the defect is fatal attracting dismissal of the election petition u/s 86(1) of the R.P. Act. On the other hand, when the contents of the document are fully incorporated in the body of the election petition and the document also is filed with the election petition, not furnishing a copy of the document with a copy of the election petition in which the contents of the document are already incorporated, does not amount to non-compliance of section 81(3) to attract section 86(1) of the R.P. Act."

18. It is, thus, clear that where a document is incorporated in petition by reference without reproducing the contents of the document in the body of the petition, then a copy of that document has to be filed with the election petition as it forms an integral part of the election petition and if a copy is not so filed, the defect is fatal and the petition is liable to be dismissed under the provisions of section 86 of the Act. It is further to be seen here that the same question was considered by the Supreme Court in its judgment in the case of Mulayam Singh Yadav, referred to above and the Supreme Court has observed thus in paragraphs 12, 13 and 14 of its judgment :-

12. Ordinarily, what is shown upon the video cassette that is mentioned and verified in Schedule 14 would have been set out in the election petition and then that video cassette could have been said to be evidence of the allegations made

in the election petition. As this election petition is drafted, there is no description, of what is shown on this video cassette except to say that it shows booth capturing, violence and arson. As to booth capturing, there are particulars contained in the other schedules but even in that regard the later paragraphs of the election petition make reference to Schedule 14 so that even in regard to both capturing the particulars shown in the video cassette mentioned and verified in Schedule 14 are relied upon. So far as the allegations of violence and arson are concerned, there are no particulars in the election petition absent the video cassette mentioned and verified in Schedule 14.

13. We are, therefore, satisfied that the video cassette mentioned and verified in Schedule 14 is an integral part of the election petition and that it should have been filed in Court along with copies thereof for service upon the respondents to the election petition. Whereas 15 copies thereof were filed for service upon the respondents, the video cassette itself was not filed. The election petition as filed was, therefore, not complete.

14. Section 81 contemplates the presentation of an election petition that is complete and satisfies the requirements of section 83 an election petition that is not complete must, having due regard to the imperative mandate of section 86, be dismissed. The present election petition must, therefore, be dismissed.

19. In so far as the present case is concerned, it is clear that in the election petition, the cassettes have merely been referred to and contents thereof have not been reproduced. Therefore, the cassettes which have been referred to in paragraph 38 form an integral part of the petition and as neither the cassettes have been filed in this Court nor the copies of the cassettes have been supplied to the respondent No. 1, there is a fatal defect, which calls for dismissal of the petition u/s 86. The only submission made in this regard on behalf of the petitioner is that in all the cases including in the case of Manohar Joshi, cassettes were filed in the Court, but the copies were not supplied to the respondents and therefore, the election petition was held to be liable for dismissal. In my opinion, distinction drawn is not relevant or material. It is to be seen that in the case of Mulayam Singh Yadav, the original of the video cassette was not filed with the election petition, the copies of the video cassette were supplied to the respondent and the Court found that defect to be fatal and the petition was held liable to be dismissed on that ground.

20. In my opinion, therefore, as it is evident from paragraph 38 of the election petition that the cassettes have been referred to, contents thereof have not been reproduced in the election petition and as these cassettes have been neither filed with the petition nor have been supplied to the respondents, there is a fatal defect attracting dismissal of the petition u/s 86 of the Act.

21. This takes me to the third ground urged by the learned Counsel appearing for the respondent No. 1, that the petition does not disclose the cause of action and therefore, it should be dismissed. This submission is based mainly on the

defective verification of the petition. It is clear from the reading of the petition that the petition has not been properly drafted. The averments of the material facts and the particulars have not been properly made, however, it cannot be said that the facts which will constitute a cause of action have not been disclosed in the petition at all. In any case, as I have held that this petition is liable to be dismissed summarily, in my opinion, it is not necessary for me to go into this aspect of the matter.

22. So far as the chamber summons and application for amendment of the petition taken out by the petitioner is concerned, as I have found that not filing of the cassettes, which form integral part of the petition, is a fatal defect and the petition is liable to be summarily dismissed. It is not strictly necessary for me to go into the question whether the petitioner is to be permitted to amend the petition, because even in the amendment application the petitioner is not trying to incorporate the contents of the cassettes. Therefore, even if the petitioner is permitted to amend the petition to the extent that the petitioner seeks to amend, then also the petition will be liable to be dismissed summarily.

23. Before I part with this order, I think it is necessary for me to observe about the manner in which the present petition has been filed and the manner in which it has been prosecuted. It is now a settled law that an election petition is based on the rights which are purely creature of statute. An election of the returned candidate can be challenged on the ground that the returned candidate is guilty of corrupt practices. The legislation has made elaborate provisions to ensure that allegations of corrupt practice are not lightly made. Election of the returned candidate can be rendered void on proof of the alleged corrupt practice. In addition thereto he could incur a subsequent disqualification also, and therefore, it is necessary that such allegations are made with a sense of responsibility and concern and not casually. Perusal of the petition shows that vague allegations have been made without giving any particulars. It is extremely difficult to find out from the petition, what are the allegations of material facts and what are particulars thereof. While verifying the petition a number of paragraphs of the petition have not at all been referred to. The affidavit that is filed in support of the petition is defective. Perusal of that affidavit shows that no attention was paid to Form 25, in which the statute requires that affidavit to be filed. The petition was filed in the year 1999. The respondent No. 1 took out Application No. 3 of 2000 in March, 2000 pointing out various defects in the petition and seeking dismissal of the petition. It is only thereafter that in the month of April, 2000, Chamber Summons No. 509 of 2000 was taken out. Perusal of the chamber summons shows that though leave of the Court to the election petition and to file a fresh affidavit in Form 25 and to reverify the annexures to the petition was sought, neither copy of the fresh affidavit was filed, which was to be substituted in place of the original affidavit, nor the proposed verification was submitted. It is clear that thus obviously the chamber summons was incompetent, but still nothing was done in the matter till the Application No. 3 of 2000 was taken up for hearing. Even nothing was done when the hearing on the

application started. It is only after the Counsel for the petitioner completed his submission and when the Counsel for the respondent No. 1 was half way through his submission, that another application was presented. The impression that I got after going through the petition was that the petition was not filed with responsibility and due care. It is to be seen that the verification of all the annexures filed with the petition is defective and it shows total non-application of mind on the part of the petitioner in presenting the petition. For example, in the petition, the grievance is made about the news item published in a daily "Pudhari" dated 12-8-1999, that the news item was published at the instance of the respondent No. 1 and contents of that news item are false. By that news item, it is alleged that the petitioner is the main culprit behind the criminal offence for which the brother of the petitioner was arrested. However, verification of that document in the petition reads as under :---

I, Prithviraj Sayajirao Deshmukh, the petitioner above named, do hereby solemnly declared that whatever stated in the foregoing News items is true and correct to my own knowledge and information, which I believe to be true.

24. Similar is the case with number of other documents, which have been filed with the petition. I find that the documents, to be filed with the petition have been filed in most careless and casual manner. Calling in question, election of a candidate who has been elected to the legislative assembly of a State on the ground that the returned candidate is guilty of corrupt practice is a serious matter. Such petition has to be presented, only after careful consideration of all the relevant aspects of the matter. While preparing the petition, due attention has to be paid to the requirements of the Act and the Rules. The Act and the Rules make elaborate provisions about manner in which the petition is to be drafted and filed. Those provisions have to be complied with. If not strictly, at least substantially. The provisions cannot be ignored. In other words an election petition under the Act cannot be filed casually and carelessly. In the present case, I found that the approach of the petitioner not only in preparing and filing the petition but also in its prosecution was casual and negligent to say the least. Such attitude has to be discouraged.

25. Taking overall view of the matter, in my opinion, as there are basic defects in the petition as pointed out above, the election petition deserves to be summarily dismissed. It is accordingly dismissed.

Chamber Summons No. 509 of 2000 and applications are disposed of. Considering the manner in which the petition is prepared, filed and prosecuted, the petitioner is directed to pay compensatory costs to the respondents.

Parties to act on simple copy of the order duly authenticated by the Associate/ Personal Secretary of the Court as a true copy.