

(2002) 12 AP CK 0015

In the Andhra Pradesh High Court

Case No : EA No. 1007 of 2000 and EP No. 14 of 1999

Rajendra Pratap Bhanj Deo

APPELLANT

Vs

Regu Mahesh @ Regu Maheshwar Rao and Another

RESPONDENT

Date of Decision : 27-12-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15

Conduct of Elections Rules, 1961 — Rule 94A

Representation of the People Act, 1951 — Section 100(1), 81(1), 83, 83(1)

Citation : (2003) 2 ALD 304

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T. Lakshmi Narayana, in EA No. 1007 of 2000 and J. Satya Prasad, in EP No. 14 of 1999, for the Appellant; T. Lakshmi Narayana, in EP No. 14 of 1999, J. Satya Prasad, in EA No. 1007 of 2000 and Government Pleader for GAD in Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This application is filed by the 1st respondent in the Election Petition, under Order VI Rule 16 and Order VII Rule 11 read with Section 151 of CPC (CPC) and Section 86 of the Representation of the People Act (43 of 1951) (for short "the Act"), to reject and dismiss the Election Petition, on the ground that the same does not disclose cause of action and does not conform to the provisions of Section 83 of the Act. The parties are referred to as arrayed in the Election Petition.

2. The petitioner, Regu Mahesh @ Regu Maheshwar Rao, an Advocate, practising at Saluru, Vizianagaram District, filed Election Petition No. 14 of 1999, seeking a declaration that the election of the 1st respondent, Sri Rajendra Pratap Bhanj Deo, to the Legislative Assembly in the State of Andhra Pradesh, from the 10-Saluru (ST) Legislative Assembly Constituency, in the elections held on 6-10-1999, as void and set aside the same.

3. The facts pleaded by the petitioner are as under:

4. The petitioner is an Elector, having been registered as voter in Part 74 of Saluru town and resident of the said town. 10-Saluru (ST) Assembly Constituency is reserved for Schedule Tribe. The 1st respondent contested in the election from the said constituency on behalf of the Telugu Desam Party. He does not belong to ST community as declared by the President of India under the Schedule Tribes Order, 1996. On the other hand, he belongs to Kshathriya caste.

5. The petitioner has raised objections when the 1st respondent filed nomination, but the objections were overruled. The 1st respondent had declared himself as belonging to Kshathriya caste when he got admitted in the school at Pedakomatipeta, at Saluru. In certain documents executed by the ancestors of the 1st respondent, their caste was declared as Kshathirya.

6. The Government of Andhra Pradesh had requested the District Collector, Vizianagaram, to enquire into the social status of the 1st respondent vide Memo dated 22-4-1999 in accordance with the Rules issued in G.O. Ms. No. 58 dated 12-5-1997, framed under the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community Certificate Act, 1993 (Act 16 of 1993) (for short "the State Act"). The 1st respondent has procured a false certificate from the concerned authorities, both when the elections were held in 1994 and in 1999.

7. The petitioner has also alleged that the elder brother of the 1st respondent has obtained a similar certificate and on the basis of the same, got appointed as District Judge. WP No. 30827/98 was filed for issuance of writ of quo-warranto against him alleging that he belongs Kshathriya community and does belong to ST community.

8. The petitioner also alleged that the 1st respondent has played fraud on the Constitution of India, and mischief, fraud and deception on the voters of the constituency by claiming the seat meant for ST community. The factum of rejection of nomination of certain other candidates on the ground that they do not belong to ST community are also referred to in the Election Petition.

9. The 1st respondent has filed his written statement on receipt of notice in Election Petition. He has also filed EA to reject and dismiss the Election Petition. In the affidavit filed in support of the EA., the 1st respondent alleged that since reference was made to his brother and his social status, he ought to have been impleaded in the Election Petition. He further pleaded that though the Election Petition is filed under Sections 5 and 100(1)(d)(i) of the Act, several averments were made which are beyond the scope of the said provisions and such averments are to be deleted; Consequently, the Election Petition, as a whole, is liable to be rejected. The 1st respondent has also referred to the averment in Para 9 of the Election Petition, which is to the effect that the Saluru Legislative Assembly Constituency is in Srikakulam District. According to him, the constituency is in Vizianagaram District and on account of lack of identity of the

constituency, the whole Election Petition is liable to be dismissed.

10. The 1st respondent has also raised objections as to the verification in the Election Petition and Affirmation in the affidavit. According to him, all the paragraphs of the Election Petition are not verified and even the verification, which is made in respect of certain paragraphs, is vague and contrary to law. As regards affidavit, it is stated that the same does not conform to Form No. 25 and in that view of the matter, the whole Election Petition is unsustainable and, as such, deserves to be rejected. The petitioner has also raised certain objections as to the description of the parties.

11. Sri J.V. Suryanarayana, learned Senior Counsel appearing for the 1st respondent, submits that the Election Petition does not furnish the material facts as required u/s 83 of the Act. He submits that the petitioner does not aver in the Election Petition that he is an Elector of the Saluru Legislative Assembly Constituency. According to him, when the petitioner was himself not aware as to the location of the constituency and does not aver that he is an Elector from that constituency, there does not exist any cause of action for him. The 2nd Contention of the learned Senior Counsel is as to the nature of the verification of the petition and form of affidavit. According to him, the petitioner did not verify Para 1 of the Election Petition at all and, as such, the same deserves to be ignored as a whole. Even the verification of other paragraphs does not accord to the requirements of law. He submits that the petitioner had levelled wild allegations of fraud, mischief, etc., which, if true, not only have an impact on the election of the petitioner, but would disentitle him to contest the election from that constituency almost forever. As such they deserve to be treated on par with corrupt practices. That being the situation, the learned Counsel states, the procedure applicable for pleading corrupt practices ought to have been followed. He sums up by submitting that in view of the various deficiencies and contraventions, as pointed out above, the Election Petition, as a whole, is liable to be rejected and dismissed. The plea as to non-joinder of parties was not pressed.

12. Sri B. Tarakam, learned Senior Counsel appearing for the petitioner, submits that the 1st respondent did not dispute the factum of the petitioner being an Elector from the Salur Constituency or that Saluru Town is part of Saluru Constituency. It is his case that the affidavit filed by the petitioner along with the Election Petition was rather superfluous. According to him, the petitioner did not allege any corrupt practices as defined u/s 126 of the Act and there did not exist any necessity to file any affidavit at all. That being the case, the defect in the form of the affidavit is of no consequence.

13. So far as verification of the Election Petition is concerned, the learned Senior Counsel submits that the omission to verify of Para 1 of the Election Petition was inadvertent and a typographical error and that it is curable. As regards verification of the other paragraphs, he asserts that there does not exist any irregularity. About the location of the Saluru Constituency, Sri Tarakam submits

that this is an inadvertent mistake and that the petitioner will take steps to rectify the same.

14. Both the Counsel relied upon several judgments in support of their respective contentions.

15. The application filed by the 1st respondent is to dismiss and reject the Election Petition for non-furnishing of the relevant facts constituting cause of action, and on account of defects as to verification and affirmation of the affidavit, etc. The rejection of the Election Petition at the threshold is contemplated under two circumstances. Section 86 enables the High Court to dismiss the Election Petition if the same does not comply with the provisions of Sections 81, 82, 83 and 117 of the Act.

16. Section 81 deals with the presentation of the Election Petition and it reads as Under:

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

Section 82 provides for the parties to be impleaded in the Election Petition. Inasmuch as the plea as regards non-impleading of certain parties is not pressed, it is not necessary to extract that. Section 117 of the Act provides for deposit of a sum of Rs. 2,000/- towards security for costs in the Election Petition. Since there was no allegation as to non-compliance of Section 117, it is not necessary to extract the same.

17. Section 83 of the Act indicates as to what an Election Petition should contain. It reads as under:

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

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

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) 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:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the

allegation of such corrupt practice and the particulars, thereof.

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

Section 83 does not find place in the list of Section mentioned in Sub-section (1) of Section 86 of the Act for non compliance of which an Election Petition can be rejected. However, inasmuch Section 83 deals with the nature of pleadings, general principles of pleadings, consequences of compliance with the same as provided under the CPC apply to the Election Petitions also. Thus, apart from Section 86(1), the High Court derives power in the matter of consideration of pleadings under Order VI Rule 16 and Order VII Rule 11 of the Act.

18. Judicial precedents are consistent and replete on this aspect. After referring to several decided cases, the Supreme Court in Azhar Hussain Vs. Rajiv Gandhi, , observed as under:

"The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised (Para 9)."

"In view of the pronouncement there is no escape from the conclusion that an Election Petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the CPC can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election Petition are not complied with (Para 11)."

This position has been reaffirmed in Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, and Lalit Kishore Chaturvedi Vs. Jagdish Prasad Thada and others, .

19. Now it needs to be seen as to whether the non-compliance complained of by the 1st respondent fits into any of the recognised mandatory requirements. The defects or deficiencies in the Election Petition pointed out by the 1st respondent can broadly be classified into two categories. The 1st one is as to existence of cause of action, or rather the lack of it; and the 2nd one is about the defect as to verification and form of affidavit and its affirmation.

20. Into the first category, can be roped in, the allegation as to the failure to disclose that the petitioner is an elector from the constituency, the identity of the constituency and the nature of allegations as to the social status of the 1st respondent.

21. The cause of action is a bundle of circumstances, which enables the individual to maintain an action against the other. This may include the legal competency of the petitioner to initiate the proceedings, the existence of the circumstances, which are provided for in the relevant enactment, etc. In a way, it may be said that various facts and factors constituting a cause of action can be compared to a chain and any missing link will render the chain, short of

necessary length. This approach holds good to all the civil proceedings as well as the Election Petitions. It is in this context that the Supreme Court in Azhar Hussain case (supra) observed as under:

"All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(b). An election petition therefore can be and must be dismissed if it suffers from any such vice."

Reference to the various decided cases on this aspect would only add to the length of the judgment. One way of examining as to whether all the relevant facts constituting cause of action have been stated is to see whether, on the basis of the averments contained in the petition, any relief can be granted even if the respondent does not turn up or oppose the petition. To put it in other words, if the Election Petition is to be taken on its face value without being contradicted by any one, the Court should be in a position to grant the relief. The contention of the parties needs to be appreciated on the touchstone of these broad principles.

22. Section 81(1) of the Act enables any candidate in an election or an elector to call in question the election of a returned candidate. The word "elector" is explained to mean as under:

"Explanation:--In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not."

The locus to call in question the election of a returned candidate is not general. It is confined only to the candidates who contested in the election or an elector. A person who does not fall into any of the categories is not conferred with the right to challenge the election. Therefore, it is obligatory on the part of the election petitioner to state that he is an elector as defined in the Explanation of Section 81(1) of the Act. In the Election Petition, the averment of the petitioner in this regard is to the following effect:

"The petitioner is an electoral (read "elector") having (been) registered as a Voter in Part 074 in Saluru Town. The petitioner is resident of Saluru Town and a Practising Advocate. The 10-Saluru (ST) Assembly Constituency is reserved for Scheduled Tribes. Respondent No. 1 was fielded by Telugu Desam Party,"

Coupled with the vagueness as to averment, is the confusion as to the very location of the constituency. In Para 9, it is averred as under :-

"The 10-Saluru (ST) Legislative Assembly Constituency is in the Srikakulam District and hence this Hon"ble Court is having jurisdiction to try the Election Petition."

In the affidavit filed in support of the EA, it was categorically averred that 10-Saluru Assembly Constituency is situated in Vizianagaram District and not

Srikakulam District. Therefore, if the petitioner was referring to his residence in Saluru Town and 10-Saluru Constituency in Srikakulam District, the very foundation of the petition becomes rather shaky. Added to this, Para 1 as a whole was not verified at all. What consequences flow out of it would be considered a little later.

23. The Election Petition was filed under Sections 5 and 100(1)(d)(i) of the Act. Section 5 deals with qualifications of persons to be chosen to fill the seat in the Legislative Assembly of a State. It reads as under:

"5. Qualifications for membership of a Legislative Assembly :--A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless--

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly Constituency in that State;

(rest omitted since not necessary)

Section 100 of the Act enumerates the grounds on which an election can be declared as void. The ground raised by the petitioner is one u/s 100(1)(d)(i), viz., improper acceptance of nomination which reads as under:

"100. Grounds for declaring election to be void :--(1) Subject to the provisions of subsection (2), if the High Court is of the opinion--

(a)

(b)

(c)

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected--

(i) by the improper acceptance of any nomination;"

24. The contention of the petitioner is that the 1 st respondent does not belong to Scheduled Tribe. The allegation of the petitioner on this ground turns around the fact as to whether the 1st respondent holds a valid Caste Certificate to the effect that he belongs to Scheduled Tribe community. It is true that it is permissible in an Election Petition to verify as to whether a particular candidate fits into the status, which he claims, to contest as a candidate. However, where the decision as to the status of a candidate is left or reserved to be decided by a special enactment, the procedure prescribed thereunder needs to be followed.

25. In this context, it needs to be observed that the A.P. State Legislature has enacted the State Act 16 of 1993 to regulate the issue of Community Certificate relating to persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and matters connected thereof or incidental thereto. Section 5

of the State Act provides for cancellation of the certificates. The proceedings for cancellation can be initiated either suo motu by the competent authority or on a written application by any person. Section 6 places the burden on the person claiming the social status. In the event of the refusal to issue a Caste Certificate u/s 4 or cancellation of Certificate u/s 5 of the State Act, an appeal is provided u/s 7. A further revision is provided to the Government u/s 8. The jurisdiction of the Civil Court is barred under Section 17. Section 19 confers overriding effect on the Act in the event of an inconsistency with any other law for the time being in force. u/s 21, the Certificate issued by any competent authority before the commencement of the Act, is conferred legitimacy, unless it is cancelled under the provisions of the State Act.

26. It is not as if the petitioner was not aware of these provisions of the State Act. As a matter of fact, in the Election Petition, reference was made to a show-cause notice said to have been issued to the 1st respondent under the provisions of the State Act. As long as Caste Certificate issued to the 1st respondent is not cancelled or varied, it cannot be said that he does not or ceased to belong to ST community. If an independent enquiry into the validity or otherwise of the Caste Certificate issued to the 1st respondent is to be undertaken in this Election Petition, it would result in parallel exercise, one by the machinery provided for under the Act and the other by this Court. While proceedings under the State Act by the competent authority therein conforms to that Act, an enquiry by this Court would be at the teeth of several provisions of the State Act.

27. It is true that in the State Act, the purport of the said certificates is said to be for the benefit of admission into educational institutions, public employment, and the elections to the local authorities and cooperative institutions. However, it is not the case of the petitioner that any other law governs the issuance of certificates conferring social status for the purpose of election under the RP Act. Once the competent authority under the State Act is in seisin of the matter, propriety and harmonious interpretation of the provisions, demand that this Court gives the way for machinery provided for under the state Act to take its course. This would accord with the principle that the special will prevail over the general. Though this may become relevant, if the trial of the petitioner is undertaken, still, it may throw light on the existence or otherwise of cause of action.

28. The petitioner had alleged fraud, mischief, deception, etc., against the 1st respondent, at more places than one. In Para 6 of the petition, it is averred as under:

"The respondents No. 1 not played fraud on the Constitution of India but also in the Voters of the 10-Saluru (ST) Legislative Assembly Constituency, knowing fully well that he belongs to "Kshathriya" Caste and by obtaining a false certificate of social status that he belongs to ST duped the voters of the said Constituency which is reserved for Scheduled Tribe."

In Para 8, it is stated as under:

"By playing fraud, mischief and deception, Respondent No. 1 approached the electorate that he belongs to ST and got elected. Hence the election is void and is liable to be declared as void."

These allegations are similar to, if not higher in gravity, than the allegations as to corrupt practices. If the contention was that there does not exist any lawful instrument enabling the 1st respondent to claim social status as ST, there does not exist any malice in such contention. However, if the allegations are that the petitioner had resorted to fraud, mischief, deception, etc., in procuring the certificate, such allegations are to be treated on par with those relating to corrupt practices. Section 83 of the Act requires an Election Petitioner to file an affidavit where corrupt practices are alleged. If there are no allegations as to corrupt practice, it is not necessary to file an affidavit. Obviously, it is in this context that the petitioner had filed the affidavit; Having realised that the affidavit does not conform to the requirements, it is pleaded that the affidavit itself was superfluous since no allegations as to corrupt practices are made. Since an Election Petition filed under Sections 5 and 100(1)(d)(i) of the Act does not permit of any accusations, the relevant portions in the Election Petition containing such allegations attributing fraud, mischief, deception, etc., are liable to be struck off.

29. The Election Petition contains copious reference to the social status of the brother of the 1st respondent. When the question is about the social status of the 1st respondent, which in turn, needs to be verified on the basis of the material on record, that too in accordance with the relevant provisions of law as indicated above, reference to the brother of the 1st respondent, that too in a petition filed under Sections 5 and 100(1)(d)(i) of the Act was totally impermissible. The averments as regards the same also deserve to be struck off.

30. It is evident from the above that while certain material facts were not pleaded, some unrelated and impermissible averments were made in the petition. Failure to plead material facts entails rejection of petition. (See L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc.,).

31. Now remains the question as to verification and attestation. u/s 83(1)(c) of the Act, the Election Petition is required to be verified in the manner laid down in the Code of Civil Procedure. Order VI Rule 15 of the CPC prescribes the mode of verification. Every part of the pleading is to be verified. It has to be stated as to what he verifies of his knowledge and what he verifies of his information. So far as affidavits are concerned, Rule 94-A of Conduct of Election Rules, 1961, mandates that the affidavit referred to in proviso to Sub-section (1) of Section 83 shall be sworn before a Magistrate of First Class or a Notary or Commissioner of Oaths and shall be in Form No. 25. Form No. 25 in turn insists the deponent to indicate the paragraphs, which are based on his knowledge and those based on his information.

32. Verification of pleadings or affirmation of affidavits has a definite purpose to serve. It binds the party to the averments made in it. Apart from putting the opposite party to a definite notice, it circumscribes the parties to the pleadings so that they cannot expand or embellish the same at a later stage. Unverified pleadings or unaffirmed affidavits are not at all acceptable in law. Certain defects as to verification or affirmation are curable, and others, not. It was held by the Supreme Court in *Shipra v. Shanti Lal Khoiwal* AIR 1996 SC 1691, that "defective portions can be struck off and other independent issues can be tried."

33. The importance of the sources of information while affirming the facts or verifying the pleadings was dealt with by the Supreme Court in *Virendra Kumar Saklecha Vs. Jagjiwan and Others*, . After referring to the various decided cases, it was summed up as under:

"The importance of setting out the sources of information in affidavits came up for consideration before this Court from time to time. One of the earliest decisions is *The State of Bombay Vs. Purushottam Jog Naik*, where this Court endorsed the decision of the Calcutta High Court in *Padmabati Dasi V. Rasik Lal Dhar* [ILR (1909) 37 Cal. 259] and held that the sources of information should be clearly disclosed. Again, in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, this Court deprecated "slip shod verifications" in an affidavit and reiterated the ruling of this Court in *Bombay case* (supra), that verification should invariably be modelled on the lines of Order 19 Rule 3 of the Code "whether the Code applies in terms or not". Again, in *A.K.K. Nambiar Vs. Union of India (UOI) and Another*, , this Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations."

"The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered."

This was referred to in *Shivaramagowda case* (supra). In this case, the effect of nondisclosure of correct source of information as to which part of the pleadings are based on personal knowledge and, which part on information, was indicated as under:

"We have already extracted paras (f) and (g) of the affidavit filed along with the Election Petition. It does not disclose the source of information. Nor does it set out which part of the Election Petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paras (a) to (e) of the affidavit state that the averments therein are true to his information. Para (f) is silent on this aspect of the matter. Para (g) refers to all the 42

paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the Conduct of Election Rules. It is a very serious defect which has been overlooked by the High Court.

Since almost all the authoritative pronouncements are referred to in these two judgments, it is not necessary to refer to the other decisions in detail.

34. Keeping in view these principles, the nature of verification and affirmation in the present Election Petition needs to be examined. The verification in the Election Petition is to the following effect:

"Verification

I, Regu Maheshwara Rao s/o late Appala Swamy, aged 33 years, Advocate, R/o Saluru, Vizianagaram District, petitioner herein, do hereby declare that the facts stated in para 2 to 8 are true to my knowledge and paras 9 to 14 are true and correct to the best of my knowledge, information, understanding and hence verified on this the 19th November, 1999 at Hyderabad."

It is evident that there is no reference to Para 1 in this verification at all. As indicated earlier, Para 1 deals with the locus of the petitioner. If the unverified paragraph is to be omitted, very drastic consequences follow. Further Paras 2 to 8 are said to be true to the knowledge of the petitioner, whereas Paras 9 to 14 are said to be true to the best of his knowledge, information and understanding. It is not known as to how Paras 9 to 14 can be said to be true and correct to the knowledge as well as information of the petitioner, "Knowledge" and "Information", in the context of verification cannot co-exist. As regards any fact, which is based on information alone, a person cannot be said to have had the knowledge of it. Conversely, a fact, which is said to be in the knowledge has to be "vouched by the Verifier and he cannot fall back upon any information. The result is that the petitioner did not exhibit any seriousness as to the requirement of verification. When a vital paragraph remained unverified and utter confusion exists as regards Paras 9 to 14, it is too difficult to hold that the petitioner has presented the Election Petition in conformity with the provisions of the Act.

35. So far as affidavit is concerned, the relevant portion reads as under:

"The averments in the paragraphs 2 to 8 are true and correct to the best of my knowledge and information and contents of paragraphs 9 to 14 are true and correct to the best of my knowledge and advise."

From a reading of the same, it is evident that paragraphs referred to in it are those in the Election Petition. Paras 2 to 8 of the Election Petition are said to be to the best knowledge and information of the petitioner, whereas Paras 9 to 14 are said to be correct to the best of his knowledge and advise. It appears that the petitioner felt himself free and liberated from any restriction in the matter of verification and affirmation. He does not appear to have exhibited any seriousness to the requirements of verification and affirmation. They are not only

self-contradictory but do not conform to any settled principles of law or requirements under the prescribed form or relevant provisions.

36. Dealing with such kind of verification of affidavit, a Constitution Bench of the Supreme Court through Justice Vivian Bose, in *The State of Bombay Vs. Purushottam Jog Naik*, held as under:

"The verification however states that everything was true to the best of his information and belief. We point this out as slip shod 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. We draw attention to the remarks of Jenkins C.J. and Woodroffe, J., in *Padmabati Casi v. Rasik Lal Dhar* 37 Cal 259 and endorse the learned Judge's observations."

37. Relying upon the judgment of the Supreme Court in *Shipra* 's case (supra), Sri Tarakam, learned Senior Counsel, submits that the defect in verification and form of affidavit should not result in dismissal of the Election Petition. He also claims that as far as possible, an opportunity should be given to the Election Petitioner to rectify the mistakes. There is no quarrel with the legal proposition laid down by the Supreme Court in *Shipra* case (supra). However, it is only the curable mistakes that can be permitted to be rectified and not those, which go to the very root of the matter.

38. The Election Petitioner filed a Rejoinder to the Written Statement as well as a counter in EA 1007/2000 filed by the 1st respondent. In the Rejoinder, as regards the factual inaccuracy of para 9 of the Election Petition, it is stated as under:

"I submit that in reply to para No. 10, it is stated that recital that Salur Legislative Assembly Constitution (may be "Constituency") in Srikakulam is a typographical error. I crave permission of this Hon"ble Court to amend the para."

In the counter-affidavit, while dealing with the contention as regards the defect in verification, the petitioner stated at para 6 as under:

"It is stated that I am filing the separate petition for seeking leave of this Hon"ble Court for amending the verification."

Till the date of hearing of the matter, no application was filed by the petitioner seeking amendment of any paragraph of the body of the petition or the verification. The permissibility or otherwise of it is a different question. When no steps were taken, the defects, which are very much material, remained unattended to.

39. The effect of the combined reading of the provisions of Sections 81, 83(1)(c) and 86 of the Act read with Rule 94-A of the Rules and Form 25 came up for

consideration before this Court. Justice Motilal B. Naik considered the purport of the relevant provisions of the Act as well as decided cases in *M. Ganga Reddy v. N. Indrasena Reddy* 1997 (5) ALD 330, and held as under:

"From the above, it is clear that Sections 81, 83(1)(c) and 86 of the Act read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. Any infirmity to comply with the mandatory requirements even u/s 83(1) (c) of the R.P Act is fatal to the maintainability of the Election Petition. When once an objection petition is filed u/s 86(1) of the Act, the Court has no option than to dismiss the Election Petition if satisfied that the Election Petition is not in conformity with Section 83(1)(c) of the R.P Act read with Rule 94-A of the Rules."

40. It is settled law that while purity of elections should be maintained, the election of a returned candidate cannot be set aside, unless valid and recognised grounds are pleaded and established strictly in accordance with the procedure laid down by law. In the adjudication of an Election Petition, not only the right of a returned candidate, but also the mandate of the electorate are involved. Unless strong and valid grounds exist and the petition is presented in accordance with the prescribed procedure, Courts would tend to keep the mandate of the electorate intact, than to meddle with the same at the whims of an individual, who does not conform to the requirements of law.

41. The cumulative effect of the foregoing discussion is that--

- (a) The Election Petition does not disclose a valid cause of action;
- (b) It contains several paragraphs which do not fit into an Election Petition filed under Sections 5 and 100(1)(d)(i) of the Act;
- (c) There does not exist any valid verification of the pleadings;
- (d) The affidavit filed by the petitioner along with the Election Petition does not conform to the Form prescribed (Form No. 25) under Rule 94-A of the Rules.

42. In view of the above, the Election Petition is liable to be rejected and dismissed and the same is accordingly rejected and dismissed. The EA is accordingly allowed.

EP No. 14 of 1999:

In view of the orders passed in the above EA, the Election Petition is dismissed.