

(2003) 03 BOM CK 0102

In the Bombay High Court

Case No : Order on Application at Exh. 24 in Ele. Petition 8 of 1999

Sahebrao Sadashiv More and Another

APPELLANT

Vs

Chainsukh Madanlal Sancheti and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Representation of the People Act, 1951 — Section 81(3), 86

Citation : (2003) 6 BomCR 818

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : Bhangde, for the Appellant; K.H. Deshpande, for the Respondent

Judgement

V.M. Kanade, J.—Heard Shri Bhangde, learned Counsel appearing on behalf of the petitioners, and Shri K.H. Deshpande, learned Senior Counsel appearing on behalf of respondent No. 1.

2. This is an application filed by the respondent No. 1 for dismissal of the election petition u/s 86 of the Representation of Peoples Act, 1951 for non-compliance of the provisions of section 81(3) of the Representation of Peoples Act (hereinafter referred to the "said Act") and also for non-compliance of the provisions of section 83 of the said Act.

3. The first objection raised by the respondent No. 1 in the written statement in para (1-d) is that there is a non-compliance of provisions of section 81(3) of the said Act. It is the case of the respondent No. 1 that as per the provisions of section 81(3) of the said Act, every election petition has to be accompanied by as many copies thereof as there are respondents mentioned in the petition and every copy has to be attested by the petitioner under his own signature that it is the true copy of the petition. It is alleged that the copies which were filed by the petitioners were the xerox copies of the original petition which were presented in the Court and that these xerox copies were made after the petition was signed and affirmed. It is alleged that there was no signature of the petitioner in original

anywhere in the body of the petition upto page-35 where the affidavit in support of the petition comes to an end and on page-35 there is a typed endorsement "verified to be true copy-petitioner". It is alleged that in the space in this endorsement, the petitioner was supposed to subscribe his original signature to certify the copy to be a true copy of the original petition and it is the allegation of the petitioner, that this has not been done by the petitioner. It is, therefore, alleged that the copies which were served on the respondents are not copies certified by the petitioner under his own signature to be true copies of the original election petition. It is, therefore, alleged that there is a non-compliance of section 81(3) of the Act.

4. The second ground which is raised in para (1-e) of the written statement is that, even on the documents which were annexed to the petition which were served on the respondents, there is a single signature in original made by the petitioner. It is alleged that this also amounted to non-compliance of section 81(3) and on this ground also the petition was liable to be dismissed. The second ground which is raised in this application is that the verification of the election petition was incomplete and inadequate and that the verification suffers from serious infirmities and these difficulties were gross and, therefore, incurable. It was further alleged that in cases where the petitioners raises grounds of corrupt practices, then such a case as per the provisions of section 83, such a petition has to be accompanied by an affidavit in the prescribed format in support of the allegation of such corrupt practices. It was submitted that the affidavit which was accompanied with the petition was hopelessly inadequate and was not in the prescribed format and, therefore, the requirements of the proviso to sub-section (1) of section 83 was not complied and on this ground also the petition was liable to be dismissed.

5. The petitioner has filed his reply, in which, he denied that there was a non-compliance of section 83(1) of the said Act. It was submitted that assuming that there was non-compliance of any procedural requirement the same was curable and that it was the duty of the office to examine the petition and raise objection which could be removed by the Advocate or the party concerned. Rule 8 of the Rules which were framed by the High Court of Judicature at Bombay in respect of election petitions under the Representation of Peoples Act, 1951, enjoined upon the office to raise such objection so that before the copies could be served, notice about the procedural defects had to be brought to the notice of the party concerned, so that he could remove this objection in time. No such procedure was followed by the office and that the petition was admitted and the petitioner was under a bona fide impression that there was no objection. It was further submitted that the copies which were supplied to the respondents were identical true copies of the petition which were filed in the Court and as such all the signatures which were there on the original petition were there in the xerox copies and there was no necessity to sign the xerox copies again. It is an admitted position that in the original petition and the copies which were supplied there was no discrepancy in respect of either the averment or the documents

which were supplied and secondly the original petition was signed on each and every page and verified as "true copy", and these signatures have appeared in the xerox copies also.

6. Learned Counsel appearing on behalf of the respondent No. 1 submitted that the provisions of section 81, sub-section (3) of the said Act are mandatory and non-compliance of the said provision would automatically entail dismissal of the petition. He submitted that these difficulties could not be cured as the wording of the section was very specific and there was no discretion left with the Court to permit the party to cure the defect which had remained at the time of filing of the petition. In support of his submission, he relied on judgment of the Apex Court reported in the case of Sharif-ud-din Vs. Abdul Gani Lone, , wherein the Apex Court had held that the provision was mandatory and in view of the importance of the said provision, it was obligatory on the part of the High Court to dismiss the petition when it was established that the provision of the Act had not been complied with.

7. Learned Counsel appearing on behalf of the respondent No. 1 also relied on judgment of the Apex Court reported in the case of Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Others, , wherein the Apex Court had held that the mistakes in the copy of the election petition were vital and would seriously prejudice the defence and, therefore, the election petition in such cases was liable to be dismissed. He further relied on judgment of the Apex Court reported in the case of Rajendra Singh Vs. Smt. Usha Rani and Others, , wherein the Apex Court had held that if incorrect copies of the election petition were filed it amounted to non-compliance of section 81(3) and that the petition was liable to be dismissed under such circumstances. He, thereafter, relied on judgment of the Apex Court reported in the case of T.M. Jacob Vs. C. Poulouse and Others, , wherein the Apex Court had held that the non-compliance of section 81(3) of the Act was a substantial defect which would require the High Court to dismiss the petition. He further relied on judgment of the Apex Court reported in the case of (2002) 9 SCC 731 , and relied on para five of the said judgment.

8. Learned Counsel appearing on behalf of the petitioner submitted that the copies which were supplied to the respondents were xerox copies of the original. He submitted that it is an admitted position that there was no lacuna in the original petition. The original petition has been signed by both the petitioners on each page and it has been verified to be a "true copy". Similarly, all the documents are signed on every page and verified to be true copies. The xerox copies were taken of this election petition and, therefore, the signatures which were there in the original copy also can be seen in the xerox copies. He submitted that though the xerox copy was not again signed afresh, the signatures from the original copy have appeared in the xerox copy. He submitted that therefore there was a compliance of provision of section 81(3) of the Act. He submitted that the xerox copy is an identical duplicate of the original. There is no necessity to again sign each and every page and the signature on the original

has appeared in the xerox copy. He further submitted that as per the rules which are framed by the High Court of Judicature at Bombay in respect of the election petitions under the Representation of the People Act, 1951, Rule 8 clearly contemplated that after the petition is filed, the office should examine the petition in order to see whether it is in conformity with the requirements of law and the rules applicable to the same, and if it is not in conformity with law and the rules, the office should raise objection, so that these objections could be removed by the party or the Advocate concerned. It is submitted that the office did not raise any objection and if any such objection had been raised, he would have removed the objection. He further submitted that the said defect which is pointed out by the respondent No. 1 is only a technical defect as it is an admitted position that the copy which is filed in the Court and the copy which is served to the respondent is an identical true copy and there are no mistakes, alterations or deviation in the original and the xerox. He further submitted that the alleged defect, if any, was cured when endorsement with the original signature of the true copies were supplied to the respondents. In support of his submission, he relied on the judgment of the Apex Court reported in the case of Anil R. Deshmukh Vs. Onkar N. Wagh and Others, , wherein three Judges of the Apex Court have held that merely because the copy of affidavit supplied to respondent did not contain endorsement of attestation it did not amount to be a substantial defect and before the stage of arguments, since true copies of affidavit containing endorsement of verification were served, it was held that the defect was cured. The Apex Court held that the defect in non-compliance of true copy was cured and the election petition could not be dismissed in limine on account of such omission. He further relied on judgment of the Apex Court reported in the case of Ram Prasad Sarma Vs. Mani Kumar Subba and Others, , wherein the Apex Court had held that mere absence of stamp and name of Oath Commissioner in the true copy of the affidavit would not amount to vital or material deviation from the original, nor would it mislead the returned candidate. He further relied on the judgment of the Apex Court in the case of M/s. Sil Import, USA Vs. M/s. Exim Aides Silk Exporters, Bangalore, , wherein the Apex Court had held while deciding the question in respect of proceedings u/s 138 of the Negotiable Instruments Act, 1881, on the question whether the notice was in writing, the Apex Court had held that sending notice by fax was permissible and it amounted to giving notice in writing. He relied on para 15 of the said judgment, wherein the Apex Court had held that when Parliament contemplated notice in writing to be given, at that time the Parliament was aware of modern devices and equipment already in vogue and that this fact could not be overlooked by the Court.

9. This is an election petition which is filed by the petitioners in respect of elections which were held in October-1999. The petitioners had challenged the elections of respondent No. 1 to the 102, Malkapur Legislative Assembly. In the written statement which was filed by the respondent No. 1, preliminary objection was raised regarding the maintainability of the election petition for non-

compliance of the provisions of section 81(3) and section 83 of the said Act, a separate application was filed and it is numbered as Exhibit 24. The petitioners have filed their reply to the said application. The following preliminary issue was framed by my predecessor by order dated 25-4-2001 which is as follows:

"Whether the election petition is not maintainable for want of compliance of the provisions of sections 81(3) and 83 of the Representation of Peoples Act?"

10. This election petition was assigned to me by Hon"ble the Chief Justice vide order dated 10th January, 2003 and, thereafter, application Exhibit 24 was taken up for hearing.

11. Shri K.H. Deshpande, learned Senior Counsel appearing on behalf of the respondent No. 1 stated that he did not wish to press the second ground raised in the application namely in respect of non-compliance of provision of section 83 of the said Act at this stage. He submitted that he would like to concentrate on the first ground i.e. non-compliance of sub-section (3) of section 81 of the said Act. In view of this, I do not propose to deal with the second ground raised in the application at Exhibit 24 in respect of non-compliance of the provision of section 83 of the said Act.

12. In order to appreciate the submissions made by the learned Senior Counsel appearing on behalf of respondent No. 1 regarding non-compliance of provision of section 81(3) of the said Act, it would be relevant to have a look at the said section. Section 81(3) reads as follows:

"81. Presentation of petitions.---

(1)

(2)

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

Chapter III of section 86 deals with the trial of election petitions. The relevant section 86 lays down the procedure in respect of the trial of election petitions. Section 86 reads as under:

"86. Trial of election petitions:

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.---An order of the High Court dismissing an election-petition under this section shall be deemed to be an order made under Clause (a) of section 98,

(2) As soon as may be after an election-petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have

been assigned by the Chief Justice for the trial of election -petitions under sub-section (2) of section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial of the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation---For the purpose of this sub-section and of section 97, the trial Court of a petition shall be deemed to commence on the date for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not alleged in the petition.

(6) The trial of an election-petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election-petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election-petition is presented to the High Court for trial."

13. From the perusal of section 86 of the said Act, it is clear that the election petition can be dismissed at the threshold if there is a non-compliance of section 81 or section 82 or section 117 of the said Act. In the present case, the respondent No. 1 is alleging that there is a non-compliance of sub-section (3) of section 81 of the said Act.

14. In the present case, the admitted position is this, the petitioner had filed the original petition which was duly signed by both the petitioners and each page was attested and the last page was also attested. Similarly, the documents were also signed after the petition was ready. The xerox copies of the same were taken. The xerox copies have the signatures which were there in the original. However, it is an admitted position that these copies were not signed again, but they continued to have the xerox impression of the original signature and in that sense, original signature was not made on the xerox copy. The petition was filed on 22-11-1999. It is an admitted position that on 17-8-2000 a further attested copy with the original signature on each page was supplied to the respondent

Nos. 1 and others. It is further an admitted position that there was no discrepancy in the original copy and the xerox copies i.e. it is nobody's case that there was any actual variation, mistake, alteration in the original and in the xerox. Thus, it is an admitted position that the xerox copy was a identical copy of the original. In this view of the matter, in my view, there has been a compliance of the provisions of section 81(3) of the said Act and, therefore, the petition is not liable to be dismissed on that ground. Further, a duly attested copy was served on the respondent on 17-8-2000 and as such, even otherwise, in my view, there is a due compliance and no prejudice is caused to the respondent No. 1.

15. So far as the judgments which are relied upon by the learned Counsel appearing on behalf of the respondent No. 1, I am of the view that the ratio of the said judgments would not be applicable to the facts of the present case. In that context, I would like to examine individually the judgments relied upon by the learned Counsel appearing on behalf of the respondent No. 1. Learned Counsel appearing on behalf of the respondent No. 1 firstly relied on the judgment of the Apex Court reported in the case of Sharif-ud-din Vs. Abdul Gani Lone, . In the said case the election in question was pertaining to the Legislative Assembly of State of Jammu & Kashmir and it was governed by the provisions of Jammu & Kashmir Representation of the People Act (4 of 1957) and the relevant provisions in the said Act are section 89 sub-section (3) and section 94 which corresponds to sections 81(3) and 86 of the Representation of People Act. In the said matter which was before the Apex Court the facts were that neither of the true copies of the election-petition had been signed by the appellant and both the copies contained identical endorsement at the foot note which read "attested true copy, Piyare Lal Handoo, Advocate", and further the Advocate had presented the election petition alongwith his Vakalatnama. The main objection which was raised was that section 89 sub-section (3) provided that "every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition". It was submitted that therefore attestation made by the Counsel was not permitted by the provision of section 89(3). In view of these facts, the Apex Court held in para 9 as follows:

"The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of Courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision

of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a reason in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequences, it would be difficult to hold that the requirement is not mandatory and the specified consequences should not follow."

In my view, the facts of the present case are entirely different. The original copy was, in fact, attested by both the petitioners on each and every page. The identical xerox copy of the same were supplied to the respondents and additional copy was also supplied on 17-8-2000. The ratio of the said judgment, therefore, would not be applicable to the facts of the present case.

16. Learned Counsel appearing on behalf of the respondent No. 1 further relied on judgment of the Apex Court reported in the case of Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Others, . In the said case, the objection which was raised was that the copy of the election petition served on the respondent contained large number of mistakes in respect of persons through whom corrupt practices were alleged to have been practiced by the appellant during the election. It was contended that in view of the very large number of mistakes which were of a very vital character, the mandatory provision of section 81(3) of the Act were not complied. The Apex Court further enumerated the mistakes in paras 16, 17, 18 and 19 of the said judgment. Paras 16, 17, 18 and 19 are reproduced herein below:

16. "We might mention here that in the instant case the mistakes in the copy supplied to the returned candidate related to corrupt practices which, as has been held by this Court in a large number of cases, have to be proved to the hilt just like a criminal charge and any mistake which contains an element of vagueness would immediately vitiate the election petition and merit its dismissal u/s 86 of the Act."

17. In the view that we take, it is not necessary for us to wade through a detailed discussion of the mistakes because a few mistakes pointed out by the Judge himself clearly reveal that they were of a very vital and material nature so as to mislead the returned candidate and prejudice him in his defence Schedule I to the election petition contained the list of persons through whom the corrupt

practices were alleged to have been committed. An analysis of these mistakes may be placed in three categories---(1) where there is complete omission of some names which have been mentioned in the election petition but not in the copy supplied to the returned candidate, (2) giving absolutely wrong names which are bound to mislead the appellant in his defence as the persons bearing the wrong names could not be traced out, and (3) some names given in the petition appear to be males but in the copy given to the appellant they appear to be females.

18. Coming to the first category, a few examples will suffice to illustrate our point"

Sr. No. in Name in the original Name in the copy Schedule I petition 17 Yogendra Jha Omitted 37 Bulari Devi Omitted 188 Bal Bhogia Omitted 445 Ramdeo Paswan Omitted 486 Jugeshwari Devi Omitted 19. The omission of names cannot be said to be a typing mistake but a very vital and serious one which is sufficient to entail the dismissal of the election petition. Under the second category (giving wrong names), the following names may be mentioned."

Sr. No. in Name in the original Name in copy Schedule I 42 Mahpuran Mitra Mahpuran Mitra 62 Bilas Jha Bilas Jha 105 Dukhi Devi Sudama Devi 179 Bhekai Paswan Mokai Paswan 385 Mauki Tetri 440 Kalasiya Kalya 466 Kalish Jandra Jha Kali Janwa Jha 479 Gayatri Devi Sati Devi 498 Udit Mishra Udit Mitra 579 Yashodara Mishra Yashoda Devi 679 Jhularia Devi Kaushilya Devi Third Category

29 Kiran Jha (May be a Kiran Devi (Must be a female) male or a female) 444 Dularia Ramdeo Paswan 675 RajsunariYadav Rajsunari Yadav The Apex Court in view of these glaring mistakes came to the conclusion in para 21, as follows:

"Thus, on an overall consideration of the facts and circumstances of this case, we are unable to agree with the High Court that the mistakes in the copy were either verbal, typographical or clerical. The present case appears to be a much worse case than Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, where only a slight difference in the title led this Court to hold that the mistake was a vital one."

The ratio laid down in the said case would not be applicable to the facts of the present case, as admittedly there are no mistake in the original petition and xerox copy which is supplied. The xerox copy is an identical copy of the original.

18. Learned Counsel appearing on behalf of the respondent No. 1 further relied on judgment of the Apex Court reported in the case of Rajendra Singh Vs. Smt. Usha Rani and Others, . In the said case before the Apex Court incorrect copies of the election petition were filed and the respondent received an incorrect copy. The facts in the said case are reproduced in the said judgment in para 5 which reads as under:

"After going through the judgment of the High Court it is not clear whether the appellant received the correct copy of the petition or an incorrect one. One the

other hand, on the evidence and admitted facts the following circumstances appear to be undisputed:---

- (a) that two sets of copies were filed by the election-petitioner in the High Court,
- (b) that one set was correct as required by the Act, and
- (c) the other set was incorrect as it contained vital omissions and mistakes regarding the details of corrupt practices alleged against the appellant."

The Apex Court in the said case observed as follows in para 6:

"There is, however, no clear evidence or finding to show that the copies which were received by the appellant were correct or incorrect and there is some divergence on this point. The High Court seems to have come to the conclusion that as the respondent had filed correct copies also, she did not violate the provisions of section 81(3) and it was for the appellant to have chosen the correct copy from the two sets. The learned Judge of the High Court has also invoked the doctrine of benefit-of-doubt in order to cure the non-compliance of the mandatory provisions of section 81(3).

In para 7, the Apex Court came to its own conclusion is as follows:

".....On going through the relevant evidence we find that there is overwhelming material to show that the appellant did not receive the correct copy and even the respondent in her evidence did not categorically deny this fact....."

The findings given by the Apex Court, therefore, were on the basis of the facts of the said case. In the present case, the facts are entirely different. It is an admitted position that there are no mistakes in the original and the xerox copies supplied. The ratio of the said judgment therefore would not be applicable to the facts of the present case.

20. Learned Counsel appearing on behalf of respondent No. 1 thereafter relied on judgment of the Apex Court in the case of T.M. Jacob Vs. C. Poulouse and Others, . In fact, in para 40 of the said judgment, the Apex Court has observed as follows:

Para 40: "In our opinion it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of section 81(3) of the Act with the consequences u/s 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition u/s 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in Murarka Radhey Shyam case are sound tests and are now well settled. We agree with the same and need not repeat those tests. Considered in

this background, we are of the opinion that the alleged defect in the true copy of the affidavit in the present case did not attract the provisions of section 86(1) of the Act for alleged non-compliance with the last part of section 81(3) of the Act and that there had been substantial compliance with the requirements of section 81(3) of the Act in supplying "true copy" of the affidavit to the appellant by the respondent."

These observations, therefore, would not be at any assistance to the respondent No. 1. Learned Counsel appearing on behalf of the respondent No. 1 lastly relied on judgment of the Apex Court reported in the case of (2002) 9 SCC 731 . In the said case, it was alleged that pages 1 to 7 of the election petition and copy thereof bore the signatures of the petitioner on each page and on the reverse of the page but there was no attestation that it was a "true copy". The Apex Court, held that merely because an endorsement of "true copy" was missing, and that there was no variation in the original and the copy, merely because the words "true copy" were not endorsed, it could not be said that there was a total non-compliance to the provisions of section 81(3) of the Act. The Apex Court held that, in fact, there was substantial compliance of the requirements of section 81(3) of the Act. Para 5 is reproduced herein below:

Para 5: "We have perused the copy of election petition which was served on the returned candidate-respondent No. 1. We find that each one of the pages of the copy of the election petition contains the signatures of the election petitioner. Indeed, an endorsement of "true copy" is missing, but the returned candidate did not point out either in his written statement or in his application filed on 22-9-1998 as to what was the variation, if any, between the original and the copy of election petition supplied to him and how was he prejudiced. Merely, because the words "true copy" were not endorsed on each page of the copy of the election petition, though the copy otherwise is a true copy and bears the signatures of the election petitioner on each page of the copy, it cannot be said that there has been a total non-compliance with the provisions of section 81(3) of the Act. In fact, there was substantial compliance with the requirements of section 81(3) of the Act. The omission of the words "true copy" above the signatures of the election petitioner on each page of the copy of the election petition not such a deviation as may attract section 86(1) of the Act."

This judgment also supports the case of the petitioners. Similarly, the view taken by the Apex Court in the case of Anil R. Deshmukh Vs. Onkar N. Wagh and Others, , which is relied by the learned Counsel appearing on behalf of the petitioners, is that the defect in non-supply of true copy was cured as the true copy was served on the respondent long before the stage of argument and as such the election petition could not be dismissed in limine. The relevant paragraph 17 reads as under:

"It is to be noticed that the reference is only with regard to the applicability of Dr. (Smt.) Shipra in cases like the one which arose before the said Bench. In the light of the rulings of the Constitution Bench referred to earlier, we have our own

reservations on the correctness of the view expressed in *Shipra (Dr.) v. Shanti Lal Khoiwal* AIR 1996 S.C.W. 1772 (supra) but it is unnecessary in the present case to dwell on the same. As pointed out earlier, Justice Ramaswamy has confined the ruling to the "fact-situation" in that case. In so far as the present case is concerned, there is a distinguishing factor which makes the ruling in *Dr. (Smt.) Shipra's* case (supra) inapplicable. We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case the true copies of the affidavits had been served on the first respondent and his Counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance of the provisions of section 81(3) read with section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act. Unfortunately, this aspect of the matter has been completely ignored by the High Court. Hence the order of the High Court dismissing the election petition in limine is unsustainable."

21. Similarly, the latest view of the Apex Court which is reflected in the judgment reported in the case of *Ram Prasad Sarma Vs. Mani Kumar Subba and Others*, , appears to be that the election petition should not be rejected at the threshold on the slightest pretext which may not have any material bearing on the factors which are to be strictly adhered to. The Apex Court in the said judgment has observed in para 17 as follows:

Para 17: "The purpose of the provision to furnish a true copy of the petition is not to frustrate the cause of the petitioner approaching the Court by adhering strictly to technicalities of little consequence. On the other hand the anxiety is that the respondent must have a correct idea of the allegations of corrupt practices made against him with some responsibility and that he may not be misled in any material respect by furnishing of a copy of the affidavit which may not be a correct copy having vital variation from the original. It is true that in the matters relating to elections and election petitions, strict compliance with the legal provisions is necessary and full care is to be taken to see that rights of an elected representative are not lightly disturbed and rightly so. But an election petition is not to be thrown at the threshold on the slightest pretext of one kind or the other which may or may not have any material bearing on the factors to be strictly adhered to in such matters. It is substance not form which would matter. If it is permitted otherwise, the returned candidate would only be on the lookout microscopically for any kind of technical lacuna or defect to abort the endeavour of the petitioner to bring to trial the issues relating to corrupt practices in the elections. The purpose of the law on the point cannot be to allow the returned candidate to avoid the trial of the issues of corrupt practices raised against him on the basis of any little defect which may not result in any vital variation between the original and the true copy so as to have the effect of misleading the returned candidate. As it is, the prevailing situation of elections and practices often said to be adopted now and then and here and there does not always give a very happy picture. Free, fair and fearless elections is an ideal

to be achieved and not to be defeated for the sake of pretentious and frivolous technicalities."

22. In view of the ratio laid down by the Apex Court in various judgments cited hereinabove and in view of the fact that there is no variation in the original petition filed in the Court and the xerox copies supplied to the respondent and that since the attested copy also has been supplied by signing xerox copy, there is no non-compliance of the provisions of section 81(3) of the said Act. The application Exhibit 24 is, therefore, liable to be rejected. It will have to be held that there is no non-compliance of provision of section 81(3) of the said Act. It will have to be held that the election petition is maintainable and there is no non-compliance of sections 81(3) and 83 of the said Act. In the circumstances, there shall be no order as to costs.