

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4555 OF 2000@@
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Bhagwan Rambhau Karankal ... Appellant

versus

Chandrakant Batesingh Raghuwanshi & Ors. ... Respondents

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Election to the Maharashtra Legislative Council from Dhule Local Authority was held in December, 1997. Result of election was declared on 31.12.1997. Besides the appellant, respondents No. 1, 2 and 3 were the contesting candidates. After the election, respondent No. 1 was declared duly elected. The appellant put in issue election of respondent No. 1 on various grounds by filing an election petition in the High Court of Judicature at Bombay, Aurangabad Bench. We are not at this stage concerned with the grounds on which election of respondent No. 1 was challenged. After respondent No. 1 was served in the election petition, he filed his written statement resisting the election petition on merits. The returned candidate also filed an application on 22.9.1998 seeking dismissal of the election petition for "non-compliance of Sections 81 and 83 of the Representation ...2/-

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of People Act". After pleadings were complete, issues came to be framed. Issues No. 6, 7, 8 and 9 were directed to be treated as preliminary issues. Those issues arose out of the application filed by the returned candidate seeking dismissal of the election petition under Section 86 (1) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). Those issues read thus :

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"(6) Does the respondent no. 1 prove that the Election Petition filed by the petitioner is not signed and verified in accordance with the provisions of section 81 and 83 of the Representation of People Act, 1951 and, if not, is Election Petition No. 2/1998 liable to be dismissed for non-compliance of the provisions of sections 81 and 83 in accordance with the provisions of section 86 of the Representation of People Act, 1951?

(7) Whether does the respondent no. 1 prove

that the copy of the petition received by him through the Court does not comply with the provisions of section 81(3) of the Representation of People Act, 1951?

- (8) Does the respondent no. 1 prove that the copy of the petition received by him in accordance with the provisions of rule 10 of the High Court (Original Side) Rules also needs the same compliance as is contemplated under section 81(3) of the Representation of People Act, 1951?
- (9) What is the effect of non-compliance of the provisions of sections 81 and 83 of the Representation of People Act, 1951?"

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The learned Designated Judge answered the issues thus:

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"In view of what has been observed above, this Court has to answer issue No. 6 as follows:

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- (A) The respondent no. 1 has failed to prove that the election petition filed by the petitioner is not signed and verified in accordance with the provisions of sections 81 and 83 of the Representation of People Act, 1951. However, so far as the copy of the election petition served on the respondent no .1 is concerned, it is not strictly in compliance with the provisions of section 81(3) of the Act and hence, the election petition deserves to be dismissed on that count.
- (B) Issue No. 7 has been completely proved by the respondent no .1 by specifically pointing out that the election petition does not comply with the provisions of section 81(3) of the Act. Hence, Issue No. 7 is answered in the affirmative.
- (C) So far as Issue No. 8 is concerned, the respondent no. 1 has proved that the copy of the election petition received by him in accordance with Rule 10 of the Bombay High Court (Original Side) Rules also needs the same compliance as is contemplated under section 81(3) of the Representation of People Act, 1951.
- (D) Hence, Issue No. 9 has to be answered to the effect that because of non-compliance of the provisions of sections 81 and 83 of the Representation of People Act, 1951, the election petition deserves to be dismissed on the preliminary issues

with costs."

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We have heard learned counsel for the parties and examined the record.

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According to the learned Designated Judge, copy of the Election Petition served on respondent No .1 did not comply with the provisions of Section 81 (3) of the Act. It was found that copy of the Election Petition served on the returned candidate at pages 1 to 7 only bear the signatures of the petitioner on each page and on the reverse of the page but there is no attestation that it is a 'true copy'. Referring to the annexures filed alongwith the Election Petition, it has been noticed that whereas each one of the Annexures 'A' to 'H' has been attested as 'true copy' of the original under the signatures of the election petitioner, the verification of the annexure does not contain any endorsement to the effect that the verification was also a true copy of the original. Another defect found by the learned Designated Judge is that the concise statement which had been filed by the petitioner on 16.2.1998 did not contain any verification. These defects, according to the learned Designated Judge were fatal to the maintainability of the Election Petition for non-compliance with the provisions of Sections 81 and 83 of the Act meriting dismissal of the election petition in limine under Section 86 (1) of the Act. So far as some other minor 'defects' are concerned, those were rightly not debated before the High Court or before us by learned counsel for the returned candidate.

We have perused the copy of Election Petition which was served on the returned candidate-respondent No. 1. We

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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 Petition on each page of the copy of the Election Petition is not such a deviation as may attract Section 86(1) of the Act.

A Constitution Bench of this Court in T.M. Jacob Vs.@@
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C.Poulose And Others (1999) 4 SCC, 274 dealt with a somewhat@@
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similar objection and observed as follows :

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"It is not denied that the copies of the election petition and the affidavit served on the appellant bore the signatures of Respondent 1 on every page and the original affidavit filed in support of the election petition had been properly signed, verified and

affirmed by the election petitioner and attested by the Notary. There has, thus, been a substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1) (c) of the Act."

The Court went on to hold :

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"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 under Section 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 under Section 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."

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The law laid down by the Constitution Bench (supra) applied with all its force to the facts and circumstances of this case in so far as the first defect found by the High Court is concerned.

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Coming now to the second defect as pointed out by the High Court. This defect in fact is non-existent. Each one of the annexures supplied to the returned candidate with the copy of election petition has been attested to be true copy@@
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as required by Section 83 (2) of the Act. Each one of the annexures has also been verified separately and the verification bears the signatures of the petitioner. It has been verified before an officer of the Registry. Learned counsel for the respondent has been unable to point out any infirmity in so far as annexures are concerned.

Coming now to the next 'defect' as found by the High Court, the requirement of Rule 6 of the Rules framed by the

High Court of Judicature at Bombay with regard to trial of Election Petitions under the Representation of the People Act, 1951 is :

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"6. The election petition along with the necessary copies may be presented at any time during the Court hours. Immediately after it is presented, the date of presentation shall be endorsed thereon, and the petition shall be entered in a special register maintained for the registration of election petitions.

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A bare reading of the Rule shows that after an Election Petition is presented together with the requisite number of copies during the Court hours to the officer competent to receive the same, that officer is required immediately after presentation of the Election Petition to endorse the date of presentation under his seal and enter it ...8/-

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in a special register. This endorsement is required to be made only on the original copy of the Election Petition. The absence of this endorsement on the copy of the Election Petition is for obvious reasons. Copies are sent by the Registry to the respondents and once the copies have been supplied by the election petitioner alongwith the Election Petition for service on the respondents, it is not possible for the petitioner to make any endorsement on each of the copies. The so called defect pointed out by the High Court is a meaningless defect.

Insofar as an objection regarding non-verification of the concise statement filed separately by the election petitioner is concerned, that is a requirement of Section 83 (1)(a) of the Act. Section 86(1) of the Act provides that an Election Petition is liable to be dismissed in limine if it does not comply with the provisions of Sections 81, 82 or 117 of the Act. A defect of the type envisaged under Section 83 does not warrant dismissal of an Election Petition under Section 86(1) of the Act in limine. What are the other consequences, if any, which may flow from that omission is a matter which has to be considered during the trial. The High Court was clearly in error in equating a defect under Section 83 of the Act with a defect under Section 81 of the Act.

The findings of the High Court regarding alleged non-compliance with the requirements of Sections 81 or 83 of the Act are clearly erroneous. The Election Petition could ...9/-

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not have been dismissed in limine for the alleged "ommissions" under Section 86(1) of the Act. The Election Petition was required to be tried on merits. We, therefore, set aside the judgment and order of the High Court and direct that the Election Petition be tried on its own merits.

Since, the election took place as early as in 1997 and the term is only of 6 years of which more than half the period has expired, we request the High Court to dispose of the Election Petition expeditiously. We, however, wish to clarify that our order shall not be construed as any expression of opinion on the merits of the Election Petition or the other objections raised in the written statement. We have confined ourselves only to the decision of preliminary issues. The High Court shall decide the Election Petition on its own merits.

The appeal is, consequently, allowed. Parties shall, however, bear their own costs.

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.....CJI.

.....J.
(R.C. LAHOTI)

.....J.
(DORAISWAMY RAJU)

New Delhi,
April 25, 2001.

Item No.101
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COURT No. 1

SECTION XVII
(Part-Heard)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 4555 OF 2000@@
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Bhagwan Rambhau Karankal

... Appellant

VERSUS

Chandrakant Batesingh Raghuwanshi & Ors.

... Respondents

(With appln. for exemption from filing O.T.)

Date : 25/04/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Appellant (s) Mr. V.A. Mohta, Sr. Adv.
Mr. P. Kanteshwar, Adv.
Ms. Niharika Bahl, Adv.
Ms. J.S. Wad, Adv.

For Respondent (s) Mr. R. Sunderavardan, Sr. Adv.
Mr. Sanjay V. Kharde, Adv.
Mr. Uday Umesh Lalit, Adv.

UPON hearing counsel, the Court made the following
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The appeal is allowed in terms of the signed order
Parties shall, however, bear their own costs.

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(Ajay Kr. Jain)
Court Master

(Prem Prakash)
Court Master

(Signed order is placed on the file)

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