

The Indian Law Reports

ELECTION PETITION

Before R. S. Narula, J.

PANNA ALIAS PANNA LAL SYNGAL,—Petitioner.

versus

MUKHTIAR SINGH,—Respondent.

Election Petition No. 6 of 1971

July 29, 1971.

Representation of People Act (XLIII of 1951)—Sections 80, 81, 86 and 117—Constitution of India (1950)—Article 329—Filing of an election petition in the High Court without the annexures referred to therein—Whether proper presentation within the meaning of section 81—Annexures to an election petition containing particulars of the alleged corrupt practices—Whether necessary part of the petition—Receipt for deposit of security—Whether forms such necessary part—Election petition filed without complete copies required under section 81(3)—Whether hit by section 86—Provisions of section 81(3)—Whether mandatory—Requirements of section 81(3) not complied—Court—Whether has discretion to condone the default.

Held, that the mere fact that a document or a paper is annexed to an election petition filed under the Representation of People Act, 1951, does not necessarily make it a part of such petition in all cases. It would, therefore, depend on the facts and circumstances of each case whether the want of an annexure renders an election petition incomplete or not. Where the annexures filed with an election petition purport to contain particulars of the corrupt practices alleged in the petition, they form necessary part of the election petition. This is, however, not so in respect of the receipt for the deposit of the security. Section 117 of the Act only requires that a sum of Rs. 2,000 must be deposited as security for the costs of the petition at the time of presenting an election petition. There is no provision requiring the original receipt for the deposit being produced with the petition. What is stated in the receipt does not directly affect the merits of the election petition. Therefore, receipt for the deposit of the security does not form necessary part of the election petition. Any document or paper without which the original petition will be treated to be incomplete must necessarily form part of the copy of that petition which is required to be furnished to the respondent under section 81(3) of the Act. Thus a duty has been cast on the petitioner by section 81(3) to file a complete copy of the election petition for the respondent including copies of the annexures which form necessary part of the election petition. (Para 7)

Held, that section 81(3) of the Act requires that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and section 86(1) provides that the High Court shall dismiss an election petition which does not comply with the provisions of section 81. The directory or mandatory nature of a particular provision of law or any part thereof depends on (i) the object and purpose of the provision or the relevant part thereof and (ii) the statutory effect of non-compliance therewith. The object of providing a complete copy of the election petition is to place the entire relevant material in respect of the petition in the hands of the respondent as is available before the Court so that he may effectively make answer thereto. The effect of non-compliance is given in section 86, the provisions of which clearly show that compliance with section 81 was intended to govern the validity and maintainability of the petition itself. Considering the matter from both these points, the relevant requirement of section 81(3) is mandatory. A mandatory provision or a mandatory part of a statutory provision must be fulfilled exactly and the question of substantial compliance therewith cannot arise. An election petition filed without complete copies required by section 81(3) would itself not be a complete petition and would, therefore, be hit by section 86.

(Para 13)

Held, that from the language and scheme of sections 80 and 86 of the Act and Article 329 of the Constitution, there is no escape from the conclusion that if those requirements of section 81(3) which are mandatory are not complied with in a given case, the Court has no discretion in the matter and cannot condone the default, but must dismiss the petition.

(Para 13.)

Election Petition under the provisions of Part IV, Chapter II, Sections 80, 81 and 101 of the Representation of People Act, 1951 praying that the election of respondent be declared to be void; after setting aside the election under section 100(1)(b) of the Representation of People Act, 1951 as corrupt practices have been committed by the respondent.

N. C. Jain, Advocate, for the petitioner.

S. C. Goyal, and J. S. Malik, Advocates for the respondent.

JUDGMENT

NARULA, J.—(1) In this petition of unsuccessful candidate Panna Lal Syngal, for declaring void the election of Mukhtiar Singh, respondent (the candidate returned to the Lok Sabha, from the Rohtak Parliamentary Constituency in the general election held in March, 1971, on the allegation of commission of certain corrupt practices),

following two preliminary objections were raised in the respondent's written statement:—

- (1) That the petition is liable to be dismissed on the ground that the petitioner has failed to supply to the respondent copies of the annexures to the petition. The defect is a defect of presentation of the petition within the meaning of section 81 of the Representation of the People Act, 1951 (hereinafter called the Act), and also as required by the Rules framed by this Court in this behalf; and
- (2) That the petition merits dismissal on the ground that no material particulars have been given regarding the corrupt practices alleged in the petition.

(2) By my order, dated May 27, 1971, I permitted the petitioner to file better particulars of the alleged corrupt practices within four weeks from that day after serving an advance copy thereof on the counsel for the respondent, who might file his further written statement in respect of the better particulars within two weeks of the receipt of the advance copy. The petitioner did not avail of the opportunity allowed to him. The time allowed for the purpose expired on June 25, 1971, when the Court was closed for summer vacation. The Court reopened on July 12, 1971. Neither any statement of better particulars nor any application for extension of time was filed by the petitioner on the reopening day. Even when the case came up for hearing before Mahajan, J. on July 16, 1971, neither any statement was filed, nor any prayer for extension of time was made. The learned Judge adjourned the case for hearing of arguments by me on the preliminary issue arising out of the first preliminary objection raised by the respondent as counsel for the parties represented before his Lordship that arguments on that issue had already been partly heard by me. I do not want to say anything about the correctness of the said representation made by counsel except this that there had been no hearing of the case before me since after the framing of the preliminary issue on May 27, 1971. The order of Mahajan, J., was brought to my notice on July 19, 1971, and I directed the case to be fixed for hearing on July 21, 1971. On that day, Mr. N. C. Jain, the learned counsel for the petitioner made a somewhat half-hearted oral prayer for adjournment of the case on payment of costs to the other side to enable his client to collect the

material for filing better particulars and for filing the same. Mr. Jain submitted that the petitioner had not been able to do the needful so far, as he has been busy in organising certain demonstrations in Delhi, and could not find time to collect the requisite information which had to be incorporated in the statement of better particulars. This in my opinion is no valid ground for the inordinate delay on the part of the petitioner to do the needful. Section 86(5) of the Act authorises this Court to allow the particulars of any corrupt practice alleged in the petition to be amplified for ensuring a fair and effective trial of the petition. Sub-section (6) of section 86 states that the trial of an election petition shall, so far as practicable, consistently with the interest of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary. Sub-section (7) enjoins a duty on this Court to try an election petition as expeditiously as possible.

(3) It was at the request of the counsel for the petitioner that four weeks were allowed to him for filing better particulars as it was represented that he would need time to collect the necessary information and to prepare the better statement. Since four weeks ended during the vacation, he could at best have availed of the time up to the reopening day. In the circumstances already referred to by me, it appears that the petitioner is not taking the trial of this petition very seriously insofar as the matters sought to be covered by better particulars are concerned. Petitioner should normally have collected all the information necessary to be given in the election petition in support of the allegation of corrupt practices before filing the petition. If on any account he was not able to do so, he should have availed of the time allowed to him by me on May 27, 1971, in the interest of justice. He has miserably failed to avail of that opportunity. No sufficient cause has been shown for his failure to do the needful within time. Even the excuse offered orally by the counsel for the petitioner is not supported by any affidavit. The alleged reason for the delay is, to say the least, wholly unjustifiable. The election petition was filed on April 26, 1971. About three months have already passed since then. The trial of the petition has normally to be concluded within six months as required by sub-section (7) of section 86. The petitioner does not appear to attach any importance to the effective prosecution of the petition. I am, therefore,

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not inclined to grant any further time to the petitioner for amplifying the particulars of the corrupt practices alleged in the petition. The oral prayer for extension of time is, therefore, declined.

(4) The only other preliminary objection pressed by the respondent (preliminary objection No. 1 in the written statement of the respondent) gave rise to the following preliminary issue (framed by me on May 27, 1971):—

“Whether the petitioner has presented the petition in the manner prescribed by section 81(3) of the Representation of People Act, 1951; if not, what is its effect?”

(5) The facts relevant for deciding this issue may first be noticed briefly. In paragraph 4(a) of the petition reference is made to the allegation about the respondent having indulged in the corrupt practice of paying Rs. 50 to one Kidara rickshaw-puller, who is stated to have been directed by the respondent to carry voters in his rickshaw on the polling day to the polling station at Jind. The second sentence of this sub-paragraph reads as below:—

“The photograph of the rickshaw pooler (puller) along with the rickshaw in which voters are sitting and the flag of Shri Mukhtiar Singh respondent is being flown, is attached herewith and is marked P-1.”

Similarly in paragraph 4(b) of the petition after giving a list of the names and particulars of four rickshaw-pullers alleged to have been employed by the respondent on payment basis or carrying voters without charging anything from them, and giving the names of the two alleged passengers to those rickshaws, the petitioner has stated as follows:—

“The petitioner reserves the right of giving the names of the rest of the rickshaw-pullers and voters. The four other photographs are attached herewith as Annexures ‘P. 2 to P. 5’ in addition to P. 1.”

Paragraph 8 of the petition reads as below:—

“That the petitioner has duly deposited in this Hon’ble Court a sum of Rs. 2,000 as security for the cost of the petition

under section 117(1) of the Representation of the People Act, 1951, and the original receipt for the same is attached herewith.”

The five photographs marked P. 1 to P. 5 and the original receipt for the security deposit have been duly attached to the petition. It is the admitted case of both sides that no copies of any of the abovementioned documents (the photographs and the receipt) were attached to or annexed with the copies of the election petition filed by the petitioner in the Registry of this Court. Sub-section (3) of section 81 requires that 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.” The objection of the respondent is that petition without its annexures is not a petition, that a copy of the petition without copies of the annexures cannot be treated as a copy of the petition within the meaning of section 81(3), and that insofar as the presentation of this election petition was defective in the abovementioned respect, this Court is bound to dismiss the election petition in view of the mandatory requirements of section 86(1) of the Act, which reads as follows :—

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

(6) The following questions have to be answered by me in order to decide the preliminary issue:—

- (1) Whether an election petition filed in the High Court without the annexures referred to therein can be deemed to have been properly presented within the meaning of section 81 ;
- (2) Whether the copy of the election petition without copies of the annexures to the original petition is or is not a copy of the petition within the meaning of section 81(3) ;
- (3) Whether the requirement of section 81(3) about the filing of as many copies of the election petition as there are respondents necessarily enjoins on the petitioner the duty to file copies of the annexures to the election petition also, besides filing copies of the body of the petition ;

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- (4) If the answer to question No. (3) is in favour of the respondent, is the requirement in question mandatory or directory; and
- (5) If section 81(3) requires copies of annexures to be filed as part of copies of the election petition, and the said requirement is mandatory, has this Court any discretion in the matter of dismissing the election petition under section 86 of the Act?

I will take up all these points one by one.

(7) In its ordinary meaning the word "annexure" merely means "to add to the end: to join or attach: to affix: to append." "Annexure" is something which is added, joined or attached, affixed or appended. In *Ballard v. Bancroft* (1), it has been held that the writing and signing a process on a separate paper from that on which the original petition is extended, and then placing the paper containing the process loosely within the folds of the petition, is not a compliance with that provision of the judiciary Act of 1799, which requires the process to be "annexed" to the petition. It was also held that the process of annexing to the petition must be either extended on the same paper, or, if on a different paper, must be firmly united by wax or tape. In *Bosworth v. Matthews* (2), it was held that the requirement that the affidavit should be annexed was *prima facie* complied with by statement that the affidavit and mortgage were "attached" together, the term "attached" being practically synonymous with the term "annexed". In the instant case, the documents in question were properly annexed to the original petition, in the sense that they being separate papers (as necessarily they had to be) were tied together with the main petition at the time of presentation of the petition. The mere fact, however, that a document or paper is annexed to the petition, would not, in my opinion, necessarily make it a part of the petition in all cases. If in an election petition it is stated that the returned candidate committed the corrupt practice of hiring or procuring of vehicles for free carriage of voters on the polling day, and no further particulars are given in the petition itself, but it is stated that "the respondent hired the vehicles mentioned in column I belonging to persons named in

(1) 31 Ga. 503, 506 (referred to at p. 671 of Words and Phrases I Vol. III.)

(2) 74 Ga. 822 (Vol. III of Words and Phrases at p. 671).

column II and driven by drivers listed in column III, for carriage of voters named in column V of Annexure P. 1 to this petition on the polling day", the annexure would necessarily be a part of the petition, and a copy of the petition without such annexure cannot be treated to be a copy thereof. If on the other hand an election-petitioner makes reference to a proposition of law in the course of his petition and says that the relevant question of law has already been decided by a High Court as per copy of the judgment of that High Court attached to the petition as Annexure P. 2, it is doubtful if the petition would be treated as not properly presented if by inadvertence the copy of the High Court judgment is left out. It would, therefore, depend on the facts and circumstances of each case whether the want of an annexure would render an election petition incomplete or not. In the present case the five photographs filed with the election petition purport to contain particulars of the corrupt practices alleged in paragraphs 4(a) and 4(b) of the petition. Those photographs therefore, form necessary part of the petition. If the petitioner had by chance omitted to annex the photographs to the original petition, I would have held that an incomplete petition has been filed. This is, however, not so in respect of the receipt for the deposit of security. All that section 117 requires is that a sum of Rs. 2,000 must be deposited as security for the costs of the petition at the time of presenting an election petition. No provision has been brought to my notice which requires the original receipt for the deposit being produced with the petition. What is stated in the receipt does not directly affect the merits of the election petition. Mr. Siri Chand Goyal, learned counsel for the respondent, contended that it was the duty of the petitioner to furnish a copy of the receipt also with the copy of the election petition as that would have enabled the respondent to find out whether in fact the requisite amount of security had or had not been deposited, and if so, whether the same had been deposited within time or not. Though in paragraph 8 of the petition it is stated that the original receipt for the security deposit is attached with the petition, it has not been marked P. 1, P. 2, etc., like the photographs which were marked P. 1 to P. 5. It appears to me that the petitioner was justified in maintaining this distinction between the two sets of documents, i.e., the photographs on the one hand and the receipt for security deposit on the other. Whereas without the photographs the petition would have been incomplete, but it could not in my opinion be treated as suffering from any fatal defect without the receipt for security deposit. In view of what I have stated above, I would hold that this election petition would not be deemed

to have been properly presented if it had not been accompanied by Annexures P. 1 to P. 5.

(8) So far as the second question framed by me is concerned, I am of the opinion that any document or paper without which the original petition can be treated to be incomplete must necessarily form part of the copy of that petition which is required to be furnished to the respondent under section 81(3) of the Act. In *Sardar Mal v. Smt. Gayatri Devi* (3), it was held by a Division Bench of the Rajasthan High Court that the word "petition" as used in section 81(3) includes the annexures to the petition containing particulars of corrupt practices alleged therein. Mr. Jain tried to argue that the copies of the petition required to be filed are only copies of the body of the petition and not its annexures because annexures have been specifically treated as something separate and different from the election petition itself while making reference thereto in sub-section (2) of section 83 in the following words:—

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

In my opinion, the mere requirement of a part of the petition being separately signed and verified in the same manner as the main petition does not derogate from such annexures being otherwise treated as a part of the petition itself. Inasmuch as copies of the photographs P. 1 to P. 5 purport to contain particulars of the corrupt practices alleged in paragraphs 4(a) and 4(b) of the petition I would hold that the copy of the petition furnished by the election-petitioner which copy was not accompanied by copies of Annexures P. 1 to P. 5 (attached to the original petition), was not a copy of the petition within the meaning of sub-section (3) of section 81 of the Act.

(9) In view of the answers to questions (1) and (2) returned by me above, I must answer question No. (3) in favour of the respondent and hold that a duty had been cast on the petitioner by sub-section (3) of section 81 to file a complete copy of the election petition for the respondent including copies of photographs P. 1 to P. 5.

(10) Next comes the question of the effect of non-compliance with the requirements of section 81(3) referred to above. Lengthy arguments were addressed by both sides on this aspect of the matter. Whereas Mr. Goyal submitted that the requirement in question is mandatory, Mr. Jain, argued at length that the requirement in question is merely directory, and non-compliance therewith should not prove fatal to the petition. Article 329(b) of the Constitution provides that no election to either House of Parliament shall be called in question except by an election petition "presented to such authority and in such manner" as may be provided for by or under any law made by the appropriate Legislature. Their Lordships of the Supreme Court held in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad and others* (4), that an election petition is not to be equated to an action at law or in equity, but the rights to file an election are purely the creature of statute. The questioning of an election otherwise than in the manner provided by the relevant law has, therefore, been specifically prohibited by the Constitution. Section 80 of the Act refers to the law made by the appropriate Legislature within the meaning of Article 329(b). The section says that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. No election petition not presented in accordance with the requirements of Part VI of the Act would be a petition the trial of which is permitted by Article 329(b) of the Constitution. Rule 16 of the "Rules of Procedure and Guidance in the matter of trial of election petitions in Part VI of the Representation of the People Act, 1951," framed by this Court, requires the Registry of the Court to issue notice of an election petition "accompanied by a copy of the petition together with, copies of the Schedules and Annexures, if any" to each of the respondents named in the petition. What has to be issued to the respondent under rule 16 is the same thing which is required to be filed by the petitioner under section 81(3) of the Act. In *Shri Babu Ram v. Smt. Prasanni and others* (5), it was held in connection with an election case that where the statute requires specific facts to be proved in a specific way and it also provides for the consequence of non-compliance with the said requirement, it would be difficult to resist the application of the penalty clause on the ground that such an application is based on a technical approach. Mr. N. C. Jain contended on the basis of the authority of a Full Bench judgment

(4) A.I.R. 1964 S.C. 1027.

(5) A.I.R. 1959 S.C. 93.

of this Court in *Dr. Anup Singh v. Abdul Ghani and others* (6), and on the basis of the authoritative pronouncement of the Supreme Court in the same case at the appellate stage in *Dr. Anup Singh v. Shri Abdul Ghani and another* (7), that the requirement in question is not mandatory. The defect to which reference was made in *Dr. Anup Singh's case* was that the copy of the election petition filed under section 81(3) of the Act was not attested to be a true copy of the petition, but only bore the signature of the petitioner. Instead of stating that the copy was "a true copy of the petition" the petitioner had merely signed each page of the copy. It was in that context that the High Court held that the object of the provision was that the respondent to an election petition should have a true copy of the petition so as to enable him to make his defence, and where the election petition had complied with all the provisions of section 81(3), but each copy of the petition was not attested by the petitioner "to be a true copy of the petition", but was merely signed by the petitioner, the petition could not be dismissed. It was in that sense that it was observed that the requirement that every copy of the petition shall be attested by the petitioner to be a true copy of the petition is not mandatory, but is directory, and substantial compliance with it would meet the object of the provision. Mr. Jain wanted to extend the proposition of law laid down in *Dr. Anup Singh's case* (supra) to the non-filing of copies of the annexures to the election petition to be a substantial compliance with the requirements of section 81(3). In *Dr. Anup Singh's case*, the copies supplied were admittedly complete and correct copies of the respective election petitions. Each page of each copy was signed by the particular petitioner, and only the words "true copy of the petition" were missing. In that context Mehar Singh, J. (as he then was) observed that the Parliament could not possibly have intended summary dismissal of an election petition upon the basis of such a hypertechnical omission, and further added that the extreme example furnished by *Dr. Anup Singh's case* showed that the particular requirement of certification and attestation of copies of the petition was not mandatory, but directory, and substantial compliance therewith would meet the object of the provision. The view taken by the High Court was approved by their Lordships of the Supreme Court when the matter was taken to them in appeal. It was held that the presence of original signature of the petitioner on the copy of the petition was

(6) I.L.R. 1963 (2) Pb. 524=A.I.R. 1963 Pb; 429;

(7) 1965 Curr. L.J. (Pb.) 358.

sufficient to indicate that the copy was attested as a true copy even though the words "true copy" were not written above the signature in the copies. This was held to be substantial compliance with section 81(3). In the present case the copy was not complete.

(11) Whether a particular provision of law or any part of any such provision is directory or mandatory depends on (i) the object and purpose of the provision or the relevant part thereof; and (ii) the statutory effect of non-compliance therewith. The object of providing a complete copy of the petition is to place the entire relevant material in respect of the petition in the hands of the respondent as is available before the Court so that he may effectively make answer thereto. The effect of non-compliance is given in section 86. Considering the matter from both these points of view, I am inclined to hold that the relevant requirement of section 81(3) is mandatory.

(12) The latest judgment of the Supreme Court which appears to be helpful in the present context was given in the case of *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar and others* (8). In that case there were discrepancies between the original election petition and the copies served on the respondents (copies furnished by the election-petitioner). It was held that this divergence was bound to mislead the contesting respondents and prejudice their defence. It was observed that pleadings in a case had great importance and that is more so in election petitions particularly when the returned candidate is charged with a corrupt practice. The returned candidate must know what the charge against him is so that he may prepare his defence. If relying on the allegations in the copy of the petition served on him the returned candidate had collected evidence to show that that allegation is false, then the entire basis of his defence would have fallen to the ground because at a later stage he had to meet a totally different case. Their Lordships emphasised that the law requires that a true copy of the election petition should be served on the respondents. Because of the discrepancies in the copies, it was held that the requirement of section 81(3) had not been either fully or substantially complied with. The order of the High Court dismissing the election petition on that ground was, therefore, upheld by the Supreme Court.

(13) The next case which is directly in point was decided by a learned Single Judge of the Madhya Pradesh High Court. It appears to me to be consistent with the trend of authoritative pronouncements of the Supreme Court in *Ch. Subbarao's case* (4) and in *Jagat Kishore Prasad Narain Singh's case* (8). The Madhya Pradesh High Court held in *Ramashanker Parmanand v. Jugalkishore Ramasahaya Bajaj and others* (9), that where an election is challenged on the ground of corrupt practice, but the petitioner fails to supply copies of annexures to the petition, for being served on the respondents, the defect produced by the non-supply of copies is a defect of presentation of the petition and so cannot be allowed to be cured subsequently. The election petition of Ramashanker was dismissed by the High Court under section 86 of the Act on the abovementioned short ground. In Annexure 'A' to Ramashanker's petition merely the numbers of votes obtained by each of the candidates who contested the poll were mentioned. Annexure (2) was a schedule showing the names of the persons, who worked for the returned candidate. Annexure (3) was a schedule showing the names of voters who were alleged to have been carried in the vehicles for casting votes. I would not have considered the non-filing of the copy of the first annexure to Ramashanker's petition as violation of section 81(3). Whatever may be said about the second annexure, there is no doubt that annexure (3) comprised of important particulars of the alleged corrupt practice, and could not be held to be merely ancillary or redundant, but comprised an integral part of the petition. The argument that section 86 refers to the petition itself and not to copies thereof was repelled by the Madhya Pradesh High Court. It is of importance to notice that right from the constitutional provision contained in Article 329 down to the Act and the Rules, great emphasis is laid on the method of filing and presenting an election petition. The provisions of section 86 clearly show that compliance with section 81 was intended to govern the validity and maintainability of the petition itself. It is settled law that a mandatory provision or a mandatory part of a statutory provision must be fulfilled exactly and the question of substantial compliance therewith cannot arise. An election petition filed without complete copies required by section 81(3) would itself not be a complete petition, and would, therefore, be hit by section 86. Mr. Jain, sought to bring out a distinction between the Madhya Pradesh case and the present case on the

ground that Ramashanker had clearly mentioned in the election petition that the schedules attached to the petition shall form part of the petition itself, but no such averment has been made in the present petition. I am unable to find any material distinction between the two cases on this account. Merely saying that a schedule or an annexure would form part of the election petition, or not so saying, would not, in my opinion, be decisive of the question whether the schedule or annexure is or is not a part of the petition. The main criterion which would determine this question has already been dealt with by me.

(14) The last case to which Mr. S. C. Goyal referred is the judgment of the Andhra Pradesh High Court in *K. Brahmananda Reddy v. The Members, Election Tribunal, Hyderabad and others* (10). The objection of the returned candidate to the maintainability of the election petition on *inter alia* the ground that its copies furnished by the election-petitioner had not been attested to be true copies as required by section 81(3) was repelled by the Election Tribunal on the ground that the word "shall" in the proviso to section 81(3) was not mandatory, but only directory. The returned candidate's writ petition was allowed by a Division Bench of the Andhra Pradesh High Court and the order of the Tribunal was set aside on the ground that the Tribunal had committed an error of law apparent on the face of the record in holding that the election petition was not liable to be dismissed for non-compliance with section 81(3) of the Act. Mr. Goyal, should not have cited this case as the judgment of the Andhra Pradesh High Court appears to have been reversed by the Supreme Court in *Ch. Subbarao's case* (4), (*supra*) and non-attestation of copy was held to be not fatal to the election petition.

(15) Mr. Jain lastly submitted that though sub-section (1) of section 81 is mandatory, the requirements of sub-section (3) of that section are merely directory. I am unable to agree with this contention in view of the law that has already been discussed above.

(16) This takes me to the last point urged by Mr. Jain, which is covered by question No. (5) framed by me. Mr. Jain vehemently urged that no election petition should be dismissed on account of non-compliance with hyper-technical rules of procedure, and that the petitioner may now be directed to furnish copies of the annexures in question to the respondent. He referred to the judgment

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of the Supreme Court in *Murarka Radhey Shyam-Ram Kumar v. Roop Singh Rathore and others* (11), and wanted to equate the instant case with the facts of *Murarka Radhey Shyam-Ram Kumar's case* (11), wherein every page of the copy of the petition served on the returned candidate was attested to be a true copy under the signature of the petitioner, though a fresh signature at the foot of the petition below the word "petitioner" was not appended. It was held on those facts that the word "copy" in sub-section (3) of section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it. In the instant case the copy is so incomplete that no one can fully understand from it the implications and details of the main charge of corrupt practice without looking at the missing photographs P. 1 to P. 5.

(17) In *Ch. Subbarao's case* (4) *supra* the Supreme Court held that if the statute renders any particular requirement in respect of an election petition as mandatory, the Courts possess and can exercise no dispensing power to waive non-compliance. Following observations of the Supreme Court in that case appear to me to be very relevant for deciding the issue before me:—

"It cannot be urged that the jurisdiction of the Election Tribunal under section 90(3) to dismiss an election petition which does not comply with the provisions of section 81 is attracted only if there is a defect in the petition itself and that a defect merely in the copy accompanying the petition would not be a case of a petition not complying with the provisions of section 81 so as to require or even permit the Tribunal to dismiss the petition. When section 81(3) requires an election petition to be accompanied by the requisite number of copies, it becomes a requirement for the presentation of the election petition to the Commission, and therefore, a condition precedent for the proper presentation of an election petition. If that is a requirement of section 81, no distinction can be drawn between the requirements of sub-sections (1) and (2) and of sub-section (3). If there is a total and complete non-compliance with the provisions of section 81(3), the election petition might not be 'an election petition presented in accordance

with the provisions of this Part' within section 80 of the Act. If there had been such a non-compliance with the requirement of sub-section (3) not merely the Election Commission under section 85, but the Election Tribunal under section 90(3) would *prima facie* not merely be justified, but would be required to dismiss the election petition."

There is no doubt that it was further observed by the Supreme Court even in *Ch. Subbarao's case* (4) that if there is a substantial compliance with the requirements of section 81(3), the election petition cannot be dismissed. The question of substantial compliance would have been incomplete in respect of something insignificant or irrelevant. In the present case the copy furnished by the petitioner is incomplete in material particulars.

(18) From the language and scheme of sections 80 and 86 of the Act and Article 329 of the Constitution, and in the face of the authoritative pronouncements of the Supreme Court in *Ch. Subbarao's case* (4) and in *Jagat Kishore Prasad Narain Singh's case* (8), there appears to me to be no escape from the conclusion that if those requirements of section 81(3) which are mandatory are not complied with in a given case, the Court has no discretion in the matter and cannot condone the default, but must dismiss the petition. I accordingly decide the preliminary issue in favour of the respondent and against the petitioner.

(19) In view of the findings recorded by me, I must dismiss this petition with costs, and I order accordingly. Counsel's fee Rs. 300.

B. S G.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

HAZURA SINGH,—Petitioner.

versus

THE STATE OF PUNJAB, etc.—Respondents.

Civil Writ No. 2569 of 1970.

July 30, 1971.

Northern India Canal and Drainage Act (VIII of 1873)—Section 30-FF—Proceedings for reconstruction of a demolished water course—Whether must