

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

**E.P. No. 7/2009  
MP No. 1/2016**

**Date of order: 28.06.2016**

## **Ashok Kumar Sharma. V. Rashpaul Singh and ors.**

*Coram:*

## **Hon'ble Mr. Justice Tashi Rabstan, Judge.**

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*Appearing Counsel:*

For the petitioner(s) : Mr. Present in person.

For the respondent(s) : Mr. D.S.Chauhan, Advocate for R-1  
Mrs. Seema Shekher, Sr. AAG for R-2 to 5.  
Mr. Eishaan Dadhichi, Advocate vice  
Mrs. Sindu Sharma, ASGI for R-6.

i. Whether approved for reporting in Press/Media : Yes

ii. Whether to be reported in Digest/Journal : Yes.

1. Petitioner has challenged the election of respondent No. 1 from 84-Kalakote Assembly Constituency of the State of Jammu and Kashmir, held on 23<sup>rd</sup>

2. The grounds of challenge of Election of respondent No. 1 by the petitioner are that respondent No. 1 on the date of filing of the nomination paper as also on the date of scrutiny and even on the date of election was holding a contract with the Government of Jammu and Kashmir through Excise Department and a huge amount was outstanding against him which was payable to the Excise Department. It is also averred that as per the mandate of Section 49 Sub-Section 2 of the provisions of the Jammu and Kashmir Representation of the People Act, 1957, in the List of contesting candidates, the name of candidates had to be disclosed alphabetically. Accordingly, the name of petitioner starts with alphabet “A.” in English and “Alf” in Urdu had to be placed at the top, i.e., at S. No. 1 but the Election Authorities showed the name of petitioner at S. No. 8, with a clear motive to benefit the party

violated the Election Code by constructing small roads at village Sairi Jamola, Badoon behind GREF, Kurlian to Mohalla Lal Din, Kurlian to Braggi, Barago to the house of master Jakhia Dali, Barmandal Agrati, Sagote Narsingpura, Dalyote besides land levelling at different sites by spending expenses from his pocket and with the help of JCB owned by him in benami, his family members and his agents during the election process. It is also alleged that truck loads of blankets, ration, clothes etc were distributed by respondent No. 1 to the electors either personally or through his family members or through his agents and also through the official machinery conducting or supervising the polls. Further, alleged that the respondents have committed corrupt practice.

4. Objections have been filed on behalf of the respondents.

going into the merits of the case, it is appropriate to frame the issues on the preliminary objections.

6. With the consensus of learned counsel for the parties, as many as five preliminary issues were framed and the same issues were treated as preliminary objections, which are as under:-

*“1. “Whether the Election Petition has not been drafted as per the Provisions of J&K Representation of the People Act, 1957, and rules framed there under and, if so, its effect ? OPR  
2. Whether respondents have complied with the mandate of Section 49 Sub-section 2 of the provisions of the J&K Representation of the People Act, 1957 ? OPR  
3. Whether it is mandatory to lodge written complaint or oral by the petitioner or his Polling agent on the date of Polling in terms of the J&K Representation of the People Act, 1957 ? OPP  
5. Relief to which the petitioner is entitled to.”*

7. When the matter came up for consideration on 31.05.2016, counsel appearing for the parties agreed to argue on the Preliminary issues. Mr. D.S.Chauhan, learned Counsel appearing on behalf of respondent No. 1 stated at the Bar that he may be permitted to furnish a copy of the Election Petition

matter was heard on preliminary issues. Thus, this judgment is primarily confined to the preliminary issues.

9. Learned counsel appearing for respondents argued that the petitioner has failed to comply with the provisions of Sections 89, 90 and 91 of the J&K Representation of People Act, 1957 (hereinafter, for short, the Act), inasmuch as the petitioner has failed to attest and verify every copy of election petition under his own signature as regards the number of respondents, so as to construe every such copy to be true copy of the petition in terms of the Act.
10. Heard learned counsel appearing for the parties and perused the file.
11. The main thrust of argument of learned counsel for the appearing respondents is that every copy of election petition has not been attested by the petitioner under his own signature to be a true copy

12. Section 89(3) of the Act provides that a copy of the petition shall be attested by the petitioner “under his own signature” to be a true copy of the petition, whereas Section 94(1) of the Act mandates that “the High Court shall dismiss an election petition which does not comply with the provisions of section 89 or section 90 or section 125.”
13. Now the question arises for consideration is: whether the requirement that every copy of election petition, which is intended for service on the respondents, should be attested by the petitioner “under his own signature”, is a mandatory requirement or not.
14. The Apex Court has dealt with the same issue in detail in *Sharif-ud-Din vs Abdul Gani Lone*, (1980) 1 SCC 403. What is held by the Apex Court is reproduced hereunder:

“19 The object of requiring the copy of an

unauthorized alteration or tampering of the contents of the original petition after it is filed into court. We have no doubt that the records and documents in the custody of courts are taken due care of by the courts and the courts would not by themselves give any scope for tampering with them. But still experience shows that allegations are sometimes made that records in the court have been tampered with notwithstanding the care and caution taken by courts. Such allegations may not always be without basis. It is probably to obviate any scope for such an allegation being made or to protect the interest of the respondent, the Legislature thought of enacting sub-section (3) of Section 89 of the Act so that the respondent may rely on the copy served on him when he finds that the original document in the court contains allegations different from those in the copy in his custody. A respondent would not have the same degree of assurance if a copy served on him is one attested by any person other than the petitioner himself. The attestation by the advocate for the petitioner cannot be treated as the equivalent of attestation by the petitioner under his own signature. If the requirement of the second part of section 89(3) that copy of the petition should contain the signature of the petitioner himself is not one of substance, there was no need to enact it as the first part of sub-section (3) of Section 89 of the Act would have been sufficient for it provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the word "copies" mentioned therein can only mean "true copies". The importance of the provision contained in Section 94 of the Act which makes it obligatory on the part of the High Court to dismiss a petition when it is established that Section 89 of the Act had not been complied with also cannot be overlooked

Act. The High Court was, therefore, right in dismissing the petition on the above ground.”

**14.** The Hon’ble Apex court also taken same view in case titled H.D.Revanna Vs G. Patta Swamy Gowda ( 1999 (2) SCC 217)

**15.** Under Section 89(3), every election petition is required to be accompanied by as many copies thereof as there are respondents in it and every such copy is required to be attested by the petitioner under his own signature to be a true copy of the petition. In the light of this provision, it has to be seen whether every copy of election petition, as supplied to the respondents, is true copy of the petition attested by the petitioner under his own signature. I have also perused the written submission filed on behalf of respondents and also examined the copy of election petition received by respondent No 1 from the registry of this court. It appears there is no such attestation by the petitioner in terms of Section 89(3) of the Act except the photo-impression of his

Court in *Sharif-ud-Din* (supra) that requirement of attestation of every copy of election petition by the petitioner “under his own signature” is mandatory one, non-compliance with the provisions of Section 89(3) of the Act, thus, renders the election petition liable to be dismissed under Section 94(1) of the Act. Therefore, the preliminary issue No 1 is decided in favour of appearing respondents and against the petitioner herein. Accordingly, the election petition along with connected miscellaneous petition, if any, is dismissed on the preliminary issue No 1 alone.

**(Tashi Rabstan)**  
**Judge**

**Jammu:**  
28.06.2016  
Tilak, Secy.