

M. KARUNANIDHI ETC.

v.

H.V. HANDE & ORS. ETC.

March 31, 1983

[A.P. SEN AND E.S. VENKATARAMIAH, JJ.]

Representation of the People Act, 1951 (43 of 1951)—Interpretation of—Sub-s. (1) of s.117—Two parts—Deposit of security mandatory—Strict compliance necessary—Mode of deposit directory—Substantial compliance sufficient, sub-s. (3) of s.81 read with sub-s. (2) of s.83—Election petition—Copies thereof—include schedule or annexure—Integral part—If included in pleadings—Copy of election petition served without annexure—Non-compliance with sub-s. (3) of s.81—Dismissal of petition in limine.

Madras High Court (Election Petitions) Rules, 1967—Rules 8 and 12 read with Madras High Court (Original Side) Rules, 1956 order 31, r.2—Interpretation of—Cash deposited in Reserve Bank through pre-receipted challan prepared by High Court—Substantial compliance.

Interpretation—Rule of—Statute mandatory or directory depends upon intent and not language of the Act.

Respondent No. 1 in C.A. 38 of 1981 filed an election petition under the Representation of the People Act challenging the election of the appellant to the State Legislative Assembly on various grounds. The petition was accompanied by a pre-receipted challan prepared by the Accounts Department of the High Court on the basis of the lodgment schedule initialled by the Assistant Registrar II, showing that a sum of Rs. 2000/- had been credited to the account of the Registrar, High Court, Madras, in the Reserve Bank of India, Madras, as security for costs. The facts are more or less similar to all the appeals. In C.A. 38/81, which has additional facts, the respondent pleaded, *inter alia*, that the appellant was guilty of corrupt practice under sub-s.(6) of s. 123 of the Act. He alleged that the appellant had erected about 50 fancy banners each costing not less than Rs. 1000/- and if this expenditure of Rs. 50,000/- was added to the amount already disclosed by him in his return of election expenses it would exceed the prescribed limit thus amounting to a corrupt practice. The respondent filed a photograph of one such fancy banner with the election petition but did not annex a copy of this photograph to the copy of the election petition furnished to the appellant.

The appellant raised two preliminary objections as to the maintainability of the petition on the ground of non compliance with sub-s.(1) of s. 117 read with r. 8 of the Election Petitions Rules, and with sub-s.(3) of s. 81. High Court overruled both the objections and held : (1) there was substantial compliance with sub-s. (1) of s. 117; and (2) the banner could not be treated as an integral part of the election petition but was merely a piece of evidence as to the nature and type of the fancy banners erected by the appellant and therefore failure

A to supply a copy of its photograph to the appellant along with the copy of the election petition did not amount to a breach of sub-s.(3) of s. 81.

On appeal, this Court by its order dated April 2, 1981 remitted back the issue with regard to non-compliance of sub s. (1) of s. 117 read with r. 8 for a decision afresh on the basis of the evidence to be led by the parties. After considering the evidence, the High Court adhered to its earlier view.

B The appellant contended in this Court : (1) the provisions of sub-s. (1) of s. 117 were mandatory ; there was no distinction between the requirement as to the making of security deposit and the manner of making such deposit ; the words "in accordance with the rules of the High Court" in sub-s. 117 were mandatory ; r. 8 must be read as forming part of sub-s. (1) of s. 117 by incorporation ; in view of the definite stand taken by the respondent that he had complied with r. 8 it was not possible to fall back on Order 31 of the Madras High Court (Original Side) Rules, 1956. There was no compliance with r. 8 as the security amount was not deposited with the Registrar in cash. (2) There was no compliance with the requirements of sub-s. (3) of s. 81 as the copy of the election petition served on him was not accompanied by a copy of the photograph of the fancy banner.

D Dismissing all the appeals and special leave petitions except C.A. 38/81 which partly succeeds and is allowed.

E **HELD :** 1(a). Sub-s. (1) of s. 117 is in two parts. The first part provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court a sum of Rs. 2000 as security for the costs of the petition, and the second is that such deposit shall be made in the High Court in accordance with the rules of the High Court. The requirement regarding the making of a security deposit of Rs. 2000 in the High Court is mandatory, the non compliance of which must entail dismissal *in limine* of the election petition under sub s. (1) of s. 86 of Act. But the requirement of its deposit in the High Court in accordance with rules of the High Court is clearly directory. The essence of sub-s. (1) of s. 117 is that at the time of filing an election petition the petitioner should furnish security for the costs of the petition. Section 117 should not be strictly or technically construed and substantial compliance with its requirements should be treated as sufficient. [645-F, 651-E, 652-B]

F 1(b). A literal and mechanical interpretation of r. 8. of the Election Petitions Rules would lead to manifest absurdity as it would imply that in every case the election petitioner shall have to pay to the Registrar a sum of Rs. 2000 in cash towards security for costs and obtain a receipt from him therefor. Rule 8 is silent as to how the cash is to be handled. Inasmuch as r. 8 does not lay down the procedure regulating the manner of deposit of cash, the matter fails to be governed by r. 2 of Order 31 of the Madras High Court (Original Side) Rules, 1956 by reason of r. 12 of the Election Petitions Rules. Although Order 31, r. 2 does not in terms apply because Order 31 relates to "payment into court of moneys to the credit of civil court deposits and account of suitors' money", and though no lodgment schedule can be prepared under r. 2 except in pursuance of a decree or order passed by the High Court i.e. in relation to some proceeding pending, or disposed of, by the High Court, still

by virtue of r. 12 of the Election Petitions Rule that is, the procedure to be adopted for deposit of Rs. 2000 in the High Court in cash i.e. by crediting the amount on the strength of a pre-receipted challan prepared by the Accounts Department on the basis of a lodgment schedule. [649 A-E]

In the present case the Assistant Registrar II, Madras High Court, directed that the money be deposited to the credit of the Registrar of the High Court in the Reserve Bank of India. The election petitioner deposited Rs. 2000 with a pre-receipted challan issued by the Accounts Department to the credit of the Registrar of the High Court and the Reserve Bank of India made the endorsement "received in cash". It must be regarded that the payment was made in the High Court and the pre-receipted challan bearing the endorsement of the Reserve Bank must be treated as the receipt of the Registrar in terms of r. 8, the Reserve Bank acting as an agent of the High Court. The procedure adopted by Assistant Registrar II, was in conformity with r. 8. There was due compliance with the requirements of sub-s. (1) of s. 117 of the Act read with r. 8 of the Election Petitions Rules. [649-B, E-H]

K. Kamaraja Nadar v. Kunju Thevar & Ors., [1959] SCR 583 ; *Chandrika Prasad Tripathi v. Siv Prasad Champria & Ors.*, [1959] 2 Suppl. SCR 527 ; *Om Prabha Jain v. Gian Chand & Anr.*, [1959] 2 Suppl. SCR 516 ; *Budhi Nath Jha v. Manilal Jadav*, 22 ELR 86 ; *Charan Lal Sahu v. Nandkishore Bhatt & Ors.*, [1974] 1 SCR 294 ; *Aeltemesh Rein v. Chandulal Chandrakar & Ors.*, [1981] 3 SCR 142, referred to.

2 (a). Sub-s. (3) of section 81 of the Act is in two part. The first part provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the second part relates to the manner in which such copy shall be attested by the petitioner under his his own signature to be a true copy of the petition. The first part is mandatory in character and non-compliance with it was fatal to the petition in view of sub-s. (1) of s. 86. [655-E, 659-F]

2 (b). The words "copies thereof" in sub-s. (3) of s. 81 read in the context of sub-s. (2) of s. 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. Sub-s. (2) of s. 83 applies only to a schedule or annexure which is an integral part of the election petition and not a document which is produced as evidence of the averments of the election petition. [663-B-C, 656 F-G]

In the instant case, the test to be applied in determining whether the photograph referred to in the election petition is an integral part of the election petition or was merely a piece of evidence in proof of the allegations contained therein, depends on whether it is a part of the pleadings. The photograph which gives a visual description of the fancy banner, the cost of which at a mere look would show that the expenditure in setting up each such banner would be Rs. 1000/- or more, was not merely a document accompanying the election petition but was a part and parcel of the pleading contained therein. The averment contained in the election petition would be incomplete as regards the allegation of the corrupt practice committed by the appellant without a

A copy of the photograph being supplied with a copy of the election petition. Merely alleging that the appellant had put up fancy banners would be of no avail unless there was a description of the banner itself together with the slogan. The failure to supply a copy of the photograph along with a copy of the election petition to the appellant amounted to non-compliance of sub-s. (3) of s. 81, [661 B, 654 F, 661 C, 654 C, 655 D, 663 A-B, F-G]

Sahodrabai Rai v. Ram Singh Aharwar, [1968] 3 SCR 13, held inapplicable.]

B *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, [1964] 6 SCR 213; *Jagat Kishore Prasad Narayn Singh v. Raj Kumar Poddar & Ors.* [1971] 1 SCR 821; *Satya Narain v. Dhruja Ram & Ors.*, [1974] 3 SCR 20 and *Kamalam (M) v. Dr. V.A. Syed Mohamad*, [1978] 3 SCR 446, referred to.

Sharif-ud-din v. Abdul Gani Lone, [1980] 1 SCR 1176, distinguished.

C 3. It is always important to bear the distinction between mandatory and directory provisions of a statute. The general rule of interpretation is well-known and it is but an aid for ascertaining the true intention of the legislature which is the determining factor and that must ultimately depend on the context. The question as to whether a statute is mandatory or directory, depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these must be ascertained not only from the words used, but also by considering its object and consequences which would follow from construing it one way or the other. An absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially. An enactment in form mandatory might in substance be directory and the use of the word "shall" does not conclude the matter. [645 E-H, 646 A-C]

E *N.P. Ponnuswami v. Returning Officer, Namakkal*, [1952] SCR 218; *Wolverhampton New Water Works Company v. Hawkesford*, [1859] 6 CB (NS) 336 at 356; *Jagan Nath v. Jaswant Singh & Ors.*, [1954] SCR 892; Maxwell on the Interpretation of Statutes, 12th Edn. p. 314; Crawford on 'Statutory Construction' p. 516; *State of U.P. v. Manbodhan Lal Srivastva*, [1958] SCR 533; *State of U.P. & Ors. v. Babu Ram Upadhyaya*, [1961] 2 SCR 679; *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur*, [1965] 2 SCR 970 and *Montreal Street Railway Company v. Normandin* LR [1917] AC 170, referred to.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 38(NCE) of 1981.

G Appeal by Special leave from the judgment and Order dated the 1st January, 1980 of the Madras High Court in Application No. 4309 of 1980 in Election Petition No. 17 of 1980.

AND

H Special Leave Petition (Civil) No. 1580 of 1981

From the Judgment and Order dated the 13th January, 1981 of the Madras High Court in Election Petition No. 13 of 1980,

AND

Special Leave Petition (Civil) No. 5178 of 1981. **A**

From the Judgment and Order dated the 8th July, 1981 of the Madras High Court in Application No. 1967 of 1981 in Election Petition No. 14 of 1980. **B**

AND

Civil Appeal No. 4216(NCE) of 1982.

Appeal by Special leave from the Judgment and Order dated the 22nd October, 1982 of the Madras High Court in Application No. 265 of 1981 in Election Petition No. 5 of 1980. **C**

AND

Civil Appeal No. 1170 of 1981. **D**

Appeal by Special leave from the Judgment and Order dated the 4th February, 1981 of the Madras High Court in Application No. 189 of 1981 in Election Petition No. 7 of 1980. **E**

IN CIVIL APPEAL NO. 38/81

G. Ramaswamy, K. Rajendra Chowdhury, N.A. Subhramanyam and Mahabir Singh for the Appellant.

N.T. Vanamalai, R.K. Garg, V.J. Francis and Bhaskar Shankar for the Respondent. **F**

A.V. Rangam for Respondent No. 10.

A.T.M. Sampath for the intervener. **G**

IN SLP (C) NO. 1580 OF 1981

C.S. Vaidyanathan for the Petitioner.

A.T.M. Sampath for Respondent No. 1. **H**

A.V. Rangam for Respondent No. 2.

IN SLP(C) NO. 5178 of 1981

A

K.R. Nambiar for the Petitioner.

P.N. Ramalingam for the Respondent.

B

IN C.A. NO. 1170 of 1981

G. Ramaswamy and *A.S. Nambiar* for the Appellant.

A.T.M. Sampath for Respondent No. 1.

C

A.V. Rangam for Respondent No. 2.

IN CA. NO. 4216 of 1980

A.S. Nambiar and *P. Parmeswaran* for the Appellant.

D

A.T.M. Sampath for Respondent.

A.V. Rangam for Respondent.

E

The Judgment of the Court was delivered by

F

SEN J. These appeals by special leave and the connected special leave petitions from the judgment and orders of the High Court of Madras raise the same question and therefore they are disposed of by this common judgment. In Civil Appeal No. 38 (NCE) of 1981, there is a further question involved.

G

The facts are more or less similar in all these appeals, except that in Civil Appeal No. 38(NCE) of 1981 there are certain additional facts. It will suffice for our purposes to set out the facts giving rise to that appeal.

H

At the last general election to the State Legislative Assembly of Tamil Nadu from the Anna Nagar Assembly Constituency No. 8 held in May 1980, the appellant, M. Karunanidhi, leader of the Dravida Munnetra Kazhagam party, contested as a candidate of that party and secured 51290 votes. As against this, the respondent Dr. H.V. Hande sponsored as a candidate by the All India Anna Dravida Munnetra Kazhagam secured 50591 votes. On June-1, 1980

the appellant, M. Karunanidhi, was consequently declared elected by a margin of 699 votes. The last date for filing an election petition to challenge his election was July 16, 1980. On July 14, 1980 the respondent, Dr. H.V. Hande, filed an election petition under s. 81 read with s.100 of the Representation of People Act 1951 (for the sake of brevity hereinafter referred to as 'the Act') challenging the election of the appellant on various grounds. The election petition was accompanied by a pre-receipted challan prepared by the Accounts Department of the High Court on the basis of a lodgment schedule initialled by the Assistant Registrar II, High Court, showing that a sum of Rs. 2,000 had been credited on July 11, 1980, to the account of the Registrar, High Court, Madras, in the Reserve Bank of India, Madras, as security for costs along with the lodgment schedule signed by the Assistant Registrar II.

The respondent pleaded, *inter alia*, in paragraph 18 of the petition that the appellant was guilty of corrupt practice under sub-s.(6) of s. 123 of the Act by incurring or authorising expenditure in contravention of s. 77. It was alleged that he had failed to disclose certain items of expenditure in his statement of election expenses filed by him in connection with the election as detailed in subparagraphs (a) to (e) of paragraph 18 of the petition. The allegation in paragraph 18(b) related to an expenditure of about Rs. 50,000 in erecting fancy banners throughout the constituency and it was alleged that there were such fancy banners about 50 in number, the cost of each banner being not less than Rs. 1,000. It was averred in paragraph 18(b) that a photograph of one such banner was filed along with the petition. Admittedly, though the respondent had filed with the election petition a photograph of one such banner, a copy of the photograph was not annexed to the copy of the petition furnished to the appellant.

On October 30, 1980 the appellant filed his written statement. He pleaded, *inter alia*, that the election petition was liable to be dismissed *in limine* under sub-s. (1) of s. 86 due to non-compliance with the requirements of sub-s.(1) of s.117 of the Act read with rule 8 of the Madras High Court (Election Petitions) Rules, 1967, for the reason that there was no deposit of Rs. 2,000 in cash in the High Court as security for costs, and also for non-compliance with the requirements of sub-s.(3) of s. 81 of the Act as the copy of the election petition served on the appellant was not accompanied by a copy of the photograph of the alleged fancy banner annexed to the

A petition, as alleged in paragraph 18(b) of the petition. The appellant accordingly raised a preliminary objection as to the maintainability of the election petition.

B The High Court by its order dated December 1, 1980, overruled both the preliminary objections. In regard to the objection based on sub-s.(1) of s. 117 of the Act read with Rule 8 of the Madras High Court (Election Petitions) Rules, 1967 (for short 'the Election Petitions Rules'), the High Court held that a sum of Rs. 2,000 as security amount had been deposited by the respondent in the Reserve Bank of India to the credit of the Registrar, High Court, at the instance of the High Court, and in accordance with the procedure followed for deposit of amounts in court. In reaching that conclusion, the High Court relied upon the lodgment schedule presented by K. Subramaniam, counsel for the respondent, which had been prepared in the Registry by the Assistant Registrar II, and the challan in triplicate prepared by the Accounts Department of the High Court and signed by the official referee specifying the amount and the date within which it had to be deposited. It held that the requirements of sub-s.(1) of s. 117 of the Act read with rule 8 of the Election Petitions Rules for the making of the deposit of Rs.2,000 as security for costs in the High Court were mandatory but the manner of making such deposit was directory and as the amount of Rs. 2,000 had, in fact, been deposited to the credit of the Registrar, High Court, within the time allowed therefor, there was substantial compliance with the requirements of sub-s. (1) of s.117 of the Act. As regards the objection based on the non-supply of a copy of the photograph of the fancy banner adverted to in paragraph 18(b), the High Court relying upon the decision of this court in *Sahodrabai Rai v. Ram Singh Aharwar*,⁽¹⁾ held that the banner could not be treated to be an integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banners erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a breach of the provisions contained in sub-s.(3) of s. 81 of the Act. These findings were reached by the High Court on the basis of the affidavits filed by the parties and the material on record. The High Court had also before it a report from the Registry as to the procedure followed with regard to Court deposits :

(1) [1968] 3 SCR 13.

"Any person desirous of paying money into Court shall present a lodgement schedule, duly vouched by the concerned Section regarding the quantum and the time limit, and initialled by the Officers of Original Side or Appellate side as the case may be, to the Accounts Department for the issue of a Challan to enable the party to make the payment into Reserve Bank of India, Madras to the credit of the case concerned. On the presentation of the Lodgement Schedule to the Accounts Department a Challan in triplicate specifying the amount and the date within which it should be paid will be issued by the Accounts Department to the person, desirous of making such payment, who will deliver the Challan to the Bank. The Bank in turn after deposit deliver one part of the Challan duly signed to the person making the payment. On the production of the Challan, the Accounts Department will make necessary credit entries in the ledgers and the receipt registers. The remaining two parts of the Challan are sent by Reserve Bank of India, Madras to Pay and Accounts Office, which in turn sends one part of it to this Office. Sometimes it takes about one or two months to receive the said Challan from the Pay and Accounts Office. In cases where advocates do not produce one part of Challan in Accounts Department, credit entries are made on the strength of the Challan from Pay and Accounts Office and the pass book from the Reserve Bank of India, Madras.

Official receipt for such deposits are issued under the signature of the Assistant Registrar (Original Side) for Original Side Deposits and of the Deputy Registrar for Appellate Side Deposits to such of those parties who produce one part of the Challan and make a request for official receipt to that effect.

It is also submitted that Accounts Department will not receive cash without specific orders to that effect.

This is the procedure that is being followed by the Accounts Section of High Court with regard to Court Deposits."

It is against this order of the High Court that this appeal was filed. The appeal was first heard in April 1981, and this Court by

A its order dated April 2, 1981, remitted back the issue with regard to the alleged non-compliance with the requirements of sub-s.(1) of s. 117 read with rule 8 of the Election Petitions Rules to the High Court for a decision afresh, as it was felt that the point raised was primarily a matter of evidence, but the parties had unfortunately not led any evidence on the point. It accordingly directed the High Court
B to record the evidence that may be adduced as regards the practice and procedure followed by the High Court in regard to the making of an election petition under s. 81 of the Act and the manner in which the security amount of Rs. 2,000 was deposited in the High Court in compliance with the requirements of sub-s.(1) of s.117 of the Act read with rule 8 of the Election Petitions Rules.

C

After the issue was remitted, the High Court allowed the parties to lead their evidence both oral as well as documentary and has recorded its findings dated July 20, 1981. The High Court adhered to its earlier view that on a construction of sub-s. (1) s. 117 of the
D Act, the factum of making of deposit of Rs. 2,000 as security for costs in the High Court was mandatory but the manner of making such deposit was directory and further held that although there was no strict or literal compliance with the requirements of rule 8 of the Election Petitions Rules, there had been substantial compliance with the requirements of sub-s.(1) of s.117 of the Act, in that the
E requisite amount of Rs. 2,000 had actually been deposited to the credit of the Registrar, High Court, in the Reserve Bank of India on July 11, 1980, that is, before the election petition was filed on July 14, 1980, and the same was available for payment of costs. In the
F connected cases also, the High Court reached the same conclusion after taking evidence of the respective parties.

It appears from the evidence adduced in all these cases that after the general elections to the State Legislative Assembly of Tamil Nadu, the then Chief Justice Ismail, C.J., nominated K.S. Natarajan (P.W. 4) Assistant Registrar II, to deal with all election petitions filed under s. 81 of the Act. The evidence of P.W. 4 shows that he met the officer in charge of the Accounts Department of the High Court and ascertained the procedure to be followed for making the security deposit of Rs. 2,000/- in cash in the High Court. He was informed by the officer in charge that the party filing the election petition should bring the lodgment schedule duly filed and that P.W.4 should initial it and then the lodgment schedule had to
G
H

be taken to the Accounts Department. He was told that the Accounts Department would prepare a challan in triplicate and hand over the same to the party for depositing the money in the Reserve Bank of India in the name of the Registrar, High Court, and that the duplicate challan must be filed along with the election petition. He deposed that the same procedure was adopted in all the cases. The lodgment schedule, Ex P-2B, prepared by K. Subramaniam (P.W.6), counsel for the respondent, had been initialled by him and that he had also put the date July 14, 1980 by which date the deposit had to be made. K. Subramaniam (P.W.6), counsel for the respondent, stated that the respondent had given him the amount of Rs. 2,000 in the first week of July 1980, and accompanied by an authorised representative of the respondent, he took the lodgement schedule Ex. P-2B to K.S. Natarajan (P.W.4), Assistant Registrar II, who initialled the same and indicated the date by which the deposit was to be made. He then took the lodgment schedule to the Accounts Department where S. Seturaj (P.W.1) working as challan issuing clerk, prepared the challan in triplicate. Thereafter, he took the challan in triplicate to the Reserve Bank of India and deposited the amount of Rs. 2,000 in cash in the name of the Registrar, High Court, and the duplicate copy of the challan was handed over to him. The duplicate copy of the challan, Ex. P-2C, bears the seal of the Reserve Bank of India, with the endorsement 'received in cash' and is dated July 11, 1980. The duplicate copy of the challan Ex P-2C, was filed along with the election petition.

At this point, it is necessary to refer to the entries of the duplicate copy of the challan. Column 1 of the challan bears the heading "By whom paid and name (or designation) and address of the person on whose behalf money is paid" and the entry reads "Registrar, High Court, Madras" and bears the seal of the High Court. Column 2 reads "On what account with authority, if any" and the entry bears the name of the counsel for the election petitioner and mentions that the amount was deposited as security deposit for the election petition. Column 3 bears the heading "Amount" and the amount deposited in each case is entered as Rs. 2,000. The last column bears the heading "Head of account" and gives the head as "P.D.A/c, Registrar, High Court, Madras". A bare reading of the challans would show that the amount of Rs. 2,000 as security for costs was received by the High Court and credited to its own account. When the High Court asked the counsel for the election

A petitioner to credit the amount in the Reserve Bank along with the pre-receipted challan, it must be deemed that the Reserve Bank was acting as an agent of the High Court. All the challans bear the seal of the Reserve Bank of India with the endorsement "received in cash".

B Article 329(b) of the Constitution provides that no election to either House of Parliament or to the House or either House of the Legislature of the State shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or under any law made by the appropriate Legislature. The Representation of the people Act, 1951 is a law made by Parliament under Art. 327 of the Constitution to provide for adjudication of disputes regarding such elections. Part VI of the Act is headed "Disputes regarding elections" and Chapter II in that Part deals with the presentation of election petitions to the High Court. Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. Section 80A provides that the Court having jurisdiction to try an election petition shall be the High Court. In *N.P. Ponnuswami v. Returning Officer, Namakkal*,⁽¹⁾ this Court restated the principle that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. The Court having regard to the *non obstante* clause in Art. 329 (b) held that the Act having furnished a complete Code for challenging an election, the election must be challenged in the manner provided. The Court relied upon the dictum of Willes, J. in *Wolverhampton New Water Works Company v. Hawkesford*⁽²⁾ which has become classical. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

G As observed by this Court in *Jagan Nath v. Jaswant Singh & Ors.*,⁽³⁾ an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power. It also added that :

H "It is a sound principle of natural justice that the success of a candidate who has won at an election should not be

(1) [1952] SCR 218

(2) [1859] 6 CB (NS) 336 at 356

(3) [1954] SCR 892

lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law."

At the same time, the Court added a note of caution :

"It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the tribunal entrusted with the trial of the case is not affected."

There are two questions that fall for determination. The first is whether the election petition filed by the respondent under s.81 read with s.100 of the Representation of the People Act, 1951 was liable to be dismissed *in limine* under sub-s. (1) of s.86 on the ground that there was non-compliance with the requirements of sub-s. (1) of s.117 of the Act read with r.8 of the Election Petitions Rules. The second is whether the election petition is also liable to be dismissed under sub-s. (1) of s.86 of the Act inasmuch as the copy of the election petition furnished to the appellant was not accompanied by a copy of the photograph of the fancy banner referred to in paragraph 18(b) of the petition as required by sub-s. (3) of s.81 of the Act.

In view of the arguments addressed to us, it is necessary to set out a few of the relevant provisions which bear upon the points raised. S.81 deals with presentation of election petitions. It runs :

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

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

B (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."

C Section 82 which is the next section lays down who shall be parties to an election petition. We need not refer to this section in detail since we are not concerned with it. S.83 is however material and it provides what shall be the contents of an election petition. It reads :

D "83 (1) An election petition—

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

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

F (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :

G Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

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

The next chapter which is Chapter III deals with the trial of election petitions but here we are concerned only with sub-s. (1) of

s. 86 which interdicts that the High Court shall, in certain circumstances, dismiss an election petition *in limine*. Sub-s. (1) of s. 86 provides as follows : A

“86 (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. B

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

Sub-s. (1) of s. 117 which is important for our purposes is in these terms : C

“117. *Security for costs—*

(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for the costs of the petition.” D

Rule 8 of the Madras High Court (Election Petitions) Rules, 1967 framed by the High Court under Art. 225 of the Constitution which is also important for the purposes of these cases provides as follows : E

“8. An Election Petitioner before presenting his Election Petition shall deposit in the High Court in cash a sum of two thousand rupees towards security for costs as provided for under Section 117 of the Act and shall produce the receipt of the Registrar for the same at the time of presentation of the petition.” F

Rule 12 of the Election Petitions Rules is also relevant and reads : G

“12. Subject to the foregoing rules and to the extent they are not inconsistent with the provisions of the Act the Rules of the High Court, 1956 (Original Side) shall, as far as practicable, be observed in all Election Petitions and all applications taken in respect of them.” H

A Taking up the contentions in the order in which they were advanced, we shall first deal with the submission that there was non-compliance with the mandatory requirements of sub-s. (1) of s. 117 of the Act read with r.8 of the Election Petitions Rules framed by the High Court, which is common to all these cases. The factum of deposit of Rs. 2000/- in each of these cases on the strength of pre-receipted challans issued by the Accounts Department of the High Court in the Reserve Bank of India to the credit of the Registrar, High Court, Madras as security for costs well within the period of limitation for filing the election petition is not in dispute and the controversy turns on the question whether the deposit of the security amount was in accordance with the rules of the High Court.

C There are different sets of rules framed by different High Courts under Art. 225 of the Constitution regulating the practice and procedure to be observed in all matters coming before the High Court in exercise of its jurisdiction under s.80A of the Act. The words "in accordance with the rules" must therefore connote "according to the procedure prescribed by the High Court".

D The mode of making deposit must necessarily be an internal matter of the concerned High Court.

E In support of this appeal, learned counsel for the appellant contends that the provisions of sub-s. (1) of s.117 of the Act are mandatory, non-compliance of which will entail dismissal of the election petition *in limine* under sub-s. (1) of s.86 of the Act. It is urged that no distinction can be drawn between the requirement as to the making of a security deposit in the High Court under sub-s. (1) of s.117 and the manner of making such deposit and sub-s. (1) of s.117 cannot be dissected into two parts, one part being treated as mandatory and the other as directory. It is further urged that the words "in accordance with the rules of the High Court under sub-s. (1) of s.117" were as much a mandatory requirement as the requirement that the election petitioner shall, at the time of presenting an election petition, deposit in the High Court a sum of Rs. 2000/- as security for the costs of the petition. There is therefore no warrant for the view taken by the High Court that the factum of deposit of the security amount of Rs. 2000/- in the High Court was mandatory and not the manner in which the security deposit was made. It is also urged that r.8 of the Election petitions Rules framed by the High Court under Art. 225 to regulate the mode of making deposit must be read as forming part of sub-s.(1) of s.117 by incorporation and therefore the only manner prescribed is by

G

H

making deposit in cash with the Registrar. When a statute requires that something shall be done in a particular manner or from expressly declaring what shall be the consequence of non-compliance with it, the requirement must be regarded as imperative. Having regard to the definite stand taken by the respondent that he had complied with the requirements of r.8, it is not permissible to fall back on the provisions contained in order 31 of the Madras High Court Rules relating to deposit of suitors' money. The last submission is that in view of the finding reached by the High Court that there was no strict or literal compliance of r.8, the election petition must be dismissed. Even if the rule of substantial compliance applies, it is clear on evidence that there has been no compliance at all much less any substantial compliance. There is intrinsic evidence to show that there has been tampering with the documents. We are afraid, the contention that there was no compliance of sub-s. (1) of s.117 of the Act cannot prevail in the light of the well settled principles.

The submissions advanced by learned counsel for the appellant cannot be accepted as they proceed on the assumption that no distinction can be drawn between the requirement as to the making of a deposit in the High Court under sub-s. (1) of s.117 and the manner of making such deposit. There was considerable emphasis laid by learned counsel that sub-s. (1) of s.117 cannot be dissected into two parts, one part being treated as mandatory and the other as directory. The contention is wholly misconceived and indeed runs counter to several decisions of this Court. It is always important to bear the distinction between the mandatory and directory provisions of a statute. Sub-s. (1) of s.117 is in two parts. The first part of sub-s. (1) of s.117 provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court a sum of Rs. 2000/- as security for the costs of the petition, and the second is that such deposit shall be made in the High Court in accordance with the rules of the High Court. The requirement regarding the making of a security deposit of Rs. 2000/- in the High Court is mandatory, the non-compliance of which must entail dismissal *in limine* of the election petition under sub-s. (1) of s.86 of the Act. But the requirement of its deposit in the High Court in accordance with the rules of the High Court is clearly directory. As Maxwell on the Interpretation of Statutes, 12th edn. at p.314 puts it: "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled

A substantially." The rule of construction is well settled and we need not burden the judgment with many citations.

B It is well established that an enactment in form mandatory might in substance be directory and the use of the word "shall" does not conclude the matter. The general rule of interpretation is well-known and it is but an aid for ascertaining the true intention of the Legislature which is the determining factor, and that must ultimately depend on the context. The following passage from Crawford on 'Statutory Construction' at p.516 brings out the rule :

C "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

E This passage was quoted with approval by the Court in *State of U.P. v. Manbodhan Lal Srivastava*,⁽¹⁾ *The State of Uttar Pradesh & Ors. v. Babu Ram Upadhyaya*⁽²⁾ and *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur*.⁽³⁾ The Court in *Manbodhan Lal's* case, (supra) where Art. 320 (3) (c) of the Constitution was held to be directory and not mandatory, relied upon the following observations of the Privy Council in *Montreal Street Railway Company v. Normandih*⁽⁴⁾ :

F "The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed., p.596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such

H

(1) [1958] SCR 533
(2) [1961] 2 SCR 679
(3) [1965] 1 SCR 970
(4) LR [1917] AC 170

that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

In *Manbodhan Lal's case*, (supra) the contention was that the reduction in rank after departmental inquiry was invalid for non-compliance with the requirements of Art. 320 (3) (c) of the Constitution which read literally made it obligatory for the Government of India or a Government of a State to consult the Union Public Service Commission or the State Public Service Commission in all disciplinary matters affecting a person in service of the State. In turning down the contention it was observed by this Court :

"The use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding, or the outcome of the proceeding, would be invalid."

Following the principle laid down by the Privy Council in *Montreal Street Railway Company's case*, (supra) the Court held that Art. 320 (3) (c) itself contemplates three grounds, and the word "shall" appeared in almost every paragraph and every clause or sub-clause of that Article. If it were held that the provisions of Art. 320 (3) (c) were mandatory in terms, the other clauses or sub-clauses of that Article would have to be equally held to be mandatory. If they were so held, any appointments made to the public services without observing strictly the terms of these sub-clauses in cl. (3) of Art. 320 would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter and this could not have been contemplated by the makers of the Constitution. The Court held that if the Article were construed as mandatory, it would cause serious general inconvenience and injustice to persons who had no control over those entrusted with the duty. As the Privy Council itself pointed out, the question whether provisions in a statute are directory or mandatory cannot be decided

- A** by laying down a general rule and in every case the object of the statute must be looked at.

- B** In *Raza Buland Sugar Co. Ltd.'s* case, (supra) the question for consideration was whether the whole of sub-s.(3) of s 131 of the U.P. Municipalities Act, 1916 was mandatory, or the part of it requiring publication in the manner laid down in sub-s.(3) of s.94 was merely directory. Per majority, the Court held that sub-s (3) of s. 131 could be divided into two parts—the first one providing that the proposal and draft rules for a tax intended to be imposed should be published for the objections of the public, if any, and the
- C** second laying down that the publication must be in the manner laid down in sub-s. (3) of s. 94. Considering the object of the provisions for publication, namely, to enable the public to place its view point, the Court found it necessary to hold that the first part of the section was mandatory, for to hold otherwise would be to render the whole procedure prescribed for the imposition of tax nugatory. The second
- D** part of the section was however held to be merely directory. In that case, there was no regularly published local Hindi newspaper but the publication was made in Hindi in a local paper which on the evidence seemed to have good circulation in Rampur. There was, in the circumstances, substantial compliance with the provisions of sub-s.(3)
- E** of s. 94 of that Act.

- There was quite some discussion at the Bar as to the legality and propriety of the procedure adopted in the Madras High Court as to the making of a security deposit under sub-s. (1) of s.117 of the Act. The objection is to the manner of such deposit being made on the strength of pre-receipted challan prepared by the Accounts Department on the basis of the lodgment schedule into the Reserve Bank of India to the credit of the Registrar, High Court, Madras. It was submitted that this was in complete violation of r.8 of the Election Petitions Rules. It is said that r. 8 must be read as forming
- F** part of sub-s.(1) of s. 117 and the only manner prescribed is by making deposit in cash with the Registrar and obtain his receipt therefor. It was urged that it is paradoxical to say that deposit of money into the Reserve Bank to the credit of the Registrar, High
- G** Court, Madras is a sufficient compliance of sub-s.(1) of s.117 when r. 8 provides that the money should be deposited in the High Court in cash, and that is the only mode prescribed under sub-s.(1) of s. 117. We are afraid, we are unable to accept this line of argument.
- H**

A
B
C
D
E
F
G
H
A literal and mechanical interpretation of r.8 would lead to manifest absurdity as it would imply that in every case the election petitioner shall have to pay to the Registrar a sum of Rs. 2,000 in cash towards security for costs as required by sub-s.(1) of s.117 of the Act and obtain a receipt from him therefor. Rule 8 is silent as to how the cash is to be handled. It cannot ordinarily be expected that the Registrar of a High Court would accept the amount of security deposit in cash. The procedure adopted by II Assistant Registrar in directing that the money be deposited to the credit of the Registrar of the High Court in the Reserve Bank of India was in conformity with the requirements of r.8 of the Election Petitions Rules. Inasmuch as r. 8 does not lay down the procedure regulating the manner of deposit of cash, the matter falls to be governed by r.2 of Order 31 of the Madras High Court (Original Side) Rules, 1956 by reason of r. 12 of the Election Petitions Rules. Although Order 31, r. 2 does not in terms apply because Order 31 relates to "Payment into court of moneys to the credit of civil court deposits and account of suitor's money", and though no lodgment schedule can be prepared under r.2 except in pursuance of a decree or order passed by the High Court i.e. in relation to some proceeding pending, or disposed of, by the High Court, still by virtue of r. 12 of the Election Petitions Rules that is the procedure to be adopted for deposit of Rs. 2000 in the High Court in cash i.e. by crediting the amount on the strength of a pre-receipted challan prepared by the Accounts Department on the basis of a lodgment schedule. That was the only procedure applicable and there was nothing wrong in the procedure adopted in making the deposit. When the amount was so deposited with a pre-receipted challan issued by the Accounts Department to the credit of the Registrar of the High Court and the Reserve Bank of India made the endorsement "Received in Cash", it must be regarded that the payment was made in the High Court and the pre-receipted challan bearing the endorsement of the Reserve Bank of India must be treated as the receipt of the Registrar in terms of r. 8, the Reserve Bank acting as an agent of the High Court. We are informed that the same practice and procedure has been followed during the relevant period in all the election petitions filed in the Madras High Court and there was no separate receipt of the Registrar except in one case where the election petition was not tried. We need not dilate on the point any further. It must accordingly be held that there was due compliance with the requirements of sub-s.(1) of s. 117 of the Act read with r. 8 of the Election Petitions Rules.

A The matter is no longer *res integra*. The submission runs counter to the decision of this Court in the well-known case of *K. Kamaraja Nadar v. Kunju Thevar & Ors.*⁽¹⁾ That was a case under the old s. 117 of the Act as it stood prior to its amendment by Act 47 of 1966. It read :

B “The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition.”

C

D In that case, the petitioner enclosed a Government Treasury receipt showing a deposit of Rs.1000 as security for costs in the State Bank of India, Ranchi Branch, but it did not show that the deposit had been made in favour of the Secretary to the Election Commission. A question arose whether the election petition was liable to be dismissed summarily under s.85 or sub-s.(3) of s.90 as the requirements of s. 117 of the Act had not been complied with. The Court analyzed s. 117 and observed that it consisted of three parts, viz : (1) The Government Treasury receipt must show that

E such deposit had actually been made in a Government Treasury or in the Reserve Bank of India. (2) It must show that it had been made in favour of the Secretary to the Election Commission. And (3) it must further show that it had been made as security for the costs of the petition. The question then arose whether the words “in favour of the Secretary to the Election Commission” were mandatory in

F character so that if the deposit had not been made in favour of the Secretary to the Election Commission as therein specified, the deposit even though made in a Government Treasury or in the Reserve Bank of India and as security for costs of the petition, would be invalid and of no avail. This Court held that these words in s. 117 were directory

G and not mandatory in their character and that the essence of the provision contained in s. 117 was that the petitioner should furnish security for the costs of the petition and should enclose along with the petition a Government Treasury receipt showing that a deposit of Rs. 1000/- had been made by him either in a Government

H Treasury or in the Reserve Bank of India to be at the disposal of the

(1) [1959] SCR 583.

Election Commission to be utilized by it in the manner authorized by law and was under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorized by it to receive the same, be he the Secretary to the Election Commission or any one else. If this essential requirement was complied with, no literal compliance was at all necessary with the words "in favour of the Secretary to the Election Commission". Though therefore the making of the deposit and the presentation of the receipt thereof along with the petition was held to be mandatory, this Court held that the form in which the deposit should be made was only directory. This Court rejected the contention that the election petition was liable to be dismissed *in limine* under s. 85 or sub-s.(3) of s. 90 for non-compliance with the requirements of s. 117 of the Act and observed :

"It would be absurd to imagine that a deposit made either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission itself would not be sufficient compliance with the provisions of s. 117 and would involve a dismissal of the petition under s. 85 or s. 90(3). The above illustration is sufficient to demonstrate that the words "in favour of the Secretary to the Election Commission" used in s.117 are directory and not mandatory in their character. What is of the essence of the provision contained in s. 117 is that the petitioner should furnish security for the costs of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India, is at the disposal of the Election Commission to be utilised by it in the manner authorised by law and is under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorised by it to receive the same, be he the Secretary to the Election Commission or any one else."

The same question was dealt with in *Chandrika Prasad Tripathi v. Siv Prasad Chanpuria & Ors.*⁽¹⁾ In that case, security deposit of Rs. 1000/- had been made, but not, in terms, in the name of the Secretary

⁽¹⁾ [1959] 2 Suppl. S.C.R. 527.

A to the Election Commission ; instead, the deposit was made “refundable by order of the Election Commission of India, New Delhi”. The Court held that the objection based on the peculiar wording of the deposit was purely technical. To the same effect are the decisions of this Court in *Om Prabha Jain v. Gian Chand & Anr.*⁽¹⁾ and *Budhi Nath Jha v. Manilal Jadhav*.⁽²⁾ The Court in all these cases followed the decision in *Kamaraja Nadar’s* case, (supra) that s. 117 of the Act should not be strictly or technically construed and that substantial compliance with its requirements should be treated as sufficient.

C In contrast, the decisions in *Charan Lal Sahu v. Nandkishore Bhatt & Ors.*⁽³⁾ and *Aeltemesh Rein v. Chandulal Chandrakar & Ors.*⁽⁴⁾ were cases where the petitioners made no security deposit before filing their election petitions. In *Charan Lal Sahu’s* case, supra, the petitioner applied to the High Court for being absolved from making any security deposit or to reduce the amount required to be deposited under the Act. This Court referred to Art. 329 (b) of the Constitution and held that the petitioner had no right to file an election petition except in the manner provided by the Act. There being no provision to absolve the petitioner from payment of security for costs, this Court held that the Madhya Pradesh High Court was right in rejecting the election petition under sub-s. (1) of s.86 of the Act. In *Aeltemesh Rein’s* case, supra, it was stated in the petition that a security amount of Rs. 2000 was being deposited, but in fact no deposit was made. The Madhya Pradesh High Court dismissed the election petition. On appeal, the petitioner contended that sub-s. (1) of s.117 of the Act was *ultra vires* Art. 329 (b) of the Constitution and therefore the High Court was in error in dismissing the election petition on the ground of non-compliance of the provisions of sub-s. (1) of s.117. This Court repelled the contention and expressed the view that the words “in such manner” in Art. 329 (b) could not be limited in their operation to procedural requirements. The Court held :

G “The provision of law which prescribes that an election petition shall be accompanied by the payment of security amount pertains to the area covered by the manner of the

H (1) [1959] 2 Suppl S.C.R., 516.

(2) 22 ELR 86.

(3) [1974] 1 SCR 294.

(4) [1981] 3 SCR 142.

making of the election petition and is therefore within the authority of Parliament.”

Adverting to the dismissal of the election petition by the High Court, this Court held that the High Court had no option but to dismiss the petition as it was not accompanied by payment of the security deposit for sub-s. (1) of s.86 of the Act clearly provides that the High Court shall dismiss an election petition which did not comply with the provisions of s.81, or 82 or 117 of the Act.

The remaining part of the case is not free from difficulty. There are two questions that arise, namely : (1) Whether the photograph referred to in paragraph 18(b) was a schedule or annexure within the meaning of sub-s. (2) of s.83 and therefore formed an integral part of the election petition and thus the failure to furnish the appellant with a copy of the photograph along with a copy of the election petition amounted to a non-compliance of sub-s. (3) of s.81. (2) Whether the High Court was right in relying upon the decision of this Court in *Sahodrabai Rai v. Ram Singh Aharwar*⁽¹⁾ in holding that the photograph was merely a document filed along with the election petition as a piece of evidence in proof of the allegation contained in paragraph 18(b) and therefore there was no need for the respondent to supply the appellant with a copy of the photograph.

To bring out the points in controversy, the averments in paragraph 18(b) may be set out ;

“18. The Petitioner submits that the first Respondent is guilty of the corrupt practice under Section 123(6) of the Act by incurring and authorising expenditure in excess of the limit of Rs. 35,000/- fixed under Section 77 of the Act. The first Respondent has submitted a statement of election expenses disclosing a total of Rs. 10,125.75 only. A true photostat copy of the Return filed by him is filed herewith as *Annexure-V*. He has, however, failed to disclose the following amount incurred by him in connection with the election, between the date of his nomination and the date of the declaration of the result thereof.

(b) The first Respondent erected fancy banners throughout the constituency and the number of such

(1) [1968] 3 SCR 13.

A banners is about 50. A photograph of one such banner is filed herewith. The cost of each such banner will be not less than Rs. 1000. The expenditure involved in erecting these fifty banners is about Rs. 50,000. It is submitted that the first Respondent has incurred the above said expenditure which added to the amount disclosed in the Return of Election Expenses exceeds the amount fixed under Section 77 (3) of the Act thus amounting to a corrupt practice under Section 123(6) of the Act."

B

C Admittedly, a copy of the photograph was not furnished to the appellant along with a copy of the election petition. The averment contained in paragraph 18(b) would be incomplete without a copy of the photograph being supplied with a copy of the election petition. The averment therein is that the appellant committed a corrupt practice under sub-s.(6) of s.123 of the Act by incurring or authorising expenditure in contravention of s.77. It is alleged that the appellant had set up fancy banners throughout the constituency and the number of such banners was about 50, the cost of each such banner being not less than Rs. 1000 and therefore the expenditure involved in erecting these 50 banners was not less than Rs. 50,000/-, but that the appellant had not disclosed the amount in the return of the election expenses and thus committed a corrupt practice under sub-s.(6) of s.123 of the Act.

D

E

F It is not possible to conceive of the dimension of the large fancy banner unless one has a look at the photograph. The photograph filed with the election petition gives a visual description of the fancy banner, the cost of which at a mere look would show that the expenditure in setting up each such banner would be Rs. 1000 or more. The photograph depicts two election banners. One of them is a huge fancy banner or a hoarding on the left side of the road and the other on the right is a smaller election banner. The fancy banner depicts two groups, and the appellant is present in both. On the left hand top there is a large picture of the appellant with the late Sri Annadurai and at the right hand below there is a smaller picture of the appellant with Smt. Indira Gandhi. The fancy banner shown in the photograph contains an election slogan in Tamil appealing to the electorate to vote for the appellant. This has been translated for us into English and it reads :

G

H

"To

The Electorate in Anna Nagar Constituency

I request you to mark on the Rising Sun and ensure success to enable service to you.

Always your affectionate,

Kalaigarn M. Karunanidhi

Polling Date
31.5.80"

It is true that paragraph 18(b) must be read in conjunction with the opening part of paragraph 18. Though the words "in connection with" do not appear in paragraph 18(b), these words are there in paragraph 18 and therefore it must be taken that the fancy banners were set up in connection with the election. Nevertheless, without being furnished with a copy of the photograph, the averments in paragraph 18(b) would be incomplete as regards the allegation of the corrupt practice committed by the appellant.

We are driven to this conclusion by the mandatory requirement of sub-s. (3) of s. 81 of the Act which is in two parts. The first part of sub-s. (3) of s.81 provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and the second part relates to the manner in which such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. It has already been stated that mandatory provisions must be fulfilled exactly whereas it is sufficient if directory provisions are substantially fulfilled. In *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*,⁽¹⁾ this Court held that (1) if there is a total and complete non-compliance of the provisions of sub-s.(3) of s.81 the election petition might not be "an election petition presented in accordance with the provisions of this Part" within the meaning of s.80 of the Act, and (2) by the expression "copy" in sub-s. (3) of s.81, it was meant not an exact copy but only one so true that nobody can possibly misunderstand it being not the same as the original. In *Ch. Subbarao's* case, *supra*, there was no attestation at the foot of the copies that they were true copies. It was held that the absence in the copy of a note to the effect that it was a 'true copy'

(1) [1964] 6 SCR 213.

A could not detract the copy from being a true copy. The facts and circumstances of the case therefore showed that there had been a substantial compliance with the requirements of sub-s. (3) of s.81 of the Act. The wider question whether sub-s. (3) of s. 81 or a part thereof is mandatory or directory was left open. On the facts of that case the Court held that if there was substantial compliance with the requirements of sub-s. (3) of s.81, the election petition could not be dismissed.

C It was submitted on behalf of the appellant that there was total and complete non-compliance of the requirements of sub-s. (3) of s. 81 and therefore the election petition was liable to be dismissed *in limine* under sub-s. (1) of s.86. The argument to the contrary advanced on behalf of the respondent was that the photograph filed along with the election petition had to be treated as a document in proof of the allegations contained in paragraph 18(b) and not as a part of the election petition. The submission is that there is a distinction "between a schedule or annexure to the petition referred to in sub-s. (2) of s. 83" and "a document which is merely evidence in the case which is annexed to the election petition" and to such a document sub-s. (3) of s.81 is not attracted.

E The preliminary issue and the appeal turn on a short point of construction. The question that arises is whether the words "copies thereof" in sub-s. (3) of s.81 comprehend the election petition proper or do they also include a schedule or annexure annexed thereto. The controversy whether the photograph was a schedule or annexure in terms of sub-s. (2) of s.83 or merely a document only in proof of the allegations in paragraph 18(b) must turn on a construction of sub-s. (3) of s.81 read with sub-s. (2) of s.83. It now appears to be well settled by *Sahodrabai's* case (*supra*) that sub-s. (2) of s.83 applies only to a schedule or annexure which is an integral part of the election petition and not to a document which is produced as evidence of the election petition. In dealing with sub-s. (2) of s.83 of the Act it was observed :

H "We are quite clear that sub-s. (2) of s.83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples

from which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. For example, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof. The pamphlet therefore must be treated as a document and not as a part of the election petition in so far as averments are concerned."

The High Court rests its conclusion on the decision of this Court in *Sahodrabai's* case, *supra*, but that decision, in our opinion, is inapplicable to the facts and circumstances of the present case. In *Sahodrabai's* case (*supra*) an election petition was filled together with a pamphlet as annexure thereto. A translation in English of the pamphlet was incorporated in the body of the election petition and it was stated that it formed part of the petition. A preliminary objection was raised that a copy of the pamphlet had not been annexed to the copy of the petition served on the returned candidate and therefore the election petition was liable to be dismissed under sub-s.(1) of s.86 of the Act. The Madhya Pradesh High Court sustained the preliminary objection and dismissed the election petition. On appeal, this Court held that the words used in sub-s. (1) of s. 81 are only "the election petition" and there was no mention of documents accompanying the election petition. Since the election petition itself reproduced the whole of the pamphlet in translation

A in English, it could not be said that the averments with regard to the pamphlet were themselves a part of the petition and therefore the pamphlet had in fact been served on the returned candidate although in a translation and not in the original. The Court then stated that even if it were not so, sub-s. (2) of s.83 of the Act has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition, but in the accompanying schedules or annexures.

C It was observed that the details of averments may be too compendious for being included in the petition and may be set out in the schedule or annexure to the election petition. The Court then gave examples on which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. It then went on to say that such annexures or schedules are treated as integrated with the election petition and copies of them must be served on the returned candidate if the requirement regarding service of the election petition is to be wholly complied with. But that this rule was not applicable to documents which are merely an evidence in the case but which, for reasons of clarity and to lend force to a petition, are not kept back but are produced or filed with the election petition. The Court added :

E "They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof."

F In that view of the matter the Court held that the pamphlet in question had to be treated as a document and not as a part of the election petition so far as the averments were concerned.

It said :

G "It would be stretching the words of sub-s. (2) of s.83 too far to think that every document produced as evidence in the election petition becomes a part of the election petition proper. In this particular case we do not think that the pamphlet could be so treated."

H It follows as a necessary corollary that if the pamphlet had not been incorporated in the body of the election petition, the decision of the Court in *Sahodrabai's* case, supra, would have been otherwise. That precisely is the case here.

In this connection, we may next refer to the decisions of this Court in *Jagat Kishore Prasad Narayan Singh v. Raj Kumar Poddar & Ors.* ⁽¹⁾ and *Satya Narain v. Dhuja Ram & Ors.* ⁽²⁾ In *Jagat Kishore Prasad Narayan Singh's* case, supra, there were serious discrepancies between the original election petition filed in the Court and the copies supplied to the contesting candidates. This Court dismissed the election petition on the ground of non-compliance of sub-s. (3) of s.81 as the copies furnished to the contesting respondents were not true copies and there was divergence between the allegations made in the petition and the allegations made in the copies, and that such divergence was bound to mislead the contesting candidates and prejudice their defence, particularly in a case where the returned candidate is charged with corrupt practice. That is because he must know the nature of the charge against him, so that he may prepare his defence. It was observed : "The law requires that a true copy of an election petition should be served on the respondents. That requirement has not been either fully or substantially complied with."

The next case in point is *Satya Narain v. Dhuja Ram & Ors.* (supra) where the election petition was not accompanied by the requisite number of spare copies for service on the respondent and no schedules were filed along with the petition. When the petition came up for scrutiny, the Deputy Registrar of the High Court asked the election petitioner to remove the defects. Before the date fixed the spare copies were filed and the defect removed. The question before the Court was whether the petition was liable to be dismissed *in limine* under sub-s. (1) of s.86 of the Act for non-compliance of sub-s. (3) of s.81. The importance of the decision in *Satya Narain's* case (supra) lies in the fact that the Court laid down that the first part of sub-s. (3) of s.81 which required that the election petition should be accompanied by as many copies thereof as there were respondents mentioned in the petition, was mandatory in character and non-compliance with it was fatal to the petition in view of sub-s. (1) of s.86.

The decision in *Kamalam v. Dr.V.A. Syed Mohamad*⁽³⁾ may also be referred. What had happened in that case was this. The signature of the election petitioner by way of authentication appeared

(1) [1971] 1 SCR 821.

(2) [1974] 3 SCR 20.

(3) [1978] 3 SCR 446.

A at the foot of the copy of the affidavit but there was no such signature separately appended at the foot of the copy of the election petition. There was a preliminary objection raised that since the copy of the election petition had not been attested by the petitioner under her own signature to be a true copy, there was no compliance with sub-s.(3) of s.81 of the Act and hence the petition was liable to be dismissed *in limine* under sub-s. (1) of s.86 of the Act. In repelling the contention, the Court observed that the second part of sub-s. (3) of s.81 had been complied with upon the view that the copy of the petition and the affidavit filed along with it as required by law constituted one single document and the signature in original of the petitioner in proof of the affidavit satisfied the requirements of sub-s. (3) of s.81 of the Act. In explaining as to what constitutes an election petition for purposes of sub-s. (3) of s.81, it was observed :

D “Now, the first question which arises is as to what constitute an election petition for the purpose of section 81, sub-section (3). Is it confined only to election petition proper or does it also include a schedule or annexure contemplated in sub-section (2) of section 83 or a supporting affidavit referred to in the proviso to section 83, sub-section (1)? To answer this question, we must turn to section 83 which deals with contents of an election petition. Sub-section (1) of that section sets out what an election petition shall contain and provides that it shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso requires that where the petitioner alleges any corrupt practice, prescribed form in support of the allegation of such corrupt practice the election petition shall also be accompanied by an affidavit in the and the particulars thereof. The context in which the proviso occurs clearly suggests that the affidavit is intended to be regarded as part of the election petition. Otherwise, it need not have been introduced in a section dealing with contents of an election petition nor figured as a proviso to a sub-section which lays down what shall be the contents of an election petition. Sub-section (2) also by analogy supports this inference. It provides that any schedule or annexure to an election petition shall be signed by the petitioner and verified in the same manner as an election petition. It is now established by the decision of this Court in *Sahodrabai Rai v.*

E

F

G

H

Ram Singh Aharwar that sub-section (2) applies only to a schedule or annexure which is an integral part of the election petition and not to a schedule or annexure which is merely evidence in the case but which is annexed to the election petition merely for the sake of adding strength to it.”

The test to be applied in determining whether the photograph referred to in paragraph 18(b) is an integral part of the election petition or was merely a piece of evidence in proof of the allegations contained therein, depends on whether it is a part of the pleadings. Upon the view that the photograph was not merely a document accompanying the election petition but was a part and parcel of the pleading contained in paragraph 18(b), it is unnecessary for us to deal with the submission based on order VII, r.14 of the Code of Civil Procedure, 1908. Our attention was drawn to the passage in *Sahodrabai's* case, supra, at p.18 of the Report. The Court observed that under order VII, r.14 where a plaintiff sues upon a document in his possession or power, he is required to file only one copy of the document and not as many copies as there are defendants and therefore a copy of the document is not expected to be deliberate with the copy of the plaint to the answering defendants when summons is served on them and that it would be too strict a reading of the provisions of sub-s. (3) of s.81 and sub-s. (2) of s.83 to lay down that the election law provides anything different. These observations cannot, in our opinion, be read out of context. The decision in *Sahodrabai's* case, supra, was that since the election petition itself reproduced the whole of the pamphlet in a translation in English, the pamphlet filed along with the petition had to be treated as a document and not as a part of the election petition and that being so, the Court observed that it would be stretching the words of sub-s. (3) of s.81 and sub-s. (2) of s.83 too far to think that every document produced as evidence in the election petition becomes a part of the election petition proper.

We would add for the sake of completeness that we have been referred to the decision of this Court in *Sharif-ud-din v. Abdul Gani Lone* ⁽¹⁾ but that decision is not directly in point. One of us (Venkataramiah, J.) had occasion to deal with the corresponding sub-s. (3) of s.89 of the Jammu & Kashmir Representation of the people Act, 1957 which reads :

(1) [1980] 1 SCR 1177.

- A** "Every election petition should be accompanied by as many copies thereof as there are respondents mentioned in the the petition and every such copy shall be attested by the petitioner under his own signature to be true copy of the petition."
- B** In that case, both the copies of the election petition contained the endorsement "Attested true copy, Piyare Lal Handoo, Advocate"; The question arose whether there was a sufficient compliance with the provisions of sub-s. (3) of s.89 of that Act. The Court pointed out that sub-s. (3) of s.89 consists of two parts. The first part
- C** requires that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the second part requires that every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. The first part of the section has been held to be a mandatory requirement by this Court in *Satya Narain's* case (supra)
- D** The Court held the second part also to be mandatory and observed :
- "It is true that sub-s.(3) of s.89 of the Act was purely procedural in character and that ordinarily procedural law should not be given that primacy by courts as would defeat the ends of justice. But if a law even though it may be procedural in character insists that an act must be done in a particular manner and further provides that certain consequences should follow if the act is not done in that manner, the Courts have no option but to enforce the law as it is."
- E**
- F** Upon that view it was held that the attestation of the copies by counsel for the election petitioner as true copies was not a sufficient compliance with the provisions of sub-s. (3) of s.89 of that Act as it required attestation by the election petitioner himself. The decision is an application of the rule that mandatory provisions must
- G** be fulfilled exactly.
- H** It is obvious that photograph was a part of the averment contained in paragraph 18 (b). In the absence of the photograph the averment contained in paragraph 18 (b) would be incomplete. The photograph referred to in paragrape 18 (b) was therefore an integral part of the election petition. It follows that there was total non-compliance with the requirements of sub-s. (3) of s.81 of the Act by failure to serve the appellatant with a copy of the election petition. In

Ch. Subbarao's case, supra, the Court held that if there is a total and complete non-compliance with the provisions of sub-s. (3) of s.81, the election petition could not be treated an "election petition presented in accordance with the provisions of this Part" within the meaning of s.80 of the Act. Merely alleging that the appellant had put up fancy banners would be of no avail unless there was a description of the banner itself together with the slogan.

The conclusion is irresistible that the words "copies thereof" in sub-s.(3) of s.81 read in the context of sub-s.(2) of s.83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. That being so, we are constrained to reverse the judgment of the High Court insofar as it holds that the photograph of the fancy banner adverted to in paragraph 18 (b) could not be treated to be an integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banner erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a violation of the provisions of sub-s. (3) of s.81 of the Act.

For these reasons, all the appeals and special leave petitions except Civil Appeal No. 38 (NCE) of 1981 must fail and are dismissed. Civil Appeal No.38(NCE) of 1981 partly succeeds and is allowed. The judgment of the High Court holding that the amount of Rs. 2000 having been deposited to the credit of the Registrar, High Court in the Reserve Bank of India on the strength of pre-receipted challans issued by the Accounts Department on the basis of a lodgment schedule, there was substantial compliance of the requirements of sub-s. (1) of s.117 of the Act, is upheld. But the judgment of the High Court is set aside insofar as it holds that the failure to supply a copy of the photograph of the fancy banner referred to in paragraph 18 (b) along with a copy of the election petition to the appellant did not amount to a breach of the provisions contained in sub-s. (3) of s.81 of the Act, and instead we hold that the failure to do so amounted to non-compliance of sub-s. (3) of s.81 inasmuch as the photograph of the fancy banner was an integral part of the election petition and therefore the election petition must be dismissed summarily under sub-s. (1) of s.86 of the Representation of the People Act, 1951. We further direct that the High Court shall permit the appellant to withdraw the recrimination petition filed by him under s.97 of the Act in terms of the undertaking given by learned

counsel for the appellant during the course of the hearing of
A the appeal.

The costs throughout shall be borne by the parties as incurred.

H.S.K.

B

*Civil Appeal No. 38/81
partly by allowed.
Petitions & Civil Appeal
Nos. 4216/82 and 1170/81
dismissed.*