

v.

SMT. USHA RANI & ORS. ETC.

February 27, 1984

[S. MURTAZA FAZAL ALI, A. VARADARAJAN AND

RANGANATH MISRA, JJ.]

Representation of the People Act 1951, Sections 81(3) and 86.

Election Petition—Service of true and exact copy of election petition on respondents—Duty of election petitioner—Consequences of failure of—Dismissal in limini of election petition.

Amendment of election petition—Whether permissible.

The respondent filed an Election Petition for setting aside the election of the appellant to the State Legislative Assembly. The appellant filed a petition for rejection of the said Election Petition *in limine* under Section 86 of the Representation of the People Act, 1951 on the ground that the copy of the petition served on him was neither attested to be a true copy nor a correct copy of the original petition, as contemplated by the provisions contained in section 81(3). The case of the respondent-election petitioner was that two sets of copies were filed, one set being correct as required by the Act and the other set incorrect containing vital omissions and mistakes, the appellant having got a correct copy as required by section 81(3) there was compliance with the requirement of the section.

The High Court held that as the respondent had filed correct copies, the provisions of section 81(3) were not violated and it was for the appellant to have chosen the correct copy from the two sets and invoked the doctrine of benefit of-doubt in order to cure the non-compliance of the mandatory provisions of section 81(3), and rejected the application to dismiss the Election Petition.

In the connected appeals, the 1st Respondent had filed separate Election Petitions for setting aside the election of the appellants to the Rajya Sabha. When the said petitions came up before the High Court for hearing an application was made by the respondent for amendment of the original petition by insertion of page 17 which was allowed. The appellants filed petitions before the Election judge for rejecting the Election Petition on the ground that no amendment could be allowed which would have the effect of defeating or bypassing the provisions of section 81(3) of the Act, and that the original petition served on the appellants did not contain page 17 and hence was not the correct and exact copy of the election petition.

The High Court rejected the application to dismiss the Election Petition.

Allowing the Appeals.

HELD : 1. The mandate contained in section 81(3) is clear and specific and requires that every copy of the election petition must be a true and exact copy of the petition. The consequences of this mandatory provision cannot be got over by praying for an amendment of the election petition because that would defeat the very object and purpose of section 81(3). [28 F, 29 B]

In the instant cases, the judgment of the High Court are set aside, and the election petitions dismissed *in limine* under section 86 of the Act. [30 D]

Sharif-ud-Din v. Abdul Gani Lone, [1980] 1 SCR 1177 ; referred to.

2. Section 81(3) and 86 of the Act do not contemplate the filing of incorrect copies and if an election petitioner disregards the mandate contained in section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed *in limine* under section 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of section 81(3) which is sufficient to entail a dismissal of the election petition at the behest of the respondent. [27 B ; C]

3. If an election petitioner files a number of copies, some of which may be correct and some may be incorrect, it is his duty to see that the copy served on the respondent is a correct one. [27 A]

In the instant case, it has not been proved by the respondent that correct copies of the election petition had been filed or, that the appellant got the correct copy and not the incorrect one, in the face of the clear and categorical assertion by him that he did not receive the correct copy. [27 F]

4. The mandate contained in Section 81(3) cannot be equated with s. 537 of the Code of Criminal Procedure which makes certain omissions as a curable irregularity. No such concept can be imported into the election law because the object of the law is that the electoral process should not be set at naught and an elected candidate should not be thrown out unless the grounds mentioned in the Act are clearly and fully proved. [27 D]

5. Parliament in its wisdom has not made any attempt to interfere with the preemptive and mandatory provisions of section 81 (3) resulting in the consequence of dismissal of the petition under section 86 despite the observations in *Satya Narain. v. Dhija Ram & Ors.* [1974] 3 SCR 20. [30 C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3702 (NCE) of 1982.

Appeal by Special leave from the judgment and Order dated the 2nd August, 1983 of the Allahabad High Court in Election Petition No. 28 of 1980.

A
With

Civil Appeal No. 9 of 1983

B Appeal by Special leave, from the Judgment and Order dated the 15th October/1st December, 1982 of the Allahabad High Court in Election Petition No. 1 of 1982.

And

Civil Appeal No. 10 of 1983

G Appeal by Special leave from the Judgment and Order dated the 15th October, 1982 and 1st December, 1982 of the Allahabad High Court in Election Petition No. 1 of 1982

D S. N. Kacker, R.L. Srivastava, Rajesh and V. K. Verma for the Appellants in CA. No. 3702 of 1982.

Appellant in person in CA. No. 10 of 1983.

E M.C. Bhandare and V.K. Verma for the Appellant in CA. 9/83.

Yogeshwar Prasad, Ms. R. Chhabra, Sujat Ullah and K. K. Gupta for the Respondents.

F The Judgment of the Court was delivered by

FAZAL ALI, J. As these appeals involve common points of law, we propose to decide them by one judgment.

G Civil Appeal No. 3702 of 1982

H This appeal arises out of election to '375-Iglas Assembly Constituency, Aligarh to the Uttar Pradesh Legislative Assembly' which was held on May 28, 1980 and the result of which was declared on June 1, 1980, in which the appellant was declared elected. Respondent No. 1, Smt. Usha Rani had also contested the above mentioned election but was defeated. Aggrieved by the result of the aforesaid election, Smt. Usha Rani filed an election petition on

July 15, 1980, at the residence of the Registrar of the Allahabad High Court. Thereafter, on September 24, 1981, the appellant filed a petition before the High Court for rejection of the election petition filed by the respondent, on the ground that the copy of the petition served on him was neither attested to be a true copy nor a correct copy of the original petition, as contemplated by the provisions contained in s. 81 (3) of the Representation of the People Act (hereinafter referred to as the 'Act') and hence the election petition should be rejected *in limine* under s. 86 of the Act. Sub-s. (3) of s. 81 may be extracted thus ;

"81. *Presentation of petitions*—

XX XX XX

(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."

An analysis of this sub-section would reveal that every election petition should be accompanied by as many copies as there are respondents and that every copy should be attested by the petitioner under his own signature. If these requirements are not followed strictly and literally, it would result in dismissal of the election petition without any trial as provided by s. 86 of the Act.

In the instant case, the main point raised by the appellant was that two sets of copies were filed by the election-petitioner in the High Court, one set being a correct and exact one and the other containing vital omissions and mistakes. This position is not disputed by the respondent (election-petitioner). In reply to the preliminary objection raised by the appellant, the respondent rebutted the charge on the ground that the appellant had got a correct copy as required by s. 81 (3) of the Act and, therefore, he could not be heard to complain of any non-compliance with the provisions of the aforesaid sub-section.

After going through the judgment of the High Court it is not clear whether the appellant received the correct copy of the petition or an incorrect one. On the other hand, on the evidence and admitted facts the following circumstances appear to be undisputed ;

A (a) that two sets of copies were filed by the election-petitioner in the High Court,

(b) that one set was correct as required by the Act, and

B (c) the other set was incorrect as it contained vital omissions and mistakes regarding the details of corrupt practices alleged against the appellant.

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

E On going through the relevant evidence we find that there is overwhelming material to show that the appellant did not receive the correct copy and even the respondent in her evidence did not categorically deny this fact. The respondent in her evidence before the Court admitted that out of the 22-23 copies filed by her, 10 copies were correct and were duly signed by her and the rest were left with the counsel with instructions to get them corrected. Therefore, she was not at all sure whether all the copies were corrected or not. She further admitted that in some of the copies she did not initial the various corrections and that Exts. R-1, F R-2, R-3 and R-4 were not out of those 10 copies which had been filed by her along with the election petition at the residence of the Registrar. There is, however, clear evidence to show that the copies which were received by the appellant were Exts. R-1 to R-4, which admittedly were not correct copies of the election petition.

G This being the position, it is manifest that the appellant did not receive the correct copies as contemplated by s. 81 (3) of the Act. The respondent has also not been able to prove that the copies served on the appellant were out of the 10 corrected copies which she had signed and filed. It appears that in view of a large number of copies H of the petition having been filed, there was an utter confusion as to which one was correct and which was not. It is obvious that if an

election-petitioner files a number of copies, some of which may be correct and some may be incorrect, it is his duty to see that the copy served on the respondent is a correct one. A perusal of ss. 81 (3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election-petitioner disregards the mandate contained in s. 81 (3) by filing incorrect copies, he takes the risk of the petition being dismissed *in limine* under s. 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of s. 81 (3) which is sufficient to entail a dismissal of the election petition at the behest.

Hence, the mandate contained in s. 81 (3) cannot be equated with s. 537 of the Code of Criminal Procedure which makes certain omissions as a curable irregularity. No such concept can be imported into the election law because the object of the law is that the electoral process should not be set at naught and an elected candidate should not be thrown out unless the grounds mentioned in the Act are clearly and fully proved. An election dispute concerns the entire constituency and in a parliamentary democracy it is of paramount importance that duly elected representatives should be available to share the responsibility in the due discharge of their duties. That is why the law provides time-bound disposal of election disputes and holds out a mandate for procedural compliance.

In these circumstances, therefore, in the instant case there was absolutely no justification for the learned Judge to have invoked the doctrine of benefit-of-doubt. We are satisfied that it has not been proved by the respondent that she filed correct copies of the election petition of, for that matter the appellant got the correct copy and not the incorrect one, in the face of the clear and categorical assertion by him that he did not receive the correct copy.

For these reasons, therefore, the appeal is allowed and the election petition filed by the respondent is dismissed under s. 86 of the Act. There will be no order as to costs.

Civil Appeal Nos. 9 & 10 of 1983

There two connected appeals also involve more or less the same point of law as was involved in Civil Appeal No. 3702 of 1982, with the difference that in Civil Appeal No. 9 of 1983, J.P. Goyal,

A and in Civil Appeal No. 10 of 1983, Bishamber Nath Pandey, (appellants) were declared elected to the Rajya Sabha on March 29, 1982. An election petition to set aside their election was filed on May 10, 1982 by the Respondent (Raj Narain) making a number of allegations. When the case came up before the Court on 5.7.82, B an application was made by the respondents for amendment of the original petition by insertion of page 17, which was allowed. The appellants filed a petition before the Election Judge for rejecting the election petition of the respondents because no amendment could be allowed which would have the effect of defeating or bypassing the provisions of s.81 (3) of the Representation of the People Act (for short, referred to as the 'Act').

C It may be stated here that Shri Bishamber Nath Pandey has in the meantime been appointed as Governor of Orissa and has resigned his membership of the Rajya Sabha. Therefore, as requested at the Bar, his name is deleted from the category of appellants.

D The main argument on behalf of the remaining appellants was that 11 copies of the election petition were filed on 10.5.1982 and although the copies which were served on them did contain page 17 yet the original petition did not contain page 17 and was sought to be added only by way of approaching the Court for amendment of the petition. It was further contended that the E Court had no jurisdiction to accede to the prayer for amendment of the petition when at the time of filing the petition, the mandate contained in s. 81 (3) was not complied with. In other words, the position seems to be that while the copies which were served on the appellants did contain page 17 yet the original election petition did not contain page 17. This being the admitted position, it could F not be said that the copies served on the appellants were the correct and exact copies of the election petition. The provision of s. 81 (3) is clear and specific and requires that every copy of the election Petition must be a true and exact copy of the petition.

G The learned counsel for the respondent submitted that this is a highly technical objection and did not cause any prejudice to the appellants because so far as their copies were concerned they already contained page 17. Mr. Bhandare, counsel for the appellants, H however, submitted that this is beside the point and does not cure the invalidity of the election petition filed on 10.5.82. The mandate contained in s. 81 (3) enjoins that there should be no difference of

any kind whatsoever barring some typographical or insignificant omissions between the petition filed and the copy served on the respondent. If an entire page is missing in the petition but it is there in the copy served on the respondent, then it is manifest that the copy served was not an exact and true copy of the petition. The consequences of the mandatory provisions of s.81 (3) could not be got over by praying for an amendment of the election petition because that would defeat the very object and purpose of s. 81 (3). It is not disputed that this discrepancy between the election petition and the copies served on the appellants was undoubtedly there. In these circumstances, the High Court was wrong and committed a serious error of law in allowing the amendment of the petition. The High Court should have tried to appreciate the tenor and spirit of the mandate contained in s.81 (3) of the Act. In the case of *Sharif-ud-Din v. Abdul Gani Lone*⁽¹⁾ this Court dismissed the election petition only on the ground that the words "attested to be a true copy" were not signed by the election-petitioner and held that this was not a sufficient compliance with the provisions of s.89 (3) of the Jammu & Kashmir Representation of the People Act, which is the same as s.81 (3) of the Act. In the instant case, the inconsistency is much greater than in *Sharif-ud-Din's case*.

Similarly, in an earlier case of *Satya Narain v. Dhuja Ram & Ors*⁽²⁾, this Court held as follows :—

"If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the 1st part of section 81 (3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under section 86 of the Act".

This view has been consistently taken all through in all the decided cases of this Court so far. Reliance was, however, placed by the counsel for the respondents on the following observations of Dwivedi, J., in *Satya Narain's case* :

(1) [1980] 1 SCR 1177.

(2) [1974] 3 SCR 20.

A

"Our decision restores that primacy of procedure over justice. It make s.86 (1) a tyrannical master. The rigidity of the rule of precedent ties me to its chains. My only hope now is that Parliament would make a just choice between the social interest in the supply of copies by the election petitioner alongwith his election petition and the social interest in the purity of election by excluding s.81 (3) from the purview of s.86 (1) of the Act.

B

The aforesaid observations express a pious wish but do not at all detract from what has been decided in this case and with which the learned Judge also agreed. Despite these observations, the Parliament in its wisdom has not made any attempt to interfere with the peremptive and mandatory provisions of s. 81 (3) resulting in the consequence of dismissal of the petition under s.86 of the Act.

C

D

For the reasons given above, we allow the appeals, set aside the judgment of the High Court and dismiss the election petitions *in limine* under s.86 of the Act. In the circumstances, there will be no order as to costs.

N.V.K.

Appeals allowed.