A P.A. MOHAMMED RIYAS

v.

M.K. RAGHAVAN & ORS.

(Civil Appeal No. 10262 of 2010)

APRIL 27, 2012

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[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

Representation of the People Act, 1951 – s. 83(1) proviso and s. 81 r/w ss. 100, 101 and 123 – Election petition alleging C *corrupt practice – Maintainability of – In absence of affidavit in Form 25 as required under s. 83(1) r/w. r. 94A of Conduct of Election Rules – Held: In the absence of proper verification as contemplated in s. 83, cause of action cannot be said to be complete – Thus the petition is not maintainable – In a* D *case where proviso to s. 83(1) was attracted, a single affidavit would not be sufficient and two affidavits would be required one under Or. VI r. 15(4) CPC and the other in Form 25 – Conduct of Election Rules, 1961 – r. 94A – Code of Civil Procedure, 1908 – Or. VI r. 15 (4).*

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The question for consideration in the present appeal was whether an election petition u/s. 81 r/w ss. 100, 101 and 123 of Representation of the People Act, 1951 is not maintainable for want of complete cause of action in absence of the requisite affidavit in Form 25 as required F **under proviso to s. 83(1) of the Act r/w r. 94A of the Conduct of Election Rules, 1961.**

Dismissing the appeal, the Court

G **HELD: 1. As is evident from Section 83 of Representation of the People Act, 1951, the election petitioner is required to set forth full particulars of any corrupt practice that he alleges and the names of the parties involved therein and it further provides that the**

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same is to be signed by the petitioner and verified in the manner laid down in CPC for the verification of proceedings. The proviso makes it clear that where the election 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 and the schedule or annexures to the petition shall also be signed by the petitioner and verified in the same manner as the petition. In other words, when corrupt practices are alleged in an election petition, the source of such allegations has to be disclosed and the same has to be supported by an affidavit in support thereof. [Para 23] [71-F-H; 72-A]

2. In the present case, although allegations as to corrupt practices alleged to have been employed by the respondent had been mentioned in the body of the petition, the petition itself had not been verified in the manner specified in Or. VI r. 15 CPC. Sub-Section (4) of Section 123 of the Act defines "corrupt practice" and the publication of various statements against the respondent which were not supported by affidavit, could not, therefore, have been taken into consideration by the High Court while considering the election petition. In the absence of proper verification, the election petition was incomplete as it did not contain a complete cause of action. [Para 24] [72-B-D]

3. It is not correct to say that it could not have been the intention of the legislature that two affidavits would be required, one under Or. VI r. 15(4) CPC and the other in Form 25. It is also not correct to say that even in a case where the proviso to Section 83(1) was attracted, a single affidavit would be sufficient to satisfy the requirements of both the provisions. Filing of two affidavits in respect of the self-same matter, would not render one of them redundant. [Para 25] [72-F-H; 73-A]

A **4. In the absence of proper verification, as contemplated in Section 83, it cannot be said that the cause of action was complete. The consequences of Section 86 of the Act come into play immediately in view of Sub-Section (1) which relates to trial of election**
B **petitions and provides that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. Although, Section 83 has not been mentioned in Sub-Section (1) of Section 86, in the absence of proper**
C **verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the Election Petition remained incomplete. The Petitioner had the opportunity of curing the defect, but it chose not to do so. [Para 26] [73-D-F]**

D *Hardwari Lal vs. Kanwal Singh* **(1972) 1 SCC 214: 1972 (3) SCR742;** *M. Kamalam vs. Dr. V. A. Syed Mohammed* **1978 (2) SCC 659: 1978(3) SCR 446;** *R.P. Moidutty vs. P.T. Kunju Mohammad and Anr.* **(2000) 1 SCC 481;** *V. Narayanaswamy vs. C.P.Thirunavukkarasu* **(2000) 2 SCC**
E **294: 2000 (1) SCR 292;** *RavinderSingh vs. Janmeja Singh and Ors.* **2000) 8 SCC 191: 2000 (3) Suppl. SCR 331;** *Azhar Hussain vs. Rajiv Gandhi* **1986 Supp SCC 315;***Samant N. Balkrishna and Anr. vs. George Fernandez and Ors.* **(1969) 3 SCC 238: 1969 (3) SCR 603;** *Dhartipakar Madan Lal*
F *Agarwal vs. RajivGandhi* **(1987) Supp SCC 93;** *Anil Vasudev Salgaonkar vs. NareshKushali Shigaonkar* **(2009) 9 SCC 310: 2009 (14) SCR 10;** *Dev Kanta Barooah vs. Golok Chandra Baruahand Ors.***(1970) 1 SCC 392: 1970 (3) SCR 662 – relied on.**

G *Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore and Ors.* **AIR 1964 SC 1545: 1964 SCR 573;** *F.A. Sapa and Ors. vs. Singora and Ors.* **(1991) 3 SCC 375: 1991 (2) SCR 752;** *Sardar Harcharan Singh Brar vs. Sukh Darshan Singh and Ors.* **(2004) 11 SCC 196: 2004 (5) Suppl.**
H **SCR 682;** *K.K. Ramachandran Master vs. M.V.*

Sreyamakumar and Ors. **(2010) 7 SCC 428: 2010 (7) SCR 712 – referred to.** A

Prasanna Kumar vs. G.M. Siddeshwar **AIR 2010 Karnataka 113**; *V. Narayanaswamy vs. C.P. Thirunavukkarasu* **(2000) 2 SCC 294: 2000 (1) SCR 292**; *Ashwani Kumar Sharma vs. Yaduvansh Singh and Ors* **(1998) 1 SCC 416: 1997 (5) Suppl. SCR 616**; *Raj Narain vs. Indira Nehru Gandhi and Anr.* **(1972) 3 SCC 850: 1972 (3) SCR 841 – cited.** B

Case Law Reference: C

AIR 2010 Karnataka 113	**Cited**	**Para 9**
2000 (1) SCR 292	**Cited**	**Para 11**
1997 (5) Suppl. SCR 616	**Cited**	**Para 12** D
1972 (3) SCR 841	**Cited**	**Para 12**
1978 (3) SCR 446	**Relied on**	**Para 14**
2000 (1) SCC 481	**Relied on**	**Para 14** E
2000 (1) SCR 292	**Relied on**	**Para 15**
2000 (3) Suppl. SCR 331	**Relied on**	**Para 15**
1972 (3) SCR 742	**Relied on**	**Para 17** F
1986 Supp SCC 315	**Relied on**	**Para 17**
1969 (3) SCR 603	**Relied on**	**Para 17**
(1987) Supp SCC 93	**Relied on**	**Para 17** G
2009 (14) SCR 10	**Relied on**	**Para 17**
1970 (3) SCR 662	**Relied on**	**Para 18**
1964 SCR 573	**Referred to**	**Para 25** H

A | **1991 (2) SCR 752** | **Referred to** | **Para 25**

2004 (5) Suppl. SCR 682 | **Referred to** | **Para 25**

2010 (7) SCR 712 | **Referred to** | **Para 25**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10262 of 2010.

From the Judgment & Order dated 17.05.2010 of the High Court of Kerala in Election Petition No. 6 of 2009.

C Krishnan Venugopal, V.K. Biju, Mannan, Gaurav, V.K. Verma for the Appellant.

P.P. Rao, S. Udaya Kumar Sagar, Karan Kanwal, Apeksha Sharan, Utsav Sidhu, Abhimanya T., Vineeti D Sasidharan (for Lawyers'S Knit & Co.) for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The appellant herein, who contested the parliamentary elections held on 16th April, 2009 E for the No.05 - Kozhikode Constituency of the Lok Sabha, challenged the election of the Respondent, Shri M.K. Raghavan, who was the returned candidate from the said constituency, by way of an Election Petition filed under Section 81 read with Sections 100, 101 and 123 of the Representation F of the People Act, 1951, hereinafter referred to as the "1951 Act". The Appellant contested the election as the official candidate of the Communist Party of India (Marxist), hereinafter referred to as the "CPI(M)" led by the Left Democratic Front, hereinafter referred to as the "LDF", whereas the Respondent G No.1 was a candidate of the Indian National Congress and he contested the election as the candidate of the United Democratic Front, hereinafter referred to as the "UDF".

2. The ground on which the election of the Respondent No.1 was challenged was that he had published false H

statements with regard to the Appellant and thereby committed corrupt practice within the meaning of Section 123(4) of the 1951 Act, which provides that the publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false in relation to the personal character, conduct of any candidate, shall be deemed to be guilty of corrupt practice within the meaning of Section 123 of the 1951 Act. The details of the publications have been set out in paragraph 4 of the impugned judgment and are as follows :

""A. "Corrupt practice" by the publication of allegedly false statements in the form of -

(1) Annexure A ("Jagratha" ("Be careful") Newsletter bearing no date) allegedly published on 14-4-2009 and distributed on 15-4-2009

(2) Annexure H (Anonymous notice allegedly published on 14-4-2009 and 15-4-2009

(3) Annexure K (Report in the Mathrubhumi daily dated 31-3-2009 of the speech of M.P. Veerendra Kumar

(4) Annexure L Hand Bill dated 11-4-2009 allegedly distributed on 14-4-2009

(5) Annexure M Wall poster allegedly published on 14-4-2009 & 15-4-2009

(6) Annexure N Wall poster -do- -do-

AND

B. Fielding of other candidates having similarity in names."

3. The highlights of the six publications have also been shown in a tabular chart in paragraph 5 of the impugned judgment and speak for themselves.

A 4. During the hearing of the petition, a question was raised with regard to the maintainability of the petition for want of a complete cause of action. After considering the submissions made on such ground, the High Court accepted the objection taken with regard to the maintainability of the Election Petition
B and dismissed the same.

5. Appearing for the Appellant, Mr. Krishnan Venugopal, learned Senior Advocate, submitted that the learned Single Judge of the High Court had dismissed the Election Petition on two grounds :
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(i) The Election Petition did not make out a complete cause of action in so far as it did not contain averments regarding the knowledge of the Respondent No.1 about the falsity of the statements
D in relation to each of the publications; and

(ii) The false statements did not relate to the personal character or candidature of the candidate within the meaning of false statements in section 123(4) of the Act.
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6. On behalf of the Respondent No.1, a preliminary objection was raised at the time of hearing that the Election Petition was incomplete and was liable to be dismissed as it did not contain the requisite affidavit in Form 25, as required
F under the proviso to Section 83(1) of the 1951 Act read with Rule 94A of the Conduct of Election Rules, 1961. Mr. Venugopal contended that the trial of an Election Petition was a quasi-criminal proceeding which entailed that the statutory requirements for an Election Petition had to be strictly
G construed. Of course, it is also necessary to protect the purity and sobriety of elections by ensuring that the candidates did not secure vote by undue influence, fraud, communal propaganda, bribery or other corrupt practices, as mentioned in the 1951 Act. Mr.Venugopal submitted that the importance
H of Section 123(4) of the above Act lies in the fact that voters

should not be misled at the time of casting of their votes by a vicious and defamatory campaign against candidates. Mr.Venugopal submitted that the common refrain in all these various decisions is that while the requirements of the election laws are strictly followed, at the same time, the purity of the election process had to be maintained at all costs.

7. In addition to the above, Mr. Venugopal urged that the argument which had not been advanced earlier and had been orally raised for the first time before this Court, should not be taken into consideration. The preliminary objection taken at the time of final hearing that the Election Petition was not supported by an affidavit in Form 25, ought not to have been taken by the Respondent No.1 either in his Written Statement or in the Additional Written Statement filed in the High Court, or even in the reply to the Election Appeal before this Court. Accordingly, such an objection ought not to have been entertained and is liable to be ignored. Apart from the above, the learned Single Judge had already taken the Appellant's affidavit on record on 15th December, 2009, wherein it was expressly noted that the Respondent No.1 did not oppose the same being taken on record. Mr. Venugopal submitted that once the affidavit had been taken on record, it was no longer open to the Respondent No.1 to contend that the Election Petition was defective on the ground of absence of affidavit in support thereof. Mr. Venugopal submitted that the affidavit was in substantial compliance with the requirements of Order VI Rule 15(4) read with Order XIX of the Code of Civil Procedure, 1908, hereinafter referred to as "CPC" , and with Form 25 appended to the Conduct of Election Rules, 1961.

8. Mr. Venugopal urged that an Election Petition could not be dismissed in limine on the ground of non-compliance with the requirements of Section 83(1) thereof. It was also pointed out that Section 86(1) of the Act requires dismissal of an Election Petition only when it did not satisfy the requirements of Sections 81, 92 and 117. Section 83 has not been included

A in the said provision. Mr. Venugopal submitted that this Court has repeatedly held that non-compliance of Section 83(1), which includes the requirement of verification under Section 83(1)(c), is a "curable" defect. In support of the said proposition, Mr. Venugopal referred to the decisions of this B Court in (i) *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore & Others* [AIR 1964 SC 1545]; (ii) *F.A. Sapa & Ors. Vs. Singora & Ors.* [(1991) 3 SCC 375]; (iii) *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh & Ors.* [(2004) 11 SCC 196] and *K.K. Ramachandran Master Vs. M.V.* C *Sreyamakumar & Ors.* [(2010) 7 SCC 428]. Mr. Venugopal submitted that the submission made on behalf of the Respondent No.1 that an affidavit in Form 25 is an integral part of an Election Petition has been considered and rejected by a Bench of three learned Judges of this Court in *F.A. Sapa's* D case (supra). Learned counsel submitted that as a general proposition, this Court has held that the affidavit of an Election Petition is not an integral part of a petition.

9. Mr. Venugopal next urged that it had been contended on behalf of the Respondent No.1 that the Election Petitioner/ E Appellant had filed only one affidavit under Order VI Rule 15(4) of the CPC and had not filed a separate and second affidavit in Form 25, as provided under Section 94A of the Conduct of Election Rules, 1961, which is also required to be filed under the proviso to Section 83(1) of the Act in support of an F allegation of a corrupt practice. Referring to the provisions of Section 83(1)(c) of the 1951 Act and Order VI Rule 15(4) CPC, Mr. Venugopal drew our attention to the Proviso to Section 83(1) which states that where the petitioner alleges a corrupt practice, the Election Petition shall "also be accompanied by G an affidavit in the prescribed form". Learned counsel submitted that two affidavits would be necessary only where an Election Petitioner wanted the election to be set aside both on grounds of commission of one or more corrupt practices under Section 100(1)(b) of the Act and other grounds as set out in Section H 100(1). In such a case, two affidavits could possibly be

required, one under Order VI Rule 15(4) CPC and another in Form 25. However, even in such a case, a single affidavit that satisfies the requirements of both the provisions could be filed. In any event, when the Election Petition was based entirely on allegations of corrupt practices, filing of two affidavits over the self-same matter would render one of them otiose, which proposition was found acceptable by the Karnataka High Court in *Prasanna Kumar Vs. G.M. Siddeshwar* [AIR 2010 Karnataka 113]. Learned counsel urged that even non-mentioning and wrong mentioning of a provision in an application is not a ground to reject the application.

10. Mr. Venugopal submitted that the object of the affidavit under the Proviso to Section 83(1) is to fix responsibility with a person making the allegations. Referring to the decision of this Court in the case of *F.A. Sapa* (supra), Mr. Venugopal pointed out that this Court had held that while there is sufficient justification for the law to be harsh who indulged in such practices, there is also the need to ensure that such allegations are made with the sense of responsibility and concern and not merely to vex the returned candidate.

11. Mr. Venugopal also urged that it has been held by this Court in *V. Narayanaswamy Vs. C.P. Thirunavukkarasu* [(2000) 2 SCC 294], that a petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the Election Petitioner is obliged to disclose his source of information in respect of the commission of the corrupt practice. He has to indicate that which of the allegations were true to his knowledge and which to his belief on information received and believed by him to be true. It was further observed that it was not the form of the affidavit but the substance that matters. Mr. Venugopal submitted that in the instant case, contrary to what had been argued on behalf of the Respondent No.1, read as a whole, the affidavit is in substantial compliance with the requirements of Form 25 because it clearly specifies the source of information, personal knowledge as well as the

A names of the person from whom information was received by the Appellant in respect of each of the paragraphs and schedules annexed to the Election Petition.

12. On the question of finding of learned Single Judge that the Election Petitioner failed to state that a complete cause of action was incorrect, since the information sought for was available in different parts of the Election Petition. Mr. Venugopal submitted that the law laid down by this Court is that pleadings should not be read in isolation but must be read as a whole and construed reasonably to determine whether they did state a cause of action. Learned counsel submitted that it is now well-settled that material particulars, as opposed to material facts, need not be set out in the Election Petition and may be supplied at a later date. In this regard, learned counsel referred to the decision of this Court in *Ashwani Kumar Sharma Vs. Yaduvansh Singh & Ors.* [(1998) 1 SCC 416], and certain other decisions which only served to multiply the decisions rendered on the said subject. Further submission was made that a "clumsy drafting" of an Election Petition should not result in its dismissal so long as the petition could make out a charge of a head of corrupt practice when it is read as a whole and construed reasonably, as was observed in the case of *Raj Narain Vs. Indira Nehru Gandhi & Anr.* [(1972) 3 SCC 850].

13. Mr. Venugopal submitted that in the present Election Appeal the requirements of a proper pleading have been fully met but the learned Single Judge failed to appreciate that there is just one single head of corrupt practice alleged under Section 123(4) of the 1951 Act, relating to the publication of false statements about the personal character and candidature of the Appellant that were calculated to prejudice his election. Learned counsel submitted that the onus of proving a particular ingredient of Section 123(4) of the 1951 Act was not very onerous, since the Appellant is only required to plead and prove that the statements made by the Respondent No.1 or his election agent or any person acting with the consent of either the Respondent No.1 or his agent are false. Once such

statement is made on oath, the onus shifts to Respondent No.1 to demonstrate that he was not aware that the statements were not false. Various decisions were cited in support of such submission, to which reference may be made, if required, at the later stage of the judgment. The learned counsel submitted that the learned Single Judge had erred in concluding that the allegations in various publications were not against the personal character or candidature of the Appellant. It was submitted that the statement published in the newspapers was certainly sufficient to effect the private or personal character of the candidate. Mr. Venugopal submitted that the order of the Hon'ble High Court was required to be set aside with the direction to expedite the appeal of the Election Petitioner and to render its verdict at an early date.

14. The submissions of Mr. P.P. Rao, learned Senior Advocate, appearing for the Respondent No.1, were on expected lines. Mr. Rao reiterated the submissions which have been made before the High Court that the Proviso to Section 83(1)(c) of the 1951 Act, requires a separate affidavit to be filed in Form 25 in support of each allegation of corrupt practice made in the Election Petition. Mr. Rao submitted that in the instant case, no such affidavit had been filed at all. He also urged that it was settled law that the affidavit required to be filed, by the Proviso to Section 83(1)(c), is an integral part of the Election Petition and in the absence thereof, such petition did not disclose a cause of action and could not, therefore, be regarded as an Election Petition, as contemplated under Section 81 of the aforesaid Act. Mr. Rao urged that the Election Petition filed by the Appellant was, therefore, liable to be dismissed under Section 86(1) of the 1951 Act read with Order VII Rule 11(a) CPC. Reference was made to the decision of this Court in *M. Kamalam Vs. Dr. V.A. Syed Mohammed* [(1978) 2 SCC 659], in which this Court had held that if the Election Petition did not comply with Section 81 of the 1951 Act, the High Court was required to dismiss the same under Section 86(1) thereof. Learned counsel then referred to the

A decision of this Court rendered in *R.P. Moidutty Vs. P.T. Kunju Mohammad & Anr.* [(2000) 1 SCC 481], wherein also the provision of verification of an election petition fell for consideration and it was held that for non-compliance with the requirements of the Proviso to Section 83(1) of the 1951 Act B and Form 25 appended to the Rules, the election petition was liable to be dismissed at the threshold. It was also held that the defect in verification was curable, but failure to cure the defects would be fatal. It was further held that the object of requiring verification of an election petition is to clearly fix the C responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts.

15. In regard to his aforesaid submission that the Election D Petition must disclose the cause of action and that in respect of allegations in relation to corrupt practice, the same had to be supported by affidavit disclosing source of information and stating that the allegations are true to the petitioner's knowledge and belief by him to be true, Mr. Rao also referred E to two other decisions of this Court in : (i) *V. Narayanaswamy Vs. C.P. Thirunavukkarasu* [(2000) 2 SCC 294] and (ii) *Ravinder Singh Vs. Janmeja Singh & Ors.* [(2000) 8 SCC 191].

F 16. Mr. Rao contended that Section 83(1)(c) of the above Act requires the Election Petition to be signed by the petitioner and verified in the manner specified in the CPC for the verification of pleadings. Referring to Order VI Rule 15 of the Code, Mr. Rao submitted that Sub-Rule (4) requires that the G person verifying the pleading shall also furnish an affidavit in support of his pleadings, which was a requirement independent of the requirement of a separate affidavit with respect to each corrupt practice alleged, as mandated by the Proviso to Section 83(1)(c) of the above Act. Mr. Rao submitted that in the body of the Election Petition, there is no averment that the H

Respondent No.1 believed the statements made in the publications to be false and did not believe them to be true, which, Mr. Rao submitted, was an essential ingredient of the corrupt practice alleged under Section 123(4) of the 1951 Act. Mr. Rao, however, admitted that in ground A of the Election Petition there is a submission based on the advice of the petitioner's counsel as per the verification made in the affidavit filed under Order VI Rule 15(4) CPC, which stands incorporated in Section 83(1)(c) of the 1951 Act by reference. According to Mr. Rao, there was no factual foundation laid for the alleged corrupt practice and the Election Petition was, therefore, liable to be dismissed.

17. Learned senior counsel further contended that omission to state a single material fact would lead to an incomplete cause of action and an Election Petition without material facts relating to a corrupt practice was not an Election Petition at all and such omission would amount to non-compliance of the mandate of Section 83(1)(a) of the above Act, which rendered the Election Petition ineffective. Beginning with the decision of this Court in *Hardwari Lal Vs. Kanwal Singh* [(1972) 1 SCC 214], Mr. Rao also referred to various other decisions on the same lines, including that of *Azhar Hussain Vs. Rajiv Gandhi* [1986 Supp SCC 315], which had relied on the decision in *Samant N. Balkrishna & Anr. Vs. George Fernandez & Ors.* [(1969) 3 SCC 238], *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi* [(1987) Supp SCC 93] and *Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar* [(2009) 9 SCC 310], to which reference may be made, if required, at a later stage.

18. Mr. Rao also urged that no corrupt practice could be made out in terms of Section 123(4) of the 1951 Act, if the allegations did not relate to the personal character, conduct or candidature of the concerned candidate and in support thereof, he relied on the decision of this Court in the case of *Dev Kanta Barooah Vs. Golok Chandra Baruah & Ors.* [(1970) 1 SCC 392] and several other cases, to which reference, if required, may be made at a later stage.

A 19. Attempting to distinguish the decisions cited by Mr. Venugopal, Mr. Rao submitted that all the said case laws were distinguishable on facts and had no application to the facts of the present case. In fact, Mr. Rao submitted that in *F.A. Sapa's* case (supra), it has been clearly indicated that the petition which B did not strictly comply with the requirements of Section 83 of the 1951 Act, could not be said to be an Election Petition in contemplation of Section 81 and attract dismissal under Section 86(1) of the said Act.

C 20. Mr. Rao submitted that the Appellant had not been able to refute the findings of fact recorded by the High Court, which had elaborately considered the decisions of this Court and correctly applied to the facts of the present case. Mr. Rao submitted that the present appeal has no merit and is liable to be dismissed with costs.

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21. Although, during the hearing of the Petition, a question was raised regarding the maintainability of the Petition for want of a complete cause of action and the same was accepted by the High Court which dismissed the Election Petition, the E learned Single Judge of the High Court took the view that the Election Petition did not make out a complete cause of action as it was not in conformity with Form 25 annexed to the Rules.

22. This brings us to the next question that in order to protect the purity of elections in the manner indicated, it was F the duty of the State to ensure that the candidates in the elections did not secure votes either by way of an undue influence, fraud, communal propaganda, bribe or other types of corrupt practices, as specified in the 1951 Act.

G 23. The provisions of Chapter II of the 1951 Act relate to the presentation of election petitions to the High Court and Section 83 which forms part of Chapter II deals with the contents of the Election Petition to be filed. For the purpose of reference, Section 83 is extracted hereinbelow :-

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83. Contents of petition. (1) An election petition- A

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

(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 B

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(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:

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. D

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

As will be seen from the Section itself, the Election Petitioner is required to set forth full particulars of any corrupt practice that he alleges and the names of the parties involved therein and it further provides that the same is to be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of proceedings. What is important is the proviso which makes it clear that where the Election 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 and the schedule or annexures to the Petition shall also be signed by the Petitioner and verified in the same F G H

A manner as the Petition. In other words, when corrupt practices are alleged in an Election Petition, the source of such allegations has to be disclosed and the same has to be supported by an affidavit in support thereof.

B 24. In the present case, although allegations as to corrupt practices alleged to have been employed by the Respondent had been mentioned in the body of the Petition, the Petition itself had not been verified in the manner specified in Order VI Rule 15 of the Code of Civil Procedure. Sub-Section (4) of Section 123 of the 1951 Act defines "corrupt practice" and the C publication of various statements against the Respondent which were not supported by affidavit, could not, therefore, have been taken into consideration by the High Court while considering the Election Petition. In the absence of proper verification, it has to be accepted that the Election Petition was incomplete as it D did not contain a complete cause of action.

25. Of course, it has been submitted and accepted that the defect was curable and such a proposition has been upheld in the various cases cited by Mr. Venugopal, beginning with the E decision in *Murarka Radhey Shyam Ram Kumar's* case (supra) and subsequently followed in *F.A. Sapa's* case (supra), Sardar Harcharan *Singh Brar's* case (supra) and *K.K. Ramachandran Master's* case (supra), referred to hereinbefore. In this context, we are unable to accept *Mr. Venugopal's* submission that despite the fact that the proviso F to Section 83(1) of the 1951 Act provides that where corrupt practices are alleged, the Election Petition shall also be accompanied by an affidavit in the prescribed form, it could not have been the intention of the legislature that two affidavits would be required, one under Order VI Rule 15(4) CPC and G the other in Form 25. We are also unable to accept Mr. Venugopal's submission that even in a case where the proviso to Section 83(1) was attracted, a single affidavit would be sufficient to satisfy the requirements of both the provisions. Mr. Venugopal's submission that, in any event, since the Election H

Petition was based entirely on allegations of corrupt practices, filing of two affidavits in respect of the self-same matter, would render one of them redundant, is also not acceptable. As far as the decision in *F.A. Sapa's* case (supra) is concerned, it has been clearly indicated that the Petition, which did not strictly comply with the requirements of Section 86(1) of the 1951 Act, could not be said to be an Election Petition as contemplated in Section 81 and would attract dismissal under Section 86(1) of the 1951 Act. On the other hand, the failure to comply with the proviso to Section 83(1) of the Act rendered the Election Petition ineffective, as was held in *Hardwari Lal's* case (supra) and the various other cases cited by Mr. P.P. Rao.

26. In our view, the objections taken by Mr. P.P. Rao must succeed, since in the absence of proper verification as contemplated in Section 83, it cannot be said that the cause of action was complete. The consequences of Section 86 of the 1951 Act come into play immediately in view of Sub-Section (1) which relates to trial of Election Petitions and provides that the High Court shall dismiss the Election Petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act. Although, Section 83 has not been mentioned in Sub-Section (1) of Section 86, in the absence of proper verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the Election Petition remained incomplete. The Petitioner had the opportunity of curing the defect, but it chose not to do so.

27. In such circumstances, we have no other option, but to dismiss the appeal.

28. The Appeal is, accordingly, dismissed, but there will be no order as to costs.

K.K.T. Appeal dismissed.