

Ch. Subbarao

Vs

Member, Election Tribunal, Hyderabad

Civil Appeal No. 971 of 1963

(CJI B. P. Sinha, Raghuvar Dayal, K. Subha Rao, J. R. Mudholkar, N. Rajgopala Ayyangar JJ)

13.01.1964

JUDGMENT

AYYANGAR J. –

This is an appeal by special leave against a judgment of the High Court of Andhra Pradesh by which a Writ Petition filed by the 3rd Respondent - K. Brahmananda Reddy - was allowed and an Election Petition filed by the appellant was directed to be dismissed.

The facts giving rise to the proceedings with which the appeal is concerned are briefly as follows : At the General Elections held in the month of February 1962 for the Legislative Assembly - Constituency of Phirangipuram in Guntur District in Andhra Pradesh - the third respondent Brahmananda Reddy and one Chandramouli, the 2nd respondent before us, were the contesting candidates. The polling at the Election took place on the 26th February 1962 and the Returning Officer declared Brahmananda Reddy, elected as having obtained the majority of valid votes. Thereafter, the appellant who is a voter on the rolls of the said Constituency filed an Election Petition before the Election Commission on April 11, 1962 under s. 81 of the Representation of the Peoples Act, 1951, which we shall refer to as the Act. There was no formal defect in the petition, it was accompanied by the requisite number of copies provided for by the Act and also by the treasury receipt evidencing the deposit of the requisite sum for security as provided by s. 117 of the Act. The grounds on which the election was sought to be set aside were various and included inter alia allegations of corrupt practices against the returned candidate as well as his election agent, as also several irregularities in the polling by having the votes of dead voters recorded as well as by double voting. The petition was received by the Commission, who after satisfying itself that it was in conformity with the Act had a copy of the petition published in the Official Gazette on May 17, 1962 as provided by s. 86 of the Act. In due course, an Election Tribunal was constituted and the petition was referred to the Tribunal for trial. The returned candidate - Brahmananda Reddy - filed his Written Statement on September 15, 1962 in which the allegations of fact made in the petition were denied. Besides what might be termed the merits of the allegations in the election petition, Brahmananda Reddy raised by his Written Statement several technical objections pointing out certain defects in the petition. This appeal is not concerned either with these technical defects in the election petition or with defence raised on the merits to the charges that were formulated in it. The merits have yet to be tried, and as regards the technical objections to the petition raised in the Written Statement dated September 15, 1962, they have been disposed of by the High Court and the same are not before us. A few days later on September 24, 1962, Brahmananda Reddy filed a further Statement of objections to the petition raising mostly objections of a technical nature and of these the only objections which is the subject matter of the present appeal is that contained in paragraph 2 which reads, and we quote the material words :

"It is further submitted on behalf of the 1st respondent that the above petition filed u/s 81 of the Act is not an Election Petition..... As the requirements of s. 81(3) of Act are not complied with, the petition is, therefore, liable to be dismissed u/s 90(3) of the Act as it does not comply with the provisions of sec. 81 of the Act....."

This second statement contained a prayer that in view of the technical objections, the maintainability of the petition might be decided as a preliminary issue as the objections went into the root of the matter.

Paragraph (2) extracted earlier is somewhat vague but in the arguments before the Tribunal it was explained as indicating an objection alleging non-compliance with s. 81(3) of the Act which runs :

"Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

We shall refer later to the precise defect which was relied on in support of the case that there was a non-compliance with this provision. The Tribunal acceded to this request and by its order dated November 7, 1962, it decided the preliminary objections including the one just now mentioned in favour of the election petitioner and fixed a date for the trial of the petition on the merits.

Brahmananda Reddy thereupon moved the High Court under Article 226 of the Constitution and prayed for the issue of the Writ quashing this decision of the Tribunal and sought the dismissal of the election petition for non-compliance with the provisions of the Act. The learned Judges of the High Court disallowed the other technical objections raised, but held that the petition did not comply with the requirements of s. 81(3) of the Act and for this reason they directed the dismissal of the Election Petition. The appellant thereafter has filed this appeal after obtaining special leave from this Court.

The subject of controversy in this appeal lies in a very narrow compass. But before we deal with it, it will be convenient to specify the precise defect which the learned Judges have held to be fatal to the maintainability of the Election Petition. As stated earlier, the Election Petition filed was accompanied by the number of copies required to accompany the petition under s. 81(3). The Election Petition was type-written and the copies which accompanied the petition were carbon copies of the type-script, so there was no question of the copies being other than 'true' copies. The copies bore two signature in original of the Election Petitioner authenticating both the contents of the petition as well as the verification thereof. The Petitioner did not however insert the words 'true copy' before or above his signatures. The learned Judges of the High Court considered that this rendered the petition one not in accordance with s. 81(3) of the Act and it is on this ground that the Election Petition filed by the appellant has been dismissed and it is the correctness of this decision that is canvassed in the appeal before us.

In view of the arguments addressed to us it would be necessary to set out a few of the relevant provisions of the Act which bear upon the points urged, but before doing so we shall refer to Art. 329 of the Constitution which provides :

#".....##

329 (b) no election to either House of Parliament or to the House or either House of

the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

In accordance with this, we have the provisions of the Act and particularly those contained in Part VI commencing with s. 79. Section 80 repeats the provision in the Constitution already extracted and enacts :

"No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

Section 81 deals with the presentation of petitions. It runs :

"81. Presentation of petitions. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (i) of section 100 and section 101 to the Election Commission 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.

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.

(2) An election petition shall be deemed to have been presented to the Election Commission :-

(a) when it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf -

(i) by the person making the petition, or

(ii) by a person authorised in writing in this behalf by the person making the petition; or

(b) when it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Before proceeding further it is necessary to advert to the history of the provision in sub-section (3) for learned counsel for the respondents laid some store by the object with which the provision was introduced. As enacted in 1951, s. 81 contained only two sub-sections, the first dealing with the time within which a petition had to be filed and the second with the person or authority and the manner in which the petition had to be presented in order to constitute the presentation one to the Election Commission. At that date the Election Commission, after scrutinizing the petitions to ascertain whether there were any formal defects, had itself to make copies for being served on the

respondents. To avoid this trouble and inconvenience to the Commission and the delay which the making of such copies necessarily involved, sub-section (3) which we have set out earlier was introduced into s. 81 by an amendment affected by Act XL of 1961. The point made, based on this feature, we shall reserve for later discussion.

Section 82 deals with the parties who are to be impleaded in the petition and s. 83 with the contents of the petition. Section 83(1)(c) enacts :

"An election petition 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."

Sub-section (2) requires a similar signature and verification of schedules or annexures to the petition.

Section 85 empowers the Election Commission to dismiss a petition in certain contingencies. It reads :

"85. If the provisions of section 81 or section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition :

Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard."

The succeeding sections deal with the trial of Election Petitions, after making provision for the appointment of an Election Tribunal by s. 86 but what is relevant in the present context is s. 90 and it is enough to quote the material words :

"(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits :

Sub-section (3) reads :

"The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, notwithstanding that it has not been dismissed by the Election Commission under s. 85."

The reasoning on which the learned Judges have based their decision shortly stated is this. It is the requirement of s. 81(3) of the Act that an election petition should be accompanied by the number of copies specified there, and equally so that the copies so accompanying "shall be attested by the petitioner under his own signature to be a true copy of the petition". There was, of course, the signature of the petitioner on the copies, but there was no attestation by him that "it was a true copy". This constituted a non-compliance with the requirements of s. 81 which brought into play the terms of s. 90(3) of the Act which required the Tribunal to dismiss a petition which did not comply with the provisions of s. 81.

Though the learned counsel for the appellant made several submissions, we propose to deal with only one, as the same is sufficient for the disposal of this appeal. This was that in the circumstances of the case there had been a substantial compliance with the requirements of s. 81(3). Before,

however, dealing with it, it will be convenient to refer to some of the submissions made to us by the learned Solicitor-General appearing for the contesting respondents. He submitted to us certain propositions which however we consider really unexceptionable. He said that an election petition was not to be equated to an action at law or in equity, but that as the rights were purely the creature of statute, if the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to waive non-compliance. We consider these propositions are sound and it is in the light of these basic positions that we shall proceed to consider whether the omission to add the words "true copy" in the copies which were admittedly exact copies of the petition, constituted a non-compliance with s. 81(3) as to render the petition liable to be rejected under s. 90(3) of the Act.

Learned counsel for the appellant urged that the jurisdiction of the Tribunal under s. 90(3) to dismiss 'an election petition which does not comply with the provisions of s. 81' was attracted only if there was a defect in the petition itself and that a defect merely in the copy accompanying the petition would not be a case of a "petition not complying with the provisions of s. 81" so as to require or even permit the Tribunal to dismiss the petition. In support of this submission, the difference in the language employed in s. 85 and s. 90(3) of the Act in the matter of making reference to the requirements of s. 81 was adverted to. Besides, it was pointed out that both s. 90(3) and before it s. 90(4) were in their present form making reference to s. 81 when the latter section did not contain the third sub-section relating to copies accompanying the petition, and that the content of s. 90(3) should not be held enlarged because in 1961 sub-section (3) was added to s. 81 particularly because the language of s. 90(3) was not altered to reflect the change.

We are not impressed by this argument. When s. 81(3) requires an election petition to be accompanied by the requisite number of copies, it became a requirement for the presentation of the election petition to the Commission, and therefore a condition precedent for the proper presentation of an election petition. If that is a requirement of s. 81, no distinction can be drawn between the requirements of sub-sections (1) and (2) and of sub-section (3). We might add that if there is a total and complete non-compliance with the provisions of s. 81(3), the election petition might not be "an election petition presented in accordance with the provisions of this Part" within s. 80 of the Act. We are therefore inclined to consider that if there had been such a non-compliance with the requirement of sub-section (3) not merely the Election Commission under s. 85 but the Election Tribunal under s. 90(3) would prima facie not merely be justified but would be required to dismiss the election petition.

This takes us to the point as to whether the requirement of s. 81(3) has been complied with or not. The principal submission of the learned Solicitor-General was based on the language employed in s. 81(3) of the Act read in the light of the direction contained in s. 90(3) which cast on the Tribunal the duty to dismiss an election petition which did not conform to the requirements of the former. In particular, he laid stress on the use of the imperative 'shall' in s. 81(3) when denoting the requirement of "attestation" "under the petitioner's signature" of the copy bearing the signature being a "true copy". It was in this connection that he pointed out that the provision for properly attested copies of the petition accompanying the petition was introduced by the amendment effected in 1961, and the object of Parliament was two-fold; first to save the time and inconvenience which the previous procedure cast on the Election Commission, of itself having to make copies for service on the respondents, and secondly by this means to expedite the conclusion of the trial of an election petition. He submitted that the attainment of these objects would be entirely frustrated if the respondents on whom these copies were served had still to make enquiries to satisfy themselves whether the copies were true copies, without the same being asserted to be so on their face. In

support he referred us to the decisions in *Noseworthy v. Overseers of Buckland etc.* (L.R. 9 C.P. 233) and in *Spice v. Bacon* (L.R. 2 Ex. D. 463) as illustrating the degree of strictness and literal compliance which was insisted on by courts in regard to provisions of like character.

The first of these cases was a registration appeal and the Act provided that a person who objected to a voter's qualification might be heard in support of his objection if he had given notice to the voter and the manner of giving notice was by sending it by post addressed to his place of abode "as described". It was held that a notice by post addressed correctly but not to the address "as described" was not a compliance with the requirement and that in consequence the objector could not be heard. We do not consider that this decision lays down any hard and fast rule or principle of construction which is attracted to every case where a statute calls for interpretation. In ultimate analysis the question is one of the construction of the relevant provision of the particular statute which proceeds on the basis of the words used understood in the context of the statute.

The second case raised a question as to the meaning of the word "true copy" in the Inn-keepers' Liability Act 1863, which required that in order to obtain the benefit of the limitation of liability conferred by the Act, a "copy" of the Act had to be exhibited at the Inn. The copy which was exhibited omitted some material words of the section which was required to be exhibited. The Court held that when a claim was made on the inn-keeper for loss sustained by a guest, he could not claim the benefit of the statute. We are unable to appreciate the relevance of this decision. It turned on what was meant by the word 'copy' in the Act and the portion which was omitted in the copy exhibited was a material portion. There is no doubt that such a 'copy' which differs in material particular from the original is not a 'copy' within the Act. In this connection we might make a reference to the decision of this Court in *Murarka v. Roop Singh* ((1964) 3 S.C.R. 573) where the question as to what is a "copy" is elaborately discussed and some of the English decisions touching this matter have been set out. We shall have occasion to refer to *Murarka's* case later, but for the present we need only add that the decision relied on by the Solicitor-General is not at variance with what this Court has laid down in *Murarka's* case.

The next matter to be considered stems from the submission as regards the object of Parliament in enacting sub-section (3) of s. 81 and that expeditious disposal of election petitions which was the object would be frustrated if substantial compliance with the provision was held sufficient.

We are not impressed with this argument. While we are conscious of the need for expeditious disposal of election petitions, and for the strict enforcement of provisions designed to achieve this purpose, we cannot be oblivious to the circumstance that to read every requirement literally might equally defeat the purpose for which Part VI is intended, viz., that elections are conducted in accordance with the relevant statutory provisions framed to ensure purity and orderliness and that the candidate who has not obtained a majority of valid votes or has obtained it in flagrant breach of the statutory provisions is not held entitled to represent the constituency.

The Court had to deal with a similar question of interpretation of words which appeared mandatory in *Kamaraj Nadar v. Kunju Thevar* ((1959) S.C.R. 583). One of the points which arose for consideration was whether the requirement of s. 117 of the Act which then required the petitioner to enclose with the petition a Government treasury receipt of Rs. 100 in favour of the Secretary to the Election Commission had been complied with by the election petitioner and s. 90(4) of the Act which corresponded substantially to the present s. 90(3) required the Election Tribunal to dismiss a petition which did not comply with the provision, inter alia, of s. 117. The petitioner in that case had made the deposit of the requisite amount in the institutions named in the section but the deposit was

made in favour of the Election Commission and not in favour of the Secretary to the Commission as required by statute. It was contended that the petition did not conform to the provisions of s. 117 and had therefore to be dismissed by the Tribunal. This Court rejected this submission and after adverting to the purpose of the provisions, held that this was fulfilled by the deposit made and that though the requirement as to deposit was mandatory, the same was complied with by the deposit made.

We consider that this reasoning is not irrelevant to the construction of s. 81(3) of the Act either.

In this connection we might refer to the decision of this Court in *Murarka v. Roop Singh* ((1964) 3 S.C.R. 573) in which this Court had to consider a question closely related to that now under debate. That case was also concerned with certain defects similar to what we have in the appeal before us. The defects which were there relied on by the returned candidate as justifying or requiring the dismissal of the Election Petition fell into several categories which included non-compliance with the requirements of s. 81(3). There, as here, the petition was accompanied with the requisite number of copies as specified in s. 81(3) but what was urged was as regards certain defects in the copies filed. These defects fell into two types. First there were two matters which it was stated rendered the copies filed not 'true copies'. If the expressions 'copy' or 'true copy' were read as exact copies of the original, the copies filed did not satisfy that test. The two defects were : (1) The original petition contained the signature of the petitioner at the foot of the petition as required by s. 83(1)(c) of the Act. In the copy filed there was no copy of this signature. To that extent therefore the copy was not an exact copy.

The second matter under this head was that the verification in the copy served on the appellant did not exactly correspond to that in the original in that in the latter one of the paragraphs was stated to be true to the personal knowledge of the petitioner while in the former that paragraph was omitted from this group.

The other type of defect which was claimed to constitute non-compliance with s. 81(3) was that the words 'true copy' with the signature of the petitioner underneath were not put down in one of the annexures to the petition, copies of which were annexed to the copies of the petition filed. The order of the Returning Officer rejecting the nomination paper of the petitioner was filed with the original petition as annexure to it, and certified copies of that order were annexed to the copies of the petition. But this certified copy did not contain an endorsement stating that it was a 'true copy' with the signature of the petitioner.

The High Court had held that so far as the defect in not reproducing the signature in the petition was concerned, it was cured by the fact that every page of the copy of the petition was attested to be a true copy and therefore it would not matter if the last page did not contain the signature. As regards the second, the High Court held that the failure to include the paragraph in the verification was only a clerical defect which had crept in through oversight and as regards the other that it was no defect at all. This decision was upheld by this Court holding that the word 'copy' in s. 81(3) meant a copy which was substantially so and which did not contain any material or substantial variation. By 'copy' in s. 81(3) was meant not an exact copy but only one so true that nobody by any possibility misunderstands it not being the same as the original. Applying this test, this Court came to the conclusion that there was no failure to comply with the last part of s. 81(3), with the result that s. 90(3) of the Act was not attracted.

This Court besides left open the question as to whether any part of s. 81(3) was directly or whether

any portion of it was mandatory. In the present case also, we do not propose to deal with the larger question as to whether s. 81(3) or any portion of it is merely directory. In view of the decision of this Court it would be clear that if there is a substantial compliance with the requirement of s. 81(3), the election petition cannot be dismissed by the Tribunal under s. 90(3). The question then is whether on the facts above-stated, there is or is not a sufficient and substantial compliance with s. 81(3). We have already pointed out that the appellant has complied with the following requirements :

- (1) The petition has been accompanied by the requisite number of copies.
- (2) The copies that accompanied the petition were true copies.
- (3) Each of those copies bore the signatures of the petitioner.

If the signature of the petitioner whose name is set out in the body of the petition is appended at the end, surely it authenticates the contents of the document. Now in regard to this the learned Judges of the High Court themselves observed after referring to the terms of s. 81(3) :

"No doubt, what is necessary is a substantial compliance with the requirement of attestation. For instance, if it is proved that the election petitioner has signed *animo attestandi*, and omitted the words 'true copy' by mistake or inadvertently, there is a substantial requirement of the compliance of s. 81(3). The same may be said if the relative positions of the words 'true copy' and of the signature one below the other are not correct."

They however held that as there was no evidence of the signature having been appended *animo attestandi*, there was non-compliance with s. 81(3). The learned Solicitor-General while not disputing the correctness of the observations of the learned Judges just extracted pressed upon us that the signature at the end of the copy was meant only as a copy of that in the original petition and could not satisfy the requirement as to attestation of the copy. He also submitted that the position would have been different if there were two signatures instead of one at the end of the copy, even if the words 'true copy' were omitted to be put down. In that case, he said, one signature could be treated as representing the copy of the signature on the original and the other might be taken to have been made *animo attestandi*. We do not however consider that there is really need for so much refinement when one has to look at whether there is a substantial compliance with s. 81(3), seeing that a signature in original signatures now found on the copies were intended to authenticate the document to which it is appended, viz., the copy, it would only mean that the copy did not reproduce the signature in the original. There is no compelling necessity to hold that the signatures were merely intended to be a copy of those on the original in order to spell out a non-compliance with the requirement of this provision. If the null was not needed on the copy and a writing copying out the name of the signatory would suffice. The decision of this Court in *Murarka's case* ((1964) 3 S.C.R. 573) is authority for the position that the absence of a writing in the copy indicating the signature in the original would not detract the copy from being a true copy. In the circumstances, we consider that there has been substantial compliance with the requirement of s. 81(3) in the petition that was filed by the appellant and the learned Judges were in error in directing the dismissal of the petition.

The appeal is accordingly allowed and the order of the High Court dismissing the petition is set aside. As owing to the filing of the Writ Petition there has been a considerable delay in the trial of

the Election Petition, we express the hope that the petition would be heard and disposed of at an early a date as is conveniently possible. The appellant will be entitled to his costs here and in the High Court which will be paid by the contesting third respondent.

Appeal Allowed.

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