

SUPREME COURT OF INDIA

Jhammak Lal

Vs.

Laxminarayan Pande

(K.S. Paripoornan, S.P.Bharucha and K. Ramaswamy JJ.)

C.A.No.200 of 1993

03.03.1996

JUDGMENT

PARIPOORNAN, J.

I respectfully agree with my learned Brethren that the appeals should be dismissed. The relevant facts in the appeals are stated in the judgment of my learned Brother Ramaswamy, j. In view of the importance of the question, I would add the following: Sections 81, 83 and 86 of the Representation of People Act (hereinafter referred to as 'the Act'), call for interpretation in this batch of appeals. The said statutory provisions may be usefully quoted. Section 81

"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 (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 no earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election or different, the later of those two dates.

Explanation.--- In this sub- section, "elector" mean 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. (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."

(emphasis supplied)

Section 83.

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

(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

(c) 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: 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.

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

Section - 86 (1)

"86. Trial of election petition--- (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 of section 82 or section 117."

There are innumerable decisions of this Court which have construed the above statutory provisions. It is hardly necessary to refer to all of them. One of the latest decisions is *F.A. Spa & Ors. V. Singora & Ors.* (1991 (3) SCC 375). A mere look of the proviso to Section 83(1) along with Section 83(2) will show that the affidavit referred to in the proviso to Section 83(1) also forms part of the election petition. The election petition is in truth and reality one document, consisting of two parts-- one being the election petition proper and the other being the affidavit referred to in proviso to section 83(1) of the Act. So, the copy of the election petition required to be filed under Section 83(3) read along with Section 83 will include a copy of the affidavit. See: *M. Kamalam v. Dr. V.A. Syed Mohammed.* [AIR 1978 SC 840 (844)]

Qazi, j. In *Purushottam v. Returning Officer, Mravati and Ors.* (AIR 1992 Bombay 227) has, after referring to the above decision of this Court along with the other decision and an unreported decision of the Bombay High Court in Election petition No. 2 of 1990, held that the absence of the endorsement of the Notary on the copy of the affidavit accompanying the election petition renders the copy as not conforming to Section 83 liable to be dismissed for the said omission.

In my opinion, the above decision lays down the law correctly and is squarely applicable herein. In particular, the following observations in the unreported decision of the Bombay High Court in Election petition No. 2 of 1990 quoted in paragraph No. 12 of the judgment of *Qazi, j.* are instructive and furnish sufficient basis to reach the said conclusion. The observations are to the following effect: "50. That, however, leaves one question to be considered and it is whether the copy of the endorsement "Affirmed and signed before me" by the Notary, designation of the Notary and the stamped endorsement regarding the affirmation which he made at the time of the making of the affidavit, were necessary and essential parts of the document and if these are omitted from the copy furnished, that would render the copy, which is furnished, incomplete, and the defect would be so glaring as to negative the inference that the copy was furnished. When Form No. 25 prescribes a particular form and the copy of the affidavit is to be furnished, it seems to me that the endorsement the authority before whom the affirmation was made, together with his official designation and the stamped endorsement, are also essential and without them the copy cannot be regarded as true copy. It is not merely the contents of the affidavit which brings sanctity to the document by the affirmation that has been made, and without the affirmation, it can be no affidavit at all. I am not

impressed by the submission of Shri Bobde that these endorsements were merely formal, because what is required under the proviso to sub-section(1) of S. 83 is an affidavit, and it should be possible for the respondent to ascertain whether, infact, the contents were sworn, affirmed and signed before the Magistrate or the Notary or the person in whose presence the affirmation was made, had authority to administer oath. The respondent will no be in position to point out that the person, who is said to have administered the oath, was not in existence or had no authority to administer the oath or that the signature and the endorsement on the document purported to have been made by the alleged authority were fake. If the copies of the affidavit are no faithful and do not include these endorsements, a valuable right of the respondent is taken away and considering the purpose which the copy of the endorsement would serve, it cannot be said that this portion would not be integral part of the affidavit. Since these details form an integral part of the affidavit, furnishing a copy without that portion would not be furnishing a complete copy, and in that event, merely because the returned candidate made and endorsement that it was a true copy, it cannot be regarded as a true copy. Considering the purpose that is to be served, I do not think that the lapse can be regarded as inconsequential."

(emphasis supplied)

With respect, I would adopt the said observations as may own. The appeals deserve to be dismissed.