

T. M. Jacob

Vs

C. Poulouse and Others

Civil Appeal No. 14555 of 1996

(CJI J. S. Verma, B. N. Kirpal, V. N. Khare JJ)

18.12.1997

ORDER

1. The main point urged by the learned counsel for the appellant is that a copy of the affidavit supplied to the appellant together with the notice of the election petition is not a true copy inasmuch as it does not indicate the name and designation of the Notary nor does it bear the seal and stamp of the Notary. On this basis, it is contended that there is non-compliance of Section 81(3) because of which the election petition is liable to be dismissed at the threshold under Section 86(1) of the Representation of the People Act. Shri Sorabjee, learned counsel for the appellant, places reliance on the decision in *Shipra (Dr.) v. Shanti Lal Khoiwal* ((1996) 5 SCC 181) particularly the opinion of Justice Paripoornan therein read with that of Justice K. Ramaswamy. Shri Sorabjee submits that even though from the supplementary opinion of Justice Bharucha, contained in para 17 of the report, identity on this point may not be explicit but there being no reservation in the opinion of Justice Bharucha on this point, this view is to be construed as the unanimous decision of the three-Judge Bench.

2. Having heard Shri Sorabjee, we are not too sure that the principle indicated in the said decision can apply to the facts of the present case but certain wide observations, in the opinion of Justice Paripoornan and Justice K. Ramaswamy, may support the appellant's contentions. In our opinion, the matter would, therefore, require reconsideration by a larger Bench to decide whether even in a case like the present one, the decision in *Shipra (Dr.) v. Shanti Lal Khoiwal* ((1996) 5 SCC 181) apply.

3. The papers be laid before the Chief Justice for constitution of a larger Bench.

# Court Masters##