

GAHC010227202024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

I.A.(Civil)/3340/2024 In
El. Pet./1/2024

KRIPANATH MALLAH
S/O LATE KRISHNAMOHAN MALLAH,
R/O VILLAGE AND P.O.- BIDYANAGAR, DIST.- KARIMGANJ, ASSAM, PIN-
788734.

VERSUS

HAFIZ RASHID AHMED CHOUDHURY
S/O LATE MAULANA MAQUBUL ALI CHOUDHURY, R/O HOUSE NO.- 18,
P.D. CHALIHA ROAD, HEDEYATPUR, P.O.- SILPUKHURI, P.S.- LATASIL,
GUWAHATI, DISTRICT- KAMRUP (METRO), PIN- 781003.

Advocate for the Petitioner : MR. D SAIKIA, MR P NAYAK

Advocate for the Respondent : MR K P PATHAK, MR. A M AHMED,MR. M K HUSSAIN,MR. M
A CHOUDHURY,MS S SARMA HAZARIKA,MR. I U CHOWDHURY,MR. M DUTTA

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Appellant : Shri D Saikia, Sr. Advocate and
Shri P Nayak, Advocate.

For the Respondent : Shri KP Pathak, Sr. Advocate and
Shri M Dutta, Advocate.

Dates of Hearing : 05.03.2025, 12.03.2025, 17.03.2025.

Date of Judgment : 04.04.2025.

JUDGMENT & ORDER (Oral)

The instant application has been filed under Section 86 of the Representation of the People (ROP) Act, 1951 read with Section 151 of the CPC praying for dismissal of the Election Petition. The connected Election Petition has been filed by the opposite party, as election petitioner under Section 80 read with Sections 80A and 81 of the ROP Act 1951, challenging the election of the present applicant from No. 7, Karimganj, Parliamentary Constituency, Assam, to the Lok Sabha in the General Elections held in the year 2024.

2. In the Election Petition, this Court, vide order dated 22.07.2024 had issued summons whereafter, the present applicant, as respondent, had appeared and had subsequently filed the present application on 28.10.2024. The principal ground of filing this application for dismissal of the Election Petition is that the presentation of the same is not in accordance with law. It has been contended that the Election Petition has been filed in violation of the procedure laid down in Sections 81 and 83 of the ROP Act. It is also the case of the applicant that in the copy served upon them, there were four pages missing and therefore, the applicant has been denied of a reasonable opportunity to defend his case.

3. I have heard Sri D Saikia, learned Senior Counsel assisted by Shri P Nayak and Shri SK Talukdar, learned counsel for the applicant-Returned Candidate. I have also heard Shri KP Pathak, learned Senior Counsel assisted by Shri M Dutta, learned counsel for the opposite party-election petitioner.

4. Shri Saikia, learned Senior Counsel has drawn the attention of this Court to Section 86 of the ROP Act which deals with trial of Election Petitions. He has submitted that under the aforesaid provision of law, the High Court shall dismiss an Election Petition which does not comply with the provisions of Section 81 or 82 or 117. He has submitted that under Section 81, the manner of presentation of an Election Petition has been laid down, whereas Section 82 deals with the parties to such petition and Section 83 with the contents of the petition. He has contended that in the present Election Petition filed, the requirement of verification has not been complied with.

5. He has also highlighted that in the copy of the Election Petition served upon the applicant, the affidavit which is required to be filed under Section 94A of the Conduct of Election Rules, 1961 (hereinafter referred to as the Rules), there is no notarization. He has submitted that the affidavit is required to be filed as per Form-25 in which, there is no notarization.

6. The learned Senior Counsel has also drawn the attention of the Court to various pages, namely, 119, 125, 139, 143, 153, 157, 160, 163, 166, 169, 172, 174, 176, 183, 186, 189, 198, 205, 208, 210, 213, 214, 215 and 217 and has submitted that in those pages, the attestation is missing. He has clarified that though there is an endorsement of being certified, there is a vast difference between the requirement of certification and attestation. He has submitted that while pleadings are required to be attested, the documents have only been certified and not attested and under Section 81(3) of the ROP Act, there is a requirement of attestation. He has also drawn the attention of this Court to Section 94A of the Rules and the format of the affidavit and has contended that the requirement of law has not been fulfilled by the election petitioner.

7. The learned Senior Counsel for the applicant has made a specific complaint that

the copy of the Election Petition served upon the applicant does not contain page nos. 11, 16, 21 and 22. He, in no uncertain terms, has submitted that his client is agreeable to a forensic examination on the aforesaid issue. He has drawn the attention of the Court to page no. 83 of the Election Petition which contains the format of affidavit as per Form-25 and has highlighted that in the copy served, there is no notarization.

8. He has submitted that in the copy served upon the returned candidate, there should be both attestation and certification. He has also submitted that in page no. 141 of the Election Petition, there is no signature of the incumbent under the endorsement "certified to be true". He has also submitted that so far as page no. 184 of the Election Petition is concerned, the same is different from the page served upon the applicant which has been annexed to page no. 216 of the present application. He has submitted that so far as the presentation of the Election Petition is concerned, the requirement of filing the same within 45 days as per Section 81 appears to have been fulfilled. However, the objection is with regard to the copies which are required to be served and the manner in which such copies are to be served. He has highlighted that under Section 83(2), any schedule or annexure is also required to be signed and verified in the same manner.

9. By drawing the attention of this Court to the averments made in paragraph 8 of the application, the learned Senior Counsel has submitted that regarding the allegation of tampering, his client is agreeable to a forensic examination. He has also submitted that since the proceeding has been defectively instituted, the entire efforts of the court would be a futile one as the presentation of the election petition is not in accordance with law. On the aspect of substantial compliance of Section 81(3), the learned Senior Counsel has submitted that so far as the requirement of Section 86 is concerned, substantial compliance is not enough and there has to be a strict

compliance with such requirement as Section 86 itself, lays down that an Election Petition is to be dismissed if it does not comply with the provisions of certain sections, namely, 81 or 82 or 117.

10. By relying upon the judgment of the Hon'ble Supreme Court in ***Dr. (Smti.) Shipra etc. Vs. Shantilal Khoiwal etc.***, reported in **(1996) 5 SCC 181**, the learned Senior Counsel for the applicant has drawn the attention of this Court to the questions framed in the said case which are laid down in paragraph 8. He has relied upon the findings in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13. He has also pressed into service the supplementing view of *Hon'ble Justice Bharucha* in paragraph 17.

11. He has also relied upon the judgment of ***TM Jacob Vs. C Poulouse & Ors.***, reported in **(1999) 4 SCC 274** and submitted that in the said case, the relevant section which was taken into consideration was 81(3) in which, though the affidavit was notarized but the particulars of the Notary was not given. It is in that connection that the Hon'ble Supreme Court has brought in the aspect of substantial compliance. In paragraph 22 of the said judgment, it has been held that the defect in that case was found to be materially different from what was laid down earlier in the case of ***Dr. (Smti.) Shipra etc. (supra)***. He has highlighted that in the instant case, there is no compliance at all of the requirement of law as in pages 81 and 82, there is no indication of any notarization.

12. The learned Senior Counsel has also relied upon the case of ***Satya Narain Vs. Dhuja Ram & Ors.***, reported in **(1974) 4 SCC 237** and paragraph 8 has been pressed into service. In the said case, the Hon'ble Supreme Court has laid down that the provision of Section 81(3) is mandatory in nature. He has also relied upon the case of ***Sarif-Ud-Din Vs. Abdul Gani Lone***, reported in **(1980) 1 SCC 403** which was pertaining to the Jammu and Kashmir Act and has contended that Section 89(3) of the

said Act is *pari materia* to Section 81(3) of the present Act. He has relied upon the paragraphs 2, 19 and 20. It is submitted that the requirement under Section 81(3) is mandatory in nature and the consequence has been laid down in Section 86 which entail a dismissal if such mandatory requirement is not complied with. He has clarified that in the aforesaid case of **Sarif-Ud-Din** (*supra*), the attestation was not by the election petitioner but by his Advocate.

13. By drawing the attention to the Election Petition, the learned Senior Counsel for the applicant has submitted that from pages 1 to 84, there is attestation as true copies on the copy of the Election Petition served on his client whereas from pages 85 to 185, the endorsement is certified to be true copy. He has submitted that in the service copy, all pages are required to be attested whether it is a part of the pleadings or annexures which is mandated under Section 81(3). In this connection, he has relied upon the case of **M. Karunanidhi Vs. HV Hande & Ors.**, reported in **(1983) 2 SCC 473**. By drawing the attention of this Court to paragraph 42 of the same judgment, he has submitted that it is laid down that all annexures and schedules are part of the Election Petition which are required to be attested under Section 81(3) of the ROP Act. Reliance has also been placed upon the case of **Rajendra Singh Vs. Smti. Usha Rani & Ors.**, reported in **(1984) 3 SCC 339**.

14. He has highlighted that in the present case, in the service copy, four pages are missing and the affidavit required to be filed in support of the allegation of corrupt practices has not been authenticated by any of the authorities, namely, the Oath Commissioner or the Notary or the District Magistrate. He has submitted that the requirement under Section 81(3) of the Act is mandatory and any failure or defect is not curable in nature. He has highlighted that the law laid down in the case of **Dr. (Smti.) Shipra etc.** (*supra*) is a good law and in the subsequent case of **TM Jacob** (*supra*), the facts were different as only the details of the Notary were not given

whereas in the instant case, the requirement of notarization is totally missing. The Learned Senior Counsel, accordingly submits that the instant application be allowed and the Election Petition be dismissed at the threshold.

15. *Per contra*, Shri Pathak, the learned Senior Counsel for the Opposite Party-election petitioner has submitted that the allegation that four numbers of pages are missing is apparently an afterthought and accordingly liable to be rejected. He has submitted that though in the present case, *dasti* service was allowed, the *dasti* was refused and the notice vide registered A/D post was served on the applicant on 06.06.2024. He has also highlighted the aspect from the pleadings made by the applicant that the applicant came to know about the contents of the election petition in the 3rd week of August, 2024 and had appeared before the Court only on 28.08.2024 on which date, there was no mention of any missing pages. He has highlighted that IA(C)/3091/2024 was filed by the applicant seeking adjournment to file written statement and even in the said IA, there was no mention of any missing pages. Be that as it may on 30.09.2024, the said IA was rejected as the same was improperly filed. He has submitted that thereafter a review has been filed followed by another IA(C)/3222/2024 with a prayer to condone the limitation for filing written statement after providing of 4 nos. of pages.

16. By drawing the attention of this Court to Section 87(2), Shri Pathak, learned Senior Counsel has submitted that the Indian Evidence Act has been made applicable to the trials of Election Petitions. Under Section 61 of the Indian Evidence Act, the two kinds of evidence, namely, primary and secondary evidence have been laid down and under Section 64, the aspect of proof of documents has been laid down which says that documents must be proved by primary evidence. On the aspect of missing pages in the service copy, the learned Senior Counsel has categorically denied the said allegation and has relied upon Sections 101, 102 and 106 of the Indian Evidence Act.

Section 101 deals with the burden of proof and Section 102 deals with whom such burden lies. Section 106 contemplates a situation where there is special knowledge. The learned Senior Counsel has submitted that by not producing the original copy which has been served, the allegation of missing pages has not been substantiated or can be legally gone into.

17. The learned Senior Counsel for the opposite party has also highlighted that it is not the pleaded case of the Returned Candidate that the Registry of this Court did not follow Rule 1 of Chapter-VIII-A, Note-(II) of the Gauhati High Court Rules under which, the petition ought to have been forthwith returned and on the other hand, the pleaded case of the election petitioner is that he had complied with all the steps envisaged under the Gauhati High Court Rules and therefore, the Returned Candidate has no scope to raise any such objection at a later stage. He has also highlighted the aspect that it is not the pleaded case that any prejudice would be suffered by the applicant even if it is assumed that the service copy did not have 4 nos. of pages. In this connection, he has relied upon the case of ***Mission Ranjan Das Vs. Hafiz Rashid Ahmed Choudhury***, reported in **2002 (1) GLT 45** and has specifically referred to paragraphs 1, 2, 8, 12 and 14. The learned Senior Counsel, however submits that without prejudice to the objection taken, he is ready and willing to serve the aforesaid 4 nos. of pages in the interest of justice. In the said case of ***Mission Ranjan Das*** (supra), the objection raised by the petitioner on the ground of maintainability was rejected. The said decision was arrived after appreciating the evidence which were adduced in the proceeding, including that of the Stamp Reporter of this Court before whom the Election Petition was presented as PW3 and the evidence which was accepted.

18. On the allegation that from pages up to 84, there is an endorsement "attested to be true copy" whereas from pages 85 to 185, the endorsement is "certified to be

true copy”, the learned Senior Counsel has submitted that under Section 81(3), the manner and mode of self-attestation is not provided and therefore, it does not make any difference whether “attested to be true copy” or “certified to be true copy” is written by the election petitioner. He has also referred to Black's Law Dictionary on the meaning of “to attest” by submitting that the meaning is to affirm to be true or genuine whereas “attested copy” refers to the word “certified copy”. He has submitted that there is no difference between the two expressions and the ultimate requirement is for an authentication.

19. Shri Pathak, learned Senior Counsel has also submitted that the applicant has not pleaded that he has suffered any prejudice because of the use of the words “attested to be true copy” in some pages or by the use of the words “certified to be true copies” in some other pages and in absence of any pleaded prejudice, the objection is not sustainable in law. The learned Senior Counsel has also highlighted that the pleadings in the IA are self-contradictory inasmuch as it has been pleaded that up-to page 84, “attested to be true copy” has been written whereas on the other hand, page numbers 11, 16, 21 and 22 have been stated to be missing. He has also relied upon the case of ***Jibontara Ghatowar Vs. Sunil Rajkonwar***, reported in **2012 (3) GLT 758** and the relevant paragraphs are 4, 5, 7, 8, 9, 10 and 12 have been referred. On the allegation of absence of no original signature or stamp of the Notary or any authority in 24 nos. of verifications and 2 nos. of affidavits with the copy of the Election Petition served on the Returned Candidate, the learned Senior Counsel has submitted that the original affidavits filed by the election petitioner have been attested by the Commissioner of Affidavit. It is submitted that under Section 81(3) of the ROP Act, there is no differentiation between the terms certification and attestation.

20. In the case of ***Jibontara Ghatowar*** (*supra*), an application seeking dismissal of the election petition was dismissed. While it was held that non-mentioning of the

words "true copy" would not cause any prejudice, there was also a finding that there was no dispute that the copy which was served is the exact copy of the election petition.

21. The learned Senior Counsel has submitted that there are no pleadings that because of absence of original signature or stamp of any of the authorities before whom the affidavits are to be sworn, any prejudice has been caused to the applicant. The learned Senior Counsel has also submitted that in the case of ***Purushottam Vs. Returning Officer, Amravati & Ors.***, reported in **AIR 1992 Bombay 227**, the Returned Candidate had filed an application for dismissal under Order 7, Rule 11, read with Section 86 of the ROP Act on the ground that the requirement of filing an affidavit under Form-25 was not met and under that context, the Bombay High Court had endorsed the submission that the Election Petition was liable to be dismissed. As regards the second case relied upon by the applicant, namely, that of ***Dr. (Smti.) Shipra etc. (supra)***, the learned Senior Counsel for the opposite party has submitted that the copy of the affidavit not containing the verification of the Notary or the copy of the Election Petition with the affidavit not duly attested by the District Magistrate or Notary cannot be said to be the true copy of the Election Petition.

22. In support of his contention regarding the aforesaid objection, the learned Senior Counsel for the opposite party has relied upon the following cases:

i) ***Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad & Ors.***, AIR 1964 SC 1027;

ii) ***Anil R Deshmukh Vs. Onkar N Wagh & Ors.***, (1999) 2 SCC 205; iii) ***Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore & Ors.***, AIR 1964 SC 1545;

- iv) ***M Kamalam Vs. Dr. VA Syed Mohammed***, (1978) 2 SCC 659; v) ***M. Karunanidhi Vs. HV Hande & Ors.***, (1983) 2 SCC 473;
- vi) ***FA Sapa & Ors. Vs. Sigora & Ors.***, (1991) 3 SCC 375;
- vii) ***TM Jacob Vs. C Poullose & Ors.***, (1999) 4 SCC 274;
- viii) ***Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar & Ors.***, (2005) 2 SCC 188;
- ix) ***A Manju Vs. Prajwal Revanna***, (2022) 3 SCC 269;
- x) ***Thangjam Arunkumar Vs. Yumkham Erabot Singh***, 2023 SCC OnLine SC 1058 (equivalent citation AIR 2023 SC 4531);
- xi) ***Kimneo Haokip Hangshing Vs. Kenn Raikhan & Ors.***, 2024 SCC OnLine SC 2548.

23. In the case of ***Ch. Subbarao*** (*supra*), the dismissal of a writ petition under Article 226 of the Constitution of India praying for quashing of a decision of the Tribunal was the subject matter before the Hon'ble Supreme Court which was allowed.

24. In the case of ***Anil R Deshmukh*** (*supra*), the facts would reveal that though in the copy of the Election Petition served, there was initially no notarial endorsement or any seal of the attesting officer, before the hearing, such requirement was complied with.

25. In the case of ***Murarka Radhey Shyam Ram Kumar*** (*supra*), the defect in the election petition was under Section 83(1) (c) which was held to be curable in nature.

26. In the case of ***M Kamalam*** (*supra*), the controversy was with regard to the signature appearing on the foot of the copy of the affidavit which was held to have

satisfied the requirement of Section 81(3).

27. In the case of ***M. Karunanidhi*** (*supra*), it has been laid down that all annexures and schedules of an Election Petition are part of the Election Petition and accordingly, all pages thereof are required to be attested by the petitioner under his own signature as per Section 81(3).

28. In the case of ***FA Sapa & Ors.*** (*supra*), it has been held that with regard to the copy to be supplied, photo copies were not prohibited and there was no particular form of attestation prescribed and under that context, it was held that Section 81(3) was not violated.

29. In the case of ***Chandrakant Uttam Chodankar*** (*supra*), it was held that Section 81(3) is satisfied if the copies are attested by the election petition to be true copies of the election petition under his own signature and in that case, it was found that the copies supplied were wholly and substantially the same as the original.

30. In the case of ***A Manju*** (*supra*), it was detected that an affidavit in support of the petition was indeed there albeit not in Form-25 and therefore, the preliminary objection was not sustained. Certain observations made by the Hon'ble Supreme Court in paragraph 22 would, however be relevant.

“22. We must begin at the inception by stating that intrinsically, election law is technical in nature. In the present matter, an election conducted under an independent body like the Election Commission is sought to be assailed, where the mandate of the public has gone in a particular way. The allegations must strictly fall within the parameters of the manner in which such a mandate can be overturned. The primary plea taken by the

appellant is largely that success in the elections was obtained by concealment of material, which would have been germane in determining the opinion of the electorate. In effect, were such material to be available with the electorate, they would have exercised another option on the basis of it. However, while the requirements to be met in the election petition may be technical in nature, they are not hypertechnical, as observed in the Ponnala Lakshmaiah [(supra)] case. We have considered the aforesaid aspect by quoting the observations made therein which have received the imprimatur of a larger Bench.”

31. In the case of **Thangjam Arunkumar** (supra), the objection was on the contents of the affidavit which was filed in support of the allegation of corrupt practice. The objection was, however rejected by making the following observation:

“15. In the instant case, the election petition contained an affidavit and also a verification. In this very affidavit, the election petitioner has sworn on oath that the paragraphs where he has raised allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under Section 83(1)(c) of the Act.”

32. The cases of **Dr. (Smti.) Shipra etc.** (supra), **TM Jacob** (supra) and **Kimneo Haokip Hangshing** (supra) will be dealt with later in this judgment.

33. On the last point of objection regarding absence of signature of the election petitioner on the foot of page 80 of the copy served, the learned Senior Counsel for the opposite party has submitted that under Section 81(3) of the ROP Act, there is a requirement that the copy served on the returned candidate should be attested by the election petitioner under his own signature to be a true copy of the original Election

Petition before the court. He submits that there is no further requirement that the signature of the election petitioner should be at the foot of the page, as alleged by the applicant. He, therefore submits that the aforesaid allegation is wholly misconceived and liable to be rejected. On the aspect of the meaning of the words 'attestation' and 'true copy', the learned Senior Counsel has submitted that the same are synonymous and the same has to be examined from the touchstone as to whether the opposite party had suffered any prejudice on the said issue.

34. Coming to the next objection regarding that in page numbers 81, 82 and 83 of the copy served, there is no original verification by any of the authorities empowered, the learned Senior Counsel has submitted that under Section 81(3) of the ROP Act, there is no such requirement and therefore, the objection is not liable to be countenanced. He has also submitted that on the aspect that in page no. 215, there is no attestation by the election petitioner in the copy served, the Learned Senior Counsel has submitted that there is no such pleading in the IA and even assuming that the allegation is correct, no prejudice, whatsoever, has been caused to the applicant.

35. In his rejoinder, Sri Saikia, the learned Senior Counsel for the applicant has submitted that when the requirement of law is mandatory in nature, the question as to whether any prejudice has been sustained will not be material at all. In any case, he submits that when four nos. of pages are missing in the copy served and many of the pages in the served copies are not in accordance with law, there is definitely a case of being misled or misled by which grave prejudice would be caused to the Returned Candidate in defending himself.

36. He has responded to the submissions made in the context of the recent case of ***Kimneo Haokip Hangshing*** (*supra*) and has contended that the facts in the said case

are distinguishable from the present case in hand. It is submitted that while the present petition has been filed under Section 86 mainly for violation of the requirement of section 81, in the said case of ***Kimneo Haokip Hangshing*** (*supra*) the petition was filed under Order 7, Rule 11 of the CPC for violation of the requirements of Section 83. He has clarified that in the present case, it is not Section 83 but mainly section 81(3) of the Act which is the fulcrum of the dispute. It is also clarified that while in that case, the core question was on the triability of the Election Petition, in the instant case, it is the manner of presentation. He has clarified that Section 86 of the ROP Act is not related to Section 83 as Section 83 is on the contents of the petition wherein shortfall in this case is not on the contents but on the presentation.

37. The rival submissions have been dully considered and materials placed before this Court have been carefully examined.

38. The process of election in our country is a sacrosanct process and the procedure laid down for making a challenge to any such election in the Act of 1951 is a special process in which a High Court has been made the adjudicating authority. The rigour which has been inserted in the ROP Act is in consonance of the object that the result of an election should not be put to challenge in a trivial manner as the same would be against the very object of a democracy to have an elected representative.

39. Under Chapter II of the ROP Act of 1951, presentation of an Election Petition to the High Court has been laid down. It is to be noted that under the Act, at the time of its enactment, the adjudicating authority was an Election Commission and only in the year 1966 by an amendment, the High Court has been made the adjudicating authority. Section 80 lays down that no election shall be called in question except by an Election Petition presented in accordance with the provisions of this Act and the jurisdiction has been vested on the High Court by Section 80A. The presentation of the

petition is laid down under Section 81. The next chapter, being Chapter III, is on trial of Election Petition and the first section under the same chapter, namely, Section 86 is on the trial. Section 86(1) which lays down that the High Court shall dismiss an Election Petition which does not comply with the provisions of Section 81 or 82 or 117. The objective of laying down a consequence of a dismissal of the Election Petition at the threshold under Section 86(1) is for mandatory and strict compliance of the Section 81 or 82 or 117.

40. The instant petition has been filed under Section 86 on the ground that there has been violation in presenting the Election Petition which is required to be done as per Section 81. The specific case of the applicant is that there is violation of Section 81(3). The specific case of the applicant is that four nos. of pages in the copy served on the applicant are missing which are pages 11, 16, 21 and 22. The other grounds on which the application has been instituted are lack of verification on certain pages, lack of attestation in certain pages, including the affidavit which is required to be filed in case there is allegation of corrupt practices and in the instant case, there is such an allegation. As mentioned above, under Section 94A of the Conduct of Election Rules, 1961, a format has been laid for such affidavit to be filed.

41. Let this Court deal with the first objection, namely, missing of 4 nos. of pages in the copy served paragraph. To adjudicate this issue, it would be necessary to keep in mind the proceedings of this case. The Election Petition had come up for consideration on 20.07.2024 when summons were issued and since the Election Commission of India and its Officers were made parties, on 19.08.2024, the Election Commission of India had filed IA(C)/2456/2024 and IA(C)/2455/2024 for striking off the proforma respondent nos. 2 and 3. The said IAs were considered on 28.08.2024 and the names of the Election Commission of India and its Officer were struck off. It would be important to note that on the same date i.e. 28.08.2024, the Returned Candidate, who

is the applicant in the instant case, had entered appearance through his counsel and had prayed for three weeks' to file written statement. When the matter had come up for consideration on 27.09.2024, the learned counsel for the applicant had submitted that an IA was filed for extension of time to file written statement which was lying defective. The said defects were apparently cured and on 30.09.2024, the IA(C)/3091/2024 praying for extension of time was taken up for consideration. This Court had, however rejected the same as the same was improperly filed. The matter was thereafter listed on 21.10.2024, 22.10.2024 and 23.10.2024 and this Court was informed that a review was filed against the dismissal order dated 30.09.2024. It is thereafter that the present IA has been filed for dismissal of the Election Petition.

42. As noted above, the aspect of challenge that the service copy had 4 nos. of pages missing and the other aspect of challenge on the procedure required to be followed under Section 81(3) are completely different aspects. As mentioned above, the Returned Candidate had entered appearance through his learned counsel on 28.08.2024 and no mention, whatsoever was made regarding any pages missing and rather, time was sought for to file written statement. Even in the IA(C)/3091/2024 which was filed for extension of time, there was no indication that 4 nos. of pages were missing.

43. On the aforesaid aspect, it has been argued on behalf of the opposite party that since the original of the copy served has not been filed with the present IA, the burden of proof has not been discharged as no primary evidence has been adduced. This Court, however is of the opinion that when the allegation itself is of certain pages being missing in the service copy, the proof of such allegation cannot be connected with filing of the original service copy.

44. However, the aforesaid aspect has to be considered on another ground. As

noted above, the matter had come up for consideration on 21.10.2024, 22.10.2024 and 23.10.2024 on which date, this Court was informed regarding filing of Review Pet./183/2024 against the order dated 30.09.2024 as well as IA(C)/3222/2024 for extension. The instant application has been filed thereafter on 28.10.2024. Under such circumstances, it is difficult to accept the contention made on behalf of the applicant that 4 nos. of pages were missing in the copy which was served upon the applicant-Returned Candidate.

45. This brings this Court on the other ground taken in the application, namely, lack of signatures in certain pages of the service copy, lack of verification in certain pages, lack of notarization in the affidavit under Form-25 and lack of attestation in certain pages. The details of the pages have already been mentioned above in this order.

46. Section 81(3) of the ROP Act requires that the Election Petition to be accompanied by such number of copies as there are respondents and every copy is required to be attested by the petitioner under his own signature. For ready reference, Section 81(3) is extracted hereinbelow:

“81(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.”

47. The aforesaid provision was not there in the original Act of 1951 and was inserted by an amendment made in the year 1961 after framing of the Conduct of Election Rules, 1961. It is the settled position of law the requirements under Section 81(3) are mandatory in nature which has also been clarified in the case of **Satya Narain** (*supra*). The case of **Sarif-Ud-Din** (*supra*) which was on the corresponding

statute of the State of Jammu and Kashmir also reiterates the said proposition in which Section 89(3) of the State Act is *pari materia* to Section 81(3). The aforesaid view regarding the mandatory nature is fortified by the statute itself inasmuch as, Section 86, in no uncertain terms lays down that such non-compliance would entail dismissal of the election petition. In the case of **M. Karunanidhi** (*supra*), it has been laid down that all annexures and schedules of an Election Petition are part of the Election Petition and accordingly, all pages thereof are required to be attested by the petitioner under his own signature as per Section 81(3).

48. In the instant case, it is seen that from pages 1 to 84 of the copy served, the election petitioner has put his signature under a rubber stamp "attested to be true copy of the petition" whereas from pages 85 to 185, the election petitioner has put his signature under a rubber stamp "certified to be true copy". This Court had also noticed that in page 183 of the Election Petition which correspondence to page 215 of the IA, there is neither any attestation nor certification. This Court has also noticed that in the service copy, the verification pages of the various documents annexed to the Election Petition, namely, page nos. 119, 125, 139, 143, 153, 157, 160, 163, 166, 169, 172, 174, 176, 183, 186, 189, 198, 205, 208, 210, 213, 214, 215 and 217 do not bear the declaration of attestation as required under Section 81(3) and the only endorsement made is "certified to be true copy". As noted above, in page 215, there is neither any attestation nor certification.

49. As noted above, in case of allegation of corrupt practices, a special affidavit is required to be filed in support of such allegation and such affidavit is required to be as per Form-25 as laid down in Rule 94A of the Conduct of Election Rules, 1961. For ready reference, the aforesaid Rule is extracted hereinbelow:

"94A. Form of affidavit to be filed with election petition.-

The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.”

50. The aforesaid Rule clearly refers to the proviso to Section 83(1) of the ROP Act and such affidavit is required to be sworn before any of the three authorities, namely, a Magistrate of the 1st Class for a Notary or an Oath Commissioner.

51. It has been argued on behalf of the opposite party that there would be no substantial difference between certification and attestation and the emphasis is on substantial compliance. The aforesaid submission has, however been stoutly refuted by the applicant. To examine the said aspect, it would be beneficial to refer to the case laws governing the field.

52. In the case of ***Dr. (Smti.) Shipra etc.*** (*supra*), the question which arose for consideration been framed in paragraph 6 of the judgment which reads as follows:

“6. Thus in all the appeals, the only question that arises for consideration is : whether the copy of the election petition accompanied by supporting affidavit served on the respective respondent along with Form 25 prescribed under Rule 94-A of the Conduct of Elections Rules, 1961 (for short, the 'Rules') without attestation part duly verified by the District Magistrate/Notary/Oath Commissioner can be said to be "true and correct copy" of the election petition as envisaged in Section 81 (3) of the Act?”

53. In paragraph 7 of the said judgment, the meaning of true copy has been explained in details and in paragraph 8, the requirement of attestation of the affidavit

by the prescribed authority has been held to be mandatory and the question has also been framed regarding the consequence of lack of such attestation in the copy served. For ready reference, the relevant part of paragraph 8 is extracted hereinbelow:

“8. ... The attestation of the affidavit by the prescribed authority, therefore, is an integral part of the election petition. The question, therefore, is : Whether copy of the affidavit supplied to the respondent without the attestation portion contained in it (though contained in the original affidavit) can be considered to be a "true copy?"

54. The said query has been answered in unequivocal terms that substantial compliance would not be sufficient and the argument that no prejudice was caused or the defect was curable in nature has been rejected. It has been held as follows:

“11. ... The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity. ...”

55. In the aforesaid judgment of **Dr. (Smti.) Shipra etc., (supra)** Hon’ble Justice **Bharucha** had given a supplementing judgment and the same would be relevant in the adjudication of the present application. For ready reference, the same is extracted hereinbelow:

“Bharucha, J. :- 4. I am in respectful agreement with the judgment and order of our learned brother, K. Ramaswamy, J. I would set out my reasons, briefly, thus :

The question that must be posed, as indicated by this Court's previous decisions, is : does the document purporting to be a true copy of the

election petition mislead in a material particular? The "true copy" of the election petition furnished by the appellant (election petitioner) to the respondent (the successful candidate) did not show that the appellant's affidavit supporting his allegations of corrupt practice had been duly sworn or affirmed. Where corrupt practice is alleged, the election petitioner must support the allegation by making an affidavit in the format prescribed. An affidavit must be sworn or affirmed in the manner required by law, or it is not an affidavit. The document purporting to be a true copy of the election petition furnished by the appellant to the respondent gave the impression that the appellant's affidavit supporting his allegations of corrupt practice had not been sworn or affirmed and was, therefore, no affidavit at all; it misled in a material particular and its supply was, as the High Court held, fatal to the election petition."

56. A Constitution Bench of the Hon'ble Supreme Court in the case of **TM Jacob** (*supra*) was examining a matter which was similar and in that case, the earlier case of **Dr. (Smti.) Shipra etc.**, (*supra*) was also taken into consideration. In the said case of **Jacob**, while the affidavit was duly notarized, the details of the Notary were not given. Under those circumstances, it was held that there was substantial compliance as there is a vast difference of the copy served containing the affidavit which has been duly sworn and the copy containing the affidavit in which the details of the Notary has not been stated.

57. The aspect of substantial compliance has been one of the mainstay of the case tried to be made out by the election petitioner and in this connection, the recent case of **Kimneo Haokip Hangshing** (*supra*) relied on by the opposite party is required to be examined. In the said case, the application was filed under Order 7 Rule XI of the CPC for rejection of the Election Petition whereas the present IA has been filed under Section 86. Though there may not be a serious issue on the provision of law under

which such petition is filed, the relevant consideration is regarding the provision of law which has been violated for which the application has been filed. In the case of ***Kimneo Haokip Hangshing*** (supra), the violation was of Section 83 which is on the aspect of contents of the petition whereas in the instant case, the violation is of Section 81(3) which is on the aspect of presentation of the petition, including the facet of the number of copies to be accompanied and the manner of such presentation. Further, under Section 86(1), there is a clear mandate for dismissal of an Election Petition which does not comply with Section 81/82/117 and Section 86 does not take into consideration any shortcomings *qua* Section 83. In the aforesaid of ***Kimneo Haokip Hangshing*** (supra), it has been held that the allegation on the violation of Section 83 can be tried in the election petition and under that context, the aspect of substantial compliance has been taken into consideration. This Court finds force in the contention made on behalf of the applicant that while in the case of ***Kimneo Haokip Hangshing*** (supra), the question was on the triability of the Election Petition whereas in the instant case, it is the presentation.

58. This Court has also noticed that so far as attestation/certification is concerned, though it is the case of the election petitioner-opposite party that there is no substantial difference in the aforesaid two terms, the requirement under Section 81(3) is that attestation has to be made to be a true copy of the petition. This Court has verified from the documents annexed to the IA and has found that while the pages from 1 to 84 of the Election Petition which was served, the endorsement is "attested to be true copy of the petition", in the rest of the pages, the endorsement is "certified to be true copy". Thus even if the argument made on behalf of the opposite party that there is no substantial difference between the aforesaid terms is considered, it is seen that so far as the endorsement "certified to be true copy" is concerned, it has not been stated that such certification is pertaining to true copy **of the petition** which is the requirement of Section 81(3).

59. In view of the aforesaid facts and circumstances, while this Court is not inclined to accept the contention made on behalf of the applicant regarding missing of 4 nos. of pages in the copy served, the other ground on which the IA has been presented under Section 86(1), namely, lack of attestation/proper attestation has substance. This Court is not able to accept the submission made on behalf of the opposite party regarding substantial compliance and suffering of prejudice inasmuch as, such requirement under the statute is mandatory in nature which is fortified by laying down a consequence of any violation thereof.

60. In that view of the matter, the IA stands allowed for the reasons indicated above. The Election Petition accordingly stands dismissed.

JUDGE

Comparing Assistant