

CASE NO.:
Appeal (civil) 4605 of 2000

PETITIONER:
SRI T. PHUNGZATHANG

Vs.

RESPONDENT:
SRI HANGKHANLIAN & ORS.

DATE OF JUDGMENT: 28/08/2001

BENCH:
CJI & N. Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

The appellant before us had preferred Election Petition No.1/2000 before the Imphal Bench of the Gauhati High Court challenging the declaration of the results made in favour of respondent No.1 herein as the elected candidate in the elections held for the 48-Churachandpur Assembly Constituency in the 7th Manipur Legislative Assembly Election. One of the grounds of attack in the said petition was that respondent No.1 indulged in corrupt practice as contemplated in Section 123 of the Representation of People Act, 1951 (hereinafter referred to as the Act) among other grounds, hence, he had prayed that the declaration made in favour of respondent No.1 be set aside and he be declared as the elected candidate from the said Constituency.

Respondent No.1 herein moved an application being Civil Miscellaneous (Election) Case No.3/2000 contending that the copies of the affidavits filed in support of the corrupt practices alleged in the election petition and supplied to him, did not contain due verification and attestation by the Oath Commissioner or by the Prescribed Authority, hence there was a violation of the mandatory requirement of Sections 81(3) and 83(1) of the Act and, therefore, the election petition in question was liable to be dismissed. It is to be noted herein that on coming to know of the Civil Misc. Petition, the plaintiff supplied fresh copies of the affidavits containing full particulars of the attestation/verification made in support of the affidavit filed in Form No.25 before the High Court to the respondents and their advocates, a few days before the Civil Miscellaneous Petition was taken up for hearing.

The High Court relying on the two judgments of this Court in Dr. Shipra (Smt.) & Ors. v. Shanti Lal Khoiwal & Ors. (1996 (5) SCC 181) and Harcharan Singh Josh v. Hari Kishan (1997 (10) SCC 294) accepted the contention of the first respondent and by its order dated 27.6.2000 dismissed the election petition under Section 86(1) of the Act on the ground of non-compliance of sub-section (3) of Section 81 read with

Section 83(1) of the Act.

In this appeal, it is contended on behalf of the appellant before us that the High Court erred in placing reliance solely on the judgments of this Court in Dr. Shipra and Harcharan Singh Josh (supra). It was contended that the judgment of this Court in Dr. Shipra's case had been explained by a Constitution Bench of this Court in the case of T M Jacob v. C. Poulse & Ors. (1999 (4) SCC 274) and the observation in Dr. Shipra's case has been held to be not universally applicable and is confined to the facts of that case only. While in regard to Harcharan Singh Josh's case, it was contended that in view of the judgment of the larger Bench in Jacobs case (supra), the Josh's case stands impliedly overruled. It was further contended that Section 81(3) does not contemplate the supply of a true copy in the sense that it should be an identical copy of the original filed before the court. According to the appellant, it would suffice that if the copy supplied is substantially correct and the omissions pointed are not such omissions as would in any manner mislead the respondent in presenting his case or would prejudice his defence in any manner. At any rate, it was argued that the omission in the copy having been rectified by the supply of copies containing entire verification, the question of the election petition being dismissed on that technical ground did not arise. It was further contended that assuming for arguments sake that the defect pointed out by the respondents did vitiate that part of the election petition attracting the provisions of Section 86(1) of the Act even then since the defect pointed out was with reference to only one of the grounds raised in the election petition pertaining to corrupt practice, the entire election petition could not have been dismissed on that score because the said petition raised other substantial and independent grounds in regard to which respondents' objections did not apply and they by themselves were sufficient to set aside the election of respondent No.1.

On behalf of the contesting respondents, it was contended before us that the judgment in Dr. Shipra (supra) has not been overruled by the Constitution Bench in Jacobs case (supra). It was further argued that the facts involved in the cases of Dr. Shipra and Harcharan Singh Josh (supra) were identical with the facts involved in the present case, hence, the ratio laid down in the said judgment squarely applied to the facts of the present appeal. It was also contended that the omissions or irregularities mentioned in Sections 81(1) and 83(1) are not of curable character, they being mandatory in nature, same cannot be condoned or cured by subsequent corrections.

We have carefully considered the arguments addressed on behalf of the parties and perused the records.

So far as Dr. Shipra's case is concerned, this Court in T.M. Jacobs case (supra), in clear terms has held that the opinion expressed therein is applicable to the fact situation in that case only because the Constitution Bench came to the conclusion that the defect pointed out in Dr. Shipra's case pertained to those in the original affidavit filed before the Court in support of the allegations of corrupt practice and not with reference to the copies supplied to the respondents. This is clear from the following observations of the Constitution Bench in paragraph 16 of Jacobs case:

Thus, from the facts noted by Bharucha, J., it transpires that in Dr. Shipra case the true copy of the election petition furnished to the

respondent gave an impression that the election petitioners affidavit supporting his allegations of corrupt practice had not been duly sworn and verified by the election petitioner before the Notary, who also had not attested the same thereby rendering that document as no affidavit at all in the eye of the law. The defect found in the true copy of the affidavit, was thus, not merely the absence of the name of the Notary or his seal and stamp but a complete absence of notarial endorsement of the verification as well as absence of an affirmation or oath by the election petitioner. It was in that context that the Bench had found in Dr. Shipra Case that the returned candidate would have got the impression, on a perusal of the true copy of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election petitioner. It was precisely on account of this fatal defect that K. Ramaswamy, J. opined that the principle of substantial compliance cannot be accepted in the fact situation. (emphasis supplied)

Proceeding further, the Constitution Bench in Jacobs case (supra) reiterated its view of Dr. Shipra's case (supra) in the following words :

27. We, therefore, reject the argument of learned counsel for the appellant regarding the applicability of the observations from Dr Shipra case to the fact situation in the present case.

28. Thus, our answer to the reference is that the judgment in Dr Shipra case is confined to the fact situation as existing in that case and has no application to the established facts of the present case and the wide observations made therein were made in the context of the facts of that case only. (See paras 27 & 28).

From the above law laid down by the Constitution Bench in Jacobs case, it is crystal clear that the principle found in Dr. Shipra's case is not universal in its application, per contra, it is confined to the facts of that case only.

Apart from holding that the views expressed in Dr. Shipra case are only confined to the fact-situation of that case in Jacobs case, the Constitution Bench turned down the contention advanced on behalf of the appellant that if the copy of the affidavit supplied to the respondent in an election petition does not contain the name and other particulars of the Notary or the stamp and seal of the Notary which had been affixed on the affidavit filed along with the election petition, the same would amount to violation of Section 81(3) of the Act, and such variation between the original affidavit filed before the High Court and the copy supplied to the respondent would render the copy as not a true copy of the original, hence, the election petition is liable to be rejected.

While rejecting the above contention of the appellant in

Jacobs case, the Bench placed reliance on two earlier judgments of the Constitution Bench of this Court in the cases of Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore & Ors. (1964 (3) SCR 573) and Ch. Subbarao vs. Member, Election Tribunal, Hyderabad (1964 (6) SCR 213). In the first of the above cases, i.e. Murarkas case, the Constitution Bench discussing the meaning of the words true copies as found in the Representation of People Act had observed:

Having regard to the provisions of Part VI of the Act, we are of the view that the word copy does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No.269 of 1962 were not such as to mislead the appellant; therefore there was no failure to comply with the last part of sub-section (3) of Section 81. In that view of the matter sub-section (3) of Section 90 was not attracted and there was no question of dismissing the election petition under that sub-section by reason of any failure to comply with the provisions of Section 81.

When every page of the copy served on the appellant was attested to be a true copy under the signature of the petitioner, a fresh signature below the word petitioner was not necessary. Sub-section (3) of Section 81 requires that the copy shall be attested by the petitioner under his own signature and this was done. As to the second defect the question really turns on the true scope and effect of the word copy occurring in sub-section (3) of Section 81. On behalf of the appellant the argument is that sub-section (3) of Section 81 being mandatory in nature all the requirements of the sub-section must be strictly complied with and the word copy must be taken to be an absolutely exact transcript of the original. On behalf of the respondents the contention is that the word copy means that which comes so near to the original as to give to every person seeing it the idea created by the original. Alternatively, the argument is that the last part of sub-section (3) dealing with a copy is merely directive, and for this reliance is placed on the decision of this Court in K.Kamaraja Nadar v. Kunju Thevar. We are of the view that the word copy in sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it (see Strouds Judicial Dictionary, Third Edn., Vol.4, p.3098). In this view of the matter it is unnecessary to go into the further question whether any part of sub-section (3) of Section 81 is merely directory.

And after considering the similar views expressed by a latter

Constitution Bench judgment in Ch. Subbarao's case, this Court in Jacobs case held the object of serving a true copy of an election petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is, thus, of substance and not of form. Having come to the said conclusion, this Court in Jacobs case held:

The expression copy in Section 81(3) of the Act, in our opinion, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. Indeed a copy which differs in material particulars from the original cannot be treated as a true copy of the original within the meaning of Section 81(3) of the Act and the vital defect cannot be permitted to be cured after the expiry of the period of limitation.

From the above conclusion of this Court in Jacobs case, two principles can be deduced; (a) The expression copy in Section 81(3) of the Act means a copy which is substantially the same as original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) If the copy differs in material particulars from the original same cannot be cured after the period of limitation.

Having laid down the law as stated above, the Court in Jacobs case proceeded to apply the same to the facts of that case, and came to the conclusion that non-mention of the name of the Notary or the absence of the stamp and seal of the Notary in the otherwise true copy supplied to the appellant could not be construed to be an omission or variation of a vital nature and the defect, if at all it could be construed as a defect, not attracting the consequences of Section 86(1) of the Act. It further held that under the circumstances, it must be held that there was no failure on the part of the election petitioner to comply with the last part of sub-section (3) of Section 81 of the Act, hence, Section 86(1) was not attracted entailing the dismissal of the election petition.

At this stage, it will be useful for us to refer to another judgment of this Court which had an occasion to consider Dr. Shipras case in an almost similar fact situation as in this appeal i.e. the case of Anil R. Deshmukh vs. Onkar N. Wagh (1999 (2) SCC 205) which judgment was also relied on by the Constitution Bench in Jacobs case. In the case of Deshmukh (supra), one of the defects pointed out to attract the dismissal of the election petition was the absence of the endorsement of verification and the stamp and seal of the attesting officer on the copy of the affidavit supplied to the first respondent and the argument was that in absence of such endorsement in the copy supplied to that respondent will not make it to be a true copy. Negating the said contention and reversing the judgment of the High Court, this Court held that there was sufficient compliance of the provisions of Section 83 read with Section 81(3) of the Act because absence of notarial endorsement in the copies supplied to the respondent did not attract the dismissal of the election petition on the ground of non-compliance of the

requirement of Section 81 or 83 of the Act. In that case the Court took note of the fact that correct copies of the affidavit containing endorsement of verification etc. were served on the respondent as well as his counsel before the arguments were heard, hence, the irregularities were cured.

Here we must notice that the judgment in Deshmukhs case (supra) was delivered prior to the judgment in Jacobs case and it had the benefit of examining the law laid down by this Court in Dr. Shipras case, and finding it not applicable to the facts of its case, the Court distinguished the same. It also noticed the fact that by the law laid down in Dr. Shipras case was already referred to a larger Bench on the ground that the same ran counter to the judgments of the Constitution Bench in the cases of Murarka and Subbarao (supra). It is to be noted here that this judgment in Deshmukh case was specifically approved in the Constitution Bench judgment of Jacobs case, and in para 20 of the said judgment it is stated thus : In Anil R. Deshmukh case Srinivasan, J. has correctly distinguished the case of Dr Shipra bringing out the difference in the type of defects found in the two cases.

In the above declared legal position, if we examine the case in hand, we notice that the only lacunae pointed out by the contesting respondent in his application in Civil Miscellaneous Election Case No.3/2000 is that the copy supplied to him did not contain the verification or affirmation made by the Oath Commissioner or the Prescribed Authority as required in Form 25 and Rule 94A of the Conduct of Election Rules, 1961. It is not the case of respondent No.1 that the original affidavit filed along with the election petition in Form 25 did not contain such verification or affirmation. On the contrary, it is an admitted fact that such affirmation or verification was made in the original affidavit filed before the High Court. Therefore, the question arising in this appeal is: would this omission as pointed out by the respondent in his petition, ipso facto entail dismissal of the election petition under Section 86(1) of the Act? In view of the law laid down in Jacobs case (supra), the answer then should be no because by such omission the copy supplied will not cease to be a true copy and there is no possibility of any prudent person being in any manner misled in defending himself or being prejudiced in the defence of his case. Further, such omissions are only curable irregularities.

In this appeal, it is also to be noted that on coming to know of the omission pointed out by the respondent, the appellant had on 6.6.2000 a few days before the starting of the arguments supplied fresh copies of the affidavit containing the verification as found in the original affidavit in its entirety, hence, as was laid down in the case of Deshmukh (supra), it should be held that the defects pointed out in the petition being curable, have been cured.

Having come to the conclusion that the facts of the present appeal are fully covered by the Constitution Bench judgment of this Court in Jacobs case and Deshmukhs case, we will now discuss the applicability of Harcharan Singh Joshs case (supra) to the facts of this case bearing in mind that the High Court has relied on this case also to dismiss the election petition. It is true that in Joshs case, this Court extended the principle laid down in Dr. Shipras case but then this Court in Jacobs case in clear terms held that the application of the principle found in Dr. Shipras case is confined only to the facts of that case; meaning thereby that it is applicable only in cases

where the original affidavit filed before the High Court contained the omissions and not to copies of the affidavit supplied to the respondents. Therefore, it is clear that the application of the principle in Dr. Shipras case to the facts of Joshs case is clearly impermissible. In that view of the matter, the decision in Joshs case being contrary to Jacobs case, the same cannot be construed as a good law any more. Therefore, the High Court in the instant case could not have relied on Joshs case to dismiss the election petition.

Before we conclude, we must note that the appellant had in support of his argument raised an additional contention to the effect that assuming that irregularities pointed out by the respondent in the copy of the affidavit supplied to him is an incurable defect, even then the election petition could not have been dismissed in its entirety because it had raised other substantial grounds questioning the declaration of result in favour of respondent No.1. In our opinion, it is not necessary for us to express any opinion on this issue because of the view expressed on the main contention argued in this appeal.

For the reasons stated above, this appeal succeeds and the same is allowed. The impugned judgment and order is set aside and the matter is remanded to the High Court for disposal of the election petition on merits. No costs.

CJI.

....J.

(N.Santosh Hegde)

August 28, 2001