

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH.

MC (E.P) NO. 02 (AP)/2010

IN

ELECTION PETITION 01 (AP)/ 2010

SRI GADAM ETE,
Son of Sri Binga Ete,
Permanent Resident of Village-Darka,
PO & PS – Aalo, District- West Saing,
Arunachal Pradesh.

.....Applicant/Respondent.

By Advocates:
Mr. S.S. Dey,
Mr.H. Tangu.

-Versus-

SMTI. DUTER PADU,
Wife of Sri Geyum Padu,
Resident of Village- Darka,
PO & PS- Aalo, District-West Siang,
Arunachal Pradesh.

.....Opposite Party
(Election Petitioner).

By Advocates:
Mr. S. Shyam
Mr. K. Ete,

BEFORE
THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing : 30-03-2010

Date of Judgment & Order: 08-04-2010

JUDGMENT & ORDER

(CAV)

Heard Mr. S. S. Dey, learned counsel for the applicant/returned candidate and also heard Mr. S. Shyam, learned counsel, appearing for and on behalf of the opposite party/election petitioner.

2. This application has been filed under Section 86 of the Representation of the People Act, 1951 ("RP Act", in short) praying for dismissal of the Election Petition for non-compliance of the provisions of Section 81 of the said Act. The opposite party/election petitioner filed the Election Petition No.01 (AP) 2010 challenging the election of the applicant to the Arunachal Pradesh Legislative Assembly from 30-Along West (ST) Legislative Assembly Constituency in the election held on 13-10-2009. The election petition was filed on 2nd February, 2010 in the Principal Seat of this Court, which was registered as E.P. No.03 of 2009 and by an order dated 14-12-2009 notice was issued fixing 6th January, 2010 for appearance and filing written statement. Subsequently, the Election Petition was transferred to this Bench for adjudication. On being transferred from the Principal Seat, it has been renumbered as E.P. 01 (AP)/2010.

3. The applicant/respondent received the notice along with the copy of election petition. In this application, the applicant has taken an objection to the effect that copy of the election petition served upon him through the summons of this Court is not a **"true copy"** of the Election Petition as required under the statutory mandate of Section 81(3) of the

RP Act inasmuch as, on the first page of the same, it has not been attested by the Election Petitioner under own signature to be "**a true copy**" of the Election Petition.

4. Mr. Dey, learned counsel for the applicant fairly submits that he is not disputing the genuineness of the signature of the Election Petitioner. He raises no other objection except the non-compliance of the requirement under Section 81(3) of the RP Act inasmuch as the word "**true copy**" has not been written on the first page of the Election Petition as a mark of attesting it to be a true copy. He is not insisting on the word "**attested**" but he would insist on the word "**true copy**". He means to say that the Election Petition served upon the applicant/respondent, in fact, does not contain any attestation at all and even the word "**true copy**" has not been written on the Election Petition to show that the Election Petition furnished/supplied to the applicant is a true copy of the Election Petition and thereby to claim that Respondent/Election petitioner substantially complied with the requirement of provisions under Section 81(3) of the RP Act. According to him, RP Act is a self contained Act and no liberal view can be taken on such non-compliance of mandatory requirement under the Act, particularly Section 81(3). Further more, he submits that the purpose of attestation of the Election Petition as "**true copy**" under his own signature is to express the election petitioner's intention that he has filed/furnished the "**true copy**" of the Election Petition. Unless such attestation is made, it cannot be inferred or read into that the copy of the Election Petition so furnished/served upon the applicant/returned candidate is a "**true copy**" as required under Section 81(3) of the RP Act. Hence, for this patent non-compliance of the provisions of Section 81(3) of the RP Act, the Election Petition is liable to be dismissed as per the

mandatory provisions under Section 86 of the Act at the threshold. In support of his submissions, Mr. Dey, would rely on the following cases.

- 1) **Mithilesh Kumar Pandey Vs. Baidyanath Yadav & Others**, reported in **AIR 1984 SC 305**.
- 2) **U.S. Sasidharan Vs. K. Karunakaran and Another**, reported in **(1989) 4 SCC 482**
- 3) **Rajendra Singh Vs. Smti Usha Rani & Others**, reported in **(1984) 3 SCC 339**.
- 4) **A. Madan Mohan Vs. Kalavakunta Chandrasekhara**, reported in **AIR 1984 SC 871**.
- 5) **Boota Singh Vs. Sher Singh & Others**, reported in **AIR 1994 Panjab & Haryana 32**.
- 6) **Satya Narain Vs. Dhuja Ram & Others**, reported in **(1974) 4 SCC 237**.

5. The above submissions of the applicant have been countered by Mr. Shyam, learned counsel appearing for and on behalf of the opposite party/election petitioner. According to him, the Election Petition including the copies thereto served upon the applicant/respondent bear signature of the Election Petitioner in her hand on each page which runs into 283 pages including the annexure, affidavit and verifications, which are integral part of the Election Petition. Although, the word "**attested true copy**" or "**true copy**" or "**copy**" has not been written on the copy of the Election Petition served on the applicant/respondent, it should be treated and accepted as "**true copy**" within the meaning of Section 81(3) of the RP Act. If the signature of the

Election Petitioner put on the copies of the Election Petition served on the applicant/returned candidate is not disputed or questioned as not being genuine, there is no good ground for taking other view that the same is not a **"true copy"**, more so, when the service copy is supported by verification and affidavit sworn by the Election Petitioner and each page of the same bears the seal and signature of the Oath Commissioner of this Court. In several pages of the service copy, the stamp **"certified to be true copy"** has been affixed under the signature of the Election Petitioner. According to Mr. Shyam, there is substantial compliance with the requirement of Section 81(3) of the RP Act and the present Election Petition cannot be dismissed in limine. Following authorities have been cited by Mr. Shyam in support of his above submissions.

- 1) **T. M. Jacob Vs. C. Poullose and Others**, reported in (1999) 4 SCC 274
- 2) **Ram Prasad Sarma Vs. Mani Kumar Subba & Others**, reported in (2003) 1 SCC 289
- 3) **Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar & Others**, reported in (2005) 2 SCC 188
- 4) **T. Phungzathang Vs Hangkhanlian & Others**, reported in (2001) 8 SCC 358
- 5) **Mission Ranjan Das Vs. Hafiz Rashid Ahmed Choudhury**, reported in 2002(1) GLT 45.

6. First let me examine the submissions made by Mr. Dey, learned counsel appearing for the applicant/returned candidate in the

light of the authorities cited by him. The application of laws laid down by the Apex Court is dependent upon the facts and circumstances involved in a given case and it must be considered whether the facts and circumstances in the present case are similar to the facts and circumstances of those cited cases.

7. In **Mithilesh's case** (supra), the copy of the Election Petition served on the returned candidate contains a large number of mistakes in respect of person through whom the corrupt practices were alleged to have been committed by the appellant during election. Such mistakes were held to be fatal and the Election Petition is liable to be dismissed in limine. In **Sasidharan's case** (supra), Video cassette depicting progress of the constituency and containing speeches of government servants allegedly used at the instance of the returned candidate were submitted in sealed cover in court instead of supplying the same to the returned candidate along with the election petition on charge of alleging corrupt practice under Section 123(7) of the RP Act. It was held in that case that requirement under Section 81(3) was not complied with and hence, the Court was bound to dismiss the entire election petition on the ground of non-supply of the true copy. In **Rejendra's case** (supra), true copies were mixed up with incorrect copies of election petition and it was held that in absence of proof that the respondent received the correct copy, benefit of doubt cannot be given to the petitioner and as such, the election petition is liable to be dismissed in limine.

8. In **Madan Mohan's case** (supra), the copies of the documents and schedules, which formed integral part of the election petition, were not supplied to the petitioner, which amounted to a clear breach of the mandatory provisions contained in Section 81(3) of the RP Act and it was

held that copies of such annexures are not required to be served on the respondent/returned candidate and in **Satya Narain's case** (supra), the Election Petitioner submitted incomplete petition because the spare copies of the election petition were not filed at the time of presenting the election petition but he filed the same after the period of limitation. In **Boota Singh's case** (supra), the affidavit filed with the election petition was not in conformity with the statute and the verification was also defective and in that case, it was held that it amounts to non compliance of mandatory requirements.

I find none of the aforesaid cases cited by Mr. Dey is similar to the facts and circumstances or issue involved in the present case and I fail to persuade myself to accept the submissions made by the learned counsel appearing for the applicant.

9. Now I come to the authorities cited by Mr. Shyam, learned counsel appearing for and on behalf of the opposite party/election petitioner. In **Jacob's case** (supra), the copies of the election petition and the affidavit served on the appellant/returned candidate bore the signatures of respondent/election petitioner on every page and the original affidavit filed in support of the election petition had been properly signed, verified and affirmed by the election petitioner and attested by the Notary. It was, therefore, held by the Apex Court that there has been a substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1) (c) of the RP Act. Jacob's case, in my considered view, has a close similarity with the present case inasmuch as the election petitioner in the present case signed in her hand on every page of the election petition as well as on each page of the copy of the election petition served on the applicant/respondent.

10. In **R.P. Sarma's** case (supra), the true copy of the affidavit served upon the respondent/returned candidate along with the copy of the election petition did not contain attestation and stamp etc. of the Oath Commissioner, which violated Section 81(3) of the RP Act but there was no dispute that the original election petition bore the signatures of the Oath Commissioner before whom, the affidavit was sworn by the petitioner. But in the copies supplied to respondent/returned candidate, though attested to be true copy, the endorsement of the Oath Commissioner on the affidavit was not indicated. This case is not similar to the present case. In **Chandrakant's case** (supra), the election petition was found to be defective as there was (i) absence of signature of election petitioners after prayer clause and verifications, (ii) absence of stamp in respect of the swearing of the affidavit, and (iii) absence of signature of election petitioners in affidavit. It was, therefore, held that the above defects were not material/vital or fatal in nature to warrant dismissal of the election petition at the preliminary stage. The said case, in my opinion, has relevancy for taking decision in respect of the present case.

11. In **T. Phungzathang's case** (supra), election petition alleging corrupt practices was filed with supporting affidavit in Form 25 as required under Section 83(1) of the RP Act and Rule 94-A of Conduct of Election Rules duly sworn before Notary/Oath Commissioner bearing his endorsement, signature and rubber stamp but the copies of the affidavit supplied along with the election petitioner, though complete in all other respects did not contain the verification and attestation of the Notary/Oath Commissioner. Such omission was held to be a curable

defect only. In my considered view, the said case may have little bearing with the present case.

12. In **Mission Ranjan's case** (supra), a copy of the election petition served upon the respondent/returned candidate, in the first page of the election petition, the following words (**filed by Hafiz Rashid Ahmed Choudhury---petitioner-in-person---27.06.2001**) were inserted without bearing any words "**attested true copy**" or "**true copy**" or "**copy**" thereon. Exactly same thing happened to the present case.

13. The applicant-returned candidate has placed on records by filing the copy of the election petition served upon and received by him which I have marked as Ext. 'X'. It was not felt necessary to examine any witness inasmuch as the applicant has raised only the question of law without raising any question of facts.

14. I have perused the copy of the Election Petition served upon the applicant. There is, as conceded by the applicant, no defect except the *absence of attestation on the first page of the copy of the election petition with the words "attested true copy" or "true copy" or "copy" on it*. Similarly, it is conceded by the opposite party/election petitioner that no such attestation was made on the first page of the election petition served on the applicant. In that view of the matter, no witness was required to be examined.

15. As already discussed and observed above that the cases referred to and relied upon by Mr. Dey, learned counsel appearing for the applicant are not similar to the present case, I desist from disposing of

this application in the light of the decisions rendered or law laid down in the aforesaid cases as they are not applicable to the present case given the admitted difference in the facts. The present issue is no longer *res integra* inasmuch as the same question has been discussed and decided by this Court in **Mission Ranjan's case** (supra). In the said case of **Mission Ranjan**, as stated earlier, the election petition was filed by the petitioner-in-person and the copy of the election petition supplied to Respondent/~~Returned candidate~~ did not contain any endorsement on the first page thereof with the words, "**attested true copy**" or "**true copy**" or "**copy**".

16. The decision of this Court in the aforesaid case was rendered in the light of the laws laid down in **Jacob's** and **Phunzathang's** cases (supra). As per decision in **Jacob's case**, 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 and thus, the requirement is of substance and not of form. The expression "copy" occurring in Section 81(3) of the RP Act, means a copy, which is substantially so and which does not contain 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.

17. It was argued by Mr. Dey that it is not the duty of the respondent/returned candidate to wade through the entire record in order to find out which is the correct copy of the election petition or as

to whether it is substantially same or contains any defect of a vital nature but to see whether election petitioner has duly attested the copy served on the respondent writing the words/word ***"attested true copy"*** or ***"true copy"*** or ***"copy"*** of the original election petition. The submission of Mr. Dey has an under-tone of hypertechnicality which I am not prepared to accept. I have, however, waded through the copy of the election petition served on the applicant, which is on record and found that it is the same copy of the original election petition filed by the opposite party/election petitioner without any variation, not to speak of any substantial variation or defect therein. The decision rendered by the Constitution Bench in **Jacob's** case has been followed in the **Phunzathang's** case wherein, it has been held as follows:

"13. From the above conclusion of this Court in Jacob 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 the 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 the same cannot be cured after the period of limitation.

18. What is to be insisted on is the substantial compliance with the requirement under Section 83(1) and once it is established that the provision has been complied substantially, the election petition cannot be dismissed in limine. The omission to insert or endorse on the copy of the election petition with the words, ***"attested true copy"*** or ***"true copy"*** or ***"copy"*** is not a vital defect in substance warranting dismissal of the election petition at the threshold. After all, the principal object of the Act

is to scrutinize purity of election for healthy growth of Parliamentary democracy. That is why the RP Act has provided time-bound disposal of the election dispute within a period of six months from the date on which the election petition is presented for trial. Half of the prescribed period has already been spent. The Court cannot afford to spend more time on fancy hypertechnical issues.

19. In view of the foregoing discussions and the reasons recorded, I find the present misc. application is lacking in merit and the same is liable to be dismissed and accordingly, the same stands dismissed. The election petition as filed by the opposite party/election petitioner is held to be maintainable and shall now proceed for trial.


JUDGE

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