



Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.7474 of 2025

Hafiz Rashid Ahmed Choudhury

...Appellant

Versus

Kripanath Mallah & Ors.

...Respondents

J U D G M E N T

K.VINOD CHANDRAN, J.

Shorn of the multitude of facts, the present appeal arises from an order passed under Section 86 of the Representation of People Act, 1951¹, rejecting an Election Petition filed by the appellant herein. The respondent, who filed the application under Section 86 of the RoP Act, was the successful candidate elected from No.7 Karimganj Parliamentary Constituency, Assam, in the general elections to the Lok Sabha held in the year 2024.

¹ Hereinafter referred to as 'the RoP Act'

2. We refer to the parties from their status in the Civil Appeal.

3. Essentially three contentions were taken before the High Court, which were as follows:-

(i) That, in the copy of the Election Petition served upon the respondent, the affidavit in Form-25, as required under Section 94A of the Conduct of Elections Rules, 1961, did not indicate any notarization having been carried out;

(ii) That, certain pages of the Election Petition were not attested properly i.e: from Page No.1 to Page No.84 of the copy served, the respondent had put a signature under a rubber stamp '*attested to be true copy of the petition*' and from Page No.85 to Page No.185, the rubber stamp was of 'certified to be true copy'; the latter not being an attestation strictly under Section 81, and

(iii) That, four pages, specifically Page Nos.11,16, 21 and 22 were missing from the Election Petition.

4. The Court found the attestation to be not proper, did not discuss about the notarization in Form-25 and negatived

the contention regarding the missing pages. The appellant, the Election Petitioner, is before us challenging the same.

5. Mr. Harin Pravinkant Raval, learned Senior Counsel for the appellant would point out that the finding of the High Court that the attestation was not proper, is in the teeth of various judgments of this Court. Reliance is placed on ***F.A. Sapa v. Singora***², which specifically dealt with the compliance of Section 81(3) of the RoP Act. If the copies are signed by the petitioner at the foot of every page, taking the responsibility of the copy being a true copy, the same would suffice, especially when no particular form of attestation is prescribed is the contention. It was also pointed out that Section 86 requires peremptory dismissal of the Election Petition, only if it does not comply with the provisions of Sections 81, 82 or 117. The specific contention raised of the copy of Form-25 having not shown attestation, if at all, is a defect under the proviso to Section 83 not liable to be reckoned for peremptory dismissal.

² (1991) 3 SCC 375

6. Mr. Wajeeh Shafiq, learned AoR for the respondent, submitted that there is no finding rendered by the Court insofar as Form-25 is concerned and though the original affidavit filed before Court has been attested by the Commissioner of Affidavits, there is nothing to indicate such attestation having been made as per the requirement in Form-25. In this circumstance, ***Dr Shipra (Smt) and Others v. Shanti Lal Khoiwal and Others***³, applies squarely. The defect pointed out in the Form-25, in the affidavit alleging corrupt practices would be a relevant defect in presentation, a violation of Section 81. It is also contended that the attestation with the seal '*certified true copy*' can be accepted only if the copies supplied were certified copies. Learned AoR for the respondent seeks to sustain the order.

7. Insofar as the missing pages are concerned, the impugned judgment found that it is an afterthought, since on many occasions when the respondent appeared after summons were issued, there was no such contention taken.

³ (1996) 5 SCC 181

We find absolutely no reason to interfere with the said finding of the High Court.

8. Admittedly, there was difference in the attestation in the Election Petition, as noticed hereinabove. Section 81 (3) provides every Election Petition to be accompanied by as many copies as there are respondents and requires every such copy to be attested by the Election Petitioner under his own signature, to be true copy of the petition. In fact, the signature of the Election Petitioner on the foot of the page, certifying the same as true copy would suffice, was the clear declaration in ***F.A. Sapa***². The learned Judges found that on a plain reading of Section 81(3), two requirements come out; one, with respect to the number of copies being equal to the number of respondents and the other, regarding attestation by the petitioner himself, that such copy is a true copy of the petition. All that the provision requires is that the copies should be attested by the petitioner to be true copy of the petition under his own signature, taking responsibility for the copy served to be a true copy of the original petition and no particular form of attestation is prescribed.

9. We respectfully concur with the findings in ***F.A. Sapa***² and reverse the finding to the contrary in the impugned judgment since the different rubber stamps employed convey the same meaning.

10. However, a little problem arises insofar as the attestation in Form-25 is concerned. Form-25, as we see, under the Conduct of Elections Rules, 1961, has to be signed by the Election Petitioner and attested by a Magistrate of the First Class, a Notary or a Commissioner of Oaths, as solemnly affirmed before him on such and such date. There can hence be no dispute raised that an affirmation on oath is required; the allegation also being only of the copy not showing such attestation of such affirmation, by the Commissioner of Affidavits, who had attested the original file before court.

11. We had reserved the matter for judgment, relying on the Constitution Bench decision in ***T.M. Jacob v. C. Poullose and Others***⁴, but later found the copies produced herein to have no semblance of notarization having been carried out. Then, we posted the matter back and queried learned Senior

⁴ (1999) 4 SCC 274

Counsel for the appellant, specifically pointing out Page Nos.421 and 577 of the paper book, where the Form-25 affidavit is produced. No attestation is seen therein, not even a printed affirmation with space left for the signature to be affixed, of the Commissioner of Affidavits and the blank space for the date; as seen from Form-25 in the Conduct of Elections Rules, 1961.

12. Mr. Harin Pravinkant Raval, learned Senior Counsel for the appellant, then took us through the decision in ***T.M. Jacob***⁴ and also that in ***T. Phungzathang v. Hangkhanlian and Others***⁵, wherein the later three Judge Bench had specifically declared that the case in ***Dr Shipra (Smt)***³ was no more good law after ***T.M. Jacob***⁴. It was argued that applying the theories of substantial compliance and of curability, it was held that the Election Petition was not liable to be dismissed *in limine*, in identical circumstances in ***T. Phungzathang***⁵.

13. We bestowed our careful attention to the three decisions cited before us. ***Dr Shipra (Smt)***³, as we noticed, was in an identical circumstance. The preliminary objection

⁵ (2001) 8 SCC 358

raised therein included that of the copy of the notice, together with the affidavit in support of the Election Petition, served on the Returned Candidate, having not contained the verification by the Notary and hence, the Election Petition was not maintainable under Section 83 (1)(c) of the RoP Act. It was held that corrupt practices are to be proved to the hilt and an element of vagueness would vitiate the Election Petition, which would lead to a dismissal *in limine*, when there is a true copy supplied with mistakes of vital and serious nature. Though, it was held that no general principle of universal application can be laid down, it was categorically held that substantial compliance would not be sufficient either. Allegations of corrupt practice, entailing civil consequences of disqualification for a maximum period of six years, apart from conviction, mandates strict compliance of the statutory requirement and a true copy supplied to the Returned Candidate containing the attestation by the prescribed authority and certified to be true copy by the Election Petition in his or her own signature was held to be a *sina qua non*.

14. **Dr Shipra (Smt)**³, with due respect, was not overruled but distinguished in **T.M. Jacob**⁴. While **Dr Shipra (Smt)**³ did not contain any indication of the attestation having been carried out, in **T.M. Jacob**⁴, the situation was different. The copy of the affidavit supplied to the Returned Candidate, contained the endorsement that the affidavit has been duly affirmed, signed and verified by the applicant before a Notary. Under the affirmation by the Notary, the words 'sd/- Notary' were also written. What was missing, was the name and address, as well as the stamp and seal of the Notary, before whom the affidavit had been affirmed and who had attested the affidavit.

15. The defect in **T.M. Jacob**⁴ was found to be materially different from the defect in **Dr Shipra (Smt)**³, and the copy of the affidavit supplied to the Returned Candidate, gave rise to neither apprehension of misrepresentation nor result in a ground of the statutory compliance having not been met, held the Constitution Bench. In fact, it was observed by one of the learned Judges in **Dr Shipra (Smt)**³ specifically that the principle of substantial compliance cannot be accepted in the fact situation, thus giving it no general application

divorced from the fact situation of a given case, was how the Constitution Bench reasoned and distinguished it.

16. At the risk of repetition, the instant case is identical to ***Dr Shipra (Smt)***³.

17. We have gone through the judgment cited by the learned Senior Counsel for the appellant in ***T. Phungzathang***⁵, which also brought forward an identical situation with a similar contention for rejection of the Election Petition; that the affidavits filed in support of the corrupt practices and supplied to the Returned Candidate, did not contain due verification and attestation by the Oath Commissioner/prescribed authority, resulting in the violation of mandatory requirements of Sections 81(3) and 83(1) of the RoP Act. In Paragraph 7, where Paragraph 16 of ***Dr Shipra (Smt)***³ was extracted, it was found that '*the defect pointed out in ***Dr Shipra (Smt)***³ case pertains 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*' (sic).

18. With due respect, we are unable to agree, as the allegation specifically noted in ***Dr Shipra (Smt)***³ case in

Paragraph 1 and also evidence from the extract made of Paragraph 16 from **T.M. Jacob**⁴, was otherwise. The Constitution Bench, having noticed the judgment of one of the judges in **Dr Shipra (Smt)**³, found that ‘it transpires that in **Dr Shipra (Smt)**³ case, *‘the true copy of the Election Petition furnished to the respondent gave an impression that Election Petitioner’s affidavit supporting his allegations of corrupt practice had not been duly shown and verified by the Election Petitioner before the notary’* (sic).

19. **Dr Shipra (Smt)**³, **T. Phungzathang**⁵ and the present appeal bring forth identical situation and identical argument.

20. We cannot but with due respect observe that the specific ground in **Dr Shipra (Smt)**³, as noticed in **T. Phungzathang**⁵, was not correct and so **T. Phungzathang**⁵ erred in its understanding of the Constitution Bench decision in **T.M. Jacob**⁴. **Dr Shipra (Smt)**³ was never overruled.

21. Be that as it may, we have to notice two relevant aspects in considering the issue of lack of attestation in Form-25, i.e. in the copies supplied to the Returned Candidate. In **Dr Shipra (Smt)**³ itself, in the concluding paragraph, it was noticed that the High Court, while rejecting the Election

Petition, held that even if more grounds were raised assailing the legality of the election results declared, the defect in Form-25 of an absence of notarization/attestation would entail dismissal of the petition. The three Judge Bench in ***Dr Shipra (Smt)***³⁾ found that this is not the correct position in law and held that if Form-25 read with Rule 94A is not in conformity with the requirement, then those parts of the petition which contain allegations of corrupt practices alone are required to be struck off and other independent grounds, if any, are required to be tried and decided on merits. Obviously, the defect under Section 83 does not entail peremptory dismissal under Section 86 of the RoP Act.

22. The second aspect arises from the decision of an earlier Constitution Bench in ***Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Others***⁶. Among others, one ground urged was of the affidavit in respect of corrupt practices, accompanying the Election Petition, being not in the prescribed form. It was held that '*it is impossible to accept the contention that a defect in verification which is to be made*

⁶ 1963 SCC OnLine SC 129

in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by Clause (c) of Sub-Section (1) of Section 83, is fatal to the maintainability of the petition.' (sic) [Para 8]

23. It was also held 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. The test was held to be whether *'the copy is a true one and the variation from the original is calculated to mislead an ordinary person'*. Applying that test, the learned Judges came to the conclusion that the defects complained of were not such as to mislead the appellant and therefore, there was no failure to comply with the last part of sub-section (3) of Section 81.

24. Another argument addressed before the Constitution Bench was the failure to comply with the proviso to sub-section (1) of Section 83, deemed to be non-compliance of Section 81. This contention was repelled, specifically noticing that the affidavit filed in that case was in the prescribed form, but due to inexperience, the Oath Commissioner had made a mistake in the verification portion

of the affidavit. The verification of the corrupt practices, having been made in the original, by a Commissioner of Affidavits, as prescribed, if at all, the copy did not contain that endorsement, it does not necessarily mislead the Returned Candidate but only entails a verification by the Court as to whether the same is available in the affidavit filed before Court. The absence of affirmation is not fatal since it neither amounts to a misrepresentation nor does it mislead the Returned Candidate.

25. The Constitution Bench decision in ***Murarka Radhey Shyam Ram Kumar***⁶ holds the field and the three Judge Benches, to the contrary, need not be looked into by virtue of the Constitution Bench decision regarding the precedential value of larger bench decisions, as declared in ***National Insurance Co. Ltd. v. Pranay Sethi and Others***⁷.

26. Admittedly in the present case Form-25 was affirmed before a Commissioner of Affidavits as available in the original before Court. Suffice it to request the High Court to verify and if due attestation of the affirmation on oath, is

⁷ (2017) 16 SCC 680

available, proceed with the matter on merits and if not available, not to permit the allegation of corrupt practises to be urged and proceed with the consideration on the merits of the other grounds, if any are pleaded. We, hence, find absolutely no reason to sustain the order of the High Court and reverse the same. We restore the Election Petition to the files of the High Court for consideration as required herein above.

27. The appeal is allowed.

28. Pending application(s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
AUGUST 24, 2026.**