

Before R. N. Mittal, J.

VINOD,—Petitioner

versus

KIRPAL SINGH DHILLON AND ANOTHER,—Respondents.

Election Petition No. 8 of 1985

May 29, 1986.

*Representation of People Act (XLIII of 1951)—Sections 81 and 86—Election challenged by way of election petition on account of alleged corrupt practices—Photostat copy of the petition and enclosures supplied to the respondent—Said petition not attested in terms of Section 81(3)—Provisions of the aforesaid section—Whether mandatory—Election petition filed without complying with the said provisions—Whether liable to be dismissed under Section 86 of the Act.*

Held, that from a reading of Section 81(3) of the Representation of People Act, 1960, the position of law which emerges is :

- (a) that the petitioner is duty bound to supply as many copies of the petition as there are respondents;
- (b) that each copy should be attested by the petitioner under his signatures;
- (c) that if the copy is not certified to be true copy by the petitioner but by his counsel or attorney that will not be a sufficient compliance of the provision;
- (d) that the provision of Section 81(3) regarding signing the copies of the petition by the petitioner are mandatory and if these are not complied with, the petition is liable to be dismissed under Section 86(1).

The matter to be examined in view of the above said propositions of law is that photostat copy of a document is a copy obtained by means of a photographic apparatus meant for taking facsimile copies of the documents. The photostat copy no doubt is an exact copy of the material photographed but that does not guarantee that whole of the writing has been photographed. It cannot be ruled out that while preparing a photostat copy a part of the writing through inadvertence is not photographed. Therefore, it cannot be held that the photostat copy which bears the impression of the signatures of the petitioner fulfills the requirement of Section 81(3) as it is the duty of

the petitioner to certify even the photostat copy of the petition to be a true copy. As the petition has not been attested in compliance with the mandatory provisions of Section 81(3) of the Act the petition is liable to be dismissed under Section 86 of the Act.

(Paras 10, 11 and 17)

*Amended Election Petition under sections 80 and 81 of the Representation of People Act, 1951 praying that the election of Shri Kirpal Singh, Respondent No. 1, to the Punjab Vidhan Sabha, from the 41 Kapurthala Constituency, be declared void and set aside with costs and the respondents be dis-qualified.*

Arun Jain, Advocate, for the Petitioner.

Har Bhagwan Singh, Sr. Advocate (Arun Walia, Advocate with him) for No. 1, for the Respondent.

#### JUDGMENT

*Rajendra Nath Mittal, J. :*

(1) Briefly the facts are that the general elections to the Punjab Vidhan Sabha were held in September, 1985. The parties to the petition and four other candidates contested the election from the Kapurthala Constituency. The petitioner was sponsored by Akali Dal (Longowal) and respondent No. 1 by Indian National Congress (I). The total votes polled in the election were 49,894 out of which the petitioner secured 12,460 votes whereas respondent No. 1, 17,072 votes and respondent No. 2, 10,919 votes. The other candidates received votes varying from 522 to 6,385. Respondent No. 1 was declared as elected on 26th September, 1985.

(2) It is alleged that respondent No. 1 and respondent No. 2 belong to Jat Sikh Community and are related to each other. Respondent No. 2 fought and won the election from this Constituency in the general election held in 1980 on Akali Dal ticket. Respondent No. 1, who was not given ticket by the Congress, supported him against the Congress candidate in that election. This time respondent No. 2 was denied the party ticket by Akali Dal (L), and he supported respondent No. 1.

(3) In para 6 of the petition it is stated that respondent Nos. 1 and 2 helped each other and respondent No. 2 did his best so that

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respondent No. 1 might come out successful. Respondent No. 1 provided the finances for election campaign of respondent No. 2.

(4) The petitioner has challenged the election of respondent No. 1 on the ground of commission of corrupt practices as mentioned in subsequent paras.

In para 7 the allegation of the petitioner is that respondent No. 2 at the instigation and with the consent of respondent No. 1 got published in the Daily Akali Patrika, dated 19th September, 1985 an appeal in the joint names of Shri Chanda Singh, Jathedar of Kapurthala District Jatha of Akali Dal (Longowal) and Giani Gian Singh, General Secretary-cum-office incharge of Kapurthala District Jatha of Akali Dal (Longowal) for casting votes in his (respondent No. 2's) favour. Both the Jathedars, it is alleged, had been bribed by the respondents.

In para 9 it is averred that several posters and hand-bills were widely distributed in the villages by which respondent No. 1 through the agency of Shri Raghbir Singh, respondent No. 2 published a false statement of fact for the purposes of making the voters believe that the petitioner was not the official candidate of Akali Dal (Longowal) but respondent No. 2 was its candidate.

In para 12 it is pleaded that with the consent and connivance of respondent No. 1, respondent No. 2, his workers and supporters held election meetings in various villages detailed therein in which an appeal was made to the voters to vote for respondent No. 2 because he was the real Panthic candidate and that he belonged to Jat Sikh community. The voters were also asked not to vote for the petitioner because she belonged to Chadha Hindu community.

In paras 13 and 14 the petitioner stated that the President and members of Kapurthala Municipal Committee belonging to Congress (I) at the instance of the returned candidate invited tenders from the contractors for laying pre-mix carpet on many roads of Kapurthala town. The advertisement in that regard was published in the Tribune on 19th September, 1985. The issuance of the notice was utilised by respondent No. 1, his workers and supporters with his consent as an offer of gratification to the voters of Kapurthala town with the object of inducing them to vote for him in the election. He also addressed a gathering on 23rd

September, 1985, at JallaolKhana Chowk, Kapurthala, at noon time. That led to heavy poll in his favour.

(5) It is averred by the petitioner in para 15 that there are two Mandis in Kapurthala, one known as Old Anaj Mandi and the other New Anaj Mandi. About a decade back a sole market yard under the Punjab Agricultural Produces Markets Act was created in New Anaj Mandi. From that time no business could be carried on in Old Anaj Mandi. The shopkeepers of the Old Anaj Mandi made repeated applications to the Punjab Government for constituting the Old Anaj Mandi to be a sub-market yard but the applications were rejected. Respondent No. 1 using his influence persuaded the Punjab Government to issue a notification, dated 12th September, 1985 declaring the Old Anaj Mandi to be a sub-market yard and brought the notification by hand on the same day to Kapurthala. He and his chief workers and supporters, Shri Mohinder Kumar Aggarwal and Shri Satgur Bahl announced it in a meeting and thereby induced the voters to vote for respondent No. 1. The shopkeepers in turn distributed sweets there and then promised to vote for him.

(6) The petition has been contested by respondent No. 1 who *inter alia* pleaded that a photostat copy of the petition had been supplied by the petitioner to him which had not been signed by her to be a true copy. The petition was liable to be dismissed on that ground alone. He further pleaded that the allegations of corrupt practices contained in paras 6, 7, 8, 9, 10 (introductory part), 11, 13, 14, 15, 16 and 17 of the petition were vague and lacking in material particulars. The affidavit attached with the amended petition was also not in accordance with law.

(7) On the pleadings of the parties the following preliminary issues were framed on 6th May 1986:—

- (1) Whether the photostat copies of the amended election petition and its annexures handed over to respondent No. 1 are required to be signed and attested to be true copies by the petitioner ? OPR.
- (2) Whether the allegations of corrupt practice contained in paras 6, 7, 8, 9, 10 (introductory part), 11, 13, 14, 15 16 and 17 of the petition are vague and lacking in material particulars. If so, with what effect ? OPR.

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(3) Whether the affidavit attached with the amended petition is not in accordance with law ? If so, with what effect ?  
**OPR.**

(8) In view of the statement of the counsel for the petitioner given on 13th and 14th May, 1986, Shri Harbhagwan Singh gave up his objection regarding lack of material particulars in paras 8, 10 (introductory part), 11, 16 and 17 of the petition.

*Issue No. 1:*

(9) It was agreed by the learned counsel that the copies of the petition supplied by the petitioner to respondent No. 1 along with the annexures be placed on the record and be taken into consideration for deciding the issue. Consequently the aforesaid documents were placed on the record. It is not disputed that the copy supplied by the petitioner to the respondent is a photostat copy of the original petition and its enclosures. The photostat copy does not bear the words "true copy of the petition" and no such authentication is signed by her. The photostat copy has been signed by Mr. Arun Jain, her Advocate. On the photostat copy the signatures of the petitioner made on the original petition however, appear. With the above said facts in view it is to be seen whether the provisions of the Representation of the People Act, 1951 (referred to as the 1951 Act) have been complied with or not.

(10) Section 81 relates to the presentation of the petitions. Sub-section (1) says that an election can be called in question by presenting an election petition on the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by a candidate. Sub-section (3) provides that the election petition shall be accompanied by as many copies of the election petition as there are respondents in the petition and every copy shall be attested as true copy by the petitioner. Sub-section (3) reads as follows:—

"(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."

Under sub-section (1) of section 86 an election petition is liable to be dismissed if it does not comply with the provisions of section 81.

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The sub-section is set out below:—

“(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

*Explanation.*—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.”

The sections were interpreted by this Court in *Panna v. Mukhtiar Singh*, (1), wherein it was observed that the provisions of section 86 clearly show that compliance with section 81 was intended to govern the validity and maintainability of the petition itself. It is settled law that a mandatory provision or a mandatory part of a statutory provision must be fulfilled exactly and the question of substantial compliance therewith cannot arise. It is further observed that an election petition filed without complete copies required by section 81(3) would itself not be a complete petition and would, therefore, be hit by section 86. Later the question was examined by the Supreme Court in *Satya Narain v. Dhuja Ram and others* (2). Goswami, J., speaking for the Court said that the right to challenge an election is a special right conferred under a self-contained special law and the Court will have to seek answer to the questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provisions. An election petition cannot be equated with a plaint in a civil suit. While dealing with section 81(3) it was observed that its provisions are mandatory. The relevant observations are as follows :—

“The very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually and lightly permitting all kinds of devices to delay the ultimate trial. The purpose of enclosing the copies of the election petition for all the respondents is to enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented.

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(1) A.I.R. 1972 Pb. and Hary. 451.

(2) A.I.R. 1974 S.C. 1105.

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If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the first part of section 81(3) with which we are mainly concerned in this appeal is a pre-emptory provision and total non-compliance with the same will entail dismissal of the election petition under section 86 of the Act."

The matter was again considered by that Court in *Sharif-ud-Din v. Abdul Gani Lone*, (3). Following the above view it was held therein that the requirement under section 89(3) of the Jammu and Kashmir Representation of the People Act, 1957 that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own signatures, is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in section 94 of the Act. The attestation by the Advocate for the petitioner cannot be treated as the equivalent of attestation by the petitioner under his own signatures. The object of requiring the copy of an election petition to be attested by the petitioner under his own signatures to be a true copy of the petition is that the petitioner should take full responsibility for its contents and that the respondents should have in their possession a copy of the petition duly attested under the signatures of the petitioner to be true copy of the petition at the earliest possible opportunity to prevent any unauthorised alteration or tampering of the contents of the original petition after it is filed in Court. It is further observed that whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow. It is appropriate to mention that section 89(3) and 94(1) of the Jammu and Kashmir Representation of People Act, 1957 are equivalent to sections 81(3) and 86(1) of the 1951 Act. The facts of that case were that the copies of the petition attested to be true copies by the counsel for the petitioner were attached with the petition. An objection was taken that the petition was not accompanied with the copies as

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required under section 89(3) of that Act. The petition was dismissed by the High Court. In appeal, the above observations were made by the Supreme Court in view of the aforesaid facts. From the above cases the propositions of law which emerge are as follows :—

- (a) that the petitioner is duty bound to supply as many copies of the petition as there are respondents;
- (b) that each copy should be attested by the petitioner under his signatures;
- (c) that if the copy is not certified to be true copy by the petitioner but by his counsel or attorney that will not be a sufficient compliance of the provision;
- (d) that the provision of S. 81(3) regarding signing the copies of the petition by the petitioner are mandatory and if these are not complied with, the petition is liable to be dismissed under section 86(1).

(11) The matter is to be examined in view of the above observations. Photostat copy of a document is a copy obtained by means of a photographic apparatus meant for taking facsimile copies of the documents. The photostat copy no doubt is an exact copy of the material photographed but that does not guarantee that whole of the writing has been photographed. It cannot be ruled out that while preparing a photostat copy a part of the writing through inadvertence is not photographed. Therefore, it cannot be held that the photostat copy which bears the impression of the signatures of the petitioner fulfils the requirement of section 81(3). It is the duty of the petitioner to certify even the photostat copy of the petition to be a true copy and if that is not done, the petition is liable to be dismissed.

(12) In the above view, I am fortified by a decision of the Delhi High Court in *Ved Parkash Gaur v. Sukhan and others* (4). In that case, the petitioner had supplied photostat copy of the petition without the requisite attestation. The learned Judge held that the petitioner had not complied with the provision of section 81(3) and, therefore, the petition was liable to be dismissed.

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(4) A.I.R. 1984 Delhi 276.



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(13) The contention of Mr. Jain is that the provisions of section 81(3) have been substantially complied with as the signatures of the petitioner appear on each page of the photostat copy as the original was signed by her. He submits that it does not matter whether the signatures are original or the impression of the signatures on the original. To support his contention he makes reference to *Muraraka Radhey Shyam Ram Kumar v. Roop Singh Rathore and others*, (5), *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar and others* (6), *M. Kamalam v. Dr. V. A. Syed Mohammed* (7).

(14) I have given my thoughtful consideration to the argument. However, I do not agree with his submission. As already observed above, it is mandatory that the signatures of the petitioner on the copy of the petition to be supplied to the other side should be in original and not the impressions of the signatures on the original. The cases referred to by the learned counsel are distinguishable. In *Murarka Radhey Shyam Ram Kumar's case* (supra) the facts were that the copy of the petition which was served on the respondent did not contain the signatures of the petitioner at the foot of the petition though every page of the copy was attested to be true copy under the signatures of the petitioner. In view of the aforesaid facts it was observed that the word "copy" in sub-section (3) of section 81 of the 1951 Act did not mean an absolute exact copy but meant that the copy should be so true that nobody could by any possibility misunderstand it. Ultimately the Bench held that when every page of the copy served on the respondent to the election petition was attested to be true copy under the signatures of the petitioner, a fresh signature below the word "petitioner" was not necessary.

(15) In *Jagat Kishore Prasad Narain Singh's case* (supra) there were discrepancies between the original petition and the copies served and the divergence was bound to mislead the contesting respondents and prejudice their defence. Consequently it was observed by the Bench that the pleadings in a case has great importance and that is more so in the election petitions particularly when the returned candidate is charged with corrupt practice.

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(5) A.I.R. 1964 S.C. 1545.

(6) 1970(2) S.C. cases 411.

(7) A.I.R. 1978, S.C. 840.

He must know what the charge against him is so that he may prepare his defence. The law requires that a true copy of the election petition should be served on the respondents. That requirement had not been fully or substantially complied with. Therefore, the petition was liable to be dismissed under section 86. It is further relevant to point out that the Bench did not express any opinion as to whether the provision of sub-section (3) of section 81 was directory or mandatory because the said provision had not even been substantially complied with.

(16) In *M. Kamalam's case* (supra) the facts were that an election petition was filed challenging the election of the returned candidate on the ground of commission of certain corrupt practices. It was duly signed and verified and was accompanied by the requisite affidavit in support of the allegation of the corrupt practice and their particulars. The election petition and the affidavit were filed together as one document. Two copies of the petition and affidavit were filed for service on the respondent. The signatures of the petitioner by way of authentication appeared at the foot of the copy of the affidavit but were not appended separately at the foot of the copy of the election petition. It was observed that an election petition for the purpose of sub-section (3) of section 81 was confined not only to election petition proper but also included a schedule or annexure contemplated in sub-section (2) of section 83 and a supporting affidavit referred to in the proviso to section 83(1). The election petition was in truth and reality one document consisting of two parts, one being the election petition proper and the other being the affidavit. Therefore, even if no signature was appended by the petitioner on the copy of the election petition proper and the signature was placed only at the foot of the copy of the affidavit that was sufficient compliance with the requirement of the last part of sub-section (3) of section 81. The law did not require that the authenticating signature must be made by the petitioner at any particular place in the copy of the election petition. In fact, the copy of the affidavit constituted the end-portion of the copy of the election petition and the signature placed by the petitioner at the foot of the copy of the affidavit was, therefore, clearly referable to the entire copy preceding it and it authenticated the whole of the copy of the election petition to be a true copy. In my view Mr. Jain cannot derive any benefit from the observations in the above cases.

(17) For the aforesaid reasons I am of the view that the photostat copies of the amended election petition and its enclosures

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handed over to respondent No. 1 were required to be attested by the petitioner. As the petitioner has not done so and failed to comply with the mandatory provisions of section 81(3), therefore, the petition is liable to be dismissed under section 86 on this short ground.

*Issues Nos. 2 and 3:*

(18) Though in view of the finding on issue No. 1 it is not necessary to decide the other preliminary issues but I propose to decide the same so that all the preliminary issues stand disposed of. Before dealing with issue No. 2, it is relevant to point out that Mr. Harbhagwan Singh, in view of the statements of Mr. Jain, dated 13th, 14th and 19th May, 1986 to the effect that he will supply the particulars of corrupt practices in paras Nos. 7, 8, 9, 10 (introductory part), 11, 13, 14, 15, 16 and 17 of the petition, gave up his objections in that regard. He, however, maintained that the particulars of consent alleged to be given by respondent No. 1 and those of the agency alleged to be created by him as mentioned in paras 7, 9 and 13 should be supplied by the petitioner. He also did not give up his objection regarding para No. 6.

(19) The objection regarding para 12 was not pressed by the counsel for the respondent at the time of framing of issues though it was pleaded that para No. 12 of the petition was vague and lacking in material particulars regarding corrupt practice. The respondent consequently filed Civil Misc. No. 28-E of 1986 alleging that the allegations in the said para were vague and lacking in material particulars. Mr. Jain thereon made a statement on 20th May, 1986 that he would incorporate the names of the workers and supporters of the petitioner in para 12 (introductory part) of the petition. He also stated that he would comply with the other objections regarding that para except the objection regarding supply of details and particulars of the consent. Consequently Mr. Harbhagwan Singh did not press his objection except the objection for supplying the particulars of consent.

(20) Thus the objections of the respondent which now stand are that para 6 of the petition does not contain the particulars of corrupt practices and that paras 7, 9, 12 and 13 do not contain the particulars of consent alleged to be given by respondent No. 1 and those of agency alleged to be created by him in the said paras.

It may be mentioned at this stage that in paras 7, 12 and 13, the petitioner has mentioned about the consent of respondent No. 1 and in para 9 he has mentioned about the agency created by him. First, I shall deal with para 6 of the petition which reads as follows :—

“That respondent Nos. 1 and 2 helped each other and respondent No. 2 did his utmost with the active help and at the behest of respondent No. 1 to cut into the votes of Akali Dal (Longowal) Party so that respondent No. 1 may come out successful against the official Akali Dal (Longowal) candidate; namely the petitioner. As a matter of fact, the finance for the election campaign of respondent No. 2 was provided by respondent No. 1.”

On 19th May, 1986, Mr. Jain made a statement that para 6 consisted of introductory facts and did not contain allegation of corrupt practice. Consequently the question of giving the particulars of **corrupt practice** did not arise. In view of the aforesaid statement of Mr. Jain, the objection of Mr. Harbhagwan Singh is that if the para does not relate to the corrupt practice it should be struck out as it does not consist of material facts.

(21) According to section 83 an election petition is to consist of a concise statement of material facts. The para contains two allegations; firstly that respondents Nos. 1 and 2 helped each other and secondly, that the election campaign of respondent No. 2 was financed by respondent No. 1. The material facts are such facts which are necessary to be proved by the petitioner in order to establish his claim and by the respondent in order to establish his defence. In view of the statement that they do not constitute a corrupt practice, the said facts cannot be said to be material facts. It is well settled that if the pleadings contain unnecessary and irrelevant matter, the same can be ordered to be struck out as incorporation of such matter in the petition can delay its fair trial. Consequently I am of the view that the para is liable to be struck out.

(22) The objection regarding paras 7, 12, and 13 is that the material particulars regarding consent stated to be given by respondent No. 1 therein, have not been given. The said paras read

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as follows :—

- “7. That respondent No. 2, Shri Raghbir Singh.....with the consent of respondent No. 1 got published in the Daily Akali Patrika, dated 19th September, 1985, an advertisement purporting to be an appeal in the joint names of Sardar Chanda Singh, Jathedar.....and Giani Gian Singh, General Secretary-cum-office-incharge of the Kapurthala District Jatha.....”
- “12. That with the consent and connivance of the returned candidates, Shri Raghbir Singh, respondent No. 2, his workers and supporters also held election meetings.....”
- “13. ....This issuance of the.....notice was utilised by the returned candidate, his workers and supporters with his consent as offer of gratification to the urban voters of Kapurthala town with the object of directly inducing the voters to vote for respondent No. 1.....”

(23) It is evident from the above paras that the corrupt practices were alleged to have been committed by some other persons with the consent of respondent No. 1. The election can be set aside on the ground of commission of corrupt practices by other persons if it is proved that the corrupt practices were committed with the consent of the candidate or his election agent. Normally giving of consent is within the special knowledge of the person who gives the same or to whom it is given. In this situation it is not possible to give the particulars of the consent by the election petitioner. He can only make an allegation of consent in the petition and prove the same by evidence. In the above view I am fortified by the observations of the Supreme Court in *Balwan Singh v. Lakshmi Narain and others* (8). In that case the allegations in the election petition were that vehicles were hired and procured for taking electors to the polling stations. An objection was raised that the particulars of hiring of the vehicles had not been given in the petition. It was observed by Shah, J., speaking for the Court, that normally, the arrangement for hiring or procuring a vehicle, is within the special knowledge of the parties to the

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(8) A.I.R. 1960, S.C. 770.

agreement and it is difficult to assume that it was intended to require the petitioner in an election dispute to set out the particulars of facts within the special knowledge of the other party, and expose the petition to a penalty of dismissal if those particulars could not be given. If particulars in support of the plea of the vehicle being hired or procured by the candidate or his agent or by another person and being used for conveying voters to or from the polling station are set out, failure to set out particulars of the contract of hiring or arrangement of procuring will not render the petition defective. In *Boddepalli Rajagopala Rao v. N. G. Ranga*, (9), it was further held that proof of express consent is not necessary. Inference of such consent may be raised from the circumstances. I am, therefore, of the view that it was not necessary for the petitioner to give the particulars of the consent.

(24) In para 9 the allegation of the petitioner is that by means of advertisements, posters and hand-bills, respondent No. 1 through the agency of Shri Raghubir Singh, respondent No. 2 published a false statement of facts for making the voters believe that he and not the petitioner was the official candidate of the Akali Dal party in the election. It was argued by Mr. Harbhagwan Singh that particulars of agency have not been given by the election petitioner. *A fortiori* I am of the view that it was not necessary for the petitioner to give particulars of the agency.

(25) The objection of the counsel for the respondent about the affidavit, dated 30th April, 1986 was that it did not relate to paras 10 (introductory part), 12 (introductory part) and 17 which contained allegations of corrupt practices. Mr. Jain, learned counsel for the petitioner, had agreed that he would file an additional affidavit of the petitioner regarding the aforesaid paras within two weeks and in case he failed to do so within that period, the said paras be deemed to be deleted. In view of the aforesaid statement of Mr. Jain, issue No. 3, has become infructuous.

(26) Therefore, in view of the finding on issue No. 1, I dismiss the election petition with costs. Counsel fee Rs. 3,000

H. S. B.

(9) A.I.R. 1971 S.C. 267.