कार्यालय : मुख्य निर्वाचन अधिकारी, उत्तराखण्ड
4 – सुभाष रोड़, सचिवालय परिसर, देहरादून – 248001
फोन न0 (0135) – 2712055, 2713551
फैक्स न0 (0135) – 2712014, 2713724

संख्या 561 /XXV–12 (1–5)/2008 देहरादून : दिनांक 13 जून, 2016

सेवा में,

लोक सूचना अधिकारी,
जिला निर्वाचन कार्यालय,
टिहरी गढ़वाल, उत्तराखण्ड।

विषयः– **सूचना के अधिकार के अर्न्तगत चाही गयी सूचनाओं से संबंधित आवेदन पत्र का हस्तान्तरण।**

महोदय,

उपरोक्त विषयक श्री शान्ती प्रसाद, एडवोकेट, उत्तराखण्ड हाईकोर्ट, हाईकोट कम्पाउण्ड, नैनीताल, उत्तराखण्ड के सूचना के अधिकार संबंधी प्रार्थना पत्र का अवलोकन करने का कष्ट करें, जिसके माध्यम से उनके द्वारा सूचना के अधिकार अधिनियम, 2005 के अर्न्तगत सूचनायें उपलब्ध कराये जाने का अनुरोध किया गया है, की प्रति इस आशय से प्रेषित की जा रही है कि आवेदक द्वारा वांछित सूचना आपके कार्यालय से संबंधित है, जिसे सूचना का अधिकार अधिनियम–2005 की धारा 6 (3) के अर्न्तगत अग्रेत्तर कार्यवाही हेतु हस्तान्तरित किया जा रहा है।

अतः कृपया नियमानुसार वांछित सूचना आवेदक को उपलब्ध कराने का कष्ट करें।

संलग्न–यथोपरि।

भवदीय,
(मस्तू दास)
अनुभाग अधिकारी एवं
लोक सूचना अधिकारी

पृ0संख्या 561 /XXV–12(1–5)/2008, तद्दिनांक।
प्रतिलिपिः– श्री शान्ती प्रसाद, एडवोकेट, उत्तराखण्ड हाईकोर्ट, हाईकोट कम्पाउण्ड, नैनीताल, उत्तराखण्ड को सूचनार्थ प्रेषित।

(मस्तू दास)
अनुभाग अधिकारी एवं
लोक सूचना अधिकारी

09/06/2016 ओ प्रति

To,
The Public Information Officer,
O/o Chief Election Commissioner,
Uttarakhand, Dehradun

Subject:- Application under Right to Information Act, 2005

Sir,

That on 09.12.2011 The Hon'ble High Court of Uttarakhand passed the Judgment in the Case of Election Petition No. 2 of 2007 Subodh Uniyal vs. Sri Om Gopal and the said Judgment attained finality as noone challenged the same before the Hon'ble Supreme Court of India.

In the said Judgment at Page No. 28 and 29, Para No. 43 and 44 of the Judgment the Hon'ble Court observed as follows:

" However, the court finds that the lapse committed by the officials in handling the postal ballot papers should be enquired into by the Chief Election Commissioner and action if any, against the Returning Officer and the erring officials be taken."

Apart from that at Page No.46 of the Judgment at Para No.66 the Hon'ble High Court gives the following direction:-

"Before parting, the courts directs the Registry to send a certified copy of this order to the Chief Election Commissioner to make an enquiry into the glitch committed by the Returning Officer in not depositing the box containing the postal ballot papers in the Treasury and in not depositing the official documents in the District Election Office and take appropriate action against the erring officials."

In view of these facts the applicant needs following information under Right to Information Act, 2005:-

1. Provide me the copy of the enquiry report against the erring officials as well as against the Returning Officer as per Judgment dated 09.12.2011
2. Provide me the copy of action taken by the Chief Election Commissioner against the erring officials as well as against the Returning Officer as per Judgment dated 09.12.2011.

Shanti Prasad
Advocate
High Court of Uttarakhand
High Court Compound, Nainital
(Uttarakhand)

Enclosed: Postal Order of Rs.10 /- No. 33F 715848 and Copy of Judgment Dated 09.12.2011

HIGH COURT OF UTTARAKHAND AT NAINITAL

Election Petition No.2 of 2007

Subhodh Uniyal
S/o Sri D. N. Uniyal
R/o Uniyal Bhawan Narendra Nagar
Uttarakhand ... Petitioner

Vs

Sri Om Gopal
S/o Sri Chandan Singh & others ... Respondents

Dated:- 09th December, 2011

Mr. V. K. Kohli, the learned senior counsel assisted by Mr. Hari Mohan Bhatia, the learned counsel for the petitioner.
Mr. Rakesh Thapaliyal, the learned counsel for the respondents.

Hon'ble Tarun Agarwala, J.

1. The election of the legislative assembly in Uttarakhand was notified for the 8 Narendranagar Legislative Assembly Constituency and was held on 21.02.2007. The result was declared on 27.02.2007. The petitioner contested the election as a candidate of the Indian National Congress. Respondent no.1, Om Gopal contested the election as a candidate of the Uttarakhand Kranti Dal. The Returning Officer declared that respondent no.1 was elected by a margin of 4 votes. The petitioner polled 13,725 votes which included 4 postal ballots whereas, the respondent no.1 polled 13,729 votes which included 17 postal ballots.

2. The petitioner, being aggrieved by the declaration of the result, filed the present election petition under Section 80 and 81 of the Representation of the People Act, 1951 *(hereinafter referred to as the Act of 1951)* praying for a direction that the EVM (Electronic Voting Machine) votes and postal ballots votes be recounted and that the election of the respondent no.1 from Narendranagar

Constituency be declared void and the petitioner be declared elected from the said constituency.

3. The petitioner contended that there had been a number of irregularities in the counting of the votes and that the ballot papers were wrongly rejected without assigning any reason, on account of which, the election has been materially affected. It was contended in paragraph 8 of the petition that there was improper reception, refusal and rejection of the votes, which were cast through postal ballots and that the counting of the postal ballots was in violation of Rule 54A of the Conduct of Election Rules, 1961 *(hereinafter referred to as the Rules of 1961)*. In paragraph 10 of the petition, it was alleged that Kunwar Singh Rawat, Senior Assistant, Tehsil Narendranagar was allotted the work of sealing of the EVM in gross violation of the directions of the Election Commission. It was contended that the staff in the Legislative Constituency could not be given election duty in that constituency and that Kunwar Singh Rawat belongs to the same village as that of respondent no.1 and that Kunwar Singh Rawat is closely related to respondent no.1.

4. In paragraph 11, it was contended by the petitioner that while the counting of EVMs was in progress, the Returning Officer started counting the postal ballot papers at around 11:30 AM and started scrutinizing the declaration in Form 13A. It was alleged that as per Rule 54A of the Rules of 1961, it was mandatory to count the postal ballot papers first and, thereafter count the votes in the EVM and thus the Returning Officer committed a grave irregularity. It was also alleged that the Returning Officer shifted Kunwar Singh Rawat from sealing duty of EVM to count the postal ballot papers without any order in writing or instructions with an oblique motive. In the same

paragraph, it was further alleged that the Returning Officer declared that 240 postal ballot papers were received and further declared that the postal ballot papers would be opened at around 12:20 PM. In paragraph 12, it was alleged that the Returning Officer started counting the postal ballot papers with the assistance of Kunwar Singh Rawat without calling the candidates or the election agent of the candidates or the counting agent, and that, after counting the postal ballot papers in the absence of the petitioner or his election agent or counting agent, the Returning Officer at 3:30 PM announced the election intimating that the petitioner had been elected by a margin of 9 votes and that the counting of the votes in the EVMs indicated that the petitioner had led by a margin of 109 votes.

5. In paragraph 13, it was alleged that the petitioner was declared elected by the Returning Officer after the counting of the EVM votes and postal ballot papers and that the news was also flashed on the electronic and print media and that the office of the Election Commission was also informed about the result, but subsequently, the Returning Officer in collusion with Kunwar Singh Rawat later announced that respondent no.1 had won the election. In paragraph 14, it has been alleged that Kunwar Singh Rawat had illegally torn the postal ballots, which were cast in favour of the petitioner. In para 16, it has been alleged that the Returning Officer at around 5:30 PM announced that the respondent no.1 had been elected by a margin of 4 votes. At around 6PM, the petitioner by way of protest submitted an application and requested the Returning Officer for recounting of the EVM and postal ballot papers. In paragraph 17, it was alleged that the Returning Officer refused to recount the EVM votes and only ordered recounting of the postal ballot papers. In paragraph 18, it was alleged that the election agent of the petitioner Soban

Singh Negi saw several postal ballot papers and declaration forms lying under the table of the Returning Officer.

6. In paragraph 19, the petitioner alleged that the District Election Officer (District Magistrate concerned) and Superintendent of Police came in the counting hall and found Kunwar Singh Rawat handling the postal ballot papers and that the District Magistrate physically removed Kunwar Singh Rawat from the table where the postal ballot papers were kept. In para 20, it has been alleged that upon the intervention of the District Magistrate, the recounting of the postal ballot papers started in the presence of the observer. In paragraph 21, it was alleged that on recounting the votes, the Returning Officer declared that 89 postal ballot papers were invalid and 137 postal ballot papers were valid. It was further alleged that out of 89 postal ballot papers, 50 postal ballot papers were cast in favour of the petitioner while invalid postal ballot papers were cast in favour of the BJP candidate. It was alleged that the Returning Officer illegally declared that the petitioner received only 4 valid postal ballot papers and that 17 postal ballot papers were cast in favour of the respondent no.1. In paragraph 22, it was alleged that out of 17 postal ballot papers which was counted as valid in favour of the respondent no.1, 7 postal ballot papers should have been rejected as invalid as it did not contain the name of the voter. In paragraph 23, it was alleged that 50 postal ballot papers which were polled in favour of the petitioner was rejected on the ground that Form 13A of the Rules of 1961 was not attached with the postal ballot papers. In paragraph 29, it was alleged that the Returning Officer illegally denied recounting of the EVM votes. It was further alleged that some of the postal ballot papers which were validly cast in favour of the petitioner were wrongly rejected

and these postal ballot papers were serial nos.715, 721, 735, 736, 737, 738, 739, 743, 746, 750, 756 & 763.

7. The returned candidate, respondent no.1 filed his written statement and raised a preliminary objection to the effect that the copy of the election petition, which was served upon the respondent, was not a true copy of the original election petition and that only the first page of the election petition had been attested whereas all the pages should have been attested and, therefore, the election petition should be dismissed for non-compliance of the provision of Section 81 (3) of the Representation of People Act, 1951 *(hereinafter referred to as the Act of 1951)* as well as non-compliance of Rule 5 of Chapter XV-A of the Rules of the Court. The respondent no.1 in his written statement denied the allegations made in the petition and contended that the postal ballot papers were counted first and only thereafter the EVM votes were counted. The respondent no.1 contended that there was no violation of Rule 54-A of the Rules of 1961.

8. In paragraph 9 of the written statement, it was alleged that Kunwar Singh Rawat was not related to respondent no.1 and the allegations made in this behalf was totally false. It was further contended that the work of counting of postal ballot papers were assigned to the Tehsildar who was the Assistant Returning Officer and was not assigned to Kunwar Singh Rawat. Kunwar Singh Rawat was assigned the work of scrutinizing and sealing of the EVM votes. In paragraph 10, it has been alleged that the counting of the postal ballot papers was done in accordance with Rule 54A of the Rules of 1961 and that the postal ballot papers were counted before counting the votes in the EVM.

9. It was further stated that the envelope containing the postal ballot papers contained 243 postal ballot papers out of which 17 postal ballot papers did not pertain to the constituency in question and hence were separated and kept apart and out of remaining 226 postal ballot papers, 46 were not accompanied by any declaration in Form 13A and, in 43, the declaration in Form 13-A was incomplete. There were other defects also and as such 89 ballot papers were not counted and were rejected. In paragraph 10, it was further stated that the respondent no.1 received 19 votes and that the petitioner received only 3 votes from the postal ballot papers, but after recounting, it was found that respondent no.1 received 17 votes and the petitioner received 4 votes. It was also stated that the petitioner only made a request for recounting of the postal ballot papers.

10. It was further stated that at the time of the original counting of the postal ballot papers as well as when recounting was done, the petitioner and other candidates and their election counting agent were present. During the course of recounting, the election agent of the petitioner was also present. It was also stated that the Returning Officer had passed an order in writing directing Kunwar Singh Rawat and Rajendra Uniyal to assist the Assistant Returning Officer in the counting of the postal ballot papers and there was no oblique motive on the part of the Returning Officer in directing Kunwar Snigh Rawat and Rajendra Uniyal to do the work of counting of postal ballot papers. Respondent no.1 further denied that the Returning Officer had ever made any announcement that the petitioner had been elected or that the petitioner was leading by a margin of 109 votes in the counting of the EVM votes. The respondent no.1, however admitted that the petitioner led by 9 votes in the EVM

and, upon the addition of the postal ballot papers, the petitioner lost by a margin of 4 votes.

11. In paragraph 15 of the written statement, respondent no.1 contended that the petitioner only moved a one-line application before the Returning Officer for recounting of the postal ballot papers only. The recounting was ordered and the results were declared at around 6:00 PM on 22nd February, 2007. The respondent no.1 in paragraph 17 further denied the fact that Kunwar Singh Rawat was removed from the table or that the postal ballot papers were found lying under the table of the Returning Officer. In paragraph 21, the respondent no.1 denied that 50 postal ballot papers, which were rejected, were in favour of the petitioner and further submitted that the said ballot papers were rightly rejected since they did not comply with the requirement of Rule 54A of the Rules of 1961. The respondent no.1 contended that the election petition filed by the petitioner was patently misconceived and was liable to be rejected.

12. On the basis of the pleadings led by the parties, the following issues were framed:-

> *"1. Whether the counting of postal ballots was in violation of Rule 54-A of the Conduct of Election Rules, 1961, as alleged in para no.8 of the election petition? If so, its effect?*
>
> *2. Whether the Returning Officer wrongly rejected the postal votes, which were cast in favour of the petitioner and counted seven invalid postal ballots in favour of the respondent no.1, as alleged in para no.29 of the election petition? If so, its effect?*

3. Whether the Returning Officer has committed irregularities and illegality in the counting of EVM votes? If so, its effect?

4. Whether the copy of the election petition as supplied to the returned candidate is not a true copy of the election petition? If so, its effect?

5. Whether the petition lacks in material facts and particulars and it does not disclose any cause of action to the petitioner? If so, its effect?

6. Whether the Annexures and Schedules with the election petition have not been verified in accordance with law? If so, its effect?

7. To what relief, if any, is the petitioner entitled?"

13. The petitioner in support of his case examined as many as four witnesses, i.e. Subhodh Uniyal PW1, the petitioner himself, Soban Singh Negi PW2 chief election agent of the petitioner, Rajendra Prasad Uniyal PW3 Senior Assistant at Sub-Tehsil Gaja, who was assigned the work of sealing of EVM and Sanjay Kumar PW4, the then District Magistrate.

14. The respondent no.1 in support of his case has examined Kunwar Singh Rawat RW1, who was assigned to count the postal ballot papers, Dr. Meharban Singh Bisht RW2 Returning Officer, Radha Krishan Naithani RW3 Assistant Returning Officer, A. N. Das RW4 Examiner / Scrutinizer appointed by the Election Commission of India, Om Gopal Rawat RW5, the returned candidate, Sahjanand Sharma RW8, Observer and Prashant Joshi RW10, Registrar (Inspection) of this Court.

15. In the light of the pleadings and evidence that has come forward, the petition basically revolves upon the rejection of the postal ballot papers by the Returning Officer on different counts. Issues no.1 & 2 relate to the rejection of the postal ballot papers. Issue No.3 relates to the alleged irregularity being committed by the Returning Officer with regard to the counting of the EVM votes. Issues no.4 & 6 relate to the question as to whether the election petition supplied to the returned candidate was supplied in accordance with the Rules and issue no.5 relates to the question as to whether the petition lacks material particulars and whether it discloses the cause of action or not.

16. Heard Mr. V. K. Kohli, the learned senior counsel assisted by Mr. Hari Mohan Bhatia, the learned counsel for the petitioner and Mr. Rakesh Thapaliyal, the learned counsel for the respondents.

17. With regard to issue no.5, the learned counsel for the returned candidate submitted that these issues should be decided first as preliminary issues. The court, by an order dated 11.03.2008, rejected the contention of the returned candidate on the ground that these issues could only be decided after the evidence was led on all the issues and, at this stage, the said issues could not be decided. Against the order of the court dated 11.03.2008, the returned candidate filed a Special Leave Petition No.10045/2008 before the Supreme Court, which was dismissed by an order dated 25.04.2008, but the order of the court dated 11.03.2008 was set aside. Upon perusing the election petition, the Supreme Court was of the opinion that material facts as required under Section 83(1) of the Act of 1951 have been given

regarding EVM as well as postal ballot papers. The order of the Supreme Court is extracted hereunder:-

> *"Although, we agree with Mr. Satya Pal Jain, Sr. Adv. appearing for the petitioner that question regarding lack of material facts and particulars cannot be postponed after the stage of trial but after going through the election petition, we are satisfied that all material facts as required under Section 83(1) of the Representation of the People Act, 1951 (for short 'the Act') have been given regarding EVM as well as postal ballots. All material facts are required to be given under Section 83 (1)(a) of the Act whereas under Section 83(1)(b) full particulars are required to be given where a corrupt practice is alleged.*
>
> *Accordingly, while dismissing the special leave petition on merits, we set aside the finding recorded by the learned Judge to the effect that question regarding lack of material facts and particulars could be postponed till the recording of evidence"*

18. In the light of the aforesaid finding given by the Supreme Court in its order dated 25.04.2008, it is clear that the material facts as required under Section 83(1) of the Act of 1951 was given with regard to EVM as well as postal ballot papers. Issue No.5 is accordingly decided and it is held that the petition does not lack material facts and particulars and that it discloses the cause of action.

19. With regard to issue no.3, the learned senior counsel for the petitioner contended that he does not wish to press this issue. In view of the statement made by the learned senior counsel for the petitioner, it is held that the Returning Officer did not

commit any irregularity or illegality in the counting of the EVM votes and the issue is accordingly decided.

20. Issues No.4 & 6 can be decided together. The issue is, whether the copy of the election petition supplied to the returned candidate was a true copy of the election petition or not and whether the annexures and the schedules with the election petition have been verified in accordance with law or not. These issues have been raised at the instance of respondent no.1. According to the learned counsel for the respondent no.1, objections have been made in para 2A and 2B of the written statement, which is extracted hereunder:-

> *"2- Preliminary Objection*
>
> *(A) That the copy of the instant election petition served on the answering respondent is not a true copy of the original election petition. Moreover, the copy of the election petition except the first page has not been attested by the petitioner to be a true copy of the original petition. Hence the instant election petition is liable to be dismissed by this Hon'ble Court as it does not comply with the provisions of Section 81 (3) of the Representation of People Act, 1951.*
>
> *(B) That even as per Chapter XV-A Rule 5 of the High Court Rules the instant election petition should be dismissed under sub Section 1 of Section 86 of the Act before issuing the process for non compliance of Section 81 (3) of the Representation of the People Act, 1951."*

21. According to the respondent no.1, the copy of the election petition supplied to respondent no.1 was only attested by the petitioner on the first page and not on other pages and, therefore, it was not a true copy of the original petition which was supplied to the respondent nor did it comply with the provision of Section 81 (3) of the Act of 1951. The learned counsel submitted that the copy supplied to respondent no.1 has been submitted to the court as a piece of evidence. A perusal of the said petition would indicate that paragraph 30 of the petition, which was supplied to the respondent no.1, was different to the averments made in paragraph 30 of the original petition. Similarly, the verification clause to the petition as well as the verification clause to the documents and annexures are different to the petition, which was supplied to respondent no.1. The learned counsel for the respondent no.1 submitted that a copy of the petition which was supplied to respondent no.1 differed from the original petition and that it could not be treated as a true copy of the petition as contemplated under Section 81 (3) of the Act of 1951 and such vital defect, which cannot be cured, leads to the dismissal of the election petition under Section 86 (1) of the Act of 1951.

22. In response to the aforesaid assertion, the petitioner submitted that true copies of the election petition was supplied in the Registry of the High Court duly attested by the petitioner and the same was accepted by the office of the High Court. It was asserted that the respondent no.1, in order to delay the proceedings, has unnecessarily raised the issue by interpolating the petition which was supplied to him. It was also asserted that in order to remove any ambiguity and to remove all doubts, the petitioner supplied a certified copy of the election petition immediately upon receipt of the written statement to the

respondent no.1 as well as to his counsel and, consequently, the defect, if any, stood cured. The learned counsel for the petitioner submitted that assuming without admitting that there was a defect in the copy so supplied to the respondent no.1, the petition could not be dismissed under Section 86 of the Act of 1951.

23. In order to appreciate the submissions of the learned counsel for the rival parties, it would be appropriate to refer to the provision of Section 81, 83 and 86, which are extracted hereunder:-

> *"**81. Presentation of petitions.** (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub- section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty- five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned Candidate at the election and the dates of their election are different, the later of those two dates.*
>
> *Explanation.- In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.*
>
> *(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."*

83. Contents of petition.—*(1) An election petition—*

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

86. Trial of election petitions.—*(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.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged

election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of the pleadings. The proviso provides that where the petitioner alleges any corrupt practice, the petition would also be accompanied by the affidavit in the prescribed form in support of the allegations of such practice and particulars thereof.

25. In the present case, the respondent contends that paragraph 28 of the election petition supplied to respondent no.1 was different from paragraph 30 of the original election petition. For facility, the said paragraph is extracted hereunder:-

Para 30 of the original election petition	*Para 30 of the petition supplied to the respondent no.1.*
30. That the non-compliance with the procedure laid down in the law for counting of votes, the same resulted in materially affecting the outcome of the result and the election of respondent no.1.	*30. That the irregularities committed in complying with the procedure laid down in the law for counting of postal ballots, resulted in materially affecting the outcome of the result.*

In so far as the verification clause is concerned, the assertion is that the paragraphs have not been filled up in the verification clause that was supplied to the respondent no.1.

26. The question is, whether the word "copy" occurring in Section 81(3) of the Act did not mean an exact copy but only one so true that no reasonable person could by any possibility misunderstand it. This matter is no longer res-integra. In **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore AIR 1964 SC 1545**, a Constitution Bench of the Supreme Court dealt with this question and held that

> *"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."

27. The Constitution Bench also opined that:-

"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 ***Kamaraja Nadar vs. Kunju Thevar AIR 1958 SC 687****. 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 Stroud's judicial Dictionary, third edition, volume 4, page 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.*

28. A similar view was reiterated by another Constitution Bench of the Supreme Court in **Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad AIR 1964 SC 1027**, wherein it was held that the expression "copy" occurring in Section 81(3) of the Act did not mean an exact copy but only one so true that no reasonable person could be any possibility misunderstand it as not being the same as the original.

29. In **T. M. Jacob Vs. C. Poulose & others AIR 1999 SC 1359,** the Constitution Bench of the Supreme Court held:-

"41. 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."

30. In the Constitution Bench in **Jacob's case** (supra), the Supreme Court expanded the principle laid down by the earlier two Constitution Benches and explained as to when a petition being defective would amount to non-compliance of the requirement of Section 81 (3) of the Act, which would lead to the dismissal of the petition under Section 86 of the Representation of the People Act, 1951. The law laid down by the Constitution Bench in **Jacob's case** (supra) can be summed up as under :-

(i) The object of serving a "true copy" of an election petition and the affidavit filed in support of the allegations of corrupt practice of 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 of substance and not of form.

(ii) The test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person.

(iii) The word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it.

(iv) Substantial compliance with Section 81(3) was sufficient and the petition could not be dismissed, in limine, under Section 86(1) where there had been substantial compliance with the requirements of Section 81(3) of the Act.

(v) There is a distinction between non-compliance with the requirement of Section 81(3) and Section 83. A substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1) of the Act is enough. Defects in the supply of true copy under Section 81 of the Act may be considered to be fatal, where the party has been misled by the copy on account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such cases would attract the provisions of Section 81(3) read with Section 86(1) of the Act. The same consequence would not follow from non-compliance with Section 83 of the Act.

(vi) The argument that since proceedings in election petitions are purely statutory proceedings and not civil proceedings as commonly understood, there is no room for invoking and importing the doctrine of substantial compliance into Section 86(1) read with Section 81(3) of the Act, cannot be accepted and has to be repelled.

(vii) It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as

expounded in Murarka Radhey Shyam (supra) and Ch. Subbarao (supra) cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. This clearly emerges from the scheme of Sections 83(1) and 86(5) of the Act.

(viii) A certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in Murarka Radhey Shyam case (supra) are sound tests and are now well settled.

31. The Constitution Bench clearly held that violation of the provision of Section 81 of the Act of 1951 can lead to the dismissal of the election petition under Section 86 of the Act. On the other hand, the defect of the type provided in Section 83 can be cured.

32. In the light of the aforesaid, if paragraph 30 of the petition supplied to respondent no.1 was different and distinct from paragraph 30 of the original election petition, it would be fatal since a party could be misled by the copy on account of variation

of a material nature in the original petition and the copy supplied to the respondent. A prejudice caused to the respondent, in such cases, would attract the provision of Section 81(3) read with Section 86(1) of the Act. This allegation made by the respondent no.1 has not been spelt out in detail in his written statement, but, has been elucidated in the arguments by comparing the original petition and the petition that was received by the respondent which has been filed as evidence.

33. Before proceeding further, a question which crops up is, whether the petition received by respondent no.1 is the same copy which was filed by the petitioner before the Registry and which was dispatched by Registry to respondent no.1? Only the first page of the petition which was received by respondent no.1 discloses that the petitioner had signed it attesting it as a true copy. Does the Act, Rules of the Court, or the C.P.C. contemplate that each and every page of the petition is required to be attested by the petitioner? In the opinion of the court, in order to remove any kind of interpolation by the contesting respondents, including the returned candidate, it is always appropriate that each and every page of the election petition, which is to be supplied to the respondents, should be signed by the petitioner. Non-compliance of it would be fatal and would lead to the dismissal of the petition under Section 86 of the Act. Section 81 (3) contemplates that every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition that is required to be supplied to the respondent. Sub-clause (3) of Section 81 of the Act is a mandatory provision, like attestation, notarisation, etc. and non-compliance of this provision would render dismissal of the petition under Section 86 of the Act of 1951. Rule 3 of Chapter XV-A of the Rules of the Court provides that the petition shall bear an office report on

court fee and in addition to other matter will also report with regard to Section 81, 83 & 117 of the Act. For facility, Rule 3 of Chapter XV-A of the Rules of the Court is extracted hereunder:-

> *"3. Presentation of Election petition. – Every election petition shall be presented to the Registrar.*
> *The petition shall bear an office report on Court-fee and on compliance, in addition to other matters, with Sections 81, 82, 83 & 117 of the Act.*
> *The petitioner shall file with the petition a list of all documents whether in his possession or power or not, on which he relies as evidence in support of his claim."*

34. The stamp reporter in the election petition has reported as under:-

> *"Nine copy of the writ petitions have been filed by the petitioner."*

35. In the opinion of the Court, the reporting made by the stamp reporter is insufficient and is not in accordance with Rule 3 of Chapter XV-A of the Rules of the Court. The stamp reporter has not certified that true copies of the original petition has been filed by the petitioner as provided under Section 81 (3) of the Act nor has reported as to whether each and every page of the petition to be supplied to the respondents has been signed and attested by the petitioner.

36. However, non-reporting by the stamp reporter will not lead to a conclusion that a defective copy of the petition was supplied by the petitioner or that it was not true copy of the original petition. The respondent cannot take advantage of the lapse committed by the Registry in this regard. The respondent no.1 in order to succeed on this aspect was required to state something further and prove the allegations. The contention that paragraph 30 of the petition that was supplied to the respondent no.1 was

different with the averments made in paragraph 30 of the original petition could only be conclusively proved provided the respondent no.1 proves that each and every page was required to be signed by the petitioner and which had not been done. In the present case, the court finds that the assertion made by the respondent no.1 that each and every page was not signed has not been proved by any witness of the defendant. On the other hand, the petitioner has also nowhere stated that he had signed each and every page, but, only stated that he had supplied true copies of the original in the Registry. Mr. Prashant Joshi, Registrar (Inspection) of this Court, RW10 deposed that the copies that was supplied by the petitioner were sent to the respondents including respondent no.1.

37. In the light of the evidence that has come on record, it is clear that no substantial evidence has come to the effect that the petition that was received by the respondent no.1 was not a true copy of the original petition. Chances of interpolation in the petition supplied to the respondent no.1 either by respondent no.1 himself or by another person cannot be ruled out and, consequently, in the absence of any positive proof, the court is of the opinion that the variation in the copy of the election petition supplied to the respondent cannot be proved. Even otherwise, the petitioner in his statement has categorically stated that when such assertion made in para 2A and 2B of the written statement came to be known, a certified copy of the election petition was immediately obtained from the Registry of the High Court and supplied without any further delay, not only to respondent no.1, but also to his counsel. Such defect, if any, stood cured. The court further finds that no allegation has been alleged that the respondents were mislead by the variation of a material nature being made in the copy so supplied to the respondent nor has

alleged that any prejudice was caused to the respondent. In the absence of such assertion being made, the court is of the opinion that the issue cannot be answered in favour of the respondent.

38. In so far as the non-inclusing of the paragraphs in the verification clause is concerned, the court is of the opinion that the same is not fatal to the dismissal of the petition and the same is curable in view of the Constitution Bench in **T. M. Jacob's case** (supra). Such a defect is contemplated under Section 83 of the Act, which can be dealt with under the doctrine of curability. In the light of the aforesaid, the court finds that the respondent no.1 has not been able to prove that the copy of the election petition supplied to him was not a true copy of the election petition. The issue is answered accordingly.

39. With regard to the issue no.6, necessary allegation has been made in paragraph 41 of the written statement. The court finds from a perusal of the petition that the annexures and the schedules to the election petition have been duly verified in accordance with the provision of Order 6 Rule 15 of the C.P.C., which provides as under:-

> *"Order VI :- Pleadings Generally*
> *15. Verification of pleadings. – (1) Save us otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*
> *(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*
> *(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*
> *(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."*

40. The verification of the election petition must be done strictly in terms of the Order 6 Rule 15 of the C.P.C. Nothing has been indicated by the learned counsel for the respondent no.1 as to how the annexures and the schedules to the election petition have not been verified in accordance with the provision of Order 6 Rule 15 of the C.P.C. The only submission made by the learned counsel for the respondent no.1 is, that the burden of proof was upon the petitioner to prove that the verification was made in accordance with the provision of Order 6 Rule 15 of the C.P.C. The submission of the learned counsel for the respondent no.1 is patently erroneous. The issue has been framed at the instance of respondent no.1 and, therefore, the onus lies upon the said respondent to prove that the verification has not been done in accordance with the provision of Order 6 Rule 15 of the C.P.C., which the respondent has miserably failed to do so. Once the burden is discharged, only then the onus shifts upon the petitioner. Even otherwise, the court has perused the verification done by the petitioner and does not find that it is against the provision of Order 6 Rule 15 of the C.P.C. Accordingly, this issue is decided against the respondent.

41. Issues no. 1 and 2 are interconnected and the same are being decided together. The crux of the matter is, that the procedure adopted under Rule 54A of the Rules of 1961 was not followed while counting the postal ballot papers. The Returning Officer had wrongly rejected 50 postal votes which were cast in favour of the petitioner and had counted 7 invalid postal ballot papers in favour of respondent no.1.

42. Before dealing with these issues, the learned counsel for the petitioner submitted that the aftermath of the election reveals the

conduct of the Returning Officer in handling the ballot papers which leads to a suspicion that something was amiss which requires investigation and recounting of the postal ballot papers for which an application has been made. The learned senior counsel further submitted that when the documents relating to the assembly elections were directed to be produced by this Court to the District Magistrate concerned, only a few documents were submitted to the Court. Subsequently, when contempt proceedings were drawn it was found that certain original documents were kept with the then Returning Officer who furnished the same to the Magistrate concerned vide letter dated 03.03.2009. The learned counsel submitted that keeping original documents by the Returning Officer coupled with the fact that the box in which the postal ballot papers were kept was deposited in the Treasury after more than 24 hours leads to an irresistible presumption that the postal ballot papers were tampered and therefore, in order to do complete justice between the parties, the Court should order a recount of the postal ballot papers.

43. In this regard, the learned counsel for the petitioner submitted that after the filing of the election petition, the petitioner made a complaint to the Chief Election Commissioner on the basis of which an enquiry was made and, on the basis of the report and statement of the Senior Treasury Officer, statement of Junior Assistant, and statement of the Clerk, it was found that 26 boxes were deposited in the Treasury on 28.02.2007 and one box containing the postal ballot papers was deposited on 01.03.2009. In this regard, certain explanation has been given indicating that this box had wrongly been sent to the office of the District Election Commission and when the mistake was realized it was deposited the very next day in the Treasury.

44. The Court has perused the documents filed in this regard as well as the statements made by the Returning Officer and Assistant Returning Officer RW2 and RW3 respectively. No doubt there has been a glitch in the filing of the box containing the postal ballot papers. Whether it was deliberate or a mere omission is not known since no concrete evidence has come on record. The court however finds that no evidence has come on record to show that the sealed 27th box was tampered or the postal ballot papers kept inside were tampered with. The court further finds that there is no such pleadings in the election petition. In the light of the aforesaid, the court is of the opinion that such contention raised by the learned senior counsel for the petitioner, relating to the post election period, cannot be taken into consideration, nor such lapse committed by the officials could lead to the cancellation of the result of the election. However, the court finds that the lapse committed by the officials in handling the postal ballot papers should be enquired into by the Chief Election Commissioner and action if any, against the Returning Officer and the erring officials be taken.

45. Similarly, the court finds that the action of the Returning Officer in not depositing the official documents in the office of the district election office is appalling. The explanation given by the Returning Officer cannot be accepted. The Chief Election Commissioner is directed to take note of this aspect also and take action accordingly.

46. Coming back to issues no.1 & 2, and before considering the evidence led by the parties on this aspect, it would be appropriate to refer to the Rules framed by the Legislature in this regard.

47. Part III of the Rules of 1961 relates to postal ballot. Rule 22 provides the Form of ballot paper and the particulars that is mentioned therein. Rule 23 provides for the issuance of the ballot paper, which is required to be sent by post under a certificate of posting to the elector, which contains a declaration form in Form 13A, a cover in Form 13B, a large cover addressed to the Returning Officer in Form 13C and instructions for the guidance of the elector in Form 13D. Rule 24 provides how the elector is required to cast his vote on the ballot paper in accordance with the directions contained in Form 13D. It also provides the procedure as to how the elector signs the declaration in Form 13A in the presence of the Attesting Officer, who is required to attest the signatures of the elector. Rule 25 provides the procedure as to how the ballot paper is required to be signed by illiterate or infirm voters. Rule 27 provides the procedure how to return the ballot paper to the Returning Officer. For facility, the provisions of Rules 22, 23, 24, 25 and 27 are extracted hereunder:

> *"**22. Form of ballot paper**.- [(1) Every postal ballot paper shall have a counterfoil attached thereto, and the said ballot paper and the counterfoil shall be in such form, and the particulars therein shall be in such language or languages, as the Election Commission may direct.]*
> *(2) The names of the candidates shall be arranged [on the postal ballot paper] in the order in which they appear in the list of contesting candidates.*
> *(3) If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.*
>
> ***23. Issue of ballot paper**.-(1) A postal ballot paper shall be sent by post under certificate of posting to the elector together with-*
> *a declaration in Form 13A;*
> *(b) a cover in Form 13B;*
> *(c) a large cover addressed to the returning officer in Form 13C; and*

(d) instructions for the guidance of the elector in Form 13D:

Provided that the returning officer may, in the case of a special voter or a voter on election duty, deliver the ballot paper and Forms, or cause them to be delivered, to such voter personally.

[(2) The returning officer shall at the same time-

(a) record on the counterfoil of the ballot paper the electoral roll number of the elector as entered in the marked copy of the electoral roll;

(b) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him, without however, recording therein the serial number of the ballot paper issued to that elector; and

(c) ensure that that elector is not allowed to vote at a polling station.]

(3) Before any ballot paper is issued to an elector at an election in a local authorities' constituency or by assembly members, the serial number of the ballot paper shall be effectively concealed in such manner as the Election Commission may direct.

(4) Every officer under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay.

(5) After ballot papers have been issued to all the electors entitled to vote by post, the returning officer shall-

(a) at an election in a parliamentary or assembly constituency, seal up in a packet that part of the marked copy of the electoral roll which relates to service voters and record on the packet a brief description of its contents and the date on which it was sealed and send the other relevant parts of the marked copy to the several presiding officers [or marking the names of electors to whom ballot papers are issued at the polling stations without however recording therein the serial numbers of the ballot papers issued to the electors]; and

(b) at any other election, seal up in a packet the marked copy of the electoral roll and record on the packet a brief description of its contents and the date on which it is sealed.

(6) The returning officer shall also seal up in a separate packet the counterfoils of the ballot papers issued to electors entitled to vote by post and record on the packet a brief description of its contents and the date on which it was sealed.]

24. Recording of Vote.-*(1) An elector who has received a postal ballot paper and desires to vote shall record his vote on the ballot paper in accordance with the directions contained in Part I of Form 13D and then enclose it in the cover in Form 13B.*

(2) The elector shall sign the declaration in Form 13A in the presence of, and have the signature attested by, a stipendiary magistrate or such other officer specified below, as may be appropriate, to whom he is personally known or to whose satisfaction he has been identified-

(a) in the case of a service voter, such officer as may be appointed in this behalf by the Commanding Officer of the unit, ship or establishment in which the voter or her husband, as the case may be, is employed or such officer as may be appointed in this behalf by the diplomatic or consular representative of India in the country in which such voter is resident;

(b) in the case of a special voter, an officer not below the rank of a Deputy Secretary to Government;

(c) in the case of a voter on election duty, any gazetted officer [or the presiding officer of the polling station at which he is on election duty];

(d) in the case of an elector under preventive detention, the Superintendent of the Jail or the Commandant of the detention camp in which the elector is under detention; and

(e) in any other case, such officer as may be notified in this behalf by the Election Commission.

25. Assistance to illiterate or infirm voters.-*(1) If an elector is unable through illiteracy, blindness or other physical infirmity to record his vote on a postal ballot paper and sign the declaration, he shall take the ballot paper, together with declaration and the covers received by him to an officer competent to attest his signature under sub-rule (2) of Rule 24 and request the officer to record his vote and sign his declaration on his behalf.*

(2) Such officer shall thereupon mark the ballot paper in accordance with the wishes of the elector in his presence, sign the declaration on his behalf and complete the appropriate certificate contained in Form 13A.

27. Return of ballot paper.-*(1) After an elector has recorded his vote and made his*

declaration under rule 24 or rule 25, he shall return the ballot paper and declaration to the returning officer in accordance with the instructions communicated to him in Part II of Form 13D so as to reach the returning officer before [the hour fixed for the commencement of counting of votes].
(2) If any cover containing a postal ballot paper is received by the returning officer after the expiry of the time fixed in sub-rule (1), he shall note thereon the date and time of its receipt and shall keep all such covers together in a separate packet.
(3) The returning officer shall keep in safe custody until the commencement of the counting of votes all covers containing postal ballot papers received by him."

48. Part V of the Rules of 1961 relates to the counting of ballot papers. The present controversy revolves on the interpretation of Rule 54-A of the Rules of 1961. For facility, Rule 54-A is extracted hereunder:-

*"**54-A.** Counting of votes received by post.-(1) The returning officer shall first deal with the postal ballot papers in the manner hereinafter provided.*

(2) No cover in Form 13C received by the returning officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted.

(3) The other covers shall be opened one after another and as each cover is opened, the returning officer shall first scrutinize the declaration in Form 13A contained therein.

(4) If the said declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13B, that cover shall not be opened, and after making an appropriate endorsement thereon, the returning officer shall reject the ballot paper therein contained.

(5) Each cover so endorsed and the declaration received with it shall be replaced in the cover in Form 13C and all such covers in Form 13C shall

be kept in a separate packet which shall be sealed and on which shall be recorded the name of the constituency, the date of counting and a brief description of its content.

(6) The returning officer shall then place all the declarations in Form 13A which he has found to be in order in a separate packet which shall be sealed before any cover in Form 13B is opened and on which shall be recorded the particulars referred to in sub-rule (5).

(7) The covers in Form 13B not already dealt with under the foregoing provisions of this rule shall then be opened one after another and the returning officer shall scrutinize each ballot paper and decide the validity of the vote record thereon.

(8) A postal ballot paper shall be rejected-

(a) if it bears any mark (other than mark to record the vote) or writing by which the elector can be identified; or

(aa) if no vote is recorded thereon; or

(b) if votes are given on it in favour of more candidates than one; or

(c) if it is a spurious ballot paper; or

(d) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

(e) if it is not returned in the cover sent along with it to the elector by the returning officer.

(9) A vote recorded on a postal ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such manner as to make it doubtful to which candidate the vote has been given.

(10) A vote recorded on a postal ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

(11) The returning officer shall count all the valid votes given by postal ballot in favour of each candidates, record the total thereof in the result sheet in Form 20 and announce the same.

> *(12) Thereafter, all the valid ballot papers and all the rejected ballot papers shall be separately bundled and kept together in a packet which shall be sealed with the seals of the returning officer and of such of the candidates, their election agents or counting agents as may desire to affix their seals thereon and on the packet so sealed shall be recorded the name of the constituency, the date of counting and a brief description of its contents.*

49. Sub-clause (4) of Rule 54-A provides that upon scrutiny of the postal ballot papers, if it is found that the declaration is not in the cover or has not been duly signed or it has not been attested or declaration form is substantially defective, or if serial number of the ballot paper as entered in the declaration form is different from the serial number endorsed in the cover in Form 13B, in each case, the cover containing the ballot paper will not be opened. The Returning Officer will make appropriate endorsement on it and would reject the ballot paper contained in that cover.

50. Sub-clause (8) of the Rule 54-A contemplates that the postal ballot paper would be rejected, if it bears any mark to which the elector could be identified or if no vote is recorded on the ballot paper or if the vote is given to more than one candidate or if it is a spurious ballot paper or if the ballot paper is damaged or mutilated and the genuineness of the ballot paper could not be identified or if the ballot paper is not returned in the cover, which was sent by the Returning Officer.

51. In the light of the aforesaid, the contention of the petitioner is that Kunwar Singh Rawat, Senior Assistant in Tehsil Narendranagar was allotted the work of sealing of EVM and, in violation of the written orders, he was allowed to do the counting of postal ballot papers deliberately in order to give advantage to

respondent no.1. It is alleged that the respondent no.1 and Kunwar Singh Rawat are closely related and that Kunwar Singh Rawat also belongs to the same village as that of respondent no.1. In para 14, it was alleged that Kunwar Singh Rawat illegally torn two postal ballot papers which were cast in favour of the petitioner. In para 19, it was alleged that when a protest was made to the Returning Officer at the time of recounting with regard to the presence of the Kunwar Singh Rawat near the postal ballot papers, the District Magistrate who was present at that time physically removed Kunwar Singh Rawat. In para 24, it was alleged that the postal ballot papers, which were declared invalid on the ground that it did not contain a declaration in form 13A, were actually valid and were cast in favour of the petitioner, but, Kunwar Singh Rawat illegally declared it invalid on the ground that the declaration in Form 13A was not found. In para 27, it was alleged that Kunwar Singh Rawat was guilty of grave irregularities and illegality in the counting of EVM votes and postal ballot papers. In para 28, it was alleged that Kunwar Singh Rawat was assigned the duty of sealing in EVM votes but the Returning Officer had illegally allowed Kunwar Singh Rawat to count the postal ballot papers. These allegations were reiterated by the petitioner in his statement as well as by Soban Singh Negi PW2, election agent of the petitioner. On the other hand, Kunwar Singh Rawat deposed as RW1 and submitted that he was deputed to do the work at the table where the postal ballot papers were being opened and that his job was to open the cover and see whether declaration in Form-13A has been given or not. The witness further stated that the Returning Officer and the Assistant Returning Officer, who was incharge of the table, were scrutinizing the documents and invalidating the same after thoroughly checking it and that this was being done in the presence of the petitioner, his election agent and other

candidates. The said witness has denied that he is the relative of respondent no.1 and further denied that he does not belong to the same village. The returned candidate Om Gopal Rawat R.W.5 has also denied that Kunwar Singh Rawat is related to him and that he does not belong to his village. The District Magistrate Sanjay Kumar deposed as PW4 and nothing was put to him on the question that Kunwar Singh Rawat was forcibly removed from the counting table where the postal ballot papers were being recounted. Such question was never put to him in the examination in chief.

52. On the other hand, Kunwar Singh Rawat in his evidence stated that when the petitioner objected to his presence, he removed himself on his own at the stage when the recounting of the postal ballot papers was about to start.

53. In the light of the statements made by various witnesses, it is clear that there is no evidence to show that Kunwar Singh Rawat was a relative of the returned candidate respondent no.1. There is no evidence to show that Kunwar Singh Rawat and the returned candidate belongs to the same village. Further, only a vague allegation was made that two valid postal ballot papers were torn by Kunwar Singh Rawat. No such evidence has been led on this aspect. The contention of the petitioner is that Kunwar Singh Rawat was physically removed from the table when the postal ballot papers were being recounted is based on surmises and conjectures and has not been proved inspite of the fact that the District Magistrate appeared as a witness of the petitioner. No question was put to the District Magistrate and consequently, the allegation in para 19 of the election petition that Kunwar Singh Rawat was physically removed in the presence of the District Magistrate has not been proved. The

Returning Officer has also deposed that Kunwar Singh Rawat was deputed to do the work at the table where the postal ballot papers were being counted. The allegation that a number of envelopes relating to postal ballot papers were found lying under the table of the Returning Officer has not been proved by any cogent evidence. In the opinion of the court, such allegations have been recklessly made and has not been proved by any cogent evidence. The contention that the Returning Officer, in connivance with Kunwar Singh Rawat, had manipulated the postal ballot papers and were guilty of grave irregularities in declaring valid votes made in favour of the petitioner as invalid and declaring invalid votes made in favour of the respondent no.1 as valid is based on surmises and conjectures. The court is of the opinion that there is no evidence to indicate that Kunwar Singh Rawat had manipulated the postal ballot papers to the detriment of the petitioner. The contention of the learned counsel for the petitioner in this regard is patently misconceived and is rejected.

54. In so far as the irregularities alleged by the petitioner violating Rule 54A of the Rules of 1961 is concerned, the basic contention is, that the postal ballot papers were not counted first and that the votes recorded in the EVM were counted first. This allegation has been endorsed by the petitioner in his deposition as well as by the election agent of the petitioner PW2. On the other hand, Kunwar Singh Rawat, Senior Assistant in the Tehsil Narendranagar who was assigned the work on the table where the postal ballot papers were being counted, categorically stated that the counting of the postal ballot papers started at 8 O'clock in the morning. Similarly, the Returning Officer PW2 has reiterated that the counting of postal ballot papers started at 8 O'clock in the morning. Radha Krishan Naithani, Tehsildar also reiterated the same thing. The observer RW8 also deposed that

the counting of the postal ballot papers started between 8 to 9 AM. In the light of the divergent evidence, which has come forward on this aspect, it becomes difficult for the court to analyze as to which evidence is correct. However, the court is of the opinion that the statement of the Observer cannot be disbelieved, who categorically asserted that the counting of the postal ballot papers started between 8 to 9 AM. In the light of the aforesaid statement given by the Observer and the Returning Officer, this court has no reason to disbelieve their statements, and the court consequently holds that the counting of the postal ballot papers started between 8 to 9 AM and, thereafter, the counting of the votes in the EVM started. Consequently, the procedure provided under sub-clause (1) of Rule 54-A of the Conduct of Election Rules, 1961 was duly followed in letter and spirit.

55. With regard to the rejection of 50 votes, the petitioner contended that these 50 postal ballot papers were rejected illegally by Kunwar Singh Rawat on the ground that it was not accompanied by the declaration in Form-13A whereas these 50 ballot votes were cast in favour of the petitioner. The contention of the petitioner is that if the declaration in Form 13A was not attached, the ballot papers showing the vote could not have been opened, but, since the ballot papers was opened in which the vote was cast in favour of the petitioner, the rejection of the postal ballot papers on the ground that the declaration in Form 13A was not attached could not be believed. The submission of the learned counsel for the petitioner seems to be attractive but after a closer scrutiny, the court finds that this assertion is patently vague and is not supported by any documentary proof nor even a shed of doubt can be cast on the Returning Officer or on Kunwar Singh Rawat. No evidence has been filed to show that the ballot

paper which is kept in Form 13B was opened. There is no proof that these 50 ballot paper were cast in favour of the petitioner. Further, Kunwar Singh Rawat has categorically stated that the work of scrutinizing as to whether the declaration in Form 13A was attached or not was done strictly by the Assistant Returning Officer and that the Returning Officer was the person who declared as to whether the postal ballot papers should be opened and counted as a valid vote or should be rejected on the ground referred under sub-clause (8) of Section 54A of the Rules. The Assistant Returning Officer has also certified this aspect. Nothing has come forward on this aspect in the cross examination of these witnesses. In the light of the aforesaid, the court is of the opinion that the assertion made by the petitioner in his petition is vague and, the evidence which has been led is sketchy and does not inspire any confidence. The evidence of the Returning Officer clearly indicates that at the time of counting and recounting of the postal ballot papers, the petitioner was present and that the rejection of each and every postal ballot papers was done after complete satisfaction of the petitioner. In the light of the aforesaid, the evidence led by the petitioner with regard to the rejection of 50 postal ballot papers does not inspire any confidence. The petitioner has miserably failed to prove that 50 postal ballot papers were validly cast in his favour.

56. Similarly, the contention that 7 postal ballot papers, which were invalid, were wrongly counted in favour of the respondent no.1 by the Returning Officer is based on no evidence. Apart from the allegations made in the petition, the statement is not supported by any cogent evidence on record and, consequently, such contention cannot be accepted.

57. During the pendency of the proceedings, the petitioner moved an application for recounting of the votes and for inspection of the valid papers. The law on this aspect is well settled and has been elaborated by the Supreme Court in various decisions, namely, **Baldev Singh Vs. Shinder Pal Singh & another 2007 (1) SCC 341, P. H. Pujar Vs. Kanthi Rajashekhar Kidiyappa & others AIR 2002 SC 1368, M. Chandrika Prasad Yadav Vs. State of Bihar & others 2004 (6) SCC 331, Vadivelu Vs. Sundaram & others AIR 2000 SC 3230, Chinnasamy Vs. K. C. Palanisamy & others 2004 (6) SCC 341, Mahendra Pal Vs. Shri Ram Dass Malanger & others JT 2002 (2) SC 396, Beliram Bhalaik Vs. Jai Behari lal Khachi & another AIR 1975 SC 283, Kattinokkula Murali Krishna Vs. Veeramalla Koteswara Rao & others AIR 2010 SC 24 and G. V. Sreerama Reddy & another Vs. Returning Officer & others 2009 (8) SCC 736.**

58. Without burdening this judgment with various decisions of the Supreme Court, this Court is of the view that it would be appropriate to consider the decision of the Supreme Court in **V. S. Achuthanandan Vs. P. J. Francis AIR 2001 SC 837** where it was held as under:

> *"1. The secrecy of the ballot is sacrosanct and shall not be permitted to be violated and merely for asking or on vague and indefinite allegations or averments of general nature. At the same time purity of election process has to be preserved and therefore inspection and re-count shall be permitted but only on a case being properly made out in that regard.*
>
> *2. A petition seeking inspection and re-count of ballot-papers must contain averments adequate,*

clear and specific making out a case of improper acceptance of rejection of votes or non-compliance with statutory provisions in counting. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted would not serve the purpose.

3. The scheme of the rules prescribed in Part V of the Conduct of Elections Rules, 1961 emphasises the point that the election petitioner who is a defeated candidate has ample opportunity to examine the voting papers before they are counted, and in case the objections raised by him or his election agent have been improperly overruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that Section 83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.

4. The election petitioner must produce trustworthy material in support of the allegations made for a re-count enabling the court to record a satisfaction of a prima facie case having been made out for grant of the prayer. The court must come to the conclusion that it was necessary and imperative to grant the prayer for inspection to do full justice between the parties so as to completely and effectually adjudicate upon the dispute.

5. The power to direct inspection and re-count shall not be exercised by the court to show indulgence to a petitioner who was indulging in a roving enquiry with a view to fish out material for declaring the election to be void.

6. By mere production of the sealed boxes of ballot papers or the documents forming part of record of the election proceedings before the court the ballot papers do not become a part of the court record and they are not liable to be inspected unless the court is satisfied in accordance with the principles stated hereinabove to direct the inspection and re-count.

7. In the peculiar facts of a given case the court may exercise its power to permit a sample inspection to lend further assurance to the prima facie satisfaction of the court regarding the truth of the allegations made in support of a prayer for re-count and not for the purpose of fishing out materials."

59. In **Vadivelu Vs. Sundaram & others AIR 2000 SC 3230**, the Supreme Court held as under :-

"18. From the above pleadings, it is evident that the appellant has not set forth material facts or particulars required for re-count of votes. To justify his contention that there was irregularity or illegality in the counting, except making some general and bald allegations, no other details are given. Though an allegation is made that the electoral roll contained the names of dead persons, that the 1st respondent took advantage of the same, and that some persons had impersonated and cast votes in his favour, no details are given as to who committed such irregularity. The appellant has also not mentioned as to how many such votes had been cast in favour of the 1st respondent. So also, the appellant has not alleged the nature of the illegality or irregularity said to

have been committed by the Counting Officers. How and in what manner there was improper acceptance of invalid votes and improper rejection of valid votes also is not explained by the appellant. In short, the election petition is bereft of all details and the appellant, while examined as PW1, could not supplement anything by way of evidence."

60. In **M. Chinnasamy Vs. K. c. Palanisamy & others 2004 (6) SCC 341**, the Supreme Court held that the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosant principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of the votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy.

61. The Supreme Court held that secrecy of the ballot is sacrosanct and should not be violated on the mere asking on vague allegations. Merely by making a general allegation that votes have been improperly rejected would not serve the purpose and that specific averments should be made with regard to wrongful rejection of the ballot papers. The Supreme Court further held that while the counting is going on, the candidate and his election agent are present and they are having first hand knowledge of the reason for the rejection of the votes and that they precisely know the nature of the reason of the rejection of the votes by the Returning Officer. The Supreme Court

consequently held that it became imperative for the loosing candidate to make a concise statement of material facts in his election petition justifying the reason either for re-inspection and /or for recounting of the votes.

62. In the light of the aforesaid decision of the Supreme Court, it is true that on vague and ambiguous evidence, no court can direct a recount but it is equally true that the doors of justice cannot be shut for a person seeking recount of the votes without affording him an opportunity of proving the circumstances justifying a recount.

63. In the light of the judicial pronouncement by the Supreme Court, the court finds that the application for recounting is not based on any cogent reason or evidence except a bald allegation that 50 votes of the petitioner has been rejected. In the opinion of the court, these allegations are general in nature. The petitioner and his election agent were present and they had the first hand knowledge of the reason for the rejection of the votes and they knew precisely the nature of the reason of the rejection of the votes. Consequently, it became imperative for the petitioner to make specific and concise statement justifying the reason for re-inspection and / or for counting of the votes. The court finds that the application for recounting of the votes is based on vague and ambiguous evidence, on which basis, this court cannot direct inspection or recounting of the postal ballot papers.

64. In the light of the aforesaid, the court does not find any merit in the election petition and is accordingly dismissed. In the circumstances of the case, the parties shall bear their own cost.

65. Registry is directed to return the postal ballot papers etc. to the District Magistrate concerned.

66. Before parting, the court directs the Registry to send a certified copy of this order to the Chief Election Commissioner to make an enquiry into the glitch committed by the Returning Officer in not depositing the box containing the postal ballot papers in the Treasury and in not depositing the official documents in the District Election Office and take appropriate action against the erring officials.

67. Registry is also directed to place a copy of this order to the Registrar General of this court, who is directed to place the matter before the Stamp Reporter who is required to ensure the reporting of election petition in future as per the Rules of the Court and in the light of the directions made in this judgment.

(Tarun Agarwala, J.)

Dated 09th December, 2011
LSR