

**Tankadhar Tripathy**

**v.**

**Dipali Das**

(Civil Appeal No. 11017 of 2025)

22 August 2025

**[Surya Kant\* and Joymalya Bagchi, JJ.]**

### Issue for Consideration

Whether non-compliance with the proviso to Section 83(1)(c) of the Representation of the People Act, 1951 is a fatal defect, rendering the Election Petition non-maintainable at the threshold.

### Headnotes<sup>†</sup>

**Representation of the People Act, 1951 – s.83(1)(c) – Conduct of Elections Rules, 1961 – Rule 94-A – Code of Civil Procedure, 1908 – Or. VII, r.11 – Whether the requirement of filing an affidavit under the proviso to s.83(1)(c) of the RP Act is of a mandatory character:**

**Held:** This Court has underscored that the requirement of filing an affidavit under the proviso to s.83(1)(c) of the RP Act is not of a mandatory character, and that ‘substantial compliance’ therewith would suffice – Where an affidavit is already on record, *albeit* not in the prescribed Form 25, the proper course would be to afford the Election Petitioner an opportunity to file a corrected affidavit in conformity with the prescribed form – On facts, there are apparent deficiencies in the Impugned Order, namely, (i) to specify the extent of compliance with the High Court Rules; (ii) to enumerate the defects necessitating rectification; and (iii) to examine whether the principles of substantial compliance have been followed or not – This Court deems it appropriate to remit the case to the High Court with a request to answer these questions and re-determine whether these were curable defects which could be permitted to be rectified. [Paras 17, 23]

**Representation of the People Act, 1951 – s.80-A – High Court Rules – Chapter XXXIII – Rules, 7, 21:**

**Held:** It becomes clear from a perusal of these Rules (Rules 7 and 21) that at the stage of presenting an Election Petition, it

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must be examined by the prescribed officer of the High Court, alongwith its accompanying documents, so as to ensure that the same conforms with the requirements of law and the applicable rules – During this process, if it is found that the Election Petition or its accompanying documents suffer from any defects or omissions, the same shall be placed before the learned Judge-cum-Election Tribunal – The judicial proceedings thereafter shall be conducted in accordance with the rules and procedures described in Rule 21 – Such procedure also contemplates compliance with the contents and format of an affidavit elaborately described in Chapter VI of the High Court Rules – In the instant case, the impugned order does not clarify whether the above-stated process of scrutiny was duly followed by the prescribed officer at the time of presentation of the Election Petition. [Paras 20, 21]

### **Representation of the People Act, 1951 – s.83(1)(c) – Obligation on the Election Petitioner:**

**Held:** The law evolved in the recent decisions of this Court, places an obligation on the Election Petitioner to file an affidavit which amounts to ‘substantial compliance’ with the prescribed format – Whether an affidavit appended with an Election Petition has ‘substantially complied’ with or ‘omitted’ to do so is essentially a question of fact to be determined by juxtaposing the allegations of ‘corrupt practices’ averred in the Election Petition *vis-à-vis* the contents of the supporting affidavit – Substantial compliance in ordinary terms means, almost, actual compliance with the essence of the enactment, or perhaps, in simpler terms, to do all that is reasonably expected, which satisfies the substance of the Statute – It, however, cannot be inferred to mean mere lip service to the requirements of the law – That being so, although the High Court has concluded that the affidavit ‘substantially complied’ with the proviso to s.83(1)(c), it has not detailed the examination conducted in order to reach such a conclusion. [Para 22]

### **Case Law Cited**

*Ravinder Singh v. Janmeja Singh and Others* [2000] **Supp. 3 SCR 331 : (2000) 8 SCC 191**; *G. M. Siddeshwar v. Prasanna Kumar* [2013] **4 SCR 1107 : (2013) 4 SCC 776**; *A. Manju v. Prajwal Revanna* [2021] **12 SCR 195 : (2022) 3 SCC 269**; *Thangjam Arunkumar v. Yumkham Erabot Singh* [2023] **11 SCR 392 : (2023) 17 SCC 500 – referred to.**

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Representation of the People Act, 1951; Conduct of Elections Rules, 1961; High Court Rules; Code of Civil Procedure, 1908.

**List of Keywords**

Election Petition; Obligation on the Election Petitioner; Requirement of filing an affidavit; Substantial compliance; Corrected affidavit; Form 25 Affidavit.

**Case Arising From**

CIVILAPPELLATE JURISDICTION: Civil Appeal No. 11017 of 2025  
From the Judgment and Order dated 21.03.2025 of the High Court of Orissa at Cuttack in IA No. 111 of 2024

**Appearances for Parties**

*Advs. for the Appellant:*

Maninder Singh, Gopal Agarwal, Sr. Advs., Ms. Mithu Jain, Kunal Rana, Shashwat Jaiswal, Milind Rai, Amarपाल Singh Dua.

*Advs. for the Respondent:*

Dr. Abhishek Manu Singhvi, Gaurav Agrawal, K Parameshwar, Sr. Advs., Tarani Kanta Biswal, C. George Thomas, Ansh Mittal, Gurkaranbir Singh.

**Judgment / Order of the Supreme Court****Judgment**

**Surya Kant, J.**

Leave granted.

2. The instant appeal revolves around certain procedural and technical requisites, generally ancillary to the filing of election petitions, which are mandated in Section 83 of the Representation of the People Act, 1951 (**RP Act**). In particular, this matter pertains to the degree of 'substantial compliance' with the prescribed Form 25 affidavit, as encapsulated in the *proviso* to Section 83(1)(c) of the RP Act read with Rule 94-A of the Conduct of Elections Rules, 1961.

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### A. FACTS

3. Before we foray into analysing the legal aspects involved in dissecting the Appellant's claim, it is incumbent upon us to briefly chronicle the factual background giving rise to the instant appeal.
4. The Governor of the State of Odisha issued a notification on 26.04.2024 to hold General Elections to constitute a new State Assembly. The election schedule was released, and both the Appellant and the Respondent filed their nominations from the 07-Jharsuguda Assembly Constituency. The polling took place on 20.05.2024, followed by the counting on 04.06.2024. The Appellant was eventually declared elected as the returned candidate by a margin of 1,333 votes.
5. The Respondent, having gotten the second highest votes, filed ELPET No. 7 of 2024 (**Election Petition**) before the High Court of Orissa at Cuttack (**High Court**), seeking the Appellant's election to be declared void and set aside. The Respondent in her Election Petition urged two distinct grounds of challenge: (*i*) that the Appellant failed to make a complete and truthful disclosure of his assets, liabilities, and criminal antecedents, and further omitted to publish particulars of such criminal antecedents in a newspaper having wide circulation, thereby indulging in 'corrupt practices' as defined in Section 123 of the RP Act; and (*ii*) that there existed discrepancies in the Control Unit Identification Numbers of the Electronic Voting Machines (**EVMS**), which allegedly rendered 6,313 votes as void. It was thus contended that, since the number of such votes far exceeded the margin of victory, the result of the election stood materially affected.
6. The Appellant, in turn, objected to the maintainability of the Election Petition on the sheet anchor of Order VII Rule 11 of the Code of Civil Procedure, 1908 (**CPC**), praying for its rejection at the very threshold. Pursuantly, the Appellant urged the following grounds: (*i*) non-joinder of necessary parties, including a third candidate who had contested the election; (*ii*) Vague, evasive, and vexatious averments in the Election Petition; and (*iii*) non-compliance with the mandatory requirement of filing the affidavit in Form 25, as prescribed in the *proviso* to Section 83(1)(c) of the RP Act. The Appellant urged that these defects were fatal to the maintainability of the Election Petition. In the alternative, the Appellant sought an order under Order VI Rule 16 of the CPC,

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to strike out the portions of the pleadings mainly pertaining to the allegations of 'corrupt practices' contained in the Election Petition.

7. Upon consideration of the competing claims, the High Court, *vide* its order dated 21.03.2025 (**Impugned Order**), dismissed the Appellant's application(s) and granted the Respondent three weeks' time to file an affidavit in the prescribed Form 25. The High Court opined that: (*i*) it was not mandatory to file a separate or second affidavit, specifically in relation to the allegations of 'corrupt practices,' along with the Election Petition; (*ii*) the solitary affidavit filed and verified, substantially fulfilled the requirement contemplated under the *proviso* to Section 83(1)(c) of the RP Act, and therefore the Election Petition could not be rejected solely on this ground; (*iii*) in any event, any deficiency in the Form 25 affidavit could be cured by affording the Election Petitioner an opportunity to file a separate affidavit; and (*iv*) the Election Petition disclosed specific allegations containing material facts accompanied by the requisite particulars. In view thereof, the High Court concluded that the matter raised triable issues and did not merit rejection at the outset.
8. Aggrieved, the Appellant has approached this Court.

**B. CONTENTIONS OF THE PARTIES**

9. Mr. Maninder Singh, Learned Senior Counsel appearing for the Appellant, while assailing the decision of the High Court, advanced the following submissions:
  - a. The allegations set out in the Election Petition were vague, unnecessary, frivolous, scandalous, and vexatious. The petition disclosed no cause of action for its maintainability under any of the grounds enumerated in Section 100 of the RP Act, inasmuch as the Respondent failed to furnish particulars of the polling agents in respect of the 43 polling stations where the alleged discrepancies are claimed to have occurred. Furthermore, the precise nature of such discrepancies was not specified, whether concerning the entries made, the counting of votes, or omissions in completing Form 17C, *etc.* Additionally, no documents were annexed to substantiate the allegations so made. These deficiencies, cumulatively, constituted substantial non-compliance with Section 83 of the RP Act and, therefore, warranted rejection of the Election Petition at the first instance.

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- b. The allegations regarding corrupt practices—specifically, the alleged failure of the Appellant to disclose all his criminal antecedents together with his assets and liabilities—were wholly devoid of the necessary particulars, such as the date of the alleged offence, the persons involved, and the source of information. The mere pleading of material facts, without the accompanying particulars, rendered the Election Petition liable to be rejected under Order VII Rule 11 of the CPC, read with Section 86 of the RP Act.
  - c. In the alternative, such incomplete and vague pleadings ought to have been struck out under Order VI Rule 16 of the CPC. In any event, the Appellant asserted that he had no knowledge of the said criminal cases at the time of filing his nomination papers, and that the details furnished in Form 26 were in accordance with the letter dated 15.04.2024 issued by the Superintendent of Police. Hence, there was no wilful suppression of information regarding his criminal antecedents.
  - d. The Respondent did not raise any objection before the Returning Officer with respect to the alleged non-disclosure of the Appellant's criminal antecedents or his assets and liabilities at the stage when the nomination papers were filed and scrutinised. Consequently, the Respondent was precluded from raising such allegations at a belated stage as a means to assail and overturn the result of a fair and transparent election.
  - e. Each page of the Election Petition was not signed and verified by the Oath Commissioner and the Respondent, as required under Section 83(1)(c) of the RP Act read with Order VI Rule 15 of the CPC. This defect was detrimental to the case and, consequently, the Election Petition ought to have been rejected *in limine*.
  - f. Finally, the Election Petition was not accompanied by a separate affidavit in Form 25, as mandated by the *proviso* to Section 83(1) (c) of the RP Act. The filing of such an affidavit was mandatory when allegations of corrupt practices were made out, and the omission to do so warranted dismissal of the petition at the very threshold.
10. *Per contra*, Dr. Abhishekh Manu Singhvi and Mr. Gaurav Agrawal, Learned Senior Counsel appearing on behalf of the Respondent, put forth the following submissions:

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- a. As per Section 86 of the RP Act, an Election Petition could be dismissed only for non-compliance with Sections 81, 82, or 171 of the RP Act. Permitting the dismissal of an Election Petition for non-compliance with Section 83 of the RP Act, a section not enumerated in Section 86, would be against the statutory mandate and legislative intent behind the RP Act.
  - b. The Election Petition contained specific allegations, duly accompanied by the necessary particulars, in relation to the alleged corrupt practices as well as the discrepancies in the EVMs. In support thereof, the Respondent furnished details including the case numbers, the names of the concerned police stations, particulars of the First Information Reports, and a comparative table indicating the votes recorded *vis-à-vis* the votes counted. It was urged that the pleadings in the Election Petition provided the Appellant with adequate particulars of the allegations to enable the preparation of his defence, and that, having regard to the nature of such allegations, their veracity could be determined only in the course of trial.
  - c. A list of documents intended to substantiate the material facts was duly disclosed by the Respondent after the 'prayer clause' and before the 'verification' commenced. In terms of Chapter XXXIII, Rule 10 of the Rules of the High Court of Orissa, 1948 (**High Court Rules**), the Respondent was under no obligation to file such documents as annexures at the time of presenting the Election Petition. The production of the same was required only upon a date being fixed for that purpose by the concerned Learned Judge.
  - d. Finally, any defect in the verification of the Election Petition or in the format of the affidavit filed in Form 25 would not, in itself, be fatal to the proceedings. Such defects, if any, are, as repeatedly held by this Court, curable in nature, and the High Court followed the proper course by affording the Election Petitioner an opportunity to rectify the same.
11. It is relevant to note at this juncture that when this appeal first came up for hearing before this Court on 13.05.2025, we suggested to the parties to put up their respective proposals regarding the deletion of certain parts of the pleadings so as to streamline and trim the

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issues under consideration. Pursuant to such suggestion, both sides submitted their respective proposals to this Court. On consideration of these proposals, we find that the parties are *ad idem* at least on the issue of deletion of their respective pleadings so far as the same pertain to a third candidate.

### **C. ISSUES**

12. In view of this, the only issue that survives for consideration is as follows:
  - (i) Whether non-compliance with the *proviso* to Section 83(1)(c) of the RP Act is a fatal defect, rendering the Election Petition non-maintainable at the threshold?

### **D. ANALYSIS**

13. In furtherance of his claim, the Appellant urged that the affidavit accompanying the Election Petition in support of the allegations of 'corrupt practices' was defective as it was not filed in the prescribed format of Form 25. The Appellant also claimed that such a defect was detrimental to the maintainability of the Election Petition and thus, it ought to have been rejected at the very threshold. Reliance was placed, in this regard, upon the decision of this Court in ***Ravinder Singh v. Janmeja Singh and Others***,<sup>1</sup> where, in paragraph 11, it was observed that Section 83 of the RP Act was mandatory in nature, and that an Election Petition containing allegations of corrupt practices must, in law, be accompanied by an affidavit to that effect in the prescribed form. It was further held that the absence of a proper affidavit, filed in support of such allegations, constituted a fatal defect warranting immediate dismissal of the election petition.
14. To the contrary, the Respondent submitted that no such separate affidavit was required to accompany an Election Petition alleging the conduct of 'corrupt practices.' The Respondent, in fact, went so far as to claim that even the complete absence of an affidavit in Form 25 was curable and the concerned court should always grant time to the Election Petitioner to rectify such defects before proceeding to trial.

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1 (2000) 8 SCC 191.

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15. After the decision in **Ravinder Singh (supra)**, the question concerning non-compliance with the *proviso* to Section 83(1)(c) of the RP Act and its effect on the maintainability of an election petition was reconsidered by a 3-Judge Bench of this Court in **G. M. Siddeshwar v. Prasanna Kumar**.<sup>2</sup> In that case, this Court held that while non-compliance with the provisions of Section 83 of the RP Act was curable, there must nonetheless be ‘substantial compliance’ therewith.
16. It was clarified that in cases of total and complete non-compliance with Section 83, the pleading could not be regarded as an Election Petition and was liable to be rejected at the outset. Proceeding on this premise, the Court further held that although a defective affidavit may not, by itself, render an Election Petition non-maintainable, the High Court must ensure that the defect was cured prior to the commencement of trial so as to enable the returned candidate to effectively meet the allegations and not be taken by surprise at that stage. This decision thus reflects a more liberal approach towards the substance of a Form 25 affidavit, as contrasted with the stricter view adopted in **Ravinder Singh (supra)**.
17. This ‘evolved’ view of the law has since been relied upon and followed by this Court in more recent judgements, such as **A. Manju v. Prajwal Revanna**<sup>3</sup> and **Thangjam Arunkumar v. Yumkham Erabot Singh**.<sup>4</sup> In these decisions, this Court has further underscored that the requirement of filing an affidavit under the *proviso* to Section 83(1)(c) of the RP Act is not of a mandatory character, and that ‘substantial compliance’ therewith would suffice. Indeed, where an affidavit is already on record, albeit not in the prescribed Form 25, the proper course would be to afford the Election Petitioner an opportunity to file a corrected affidavit in conformity with the prescribed form.
18. In our considered view, the question of law on this aspect is extremely well-settled in the above-cited cases, and thus the issue raised is no longer *res integra*. However, one question that still requires consideration, in terms of **G. M. Siddeshwar (supra)**, is: whether the defects in a Form 25 affidavit filed alongside the Election Petition are required to be cured by way of a fresh affidavit within the stipulated

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2 (2013) 4 SCC 776.

3 (2022) 3 SCC 269.

4 (2023) 17 SCC 500.

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period of limitation or whether it can be filed at any point during the proceedings, even after such period has expired?

19. In this respect, the first port of call ought to be the ‘Rules to Regulate Proceedings under Section 80-A of the Representation of the People Act, 1951 (Act 43 of 1951),’ which are contained in Chapter XXXIII of the High Court Rules. Rules 7 and 21 of this Chapter prescribe the process of scrutiny of an Election Petition and the procedure to be followed while conducting the proceedings. Rules 7 and 21 read as follows:

*“7. Every election petition shall, on presentation, be examined by the Stamp Reporter, who shall certify thereon whether the petition is in conformity with the requirements of law and the rules applicable to the same and **the petition with the defects or omissions if any, as reported by the Stamp Reporter, shall be referred to the Judge who has been assigned by the Chief Justice for the trial of the Election Petition for orders under section 86 of the Act.***

*21. Subject to the provisions of the Act and these rules, the provisions of Code of Civil Procedure, so far as may be applicable, will apply to the proceedings arising under the Act. **The rules regarding applications and affidavits in Chapter VI Part II of the Orissa High Court Rules Vol. I shall apply mutatis mutandis to the applications under this Chapter.***

[Emphasis supplied]

20. It becomes clear from a perusal of these Rules that at the stage of presenting an Election Petition, it must be examined by the prescribed officer of the High Court, alongwith its accompanying documents, so as to ensure that the same conforms with the requirements of law and the applicable rules. During this process, if it is found that the Election Petition or its accompanying documents suffer from any defects or omissions, the same shall be placed before the learned Judge-cum-Election Tribunal. The judicial proceedings thereafter shall be conducted in accordance with the rules and procedures described in Rule 21 above. Such procedure also contemplates compliance with the contents and format of an affidavit elaborately described in Chapter VI of the High Court Rules.

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21. In the instant case, the Impugned Order does not clarify whether the above-stated process of scrutiny was duly followed by the prescribed officer at the time of presentation of the Election Petition. Further, there is no reference to whether any defects were noticed at the time of admission. In the same vein, it is also indiscernible from the Impugned Order whether the Learned Judge, to whom the Election Petition was assigned, granted any time to the Election Petitioner to cure such defects at the first instance. Instead, the Impugned Order, which emanated from an adjudication at the Order VII Rule 11 stage, simply granted the Respondent an opportunity to “*cure defects*” and further provided a period of three weeks to do so. The Impugned Order thus neither sheds any light on the nature of the defects so recognized, nor clarifies whether the opportunity to rectify such defects was accorded before or after the expiry of the period of limitation.
22. Alongside this, it is pertinent to note that the law evolved in the recent decisions of this Court, as cited in paragraphs 15 to 17 above, places an obligation on the Election Petitioner to file an affidavit which amounts to ‘substantial compliance’ with the prescribed format. Whether an affidavit appended with an Election Petition has ‘substantially complied’ with or ‘omitted’ to do so is essentially a question of fact to be determined by juxtaposing the allegations of ‘corrupt practices’ averred in the Election Petition *vis-à-vis* the contents of the supporting affidavit. Substantial compliance in ordinary terms means, almost, actual compliance with the essence of the enactment, or perhaps, in simpler terms, to do all that is reasonably expected, which satisfies the substance of the Statute. It, however, cannot be inferred to mean mere lip service to the requirements of the law. That being so, although the High Court has concluded that the affidavit ‘substantially complied’ with the *proviso* to Section 83(1)(c), it has not detailed the examination conducted in order to reach such a conclusion. As a result, the necessary facts-based analysis appears to have escaped attention.
23. In view of these apparent deficiencies in the Impugned Order, namely, (i) to specify the extent of compliance with the High Court Rules; (ii) to enumerate the defects necessitating rectification; and (iii) to examine whether the principles of substantial compliance have been followed or not, we deem it appropriate to remit the case to the High Court with a request to answer these questions and re-determine

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whether these were curable defects which could be permitted to be rectified. We are inclined to remand the matter also for the reason that the High Court has correctly identified some grounds, other than ‘corrupt practices,’ on which the Election Petition deserves further consideration on merits.

### ***E. CONCLUSION AND DIRECTIONS***

24. In light of the above discussion, the matter stands remitted to the High Court with the following directions and conclusions:
  - a. The High Court is requested to identify and enumerate the defects in the Form 25 affidavit and assess whether such defects, if any, were curable. To this end, the High Court may consider the following as preliminary issues:
    - i. Whether the affidavit in the instant case, alleging ‘corrupt practices,’ is defective and does not satisfy the requirement under Form 25?
    - ii. If defective, does it substantially satisfy the requirements of Form 25, and can it be so construed in accordance with the decisions of this Court cited in paragraphs 15 to 17 above?
    - iii. If the defect in the Form 25 affidavit could be cured, would it be mandatory to file a supplementary affidavit within the period of limitation?
    - iv. Whether the High Court-cum-Election Tribunal possesses the power to condone the delay and permit the Election Petitioner to file the affidavit, in the prescribed format of Form 25, beyond the period of limitation?
  - b. Additionally, we allow the proposals submitted by the parties and request the High Court to strike out the portions of the pleadings that they have mutually agreed to expunge from the record.
  - c. Upon striking out of such pleadings, the High Court shall afford the parties reasonable time to carry out the consequential amendments to the Election Petition and the Written Statement(s). Thereafter, the High Court may proceed to frame issues on the merits of the matter.

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25. The instant appeal stands disposed of in these terms.
26. Ordered accordingly. Pending applications, if any, are also to be disposed of in the above terms.

*Result of the case:* Matter remitted to High Court.

*†Headnotes prepared by:* Ankit Gyan