



-1-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**APPLICATION IN ELECTION PETITION NO. 18 OF 2026**  
IN  
ELECTION PETITION NO. 16 OF 2025

Latif Ibrahim Pathan,  
i.e. Returning Officer,  
Age : 52 years,  
Occupation : Service as Sub Divisional Officer,  
R/o. Sillod,  
District Chhatrapati Sambhajinagar. ... Applicant

Versus

1. Mahesh Shankarlal Shankarpelli,  
Age : 52 years, Occupation : Business,  
R/o Maa Durga Nivas, Shastri Nagar/Colony,  
Sillod, Taluka Sillod,  
District Chhatrapati Sambhajinagar.
2. Ganesh Shankarlal Shankarpelli,  
Age : 47 years, Occupation : Social Worker,  
R/o 109/1, First Lane Near Vithal Temple,  
Shastri Nagar, Sillod, Taluka Sillod,  
District Chhatrapati Sambhajinagar. ... Ori. Petitioners
3. Abdul Sattar Abdul Nabi,  
Age : 54 years, Occupation : Business,  
R/o H. No. 786, Sneha Nagar,  
Sillod Municipal Council, Sillod,  
Taluka Sillod,  
District Chhatrapati Sambhajinagar. ... Respondents

.....

Mr. Alok Sharma, Advocate for the Applicant.  
Mr. R. L. Kute, Advocate for Respondent Nos. 1 and 2 (Original  
Petitioners)  
Mr. D. R. Kale, Advocate for Respondent No.3

.....

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 17.08.2026

Pronounced on : 01.10.2026

**ORDER :**

1. Original respondent no.2 in Election Petition has pressed into service the instant application by raising a prayer that he be deleted from the array of respondents in the Election Petition. The relevant prayer clause (B) reads as under :

*“B) That, the applicants be deleted as respondent to the election petition.”*

2. In support of such prayer, Mr. Alok Sharma, learned counsel for the applicant/original respondent no.2 seeks reliance on the judgment of the Hon'ble Apex Court in the case of ***Michael B. Fernandes v. C. K. Jaffer Sharief and others***, reported in AIR 2002 SC 1041, and in view of the provisions laid down in Sections 82 and 86(4) of the Act, he seeks deletion of applicant/original respondent no.2 Returning Officer as, according to him, the Returning Officer is neither a proper party, nor a necessary party.

3. Learned counsel for the original Election Petitioners opposes primarily on the ground that, in the Election Petition, there is challenge to the very election of respondent/returned candidate and

the process that has been conducted by the Election Commission. The respondent/returning officer was throughout in picture in the election process and certain lapses on his part are under consideration. He therefore opposes deletion.

4. Heard both sides.

5. In the case of ***Midhael B. Fernandes*** (supra) relied by learned counsel for the applicant/original respondent no.2, the Hon'ble Apex Court had an occasion to deal with a similar appeal arising out of the order of Karnataka High Court deleting the Election Commissioner, Returning Officer and the Chief Electoral Officer from the array of respondents to the election petition. Said appeal was dismissed by the Hon'ble Apex Court by observing that, parties to an election petition are limited strictly to those specified in Sections 82 and 86(4) of the Act and as per Section 82, Returning Officer and Chief Electoral Officer are not proper parties. It has been further held that the concept of 'proper parties' as understood in the Civil Procedure Code is not applicable to the election petitions under the Act.

6. Similarly, this Court derives strength from the judgment of the Hon'ble Apex Court in ***Jyoti Basu and others v. Debi Ghosal and others***, reported in (1982) 1 SCC 691, wherein it has been observed

that, in the election petitions alleging corrupt practice, only the 'candidates' expressly mentioned in Sections 82 and 86(4) of the Act can be joined as respondents by the election petitioner and the non-candidates, even though against them corruption charges are made in the petition, cannot be so joined. In para 10 of the said decision in **Jyoti Basu** (supra), it has been further observed as under :

*“The question is not whether the Civil Procedure Code applies, because it undoubtedly does, but only ‘as far as may be’ and subject to the provisions of the Representation of the People Act, 1951 and the Rules made thereunder. Section 87(1) expressly says so. The question is whether the provisions of the Civil Procedure Code can be invoked to permit that, which the Representation of the People Act does not. Quite obviously the provisions of the Code cannot be so invoked.”*

Further, paragraphs 11 to 13 of the decision in **Jyoti Basu** (supra) read as under :

*“11. The matter may be looked at from another angle. The Parliament has expressly provided that an opportunity should be given to a person who is not a candidate to show cause against being 'named' as one guilty of a corrupt practice. Parliament, however, has not thought fit to expressly provide for his being joined as a party to the election petition either by the election-petitioner or at the instance of the very person against whom the allegations of a corrupt practice are made. The right given to the latter is limited to show cause against being 'named' and that right opens up for exercise when, at the end of the trial of the election petition notice is given to him to show cause why*

*he should not be 'named'. The right does not extend to participation at all stages and in all matters, a right which he would have if he is joined as a party at the commencement. Conversely the election petitioner cannot by joining as a respondent a person who is not a candidate at the election subject him to a prolonged trial of an election petition with all its intricacies and ramifications. One may well imagine how mischievous minded persons may harass public personages like the Prime Minister of the country, the Chief Minister of a State or a political leader of a national dimension by impleading him as a party to election petitions, all the country over. All that would be necessary is a seemingly plausible allegation, casually or spitefully made, with but a facade of truth. Everyone is familiar with such allegations. To permit such a public personage to be impleaded as a party to an election petition on the basis of a mere allegation, without even prime facie proof, an allegation which may ultimately be found to be unfounded, can cause needless vexation to such personage and prevent him from the effective discharge of his public duties. It would be against the public interest to do so. The ultimate award of costs would be no panacea in such cases, since the public mischief cannot be repaired. That is why public Policy and legislative wisdom both seem to point to an interpretation of the provisions of the Representation of the People Act which does not permit the joining, as parties, of persons other than those mentioned in Sections 82 and 86 (4). It is not as if a person guilty of a corrupt practice can get away with it. Where at the concluding stage of the trial of an election petition, after evidence has been given, the Court finds that there is sufficient material to hold a person guilty of a corrupt practice, the Court may then issue a notice to him to show cause under Section 99 and proceed with further action. In our view the legislative provision contained in Section 99 which enables the Court, towards the end of the trial of an election petition, to issue a notice to a person not a party to the proceeding to show cause why*

*he should not be 'named' is sufficient clarification of the legislative intent that such person may not be permitted to be joined as a party to the election petition.*

*12. There is yet another viewpoint. When in an election petition in addition to the declaration that the election of the returned candidate is void a further declaration is sought that any candidate other than the returned candidate has been duly elected, Section 97 enables the returned candidate or any other party to 'recriminate' i.e. to give evidence to prove that the election of such candidate would have been void if he had been a returned candidate and a petition had been presented to question his election. If a person who is not a candidate but against whom allegations of any corrupt practice are made is joined as a party to the petition then, by virtue of his position as a party, he would also be entitled to 'recriminate' under sec. 97. Surely such a construction of the statute would throw the doors of an election petition wide open and convert the petition into a 'free for all' fight. A necessary consequence would be an unending, disorderly election dispute with no hope of achieving the goal contemplated by Sec. 86(6) of the Act that the trial of the election petition should be concluded in six months. It is just as well to remember that 'corrupt practice' as at present defined by Sec. 123 of the Act is not confined to the giving of a bribe but extends to the taking of a bribe too and, therefore, the number of persons who may be alleged to be guilty of a corrupt practice may indeed be very large, with the consequence that all of them may possibly be joined as respondents.*

*13. In view of the foregoing discussion we are of the opinion that no one may be joined as a party to an election petition otherwise than as provided by Sections 82 and 86(4) of the Act. It follows that a person who is not a candidate may not be joined as a respondent to the election petition. The appeal is therefore, allowed with costs and the names of the appellants and the seventh respondent in the*

*appeal are directed to be struck out from the array of parties in the election petition. We may mention that in arriving at our conclusion we have also considered the following decisions cited before us : S.B. Adityan v. S. Kandaswami, AIR 1958 Mad 171; Dwijendra Lal Sen Gupta v. Harekrishna Konar, AIR 1963 Cal 218, H.R. Gokhale v Bharucha Noshir C. AIR 1969 Bom 177 and S. Iqbal Singh v. S. Gurdas Singh Badal AIR 1973 P&H 163 (FB)”*

7. Likewise, this Court also derives strength from the judgment of the Hon'ble Apex Court in the case of ***B. Sundara Rami Reddy v. Election Commission of India and others***, reported in 1991 Supp (2) SCC 624, wherein, in paragraphs 3 and 4, the following observations are made :

*“3. After hearing learned counsel for the petitioner we do not find any merit in the petition. Section 82 of the Representation of the People Act, 1951 specifies the persons who are required to be joined as respondents to an election petition. Under this provision the returned candidate is a necessary party as a respondent and where relief for a declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. No other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Act. The Election Commission of India is therefore not a necessary party to an election petition.*

*4. Learned Counsel for the petitioner urged that even if the Election Commission may not be a necessary party, it was a proper party since its orders have been challenged in*

*the election petition. He further urged that since Civil Procedure Code, 1908 is applicable to trial of an election petition the concept of proper party is applicable to the trial of election petition. We find no merit in the contention. Section 87 of the Act lays down that subject to the provisions of the Act and any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Provisions of the Civil Procedure Code have thus been made applicable to the trial of an election petition to a limited extent as would appear from the expression "subject to the provisions of this Act". Since Section 82 designates the persons who are to be joined as respondents to the petition, provisions of the Civil Procedure Code, 1908 relating to the joinder of parties stands excluded. Under the Code even if a party is not necessary party, he is required to be joined as a party to a suit or proceedings if such person is a proper party, but the Representation of the People Act, 1951 does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order I of the Civil Procedure Code cannot be imported to the trial of election petition, in view of the express provisions of Sections 82 and 87 of the Act. The Act is a self-contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party. In K. Venkateswara Rao v. Bekkam Narasinha Reddi, AIR 1969 SC 872 this Court while discussing the application of Order I Rule 10 of the Civil Procedure Code to an election petition held that there could not be any addition of parties in the case of an election petition except under the provisions of sub-section (4) of Section 86 of the Act. Again in Jyoti Basu v Debi Ghosal, (1982) 1 SCC 691 this Court held that the concept of 'proper party' is and must remain alien to an election*

*dispute under the Representation of the People Act, 1951. Only those may be joined as respondents to an election petition who are mentioned in Section 82 and Section 86 (4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents.”*

8. Here, no relief whatsoever is claimed against the present applicant/original respondent no.2 Returning Officer, and therefore, he is neither a necessary party nor a proper party. In view of the ratio as culled out in the above discussed rulings, the applicant succeeds. Hence, the following order :

#### **ORDER**

- I. The application is allowed.
- II. The petitioner is directed to effect necessary amendment in the Petition, thereby deleting the name of Respondent No.2 - The Returning Officer from the array of the respondents, with consequential amendments in the body and prayer of the Petition.
- III. The amendment shall be carried out within a period of six weeks from the date of pronouncement of this order.
- IV. In the circumstances, there is no order as to costs.
- V. The application is accordingly disposed off.

**[ABHAY S. WAGHWASE, J.]**