

THE HIGH COURT OF TRIPURA
AGARTALA

IN CRP NO. 28 OF 2012:

Petitioners :

1. The State of Tripura represented by the Secretary to the Panchayat Department, Government of Tripura having its office at Capital Complex, Lichibagan, Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

- **Versus** -

Respondent:

1. Sri Rakhal Sarkar,
S/O. Shri Murari Sarkar,
Resident of Uttar Kalamchoura,
P.O. Boxanagar,
P.S.-Kalamchoura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Babudhan Sarkar,
S/O. Shri Binode Sarkar,
Resident of Uttar Kalamchoura,
P.O. Boxanagar, PS-Kalamchoura,
Dist.-West Tripura.

IN CRP NO. 29 OF 2012:

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1. The State of Tripura represented by the Secretary to the Panchayat Department, Government of Tripura having its office at Capital Complex, Lichibagan, Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

- **Versus** -

Respondent:

1. Sri Abdul Mutaleb,
S/O. Abdul Rahaman,
Resident of Gaurangula,
Uttar Kalamchoura,

P.O. Boxanagar,
P.S.-Kalamchoura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Chandu Miah,
S/O. Shri Ramikiddin,
Resident of Gaurangula,
P.O. Boxanagar,
Under Rahimpur Gram Panchayat,
PS-Kalamchoura,
Dist.-West Tripura.

IN CRP NO. 30 OF 2012:

Petitioners :

1. The State of Tripura represented by the
Secretary to the Panchayat Department,
Government of Tripura having its office at
Capital Complex, Lichibagan,
Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Sri Subodh Das,
S/O. Suresh Ch. Das,
Resident of Uttar Kalamchoura,
P.O. Boxanagar,
P.S.-Kalamchoura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Nantu Das,
S/O. Shri Prafulla Chandra Das,
Resident of Uttar Kalamchoura,
P.O. Boxanagar, PS-Kalamchoura,
Dist.-West Tripura.

IN CRP NO. 31 OF 2012:

Petitioners :

1. The State of Tripura represented by the
Secretary to the Panchayat Department,
Government of Tripura having its office at
Capital Complex, Lichibagan,
Agartala, West Tripura.

2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Sri Raficul Islam,
S/O. Idrish Miah,
Resident of village Uttar Kalamchoura,
P.S.-Kalamchoura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Mafijul Islam,
S/O. Badsa Miah,
Resident of village Uttar Kalamchoura,
PS-Kalamchoura,
Dist.-West Tripura.

IN CRP NO. 32 OF 2012:

Petitioners :

1. The State of Tripura represented by the
Secretary to the Panchayat Department,
Government of Tripura having its office at
Capital Complex, Lichibagan,
Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Sri Sanjoy Paul,
S/O. Shri Sunil Paul,
Resident of Kalamnagar,
P.O. Boxanagar,
P.S.-Sonamura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Surya Kumar Dey,
S/O. Shri Kshetra Dey,
Resident of Kalamnagar,
P.O. Boxanagar, PS-Sonamura,
Dist.-West Tripura.

IN CRP NO. 33 OF 2012:**Petitioners :**

1. The State of Tripura represented by the Secretary to the Panchayat Department, Government of Tripura having its office at Capital Complex, Lichibagan, Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Sri Samboo Biswas,
S/O. Late Ramesh Biswas,
Resident of Anandanagar,
P.O. Boxanagar,
P.S.-Sonamura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Sumanta Biswas,
S/O. Late Ramesh Biswas,
Resident of Anandanagar,
P.O. Boxanagar, PS-Sonamura,
Dist.-West Tripura.

IN CRP NO. 34 OF 2012:**Petitioners :**

1. The State of Tripura represented by the Secretary to the Panchayat Department, Government of Tripura having its office at Capital Complex, Lichibagan, Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Sri Rahim Ali,
S/O. Late Mali Miah,
U.N.C. Nagar, P.O. Motinagar,
P.S.-Sonamura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Abul Rashem,
S/O. Chayed Ali,
U.N.C. Nagar, P.O. Motinagar,
PS-Sonamura,
Dist.-West Tripura.

IN CRP NO. 35 OF 2012:**Petitioners :**

1. The State of Tripura represented by the
Secretary to the Panchayat Department,
Government of Tripura having its office at
Capital Complex, Lichibagan,
Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

- **Versus** -

Respondent:

1. Sri Subash Ch. Roy,
S/O. Shri Jagabandhu Roy,
Resident of Anandnagar,
P.O. Boxnagar,
P.S.-Sonamura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Pradip Roy,
S/O. Shri Nepal Roy,
Resident of Anandnagar,
P.O. Boxnagar,
PS-Sonamura,
Dist.-West Tripura.

IN CRP NO. 36 OF 2012:**Petitioners :**

1. The State of Tripura represented by the
Secretary to the Panchayat Department,
Government of Tripura having its office at
Capital Complex, Lichibagan,
Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Mubaarak Hussain,
S/O. Shri Ali Azzam,
Resident of Anandnagar,
P.O. Boxnagar,
P.S.-Sonamura,
Dist.-West Tripura.

Pro Respondent:

2. Sayed Abdul Momin,
S/O. Majid Miah,
Resident of Anandnagar,
P.O. Boxnagar,
PS-Sonamura,
Dist.-West Tripura.

IN CRP NO. 37 OF 2012:

Petitioners :

1. The State of Tripura represented by the
Secretary to the Panchayat Department,
Government of Tripura having its office at
Capital Complex, Lichibagan,
Agartala, West Tripura.
2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Sri Khirode Sarkar,
S/O. Bhuban Sarkar,
Resident of Uttar Kalamchoura,
Pin-799106,
P.S.-Uttar Kalamchoura,
Dist.-West Tripura.

Pro Respondent:

2. Sri Bikash Kanti Das,
S/O. Shri Anil Das,
Resident of Uttar Kalamchoura,
P.O. Box Nagar,
Dist.-West Tripura.

IN CRP NO. 38 OF 2012:

Petitioners :

1. The State of Tripura represented by the
Secretary to the Panchayat Department,

Government of Tripura having its office at
Capital Complex, Lichibagan,
Agartala, West Tripura.

2. Returning Officer,
(BDO, Boxanagar RD Block),
PS-Kalamchoura, Dist.-West Tripura.

– **Versus** –

Respondent:

1. Smt. Nargish Akhtar,
W/O. Shri Khurshid Alam,
Resident of Uttar Kalamchoura,
P.O. Boxnagar,
P.S.-Kalamchoura,
Dist.-West Tripura.

Pro Respondent:

2. Smt. Milan Rani Das,
W/O. Shri Gauranga Das,
Resident of Uttar Kalamchoura,
P.O. Boxnagar,
PS-Kalamchoura,
Dist.-West Tripura.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U.B. SAHA**

For the petitioners : Mr. T.D. Majumder, G.A.,
(in all the petitions) Ms. K. Debbarma, Advocate.

For the respondents : Mr. S. Acharji, Advocate.
(in all the petitions)

Date of hearing and : 19.03.2015.
delivery of judgment
and order.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

The short but interesting question involved in these petitions is whether the Returning Officer and the Secretary to the Panchayat Department, Government of Tripura are proper parties in the election petition.

2. Briefly stated, the facts relevant for deciding the present petitions are that elections were held under the Tripura Panchayats (Conduct of Election) Rules, 1993 for filling up the various posts of members in different Panchayats. As far as these petitions are concerned, they all relate to Panchayats under Boxanagar R.D. Block. In all these election petitions, the Returning Officer and the Secretary to the Panchayat Department, Government of Tripura were impleaded as respondents in the election petitions. The election petitions in terms of Section 198 of the Tripura Panchayats Act, 1993 and Rule 70 of the Tripura Panchayats (Conduct of Election) Rules, 1993 are to be heard by an Election Tribunal. The concerned officers, i.e. the Returning Officer and the Secretary to the Panchayat Department, Government of Tripura filed petitions before the Tribunal praying that they were unnecessary parties in the petition and their names may be deleted from the array of parties. These petitions have been rejected by the impugned order and hence, these petitions under Article 227 of the Constitution of India.

3. We have gone through some of the election petitions. In all the election petitions the main allegation was that wrong counting of votes was done. An allegation was also made that the Returning Officer had purposely misplaced some of the votes cast with a view to help the returned candidate. However, the relief claimed against respondents 2 and 3, i.e. the Returning Officer and the Secretary, Panchayat Department, Government of Tripura was

only that they should be directed to produce the sealed Ballot box containing the votes cast.

4. Rule 70 of the Tripura Panchayats (Conduct of Election) Rules, 1993 lays down the procedure to be followed while dealing with such petitions. We are concerned with sub-rule (3) and (4) of the Rules which read as follows:-

“70(3). If the irregularities alleged in the petition are likely to effect the validity of the election of more than one returned candidate the petitioner shall join opposite party to his petition all such returned candidate.

(4). The petitioner may, if so desires in addition to calling in question the election of the returned candidate or candidates, claim for a declaration that he himself or any other candidate has been duly elected.”

5. What these rules contemplate is that if the irregularities alleged in the petition are likely to effect the validity of the election of more than one returned candidate, then all such returned candidates shall have to be made parties and the petition can be rejected if all the returned candidates whose election is likely to be effected are not made parties. Other than the returned candidates, the rules do not envisage the impleadment of any other person as parties. Rule 70 sub-rule (3) is narrower than Section 82 of the Representation of the People Act, 1951 which reads as follows:-

“82. Parties to the petition.—A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the

returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

6. Under section 82, the petitioner can not only seek a declaration that the election of the returned candidate is illegal or void but he can also seek a declaration that either he himself or any one of the other candidates should be declared elected and in such an eventuality, all the contesting candidates must be made parties to the petition. However, where no such declaration is sought and only setting aside of the election is sought, then only the returned candidates are to be made parties.

7. Section 82 has been the subject matter of discussion in ***Jyoti Basu and others vs. Debi Ghosal and others, [(1982) 1 SCC 691]*** wherein the Apex Court dealing with Section 82 held as follows:-

“9. Section 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector of the constituency; it may be none else. Section 82 is headed “Parties to the petition” and clause (a) provides that the petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of Section 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Section

86(4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with the question as to who may be joined as respondents. It is significant that while clause (b) of Section 82 obliges the petitioner to join as a respondent any candidate against whom allegations of any corrupt practice are made in the petition, it does not oblige the petitioner to join as a respondent any other person against whom allegations of any corrupt practice are made. It is equally significant that while any candidate not already a respondent may seek and, if he so seeks, is entitled to be joined as a respondent under Section 86 (4), any other person cannot, under that provision seek to be joined as a respondent, even if allegations of any corrupt practice are made against him. It is clear that the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of 'proper parties' enter the picture at all? We think that the concept of 'proper parties' 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. The Apex Court then went on to hold that the Code of Civil Procedure is not applicable to trial by election. The Apex Court in paras-12 and 13 held as follows:-

"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 Section 97. Surely such a construction of the stature 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 Section 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 Section 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 Section 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."

9. In **Michael B. Fernandes vs. C.K. Jaffer Sharief and others, [(2002) 3 SCC 521]**, the law laid down in **Jyoti Basu's** case was followed and reaffirmed.

10. From a reading of the aforesaid judgment, it is clear that in election petitions other than the candidates no one else can be a party to an election petition. Even if allegations of corruption etc. are made against the Returning Officer, he is not to be arrayed

as a party in the petition but those allegations may be proved by the petitioner by leading evidence.

11. As far as the learned trial Court is concerned, it gravely erred in holding that the aforesaid judgments of the Supreme Court which were cited before it were not applicable. The learned trial Court did not appreciate the judgment of the Apex Court in its entirety. The main reason which weighed with the Apex Court was the language of Section 82 of the Act. True it is that to support its decision, the Apex Court made reference to other provisions of the Act, such as Sections 86 and 91 but basically the case revolved around the interpretation of Section 82 of the Act. Section 86 does not deal with parties. It is procedural in nature.

12. It is true that the Representation of the People Act, 1950 and the Tripura Panchayats Act, 1993 are different statutes but merely because a statute is different does not mean that any decision of the Apex Court given on a point of law while dealing with the Representation of the People Act is not binding on the Courts below only because the Act which is dealt with is a different Act. Article 141 of the Constitution of India lays down that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. No Court or Tribunal can say that the law laid down by the Supreme Court is not binding on it. Even if the two Acts were different, the Tribunal should have examined the language of the two provisions and then come to the conclusion whether such finding given in respect of the Representation of the People Act is binding with regard to proceedings under the

Panchayati Raj Act or not. As pointed out by us above, we are of the considered view that the language of the Tripura Panchayats (Conduct of Election) Rules, 1993 is narrower than Section 82 of the Act and whereas under Section 82 even unelected candidates can be arrayed as respondents in the petition under the Panchayati Raj Act and the Rules framed thereunder only returned candidates whose rights are likely to be effected by the election petition can be made parties to the petition. No other person can be made a party to the petition.

13. Therefore, we set aside the order of the learned Election Tribunal and direct that the names of the officials who have been arrayed as respondents should be struck off from the array of respondents.

14. All the revision petitions are disposed of accordingly.

15. Send back the lower court records forthwith.

JUDGE

CHIEF JUSTICE