

*** HON'BLE SRI JUSTICE M. SATYANARAYANA
MURTHY**

+ CIVIL REVISION PETITION No.246 of 2016

% 04-03-2016

M.A.Faheem Uddin S/o.Md.Rasheed Uddin,
Aged.49 years, H.No.9-14-28/1,Ahmedpura Colony,
Nizamabad.

..PETITIONER

VS.

\$ Shaik Nayeem S/o.Shaik Raheem
Aged.28years,occ:Business,H.No.9-12-100,
Ahmedpura Colony, Nizamabad and another.

..RESPONDENTS.

! Counsel For The Petitioner: Sri A.Sudarshan Reddy for Sri
M.Rajendender

Reddy

^ Counsel For Respondents: Sri P.Veera Reddy for Sri Shafath
Ahmed

Khan

< Gist :

> Head Note :

? CITATIONS :

1. AIR 1986 Supreme Court 1253(1)
2. 1997(5) ALD 330
3. 2010 Law Suit (P&H) 5028
4. AIR 1996 Supreme Court 796
5. AIR 1958 Supreme Court 687
6. (2003) 1 Supreme Court Cases 289
7. 2014 (4) ALD 585
8. 2004 (3) ALT 788 (D.B)
9. AIR 1972 Andhra Pradesh 120 (V.59 C 24)
10. 2015 (4) ALT 40
11. AIR 1972 SC 515
12. AIR 1987 SC 1926
13. AIR 2002 SC 1041
14. 1982 13 SCR 318
15. (1992) 1 LLJ 281 SC

16. AIR 1963 Cal 218
17. AIR 1969 Bombay 177
18. AIR 2013 SC1549
19. (2001) 4 SCC 428
20. (2004) 11 SCC 196
21. (2008) 11 SCC 740
22. AIR 2012 SC 2638
23. (1999) 2 SCC 217
24. AIR 1969 SC 677
25. AIR 1976 SC 744
26. 1978 WLN 161

**HON'BLE SRI JUSTICE M. SATYANARAYANA
MURTHY**

CIVIL REVISION PETITION No.246 of 2016

ORDER:

This Revision petition is filed under Article 227 of Constitution of India challenging the order, dated 15-10-2015, passed in I.A.No.634 of 2015 in OP.No.235 of 2014 by the Judge, Family Court-cum-Additional District Judge and Election Tribunal, Nizamabad.

The Revision petitioner was the petitioner before the Tribunal and the 1st respondent was the election petitioner/respondent and they will be hereinafter referred to as revision petitioner and 1st respondent for convenience of reference.

The revision petitioner (the 1st respondent in Election petition) filed petition under Sections 71, 72 of the Greater Hyderabad Municipal Corporation Act (for short the "Act") and rule 100 (3) of A.P.Municipal Corporations (Conduct of Election of Members) Rules, 2005

("for short "Election Rules, 2005") alleging that he contested for the office of Corporator from Division/ward No.29, Nizamabad Municipal Corporation held on 30-03-2014. The revision petitioner was declared as elected for the Division/ward on 12-05-2014 having secured highest number of votes among nine contested rival candidates for the said Division/ward of Municipal Corporation, Nizamabad.

The 1st respondent among other contested candidates who

secured second highest votes in the said election filed petition challenging the election of the revision petitioner on the ground that he was disqualified under Section 21 (B) of the Act to contest in the election as he was blessed with more than two children as on the date of filing nomination, thereby not entitled to continue as member of said Division/ward. The revision petitioner filed counter in the main election petition denying the same.

The specific contention of the petitioner is that there were totally 10 contested candidates on the fray for the Division/ward No.29 of Nizamabad Municipal Corporation in the said election. But the 1st respondent filed election petition without impleading all other contested candidates for the said ward and though they are necessary parties to the election in view of Sections 71, 72 and 74 of the Act and rules framed thereunder. Therefore, for non-compliance of mandatory provisions of Sections 72 read with Section 74, the petition is liable to be dismissed in *limini* without any trial as per rule 100 (3) of Election Rules, 2005, prayed to dismiss the election petition pending on the file Election Tribunal.

The 1st respondent (Election petitioner) filed counter denying the material allegations while reiterating that the revision petitioner was disqualified to contest in the election, in view of disqualification under 21(B) of the Act and that trial Court though honestly made attempts to dispose of the matter, in view of Section 86 (7) of Representation of People Act, as expeditiously as possible and as per the orders of this Court in CRP.No.5037 of 2014. The revision petitioner is creating hurdles at every moment, not allowing the Tribunal to decide the election petition. It is further contended that the revision petitioner filed similar petition on 12-06-2014 under Section 75(1) of the Act read with Order VII Rule 10, 10-A (3) and 11(d) of C.P.C. to reject or return the election petition in view of inherent lack of jurisdiction and the same was not entertained till this day. Moreover,

petition filed by the 1st respondent (election petitioner) under Order 1 Rule 10(2) to implead the contested candidates was dismissed, since, the application was not filed within (14) days from the date of filing election petition. The 1st respondent further contended that point of jurisdiction was also disputed by the revision petitioner in the earlier round, by filing I.A.No.408 of 2014 and the same was dismissed on the ground that the Tribunal has no jurisdiction to pass any order in exercise of power under Section 151 C.P.C. by way of interim order. Again the petitioner filed the present petition to dismiss the election petition in *limini* by gross abuse of process of law and the same cannot be accepted. It is contended that the election petition cannot be dismissed at the threshold for non-compliance of provisions of the Act or rules framed thereunder. Since the Act does not contemplate dismissal of the petition without conducting any trial and that the present petition is only abuse of process of law, prayed to dismiss the petition.

The 2nd respondent did not file any counter.

Upon hearing argument of both counsel, perusing various provisions of the Act and rules framed thereunder, the Tribunal held in para No.26 as follows:

“ In my humble opinion if this Tribunal feels that there is a ample oral and documentary evidence to consider that the petitioner herein is not qualified to contest in Municipal election definitely he will be declared as disqualified candidate for which all the contesting candidates are not necessary for adjudication. Further, if the respondent No.1 herein declared as elected candidate, then the mandatory provisions required for compliance can be seen. Further the violation of non-joinder of necessary parties is concerned, it will be continued till the disposal of the main OP and it cannot be rectified further as the Hon'ble High Court already confirmed the order given by this Tribunal in a petition filed by the respondent No.1 herein under Order 1 Rule 10 of C.P.C. So the contest made by the petitioner herein already pleaded in his counter in the main OP that the petition is not maintainable for non-joinder of necessary party still continues till disposal of main election petition. As such, I am of the opinion no special prejudice will be caused to the petitioner herein if the petition is dismissed. Further, this Tribunal already started recording the evidence of the respondent No.1 herein and one witness is in the witness box. In such circumstances, I am of the opinion it is not safe to consider this petition as it is always open to

the petitioner herein to let in evidence to discredit the evidence of the respondent No.1 and to prove his defence. On my perusal of the citations relied by the petitioner that it relates to period of limitation. Admittedly, the petitioner is not contesting that the election petition is filed beyond the period of limitation, as such the decisions are not applicable to the present case.”

Against the above order, the present revision is filed contending that the postponement of decision about maintainability of election petition is erroneous, as the relief claimed by the petitioner falls under Sections 72 read with Section 74(b) of the Act. In such a case, all the contested candidates for the ward No. 29 are necessary parties and in the absence of impleading other contested candidates, the petition is liable to be dismissed in view of rule 100(3) of Election Rules, 2005. The Tribunal failed to consider the order in I.A.No.657 of 2014 filed by the 1st respondent under order 1 Rule 10(1) CPC. Finally contended that order under challenge is erroneous and in violation of Rule 100 (3) of Election Rules,2005 and prayed to set aside the order and dismiss the election petition on the ground of non-joinder of necessary parties to the petition, the Tribunal failed to exercise jurisdiction conferred on it.

During hearing learned Senior Counsel for the petitioner Sri A.Sudarshan Reddy, contended that the election petition is liable to be dismissed, when the petitioner claimed relief to declare that the revision petitioner (returned candidate) in the election for the municipal corporation, Nizamabad for Division/ward No.29 and to declare the election petitioner as elected as member of Municipal Corporation, Nizamabad falls within Section 74 (b) of the Act and in view of Rule 100(3) of the Election Rules,2005, the petition is liable to be dismissed for non-joinder of other contested candidates in the election for Division/ward No.29 of the Municipal Corporation, Nizamabad. It is the specific contention of the learned counsel for the petitioner that the petition is not maintainable in accordance with law. The returned candidate cannot be put to ordeal of trial and he need not wait till the

completion or conclusion of trial in the main election petition. To support his contention, he placed reliance on the judgments of **Azhar Hussain v. Rajiv Gandhi**^[1], **M.Ranga Reddy v. N.Indrasena Reddy**^[2], **Gurlal Singh v. Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others**^[3], **Manohar Joshi v. Nitin Bhaurao Patil and another**^[4]. Finally it is contended that the 1st respondent made an attempt to implead other contested candidates by filing an application, which ended in dismissal and attained finality. In such a case, the revision petitioner cannot be compelled to undergo ordeal of trial of election petition without concentrating on the duties as a member of the ward/Division of Nizamabad Municipal Corporation. The defect in the petition is not curable one and if it is curable, the decision in the main petition can be postponed, when it is not curable, the petition is liable to be dismissed at the threshold, instead of deciding the matter on merits.

Learned Senior counsel for the 1st respondent Sri P.Veera Reddy contended that when the revision petitioner is disqualified to contest the election in view of Section 21(B) of the Act, non-joinder of parties is not inherent defect in the petition and therefore, the petition cannot be dismissed at the threshold and at best at the end of trial, if the Tribunal comes to a conclusion that petition is defective for non-joinder of necessary parties as required under Section 72, 74(b) of the Act, the petition can be dismissed. But not before proceeding with the trial, the relief claimed by the revision petitioner cannot be granted, since the Tribunal is not competent to pass any interim order, to support his contention, he placed reliance on the judgments of **K.Kamaraja Nadar v. Kunju Thevar and others**^[5], **Ramprasad Sarma v. Mani Kumar Subba and others**^[6]. Another contention raised by Senior Counsel Sri P.Veera Reddy is that the election petitions cannot be dismissed at the threshold, at the best they can be

dismissed at the conclusion of the trial, if there is any inherent defect. To support his contention, he placed reliance on the judgments of **Challa Swaroopa v. District Collector (District Election Authority)**, **Khammam Town and District and others**^[7], **Kummari Ramulu v. Gangaram Penta Reddy and others**^[8], **Gadde Venkateswara Rao v. K.Venkata Rao and another**^[9] and **M.Khalellulla Baig v. Mulla Khaja Mohiuddin and others**^[10], finally prayed to dismiss the petition, since, dismissal of election petition without trial is impermissible under the Act and rules framed thereunder.

Considering the rival contentions, perusing the material on record, the sole point that arises for consideration is as follows:

“ Whether, the other contested candidates for ward/Division No.29 of Nizamabad Municipal Corporation in the elections held on 30-03-2014 are necessary parties to the election petition under Section 72 of the Act, as the relief claimed to declare that the election of revision petitioner for the ward number 29 of Nizamabad Municipal Corporation as void, illegal and contrary to Section 21 (B) of the Act and to declare him as the elected candidate having secured second highest number of votes in the said election (vide Section 74(b) of the Act) if so, whether the election petition is liable to be dismissed before conclusion of trial”?

POINT:

Before advertng to the point, it is relevant here to note the comparative analysis of the relevant provisions under the Greater Hyderabad Municipal Corporations act, 1955 and The Representation of the People Act, 1951.

THE GREATER HYDERABAD MUNICIPAL CORPORATION ACT, 1955	THE REPRESENTATION OF THE PEOPLE ACT, 1951
Section 71 : <u>Election Petition:</u> 1) No election held under this Act shall be called in question except petition which shall be	Section 81: <u>Presentation of Petitions:</u> 1) An election petition calling in question any election may be presented on one or more of the

presented in such manner as may be prescribed.	grounds specified in 3 [sub-section(1) of section 100 and section 101 to the 4 [High Court] by any candidate at such election or any elector 5 [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].
2) An Election petition calling in question any election may be presented on one or more of the grounds specified in clauses (i) and (ii) of Section 79 and section 80 to the Election Tribunal by any candidate at such election or any voter, within two months 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 the election are different is the later of those two dates. Provided that the period from the date on which an election petition can be filed under this sub-section to the date of the constitution of an Election Tribunal under Section 75, shall be excluded for purpose of computing the period of two months under this sub-section. <u>Section 72:</u> <u>Parties to the petition:</u> A petitioner shall join as respondents to his petition:- a) Where the petitioner claims a declaration under clause (b) of Section 74, all the contesting candidates other than the petitioner and in any other case all the returned candidates; and b) Any other candidates against	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. Sub-section (2) ...omitted [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.] <u>Section 82:</u> <u>Parties to the petition:-</u> A petitioner shall join as respondents to his petition- a) where the petitioner, in addition to claiming a 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

whom allegations of any corrupt or illegal practice are made in the petition. <u>Section 74:</u> - <u>Relief that may be claimed by the petitioner:</u> A petitioner may claim any one of the following declarations. a) that the election of the returned candidate is void; b) that the election of the returned candidate is void and that himself or any other candidate has been duly elected. c) That the election as a whole is void.	candidates; and b) any other candidate against whom allegations of any corrupt practice are made in the petition. <u>Section 84:</u> <u>Relief that may be claimed by the petitioner:-</u> A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.
THE GREATER HYDERABAD MUNICIPAL CORPORATION ACT, 1955	THE REPRESENTATION OF THE PEOPLE ACT, 1951

<u>Section 77</u> <u>Decision of Tribunal:</u> At the conclusion of the trial of an election petition, the Tribunal shall make an order- a) dismissing the election petition: or (b) declaring the election of the returned candidate to be void; or c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to be void and the petitioner or any other candidate to have been duly elected; c) declaring the election to be wholly void.	<u>Section 98:</u> <u>Decision of the High Court:</u> At the conclusion of the trial of an election petition [the High Court] shall make an order- a) dismissing the election petition; or b) declaring the election of [all or any of the returned candidates] to be void; or c) declaring the election, of [all or any of the returned candidates] to be void and the petitioner or any other candidate to have been duly elected.
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The A.P.Municipal Corporation (Conduct of Election of Members, Election Expenses and Election Petitions) Rules, 2005	The Representation of the People Act, 1951
<u>Rule 100:</u> <u>Procedure before the Tribunal:</u> 1) Subject to the provisions of the Act and these rules every election shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure Code, 1908 (Act V of 1908) to the trial of suits: provided that the tribunal shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witness if it is of the opinion that their evidence is not material for the decision the petition or that the party tendering such witness or witnesses in doing so on	<u>Section 86:</u> <u>Trial of election petitions:-</u> 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. <u>Explanation:-</u> A n 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.

frivolous grounds or with a view to delay the proceedings. 2) The provision of the Indian Evidence Act, 1872 (1 of 1872) shall subject to the provisions of these rules be deemed to apply in all respects to the trial of an election petition. 3) This Tribunal shall dismiss an election petition which does not comply with the provisions of Sections 71, 72 or Rule 114. 4) Any candidate not already a respondent shall upon application made to the tribunal within fourteen days from the commencement of the trial and subject to the provisions of rule 106 be entitled to be joined as respondent. <u>Explanation:-</u> For the purpose of this sub-rule and of rule 99 the trial of petition shall be deemed to commence on the date fixed for the respondents to appear, before the Tribunal and answer the claim or claims made in the petition. 5) The Tribunal may upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt or illegal practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition,	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) When 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.
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but shall not allow any amendment to the petition which will have the effect of introducing particulars of a corrupt or illegal practice not previously alleged in the petition.	
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The undisputed facts are that the 1st respondent (election petitioner) filed petition questioning the election of revision petitioner on the ground that he is blessed with more than two children and disqualified to contest in the election, in view of disqualification contemplated under Section 21 (B) of the Act. Of course, the revision petitioner (the 1st respondent in the election petition) denied the disqualification under Section 21 (B) of the Act and it is a disputed fact required to be decided at the conclusion of the trial by pronouncing order/judgment on termination of proceedings. The election petitioner claimed following reliefs in the election petition in OP.No.235 of 2014 in last para (prayer), which is extracted hereunder for better appreciation in view of contentions raised by both parties to the revision petition:

- “ i) To declare the Election of the returned candidate for Ward No.29 i.e. respondent No.1 as void.**
- ii) To declare the petitioner as duly elected from Ward No.29.**
- iii) Costs of the petition may be awarded.**
- iv) Any other relief or reliefs as this Hon’ble Court may deem fit and proper, in the above circumstances of the case, may be awarded, in the interest of justice and equity.”**

A bare look at the prayer in the election petition extracted above, he claimed relief to declare the election of the revision petitioner for the ward No.29 as void and declare the petitioner as duly elected for the Division/ward No.29. At this stage, it is relevant to extract section 74 and Section 77 of the Act as it would serve useful

purpose for better appreciation and extracted hereunder:

Section 74 of the Act :

A petitioner may claim any one of the following declarations:-

- a) *that the election of the returned candidate is void;***
- b) *that the election of the returned candidate is void and that himself or any other candidate has been duly elected;***
- c) *that the election as a whole is void.”***

Thus, the election petitioner is entitled to claim the relief contemplated under all the sub-sections of the Section 74 of the Act.

Section 72 of the Act deals with necessary parties to the petition and according to it, the petitioner shall join as respondents to his petition,-

- a) *where the petitioner claims a declaration under Clause (b) of Section 74, all the contesting candidates other than the petitioner and in any other case all the returned candidates, and***
- b) *any other candidates against whom allegations of any corrupt or illegal practice are made in the petition.***

Here, the petitioner claimed relief under Section 74(b) of the Act, hence, all the contested candidates in addition to revision petitioner are proper and necessary parties to the petition in view of Section 72 (a) of the Act.

Rule 100 (3) of the Election Rules, 2005 deals with the procedure before the Tribunal, according to sub-rule (1) subject to other provisions of the Act and the rules, every election petition shall be considered by the Tribunal as nearly as may be in accordance with the procedure applicable under Code of Civil Procedure to the trial of the suits. However, the Tribunal shall have discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision in the petition or that party tendering such witness or witnesses in doing so on frivolous grounds or with a view to delay proceedings. According to Sub-Rule 3 of Rule 100, the Tribunal shall dismiss an election petition, which does not comply with the provisions of Sections 71, 72 or Rule 114. Therefore, it is clear that from sub-rule 3

of Rule, 100 of Election Rules, 2005, the election petition filed under Section 71 for non-compliance of Section 72 read with Section 74 (b) of the Act i.e. impleading of other contested candidates other than returned candidate, when relief claimed falls within the ambit of 74 (b) of the Act is liable to be dismissed. The provision is not clear whether such an order can be passed at the threshold or at the conclusion of trial of election petition. In view of the contention that the election petition can be dismissed at the threshold without ordeal of trial as contended by Sri A.Sudarshan Reddy, learned Senior Counsel for the petitioner and that election petition shall not be dismissed at the threshold as contended by Senior Counsel Sri P.Veera Reddy, it is necessary to examine this issue with reference to law declared by Apex Court and other Courts both with reference to A.P.Municipal Corporations Act, Representation of People Act and other enactments.

The 1st respondent/election petitioner claimed relief to declare that the election of revision petitioner-returned candidate for the ward No.29 of Nizamabad Municipal Corporation as void besides claiming declaration that he is the returned candidate for the said ward. When the petitioner claimed such relief, it is his obligation to implead all the contested candidates in addition to impleading the returned candidate as party to the petition as required under Section 72 read with Section 74 (b) of the Act.

Learned Senior Counsel for the petitioner Sri A.Sudarshan Reddy while contending that object of rule 100 (3) of Rules, 2005 is to avoid ordeal of trial of the election petition, when other contested candidates are not impleaded as parties to the petition; to allow returned candidates to attend duties being member of Ward/Division, petition can be dismissed at the threshold. He placed reliance on **Rajiv Gandhi's** case (supra 1). In the said election petition, the election petitioner challenged the election of Rajiv Gandhi for the Lok-

sabha Member from Amethi Constituency and non-compliance of Section 81, 82 of the Act and Section 117 of Representation of the people Act

(For short “ the R.P.Act”) is in pari-materia to Sections 71, 72 and Section 74 of the Act. Before the Supreme Court, it was contended that the provisions of C.P.C. are applicable, Section 84 of the R.P. Act, is equivalent to Section 74 of the Act, based on the judgment of Apex Court in **Hardwari Lal v. Kanwal Singh**^[11], the Supreme Court concluded that the election petition can be summarily dismissed, if it does not furnish any cause of action, in exercise of powers under the Code of Civil Procedure, so also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed, if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

While dealing with other grounds under Section 82 of Representation of People Act, the Apex Court concluded as follows:

“ Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the Court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Further

observed that the contention that even if the election petition is liable to be dismissed ultimately should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections.

Finally, the Apex Court held that to wind up the dialogue to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The Court cannot accede to such a proposition.”

A bare reading of law declared by Supreme Court the election petition can be dismissed at the threshold without ordeal of trial, since the Court trying election petition can exercise powers under Code of Civil Procedure. Similar view is expressed by learned single Judge of this Court in **Indrasena Reddy’s case** (supra 2) and held in para No.27 by placing reliance on the judgment of **Samar Singh v. Kedar**

Nath ^[12] as follows:

“ From the above, it is clear that Sections 81, 83(1) (c) and 86 of the Act read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. Any infirmity to comply with the mandatory requirements even under Section 83(1) (c) of the R.P.Act is fatal to the maintainability of the election petition. When once an objection petition is filed under Section 86(1) of the Act, the Court has no option than to dismiss the election petition if satisfied that the election petition is not in conformity with Section 83 (1) (c) of the R.P.Act read with Rule 94-A of the Rules.”

The disputed fact in the above judgment is non-compliance of section 83 of the R.P.Act, but here the dispute is with regard to non-compliance of Section 72 of the Act, equated to Section 82 of the R.P. Act. Even otherwise, law declared in the above judgment in case of non-compliance of mandatory provisions, the election petition can be dismissed at the threshold.

In **Michael B.Fernades v. C.K.Jaffer Sharief and others**^[13], the Full Bench of Apex Court while deciding the issue regarding non-compliance of Section 82 of the R.P.Act, placing reliance on **Jyothi Basu and others v. Debi Ghosal**^[14] and **B.Sundra Rami Reddy v. Election Commission of India and others**^[15] and judgments of **Dwijendra Lal Sen Gupta v. Kare Krishna Konar**^[16], **H.R.Gokhale v.Bharucha Nashir C. and others**^[17] held that on a plain reading of Section 82, which indicates as to the person who can be joined as respondents to an election petition, the conclusion is irresistible that the returned candidate, the candidate against whom allegations of any corrupt practice have been made are to be joined as party respondent when declaration is sought for holding the election of the returned candidate to be void and when a prayer is made to any other candidate to be declared to be duly elected, then all the contesting candidates are required to be made as party respondents. On a literal interpretation of the aforesaid provisions of Section 82, therefore, it can be said that an election petition which does not made the person enumerated in Section 82 of the Act, as party respondents, is liable to be dismissed.

In **Gurlal Singh's case (supra 3)**, a single judge of Punjab and Haryana High Court had an occasion to deal with similar question and held in para 21 as follows:

“ In answer to the aforesaid arguments, learned counsel for the appellant has relied upon a judgment of the Apex Court in the case of Udhav Singh which pertains to an election petition whereby election of the respondent (Madhav Rao Scindia) to Lok Sabha was challenged but the election petition was dismissed. In that case, six candidates filed their nomination papers for contesting the election to Lok Sabha from Guna Parliamentary Constituency. The appellant

(Udhav Singh) filed the election petition on two grounds but he did not implead all the candidates in the election petition but for the lone respondent. At the fag end, an application was filed at the instance of the respondent therein that necessary parties have not been impleaded which is in violation of the mandatory provisions of Section 82 (b) of the Representation of the People Act, 1951 (for short, 'Act of 1951'). It was objected to by the appellant Udhav Singh that the objection of non-joinder of necessary parties was not taken at the earliest stage, therefore, it should be deemed to have been waived by the respondents. It was held by the Apex Court that Section 82 (b) of the Act of 1951 is peremptory and the respondent cannot by consent, express or tacit, waive these provisions or condone a non-compliance with the imperative of Section 82 (b). Even inaction, laches or delay on the part of the respondent in pointing out the lethal defect of non-joinder cannot relieve the Court of its statutory obligation cast on it by Section 86. As soon as the non-compliance with Section 82 (b) comes or is brought to the notice of the Court, no matter in what manner and at what stage, during the pendency of the petition, it is bound to dismiss the petition in unstinted obedience to the command of Section 86. It is also held that the respondent is not obliged to raise this objection only in his written statement. Even referred to some principles laid down in Jyoti Basu's case and consequently upheld the dismissal of election petition for non-compliance.

Learned counsel for the revision petitioner though drawn the attention of full Bench Judgment of Apex Court in **Manohar Joshi** (supra 4), but the decision relates to Section 83 of the R.P.Act and not directly on the point involved in that matter is corrupt practice against the returned candidate. Therefore, law declared in the above judgment is not directly applicable to the present facts. In view of law declared by Apex Court and this Court in **Rajiv Gandhi's case** and **Indra Sena Reddy's case**, the election petition if not complied with Section 82 of R.P.Act can be dismissed at the threshold without ordeal of the trial, learned Single Judge of Punjab and Haryana High Court is also of the same view. Even otherwise basing on the principle in **Udhav singh's case**, relied on by Punjab and Haryana High Court, election petition can be dismissed irrespective of stage of the petition, if Section 82 mandatory provision is not complied even without any

plea raised by the respondent.

Learned Senior Counsel for the 1st respondent/Election petitioner though raised a contention that election petition cannot be dismissed at the threshold and drawn the attention of this Court to support his contention to a judgment of **Kunju Thevar** (supra 5), wherein the Full Bench of Apex Court concluded that non-joinder of proper and necessary parties is not curable defect and by any amendment of petition seeking to delete the claim for such further declaration and the Election Tribunal was clearly in error in allowing such amendment of the grounds disclosed in I.A.No.3 of 1957 or otherwise. This judgment is of no assistance to the respondent/election petitioner to support his contention that election petition cannot be dismissed at the threshold. In **R a m Prasad Sarma's case** (supra 6), the Supreme Court held that election petition is not liable to be dismissed at the threshold. In the facts of above judgment Sections 81, 83 and Section 86 of R.P.Act came up for consideration, in para No.24, held as follows:

“There was every intention to implead such a person as a respondent. It may then be noted that along with the election petition, copy of Return of Election is required to be filed in Form 21E under Rule 64 of the Conduct of Election Rules 1961. It contains the result of the election as well as the list of candidates. The said list is on record as Annexure I to the election petition filed by the petitioner and the name of Abul Khayer is indicated at Serial No.7 having contested as an independent candidate. It is thus evident that it is not as if the correct name is not available on the record of the case. Apparently, it seems to be a case of spelling mistake. Instead of Abul letter `d' got added extra hence typed as Abdul in the array of parties and the spelling of Khayer as `Khyer' omitting `a' after `kh'. It is to be noted that address of Respondent No.11 is also indicated in the petition. It is not disputed that it is the address of the person who contested the election. In this Court there is an office report of service of notice on respondent No. 8 prepared on the basis of the report received

from the Gauhati High Court. So far wrong spelling of Khyer is concerned it is of little consequence. Both words "Khyer" and "khayar" would produce almost the same sound. Technically there may be difference but by way of example some may spell 'Banerjee' as 'Banerji' or 'Saksena' as 'Saxena' or the like. Therefore such difference in spelling of Khayar is but to be ignored. There is certainly some difference in 'Abul' and 'Abdul' but there is ample material on record to indicate that the same person who had contested election was meant to be impleaded e.g. the address of the person, the averment that the Respondents 7 to 18 had contested the election as well as the form of election return indicating names of all those who had contested the election and the names with correct spelling is on the record namely 'Abul Khayar'. In the present case no application for correcting the name was moved nor any written objection was filed to indicate that it was a typing error. We feel that absence of any such application will not adversely affect the petition. Therefore, election petition cannot be dismissed at the threshold.

But in the present case, the facts are totally different and including typographical mistake in mentioning the name of respondent in the above judgment was considered. On that ground, election petition cannot be dismissed. The principle laid down in the above judgment is not applicable to the facts of the present case, since non-joinder of contested candidates to the election petition strictly adhering to Sections 72 and 74 of the Act, is in dispute.

Learned Senior Counsel Sri P.Veera Reddy drawn my attention to the judgment of this Court in **Challa Swaroopa** (supra 7). Wherein, learned Single Judge held that election petition cannot be dismissed at the threshold, and held in para No.23 of judgment as under:

“While the impugned order must be set aside on the ground of inherent lack of jurisdiction in the Election Tribunal to pass an interlocutory order at the very inception, more so one which has the effect of partly allowing the Election Petition itself, the fact remains that any delay in adjudication of the Election Petition may well result in the statutory right of the election petitioner, to hold the elected office of Sarpanch, being deprived thereby. The inconsistencies in the recount of

votes, variations in the number of invalid votes at the time of each recount, and the power of the Returning Officer to order a third recount, have been put in issue, in his Election Petition, by the 6th respondent herein. While the submission of Sri K. Rathangapani Reddy, Learned Counsel for the 6th respondent, that the action of the Returning Officer in this regard is ex-facie illegal cannot be readily brushed aside, these are matters for adjudication by the Election Tribunal and not for examination in proceedings under [Article 226](#) of the Constitution of India. I consider it appropriate therefore, while setting aside the impugned order, to direct the Election Tribunal to adjudicate the Election Petition with utmost expedition and, in any event, not later than four months from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the dispute and the Election Tribunal shall adjudicate the Election O.P. on its merits uninfluenced by any observations made in this Order or in its earlier order in I.A. No.840 of 2013 in Election O.P.No.16 of 2013 dated 25.02.2014.”

In the facts of above judgment, the dispute was regarding recounting ordered by way of Interlocutory order in the application filed in I.A.No.840 of 2013 but after reviewing entire law, single judge of this Court concluded that ordering recounting by way of interlocutory order amounts to granting main relief in the election petition and no pre-trial reliefs can be granted. Learned Counsel Sri P.Veera Reddy further drawn attention of this Court to the judgment of **Kummari Ramulu (supra 8)**, wherein a Division Bench of this Court held that the powers which the Election Tribunal while trying election petition, which are vested in a Court while trying the suit under the Code of Civil Procedure Code, are only for discovery and inspection, enforcement of attendance of witnesses and requiring deposit of expenses, compelling production of documents, examining witnesses on oath, reception of evidence taken on affidavit and issuing commission for examination of witnesses. Nowhere, the rule makes a provision that Election Tribunal shall have the power to permit amendment of election petition or addition, substitution or deletion of parties, which is a specific power available to a civil Court while trying a suit under the

Code of Civil Procedure. Law enjoins upon trial of election petition expeditiously. That being the purpose, the Legislature in its wisdom rightly conferred specific powers on the Election Tribunal while trying election petition, which are enjoined upon a Civil Court while trying a suit, and not all the powers exercisable by a Civil Court as provided under the Code of Civil Procedure. That being the purpose, it has to be assumed that the powers, which are not mentioned in the rules, cannot be exercised by the Election Tribunal. Moreover, power to permit addition of a party after the period of limitation is such a power that can be exercised only when it is specifically conferred on the Tribunal.”

Similar view is expressed by learned Single Judge of this Court i n **M.Khalellulla Baig’s case**, (supra 10), so also in **Gadde Venkateswara Rao’s case**, (supra 9), based on principles laid down in the above judgments, Sri P.Veera Reddy, learned Senior Counsel for the

1st respondent/election petitioner contended that dismissal of election petition by way of interim order is unwarranted, since the Tribunal trying the election petitions under the A.P.Municipal Corporations Act are not competent to pass dismissal order in election petition by way of interim order in an Interlocutory application filed by the petitioner. If this is the situation, the parties have to undergo long ordeal of trial without concentrating on their pursuits or duties as member of Ward or Division. In **Kunju Thevar’s case** (supra 5), the Supreme Court held that failure to implead all contesting candidates is not a curable defect and on account of non-joinder of parties, the election petition can be dismissed. In **Ram Prasad Sarma’s case** (supra 6), the Supreme Court considered the spelling mistake of the name of the party and concluded that it is not fatal and in the other judgment of **Challa Swaroopa’s case** (supra 7) held that granting of main relief by way of interim order in interlocutory applications was considered, since it

amounts to granting pre-trial decree in the election petition, the order was set aside. In the judgment of **Kummari Ramulu (supra 8)**, when powers of election Tribunal to implead the parties came up for consideration and a division Bench of this Court concluded that Election Tribunal has no power to substitute a party in place of impleaded party invoking provisions of Code of Civil Procedure Code. In **M.Khaleellulla Baig's case** (supra 10) held that Court cannot decide any issue as preliminary issue, since powers of Election Tribunal are limited. In the judgment of **Gadde Venkateswara Rao (supra 9)** held that the election Court is not empowered to grant temporary injunction under Order 39 Rule 1 and Section 151 of C.P.C. In all the judgments relied on by the counsel for the 1st respondent/Election petitioner, impact of Section 82 r/w 86 of the R.P.Act was not considered but in **Rajiv Gandhi's case** referred supra, the Election Tribunal dismissed the election petition for non-compliance of Section 82 of the R.P.Act. Even in **Udhav singh's case**, the Apex Court expressed the view taken in **Rajiv Gandhi's case**. Therefore, there is no fetter or interdict on the power of Election Tribunal to dismiss the Election Petition, passing order on interlocutory applications, if statutory provisions are not complied. But the trial Court without expressing any opinion as to maintainability of election petition for non-compliance of Section 72 read with Section 74(b) of the Act postponed its decision till conclusion of trial, the approach of election Tribunal in deciding the issue about maintainability of election petition is contrary to the law declared by Apex Court in **Rajiv Gandhi's case** referred supra.

In any of the decisions relied on by the 1st respondent (Election Petitioner), the law declared by Apex Court in **Rajiv Gandhi's case** (supra 1) was not considered and no other decision of Apex Court is brought to the notice of this Court contrary to the principle laid down in **Rajiv Gandhi's case** (supra 1).

In **G.M.Siddeswar v. Prasanna Kumar**^[18], while deciding the

scope of Section 83 (1) of the R.P Act, adverted to Hardwari Lal's case (supra 11), in the context of dismissal of Election Petition under the provisions of CPC, also referred the principle in **Mallikarjunappa and Another v. Shamanur Shivashankarappa and others**^[19] wherein the Apex Court held that

“an election petition is liable to be dismissed '*in limini*' under Section 86 (1) of the Act, if the election petition does not comply with either of the provisions “Section 81 or Section 82 or Section 117” of the RP Act.”

In later judgment **Sardar Harcharan Singh Brar v. Sukh Darshan Singh**^[20], the Apex Court is of the view that Section 86 of the Act sanctions dismissal of an election petition for non-compliance with Sections 81, 82 and 117 of the Act, only.

In **Siddeswar's case** (supra 18), the Apex Court followed the suggestions in **Umesh Challiyill v. K.P.Rajendran**^[21], wherein the Apex Court suggested the following solution:

“However, in fairness whenever such defects are pointed out then the proper course for the Court is not to dismiss the petition at the threshold. In order to maintain the sanctity of the election the Court should not take such a technical attitude and dismiss the election petition at the threshold. On the contrary after finding the defects, the Court should give proper opportunity to cure the defects and in case of failure to remove/cure the defects, it could result into dismissal on account of Order 6 Rule 16 or Order 7 Rule 11 Code of Civil Procedure. Though technically it cannot be dismissed under Section 86 of the Act of 1951 but it can be rejected when the election petition is not properly constituted as required under the provisions of Code of Civil Procedure.....”

In **Ponnala Lakshmaiah vs Kommuri Pratap Reddy and Others**^[22], a vague reference regarding non-compliance of Section 82 of the Act was made as ground for dismissal of election petition.

But in **H.D.Revanna vs. G.Puttaswamy and Others**^[23], the Apex

Court held that an election petition can be dismissed for non-compliance of Sections 81, 82, 117 of the R.P.Act, it may also be dismissed if the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 of C.P.C.

In **Mohan Raj v. Surendra Kumar Taparua and Others**^[24], the Apex Court considered the scope of Order I Rule 10 of CPC with reference to provisions of the R.P.Act and held that when Act enjoins penalty of dismissal of petition for non-joinder of a party, provisions of CPC can't be used as curative means to save petition. In the facts of the above decision, petitioner though alleged corrupt practices, but not impleaded the person against whom such corrupt practices were attributed, but filed petition under Order 1 Rule 10 of CPC to cure the defect under section 82 (b) of R.P.Act. The Apex Court did not even accept the deletion of allegation of corrupt practices by way of amendment, as it was not the policy of law, since dismissal is peremptory and the law does not admit any other approach.

In **Udhav Singh v. Madhav Rao Scindia**^[25], the Supreme Court reiterated the principle laid down in **Surendra Kumar's** case (supra 24) while holding that without impleading the candidate against whom corrupt practices were made, the election petition is not maintainable, in view of Section 82 of R.P.Act. Same view is reiterated in **Mukat Behari Lal v. Shiv Charan Singh and others**^[26].

In view of parallel citations and perceptive pronouncements by Apex Court in **Rajiv Gandhi, Shamanur Shivashankarappa, G.Puttaswamy and Others, Sukh Darshan Singh** an election petition can be dismissed in *limini* for non-compliance with Section 82 of R.P.Act, the position is free from enigma as to dismissal of election petitions at the threshold. Since, the provisions of R.P.Act and Municipal Corporations Act are identical, the same principles are

applicable to the petition.

Learned Senior Counsel for 1st respondent Sri P.Veera Reddy would submit that there is no provision in A.P. Municipal Corporations Act, similar to Section 86 of the R.P. Act, as such principles laid down under the R.P. Act can't be applied to Election petition under the Act. Rule 100 (3) of Election Rules dealing with procedure before Tribunal is identical to Section 86 of R.P. Act, hence the contention of respondent's counsel can't be acceded to as it is without any substance.

A close analysis of legal position in plethora of decisions referred above makes it clear that if the defect in election petition is curable, an opportunity shall be given to cure defect, if failed to cure, the petition shall be dismissed as per Order VII Rule 11 or strike out the pleadings as per Order VI Rule 16 of C.P.C; the defect of non joinder of other candidate is incurable defect, even otherwise the petition filed by the 1st respondent/Election Petitioner under Order I Rule 10 of C.P.C was dismissed by the tribunal and the same was confirmed by this Court in C.R.P No. 5024 of 2014 dated 30-12-2014 and attained finality. Therefore by applying law declared by various Courts, referred above, this Court has no option except to reject the contention of 1st respondent/Election Petitioner, holding that the election petition is not maintainable for non-compliance with Section 72 read with 74 (b) of the Act.

Yet, learned Senior Counsel for respondent No.1 contended that as per Section 77 of Act, at the conclusion of trial of an election petition, the tribunal may dismiss the election petition or declare the election of returned candidate as void and petitioner as returned candidate. In view of Section 77 of the Act, the petition shall not be dismissed summarily or in *limini* without trial. When Rule 100 (3) of the Election Rules permits the Tribunal to dismiss Election Petition, there is no need to face ordeal of trial. Section 77 deals with orders to

be passed at the conclusion of trial, whereas Rule 100 (3) deals with summary dismissal of Election Petition.

If really the intention of legislature is that the Election Petition shall not be dismissed at threshold, except to dismiss under Section 77 of the Act, there is no need to incorporate Rule 100 (3) in the Election Rules. On harmonious construction of Section 77 of the Act and Rule 100 (3) of Election Rules, it can safely be concluded that order of dismissal can be passed at conclusion of trial under Section 77, at the same time Election Petition can be dismissed in *limini* as per Rule 100 (3) without any trial for non-compliance of Sections 72 and 74 of the Act.

In view of discussion, it is difficult for me to accept the contention of the learned Senior Counsel for the 1st respondent.

Incorporation of Rule 100 (3) is to avoid unnecessary waste of time of Court, litigants and to allow the parties to concentrate on their pursuits, if the tribunal put an end to Election Petition for non-compliance of mandatory provision of Act.

Admittedly, the other contested candidates in the election held on 30-03-2014 for Ward/Division 29 of Nizamabad Municipal Corporation and the 1st respondent/Election Petitioner failed in her attempt to implead the contested candidate to the Election Petition. Therefore, the Election Petition is liable to be dismissed in *limini* without ordeal of trial as held in Rajiv Gandhi's case (supra1). The tribunal unnecessarily postponed the decision on maintainability of petition with a view to determine the same at the conclusion of trial. The view of the tribunal is against the law declared in Rajiv Gandhi's case.

In view of my foregoing discussion, the order of tribunal in I.A.No.634 of 2015 in O.P No. 235 of 2014 is illegal and contrary to settled principles of law, consequently liable to be set aside.

It is contended that since dismissal of Election Petition at the

threshold, despite disqualification to be a member of ward/division, it directly permitting the disqualified person as member of the ward.

Ill-drafting of the petition by the mofisil practitioner lead to such situation to question the very maintainability of the petition itself on account of inherent, incurable vice of non-joinder of other contested candidates for the ward No.29 in compliance of Section 72 r/w 74 and insisting the court to keep it pending till conclusion of trial is nothing but sidomasochism of the Election Petitioner to drive the revision petitioner to face the ordeal of trial of helter-skelter election petition, prosecuting abortive litigation. If the petition is allowed to be tried, the result at the conclusion of trial would be the same i.e. dismissal in view of patent defect in the petition which is incurable. Acceptance of such request is nothing but allowing malicious abuse of process to waste valuable judicial time of Court and parties to the petition. The Tribunal without considering the expected result at the conclusion of trial, postponed decision about maintainability, till conclusion of trial adopting nonchalant approach, committed a prejudicial error in dismissing the petition.

Keeping in view of law referred above, I am of the view that the order of the tribunal is liable to be set aside to palliate the pang of the parties to face ordeal of trial, since, the result will be the same even after conclusion of trial of Election Petition in view of legal, incurable infirmity. Accordingly the order is set aside, allowing the revision, dismissing the Election Petition, as the Tribunal did not exercise jurisdiction which vested on it.

In the result, the Civil Revision Petition is allowed setting aside the order, dated 15-10-2015, of the Tribunal in I.A.No.634 of 2015 in O.P.No.235 of 2014. Consequently, I.A.No. 634 of 2015 is allowed and dismissed the Election Petition for non-compliance of mandatory statutory provisions viz., Sections 72 and 74 of A.P.Municipal Corporations Act.

In consequence, Miscellaneous Petitions, if any, pending in this

revision petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

04-03-2016

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Note:

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[\[1\]](#) AIR 1986 Supreme Court 1253(1)
[\[2\]](#) 1997(5) ALD 330
[\[3\]](#) 2010 Law Suit (P&H) 5028
[\[4\]](#) AIR 1996 Supreme Court 796
[\[5\]](#) AIR 1958 Supreme Court 687
[\[6\]](#) (2003) 1 Supreme Court Cases 289
[\[7\]](#) 2014 (4) ALD 585
[\[8\]](#) 2004 (3) ALT 788 (D.B)
[\[9\]](#) AIR 1972 Andhra Pradesh 120 (V.59 C 24)
[\[10\]](#) 2015 (4) ALT 40
[\[11\]](#) AIR 1972 SC 515
[\[12\]](#) AIR 1987 SC 1926
[\[13\]](#) AIR 2002 SC 1041
[\[14\]](#) 1982 13 SCR 318
[\[15\]](#) (1992) 1 LLJ 281 SC
[\[16\]](#) AIR 1963 Cal 218
[\[17\]](#) AIR 1969 Bombay 177
[\[18\]](#) AIR 2013 SC1549
[\[19\]](#) (2001) 4 SCC 428
[\[20\]](#) (2004) 11 SCC 196
[\[21\]](#) (2008) 11 SCC 740
[\[22\]](#) AIR 2012 SC 2638
[\[23\]](#) (1999) 2 SCC 217

[\[24\]](#) AIR 1969 SC 677

[\[25\]](#) AIR 1976 SC 744

[\[26\]](#) 1978 WLN 161