

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ELECTION PETITION No. 1/2015**

% **Reserved on: 14th September, 2016**
Pronounced on: 19th September, 2016

MANOJ KUMAR SHOKEEN Petitioner
Through: Mr. Rahul Gupta, Ms. Nandita Abrol,
Ms. Vrishti Gupta and Mr. Shekhar
Gupta Advocates.

Versus

RAGHUVINDER SHOKEEN Respondent
Through: Mr. Ramji Srinivasan, Sr. Advocate with
Mr. Arjun Singh Bhati and Mr. Vivek
Paul, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

I.A. No.13535/2015 (under Section 86 of the Representation of the People Act, 1951, moved by respondent no.1 for dismissal of the election petition) in Election Petition No. 1/2015

1. This application has been filed by the respondent under Section 86 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') for dismissing the election petition. The election petition has been filed by the petitioner Sh. Manoj Kumar Shokeen praying for issuing of directions for setting aside the election of respondent as a Member of the Legislative Assembly of Delhi from the Nangloi Jat Constituency termed as AC-11. Petitioner belongs to Bhartiya Janta Party (BJP) and the respondent belongs to

Aam Aadmi Party (AAP). Elections were held on 7.2.2015 and results were announced on 10.2.2015, and as per which results the petitioner lost the elections and respondent was declared as elected as a Member of the Legislative Assembly of Delhi.

2. By this application, the following grounds are urged for dismissal of the election petition:-

(i) As per Section 81(1) of the Act the petition had to be personally presented by the petitioner, but admittedly the election petition was not presented by the petitioner personally in the Registry of this Court nor was the petitioner personally present within the Court premises when the election petition was filed. Accordingly, the election petition is prayed to be dismissed for non-compliance of Section 81(1) of the Act as provided in Section 86 of the Act.

(ii) As per Section 81(3) of the Act, the petitioner was required to file along with the election petition as many true copies under the petitioner's signatures as the number of respondents mentioned in the petition, and this has not been done, because originally there were three respondents and only one copy was filed, and hence, there is violation of Section 81(3) of the Act, and resultantly the petition is liable to be dismissed by application of Section 86 of the Act.

(iii) In the present election petition, there is only one respondent being the candidate who was declared elected (respondent nos.2 and 3 being the Chief Electoral Officer, Delhi and the Election Commission of India, respectively, were deleted vide the first Order of the Court dated 23.2.2015) and thus the petition is bad for non-joinder of necessary parties being the other candidates who had contested the election, because, as per the prayer clause the petitioner seeks a declaration of being elected and which prayer can only be granted if the other candidates were made respondents to the petition as required by Section 82(a) of the Act, and this not having been done, Section 86 of the Act comes into play for dismissing of the election petition.

3. Since the provisions of Sections 81, 82(a) and 86(1) of the Act are in issue, let me at this stage reproduce the said sections as under:-

“81 - Presentation of petitions.- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

*Explanation.-*In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

82. Parties of 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

86. Trial of election petitions. – (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.”

4. As regards the first aspect that the election petition is liable to be dismissed because petitioner did not present personally the election petition at the Registry/filing counter of this Court, it is argued by the respondent that it is not disputed by the petitioner in the reply to the present application as also in the additional affidavit filed by the petitioner on 26.5.2016 that petitioner was not personally present when the election petition was filed, and therefore once admittedly Section 81(1) of the Act which requires personal presence of the election petitioner who filed the petition at the time of filing is found admittedly to be not complied with, the election petition therefore be dismissed by application of Sections 81(1) and 86(1) of the Act.

5. I may note that during the course of hearing, counsel for the petitioner does not dispute that not only the petitioner was not present in Court before the filing counter when the election petition was filed, but also that the petitioner was not present in the Court premises when the election petition was filed/presented in the Registry/filing counter.

6. Learned senior counsel for the respondent in support of the first issue has placed reliance upon the judgment of the Supreme Court in the case of ***G.V. Sreerama Reddy and Another Vs. Returning Officer and Others, (2009) 8 SCC 736*** to argue that once there is violation of Section 81(1) of the Act, the election petition has to be dismissed as per Section 86 of the Act. The relevant paragraphs of the judgment of the Supreme court in the case of ***G.V. Sreerama Reddy (supra)*** are paragraphs 4, 18, 19, 21, 23, 24, 25 and the same read as under:-

“4. The appellants filed an election petition under Section 81 of the Act on various grounds pointing out large-scale irregularities and illegalities committed by respondent-authorities in the voting and the illegalities of allowing the recounting after announcing the declaration of appellant No. 1 as elected. On 6-7-2008, the first appellant, through his advocate, Shri Shiva Reddy presented the election petition before the Registrar (Judicial), High Court of Karnataka. The Registry of the High Court put up an office objection that as the appellants were not present at the time of filing of the election petition, the presentation of the papers were not in accordance with Section 81 of the Act and as such there was no proper filing of the election petition.

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18. In spite of existence of adequate provisions in the Code of Civil Procedure relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trial of election petitions are to be conducted has been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mentioned by the Legislature.

19. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented "by" the petitioner himself, so that at the time of presentation, the

High Court may make preliminary verification which ensures that the petition is neither frivolous nor vexatious.

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21. It is to be noted that in *Sheo Sadan Singh case*, it is not in dispute that the petition was presented to the Registry in the immediate presence of the petitioner. In other words, the officer authorized by the High Court had an opportunity to verify him but in the case on hand, admittedly, it was presented only by the advocate and the petitioners were not present before the Registrar (Judicial). In view of the same, the said decision is not helpful to the appellant's case. This is because the petitioner therein had, in substance, complied with the provision as strictly construed.

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23. We have already pointed out that in spite of provisions in CPC and Evidence Act relating to institution of suit and recording of evidence etc. this Act provides all the details starting from the presentation of the election petition ending with the decision of the High Court. In such circumstances, it is but proper to interpret the language used by the Legislature and implement the same accordingly.

24. The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider Sub-section (1) along with the other provisions in Chapter II and III, the object and intent of the Legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

25. In view of the endorsement by the Registrar (Judicial) on 7-7-2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per sub-section (1) of Section 81, election petition is to be presented by any candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation. (emphasis is mine)

7. Learned counsel for the petitioner in response argued by placing reliance upon the judgment of the Supreme Court in the case of *T. Phungzathang Vs. Hangkhanlian and Others*, (2001) 8 SCC 358 to argue that the provisions of the Act have to be read for substantial compliance and it is not mandatory for the petitioner to personally appear because an advocate who filed

the election petition for a candidate should be taken as filing personally by the petitioner. Paragraphs 13, 15, 23, 25 and 28 of this judgment are relevant and they read as under:-

“13. From the above conclusion of this Court in *Jacob case*, two principles can be deduced: (a) the Expression “copy” in Section 81(3) of the Act means a copy which is substantially the same as original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) If the copy differs in material particulars from the original same cannot be cured after the period of limitation.

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15. At this stage, it will be useful for us to refer to another judgment of this Court which had an occasion to consider *Dr. Shipra case* in an almost similar fact situation as in this appeal i.e. the case of *Anil R. Deshmukh v. Onkar N. Wagh* which judgment was also relied on by the Constitution Bench in *Jacob case*. In the case of *Deshmukh* one of the defects pointed out to attract the dismissal of the election petition was the absence of the endorsement of verification and the stamp and seal of the attesting officer on the copy of the affidavit supplied to the first respondent and the argument was that in absence of such endorsement in the copy supplied to that respondent will not make it to be a true copy. Negating the said contention and reversing the judgment of the High Court, this Court held that there was sufficient compliance of the provisions of Section 83 read with Section 81(3) of the Act because absence of notarial endorsement in the copies supplied to the respondent did not attract the dismissal of the election petition on the ground of non-compliance of the requirement of Section 81 or 83 of the Act. In that case the Court took note of the fact that correct copies of the affidavit containing endorsement of verification etc. were served on the respondent as well as his counsel before the arguments were heard, hence, the irregularities were cured.

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23. The relevant facts have been succinctly stated and relevant provisions of law quoted by my learned brother, yet a quick recap of the facts and relevant statutory provisions, as a prologue to this opinion of mine, would be in order. It is undisputed that the election petitioned filed by the appellant, putting in issue the election of Respondent 1, alleges commission of corrupt practice by the Respondent 1 and also pleads grounds other than commission of corrupt practice, in support of the relief for declaring the election of returned candidate to be void. The election petition is signed and verified by the petitioner in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The petition is accompanied by an affidavit in Form 25 as required by proviso to sub-section (1) of Section 83 of the Representation of the People Act, 1951 (hereinafter, 'the Act') and Rule 94-A of the Conduct of Election Rules, 1961 (hereinafter, 'the Rules'). The affidavit so filed has been sworn

before a Commissioner of Oaths and bears, to that effect, an endorsement, signature and rubber stamp of the Oath Commissioner administering oath to the deponent in the manner and form contemplated by Form 25. It is also not disputed that the set of the copies which accompanied the election petition at the time of filing and which was delivered to the Respondent 1 along with the writ of summons was complete in all respects excepting that the endorsement made by the Oath Commissioner attesting the affidavit to have been sworn by the deponent before him, his signature and rubber stamp do not appear on the copy of the affidavit delivered along with the copy of the election petition to Respondent 1. On 22-5-2000 an application was filed by respondent no. 1 before the learned Designated Election Judge under Section 83 and 86 of the Act calling for dismissal of the election petition on the ground that the verification on the election petition was defective and material facts and particulars as to the alleged corrupt practice were not given but therein no grievance was raised that the copy delivered to the Respondent 1 was not in conformity with the original and, therefore, the Respondent 1 was prejudiced in his defence. On 5-6-2000 another application was filed by respondent no. 1 wherein such an objection was taken. Soon on receipt of the copy of the application, served on the petitioner out of the Court, the counsel for the election petitioner delivered another set of copy of election petition with affidavit which had the endorsement and rubber stamp of the Oath Commissioner as it was on the original and this was done before the application came up for hearing before the learned designated Election Judge. However, the learned Judge felt that there was non-compliance of Section 83(1)(c) proviso read with Section 81(3) and hence the petition was liable to be dismissed under Section 86(1) of the Act.

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25. In *T.M. Jacob v. C. Poulose* the Constitution Bench has reaffirmed the law as stated earlier by two Constitution Benches in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* and *Ch. Subbarao v. Member, Election Tribunal*, and has also explained and expanded the principles laid down by the earlier two Constitution Benches. In *T.M. Jacob case*, copy of the election petition delivered to the contesting respondent did not show that the verification of the Notary Public required as per Rule 94-A and Form 25 was contained in the original and, therefore, the copy was objected to as being defective and amounting to non-compliance with the requirement of Section 81(3) of the Act. The case was placed before the Constitution Bench specifically for reconsidering the Three-Judges Bench decision in *Dr Shipra v. Shanti Lal Khoiwal* and while doing so the Constitution Bench also noticed another later three-Judge Bench decision of this court in *Anil R. Deshmukh v. Onkar N.* The law laid down by the Constitution Bench may be summed up as under:-

- (i) The object of serving a "true copy" of an election petition and the affidavit filed in support of the allegation of corrupt practice of the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the

same in the written statement and prepare his defence. The requirement is of substance and not of form. (SCC p.290, para 35)

(ii) The test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person. (SCC p.288, para 33)

(iii) The word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. (SCC p.289, para 34)

(iv) Substantial compliance with Section 81(3) was sufficient and the petition could not be dismissed, in limine, under Section 86(1) where there had been substantial compliance with the requirement of Section 81(3) of the Act. (SCC p.289, para 34)

(v) There is a distinction between non-compliance with the requirement of Section 81(3) and Section 83. A substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1) of the Act is enough. Defects in the supply of true copy under Section 81 of the Act may be considered to be fatal, where the party has been misled by the copy on account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such cases would attract the provision of Section 81(3) read with Section 86(1) of the Act. The same consequence would not follow from non-compliance with Section 83 of the Act. (SCC p.291, para 37)

(vi) The argument that since proceedings in election petitions are purely statutory proceedings and not civil proceedings as commonly understood, there is no room for invoking and importing the doctrine of substantial compliance into Section 86(1) read with Section 81(3) of the Act, cannot be accepted and has to be repelled. (SCC p.291, para 38)

(vii) It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in *Murarka Radhey Shyam* and *Ch. Subbarao* cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. This clearly emerges from the scheme of Sections 83(1) and 86(5) of the Act. (SCC p.291, para 38)

(viii) A certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in *Murarka Radhey Shyam* case are sound tests and are now well settled. (SCC p.292, para 40)

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28. In the case before us, the copy of affidavit supplied to the Respondent 1 fulfilled the object which the copy is intended to serve. There was no such variation from the original, as was calculated to mislead the respondent. There was no scope of misunderstanding for the respondent. The affidavit satisfied the test of substantial compliance, as propounded in *Murarka Radhey Shyam* and reaffirmed in *T.M. Jacob*. The Respondent 1 was not prejudiced. This is clear from the fact that no objection in this regard was taken in the application dated 22-5-2000. In the next application dated 5.6.2000, objection in this regard was taken and immediately the election petitioner made available to the respondent another copy of affidavit without defect. Thus the defect, if any, stood cured as held in *Anil R. Deshmukh case*.” (underlining added)

8. In my opinion, the arguments urged on behalf of the respondent is correct that the election petition is bound to be dismissed as it was not presented in person by the petitioner himself in view of the ratio of the judgment of the Supreme Court in the case of ***G.V. Sreerama Reddy (supra)***. In ***G.V. Sreerama Reddy (supra)***, the Supreme Court in no uncertain terms has held that non-compliance of Section 81(1) of the Act whereby the petitioner does not personally present the petition for filing should result in dismissal of the petition. Accordingly, applying the ratio of ***G.V. Sreerama Reddy's*** case (***supra***) the election petition is dismissed for non-compliance of Section 81(1) of the Act as the petitioner did not personally present the election petition and in fact he was not even present in the Court premises when the election petition was filed.

9. The judgment in the case of ***T. Phungzathang (supra)*** relied upon by the counsel for the petitioner will not apply to the facts of the present case because that judgment deals with different facts wherein the issue was of

substantial compliance of giving a copy which should be as accurate and the same as original with the fact that variations from the original should be of vital nature so as to to mislead the respondent in making application. In the facts of the said case it was held that the copy of the petition delivered to the respondent did not materially or substantially differs with the original petition filed in the court because the non-compliance was only that in the copy given to the respondents the signatures and rubber stamp of the Oath Commissioner did not appear. It was accordingly held by the Supreme Court in the case of ***T. Phungzathang (supra)*** that there was substantial compliance of the requirement of giving of an accurate copy, and therefore, the election petition could not be dismissed for non-compliance of Section 81(1) of the Act. The judgment of the Supreme Court in the case of ***T. Phungzathang (supra)*** did not deal with the issue of the effect of non-appearance of a petitioner who is required to appear in person as per Section 81(1) of the Act and therefore what will apply would be the direct ratio of the judgment of the Supreme Court in the case of ***G.V. Sreerama Reddy (supra)*** that a petitioner not personally presenting the election petition is a ground for dismissing of the election petition under Section 86 of the Act because of non-compliance of the Section 81(1) of the Act.

10. I accordingly hold first issue in favour of the respondent and the election petition is therefore dismissed under Section 86 of the Act on account of non-compliance by the petitioner of Section 81(1) of the Act as the petitioner

was not personally present when the election petition was presented to the Registry/filing counter of this Court.

11. So far as the second argument of not filing of sufficient number of true copies of the election petition along with the main petition because originally there were three respondents and only one true copy was filed is concerned, I would like to observe that since on the very first date itself the respondent nos. 2 and 3 being the Chief Electoral Officer, Delhi and the Election Commission of India were deleted and only one respondent remained for whom true copy was filed, and it is not the case of the respondent that there are any discrepancies which will cause the respondent to be misled for filing of his reply, therefore, the election petition cannot be dismissed on account of Section 81(3) of the Act which requires filing of true copies attested by the petitioner under his signature as per the number of the respondents, inasmuch as, there remained only one respondent right from the very first date, and for which sole respondent the copy of the petition was filed without any discrepancy as compared to the original petition filed in this Court.

12. No doubt in the case of ***K.K. Shukla Vs. Vijay Kumar Goel and Others, 64 (1996) DLT 56***, it has been held by the learned single judge of this Court that the election petition has to be dismissed when the election petition is not accompanied by as many copies as thereof as the number of respondents, it is seen that the said judgment will not apply to the facts of the present case

where there is only one respondent and there is no discrepancy in the copy which is supplied of the election petition to the respondent with the original election petition filed in this Court.

13. The last and third issue is whether the election petition is bound to be dismissed because of non-compliance of Section 82(a) of the Act which states that where the petitioner claims a declaration that he should be declared to be elected by declaring the election of the successful candidate/respondent as void, then, all the contesting candidates other than the petitioner should also be added as respondents to the election petition.

14. This third issue has to be answered in favour of the respondent and against the petitioner because of the categorical language of Section 82(a) of the Act because of the prayer clause of the present election petition as per which it is prayed that petitioner be declared as elected. The prayer clause of the election petition reads as under:

“It is therefore respectfully prayed that this Hon’ble Court/Tribunal may kindly be pleased to issue necessary directions thereby quashing/setting aside the nomination/election of Respondent No. 1, and declaring the same as illegal, null and void, and further declare the Petitioner as elected as he secured the majority of valid votes, in the interests of Justice.

Any other relief which this Hon’ble Court deems fit and proper in the facts and circumstances of the case may also be granted in faovur of the petitioner and against the respondents, with costs.

It is prayed accordingly.”

15. A reading of the prayer clause shows that clearly a declaration has been sought by the petitioner for not only declaring the election of respondent

as void etc but also for a declaration that petitioner stands elected, and whereby Section 82(a) of the Act clearly comes into play.

16. A learned single judge of this Court in the case of ***Surender Kumar Vs. Ranjit Singh, MLA & Ors., Election Petition No.5/2014*** decided on 22.12.2014 has held that in the absence of the other candidates to the election petition as respondents the election petition is liable to be dismissed. The relevant paras of the judgment in the case of ***Surender Kumar (supra)*** are paras 1, 9 and 16 and which paras read as under:

“1. This election petition has been filed by the petitioner seeking a declaration that election of respondent No. 1 is null and void, thereby setting aside the election result dated 8th December, 2013 to the Assembly Constituency 68, Gokulpur Delhi (NCT Delhi) (hereinafter referred to as the “Gokulpur Constituency”), constituency reserved for schedule caste whereby respondent No. 1 was elected and a declaration that the petitioner is the elected member from Gokulpur Constituency, who contested the said election dated 4th December, 2013 as an independent candidate.

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9. Summons in the matter have not been issued, as counsel have been appearing on behalf of respondent No. 1 and has raised a preliminary objection that the present petition is not maintainable. An application in this regard has also been filed being I.A. No. 6061/2014 for dismissal of the present petition.

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16. Considering the above, this Court is of the considered opinion that the present petition is not maintainable for non-joinder of parties as contemplated by the conjoint reading of section 82(a) and Section 86(1) of the Act and the same is liable to be dismissed. Dismissed accordingly. It is not necessary to discuss the other objections raised by the respondent No. 1.”

17. Since the mandate of Section 82(a) of the Act is clear, hence as per Section 86 of the Act this petition is liable to be dismissed especially when read with the ratio of the judgment in the case of ***Surender Kumar (supra)***. The

election petition will accordingly stand dismissed on account of the petitioner not adding all other contesting candidates as respondents to the election petition.

18. Learned counsel for the petitioner sought to argue that petitioner can always remove the defect of non-joinder of necessary parties by filing an application to amend the petition and add the necessary parties being the unsuccessful candidates, and to which learned senior counsel for the respondent sought to place reliance upon the judgments of the Supreme Court in the case of ***K. Kamaraja Nadar Vs. Kunju Thevar and Others, AIR 1958 SC 687*** and a Single Judge of the Bombay High Court in the case of ***Kallappa Laxman Malabade Vs. Prakash Kallappa Awade, AIR 1996 Bom 5*** that such an application for amendment would be liable to be dismissed, however, I may note that the present election petition was filed way back in February, 2015, and the present application for dismissal of the election petition was filed in June, 2015, and to which reply was filed by the respondent in July, 2015, but, till date, there is no application which is filed by the petitioner before this Court for amending the petition to add necessary parties, and thus the fact of the matter is that as of today that there is non-compliance of Section 82(a) of the Act and hence on account of non-joinder of necessary parties this election petition is liable to be and is accordingly dismissed in view of the categorical language of Section 86 of the Act which requires dismissal of the election petition.

19. In view of the above discussion, I.A. No.13535/2015 will stand allowed and the election petition will stand dismissed. Parties are left to bear their own costs.

SEPTEMBER 19, 2016

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VALMIKI J. MEHTA, J

