

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION NO.17 OF 2019
ALONGWITH
APPLICATION NO.1 OF 2020
IN
APPLICATION NO.2 OF 2020**

Dr. Kanagsabapathy Sundaram Pillai)
B-1/1, Narayan Pujari Nagar,)
A. G. Khan Road, Worli, Mumbai 400018) ..Petitioner

V/s.

1 Shri Bansri Gawali)
Returning Officer)
PC-31, Mumbai South Election Office at Office of)
Additional Collector (Mumbai City), Room No.132)
1st Floor, Old Custom House, Shahid Bhagatsingh)
Road, Fort, Mumbai 400 001)

2 Arvind Ganpat Sawant)
3/87, Mithibai Building, Acharya Donde Marg,)
Sewree, Mumbai 400 15) ..Respondents

Dr. Kanagsabapathy Sundaram Pillai, petitioner in person
Mr. Pradeep Rajagopal a/w Ms. Drishti Shah i/b Ms Rekha Rajagopal for
Respondent No.1
Mr. Balkrishna Joshi a/w Mr. Jagdish Sawant and Mr. V. V. Pethe for
Respondent No.2

**CORAM : K.R.SHRIRAM, J.
DATED : 9th OCTOBER 2020**

ORAL JUDGMENT :

1 Petitioner has approached this court for various reliefs including for a
declaration that petitioner be declared as the returned candidate to fill the

post 31 PC-Mumbai-South, under Section 101 of the Representation of People Act 1951 (the said Act).

2 Before I proceed further, I need to mention that after I heard the parties, I had expressed my view to petitioner who appeared in person, and who stated is an Advocate (But in affidavit in support he says he is a Doctor of Medicine by profession, retired medical teacher), that I am inclined to dismiss the petition under the provisions of Section 86(1) read with Section 82 of the Act. Petitioner stated that if that is the case, he may be permitted to withdraw the petition. I asked Mr. Joshi and Mr. Rajagopal, whether I could permit petitioner to withdraw the petition, and Mr. Joshi pointed out that in view of Section 109 of the Act, there is a procedure prescribed that all parties to petition should be given notice and it shall be published in official gazette if the court is inclined to permit petitioner to withdraw the petition. I asked Mr. Joshi since only two respondents are parties to the petition and if they give consent, whether we could permit petitioner to withdraw the petition. Petitioner stated that under the Act there is no provision that he could withdraw the petition. Though, I do not agree with petitioner's stand, to avoid any further discussion, I decided to pass this order.

3 The facts in brief are that petitioner wanted to contest election from 31-PC Mumbai-South, as an independent candidate. Petitioner collected the nomination forms with enclosures on 2-4-2019 and submitted the form with respondent no.1 on 9-4-2019, which was the last date for submission of

nomination form. Petitioner's form was checked by staff of respondent no.1 as to whether all requirements in the checklist were complied with and petitioner was asked to deposit a sum of Rs.25,000/- as candidate deposit. Petitioner paid the amount and the original of receipt was retained by the staff of respondent no.1. On the checklist, the signature of petitioner was taken and respondent no.1 also signed the same putting the date and time as 9-4-2019 at 2.10 p.m. Petitioner was told that the documents filed by petitioner did not exactly tally with the checklist and petitioner was told to comply with the objections latest by 3.00 p.m. on 9-4-2019. The objections raised were given to petitioner. Affidavit, which was submitted, however, was not returned to petitioner. Petitioner, thereafter, received a call at about 7.00 p.m. on 9-4-2019 from three numbers and the caller identified themselves as election staff and asked petitioner to immediately go to the office of respondent no.1 with all letters and materials that he was given by office of respondent no.1 that morning. It seems, petitioner was informed that the checklist given that day was to be withdrawn. Petitioner, with great difficulty went the same night to the office of Returning Officer accompanied by his spouse. Returning Officer gave petitioner another letter, which petitioner later realised was a second checklist, which modified the checklist given in the morning and petitioner was asked to file revised affidavit in form no.26 by 11.00 a.m. on 10-4-2019. What was in the first checklist and what was in the revised checklist can be found in paragraphs 5 and 7 of the petition. To petitioner's shock, the first affidavit submitted on

9-4-2019 by petitioner was uploaded in the website of Election Commission of India and Chief Electoral Officer, Maharashtra, without waiting for petitioner to submit a revised affidavit. Based on that, Petitioner's nomination was also rejected and according to petitioner, the rejection was illegal. It is also petitioner's case that respondent no.2 and other candidates had also not fill up the forms as required, particularly regarding their criminal antecedents, and therefore, respondent no.1 should have rejected their forms as well. According to petitioner, only his nomination form and enclosures were correct and in accordance with rules, and therefore, he would have been the sole candidate and hence should have been declared as returned candidate.

4 I have to note that Mr. Joshi appearing for respondent no.2 had not taken out a formal application for dismissal of the petition under Section 86 read with Section 82 of the Act but his objections were noted in the order dated 25-9-2020 and petitioner was put to notice that the court was inclined to hear that point raised by Mr. Joshi that petition has to be dismissed under Section 86(1) of the Act for non-compliance with provisions of Section 82 of the Act as preliminary issue. Order dated 25-9-2020 reads as under:

"1 Mr. Joshi appearing for respondent no.2 states that in prayer clause 2(b) of the petition, petitioner is praying "to be declared as the returned candidate to fill.....:" Mr. Joshi states under Section 82(a) of the Representation of the People Act 1951, where petitioner in addition to other declarations claims a further declaration that he himself has been duly elected, the contesting candidates other than petitioner, shall be joined as respondents to the petition. Mr. Joshi further submits that under Section 86(1) of the Act, the High Court shall dismiss the election petition, which does not comply with the provisions of Section 82 of the Act, and therefore, the petition should be dismissed. There is no separate application taken out for this, but

since it is a pure question of law, I am inclined to hear the parties on this point alone first and decide the further course of action.

2 Stand over to 9-10-2020. Parties may circulate the judgments in their support before 1-10-2020.”

The petitioner, therefore, was given an opportunity of being heard.

5 Section 82 and Section 86(1) of the said Act read as under:

“Section 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

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

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.”

6 Petitioner stated twice that requirements of Section 82 have been substantially complied with. Despite repeatedly asking petitioner as to how he says substantially complied with and substantial compliance is enough to escape dismissal of the petition, petitioner was unable to make any submissions. Petitioner also submitted that petitioner should be then allowed to withdraw the prayer sought that he be declared as duly elected, in other words amend the petition. Whether petitioner can amend the

petition to escape the strict provisions of Section 86 read with Section 82, has been dealt with in plethora of judgments of the Apex Court. Paragraph 20 of the judgment of the Apex Court in ***Patangrao Kadam Vs. Prithviraj Sayajirao Yadav Deshmukh & Ors.*** reads as under:

“20. The view that a candidate, who is duly nominated, continues to be a candidate for the purpose of [Section 82\(b\)](#) in spite of withdrawal is supported by the decisions of Har Swarup (supra) and [Amin Lal vs. Hunna Mal](#) [1965 (1) SCR 393]. This Court referring to the said decisions in [Mohan Raj vs. Surendra Kumar Taparā and others](#) [AIR 1969 SC 677] agreed with the said view. Further the decision in [Chaturbhuj vs. Election Tribunal Kanpur](#) [AIR 1958 All 809] taking the same view after elaborate consideration on all aspects touching the question is approved. Dealing with the applications made for impleadment under Order I Rule 10 and amendment under Order 6 Rule 17, in para 10 of the same judgment, this Court had stated thus:

“No doubt the power of amendment is preserved to the Court and O. 1 R. 10 enables the Court to strike out parties but the Court cannot use O. 6 R. 17 or O. 1 R. 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the [Representation of the People Act](#) and any rules made thereunder (see [Section 87](#)). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition.”

7 It is quiet clear that the court cannot order an amendment using its powers under Order 6 Rule 17 of the Civil Procedure Code to avoid the consequences of the petition being dismissed for non-joinder of a party under Section 82 read with Section 86. In Patangrao Kadam (Supra) the Apex Court has also held that Section 82 is mandatory in relation to joining of respondents mentioned therein and Section 86(1) does not leave any option to the High Court but to dismiss an election petition for non-compliance

with Sections 81, 82 and 117.

8 Apex Court in ***Ram Pratap Chandel Vs. Chaudhary Lajjar Ram & Ors.***¹, also has taken the same view. Paragraphs 8 and 10 of the said judgment read as under:

“8. This view is supported by the decision of this Court in Mohan Raj v. Surendra Kumar Taparia. In this case, seven candidates had been nominated for election to a parliamentary constituency, but two withdrew. The first respondent, one of the remaining five candidates, was declared elected, and his election was challenged by the appellant who was an elector. Only the returned candidate and the other four contesting candidates were made parties. On the objection of the first respondent that the allegations in the petition were vague, the petition was amended and in the amended petition, with reference to one of the grounds, namely, the offering of bribes to voters, the appellant gave instances of bribes having been offered or paid by the first respondent, his election agents, and others. Two persons were referred to as the election agents of the first respondent. One of them was one of the candidates who had withdrawn his candidature and had not been impleaded as a party to the election petition. The first respondent contended that the election petition should be dismissed having regard to the provisions of Section 82(b). The appellant then filed an application for amendment of the election petition wherein he stated that by "election agent", he did not mean the candidate who had withdrawn, that there was never an intention to make an allegation against that candidate and that that candidate's name should be deleted. The High Court dismissed the election petition. This Court held that Section 86 of the Act was a peremptory provision. It required dismissal of an election petition if there was non-compliance with the requirements of Section 82. Section 82 made it incumbent that a candidate against whom a charge of corrupt practice was made should be joined as a party. A candidate was defined by Section 79 to mean a person who had been or claimed to have been duly nominated as a candidate at the election, and any such person should be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out to be a prospective candidate. The argument that the person concerned, who was named Periwal, was not a candidate at the election since he had withdrawn and that Section 82(b) should be limited to contesting candidates was rejected and it was held that a candidate who was duly nominated continued to be a candidate for the purposes of Section 82(b) in spite of withdrawal. Judgments of this Court taking an identical view were referred to in support.

10. Learned counsel for the first respondent cited the decision in Udhav Singh v. Madhav Rao Scindia. It has been held there that the provisions of Section 82 are based upon a fundamental principle of natural justice - that nobody should be condemned unheard. A charge

¹ (1998) 8 Supreme Court Cases 564

of corrupt practice against a candidate, if established, entails serious penal consequences. It has the effect of debarring him from being a candidate at an election for a considerably long period. That is why Section 82(b) in clear, peremptory terms obligates an election petitioner to join as a respondent to his petition a candidate against whom allegations of corrupt practice are made. A respondent cannot by consent waive these provisions or condone them. Even inaction, laches or delay on the part of the respondent in pointing out the defect of non-joinder cannot relieve the court of its statutory obligation of dismissing such an election petition. In our view, the observations in the case of Udhav Singh are wide enough to cover a situation where non-impleadment is shown to be because of an advocate's default." (emphasis supplied)

9 Apex Court in ***Krishan Chander Vs Ram Lal***² held section 82 enjoins who the parties to the petition should be, and if the requirement is not fulfilled, sub-Section 86 makes it mandatory for the High Court to dismiss the election petition for non-compliance with provisions of Section 82 of the Act. Apex Court accepted the view that reading Section 86 with Section 82 makes both clauses (a) and (b) of Section 82 mandatory and non-compliance with the requirements thereof visits the petitioner with penalty of having his petition dismissed. Apex Court held that in view of these provisions, it is incumbent upon the High Court, where the allegation is that the requirements of Section 82 are not complied with to determine that issue as a preliminary issue and if respondent has made out his case on that issue, the court is left with no option but to dismiss the petition for non-compliance with the mandatory provisions of Section 82.

10 It will also be useful to reproduce paragraph 10 in ***Mohan Raj Vs. Surendra Kumar Taparia & Ors.***³ where the Apex Court held:

"10 It is argued that the Civil Procedure Code applies and O. VI, r. 17

² (1973) 2 Supreme Court Cases 759

³ AIR 1969 Supreme Court 677

and O. 1, r. 10 enable the High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of reference to Periwai. This argument cannot be accepted. No doubt the power of amendment is preserved to the court and O. 1, r. 10 enables the court to strike out parties but the court cannot use O. VI, r. 17 or O. 1, r. 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition."

11 Petitioner circulated a note including a copy of the judgment of the Apex Court in ***K. Kamaraja Nadar Vs. Kunju Thevar & Ors.***⁴ Here also the Apex Court held that where provisions under Section 82(a) are not complied with the petition has to be dismissed. As it was pre-1966 amendment, the relevant provision for dismissal was Section 85 which was pari-materia to Section 86 now. Paragraph 32 of the said judgment reads as under:

"32. When we come to the provisions of Part VI of the Act relating to disputes regarding elections, we find that there is no definition given in section 79 of the expression "contesting candidate", though there are definitions of "candidate" and "returned candidate" to be found therein. An election petition calling in question any election can be presented by any candidate at such election or any elector on one or more of the grounds specified in sections 100(i) and 101 to the Election Commission and a petitioner in addition to calling in question the election of the returned candidate or candidates may further claim a declaration that he himself or any other candidate has been duly elected. Where the petitioner claims such further declaration, he must join as respondents to his petition all the contesting candidates other than the petitioner and also any other candidate against whom allegations of any corrupt practices are made in the petition. The words "other than the petitioner" are meant to exclude the petitioner

4 AIR 1958 SC 687

when he happens to be one of the contesting candidates who has been defeated at the polls and would not apply where the petition is filed for instance by an elector. An elector filing such a petition would have to join all the contesting candidates whose names were included in the list of contesting candidates prepared and published by the returning officer in the manner prescribed under Section 38, that is to say, candidates who were included in the list of validly nominated candidates and who had not withdrawn their candidature within the period prescribed. Such contesting candidates will have to be joined as respondents to such petition irrespective of the fact that one or more of them had retired from the contest under Section 55A(2). If the provisions of Section 82 which prescribes who shall be joined as respondents to the petition are not complied with, the Election Commission is enjoined under Section 85 of the Act to dismiss the petition and similar are the consequences of non-compliance with the provisions of Section 117 relating to deposit of security of costs. If the Election Commission however does not do so and accepts the petition, it has to cause a copy of the petition to be published in the official gazette and a copy thereof to be served by post on each of the respondents and then refer the petition to an election tribunal for trial. Section 90(3) similarly enjoins the Election Tribunal to dismiss an election petition which does not comply with the provisions of Section 82 or Section 117 notwithstanding that it has not been dismissed by the Election Commission under Section 85. Section 90(3) is mandatory and the Election Tribunal is bound to dismiss such a petition if an application is made before it for the purpose.”

Apex Court is very clear that petitioner, in addition to calling in question the election of the returned candidate, may claim a declaration that he himself or any other candidate has been duly elected but he must join as respondent to his petition all the contesting candidates other than petitioner.

12 In the circumstances, as in this petition also petitioner has claimed in prayer 2(b) for a declaration that he be declared as the returned candidate, non-joinder of all the contesting candidates is fatal to the petition and has to be dismissed.

13 There is also an application, which is taken out by respondent no.1 for a declaration that he being the returning officer cannot be made a party to

the election petition and his name be deleted. Though I strictly do not have to go into the merits of this application, as the petition itself is being dismissed as noted above, I would still consider this application in view of the submissions made by petitioner. Petitioner has relied upon two judgments, one is of Madras High Court in *K. T. Kosalram Vs. Dr. Santhosham & Ors*⁵ and other is of Calcutta High Court in *Dwijendra Lal Sen Gupta Vs. Harekrishna Konar*⁶ to submit that the returning officer, in view of the facts and circumstances of the case, is a necessary party and can be added as respondent. These two judgments, of Madras High Court and Calcutta High Court, has been considered by a Full Bench of Punjab and Haryana High Court in *S. Iqbal Singh Vs. S. Gurudas Singh Badal & ors.*⁷ and the Full Bench has disagreed with the view taken by Madras High Court and Calcutta High Court. In *S. Iqbal Singh* (Supra) the court has held that a person who is not a candidate at an election cannot be joined as a respondent to a petition filed under Sections 80 and 84 merely because allegations of corrupt practices have been made against such a person in the petition. The returning officer also cannot be impleaded as party to such petition on the ground that he has been guilty of committing illegalities etc., in the conduct of the election. The names of such persons are liable to be struck off from the array of respondents without prejudice to the rights of the court to issue notices to them under Section 99 if and when it becomes necessary to do so.

⁵ AIR 1969 Mad 116

⁶ AIR 1963 Cal 218

⁷ AIR 1973 Punjab and Haryana 163

14 Mr. Rajagopal relied upon about 9 judgments to buttress his submissions that respondent no.1 cannot be joined as respondent. These judgments include many unreported judgments of this court, where this court has taken a consistent view that a person who is not a candidate at an election cannot be joined as respondent to a petition filed under Section 80 and 84 merely because allegations are made against him.

Apex Court in *Jyoti Basu & Ors Vs. Election Commission of India & Ors.*⁸ relied upon by Mr. Rajagopal in paragraphs 9 and 13 has held as under:

9. Sec. 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. Sec. 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 Sec. 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Sec. 86 (4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with question as to who may be joined as respondents. It is significant that while clause (b) of Sec. 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 Sec. 86 (4), any other person cannot, under that provision seek to be joined as 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 Sec. 82 and Sec. 86 (4) and no others. However

8 AIR 1982 SCC 933

desirable and expedient it may appear to be, none else shall be joined as respondents.

13 In view of the foregoing discussion we are of the opinion that no one may be joined as a party to an election petition otherwise than as provided by Sections 82 and 86(4) of the Act. It follows that a person who is not a candidate may not be joined as a respondent to the election petition. The appeal is therefore, allowed with costs and the names of the appellants and the seventh respondent in the appeal are directed to be struck out from the array of parties in the election petition. We may mention that in arriving at our conclusion we have also considered the following decisions cited before us: S.B. Adityen & Anr. v. S. Kandaswami & Ors., AIR 1958 Mad 171, Dwijendra Lal Sen Gupta v. Herekrishna Koner, AIR 1963 Cal 218, H.R. Gokhale v. Bharucha Noshir C., AIR 1969 Bom 177 and S. Iqbal Singh v. S. Gurdas Singh Badal, AIR 1973 Punj & Har 163 (FB).

Apex Court in ***B. Sundara Rami Reddy Vs. Election Commission of***

India & Ors⁹ in paragraph 3 held as under:

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

Similarly in ***Michael B. Fernandes Vs. C. K. Jaffer Sharief & Ors.***¹⁰ ,

Apex Court has held in paragraph 4 as under:

“..... On a plain reading of [Section 82](#), which indicates as to the person who can be joined as a respondent 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 as to any other candidate to be declared to be duly elected, then all the contesting candidates are required to be made 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 make the persons enumerated in [Section 82](#) of the Act, as party respondents, is liable to be dismissed. The two

⁹ 1991 Suppl. (2) SCC 624

¹⁰ (2002) 3 SCC 521

decisions of this Court directly on the question are the cases of *Jyoti Basu and Ors. vs. Debi Ghosal and Ors.*, 1982(1) S.C.C. 691 and *B. Sundara Rami Reddy vs. Election Commission of India and Ors.*, 1991 Supp.(2) S.C.C. 624. In the former case, Chinnappa Reddy, J, speaking for the Court, held that right to elect or to be elected or dispute regarding election are neither fundamental rights nor common law rights but are confined to the provisions of the Act and the Rules made thereunder and consequently, rights and remedies are all limited to those provided by the statutory provisions. On the question of Joinder of parties, referring to Sections 82 and 86(4) of the Representation of the People Act, it was held that the contest of the election petition is designed to be confined to the candidates at the election and all others are excluded and, therefore, only those may be joined as respondents to an election petition, who are mentioned in [Section 82](#) and [86\(4\)](#) and no others. An argument had been advanced in that case that even if somebody may not be a necessary party under Section 82 of the Act, but yet he could be added as a proper party as provided in Order I Rule 10 of the Code of Civil Procedure. But the Court rejected that contention on a finding that the provisions of the Civil Procedure Code apply to election disputes only as far as may be and subject to the provisions of the Act and any rules made thereunder and the provisions of the Code cannot be invoked to permit which is not permissible under the Act. It was in that context the Court further observed that the concept of 'proper parties' is and remain alien to an election dispute under the Act. This decision was followed in *B. Sundara Rami Reddy's case*, 1991 Supp. (2) S.C.C. 624, referred to supra and it was reiterated that the concept of 'proper party' is and must remain alien to an election dispute under the Act and only those may be joined as respondents to an election petition, who are mentioned in Sections 82 and 86(4) of the Act and no others. The Court in this case added that however desirable and expedient it may appear to be, none-else shall be joined as respondents. Mr. Venkataramani, the learned senior counsel, appearing for the appellant, contended that the law enunciated in the two decisions and the observations made are too wide and while Section 82 casts an obligation on an election petitioner to join those mentioned in clauses (a) and (b) as party respondent, it does not put an embargo for addition of any other person in an appropriate case, depending upon the nature of allegation made and consequently, the expression "any other" in the two decisions.Mr. Venkataramani then relied upon the decision of Calcutta High Court in *Dwijendra Lal Sen Gupta vs. Hare Krishna Konar*, A.I.R. 1963 Calcutta 218, where the question came up for consideration directly and the Calcutta High Court did observe that the Returning Officer may nevertheless in an appropriate case be a "proper party" who may be added as party to the election petition and undoubtedly, the aforesaid observation supports the contention of Mr. Venkataramani. Following the aforesaid decision, a learned Single Judge of the Bombay High Court in the case of *H.R. Gokhale vs. Bharucha Noshir C. and Ors.*, A.I.R. 1969 Bombay 177, had also observed that the observations of Shah, J in *Ram Sewak Yadav's case*, AIR 1964 SC 1249 in paragraph (6) is not intended to lay down that the Returning Officer can in no event be a proper party to an election petition. But both these aforesaid decisions of the Calcutta High Court and Bombay High Court had been

considered by this Court in Jyoti Basu case and the Court took the view that the public policy and legislative wisdom both seem to point to an interpretation of the provisions of the Representation of the People Act which does not permit the joining, as parties, of persons other than those mentioned in Sections 82 and 86(4). The Court also in paragraph (12) considered the consequences if persons other than those mentioned in Section 82 are permitted to be added as parties and held that the necessary consequences would be an unending, disorderly election dispute with no hope of achieving the goal contemplated by Section 86(6) of the Act. In the aforesaid premises, we reiterate the views taken by this Court in Jyoti Basu's case and reaffirmed in the latter case in B. Sundara Rami Reddy and we see no infirmity with the impugned judgment, requiring our interference under Article 136 of the Constitution. This appeal accordingly fails and is dismissed."

15 In the circumstances, respondent no.1 not being a candidate could not have been joined as respondent to the petition.

16 Petition accordingly dismissed with no order as to cost.

17 In view of the dismissal of the petition, all pending interim applications stand disposed.

(K.R. SHRIRAM, J.)

Meera
M.
Jadhav

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by Meera M.
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