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O.A.No.672 of 2021
in
E.L.P.No.9 of 2021

V. BHARATHIDASAN, J.

This Original Application has been filed by the respondents 15 to 18 in the main Election Petition, to strike off their names in the Election Petition.

2. The first respondent herein, filed the Election Petition to declare the election of the 1st respondent herein to No.53, Krishnagiri Assembly Constituency in the State of Tamil Nadu on 02.05.2021 as null and void and consequently, to declare that the Election petitioner has been duly elected in the said Constituency. The present application has been filed by the Returning Officer as well as the Election Commission of India, on the ground that in view of the Sections 82 and 86(4) of the Representation of the People Act, 1951, they cannot be impleaded as a party respondents in the Election Petition, as they are not necessary parties in the Election petition. Hence, they sought for strike off their names from the Election Petition.

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3. Mr.Niranjan Rajagopalan, the learned counsel appearing for the applicants would contend that, Section 82 of the Representation of People Act, provides for impleading of parties in the Election Petition. As per Section 82 of the said Act, apart from the persons mentioned therein, no one can be impleaded as a party respondent. Hence, the applicants names should be strike off from the Election Petition.

4. The first respondent/petitioner has filed counter affidavit and raise objections to allow the application.

5. Heard the learned counsels appearing on either side.

6. Earlier, this Court in a similar application filed by the Returning Officer in O.A.No.247 of 2017 in E.L.P.No.1 of 2016, allowed the application, holding as follows:

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"6. The issue involved in this application is no more res intagra. The Hon'ble Supreme Court in number of cases has held that, the right to elect, to be elected, or to dispute election are not fundamental right or common law right, but it is only a statutory right, and it is subject to statutory limitations, the Election Petition being a statutory proceedings, for which only the statutory rules apply. Hence, the persons who are all mentioned in Sections 82 and 86(4) of the Representation of the People Act, can alone be joined as respondents in the Election Petition and no other persons can be arrayed as party respondent however desirable and expedient it may appear to be. The concept of necessary and proper party is not applicable in election petition filed under the Representation of the People Act.

7. The Hon'ble Supreme Court in ***JYOTI BASU AND OTHERS Vs. DEBI CHOSAL AND OTHERS reported in 1982 (1) SCC 691,*** *held as follows:-*

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"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 7th respondent in the appeal are directed to be struck out from the array of parties in the election petition."

In another Judgment of the Hon'ble Supreme Court in ***S.SUNDARA RAMI REDDY Vs. ELECTION COMMISSION OF INDIA AND OTHERS*** *reported in* ***1991 Supp (2) SCC 624,*** *held as follows:-*

"The representation of the People Act,1951 does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the

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provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order I of the Civil Procedure Code cannot be imported to the trial of election petition, in view of the express provisions of Sections 82 and 87 of the Act. The Act is a self contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party. In K.Venkateswara Rao v. Bekkam Narasimha Reddy, this Court while discussing the application of Order I Rule 9 of the Civil Procedure Code to an election petition held that there could not be any addition of parties in the case of an election petition except under the provisions of sub-section (4) of Section 86 of the Act. Again in Jyoti Basu v. Debi Ghosal, this Court held that the concept of 'proper party' is and must remain alien to an election dispute under the Representation of the People act, 1951. Only those may be joined as respondents to an election petition who are

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mentioned in Section 82 and Section 82(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents.

The above two judgments have been considered by the 3 Judges Bench of the Hon'ble Supreme Court in ***MICHAEL B. FERNANDES Vs. C.K. JAFFER SHARIEF AND OTHERS*** *reported in* ***2002 (3) SCC 512*** *and reiterated the view taken in the above two judgments.*

8. In view of the above stated position, I am of the considered view that the 11th respondent can not be added as party respondent in the Election Petition. Hence, the application filed by the petitioner deserves to be allowed.

9. In the result, this application stands allowed and the name of the applicant/, namely, Returning Officer, No.72, Tindivanam Legislative Assembly Constituency(Reserved), the 11th respondent in the election petition, is strike out in the election petition."

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7. In view of the above, this Court is inclined to allow the application. Accordingly, this application stands allowed and the names of the applicants, namely, respondents 15 to 18, in the Election Petition, are strike out in the Election petition. No costs.

11.01.2022

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Note: Registry is directed to carryout necessary amendments the Election petition.

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