

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 20th OF DECEMBER, 2023

CIVIL REVISION No. 691 of 2023

BETWEEN:-

**MANGLESH S/O SATYNARAYAN KASERA, AGED
ABOUT 42 YEARS, OCCUPATION: BUSINESS R/O
VIVEKANADN MARG SAILANA DISTT. RATLAM
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VISHAL LASHKARI – ADVOCATE)

AND

**1. LALIT S/O MOOLCHANAD KASERA, AGED
ABOUT 45 YEARS, OCCUPATION:
BUSINESS R/O VIVEKANAND MARG
SAILANA DISTT. RATLAM (MADHYA
PRADESH)**

**2. NAGAR PALIKA PARISHAD THROUGH
COMMISSIONER SAILANA, DIST. RATLAM
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI V.A.KATKANI – ADVOCATE FOR RESPONDENT NO.1)

.....
*This revision coming on for admission this day, the court passed
the following:*

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This civil revision has been filed by the petitioner the returned candidate, against the order dated 10.08.2023 passed by the 5th Additional District Judge, Ratlam in case No.MJC/173/2022 whereby the petitioner's application filed under Order 7 Rule 11 of CPC has been rejected.
- 3] In brief, the facts of the case are that the election petitioner the respondent No.1 has filed the Election Petition under Section 20 of the Madhya Pradesh Municipal Corporation Act, 1961 (in short 'the Act of 1961'). In the aforesaid election petition, the election petitioner has also sought the relief that in addition to that the election of the petitioner, who has been elected as Councilor in Ward No.15 be set aside, and also prayed that he should be declared as elected. In the aforesaid petition, the petitioner returned candidate filed an application under Order 7 Rule 11 of CPC raising a specific ground that the election petitioner has not joined all the candidates as parties, which is in violation of Sub-section (4) of Section 20 of the Act of 1961. The aforesaid application has been rejected by the Election Tribunal vide its order dated 10.08.2023, holding that the aforesaid ground raised by the petitioner does not fall within the purview of under Order 7 Rule 11 of CPC. This order dated 10.08.2023 is under challenge in this petition. .
- 4] Counsel for the petitioner has drawn the attention of this Court to Sub-Section (4) of Section 20 of the Act of 1961 which provides that in such cases where the election petitioner, in addition

to claiming a declaration that the election or nomination 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 or nominated, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates shall be made party. Thus, it is submitted that since the election petition is not in proper format according to law, the impugned order is liable to be set aside and the election petition deserves dismissal.

5] Counsel for the petitioner has also relied upon the decisions rendered by the Supreme Court in the cases of **Jyoti Basu and others Vs. Debi Ghosal and others** reported in **(1982) 1 SCC 691**; **B. Sundara Rami Reddy Vs. Election Commission of India and others** reported as **1991 Supp (2) SCC 624**; and in the case of **Michael B. Fernandes Vs. C. K. Jaffer Shariff and others** reported as **(2002) 3 SCC 521** in which it is held that the election petition in which the persons enumerated under Section 82 of the Representation of People Act, 1951 as party respondent are not made parties, is liable to be dismissed on this ground only.

6] Counsel for the respondent No.1, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as it is merely a procedural lapse on the part of the election petitioner and can be cured by way of amendment and submits that the respondent No.1 is ready to file an amendment application before the Election Tribunal. Thus, it is submitted that no illegality has been committed and the petition deserves to be

dismissed.

7] Heard counsel for the parties and perused the record.

8] On due consideration of submissions, perusal of the documents filed on record, this Court finds that it is not disputed that there was a prayer of recrimination by the respondent No.1 in the election petition, which was filed against the election of the petitioner, who was elected as the Councilor of Ward No.15 of Ratlam. As per the documents filed, there were as many as 3 candidates, who had contested the election, whereas, the election petitioner, in his election petition has made only the present petitioner as a party respondent, which clearly runs contrary to the provisions of Sub-section (4) of Section 20 of the Act of 1961, which reads as under:-

“20. Election petitions.-

(1) No election or nomination under this Act shall be called into question except by a petition presented in accordance with the provisions of this section.

(2) Such petition may be presented on one or more of the grounds specified in section 22-

(a) by any candidate at such election or nomination; or

(b) (i) in the case of an election of a councilor, by any voter of the ward concerned;

(ii) in the case of a nomination of Councillor, by any Councillor;

(iii) in the case of election of President by any voter of the Municipal area; to the District Judge, where such election or nomination is held within the revenue district in which the Court of the District Judge is situate, and in any other case, to the Additional District Judge having the permanent seat of his Court within the revenue district in which such election or nomination is held and if there be more than one such Additional District Judge within the said revenue district, to such one of them as the District Judge may specify for the purpose (herein after such district Judge or Additional District Judge referred to as judge.

(3) No petition presented under sub-section (2), shall be admitted unless-

(i) it is presented within thirty days from the date on which the result of such election or nomination was notified in the Gazette; and

(ii) it is accompanied by a Government Treasury receipt showing a deposit of two hundred rupees, in the case of election or nomination to Municipal Council and one hundred rupees, in the case of election or nomination to Nagar Panchayat.

(4) A petitioner shall join as respondents to his petition-

(a) where the petitioner, in addition to claiming a declaration that the election or nomination, as the case may be, 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 or nominated, 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”

(emphasis supplied)

9] So far as the decision in the case of **Michael B. Fernandes** (*supra*) is concerned, in this case certain Election officers of the State of Karnataka were also arrayed as the respondents and their names were directed to be deleted by the High Court, and while upholding the decision of the High Court, the following observations were made by the Supreme Court in para 4 of the same:-

“4. In order to examine the correctness of the rival submissions, it would be necessary for us to have a bird's-eye view of the relevant provisions of the Act and the different case-laws on the point. But one thing must be borne in mind that in the case in hand, the allegations made were in relation to the use of voting electoral machines, under Section 61-A of the Act. The gravamen of the allegations in the election petition is that the Returning Officer as well as the Chief Electoral Officer had not complied with several provisions of the Conduct of Elections Rules and Respondents 7 and 8 had not acted in accordance with the

guidelines issued by the Election Commission of India. The relevant paragraphs of the election petition pertaining to the infraction of Rules committed by Respondents 7 and 8 are paragraphs 20-*a*, 20-*d*, 20-*f*, 25 and 28. The Representation of the People Act, 1951 (hereinafter referred to as “the Act”) is an Act, providing for the conduct of elections to the House of Parliament and to the House of Legislature of each State and it provides the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences in connection with such elections and the decisions of doubts and disputes arising out of or in connection with such elections. The general procedure at elections has been enumerated in Chapter III. Section 61 of the Act provides the procedure for preventing personation of electors and Section 61-A which was inserted by Act 1 of 1989 w.e.f. 15-3-1989, deals with voting machines at elections. Section 66 provides for declaration of result and Section 67 provides for submission of a report of the result to the appropriate authority and the Election Commission and in case of an election to a House of Parliament, to the Secretary of that House by the Returning Officer, soon after the declaration of the result. It also provides for publication of the name of the elected candidate in the Official Gazette. Part VI starting with Section 79 deals with disputes regarding elections. Under Section 80 of the Act, no election shall be called in question except by an election petition presented in accordance with the provisions of this part. Presentation of petition is dealt with in Section 81 and such petition could be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. Section 82 stipulates as to who shall join as respondents to an election petition. Section 82 may be quoted hereinbelow in extenso:

“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.”

Section 83 provides as to what should be contained in an election petition and Section 86 in Chapter III deals with trial of election petitions. Section 87 is the procedure for such trial and it provides that every election petition shall be tried as nearly as may be, in

accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. As stated earlier, Section 100 indicates the grounds on which an election can be declared to be void and Section 101 indicates the grounds on which a candidate other than the returned candidate may be declared to have been elected. We are not concerned with the other provisions of the Act in the case in hand. An appeal to the Supreme Court has been provided under Section 116-A. 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 is 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 decisions of this Court directly on the question are the cases of *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691] and *B. Sundara Rami Reddy v. Election Commission of India* [1991 Supp (2) SCC 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 Sections 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 1 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 that which is not permissible under the Act. It was in that context the Court further observed that the concept of “proper parties” is and remains alien to an election dispute under the Act. This decision

was followed in *B. Sundara Rami Reddy case* [1991 Supp (2) SCC 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 the 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 referred to above, must be held not to have been correctly used. Mr Venkataramani relied upon the observations made by this Court in *M.S. Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 : (1978) 2 SCR 272]* wherein the Court had observed that the Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances and submitted that the basis of electoral democracy being a free and fair election and fairness imports an obligation to see that no wrongdoer candidate benefits from his own wrong. In case where allegations are made against the Returning Officer or the Chief Electoral Officer with regard to the conduct of the election, there should be no bar to array them as parties and according to Mr Venkataramani in *Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 : (1978) 2 SCR 272]* the Chief Election Commissioner was a party and, therefore, this Court in *Jyoti Basu [(1982) 1 SCC 691]* as well as the subsequent case, having not noticed the aforesaid judgment of the larger Bench, the latter decision will be of no assistance. We are not in a position to accept the submission of Mr Venkataramani inasmuch as in *Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 : (1978) 2 SCR 272]* an order of the Election Commissioner was under challenge by filing a writ petition and it was not an election petition under the provisions of the Representation of the People Act. There is no dispute with the proposition that a free and fair electoral process is the foundation of our democracy, but the question for consideration is, whether by indicating in the Act as to who shall be arrayed as party, the

court would be justified in allowing some others as parties to an election petition. For the aforesaid proposition, *Gill case* [*Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405 : (1978) 2 SCR 272] is no authority. Mr Venkataramani then relied upon the decision of the Calcutta High Court in *Dwijendra Lal Sen Gupta v. Harekrishna Konar* [AIR 1963 Cal 218 : 66 CWN 917] 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 v. Bharucha Noshir C.* [AIR 1969 Bom 177 : 70 Bom LR 466] had also observed that the observations of Shah, J. in *Ram Sewak Yadav case* [*Ram Sewak Yadav v. Hussain Kamil Kidwai*, AIR 1964 SC 1249] in paragraph 6 are 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 *Calcutta High Court* [AIR 1963 Cal 218 : 66 CWN 917] and *Bombay High Court* [AIR 1969 Bom 177 : 70 Bom LR 466] had been considered by this Court in *Jyoti Basu case* [(1982) 1 SCC 691] 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 case* [(1982) 1 SCC 691] and reaffirmed in the later case in *B. Sundara Rami Reddy* [1991 Supp (2) SCC 624] 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.”

(emphasis supplied)

10] On perusal of the aforesaid provisions as also the decision rendered by the Supreme Court in the case of *Michael B. Fernandes (supra)*, relied upon by shri Vishal Lakshari, learned counsel for the petitioner, this court is of the considered opinion that sub-section (4) of S. 20 of the Act of 1961, which is in *pari materia*

with s.82 of the Representation of People Act, 1951, is mandatory in nature, and non-compliance of the same is clearly a ground which can be raised under sub-rule (d) of Rule 11 of Order VII of CPC which provides that a plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Thus, the contentions of the respondent No.1 at this stage, that he is ready to amend the election petition, are not tenable in law and cannot be accepted. Thus, the election petition is bound to fail on account of non-compliance of Sub-section (4) of Section 20 of the Act of 1961.

11] Accordingly, the impugned order dated 10.08.2023 is hereby set aside and the application filed by the petitioner under Order VII Rule 11 of CPC is hereby allowed.

12] Resultantly, the election petition stands rejected on account of non-compliance of Sub-section (4) of Section 20 of the Act of 1961.

13] With the aforesaid, the petition stands allowed and disposed of.

**(SUBODH ABHYANKAR)
JUDGE**

Pankaj