IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPLICATION (LODGING) NO.27786 OF 2024
IN
ELECTION PETITION NO.2 OF 2024
WITH
ELECTION PETITION NO.2 OF 2024

Shahaji Nanai Thorat @ Shahjirao Dhondiba Thorat ...***Petitioner***

Versus

1. State of Maharashtra, Returning Officer, 28 Mumbai North East, Parliamentary Constituency, Phirozshah Sanskrutik Sabhagrah, Godrej Colony, Vikhroli Railway Station, Vikhroli (East), Mumbai -400 079.

AND

2. Chief Electoral Officer, State of Maharashtra, General Administration Department, Annex Building, Mantralaya, Room No.611A, 6th Floor, Madam Cama Marg, Hutatma Rajguru Chowk, Mumbai-400 032.

3. Chairman and Chief Commissioner, Election Commission of India, Nirvacahn Sadan, Ashok Road, New Delhi-110001.

4. Ministry of Law and Justice, Department of Legal Affairs (Union of India), Aayakar

Bhavan, 2nd Floor, Room No.239-B, New Marine Lines Served through the Office, Central Government Pleader, High Court, Mumbai-400 020.

5. Officer of Government Pleader Original Side, (Writ Cell), High Court, Mumbai-400 032.

6. Collector & District Election Officer Returning-28, Mumbai North East Mumbai Suburban Kalanagar, Bandra (East), Mumbai-400051.

7. Mr. Sanjay Dina Patil

AND ...***Respondents***

1. Mr. Nandesh Vitthal Umap
2. Mihir Chandrakant Kotecha
3. Sanjay Bandu Patil
4. Dattatray Arjun Utekar
5. Daulat Kadar Khan
6. Prof. Dr. Prashant Gyaneshwar Gangawane
7. Bhawani Hiralal Coudhary
8. Bhopinder Singh Saini
9. Mohammad Arman Mohammed Khan
10. Surendra Mahavir Sibag
11. Sanjay Saoji Deshpande
12. Sanju Maruti Pawar
13. Prem Ramapati Gupta
14. Dilip Bapu Bansode
15. Shaikh Mohammed Ahmed
16. Vidya Satish Naik
17. Sushma Motilal Maurya
18. Sanjay Nivrutti Patil

...Proposed Respondents

WITH
APPLICATION (LODGING) NO.32011 OF 2024
IN
ELECTION PETITION NO.2 OF 2024

Sanjay Dina Patil ...***Applicant***

In the matter between
Shahaji Nanai Thorat @
Shahjirao Dhondiba Thorat ***...Petitioner***

Versus

1. State of Maharashtra,
Returning Officer, 28 Mumbai
North East, Parliamentary
Constituency, Phirozshah
Sanskrutik Sabhagrah, Godrej
Colony, Vikhroli Railway
Station, Vikhroli (East),
Mumbai -400 079.

2. Chief Electoral Officer, State
of Maharashtra, having address
at :Administration Department,
Annex Building, Mantralaya,
Room No.611A, 6th Floor,
Madam Cama Marg, Hutatma
Rajguru Chowk, Mumbai-400
032.

3. Chairman and Chief
Commissioner, Election
Commission of India, Nirvachan
Sadan, Ashok Road, New Delhi-
110001.

4. Ministry of Law and Justice,
Address: Department of Legal

Affairs (Union of India),
Aayakar Bhavan, 2nd Floor,
Room No.239-B, New Marine
Lines Served through the Office,
Central Government Pleader
High Court, Mumbai-400 020.

5. Office of Government Pleader
Original Side, (Writ Cell), High
Court, Mumbai-400 032.

6. Collector & District Election
Officer Returning, 28 Mumbai
North East Mumbai Suburban
Kalanagar, Bandra (East),
Mumbai-400051.

7. Mr. Sanjay Dina Patil ...***Respondents***

Mr. Shahaji Nanai Thorat, *Petitioner-in-person.*

Mr. Vijay Nair *with Mr. Prashant P. Kulkarni & Ms Rachna Mamnani for Respondent No.7.*

Mr. Himanshu B. Takke, *AGP for Respondent Nos.1, 2 & 5-State.*

Ms. Shruti Vyas *with Mr. D.P. Singh for Respondent No.4-Union of India.*

Mr. Tejas Deshmukh *with Mr. H.D. Chavan for Respondent No.6.*

Mr. Ganesh S. Patil *with Mr. Akash Ahire for proposed Respondent No.13.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 18 November 2024.

Judgment pronounced on : 26 November 2024.

Judgment:

1) Petitioner has filed the present Election Petition challenging election of Respondent No.7 from 28-Mumbai North East Parliamentary Constituency vide result dated 4 June 2024 and for a declaration of his own election from that constituency. In the Election Petition as originally filed, Petitioner initially impleaded State of Maharashtra, Returning Officer, Election Commission of India, Union of India and other Government officials in addition to the returned candidate (Respondent No.7) thereto. After noticing provisions of Section 82 of the Representation of the People's Act, 1951 (**the Act)** the Petitioner has filed Application (Lodging) No.27786 of 2024 seeking issuance of summons against 18 candidates, who also contested the election. Respondent No.7 has opposed Application (Lodging) No.27786 of 2024 by filing affidavit-in-reply. Additionally, Respondent No.7 has filed Application (Lodging) No. 32011 of 2024 seeking (i) deletion of Respondent Nos.1 to 6 from the Election Petition, (ii) dismissal of the Election Petition for non-compliance of provisions of Section 82 of the Act, (iii) striking off the pleadings in various paragraphs of the Election Petition under Order VI Rule 16 of the Code of Civil Procedure, 1908 (**Code)** and (iv) rejection of the Petition under Order VII Rule 11 of the Code. Application (Lodging) No.32011 of 2024 is opposed by the Petitioner by filing affidavit-in-reply.

2) Since one of the prayers in Application (Lodging) No. 32011 of 2024 filed by Respondent No.7 for rejection of Election Petition on

account of failure to implead the contesting candidates under Section 82 of the Act is connected with Petitioner's Application (Lodging) No.27786 of 2024 filed for seeking issuance of summons to 18 contesting candidates, both the Applications are taken up for hearing together.

3) I have heard the Petitioner in-person in support of Application (Lodging) No.27786 of 2024 and for opposing Application (Lodging) No.32011 of 2024. He would submit that Application (Lodging) No.27786 of 2024 has been filed by him in accordance with the provisions of Section 82 of the Act wherein it is mandatory for the Petitioner to join all contesting candidates to the Election Petition. He would submit that Application (Lodging) No.27786 of 2024 merely ensures compliance with provisions of Section 82 of the Act and would enable the Court to hear merits of the Election Petition and that therefore Petitioner must be permitted to implead the 18 contesting candidates (proposed Respondents) to the Election Petition. He would submit that the Election Petition has been filed within a period of 45 days of the election of Respondent No.7 and that there is no necessity that the other contesting candidates must also be impleaded to the validly filed Election Petition within a period of 45 days. He would in fact go ahead and submit that there is clear ambiguity in Section 81 of the Act, which requires filing of Election Petition within a period of 45 days from the date of election of the returned candidate ignoring the provisions of Limitation Act. He would also submit that he had in fact drafted the Election Petition by impleading all the contesting candidates,

but the registry of this Court refused to register such Petition and advised him to file a Petition impleading only Respondent No.7. He would rely upon judgment of the Apex Court in ***Public Interest Foundation and Others V/s. Union of India and Anr.***[1]

4) So far as Application (Lodging) No.32011 of 2024 filed by Respondent No.7 is concerned, Petitioner would oppose the same submitting that the prayer of Respondent No.7 for rejection of the Petition on account of non-compliance of provisions of Section 82 of the Act would automatically be rendered infructuous once Petitioner's Application (Lodging) No.27786 of 2024 is allowed. That the said application is frivolous and vexatious. He would submit that this Court has already issued notices to the proposed Respondents in Application (Lodging) No.27786 of 2024 and that therefore the said Respondents are deemed to have been impleaded in the Election Petition. That Respondent No.7 has not challenged order dated 18 September 2024, which has attained finality. He would accordingly pray for dismissal of the Application (Lodging) No.32011 of 2024.

5) *Per contra*, Mr. Nair, the learned counsel appearing for Respondent No.7 would submit that Election Petition is liable to be dismissed on account of non-impleadment of all the contesting candidates to the Petition, which is a mandatory requirement under Section 82 of the Act. He would invite my attention to the prayers in the Election Petition to demonstrate that the Petitioner has sought a declaration that he has been duly elected, in which

1 (2019) 3 SCC 224

case, Petitioner must implead all the contesting candidates. He would submit that instead of impleading all the contesting candidates to the Petition, the Petitioner has unnecessarily impleaded Respondent Nos.1 to 6, who cannot be impleaded in an Election Petition. So far as Application (Lodging) No.27786 of 2024 is concerned, Mr. Nair would submit that said Application is not for impleadment of contesting candidates to the Election Petition. That the prayer made in the said Application is only for issuance of summons to the proposed Respondents and that there is no prayer for their impleadment. He would further submit that even otherwise, it is impermissible for a Court to permit impleadment of any Respondent by exercising power under Order VI Rule 17 of the Code. In support, he would rely upon judgment of this Court in ***Comrade Kallappa Laxman Malabade V/s. Prakash Kallappa Awade***[2]. He would submit that a fundamental defect in an Election Petition of non-compliance with provisions of Section 82 of the Act cannot be cured and the Election Petition must be dismissed without granting opportunity to the Petitioner to implead all the contesting candidates. Without prejudice, Mr. Nair would submit that even if Application (Lodging) No.27786 of 2024 is to be considered as the one filed for impleadment of proposed Respondents, the same is clearly filed beyond the period of 45 days from the date of election of Respondent No.7. He would submit that result of the election was declared on 4 June 2024 whereas Application (Lodging) No.27786 of 2024 is filed on 3 September 2024. That the other contesting candidates have a right under provisions of Section 97 of the Act to file Recrimination Petition

2. AIR 1996 BOMBAY 5

seeking declaration of their own election in a validly filed Election Petition. That therefore their impleadment also needs to be done within a statutory period of 45 days provided under Section 81 of the Act.

6) Mr. Nair would submit that Election Petition is not a fundamental or common law remedy and that therefore, pleadings have to be with exactitude and in support he would rely upon judgment of this Court in ***Dhartipakar Madan Lal Agarwal V/s. Shri Rajiv Gandhi***[3]**.** In support of his contention that Respondent Nos.1 to 6 are not necessary parties and that provisions of the Code cannot be invoked for deciding the issue of joinder of appropriate parties, he would rely upon judgment of ***B. Sundara Rami Reddy V/s. Election Commission of India and Others***[4]. He would also rely upon judgment of the Apex Court in ***Patangrao Kadam V/s. Prithviraj Sayajirao Yadav Deshmukh & Ors.***[5] in support of his contention that provisions of Section 82 of the Act are mandatory in relation to the Respondents mentioned therein. Mr. Nair would pray for rejection of Application (Lodging) No.27786 of 2024 and for dismissal of the Election Petition.

7) I have also heard Mr. Takke, the learned AGP appearing for Respondent Nos.1, 2 and 5, Ms Vyas, the learned counsel appearing for Respondent No.4 and Mr. Deshmukh, the learned counsel appearing for Respondent No.6, who do not have much role to play

3. AIR 1987 SC 1577
4. 1991 Supp(2) SCC 624.
5. (2001) 3 SCC 594

in decision of both the Applications. Mr. Patil, the learned counsel appearing for proposed Respondent No.13 has also not canvassed any submissions in relation to both the Applications.

8) Rival contentions of the parties now fall for my consideration.

9) Petitioner has challenged election of Respondent No.7 from 28, Mumbai North-East Parliament Constituency, result of which was declared on 4 June 2024. In addition to challenging election of Respondent No.7, Petitioner has also sought a declaration that he is elected from the said constituency. Before proceeding ahead with the relevant provisions of the Act, it would be necessary to take stock of the events leading to election of Respondent No.7 from 28, Mumbai North-East Parliament Constituency.

10) A Notification was issued by the Election Commission of India on 26 April 2024 declaring the elections of various Parliamentary Constituencies. As per the said Notification, the last date for filling up nomination was 3 May 2024 and scrutiny in respect of the nominations was to be conducted by 4 May 2024. Candidates filing nominations were permitted to withdraw their nominations by 6 May 2024. After withdrawal of nominations, list of contesting candidates was declared by the Returning Officer on 6 May 2024 which included both Petitioner as well as Respondent No.7. The voting was conducted on 20 May 2024 and counting of votes and result of the election was declared on 4 June 2024. While Petitioner contested the election from amongst 'other candidates' (not forming

part of recognised National and State political parties or as candidate of registered political parties), Respondent No.7 contested the election as a candidate of recognised State and National political party being *Shivsena* (Uddhav Bal Thakare). After counting of votes, Respondent No.7 was declared elected from 28-Mumbai North-East Parliamentary Constituency. The Petitioner has challenged the election of Respondent No.7 and sought his own election from 28- Mumbai North-East Parliament Constituency. In his Election Petition, Petitioner has sought following prayers-

(a) This Hon'ble Court may call the Record & Proceeding of Documents of Election. To call for nomination form and supporting affidavit submitted by the candidates before the Returning Officer, 28 Mumbai North East Parliamentary Constituency and after verifying declare the Petitioner elected as the petitioner correctly filed nomination form.

(b) That this Hon'ble Court be pleased to hold and declare that the Election of Respondent No7 to the House of People from the 28 Mumbai North-East Parliamentary Constituency for the year 2024, the result of which is declared on the 04/06/2024, is ex-facie illegal null and void and is liable to be cancelled and set aside.

(c) That this Hon'ble Court be pleased to quash and set aside the Election of Respondent No.7 to the Election of the House of People from 28, Mumbai North-East Parliamentary Constituency of year 2024.

(d) That this Hon'ble Court be pleased to declare that the Election of Respondent No.7 to the election of the House of People from the said Constituency for the year 2024 is in violation of the provisions of the Constitution of India and the Representation of People Act, 1951 and rules made thereunder and the Code of Conduct of Election Rules, 1961.

(e) That pending the hearing and final disposal of the present Petition, Respondent No.7 may be prevented by an Order and Injunction of this Honourable Court from attending the Maharashtra Parliamentary Constituency proceeding and/or

taking any part therein.

(f) Any other and further Order as this Hon'ble Court feels deem fit and proper be passed in the interest of justice.

11) Thus, in addition to challenging the election of Respondent No.7, Petitioner has sought a further declaration that he is duly elected. Section 82 of the Act deals with 'Parties to Petition' and provides thus:-

> 82. Parties to the petition.- 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 candidates; and
>
> (b) any other candidate against whom allegations of any corrupt practice are made in the petition.

12) Thus, when a Petitioner, in addition to claiming declaration that election of the returned candidate 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 must be joined as Respondents to the Petition. It is only when the Petitioner does not seek a declaration of his own election, only returned candidate can be impleaded to the Election Petition. As observed above, Petitioner has clearly sought declaration of his own election and therefore it was incumbent for him to join all the contesting candidates as Respondents to his Petition. There is no serious dispute to the position that provisions of Section 82 of the

Act are mandatory in nature. The Petitioner himself admits the position that in absence of impleadment of all the contesting candidates, the Election Petition cannot be decided and has accordingly filed Application (Lodging) No.27786 of 2024 for the issuance of summons to the 18 contesting candidates. He is required to do so because he has impleaded only the returned candidate (Respondent No.7) in addition to the other official Respondents to the Election Petition. As rightly contended by Mr. Nair, Respondent Nos. 1 to 6 are not necessary parties to Election Petition. In ***B. Sundara Rami Reddy*** (supra) the Apex Court has held that Election Commission is not to be impleaded as Respondent and has held in paragraph 4 as under:

> 4. Learned counsel for the petitioner urged that even if the Election Commission may not be a necessary party, it was a proper party since its orders have been challenged in the election petition. He further urged that since Civil Procedure Code, 1908 is applicable to trial of an election petition the concept of proper party is applicable to the trial of election petition. We find no merit in the contention. Section 87 of the Act lays down that subject to the provisions of the Act and any rules made there- under, every election petition shall be tried by the High Court, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Provisions of the Civil Procedure Code have thus been made applicable to the trial of an election petition to a limited extent as would appear from the expression "subject to the provisions of this Act". Since Section 82 designates the persons who are to be joined as respondents to the petition, provisions of the Civil Procedure Code, 1908 relating to the joinder of parties stand excluded. Under the Code even if a party is not necessary party, he is required to be joined as a party to a suit or proceedings if such person is a proper party, but 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 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. b Bekkam Narasimha Reddi', this Court while discussing the application of Order I Rule 10 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 mentioned in Section 82 and Section 86(4) and no others. However desirable and expedient it may appear to be, none else shall be joined as respondents.**
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> *(emphasis added)*

13) Following the law laid down by the Apex Court in ***B. Sundara Rami Reddy*** (supra) Respondent Nos.1 to 6 cannot be impleaded to the Election Petition. Petitioner has failed to implead the other 18 contesting candidates to the Election Petition. The purpose behind impleadment of other contesting candidates to Election Petition, where declaration is sought by the Petitioner of his own election, is on account of their right to seek a declaration of their own election instead of the Petitioner. Under provisions of Section 97 of the Act, in a Petition involving a declaration of Petitioner as being elected, the returned candidate as well as the other contesting candidates are entitled to give evidence to prove that they ought to be declared as returned candidates. Section 97 of the Act provides thus:

> **97. Recrimination when seat claimed.-**(1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to

> prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:
>
> Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of [commencement of the trial], given notice to [the High Court] of his Intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.
>
> (2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner.

14) Thus, the scheme of the Act is such that if Petitioner merely challenges election of the returned candidate (without seeking his own election), it is not necessary to join other contesting candidates to the Election Petition. However, when the Petitioner, in addition to challenging election of returned candidates, seeks declaration of his own election, and in the event of the Court declaring election of the returned candidate being void, the other contesting candidates are required to be given an opportunity to seek their own election instead of election of the Petitioner. This is the reason why an Election Petition cannot be maintained seeking declaration of Petitioner of being elected in absence of all contesting candidates as party Respondent to such Petition.

15) Having held that all the 20 candidates contesting the election in question are necessary parties, in whose absence Election Petition filed by the Petitioner cannot be maintained, I now proceed to decide whether the Petitioner has sought impleadment of the

remaining 18 contesting candidates and if yes, whether such impleadment can be granted. The prayers made by the Petitioner in Application (Lodging) No.27786 of 2024 read thus:-

a) The above proposed Respondents be issued summons.

b) Any other and further orders be passed.

16) Thus, there is no specific prayer for impleadment of all the 18 proposed Respondents in the Election Petition. The prayer is only for issuance of summons to them. Thus, Petitioner has not sought a prayer for impleadment of all the 18 contesting candidates as party Respondents to the Election Petition. Thus, the position that stands is that the Petitioner neither impleaded 18 contesting candidates as party Respondents to the Election Petition nor has filed any application for their impleadment. Thus, the Election Petition filed by the Petitioner does not comply with the mandatory requirement under Section 82 of the Act and on this ground alone, the Election Petition is liable to be dismissed.

17) The Petitioner in-person has submitted that Application (Lodging) No.27786 of 2024 is indeed for impleadment of the 18 contesting candidates, which is a reason why Petitioner has sought issuance of summons to them. I am unable to agree. The question of issuance of summons to the 18 contesting candidates in the Election Petition would arise only in the event of them being impleaded as party Respondents to the Election Petition. Since there is no prayer in the Application for their impleadment as

parties to the Election Petition, the prayer for issuance of summons to them cannot be entertained.

18) Petitioner in-person has strenuously relied upon order passed by this Court on 18 September 2024 in Application (Lodging) No.27786 of 2024 in support of his contention that the said 18 contesting candidates are deemed to have been impleaded to the Election Petition. Order dated 18 September 2024 passed by this Court reads thus:

> 1) Mr. Takke the learned AGP appears on behalf of the Respondent Nos.1, 2 and 5, Mr. Singh the learned counsel appears for Respondent No.4 and Mr. Utagikar holding for Mr. Deshmukh appears for Respondent No.6 and Mr. Kulkarni appears on behalf of Respondent No.7. It appears that the service report in respect of Respondent No.3 is awaited.
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> 2) Written statement be filed by the Respondents before the next date of hearing.
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> 3) The Petitioner has filed Interim Application (L) No. 27786 OF 2024 for impleadment of 18 persons who had also contested the election.
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> 4) Issue notice to the proposed Respondents in Interim Application (L) No. 27786 of 2024, returnable on 23 October 2024.

19) Thus, what is done by this Court by order dated 18 September 2024 is mere issuance of notices in Application (Lodging) No.27786 of 2024 for the purpose of decision of the said Application. Mere issuance of notices in Application (Lodging) No.27786 of 2024 to the proposed Respondents cannot and does not mean that said 18 contesting candidates are impleaded by this Court as Respondents to the Election Petition. Therefore, reliance by the Petitioner in-

person on order dated 18 September 2024 is clearly misplaced.

20) Moving further, even if the prayer made by the Petitioner in Application (Lodging) No.27786 of 2024 was to be momentarily ignored and the said Application was to be construed as an Application for impleadment of the 18 contesting candidates to the Election Petition, in my view the Application still deserves to be dismissed. The requirement of Section 82 of impleading of the 18 candidates where declaration is sought by Petitioner of his own election is mandatory in nature. If the Court notices that all the contesting candidates are not impleaded to the Petition, the Court is left with no option but to dismiss the Election Petition on that count alone. Under Section 86 of the Act, the Court has no option but to dismiss an Election Petition which does not comply with the provisions of Section 82 of the Act. Section 86 of the Act provides thus:-

> **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.
>
> (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)Where 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.
>
> Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.
>
> (5)The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt 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, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.
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> (6)The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.
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> (7)Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.
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> *(emphasis added)*

21) The word used in Section 86(1) is ‘shall’, leaving no option for the Court but to dismiss the Election Petition which is non-compliant with provisions of Section 82. The fundamental defect in the Election Petition of non-impleadment of all contesting candidates cannot be sought to be cured by filing an Application for impleadment of such contesting candidates. In ***Comrade Kallappa Laxman Malabade*** *(*supra) Single Judge of this Court was confronted with somewhat similar situation. In that case, Petitioner had not only challenged election of the returned candidate but had also sought declaration of his own election. At

the stage of admission of the Petition, this Court noticed defect in the Petition where all contesting candidates were not impleaded to the Petition. Upon noticing this defect, Petitioner sought to delete prayer for declaration of his own election. The issue before this Court was whether Petitioner could be permitted to delete prayer for declaration of his own election with a view to save the Petition from being rejected under Sub Section 1 of Section 86 of the Act. This Court held in paragraphs 2, 4 to 10 as under:-

> 2. Prima facie, at the admission stage of the petition, it appeared that by virtue of Section 86 of the Representation of the People Act, 1951 (for short "the Act"), the Court was obliged to dismiss the petition for Section 82 of the Act required the petitioner to join to this petition as parties, all contesting candidates other than the petitioners, in view of the fact that the petitioner, in addition to claiming a declaration that the election of the returned candidate is void, has also claimed a further declaration that he be declared as duly elected. That being the clear position, the petitioner through his learned counsel made a request that he be permitted to delete the prayer contained in paragraph 33(b) of the petition by which the petitioner also prayed for a declaration that he is duly elected.
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> xxx
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> 4. The aforesaid holding of the Supreme Court leaves no room for doubt that the provisions of the Code of Civil Procedure could not be resorted to in order to save a petition which otherwise is liable to be dismissed for non-joinder of the parties, which Section 82 of the Act says must be joined.
>
> 5. In the present case, as indicated hereinabove, basides the petitioner and the respondent there were 5 others in the fray. There were in all 7 contesting candidates. In view of the prayer in para 33(b) of the petition, Section 82 of the Act mandates that, all of them should have been joined in the petition, at the time when it was instituted, and by virtue of Section 86 of the Act, the Court has no option but to dismiss a petition which does not comply with the requirements of Section 82 of the Act. If the provisions of Code of Civil Procedure, viz., Order 6, Rule 17 or even order 23, Rule 1 are permitted to be resorted to with a view to save the petition from

being dismissed, which otherwise is liable to be dismissed, that would be using the provisions of the Code of Civil Procedure solely with a view to defeating the provisions of the Act. In other words, such an exercise would be exercise in fraud on the provisions of the Act. I do not think detailed discussion is needed in the order to say that none of the provisions of the Code of Civil Procedure could be invoked with a view to defeating the provisions of the Act.

6. Mr. Bobde further buttressed his argument by relying upon a decision in the case of K. Kamaraja Nadar v. Kunju Theevar, . In paragraph 33 of that report, this is what their Lordships have observed:

> "As regards the amendment of a petition by deleting the averments and the prayer regarding the declaration that either the petitioner or any other candidate has been duly elected, so as to cure the defect of non-joinder of the necessary parties as respondents, we may only refer to our judgment about to be delivered in Mallappa Basappa v. Basavraj Ayyappa, Civil Appeal No. 76 of 1958 : where the question is discussed at considerable length. Suffice it to say here that the Election Tribunal has no power to grant such an amendment be it by way of withdrawal or abandonment of a part of the claim or otherwise, once an Election Petition has been presented to the Election Commission Claiming such further declaration.

7. This decision makes it clear that the Court has to examine the question of applicability of Section 86 of the Act at the time Election Petition is presented to the Court, and if the Election Petition presented to the Court, is liable to be dismissed on account of non-compliance of Section 82 of the Act, no amount of subsequent exercise either by resorting to provisions of the Code of Civil Procedure or otherwise can save the petition from being dismissed. This case of K. Kamaraja Nadar v. Kunju Thevar, (supra) puts beyond the pale of doubt the position that the petitioner cannot be allowed to delete any prayer in the petition with a view to avoid the consequences following from Section 86 of the Act. In that case, their Lordships have made a reference to the decision in the case of Mallappa Basappa v. Basavraj Ayyappa, Civil Appeal No. 76 of 1958, . That judgment also holds that there is no power in the Election Commission to allow a petitioner to withdraw or abandon a part of his claim either by having resort to the provisions of Order 23, Rule 1 of t7.he Code of Civil Procedure or otherwise.

8. The aforesaid three judgments relied upon by Mr. Bobde clearly posit that the petitioner cannot be permitted to save his petition by

withdrawing or abandoning the relief about declaration that he is duly elected.

9. Mr. Kudle, the learned counsel for the petitioner, in his turn, relied upon the following judgments;

(i) Jagan Nath v. Jaswant Singh, reported in AIR 1954 SC 210;

(ii) Amin Lal v. Hunna Mal, reported in AIR 1965 SC 1243;

(iii) Sethi Roop Lal v. Malti thaper (Mrs.), reported in (1994) 2 SCC 579; and

(iv) F. A. Sapa v. Singora, reported in (1991) 3 SCC 375: (AIR 1991 SC 1557).

After having gone through those judgments, I do not think any of them lay down a proposition of law, even remotely contrary to what emerges from three judgments relied upon by Mr. Bobde to which I have made a reference hereinabove.

10. Having heard the counsel on both sides at some length, I think the request made on behalf of the petitioner that he be permitted to withdraw or abandon the relief contained in paragraph 33(b) of the Election Petition cannot be granted for the Court has no power to grant such a request in view of the facts of the case and the law applicable. That request for deletion of the prayer contained in paragraph 33(b) of the Petition is rejected.

22) Following the law expounded by this Court in ***Kallappa Laxman Malabade*** (supra), it is impermissible for a Court to permit Petitioner to have recourse to provisions of the Code particularly of Order VI Rule 17 for amendment of the Petition for avoiding consequences flowing from Section 86(1) of the Act. If Petitioner cannot be permitted to withdraw or abandon part of his claim by having recourse to the provisions of Order XXIII Rule 1 of the Code, I do not see any reason why Petitioner in the present Petition can be permitted to have recourse to the provisions of Order VI Rule 17 of the Code by amending the Petition to implead 18 contesting candidates to the Petition for avoiding consequences

under Section 86(1) of the Act.

23) Thus, it would be impermissible for this Court to allow Petitioner to amend Election Petition by impleading 18 contesting candidates for the purpose of avoiding the consequences of dismissal of the Election Petition under Sub Section (1) of Section 86 of the Act. This Court could have dismissed the Election Petition on the first date of hearing without even issuing summons to the Respondents upon noticing non-impleadment of all elected candidates. Therefore, what could and ought to have been done by this Court on first date of hearing at the time of entertaining of Petition for issuance of summons, cannot be avoided by subsequent act of filing an Application for impleadment of contesting candidates. The fundamental defect in the Election Petition due to non-compliance of mandatory provisions of Section 82 of the Act cannot be cured subsequently by filing Application for impleadment of all contesting candidates.

24) There is yet another reason in the present case why Petitioner's Application (Lodging No) 27786 of 2024 cannot be allowed. Under provisions of Section 81 of the Act, an Election Petition must be filed within a period of 45 days from the date of election of the returned candidate. Section 81 of the Act provides thus:-

> **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 the 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.
>
> (2)***
>
> (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.

25) The statutory scheme under Sections 81 and 82 of the Act is such that a validly filed Election Petition conforming to the provisions of Section 82 of the Act must be presented within a period of 45 days. When Petitioner seeks declaration of his own election, the affected parties are not just the returned candidate, but also the contesting candidates. As observed above, every contesting candidate has right under Section 97 of the Act to file a recriminating petition for seeking a declaration that he himself be declared as elected instead of Petitioner. In that view of the matter, Election Petition *qua* all contesting candidates must also be filed within a period of 45 days of the election of the returned candidates. In the present case Respondent No.7 is declared as elected on 4 June 2024 whereas Application (Lodging) No.27786 of 2024 is filed on 5 September 2024. Thus, even if Application (Lodging) No.27786 of 2024 was to be momentarily treated as an application for impleadment of 18 contested candidates, the same is filed beyond the period of 45 days from the date of election of Respondent No.7. This is yet another ground why Petitioner cannot be permitted to implead 18 contesting candidates to the present

Election Petition.

26) Useful reference in this regard can also be made in ***Dhartipakar Madan Lal Agarwal*** (supra) in which Apex Court has held that it is impermissible to amend the Election Petition by inserting new grounds beyond limitation specified under Section 81 of Act. The Apex Court held in paragraph 31 as under:

> 31. The above scanning of the election petition would show that the appellant failed to plead complete details of corrupt practice which could constitute a cause of action as contemplated by Section 100 of the Act and he further failed to give the material facts and other details of the alleged corrupt practices. The allegations relating to corrupt practice, even if assumed to be true as stated in the var- ious paragraphs of the election petition do not constitute any corrupt practice. The petition was drafted in a highly vague and general manner. Various paragraphs of the petition presented disjointed averments and it is difficult to make out as to what actually the petitioner intended to plead. At the conclusion of hearing of the appeal before us appellant made applications for amending the election petition, to remove the defects pointed out by the High Court and to render the allegations of corrupt practice in accordance with the provisions of Section 83 read with Section 123 of the Act. Having given our anxious consideration to the amendment applications, we are of the opinion that these applications cannot be allowed at this stage. It must be borne in mind that the election petition was presented to the Registrar of the High Court, at Lucknow Bench on the last day of the limitation prescribed for filing the election petition. The appellant could not raise any ground of challenge after the expiry of limitation. Order VI Rule 17 no doubt permits amendment of an election petition but the same is subject to the provisions of the Act. Section 81 prescribes a period of 45 days from the date of the election for presenting election petition calling in question the election of a returned candidate. After the expiry of that period no election petition is maintainable and the High Court or this Court has no jurisdiction to extend the period of limitation. An order of amendment permitting a new ground to be raised beyond the time specified in Section 81 would amount to contravention of those provisions. and is beyond the ambit of Section 87 of the Act. It necessarily follow that a new ground cannot be raised or inserted in an election petition by way of amendment after the expiry of the

> period of limitation. The amendments claimed by the-appellant are not in the nature of supplying particulars instead those seek to raise new grounds of challenge. Various paragraphs of the election petition which are sought to be amended, do not disclose any cause of action, therefore it is not permissible to allow their amendment after expiry of the period of limitation. Amendment applications are accordingly rejected.

27) Following the law enunciated by the Apex Court in ***Dhartipakar Madan Lal Agarwal*** (supra) Petitioner cannot be permitted to implead contesting candidates by filing an application after expiry of period of 45 days prescribed under Section 81 of the Act.

28) Mr. Nair has rightly relied upon judgment of the Apex Court in ***Azar Hussain V/s. Rajiv Gandhi***[6] in which it is held that omission of a single material fact would lead to an incomplete cause of action. Thus, even a single material defect in the Election Petition must lead to its dismissal. As rightly contended by Mr. Nair, filing Election Petition is neither fundamental right nor a common law right thereby requiring strict compliance with the pleadings as provided for under the Act and in this regard his reliance on judgment of this Court in ***Dhartipakar Madan Lal Agarwal*** (supra) is apposite.

29) Reliance by Petitioner in-person on Constitution Bench judgment in ***Public Interest Foundation*** (supra) does not assist his case. The judgment deals with the issue of criminalisation of politics and need for electoral reforms and has absolutely no application for deciding both the Applications filed by Petitioner

6. AIR 1986 SC 1253

and Respondent No.7.

30) Conspectus of the above discussion is that Application (Lodging) No.27786 of 2024 filed by Petitioner is not for impleadment of 18 contesting candidates as party Respondents to the Election Petition. Therefore, Petitioner has neither impleaded all contesting candidates to the Election Petition nor has filed any application for seeking their impleadment. Even if Application (Lodging) No. 27786 of 2024 was to be momentarily considered as Application for impleadment of 18 contesting candidates to the Election Petition, still the Petitioner cannot be permitted to implead them as party Respondents to the Election Petition for the purpose of avoiding consequences of dismissal under Section 86(1) of the Act. There is thus, non-compliance of mandatory provisions of Section 82 of the Act and therefore this Court is left with no option but to dismiss the Election Petition as per Sub Section (1) of Section 86 of the Act.

31) I accordingly, proceed to pass the following order:

(i) Application (Lodging) No.27786 of 2024 filed by the Petitioner is rejected.

(ii) Application (Lodging) No.32011 of 2024 filed by Respondent No.7 is partly allowed to the extent of rejection of the Election Petition for non-compliance with the provisions under Section 82 of the Act.

(iii) Election Petition is accordingly dismissed.

32. The Registry shall intimate the decision in the Election Petition as provided for in Section 103 of the Act and Rule 19 of the Rules framed by the High Court of Judicature at Bombay in regard to Election Petition under the Representation of People's Act, 1951.

[SANDEEP V. MARNE, J.]