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

+ EL.PET. 1/2019

SATISH KUMAR SANSEI

..... Petitioner

Through: Mr. Ramesh Kumar, Ms. Nishtha
Sharma, Mr. Alkesh Tanwar,
Advocates.

versus

ELECTION COMMISSION OF INDIA & ANR Respondents

Through: Mr. Sidhant Kumar, Ms. Vidhi,
Advocates for R-1.

Mr. Rajeev Sharma, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 13.01.2023

I.A. 9546/2019 & I.A. 10088/2019

1. These two applications have been filed by the respondent Nos. 1 and 2- Election Commission of India ["ECI"] and the Returning Officer of the North West Delhi Parliamentary Constituency-05, for deletion of their names from the array of parties.
2. Learned counsel for the said respondents submit that, in an election petition, neither the ECI nor the returning officer of a constituency are necessary and proper parties. In support of their contention, they rely upon the decisions of the Supreme Court in *Jyoti Basu and Ors. vs. Debi Ghosal & Ors.* (1982) 1 SCC 691 and *B. Sundara Rami Reddy vs. Election Commission of India and others.* 1991 Supp (2) SCC 624.
3. These judgments of the Supreme Court have also been considered



by this Court in *Sanjay Gupta & Anr. vs. Election Commission of India & Ors.* (2019) OnLine Del 9787, and *Pratap Chandra vs. Manish Sisodia & Ors.* [order dated 24.03.2021, in Election Petition No. 1/2020].

4. In *B. Sundara Reddy* (supra), the Supreme Court has *inter alia* held as follows:-

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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.”

5. In *Sanjay Gupta* (supra) and *Pratap Chandra* (supra), this Court deleted the ECI and the returning officer from the array of parties following the judgement of the Supreme Court in *B. Sundara Reddy* (supra).

6. Mr. Ramesh Kumar, learned counsel for the plaintiff, submits that the plaintiff’s cause of action in the present petition arises out of alleged improper rejection of his nomination, and the both the respondents would, therefore, be necessary parties to these proceedings.

7. I do not find any such distinction made in the aforesaid authorities. In fact, Mr. Sidhant Kumar, learned counsel for the ECI, has rightly pointed out that, the election petition in *Sanjay Gupta* (supra), proceeded on a similar cause of action. Mr. Rakesh Kumar has not cited any authority to the contrary.



8. Following the aforesaid judgments of the Supreme Court and this Court, the applications are, therefore, allowed, and the respondent Nos. 1 and 2 are deleted from the array of parties. Amended memo of parties be filed within one week from today.

9. The applications stand disposed of.

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1. List the petition before the Joint Registrar on the date already fixed i.e., 14.04.2023, for completion of service and pleadings.
2. List before the Court on 17.08.2023.

PRATEEK JALAN, J

JANUARY 13, 2023

'Bhupi'/'