

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/ELECTION PETITION NO. 12 of 2023****With****R/ELECTION APPLICATION NO. 24 of 2023****In****R/ELECTION PETITION NO. 12 of 2023**

=====

CHANDRAKANTBHAI HIRABHAI MACHHAR
Versus
NIMISHABEN MANHARSINH SUTHAR & ORS.

=====

Appearance:

MS JAYINI THAKORE FOR MR DIPAN DESAI(2481) for the Petitioner(s) No.
1MR NAMAN K. BRAHMBHATT FOR MR C B UPADHYAYA(3508) for the
Respondent(s) No. 1

MR. SAHIL M SHAH(6318) for the Respondent(s) No. 4,5

NOTICE SERVED for the Respondent(s) No. 2,3

=====

CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 18/10/2024****ORAL ORDER****Order in Election Application:**

1. By this application, the applicants i.e. Election Commission of India and Election Officer, have prayed to delete their names from the array of the captioned election petition.

2. Mr Sahil M. Shah, learned advocate appearing for the applicants in support of the application has submitted that the applicants are neither necessary nor a proper party and they could not have been added or substituted as party to the captioned proceedings. It is submitted that it is well recognized principle of law that Election Commission of India cannot be joined as respondent to election petition. Consequently, the officers appointed by the Election Commission cannot be joined. It is also submitted that the

provisions of Section 82, Section 86(4) of the Representation of Peoples Act, 1951 (hereinafter referred to as “the Act of 1951”) have been considered by the Apex Court and it has been held that only those persons who are referred to in the said provisions, namely, Section 82 and Section 86(4) of the Act of 1951, may be joined as a respondent to the election petition and no others.

3. Reliance is placed on the orders passed by this Court in the cases of *The Election Commission of India & Others vs. Gendalbai Motibhai Damor & Others*; *The Election Commission of India vs. Rahul Dilipbhai Patel and Election Commission of India vs. Joshi Kamleshkumar Ranchhodhai*.

4. Ms Jayini Thakore, learned advocate for Mr Dipan Desai, learned advocate for original petitioner and opponent no.1 has fairly stated before this Court that considering the provisions of the Act and the applicable judgments, the applicants may be deleted from the array of the captioned proceedings. So is the stand taken by Mr Naman K. Brahmbhatt, learned advocate for Mr C. B. Upadhyaya, learned advocate for opponent no.2.

5. In view of the above, considering the settled position of law as pronounced by the Apex Court in the case of *Jyoti Basu and others vs. Debi Ghosal and others* reported in AIR 1982 SC 983, *B. Sundara Rama Reddy vs. Election Commission of India and others*, reported in 1991 Suppl (2) SCC 624 so also *Michael B. Fernandes vs. CK Jaffer Shariff and others*, reported in AIR 2002 SC 1014, so also the provisions of Section 82 of the Act of 1951 and having regard to the submissions made, the captioned application deserves to be allowed and is accordingly allowed.

6. The applicants are directed to be deleted from the array of the

respondents in the captioned election petition. Necessary amendment to be carried out within a period of two weeks from today. No order as to costs.

Order in Election Petition:

List the matter on 13.12.2024.

RAVI P. PATEL

(SANGEETA K. VISHEN,J)