

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/ELECTION PETITION NO. 7 of 2023
With
R/ELECTION APPLICATION NO. 5 of 2023
In
R/ELECTION PETITION NO. 7 of 2023
With
R/ELECTION APPLICATION NO. 17 of 2023
In
R/ELECTION PETITION NO. 7 of 2023

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RAJENBHAI SHANKARBHAI SOLANKI (RAJU SOLANKI)

Versus

JITENDRABHAI SAVAJIBHAI VAGHANI (JITU VAGHANI)

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Appearance:

MR PUNIT B JUNEJA(3972) for the Petitioner(s) No. 1

MR. SAHIL M SHAH(6318) for the Respondent(s) No. 2,3,4

MR. VISHRUT R JANI(6696) for the Respondent(s) No. 5

SHIVANG P JANI(8285) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Date : 10/11/2023

ORAL ORDER

Order in Election Application no.17 of 2023 :-

1. **Rule.** Learned advocates for the respective respondents waive notice of Rule. Considering the issue involved in the matter and with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

2. By way of present application, the respondent nos.2 to 4 in Election Petition no.7 of 2023 has prayed to delete the

names of Chief Electoral Officer, District Election Officer and Returning Officer/Deputy Commissioner Admin, Bhavnagar from the Election Petition no.7 of 2023 for the reasons, which are mentioned by the applicant in the application.

3. Heard the learned advocates for the respective parties.

3.1 The learned advocate for the applicants submitted that challenging the election to the Gujarat Legislative Assembly 105, Bhavnagar West, Election Petition No. 7 of 2023 is filed. The present applicants are impleaded amongst others as respondents in the said election petition. It is further submitted that under Section 82 of the Representation of the People Act, 1951, a petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. The the contest of the election petition is designed to be confined to the candidates at the election and all others are excluded. In support of his arguments, the learned advocate has relied upon a decision in the case of Michael B. Fernandes Vs. C. K. Jaffer Sharief and Others, (2002) 3 SCC 521 and a decision of the Punjab and Haryana High Court in the case of Iqbal Singh Vs. Gurdas Singh Badal and Others, (1972) 1 ILR 554 and in the case of Jyoti Basu & Ors. Vs. Debi Ghosal & Ors., (1982) 1 SCC 691. It is further submitted that to delete the present

applicants in the election petition as the respondents, the applicants cannot be made parties to the election petition under the Civil Procedure Code.

4. From the other side, the learned advocate Mr.Punit Juneja for the respondent No. 1 has submitted that the applicants are the necessary parties in the election petition. The presence of the applicants are required in the election petition and, therefore, they cannot be deleted as party respondents as prayed for. In a similar facts of the case, this Court has passed an order in Election Application No.41 of 2018 in Election Petition No.3 of 2018 and hence, it was requested by the learned advocate for the respondent No.1 to dismiss the application.

5. Learned advocate for the respondent No.2 has submitted that the question of deleting the parties as prayed for by the applicants is between the respondent No.1 and the applicants. The observations made by this Court in the aforesaid Election Application No.41 of 2018 in Election Petition No.3 of 2018 would not be applicable to the facts of this case and, therefore, he has objection to apply the order in the present proceedings. He has further requested to pass necessary orders.

6. Having considered the facts of the case and the submissions made by the learned advocates for the respective parties and the record of Election Petition No.7 of 2023, it appears that the present applicants are the respondents impleaded amongst other in the said

election petition. The applicant No.1 is the Chief Electoral Officer, applicant No.2 is the District Election Officer and applicant no.3 is Returning Officer/Deputy Commissioner Admin, Bhavnagar. If we refer Section 82 of the Representation of the People Act, 1950, it reads as under:

“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.”

6.1 The Apex Court in the case of Jyoti Basu & Ors.(supra) has observed as under:

“9. Section 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector of the constituency; it may be none else. Sec. 82 is

headed "Parties to the petition" and clause (a) provides that the petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of S. 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Section 86 (4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with the question as to who may be joined as respondents. It is significant that while cl. (b) of S. 82 obliges the petitioner to join as a respondent any candidate against whom allegations of any corrupt practice are made in the petition, it does not oblige the petitioner to join as a respondent any other person against whom allegations of any corrupt practice are made. It is equally significant that while any candidate not already a respondent may seek and, if he so seeks, is entitled to be joined as a respondent under S. 86 (4), any other person cannot, under that provision seek to be joined as a respondent, even if, allegations of any corrupt practice are made against him. It is clear that

the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of 'proper parties' enter the picture at all? We think that the concept of 'proper parties' 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 S. 82 and S. 86 (4) and no others. However, desirable and it may appear to be, none else shall be joined as respondents.

10. It is said, the Civil Procedure Code applies to the trial of election petitions and so proper parties whose presence may be necessary in order to enable the Court 'effectually and completely to adjudicate upon and settle all questions involved' may be joined as respondents to the petitions. The question is not whether the Civil Procedure Code applies because it undoubtedly does, but only 'as far as may be and subject to the provisions of the Representation of the People Act, 1951 and the rules made thereunder. Section 87 (1) expressly says so. The question is whether the provisions of the Civil Procedure Code can be invoked to permit that which the Representation of the

People Act does not. Quite obviously the provisions of the Code cannot be so invoked.

11. xxx xxx xxx

12. xxx xxx xxx

13. 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.

6.2 From the reading of the decisions as relied upon by the applicant except the candidates to election, no one else can be joined as party respondents. Therefore, it can be said that an election petition, which does not make the persons enumerated in Section 82 of the Act, would be a party respondent and therefore, mere allegation in the petition filed by the respondent No.1 would not suffice to continue him as a party respondents in the present proceedings as Section 82 is very clear that they cannot be joined as parties in the petition. In Election Application No.13 of 2018 in Election Petition No.3 of 2018, this Court allowed the application in terms of Paragraph No. 8(B) of the application with certain observations by order dated

19.12.2018. As the provision itself is very clear to be joined as a party in election petition by the petitioner, this Court is of the clear view that the present applicants, as they are joined as respondents in Election Petition No.7 of 2023, are not necessary parties and, therefore, they would be deleted from the proceedings.

7. This application is accordingly ***allowed. Rule is made absolute to the aforesaid extent.***

Order in Election Petition no.7 of 2023 and Election Application no.5 of 2023.

Learned advocate for the applicant in Election Application no.5 of 2023 to file rejoinder before the next date of hearing. Copy of the rejoinder be provided to the other side.

Stand over to ***8th December, 2023.***

(RAJENDRA M. SAREEN, J.)

AMAR RATHOD...