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मध्यप्रदेश राजपत्र

(असाधारण)
प्राधिकार से प्रकाशित

क्रमांक 156]

भोपाल, मंगलवार, दिनांक 5 अप्रैल 2022—चैत्र 15, शक 1944

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 5 अप्रैल 2022

क्र. 05-वि.निर्वा.-चार-2020-60.—भारत निर्वाचन आयोग की अधिसूचना क्रमांक 82-म.प्र.-(05-2020) 2022, दिनांक 10 मार्च 2022 सर्वसाधारण की जानकारी के लिये प्रकाशित की जाती है.

प्रमोद कुमार शुक्ला, उपसचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110 001
नई दिल्ली, तारीख 10 मार्च 2022—19 फाल्गुन, 1943 (शक)

अधिसूचना

सं. 82-म.प्र.-(05-2020)-2022.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2020 की निर्वाचन याचिका संख्या 5 (हेमंत कटारे विरुद्ध ओ.पी.एस. भदौरिया) में मध्यप्रदेश के माननीय उच्च न्यायालय की ग्वालियर खंडपीठ के दिनांक 3 फरवरी 2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है।

आदेश से,

हस्ता./-

(मधुसूदन गुप्ता)

सचिव,

भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, Dated 10th, March, 2022—19 Phalguna, 1943 (Saka)

NOTIFICATION

No. 82-MP-(05-2020)-2022.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment/order dated 03rd February 2022 of Hon'ble High Court of Madhya Pradesh, Gwalior Bench, in Election Petition No. 05 of 2020 (Hemant Katare Vs. O.P.S. Bhadoriya).

By order,

Sd./-

(MADHUSUDAN GUPTA)

Secretary,

Election Commission of India.

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HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

SINGLE BENCH:

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

Election Petition No.5/2020

.....Petitioner(s): Hemant Katare

Versus

.....Respondent(s) : O.P.S. Bhadoriya

Shri Sankalp Sharma, Counsel for the petitioner.

Shri Kushagra Raghuvanshi, Counsel for the respondent.

Date of hearing : 31/01/2022

Date of Judgment : 03/02/2022

Whether approved for reporting :

ORDER

(03/02/2022)

(Through Video Conferencing)

This election petition has been filed under Sections 80, 80-A, 81, 100 (d)(iv) and 101 of the Representation of People Act, 1951 seeking following relief:-

1. To declare that the election of the Respondent from 12 Mchgaon Assembly Constituency is illegal and void and hence the same be set aside by allowing the election petition and;
2. To declare the election petitioner as a returned candidate for obtaining the next highest number of votes and;
3. To call upon the CCTV Footage (video recording) of the Polling Booth prayed by the Petitioner in his representations, from time to time;
4. To take appropriate civil/criminal action against the Respondent for violating MCC and RP Act;
5. Any other direction as the Hon'ble Court may deem fit."

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2. I.A.No.5087/2021 has been filed under Section 86(1) of Representation of People Act, 1951 for dismissal of the election petition whereas I.A.No.5869/2021 has been filed for amendment in the election petition.

3. Section 86 of the Representation of People Act, 1951 reads as under:-

“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

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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.

(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.

(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.]”

4. It is not out of place to mention here that except the returning candidate, nobody else have been impleaded as respondent.

I.A.No.5087/2021 has been filed for dismissal of the election petition on the ground that all the contesting candidates have not been impleaded as respondent because in case if the election petitioner seeks declaration that he should be declared as an elected candidate, then each and every contesting candidate is a necessary party as required under Section 82 of the Representation of People Act, 1951. Since all the contesting candidates have not been impleaded as a party, therefore, this petition is liable to be dismissed.

5. Faced with such a situation, the election petitioner filed I.A.No.5869/2021, an application for amendment of the prayer clause and sought permission to delete clause No.2.

6. To resolve the controversy involved in the present case, I.A.No.5869/2021 shall be taken up first.

7. It is submitted by the counsel for the election petitioner that law

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relating to amendment of pleading is provided under Order 6 Rule 17 of CPG. It is submitted that any party to the proceedings can be allowed to alter or amend his pleadings and, accordingly, it is prayed that the election petitioner may be permitted to delete clause 2 of the prayer clause.

8. The pivotal question for consideration is as to whether an application for amendment of prayer clause thereby deleting the prayer for declaration of the election petitioner as a returned candidate having been obtained the next highest number of votes can be permitted to be deleted/withdrawn or not?

9. The counsel for the respondent submitted that the petitioner cannot be allowed to withdraw a part of relief clause in order to save election petition from getting it dismissed under Section 86(1) of Representation of People Act due to non-joinder of necessary party and to buttress his contention, he has relied upon the judgment passed by Delhi High Court in the case of Surinder Kumar vs. Ranjit Singh, MLA & Ors reported in 2014 SCC OnLine Del 7455, judgment passed by Bombay High Court in the case of Kallappa Laxman Malabade vs. Prakash Kallappa Awade reported in 1995 (2) Mh.L.J. 376 and the judgment passed by Gauhati High Court in the case of Sh. H.Rohluna vs. Sh. L. Thangmawia reported in (2014) 6 Gauhati Law Reports 14.

10. *Per contra*, it is submitted by the counsel for the respondent that the provisions of Order 6 Rule 17 of CPC are applicable to the election petitioner and thus the election petitioner can be permitted to amend the

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election petition. It is further submitted that Section 86(1) of the Representation of People Act, 1951 was incorporated by the Representation of People (Amendment) Act, 1966 and by Repealing and Amending Act 1974, Representation of People (Amendment) Act, 1966 was repealed, as a result, Section 86 of Representation of People Act in its present form stood repealed. However, it is fairly conceded that Repealing and Amending Act, 1974 was repealed by the Repealing and Amending Act, 1978.

11. Heard the learned counsel for the parties.

12. The Supreme Court in the case of F.A. Sapa and, others vs. Singora and others reported in (1991) 3 SCC 375 has held as under:

19. Before the amendment of the R.P. Act by Act 27 of 1956, Section 83(3) provided for an amendment of an election petition insofar as 'particulars' of corrupt practice were concerned. By the 1956 amendment this provision was replaced by Section 90(5) which the turn came to be deleted and transferred as sub-section (5) of Section 86 by the Amendment Act 47, of 1966. Section 86(5) as it presently stands empowers the High Court to allow the 'particulars' of any corrupt practice alleged in the petition to be amended or amplified provided the amendment does not have the effect of widening the scope of the election petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the election petition. In other words the amendment or amplification must relate to particulars of a corrupt practice already pleaded and must not be an effort to expand the scope of the inquiry by introducing particulars regarding a different corrupt practice not earlier pleaded. Only the particulars of that corrupt practice of which the germ exists in the election petition can be amended or amplified and there can be no question of introducing a new corrupt practice. It is significant to note that Section 86(5) permits

'particulars' of any corrupt practice, 'alleged in the petition' to be amended or amplified and not the 'material facts'. It is, therefore, clear from the trinity of clauses (a) and (b) of Section 83 and sub-section (5) of Section 86 that there is a distinction between 'material facts' referred to in clause (a) and 'particulars' referred to in clause (b) and what Section 86(5) permits is the amendment/amplification of the latter and not the former. Thus the power of amendment granted by Section 86(5) is relatable to clause (b) of Section 83(1) and is coupled with a prohibition, namely, the amendment will not relate to a corrupt practice not already pleaded in the election petition. The power is not relatable to clause (a) of Section 83(1) as the plain language of Section 86(5) confines itself to the amendments of 'particulars' of any corrupt practice alleged in the petition and does not extend to 'material facts'. This becomes crystal clear on the plain words of the closely connected trinity of Sections 83(1)(a), 83(1)(b) and 86(5) and is also supported by authority. See *Samant N. Balakrishna v. George Fernandez* [(1969) 3 SCC 238 : (1961) 3 SCR 603] and *D.P. Mishra v. Kamal Narayan Sharma* [(1970) 2 SCC 369 : (1971) 1 SCR 8]. In *Balwan Singh v. Lakshmi Narain* [(1960) 22 ELR 273 : (1960) 3 SCR 91 : AIR 1960 SC 770] this Court held that if full particulars of an alleged corrupt practice are not supplied, the proper course would be to give an opportunity to the petitioner to cure the defect and if he fails to avail of that opportunity that part of the charge may be struck down. We may, however, hasten to add that once the amendment sought falls within the purview of Section 86(5), the High Court should be liberal in allowing the same unless, in the facts and circumstances, of the case, the court finds it unjust and prejudicial to the opposite party to allow the same. Such prejudice must, however, be distinguished from mere inconvenience, vide *Raj Narain v. Indira Nehru Gandhi* [(1972) 3 SCC 850, 858 : (1972) 3 SCR 841 : AIR 1973 SC 1302, 1307]. This much for the provisions of Section 83(1)(a) and (b) and Section 86(5) of the R.P. Act.

The Supreme Court in the case of *Sethi Roop Lal vs. Malti Thapar (Mrs.)* and others reported in (1994) 2 SCC 579 has held as

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under:

10. The fasciculus of sections appearing in Chapter III of Part VI of the Act lays down the procedure for trial of election petitions. Sub-section (1) of Section 87 thereof provides that subject to the provisions of this Act and of any rules made thereunder, 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 ('Code' for short). That necessarily means that Order VI Rule 17 of the Code which relates to amendment of pleadings will afortiori apply to election petitions subject, however, to the provisions of the Act and of any rules made thereunder. Under Order VI Rule 17 of the Code the Court has the power to allow parties to the proceedings to alter or amend their pleadings in such manner and on such terms as may be just and it provides that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. But exercise of such general powers stands curtailed by Section 86(5) of the Act, when amendment is sought for in respect of any election petition based on corrupt practice. Since Section 87 of the Act — and, for that matter, Order VI Rule 17 of the Code — is subject to the provisions of the Act, which necessarily includes Section 86(5), the general power of amendment under the former must yield to the restrictions imposed by the latter.

11. Indubitably, therefore, if the amendment sought for in the instant case related to corrupt practice we might have to consider the same in conformity with Section 86(5) of the Act as interpreted by this Court in the case of *F.A. Sapa* [(1991) 3 SCC 375] and accept the findings of the learned Judge as recorded in the impugned order; but then, the learned Judge failed to notice that the amendments, the appellant intends to bring in his election petition, do not relate to any corrupt practice and, therefore, it has to be

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considered in the light of Section 87, and de hors Section 86(5) of the Act. For the foregoing reasons the impugned order dated May 28, 1993 cannot also be sustained.

13. Thus the only question which requires consideration is as to whether the amendment sought by the election petitioner can be allowed or not?

14. The Supreme Court in the case of Mohan Raj vs. Surendra Kumar Taparia and others reported in (1969) (1) SCR 630 has held as under:

10. It is argued that the Civil Procedure Code, applies and Order 6, Rule 17 and Order 1, Rule 10 enable the High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of reference to Periwal. This argument cannot be accepted. No doubt the power of amendment is preserved to the court and Order 1 Rule 10 enables the court to strike out parties but the court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition.

The Supreme Court in the case of K. Venkateswara Rao and another vs. Bekkam Narasimha Reddi and others reported in

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(1969) 1 SCR 679 has held as under:

10. This aspect of an election petition was emphasised again in the case of *Başappa v. Ayyappa* [1959 SCR 611] where it was held that the provisions of Order 23 Rule 1 of the Code of Civil Procedure do not apply to election petitions and it would not be open to a petitioner to withdraw or abandon a part of his claim once an election petition was presented to the Election Commission.

11. Even though Section 87(1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a suit, the Act itself makes important provisions of the Code inapplicable to the trial of an election petition. Under Order 6 Rule 17 CPC a court of law trying the suit has very wide powers in the matter of allowing amendments of pleadings and all amendments which will aid the court in disposing of the matters in dispute between the parties are as a rule allowed subject to the law of limitation. But Section 86(5) of the Act provides for restrictions on the power of the High Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1 Rule 10 subject to the added party's right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of sub-section (4) of Section 86. Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. Under Section 86(1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act.

12. It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible

subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the court in respect thereof are all circumscribed by the Act....

16. Mr Ram Reddy attempted to press that decision to service in the appeal before us. In our view, the situation now obtaining in an appeal to this Court from an order of the High Court is entirely different. There is no section in the Act as it now stands which equates an order made by the High Court under Section 98 or Section 99 to a decree passed by a civil court subordinate to the High Court. An appeal being a creature of a statute the rights conferred on the appellant must be found within the four corners of the Act. Sub-section (2) of the present Section 116-A expressly gives this Court the discretion and authority to entertain an appeal after the expiry of the period of thirty days. No right is however given to the High Court to entertain an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117.

17. It was argued that if a petition were to be thrown out merely because a necessary party had not been joined within the period of 45 days no enquiry into the corrupt practices alleged to have been committed at certain elections would be possible. This is however a matter which can be set right only by the Legislature. It is worthy of note that although the Act has been amended on several occasions, a provision like Section 86(1) as it now stands has always been on the statute book but whereas in the Act of 1951 the discretion was given to the Election Commission to entertain a petition beyond the period fixed if it was satisfied as to the cause for delay no such saving clause is to be found now. The legislature in its wisdom has made the observance of certain formalities and provisions obligatory and failure in that respect can only be visited with a dismissal of the petition.

The Supreme Court in the case of Patangrao Kadam vs. Prithviraj Sayajirao Yadav Deshmukh and others reported in (2001) 3 SCC 594 has held as under:

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18. Almost in an identical case, this Court, in *Natau Ram Indra Singh v. Trikamal Jamandas Patel* [37 ELR 267] has held that a person who had been nominated as a candidate for an election and had since withdrawn his candidature was for the purpose of Section 82 a candidate and he must be impleaded in a petition if any allegations of corrupt practice were made against him, whether committed before or after his withdrawal in the election petition. That was also a case where the appellant had filed an election petition on 10-4-1967 to set aside the election of the first respondent and for a further order that the fourth respondent be declared elected. In the petition it was averred that the first respondent and his election agent Jamna Shanker Pandya and other agents with their consent had committed corrupt practices within the meaning of Sections 123(3), (3-A) and (4) of the RPA. Jamna Shanker Pandya had filed his nomination for election to the same constituency, but he had later withdrawn his candidature and thereafter, he had become an election agent of the first respondent. He was not impleaded as respondent to the election petition. The first respondent applied to the High Court praying for dismissal of the election petition. Thereafter, in June 1967 an application was made under Order I Rule 10 CPC for impleading Jamna Shanker Pandya as a party-respondent. The High Court rejected the application and dismissed the election petition for non-compliance with Section 82(b). This Court affirmed the said decision of the High Court stating that Section 79 of the RPA defines "candidate" as meaning a person who has been or claims to have been duly nominated as a candidate at any election, and any such person should be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. The Court went on to say as under:

"This Court has held that a person who had been nominated as a candidate for an election and has since withdrawn his candidature is for the purpose of Section 82 a candidate and he must be impleaded in a petition if any allegations of corrupt practice are made against him whether committed before or after his withdrawal in the election petition. *Har Swarup v. Brij Bhushan*

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Saran [AIR 1967 SC 836 : (1967) 1 SCR 342], *Mohan Singh v. Bhanwarlal* [AIR 1964 SC 1366 : (1964) 5 SCR 12] and *Amin Lal v. Hunna Mal* [AIR 1965 SC 1243 : (1965) 1 SCR 393], Jamna Shanker Pandya being a necessary party to the election petition, failure to implead him rendered the election petition defective, and the High Court was bound to dismiss the election petition."

19. This Court, in *Har Swarup v. Brij Bhushan Saran* [AIR 1967 SC 836 : (1967) 1 SCR 342] expressed the opinion

"that if the effect of withdrawal is said to be that a person nominated can no longer be considered to be a candidate only after his withdrawal, the date of withdrawal cannot be a dividing line as to the time up to which he can be treated as a candidate and the time after which he cannot be treated as a candidate. If purity of elections has to be maintained a person, who is a candidate as defined in Section 79(b) of the Act, will remain a candidate even after he withdraws till the election is over, and if he commits a corrupt practice whether before or after his withdrawal he would be a necessary party under Section 82(b) of the Act. We are therefore of opinion that the view taken by the Patna High Court on which reliance has been placed on behalf of the appellants is not correct and the decision of the High Court under appeal is correct."

20. The view that a candidate, who is duly nominated, continues to be a candidate for the purpose of Section 82(b) in spite of withdrawal, is supported by the decisions of *Har Swarup* [AIR 1967 SC 836 : (1967) 1 SCR 342] and *Amin Lal v. Hunna Mal* [AIR 1965 SC 1243 : (1965) 1 SCR 393]. This Court referring to the said decisions in *Mohan Raj v. Surendra Kumar Taparia* [AIR 1969 SC 677 : (1969) 1 SCR 630] agreed with the said view. Further the decision in *Chaturbhuj Chunnilal v. Election Tribunal, Kanpur* [AIR 1958 All 809] taking the same view after elaborate consideration on all aspects touching the question is approved. Dealing with the applications made for impleadment under Order 1 Rule 10 and amendment under Order 6 Rule 17, in para 10 of the same judgment, this Court had stated thus: (AIR p. 681)

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"No doubt the power of amendment is preserved to the Court and Order 1 Rule 10 enables the Court to strike out parties but the Court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition."

21. It may be noted that the facts of the case in *Ram Partap Chandel v. Chaudhary Lajja Ram* [(1998) 8 SCC 564] are similar to the facts of the case in hand. In the election petition the appellant averred that certain corrupt practices had been committed by the first respondent (the returned candidate) and by his son Harbhajan Singh, who was the election agent; also, by one Amarnath Kaushal, who was the counting agent of the first respondent. Both Harbhajan Singh and Amarnath Kaushal had been candidates at the election but had withdrawn their candidature. They were not impleaded as respondents to the election petition. The High Court in the light of Section 82 of the RPA dismissed the election petition as not maintainable. This Court, while dismissing the appeal against the said judgment of the High Court referring to the case of *Mohan Raj* [AIR 1969 SC 677 : (1969) 1 SCR 630] in para 7 of the judgment, had stated thus: (SCC p. 566)

"7. It will be seen that sub-section (a) of Section 82 uses the words 'contesting candidates' and sub-section (b) uses the words 'any other candidate'. The combined effect of sub-sections (a) and (b) is, plainly, to require the impleadment in an election petition of all candidates at an election against whom allegations of corrupt practice are made. This would apply not only to

those who actually contested the election, but also to those who stood for election but withdrew their candidature before the polling date. The person being the same, it is of no consequence that the allegation of corrupt practice is made in relation to a point of time when the candidature had been withdrawn and the person was now acting as the agent of a contesting candidate."

22. Yet in another recent judgment in *Gadnis Bhawani Shankar, V. v. Faleiro Eduardo Martinho* [(2000) 7 SCC 472] agreeing with the exposition of law made in the cases of *Har Swarup* [AIR 1967 SC 836 : (1967) 1 SCR 342], *Mohan Raj* [AIR 1969 SC 677 : (1969) 1 SCR 630] and *Rani Partap Chandel* [(1998) 8 SCC 564] aforementioned; this Court in para 13. concluded thus: (SCC p. 476)

"13. In our opinion, the allegations which have been made in the election petition are allegations of corrupt practice against Cardozo besides some others. Since Cardozo was a nominated candidate, it was necessary to implead him as a party-respondent under Section 82(b) of the Act, irrespective of the fact that before the actual date of election, he had withdrawn his candidature and allegedly committed the corrupt practice after his withdrawal from the election. Thus, the answer to the question posed in the earlier part of the judgment is in the affirmative."

23. No arguments were advanced in support of Civil Appeals Nos. 2080-81 of 1998. Even otherwise in view of decisions in *Natau Ram Indra Singh v. Trkamal Jamandas Patel* [37 ELR 267] and *Mohan Raj v. Surendra Kumar Taparia* [AIR 1969 SC 677 : (1969) 1 SCR 630] there is no merit in these appeals.

15. Thus it is clear that any amendment which is not in relation to better particulars but it is in relation to material facts as well as any amendment which takes out the petition from the rigors of the mandatory provisions of Section 86 of Representation of People Act, cannot be allowed. In the present case, the election petitioner had sought for a declaration that he be declared as a returning candidate having obtained

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the next highest number of votes and by the amendment application, the said relief cannot be permitted to be withdrawn.

16. Accordingly, I.A.No.5869/2021 is hereby rejected.

17. I.A.No.5087/2021. This application under Section 86(1) of Representation of People Act has been filed for dismissal of the election petition on the ground of non-impleadment of necessary parties.

18. Section 82 of the Representation of People Act deals with parties to the petition which reads as under:

[82. Parties to 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.]

19. Thus from the plain reading of Section 82(a) of the Representation of People Act, it is necessary that where a declaration is sought that the election petitioner or the candidate should be declared as elected, then all the contesting candidates are required to be impleaded as party to the election petition. The opening words of Section 86(1) of the Representation of People Act are that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or section 82 or section 117 of the Representation of People Act. The mandate of Section 86(1) of the Representation of People Act is

mandatory and not directory.

20. 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 in 1991 Supp (2) SCC 624 and in the case of *Michael B. Fernandes vs. C.K. Jaffer Shariff and others* reported in (2002) 3 SCC 521 has held that the election petition which does not make the person enumerated under Section 82 of the Representation of People Act as party respondent is liable to be dismissed. The right to elect or to be elected or dispute regarding election are neither fundamental right nor common law rights but are confined to the provisions of the Act and the rules made thereunder and consequently the rights and remedies are all limited to those provided by the statutory remedies. It was further held that the provisions of CPC would apply to the election dispute 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.

21. Under these circumstances, this Court is of the considered opinion that since the election petitioner had sought a declaration that he be declared as nominated having obtained maximum second highest number of votes but by not impleading all the contesting candidates, this election petition is liable to be dismissed under Section 86(1) of the Representation of People Act being not in conformity with Section 82 of the Representation of People Act.

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22. Accordingly, this petition is dismissed on the ground of non-impleadment of necessary parties as enumerated under Section 82 of the Representation of People Act.
23. No order as to costs.

sdr
(G.S. Ahluwalia)
Judge.

By order,
Sd./-
(MADHUSUDAN GUPTA)
Secretary,
Election Commission of India.