

Michael B. Fernandes vs C.K. Jaffer Sharief & Ors on 14 February, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1041, 2002 AIR SCW 768, 2002 AIR - KANT. H. C. R. 902, 2002 (2) SLT 39, (2002) 5 ALL WC 4333, (2002) 2 JT 87 (SC), 2002 (3) SRJ 392, 2002 (2) SCALE 157, 2002 (3) SCC 521, (2002) ILR (KANT) (3) 4489, (2002) 2 SUPREME 1, (2002) 2 SCJ 68, (2002) 2 SCALE 157, (2002) 1 UC 536, (2002) 47 ALL LR 338, (2002) 2 BLJ 415, (2002) 2 CIVLJ 326

Bench: S.N. Phukan, S.N. Variava

CASE NO.:
Appeal (civil) 1310 of 2001

PETITIONER:
MICHAEL B. FERNANDES

Vs.

RESPONDENT:
C.K. JAFFER SHARIEF & ORS.

DATE OF JUDGMENT: 14/02/2002

BENCH:
G.B. Pattanaik, S.N. Phukan & S.N. Variava

JUDGMENT:

PATTANAIAK, J.

This appeal is directed against the Order dated 16th June, 2000, passed in Election Petition No. 29 of 1999. The aforesaid Election Petition had been filed by the appellant, challenging the validity of the election to the House of People from the Bangalore North Parliamentary Constituency, in which election, respondent No. 1 was declared to have been elected. In the election petition, the Election Commissioner, the Returning Officer and the Chief Electoral Officer of the State of Karnataka had been arrayed as respondents 6, 7 and 8. Those respondents filed an application before the High Court of Karnataka for their deletion inter alia on the ground that under Section 82 of the Representation of the People Act, it has been clearly indicated that who should be the parties to an election petition and since they have been unnecessarily impleaded, they should be deleted. The

High Court by the impugned judgment having deleted the said respondents 6, 7 and 8 from the array of parties, the present appeal has been preferred.

Mr. R. Venkataramani, the learned senior counsel appearing for the appellant contended that the election petition having been filed, challenging the validity of the election of respondent No. 1, on the grounds contained in Section 100(1)(d)(iii)(iv) and non-compliance with the provisions of the Constitution and the Rules by the election machinery having been alleged, respondents 7 and 8 at least ought to have been held to be proper parties and there could not have been an order of deletion. According to the learned counsel, these respondents 7 and 8 having failed to conform to the mandatory guidelines enacted by the Election Commission of India, as contained in the hand book of the Returning Officer and those guidelines being treated as an integral part of the rules as well as Article 324 of the Constitution, respondents 7 and 8 became proper parties to the election petition, in view of the nature of allegations pertaining to their official conduct. That being the position, the learned Single Judge, who was in session of the matter, erroneously deleted the said respondents 7 and 8. Mr. Venkataramani however seriously does not challenge the order of deletion, so far as respondent No. 6 is concerned.

Mr. S. Muralidhar, the learned counsel appearing for the Election Commission, on the other hand submitted that the question of parties to an election petition is concluded by two earlier decisions of this Court in the case of *Jyoti Basu and Ors. vs. Debi Ghosal and Ors.*, 1982(1) S.C.C. 691 and *B. Sundara Rami Reddy vs. Election Commission of India and Ors.*, 1991 Supp. (2) S.C.C 624 and therefore, the High Court was wholly justified in directing the deletion of those respondents from the array of parties and by such deletion, there has been no illegality requiring interference by this Court. Mr. Muralidhar, further contended that the Representation of the People Act being a full code by itself, prescribing the procedure to be followed and indicating the parties to be arrayed to an election petition and respondents 7 and 8, not coming within the ambit of the said provision, the High Court rightly deleted them and that order need not be interfered with by this Court. The learned counsel lastly urged that in view of the nature of allegations made, the person making those allegations is required to prove the same and therefore, there is no justifiable reason, why the Election Officer or the Returning Officer should be permitted to be added as a party to the election petition.

In order to examine the correctness of the rival submissions, it would be necessary for us to have a bird's eye view of the relevant provisions of the Act and the different case laws on the point. But one thing must be borne in mind that in the case in hand, the allegations made were in relation to the use of voting electoral machines, under Section 61A of the Act. The gravamen of the allegations in the election petition are that the Returning Officer as well as the Chief Electoral Officer had not complied with several provisions of the Conduct of Election Rules and respondents 7 and 8 had not acted in accordance with the guidelines issued by the Election Commission of India. The relevant paragraphs of the election petition pertaining to the infraction of Rules committed by respondents 7 and 8 are paragraphs 20a, 20d, 20f, 25 and 28. The Representation of the People Act, 1951 [hereinafter referred to as 'the Act'] is an Act, providing for the Conduct of elections to the House of Parliament and to the House of Legislature of each State and it provides the qualifications and dis-qualifications for Membership of those Houses, the Corrupt Practices and other offences in

connection with such elections and the decisions of doubts and disputes arising out of or in connection with such elections. The general procedure at elections has been enumerated in Chapter III. Section 61 of the Act provides the procedure for preventing personation of electors and Section 61A which was inserted by Act 1 of 1989 w.e.f. 15.3.1989, deals with Voting machines at elections. Section 66 provides for declaration of result and Section 67 provides for submission of a Report of the result to the appropriate authority and the Election Commission and in case of an election to a House of Parliament, to the Secretary of that House by the Returning Officer, soon after the declaration of the result. It also provides for publication of the name of the elected candidate in the official gazette. Part VI starting with Section 79 deals with disputes regarding elections. Under Section 80 of the Act, no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. Presentation of petition is dealt with in Section 81 and such petition could be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. Section 82 stipulates as to who shall join as respondents to an election petition. Section 82 may be quoted herein-below in extenso:-

"Sec. 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."

Section 83 provides as to what should contain in an election petition and Section 86 in Chapter III deals with trial of election petitions. Section 87 is the procedure for such trial and it provides that every election petition shall be tried as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. As stated earlier, Section 100 indicates the grounds on which an election can be declared to be void and Section 101 indicates the grounds on which a candidate other than the returned candidate may be declared to have been elected. We are not concerned with the other provisions of the Act in the case in hand. An appeal to the Supreme Court has been provided under Section 116A. On a plain reading of Section 82, which indicates as to the person who can be joined as a respondent to an election petition, the conclusion is irresistible that the returned candidate, the candidate against whom allegations of any corrupt practice have been made are to be joined as party respondent when declaration is sought for holding the election of the returned candidate to be void and when a prayer is made as to any other candidate to be declared to be duly elected, then all the contesting candidates are required to be made party respondents. On a literal interpretation of the aforesaid provisions of Section 82, therefore, it can be said that an election petition which does not make the persons enumerated in Section 82 of the Act, as party respondents, is liable to be dismissed. The two decisions of this Court directly on the question are the cases of *Jyoti Basu and Ors. vs. Debi Ghosal and Ors.*, 1982(1) S.C.C.

691 and B. Sundara Rami Reddy vs. Election Commission of India and Ors., 1991 Supp.(2) S.C.C. 624. In the former case, Chinnappa Reddy, J, speaking for the Court, held that right to elect or to be elected or dispute regarding election are neither fundamental rights nor common law rights but are confined to the provisions of the Act and the Rules made thereunder and consequently, rights and remedies are all limited to those provided by the statutory provisions. On the question of Joinder of parties, referring to Sections 82 and 86(4) of the Representation of the People Act, it was held that the contest of the election petition is designed to be confined to the candidates at the election and all others are excluded and, therefore, only those may be joined as respondents to an election petition, who are mentioned in Section 82 and 86(4) and no others. An argument had been advanced in that case that even if somebody may not be a necessary party under Section 82 of the Act, but yet he could be added as a proper party as provided in Order I Rule 10 of the Code of Civil Procedure. But the Court rejected that contention on a finding that the provisions of the Civil Procedure Code apply to election disputes only 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 which is not permissible under the Act. It was in that context the Court further observed that the concept of 'proper parties' is and remain alien to an election dispute under the Act. This decision was followed in B. Sundara Rami Reddy's case, 1991 Supp.(2) S.C.C. 624, referred to supra and it was reiterated that the concept of 'proper party' is and must remain alien to an election dispute under the Act and only those may be joined as respondents to an election petition, who are mentioned in Sections 82 and 86(4) of the Act and no others. The Court in this case added that however desirable and expedient it may appear to be, none-else shall be joined as respondents. Mr. Venkataramani, the learned senior counsel, appearing for the appellant, contended that the law enunciated in the two decisions and the observations made are too wide and while Section 82 casts an obligation on an election petitioner to join those mentioned in clauses

(a) and (b) as party respondent, it does not put an embargo for addition of any other person in an appropriate case, depending upon the nature of allegation made and consequently, the expression "any other" in the two decisions referred to above, must be held not to have been correctly used. Mr. Venkataramani relied upon the observations made by this Court in M.S. Gill's case, 1978 (2) S.C.R. 272, wherein the Court had observed that the Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances and submitted that the basis of electoral democracy being a free and fair election and fairness imports an obligation to see that no wrong-doer candidate benefits from his own wrong. In case where allegations are made against the Returning Officer or the Chief Electoral Officer with regard to the conduct of the election, there should be no bar to array them as parties and according to Mr. Venkataramani in Gill's case, the Chief Election Commissioner was a party and, therefore, this Court in Jyoti Basu as well as the subsequent case, having not noticed the aforesaid judgment of the larger Bench, the latter decision will be of no assistance. We are not in a position to accept the submission of Mr. Venkataramani inasmuch as in Gill's case, an order of the Election Commissioner was under

challenge by filing a writ petition and it was not an election petition under the provisions of the Representation of the People Act. There is no dispute with the

proposition that a free and fair electoral process is the foundation of our democracy, but the question for consideration is, whether by indicating in the Act as to who shall be arrayed as party, the Court would be justified in allowing some others as parties to an election petition. For the aforesaid proposition, Gill's case is no authority. Mr. Venkataramani then relied upon the decision of Calcutta High Court in Dwijendra Lal Sen Gupta vs. Hare Krishna Konar, A.I.R. 1963 Calcutta 218, where the question came up for consideration directly and the Calcutta High Court did observe that the Returning Officer may nevertheless in an appropriate case be a "proper party"

who may be added as party to the election petition and undoubtedly, the aforesaid observation supports the contention of Mr. Venkararamani. Following the aforesaid decision, a learned Single Judge of the Bombay High Court in the case of H.R. Gokhale vs. Bharucha Noshir C. and Ors., A.I.R. 1969 Bombay 177, had also observed that the observations of Shah, J in Ram Sewak Yadav's case, AIR 1964 SC 1249 in paragraph (6) is not intended to lay down that the Returning Officer can in no event be a proper party to an election petition. But both these aforesaid decisions of the Calcutta High Court and Bombay High Court had been considered by this Court in Jyoti Basu case and the Court took the view that the public policy and legislative wisdom both seem to point to an interpretation of the provisions of the Representation of the People Act which does not permit the joining, as parties, of persons other than those mentioned in Sections 82 and 86(4). The Court also in paragraph (12) considered the consequences if persons other than those mentioned in Section 82 are permitted to be added as parties and held that the necessary consequences would be an unending, disorderly election dispute with no hope of achieving the goal contemplated by Section 86(6) of the Act. In the aforesaid premises, we reiterate the views taken by this Court in Jyoti Basu's case and reaffirmed in the latter case in B. Sundara Rami Reddy and we see no infirmity with the impugned judgment, requiring our interference under Article 136 of the Constitution. This appeal accordingly fails and is dismissed.

.....J. (G.B. PATTANAIAK)J. (S.N. PHUKAN)J. (S.N. VARIAVA) February 14, 2002.