

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

EP No. 1/2024

Reserved on: 30.03.2026

Pronounced on : 20.04.2026

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Whether the operative part or full judgment is
pronounced: Full

Harsh Dev Singh

....Petitioners

Through:- Mr. Aseem Kumar Sawhney,
Sr. Advocate with Mr. Shabab Malik,
Advocate and the petitioner in person.

V/s

UT of J&K & Ors

.....Respondents

Through:- Ms. Chetna Manhas, Assisting counsel
to Mrs. Monika Kohli, Sr. AAG
Mr. Vilakshan Singh, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(JUDGMENT)

01. I have heard the arguments advanced by learned counsel for the parties with reference to preliminary issue No.1. I have also perused record of the case.

02. Issue No. 1, which falls for determination, reads as under:

Whether there is mis-joinder of parties? If so, to what effect? OPR 10.

03. According to the learned counsel for respondent No. 10, there is mis-joinder of parties in the present case.

He has submitted that the petitioner has not only

impleaded the contesting candidates as the parties to the instant petition, but he has also impleaded as respondents the other parties including the officers and officials against whom allegations of impropriety have been leveled in the present election petition. The aforesaid contention of learned counsel for the respondent No.10 is based upon the interpretation of provisions contained in Section 82 of the Representation of People Act, 1951 (hereinafter to be referred to as **“Act of 1951”**), which deals with the parties, to an election petition. It has been contended that as per Section 82 of the Act of 1951, only the contesting candidates have to be impleaded as parties to an election petition. In this regard, learned counsel for respondent No.10 has placed reliance upon the judgments of the Supreme Court in the cases of **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and anr, 1963 SCC Online SC 129, Joyti Basu Vs. Debi Ghosal, 1982 (1) SCC 691 and B.S. Yadiyurappa vs. Mahalingappa, 2002 (1) SCC 301.**

04. Learned Senior counsel appearing for the petitioner on the other hand has contended that as per the provisions contained in Section 87 of the Act of 1951, the procedure applicable under the Code of Civil Procedure is applicable to the election petitions tried by the High Court and, therefore, all necessary and proper parties to the

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petition have to be impleaded as the parties. It has further been contended that in terms of sub-clause (ii) of clause (a) of sub-section (1) of Section 99 of the Act of 1951, all persons, who have been proved at the trial to have been guilty of any corrupt practice, have to be named, therefore, it is not only the contesting candidates, who are to be impleaded as parties to the election petition but even those officers and officials, against whom there are allegations of corrupt practice, have to be impleaded as parties to the election petition. In this regard, the learned Senior counsel has relied upon the judgment of the Madras High Court in the case of **K.T. Kosalram Vs. Dr. Santhosham and Ors, AIR 1969 Madras 116.**

05. In order to determine the merits of the rival contentions raised by learned counsel for the parties, it would be apt to notice the provisions of the Act of 1951, which deal with the issue relating to joinder of parties to an election petition. The same are reproduced as under:

“S.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.”

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 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.

S. 87. Procedure before the High Court

(1) 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, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for

the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

S. 99. Other orders to be made by the High Court.—

(1) At the time of making an order under section 98 the High Court shall also make an order—

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) finding whether any corrupt practice has or has not been proved to have been committed at election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of cost payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before the High Court and to show cause why they should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression “agent” has the same meaning as in section 123.”

06. From a perusal of the provision contained in Section 82, it is clear that the guidelines for impleadment of parties to an election petition have been set out in the said provision. As per this provision, in a case where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been elected, all the contesting candidates

other than the petitioner have to be impleaded as respondents. However, in a case where no further declaration is claimed by the petitioner, only the returned candidates are to be impleaded as respondents. As per Clause (b) of Section 82, a candidate against whom there are allegations of any corrupt practice has to be impleaded as a party to the petition.

07. Sub-section (4) of Section 86 of the Act of 1951 vests power with the High Court to implead a candidate as respondent to the election petition, if such candidate has not been already impleaded as respondent, provided such candidate makes an application for his impleadment within fourteen days from the commencement of the trial of the case.

08. The aforesaid provisions came up for interpretation before the Supreme Court of India in **Joyti Basu's case (Supra)**. The Supreme Court, while interpreting the said provisions, observed as under:

"Sec. 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 Sec. 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice

are made in the petition. Sec. 86 (4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with question as to who may be joined as respondents. It is significant that while clause (b) of Sec. 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 Sec. 86 (4), any other person cannot, under that provision seek to be joined as 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 Sec. 82 and Sec. 86 (4) and no others. However desirable and expedient it may appear to be, none else shall be joined as respondents."

09. The aforesaid ratio laid down by the Supreme Court was reiterated by the said court in the case of **Michael B. Fernandes Vs. C.K. Jaffer Sharief & ors, 2002 (3) SCC 521.**

10. From the foregoing analysis of the legal position, it is clear that a contest of election petition is to be confined to the candidates at the election. All other parties are to be excluded. Only those parties, who are mentioned in Section 82 of the Act of 1951 and no others, have to be impleaded as respondents to the election petition.

11. So far as the argument of learned Senior counsel appearing for the petitioner that because provisions

contained in Code of Civil Procedure govern the procedure for dealing with an election petition and as such, even a person, who is a proper party to the proceedings has to be impleaded as a respondent to an election petition is concerned, the said contention has also been answered by the Supreme Court in **Joyti Basu's case (supra)** in the following manner:

"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. Sec. 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. In [Mohan Raj v. Surendra Kumar Taparia & Ors.](#), (1) this Court held that the undoubted power of the Court (i.e. the Election Court) to permit an amendment of the petition cannot be used to strike out allegations against a candidate not joined as a respondent so as to save the election petition from dismissal for non-joinder of necessary parties. It was said, "The Court can order an amendment and even strike out a party who is not necessary. But where 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. [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 a curative means to save the petition."

12. From the aforesaid analysis of legal position, it is clear that as per Section 87 of the Act of 1951, the procedure prescribed under the Code of Civil Procedure is applicable to trial of election petitions only subject to

the provisions of the Act of 1951. Thus, anything contained in the Code of Civil Procedure which is contrary to the provisions of the Act of 1951 cannot be made applicable to trial of election petitions. Since Section 82 of the Act of 1951 provides as to which persons are to be impleaded as respondents to an election petition, therefore, anything contrary to Section 82 contained in the Code of Civil Procedure cannot be invoked to implead a person as party to an election petition, who otherwise cannot be impleaded as respondent in terms of Section 82 of the Act of 1951. The contention of learned Senior counsel for the petitioner is, therefore, without any merit.

13. The next contention raised by learned Senior counsel for the petitioner is based upon the provisions contained in sub-clause (ii) of clause (a) of sub-section (1) of Section 99 of the Act of 1951. As per this provision, the persons, who are proved to have indulged in corrupt practice at the election, have to be named at the time of making the final decision. According to the learned Senior counsel, the aforesaid provision makes it clear that even the persons other than the candidates can be impleaded as parties to an election petition if it is shown that such persons have indulged in corrupt practice at the election.

14. The Supreme Court has, in **Joyti Basu's case** (supra), dealt with a similar contention in the following manner:

“The matter may be looked at from another angle. The Parliament has expressly provided that an opportunity should be given to a person who is not a candidate to show cause against being 'named' as one guilty of a corrupt practice. Parliament however, has not thought fit to expressly provide for his being joined as a party to the election petition either by the election-petitioner or at the instance of the very person against whom the allegations of a corrupt practice are made. The right given to the latter is limited to show cause against 'named' and that right opens up for exercise when, at the end of the trial of the election petition notice is given to him to show cause why he should not be 'named'. The right does not extend to participation at all stages and in all matters, a right which he would have if he is joined as a party at the commencement. Conversely the election petitioner cannot by joining as a respondent a person who is not a candidate at the election subject him to a prolonged trial of an election petition with all its intricacies and ramifications. One may well imagine how mischievous minded persons may harass public personages like the Prime Minister of the country, the Chief Minister of a State or a political leader of a national dimension by impleading him as a party to election petitions, all the country over. All that would be necessary is a seemingly plausible allegation, casually or spitefully made, with but a facade of truth. Everyone is familiar with such allegations. To permit such a public personage to be impleaded as a party to an election petition on the basis of a mere allegation, without even prime facie proof, an allegation which may ultimately be found to be unfounded, can cause needless vexation to such personage and prevent him from the effective discharge of his public duties. It would be against the public interest to do so. The ultimate award of costs would be no panacea in such cases, since the public mischief cannot be repaired. That is why 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). It is not as if a person guilty of a corrupt practice can get away with it. Where at the concluding stage of the trial of an election petition, after evidence has been given, the Court finds that there is sufficient material to hold a person guilty of a corrupt practice, the Court may then issue a notice to him to show cause under Sec. 99 and proceed with further action. In our view the legislative provision contained in Sec. 99 which enables the Court, towards the end of the trial of an election petition, to issue a notice to a person not a party to the proceeding to show cause why he should not be 'named' is sufficient clarification of the legislative intent that

such person may not be permitted to be joined as a party to the election petition.”

15. From the foregoing analysis of the legal position, it is clear that the concept of proper parties is and would remain alien to an election dispute under the Act. Regarding addition of any other person as a party as contemplated under Section 99 of the Act of 1951, the Supreme Court has clearly held that the stage of impleading such parties against whom charge of corrupt practices having been committed has been found established would come only after the trial of the case and not at the time of filing of the election petition, as the legislature in its wisdom has thought it proper to permit impleadment of those persons other than the candidates, who are found to have indulged in corrupt practices at the election, only after trial of the case.

16. Turning to the facts of the present case, the petitioner has impleaded as respondents not only the contesting candidates but he has also impleaded respondents No. 1 to 9, who are the officials/officers and are not the contesting candidates. In the election petition, the petitioner has leveled several allegations against these respondents but mere leveling of the allegations would not make them necessary parties to the present petition. In the face of the provisions contained in Section 82 of the Act of

1951 and the interpretation given to the said provision by the Supreme Court in **Joyti Basu's case** (supra), the respondents No. 1 to 9 should not have been impleaded as parties to the present petition. Thus, it is established that there is misjoinder of parties in the present petition. Preliminary issue No.1 is, therefore, proved.

17. That takes us to the question as to what would be the effect of misjoinder of parties on the fate of the present petition.

18. The Supreme Court in the case of **B.S. Yadiyurappa vs. Mahalingappa** (supra) has held that the election petition, which does not comply with the provisions of Section 82 of the Act of 1951, would not necessarily entail its dismissal. It has been held that such a petition can be amended by striking out from the array of the parties those additionally impleaded. In view of the aforesaid ratio laid down by the Supreme Court, the effect of impleading respondents No. 1 to 9 as parties to the present petition would not entail dismissal of the petition but an order regarding their striking out as parties from the array of parties is required to be passed.

19. Accordingly, a direction is issued for deletion of respondents No. 1 to 9 from the array of parties. The

petitioner shall consequently file an amended petition/
memo of parties by next date of hearing.

20. List for further proceedings on **11.05.2026**.

(SANJAY DHAR)
JUDGE

SRINAGAR
20.04.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes/No**

Whether the judgment is reportable: **Yes/No**

