

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

**MC (Election Petition) No.69 of 2023
Ref: (Election Petition No.13 of 2022)**

Sanasam Premchandra Singh,
aged about 46 years, s/o late
Jabamjao @ Sanasam Jaramajao Singh,
resident of Kumbi Salanngkonjin Part-2
Near Public Community Hall, PO
Moirang, PS Kumbi, Bishnupur
District, Manipur ... Respondent No.1/Applicant

-Versus-

1. Ahanthem Shanjoy Singh, aged about
46 years, s/o Ahanthen Surchandra Singh,
a permanent resident of Wangoo Sabal, Wangoo
Ahallup, PO Moirang, PS Moirang, Bishnupur
District, Manipur 795133.
... Election Petitioner/ O.P.

2. Ningthoujam Mangi Singh, aged about 71 years,
s/o late Ningthoujam Ibomcha Singh, Kumbi Ward
No.9 PO Moirang, PS Kumbi, Bishnupur District,
Manipur 795133.

3. Dr.Khangembam Romesh Singh, aged about
45 years s/o Khangembam Amrita Singh, Kumbi
Khuga Wangma, PO Moirang, PS Kumbi, Bishnupur
District, Manipur 795133.

4. Naorem Sorojini Devi, aged about 43 years,
w/o Shougrakpam Chandrakumar Singh, Saiton
Maning Leikai, PO Moirang, PS Kumbi, Bishnupur
District, Manipur 795133.
...Respondents/O.Ps.

P R E S E N T
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Applicant :: Mr.B.R.Sharma, Advocate

For the respondents :: Mr.N.Mahendra, Advocate
 Mr.Ajoy Pebam, Advocate
 Mr.Riyananda, Advocate
 Mr.Leo Rommel, Advocate

Date of hearing :: 31.01.2024/05.03.2024/20.03.2024

Date of order :: 30.08.2024

O R D E R
(CAV)

[1] The instant application, under Section 83 (1) (a) Representation of People Act, 1951 read with Order 6, Rule 2 and/or Order 6, Rule 4 and/or Order 6 Rule 16 and/or Order 7, Rule 11 and/or Order 15, Rule 1 of the Civil Procedure Code, 1908 is filed by the applicant/respondent No.1 (returned candidate) in the Election Petition No.13 of 2022, seeking for dismissal of the Election Petition as the Election Petitioner does not disclose a cause of action and there are no material facts/complete materials facts in the Election Petition upon which the election petitioner relies for his claim and reliefs.

[2] The applicant is the returned candidate from Kumbi Assembly Constituency having elected on BJP ticket in 12th Manipur Assembly election held in the year 2022 and he is respondent No.1 in the election petition filed by the respondent herein who is the second placed candidate contesting on Janata Dal (U) ticket. Respondent Nos. 2, 3 and 4 are other candidates from the constituency. For easy reference, the applicant herein will be referred to as 'returned

candidate' and respondent No.1 herein as 'election petitioner' or 'petitioner'.

[3] It is stated that the Election Petition had been filed in the context of the gross misrepresentation and concealment of facts, documents, assets, liabilities and holdings by the Applicant in filing his Form 26 Affidavit at the time of nomination for the 12th Manipur Legislative Assembly Election held in the month of February & March, 2022. The election of the returned candidate is challenged mainly on the grounds referred in Para 5-A, 5-B, 5-C, 5-D, 5-E and 5-F of the election petition for furnishing wrong information relating to his educational qualification and assets.

[4] It is alleged in the election petition that the returned candidate has given wrong information about his highest education qualification in Para 10 of the Affidavit FORM-26 submitted at the time of nomination as having passed 'Higher Secondary Examination (Class 12) from PLC Academy, Yairipok, Uttar Purva Siksha Board, Assam in 2019'. It is the case of the petitioner that the returned candidate did not pursue his schooling further after Class-VIII onwards and did not pass Class X so as to pursue Class XI and XII. The Certificate and Marksheet produced by the returned candidate are fake and do not indicate the stream of subject such as Science, Arts or Commerce. It is also urged that the 'Uttar Purva Siksha Board' is not a Board recognised by Ministry of Human Resources Development as per list published by the Govt of India [Annexure A-4 of EP]. In the list, only three Boards are recognised from Assam, namely, (i) Assam Higher Secondary Education Council, Bamunimaidan, Guwahati-21; (ii) Assam Board of Secondary Education, Bamunimaidan, Guwahati-21; and (iii) Assam State Open School, Bamunimaidan, Guwahati-21. It is pointed out that 'Uttar Purva Siksha Board, Birubari, Guwahati-16, Assam' from which

the returned candidate is alleged to have passed Class 12, is not included in the list of recognised Boards from Assam and as such the returned candidate cannot be treated having passed Class 12 from a recognised Board.

[5] It is also stated that the returned candidate has not disclosed complete information about his assets, both movable and immovable, and also concealed vital information about his and spouse's property in FORM-26 as alleged in Para 5-B, 5-C, 5-D, 5-E and 5-F of the election petition. It is prayed that the election of the returned candidate on BJP ticket be declared void and to declare the petitioner on JDU ticket be elected.

[6] The returned candidate has filed the present application being MC(EP) No. 69 of 2023 for rejection of the election petition under the provisions of Order 7 Rule 11 CPC mainly on the ground that the election petition does not disclose a cause of action and the pleadings do not contain the necessary foundation for raising appropriate issue for trial.

[7] The petitioner has filed reply/objection to the application of the returned candidate reiterating that concise statement of all the material facts has been made in consonance with the relevant provisions.

[8] In the reply filed by the respondent No.2, it is also stated that the Election Petitioner has disclosed all material facts and particulars in Para Nos. 5 and 6 of his Election Petition and these are the sufficient materials to constitute the cause of action for setting aside the Election of the Applicant in terms of Section 100 of the Representation of People Act, 1951, being violative of Section 33 and 33A of the Representation of the People Act, 1951 read with Rule 4A of the Conduct of Elections Rules, 1961, as well as

Instructions/Notifications issued by the Election Commission of India under Article 324 of the Constitution of India.

[9] Further contention on behalf of respondent No.2 is that the pleadings of the Election Petition should be read as whole and if the contents of Para Nos.5 and 6 of the Election Petition are read as a whole would show that the Election Petition is filed on the following grounds:

(i) The applicant falsely declared his highest education qualification in his Form 26 Affidavit.

(ii) The applicant did not pursue his schooling after Class VIII onwards however, the applicant mentioned his highest qualification as Class XII (Sr. Secondary Examination).

(iii) The Certificate and other documents of the highest educational qualification of the applicant i.e. Sr. Secondary Examination, 2019 (Class XII) which was purportedly issued by the Secretary, Uttar Purva Siksha Board Guwahati, Assam under Roll No.093511207 are fake documents.

(iv) Presuming the Certificate and other documents of highest educational qualification are correct, the said documents were not issued by the Recognized Board/University. In the Form 26 Affidavit, the document or information means to disclose the legally viable documents.

(v) The applicant falsely declared Non-agricultural land of his spouse in his Form 26 Affidavit.

(vi) The applicant falsely declared residential buildings of his spouse in his Form 26 affidavit.

(vii) The applicant falsely declared his non-agricultural land in his Form 26 affidavit.

[10] Respondent No.2 contended that the present application under Order 7 Rule 11 of the CPC for dismissal of the Election Petition filed by the applicant is not maintainable. It is not a bonafide prayer and the same has been filed with malafide intention for causing delay in the trial of the Election Petition and as such it is liable to be dismissed with heavy cost.

[11] Mr. N. Mahendra, learned counsel for the applicant/ returned candidate submits that FORM-26 requires only to declare highest educational qualification of the candidate and the same is given in para 10 of the affidavit as 'Higher Secondary Examination (Class 12) from PLC Academy, Yairipok, Uttar Purva Siksha Board, Assam in 2019' and no wrong statement has been furnished by the returned candidate and marksheet and certificate for passing such examination have also been enclosed. Whether the Board is recognised or not by the Government of India has no relevancy with respect to such declaration. It is highlighted that the candidate has given the true information, but he cannot be faulted if such Board turns out to be fake as alleged by the petitioner. Learned counsel for the petitioner tries to impress this Court by submitting that Para 10 of FORM-26 requires only to give highest educational qualification along with full details of institute and year of passing and it does not mention that the course should be from a recognised institute/board. Since the returned candidate has not applied for employment, the status of the Board and/or examination is irrelevant for the purpose under RP Act.

[12] With regard to the allegation of concealment of facts and furnishing wrong information about the assets, Mr. N. Mahendra, learned counsel denied the allegations and asserts that there is no

wrong information and no concealment. However, he admits there are some typographical mistakes with respect to the columns for assets and same are not fatal and the election of the returned candidate cannot be declared void on such mistakes. Mere entry in jamabandi does not confer title over land to the returned candidate in absence of valid acquisition of right. It is submitted that the averments in the election petition are vague and do not disclose cause of action for a full trial. It is prayed that the election petition be dismissed as not maintainable on the threshold. Reliance is placed on the following decisions:

(i) **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706** :

If the plaint does not disclose any cause of action, the same can be rejected at any stage and averments made in the plaint are to be considered alone.

(ii) **Srihari Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99**:

To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

(iii) **Geetha v. Nanjundaswamy**

2023 SCC OnLine SC 1407: Averments made in the plaint alone are to be considered and plaint cannot be rejected in part.

(iv) **Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020)**

7 SCC 366: In civil suit, trial begins with the framing of issue. But in election petition, trial starts at the time of filing of EP.

(v) **Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC**

315: All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead

even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice.

(vi) **Kalyan Singh Chouhan v. C.P. Joshi, (2011) 11 SCC 786**: For the purpose of the election petition, the word "trial" includes the entire proceedings commencing from the time of filing the election petition till the pronouncement of the judgment. The court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is, therefore, not permissible for the court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration.

(vii) **Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137**: For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

[13] Mr. B R Sharma, learned counsel for the election petitioner reiterates that in the election petition every detail with respect to the wrong educational qualification obtained from a non-recognised Board, the concealments and wrong information regarding assets of the returned candidate have been mentioned in Para 5 and 6 of the petition. It is emphasised that whether a certificate obtained from a non-recognised Board will satisfy the requirement of higher educational qualification as mandated in Para 10 of FORM-26 or not, is a triable issue to be decided during the trial. It is submitted that the

question of validity and admissibility of a certificate and degree obtained from a non-recognised Board for the purpose of Para 10 has to be decided by this Court during the trial on appreciation of evidence and such a presumption cannot be made as a ground for rejection of election petition under Order 7 Rule 11 of CPC. Mistakes in the columns for immovable property such as sale deed and consideration mentioned for inherited property have been pointed out in the election petition in para 5-D. In para 5-E, it has been averred about concealment of agricultural land. It is submitted that such grounds are triable issues requiring a full trial for a decisive finding. It is submitted that the application for rejection of election petition filed by the returned candidate be dismissed with exemplary cost.

[14] Mr. B R Sharma relies on the following case laws:

(i) **D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267**: For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition.

(ii) **P.V. Guru Raj Reddy v. P. Neeradha Reddy, (2015) 8 SCC 331:** Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

(iii) **(2021) 9 SCC 99:** Only contents of the plaint have to be examined for the purpose of determination of application under Order 7 Rule 11 CPC and the version and documents of the defendant are to be examined during the trial.

(iv) **Ashraf Kokkur v. K.V. Abdul Khader, (2015) 1 SCC 129:** After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts

pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial.

(v) **Eldeco Housing and Industries Ltd vs. Ashok Vidyarthi: 2023 INSC 1043:** Only averments in the plaint would be relevant and documents not forming part of plaint cannot be looked into at the stage of determination of an application under Order 7 Rule 11 CPC. Such documents of the defendant can be considered at the stage of trial as a preliminary issue on maintainability.

[15] In conclusion, Mr. B R Sharma, learned counsel for the election petitioner, submits that the points raised by the petitioner in the election petition of furnishing wrong information about educational qualification of the returned candidate and concealment of vital data about his assets, are in sufficient compliance of the stipulations under Section 83 of RP Act, 1951 raising a triable issue and hence the election petition cannot be rejected at the threshold. It is prayed that the application for rejection of election petition filed by the returned candidate be dismissed with exemplary cost.

[16] Mr. Ajoy Pebam, learned counsel for the respondent No.2 submits that in the election petition, necessary materials, such as, false declaration of the highest educational qualification and false declaration and concealment of information about assets of the returned candidate, are specifically mentioned with all necessary details within the meaning of Section 83 of RP Act. It is highlighted that furnishing wrong information about educational status of a candidate is sufficient for quashing election of the returned candidate. Wrong information about

assets in FORM-26 cannot be considered as a typographical mistake. Reliance is made on the following case laws:

(i) **Mairembam Prithviraj v. Pukhrem Sharatchandra Singh, (2017) 2 SCC 487**: The contention of the returned candidate that the declaration relating to his educational qualification in the affidavit is a clerical error cannot be accepted.

(ii) **Ashraf Kokkur v. K.V. Abdul Khader, (2015) 1 SCC 129**: If there is a triable issue, election petition cannot be rejected at the threshold stage without trial.

(iii) **Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy, (2018) 14 SCC 1**: It is well settled that the election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action. Cause of action embodies a bundle of facts which may be necessary for the plaintiffs to prove in order to get a relief from the Court.

(iv) **S. Rukmini Madegowda v. The State Election Commission: 2022 SCC Online SC 1218**, Hon'ble Supreme Court held that non-disclosure of assets in the affidavit for election amounts to undue influence and hence a corrupt practice.

[17] Mr. Ajoy Pebam, learned counsel for the respondent No.2 concludes that the election petition discloses all the material facts as mandated by Section 83 of RP Act, 1951 for determination of the validity of the election of the returned candidate and as such the application under Order 7 Rule 11 CPC for rejection of election petition

is not maintainable in the present form and is liable to be rejected with heavy cost.

[18] Mr. Leo Rommel, learned counsel for the respondent No. 3 adopts the submissions made by Mr. B R Sharma and Mr. Ajoy Pebam.

[19] It is stipulated by the provisions of Section 87 of RPA, 1951 that the provisions of CPC will be applicable to the trial of election petition as nearly as possible subject to the provisions of the Act and any rules made thereunder. In other words, the rule of CPC will be applicable in an election petition in consistent with the provisions of RPA, 1951 and rules made thereunder. In case of any inconsistency, the provisions of RPA will prevail over the provisions of CPC. From the above referred para, it is seen that the provisions of Order 7 Rule 11 CPC will be applicable in an election petition specially the rules stipulated under sub-rules (a) and (d) of non-disclosure of cause of action and barred by limitation. In the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali: (2020) 7 SCC 366**, the 'cause of action' is defined as 'every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit'. In short, the cause of action consists of materials facts for succeeding in a suit. If such facts are not disclosed on a plain reading of the plaint, the same can be rejected at the threshold. Limitation is one of the grounds for rejection of plaint under sub-rule (d) to Order 7 Rule 11 CPC. Apart from the provisions of Order 7 Rule 11 CPC, Section 86(1) of RPA, 1951 mandates the High Court to dismiss the election petition for non-compliance of the provisions of Sections 81 (petition filed beyond 45 days of period of limitation) or Section 82 (non-joinder

of necessary party) or Section 117 (non-deposit of a sum of Rs.2000/- as security for cost of the election petition) of the Act. Section 83 stipulates that the concise materials facts and full particular of any corrupt practices, if alleged in the petition, should be disclosed. Apart from the provisions of Order 7 Rule 11 CPC, non-compliance of mandate of Sections 81, 82, 83 and 117 of RPA, 1951 would be grounds of rejection of election petition on co-joint reading of principles embodied in CPC and RPA, 1951.

[20] In sum and substance, the principles of CPC will be applicable in a proceeding challenging election as far as practicable and consistent with the provisions of RP Act. Section 83 of RP Act, 1951 mandates disclosure of concise statements of all material facts so as to make out a triable issue. In other words, there should be materials to support the allegations made in the election petition to enable to get a verdict in favour of the petitioner. If such material facts are not disclosed, the election petition can be nipped in the bud at the very initial stage under the provisions of Order 7 Rule 11 CPC. For this purpose, only the averments made in the election petition are to be considered and the defence version cannot be relied at this stage.

[21] In light of the settled proposition of law, the application for rejection of election petition has to be considered.

[22] In the present case, the election petitioner has specifically pleaded that the certificate of passing Class 12 by the returned candidate is from a Board not recognised by the Government of India as per **Annexure A-4** appended to the petition. The plea of the returned candidate that the highest qualification may not necessarily be only from a recognised Board, is not a ground for rejection of election petition. Such a plea of validity of a certificate from non-recognised Board/Institute is a question to be decided during the trial.

In the election petition, it is specifically pointed out about furnishing of wrong information about the assets and their concealment as narrated in Para 5-B, 5-C, 5-D and 5-F of the election petition. This Court is of the considered view that the petitioner has been able to disclose sufficient materials for framing issues to go for a full trial. Accordingly, the application being MC(EP) No. 69 of 2023 for rejection of EP No. 13 of 2022 is rejected with cost of Rs. 30,000/- [Rupees thirty thousand only] to be deposited in favour of Manipur State Legal Services Authority.

[23] List election petition along with pending applications on **17.09.2024** for further proceeding. Returned candidate is directed to file proof of payment of cost before the next date.

[24] With these observations and directions, MC(EP) No. 69 of 2023 is disposed of.

JUDGE

FR/NFR

Priyojit

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PRIYOJIT
SINGH

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