

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

MC(WP(C))No.189 of 2023

Ref: WP(C)No.833 of 2022

1. Shri. N. Sarat Singh, aged about 65 years, (L) N. Modhumangol Singh, a resident of Thangmeiband Yumnam Leikai PO Lamphelpat & PS Imphal, Imphal West District, Manipur.
2. Shri Th. Bimol singh, aged about 55 years, S/o (L) Th. Dwijamani Singh of Ward No.3, Ningthoukhong P.O. & PS Bishnupur, Bishnupur District, Manipur.

...Applicants

– Versus –

1. Shri Ngangom Ibotombi Singh, S/o (L) Ng. Parijat Singh of Oinam Bazar Makha, PO & PS Nambol, Bishnupur District, Manipur.

....Principal Respondents.

2. The State of Manipur through the Chief Secretary, Government of Manipur, Secretariat South Block, Babupara, PO & PS Imphal-795001.
3. The Manipur Lokayukta through its Secretary, 3rd Floor Directorate Complex, 2nd MR North AOC, PO & PS Imphal, Imphal West District-795001.

....Respondents

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the applicant : Mr. HS Paonam, Sr. Adv.

For the Respondents : Mr. M. Rarry Adv.

Date of hearing & reserved. : 01.08.2023

Date of Judgment & Order : 08.08.2023.

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. H. S Paonam, learned senior counsel for the petitioners and Mr. M. Rarry, the learned counsel for the respondent No.3.

[2] This petition has been filed by the petitioners to implead Ngangom Ibotombi Singh as respondent No.3 in the writ petition.

[3] Learned counsel for the petitioners submits that the petitioners have filed WP (C) No.833 of 2022 *inter alia* praying for closing of the Complaint Case No.5 of 2022 as not maintainable, as the same is barred by limitation. He would submit that the said Complaint Case was filed by the proposed respondent before the Manipur Lokayukta alleging that a project "Installation of 2x5 MVA 33/11 KV sub-station at Sugnu along with associated 33 KV line and related works" in Thoubal District was taken up by MSPCL during the period 2014 to 2017 under NLCPR and State fund. The contract work of the said project was executed by M/s.Shyama Power India Private Limited on turnkey basis. The length of the associated 33 KV transmission line from

33/11 KV sub-station New Chayang to Sugnu as per the approved scheme is 20 kilo meter. However, the sub-station has been commissioned by erecting a line of 3 kilo meter tapping from the existing 33 KV New Chayang-Joupi line at Khongnang Paishabi, thereby embezzling the fund released from Ministry and the State Government for supply and erection of the balance 17 Km long 33 KV transmission line and one 33 KV sending end bay along with the equipment at 33 KV sub-station, New Chayang. Since the project was completed on 14.8.2015 itself and 7 years have passed by, it has become an issue which cannot be looked into by the Manipur Lokayukta.

[4] Learned counsel further submitted that while filing the writ petition, the proposed respondent, who is the complainant, was not made as a party in bonafide belief that he is not a necessary party, as the issue involved as to whether the Complaint Case is time barred has to be decided on the basis of the documents with the State Government. However, in order to avoid any complicity, including of providing an opportunity to the proposed respondent/complainant, it is just and proper to implead him as respondent in the writ petition. According to learned counsel, the impleadment of Ngangom Ibotombi Singh will not prejudice the right of any party. Therefore, the petitioners may be permitted to implead the said Ngangom Ibotombi Singh as third respondent in the writ petition.

[5] The learned counsel for the respondent Manipur Lokayukta submitted that the petitioners have obtained stay of the proceedings of the Complaint Case and, after concluding the final arguments in the light of the time limit

fixed by the Hon'ble Supreme Court, they have come forward with the present petition stating that it has been filed to avoid complicity. According to the learned counsel, the said plea is bereft of any bonafide and the same is made only to delay the disposal of the writ petition with an express objective to violate the timely disposal of the writ petition.

[6] The learned counsel further submitted that despite filing a defective and illegal writ petition by a person who is not an aggrieved person in law, nor having any locus standi, nor having a legal right to sue, the petitioners have enjoyed the interim stay of the proceedings before the Manipur Lokayukta and, that too, behind the back and without knowledge of the complainant. According to the learned counsel, despite the time limit fixed by the Hon'ble Supreme Court, the petitioners have filed the present petition to further delay the disposal of the writ petition. If the petition is allowed, it would amount to approving the abuse of the process of law by the petitioners. Thus, prayed for dismissal of the petition.

[7] Heard the learned Government Advocate for the respondent State.

[8] This Court considered the rival submissions and also perused the materials available on record.

[9] The petitioners, who are the original writ petitioners, have filed the writ petition for issuance of a writ of mandamus for closing the Complaint Case No.5 of 2022 as not maintainable, being barred by limitation, and restraining the respondent Manipur Lokayukta from further proceeding with the Complaint Case No.5 of 2022 pending on its file.

[10] Pleadings were exchanged by the parties and now the writ petition is at part-heard stage.

[11] In the affidavit-in-opposition filed by the respondent Manipur Lokayukta, dated 18.10.2022, it has been stated as under:

“1.4 The petitioner has not approached this Hon’ble Court with clean hands and is guilty of concealing material facts and documents and as such the present petition is liable to be dismissed in view of the judgment of K.D.Sharma supra and is bad in law for non-joinder of necessary party being the Complainant namely Shri Ngangom Ibotombi Singh.”

[12] Admittedly, the plea of non-joinder has been raised by the respondent Manipur Lokayukta way back on 18.10.2022 itself. But the petitioners have not taken any steps to implead the proposed respondent at the earlier point of time. Now only the petitioners have filed the present petition praying for impleadment of the proposed respondent stating that in order to avoid any complicity, including for providing an opportunity to him, the proposed respondent should be added as party respondent.

[13] Though the petition for impleading the complainant in Complaint Case No.5 of 2022 has been filed belatedly, taking into consideration the issue involved and to avoid any complicity, the proposed respondent is a necessary party to the writ petition and no prejudice would be caused to either of the respondents in the writ petition, if he is added as party respondent in the writ petition at this stage. The contention of the respondent Manipur Lokayukta that the petition has been filed only to drag on the case cannot be countenanced.

[14] It is trite that the Court has the power to strike out the name of the parties improperly joined or add a party either on an application or without application of either party in its own discretion, but the condition precedent is that the Court must be satisfied that the presence of the party to be added, would be necessary, in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the proceedings. To array a person as party-respondent/party-defendant is not a substantive right but one of procedure and the Court has discretion in its proper exercise. The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence, at the same time without any protraction, in convenience, and to avoid multiplicity of proceedings. A person may be added as a defendant to the suit though no relief may be claimed against him/her provided his/her presence is necessary for a complete and final decision on the question involved in the suit.

[15] As stated supra, the Complaint Case No.5 of 2022 has been filed by the proposed respondent against the petitioners. The petitioners seek to close the said Complaint Case alleging that the project in question has already been completed long time back on 14.8.2015 and it would be outside the purview of the Manipur Lokayukta as per the scheme of the Manipur Lokayukta Act, 2014. When such being the plea/case of the petitioners, the presence of the proposed respondent is very much required. In his absence, if any order is passed, it would definitely affect his interest. In fact, in the

affidavit-in-opposition to the present petition filed by the respondent Manipur Lokayukta, it has been stated that *“the writ petitioners have already enjoyed interim stay of the proceeding before the Manipur Lokayukta and that too, all behind the back and knowledge of the complainant”*. Therefore, if the proposed respondent is added as party respondent, no prejudice would be caused to the respondents in the writ petition.

[16] It is apposite to mention that aggrieved by the order dated 19.12.2022 in MC (WP (C)) No.346 of 2022 passed by this Court, the Manipur Lokayukta filed Petition for Special Leave to Appeal (C) No.2069 of 2023 before the Hon’ble Supreme Court. By the order dated 3.2.2023, the Hon’ble Supreme Court passed the following order:

*“Noticing that by the impugned order that the High Court has made the interim order absolute, we are not inclined to interfere with the impugned order. Without expressing any view on the merits of the contentions of the parties, we only request the High Court to dispose of the writ petition itself within a period of three months from the date of production of the copy of this order before the High Court.
The Special Leave Petition is disposed of accordingly.
Pending applications, if any, also stand disposed of.”*

[17] As the writ petition could not be disposed of within the time limit, this Court sought extension of time for three months from 8.5.2023. The Hon’ble Supreme Court, under order dated 18.7.2023 in Miscellaneous Application No.1559 of 2023 in SLP (C) No.2069 of 2023, granted further time of three months to conclude the trial in W.P. (C) No.833 of 2022. The order dated 18.7.2023 of the Hon’ble Supreme Court reads thus:

“1. Perused the office report and letter dated 5th July, 2023, sent by the Registrar General, High Court of Manipur requesting therein to extend time for three months from 08.05.2023 for disposing of the W.P.(C) No.833 of 2022.

2. We accede to his request and grant further time of three month to conclude the trial in W.P.(C) No.833 of 2022.

3. The Misc. Application is disposed of accordingly.”

[18] As stated supra, since the Complaint Case sought to be closed by the petitioners has been filed by the proposed respondent, any order passed behind his back would definitely be prejudicial to his interest. Therefore, this Court is of the view that the petitioners are right in seeking impleadment of the proposed respondent, namely Ngangom Ibotombi Singh, as third respondent in the writ petition. In fact, the respondent Manipur Lokayukta itself raised a plea that the writ petition suffers from non-joinder of necessary party i.e. the complainant in Complaint Case No.5 of 2022. A person who is likely to suffer from the order of the Court and has not been impleaded as a party, has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

[19] The judgment in the case of *Ranjan Kumar etc. V. State of Bihar and others*, Civil Appeal Nos.4455-4458 of 2009, dated 16.4.2014 relied upon by the learned counsel for the respondent Manipur Lokayukta is not applicable, as the said judgment deals with candidates who had taken part in the selection process and it was held that they cannot challenge the mode of examination. Admittedly, the facts of the instant case are not similar to case of *Ranjan Kumar*, supra.

[20] Another decision relied upon by the learned counsel for the Manipur Lokayukta is *ILR (2009) VI Delhi 83 (Office of Lokayukta v. Govt. of NCT of Delhi and another)*. The said case relates to power of the Lokayukta to conduct preliminary enquiry. The issue involved in the present petition is entirely different. In the instant petition, this Court cannot decide or deliberate on the power of the Manipur Lokayukta to deal with the case. Therefore, the decision in *ILR (2009) VI Delhi 83*, supra, relied upon by the learned counsel for the respondent Manipur Lokayukta is also not applicable, as this Court has not delved into the power of Manipur Lokayukta to deal with the case.

[21] The impleadment of Ngangom Ibotombi Singh will not prejudice the right of any party. That apart, as stated supra, since the petitioners have challenged the complaint lodged by Ngangom Ibotombi Singh, he ought to be impleaded as party respondent in the writ petition. No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. Time and again, the Hon'ble Supreme Court held that the litigant has to ensure that the necessary party is before the Court, otherwise, the proceedings will have to fail. Therefore, if Ngangom Ibotombi Singh is impleaded as respondent in the writ petition, no prejudice would be caused to him. On the other hand, it would be very much helpful for this Court to decide the writ petition after hearing the plea of Ngangom Ibotombi Singh.

Therefore, in the interest of justice and for proper adjudication of the writ petition, this Court is inclined to allow the present petition.

[22] In the result,

(1) M.C.No.189 of 2023 is allowed.

(2) The proposed respondent Ngangom Ibotombi Singh is ordered to be impleaded as third respondent in the writ petition.

(3) The Registry is directed to carry out necessary amendment in the writ petition.

ACTING CHIEF JUSTICE

FR/NFR

John Kom