

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MC(EI. Petn.) No. 110 of 2022
(Ref:- EI. Petn. No. 12 of 2022)

Shri Jotin Waikhom, aged about 37 years, S/o (L) Waikhom Surendra Singh, resident of Thangmeiband Hijam Leikai, P.O. Lamphel, Imphal West District, Manipur – 795004.

...Applicant

-Versus –

1. Shri Khumukcham Joykisan Singh, aged about 57 years, S/o Late Kh. Ingocha Singh, resident of Thangmeiband Khuyathong Polem Leikai, P.O. Lamphel, Imphal West District, Manipur-795004 and
2. Shri Hijam Nutanchandra Singh, aged about 55 years, S/o Shri Hijam Gunachandra Sigh, resident of Thangmeiband Thingel Leikai, P.O. Imphal, Imphal West District, Manipur – 795001.

.... Respondents

-AND-

IN THE MATTER OF:
(In Election Petition No. 12 of 2022)

Shri Jotin Waikhom, aged about 37 years, S/o (L) Waikhom Surendra Singh, resident of Thangmeiband Hijam Leikai, P.O. Lamphel, Imphal West District, Manipur – 795004.

... Petitioner

-Versus-

1. Shri Khumukcham Joykisan Singh, aged about 57 years, S/o Late Kh. Ingocha Singh, resident of Thangmeiband Khuyathong Polem Leikai, P.O. Lamphel, Imphal West District, Manipur-795004 and
2. Shri Hijam Nutanchandra Singh, aged about 55 years, S/o Shri Hijam Gunachandra Sigh, resident of Thangmeiband Thingel Leikai, P.O. Imphal, Imphal West District, Manipur – 795001.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Applicant :: Mr. Ajoy Pebam, Advocate
For the respondents :: Mr. N. Ibotombi, Senior Advocate
asstd. by Mr. A. Rommel, Advocate
Date of Hearing :: **23-02-2023**
Date of Judgment & Order :: **27-02-2023**

JUDGMENT & ORDER

[1] Heard Mr. Ajoy Pebam, learned counsel appearing for the applicant and Mr. N. Ibotombi, learned senior counsel assisted by Mr. A. Rommel, learned counsel appearing for the respondent No 1. None appeared for the respondent No 2.

The present application had been filed under Order VI Rule 17 of the CPC, 1908 with a prayer for allowing to delete the letter "h" from the name of the respondent No. 1 appeared at the Index, List of Date and Synopsis, Cause Title at page No. 4, para No. 14(I) at page No. 17, para No. 14 (II) at page No. 19, para No. 22 at page No. 29 and para No. 1(II) at page No. 44 of the connected Election Petition No. 12 of 2022.

[2] In the present application, it has been pleaded that in El. Petn. No 8 of 2017 filed by the present applicant in connection with the previous election, the present respondent No. 1 wrote his name as "Khumukcham Joykishan Singh" in the cause title of his written statement as well as in the affidavit filed in support of his written statement. It has also been pleaded that while executing and registering a Sale Deed dated 02-06-2017, the name of the respondent No. 1 was written as "Khumukcham Joykishan Singh" and that in Revenue Receipt No. 0935 in respect of his land issued by the Revenue Department, the name of the respondent No. 1 is written as "Joykishan" and

that before the Sub-Divisional Officer, Lamphel, Imphal West, the respondent No. 1 presented himself as “Joykishan” as the appellant in Revenue Appeal Case No. 5 of 2017 and Revenue Appeal Case No. 7 of 2017.

[3] It is the case of the applicant that the name of the respondent No. 1 is some time written as “Khumukcham Joykishan Singh” and some time as “Khumukcham Joykisan Singh” in some of his important/ official documents and accordingly, at the time of drafting the present Election Petition No. 12 of 2022, the learned counsel for the applicant committed a mistake in writing the name of the respondent No. 1, in that he added the letter “h” in between the letters “s” and “a” in writing the name of the respondent No. 1, which appeared at the Index, List of Date and Synopsis, Cause Title at page No. 4, para No. 14(I) at page No. 17, para No. 14 (II) at page No. 19, para 22 at page No. 29 and para No. 1(II) at page No. 44 of the election Petition No. 12 of 2022.

The applicant also pleaded that the respondent No. 1 wrote his name as “Joykisan” in filing his nomination paper in connection with the 12th Manipur Legislative Assembly Election, 2022, however, being a time bound matter, the applicant did not perused properly the spelling of the name of the respondent No. 1 mentioned in the said election petition and consequently the applicant failed to write the name of the respondent No. 1 as “Joykisan” in some pages of the election petition during the preparation of the said election petition.

[4] Mr Ajoy Pebam, learned counsel appearing for the applicant submitted that while drafting the said Election Petition No. 12 of 2022, the learned counsel for the applicant through bona fide mistake and oversight wrote the name of the respondent No. 1 as "Joykishan" in some pages of the election petition, however, the name of the respondent No. 1 is also written

[4]

as "Joykisan" in some pages of the election petition. It has also been submitted that the respondent No. 1 had accepted service of notice of the said election petition, which was sent under the name "Khumukcham Joykishan Singh" and the respondent No. 1 has knowledge about the pendency of the said election petition and contested the same by filing his written statement. The learned counsel further submitted that while deleting the letter "h" from the name of the respondent No. 1 by way of amendment as sought for will not change the nature and character of the election petition but it would rather assist this court to give justice to the applicant and that if the connected election petition is heard and disposed of without allowing the present application, it will cause great loss and irreparable damage to the applicant. The learned counsel accordingly submitted that it will be just and appropriate to grant leave of this court to delete the letter "h" from the name of the respondent No. 1 as prayed for in the present application for proper adjudication of the said election petition.

[5] Mr. N. Ibotombi, learned senior counsel appearing for the respondent No. 1 submitted that through bona fide mistake on the part of the respondent No. 1, he wrongly typed his name as "Khumukcham Joykishan Singh" in the written statement filed by him in connection with the earlier El. Petn. No. 8 of 2017 though the respondent No. 1 clearly mentioned his name as "Khumukcham Joykisan Singh" in the nomination paper and Form-26 affidavits and that though the respondent No. 1 wrongly typed his name as "Khumukcham Joykishan Singh", he signed his written statement and other connected papers as "Khumukcham Joykisan Singh". The learned senior

counsel further submitted that any bona fide mistake regarding the correct name of the respondent No. 1 on the earlier occasion, i.e., at the time of filing his written statement in the earlier election petition has nothing to do in the present case and that the applicant cannot take advantage of the said bona fide mistake in the present election petition and that such mistake cannot cure the defect committed by the applicant in his election petition.

[6] The learned senior counsel for the respondent No. 1 submitted that the name of the returned candidate from 9-Thangmeiband Assembly Constituency in the 12th Manipur Legislative Assembly Election is “Khumukcham Joykisan Singh” and not “Khumukcham Joykishan Singh” and that there is no person called and known as “Khumukcham Joykishan Singh”, s/o (L) Kh. Ingocha Singh at Thameiband Khoyathong Polem Leikai, Imphal, Manipur. It has also been submitted that the petitioner did not implead “Khumukcham Joykisan Singh”, the returned candidate from 9-Thangmeiband Assembly Constituency in the 12th Manipur Legislative Assembly Election in El. Petn. No. 12 of 2022 and accordingly, the said election petition is hit by principle of non-joinder of necessary parties and the said election petition is liable to be dismissed.

[7] It has also been submitted on behalf of the respondent No. 1 that the amendment as sought for by the present applicant is not sustainable in the eye of law and also not permitted by law and that if the amendment as prayed for is allowed, it will change the entire character of the connected election petition and that the amendment to the election petition cannot be permitted to cure inherent defect after the expiry of limitation period. The

learned senior counsel accordingly submitted that the present application is liable to be dismissed as being not maintainable.

[8] I have heard the rival submissions advanced by the learned counsel appearing for the parties at length and also examined the materials available on record. It is undeniably found on record that the name of the returned candidate is written as "Khumukcham Joykishan Singh" in some pages of the Election Petition No. 12 of 2022 as mentioned hereinabove and his name is also written as "Khumukcham Joykisan Singh" in some pages of the election petition. After hearing the arguments advanced by the learned counsel appearing for the parties and on careful examination of the pleadings made in the said election petition, this Court is of the considered view that the insertion of the letter "h" in between the letters "s" and "a" while writing the name of the returned candidate is purely a typographical mistake and a simple case of spelling mistake and nothing more. In my considered view, the said mistake is only a mis-description of the respondent No. 1's name and that a mistake in spelling the name is merely a typographical error and is preeminently a curable defect and that if the correction is allowed, it would not amount to adding any new party and it would not alter the cause of action or bring any substantive change in the complexion of the petition which would remain the same in content and so long as there is substantial compliance of section 82 of the RP Act, that should be sufficient to support the amendment sought. It is also not the case where the identity and address of the respondent No. 1 is in dispute. Moreover, the returned candidate has knowledge about filing of the said election petition challenging his election and

contested the said election petition by filing his written statement. In view of the above, this Court is of the considered view that the objection raised by the respondent No. 1 is purely on minor technical ground and that the election petition cannot be invalidated by this insignificant typographical error. In this connection, we can gainfully relied on the following judgments:-

1. 1995 Supp (3) SCC 407 “Gore Lal Shakya v. Maharaj Singh Yadav & ors.”

“8. Learned counsel for Respondent 1 in support of his submission that the averments in the election petition should be in strict compliance of Section 86(1) of the Act, relied upon the decision in Rajendra Singh v. Usha Rani. But in the same decision the learned Judges have observed: (SCC p. 345, para 15)

“The mandate contained in Section 81(3) enjoins that there should be no difference of any kind whatsoever barring some typographical or insignificant omissions between the petitions filed and the copy served on the respondent.”

“9. In the present case we are of the firm view that the mentioning of the name of the 10th respondent as “Sanjai Kumar” in the array of parties is nothing but only a typographical error which is insignificant. Under these circumstances we are unable to agree with the High Court that this typographical error has invalidated the election petition under Section 86(1) of the Act.”

2. (2003) 1 SCC 289 “Ram Prasad Sarma v. Mani Kumar Subba & ors.”

“24. It may be noted that in Paragraph 1 of the election petition it has been mentioned that the respondents were the contesting candidates from 9-Tezpur Parliamentary Constituency, that is to say, that Respondent No. 11 was also impleaded as one who had contested the election from the said constituency. There was every intention to implead such a person as a respondent. It may then be noted that along with the election petition, copy of return of election is required to be filed in Form 21-E under Rule 64 of the Conduct of Election Rules, 1961. It contains the result of the election as well as the list of candidates. The said list is on record as Annexure I to the election petition filed by the petitioner and the name of Abul Khayer is indicated at

Serial No. 7 having contested as an independent candidate. It is thus evident that it is not as if the correct name is not available on the record of the case. Apparently, it seems to be a case of spelling mistake. Instead of Abul letter 'd' got added extra hence typed as Abdul in the array of parties and the spelling of Khayer as 'Khyer' omitting 'a' after 'kh'. It is to be noted that address of Respondent No.11 is also indicated in the petition. It is not disputed that it is the address of the person who contested the election. In this Court there is an office report of service of notice on respondent No. 8 prepared on the basis of the report received from the Gauhati High Court. So far as the wrong spelling of Khyer is concerned, it is of little consequence. Both words "Khyer" and "Khayer" would produce almost the same sound. Technically there may be difference but by way of example some may spell 'Banerjee' as 'Banerji' or 'Saksena' as 'Saxena' or the like. Therefore such difference in spelling of Khayar is but to be ignored. There is certainly some difference in 'Abul' and 'Abdul' but there is ample material on record to indicate that the same person who had contested election was meant to be impleaded e.g. the address of the person, the averment that the Respondents 7 to 18 had contested the election as well as the form of election return indicating names of all those who had contested the election and the names with correct spelling is on the record, namely, 'Abul Khayer'. The respondent therefore gets no advantage out of above-noted point sought to be made out. The parties have however placed reliance on certain decisions on the point. On behalf of Respondent No.1 reliance has been placed on *Gore Lal Shakya v. Maharaj Singh Yadav* wherein Respondent No.10 was shown as Sanjay Kumar whereas the correct name should have been Sanjiv Kumar. Similar arguments seems to have been advanced that notice was not served on the correct respondent and the person who ought to have been impleaded, has not been impleaded. The High Court dismissed the petition for non-compliance with Section 82(a) of the Act. This Court upset the decision of the High Court observing that High Court had made a mountain out of a molehill as it was a mere typographical mistake. Then this Court noted that in the body of the petition at one place his name was indicated as Sanjiv Kumar and at another place his name was indicated as Sanjay Kumar. It is submitted that in the present case no application for correcting the

name was moved nor was any written objection filed to indicate that it was a typing error. We feel that absence of any such application will not adversely affect the petition for the reasons we have already indicated earlier. Another case relied upon by the learned counsel for the respondent is reported in K. Kamaraja Nadar v. Kunju Thevar. This is a case relating to non-joinder of necessary parties. We are not concerned here with such a point. This case therefore would be of no help to the respondent. The learned counsel for the appellant relies upon a case reported in Shiv Chand v. Ujagar Singh to indicate the approach which the Court may adopt while dealing with a case under Section 86 (1) of the Act. It is observed that the test is whether the election petition complies with provisions of Section 82, not whether the election petitioner has failed to comply with Section 82. The substance of the matter must govern, because hypertechnicality when the public policy of the statute is fulfilled, cannot be permitted to play the procedural tyrant to defeat the vital judicial process, namely, investigation into the merits of the case. We find no force in this point too raised by Respondent No. 1. No other point has been urged.

[9] The Hon'ble High Court of Punjab and Haryana considered similar amendment applications and allowed the said amendment in its judgment dated 29-10-2014 passed in MCs No. 3-E & 4-E of 2013 (El. Petn. No. 3 of 2012) with the following directions:-

“For the foregoing reasons, the application is allowed and the amendment is permitted to be carried out. The amended petition is taken on record. The respondent is at liberty to file afresh written statement or adopt the written statement already filed by her. Four weeks time is granted to the respondent to do so or to omit to do so.

However, a challenge to a small mistake in typing ‘r’ for ‘n’ has led to a gross waste of Court time in hearing this matter and passing judgment even when there was sufficient case law in command for the proposition in issue. Besides, the respondent has been put to unnecessary expense of Court hearings, counsel fee etc. on the application for amendment for which she deserves to be compensated. Therefore, it is deemed fit that the applications will be allowed subject to payment of

₹ 25,000/- as costs, half payable to the respondent and the rest to the Medication & Conciliation Centre of this Court.”

[10] For the reasons and findings given hereinabove and in view of the judgments quoted hereinabove, the present application is allowed and the amendment sought for is permitted to be carried out subject to payment of cost of Rs. 25,000/- (rupees twenty five thousand) to be paid to the High Court Bar Association of Manipur. The counsel for the applicant is directed to carry out the necessary amendments in the presence of the Registrar (Judl.) of this High Court and the counsel for the respondent No. 1. The correction is to be carried out within a period of one week from today. The respondent No. 1 is at liberty to file a fresh written statement or adopt the written statement already filed by him, if so advised for which, four weeks' time is granted for doing the needful.

With the aforesaid directions, the present application is disposed of.

JUDGE

FR/NFR

Devananda