

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

MC(EI.Pet.)No.119 of 2022
El.Pet.No.6 of 2022

Shri Nahakpam Indrajit Singh, aged about 45 years, S/o (L) Nahakpam Moirangningthou Singh of Thambalkhong Sabal Leikai, PO & PS Porompat, District-Imphal East, Manipur-795005.

...Applicant

– Versus –

1. Sheikh Noorul Hassan, aged about 36 years S/o Late Nur Mohammad, of Kshetri Awang Leikai, PO & PS-Porompat, District- Imphal East, Manipur-795005.
2. Shri Wahengbam Rojit Singh @ Bullet aged about 41 years, S/o Wahengbam Inder Singh of Thawanthaba Leikai, PO & PS Porompat, District-Imphal, Manipur-795005.
3. Smt. Punnam Rani Wangkhem, aged about 53 years, D/o Late W. Bashanta Kumar of Porompat Thawanthaba Leikai, PO & PS Porompat, Imphal East, District, Manipur-795005.

.... Respondents.

BEFORE

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

For the Petitioner : Mr. Ajoy Pebam, Adv.

For the Respondents : Mr. N. Ibotombi, Sr. Adv.

Date of reserved. : 23.02.2023

Date of Judgment & Order : 14.03.2023.

JUDGMENT & ORDER
(CAV)

This application has been filed by the petitioner under Order 8, Rule 9 CPC read with Section 87 of the Representation of People Act, 1951 read with Section 151 of CPC praying for granting leave to file the subsequent pleading/replication in answer to the new facts asserted in the written statement dated 04.08.2022 of the first respondent.

2. Heard Mr. Ajoy Pebam, learned counsel for the petitioner and Mr. N. Ibotombi, learned senior counsel for the first respondent.

3. The learned counsel for the petitioner submitted that in the pleading made in paragraphs 1(i) to (x), 10, 12, 13, 14, 15, 16, 18, 18.1, 18.2, 18.3, 19, 21 and 30 etc. of the written statement dated 4.8.2022, the first respondent has set out new facts and assertions, which required to be controverted by giving proper reply and, as such, the petitioner prayed for leave of this Court to file subsequent pleading/replication.

4. Adding further, the learned counsel for the petitioner argued that it is lawful for the petitioner to file a replication to add to his pleas already made in the election petition and the only condition therein is leave of the Court. It is also the submission of the learned counsel for the petitioner that the petitioner as election petitioner can be permitted to explain the additional facts which have been incorporated in the written statement filed by the first respondent.

5. In support, the learned counsel placed reliance upon the following decisions:

- (i) *Ramesh Kumar v. Chandu Lal*, AIR 2009 Raj. 87
- (ii) *Kalyan Mal Mina v. Ratan Lal Tamb*, AIR 1981 Raj. 249
- (iii) *Sunil Vasanth Architects and Consulting Engineers and another v. Tata Ceramics Ltd.*, AIR 1999 Kerala 88
- (iv) *State of Rajasthan v. Mohammed Ikbāl*, AIR 1999 Raj. 169
- (v) *Ghanashyam v. Vikram*, AIR 2007 P&H 14.

6. Refuting the submissions made by the learned counsel for the petitioner, the learned senior counsel for the first respondent submitted that the statement/pleading sought to be brought on record is in existence before the filing of the election petition and, as such, the petitioner ought to have incorporated all the facts at the time of filing the election petition. Section 83 of the Act requires every election petition to contain a concise statement of the material facts on which the petitioner relies and that the material facts are

required to be given in the election petition and not in the replication filed much after the expiry of the period of limitation for filing election petition.

7. The learned counsel further submitted that the petitioner by giving contradictory statement in the replication is trying to mislead this Court. In fact, the petitioner has filed the proposed replication giving reply to all the paras of the written statement thereby introducing new facts and is trying to fill up the lacuna and also trying to improve the pleading of the election petition. If the prayer of the petitioner is accepted, it may amount to permit a new ground to be raised beyond the time prescribed in Section 81 of the Act. Since the statement given in the written statement are the denial and clarification of the statement given in the election petition, there is no need for filing replication/subsequent pleading by the petitioner. Thus, a prayer has been made to dismiss the petition.

8. To fortify his submission, the learned senior counsel for the first respondent relied upon the following decisions:

- (i) *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*, (1987) Supp SCC 93.
- (ii) *Jeet Mohinder Singh v. Harminder Singh Jassi*, (1999) 9 SCC 386.
- (iii) *Thangjam Mohendro Singh v. Thokchom Lokeswar Singh*, (2021) GauLT 580.

9. This Court considered the rival submissions and also perused the materials available on record.

10. The petitioner has filed the election petition under Section 80A/81 of the Representation of People Act, 1951 challenging the election of the first respondent from 4-Kshetrigao Assembly Constituency of 12th Manipur Legislative Assembly, 2022 as null and void under Section 100(1)(d)(i) and (v) as well as under Section 100(1)(b) of the Representation of People Act, 1951 and to declare the petitioner is the duly elected member in the 12th Manipur Legislative Assembly from 4-Kshetrigao Assembly Constituency under Section 101 of the Representation of People Act, 1951.

11. The first respondent has filed his objection in the form of written statement denying the averments set out in the election petition. The specific plea of the first respondent is that he had never furnished any false information and has not concealed important and vital information in Form 26 affidavit. Only after proper scrutiny, the returning officer accepted the nomination of the first respondent. It is stated that the first respondent never committed any corrupt practices as alleged by the petitioner in the election petition and he is a candidate duly elected by the public in a fair and transparent manner and he had never resorted to any false means of getting himself elected.

12. The grievance of the petitioner is that in the replication/subsequent pleading sought to be filed by him, no new facts or new pleas have been taken and only to controvert the new facts over and above the denial of assertion

made in the written statement, the petitioner wants to reply by way of subsequent pleading/replication.

13. There is no dispute that “replication” is the plaintiff’s answer to the defendant’s plea and “rejoinder” is the defendant’s answer to the plaintiff’s replication. Black’s Law Dictionary, 6th Edition, defines “replication” as pleading in common law made by the plaintiff in an answer to the defendant’s plea; and “rejoinder” as a second pleading in common law on the part of the defendant being his answer to the plaintiff’s replication. Where plaintiff wishes to offer affirmative matter in answer to affirmative plea of the defendant and involves another transaction consistent with the plaintiff’s position as the original pleading, he must reply. This is the purpose of a “replication”.

14. Ordinarily, replication is not to be permitted to be filed, much less in routine. A replication is permissible only in three situations namely (1) when required by law; (2) when a counter claim is raised by the defendant; (3) when the Court directs or permits a replication being filed. The Court may direct filing of a replication when the Court having scrutinized the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement.

15. The petitioner has filed the election petition, inter alia, on the ground that the first respondent has failed to disclose the details – status of his bank accounts with respective balances in Form 26. The first respondent has also

failed to disclose the details of liability and also the car bearing DL4CNB4776 owned by him in Form 26.

16. On a reading of the election petition, it is seen that the petitioner has also taken other grounds. However, in reply to the ground for non-disclosure of the account details, the first respondent replied in his written statement that the said accounts opened for establishment of Self Help Group, namely Panthoibi SHG, Yaiphabi SHG. Paragraphs 12 and 17 of the written statement speak about the opening of the bank accounts and also stated that some of the accounts have NIL balance and were lying in a dormant condition at the time of filing nomination papers. Therefore, there is no necessity to disclose the same in Form 26. The opening of the accounts for establishment of Self Help Groups, according to the petitioner, is new plea and the petitioner has to controvert the said facts by clarifying the relation between the accounts and Self Help Groups.

17. The learned counsel for the petitioner submitted that the accounts are joint accounts which are actually belonged to the first respondent and others and nowhere mentioned that these accounts are the social or charitable account. The argument of the learned counsel for the petitioner appears to be merit consideration.

18. The petitioner being election petitioner and the election petition being civil litigation, the celebrated principle of variance between pleading and proof is very much attracted in the matter of appreciation of evidence. It is lawful to

the petitioner to file a replication to add to his pleas already made in the election petition and the only condition thereon is the leave of the Court. Even in cases that require leave, it is open to the Court to grant leave with or without conditions.

19. It is pertinent to note that the law is well settled that the plaintiff cannot be permitted to raise a new plea under the garb of filing rejoinder/replication or take a plea inconsistent to the pleas taken by him in the plaint, nor the rejoinder can be filed as a matter of right, even the Court can grant leave only after applying its mind on the pleas taken in the plaint and the written statement.

20. In **Ramesh Kumar**, supra, the Rajasthan High Court held as under:

“24. Thus, as per Order 8, Rule 9 CPC, in ordinary course the pleading except in case of plea of set-off or counter-claim ends with the defendant filing the written statement. The plaintiff or defendant is not entitled to file any additional/supplemental written statement except with the leave of the Court. But at the same time, the plaintiff cannot be permitted to raise new pleas and facts in the garb or filing rejoinder so as to alter the basis of the case set out or come forward with altogether a new case to which the defendant has no opportunity to reply. However, it is settled law that where the defendant brings new facts in the written statement, the plaintiff must be afforded an opportunity to controvert the allegations/averments incorporated in the written statement.” (underlining added)

21. In **Tata Ceramics Limited**, supra, the Kerala High Court held as under:

“3. Learned senior counsel Sri. P.Balagangadhara Menon appearing for the petitioner contended that Order 8, Rule 9 does not envisage a replication. Order 8, Rule 9 deals with subsequent pleadings. It states as follows:

“No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the court and upon such terms as the court thinks fit. But the court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.”

In the decision reported in the case of Kochu-Kesavan Nair v. Gouri Amma, 1967 KLT 257, His Lordship Justice M.Madhavan Nair considered the question whether replication can be filed by the plaintiff under Order 8, Rule 9. It was held as follows:

“The Code of Civil Procedure far from pinning down the plaintiff to the plaint and the defendant to the written statement does contemplate further pleadings. It is lawful for the plaintiff to file a replication to add to his pleas already made in the plaint and the only condition herein is leave of the court. As the replication in this case had been accepted by the court of trial, the leave necessary therefor must be assumed to have been given by it.”

It was observed in that case that the word “replication” is the plaintiff’s answer to the defendant’s plea and “rejoinder” is the defendant’s answer to the plaintiff’s replication.” (underlining added)

22. In **Kalyan Mai Mina**, supra, the Rajasthan High Court held as under:

“4. In the light of the submission made by the learned counsel for the parties, the question that emerges for consideration is as to whether the petitioner can present replication with the leave of the Court under O.8, Rule 9 C.P.C. as Code of Civil Procedure has been made applicable by Section 87 of the Act for trial of the election petition. The relevant part of Section 87 of the Act lays down that subject to the provisions of the Act and of any rules 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, to the trial of suit. The scope of the replication may be different than the contents of the election petition. Whether a necessity for replication arises on account of any pleas taken in the reply has to be judged in a particular case in the light of the averments made in the reply, but on the basis of what is required to be pleaded in the election petition, it cannot be said that the provision relating to filing of subsequent pleading with the leave of the court has been done away with” (underlining added)

23. The specific plea of the petitioner is that the first respondent has asserted some new facts in his written statement, particularly, paragraphs 1(i) to (x), 10, 12, 13, 14, 15, 16, 18, 18.1, 18.2, 18.3, 19, 21 and 30 and the petitioner is necessary to reply by filing the replication. Though the first respondent contended that the petitioner has filed the proposed replication and introducing new facts and also trying to fill up the lacuna, nothing has been produced to prove the same.

24. Admittedly, on a reading of the averments set out in the subsequent pleading/replication, it is clear that they are the clarification and amplification of the earlier pleading made in the election petition and if the pleading of the election petition is read conjointly with the pleading of the replication, the pleading of replication are the addition of facts of the earlier facts of the election petition and the annexed documents are also related with the earlier facts of the election petition. In other words, the replication of the petitioner is to

controvert the averments made in the written statement to the election petition. That apart, prima facie, the averments pleaded in the replication are not contrary to the averments made in the election petition and in fact, they are only explanatory to the plea taken by the first respondent in the written statement.

25. The argument of the learned counsel for the first respondent that the replication sought to be made by the petitioner clearly violates the requirement of the provisions of the Representation of People Act, 1951 and that the petitioner sought to introduce new facts after the expiry of 45 days, cannot be countenanced for the reason that the petitioner does not insert any new facts. It appears that the first respondent has filed his written statement on 4.8.2022 and petition to grant leave to file replication was filed on 7.9.2022 within a reasonable time.

26. As stated supra, the statement made in the replication are the denial of the statement made in the written statement filed by the first respondent to the election petition. If the same is received, no prejudice would be caused to the other side, especially, the first respondent. Moreover, it is the bounden duty of the election petitioner to clarify the averments made by the first respondent in his written statement. That apart, there is no bar for clarification of the earlier pleading, which has already been taken in the election petition by the petitioner.

27. The decision in the case of ***Thangjam Mohendro Singh***, supra, relied upon by the first respondent is not applicable to the case on hand in the given facts and circumstances, as in ***Thangjam Mohendro Singh***, supra, the

plea sought to be raised in the replication are new one. Therefore, this Court declined to grant leave to file replication in the said case. However, in the instant case, the averments in the replication are not new facts and, as stated supra, they are clarification and amplification of the earlier pleading made in the election petition.

28. As far as the decision in the case of ***Jeet Mohinder Singh***, supra, relied upon by the learned counsel for the first respondent is concerned, the said decision deals with the narration of material facts and particulars for the first time in the replication. The said decision does not speak about the non-receipt of the replication or refusal to grant leave to file replication. Therefore, this Court is of the view that the decision in the case of ***Jeet Mohinder Singh***, supra, is not applicable to the case on hand.

29. The decision in ***Dhartipakar Madan Lal Agarwal***, supra, relied upon by the first respondent does not speak about the refusal to grant leave to file replication. In ***Dhartipakar Madan Lal Agarwal***, supra, the Hon'ble Supreme Court held that the election petitioner could not raise any ground of challenge after the expiry of limitation. Order VI, Rule 17 CPC no doubt permits amendment of an election petition but the same is subject to the provisions of the Representation of People Act, 1951. It was held that Section 81 prescribes a period of 45 days from the date of the election for presenting election petition calling in question the election of a returned candidate. After the expiry of that period, no election petition is maintainable. It was further held that an order of

amendment permitting a new ground to be raised beyond the time specified in Section 81 would amount to contravention of those provisions and is beyond the ambit of Section 87 of the Act.

30. As stated supra, the petitioner has not raised any new plea and on the other hand, in order to controvert by giving proper reply qua the new facts stated in some of the paragraphs in the written statement by the first respondent, the petitioner sought leave to file replication. When the first respondent attempted to introduce new facts in the written statement, the petitioner must be afforded an opportunity to controvert the said averments incorporated in the writ statement. Therefore, in the facts and circumstances of the case, the decision in the case of ***Dhartipakar Madan Lal Agarwal*** relied upon by the first respondent is not helpful to the case of the first respondent.

31. Admittedly, the practice of filing replication/subsequent pleading is meant only for denying and/or clarifying the facts stated in the written statement. Fresh cause of action or fresh case is not brought up by filing replication. On a perusal of the replication filed by the petitioner, this Court finds that the averments set out in the replication are not contrary to the averments set out in the election petition and these are only explanatory to the plea advanced by the first respondent in the written statement. Therefore, in order to explain/clarify the plea of the first respondent and for fair trial of the election petition and also in the interest of justice, this Court is inclined to grant leave to the petitioner to file replication.

32. For all the reasons stated above, MC (El.Pet.) No.119 of 2022 in Election Petition No.6 of 2022 is allowed. Leave is granted to the petitioner to file replication/subsequent pleading in answer to the new facts asserted in the written statement dated 4.8.2022 filed by the first respondent. No costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom