

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MC(EI. Petn.) No. 188 of 2022

(*Ref:-* EI. Petn. No. 19 of 2022)

Khuraijam Loken Singh, aged about 51 years, S/o Khuraijam Yaima Singh a resident of Yumnam Huidrom Leikai, P.O. & P.S. Wangoi, Imphal West District, Manipur – 795009.

... Applicant

-Versus-

1. Shri Oinam Lukhoi Singh, aged about 46 years, S/o (L) Oinam Dhananjoy Singh of Laku Huidrom Awang Leikai and also at Thiyam Leishangkhong, P.O. & P.S. Wangoi, District Imphal West, Manipur-795009.
2. Shri Salam Joy Singh, aged about 48 years, S/o (L) Salam Krishnadas Singh of Samurou Awang Leikai, P.O. & P.S. Wangoi, District- Imphal West, Manipur-795009.

... Respondents

-AND-

IN THE MATTER OF:
Election Petition No. 19 of 2022

Shri Oinam Lukhoi Singh, aged about 46 years, S/o (L) Oinam Dhananjoy Singh of Laku Huidrom Awang Leikai and also at Thiyam Leishangkhong, P.O. & P.S. Wangoi, District Imphal West, Manipur-795009.

... Petitioner

-Versus-

1. Shri Khuraijam Loken Singh, aged about 51 years, S/o Khuraijam Yaima Singh a resident of Yumnam Huidrom Leikai, P.O. & P.S. Wangoi, Imphal West District, Manipur – 795009.
2. Shri Salam Joy Singh, aged about 48 years, S/o (L) Salam Krishnadas Singh of Samurou Awang Leikai, P.O. & P.S. Wangoi, District- Imphal West, Manipur-795009.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the Applicant	::	Mr. S. Biswajit, Senior Advocate asstd. by Ms. Ishori, Advocate
For the respondents	::	Mr. Ajoy Pebam, Advocate
Date of Hearing	::	03-05-2023
Date of Judgment	::	29-05-2023

J U D G M E N T

[1] Heard Mr S. Biswajit, learned senior counsel assisted by Ms. Ishori, learned counsel appearing for the applicant and Mr. Ajoy Pebam, learned counsel appearing for the respondent No. 1. None appeared for the respondent No. 2.

[2] The present application had been filed with the prayer for dismissing the connected Election Petition No. 19 of 2022 on the following grounds:-

- (a) The copy of the election petition furnished to the applicant (respondent No. 1 in the connected Election Petition) is not a true copy of the election petition filed before the registry of this court as the copy furnished to the applicant does not bear any attestation including seal, affirmation and signature of the Oath Commissioner specially in the affidavit accompanying the election petition. Hence, the said copy of the election petition served to the applicant is not a true copy of the election petition filed in this court.
- (b) At page 5 and page 42 of the election petition, the petitioner made addition and alteration by way of handwriting without any

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attestation and verification by any competent authority to authenticate the addition and alteration.

- (c) Even though the election petitioner at paragraphs 34 of his election petition alleged commission of corrupt practice by the applicant, no affidavit in the prescribed form in support of such allegation of corrupt practice has been filed as provided under Section 83 of the RP Act.

[3] Mr. S. Biswajit, learned senior counsel appearing for the petitioner submitted that the affidavit accompanying the copy of the election petition furnished to the applicant did not bear any attestation including seal, affirmation and signature of the Oath Commissioner, hence, the said copy of the election petition served to the applicant cannot be said to be a true copy of the election petition filed before this court. The learned senior counsel further submitted that the said affidavit filed in support of the pleadings made in the election petition should be attested and verified by an Oath Commissioner and thereafter, a true copy of the same should be served to the respondents otherwise the election petition is liable to be dismissed for non-compliance of the provision of Section 81 of the Representation of People Act ("RP Act" for short). In support of his contention, the learned senior counsel relied on the judgment rendered by the Hon'ble Apex Court in the case of "**Harcharan Singh Josh Vs. Hari Kishan**" reported in **(1997) 10 SCC 294** wherein the Hon'ble Apex Court held as under:-

***“2. It is not necessary for us to go into the grounds on which the election petition was dismissed by the High Court. Suffice it to state that the objections raised by the respondent regarding non-supply of the true copy of the affidavit is a formidable objection which merits acceptance in view of the recent judgment of this Court in Shipra (Dr) v. Shanti Lal Khoiwal. Therein the copy of the affidavit supplied to the respondent was not attested by the Oath Commissioner. This Court, after considering the entire case-law, held that the affirmation before the prescribed authority in the affidavit and the supply of its true copy is mandatory so that the returned candidate would not be misled in his understanding that imputation of the corrupt practices were solemnly affirmed and duly verified before the prescribed authority. For that purpose, Form 25 prescribed by Section 83 requires verification before the prescribed authority. The concept of substantial compliance has no application in such a case. It is seen that the copy of the affidavit supplied to the respondent does not contain the affirmation by the Oath Commissioner. Under these circumstances, the defect is not a curable defect. Therefore, the dismissal of the election petition on this ground is sustainable in law.*”**

[4] In connection with the second ground, the learned senior counsel appearing for the applicant submitted that at page 5 and page 42 of the election petition, the election petitioner made certain addition and alteration by way of handwriting without any attestation and verification by any competent authority to authenticate such addition and alteration. The learned senior counsel accordingly submitted that the election petition is liable to be dismissed for making such addition and alteration as no addition or alteration can be made in the election petition without demonstrating the authenticity of the same.

[5] In connection with the third ground, it has been submitted by the learned senior counsel appearing for the applicant that at para 34 of the election petition, the petitioner alleged commission of corrupt practice by the applicant, however, the petitioner failed to file an affidavit in the

prescribed form in support of the allegation of such corrupt practice as provided under Section 83 of the RP Act. The learned senior counsel submitted that filing of such affidavit is not just a mere formality but is a mandatory requirement under law and as such non-filing of the said affidavit is a vital mistake on the part of the election petitioner. It has also been submitted that since filing of an affidavit in the prescribed form in support of the allegation of such corrupt practice is mandatorily required under the proviso to sub-section (i) of Section 83 of the RP Act, the election petition is liable to be dismissed at the threshold. In support of his contention, the learned senior counsel cited the following case laws:-

1. **“V. Narayanaswamy Vs. C.S. Thirunavukkarasu”** reported in (2002) 2 SCC 294.

***“26. Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter; if proved, not only does the candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Reference in this connection may be made to Section 8-A of the Act. It was for this purpose that the proviso to sub-section (1) of Section 83 was inserted by Act 40 of 1961 (w.e.f. 20-9-1961) requiring filing of the affidavit in the prescribed form where there are allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the rules.*”**

[6] I have heard the rival submissions advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on record. In connection with the first ground raised by

the learned senior counsel appearing for the applicant, it is to be pointed out that the said ground is no longer an undecided question of law. In this regard, we can gainfully refer to the following judgments rendered by the Hon'ble Apex Court:-

1. In the case of **“T. Phungzathang Vs. Hangkhanlian & ors.”** reported in **(2001) 8 SCC 358**, it has been held by the Hon'ble Apex Court as under –

“17. In the above-declared legal position, if we examine the case in hand, we notice that the only lacuna pointed out by the contesting respondent in his application in Civil Miscellaneous Election Case No. 3 of 2000 is that the copy supplied to him did not contain the verification or affirmation made by the Oath Commissioner or the prescribed authority as required in Form 25 and Rule 94-A of the Conduct of Elections Rules, 1961. It is not the case of Respondent 1 that the original affidavit filed along with the election petition in Form 25 did not contain such verification or affirmation. On the contrary, it is an admitted fact that such affirmation or verification was made in the original affidavit filed before the High Court. Therefore, the question arising in this appeal is: would this omission as pointed out by the respondent in his petition, ipso facto entail dismissal of the election petition under Section 86(1) of the Act? In view of the law laid down in Jacob case the answer then should be no” because by such omission the copy supplied will not cease to be a “true copy” and there is no possibility of any prudent person being in any manner misled in defending himself or being prejudiced in the defence of his case. Further, such omissions are only curable irregularities.”

2. **“Ram Prasad Sarma: Mani Kumar Subba Vs. Mani Kumar Subba: Ram Prasad Sarma”** reported in **2002 Legal Eagle (SC) 918**.

“18. THE purpose of the provision to furnish a true copy of the petition is not to frustrate the cause of the petitioner approaching the court by adhering strictly to technicalities of little consequence. On the other hand the anxiety is that the respondent must have correct idea of the allegations of corrupt practices made against him with some responsibility and that he may not be misled in any material respect by furnishing of a copy of the affidavit which may not be a correct copy having vital variation from the original. It is true that in the matters relating to elections and election petitions, strict compliance of the legal provisions is necessary and full

care is to be taken to see that rights of an elected representative are not lightly disturbed and rightly so. But an election petition is not to be thrown at the threshold on the slightest pretext of one kind or the other which may or may not have any material bearing on the factors to be strictly adhered to in such matters. It is substance not form which would matter. If it is permitted otherwise, the returned candidate would only be in the look out microscopically for any kind of technical lacuna or defect to abort the endeavour of the petitioner to bring to trial the issues relating to corrupt practices in the elections. The purpose of the law on the point cannot be to allow the returned candidate to avoid the trial of the issues of corrupt practices raised against him on the basis of any little defect which may not result in any vital variation between the original and the true copy so as to have the effect of misleading the returned candidate. As it is, the prevailing situation of elections and practices often said to be adopted now and then and here and there does not always give a very happy picture. Free, fair and fearless election is ideal to be achieved and not to be defeated for the sake of pretentious and frivolous technicalities.”

- “20. **LEARNED** senior counsel for the respondent then submits that in the case in hand on the copy there is no stamp of the notary, nor anything is mentioned about attestation by him nor that the affidavit was verified before the oath commissioner and was signed by him (oath commissioner). Therefore, it would be a different case from one in which in the true copy it was indicated that the affidavit was signed by the notary and in another case where it was not so noted but copy of stamp of notary may be there in the true copy without indicating that the affidavit was verified or signed by the oath commissioner as in those cases the returned candidates might know that the allegations relating to corrupt practices have been verified and attested before the oath commissioner even though it is not indicated in the true copy that it was signed by the oath commissioner. We are unable to appreciate the above submission. Mere indication of the stamp of oath commissioner without any indication in the true copy that the affidavit was attested before the oath commissioner and signed by him (oath commissioner) will have no different effect from one where nothing is indicated about the stamp and verification before the oath commissioner because it is not necessary that mere stamp of the oath commissioner must lead to the inference that the affidavit was also sworn before and signed by the oath commissioner in attestation thereof. Therefore, such a case would be at the same footing as where nothing is indicated regarding swearing of the affidavit before the oath commissioner.”

[7] In the case of “**T. Phungzathang Vs. Hangkhanlian & ors.**” reported in **(2001) 8 SCC 358**, the Hon’ble Apex Court has held that the decision laid down in the case of Harcharan Singh Josh (*supra*) relied on by the learned senior counsel appearing for the applicant cannot be construed as a good law any more. Relevant portions of the judgments are as under:-

1. “T. Phungzathang Vs. Hangkhanlian & ors.” reported in (2001) 8 SCC 358.

“19. Having come to the conclusion that the facts of the present appeal are fully covered by the Constitution Bench judgments of this Court in Jacob case and Deshmukh case? We will now discuss the applicability of Harcharan Singh Josh case to the facts of this case bearing in mind that the High Court has relied on this case also to dismiss the election petition. It is true that in Josh case this Court extended the principle laid down in Dr. Shipra case but then this Court in Jacob case³ in clear terms held that the application of the principle found in Dr Shipra case is confined only to the facts of that case; meaning thereby that it is applicable only in cases where the original affidavit filed before the High Court contained the omissions and not to copies of the affidavit supplied to the respondents. Therefore, it is clear that the application of the principle in Dr. Shipra case to the facts of Josh case is clearly impermissible. In that view of the matter, the decision in Josh case being contrary to Jacob case the same cannot be construed as a good law any more. Therefore, the High Court in the instant case could not have relied on Josh case to dismiss the election petition.

2. “Ram Prasad Sarma: Mani Kumar Subba Vs. Mani Kumar Subba: Ram Prasad Sarma” reported in 2002 Legal Eagle (SC) 918.

*“16. IN yet another decision in the case of Sri T. Phungzathang v. Sri Hangkhanlian and Others, it has been held that the case of Harcharan Singh Josh (*supra*) does not lay the correct law. It has also been observed that an election petition accompanied by an affidavit has two parts out of which the verification part by the oath commissioner is not an integral part of the petition and the affidavit. If the copy furnished to the returned candidate does not contain the words as the*

true copy so far the attestation part by the oath commissioner is concerned, it would not violate the requirement of furnishing of true copy of the election petition and the affidavit thereof. This is also a decision by three judge bench rendered on considering the decision in the cases of Dr. Shipra, Murarka Radhey Shyam and T.M. Jacob (supra). It was held that in view of the two constitution bench decisions in the case of Harcharan Singh Josh (supra) cannot be held as laying down the correct law. The Court followed the decision in the case of T.M. Jacob and Anil R. Deshmukh (supra). The fact situation of the case was also quite akin to the case in hand. The allegations of corrupt practices were made. The original petition contains the affidavit with all necessary endorsement and attestation by the oath commissioner. But the copy supplied did not contain any such verification or affirmation. While ascribing additional reasons in support of the decision, one of us (R.C. Lahoti, J.), who was a member of the bench observed that endorsement made by the officer administering oath to the deponent is not an integral part of the affidavit. Preparing, signing and swearing of an affidavit are act of deponent; administering oath and making an endorsement in proof thereof on the affidavit are acts of the officer administering the oath. The former relates to form of an affidavit which the latter is mode and manner of swearing in an affidavit. The latter part of the provision prescribes the person recognized by the Act or the rules as competent to administer the oath to the deponent and his endorsement is not an integral part of the affidavit.”

“17. FROM the various decisions noted above, it clearly emerges out that the correctness of the decision in Dr. Shipra's case (supra) was doubted and it has been held by the constitution bench in the T.M. Jacob's case (supra) that it was confined to the facts of that case. Therefore it cannot be said that Dr. Shipra's case lays down any proposition of law of binding nature. The two decisions of the constitution benches, namely. Radhey Shyam Murarka and T.M. Jacob (supra) hold the field as well as the decision in the case of Sri T. Phungzathang (supra). The law as laid down in the above noted decisions would be the guiding precedents in deciding a question relating to a true copy of an affidavit.”

In view of the above quoted law laid down by the Hon'ble Apex Court, this court find no substance in the first ground raised by the senior

counsel appearing for the applicant and accordingly, the same is hereby rejected.

[8] With regard to the second ground raised on behalf of the applicant, the addition and alteration made at page 5 and page 42 of the election petition are as under:-

- (i) The addition of the name of the father of the respondent No. 2 in the cause title of the election petition; and
- (ii) Alteration or correction of the date of verification of the affidavit accompanying the election petition. The said addition or alteration is supported by the signature of the person carrying out the said alteration or correction. It has also been verified from the record that the said addition or alteration were carried out before filing of the election petition and well before the prescribed period of limitation provided under Section 81 of the RP Act.

In view of the above, this court did not find any substance or merit in the second ground raised by the applicant and accordingly, the same is hereby rejected.

[9] With regard to the argument advanced on behalf of the applicant for dismissing the election petition for non-compliance with the requirements of filing an affidavit in support of the allegation of corrupt practice as provided under the proviso to Section 83(1) of the RP Act, this court is of the considered view that the allegation made in the election

petition are mainly in connection with the improper acceptance of the nomination of the applicant and non-compliance with the statutory provisions. The allegation regarding corrupt practice made in the election petition relates to the concealment of material information in Form -26 affidavit filed by the applicant, which amounts to undue influence as defined in Section 123(2) of the RP Act, 1951.

[10] In the case of **“Lok Prahari through its General Secretary Vs. Union of India & ors.”**, reported in **(2018) 4 SCC 699**, the Hon'ble Apex Court held that non-disclosure of assets and source of income by the candidate and their associates would constitute a corrupt practice falling under the heading "undue influence" as defined under Section 123(2) of the RP Act, 1951. The relevant paragraphs of the aforesaid judgments are as under:-

“79. We shall now deal with Prayer 2 which seeks a declaration that non-disclosure of assets and sources of income would amount to “undue influence” – a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any Panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to “undue influence” – a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the RP Act of 1951.

“80. On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy case held as follows:

“91. ... While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. ...”

“81. For the very same logic as adopted by this Court in Krishnamoorthy, we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading “undue influence” as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer No.2.”

[11] In the case of **“Umesh Challiyil Vs. K.P. Rajendran”** reported in **2008 Legal Eagle (SC) 305**, it has been held by the Hon'ble Apex Court as under:-

“14. However, in fairness whenever such defects are pointed then the proper course for the Court is not to dismiss the petition at the threshold. In order to maintain the sanctity of the election the Court should not take such a technical attitude and dismiss the election petition at the threshold. On the contrary after finding the defects, the Court should give opportunity to cure the defects and in case of failure to remove/ cure the defects, it could result into dismissal on account of Order 6 Rule 17 or Order 7 Rule 11 CPC. Though technically it cannot be dismissed under Section 86 of the Act of 1951 but it can rejected when the election petition is not properly constituted as required under the provisions of the CPC but in the present case we regret to record that the defects which have been pointed out in this election petition was purely cosmetic and it does not go to the root of the matter and secondly even if the Court found them of serious nature then at least the court should have given an opportunity to the petitioner to rectify such defects.”

In the case of **“A. Manju Vs. Prajwal Revanna @ Prajwal R. & ors.”** reported in **2001 Legal Eagle (SC) 901**, it has been held by the Hon'ble Apex Court as under-

- “21. Thus, the real and core question before us is that in view of the allegations of the alleged non-disclosure of assets in Form-26 by respondent No.1 being cited as corrupt practice”, would it be mandatory for the election petitioner to file an affidavit in Form-25 and what would be the consequences of not filing such an affidavit.”**
- “22. We may take note of the Constitution Bench judgment of this Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* AIR 1964 SC 1545: (1964) 3 SCR 573 which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily and such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in *G.M. Siddeshwar (supra)* case to come to a conclusion that non-compliance with proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied, i.e., even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the appellant were not confined only to Section 33A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of respondent No. 1 were also pleaded as violation of the mandate under Sections 123 and 100 of the RP Act.”**
- “23. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in *Ponnala Lakshmaiah (supra)* case which have received the imprimatur of the three Judges Bench in *G.M. Siddeshwar (supra)* case appear not to have been appreciated in the correct perspective. In fact, the *G.M. Siddeshwar (supra)* case has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge, i.e. *Ponnala Lakshmaiah (supra)* as well as *G.M. Siddeshwar, (supra)* ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form.”**
- “24. The arguments of learned counsel for respondent No.1 were predicated on the distinction between the absence of an affidavit and a defective affidavit. This pre-supposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective. This would be very**

narrow reading of the provisions. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of respondent No. 1.”

“25. The appellant states the case clearly and in no uncertain terms with supporting material in the election petition. Whether the violation is made out by respondent no. 1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold.”

[12] In view of the law laid down by the Hon'ble Apex Court as quoted above and keeping in view the facts and circumstances of the present case, this court is not inclined to dismiss the election petition on the ground raised by the applicant.

In view of the facts and circumstances of the present case and the findings and reasons given hereinabove, this Court is not inclined to grant the reliefs sought for by the applicant in the present application and accordingly, the present application is hereby dismissed as being devoid of merit. Parties are to bear their own cost.

JUDGE

FR / NFR

Devananda