

Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (EP) No. No. 19 of 2023 in
El. Pet. No. 2 of 2023

Date of Decision: 31.10.2023

Shri Gavin Miguel Myllem & Ors. Vs. Shri Titosstar Well Chyne

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge.

Appearance:

For the Petitioner(s)/Applicant(s): Mr. S. Sahay, Adv. with
Ms. Y. Pallavi, Adv.
Ms. S.K. Nongrum, Adv.
Mr. A.M. Pala, Adv.

For the Respondent(s)/Opp. Party: Mr. N. Jotendra Singh, Sr. Adv. with
Mr. B. Khyriem, Adv.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. The instant application has been filed by the respondent No. 1 under Section 86 of the Representation of People Act read with Order 7 Rule 11 CPC and the Gauhati High Court Rules (as adopted by the High Court of Meghalaya).

2. The grounds taken in the instant application are that the Election Petition is ex-facie barred by Section 86 of the Representation of People Act, being filed in violation of Section 81, 82 & 83 of the said Act, the High Court of Meghalaya Rules, and also barred by law within the meaning of Order 7 Rule 11 CPC.

3. It has been submitted by Mr. S. Sahay, learned counsel for the applicant/respondent, that the election petition is liable to be dismissed as it failed to meet the requirement of filing of an election petition as stipulated by law. Reference has been made to Article 329 (b) of the Constitution of India that prescribes that (i) election can only be challenged by way of election petition; (ii) and such election petition must be presented to the authorized authority (iii) and such presentation must be done in the manner prescribed under the law. In this regard it has been submitted that the law as framed for presentation, is contained in Section 81 of the RP Act, the contravention of which, entails outright dismissal as provided in Section 86 of the said Act.

4. Further contention has been raised that as the Meghalaya High Court Rules, 2013 has adopted the procedure with regard to the presentation of election petitions from the Gauhati High Court Rules, which in this case is to be before the Stamp Reporter, the non-compliance thereof, would be violative of Section 81 (1) of the RP Act, read with Rule

1 under Chapter VIII A of the High Court Rules. In the instant case, it is argued that the election petitioner has not controverted the allegations that the petitioner had not presented the election petition before the Stamp Reporter personally, and that the reply to the instant application is silent on material particulars regarding the details of such presentation. It has been further submitted that there is no endorsement of the Stamp Reporter in the petition and that the report of the Stamp Reporter does not show that the petition was personally presented by the election petitioner. In support of these arguments, reliance has been placed on the following cases:-

- i) ***G.V. Sreerama Reddy vs. Returning Officer (2009) 8 SCC 736***
- ii) ***Abdul Jabbar vs. Syeda Anwara Taimur & Ors. (1986) 1 GLR 257***
- iii) ***Jamal Uddin Ahmed vs. Abu Saleh Najmuddin & Anr. (2003) 4 SCC 257***

5. It has been submitted that as the petition has not been presented personally by the election petitioner, and that in reply to the instant application, only bald averments have been made without any material particulars, there is no necessity that evidence be led to substantiate this contention. It is also submitted that evidence can be led only if there is a pleading to this effect, and the same not being present, apart from the Stamp Reporter's report not indicating that the petition was

presented by the election petitioner, the argument that at the time of presentation, the election petitioner was only present in the campus, will not come to the aid of the election petitioner in any manner.

6. It has further been contended that Section 81 (3) of the RP Act has been breached, inasmuch as, the requirement that each and every copy of the election petition to be attested by the election petitioner under his own signature has not been met, while filing the election petition. To the arguments raised by the election petitioner, that this Court by order dated 11.08.2023 passed in MC (EP) No. 27 of 2023, had allowed the furnishing of attested copies of the election petition signed by the election petitioner to all respondents and as such there has been substantial compliance thereof, it has been countered by the learned counsel for the applicant, that the order was only with regard to furnishing of fresh copies before hearing of the objections. The issue of non-compliance of Section 81, it is submitted has no bearing as far as the instant application is concerned, and the election petitioner having not presented the election petition personally, the election petition by virtue of Section 86 of the RP Act is therefore liable to be dismissed.

7. Mr. N. Jotendra Singh, learned Senior counsel assisted by Mr. B. Khyriem, learned counsel for the election petitioner (respondent herein) has at the outset submitted that dismissing of the election petition,

on the ground of there being no cause of action is untenable, inasmuch as, in the election petition, material facts and particulars have been pleaded in detail, as is seen by the statements made in Para-3.5, 4, 9 & 14. With regard to the presentation of petitions and the relevant law governing the same i.e. Section 81, 82 of the RP Act read with Rule 1 to Chapter VIII A of the Gauhati High Court Rules as adopted by the High Court of Meghalaya, the learned counsel has taken this Court through the said provisions, and submitted that the election petitioner has complied with the stipulation as contained in Chapter VIII A of the High Court Rules, especially Note I and Note II to the said Rule, which mandates that non-compliance of the same, an election petition should be returned forthwith by the Stamp Reporter. There being no objection by the Stamp Reporter, he therefore contends that the election petition is to be treated as correct and in proper form. It is further submitted that since the Registry of the High Court has accepted the election petition, the controversy raised by the applicant/respondent is not available any longer for consideration before this Court in the instant proceedings under Order 7 Rule 11 CPC. The learned counsel has laid great emphasis on the order dated 11.08.2023 passed in MC (EP) No. 27 of 2023, to advance his argument that this Court having ruled in favour of the election petitioner, and allowed the curing of the defect of non-furnishing of signed petitions, which was thereafter

never challenged by the applicant/respondent, the objections in the application which touches upon the order dated 11.08.2023 cannot be sustained. Learned Senior counsel, then submits that the issues raised by the applicant are all triable issues which are to be decided at the time of trial of the election petition, and as such this Misc. application is liable to be rejected as being without any merit.

8. Heard learned counsels for the parties.

9. As noted from the submissions, the question to be decided in the instant application under Order 7 Rule 11 CPC is whether the presentation of the election petition was in accordance with Section 81 (1) of the RP Act 1951 read with Chapter VIII A of the Gauhati High Court Rules as adopted by the High Court of Meghalaya. The point in issue therefore crystallizes only on the examination as to whether the election petition was presented personally before the authorized officer of the High Court, in this case as per the Rules, the Stamp Reporter.

10. It is a settled law that the proper presentation of an election petition as per Section 81 (1) of the RP Act requires strict compliance as held in the case of *G.V. Sreerama Reddy vs. Returning Officer (supra)*, wherein Paras-15 to 19, 24 & 25, reads as follows:-

“15. This Court, on previous occasions, had the chance to interpret Section 81(1). It must be noted that the Representation of the People Act, 1951 is a special

statute, and a self-contained regime. In K. Venkateswara Rao. v. Bekkam Narasimha Reddi a question arose whether 45 days' period provided under Section 81(1) could be condoned through the application of the Limitation Act? After examining the relevant provisions of the Act, this Court held: (AIR p. 877, para 14)

"14. ... the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act."

(emphasis supplied)

This has been reiterated in Hukumdev Narain Yadav v. Lalit Narain Mishra wherein this Court has again read the requirements under Section 81 strictly, while stating that the Act is a self-contained special statute.

16. While interpreting a special statute, which is a self-contained code, the court must consider the intention of the legislature. The reason for this fidelity towards the legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed.

17. The preamble of the Representation of the People Act makes it clear that for the conduct of elections of the Houses of Parliament or the legislature of each State, the qualification and disqualification for membership of those Houses, the corrupt practice and other offences in connection with such allegations the Act was enacted by Parliament.

18. In spite of existence of adequate provisions in the Code of Civil Procedure relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are

the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trials of election petitions are to be conducted has been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mentioned by the legislature.

19. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the legislature has provided that the petition must be presented "by" the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.

24. The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub-section (1) along with the other provisions in Chapters II and III, the object and intent of the legislature is that this provision i.e. [Section 81\(1\)](#) is to be strictly adhered to and complied with.

25. In view of the endorsement by the Registrar (Judicial) on 7-7-2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per sub- section (1) of [Section 81](#), an election petition is to be presented by any candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere to such course would be contrary to the said provision and

in that event the election petition is liable to be dismissed on the ground of improper presentation.”

11. Further, with regard to the constitutionality of the High Court Rules, requiring the election petition to be presented before the Stamp Reporter, the same has been upheld in the case of ***Abdul Jabbar vs. Syeda Anwara Taimur & Ors.*** (supra), wherein the erstwhile jurisdictional High Court, had held that the election petition is said to be filed only when it is presented to the proper officer for acceptance for record in the office. The relevant paragraph (at para-14), is quoted hereunder: -

“14. The next question which arises for consideration is whether the election petition was presented in terms of the expression “presentation” used in Section 81. The word ‘presentation’ has many different significations in the context and circumstances in which it is used. The dictionary meaning of ‘presentation’ is delivering; filing; showing. A mere depositing of the petition and marking of filing by the clerk is not a filing. The paper is said to be filed when it is delivered or deposited to the proper office or custodian for keeping it on file. A file mark or endorsement on the petition is merely an evidence of filing and not actual filing since filing is delivery to the proper officer or clerk for his acceptance for record in his office.”

12. A perusal of the above noted judgments therefore, leaves no doubt as to the stringent requirements that are to be followed in filing and presentation of an election petition, inasmuch as, as observed by the Hon’ble Supreme Court, an election petition is a serious matter with a variety of consequences. In the instant case, though pointed arguments

have been raised by the applicant/respondent that the election petition was not presented in the manner prescribed, certain doubts had arisen which occasioned this Court by order dated 15.09.2023, to call for a report from the Stamp Reporter, which was furnished on 27.09.2023. However, in the said report, the Stamp Reporter only verified that the Stamp report of the main election petition was affixed at the first page of the petition as a check slip as per practice of the Registry. The report when perused together with the check slip dated 12.04.2023 bearing Filing Serial No. 189 of 2023, apart from indicating that the case was ready, does not disclose as to whether the presentation of the same was made personally by the election petitioner. Compounded with the inconclusive report of the Stamp Reporter, is the submission of the counsel of the election petitioner during arguments of the instant application that the election petitioner was present at the time of presentation in the campus. The fact therefore, as to whether the election petitioner was present or not, cannot be conclusively ascertained at this stage from the materials on record, to warrant the application Section 86 of the RP Act to dismiss the election petition outrightly.

13. Another issue which has been raised by the election petitioner in his defense, i.e. the implication of the order dated 11.08.2023 passed in MC (EP) No. 27 of 2023, in the opinion of this Court does not deserve any

consideration or can be taken to be a ground for not entertaining the instant application. This is due to the fact that in the said order, it has been clearly indicated at Para-7 thereof, that the instant application under Order 7 Rule 11 CPC was pending consideration at that time, when MC (EP) No. 27 of 2023 was filed, which was limited only to a prayer for granting leave to allow furnishing of attested copies of the election petition to the respondent, which was allowed by this Court.

14. In consideration of the facts and circumstances as discussed, and in light of the judgment rendered in the case of ***Abdul Jabbar vs. Syeda Anwara Taimur & Ors.*** (supra), this Court being unable to arrive at a conclusive finding as to the presence of the election petitioner at the time of presentation, and in view of the cryptic report furnished by the Stamp Reporter, deems it fit to take up the issues raised in the instant application as to the presentation, as preliminary issues for consideration.

15. Accordingly, the instant application stands disposed of.

JUDGE

Meghalaya
31.10.2023
"V. Lyndem PS"