

Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(EP) No. 27 of 2023
In El. Petn. No. 2 of 2023

Date of Decision: 11.08.2023

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

Coram:

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

Appearance:

For the Petitioner/Applicant(s): Mr. N. Jotendra Singh, Sr. Adv. with
Mr. D. Singha, Adv.

For the Respondent/Opp. Party(s): Mr. S. Sahay, Adv. with
Ms. S.K. Nongrum, Adv.
Mr. A.M. Pala, Adv.

i) Whether approved for reporting in Yes/No
Law journals etc.:

ii) Whether approved for publication Yes/No
in press:

Oral:

1. The instant Misc. Application has been filed by the Election
Petitioner under Section 141 read with Section 151 of the Code of Civil

Procedure, 1908, and Section 81(3) and Section 87(1) of the Representation of the People Act, 1951 (hereinafter referred to as RP Act, 1951), for granting leave to allow the Applicant/Election Petitioner to furnish attested copies of the Election Petition to the respondents, as in the main Election Petition No. 2 of 2023, while furnishing copies to the respondents pursuant to order dated 13.04.2023, photo copies of the same only was supplied. The respondent No. 1, then on entering appearance had filed a Misc. Case being MC(EP) No. 19 of 2023, raising the issue of non-maintainability of the Election Petition on various grounds, which amongst others, included the non-furnishing of attested copies of the Election Petition duly signed by the Applicant/Election Petitioner. As such, by way of the instant application, leave of this Court has been sought to allow the furnishing of attested copies of the Election Petition, duly signed by the Election Petitioner to the respondents.

2. Mr. N. Jotendra Singh, learned Senior counsel assisted by Mr. D. Singha, learned counsel for the applicant has submitted that the non-furnishing of the duly attested copies, was due to inadvertence and is not intentional. The learned Senior counsel has further submitted that there should be no impediment in this Court allowing the application, inasmuch as, the applicant can furnish the attested copies before hearing

of the objection of the respondent No. 1 is taken up. In support of his contention, the learned Senior counsel has placed reliance on the judgment of the Supreme Court in the case of *Anil R. Deshmukh vs. Onkar N. Wagh & Ors.* reported in (1999) 2 SCC 205, wherein it has been held, that even before arguments were heard on preliminary objections, as the true copy of the affidavits had been served on the first respondent and his counsel, there was sufficient compliance of the provisions of Section 81(3) read with 83(1)(c) of the RP Act, 1951, even though, the copies served in the first instance on the respondents was not in conformity with the provisions of the Act. As such, he submits, the judgment covers the instant case, and thus will overcome the technical objection that has been raised by the respondent No. 1.

3. Mr. S. Sahay, learned counsel assisted by Ms. S.K. Nongrum, learned counsel for the respondent No. 1 has at the outset submitted that, the application is not maintainable, inasmuch as, Sections 141 and 151 of the Code of Civil Procedure, are inapplicable in the proceedings, as the same are to be conducted strictly in accordance with the provisions of RP Act, 1951, which is a self-contained code. It has been further submitted that, the instant application by the Election Petitioner is an admission of the fact that, the Election Petition originally filed, is defective and that the same will be barred by limitation, as only upon

correction of the defects will the Election Petition be compliant with the statutory requirements. He submits that therefore, the election results having been declared as far back as on 2nd March, 2023, the 45(forty-five) days period allowed for preferring the Election Petition had expired on 17th April, 2023, and as such, the instant application being filed on 10th July, 2023, is well beyond the period of limitation, and should be rejected.

4. It has further been submitted that the application has been filed to correct the defects only after the application namely Misc. Case No. 19 of 2023, under Order 7 Rule 11 CPC has been filed by the respondent No. 1. He submits that with the issuance of notice, it is to be understood that, hearing on the preliminary objections has commenced. He submits therefore, the instant application being filed after the arguments on the application under Order 7 Rule 11 CPC, has commenced, the same is clearly not maintainable. Apart from these contentions, the learned counsel on the point of the petition being barred by limitation, has relied upon the case of *Satya Narain vs. Dhuja Ram & Ors. (1974) 4 SCC 237*. The learned counsel has also sought to distinguish the case of *Anil R. Deshmukh vs. Onkar N. Wagh & Ors. (supra)*, which has been relied upon by the applicant, to emphasise the point that the said judgment does not in any manner authorise or permit

rectification of any defects, which he submits as per the judgment rendered in *Hukumdev Narain Yadav vs. Lalit Narain Mishra (1974) 2 SCC 133*, should be done strictly as per the RP Act, 1951. The learned counsel lastly submits that, the instant Misc. application itself is an admission of the non-maintainability of Election Petition No. 2 of 2023 itself.

5. I have heard learned counsels for the parties. The point for consideration in the present application is whether, an Election Petition is to be dismissed at the threshold itself due to the non-attestation of the copies served upon the respondents. Section 81 and 83 of the RP Act, 1951, has stipulated the manner of presentation and also as to the contents thereof of the Election Petition. Section 81(1)(3) prescribes as follows.

***“81. Presentation of petitions.-.....
.....
.....
[(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [***], and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]”***

6. On the non-supply of such attested copies, the Election Petitioner therefore by way of this instant application is seeking to cure

the said defects. As aforementioned, objections to the application have been raised, on the ground that it is barred by limitation and that the same cannot be considered, in view of the fact that hearing of Misc. Case 19 of 2023, the Order 7 Rule 11 CPC application filed by the respondent has since commenced. On the first point, it is not disputed that the Election Petition was presented before the Registry within the 45(forty-five) days limitation period, and the same was accepted and registered. Substantially therefore, the Election Petition was already on board, and notwithstanding the application for rectification of defects, the same was available for consideration. The contention therefore, that it was not complete in all respects and is now sought to be made compliant as per the RP Act of 1951, by the instant application, which is beyond the period of 45(forty-five) days, in the considered view of this Court, is untenable, and the contention is rejected.

7. On the other aspect, it is noted that though it is correct that an application under Order 7 Rule 11 CPC filed by the respondent No. 1 is pending consideration, and had been filed prior to the instant application, presently however, this Court at this stage, is only to examine as to whether the preliminary objections had been substantially heard, before the instant application was filed. In the case of **Anil R. Deshmukh vs. Onkar N. Wagh & Ors. (supra)**, on this point the

Hon'ble Supreme Court at Para – 17, which is reproduced herein below, had held as follows.

“17. It is to be noticed that the reference is only with regard to the applicability of Dr Shipra in cases like the one which arose before the said Bench. In the light of the rulings of the Constitution Bench referred to earlier, we have our own reservations on the correctness of the view expressed in Dr Shipra case but it is unnecessary in the present case to dwell on the same. As pointed out earlier, Justice Ramaswamy has confined the ruling to the "fact situation" in that case. Insofar as the present case is concerned, there is a distinguishing factor which makes the ruling in Dr Shipra case inapplicable. We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case, the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance of the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act. Unfortunately, this aspect of the matter has been completely ignored by the High Court. Hence the order of the High Court dismissing the election petition in limine is unsustainable.”

[Emphasis supplied]

8. In the instant case, the respondent No. 1 had filed Misc. Case No. 19 of 2023, under Order 7 Rule 11 CPC on 14.06.2023, and the matter then appeared on 11.07.2023. On this date, the Election Petitioner then filed the instant Misc. Case, seeking leave to furnish attested copies before the commencement of hearing of the objection application under Order 7 Rule 11 CPC. The order dated 11.07.2023, being relevant is reproduced herein below.

Serial No. 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

***MC (EP) No. 27 of 2023 in
El. Pet. No. 2 of 2023***

Date of Order: 11.07.2023

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

Coram:

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

Appearance:

For the Petitioner(s)/Applicant(s): Mr. D. Singha, Adv.

***For the Respondent(s) : Mr. S. Sahay, Adv. with
Ms. S.K. Nongrum, Adv. (For R 1)***

***This is an application filed by the election petitioner under
Section 141 read with Section 151 of the CPC for granting leave to***

allow the applicant/election petitioner to furnish attested copies of the Election Petition, duly signed by the applicant/election petitioner before the commencement of hearing of the objection application under Order 7 Rule 11 of the CPC, filed by the returned candidate (respondent No. 1), which has been registered as Misc. Case No. 19 of 2023.

Mr. S. Sahay, learned counsel for the returned candidate (respondent No. 1) submits that a short reply is necessary to the instant Misc. Case, and prays for 2(two) weeks' time to file the same.

Prayer is allowed.

It is also noted that the election petitioner has filed reply to the Order 7 Rule 11 application.

List this matter on 27.07.2023.

Meghalaya
11.07.2023
"V. Lyndem-PS"



JUDGE

9. From the facts as they pertain on that date, and as given in the order dated 11.07.2023 quoted above, the preliminary objection was yet to be taken up for consideration or arguments by this Court, and as such therefore, the above quoted judgment will squarely apply to the instant case, inasmuch as, leave has been sought to furnish the attested copies before Misc. Case No. 19 of 2023, will be taken up.

10. Another authority of relevance is the judgment in the case of ***G.M. Siddeshwar vs. Prasanna Kumar (2013) 4 SCC 776***, wherein the Hon'ble Supreme Court has in Paragraphs – 39 and 52, which are reproduced herein below, held that although non-compliance with the provisions of Section 83 of the RP Act, 1951, is a curable defect, yet there must be substantial compliance with the provisions thereof. This judgment will therefore undoubtedly apply to the instant case, inasmuch as, substantial compliance is on record and the only defect was that, attested copies had not been furnished to the respondents.



***“39. Undoubtedly, Section 86 of the Act makes no reference to Section 83 thereof and so, prima facie, an election petition cannot be summarily dismissed under Section 86 of the Act for non-compliance with the provisions of Section 83 thereof. This was briefly adverted to in *Hardwari Lal v. Kanwal Singh* but that was in the context of dismissal of the election petition under the provisions of CPC. The contention urged in *Hardwari Lal* was to the effect that since Section 83 of the Act does not find a mention in Section 86 thereof, an election petition could not be summarily dismissed for non-compliance with Section 83. A three-Judge Bench of this Court held that since an election petition is required to be tried as nearly as possible in accordance with the procedure applicable under CPC to the trial of suits, an election petition could nevertheless be dismissed if it did not disclose a cause of action.*”**

52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold.”

11. As the defect therefore, being mere technical in nature, it cannot be held to be fatal to the main Election Petition, and as observed earlier, as there is substantial compliance with Section 83 of the RP Act, 1951, the technical defect is therefore curable.

12. Accordingly, in view of these discussions and observations made herein above, the instant Misc. Application is allowed and is accordingly disposed of.

Judge

Meghalaya
11.08.2023
“D.Thabab-PS”