

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.33/2023

Date of order: 21.09.2023

Shri Tennydard M. Marak vs. The Election Commission of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellant : Mr. J. C. Gaur, Adv with
Mr. U. Ch. Das, Adv

For the Respondents : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv
Mr. N.D. Chullai, AAG with
Ms. S. Laloo, GA for R/2-6

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appellant should have learnt a lesson from the order impugned by which his petition as a busybody under Article 226 of the Constitution to, in effect, unseat a representative elected to the State Assembly was dismissed with costs of Rs.15,000/-.

2. The prayers in the petition are set out:

“It is, therefore, respectfully prayed that Your Lordships may be pleased to issue a Rule calling upon the respondents No. 1 to 6 to show cause as to why they should not be directed to register a case against the respondent No.7 on the basis of complaint dated 23.02.2023 and FIR dated 03.04.2023 lodged by petitioner,

investigate the same and take action as per provisions of the Representation of Peoples Act 1951;

And call for records and on hearing the causes as may be shown by the respondents, make the Rule absolute by issuing appropriate Writ, Order or Direction and/or to pass such other order or orders as Your Lordships may seem fit and proper under the facts and circumstances of the case.

And during pendency of this writ petition, the respondent No.7 may kindly be restrained from holding any Post in the present Government of Meghalaya for fair investigation and ends of justice.”

3. The entirety of the writ petition is founded on the perceived inaction of the police authorities in Willamnagar to take action on the basis of a complaint lodged by the appellant herein on April 3, 2023. The police complaint was preceded by a complaint filed before the Chief Election Commissioner of India on March 23, 2023. It is evident from the third paragraph of police complaint of April 3, 2023 that the purpose of the petitioner’s enterprise was “to declare the election of Mr. Marcuise N. Marak to be void for adopting corrupt practices and holding fresh election.”

4. The previous complaint to the Election Commission and the subsequent petition in this Court were for the same purpose. Quite plainly, the appellant herein had no locus standi to seek the election of

the successful candidate to be annulled since the appellant was not a candidate and cannot be said to have been directly affected by anything that the appellant may have complained of.

5. By the order impugned dated August 22, 2023, the writ court referred to the provisions of the Constitution and the Representation of People Act, 1951 together with the Conduct of the Election Rules, 1961 to hold that the petitioner had no right to have the election of the successful candidate cancelled or annulled and even the police authorities could take no steps in such regard since the only authority in such regard would be the Election Commission. Further, the writ court, quite appropriately, held that once a candidate had been declared elected, it was only by way of an election petition that the result could be annulled. Since the appellant herein could not have filed an election petition and the failed candidates, who were directly affected by the result of the election, did not lodge any complaint or file any election petition, the entire exercise by the appellant herein was a farce.

6. There is no room for interference with the reasons indicated in the judgment and order impugned.

7. Accordingly, WA No.33 of 2023 is dismissed with further costs of Rs.15,000/- which should be paid by the appellant to the Meghalaya State Legal Services Authority within four weeks from date and, in default, will be executable against his assets.

8. After this order is passed, it is submitted on behalf of the Election Commission of India that a belated election petition was filed by this appellant which was subsequently withdrawn.

(B. Bhattacharjee)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
21.09.2023
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