

REPORTABLE

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MC(El.Pet.) No. 73 of 2022

Shri Mayanglambam Rameshwar Singh, aged about 53 years, S/O late Mayanglambam Aber Singh, a resident of Makha Lou, Kakching Khullen, P.O. & P.S. Kakching, Manipur-795013.

.....Applicant
Respondent No. 1 in E.P.

1. Shri Kshetrimayum Kennedy Singh, aged about 48 years, S/O late Kshetrimayum Irabot Singh, a resident of Kakching Makha Leikai, P.O. & P.S. kakching, District-Kakching, Manipur-795103.

.....Principal Respondent
Election Petitioner

2. Shri Yengkhom Nilachandra Singh, aged about 61 years, S/O late Yengkhom Kengba Singh, a resident of Kakching Khullen Leishangbam Pareng, P.O. & P.S. Kakching, District-Kakching, Manipur -795103.
3. Smt. Yengkhom Roma Devi alias Kshetrimayum Ongbi Roma Devi, aged about 51 years, W/O Kshetrimayum Ibomcha Singh, a resident of Kakching Khullen Makha Leikai, P.O. & P.S. Kakching, District-Kakching, Manipur-795013.
4. Shri Yengkhom Surchandra Singh, aged about 70 years, S/O late Y. Yaima Singh, resident of Kakching Turel Wangma, P.O. & P.S. Kakching, Kakching District, Manipur -795103.
5. Shri Naorem Nabachandra Singh, aged about 58 years, S/O late Naorem Bhupon Singh, a resident of Kakching Paji Leikai Makha Lou, P.O. & P.S. Kakching, District-Kakching, Manipur-795103.

.....Proforma Respondents
Respondents No. 2 to 5 in E.P.

IN

Election Petition No. 35 of 2022

Shri Kshetrimayum Kennedy Singh, aged about 48 years, S/O late Kshetrimayum Irabot Singh, a resident of Kakching Makha Leikai, P.O. & P.S. kakching, kakching District, Manipur, PIN-795103.

..... Petitioner

- Versus -

1. Shri Mayanglambam Rameshwar Singh, aged about 53 years, S/O late Mayanglambam Aber Singh, a resident of Makha Lou, kakching Khullen (Part A), P.O. & P.S. Kakching, Manipur, PIN-795013.
2. Shri Yengkhom Nilachandra Singh, aged about 61 years, S/O late Yengkhom Kengba Singh, a resident of Kakching Khullen Leishangbam Pareng, P.O. & P.S. Kakching, Kakching District, Manipur, PIN-795103.
3. Smt. Yengkhom Roma Devi alias Kshetrimayum Ongbi Roma Devi, aged about 51 years, W/O Kshetrimayum Ibomcha Singh, a resident of Kakching Khullen Makha Leikai, P.O. & P.S. Kakching, Kakching District, Manipur, PIN-795013.
4. Shri Yengkhom Surchandra Singh, aged about 70 years, S/O late Yengkhom Yaima Singh, a resident of Kakching Turel Wangma, P.O. & P.S. Kakching, Kakching District, Manipur PIN-795103.
5. Shri Naorem Nabachandra Singh, aged about 58 years, S/O late Naorem Bhupon Singh, a resident of Kakching Paji Leikai Makha Lou, P.O. & P.S. Kakching, Kakching District, Manipur-PIN-795103.

.....Respondent/s

AND

El.Recr.Petn. No. 24 of 2022

Shri Mayanglambam Rameshwar Singh, aged about 53 years, S/O late Mayanglambam Aber Singh, a resident of Makha Lou, kakching Khullen, P.O. & P.S. Kakching, Manipur-795013

.....Reckrimination Petitioner

1. Shri Kshetrimayum Kennedy Singh, aged about 48 years, S/O late Kshetrimayum Irabot Singh, a resident of Kakching Makha Leikai, P.O. & P.S. kakching, District-Kakching, Manipur-795103.
2. Shri Yengkhom Nilachandra Singh, aged about 61 years, S/O late Yengkhom Kengba Singh, a resident of Kakching Khullen

Leishangbam Pareng, P.O. & P.S. Kakching, District-Kakching, Manipur -795103.

3. Smt. Yengkhom Roma Devi alias Kshetrimayum Ongbi Roma Devi, aged about 51 years, W/O Kshetrimayum Ibomcha Singh, a resident of Kakching Khullen Makha Leikai, P.O. & P.S. Kakching, District-Kakching, Manipur-795013.
4. Shri Yengkhom Surchandra Singh, aged about 70 years, S/O late Y. Yaima Singh, resident of Kakching Turel Wangma, P.O. & P.S. Kakching, Kakching District, Manipur -795103.
5. Shri Naorem Nabachandra Singh, aged about 58 years, S/O late Naorem Bhubon Singh, a resident of Kakching Paji Leikai Makha Lou, P.O. & P.S. Kakching, District-Kakching, Manipur-795103.

.....Respondents

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the applicant	::	Mr. N. Kumarjit, Sr. Adv., Mr. N. Zequeson, Adv.
For the respondents	::	M. Rakesh, Advocate; Mr. N. Jotendro, Sr. Adv. & Mr. Syed Murtaza, Advocate
Date of Hearing	::	24.07.2024/02.08.2024.
Date of Order	::	03.12.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mr. N. Kumarjit, learned senior counsel assisted by Mr. N. Zequeson, learned counsel for the applicant/respondent No. 1, Mr. M. Rakesh, learned counsel for the election petitioner and Mr. N. Jotendro, learned senior counsel assisted by Mr. Syed Murtaza, learned counsel for respondent No. 4.

[2] El.Pet. No. 35 of 2022 has been filed by the petitioner herein under Section 100(1)(d)(i) & (iv) of the Representation of People Act, 1951 [in short, RP Act, 1951] to declare the election of applicant/respondent No. 1 from 37-Kakching Assembly Constituency in the 12th Manipur Legislative Assembly Election 2022 as null and void and to declare the petitioner as the returned candidate from the same Assembly Constituency. 6 (six) candidates contested from 37- Kakching Assembly Constituency in 2022 Assembly Election, the petitioner namely Kshetrimayum Kennedy Singh is contesting Indian National Congress (INC) ticket and respondent Nos. 1 to 5 contested from National People's Party (NPP), Nationalist Congress Party (NCP), Bharatiya Janata Party (BJP), Communist Party of India (CPI) and Nanata Dal (United) respectively. The schedule of the election in Manipur for the 12th General Election to the Manipur Legislative Assembly, 2022 as published by the Election Commission of India is reproduced as:

Sl. No.	Poll Event	First Phase	Second Phase
1	Issue of Notification	01.02.2022	04.02.2022
2	Last date of making Nominations	08.02.2022	11.02.2022
3	Scrutiny of Nominations	09.02.2022	14.02.2022
4	Last date for withdrawal of candidature	11.02.2022	16.02.2022
5	Date of Poll	27.02.2022	03.03.2022
6	Counting of Votes	10.03.2022	
7	Date before which the election process shall be completed	12.03.2022	

[3] However, Election Commission re-scheduled the first and second phase on 28.02.2022 & 05.03.2022 respectively. After counting held on 10.03.2022, the result of the election was announced and the votes secured by the 6 (six) candidates are given below:

Sl. No.	Name of Candidates	Total Votes
1	Mayanglambam Rameshwar Singh	8546
2	Yengkhom Nilachandra Singh	2009
3	Yengkhom Roma Devi	676
4	Yengkhom Surchandra Singh	7341
5	Kshetrimayum Kennedy Singh	5873
6	Naorem Nabachandra Singh	2451

[4] Accordingly, Shri Mayanglambam Rameshwar Singh of NPP was declared as elected on NPP ticket. The election of the returned candidate Shri Mayanglambam Rameshwar Singh was challenged by the petitioner, inter-alia, on the following grounds that:

- (i) the returned candidate in his affidavit dated 10.02.2022 of Form-26 for the 12th Assembly Election submitted that his education qualification is M.A.(Pol.Sc.) from Delhi University in the year 2002. However, in the affidavit dated 14.02.2017 of Form-26 submitted to the Returning Officer for the 11th Assembly

Election of 37-kakching Assembly Constituency, the returned candidate mentioned his highest education qualification as M.A. (Pol.Sc.) from Delhi University in the year 1992.

(ii) The submission of information for passing of Master Degree in Pol.Sc. from Delhi University in two different years i.e. 1992 & 2002 in the two affidavits of 2017 & 2022 elections amounts to filing false affidavit and the same is corrupt and malpractice and his election is liable to be declared null and void.

[5] It is stated that the cause of action arose on 10.03.2022 and when the election was declared by the Returning Officer for 37-Kakching Assembly Constituency and election petition filed on 25.04.2022 is within time excluding 23.04.2022 & 24.04.2022 which being holiday. Along with election petition, a sum of Rs. 2,000/- was also deposited as required under Section 117 of the RP Act, 1951.

[6] Respondent No. 1 (returned candidate) filed an application being MC(El.Pet.) No. 73 of 2022 raising the question of maintainability of the election petition being El.Pet. No. 35 of 2022 on the ground of non-compliance of various provisions of the RP Act 1951, the Conduct of Elections Rules, 1961 as well as Chapter VII-A of the High Court of Manipur Rules, 2019 and the provisions of the Code of Civil Procedure, 1908.

Returned candidate also filed a recrimination petition being El. Recr. Pet. No. 24 of 2022 with respect to the El. Pet. No. 35 of 2022. In the application, the applicant/returned candidate raised the question of maintainability of the election petition for non-compliance of the following provisions:

- (a) Sections 81, 83 and 87 of the Representation of the People Act, 1951.
- (b) Rule 94-A of the Conduct of Elections Rules, 1961.
- (c) Order VI Rule 15 of the Code of Civil Procedure, 1908.
- (d) Provisions of Chapter VII-A of the High Court of Manipur Rules, 2019.

[7] It is stated that as per Section 81(3) of the R.P. Act, 1951, copy of the election petition served upon the respondents should be attested by the petitioner under his own signature to be a true copy, however, the same has not been complied and unsigned copy has been served. The election petitioner also fails to disclose the full material facts and particulars of any corrupt practice and not accompanied by the affidavit of corrupt practice and the election petition is liable to be dismissed for non-compliance of Section 83(1)(a) & (b) of the R.P. Act, 1951.

[8] In the election petition, nothing is mentioned about Form-26 affidavit dated 10.02.2022 submitted by the returned candidate for the 12th Assembly Election 2022 is false. The petitioner has also failed to mention

the factum of passing of M.A. (Pol.Sc.) in 2002 as mentioned in para 10 of the Form-26 affidavit dated 14.02.2017 submitted by the returned candidate for the 2017 Assembly Election. Hence, the petitioner approached this Court with malafide intension.

[9] It is stated that affidavit of corrupt practice under Rule 94-A of the Conduct of Election Rules, 1961 read with proviso to Section 83(1)(b) of RP Act has not been enclosed and the election petition is liable to be dismissed on this ground alone. The petitioner also failed to sign schedule or annexure to the election petition in violation of the provisions of Section 83(2) of the R.P. Act, 1951. No grounds have been pleaded under Section 101 of the R.P. Act, 1951 for declaring the petitioner as returned candidate and no triable issue has been made out. It is stated that election petition be dismissed with cost at the threshold for non-compliance of the above-mentioned provisions.

[10] Election petitioner filed written objection to the application filed by the returned candidate for dismissing election petition. In the objection filed by the election petitioner, nothing specific has been stated except for mere denial of the averments in the application i.e. MC(El.Pet.) No. 73 of 2022 filed by the returned candidate.

[11] The returned candidate also filed rejoinder affidavit to the written objection filed by the election petitioner stating that the election petitioner has submitted evasive denial and no specific reply has been given

to the question of maintainability raised in the application by the returned candidate.

[12] The points of determination for exercising the power under Order 7 Rule 11 of CPC of rejecting the election petition are:

(i) Whether the alleged wrong information about the highest educational qualification mentioned in Form-26 affidavit by the returned candidate in 11th General Assembly Election of Manipur, 2017 for 37-Kakching Assembly Constituency can be a ground for declaring the election of the returned candidate as void in the subsequent Assembly Election of 12th Manipur Legislative Assembly held in the year 2022 wherein the returned candidate has given correct information about the highest educational qualification in his Form 26 affidavit submitted for 2022 Election?

(ii) Whether the election petition is not maintainable for not disclosing the material facts and particulars of instance of corrupt practice by the returned candidate as mandated under Section 83(1)(a) & (b) of the RP Act, 1951?

(iii) Whether the election petition is liable to be dismissed at the threshold for not filing affidavit of corrupt practice as mandated under proviso to Section 83(1) of RP

***Act and as mandated under Rule 94-A of the Conduct of
Election Rules, 1961?***

[13] Mr. N. Kumarjit, learned senior counsel for the returned candidate, submits that as per Section 81 of the R.P. Act 1951, every election petition given to the respondents shall be attested as true copy by the petitioner under his own signature and the election petitioner has failed to do the same. As provided under Section 83 of the R.P. Act 1951, the election petition shall contain a concise statement of material facts and set out full particulars of any corrupt practices as alleged including name, place, time, date and the nature of corrupt practice and election petition be signed and verified. In case of corrupt practice, the election petition should be accompanied by an affidavit in prescribed form for corrupt practice. Learned senior counsel draws the attention of this Court that there is total non-compliance of the provisions of Section 83(1)(a) & (b) of the R.P. Act 1951, as the petitioner has failed to disclose the full particulars of any corrupt practice and also separate affidavit of corrupt practice as provided under proviso to Section 83(1) and Rule 94-A of the Conduct of Election Rules has not been submitted.

[14] It is also submitted that in Form-26 affidavit submitted by the returned candidate for 2022 Election, the particulars of the highest educational qualification i.e. M.A. (Pol.Sc.) from Delhi University in the year 2002 is correctly mentioned. Further, in Form-26 affidavit for 11th Manipur Legislative Assembly for 2017 Assembly Election in para 10 of the affidavit,

the highest educational qualification was correctly mentioned as M.A.(Pol.Sc.) from Delhi University in the year 2002. However, in para 11, due to typographical mistake it was mentioned as M.A.(Pol.Sc.) from Delhi University in the year 1992. It is submitted that the affidavit filed for Assembly Election of 2017 cannot be relied for challenging the election of the returned candidate in the Assembly Election of 2022 when the correct information i.e. M.A.(Pol.Sc.) from Delhi University is given in Form-26 affidavit of 2022 Election.

[15] Mr. N. Kumarjit, learned senior counsel for returned candidates, relies on the following decisions of the Hon'ble Supreme Court:

(1) **Dhartipakar Madan Lal Agarwal –vs- Rajiv Gandhi** reported as **1987 (Supp) SCC 93** held that the corrupt practice should be precisely made out by stating separate instances of corrupt practice.

(2) **V.S. Achuthanandan –vs- P.J. Francis & Anr.** reported as **(1999) 3 SCC 737** holding that election petition can be dismissed by invoking power under Section 87 of the R.P. Act, 1951 read with provisions of Order 7 Rule 11(a) of the CPC for non-disclosure of the material facts.

(3) **Hari Shanker Jain –vs- Sonia Gandhi** reported as **(2001) 8 SCC 233** holding that in order to enable a Court to reject a plaint on the ground that does not disclose the cause of action, it should look at the plaint and nothing else. Failure to plead material facts is fatal to the election petition.

(4) **Swamy Atmananda & Ors. –vs- Sri Ramakrishna Tapovanam & Ors.** reported as **(2005) 10 SCC 51** held that cause of action means every fact which is necessary for the plaintiff to prove in order to support his right to a judgment of the Court.

(5) **Jaipal Singh –vs- Sumitra Mahajan (Smt.) & Anr.** reported as **(2004) 4 SCC 522** held that election petition is liable to be dismissed for non-disclosure of the full material facts.

(6) **Saleem Bhai & Ors. –vs- State of Maharashtra 7 Ors.** reported as **(2003) 1 SCC 557** held that the averment in the plaint only and not the plea taken in the written statement be considered for while deciding an application under Order 7 Rule 11 of the CPC for rejection of the plaint.

(7) **Azhar Hussain –vs- Rajiv Gandhi** reported as **1986 (Supp) SCC 315** held that election petition can be dismissed at the threshold in exercising of power under Order 6 Rule 12 and Order 7 Rule 11 of the CPC for non-compliance of Section 83, 86 & 87 of the R.P. Act, 1951 such as non-disclosure of the material facts, failure to plead factum of corrupt practice, etc.

(8) **Kalyan Singh Chouhan –vs- C.P. Joshi** reported as **(2011) 11 SCC 786** held that the provisions of CPC will be applicable as far as practicable in election petition.

(9) **Harcharan Singh –vs- s. Mohinder Singh** reported as **AIR 1968 SC 1500** held that that statutory requirement of election law must be strictly observed.

(10) **R.P. Moidutty –vs- P.T. Kunju Mohammad** reported as **(2000) 1 SCC 481** held that corrupt practice should be specifically pleaded and the defect in affidavit is curable but failure to cure the affidavit is fatal.

(11) **Quamarul Islam –vs- S.K. Kanta & Ors.** reported as **1994 Supp (3) SCC 5** held that the factum of corrupt practice must be disclosed by furnishing all material facts and particulars and the same cannot be submitted later on.

(12) **Anil R. Deshmukh –vs- Onkar N. Wagh & Ors.** reported as **(1999) 2 SCC 205** held that copy of the affidavit of corrupt practice furnished to the respondent was not notarised or without seal; however, a true copy, affidavit, endorsement of verification, etc. was served later on before hearing, is in sufficient compliance of Section 83(1)(c) of R.P. Act, 1951.

(13) **T. Phungzathang –vs- Hangkhanlian & Ors.** reported as **(2001) 8 SCC 358** held that copy of the affidavit supplied along with the election petition to the respondent though complete and not containing verification and attestation of the Notarization/Oath Commissioner is curable defect and the election petition cannot be rejected on this ground alone.

(14) **Ashraf Kokkur –vs- K.V. Abdul Khader** reported as (2015) **QSCC 129** held that enquiry under Order 7 Rule 11(a) of the CPC is only as to whether the fact pleaded disclose the cause of action and not complete cause of action and such, pleadings constitute a triable issue.

(15) **Dr. Shipra & Ors. –vs- Shanti Lal Khoiwal & Ors.** reported as (1996) **5SCC 181** held that the requirements of affidavit under Rule 94-A of the Conduct of Election Rules, 1961 read with Section 83(1) of R.P. Act, 1951 is mandatory and formed part of the election petition. In case of non-compliance of the same, the copy of the petition cannot be treated as true copy under Section 81(3) of R.P. Act.

(16) **Harcharan Singh Josh –vs- Hari Kishan** reported as (1997) **10 SCC 294** held that the defect of not containing endorsement of the Oath Commissioner is curable defect.

(17) **Anil Vasudev Salgonkar –vs- Naresh Kushali Shigaonkar** reported as (2009) **9 SCC 310** held that material and full particulars of the corrupt practice are to be pleaded and proved in the election petition and election petition can be summarily dismissed, if it does not furnish cause of action in exercise power of CPC and the failure to plead even a single material fact is fatal.

(18) **P.V. Guru Raj Reddy –vs- P. Neeradha Reddy** reported as (2015) **8 SCC 331**: For rejection of the plaint under provisions of Order

7 Rule 11 CPC, only averment made in the plaint are to be considered and the stand of the defendant in the written statement or in the application for rejection of plaint cannot be considered at all.

(19) **Church of Christ Charitable Trust & Educational Charitable Society –vs- Ponniyamman Educational Trust** reported as **(2012) 8 SCC 706**: The power under Order 7 Rule 11 of the CPC can be exercise at any stage of the suit either before registering the plaint or after issuance of summon to the defendant or at any stage before the conclusion of the trial and only the averment in the plaint has to be considered in the proceeding under Order 7 Rule 11 CPC.

(20) **Soumitra Kumar Sen –vs- Shyamal Kumar Sen** reported as **(2018) 5 SCC 644**: While considering the application for rejection of plaint, the averment in the place must be considered alone and not what is stated in the written statement.

[16] Mr. N. Kumarjit, learned senior counsel, summarising the above decisions of the Hon'ble Supreme Court, has submitted that in the present petition, the election petitioner has miserably failed to plead the factum of corrupt practice and also did not file any affidavit of corrupt practice as mandated under Rule 94-A of the Conduct of Election Rules, 1961 and proviso to Section 83(1) of the R.P. Act. The election petition is liable to be dismissed on this ground alone. He further pointed out that in Form-26 affidavit filed for the Election of 2022, there is no defect and the information

of highest educational qualification as M.A. (Pol.Sc.) from Delhi University in the year 2002 was correctly mentioned. The typographical mistake of highest educational qualification in Form-26 affidavit submitted in the year 2017 Assembly Election cannot be a ground for quashing of the election in the 2022 election. It is clarified that in 2017 affidavit, it was correctly mentioned as M.A. (Pol.Sc.) from Delhi University in 2002 in para 10 of the affidavit. However, there is typographical mistake of mentioning the year 1992 in part-B Column-11 of the same affidavit. Assuming that the information furnished in Form-26 affidavit of 2017 is false, the same cannot be a ground for challenging the election of the returned candidate in 2022 election. Since the petitioner has not pleaded any other grounds, it is prayed that the election petition is filed with malafide intention and the same may be rejected at this stage with exemplary cost in order to save precious time of this Court.

[17] On the other hand, Mr. M. Rakesh, learned counsel for the election petitioner, submits that as per the latest judgment of the Hon'ble Supreme Court in the case of **Thangjam Arunkumar v. Yumkham Erabot: 2023 INSC 762**, it has been held that affidavit of corrupt practice can be submitted later on, if there is an averment of complete details of the corrupt practice in the petition. It is submitted that in para-9 &10 of the election petition, the factum of corrupt practice by the returned candidate by giving false information about his highest educational qualification of the election petitioner has been mentioned and as such, the affidavit if any, can be

submitted later on and the same is curable defect. It is submitted that the application for rejection of plaint be rejected with exemplary cost.

[18] This Court has considered the materials on record, the submissions made by the parties and the relevant provisions of law and the decisions in this regard.

[19] According to Section 87 of the R.P. Act, 1951, the election petition shall be tried by the High Court as nearly as may be in accordance with the procedure prescribed by the Court of Civil Procedure, implying that the provisions of CPC will be applicable in election petition except for exclusively stipulated under R.P. Act, 1950 & 1951 and Rules made therein from time to time.

[20] From the above cited case laws, it is settled proposition of law that the provisions of CPC with respect to Order 7 Rule 11 for rejection of a plaint is applicable in an election petition when the petition does not disclose the cause of action. It is also settled proposition of law that in the election petition, the concise statement of material facts upon which the election petitioner relies for getting relief from the Court should be specifically pleaded and also the full particulars of any corrupt practice such as name, date, place, time and the nature of corrupt practice should be specifically pleaded and separate affidavit in prescribed form in support of the allegation of corrupt practice is mandatory as mandated under Rule 94-A of the Conduct of Election Rules, 1961 read with the proviso to Section 83(1) of RP

Act, 1951. Mere defects not relating to the material facts, such as absence of endorsement of the Oath Commissioner, etc. are curable defect. However, if the defect is not cured within the stipulated time, the same is also fatal. Failure to plead even one instance of material fact is also fatal in an election petition. It is the law laid down by the Hon'ble Apex Court that while considering an application for rejection of the plaint under the provisions of Order 7 Rule 11 of the CPC, only the averments made in the plaint/petition are to be considered and the plea of the defendant in the written statement or in the application cannot be considered at all.

[21] The present application has to be examined keeping in mind the above provisions of the law and the decisions of the Hon'ble Apex Court. In the case in hand, on mere perusal of the election petition filed by the election petitioner, the only plea of the election petitioner for challenging the election of the returned candidate is that the returned candidate has furnished wrong information of his highest educational qualification in Form-26 affidavit submitted for the State Assembly Election held in the year 2017. However, in Form-26 affidavit of 2022 Election (under challenged), the returned candidate has furnished the correct information of his highest educational qualification as M.A. (Pol.Sc.) from Delhi University in the year 2002. The challenge in the present election petition is for some alleged wrong information furnished in Form-26 affidavit of 2017 election and not the present concerned election of 2022. On full examination of Form-26 affidavit of 2017, it is found that in column-10, the highest educational qualification is

correctly mentioned as M.A.(Pol.Sc.) from Delhi University in the year 2002 whereas in part-B column-10, the same is inadvertently written as M.A. (Pol.Sc.) from Delhi University in the year 1992. The same may be typographical error.

[22] Even if assuming that Form-26 affidavit submitted in the election of 2017 of Assembly Election with respect to highest educational qualification is wrong, this Court is of the opinion that the same cannot be a ground and material document for challenging the election of the returned candidate in 2022 Assembly Election wherein in Form-26 affidavit, the status of the highest educational qualification as M.A.(Pol.Sc.) from Delhi University in the year 2002 has been correctly disclosed. In other word, the election petitioner has miserably failed to point out any wrong information regarding highest educational qualification of the returned candidate in the affidavit of 2022 Assembly Election and false statement given in the earlier Election of 2017 cannot be a ground to challenge the election of the returned candidate in the subsequent election held in 2022. At most, the affidavit of 2017 can be a material fact for challenging the election of returned candidate in the 2017 election and should be confined to for election only.

[23] This Court is of the opinion that the plea for giving false affidavit of highest educational qualification in Form-26 affidavit of 2017 election does not constitute a triable issue in the election petition challenging the election of the returned candidate in the subsequent election held in 2022. When correct information about the highest educational qualification is furnished in

the 2022 election, the election petition on the sole ground of furnishing wrong information of highest educational qualification in 2017 election is bound to be failed and the same is liable to be dismissed on this ground alone.

[24] With regard to the plea of the corrupt practice, the petitioner has miserably failed to mention even any instance of corrupt practice; specially of time, place, date and the nature of corrupt practice as required under Section 83(1)(b) of RP Act. The plea of the election petitioner that by giving a false information about the highest educational qualification in Form-26 affidavit submitted in 2017 Assembly Election, the returned candidate has adopted corrupt practice of misleading the voters in 2022 Assembly Election does not satisfy the rigor and mandate of Section 83(1)(a)(b) of RP Act.

[25] This Court is of the view that the plea is too general without any details and cannot fall within the definition of “corrupt practice” as defined under Section 123, especially Clause (4), of the R.P. Act, 1951. It is reiterated here that the alleged false information about the highest educational qualification in the election of 2017 cannot be considered as a factum of corrupt practice, in the election of 2022 when the returned candidate himself has given correct information of the highest educational qualification in the affidavit of 2022 election as M.A.(Pol.Sc.) from Delhi University in the year 2002. Apart from this, there is no other ground for challenging the election of the returned candidate. In the circumstances, the election petition is liable to be dismissed under Section 83(1)(b) of the R.P.

Act, 1951 for failure to plead any instances of corrupt practice with full particulars.

[26] The petitioner has not furnished any affidavit of corrupt practice along with the election petition as mandated under proviso to Section 83(1) of the R.P. Act, 1951 read with provision of Rule 94-A of Conduct of Election Rules, 1961. It is true that mere defect in affidavit is curable, but non-filing of affidavit of corrupt practice and non-disclosure of full factum particulars of corrupt practice are not curable defect as held in the above cited decisions. The ratio in **Arunkumar case (supra)** will not be applicable in the present case, as the petitioner has not pleaded any specific instances of corrupt practice with full details in the election petition except for mentioning for namesake.

[27] In the circumstances, this Court is of the considered view that the election petition is liable to be rejected at this stage by exercising the power under Order 7 Rule 11 of the CPC for non-disclosure of material facts and the instance of full particulars of the corrupt practice and non-filing of affidavit of corrupt practice as required under Section 83 of RP Act, 1951 and Rule 94-A of Conduct of Election Rules, 1961. Form-26 affidavit of 2017 election cannot be a material for challenging the election of the returned candidate for the Assembly Election held in 2022.

[28] Accordingly, the application being MC(El.Pet.) No. 73 of 2022 is allowed and the election petition being El.Pet. No. 35 of 2022 is rejected

in exercise of the power under Order 7 Rule 11 of the CPC with a cost of Rs. 50,000/- (Rupees fifty thousand) only to be deposited to the account of High Court Bar Association, Manipur towards relief fund. The cost should be deposited within one month and the election petitioner is directed to submit proof of payment of the cost to the registry.

[29] In the case of **T A Ahammed Kabeer v. A A Azeez : (2003) 5 SCC 650 @ Para 33**, Hon'ble Supreme Court held that a recrimination petition under Section 97 of RP Act, 1951 will be maintainable only when '..... the election petition seeks a declaration that any other candidate other than the returned candidate has been duly elected over and above the declaration that the election of the returned candidate is void.....'. In other words, the recrimination petition will be maintainable and can be adjudicated if the election of the returned candidate is likely to be set aside and any other candidate be declared as elected. If the election petition is dismissed at threshold, there would be no occasion for the court to entertain the recrimination petition, as both the election petition and recrimination petition are to be decided in the same proceeding in the nature of counter-claim in a civil suit. In view of the above position of law, the recrimination petition being El.Recr.Pet. No. 24 of 2022 filed by the returned candidate is closed as infructuous.

[30]

Put up on **14.01.2025** for compliance of payment of cost.

JUDGE

FR/NFR

Kh. Joshua Maring

**KH.
JOSHUA
MARING**

Digitally signed by
KH. JOSHUA
MARING
Date: 2024.12.03
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