

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

**MC (Election Petition) No.87 of 2022
Ref: (Election Petition No.23 of 2022)**

Usham Deben Singh, aged about 53 years,
s/o (Late) U.Pukchao Singh of 3-Keirak
Awang Usham Leikai, Sub Division
Kakching, PO & PS Kakching District,
Manipur 795103. ... Applicant

-Versus-

1. Md Fajur Rahim aged about 51 years, s/o
Md Fajur Rahman of Irong Chesaba Mathak
Leikai, PO & PS Mayang Imphal, Kakching District,
Manipur 795132 ... Respondent/Petitioner

2. Mayengbam Ranjit Singh, aged about 47
Years, s/o (late) M.Manihar Singh of Wabgai Tera
Urak, PO & PS Kakching, Kakching District,
Manipur 795103.

3. Md.Sikander, aged about 43 years, s/o
Md Ahmad Ali of Santhel Mayai Leikai, PO & PS
Mayang Imphal, Kakching District, Manipur 795132.

4. Sakir Ahmed, aged about 39 years, s/o
(late) Hayad Ali of Sekmaijin Hungul Ngakhapat,
Hangul, PO Mayang Imphal, PS Hiyangbam,
Kakching District, Manipur 795132

... Respondents

IN

Election Petition No.23 of 2022

Md Fajur Rahim aged about 51 years, s/o
Md Fajur Rahman of Irong Chesaba Mathak
Leikai, PO & PS Mayang Imphal, Kakching District,
Manipur 795132

... Petitioner

-Versus-

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Kakching District, Manipur 795132

... Respondents

BEFORE

For the Applicant :: Mr.M.Hemchandra, Sr. Adv,
 Mr.Tolapishak, Advocate &
 Mr. N. Rendy, Advocate

For the Respondent/1:: Mr.N.Ibotombi, Sr.Advocate,
Mrs. N. Savitri, Advocate

Date of Hearing :: 02.02.2024/13.02.2024

Date of Judgment :: **14.06.2024**

JUDGMENT & ORDER

[1] By the present application being MC(Election Petition) No. 87 of 2022 in Election Petition No. 23 of 2023, the respondent No.1/applicant (returned candidate) filed under Order 7 Rule 11 of the Code of Civil Procedure (in short, CPC), the maintainability of the election petition being Election Petition No. 23 of 2022 is challenged.

[2] Heard Mr. M. Hemchandra, learned senior counsel assisted by Mr. Th. Tolpishak, Advocate and Mr. M. Rendy, Advocate on behalf of the respondent No.1/applicant and Mr. N. Ibotombi, learned senior counsel assisted by Mrs. N. Savitri, Advocate on behalf of the election petitioner.

[3] The instant application arises out of Election Petition No.23 of 2022, which prayed for declaring the election of the respondent No.1 as Member to the 12th Manipur Legislative Assembly from 36-Wabgai Assembly Constituency as null and void, coupled with a prayer to declare the Election Petitioner, a candidate nominated and set up by the Indian National Congress, as elected Member of the 12th Manipur Legislative Assembly from 36-Wabgai Assembly Constituency, on the

ground that the names of the 30 service voters mentioned in para No.15 of the Petition are not ordinarily residents of 36-Wabgai Assembly Constituency. These non-resident 30 service voters have casted their votes as service voters on the basis of service voter list 2022 prepared by the Election Authority in collusion with the said voters and respondent No.1 (returned candidate). It is also stated that the names of the 111 voters mentioned in para No.16 of the Election Petition who are central government employees and senior citizens 80+, have casted their vote by means of ETPBS and Postal Ballots, ie, voted twice. As the said 111 voters have casted their votes in the polling stations as well as by means of ETPBS and Postal Ballots, such ballots should be declared as void.

[4] As per Notice dated 16.02.2022 issued by the Returning Officer, the number of voters in respect of AVSC or Senior Citizens and AVPD or persons with disability flagged in the database of electoral roll are 229 numbers of 80+ and 44 numbers of PWD, whereas as per the Letter dated 28.03.2022 issued by the Returning Officer, the number of Senior Citizen (above 80 yrs.) is 453 voters and number of PWD is 53. Regarding the discrepancy, the Election Authority is required to explain why the number of 80+ voter has been increased from 229 voters to 453 voters and also the increase of the number of voter of PWD from 44 voters to 53 voters. It is submitted that the said increased votes have been casted in favour of the Respondent No.1, in collusion with the Election Authority and as such, the Election of the Applicant/Respondent No.1 be declared as void.

[5] The respondent No.1, at the outset submits that the petitioner in the above referred election petition has failed to mention in each pages of the copy of the election petition "Attested to be true copy" of

the enclosed Annexures and conspicuously in para No.23 wherein, under Section 117 of the RP Act, 1951 read with Chapter VII-A Rule 1(d) of the High Court of Manipur Rules, 2019 a sum of Rs.2000/- (Two thousand rupees) only has not mentioned as "Attested to be true copy of the Original Challan No.323 dated 19.04.2022 is enclosed herewith and marked as Annexure A/nil therefore, when the enclosed statement of the Original Challan No.323 dated 19.04.2022 is not mentioned in the same amount as not enclosed in the present Election Petition, thereby failed to abide the section 117 of the RP Act, 1951 read with Chapter VII-A Rule 1(d) of the High Court of Manipur Rules, 2019 and in these light the present Election is defective and not maintainable.

[6] It is further stated that after perusal of the present Election Petition the custody of the documents claimed in para No.15 and 16 calling the records, i.e Register maintained by the Election authority for issuing ETBPS, Electoral Roll of 38 Hiyanglam AC, 35 KhangabokAC, 23 Mayang Imphal A/C and 37 Kakching AC through the Returning Officer, 36 Wabgai Assembly Constituency in respect of the alleged thirty voters and the Register maintained by the Election authority for issuing the ETBPS, Postal Ballot papers and marked copy of electoral Rolls, Electoral roll in the polling Stations through the Returning Officer, 36 Wabgai Assembly Constituency of the alleged 111 (one hundred eleven) voters, however the grounds for calling the said records are under the domain of District Electoral Officer and Joint/Chief Electoral Officer and there is no such particular allegation for collusion along with the election authority and nowhere it is mentioned in the pleadings the word "corrupt practice" that materially affect the election and make out locus standi /right to file the present Election Petition.

[7] It is also stated that there is no cause of action since all the allegation made in the Election is wildly imaginary and submitted from procrastination of being unbearable from the loss of the election against the returned candidate/applicant.

[8] Respondent No.1/election petitioner filed written objection to the misc. application for rejection of the election petition of the applicant denying the averment of not mentioning 'attested to be true copy' on annexures and stated that the same is marked on each page of the annexures. It is also clarified that it is not required to mark 'attested to be true copy' in the petition itself and such lapses, if any, could not be a ground for rejection of election petition. Regarding non-marking of the original challan of Rs.2000/- as a security for the election petition in terms of High Court of Manipur Rules, 2019, the same is not a ground for rejection of the election petition as challan under Chapter VII-A of the High Court Rules is not a part of document for election petition. Annexing the same with the election petition is sufficient compliance of the provisions of Section 117 of the Representation of Peoples Act, 1951. It is further stated that election authority is not a necessary party to the election petition as stipulated under Section 82 of RPA, 1951 and only candidates are the necessary parties. It is further clarified that material facts as mandated under Section 83 of RPA, 1951 have been taken. The issues raised by the applicants in his written statement are to be decided during the trial. It is prayed that the application for rejection of election petition be rejected with exemplary cost.

[9] Mr. M. Hemchandra, learned senior counsel for the applicant/respondent No.1 in the election petition has raised the following objections to the maintainability of the election petition in the present form.

[10] First objection is regarding failure to mention on each page of the election petition "Attested to be true copy" of the enclosed Annexures, ie, on page Nos. 11, 12, 13, 35, 38, 40 and in para 23 also not mention "Attested to be a true copy of the original Challan No. 323 dated 19.04.2022" as annexures in violation of Section 117 of RPA, 1951 read with Chapter VII-A Rule 1(d) of the High Court of Manipur Rules, 2019. It is submitted that the same amounts to incomplete material facts in terms of Section 83(1)(a) of the RPA, 1951 and hence, the election petition can be rejected on this ground alone.

[11] The second ground for objection is for non-joinder of election authority as a necessary party when allegations are made in para 15, 16 and 20 of the election petition about the collusion between the election authority and the returned candidate. It is pointed out that the election petition suffers from non-joinder of necessary party or proper party under the provisions of Order 1 Rule 9 CPC and the same can be rejected on this ground also.

[12] The third ground for objection to the maintainability of the election petition is for failure to file separate affidavit in support of the allegation of corrupt practice as mandated under proviso to Section 83(1)(b) of RPA, 1951. It is explained the averment of 'collusion' with the election authority and respondent No.1 (returned candidate) amounts to allegation of corrupt practice within the meaning of Section 100(1)(b)&(d)(ii) and Part VII Chapter I of the Act (Section 123 which defines 'corrupt practice'). The averments made in para 15, 16 and 20 of the election petition are nothing but instances of corrupt practice as defined in Black Law Dictionary. It is further submitted that materials facts of collusion such as identity of the election officials, time and date of such act of collusion, etc. are not explained in para 15 and 16 and hence the same amounts to incomplete facts within the meaning of

section 83(1)(a)&(b) of RPA, 1951 and non-compliance of Form 25 read with Rule 94A of the Conduct of Election Rules 1961 regarding affidavit to be filed along with election petition. It is reiterated that such lapses are incurable and fatal.

[13] With respect to the plea of non-disclosure of complete facts, Mr. M. Hemchandra, learned senior counsel for the applicant refers to the following decisions:

- (i) **(2001) 8 SCC 233 @ Para 23 & 24-** Failure to plead material fact is fatal to election petition.
- (ii) **AIR 1994 P&H 32 @ Para 12-** Lack of material facts for collusion of corrupt practice would lead to rejection of election petition.
- (iii) **(2008) 7 SCC 604 @ Para 20-** insufficient material facts for corrupt practice to go for a full trial.
- (iv) **(2009) 10 SCC 541 @ Para 14-21-** Rejection of election petition on failure to disclose material facts.
- (v) **(2014) 10 SCC 547 @ Para 18 & 19-** Materials of corrupt practice should be given completely.
- (vi) **(2009) 9 SCC 310 @ Para 50 & 51-** Omission of single material fact is fatal.
- (vii) **2022 LiveLaw(SC) 802** [Civil Appeal Nos. 5755-56 of 2021 dated 27.09.2022]- Suit is liable to be dismissed for failure to implead necessary party.

[14] The fourth ground for objection to the maintainability for non-compliance of Sections 15, 17, 18 and 19 of RPA, 1950 and Section 62 of RPA, 1951 could not be a ground for declaring the election of respondent No.1/returned candidate as null and void under Section 100(1)(d)(iv) of RPA, 1951. It is highlighted that Section 30 of RPA, 1950 bars jurisdiction of civil court in respect of preparation of electoral

roll and its revision. Mr. M. Hemchandra, learned senior counsel for the applicant relies on the decision reported as **(1974) 3 SCC 415 @ Para 30**- Non-compliance of Section 19 of RPA, 1950 cannot be a ground for declaring election result as void under Section 100(1)(d)(iv) of RPA, 1951.

[15] The fifth ground for objection is non-existence of the cause of action, as the election petition is based on imaginary assumptions and allegations not supported by detailed facts.

[16] The sixth ground for objection is the question of limitation. It is stated that as per the provisions of Section 81(1) of RPA, 1951, election petition should be filed within 45 days from the date of declaration of the result. In the present case, the result of the assembly election was declared on 10.03.2022 and the 45 days expired on 24.04.2022. However, the election petition was registered on 30.05.2022 thereby causing a delay of 5 days. It is stated that registration of the election petition after 5 days from the date of expiry of 45 days as contemplated under Section 81(1) of RPA, 1951 cannot be condoned and the same ought to be dismissed on the ground of limitation. It is submitted that what is mandated under Section 81(1) of RPA, 1951 is the filing of election petition without any defect within the stipulated 45 days. Mr. M. Hemchandra, learned senior counsel relies on the decisions reported as (i) **(1974) 2 SCC 133 @ Para 23**- election petition shall be dismissed for non-compliance of mandatory provisions of Sections 81, 82 or 117 of RPA, 1951; (ii) **(1974) 4 SCC 237 @ Para 14**- non-compliance of the provisions of Section 81(3) of RPA, 1951; and (iii) **(1999) 8 SCC 266 @ Para 17**. It is emphasised that the 'presentation' used in Section 81 of RPA, 1951 should be read as 'registration' of the election petition. As per RTI reply given by the High Court, the petition was registered after 5 days delay.

[17] The seventh ground for objection is regarding no objection from the election petitioner on the day of poll, ie, on 05.03.2022 as well as at the time of scrutiny as given in letter dated 28.06.2022 issued by the Returning Officer of 36- Wabagai AC.

[18] The eight ground for objection is that the grounds raised in para 20 of the election petition will amount to roving and fishing enquiry by the court.

[19] The ninth ground for objection is that the election petitioner has failed to show how he has materially been affected.

[20] Mr. M. Hemchandra, learned senior counsel submits that the election petition being Election Petition No. 23 of 2022 filed by the petitioner be dismissed with exemplary cost for misusing the process of court.

[21] Mr. N. Ibotombi, learned senior counsel for the respondent No.1/ election petitioner submits that in all annexures/documents annexed with the election petition, 'attested to be true copy of the original' is marked by the petitioner along with his signatures. It is pointed out that as per Section 83(3) of RPA, 1951, such attestation is required only in the documents and not required in the body of the election petition. It is urged that improper marking of annexures is a ground for rejection of the plaint as contemplated under Order 7 Rule 11 CPC. It is pointed out that assuming for the sake of argument that such attestation is to be made in the petition, the same cannot be a ground for rejection of the election petition at the threshold.

[22] Further, it is clarified that the challan for payment of Rs.2000/- as security for cost of election petition as contemplated under Section 117 of RPA, 1951 read with Chapter VII-A Rule 1(d) of the High Court of Manipur Rules, 2019 is not a material particular within the meaning of Section 83(1) of the Act as held by Hon'ble Supreme Court in a

catena of cases. Challan is shown in the Index at Sl. No.11 and original challan is placed at page No.92 of the election petition. The challan is not a part and parcel of the election petition, rather it is only a statutory requirement under Section 117 of RPA 1951 read with Rule 1(d) of Chapter VII-A of the High Court of Manipur Rules, 2019. It is reiterated that mere filing of the original challan along with the election petition is a sufficient compliance of the mandatory provisions.

[23] In reply to the plea of non-joinder of necessary party, Mr. N. Ibotombi, learned senior counsel submits that all parties required under Section 82 of the Act have been impleaded in the election petition. It is pointed out that the election authority and the voters are not parties as contemplated under Section 82 of the Act. It is stated that only the candidates against whom reliefs are prayed for, are the necessary party in an election petition.

[24] With respect to the plea of non-filing of separate affidavit for corrupt practice in terms of the provisions of the proviso to Section 83(1)(b) of RPA, 1951, it is clarified that the petitioner does not plead corrupt practice in his petition and hence no separate affidavit is required. Even if assuming for the sake of argument that the plea of corrupt practice is implicit in para 15 and 16 of the election petition, the affidavit can be submitted later on as per the decision of the Hon'ble Apex Court in the case of **Thangjam Arunkumar v. Yumkham Erabot: 2023 INSC 762**. It is submitted that there is no merit on this objection.

[25] Mr. N. Ibotombi, learned senior counsel relies on the decision of the Hon'ble Supreme Court in the case of **R K Roja v. U S Rayudu: (2016) 14 SCC 275** to emphasise the point that the election petition can be rejected at the threshold if on reading of the election petition, the entire petition falls within the purview of the provisions of Order 7

Rule 11 (a) to (f) of CPC. It is pointed out that the election petition does not attract any of the situations as stipulated in the above provisions. On this point, reference is also made to the decision in the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali: (2020) 7 SCC 366** to highlight that plaint can be rejected if cause of action is not disclosed on entire reading of the plaint.

[26] With respect to the objection on the ground of limitation, Mr. N. Ibotombi, learned senior counsel submits that Section 81 of RPA, 1951 specially mentions that an election petition has to be presented within 45 days from the date of declaration of the result. Reading the word 'presented' as registration of election petition would amount to judicial amendment of the statute. It is clarified that the case law cited by the applicant, ie, **Hukumdev (supra): (1974) 2 SCC 133**, does not postulate such an interpretation. It is submitted that the present application is filed with an intent to delay proceeding of the election petition and prays that the application under Order 7 Rule 11 CPC for rejection of election petition be dismissed being devoid of any merit with exemplary cost.

[27] This Court has perused the materials on record specially the contents of election petition, the submissions made at bar, the relevant provisions of law and case laws in this regard. Before entering into merit of the application, it will be useful to reproduce relevant provisions of the statutes.

Code of Civil Procedure, 1908: Order 7 Rule 11.

Rule 11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

The Representation of the People Act, 1951

Section 80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

Section 80-A. High Court to try election petitions.—

(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose:

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.

Section 81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on

one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) [*Omitted*]

(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.

Section 82. Parties of the petition.—A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

Section 83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Section 86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of Section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the

effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

Section 87. Procedure before the High Court.—(1)

Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

Section 100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) [*Omitted*];

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.

[28] The sum and substance of the nine objections raised by the returned candidate in the application for rejection of the election petition can be summarised into these broad heads- (i) non-marking of annexures and challan in the election petition; (ii) non-disclosure of material facts; (iii) limitation; (iv) non-joinder of necessary party; and (v) other miscellaneous grounds.

[29] The provisions of Order 7 Rule 11 CPC permit rejection of the plaint if the same falls within any of the conditions laid down in (a) to (f) in order to cut short of vexatious litigations at the threshold and in order to save precious judicial time. It will be fruitful to refer to the decision of **Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366** wherein the Hon'ble Supreme Court held as below:

23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

"11. Rejection of plaint.—The plaint *shall* be rejected in the following cases—

- (a) *where it does not disclose a cause of action;*
- (b) *where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) *where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;*
- (d) *where the suit appears from the statement in the plaint to be barred by any law;*
- (e) *where it is not filed in duplicate;*
- (f) *where the plaintiff fails to comply with the provisions of Rule 9:*

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

(emphasis supplied)

23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

[30] It is provided by the provisions of Section 87 of RPA, 1951 that the provisions of CPC will be applicable to the trial of election petition as nearly as possible subject to the provisions of the Act and any rules made thereunder. In other words, the rule of CPC will be applicable in an election petition in consistent with the provisions of RPA, 1951 and rules made thereunder. In case of any inconsistency, the provisions of RPA will prevail over the provisions of CPC. From the above referred para, it is seen that the provisions of Order 7 Rule 11 CPC will be applicable in an election petition specially the rules stipulated under sub-rules (a) and (d) of non-disclosure of cause of action and barred by limitation. In the case of **Dahiben (supra)**, the 'cause of action' is defined as 'every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit'. In short, the cause of action consists of materials facts for succeeding in a suit. If such facts are not disclosed on a plain reading of the plaint, the same

can be rejected at the threshold. Limitation is one of the grounds for rejection of plaint under sub-rule (d) to Order 7 Rule 11 CPC.

[31] Apart from the provisions of Order 7 Rule 11 CPC, Section 86(1) of RPA, 1951 mandates the High Court to dismiss the election petition for non-compliance of the provisions of Sections 81 (petition filed beyond 45 days of period of limitation) or Section 82 (non-joinder of necessary party) or Section 117 (non-deposit of a sum of Rs.2000/- as security for cost of the election petition) of the Act. Section 83 stipulates that the concise materials facts and full particular of any corrupt practices, if alleged in the petition, should be disclosed. Apart from the provisions of Order 7 Rule 11 CPC, non-compliance of mandate of Sections 81, 82, 83 and 117 of RPA, 1951 would be grounds of rejection of election petition on co-joint reading of principles embodied in CPC and RPA, 1951.

[32] In the case of **Hari Shanker Jain v. Sonia Gandhi, (2001) 8 SCC 233**, Hon'ble Supreme Court held that the provisions of Section 83(1)(a) of RPA, 1951 of disclosing material facts is mandatory and its non-compliance, ie, failure to plead material facts is fatal to the election petition. Relevant para are reproduced below:

23. Section 83(1)(a) of RPA, 1951 mandates that an election petition *shall* contain a concise statement of the *material facts* on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford *a basis* for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of

the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez*¹⁸, *Jitendra Bahadur Singh v. Krishna Behari*¹⁹.) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis*²⁰ this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

[33] In the case of **C.P. John v. Babu M. Palissery, (2014) 10 SCC 547**, Hon'ble Supreme Court discussed the mandatory requirement of pleading all particulars of corrupt practices alleged in the election petition under the provisions of Section 83(1)(b) of RPA, 1951 and on failure to plead the material details of the alleged corrupt practices, such name of the persons involved, the time, date and place of such corrupt practices, the election petition can be rejected at the threshold. Relevant para are reproduced below:

18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which

an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said Section 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.

19. To put it differently, when the election petition is taken up for consideration, the Court which deals with such an election petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to

comply with the said requirement statutorily. The format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statements of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94-A and Form 25 of the Rules makes the legal position clear that in the filing of an election petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas,

with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal.

[34] Section 81 of RPA, 1951 stipulates that an election petition shall be presented within 45 days from the date of declaration of the result of the returned candidates. Chapter VII-A, Rule 1 of the High Court of Manipur also prescribes that an election petition should be presented before the Stamp Reporter of the Court within 45 days from the date of the election of the returned candidate. In the case of **Amin Lal v. Hunna Mal: AIR 1965 SC 1243**, a 5-Judge Constitution Bench of the Hon'ble Supreme Court held that under Section 81 of RPA, 1951, an election petition has to be presented within 45 days from the date of election of the returned candidate. The same ratio is used in the case reported as **(2007) 1 SCC 770**. None of the decisions held that the period of limitation is counted up to the date of registration of the election petition. It has been consistently held that the period of limitation for presenting election petition is 45 days from the date of election of returned candidate. In the case of **Chandrakant Shukla v. Martand Singh: (1973) 3 SCC 194**, Hon'ble Supreme Court specifically held that the election petition should be filed within 45 days of election of the returned candidate.

[35] It may be pertinent to refer to the provisions of Section 83(2) of RPA, 1951 stipulating that any schedule or annexures to the election petition shall also be signed by the petitioner and verified in the same manner as the petition. This means that the petitioner has to sign and verify on each annexure. This is the mandate of the statute.

[36] On the basis of the above quoted provisions of relevant statutes and decisions of the Apex Court, the objections are to be examined

whether these are within the ambit of the provisions of Order 7 Rule 11 CPC read with Section 86(1) of RPA, 1951.

Decisions

[37] The first objection is that the words “attested to be true copy” have not been mentioned in the body of the petition while marking Annexures- A/1 to A/7 and non-marking of the challan of depositing Rs.2000/- as an annexure in para 23 of the election petition. It is vehemently argued by Mr. M. Hemchandra, learned senior counsel for the returned candidate that such non-compliance falls within the vice of the provisions of Order 7 Rule 11 CPC read with Section 83(2) and Section 117 of RPA, 1951. This Court does not find any merit in the submission of Mr. M. Hemchandra as the requirement of signature and verification as Section 83(2) of the Act is on annexures appended to the petition and the challan for depositing of Rs.2000/- as cost for security under Section 117 will not be a material document for deciding the election petition. Mentioning about the deposit made under Section 117 of the Act in the petition enclosing the original copy of the challan is a sufficient compliance of the mandate of section 117 of the Act.

[38] The next important objection raised is regarding non-disclosure of material facts with respect to the plea of corrupt practice as alleged in para 15, 16 and 20 of the election petition. Mr. M. Hemchandra, learned senior counsel for the returned candidate has vehemently submitted that on minute reading of the pleadings in para 15, 16 and 20 of the election petition would constitute plea of corrupt practice as there has been allegations of collusion between election authority, voters and the returned candidate. However, there is no particular of the instances of the corrupt practices and the same is not supported by an affidavit as mandated under Section 83(1)(b) of the Act and its proviso and the election petition is liable to be dismissed at the threshold. On

the other hand, Mr. N. Ibotombi, learned senior counsel for the petitioner clarifies that the petitioner does not plead corrupt practice as one of the grounds. On a plain reading of the election petition, the main grounds for challenge are- (i) 30 non-voters of Wabagai A/C casted their votes as service voters, and (ii) 111 voters casted their votes physically as well as by means of ETPBS. The details of these 141 (30+111) voters are given in para 15 and 16 of the election petition. In para 20 of the petition, the ground for challenge is mentioned as under Section 100(1)(d)(iv) of RPA, 1951. In other words, the challenge is made on the ground of non-compliance with the provisions of the Constitution of India or the RPA, 1951 or any rules or orders made under the Act. It is seen from the pleadings made in para 15, 16 and 20 that the grounds for challenge are voting by non-voters and double voting by voters of the constituency. Plea of corrupt practice could not be deciphered on plain readings of the petition. Moreover, material facts and particulars of 141 illegal votes have clearly mentioned in para 15 and 16 of the petition. Accordingly, the objection of non-disclosure of material facts specially the plea of corrupt practice is rejected.

[39] The next plea is limitation. Mr. M. Hemchandra, learned senior counsel for the returned candidate submits that the result was declared on 10.03.2022, the election petition was filed on 22.04.2022 and was registered on 30.04.2022. It is stated that there was a delay of 5 days in registration of election petition and the word 'presented' used in Section 81 of RPA, 1951 should be read as 'registered' and hence the election petition registered on 30.04.2022 is barred by 5 days.

[40] On perusal of the record, it is found that the election petition was filed on 22.04.2022 before the Stamp Reporter of this Court and registered on 30.04.2022. Section 81 of the Act mandates that the election petition be presented within 45 days from the date of

declaration of result of the returned candidate. As held in a catena of cases as referred above namely, **Amin Lal (supra)** and **Chandrakant (supra)**, the election petition is to be filed within 45 days from the date of result. Reading the word 'presented' used in Section 81 as 'registered' will amount to judicial amendment. This Court is of the opinion that the election petition filed on 22.04.2022 is within the stipulated period of 45 days from the date of declaration of result on 10.03.2022. Accordingly, the objection on the ground of limitation is also rejected.

[41] The next major objection is non-joinder of necessary party such as the election authority and 30 voters as mentioned in para 15 of the petition. As evident from reading of the provisions of Section 82 of RPA, 1951, it is seen that only candidates are the necessary parties in an election petition. This Court is of the opinion that the provisions of CPC with regard to Order 1 Rule 9 will be excluded by the provisions of Section 87 of the RPA, 1951. In case of any inconsistency, the provisions of the Act will prevail upon the provisions of CPC. Accordingly, the objection of non-joinder of necessary party is rejected.

[42] This Court is of the opinion that the other objections raised by the returned candidate on maintainability of the election petition do not fall within the purview of the provisions of Order 7 Rule 11 CPC read with Section 86(1) of RPA, 1951 and the same are to be considered during the trial.

[43] In view of the above discussions, this Court does not find any merit in the plea of maintainability raised by the returned candidate. Accordingly, the application being MC(Election Petition) No. 87 of 2022 in Election Petition No. 23 of 2022 filed by the returned candidate is dismissed with a cost of Rs.30,000/- to be paid by the applicant/

returned candidate in favour of High Court Bar Association, Manipur toward relief purposes. The application is disposed of.

[44] List the election petition and other applications on **05.07.2024** for further proceedings. Receipt of the payment of the cost, as directed above, shall be submitted to the Registry before the next date.

JUDGE

FR/NFR

Priyojit

**KH.
JOSHUA
MARING**

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by KH. JOSHUA
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