



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (EP) No. 18 of 2023 in
El. Pet. No. 1 of 2023

Date of Decision: 19.06.2024

Shri Kartush R. Marak Vs. Shri John Marak

Coram:

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

Appearance:

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

For the Respondent(s) : Mr. S. Jindal, Adv. with
Mr. S. Deb, Adv.
Mr. I. Kharmujai, Adv.
Ms. B. Jyrwa, Adv.

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

JUDGMENT AND ORDER

1. This application under Order 7 Rule 11 has been filed
by the respondent/applicant herein, for rejection of the election
petition and for dismissal of the same, as not being maintainable



under the provisions of the Representation of People Act, 1951 (herein referred to as RP Act, 1951) read with Chapter VIII-A of the Gauhati High Court Rules (as adopted).

2. The main contention is that the election petition has been filed contrary to Section 81 of the RP Act, 1951 and Rule 1 of Chapter VIII-A of the Gauhati High Court Rules as adopted, which requires that the election petition must be presented by any candidate or any elector before the Stamp Reporter of this Court. The election petitioner, it is alleged had not presented the election petition in accordance with the aforementioned provisions, which therefore by the operation of Section 86 of the RP Act, 1951 should be dismissed.

3. Ms. Y. Pallavi, learned counsel for the applicant/respondent has submitted that Section 81(1) strictly provides that the election petitioner must present the election to the authorized officer of the High Court i.e. the Stamp Reporter who is the Assistant Registrar-III, and that the same must be presented duly verified in the form prescribed with the requisite Court Fee affixed thereon within 45 days from the date of the results of the election. She submits that the election petitioner by himself in Para-11 of the



show cause reply to the instant Misc. Case has stated that the election petition was presented before the Assistant Registrar (Smti S. Lanong) on 21.03.2023, which she contends was not the Assistant Registrar-III, and that further there is no endorsement of the Stamp Reporter on the petition. It is further submitted that the report of the Stamp Reporter does not show that the petition was personally presented by the election petitioner.

4. The learned counsel then submits that the election petition served on the respondent and the certified copy of the election petition shows that many pages of the election petition had not been attested by the notary public and the election petition served on the petitioner does not at all bear the seal and signature of the notary public. She contends therefore, the election petitioner has not filed the election petition accompanied by as many copies which is the mandatory requirement of Section 81(3) of the RP Act, 1951. The learned counsel also submits that Section 86 of the Act serves as a threshold bar to entertain election petitions not filed in compliance with Sections 81 or 82 of the Act, and that Section 86 and Article 329(b) of the Constitution of India are to be read together, which expressly bar any election petition from being



entertained, if the same is not in compliance with the specific provisions of the RP Act, 1951. The learned counsel has in support of her submissions relied upon the followings judgments and orders:-

- i) ***MC (EP) No. 19 of 2023 in El. Pet. No. 2 of 2023 (Shri Gavin Miguel Myllem & Ors. vs. Shri Titosstar Well Chyne)***
- ii) ***Jamal Uddin Ahmad vs. Abu Saleh Najmuddin & Anr. 2003 4 SCC 257 (Para-14)***
- iii) ***G.V. Sreerama Reddy vs. Returning Officer (2009) 8 SCC 736 (Para-7)***

5. She finally submits that no evidence is required in the matter since the petition had not been presented personally by the election petitioner, and that there is no effective reply to the instant Misc. application except for bald statements without any material in particular. Evidence, she contends can be led only if there are requisite pleadings in this regard, and that the same being absent in the instant case and with the petitioner's admission that there was no endorsement by the Stamp Reporter, the election petition should be dismissed.

6. In reply Mr. S. Jindal, learned counsel for the election petitioner submits that firstly, no written statement has been filed by



the respondent till date. On the contentions raised by the applicant, it is submitted that the election petitioner was present before the Stamp Reporter on the date of presentation i.e. 21.03.2023, and that each and every page of the petition along with annexures thereto had been duly signed by the election petitioner personally, duly verified in a proper manner and notarised in Shillong. The learned counsel contends that the instant application under Order 7 Rule 11 is not maintainable, inasmuch as, no leave was sought from the Court, which is violative of Rule 10 Chapter VIII-A of the Gauhati High Court Rules. It is also submitted that the application does not satisfy the requirement of Order 7 Rule 11 (d) CPC, inasmuch as, the respondent has not pointed out any statement made in the plaint, which would make the Suit barred by law. In this context, reliance has been placed on the judgment of *Prem Kishore & Ors. vs. Brahm Prakash & Ors.* reported in *2023 SCC OnLine SC 356*.

7. The learned counsel submits that for the suit to be barred in law, the bar in question has to be a threshold bar that prevents the Court even to take cognizance of the matter as contemplated under Section 9 CPC. He submits that as this Court has already taken cognizance of the instant matter, there cannot be a



threshold bar as the power under 86 (1) of the RP Act, can be exercised even at the stage of judgment. The learned counsel then reiterates that the election petitioner had personally presented the election petition and that the office note/check slip dated 21.03.2023 issued by the Stamp Reporter having passed the same, there is a presumption of compliance in favour of the election petitioner. It is further submitted that the contention that the election petitioner was personally not present is vague and ambiguous and is not substantiated by any material on record, and hence the burden lies on the respondent to prove the same as per Section 101 of the Evidence Act. On the judgment presented by the applicant, i.e. ***GV Sreerama Reddy*** (supra) the learned counsel submits that the same will not be applicable as there is no objection or a registry note present in the instant case to raise doubts about any improper presentation. With regard to the judgment of this Court i.e. ***Gavin Miguel Myllem*** (supra) dated 14.03.2024, the learned counsel submits this Court has held that the issue of presentation cannot be determined without adducing evidence in such regard. He therefore, submits that as there is no merit in the instant application, the same should be dismissed.



8. Having heard the learned counsels for the parties, in conformity with the earlier judgments of this Court passed in the same issue, this Court deems it fit that at this stage only the objections as to the presentation of the election petition be considered, and the other allegations with regard to attestation etc. be taken up at a later stage consequent upon any future orders that will be finally passed as to whether the election petition was presented as per the requirement of Section 81(1) of the RP Act.

9. An overview of the contentions, allegations and replies thereto, as presented in application, show cause and arguments of the respective counsels, it can be seen that the crux of the matter lies on the issue as to whether the election petition was presented in the manner prescribed by law on 21.03.2023, before the Stamp Reporter. It is noted that there is some confusion as to who is the Stamp Reporter before whom the election petition was presented and whether the election petitioner was present personally. As has been held by this Court in *MC (EP) No. 19 of 2023 in El. Pet. No. 2 of 2023 (Shri Gavin Miguel Myllem & Ors. vs. Shri Titosstar Well Chyne)* in its order dated 31.10.2023 and *MC (EP) No. 25 of 2023 in El. Pet No. 7 of 2023 (Shri Rupa M. Marak vs. James*



Pangsang Kongkal Sangma & Ors. dated 14.03.2024, in the instant case also, it is seen that it would not be possible on the basis of pleadings to come to any conclusive findings, as to the correct presentation of the election petition. Accordingly, this Court deems it fit to take up the issue of presentation of the election petition as a preliminary issue for consideration. The objection that the instant application has been filed without leave of this Court is overlooked and not considered as the same has been made under the procedural provision of Order 7 Rule 11 CPC.

10. It is therefore ordered that the issue as to the presentation of the election petition shall be taken up as a preliminary issue for consideration.

11. This Misc. application accordingly stands disposed of.

JUDGE

Meghalaya
19.06.2024

VALENTINO
LYNDEM

Digitally signed by
VALENTINO LYNDEM
Date: 2024.06.19
17:00:52 +05'30'