

Serial No. 06
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(EP) No. 25 of 2023
In El.Pet. No. 7 of 2023

Date of Decision: 14.03.2024

Shri. Rupa M. Marak,
S/o Shri. Durga Singh
R/o Bolchugre P.O. and P.S. Dadenggre
West Garo Hills, Meghalaya

::::Applicant

-Vs-

1. Shri. James Pangsang Kongkal Sangma,
S/o (L) Purno Agitok Sangma,
Resident of Dadenggre P.O. Dadenggre,
West Garo Hills, Meghalaya

2.Shri. Braining R. Marak
S/o Shri. Late Canning N. Sangma
R/o Chikasingre P.O. Anogre
P.S. Damal Asim District:
West Garo Hills, Meghalaya

3. Chesterfield Sangm,
S/o Shri. Late Jehonath Ch. Marak
R/o Petra Akong, P.O. and P.S. Araimile,
West Garo Hills, Meghalaya

4.Witjeng N. Sangma,
S/o Shri. Dajang Sangma
R/o Abokgre, P.O. Dadenggre, P.S. Dadenggre,
West Garo Hills, Meghalaya

::::Respondents

Coram:

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

Appearance:

For the Petitioner/Applicant(s) : Mr. S. Dey, Adv.
Mr. S. Deb, Adv.

For the Respondent(s) : Mr. D. Sharma, Adv.
Ms. T. Yangkyi, Adv.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. This Application under Order 7 Rule 11 CPC, has been filed by the respondent/applicant herein, for rejection of the Election Petition and for dismissal of the same on grounds of non-compliance of Section 81(1) of the Representation of People's Act, 1951, and Rule 94A of the Conduct of Election Rules, 1961.

2. It has been submitted by the learned counsel for the applicant that the Election Petition filed by the election petitioner is not

maintainable, at the very threshold itself, due to the non-compliance of the mandatory provision of Section 81(1) of the Representation of People's Act, 1951, on the ground that the election petitioner was not present at the time of filing/representation of the election petition, as mandated under Section 81(1) and that the same, had been presented and filed through his advocate. It has been argued that, this fact is apparent from the reply filed to the instant application, as nowhere has the election petitioner stated that, he had personally presented the Election Petition before the Registry, but has only averred that he had sworn the same before the Notary Public on 13.04.2023. It has further been submitted that the Election Petition is also liable to be dismissed on the ground that, though the election petitioner has alleged corrupt practice(s) against the applicant, an affidavit as prescribed by Rule 94A of the Conduct of Election Rules, 1961, to be filed in Form 25, has not been filed.

3. On behalf of the election petitioner in reply thereto, it has been submitted that there has been substantial compliance with the requirements of law, as laid down in the Representation of People's Act, 1951, and the Conduct of Election Rules, 1961. The learned counsel has contended that substantial compliance in filing the Election Petition has been fulfilled by the election petitioner, which can be

discerned from the fact that, the Registry of the High Court through the Stamp Reporter had found no defects, and had registered the Election Petition. He further submits that similar is a situation, with regard to the filing of the affidavit accompanying the Election Petition and that the said affidavit, which is as per Form 26 is exhaustive, and has covered all the allegations and statements made in the Election Petition. He therefore submits that, there being no grounds made out for rejection of the Election Petition, the application under Order 7 Rule 11, is liable to be dismissed.

4. Having heard the learned counsel for the parties, and after examining the application and the reply filed by the parties, this Court notes that it would be appropriate at this stage, to first consider the objection as to the presentation of the Election Petition, and that the other issue i.e. the allegation as regards the form of affidavit, can be taken up at a later stage, which would be consequent on the finding that, the Election Petition was presented as per the requirements of Section 81(1) of the RP Act.

5. The election petitioner as can be seen from the reply, and as argued by the learned counsel insist that, on the day of swearing the true copies of the Petition along with all the mandatory affidavits, the same was done before the Notary on 13.04.2023, at her home, and that

thereafter, though efforts were made, the petition could not be filed on that day itself, and due to the intervening holidays, the filing formalities was completed on 17.04.2023, and a check slip was also issued by the Registry of this Court, which as contended will amount to proper presentation.

6. From the facts as available, this Court cannot arrive at any definite conclusion, as to whether the election petitioner had presented himself before the Registry or that the Registry itself, was satisfied in all respects, as to the manner of presentation to be as per the requirements of law. As observed 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, it is settled law that, presentation of the Election Petition as per Section 81(1) of the RP Act, 1951, requires strict compliance, and as such, to ensure that proper adjudication on this aspect, similarly in the instant case, this Court deems it fit to take up the issue of presentation of Election Petition, as a preliminary issue for consideration.

7. With regard to the other issue raised in the application, that of, the non-filing of an affidavit in Form 25, of the Conduct of Election Rules, 1961, on the allegation of corrupt practice(s); as these pleadings are present in the written statement, filed by the applicant/respondent in

the main Election Petition, the same along with other issues, will be examined, if the Election Petition can cross the threshold, as to having been presented, in accordance with Section 81(1) of the RP Act, 1951.

8. Misc. Case accordingly stands disposed of.

Judge

Meghalaya
14.03.2024
"D.Thabak-PS"