

GAHC030005192022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/131/2022

Sh. K. Pawhnie
S/o K. Rahmo
R/o College Vaih-I, Siaha, Mizoram.

VERSUS

The State of Mizoram and 7 Ors.
r/b the Chief Secretary to the Govt. of Mizoram, Aizawl. 2:The Secretary to the
Govt. of Mizoram
District Council and Minority Affairs Deptt.
Aizawl
Mizoram.

3:The State Election Commissioner
Mizoram State Election Commission
Tuikhuahtlang
Aizawl
Mizoram.

4:Mizoram State Election Commission r/b its Secretary
Tuikhuahtlang
Aizawl
Mizoram.

5:Mara Autonomous District Council r/b the Chief Executive Member
Siaha
Mizoram.

6:Sh. H. Malvina
MDC
02-Phura Constituency and Chief Executive Member
MADC
Siaha
Mizoram.

7:The Returning Officer
1-25
MADC Constituency Election
Siaha
Mizoram.

8:Sh. R. Pathuama
S/o R. Sangkhuma
R/o Phura
Siaha District
Mizoram

Advocate for the Petitioner : Ms. Juliana Lalhmangaihi

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 & 2

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 30.07.2024

Date of Order : 22.08.2024

J U D G M E N T & O R D E R (C A V)

Heard Mr. C Tlanthianghlina, learned counsel for the petitioner, Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General, Mizoram for respondent Nos. 1 & 2, Mr. C Zoramchhana, learned counsel for respondent Nos. 3 & 4 and Mr. B Lalramenga, learned counsel for respondent Nos. 6 & 8. None appears for respondent Nos. 5 & 7 despite notice.

[2.] By filing this writ petition under Article 226 of the Constitution of India, the petitioner is before this Court with the following prayer:-

“In the premises, it is most humbly prayed that your Lordships may graciously be pleased to admit this petition, call for the records and issue rule calling upon the Respondents to show cause as to why the election of the Respondent No. 6 as MDC from 02-Phura Constituency should not be declared as void and illegal and why he should not be disqualified as MDC since he is guilty of corrupt practice, undue influence and fraud by filing a false affidavit in his Election Affidavit dt.13/4/2022 (Annexure-6) in clear violation of MADC (Constitution, Conduct of Business, etc.) Rules, 2002 and against the Order dt. 5/4/2022 (Annexure-4) passed by the Respondent No. 4 and as to why the impugned Notification dt. 10/5/2022 (Annexure-9) issued by the Respondents shall not be set aside and quashed to the extent that it had illegally declared the Respondent No. 6 as elected MDC from 02-Phura Constituency and after hearing the parties be further pleased to make the rule absolute by allowing the writ petition and directing the Respondents to declare the Petitioner as duly elected from 02-Phura Constituency and to pass any other order(s) as your Lordships may deem fit and proper.

-AND-

In the interim, be further pleased to restraint the Respondent No. 6 from functioning as MDC from 02-Phura Constituency and restrain him from attending any sessions of the 12th MADC during the pendency of the writ petition.”

[3.] Brief facts of the case as projected by the petitioner is that the Governor

of Mizoram, on the recommendation of the State Election Commission (SEC) called upon every constituency under the Mara Autonomous District Council (MADC) to elect a member of the MADC in accordance with the MADC (Constitution, Conduct of Business, etc.) Rules, 2002 (Conduct of Business Rules) and orders made by the SEC vide Notification dated 14.02.2022 issued by the respondent No. 2. Thereafter, vide Notification dated 05.04.2022, the SEC notified specific dates and time in respect of the election in each of the constituency and by an order of the same date, the SEC issued further direction regarding the modalities of the nomination paper to be submitted accompanied by affidavits to be sworn by each candidate contesting the election.

[4.] Accordingly the petitioner, the respondent Nos. 6 & 8 filed their nomination papers for contesting the election from Phura constituency while also submitting the required affidavits with their respective particulars. The affidavit of each candidate were displayed in the notice board of the District Election Office, Siaha as per Order dated 05.04.2022 issued by respondent No. 4. The petitioner upon seeing the declaration of respondent No. 6 with regard to his educational qualification in particular, became suspicious as he was known to him since a long time back. He even approached the Election Office, Siaha and verbally enquired about the matter to clear his doubt. However, since the respondent No. 6 did not enclose his mark sheets or certificates in support of his educational background in

his affidavit, the petitioner could not be provided with any concrete document to clear his doubt.

[5.] As scheduled, polling was conducted on 05.05.2022 and thereafter, the results of the election was notified on 10.05.2022 by the SEC wherein, the respondent No. 6 was declared to be elected from Phura constituency. As for the respondent No. 8 and the petitioner, they secured the 2nd highest and 3rd highest votes for the said constituency. Thereafter, against the opinion sought by the petitioner through RTI about respondent No. 6 having completed his High School Leaving Certificate (HSLC) Examination from New Colony High School, Siaha, the Headmistress of that School replied back stating that the respondent No. 6 had appeared in the HSLC exam conducted in the year, 1996 from the School under Roll No. 17676 but he had failed. Similarly, against the information sought from the Principal, Sankardev College, Shillong about the respondent No. 6 having completed HSSLC and Bachelors' Degree from the said College, the Principal of the College clarified that as per the records available in the College, there was no evidence to prove that the respondent No. 6 was a student of the College either in the Higher Secondary level or in the Degree level.

[6.] According to the petitioner, although there is a provision for filing of election petition under Rule 194 & Rule 195 of the Conduct of Business Rules, he

could not file the same within the prescribed time limit of 60 days from the date of declaration of the results of the election. However, he submitted the representation to the respondent No. 4 demanding the disqualification of the respondent No. 6 and to declare his election from Phura constituency as void and illegal and to declare him as elected instead from the said constituency. However, the representation dated 04.11.2022 submitted by the petitioner was rejected by the respondent No. 4 vide Letter dated 07.11.2022. The petitioner, being aggrieved, is before this Court.

[7.] Mr. C. Tlanthianghlina, learned counsel submits that Rule 12 of the Conduct of Business Rules provides for the provisions for disqualification from the membership to the District Council. He submits that as per Rule 12(1)(h), a person shall be disqualified for being chosen as, and for being a member of the District Council if he has been found guilty of a corrupt or illegal practices by order under Rules 208, 209 or 210 of the same rules. He submits that the explanation for the term "corrupt or illegal practices" is confined to those corrupt or illegal practices which have been declared by Rules 208, 209 or 210 to be an offence or practice entailing disqualification under the rules.

[8.] The learned counsel further submits that major corrupt practice has been explained under Rule 208 of the same rules. Referring to Rule 208(2) of the rules,

the learned counsel submits that corrupt practices includes undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the connivance of the candidate or his election agent, with the free exercise of electoral right. He submits that the respondent No. 6 by claiming to have the qualification which he otherwise did not possess has indulged himself in corrupt practice and for which, he is liable to be disqualified from being a member of the MADC from Phura constituency. The learned counsel submits that the petitioner could not invoke Rule 194 and Rule 195 of the conduct of Business Rules due to certain circumstances beyond his control and that this Court has the jurisdiction to entertain and decide the issue in exercise of its powers under Article 226 of the Constitution of India. The learned counsel submits that existence of an alternative remedy does not oust the jurisdiction of this Court to entertain the writ petition of the petitioner. He submits that since the respondent No. 6 secured his election through fraud and by corrupt practice, his election as member of the MADC from Phura constituency should be set aside.

[9.] The learned counsel submits that although the respondent No. 6 has taken the stand in his affidavit that he had entrusted one Sh. H C Jephania Beilychhi, one of his party worker to take necessary steps in preparing the election affidavit but there are no documents supporting the statement of the respondent No. 6 and that the party worker concerned apparently had given the details of the

educational qualification of respondent No. 6 as per his own instructions. The learned counsel thus submits that the writ petition may be allowed as prayed for. In support of his submission, Mr. C Tlanthianghlina, learned counsel has relied upon the following authorities:-

(1) *K Ventakachalam vs. Swamickan & Anr., (1999) 4 SCC 526.*

(2) *S Rukmini Madegowda vs. State Election Commission & Ors., 2022 SCC OnLine SC 1218.*

(3) *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority & Ors., 2023 SCC OnLine SC 95.*

(4) *Union of India vs. Association for Democratic Reforms & Anr., (2002) 5 SCC 294.*

(5) *A. Ayyasami vs. A Paramasivam & Ors., (2016) 10 SCC 386.*

[10.] Mr. B. Lalramenga, learned counsel for the respondent No. 5 by referring to the affidavit-in-opposition filed by the respondent No. 5 submits that during the election and even prior to that, the respondent No. 6 was backed by some of the party workers who supported him. As the respondent No. 6 was quite busy with the campaign, he entrusted Sh. H.C Jephania Beilychhi who is one of his party worker to take necessary steps in the preparation of election affidavit and other ancillary

matters. As a result, the respondent No. 6 did not deliberately or knowingly declare such information about his educational qualification in his election affidavit and that it was purely a bona fide mistake which appeared to have happened due to miscommunication/misconception between the respondent No. 6 and the said party worker. Therefore, the respondent No. 6 had no intention to commit fraud, undue influence or corrupt practice in this regard and therefore, there is no reason as to why the respondent No. 6 should be disqualified from his membership to the MADC. Referring to Rule 12(1)(h) of the Conduct of Business Rules, the learned counsel submits that the same relates to disqualification if the person concerned is found guilty of a corrupt or illegal practice by an order under Rules 208, 209 or 210 of the Conduct of Business Rules.

[11.] The learned counsel submits that in the given facts and circumstances of the instant case, there is no question of there being undue influence as provided under Rule 208(2) of the Rules. He submits that the allegation of fraud was not proved and therefore, there is no question of the respondent No. 6 having indulged in causing undue influence. He further submits that at any rate, any such allegation that may require serious consideration has to be referred to the Governor through the Secretary to the Govt. of Mizoram by the Chairman of the MADC. The same having not been done and the petitioner having not invoked Rule 194 and Rule 195 of the Rules, no case is made out for interference by this Court. Referring to the

case of *K Ventakachalam* (supra) relied upon by the counsel for the petitioner, Mr. B. Lalramenga submits that the respondent No. 6 in the instant case is an elector from Phura constituency and therefore, he cannot be disqualified unlike the factual situation in the referred case. He submits that at any rate the petitioner ought to have availed the statutory remedy available instead of filing the instant writ petition. Having not done so, the writ petition should be dismissed on this ground and as well as on merits. The learned counsel in support of his submission relies upon the following authorities:-

(1) South Indian Bank Ltd. vs. Naveen Matthew Philip, 2023 SCC OnLine SC 435.

(2) Pune Municipal Corporation & Anr. vs. Harakchand Misirimal Solanki & Ors., (2014) 3 SCC 183.

[12.] Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General appearing for respondent Nos. 1 & 2 submits that the petitioner has failed to avail the remedy provided under Rule 195 of the Conduct of Business Rules and therefore, the writ petition is not maintainable. He submits that during the entire election process, there was no complaint from any quarters against the respondent No. 6 and that the election was conducted in a free and fair manner. Therefore, the writ petition has no merit and the same should be dismissed.

[13.] Mr. C. Zoramchhana, learned counsel for respondent No. 4 submits that the responsibility of respondent No. 4 is to oversee that election is conducted in a free and fair manner. The election accordingly was conducted without any hindrance and what has been raised by the petitioner long after the conclusion of the election is beyond the purview of the respondent No. 4. Accordingly, the representation submitted by the petitioner was rejected.

[14.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[15.] The main grievance projected by the petitioner is that the respondent No. 6 had made a wrong declaration in the affidavit sworn by him and which was submitted before the respondent authority concerned to enable him contest the election to be a member of the MADC by claiming to have completed HSLC in the year 1995, HSSLC in the year 1997, Graduation in the year 2000 and Post-Graduation in the year 2007. According to the petitioner, the information sought through RTI from the school from where the respondent No. 6 claimed to have completed his HSLC was replied to by the school authority informing that the respondent No. 6 appeared in the HSLC examination conducted in the year 1996 but failed. Likewise, the information received from Sankardev College, Shillong about the academic records of the respondent No. 6 in respect of HSSLC and

Graduation revealed that there was no one by the name of the respondent No. 6 in the records of the College who had undertaken the course of HSSLC and Graduation from the College. The same, according to the petitioner, amounts to major corrupt practice as defined under Rule 208 of Conduct of Business Rules warranting the disqualification of the respondent No. 6 under Rule 12 of the same Rules.

[16.] The respondent No. 6, in his affidavit-in-opposition, has not denied the fact that the declaration made in the affidavit is false. His explanation is that he had entrusted the preparation of the affidavit to one of the party worker and the declaration of the educational qualification of the respondent No. 6 happened due to miscommunication/misconception between the party worker and himself. That he had no intention to commit fraud, cause undue influence or indulged in corrupt practice. Besides making such statements in paragraph No. 5 of the counter affidavit, how the miscommunication or a misconception occurred has not been explained or substantiated by any other material or documents by the respondent No. 6. Therefore, the fact remains that the declaration made by the respondent No. 6 in the affidavit is a wrong declaration.

[17.] Rule 208(1)(2) of the Conduct of Business Rules deals with major corrupt practices. The same is *pari materia* to Section 123 of the Representation of

the People Act, 1951 (RP Act) under the heading "corrupt practices". In the case of *S Rukmini Madegowda* (supra) relied upon by the learned counsel for the petitioner, the Apex Court in the given facts of that case held that the definition of undue influence under Section 123(2) of the RP Act has been incorporated in the definition of undue influence in Section 39(2) of the Karnataka Municipal Corporations Act, 1976 (KMC Act). That the tenor of Section 39(3) of the KMC Act would go to show that any false statement relating to a candidate would be corrupt practice. Reference was also made to the decision of the Apex Court in *Lok Prahari vs. Union of India*, (2018) 4 SCC 699 where it was held that non disclosure would amount to 'undue influence' as defined in the RP Act. The non disclosure of the assets would therefore also amount to 'undue influence' and consequently to 'corrupt practices' under the KMC Act.

[18.] In the case of *K.Ventakachalam* (supra), the Apex Court in the given facts of that case opined and held that the appellant was not an elector in the electoral roll of Lalgudi assembly constituency. He therefore could not be elected as member from that constituency as he lacked the basic qualification under Clause (c) of Article 173 of the Constitution of India read with Section 5 of the R.P Act which mandates that a person to be elected from an assembly constituency has to be an elector of that constituency. The appellant was therefore certainly disqualified from being a member of legislative assembly of Tamil Nadu. His election, however, was not challenge by filing an election petition under Section 18 of the Act but yet, the Division Bench of the High Court in exercise of its power under Article 226 of the Constitution of India held that it was not

powerless from declaring the election of the appellant to be illegal for failure of the appellant to possess the basic constitutional and statutory qualifications. The decision of the Division Bench was upheld by the Apex Court.

[19.] Reliance has been placed upon the case of *South Indian Bank Ltd. & Ors.* (supra) by the learned counsel for the respondent Nos. 6 & 8 wherein the Apex Court has held that a writ of mandamus is a prerogative writ and in the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of [Article 12](#) of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. It may be seen that according to the Apex Court since there was an effective remedy under the provisions of Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, constitutional courts would refrain from invoking writ jurisdiction. However, the facts in the present case are different in view of the fact that the respondent No. 6 in submitting his nomination for membership to the MADDC had given false declaration about his educational qualification which therefore attracts the provisions of Rule 12(1)(h) of the Conduct of Business Rules and further attracting Rule 208(2) of the same Rules.

[20.] The Apex Court in *Godrej Sara Lee Ltd.* (supra) in the given facts of that case held that one of the self-imposed restrictions on the exercise of power under [Article 226](#) that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available and at the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under [Article 226](#) has not pursued, would not oust the jurisdiction of the high court and render the writ petition not maintainable.

[21.] Coming back to the present case, as may be noticed, the respondent No. 6 has not made any denial to the fact that he does not possess the qualifications which he otherwise declared in his affidavit at the time of filing his nomination. He has rather sought to justify the declaration by stating that the same was due to some communication gap with one of the party worker whom he had entrusted to prepare the affidavit. The same in the considered view of this Court cannot be accepted and therefore, in view of the prescription of Rule 12(1)(h) and Rule 208(2) of the Conduct of Business Rules, the election of the respondent No. 6 as member to the MADDC is found to be unsustainable and accordingly, the Notification dated 10.05.2022 (Annexure-9) in so far as the respondent No. 6 is concerned is hereby set aside. The writ petition accordingly stands disposed of as allowed.

Under the given facts and circumstances, the parties are directed to bear their own cost.

JUDGE

Comparing Assistant