

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

MC (El. Pet.) No. 49 of 2024
[Ref: El. Petn. No. 9 of 2022]

Shri Konthoujam Govindas Singh

Applicant

Vs.

Oinam Nabakishore Singh; & Anr.

Respondents

BEFORE
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

20.02.2025

[1] Heard Mrs. L. Ayangleima, learned counsel appearing for the applicant and Mr. N. Ibotombi, learned senior counsel appearing for the respondent No. 1.

None appeared for the respondent No. 2, despite service of notice.

[2] The present application has been filed with a prayer for striking out the prayer No. 2 of the Election Petition No. 9 of 2022 filed by the respondent No. 1 herein. For ready reference, prayer No. II of the election petition is quoted below:-

"(II) To declare the humble petitioner as duly elected candidate from the 26-Bishenpur Assembly Constituency;"

The only ground raised on behalf of the applicant for striking out the above quoted prayer No. II is that there is no averment of material facts in the Election Petition to constitute ingredients incorporated in clause (a) and (b) of section 101 of the Representation of People Act, 1951.

It has been strenuously submitted by the learned counsel appearing for the applicant that on perusal of the whole pleadings made by the election petitioner in the Election Petition, there is no averment of material facts to constitute the ingredients incorporated in clause (a) and clause (b) of section 101 of the Representation of People Act, 1951. The learned counsel further submitted that all the material facts/averments made by the election petitioner in his Election Petition will never constitute or constitute the ingredients incorporated under section 101 clause (a) and clause (b) of the Representation of People Act, 1951 and as such, the above quoted prayer No. II may be strike off as consideration of such prayer is unnecessary and frivolous and will only waste the valuable time of this Court. It has also been submitted that the material facts or averments made by the petitioner in the Election Petition will not assist this Court in granting the relief sought by the petitioner in prayer No. II of his Election Petition and as such, the said prayer No. II may be strike out as redundant and frivolous. In support of such contention, the learned counsel appearing for the petitioner relied on the judgment rendered by the Hon'ble Apex Court in the case of **"Muniraju Gowda P.M. vs. Munirathna and Others"** reported in (2020) 10 SCC 192, wherein, it has been held as under:-

"14. *As observed by the High Court, pleadings necessary for the High Court to form an opinion in terms of clause (a) or clause (b) of Section 101 of the Act were not there in the election petition. Under Section 83(1)(a) of the Act, an election petition should contain a concise statement of material facts. What constitutes "material facts" would depend upon the ground on which the election of a returned candidate is challenged. Several grounds are enumerated in Section 100(1) of the Act and pleading of material facts co-relatable to the grounds set out in Section 100(1), forms the bedrock of an election petition.*

- "15.** *In the election petition, as it was originally filed, there was no averment of material facts traceable to the ingredients incorporated in clauses (a) and (b) of Section 101. This is why the first respondent herein made the first strike by moving an application in IA No. 4 of 2019 for striking out Prayer (c). Actually, IA No. 4 of 2019 was filed by the first respondent herein on 11-10-2019, pointing out that there are no necessary pleadings with reference to Section 101.*
- "18.** *Once it is found that neither the original election petition nor the amended election petition contains any pleading of material facts which would enable the High Court to form an opinion in terms of Section 101, there was no alternative for the High Court but to strike off Prayer (c).*
- "19.** *There is one more reason why the petitioner cannot succeed. In the elections in question, there were 14 candidates in the fray, including the petitioner herein and the first respondent. In Vishwanatha Reddy v. Konappa Rudrappa Nadgouda, the Constitution Bench of this Court treated the votes polled in favour of the returned candidate as thrown away votes, on the ground that he was disqualified from contesting and that the election petitioner was entitled to be declared elected, in view of the fact that there was no other contesting candidate. But the Constitution Bench cautioned that the rule for the exclusion of the votes secured by corrupt practices by the returned candidate in the computation of the total votes and the consequential declaration of the candidate who secured the next highest number of votes as duly elected, can be applied only when there are just two candidates at an election,*
- "22.** *Therefore, apart from the fact that in the election petition, there were no pleadings of material facts co-relatable to the ingredients of clause (a) or (b) of Section 101 of the Act, to sustain Prayer (c), even legally the High Court could not have granted Prayer (c) in view of the fact that there were 14 candidates in the fray.*
- "23.** *In view of the above, the order of the High Court does not call for any interference. Hence these special leave petitions are dismissed. No costs."*

[3] Mr. N. Ibotombi, learned senior counsel appearing for the respondent No. 1 submitted that the election petitioner made elaborate and detailed material facts at paragraphs 8-19 of the Election Petition and that after hearing the submission advanced by the learned counsel appearing for the parties and after perusal of the pleadings made by the parties in the Election Petition, this Court had framed as many as 23 issues by passing an order dated 11.01.2023. One of the issue, more particularly issue No. 15 framed by this Court is whether the petitioner is entitled to be declared as

elected member to the 12th Manipur Legislative Assembly Election from 26-Bishenpur Assembly Constituency.

It has further been submitted that subsequent to framing of such issues, witnesses produce by both the parties have already been examined and at this stage, the applicant cannot file the present application praying for striking out the above quoted prayer No. II. The learned senior counsel submitted that the present application is without any merit and is liable to be rejected outright.

[4] I have heard at length the submissions advanced by the learned counsel appearing for the parties.

On perusal of the judgment rendered by the Hon'ble Apex Court in the case of ***Muniraju Gowda*** (*Supra*), more particularly paragraphs 14, 15, 18 and 22 of the judgment, this Court is of the considered view that striking out of the prayer for declaring the election petitioner as a returned candidate have been allowed only on the ground that there were no pleadings of material facts co-relatable to the ingredients of clause (a) or clause (b) of section 101 of the RP Act, 1951 to sustain such prayer.

In the present case on perusal of the pleadings made by the election petitioner in paragraphs No. 8 to 19 of the Election Petition, this Court finds that elaborate and detailed material facts have been pleaded for considering the issue as to whether there are any pleadings of material facts co-relatable to the ingredients of clause (a) or clause (b) of section 101 of the RP Act, 1951.

In view of such finding, this Court had already made issue No. 15 in the Election Petition. Accordingly, this Court is of the view that the ratio laid down by the Hon'ble Apex Court in the case of ***Muniraju Gowda*** (Supra) is not at all applicable in the facts and circumstances of the present case and this Court is not inclined to allow the prayer made by the applicant in the present application.

In the result, the present application is hereby dismissed as being devoid of merit.

JUDGE

Sapana