



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (EL) Pet. No. 26 of 2023 in
El. Pet. No. 5 of 2023

Date of Decision :17.08.2026

Shri Sanjay A. Sangma

.... Applicant(s)

Versus

Ali Akbar

.... Respondent(s)

Coram:

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

Appearance:

For the Applicant(s) : Mr. A.S. Pandey, Adv. with
Mr. A.M. Pala, Adv.

For the Respondent(s) : Mr. K. Paul, Sr. Adv. with
Mr. S. Khyriem, 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 Section 86 of the Representation of People Act, 1951 read with Order 7 Rule 11 of the CPC and Gauhati High Court Rules (as adopted by the High Court of Meghalaya), has been filed by



the respondent in the main Election petition with the prayer for dismissal of the Election petition, as not maintainable in law.

2. The grounds set out by the applicant are that the copy of the petition served upon him was not attested by the petitioner under his own signature as a true copy, as required under Section 81(3) of the RP Act, but instead the affirmation was allegedly done by the petitioner's advocate. Further, it has also been highlighted that there are significant differences between the copy filed in the Court Registry (bearing the Notary Stamp of one M. Lyngwa) and the copy served upon the respondent (bearing the Notary Stamp of one J. Blah) and that only specific pages of the served copy were notarized. The petition it is alleged, has been verified improperly and that it lacks the mandatory affidavit in the prescribed form for allegations regarding corrupt practice under Section 83(1) (c) of the RP Act. It has also been contended that the petitioner has committed fraud on the Court and committed perjury and has approached the Court with unclean hands.

3. Mr. A.S. Pandey, learned counsel for the respondent/applicant has submitted that though there are various objections to the maintainability of the election petition including the contention that the election petition had not been presented in accordance with Section 81(1) of the RP Act, this question is preceded with the issue whether the election petition has been filed in derogation of Section 81(3) of the RP Act, as the true copy of the



Election petition was not supplied to the applicant. The learned counsel has referred to Chapter-VIII-A of the Gauhati High Court Rules as applicable in the High Court of Meghalaya, which he submits that all copies should be fully attested by the petitioner under his own signature to be a true copy of the petition. Further, it is argued that in the served copy only certain pages were notarized and the remaining pages including annexures are not notarized, the election petition does not bear the attestation of the election petitioner that it is a true copy and the annexures were affirmed to be true copy by the advocate.

4. From the facts he submits, it clearly shows that the election petition filed by the petitioner before this Court is significantly different from the election petition supplied to the applicant. Section 81(3) of the RP Act he submits, mandates that all pages have to be fully attested by the election petitioner to be true copies and the learned counsel has placed reliance on the followings decisions in support of his case: -

- i) United India Insurance Co. Ltd. v. Arati Boro, 2021 SCC OnLine Gau 2646*
- ii) Prataprai Trumbaklal Mehta v. Jayant Nemchand Shah, 1991 SCC OnLine Bom 205*
- iii) Mithilesh Kumar Pandey v. Baidyanath Yadav (1984) 2 SCC 1*
- iv) G.V. Sreerama Reddy v. Returning Officer (2009) 8 SCC 736*
- v) Jagan Nath v. Jaswant Singh (1954) 1 SCC 57*



5. It is then contended that in the light of the aforementioned judgments, the filing of a true copy of the election petition is a mandatory requirement and cannot be extended beyond typographical or clerical mistakes. With regard to the presentation, reference has been made by the learned counsel to the Gauhati High Court Rules which he submits that the election petitioner has failed to comply with, while presenting the election petition before the Stamp Reporter. Reliance has been placed on the judgments namely; *Abdul Jabbar vs. Syeda Anwara Taimur & Ors.* and also *Nazir Ahmad vs. King Emperor*, in support of this contention.

6. On the objections raised by the election petitioner that the instant petition under Order 7 Rule 11, has been filed without permission being obtained under Rule 10 of Chapter-VIII-A of the Gauhati High Court Rules, it has been argued that the said objection has not been taken in the pleadings/reply filed by the election petitioner and the same is not liable to be considered by this Court. It is also further submitted that this provision in the High Court Rules is merely directory in nature as the term ‘may be’ has been used, which he contends is permissive in nature and no consequence is provided for non-compliance of the same. In this context, reference has been made to the case of *Shri Kartush R. Marak vs. Shri John Marak (MC) EP No. 18/2023 in EP 1/2023 dated 19.06.2024*, wherein this objection was overlooked and not considered as the same had been made under the



procedural provision of Order 7 Rule 11 CPC, which has been similarly done in the instant case. It is lastly submitted that the application was permitted to be on record vide orders passed by this Court and further proceedings thereafter were in pursuance to orders passed by this Court itself, and as such requirement of Rule 10 of Chapter-VIII-A of the Gauhati High Court Rules stands satisfied.

7. In reply Mr. K. Paul, learned Senior counsel assisted by Mr. S. Khyriem, learned counsel for the petitioner has firstly submitted that the election petition was presented personally before the Stamp Reporter on 13.04.2023, with requisite Court Fees paid. With regard to the main contention raised by the applicant, it is submitted that the requirements of Section 81(3) of the RP Act, 1951 is of ‘substance and not of form’ in which he submits as held by the Supreme Court in various judgments, if not of a vital nature, then the same can be corrected. The copies served upon the applicant he submits, bear the signature of the election petitioner at every page, and as such, the requirements as provided under Section 81(3) of the RP Act have been complied with. The word ‘true copy’ he contends, as it appears under Section 81(3) of the RP Act does not mean an absolute exact copy, but refers to a copy that shall be so true that no reasonable man can by any possibility, misunderstand or misconstrue it. He further submits that if the copy served upon the applicant has the effect of misleading, as to the



contents of the petition and the allegations made therein, the applicant has to specify the same in the Order 7 Rule 11 application, stating how he has been misled and should state therein, the variance in the contents of the petition served upon him and the copy filed before this Court. The applicant he asserts, has failed in this aspect to demonstrate as to how he has been misled and has also failed to justify the allegations of corrupt practices in the election proceedings.

8. It is then submitted that the defects pointed out by the applicant with respect to notarial stamps and signatures of the election petitioner are only ancillary and curable in nature, and cannot be construed as an omission or variation of a vital nature that would result in the applicant and this Court being misled, further with the fact that notarization is not a defect for the purposes of Section 81(3) of the RP Act. The fundamental requirement he submits, is that the copies served upon the applicant must bear the signature of the election petitioner at every page of the election petition, which in the instant case, has been duly attested by the election petitioner at every page of the election petition to be a true copy, and as such therefore, the petition fulfils the requirement of substantial compliance under the RP Act. Learned Senior counsel has then referred to the judgment of *Murarka Radhay Shyam Sundar vs. Roop Singh Rathore & Ors. (1963) SCC OnLine 129*, in support of his argument of substantial compliance. He therefore, submits



that the objections pointed out by the applicant do not constitute any material defect of a vital nature, but rather refers to two ancillary markings, which cannot render the election petition defective as there is no variation in the contents of both documents to mislead the applicant. Learned Senior counsel has also placed reliance on the following two decisions i.e. *T.M. Jakob vs. C. Poulose & Ors. (1999) 4 SCC 274* and *P. Phunzathang vs. Hangkhanlian & Ors. (2001) 8 SCC 358*.

9. The learned Senior counsel has also raised additional issues on the application under Order 7 Rule 11 being filed in violation of Chapter-VIII-A, Rule 10 of the Gauhati High Court Rules, where he submits it has been provided that any interlocutory application can only be filed with leave granted by the Court, whereas from the orders of this Court dated 15.06.2023, and 23.07.2023, no leave was sought or granted by this Court for filing of the application under Order 7 Rule 11. As such, he submits the application of Order 7 Rule 11, is liable to be rejected.

10. On hearing the learned counsel for the parties, the issues that arise for determination is whether firstly, the petition was filed in violation of Section 81(1) of the RP Act i.e. whether it was presented personally by the election petitioner in accordance with law and secondly, whether the petition violates Section 81(3) of the RP Act because the copies served were not attested by the petitioner under his own signature, as true copies.



11. On the first issue i.e. on presentation though allegation had been made that the petitioner had not personally presented the election petition before the Stamp Reporter, this allegation has been countenanced by the election petitioner in his affidavit by stating that the election petition had been personally presented on 13.04.2023, before the Stamp Reporter. On this issue it is noted, both in the application filed by the respondent/returned candidate and in the affidavit in reply thereto, no particulars or instances have been stated or disclosed to substantiate the allegation or to disprove the same to enable this Court to come to a definitive finding. As this Court has held in similar matters where this question has arisen, as the same is crucial in nature, inasmuch as, non-compliance of Section 81(1) of the RP Act and Rule 1 of Chapter-VIII-A of the Gauhati High Court Rules would be fatal to the maintainability of the election petition and warrant dismissal under Section 86, this aspect is to be taken up for preliminary consideration by way of evidence.

12. On the second issue, as held by this Court in other similar matters, non-furnishing of duly signed attested copies is a curable defect as the same is governed by the doctrine of substantial compliance as held in the cases of *Murarka Radhay Shyam Sundar vs. Roop Singh Rathore & Ors.* *T.M. Jakob vs. C. Poulose & Ors.* and *P. Phunzathang vs. Hangkhanlian & Ors.* (supra). The Notary Seal discrepancies and partial notarization are



ancillary, non-statutory irregularities that do not mislead the applicant and thus are non-fatal. It is also relevant to note that as held in the case of ***G.M. Siddeshwar vs. Prasanna Kumar (2013) 4 SCC 776***, Section 86 of the RP Act, makes no reference to Section 83, and non-compliance to Section 83 i.e. verification in affidavits is a curable defect and does not justify threshold dismissal. Further, the allegations of fraud and perjury have not been made out since no variation is present, which may mislead the application as to the substance of allegations, and as such it passes the settled ‘true copy’ test following the judgment of ***Murarka Radhay Shyam Sundar vs. Roop Singh Rathore & Ors.(supra)***, where at Para-11 the extracts of which are reproduced hereinbelow, it has been held as follows:-

“11. We are of the view that the word “copy” in sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it (see Stroud’s judicial Dictionary, 3rd Edn., Vol. 4, p. 3098).....We are of the view that the word “copy” does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No. 269 of 1962 were not such as to mislead the appellant; therefore there was no failure to comply with the last part of sub-section (3) of Section 81.....”

13. The other additional issues argued by the election petitioner i.e. the application under Order 7 Rule 11 being filed in violation of Chapter-



VIII-A Rule 10 of the Gauhati High Court Rules, without leave being sought, being an issue that has not been objected to in the reply affidavit or objected to initially by the counsel and keeping the order passed in the case of *Shri Kartush R. Marak vs. Shri John Marak (MC) EP No. 18/2023 in EP 1/2023 dated 19.06.2024* in mind, the same is overlooked.

14. The objections raised by the applicant on the first issue being a triable preliminary issue and the second being non-fatal, the election petition remains legally maintainable to be determined on a preliminary hearing on presentation and on merits.

15. Accordingly, as per the discussions and findings made hereinabove, the instant Misc. application is accordingly disposed of.

JUDGE

Meghalaya
17.08.2026
"V. Lyndem- AR-PS"