Yumkham Rother
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

M.C(El.Pet.) No. 5 of 2020
(Ref:-El.Pet. No. 01 of2019)

ShriLorho S. Pfoze, aged about 59 years, s/o Late A. SiboPfoze, resident of Kayinu village, PO & PS Mao, District Senapati, Manipur-795150, presently residing at Quarter No. Type-VII/NC-3, Lamphelpat, Imphal West, Manipur-795004.

....Applicant

- Versus -

HoulimShokhopao Mate @ Benjamin, aged about 36 years, s/o (L) H. Jamkhokhai Mate, resident of Tengnoupal Village PO & PS Tengnoupal, District Tengnoupal, Manipur-795131.

... Respondent

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the Applicant	::MrHS Paonam, Sr. Adv.
For the respondent.	:: Mr. N. Zequesion, Adv.
Date of hearing and Reserved.	:: 11.09.2020.
Date of delivery of Judgment and order	:: 23.11.2020

JUDGMENT & ORDER
(CAV)

[1] This petition has been filed by the petitioner seeking to set aside the ex parte order dated 24.1.2020 passed in the Election Petition No. 1 of 2019 and relegates back to the stage on which the ex parte order or prior to it was passed.

[2] The petitioner has filed the instant petition to set aside the ex parte order dated 24.1.2020 passed against him stating that he was not served with the proper notice in the Election Petition and further, the first respondent/election petitioner choose to take steps on the petitioner at the village address. In fact, since May, 2019, the petitioner and his family members have not been residing at the address when the notice was sent and being a Member of Parliament, he also stays in New Delhi for official purposes and other meetings. At present, the petitioner is residing at Quarter No.Type/VII/NC-3, Lamphelpat, Imphal West, Manipur. It is stated that being unavailable at the address namelyKayinu Village, Senapati District, the notice intended to be served uponthe petitioner was not served upon him, as he was out of station. Further, the election petitioner also did not search for an

alternative address in Imphal or in New Delhi or through the Parliament of India.

[3] According to the petitioner, he was not aware of the Election Petition No.1 of 2019 pending before this Court and he came to know the same only when his relative Pfokrelo met one of the counsels in the marriage ceremony of HijamChandrakumar on 3.2.2020, where advocate Sharma during their casual conversation narrated about the case and informed that the Court has proceeded ex parte against the petitioner. According to the petitioner, till date, no notice has been refused or received by him and as such, the service of notice may not be deemed as completed without proper endorsement or an affidavit and examination of the process server or the postman as required under Order V, Rule 19of CPC. As there was no one available at the given address to receive the notice, the service of notice upon the petitioner could not be completed and effected returned on two occasions with endorsement as “addressee Out of station” and “refused”. Hence, the petitioner prayed for setting aside the ex parte order dated 24.1.2020 passed against him in the Election Petition.

[4] The first respondent filed objection stating that as per the order of this Court dated 31.07.2019, the Registry sent notice to the

petitioner on 03.08.2019 and the tracking report says delivered. On 04.09.2019, the first respondent requested the Post Master of the Manipur High Court Sub-office to issue a postal receipt certificates in respect of all the respondents in the Election Petition. It is stated that though the notice sent to the petitioner was shown as delivered in the official website, when the postal receipt was requested, the Sub Postmaster, returned the consignment itself along with a report dated 17.9.2019 Stating that the article was duly received from Imphal Head Office on 6.8.2019 and when it was sent out for delivery, the concerned addressee was out of station. However, on the request of the family member of the addressee the same was not returned and it was kept in the Post Office for deliverywhen the addressee is in station.

[5] It is further stated that vide orders dated14.10.2019, 14.11.2019 and 4.12.2019, the first respondent was permitted to take fresh steps on the petitioner. Accordingly, fresh steps was taken by the petitioner for service of notice on the petitioner by registered post. Thistime the consignment was returned by the postal authorities as “refused”and thus, the notice upon the petitioner was deemed to be served andproceedings were set to be taken up ex parte against the petitioner on 24.01.2020. Since the petitioner was fully aware of the notices sent to him, he cannot now file an application to

set aside the ex parte order stating that he was not served with proper notice. Hence, prayed for dismissal of the petition.

[6] The learned counsel for the petitioner submits that at the relevant point of time as no one was there at the given address viz. Kayinu village, Senapati district, no one refused the notice as alleged by the first respondent and mere writing “refused RTS” on the envelop without any details as to who refused the parcel, the endorsement if assumed to be true, is vague and incomprehensible. He would submit that at the relevant point of time, the petitioner was out of station being Member of Parliament and in this regard, the learned counsel also produced the Xerox copies of the flight tickets.

[7] Per contra, the learned counsel for the contesting first respondent submits that proper notice has been served on the petitioner and based on the endorsement refused, the Court has proceeded to pass an order that the notice was deemed to be served and accordingly, on24.1.2020, the petitioner was set ex-parte. He would submit that the first respondent has undertaken all possible steps to serve notice on the petitioner. The petitioner, in fact, has stated a false and concocted story that he came to know of the election petition during his relative met one of the counsel namely BR Sharma in the

marriage function of HijamChandrakumar on 03.02.2020. Further, he would submit that with an intention to drag on the proceedings, the petitioner has filed the present petition and the same is liable to be dismissed.

[8] This Court considered the submissions raised by both the counsels and perused the materials available on record.

[9] According to the petitioner, he was not served with proper notice and he never refused to receive the notice. Further contention of the petitioner is that at the relevant point of time he was not residing at KayinuVillage and being a Member of Parliament, he also stays in New Delhi for official purposes and at present the petitioner and his family members are residing at Quarter No. Type-VII/NC-3, Lamphelpat, Imphal West, Manipur.According to the petitioner, it was not intentional or deliberate, but due to unavoidable circumstances as there was no one available at the Kayinu village to receive the notice.

[10] Though the first respondent contended that the petitioner intentionally refused to receive the notice, nothing has been produced to establish the same and further, nothing on record to show that the petitioner himself directly refused to receive the parcel/notice. In fact, in the objection filed to the petition, the first respondent admitted the fact

that the service of notice against the petitioner was never delivered by the post office, as the concerned addressee was out of station and was wrongly updated online as delivered and only on enquiry for a delivery certificate, the parcel was returned to the High Court with an endorsement that the addressee was out of station. The said averment is in relation to the previous notice sent to the petitioner. On 4.12.2019, this Court permitted the first respondent to take fresh steps for service upon the petitioner and accordingly, the first respondent has taken steps for service of notice by registered post. This notice sent through post is stated to be refused by the petitioner and based on the refusal endorsement, he was set ex-parte.

[11] When the petitioner alleges that he was not effected with proper service of notice and the alleged refusal of notice stated by the first respondent is not true, it is the bounden duty of the first respondent to prove the same by examining the concerned persons, including the officials of the postal department. In the instant case, the first respondent admittedly, failed to do so. Though equally, it is the duty of the petitioner to prove that he never refused to receive the notice and the alleged refusal is forgery, no one was examined on his side. However, taking into consideration of the fact that he was a Member of Parliament and at the relevant point of time, the petitioner was out of

station and in some times he was staying in New Delhi, this Court is inclined to accept the plea of the petitioner.

[12] It is also the case of the petitioner that no one stays at Kayinu village, as his family members are staying at Imphal. It is not the case of the first respondent that the petitioner himself refused to receive the notice. When the petitioner himself has not directly refused to receive the notice and when there is no particulars as to who refused to receive the notice, coupled with the fact that at the relevant point of time, the petitioner was staying in New Delhi, the service of notice on the petitioner alleged by the first respondent is not proper.

[13] It is to be mentioned that since the election of the petitioner has been questioned by the first respondent in the election petition, without hearing the petitioner, it would not be possible for this Court to decide the controversy between the parties. So, in order to defend the election petition and for proper adjudication of the controversy between the parties, the petitioner should be given an opportunity.

[14] The plea of the first respondent that only to protract the proceedings, the petitioner has filed the instant petition has not been established. Further, nothing has been produced by the first respondent

to show that the petitioner has knowledge about the filing of the election petition earlier. Hence, in the interest of justice and in order to give an opportunity to the petitioner to defend the election petition, it is necessary to set aside the ex parte order dated 24.01.2020 passed against the petitioner. If the ex-parte order is not set aside, the petitioner would be put to irreparable loss and damage. On the other hand, if the petition is allowed, no prejudice would be caused to the first respondent.

[15] In the result, the petition is allowed. The ex parte order dated 24.01.2020 passed against the petitioner in the election petition is set aside. The petitioner is granted three weeks' time to file his objection to the election petition. No costs.

JUDGE

FR/NFR

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