Yumkham Rother
Digitally signed by Yumkham Rother
Date: 2020.12.03 14:59:42 +05'30'

IN THE HIGH COURT OF MANIPUR
AT IMPHAL
Rev. Petn. (J2) No. 1 of 2020

Shri Ningthoujam Mangi, aged about 69 years, S/o Late N. Ibomcha, resident of Kumbi Ward N. 9, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur-795133.

... Petitioner

-Versus-

1. Shri Sanasam Bira Singh, aged about 73 years, S/o Late S. Megha Singh, resident of Wangoo Ahalup Leikai, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur-795133.
2. Shri Ningombam Ibohal Meitei, aged about 60 years, S/o Late N. Chaoba Singh, resident of Ithai Khunou, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur-795133.
3. Shri Wahengbam Bobbyjames Singh, aged about 39 years, S/o W. Imocha Singh, resident of Kumbi Mayai Leikai, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur-795133.

... Respondents

-AND-

IN THE MATTER OF:

(Election Petition No. 12 of 2017)

Shri Ningthoujam Mangi, aged about 69 years, S/o Late N. Ibomcha, resident of Kumbi Ward N. 9, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur-795133.

... Petitioner

-Versus-

1. Shri Sanasam Bira Singh, aged about 73 years, S/o Late S. Megha Singh, resident of Wangoo Ahalup Leikai, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur – 795133.
2. Shri Ningombam Ibohal Meitei, aged about 60 years, S/o Late N. Chaoba Singh, resident of Ithai Khunou, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur-795133.
3. Shri Wahengbam Bobbyjames Singh, aged about 39 years, S/o W. Imocha Singh, resident of Kumbi Mayai Leikai, P.O. Moirang, P.S. Kumbi, District: Bishnupur, Manipur-795133.

.... Respondents

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the applicant :: Shri A. Mohendro, Advocate.
For the respondents :: Shri Serto T. Kom, Advocate
Date of Hearing :: **24-11-2020**
Date of Judgment & Order :: **03-12-2020**

JUDGMENT & ORDER

[1] Heard Shri A. Mohendro, learned Advocate appearing for the review petitioner while Shri Serto T. Kom, learned Advocate appearing for the respondent No. 1. None appears for the other respondents.

[2] The instant review petition is directed against the order dated 04-09-2020 passed by this Court in the election petition.

[3.1] Facts and circumstances which have led to the filing of the present review petition are, in short, that the election for the 11th Manipur Legislative Assembly was held on 04-03-2017 and the respondent No.1 was elected and declared as the returned candidate for the Kumbi Assembly Constituency. Being aggrieved by the election, the above election petition was filed by the petitioner mainly on two grounds- firstly, from the election expenditure account submitted by the respondent No.1 on 10-04-2017 to the District Election Officer, Bishnupur, it is reflected that he received a sum of Rs.3,00,000/- (Rupees three lakhs) from Shri A. Priyokumar by cash on 10-03-2017 and another sum of Rs.63,500/- (Rupees sixty three thousand and five hundred) from Shri L. Bhoben on 11-03-2017 by cash as donations and a sum of Rs.961/- as loan. The factum of having received a total sum of Rs.3,64,461/- (Rupees three lakhs

sixty four thousand and four hundred sixty one) was recorded in the summary report prepared by the District Election Officer, Bishnupur. The receipt of donation for a sum of Rs.3,00,000/-(Rupees three lakhs) and Rs. 63,500/-(Rupees sixty three thousand and five hundred) by cash on 10-03-2017 and 11-03-2017 respectively by the respondent No.1 as reflected in his Abstract Statement of Election Expenses dated 10-04-2017, amounts to commission of corrupt practice within the meaning of Section 123(6) of the Act, 1951. Hence, the election of the respondent No.1 is illegal and is liable to be set aside under Section 100(1)(b) of the Representation of the People Act, 1951 (hereinafter referred to as "**the Act, 1951**". As per the provisions of Section 33 and 33(A) of the Act, 1951 read with Rule 4A of the Conduct of the Elections Rules, 1961, a candidate is required to file an affidavit duly sworn to along with his nomination paper. Secondly, the respondent No.1 made a false declaration /statement in his affidavit dated 13-02-2017, filed along with his nomination paper, pertaining to his liabilities towards financial Institutions/ Banks. The respondent No.1 took a loan for a sum of Rs.10,00,00/- (Rupees ten lakhs) from the State Bank of India for buying a Motor Car/ Vehicle which he failed to purchase and In addition thereto, he obtained another loan of Rs.5,00,000/- (Rupees five lakhs) only being the advance for purchase of a Motor Car and this time too, no Motor Car was purchased by him. These facts were not disclosed by the respondent No.1 in his affidavit dated 13-02-2017 filed before the Returning Officer who ought to have rejected such nomination but since his nomination was not rejected by the Returning Officer, the respondent

No.1 was allowed to contest the election. Due to improper acceptance of the nomination paper of the respondent No.1 by the Returning Officer, the result of the election in so far as it concerns the respondent No.1 has been materially affected and therefore, a prayer has been made to declare the election of the respondent No.1 as the returned candidate as null and void.

[3.2] In the written statement, it has been stated by the respondent No.1 that the receipts of donation of Rs.3,00,000/- (Rupees three lakhs and Rs.63,500/- (Rupees sixty-three five hundred) and a loan amount of Rs. 961/- (Rupees nine hundred and sixty one) do not violate the direction of the Election Commission of India in view of the fact that the alleged donation amounts are not from a single person. As regard the donation amount of Rs.3 lakhs, it was donated by 20 (twenty) well wishers of the respondent No.1- each donating Rs.15,000/- (Rupees fifteen thousands) and similarly, the donation amount of Rs.63,500/- was donated by 5 (five) well wishers of the respondent No.1 whose donation amount does not cross the ceiling limit of Rs.20,000/- as per the instructions of the Election Commission of India. In this regard, the Additional Election Agent of the respondent No.1 vide his letter dated 02-04-2017, in response to the notice of the Returning Officer(RO) dated 11-04-2017, has furnished the explanation about the said donations and loans mentioned in the election petition and the satisfaction of the concerned authority was reflected in the scrutiny report of the District Election Officer on election expenses of the candidates under Rule 89 of C.E Rule, 1961 with the remark that the

candidate has rectified the defect. Since the Election Commission of India has accepted the explanation, there is no question of the instructions of the E.C.I being violated and that a receipt of such donation does not amount to commission of corrupt practice under Section 123(6) of the Act, 1951. As regards the loan taken by the respondent No.1 for a sum of Rs.10 lakhs and another sum of Rs.5 lakhs form SBI, the deductions made out of it by the bank, are reflected in the annexure A/4 and A/5 of the election petition meaning thereby that there has been a total outstanding loan amount of Rs.11,61,145/- which has been clearly mentioned in the affidavit of the respondent No.1 and therefore, there is no question of non-disclosure about the said loans and in particular, the outstanding loan amount. The allegation made by the petitioner that the respondent No.1 made false statement in affidavit dated 13-02-2017, is absolutely incorrect.

[4] While the proceedings for the election trial were going on, an application being MC(Elec. Pet) No.12 of 2018 was filed by the respondent No.1 raising an objection as regards the maintainability of the election petition. After having heard the learned counsels appearing for the parties, this Court rejected the application vide its judgment and order dated 22-01-2019, the relevant paragraph of which reads as under:

> ***"[11]*** *As has been held by the Hon'ble Supreme Court, what particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. Therefore, the nature and content of material facts would differ from one case to another and in other words, the material facts to be stated in respect of an election petition filed on the ground of corrupt practice, would be different from that of the election petition filed on any other grounds. In the present case, the election petition has been filed on the grounds*

mentioned in Section 100(1)(d)(iii) and 100(1)(d)(iv) of the Act. This petition being filed on both the grounds, it does require to state material facts as well as the material particulars. In terms of the law laid down by the Hon'ble Supreme Court, the election petition as a whole is to be read to find out if it contains a concise statement of material facts disclosing a cause of action and material particulars thereof. In order to decide the issue involved herein, it become necessary for this Court to examine the averments made in the election petition and the written statement filed by the parties. According to the respondent No.1/petitioner, the material facts have been stated in the petition and the allegations made therein are two-fold- firstly, on 10.04.2017, the respondent No.1/ petitioner received a sum of Rs.3,00,000/- (three lakhs) from Shri A. Priyokumar by cash on 10.03.2017 and another sum of Rs.63,500/-(sixty three thousand and five hundred) from Shri L. Bhoben on 11.03.2017 by cash as donation and a sum of Rs.961as loan. The factum of having received a total sum of Rs. 3,64,461/- (three lakhs sixty four thousand and four hundred sixty one) was recorded in the summary report prepared by the District Election Officer, Bishnupur. The receipt of donation for a sum of Rs. 3,00,000/-(three lakhs) and Rs. 63,500/-(sixty three thousand and five hundred) by cash on 10.03.2017 and 11.03.2017 respectively by applicant/ respondent No.1/ petitioner as reflected in his Abstract Statement of Election Expenses dated 10.04.2017, amounts to commission of corrupt practice within the meaning of Section 123(6) of the RP Act, 1951. Secondly, the applicant/ respondent No.1 made a false declaration / statement in his affidavit dated 13.02.2017 filed along with his nomination paper pertaining to his liabilities towards financial Institutions/ Bank. He took a loan for a sum of Rs.10,00,00/-(ten lakhs) from the State Bank of India for buying a Motor Car/ vehicle which he failed to purchase and In addition thereto, he obtained another loan of Rs.5,00,000/-(Five lakhs) only being the advance for purchase of a Motor Car and this time too, no Motor Car was purchased by him. These facts were not disclosed by the applicant/ respondent No.1 in his affidavit dated 13.02.2017 filed before the Returning Officer who ought to reject such nomination but since his nomination was not rejected by the Returning Officer, the applicant/ respondent No.1 was allowed to contest the election. Due to improper acceptance of the nomination paper of the applicant/ respondent No.1 by the Returning Officer, the result of the election in so far as it concerns the applicant/ respondent No.1 has been materially affected and therefore, the prayer has been made to declare the election of the applicant/ respondent No.1 as returned candidate as null and void. The applicant/ respondent No.1 does not deny the receipt of the said amounts and the amount towards loan but it has been stated that the receipt of donation of Rs.3 Lakhs and

Rs.63,500 and a loan amount of Rs. 961/-(nine hundred and sixty one) does not violate the direction of the Election Commission of India, in view of the fact that the alleged donation amounts are not from a single person. It was donated by 20(twenty) well wishers of the applicant/ the respondent No.1- each donating Rs.15,000(fifteen thousands) and similarly, the donation amount of Rs.63,500/- was donated by 5 (five) well wishers of the applicant/ respondent No.1 whose donation amount does not cross the ceiling limit of Rs. 20,000/- as per the instructions of the Election Commission of India. In this regard, the Additional Election Agent of the applicant/ respondent No.1 vide his letter dated 02.04.2017, in response to the notice of the Returning Officer(RO) dated 11.04.2017, has furnished the explanation about the said donations and loans mentioned in the election Petition and the satisfaction of the concerned authority was reflected in the scrutiny report of the District Election Officer on election expenses of the candidates under Rule 89 of C.E Rule,1961 with the remark that the candidate has rectified the defect. Since the Election Commission of India has accepted the explanation, there is no question of the instructions of the E.C.I being violated and that a receipt of such donation does not amount to commission of corrupt practice under Section 123(6) of the Act, 1951. As regards the loan taken by the applicant/ respondent No.1 for a sum of Rs.10 lakhs and another sum of Rs. 5 lakhs form SBI, the deductions made out of it by the bank, are reflected in the annexure A/4 and A/5 of the Election Petition meaning thereby that there has been a total outstanding loan amount of Rs.11,61,145/- which has been clearly mentioned in the affidavit of the applicant/ respondent No.1 and therefore, there is no question of non-disclosure about the said loans and in particular, the outstanding loan amount. The allegation made by the respondent no.1/ petitioner that the applicant/ respondent no.1 made false statement in affidavit dated 13.02.2017, is absolutely incorrect. Thus, after going through the averments made in the election petition as a whole, it cannot be said that the petition does not contain a concise statement of material facts. In fact, it does disclose a cause of action. The contention of the learned counsel appearing for the applicant/ respondent No.1 has no substance and merit. So long as the petition discloses some cause of action or raises some questions fit to be decided by the court, the mere fact that the case is weak and not likely to succeed, is no ground for dismissing it. Therefore, the trial can continue on merits and it is a different matter if the material facts as stated in the petition, are not sufficient to prove the allegations. Whether or not the respondent No.1/ petitioner is able to prove the allegations, is a matter of evidence which can be considered only at the stage of trial, as has been held by the Hon'ble Supreme Court. In view of the above, this court is of the

view that there had been substantial compliance with the provisions of Section 83(1)(a) of the Act and since the application is devoid of any merit, the same is liable to be rejected by this court.

[5] In the meantime, an application being MC (Elect. Pet) No.14 of 2018 was filed by the petitioner praying for grant of leave to file a replication and the objection thereto was filed by the respondent No.1. After having heard the counsels appearing for the parties, the application was allowed in part on 27-04-2019. Thereafter, issues could be finally framed only on 26-11-2019 and the parties were directed to file their list of witnesses. Admission and denial of documents were conducted before the Registrar (Judicial) on 30-01-2020. The examination-in-chief in the form of affidavit was filed on 12-02-2020 and the petition was directed to be listed on 18-02-2020 for recording evidence of PW-1 which was duly commenced in part. An objection was raised by the counsel for the respondent No.1 that the documents filed along with the replication could not be taken on record. It was submitted by the counsel appearing for the petitioner that the said documents could be taken on record in view of some of the decisions rendered by the Hon'ble Supreme Court. On 03-03-2020 the counsel for the respondent No.1 was granted time to go through them. Thereafter, the election petition could not be taken up further in view of COVID-19 crisis.

[6] During the pendency of the election petition, the Speaker, Manipur Legislative Assembly passed an order dated 18-06-2020 holding that the respondent No.1 had incurred disqualification for being a member

of the Manipur Legislative Assembly (hereinafter referred to as "**the Assembly**") in terms of paragraph 2(1)(a) of the Tenth Schedule read with Article 191(2) of the Constitution of India and that he had ceased to be a member of the Assembly with immediate effect till the expiry of the term of the Assembly.

[7] On 25-08-2020 when the election petition was taken up for further trial, it was submitted by Shri Serto T. Kom, learned counsel appearing for the respondent No.1 that on the disqualification of the respondent No.1, the prayer (b) of the election petition had become infructuous, as a result of which the prayer (c) could not be granted at all in view of the provisions of Section 101 of the Act, 1951. Combating his submissions, Shri A. Mohendro, learned counsel appearing for the petitioner submitted that the grounds taken in the election petition were within the meaning of corrupt practice as defined in Section 123 of the Act, 1951 and since the respondent No.1 had obtained votes by corrupt practice, the election petition could not be said to have become infructuous and therefore, it needed to be considered on merit. After having heard the learned counsels appearing for the parties, this Court passed an order dated 04-09-2020, the relevant paragraphs of which read as under:

> ***[6.1]*** *Section 81 of the Act, 1951 provides that an election petition can be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. Although the grounds are specified in Section 100 and Section 101, they are meant for different purposes. While the grounds specified in Section 100 are meant for declaring an election to be void, Section 101 specifies the grounds on the basis of which the*

petitioner or such other candidate, as the case may be, can be declared to have been duly elected, after declaring the election of the returned candidate to be void. The conjoint reading of both Section 100 and Section 101 makes it clear that no election petition can be presented on the grounds specified in Section 101 alone, without it being presented on any of the grounds specified in Section 100. No declaration under Section 101 can be made by the High Court in the absence of a declaration under Section 100 that the election is void. Section 100 (1) and Section 101 read as under:

"100. Grounds for declaring election to be void-(1) Subject to the provisions of sub-section (2), if the High Court is of opinion –

(a) *that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or*

(b) *that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or*

(c) *that any nomination has been improperly rejected; or*

(d) *that the result of the election, insofar as it concerns a returned candidate, has been materially affected –*

(i) *by the improper acceptance of any nomination, or*

(ii) *by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or*

(iii) *by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or*

(iv) *by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.*

101.Grounds for which a candidate other than the returned candidate may be declared to have been elected-If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been

duly elected and the High Court is of opinion-

(a) *that in fact the petitioner or such other candidate received a majority of the valid votes; or*

(b) *that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected**."***

[6.2] The grounds specified in Section 100 are the ones on basis of which the High Court can declare the election of the returned candidate to be void. On the basis of the grounds specified in Section 100, the election petitions which can be filed under the provisions of Section 80 of the Act, can be broadly categorised into two groups- one, an election petition filed on the ground of corrupt practice and two, an election petition filed on other grounds namely the result of the election has been martially affected by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act. Section 83(1)(a) which mandates that an election petition shall contain a concise statement of material facts, is common for both the categories of election petitions. So far as the first category is concerned, Section 83(1)(b) provides that the election petition shall set out full particulars of corrupt practice.

[6.3] After the election of the returned candidate being declared to be void on any of the grounds specified in Section 100, the High Court can declare the petitioner or such other candidate to have been elected on any of the grounds specified in Section 101. Such a declaration under Section 101 can be made, if the High Court is of the opinion that in fact, the petitioner or such other candidate received majority of the valid votes or that but for the votes obtained by the returned candidate by corrupt practices, the petitioner or such other candidate would have obtained a majority of the valid votes. The opinion of the High Court will have to be based on materials placed on record by the petitioner. In other words, the materials shall be such, on the basis of which the High Court can form an opinion that the petitioner or such other candidate received or would have

received a majority of the valid votes.

[7] The short issue that calls for consideration by this Court is as to whether, having regard to the facts and circumstances, the election petition has become infructuous on account of the fact that the respondent No.1 has been disqualified for being a member of the Assembly. Since the submissions have been made by the learned counsels appearing for the parties based on the decisions rendered by the Hon'ble Supreme Court, this Court deems it fit to refer to them. Firstly, in ***Lata Devi case*** *(supra), she was declared elected to the Bihar Legislative Assembly which was challenged by the respondent on the ground that the change of his symbol with less than 20 days time for campaign was in violation of Rule 10(5) of the Conduct of Election Rules, 1961 which is itself sufficient to have materially affected the result of the election. The Hon'ble Supreme Court held that the violation of sub-rule 5 of Rule 10 per se will not invalidate the election. The election petitioner has also to prove that the result of the election, insofar as it concerns the returned candidate, was materially affected. The election petitioner dismally failed to discharge the burden of proving that the result of the election, insofar it concerned the returned candidate, was materially affected. The High Court was in error in holding, without sufficient evidence, that it was materially affected. Secondly, in* ***Prakash Khandri case*** *(supra), the appellant contested the election and was declared elected to the Karnataka Legislative Assembly. The respondent No.1, Dr. Vijay Kumar Khandre contested the said election but was defeated and he challenged the said election contending that since the appellant was disqualified to contest the election as there were subsisting contracts with the State Government, the declaration of election was illegal and void and that he be declared as duly elected. The Karnataka High Court allowed the election petition with the declaration that the election of the appellant was void and the respondent No.1 elected under Section 101. When the appeals were preferred before the Hon'ble Supreme Court, one of the questions for determination which is relevant for the present case, was as under-*

"*In an election petition under the Representation of the People Act, 1951, when contest for election to the post of MLA is by more than two candidates for one seat and a candidate, who was disqualified to contest the election, is elected-whether the*

*court can declare a candidate who has secured next higher votes as elected **?"***

The Hon'ble Supreme Court, after considering the ingredients of Section 101, held"

"14. However, in an election where the elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, there is no specific provision under the Act under which the person who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been secured by the next candidate who has secured more votes. If disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than the other remaining candidates would be a question in the realm of speculation and unpredictability. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected.

24. In view of the aforesaid settled legal position, in our view, the impugned order passed by the High Court declaring the election petitioner as elected on the ground that the votes cast in favour of the elected candidate (appellant) are thrown away was totally erroneous and cannot be justified. As held by the Constitution Bench in Konappa case that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as "thrown away" only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter. As stated earlier, in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was

*disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern. Therefore, order passed by the High Court declaring the election petitioner Dr. Vijay Kumar Khandre as elected requires to be set aside.***"**

Thirdly, in ***Election Commission of India case*** *(supra), the subject matter in issue relates to the interpretation of Section 151 A of the Act, 1951. As many as twelve members submitted their resignations from the membership of the Andhra Pradesh Legislative Assembly to the Speaker who declared the resultant vacancies. The ECI notified its decision to hold bye-elections in respect of ten clear vacancies, while in respect of the remaining two constituencies, the bye-election was not notified on account of the fact that the election petitions were pending. The decision of the ECI not to hold bye-election in the said two constituencies was challenged in a writ petition which was allowed by the High Court. Hence, the appeal was preferred before the Hon'ble Supreme Court by the ECI wherein the Hon'ble Supreme Court held:*

"46. We are, therefore, of the firm view that the introduction of Section 151-A in the Constitution did not alter the position as far as the provisions of Section 84 and consequently Section 98(c) and 101(b) of the 1951 Act are concerned, since although a casual vacancy may have occurred within the meaning of Section 150 of the 1951 Act, those vacancies in which election petitions had been filed and were pending cannot be held to have become available for the purposes of being filled up within the time prescribed under Section 151-A of the 1951 Act. Article 190(3)(b) of the Constitution merely indicates that if a Member of a House of a Legislature of a Sate resigns his seat by writing to the Speaker and such resignation is accepted, his seat shall become vacant. It does not introduce any element of compulsion on the Election Commission to hold a bye-election ignoring the provisions of Section 84 of the Act. In such cases, we have little hesitation in holding that such casual vacancies are not available for being filled up and the Commission will have to wait for holding elections in such constituencies until a decision is rendered in regard to the latter part of Section 84 of the 1951 Act during the life of the House. The view expressed by the High

Court that a case has to be decided in accordance with the laws as existing on the date of adjudication, while salutary in principle, are not attracted to the facts of this case in view of the provisions of Section 84 of the 1951 Act."

Fourthly, in ***Kisan Shankar Kathore case*** *(supra), the appellant was the successful candidate in the Maharashtra Legislative Assembly and after he being declared elected, his election was challenged by a vote contending that his nomination had been improperly accepted by the Returning Officer. The election petition was filed under Section 100(1)(d)(i) and (iv) of the Act, 1951 namely the suppression of information relating to dues payable, assets etc. The High Court allowed the election petition holding that the nomination form of the appellant was defective and should not have been accepted by the Returning Officer. The appeal preferred against the judgment and order of the High Court was dismissed by the Supreme Court. Fifthly, in* ***Krishnamoorthy case*** *(supra), the subject matter in issue relates to non-disclosure of full particulars of criminal cases pending against a candidate. The appellant was elected as the President of Thekampatti, Tamil Nadu, the validity of which was called in question on the ground that he had filed a false declaration suppressing the details of criminal cases pending against him. The election tribunal declared the election as null and void. In revision, the High Court agreed with the ultimate conclusion of the tribunal though for a different reason. In the appeal preferred before the Hon'ble Supreme Court, one of the issues was as to whether non-disclosure of criminal antecedents would tantamount to undue influence, which is a facet of corrupt practice as per Section 123 (2) of the Act, 1951. After referring to its earlier decisions, the conclusions summarised by the Hon'ble Supreme Court read as under:*

"94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3. Concealment or suppression of this nature deprives the

voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void buy the Election Tribunal under Section 100(1)(b) of the 1951 Act."

Sixthly, in ***Lok Prahari case*** *(supra), the subject matter in issue relates to reforms in electoral process including the improvement of the electoral system in order to strengthen democracy and in particular, the requirement of periodic examination of source of income of legislators and their associates to ascertain whether there is undue accretion of assets. There are many prayers in the writ petition, of which one which is relevant for the present case, is the prayer for declaring that non-disclosure of assets and source of income of self, spouse and dependants by a candidate would amount to undue influence and thereby, corruption rendering such election null and void under Section (1)(b) of the Act, 1951. The Hon'ble Supreme Court held:*

"81. F*or the very same logic as adopted by this Court in Krishnamoorthy, we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under hearing "undue influence" as defined under Section 123(2) of the 19512 RP Act. We therefore, allow Prayer 2."*

On perusal of the aforesaid decisions, it can be aptly inferred that there can be no any dispute as regards the law laid down by the Hon'ble Supreme Court in the above cases, except that of Prakash Khnadri, but their facts and circumstances are not exactly the same as that of the present case. However, the facts of the Prakash Khandri case are identical, to some extent, with that of the present case and therefore, in order to decide the

technical issue involved herein, the decision rendered by the Hon'ble Supreme Court therein will have an application.

[8] The election petition has been filed by the petitioner mainly for two reasons-one, if the election of the respondent No.1 is declared null and void on any of the grounds mentioned therein, he will cease to be the member of the Assembly and a bye-election can be held for the seat vacated by him and two, in the event of the election being declared as null and void, the petitioner can be declared to have been duly elected. Admittedly, during the pendency of the instant election petition, the respondent No.1 has incurred disqualification for being a member of the Assembly in terms of paragraph 2(1)(a) of the Tenth Schedule read with Article 191(2) of the Constitution of India vide order dated 18-06-2020 issued by the Speaker and that he has ceased to be a member of the Assembly till the expiry of the term of the Assembly with the result that the seat of the Kumbi Constituency has remained vacant. But it has been brought to the notice of this Court that the legality or otherwise of the order dated 18-06-2020 passed by the Speaker has been challenged by the respondent No.1 and is pending for consideration by this Court. It is not known to this Court as to when it will be disposed of by this Court. Moreover, the issue whether bye-election can now be held against the seat lying vacant in view of the fact that the writ petition challenging the order of disqualification is pending, is not the issue involved herein and therefore, it is not appropriate for this Court to make any observation thereon. There is no point of going ahead with the trail, for the time being, for the reason that this Court cannot foresee the outcome of the writ petition. After the trail having proceeded for sometime, if it is brought to the notice of this Court later on that the writ petition has been dismissed by this Court, the whole exercise will be rendered futile. In this regard, the argument that has been advanced by the counsel appearing for the petitioner, is that in view of the prayer (c), the trial will have to be proceeded and continued to its logical conclusion, even though the respondent No.1 has been disqualified. His contention appears to have no merit at all because there is no material on record as contemplated in Section 101, on the basis of which this Court can come to conclusion that but for the alleged filing of a false affidavit or making a false statement in the affidavit, the petitioner would have received a majority of valid

votes. In other words, there is no material to come to the conclusion that 1311 votes that the respondent No.1 secured more than that of the petitioner, could have been secured by the petitioner, if the respondent No.1 had been disqualified earlier and that there is a possibility that those votes could have been secured by the other candidates. There appears to be no dispute as regards the number of valid votes secured by them. There is no allegation that more valid votes have been secured by the respondent No.1 by means of corrupt practice namely bribery, undue influence, booth capturing etc. On top of that, it may be noted that there are more than two candidates contesting the election and in view of the decision rendered by the Hon'ble Supreme Court in Prakash Khadri case (supra) as mentioned hereinabove, the prayer (c) cannot be granted at all, even assuming that the alleged filing of a false affidavit or alleged violation of the instructions dated 09-06-2015 of the ECI can be said to be undue influence which is one of the facets of corrupt practice. In other words, even if the election of the returned candidate is declared null and void by this Court, the petitioner cannot be declared to have been elected as aforesaid and in any case, a bye-election will become indispensable for the seat vacated or to be vacated by the respondent No.1 either on account of his disqualification by the Speaker or the election being declared null and void by this Court after the trail. Considering the above facts and circumstances, this Court is of the view that the continuation of the election trail will be, for the time being, a futile exercise but for the pendency of the writ petition filed by the petitioner questioning his disqualification, the election petition cannot be dismissed as infructuous. This court will have to await the outcome of the said writ petition and in case the writ petition is dismissed, the instant election petition will automatically become infructuous. In the event of the writ petition being allowed by this Court quashing the order of disqualification passed by the Speaker, the election petition can be taken up for further trail.

[8] Being aggrieved by the order dated 04-09-2020, the instant review petition has been filed by the petitioner on the inter-alia grounds that since this Court vide its judgment and order dated 22-01-2019 had held that the allegation of the Respondent No.1 could be decided after trial of the same,

the Hon'ble Court cannot take a contrary view to the effect that there is no material on record as contemplated in Section 101; that Section 101 of the Act, 1951 cannot be read in isolation and it shall be read with Section 77 and Section 123 of the Act, 1951 and that due to the order dated 04-09-2020 being passed, a misconception of law has arisen and if it is allowed to exist, it will become a wrong precedent. It has also been submitted that in terms of Section 86 (7), every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. If the trial is deferred till the disposal of the writ petition filed by the respondent No.1 questioning his disqualification, it will cause irreparable loss to the people of the constituency.

[9.1] Before considering the review petition on merit, this Court proposes to examine the law laid down by the Hon'ble Supreme Court to be followed while deciding it. In ***Kamlesh Verma Versus Mayawati & Ors., (2013) 8 SCC 320,*** the Hon'ble Supreme Court, while considering the issue as to whether the review petitioner therein has made out a case for reviewing the judgment and order and satisfies the criteria for reviewing the same in review jurisdiction, had considered the scope of the review jurisdiction. After referring to its earlier decisions, the Hon'ble Supreme Court has held:

> ***"20****. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

20.1. *When the review will be maintainable:*

(i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*

(ii) *Mistake or error apparent on the face of the record;*

(iii) *Any other sufficient reason.*

The words "any other sufficient reason" have been interpreted in ***Chhajju Ram v. Neki*** *and approved by this Court in* ***Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius*** *to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated* ***in Union of India v. Sandur Manganese & Iron Ores Ltd.***

20.2. *When the review will not be maintainable:*

(i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

(ii) *Minor mistakes of inconsequential import.*

(iii) *Review proceedings cannot be equated with the original hearing of the case.*

(iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error*

(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be*

advanced in the review petition.

(ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.***"**

The above decision of the Hon'ble Supreme Court has been referred to and relied upon by this Court in many cases. On top of that, it has been referred to by the Hon'ble Supreme Court in one of its recent decision rendered in **Akshay Kumar Singh Vs. State (NCT of Delhi), (2020) 3 SCC 431** wherein the Hon'ble Supreme Court has held that it is no longer res intrega that the scope of review is limited and review cannot be entertained except in case of error apparent on the face of the record. Review is not a rehearing of the appeal over again. In a review petition, it is not for the Court to re-appreciate the evidence and reach a different conclusion.

[9.2] In the light of the law laid down by the Hon'ble Supreme Court as mentioned hereinabove, this Court proposes to deal with grounds raised by the petitioner in the review petition. The first submission of the learned counsel appearing for the petitioner is that this Court in its order dated 04-09-2020 has held that there is no material, although this Court in its earlier judgment and order dated 22-01-2019 has held that there are materials facts which are contrary to each other. His submission has no merit at all. All that has been submitted by him, is in relation to the appreciation of the provisions of law and in other words, it relates to the questions of law which cannot be said to be an error apparent on the face of record. It is no, doubt, a matter of record that this Court while deciding the MC (Elec. Pet.)

No.12 of 2018 vide judgment and order dated 22-01-2019 held that it could not be said that the election petition did not contain a concise statement of material facts; that it did disclose a cause of action and that there had been substantial compliance with the provisions of Section 83(1)(a) of the Act. This observation was made by this Court in the context of the provisions of Section 83 of the Act, 1951 as regards the maintainability of the election petition. So far as the order dated 04-09-2020 passed by this Court is concerned, it was passed in the context of the provisions of Section 101 of the Act, 1951 whereby in the event of the election being declared as null and void, the petitioner can be declared elected provided one of the conditions mentioned therein is fulfilled. This Court has observed that there is no material on record to show the number of votes secured by the respondent No.1 by way of corrupt practice so that this Court, in the event of the election being declared null and void, invoke the provisions of Section 101 of the Act, 1951 and declare that the petitioner is elected. The provisions of Section 83 and 101 of the Act, 1951 are altogether different and are meant for different purposes.

[9.3] Secondly, it has been submitted by the counsel appearing for the petitioner that there is no any provision in the Act, 1951 that the election petition shall be considered only after the writ petition questioning the order of disqualification passed by the Speaker, Manipur Legislative Assembly disqualifying the respondent No.1, is decided by this Court. There can be no any dispute on his submission to some extent but the fact remains that after the respondent No.1 being disqualified, the assembly seat is lying

vacant. The respondent No.1 is no longer the member of the Manipur Legislative Assembly. The bye-election can be held but for the pendency of the said writ petition, the bye-election has not been held by the Election Commission India. The writ petition challenging the order of disqualification is being considered by this Court as part-heard and moreover, there is no order passed by this Court staying the operation of the order of disqualification. The said writ petition is at its final stage of hearing. While passing the order dated 04-09-2020, this Court considered two main reasons as to why the election petition is filed by the petitioner-one, if the election of the respondent No.1 is declared null and void on any of the grounds mentioned therein, he will cease to be the member of the Assembly and a bye-election can be held for the seat vacated by him and two, in the event of the election being declared as null and void, the petitioner can be declared to have been duly elected. As has been observed hereinabove, there is no material on record as required under Section 101 of the Act, 1951 to declare that the petitioner is elected, even assuming that the election of the respondent No.1 is found to be null and void because there are more than two candidates and moreover, there is no material to show the number of votes secured by the respondent No.1 by way of corrupt practice. In other words, the second reason for filing the election petition is not available with the petitioner in the facts and circumstances of the case. If the respondent No.1 does not succeed in his writ petition questioning his disqualification, there is no point of proceeding further with the election trial and therefore, this Court has passed the

impugned order to await the outcome of the said writ petition. It has further been submitted by him that in the event of the election being declared null and void, the respondent No.1 will be debarred from contesting elections in future and therefore, the conclusion of the trial is a must. His submission involves a question of law and it cannot be said to be a ground for reviewing the order. It may be noted that the election petition is still pending and has not been dismissed by this Court.

[9.4] The third argument that the learned counsel appearing for the petitioner has advanced, is that in terms of Section 86 (7), every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. There can be no any dispute on that but the facts remains that after the election being held on 04-03-2017, as many as thirteen/ fourteen election petitions were filed before this Court and at that point of time, there were only two Judges in the High Court-one, the Acting Chief Justice and two, a puisne Judge which continued almost a year, although the total strength thereof was five. The election petitions were divided between them almost equally. No particular Judge could be earmarked to deal with the election petitions only, as both the Judges will have to take up other cases as well daily including the habeas corpus petitions and bail applications. On top of that, many applications came to be filed in the election petitions including the one relating to the maintainability of the election petition which will have to be decided by this Court after giving the parties an opportunity of

completing the pleadings before proceeding further with the trial. While disposing of the applications, this Court took some time and most of the time, the counsels of the either side used to pray for adjournments on personal difficulties which are reflected in the proceedings of this Court. Moreover, in most of the election petitions, any order passed by this Court in the interlocutory application used to be questioned by the aggrieved party before the Hon'ble Supreme Court which can be said to be one of the factors for the delay in the trial, although it is unavoidable for the reason that it is his right to approach the appellate forum for redressal of his grievance. In such circumstances, it is almost impossible for this Court to conclude the election trial within six months, despite best endeavour being made by it. The COVID-19 crisis is also another factor for the delay in the election trial, which prevents the Court from holding physical Courts for recording evidence and regular hearing.

[10] On perusal of the averments made in the review petition and after having considered the grounds raised therein, it is seen that the petitioner has failed to point out any error crept in the order dated 04-09-2020 passed by this Court which is apparent on the face of record. The grounds taken by the petitioner therein and discussed in the preceding paragraphs by this Court, are not the ones on the basis of which the review petition can be entertained by this Court. In fact, they relate to the questions of law which are available with the petitioner for preferring an appeal before the appropriate forum.

[11] In view of the above and for the reasons stated hereinabove, the instant review petition is devoid of any merit and is accordingly dismissed with no order as to costs.

JUDGE

FR/NFR

Devananda