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

**MC(Election Petition) No. 18 of 2020**
**Ref:- Election Petition No. 1 of 2017**

Shri Yengkhom Surchandra Singh, aged about 67 years, son of Late Y. Yaima Singh, resident of Kakching Turel Wangma, P.O. & P.S.-Kakching, District Kakching, Manipur– 795103.

**…... APPLICANT**

**-VERSUS-**

1. Shri Mayanglambam Rameshwar Singh, aged about 50 years, son of M. Aber Singh, resident of Makha Lou, Kakching Khullen, P.O. & P.S. Kakching, District Kakching, Manipur – 795103.

2. Shri Naorem Achouba, aged about 64 years, son of Late N. Naran, resident of Kakching Ningthou Leikai, P.O. & P.S. Kakching, District- Kakching, Manipur– 795103.

**…..... OPPOSITE PARTIES**

BEFORE
**HON'BLE MR. JUSTICE M.V. MURALIDARAN**

| | | |
|---|---|---|
| For the Applicant | :: | Mr. Th. Modhu, Advocate<br>Mr. L.N. Ngamba, Advocate. |
| For the Respondents | :: | Mr. A. Mohendro, Advocate,<br>Mr. Ajoy Pebam, Advocate,<br>Mr. L. Rojeshon, Advocate. |
| Date of Hearing & Reserving Judgment & Order | :: | 13.10.2020 |
| Date of Judgment & Order | :: | **16.10.2020** |

**JUDGMENT AND ORDER**
**(CAV)**

This petition has been filed by the petitioner Yengkhom Surchandra Singh, who is the first respondent in Election Petition No.1 of 2017, under Section 151 of the Code of Civil Procedure, 1908 read with Section 87 of the Representation of People Act, 1951, praying to keep the further proceedings of Election Petition No.1 of 2017 in abeyance in the light of the order dated 4.9.2020 passed in Election Petition No.12 of 2017 on the file of this Court.

2. According to the petitioner, the Speaker's Tribunal of Manipur Legislative Assembly, on an initiation of one Shri DD

Thaisil, an MLA of Karong Assembly Constituency, had taken up a proceeding being Disqualification Case No.14 of 2019 under Tenth Schedule of the Constitution of India against the petitioner. The petitioner contested the said proceeding, but the Speaker's Tribunal, by an order dated 18.6.2020, disqualified the petitioner from being MLA. Accordingly, the Secretary, Manipur Legislative Assembly, issued a bulletin on 18.6.2020 that the petitioner Y.Surchandra Singh elected from 37Kakching Assembly Constituency has been disqualified from the membership on 18.6.2020 and thus, the 37-Kakching Assembly Constituency is lying vacant. Aggrieved by the said order, the petitioner had filed W.P.(C) No.316 of 2020 before this Court and the same is pending. The petitioner attempted to file Miscellaneous Application in the pending Election Petition bringing to the notice of this Court about the disqualification, but the Court had passed an order on 26.8.2020 rejecting the said request made by the learned counsel for the petitioner holding that the proceeding under Tenth Schedule is different from the Election Petition.

3. It is stated that one N.Mangi Singh filed Election Petition No.12 of 2017 before this Court challenging the election of one S.Bira Singh from 29-Kumbi Assembly Constituency in the

last 11th Legislative Assembly Election, 2017. It is also stated that the Speaker, Manipur Legislative Assembly had passed an order dated 18.6.2020 under the Tenth Schedule disqualifying the said S.Bira Singh from being the member of Manipur Legislative Assembly and the Secretary of the Manipur Legislative Assembly had issued bulletin regarding disqualification. Challenging the said order, S.Bira Singh had filed a writ petition and the same is pending. Further, S.Bira Singh has also filed Miscellaneous Petition in Election Petition No.12 of 2017 bringing to the notice of the Court about the disqualification and for passing necessary order to dispose of Election Petition No.12 of 2017 as infructuous. By an order dated 4.9.2020, the trial of the Election Petition No.12 of 2017 was kept in abeyance till the fate of the writ petition.

4. According to the petitioner, the present Election Petition No.1 of 2017 is in the midst of final hearing and the order dated 4.9.2020 passed in Election Petition No.12 of 2017 is squarely applied to the present case and hence, considering the subsequent development of passing the order dated 4.9.2020 in Election Petition No.12 of 2017, the petitioner prayed to keep the further proceedings of Election Petition No.1 of 2017 in abeyance.

5. Resisting the petition, the first respondent filed objection stating that the present Miscellaneous Petition regardless of knowing the fact that he has to close his final submission on 12.10.2020 and regardless of having many opportunities to do so since the day, he started his submission for final disposal of the Election Petition No.1 of 2017. It is stated that this is a very ill-intentioned tactics by the petitioner to delay the present case and waste the valuable time of this Court. It is also stated that it has become a continuous practice of the petitioner to file an unwarranted Miscellaneous Petitions from time to time, in order to delay the matter and filing of the Miscellaneous Petitions have become a hurdle and contemptuous to the proceeding for speedy and administration of justice. Hence, prayed for dismissal of the petition.

6. The learned counsel for the petitioner submitted that in similar circumstances, the Speaker of Manipur Legislative Assembly, had passed an order dated 18.6.2020 under Tenth Schedule disqualifying one S.Bira Singh, who is the first respondent in Election Petition No.12 of 2017 and challenging the said order of the Speaker, S.Bira Singh had filed writ petition and the same is still pending. He submits that when S.Bira Singh filed

Miscellaneous Application bringing to the notice of this Court about his disqualification and passing necessary order to dispose of the Election Petition No.12 of 2017 as infructuous, this Court, by an order dated 4.9.2020, ordered the further proceedings of the said Election Petition in abeyance till the outcome of the writ petition. The learned counsel submits that in similar situations, when the petitioner's counsel making attempt by mentioning to bringing to the notice of the disqualification, by an order dated 26.8.2020, this Court, rejected the petitioner's request which is contrary to law. In such circumstances, the learned counsel filed this M.C. (Election Petition) No. 18 of 2020 and prayed for an order keeping the Election Petition No.1 of 2017 in abeyance till the disposal of the writ petition.

7. Mr. Th. Modhu, learned counsel for the petitioner/first respondent has submitted the following citations for supporting of his case :-

I. **Dr. Vijay Laxmi Sadho Vs. Jagdish, (2001) 2 SCC 247, para 33 :**

> ***"33.*** *As the learned Single Judge was not in agreement with the view expressed in Devilal's case*[4]*,*

*it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."*

[4] *Election Petition No. 9 of 1980*

II. **Dist. Manager, APSRTC, VIJAYAWADA Vs. K. Shivaji & Others, (2001) 2 SCC 135, Para 3 last portion :**

**"*3.*** *……*
*…….*

*……...*

*It is thus clear that the decision that if an establishment is a State within the meaning of Article 12, then it is under the control of the Government for the purposes of Section 11(1)(c), is not based upon an examination*

*of the Memorandum and Articles of Association. This decision was binding on the learned Judge hearing the Writ Petition. Judicial discipline required that he either follow it or refer the matter to a larger Bench. Sitting singly the learned Judge could not have taken a different view on the specious ground that the decision was based on facts. It must be mentioned that, as is pointed out hereinafter, even on facts the conclusion of the Learned Judge is unsustainable."*

III. **SOPAN SUKHDEO SABLE Vs. Asst. Charity Commissioner and Others, (2004) 3 SCC 137, Para 15**

***"15.*** *There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings*

*taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair- splitting technicalities."*

8. By showing the above citations, the learned counsel submits that the Coordinate Bench like this Court should follow the order passed in other Bench in the above Election Petition No. 12 of 2017 dated 04.09.2020

9. Per contra, the learned counsel for the respondent in this Misc. case submits that since the trial of the Election Petition was over and it is pending for submission of final day arguments of the Respondent No. 1, at this stage, the present petition is not at all maintainable. Further, the learned counsel submits that only to protract the proceedings, the petitioner has filed the present petition. Moreover, the petitioner is in the habit of filing petition after petition. He would submit that since the ground of challenge in both the Election Petitions are different, the petitioner cannot plead that the case in Election Petition No.12 of 2017 is identical to that of Election Petition No.1 of 2017.

10. Mr. A. Mohendro, learned counsel for the respondent/election petitioner has produced the citations in

***Election Commission of India Vs. Telangana Rastra Samithi and another, (2011) 1 SCC 370*** in which he referred to paras 39 and 42 of the judgment which read as follows :

> ***"39***. The decision in *Sanjeevayya case*[1] involved the causation of a casual vacancy on account of resignation by the elected candidate while an election petition under Section 84 of the Act was pending. The effect of Article 190(3)(b) of the Constitution was considered in the facts of the said case and it was held that the vacancy caused by the decision of the Speaker did not become a *vacancy available for being filled up and/or capable of being filled up* (Emphasis supplied) till a declaration was either made or refused under the latter part of Section 84. Notwithstanding the intervention of Section 151A by way of amendment with effect from 1st August, 1996, the position remains the same. The only effect on account of such declaration under Section 190(3)(b)is that a time limit was fixed for holding bye-elections in respect of casual vacancies.
>
> ***40. ……***
> ***……..***
>
> ***41. ……***
> ***……..***

> ***42***. *At this stage, it would be apposite to consider another aspect of the matter regarding the meaning of the expression "vacancy" for the purpose of Part IX of the aforesaid Act. In this behalf we are inclined to agree with the decision rendered in D.Sanjeevayya case*[1] *and the submissions of the learned Additional Solicitor General that in order to be filled up in a bye- election, a vacancy must be available for being filled up. In a situation such as that contemplated by the latter half of Section 84 and its consequences as reflected in Sections 98(c), 101(b) and 8A of the 1951 Act, it cannot be said that a vacancy in such a situation would be a vacancy available for being filled up by a bye-election, particularly in a situation where allegations of corrupt practices have been made which, if proved, provides for disqualification under Section 8A of he said Act. Simply by submitting his resignation, a successful candidate against whom allegations of corrupt practices are made, cannot escape the consequences of Section 8-A of the Act, if the same are ultimately found to be proved."*
>
> [1] *D. Sanjeevayya v. Election Tribunal, AIR 1967 SC 1211 : (1967) 2 SCR 489*

11. By citing the above judgment, Mr. Mohendro, supporting his case, he argued that the order in Election Petition

No. 12 of 2017 dated 04.09.2020 produced by the petitioner/first respondent is not supported the Election Petition No. 1 of 2017 and only with an aim to protect the proceedings, the petitioner/first respondent has filed this Misc. case in MC (Election Petition) No. 18 of 2020.

12. This Court considered the submissions made by the learned counsel for the parties and perused the materials available on record.

13. The grievance of the petitioner/Respondent No.1 is that there is no point in continuing the proceedings of the Election Petition No.1 of 2017 after the order of disqualification passed by the Speaker, which was also challenged by way of separate writ petition. In future, if it is brought to the notice of this Court that the writ petition challenging the order of the Speaker has been dismissed, the entire exercise done in the Election Petition will be rendered futile.

14. On the other hand, it is the submission of the learned counsel for the respondent that the proceedings of the instant Election Petition cannot be kept in abeyance, as the same will have to be continued to its logical conclusion and the

disqualification order passed by the Speaker is in no way concern with the present Election Petition.

15. According to the learned counsel for the petitioner, in similar circumstances, in Election Petition No.12 of 2017, by an order dated 4.9.2020, another Hon'ble Judge of this Court has passed an order to the effect that continuation of the Election Petition is futile exercise. Taking through the said order, the learned counsel for the petitioner submitted that the said order dated 4.9.2020 is squarely applies to the instant case and therefore, the entire proceedings of the present Election Petition shall be kept in abeyance.

16. For proper appreciation, the order dated 4.9.2020 passed in Election Petition No.12 of 2017 is extracted herein below:

> *"[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 09-062015 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.*

*Accordingly, list the election petition on 1911-2020 for further trial and in case the writ petition happens to be allowed earlier than the next date of hearing, it is open to the counsel appearing for the petitioner to make a mention for preponing the next date of hearing.*

*Copies of this order shall be sent to the learned counsels appearing for the parties through their WhatsApp/ e-mail.*

17. When on 26.08.2020 the learned counsel for the first respondent in the Election Petition No. 1 of 2017 seeking permission of this Court for filing fresh Misc. case for bringing to the notice of this Court about the disqualification of the first respondent and filing of the writ petition challenging the disqualification, this Court had passed the following order :

*"[1] When the matter is taken up on 24.08.2020, Mr. Th. Ibohal, learned Sr. Counsel*

*who appeared for the Respondent No. 1 represented before this Court that he wants to examine the witness no. 10 as DW No. 10 by namely, Mr. Joseph. Therefore, he seeks time and accordingly, this Court posted the matter today.*

*[2] When the matter is taken up today, Mr. Ibohal, learned Sr. Counsel for the respondent No. 1 in the Election Petition represented that the witness no. 10 Mr. Joseph is out of station and therefore, he seeks to adjourn this matter to 10 to 15 days eventhough this Court had already granted enough time for producing all the witnesses on the respondent no. 1 side but even today the Respondent No.1 seek further more time. Therefore, this Court is not giving any further time to respondent no.1 for examining the witness No. 10. Accordingly, the same was rejected.*

*[3] Hence, Mr. Ibohal, learned Sr. Counsel thereafter represented before this Court that he is closing the evidence on side of the respondent no. 1. Accordingly, recording his submission, the evidence of the respondent no. 1 is closed in the main election petition.*

*[4] Mr. Ibohal, the learned Senior Counsel further represented before this Court that he wants to file a Misc. case in respect of challenging the disqualification of the respondent no. 1 as ordered by the Hon'ble Speaker of the Manipur Legislative Assembly before this Court by way of writ petition and hence, he seeks permission of this Court to file fresh Misc. case for the above purpose.*

*[5] It is made clear that this Election Petition No. 1 of 2017 has been filed only to the prayer of challenging the election of respondent no. 1 as Member of Legislative Assembly of 37-Kakching Assembly Constituency. The further course of action of the disqualification of the respondent no. 1 is no way connected with this Election Petition No. 1 of 2017. Therefore, the second request made by Mr. Ibohal, the learned Senior Counsel is rejected by this Court since the said issue is no way connected with this election petition.*

*[6] The Respondent no. 1 in the Election Petition No. 1 of 2017 has filed 2 (two) Misc. cases in MC (El.Pet.) No. 7 of 2020 and MC (El. Pet.) No. 8 of 2020.*

*[7] The prayer sought for in MC(El.Pet.) No. 7 of 2020 reads as follows :*

*"It is, therefore, prayed that Your Lordships be pleased to hold an enquiry under Section 340 Cr.P.C. against the opposite party no. 1 herein (M. Rameshwar Singh) for his commission of crime punishable under Section 193, 199, 200, 209 and 471 of Indian Penal Code respecting the document exhibited as Ext. P/5 in the Election Petition No. 1 of 2017 and take appropriate action against him as provided under the said Section 340 Cr.P.C. for the ends of justice. And it is further prayed that your Lordships be pleased to stop the further proceedings of the Election Case."*

*[8] The prayer sought for in MC(El.Pet.) No. 8 of 2020 reads as follows :*

*"It is, therefore, prayed that Your Lordships be pleased to reject the above referred Election Petition No. 1 of 2017 for the ends of justice.*

*-And-*

*It is further prayed that Your Lordship be pleased to stay the further proceedings of the Election Petition till disposal of the application for holding enquiry against the Respondent*

*herein (M. Rameshwar Singh) for his commission of crime punishable under Section 193, 199, 200 and 209 of Indian Penal Code respecting the document exhibited as Ext. P/5 in the Election Petition No. 1 of 2017 for the ends of justice."*

*[9] When the matter is taken up today, Mr. Th. Ibohal, learned Sr. Counsel for the respondent no. 1 represented before this Court that though he seeks the prayer as per Section 340 Cr.P.C. it is the independent proceeding that should be decided first, then other proceedings may be taken up later on whereas Mr. A. Mohendro, learned counsel for the election petitioner represented before this Court by producing the judgment of the Hon'ble Supreme Court* ***in (2015) 16 SCC 149 para 21*** *by stating that Misc. Cases should be heard along with the main Election Petition.*

*[10] Therefore, on hearing both sides, post this matter on 28.08.2020 to decide whether the two Misc. cases can be heard along with the main Election Petition or hear independently?*

*[11] For that purpose, the matters stand adjourned to 28.08.2020.*

*[12] Registry is directed to post the matters on 28.08.2020.*

18. As against the order dated 4.9.2020, this petitioner who is the first respondent in the Election Petition No. 1 of 2017 has not been preferred any appeal and the said order allowed to be attained finality.

19. In the background aforesaid, this Court is of the view that the instant petition praying for consideration of the subsequent development and to keep the further proceedings of the present Election Petition No. 1 of 2017 in abeyance is the method invented by the petitioner to delay the proceedings and the trial of Election Petition No. 1 of 2017. Further, on a perusal of the records, it is seen that pending Election Petition, the petitioner/first respondent has filed number of Misc. petitions with various prayers and in the said petitions, this Court had passed various orders. The filing of petitions by the petitioner in the Election Petition, as rightly argued by the learned counsel for the opposite party, has caused tremendous delay in the delivery of justice. For the reference of this Court, the following

Miscellaneous Petitions are filed by this petitioner/first respondent and the respondent/election petitioner :

**MISC. CASES FILED BY THE RESPONDENT NO. 1 IN CONNECTION WITH THE ELECTION PETITION NO. 1 OF 2017**

| Sl. No. | Date of filing | Case No. | Purpose | Remarks |
|---|---|---|---|---|
| 1. | 12/06/2017 | M.C. (Election Petition) No. 4 of 2017. | The Respondent No. 1 prayed for granting 4 (four) week time to file Written Statement. | The M.C. (Election Petition) No. 7 of 2017 was closed as infructuous on 30/10/2017 |
| 2. | 19/07/2017 | M.C. (Election Petition) No. 7 of 2017 | The Respondent No. 1 prayed for granting 2 (two) week time for filing Written Statement of the Respondent No. 1. | The M.C. (Election Petition) No. 7 of 2017 was closed as infructuous on 30/10/2017 |
| 3. | 3/10/2017 | M.C. (Election Petition) No. 22 of 2017 | The Respondent No. 1 prayed for amendment of the Written Statement of the Respondent No. 1. | M.C. (Election Petition) No. 22 of 2017 filed by the Respondent No. 1 |

| | | | | |
|---|---|---|---|---|
| | | | | was allowed on 13/11/2017 |
| 4. | 24/11/2017 | M.C. (Election Petition) No. 29 of 2017 | The Respondent No. 1 filed for allowing to file the subsequent pleading/Rejoinder as reply to the replication of the Applicant. | Allowed on 24/11/2017 |
| 5. | 4/12/2017 | M.C. (Ele. Pet.) No. 30 of 2017 | The Respondent No. 1 filed for allowing to file a fresh affidavit in view of the Amendment Written Statement. | Allowed on 4/12/2017 |
| 6. | 27/02/2018 | M.C. (Election Petition) No. 7 of 2018 | The Respondent No. 1 filed the said Misc. case for amendment of the Written Statement of the Respondent No.1. | Allowed on 7/06/2018 |
| 7. | 08/03/2018 | M.C. (Election Petition) No. 9 of 2018 | The Respondent No. 1 filed the said Misc. Case praying for allowing to file subsequent pleading replication to the Written objection filed by the | Closed as Infructuous on 05/09/2018 |

| | | | | |
|---|---|---|---|---|
| | | | Applicant in M.C. (Ele. Pet.) No. 7 of 2018. | |
| 8. | 08/03/2018 | M.C. (Election Petition) No. 10 of 2018 | The Respondent No. 1 filed the said Misc. Case for amendment of the M.C. (Election Petition) No. 7 of 2018 filed by the Respondent No.1. | Allowed on 25.05.2018 |
| 9. | 03/04/2018 | M.C. (Election Petition) No. 11 of 2018 | The Respondent No. 1 filed the said Misc. case praying for allowing to file subsequent pleading /replication in reply to the Written Objection filed by the Applicant. | Allowed on 07/06/2018 |
| 10. | 11/06/2018 | M.C. (Election Petition) No. 20 of 2018 | The Respondent No. 1 filed the said Misc. case praying for allowing to file the additional list of documents in the Election Petition No. 1 of 2017. | Allowed on 19/09/2018 |
| 11. | 11/06/2018 | M.C. (Election Petition) No. 21 of | The Respondent No. 1 filed the said Misc. Case praying for under | Allowed on 19/09/2018 |

| | | | | |
|---|---|---|---|---|
| | | 2018 | Order 6 Rule 17 of the CPC read with Section 87 of the R.P. Act for amendment of the Written Statement of the Respondent No.1. | |
| 12. | 04/09/2018 | M.C. (Election Petition) No. 24 of 2018 | The Respondent No. 1 filed the said Misc. Case praying for under Order 6 Rule 17 of the CPC read with Section 87 of the R.P. Act for amendment of the M.C. (Elec. Petition) No. 21 of 2018 of the Respondent No. 1. | Allowed on 19/09/2018 |
| 13. | 17/09/2018 | M.C. (Election Petition) No. 27 of 2018 | The Respondent No. 1 filed the said Misc. case praying for allowing to file a second additional list of documents in the Election Petition No. 1 of 2017. | Allowed on 19/09/2018 |
| 14. | 12/10/2018 | M.C. (Election Petition) No. 31 of | The Respondent No. 1 filed the said Misc. Case praying for | Allowed on 23/01/2019 |

| | | | | |
|---|---|---|---|---|
| | | 2018 | amendment of the Written Statement filed by the Respondent No.1. | |
| 15. | 25/02/2019 | M.C. (Election Petition) No. 2 of 2019 | The Respondent No. 1 filed the said Misc. Case praying for filing 3rd additional documents. | Dismissed on 3/07/2019 |
| 16. | 25/02/2019 | M.C. (Election Petition) No. 3 of 2019 | The Respondent No. 1 filed the said Misc. Case praying for amendment or modification of the issues framed by the Hon'ble Court or adding of additional issues. | Dismissed on 03/07/2019 |
| 17. | 19/08/2019 | M.C. (Election Petition) No. ... of 2019 | The Respondent No. 1 filed the said Misc. Case praying for adjournment of 20 days. | Dismissed |
| 18. | 2/12/2019 | M.C. (Election Petition) No. 21 of 2019 | The Respondent No. 1 filed the said Misc. Case praying for issuing Summons to the witness Shri G. Tapankumar Sharma. | Allowed on 3/12/2020 |

| | | | | |
|---|---|---|---|---|
| 19. | 17/12/2019 | M.C. (Election Petition) No. 25 of 2019 | The Respondent No. 1 filed the said Misc. Case praying for issuing Summons to the Witness Shri Raghunandan Samanta. | Allowed on 22/01/2020 |
| 20. | 17/12/2019 | M.C. (Election Petition) No. 26 of 2019 | The Respondent No. 1 filed the said Misc. Case praying for allowing to file one original Certificate issued by the Senior Manager (OP), UBI, Imphal | Allowed on 22/01/2020 |
| 21. | 24/02/2020 | M.C. (Election Petition) No. 6 of 2020 | The Respondent No. 1 filed the said Misc. Case praying for allowing to examine Shri. Soroj Singh as summon witness. | Disposed 25/02/2020 |
| 22. | 6/03/2020 | M.C. (Election Petition) No. 7 of 2020 | The Respondent No. 1 filed the said Misc. Case praying for holding inquiry against the Petitioner. | Pending |
| 23. | 6/03/2020 | M.C. (Election Petition) | The Respondent No. 1 filed the said Misc. Case | Pending |

| | | | | |
|---|---|---|---|---|
| | | No. 8 of 2020 | praying for dismissing the Election Petition filed by the Petitioner. | |
| 24. | 20/07/2020 | M.C. (Election Petition) No. 9 of 2020 | The Respondent No. 1 filed the said Misc. Case praying for rejection of the Additional Affidavit dated 1/07/2020 filed by the Petitioner. | Closed on 26/08/2020 as infructuous |
| 25. | 26/08/2020 | M.C. (Election Petition) No..... of 2020 | The Respondent No. 1 filed the said Misc. Case praying for modification of the Order dated 24/08/2020 of the Hon'ble Court. | The Hon'ble Court declined to accept the submission of the Ld. Counsel of the Respondent No. 1 on 26/08/2020 |
| 26. | 26/08/2020 | M.C. (Election Petition) No..... of 2020 | The Respondent No. 1 filed the said Misc. Case praying for allowing to file the Order dated 18/06/2020 of the Hon'ble Speaker of the MLA and | The Hon'ble Court declined to accept the submission of the Ld. Counsel of the |

| | | | | |
|---|---|---|---|---|
| | | | also to take notice of Writ Petition challenging the said Order of the Hon'ble Speaker before the Hon'ble High Court of Manipur. | Respondent No. 1 on 26/08/2020 |

**MISC. APPLICATION FILED BY THE ELECTION PETITIONER IN CONNECTION WITH THE ELECTION PETITION NO. 1 OF 2017**

| Sl. No. | Date of filing | Case No. | Purpose | Remarks |
|---|---|---|---|---|
| 1. | 29/08/2017 | M.C. (Ele. Pet.) No. 16 of 2017 | The Petitioner filed for allowing to file the Rejoinder/Replication as reply to the Written Statement of the Respondent No. 1. | The said Misc. case was allowed on 12/09/2017 |
| 2. | 21/06/2018 | M.C. (Ele. Pet.) No. 22 of 2018 | The Election Petitioner filed the said Misc. case praying for day-to-day hearing of the Election Petition | Rejected on 19/09/2019 |

| | | | | |
|---|---|---|---|---|
| 3. | 5/12/2019 | M.C. (Ele. Pet.) No. 23 of 2018 | The Election Petitioner filed the said Misc. Case praying for calling Shri Raghunandan Samanta as Witness. | Closed as not pressed on 22/01/2020 |

20. Section 86(7) of the Representation of People Act, 1951, provides *that every Election Petition shall be tried as expeditiously as possible and endeavor 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.*

21. Almost all the Miscellaneous Petitions filed by the petitioner herein have already been dismissed/disposed and as rightly argued by the learned counsel for the respondent all the Miscellaneous Petitions have no legal ground or merit. At this juncture, it is to be highlighted that regardless of the above facts, the petitioner still continues to file more Miscellaneous Petitions further to delay the Election Petition, which was filed in the year 2017 and almost 4 years have elapsed, the Election Petition has not seen its result.

22. Further, as per the provisions of the Representation of People Act, 1951, the issue of infructuous of the Election Petition on the filing of the writ petition challenging the disqualification order as contended by the petitioner does not arise and the disqualification from being member of the Manipur Legislative Assembly is different issue from the present issue of the Election Petition.

23. After closing the evidence of the both sides, now the Election Petition is listed for final day arguments on the side of the First Respondent in the Election Petition No. 1 of 2017. At this stage only, the petitioner has come up with the present petition contending that the Election Petition has become infructuous due to the disqualification order. Having regard to the facts and circumstances of the case, it can safely be concluded that since the trial has commenced and the Election Petition is pending for arguments, the question of infructuous pleaded by the petitioner cannot be countenanced, even though the petitioner has been disqualified. Therefore, this Court is of the view that the continuation of the proceedings in the Election Petition is not a futile exercise.

24. It is to be mentioned at this stage that the disqualification order issued on the ground that the petitioner had voluntarily given up the membership of INC. Hence, the Speaker came to be conclusion that the petitioner had violated the provision of the Tenth Schedule of the Constitution of India and is liable to be punished as per the provisions of the Constitution to uphold the dignity of democracy and the mandate of the people.

25. The trial of the Election Petition is a special trial and Chapter III of the Representation of People Act, 1951 provides for trial of Election Petitions. As such, there is no provision for staying for the proceedings of the Election Petition No. 1 of 2017 and for closing the Election Petition as infructuous due to the disqualification of the petitioner in terms of Paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India read with Article 19(2) of the Constitution of India.

26. The main ground for filing the present Election Petition is non-disclosure of material information in his Affidavit in Form 26 and the votes were obtained by the petitioner by way of undue influence which amounts to corrupt practice. If the allegation regarding the corrupt practice is found to be true, then

Section 8A of the Representation of People Act, 1951 will be applied to the petitioner. Therefore, as rightly submitted by the learned counsel for the First respondent in this Misc. Case, the order dated 4.9.2020 passed in Election Petition No.12 of 2017 is not applicable to the present case. It has also been brought to the notice of this Court that the order dated 4.9.2020 is under review in Review Petition (J2) No.1 of 2020.

27. As stated supra, the order dated 26.8.2020 passed in the instant Election Petition No. 1 of 2017 is still subsisted and the petitioner has not filed any appeal before the higher Court. Therefore, it is not proper to insist this Court to follow the order dated 4.9.2020 passed in Election Petition No.12 of 2017 by another Bench, as the present Election Petition was filed under different cause of action. The cause of action for filing present Election Petition is when the petitioner was declared as elected member by accepting his nomination paper by the Returning Officer. The grounds for challenging the election of the petitioner are different from the Disqualification Case, as the disqualification case is the issue of giving up of his original party while he was a sitting MLA.

28. The learned counsel for the First respondent has submitted that the Election Petitioner cannot withdraw the Election Petition as infructuous and in case, if the Election Petitioner likes to withdraw his Election Petition, he has to comply with the provisions of Sections 109, 110 and 111 of the Representation of People Act, 1951. The learned counsel has also submitted that in situations where Election Petitioner has expired during the pendency of his Election Petition, the procedure provided in the provisions of Section 112 of the Representation of People Act, 1951 is still to be complied with.

29. In this main Election Petition, the witnesses examination and cross-examination were completed and both sides evidences were closed on 26.09.2020 and posted the Election Petition for argument of both parties. Accordingly, the learned counsel for the Election Petitioner argued in the Election Petition No. 1 of 2017 on the following days :

> "***07.09.2020***
>
> *Mr. Ajoy Pebam, learned counsel for the petitioner argued in part and Mr. Th. Modhu, learned counsel for the respondent No.1 is also appeared.*

*For continuation, post this matter tomorrow (i.e. 08.09.2020).*

***08.09.2020***

*Heard the argument of Mr. Ajoy Pebam, Ld. counsel for the petitioner in continuation and in part and Mr. Th. Ibohal, Ld. Sr. counsel and Mr. Th. Modhu, Ld. counsel for the Respondent No.1 in this Election Petition, are appeared.*

*For continuation, post this matter on 10.09.2020.*

*Ld. counsels for the petitioner are directed to complete their argument on 10.09.2020 and 11.09.2020 and the Ld. counsels for the Respondents are directed to present on both days without fail.*

*It is made clear that the Ld. counsels for the petitioner are directed to complete their argument on or before 11.09.2020 without fail since the argument of the Respondent No.1 was already fixed to be started from 14.09.2020.*

*Registry is directed to post this matter on 10.09.2020, for continuation of the petitioner's side argument.*

*Issue copy to both the parties.*

***10.09.2020***

*Heard the arguments of Mr. Ajoy Pebam and Mr. A. Mohendro, Ld. Counsels for the petitioner in part.*

*For continuation, post the matters tomorrow, i.e. on 11.09.2020.*

*Issue copy to both the parties.*

***11.09.2020***

*Heard the argument of Mr. A. Mohendro, Ld. counsel for the election petitioner in full and he has completed his argument in Election Petition No.1 of 2017.*

*[2] Mr. Th. Ibohal, Ld. Sr. counsel and Mr. Th. Modhu, Ld. counsel for the Respondent No.1 were present.*

*[3] Mr. A. Mohendro, Ld. counsel for the election petitioner further stated that 2(two) Misc. Cases in MC(Election Petition) Nos.7 & 8 of 2020 were filed and the same are pending and if the argument is made by the Respondent No.1 in the 2(two) Misc.Cases, he is ready to give his reply to both the Misc. Cases, being MC(Election Petition) Nos.7 & 8 of 2020.*

*[4] For the argument of Respondent No.1 in the election petition and in both the Misc. Cases, being*

*MC(Election Petition) Nos.7 & 8 of 2020, post the matters on 16.09.2020.*

*[5] Issue copy to both the parties."*

The learned counsel for the respondents argued on the following days :

***"16.09.2020***

*[1] Mr.Th.Ibohal, learned senior counsel appeared for the respondent No.1 and he has filed written argument along with the citations.*

*[2] When the matter is taken up today, Mr. Th. Ibohal, learned senior counsel appeared for the respondent No.1 seeks one day only for filing the compilation in complete for argument on his side whereas Mr. N. Zequeson, learned counsel who appeared for the Election petitioner is objecting for granting time.*

*[3] Anyhow, this Court already fixed the date for argument of the learned counsel for the respondent No.1 from 16.09.2020 to 18.09.2020.*

*[4] Therefore, as request made by Mr. Th. Ibohal, learned senior counsel for the respondent No.1, the matter is adjourned to. 17.09.2020 (tomorrow).*

*[5] Therefore, Registry is directed to post the matter tomorrow (i.e.17.09.2020) and it is made clear that Mr. Th. Ibohal, learned*

*senior counsel for the respondent No.1 is directed to advance and complete his argument without fail as per the direction of this Court.*

*[6] Issue copy to both the parties.*

***28.09.2020***

*Today, I heard the argument of Mr. Th. Ibohal, learned senior counsel for the respondent No.1 in part.*

*For continuation, post these matters tomorrow(i.e. 29.09.2020).*

*Mr. Ajoy Pebam, learned counsel for the petitioner also appeared.*

***29.09.2020***

*Heard the argument in continuation of Mr. Th. Ibohal, Ld. Senior counsel for R1 and argued in part.*

*For continuation, post the matters on 01.10.2020.*

*Mr. A. Mohendro and Mr. Ajoy Pebam, Ld. Counsels for the petitioner are appeared.*

***01.10.2020***

*Heard the argument of Mr. Th. Ibohal, Ld. Senior counsel for the Respondent No.1 in part.*

*Mr. A. Mohendro and Mr. Ajoy Pebam, Ld. Counsels for the petitioner are appeared.*

*For continuation of the argument of the Respondent No.1, post the matters on 05.10.2020.*

***05.10.2020***

*Heard the argument of Mr. Th. Ibohal, Ld. Senior counsel for the Respondent No.1 in part.*

*Mr. A. Mohendro and Mr. Ajoy Pebam, Ld. Counsels for the petitioner are appeared.*

*For continuation of the argument of the Respondent No.1, post the matters on 06.10.2020.*

***06.10.2020***

*Heard the argument of Mr. Th. Modhu, Ld. counsel for the respondent No.1 in part.*

*Mr. A. Mohendro and Mr. Ajoy Pebam, Ld. counsels for the petitioner also appeared.*

*For continuation of the argument of the Respondent No.1, post the matters tomorrow, i.e., on 07.10.2020.*

***07.10.2020***

*Today, I heard the argument of Mr. Th. Modhu, learned counsel for the respondent No.1 in part.*

*For continuation, post these matters tomorrow(i.e. 08.10.2020).*

*Mr. Ajoy Pebam and Mr. A. Mohendro, learned counsel for the petitioner also appeared.*

***08.10.2020***

*Today, I heard the argument of Mr. Th. Modhu, learned counsel for the respondent No.1 in part.*

*For continuation of the argument of the respondent No. 1, post these matters tomorrow(i.e. 09.10.2020).*

*Mr. Ajoy Pebam, learned counsel for the petitioner also appeared.*

***09.10.2020***

*Heard the argument of Mr. Th. Modhu, Ld. counsel for the Respondent No.1 in part.*

*Mr. A. Mohendro and Mr. Ajoy Pebam, Ld. Counsels for the petitioner are appeared.*

*For continuation and completion of argument on the side of the Respondent No.1 and also for the reply of the petitioner, post the matters on Monday, i.e., on 12.10.2020 finally.*

*Thereafter, no further adjournment shall be made. "*

30. Finally, on 09.10.2020, when the matter is taken up, the learned counsel for the first respondent in the Election Petition was argued and he sought 1 (one) more day for completion of his argument in the Election Petition and also represented that he would complete his argument on 12.10.2020. Inspite of that, on 10.10.2020, he has filed this present Misc. Case being MC (Election Petition) No. 18 of 2020 and seeking the prayer to keep the further proceedings of the Election Petition No. 1 of 2017 in abeyance.

31. As per the above proceedings in the Election Petition No. 1 of 2017, it is made clear that though the prayers sought for by this petitioner who is the First Respondent in the Election Petition No. 1 of 2017 it is well known that the order in Election Petition No. 12 of 2017 has been passed on 04.09.2020 and even then, the learned counsel for the petitioner/First Respondent had made a final argument in Election Petition No. 1 of 2017 from

16.09.2020 to 09.10.2020 when the learned counsel for the First Respondent in the Election Petition sought time finally for one day argument on 09.10.2020 and accordingly, this Court adjourned the matter to 12.10.2020 but at this stage only after a lapse of 36 (thirty six) days from the date of order in Election Petition No. 12 of 2017 dated 04.09.2020 this Misc. Case being MC(Election Petition) No. 18 of 2020 has been filed.

32. Therefore, the attitude of the First Respondent in filing the application one after another and finally this application in M.C. (Election Petition) No. 18 of 2020 has been filed at the fag end of argument on 10.10.2020. There is no explanation by this petitioner who is the First Respondent in the Election Petition in filing the application after 36 (thirty six) days delay from the date of 04.09.2020 in Election Petition No. 12 of 2017 which shows the clear aim to protract the Election Petition.

33. In the present case, petitioner has filed the present Miscellaneous Petition knowing the fact that he should close his final submission on 12.10.2020 and having availed of many opportunities to do so since the day, he started his submission for final disposal of the Election Petition No.1 of 2017. This is a very

ill-intentioned tactics adopted by the petitioner to delay the present case and waste the precious time of this Court. This Court finds some force in the submissions of the learned counsel for first respondent in this Misc. case.

34. In the background aforesaid, this Court constrained to hold that the petitioner is in the habit of filing unwarranted petitions from time to time to delay the matter and the instant Miscellaneous Petition filed by him has become a hurdle to do speedy justice in the Election Petition. Further, the petitioner has no right to file the instant Miscellaneous Petition by referring to the subsequent order dated 4.9.2020 in Election Petition No.12 of 2017 praying to keep the further proceedings of Election Petition No.1 of 2017 in abeyance. Moreover, the subsequent development of the disqualification of the returned candidate is no way connected with the Election Petition No.1 of 2017. Since the Election Petition No. 1 of 2017 was filed by Election Petitioner is only to challenge the very election of the respondent no. 1 in the year 2017. Similarly, the filing of W.P.No.316 of 2020 challenging the disqualification order is no way connected with the present Election Petition, as the cause of action alleged in both these proceedings are different in nature and therefore, the same have

to be tried on its own merits and in accordance with the relevant laws.

35. In view of the above, this Court is of the view that there is no merit in the instant Miscellaneous Petition and the same is therefore liable to be dismissed. Accordingly, the Miscellaneous Petition is dismissed. No costs.

36. Issue copy today.

**JUDGE**

**FR/NFR**

*Sushil*

Yumkham Rother

Digitally signed by Yumkham Rother
Date: 2020.10.16 14:16:15 +05'30'