IN THE HIGH COURT OF MANIPUR
AT IMPHAL

M.C. (EL. PET.) NO. 23 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 65 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. Ibohal, Sr. Advocate.
For the Respondents	::	Mr. A. Mohendro, Advocate Mr. Ajoy Pebam, Advocate

Date of Hearing &
Judgment & Order :: ***06.11.2020***

JUDGMENT AND ORDER
(ORAL)

[1] This petition has been filed by the petitioner seeking to stay the operation of the judgment dated 05.11.2020 passed in Election Petition No. 1 of 2017 stating that the petitioner is preparing an appeal under Section 116-A of the Representation of Peoples Act, 1951 against the said judgment before the Hon'ble Supreme Court.

[2] It is stated that from 08.11.2020 to 15.11.2020, the High Court will be closed on account of holidays and since 07.11.2020 (Saturday) is a holiday, he would not be able to get the certified copy of the judgment for preparing the appeal.

[3] It is further stated that he has got a good case supported by oral and documentary evidence and is also having chance of succeeding in the appeal before the Hon'ble Supreme Court. Hence, the petitioner prayed for staying the operation of the judgment dated 05.11.2020.

[4] ` I heard Mr. Th. Ibohal, learned Senior Counsel for the petitioner and Mr. A. Mohendro, learned counsel for the contesting respondents.

[5] The counter affidavit dated 06.11.2020 has also been filed opposing the said petition seeking stay which the Court has considered.

[6] Taking through the petition, the learned Senior Counsel for the petitioner submitted that since holidays for the Court are commencing from 07.11.2020 to 15.11.2020, the petitioner would not be able to get the certified copy of the judgment and file an appeal. Hence, till the time of filing the appeal, the operation of the judgment dated 05.11.2020 in Election Petition No. 1 of 2017 is to be stayed.

[7] Opposing the prayer of the petitioner, the learned counsel for the contesting respondents submitted that the question of staying the judgment dated 05.11.2020 does not arise and the petitioner can very well download the web copy of the judgment and file an appeal in accordance with law. He would submit that as per Section 116-B of the Representation of the Peoples Act, 1951 sufficient cause has to be shown to stay operation of the

judgment of the High Court. The provision under Section 116-B of the Representation of the Peoples Act, 1951 reads as follows :-

> "***116B. Stay of operation of order of High Court.—***
>
> *(1) An application may be made to the High Court for stay of operation of an order made by the High Court under section 98 or section 99 before the expiration of the time allowed for appealing therefrom and the High Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order; but no application for stay shall be made to the High Court after an appeal has been preferred to the Supreme Court.*
>
> *(2) Where an appeal has been preferred against an order made under section 98 or section 99, the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.*
>
> *(3) When the operation of an order is stayed by the High Court or, as the case may be, the Supreme Court, the order shall be deemed never to have taken effect under sub-section*

> *(1) of section 107; and a copy of the stay order shall immediately be sent by the High Court or, as the case may be, the Supreme Court, to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned.*"

[8] In this case, admittedly, the petitioner has not shown sufficient cause and the plea raised that there will be a delay in obtaining the certified copy of the order or judgment can, by no stretch of imagination, be construed as sufficient cause. The present petition, in fact, is unnecessary one and the same, therefore, liable to be dismissed.

[9] This Court considered the submissions raised by the learned counsel appearing on either side and also perused the materials available on record.

[10] Challenging in the Election Petition No. 1 of 2017 is to declare that the election of the petitioner from 37-Kakching Assembly Constituency as null and void. By the judgment and order dated 05.11.2020, the Election Petition No. 1 of 2017 was allowed by this Court declaring the election of the petitioner as void. The judgment pronounced by this Court has been uploaded

in the website of the High Court which fact has not been disputed by the petitioner.

[11] The only ground for staying the operation of the judgment dated 05.11.2020 is that from 08.11.2020 to 15.11.2020, the High Court will be closed on account of holidays and the date 07.11.2020 (Saturday) is also the Court holiday and there will be no sitting. In such circumstances, the only available working day is 06.11.2020 and therefore, it is not possible for the petitioner to file an appeal before the Hon'ble Supreme Court.

[12] Citing the holidays of the High Court from 07.11.2020 to 15.11.2020, the petitioner cannot seek stay operation of the judgment dated 05.11.2020 as stated (supra). Nothing prevented from producing the web copy of the judgment with digital signature of the authorised signatory before the Hon'ble Supreme Court while preparing the appeal.

[13] Mr. Ibohal, learned Senior Counsel for the petitioner submitted that normally, the Hon'ble Supreme Court will not entertain web copy along with the appeal papers.

[14] This Court is of the view that it is for the Hon'ble Supreme Court to decide and normally, the Hon'ble Supreme Court is accepting the web copy of the judgment downloaded from High Court website.

[15] Therefore, this Court holds that the above said ground taken by the petitioner has no legs to stand and the same is flimsy ground taken by the petitioner.

[16] Learned Senior Counsel for the petitioner next submitted that the petitioner has every chance to succeed in the appeal and therefore, the petitioner filed for the stay of the operation of the judgment dated 05.11.2020 is maintainable. The said plea of the petitioner is liable to be rejected on the ground that after pronouncement of the judgment, this Court has no power to stay the operation of its own judgment on the ground that functioning of the Court will be closed from 07.11.2020 to 15.11.2020.

[17] The operation of the judgment/order can only be made by the Appellate Court and not the Court which has delivered the judgment/order.

[18] That apart, the election of the applicant was declared as null and void in the Election Petition. Therefore, stay of operation of the judgment dated 05.11.2020 does not arise. Moreover, as rightly argued by the learned counsel for the respondents that as per Section 116-B of Representation of the People Act, 1951 sufficient cause has to be shown to stay the operation of the judgment of the High Court. In this case, admittedly, the cause shown is not sufficient.

[19] It is the case of the petitioner that from 07.11.2020 to 15.11.2020, this Court is not working. When the Hon'ble Supreme Court is functioning during the period between 07.11.2020 to 15.11.2020, the petitioner can very well file his appeal by producing the web copy of the judgment, if necessary with the permission of the Hon'ble Supreme Court, by producing the web copy.

[20] It is reiterated that if the petitioner is really interested in challenging the judgment of the Court dated 05.11.2020, he can very well do so by producing the web copy of the judgment as stated (supra).

[21] Law does not permit this Court to stay its own judgment and further the ground raised seeking closure/leave of this Court is totally vogue.

[22] It is settled that the Court, in exercise of its inherent power, stay operation of the order passed by itself. Inherent power has to be exercised by the Court in the interest of justice/or to prevent abuse of process of Court and not for any other purpose. It is impossible for a Court to say that the order passed by it is against the interest of justice/or is abuse of process of Court. If that is so, the Court should not have passed the order at all.

[23] In the instant case, after this Court holds that the election of the petitioner from 37-Kakching Assembly Constituency was null and void, he could not direct that the operation of the judgment should be stayed merely on the ground that there may be delay in obtaining the certified copy when admittedly, the web copy is available on the website of the High Court with digital signature as stated above (supra).

[24] If an appeal is filed, the operation may be stayed during its pendency by Appellate Court but it cannot be stayed in

anticipation of filing an appeal which may not be filed at all or may be on one count or the other.

[25] When the petitioner filed this stay petition by invoking the provision of Section 116-B of the Representation of Peoples Act, 1951, the petitioner ought to give sufficient cause but the cause assigned in the petition is not sufficient. Accordingly, this Court is not in a position to consider the petitioner's claim for granting interim stay the operation of the judgment in Election Petition No. 1 of 2017 dated 05.11.2020.

[26] For the foregoing reasons, this Court finds that there is no merit in this petition and the same is liable to be dismissed.

[27] Accordingly, the same is dismissed.

[28] Issue copy to both the parties through Whatsapp/e-mail.

[29] Issue copy today.

JUDGE

FR/NFR

Sushil

Yumkham Rother

Digitally signed by Yumkham Rother
Date: 2020.11.06 16:27:17 +05'30'