IN THE HIGH COURT OF MANIPUR

AT IMPHAL

MC(El. Petn.) No. 12 of 2019
(*Ref:-* El. Petn. No. 11 of 2017)

Langpoklakpam Jayantakumar Singh, aged about 57 years, S/O Late L. Bhagyachandra Singh resident of Pishumthong Oinam Leikai, P.O & P.S, Imphal, Imphal West District, Manipur-795001

… Applicant/ Respondent No.1

-Versus-

1. Laisom Ibomcha Singh, aged about 68 years, S/o Late L. Tomba Singh resident of Keishamthong Laisom Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

…. Opposite Party/ Petitioner

2. Rajkumar Shivachandra Singh, aged about 51 years, S/O Late Rajkumar Sanayaima Singh resident of Kwaikeithel Laishram Leikai, P.O & P.S, Imphal, Imphal West District, Manipur-795001.

3. Potsangbam Dhanakumar Singh, aged about 61 years, S/O late Potsangbam Kalachand Singh resident of Haobam Marak Ngangom Leikai, P.O & P.S Imphal, Imphal West District, Manipur-795001.

4. Heisnam Lokeshwor Singh, aged about 52 years, S/O Late H. Mangoljao Singh resident of Sega Road Khwairakpam Leikai, P.O & P.S. Imphal, Imphal West District, Manipur-795001.

5. Khaba Paonam, aged about 33 years, S/O Paonam Tejmani Singh resident of Keishamthong Hodam Leirak, P.O & P.S Imphal, Imphal West District, Manipur-795001.

6. Yumnam Romola Devi, aged about 47 years, D/O Yumnam Birendro Singh resident of Keishamthong Elangbam Leikai, P.O & P.S, Imphal West District, Manipur-795001.

7. Changamayum Ganeshlal Singh, aged about 52 years, S/O Late Changamayum Brajabidhu Singh resident of Pishumthong Ningom Leirak P.O & P.S Imphal, Imphal West District, Manipur-795001.

… OP/s Respondents

IN El. Petn. NO.11 OF 2017

Laisom Ibomcha Singh, aged about 68 years, S/o Late L. Tomba Singh resident of Keishamthong Laisom Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

…. Petitioner

Vs.

1. Langpoklakpam Jayantakumar Singh, aged about 57 years, S/O Late L. Bhagyachandra Singh resident of Pishumthong Oinam Leikai, P.O & P.S, Imphal, Imphal West District, Manipur-795001
2. Rajkumar Shivachandra Singh, aged about 51 years, S/O Late Rajkumar Sanayaima Singh resident of Kwaikeithel Laishram Leikai, P.O & P.S, Imphal, Imphal West District, Manipur-795001.
3. Potsangbam Dhanakumar Singh, aged about 61 years, S/O late Potsangbam Kalachand Singh resident of Haobam Marak Ngangom Leikai, P.O & P.S Imphal, Imphal West District, Manipur-795001.
4. Heisnam Lokeshwor Singh, aged about 52 years, S/O Late H. Mangoljao Singh resident of Sega Road Khwairakpam Leikai, P.O & P.S. Imphal, Imphal West District, Manipur-795001.
5. Khaba Paonam, aged about 33 years, S/O Paonam Tejmani Singh resident of Keishamthong Hodam Leirak, P.O & P.S Imphal, Imphal West District, Manipur-795001.
6. Yumnam Romola Devi, aged about 47 years, D/O Yumnam Birendro Singh resident of Keishamthong Elangbam Leikai, P.O & P.S, Imphal West District, Manipur-795001.
7. Changamayum Ganeshlal Singh, aged about 52 years, S/O Late Changamayum Brajabidhu Singh resident of Pishumthong Ningom Leirak P.O & P.S Imphal, Imphal West District, Manipur-795001.

… Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Applicant	::	Shri A. Bimol, Sr. Advocate.
For the respondent/ petitioner	::	Shri S. Biswajit Meitei, Advocate
Date of Hearing	::	28-11-2019
Date of Judgment & Order	::	**06-01-2020 [from 21-12-2019 to 12-01-2020 being holidays]**

JUDGMENT & ORDER

[1] This is an application filed by the applicant/ respondent No.1 praying for amendment of the issue Nos.1 and 2 framed by this Court and a further prayer has been made that the additional issues be framed on the averments made in the application for the end of the justice.

[2] This Court vide its order dated 08-08-2019 finalised the following issues:-

i) whether the respondent No.1 failed to open a separate Bank Account for the purpose of his election expenditure at least one day prior to the date of his nomination being filed on 13.02.2017 as per the mandatory instructions of the Election Commission of India as contained in its letter dated 15.10.2013 and if the answer is in the affirmative, whether the acceptance of his nomination paper by the Returning Officer has materially affected the result of the election?

ii) Whether the Respondent No.1 has filed a false affidavit as regards the Government dues and in particular, the revenue payable to the Government in respect of his landed property at Wangkhem Village, Keirao Bitra?

iii) Whether the Respondent No. 1 has given a false statement in his affidavit filed in respect of the election expenses and in particular,

the expenditures for the period from 13.02.2017 to 15.02.2017 as regards the nomination fee deposited by him on 13.02.2017 ?.

[3] On the basis of the issues proposed and suggested by the counsel appearing for the parties, the aforesaid issues were framed by this Court. However, on receipt of a copy of the letter dated 14-08-2019 of the Assistant Registrar of this Court enclosing therewith a copy of the order dated 08-08-2019 along with the issues finalised by this Court and on perusal thereof, the applicant/ respondent No.1 felt that the certain issues would be required to be amended in the manner proposed therein.

[4] In the application, the applicant/ respondent No.1 proposed the following additional issue:

A. Whether the present Election Petition is presented in the proper form and if not, whether the same deserves dismissal?

B. Whether there is cause of action to file the present election petition within the scope of Section 100 of the Representation of People Act, 1951?

[5] In addition to the above additional issues, the applicant/ respondent No.1 proposed to amend issue Nos.1 and 2 in the following manner:

A. The words "mandatory instructions" appearing in the 4th line of the issue No.1 finalised by this Court be deleted.

B. The existing issue No.2 be amended as follows:

"Whether the Respondent No.1 has made a false statement in his affidavit as regards the Government dues and in particular,

the land revenue payable to the Government in respect of his landed property at Wangkhem Village"?.

[6] An objection has been filed on behalf of the respondent No.1/ petitioner raising preliminary issue as regards the maintainability of the application on the inter-alia grounds that the application was filed by the applicant/ respondent No.1 concealing material and vital facts; that the applicant/ respondent No.1 had already filed an application being MC (El.Pet.) No.8 of 2018 raising the issue regarding the maintainability of the election petition which was dismissed by this Court on 25-04-2019 and a petition for special leave to appeal stated to have been preferred before the Hon'ble Supreme Court against the said judgment and order dated 25-04-2019 was dismissed by the Hon'ble Supreme Court observing that the hearing of the election petition should continue but no final order should be passed by this Court. It has further been stated that the other application being MC (El.Pet.) No.30 of 2018, filed by the applicant/ respondent No.1 for allowing him to file sur-rejoinder in the election petition, was allowed by this Court. As per the provisions of the Representation of the people Act, 1951, the trial of the election petition should be completed within 6 months but because of the delay tactics played by the applicant/ respondent No.1, the matter still remains pending for adjudication by this Court for the last more than two and half years. Since the prayer of the applicant/ respondent No.1 for filing the additional issues, having been rejected by this Court and since it was not challenged before the appellate forum, it had attained its finality. This Court had already decided the issue relating

to the cause of action or the preliminary issue as regards maintainability of the election petition and therefore, the applicant/ respondent No.1 cannot be permitted to raise again such issue relating to maintainability of the election petition. The guidelines/ instructions issued by the Election Commission of India are mandatory and therefore, they are binding upon the candidates and non-compliance thereof by any of the candidates will entail a penal consequence. On the basis of various orders passed by this Court in the present case, it has been stated that the conduct of the applicant/ respondent No.1 is unfair and that he has been playing different tactics to delay the trial of the election petition.

[7] The submission of Shri A. Bimol, learned counsel appearing for the applicant/ respondent No.1 is twofold-one, in terms of Order VII Rule 14 and Order 15 Rule 5 of the Code of Civil Procedure, the amendment of the issues is permissible with the result that an additional issue as regards the maintainability of the election petition be framed and two, the instructions/ guidelines issued by the Election Commission of India are not mandatory and therefore, the word "**mandatory**" used while framing the issue No.1 shall be deleted. As regards the first submission, on perusal of the provisions of the said orders of the CPC, it is seen that although the amendment of the issue is permissible, it cannot be claimed as of right by the applicant / respondent No.1 and it depends upon the discretion of the Court and in other words, it depends upon the facts and circumstances of each case. Moreover, the Representation of the People Act is a self contained code and the trial of the election petition will have to be made

within the bounds of its provisions. Section 87 provides that the election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under CPC. In this regard, this Court vide its judgment and order dated 14-01-2019 passed in **MC(EP) No.16 of 2018 [Ref: EP No.5 of 2017], Dr. Kh. Loken Singh Vs. R.K Imo Singh** had observed as under:

> ***"****Section 87 of the RP Act, 1951 provides that every election petition shall be tried by the High Court in accordance with the procedure applicable under the CPC with the qualifying expression "as nearly as may be" which indicates that all the provisions of the CPC are not applicable in the trial of an election petition. If it is intended by the Legislature that all the provisions of the CPC will have to be applied in the trial of an election petition, it could have expressly provided in the section itself instead of using the expression "as nearly as may be" but it did not do that. The trial of an election petition by the High Court is subject to the provisions of the RP Act, 1951 and the rules made thereunder. The expression "as nearly as may be" is not defined in the RP Act, 1951 and in other words, what and which provisions of CPC will be applied in the trial of the election petition, have not been specifically mentioned in the RP Act, 1951****."***

[8] There is no time limit prescribed in the CPC for conclusion of the trial of a suit and the speedy trial of a suit depends upon various factors which cannot be codified in the form of law. On the contrary, in terms of the provisions of the Representation of the People Act, the election petition shall be tried as expeditiously as possible and endeavour shall be made to

conclude the trial within six months. The term of the present Manipur Legislative Assembly is for five years which has commenced on 11-03-2017. As of now, three years of its term is nearing completion in the near future and it is expected that the trial of the election petition shall be completed as expeditiously as possible. The trial is at the stage of framing issues and a lot of time is likely to be taken while recording the evidence of the witnesses. Therefore, the contention of the counsel appearing for the applicant/ respondent No.1 that the trial is at a very early stage, is incorrect and cannot be countenanced by this Court. On the other hand, the contention of Shri S. Biswajit Meitei, learned counsel appearing for the respondent No.1/ petitioner that the proceedings of this Court make it very clear that the intention of the applicant/ respondent No.1 is nothing but to delay the trial of the election petition so that the same may be rendered infructuous before the completion of the trial, has substance and merit. The above election petition was listed on 24-01-2018 and 09-02-2018 for framing issues and in compliance therewith, the respondent No.1/ petitioners filed his proposed issues on 21-03-2018. In spite of the said orders being passed by this Court, the applicant/ respondent No.1, without filing his proposed issues, filed the application being MC(EP) No.8 of 2018 raising preliminary issue as regards the maintainability of the election petition and reply thereof was filed by respondent No.1/ petitioner promptly. On 23-03-2018, time was granted to the applicant/ respondent No.1 till 09-04-2018 for filing rejoinder thereto. As the rejoinder was not filed in time, on 18-04-32018 two weeks time as last opportunity was

granted to the applicant/ respondent No.1 who filed his rejoinder in the second week of May, 2018 as is evident from the office report dated 17-05-2018. However, the said application could not be considered by this Court on many occasions on one reason or the other. On 03-10-2018 another application being MC(EP) No.30 of 2018 was filed by the applicant/ respondent No.1 praying for permission to file sur-rejoinder in the election petition to which the respondent No.1/ petitioner filed his objection on 22-10-2018 and accordingly, on 23-10-2018, the application was directed to be listed on 22-11-2018 for consideration. After the matter being adjourned on many occasions as prayed by the parties, the application being MC(EP) No.8 of 2018 could be heard only on 28-03-2019 and the judgment and order thereof was pronounced on 25-04-2019 on which the parties were directed to submit their suggested issues. On 16-05-2019, the counsel appearing for the applicant/ respondent No.1 submitted that he had filed the suggested issues and accordingly, the matter was directed to be listed for finalisation of issues. After the matter being adjourned on two/ three occasions, on 02-07-2019 this Court finalised the issues and directed that the matter be listed before the Registrar (Judicial) for admission and denial of documents and at that point of time, the counsel for the applicant/ respondent No.1 informed this Court that a petition for special leave to appeal had been preferred before the Hon'ble Supreme Court against the judgment and order dated 25-04-2019 passed by this Court. On 16-07-2019, this Court was informed that notice had been issued in the special leave petition and accordingly, the matter was directed to be listed on 25-

07-2019 to await the outcome thereof. But the counsel appearing for the applicant/ respondent No.1 was permitted to file supplementary suggested issues. On 25-07-2019 when the matter listed for consideration, a copy of the order dated 15-07-2019 passed by the Hon'ble Supreme Court was produced before this Court for perusal and on perusal thereof, it was seen that while issuing notice, the Hon'ble Supreme Court directed that the hearing of the petition shall continue but no final order shall be passed. Therefore, this Court directed the parties to file their list of witness by the next date, ie., 01-08-2019. On 08-08-2019, this Court directed the parties to file their list of witnesses on or before 19-08-2019 failing which appropriate order would be passed on the next date. On 19-08-2019, the learned counsel appearing for the applicant/ respondent No.1 prayed that he be permitted to file additional issue which was turned down by this Court on the ground that he had no any grievance to the earlier orders of this Court by which he was directed to file list of witness. List of witness on behalf of the respondent No.1/ petitioner was filed but the applicant/ respondent No.1 did not file and accordingly, on 22-08-2019, this Court directed that the list of witness be filed by 26-08-2019 failing which the trial be proceeded without the list of witness on behalf of the applicant/ respondent No.1. On 27-08-2019 when the counsel appearing for the applicant/ respondent No.1 submitted that the list of witness had been filed, the matter was directed to be listed on 06-09-2019 for recording evidence. On 20-09-2019, this Court directed the counsel appearing for the respondent No.1/ petitioner to file examination-in-chief in the form of

affidavit so that the matter could be listed on 26-09-2019 for cross-examination. In the meantime and after the matter being fixed for recording of evidence, the instant application was filed by the applicant/ respondent No.1 by taking a u-turn. From the circumstances as aforesaid, it is seen that the applicant/ respondent No.1 is not interested in the conclusion of the trial and he has been making efforts to see that the trial is not concluded as expeditiously as possible in terms of the provisions of the Act. It may be noted that the Hon'ble Supreme Court has directed that the hearing of the election petition shall continue but no final order shall be passed therein. Moreover, this Court vide its order dated 19-08-2019 has rejected the prayer of the counsel appearing for the applicant/ respondent No.1 for allowing him to file suggested additional issue. This order dated 19-08-2019 appears to have not been challenged by him before the appellate forum, as a result of which it has attained its finality.

[9.1] One of the additional issues proposed by the applicant/ respondent No.1 is as regards the maintainability of the election petition which has already been decided by this Court. The judgment and order dated 25-04-2019 passed by this Court is a subject matter in issue before the Hon'ble Supreme Court in which the Hon'ble Supreme Court has passed an order to the effect that the hearing shall continue but no final order shall be passed. In this view of the matter, this preliminary issue is not now available with the applicant/ respondent No.1. As regards the issue whether the guidelines/ instructions issued by the Election Commission of India are mandatory or not, it has been submitted by the counsel

appearing for the applicant/ respondent No.1 that they are not mandatory but in support of his contention, no any decision rendered by the Hon'ble Supreme Court has been brought to the notice of this Court. On the other hand, it has been submitted by the counsel appearing for the respondent No.1/ petitioner that they are mandatory and in support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in **Union of India Vs. Association of Democratic Reforms, CA No.7178 of 2001; Mohinder Singh Gill Vs. ECI, AIR 1978 SC 851; Kanhaiya Lal Omar, AIR 1986 SC 11** and many others.

[9.2] There can be no any dispute that the Election Commission of India is conferred wide power and function under Article 324 of the Constitution of India as regards the conduct of elections to parliament, the Legislature of every State etc. and in exercise of its power, the guidelines/ instructions are issued by it from time to time. On top of that, the Hon'ble Supreme Court has issued various directions directing the Election Commission of India to issue instructions. In Union of India Vs. Association of Democratic Reforms case (supra), it has been held by the Hon'ble Supreme Court that the Election Commission of India has to issue, from time to time, instructions in order to meet with the situation where the field is unoccupied by the legislation. Similar is the case with Kanhaiya Lal Omar case (supra) wherein the Hon'ble Supreme Court, while construing the expressions "superintendence, direction and control" held that a direction may mean an order issued to a particular individual or precept which may have to follow. In Mohinder Singh Gill case (supra), it has been held by the

Hon'ble Supreme Court that legal vacuum or transparency in election can be filled up by issuing guidelines by the Election Commission of India. This decision has also been referred to by this Court while passing the judgment and order dated 25-04-2019 dismissing the application being MC(EP) No.8 of 2018 filed by the applicant/ respondent No.1 in the present election petition. Considering the submissions of the counsel appearing for the parties and the materials on record, this Court is of the view that the present application is devoid of any merit and is liable to be dismissed by this Court.

[10] For the reasons stated hereinabove, the instant application being MC(EP) No.12 of 2019 is dismissed with no order as to costs.

JUDGE

FR/ NFR

A. Surjit.