

Pukhrem Sharatchandra Singh vs Mairembam Prithviraj @ Prithibiraj ... on 1 October, 2015

Equivalent citations: AIR 2015 SUPREME COURT 3783, 2015 (16) SCC 149, 2015 (6) AIR BOM R 356, 2015 (4) AIR KANT HCR 571, (2015) 6 ALLMR 424 (SC), (2015) 113 ALL LR 746, (2015) 10 SCALE 285, (2015) 6 ALL WC 5638, (2015) 7 MAD LJ 378, (2016) 4 PAT LJR 341, (2016) 2 MAD LW 643, (2015) 4 RECCIVR 626, (2016) 1 ESC 25, (2015) 4 JLJR 213, 2015 (155) AIC (SOC) 5 (SC), 2016 (4) ADJ 33 NOC, (2015) 6 BOM CR 282

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Bench: Prafulla C. Pant, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8063 of 2015
(@ SLP(C) NO. 15813 OF 2015)

Pukhrem Sharatchandra Singh ... Appellant

Versus

Mairembam Prithviraj @ Prithibiraj Singh ... Respondent

J U D G M E N T

Dipak Misra, J.

What ordinarily would have entailed dismissal of the special leave petition treating it with loathe, regard being had to the nature of the order passed by the learned Single Judge in Misc. Case (E.P) No. 1 of 2012 in Election Petition No. 1 of 2012 as he had only adjourned the matter, but the chronology of events, the ultimate consequence that would emerge by efflux of time, the command of the provision contained in Section 86(7) of the Representation of the People Act, 1951 (for brevity, “the Act”), every conceivable stand adopted in a dexterous manner by the respondent, the elected candidate, harbouring the notion that he singularly has the intellectual imperialism, which has the effect potentiality to frustrate and defeat the election trial, for the High Court has not even been able to frame issues lest proceed with the trial, has impelled us to interfere and write a verdict. It needs

no special emphasis to state that causation of delay in the conclusion of the trial of an election petition leaves an impression that the elected candidate has the skilfulness to enjoy his full term without being concerned or bothered about the challenge to his election. As it appears, he does not perceive the pendency as hanging of the sword of Damocles or even if it is so, he believes that by his hypnotic power he can make it hang in the air so that the threat becomes totally non-existent. Either way, it depicts a sad state of things.

2. The necessary facts. The appellant, a resident of Phairembam Leikai, Morang located within the 27-Moirang Assembly Constituency of Bishnupur District, Manipur, was a candidate in the 10th Manipur Legislative Assembly Election from he said Constituency. The election for the Manipur Legislative Assembly was held on 28.01.2012 and the appellant contested as a candidate from the aforementioned constituency being nominated by the Nationalist Congress Party ("NCP" for short). The respondent became successful in the election and was declared as a member of the Manipur Legislative Assembly. It is apt to note here that at the time of scrutiny, the appellant had objected to the nomination of the respondent as per Section 36(2) of the Act on the ground that he had failed to file the proper affidavit as prescribed under Article 173 of the Constitution and further the affidavit was a forged one inasmuch as he had falsely stated at paragraph 9 of the affidavit dated 06.01.2012 that his highest educational qualification is MBA, and he had passed out from the Mysore University and that apart the said affidavit also contained certain other facts which were incorrect and he had also not subscribed to the oath before the Returning Officer or any competent authority as prescribed by the Election Commission of India. The Returning Officer, after affording an opportunity of hearing, declined to reject the nomination. After the election was over, the counting of votes took place and the respondent was declared as the elected candidate.

3. The appellant challenged the election before the High Court of Manipur at Imphal in Election Petition No. 1 of 2012. As the factual narration would unveil, the respondent filed the written statement after two years to the main election petition and during the pendency of the election petition, the returned candidate filed number of miscellaneous applications. It is pertinent to refer to the said applications, as Mr. N. Kumarjit, learned senior counsel for the appellant has laid immense emphasis them. We think it appropriate, for the sake of completeness, to reproduce the same:-

"1. Misc. Case (EP) No.1 of 2012 as preliminary objection on the ground of maintainability of Election Petition No. 1 of 2012 – filed on 27-06-2012 and the same is pending.

2. Misc. Case (EP) No. 4 of 2012 for amendment of his application in Misc. Case (EP) No. 1 of 2012. The same is partly allowed on 06-02-2013.

3. Misc. Case (EP) No.1 of 2013 for impleading the Returning Officer of the election and the same is rejected on 15-04-2014.

4. Misc. Case (EP) No. 5 of 2014 filed by the respondent for amendment of application in Misc. Case (EP) No. 4 of 2014 was also allowed on 14-05-

2014.

5. Misc. Case (EP) No. 4 of 2014 filed by the respondent for condoning the delay in filing the written statement was allowed on 02-06-2014.

6. On 02-06-2014 filed another misc. application i.e. Misc. Case (EP) No. 6 of 2014 for dismissing the Election Petition taking the ground that the Challan Copy for depositing cost under section 117 of the RP Act, 1951 is not signed by the petitioner. The same is pending.

7. Misc. Case (EP) No. 8 of 2014 filed for condonation of delay in filing the misc. application again for amendment of the misc. application in Misc. Case (EP) No. 1 of 2012 was allowed on 09-09-2014.

8. Misc. Case (EP) No. 9 of 2014 filed for amendment of the Misc. Application third time in Misc. Case (EP) No. 1 of 2012 was allowed on 09-09-2014.

9. Misc. Case (EP) No. 10 of 2014 filed for dismissal of the election petition on the ground that election petition is incomplete was withdrawn on 05-11-2014.

10. On 14-01-2015 filed another misc. application i.e. Misc. Case (EP) No. 1 of 2015 for dismissal of the election petition stating that no cause of action is disclosed. The same is pending.”

4. At this juncture, it is relevant to mention that the High Court while dealing with M.C. No. 4 of 2012 whereby the respondent had sought amendment to his preliminary objection pertaining to the maintainability of the election petition had allowed the amendment except the proposed amendment in respect of paragraph 5(F). Against the said order, the respondent preferred an appeal by special leave i.e. Civil Appeal No. 10599 of 2013. This Court recorded the original stand and the amended one and came to hold as follows:-

“We have considered the entire issue. In our opinion, the aforesaid amendment would in no manner change the nature of the plea taken by the appellant. Reading of the entire paragraph 5 of the MC (PE) 1 of 2012 clearly shows that the appellant has claimed that the Election Petition is not signed by the election petitioner/respondent herein. We, therefore, find merit in the submission made by Mr. Jaideep Gupta that the aforesaid amendment also has to be allowed in the interest of justice.

Consequently, the appeal is allowed. The order of the High Court is modified to the effect that paragraph ‘F’ can also be amended, as proposed by the appellant.”

5. The said order was passed on 19.11.2013. It is asserted in the memorandum of appeal that the respondent filed Misc. Case E.P. No. 1 of 2013 for impleading the Returning Officer as respondent no.2 and the said application has not been disposed of and the matter was adjourned on many an occasion. This situation compelled the election petitioner to file Misc. Case E.P. No. 2 of 2013 dated 11.12.2013 to hear the case on day to day basis. Eventually on 3.4.2014, the respondent filed the

written statement.

6. As the case was not being taken up, as averred, the appellant filed an application forming the subject matter of Misc. Case E.P. No. 7 of 2014 to dispose of the election petition on a preliminary issue on the foundation that the respondent had filed a false affidavit while submitting his nomination papers which was evincible from the admission made in the written statement. The matter was adjourned from time to time. Hence, the present appeal, by special leave, has been filed challenging the manner in which it is conducted and the dilatory tactics ingeniously adopted by the respondent to procrastinate the hearing of the election petition.

7. When the matter was listed on the first occasion, we had issued notice fixing a returnable date. Despite service of notice, no one has entered appearance on behalf of the respondent.

8. It is interesting to note that the election petition was taken up by the High Court on 24.8.2015. The learned Single Judge on that date has passed the following order:-

“When the matter has been put up for hearing today, it has been submitted by Mr. Iswarlal, learned counsel for the respondent that the respondents have filed an SLP before the Hon’ble Supreme Court being S.L.P. No. 15813/2015 and the Hon’ble Supreme Court has fixed on 23.09.2015 for hearing and prays that the matters be taken up after disposal of the said SLP.

Mr. N. Kumarjit, learned senior counsel for the petitioner submits that since no stay order has been passed there is no impediment on the part of this Court to proceed with the Election Petition. However, Mr. Kumarjit, learned senior counsel seeks some time to take necessary instruction in this regard. List these matters on 09.09.2015 as prayed by the parties.”

9. We have reproduced the said order only to indicate that the adjournment was sought by the respondent and not by the election petitioner. The adroit effort to cause delay is absolutely manifest. It is submitted by Mr. N. Kumarjit, learned senior counsel for the appellant that despite the statutory provision contained in Section 86(7) of the Act that 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, the same has not been kept in view and the respondent has been successful in getting the matter adjourned on numerous occasions by filing variety of applications. Learned senior counsel would further submit that the respondent chose not to file the written statement for two years and the intention is to see that the term is over. He has also apprised this Court that issues have not been framed.

10. Section 86(7) of the Act reads as follows:-

“86. Trial of election petitions – (1-6) xxxxx (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 of which the election petition is presented to the High Court

for trial.”

11. While dealing with the role of Election Tribunal and the conception of disposal of a challenge to election, a three-Judge Bench in *Satya Narain v. Dhuja Ram*[1] has observed that:-

“Keeping in the forefront the proper functioning of democracy, the principal object of the Act is purity of elections. When, therefore, an election of a returned candidate is challenged under the Act, expeditious trial of the election dispute is sought to be enforced by the Legislature making all safeguards against delay. Trial has to be necessarily expedited to rid the candidate as well as the constituency interested in the result of the election, of any taint or suspicion of corrupt practices which are again clearly enumerated in the Act. To take, therefore, another important object of the Act viz. expeditious disposal of an election petition, by Section 86(b) “the trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded”. Again under 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”. Further Section 87(1) introduces the Civil Procedure Code only subject to the provisions of the Act and of any rules made thereunder. Section 87(2) makes a deeming provision for application of the Evidence Act only subject to the Acts. Therefore, there is no scope for free play in the application of the provisions of those two Acts. The very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually and lightly permitting all kinds of devices to delay the ultimate trial. The purpose of enclosing the copies of the election petition for all the respondents is to enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under Section 86 of the Act.”
[Emphasis supplied]

12. In *P. Nalla Thampy Thera v. B.L. Shanker*[2], this Court while dealing with the justification of granting one adjournment opined as follows:-

“The High Court was justified in giving only one adjournment as a last chance and fixing the trial on 9-3-1981, in view of the statutory mandate that an election petition shall be disposed of as far as practicable within six months from the date of presentation of the election petition as required by Section 86(7) of the Act.”

13. In *F.A. Sapa v. Singora*[3], another three-Judge Bench, in a different context stated that if the vexatious applications are entertained, it would defeat the very object of expeditious disposal of election petition as envisaged in Section 86(7) of the Act.

14. From the aforesaid authorities, it is quite clear that an election petition has to be decided in quite promptitude as there is an obligation cast upon the Court to dispose of the same within a period of six months. Engrafting a provision in the nature of Section 86(7) of the Act, the legislative intendment is clear that the Court has to endeavour to dispose of an election petition as expeditiously as possible and not to allow the parties to take resort to unnecessary adjournments or file vexatious applications.

15. In the case at hand, as we have stated, the elected candidate has been taking time at his own pleasure and leisure and filing applications as he desired giving vent to his whim and fancy and the Court has granted adjournment in an extremely liberal manner. All the aspects can be taken exception to and they really run counter to the conception of expeditious disposal

16. At this juncture, we may state without any hesitation that the fundamental purpose for expeditious disposal of an election petition is to sustain the purity of parliamentary democracy. The concept of purity of democracy has been emphatically stated in *Rameshwar Prasad and others v. Union of India* and another[4].

17. Recently, in *Manoj Narula v. Union of India*[5], majority view in the Constitution Bench is to the following effect:-

“Democracy, which has been best defined as the government of the people, by the people and for the people, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance. While dealing with the concept of democracy, the majority in *Indira Nehru Gandhi v. Raj Narain*[6], stated that “democracy” as an essential feature of the Constitution is unassailable. The said principle was reiterated in *T.N. Seshan, CEC of India v. Union of India*[7] and *Kuldip Nayar v. Union of India*[8]. It was pronounced with asseveration that democracy is the basic and fundamental structure of the Constitution. There is no shadow of doubt that democracy in India is a product of the rule of law and aspires to establish an egalitarian social order. It is not only a political philosophy but also an embodiment of constitutional philosophy.”

18. In *Mohinder Singh Gill v. Chief Election Commissioner*[9], while laying emphasis on fundamental values of democracy which includes holding of free and fair election by adult franchise in a periodical manner, Krishna Iyer, J. quoted the statement of Sir Winston Churchill which is to the following effect:-

“2. ... ‘At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper—no

amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”

19. A voter casts his vote as a responsible citizen to choose the masters for governing the country. That being the trust of the electorate in an elected candidate, when he faces an assail to his election, it should be his sanguine effort to become free from the assail in the election petition and work with attainment and not take shelter seeking adjournments with the elated hope that he can be triumphant in the contest by passage of time. This kind of attitude has to be curbed from all angles because law does not countenance it.

20. We are absolutely conscious that in this case the election petitioner has also filed an application for early determination of the preliminary objection. The respondent, the elected candidate, has filed series of applications. We are of the convinced opinion that the election petition pending before the High Court has to be decided with extreme alertness and in quite promptitude. As the court has not framed issues, it shall proceed to frame issues. Thereafter, the evidence shall commence and the court shall, regard being had to the statutory command and the norms in a democratic polity, dispose of the election petition by end of February 2016. All the miscellaneous applications shall be decided at the time of final hearing so that the procrastination is totally ostracised.

21. With the aforesaid observations and directions, the appeal stands disposed of. There shall be no order as to costs.

.....J. [Dipak Misra], J.

[Prafulla C. Pant] New Delhi October 01, 2015

- [1] (1974) 4 SCC 237
- [2] (1984) Supp. SCC 631
- [3] (1991) 3 SCC 375
- [4] (2006) 2 SCC 1
- [5] (2014) 9 SCC 1
- [6] 1975 Supp SCC 1
- [7] (1995) 4 SCC 611
- [8] (2006) 7 SCC 1
- [9] (1978) 1 SCC 405
