

CASE DETAILS

DASANGLU PUL

v.

LUPALUM KRI

(Civil Appeal No.3710 of 2023)

OCTOBER 19, 2023

**[A. S. BOPANNA AND
PAMIDIGHANTAM SRI NARASIMHA, JJ.]**

HEADNOTES

Issues for consideration: Whether the indication made by the appellant-returned candidate in Form-26, as ‘not applicable’ in the column relating to ‘spouse’, in the facts of the present case would amount to non-disclosure of the properties owned by her spouse; and whether that would amount to a defect of substantial character requiring rejection of the nomination papers of a successful candidate after the election as having materially affected the result.

Representation of the People Act, 1951 – s.100(1)(d)(iv) – Appellant-returned candidate and her late husband who was the sitting member of the Legislative Assembly from 45-Hyuliang (ST) Assembly Constituency belonged to the Mishmi tribe in Arunachal Pradesh and as permitted under the custom of the said tribe, he had married the appellant as his third wife – High Court declared the election of the appellant from the said Constituency as void u/s.100(1)(d)(iv) holding that the details of the property owned by her late husband were not indicated in the relevant column of Form-26 and when the legal heir certificate issued in favour of the first wife of appellant’s late husband had been set aside as on the date when the nomination paper was filed by the appellant, the properties relating to which the legal heir certificate had been issued being that of the spouse ought to have been mentioned in the Form-26 of the affidavit – Propriety of:

Held: The case as set up by the appellant was that as per the custom followed by the Mishmi tribe it is only the first wife who succeeded to the

properties of the husband if the deceased at the time of death had more than one wife and as such the appellant had no claim whatsoever over the said properties – Neither as on the date of the death of the spouse nor on the date of filing the nomination for the election at the first instance in the year 2016 or at the point when the nomination was filed on 22.03.2019, the property left behind by the deceased was claimed by the appellant – Further, much has been made about the challenge raised by the appellant to the legal heir certificate dtd.04.05.2017 issued in favour of the first wife which had been set aside as on the date of filing the nomination on 22.03.2019 – Apart from the fact that the dispute was still at large before the forum to which it was remitted, in any event, legal heir certificate by itself cannot be construed as a document of title to the property – It is a mode to determine the heirship based on which the consequential actions would follow – In the facts and circumstances of the case, the disclosure of the properties in the column in Form-26 to indicate the properties belonging to the spouse would not arise, firstly, since the spouse was not alive and on his death the succession had opened, even otherwise the appellant had not claimed any interest in the properties which are the subject matter and belonged to the deceased spouse – It is not a case of improperly accepted nomination and it certainly has not materially affected the result of the election as contemplated in s.100(1)(d)(i) (iv) – Contention of the respondent that it would amount to non-disclosure and therefore a defect of substantial character not accepted – Impugned order set aside – Election Petition dismissed – Conduct of Election Rules, 1961. [Paras 9, 13, 14, 17 and 18]

Election – Election Petition – Scope of interference – Plea of the respondent that there is no uniformity in the opinion expressed by the witness with regard to the custom followed by the Mishmi tribe:

Held: In the scope available to this Court in an election petition it would not be appropriate for this Court to either examine the customary right or the right to inheritance – It would be appropriate only to notice as to whether in the facts and circumstances of the case where the appellant herself has no claim to the properties after the succession has opened, the non-mentioning of the properties as belonging to that of the spouse was a substantial defect. [Para 9]

LIST OF CITATIONS AND OTHER REFERENCES

Kisan Shankar Kathore vs. Arun Dattatray Sawant & Ors. (2014) 14 SCC 162 : 2014 [7]SCR 258 – distinguished.

Mairembam Prithviraj @ Prithviraj Singh vs. Pukhrem Sharatchandra Singh (2017) 2 SCC 487 : 2016 (9)SCR 687 – held inapplicable.

Union of India vs. Association for Democratic Reforms (2002) 5 SCC 294 : 2002 [3] SCR 696 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3710 of 2023.

From the Judgment and Order dated 25.04.2023 of the High Court of Gauhati at Itanagar in EP No.3 of 2019.

Appearances:

Jaideep Gupta, Sr. Adv., Ms. Tatini Basu, Boboy Potsangbam, Gamso Billai, Biluso Tulang, Kumar Shashank, Ms. Nitipriya Kar, Advs. for the Appellant.

Santosh Paul, Sr. Adv., Arvind Gupta, Anil Kumar Sahu, Mohit Bidhuri, Mrs. Suman Sharma, Sagnik Bose, Vedansh Mishra, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****A. S. BOPANNA, J.**

1. The appellant is before this Court assailing the judgment and order dated 25.04.2023 passed by the Gauhati High Court, Itanagar Bench in Election Petition No.3 of 2019. Through the said judgment and order the High Court has arrived at a conclusion that the appellant herein who is the returned candidate had not presented her nomination paper in accordance with Section 33 of the Representation of the People Act, 1951 ('R.P.Act' for short) and as such the nomination paper of the appellant is liable to be rejected under Section 36(2)(b) of R.P. Act, 1951. In that view, it is held

that the improper acceptance of the nomination by the Returning Officer has therefore materially affected the result of the election. Hence the election of the appellant from 45-Hyuliang (ST) Assembly Constituency in the election held pursuant to the notification dated 18.03.2019 is declared as void under Section 100(1)(d)(iv) of the R.P. Act 1951. The appellant therefore claiming to be aggrieved by the said judgment and order is before this Court in this appeal.

2. We have heard Mr. Jaideep Gupta, learned senior counsel for the appellant, Mr. Santosh Paul, learned senior counsel for the respondent and perused the appeal papers.

3. The brief facts to be noted is that the appellant and her late husband belong to the Mishmi tribe in Arunachal Pradesh. The husband of the appellant Late Khaliko Pul was the sitting member of the Legislative Assembly from 45-Hyuliang (ST) Assembly Constituency. As permitted under the custom of the said tribe, Late Khaliko Pul married the appellant during May, 2015 as his third wife. The said Late Khaliko Pul died intestate on 09.08.2016. He is survived by three wives (including the appellant) and seven sons. On the death of the husband, the appellant, for the first time contested from the said constituency in the bye-election that ensued on 19.11.2016 and was successful. After the completion of the term of the assembly for the earlier period, when the elections were notified on 18.03.2019, the appellant filed her nomination on 22.03.2019. She enclosed the relevant papers which included the affidavit under Form 26 of Rule 4A of the Conduct of Election Rules, 1961 ('Rules 1961' for short).

4. The respondent herein was also a candidate and had filed his nomination from the said constituency. On 26.03.2019 the respondent filed a counter affidavit challenging the nomination of the appellant alleging that there is substantial defect in the nomination filed by the appellant and urged the Returning Officer to reject her nomination. The ground on which such challenge was raised by the respondent is that the appellant who has an interest and claim over the properties of her spouse has not mentioned the same in her affidavit filed on 25.03.2019. In that regard, it was the case of the respondent that the non-disclosure of the properties belonging to her spouse amounts to defects of substantial character and as such the nomination

was liable to be rejected. The Returning Officer, through his order dated 26.03.2019 had however rejected the objection raised by the respondent and had accepted the nomination of the appellant. In that background, the elections were held on 11.04.2019 and the results were declared on 23.05.2019 wherein the appellant had secured 5663 votes as against the 4591 votes secured by the respondent. The appellant was therefore declared elected by a margin of 1072 votes as a Member of the Legislative Assembly from the 45-Hayuliang(ST) Assembly Constituency.

5. It is in that backdrop, the respondent challenged the election of the appellant by filing the Election Petition No.3/2019 on 03.07.2019 before the Gauhati High Court, Itanagar Bench on the ground that the nomination of the appellant was improperly accepted which has materially affected the result of the election. The appellant in response had filed a Recrimination Case No.1(AP)/2020 on 20.01.2020 contending that the respondent held an office of profit on the day of filing his nomination and therefore his nomination is in fact liable to be rejected. In the election petition, the appellant filed her written statement and defended the acceptance of her nomination as valid.

6. Based on the pleadings raised before the High Court, the High Court framed as many as 8 issues for its consideration. The respondent in support of his election petition examined himself as PW-1 and the Returning Officer Mr. Dagbom Riba as PW-2. The appellant, on the other hand, in her defense had examined 14 witnesses which included her family members, the advocate who assisted her in filing the nomination as also her election agent. On analysing the evidence available before it, the High Court has arrived at the conclusion that the details of the property owned by the late husband of the appellant was not indicated in the relevant column of Form-26 which provided for mentioning the details of the properties owned by the spouse. In the said column the appellant had indicated as ‘not applicable’. It is in that light, the High Court has arrived at the conclusion that in a circumstance when the legal heir certificate dated 04.05.2017 issued in favour of the first wife of Late Khaliko Pul had been set aside as on the date when the nomination paper was filed by the appellant on 26.03.2019, the properties relating to which the legal heir certificate had been issued being that of the spouse ought to have been mentioned in the Form-26 of the affidavit.

7. In the background of the contentions urged by the learned senior counsel for the appellant to assail the conclusion reached by the High Court and the contentions put forth by the learned senior counsel for the respondent to sustain the same, we note that though a detail consideration has been made by the High Court and the contentions in that regard put forth by the learned senior counsel on either side before us is also elaborate, the only issue that arises for consideration is as to whether the indication made by the appellant in Form-26, as ‘not applicable’ in the column relating to ‘spouse’, in the facts and circumstance emerging herein would amount to non-disclosure of the properties owned by her spouse, as would be understood in a normal case and whether that would amount to a defect of substantial character requiring rejection of the nomination papers more particularly of a successful candidate after the election as having materially affected the result.

8. On this aspect, the undisputed fact even without reference to the evidence tendered by the parties is that the husband of the appellant Late Kalikho Pul, during his life time had owned and possessed the following properties:-

“(1). Plot No.1: Area 581 Sq Yards: location Mumbai, Maharashtra.

(2). Plot No.480: Area 550 Sq Yards: location Mumbai, Maharashtra.

(3). Plot No.483-484: Area 1166 Sq Yards: location Mumbai, Maharashtra.

4). Plot No.485-486: Area 1148 Sq Yards: location Mumbai, Maharashtra.

5). Plot/Dag No.37(A): Area 5950 Sq Mtrs; location Khupa, (Hig) Anjaw.

6). Plot/Dag No.894: Area 2000 Sq Mtrs; location Tezu(Educated youth colony).”

But, the question is with regard to its status after his death.

9. The fact that the appellant had indicated as ‘not applicable’, in the column in Form-26 relating to indication of the property details belonging to the spouse will no doubt *ex-facie* indicate that the above-noted properties were not mentioned. However, the question would be; whether the appellant had any claim to the said property either to be her property on the death of the husband or has a claim to be entitled to succeed. The fact that the husband died on 09.08.2016 will indicate that as on that day the right to succession had opened and the property would not continue to be the property of the husband. In that circumstance, technically if the appellant had succeeded to the same, the said properties could be considered as her own to be disclosed and the question of indicating it as that of the spouse would not arise. The case as set up by the appellant therefore is that as per the custom followed by the Mishmi tribe it is only the first wife who would succeed to the properties of the husband if the deceased at the time of death had more than one wife and as such the appellant had no claim whatsoever over the said properties. It is in that light, the appellant has examined the witnesses who have spoken with regard to the manner of inheritance among persons belonging to Mishmi tribe. Though the learned senior counsel for the respondent seeks to point out that there is no uniformity in the opinion expressed by the witness with regard to the custom followed by the Mishmi tribe, we are of the opinion that in the scope available to this Court in an election petition it would not be appropriate for this Court to either examine the customary right or the right to inheritance. It would be appropriate only to notice as to whether in the facts and circumstances of the case where the appellant herself has no claim to the properties after the succession has opened, the non-mentioning of the properties as belonging to that of the spouse was a substantial defect.

10. In that circumstance, the undisputed fact is that much prior to the filing of the nomination on 22.03.2019 a legal heir certificate was issued on 04.05.2017 in favour of Smt. Dangwimsai Pul by the Court of Judicial Magistrate, First Class Tezu, Lohit District, Arunachal Pradesh i.e., in favour of the first wife of Late Khaliko Pul. Para-3 of that certificate in fact recognises her right as the legal heir being the first wife and property details are mentioned therein. The case of the respondent is that the appellant had

challenged the issue of the legal heir certificate and the learned Sessions Judge vide order dated 20.12.2018 had set aside the legal heir certificate and had remitted the case to the Court of Deputy Commissioner, Tezu for consideration of the application for issuance of legal heir certificate made by Smt. Dangwimsai Pul i.e., the first wife of Late Khaliko Pul. It is in that light contended that as on 22.03.2019 when the nomination papers were filed, the legal heir certificate had been set aside and as such the appellant being one of the wives was required to indicate the property belonging to her spouse.

11. In order to appreciate the said contention, the High Court has taken note of the decision of this Court in *Kisan Shankar Kathore vs. Arun Dattatray Sawant & Ors.* (2014) 14 SCC 162 wherein this Court on finding that there was clear non-disclosure of the bungalow belonging to the appellant's wife in the nomination papers filed by the appellant in that case had held the same to be a substantial lapse. Having perused the said decision we note that in the facts of the said case the husband being the candidate had a wife who was living and had owned certain properties which was to be mentioned in Form No.26 and his failure to do so had been held as a substantial lapse, by this Court. In the very decision, this Court had also taken note with regard to the non-disclosure of the electricity dues regarding which there was a dispute pending and had arrived at the conclusion that the same was not a serious lapse. This Court therefore has clarified that the consideration as to whether it is a defect of substantial character would depend on the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. Though the said observation was indicated as not to be treated as having general application, the position of law cannot be different and it is well established that a case cannot be considered in abstract, without having reference to the facts and circumstances evolving in a case.

12. It is in that light to be noted that in the instant facts, the nomination papers for the present election were filed on 22.03.2019. If the said date is taken as the relevant date, the legal heir certificate issued to the first wife being on 04.05.2017 will have to be construed as being issued at an undisputed point in time. It is no doubt true that the appellant had challenged the legal heir certificate on 04.10.2017, which was set aside by the learned

Sessions Judge on 20.12.2018. From the evidence placed on record it is noted that in the petition challenging the issue of legal heir certificate the appellant had not set up title to the property which was owned by her late husband but had only contended that the legal heir certificate issued by the Judicial Magistrate, First Class was without jurisdiction. The order passed by the learned Sessions Judge to set aside the same and remand the proceedings to the Court of the Deputy Commissioner through the order dated 20.12.2018 will disclose that the right of the parties to the property was not decided in favour of the appellant, but having set aside the certificate as being without jurisdiction, had remitted the matter to the authority having jurisdiction to consider the same.

13. The proceedings were thereafter pending and ultimately a fresh legal heir certificate was issued by the Executive Magistrate, Lohit District on 22.03.2022. The said certificate was in respect of the properties which stood in the name of the late husband regarding which an objection had been raised by the respondent for not being included in Form No.26. If that be the position, as on 22.03.2019 when the nomination was filed by the appellant herein, the issue relating to the legal heir certificate, though set aside was at large and the dispute was pending. In any event, the appellant had not set up any claim to the said properties which were not indicated in Form-26. Though the learned senior counsel for the respondent would contend that the ‘no objection certificate’ filed by the remaining family members which ultimately resulted in the issue of the legal heir certificate dated 22.03.2022 in favour of the first wife itself is contrary to law inasmuch as the minor children also have signed the said document, the validity of the same is not an issue for consideration herein. The fact remains that even the other persons who have signed have indicated that they have no objection and the legal heir certificate has accordingly been issued in favour of the first wife. Therefore, neither as on the date of the death of the spouse nor on the date of filing the nomination for the election at the first instance in the year 2016 or at the point when the nomination was filed on 22.03.2019, the property left behind by the deceased was claimed by the appellant.

14. It is no doubt true that much has been made about the challenge raised by the appellant to the legal heir certificate dated 04.05.2017 issued

in favour of the first wife which had been set aside as on the date of filing the nomination on 22.03.2019. Apart from the fact as already indicated, the dispute was still at large before the forum to which it was remitted, in any event, legal heir certificate by itself cannot be construed as a document of title to the property. It is a mode to determine the heirship based on which the consequential actions would follow. The appellant in her evidence has specifically disclosed the reason for which she had challenged the legal heir certificate. The portion of the evidence reads as hereunder :-

“That my challenge to legal heir certificate dated 04.05.2017 was primarily for the purpose of pressurizing Smti Dangwimsai Pul to handover the papers of land bearing Plot No.230 situated at Tezu township. Late Kalikho Pul before his death had made it clear that this plot of land is meant for me. The papers of this plot of land were in the possession of Smti Dangwimsai Pul and after the death of Shri Kaikho Pul, she showed reluctance in handing over the papers of this plot of land to me. I needed the papers of this plot of land badly to get an allotment order in my favour. Since Smti Dangwimsai Pul had obtained the legal heir certificate in respect of other properties in her favour, I feared that she may also apply for another legal heir certificate in respect of this plot of land also. In order to force Smti Dangwimsai Pul to part with the papers of this plot of land, I challenged the legal heir certificate dated 04.05.2017 on the advice of Shri Biluso Tulang, who is my first cousin and has been helping me in managing my various social, legal and political matters. During the pendency of the criminal revision petition filed by me challenging the said legal heir certificate, the papers of the said plot of land were given to me after which I stopped taking interest in my criminal revision petition. Subsequently, the said plot of land was allotted in my favour.”

15. A perusal of the above extracted portion of the deposition would indicate that the appellant was claiming her right to Plot No.230 situate at Tezu township since her late husband had made it clear that the said plot is meant for the appellant. The challenge was therefore raised as a pressure tactics to secure the documents of the said property from Smt. Dangwimsai

Pul i.e., the first wife. Therefore, it was her clear understanding that the remaining properties will belong to the first wife of Late Khaliko Pul and her entitlement was to Plot No.230 mentioned above. While weighing the entire case in the background of the evidence tendered and arriving at a decision based on preponderance of probability, the explanation put forth by the appellant in the fact situation herein will have to be accepted as plausible since the appellant while filing her nomination in Form No.26 and indicating the details of the properties standing in her name has indicated Plot No.230 in Tezu township, to which she was laying claim based on the assurance given to her by her late husband during his lifetime and has not laid claim to any other property which stood in the name of her deceased husband, to which, as contended by her the first wife has succeeded.

16. Therefore, in the facts and circumstances of the instant case if all these aspects are taken into consideration the disclosure of the said properties in the column in Form-26 to indicate the properties belonging to the spouse would not arise, firstly, since the spouse was not alive and on his death the succession had opened, even otherwise she had not claimed any interest in the properties which are the subject matter and belonged to the deceased spouse. Hence it cannot be construed that there was a defect of substantial character in the present facts and circumstances of the case. Hence, this was not a case of improper acceptance of the nomination filed by the appellant. As such the principle enunciated in *Mairembam Prithviraj @ Prithviraj Singh vs. Pukhrem Sharatchandra Singh* (2017) 2 SCC 487 was not applicable herein. The High Court was therefore not justified in applying the same to the facts arising herein.

17. As noted, we have indicated that the contention of the respondent in the present facts that it would amount to non-disclosure and therefore a defect of substantial character cannot be accepted and since in that circumstance it is not a case of improperly accepted nomination, it certainly has not materially affected the result of the election as contemplated in Section 100(1)(d)(i) (iv) of the RP Act, 1951. Further, even if the object with which this Court in *Union of India vs. Association for Democratic Reforms* (2002) 5 SCC 294 has required the disclosure of assets is kept in view, the facts involved herein would indicate that the allegation herein cannot be taken as non-disclosure

though it could have been open for the appellant to indicate this aspect in the affidavit but in any event, it is not a substantial defect so as to materially affect the result of the election in the facts and circumstances herein.

18. Therefore, for all the above-stated reasons the judgment and order dated 25.04.2023 passed by the Gauhati High Court, Itanagar Bench in Election Petition No.3 of 2019 is set aside and the Election Petition No.3 of 2019 is consequently dismissed. The appeal is accordingly allowed, however with no order as to costs.

19. Pending application, any, shall also stand disposed of.

Headnotes prepared by:
Divya Pandey

Appeal allowed.