

Kimneo Haokip Hangshing

v.

Kenn Raikhan & Ors.

(Civil Appeal No. 10549 of 2024)

13 September 2024

[Sudhanshu Dhulia* and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Issue arose as to whether the Court can dismiss an election petition at the very threshold on an application u/Ord. VII r. 11 CPC or that the petition needs a detailed consideration by the Court.

Headnotes[†]

Representation of the People Act, 1951 – ss. 83, 86 – Contents of the petition – Trial of election petition – Appellant elected in the General Elections to the State Legislative Assembly – Election petition by the respondent-contestant from the same seat, challenging the election of the appellant alleging that the appellant did not disclose her assets in her nomination papers and had indulged in corrupt practices in the election – Application u/Ord. VII r. 11 CPC read with s. 86 for rejection of the election petition by the appellant – Dismissed by the High Court holding that the election petition discloses a cause of action and that there is substantial compliance of the requirements provided under provisions of RPA and thus the election petition cannot be dismissed u/Ord. VII r. 11 application – Interference with:

Held: Not called for – Perusal of s. 83 shows that an election petition should, inter alia, contain a concise statement of material facts and particulars of any corrupt practices which is alleged against the returned candidate, etc. – Proviso to s. 83(1) requires that the election petition to be accompanied by an affidavit in prescribed form to support the allegations of corrupt practices – Election petition should not be rejected at the very threshold where there is a “substantial compliance” of the provisions – In the election petition, the respondent pleaded

* Author

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there was non-compliance with the requirement of furnishing true and correct information by the appellant – On a perusal of the petition as a whole, including the averments stated, it is clear that a cause of action has been disclosed by the respondent – Whether the appellant has concealed her investments and her income, and thus her nomination has been improperly accepted, is a triable issue – Also, affidavit, which is required as per the proviso to s. 83(1)(c) has to be given in Form 25 as per the Conduct of Election Rules, 1961 – Code of Civil Procedure, 1908 – Ord. VII r. 11. [Paras 6, 8, 9, 12]

Case Law Cited

G.M. Siddehswar v. Prasanna Kumar [\[2013\] 4 SCR 1107 : \(2013\) 4 SCC 776](#); *Thangjam Arunkumar v. Yumkham Erabot Singh* [\[2023\] 11 SCR 392 : 2023 SCC OnLine SC 1058 – referred to.](#)

List of Acts

Code of Civil Procedure, 1908; Representation of the People Act, 1951; Conduct of Election Rules, 1961.

List of Keywords

Non disclosure of assets in nomination papers; Corrupt practices; Rejection of the election petition; Cause of action; Election Petition to be accompanied by affidavit in prescribed form; Substantial compliance; Nomination.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10549 of 2024
From the Judgment and Order dated 05.07.2023 of the High Court of Manipur at Imphal in MC (El.Pet.) No. 66 of 2022 in El. Pet. No. 34 of 2022.

Appearances for Parties

D N Goburdhan, Sr. Adv., B. Krishna Prasad, Mrs. Rajani K Prasad, Mrs. Sunita Rani Singh, Advs. for the Appellant.

Ahanthem Henry, Ahanthem Rohen Singh, Tadup Tana Tara, Mohan Singh, Aniket Rajput, Ms. Khoisnam Nirmala Devi, Kumar Mihir, Advs. for the Respondents.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****Sudhanshu Dhulia, J.**

Leave granted.

2. The appellant before this Court is a Member of Legislative Assembly (hereinafter “**MLA**”) and was elected from the 46-Saikul Assembly Constituency in the 12th General Elections to the Manipur Legislative Assembly, which were held in 2022.

The respondent, who was also a contestant from the same seat, filed an Election Petition before the High Court of Manipur challenging the result of the election on the grounds that the appellant has not disclosed her assets in her nomination papers and that she had indulged in “corrupt practices” in the election. The appellant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“**CPC**”) read with Section 86 of the Representation of the People Act, 1951 (“**RPA**”) for rejection of the petition, which was dismissed. The application dismissed by the High Court on 05.07.2023 is presently under challenge before this Court.

3. The respondent in his Election Petition *inter alia* raised the following grounds in challenge to the election of the appellant:
 - (1) Because the [appellant] has been declared as the returned/successful candidate by improperly accepting the nomination paper despite the concealment of the asset and investment of about Rs. 2 crore for land development in the said property of land and construction inside the agricultural land mentioned in her Form 26 affidavit...
 - (2) Because the [appellant] had concealed her total income for Financial Year 2021-22 and shown as Rs. 0 even though she was serving as Committee Officer at Secretariat of Manipur Legislative Assembly till 31.12.2021.”
4. Before the High Court, the present appellant then moved an application under Order VII Rule 11 for rejection of the petition on the grounds that it does not disclose any cause of action as it does not specify any corrupt practices alleged to have been committed by the appellant, nor is there any averment regarding concealment

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of her income/assets. Therefore, the Election Petition does not comply with the requirements of Section 83 of RPA and ought to be dismissed at the threshold.

5. The High Court vide the impugned order held that whether the appellant had any income or not and whether he had given a wrong declaration at the time of his nomination needs to be looked into in trial for which evidence has to be led by the parties and examined by the Court. The petition cannot be dismissed under Order VII Rule 11 application. Consequently, the application under Order VII Rule 11 filed by the appellant was dismissed. Aggrieved, the appellant is now before us.

6. Section 83 of the RPA is reproduced below:

“(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

(emphasis supplied)

A perusal of the section shows that an Election Petition should, *inter alia*, contain a concise statement of material facts and particulars of any corrupt practices which is alleged against the returned candidate, etc. Further, the Proviso to Section 83(1) of the Act requires that

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the Election Petition shall also be accompanied by an affidavit in prescribed form to support the allegations of corrupt practices.

7. Over the years, Election Petitions have been filed invariably on the grounds which are similar to the ones raised before this Court.

The only question is whether the Court can dismiss such a petition at the very threshold on an application under Order VII Rule 11 CPC or that the petition needs a detailed consideration by the Court. The answer to this will depend upon what kind of statutory compliances have been made in the Election Petition.

The case of the present appellant before this Court is that if the provisions as referred above, wherein material details have to be given by the respondent and particularly the details of corrupt practices etc., has to be strictly construed and any deviation by the respondent on this requirement shall make the petition liable to be dismissed at the very threshold.

All the same, this is not what is the requirement of law. Rather the settled position of law here is that an Election Petition should not be rejected at the very threshold where there is a “substantial compliance” of the provisions.

8. Thus, we will have to see whether “substantial compliance” of Section 83(1)(a) and 83(1)(b) has been done by the respondent.

In para 15 of the Election Petition, the respondent has pleaded that construction worth approx. Rs. 2 crores has taken place on agricultural land of the appellant, however, the column for investment in land through construction has been left empty by the appellant. Thereafter, the respondent has also pleaded that the appellant was serving as a Committee Officer in the Assembly Secretariat, Manipur Legislative Assembly till 31.12.2021, yet, she has shown her income for FY 2021-22 as Rs.0/-, which is untrue.

In para 16 of the Election Petition, the respondent has referred to Section 33 of RPA and alleged non-compliance with the requirement of furnishing true and correct information by candidates. Further, in ground A (as reproduced above) it is asserted that since the appellant has concealed her investment of Rs. 2 crores in her land, her nomination papers ought to have been rejected.

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On a perusal of the petition as a whole, including the averments reproduced above, it is clear that a cause of action has been disclosed by the respondent. Whether the appellant has concealed her investments and her income, and thus her nomination has been improperly accepted, is a triable issue.

9. Secondly, the affidavit, which is required as per the proviso to Section 83(1)(c) of RPA has to be given in Form 25 as per the Conduct of Election Rules, 1961, where Rule 94A reads as under:

“94A. Form of affidavit to be filed with election petition.— The affidavit referred to in the proviso to subsection (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.”

The relevant portion of Form 25 is also reproduced below:

I, _____, the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati _____ (Respondent No.____) in the said petition) make solemn affirmation/oath and say—

(a) that the statements made in paragraphs _____ of the accompanying election petition about the commission of the corrupt practice of _____ and the particulars of such corrupt practice mentioned in paragraphs _____ of the same petition and in paragraphs _____ of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs _____ of the said petition about the commission of the corrupt practice of _____ and the particulars of such corrupt practice given in paragraphs _____ of the said petition and in paragraphs _____ of the Schedule annexed thereto are true to my information...

10. A question had come up before a three Judge Bench of this Court in **G.M. Siddeshwar v. Prasanna Kumar (2013) 4 SCC 776** as to whether an Election Petition is liable to be dismissed at the very threshold even if the allegations of corrupt practices of a returned candidate have not been given by a petitioner in terms of the proviso in Section 83(1)(c) of RPA. The finding of this Court was

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that this cannot be done even if an affidavit is not filed in terms of the proviso. What is mandatory, however, is that there should be substantial compliance. In other words, if substantial compliance in terms of furnishing all that is required under the law has been given, the petition cannot be summarily dismissed.

11. In a more recent case also from Manipur (*Thangjam Arunkumar v. Yumkham Erabot Singh*, 2023 SCC OnLine SC 1058), this Court upheld the dismissal of the returning candidate's Order VII Rule 11 application by the Manipur High Court in an Election Petition. The Court after referring to and applying the test laid down in *Siddeshwar (supra)* held as follows:

“14. The position of law that emerges for the above referred cases is clear. The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit.”

12. In view of the reasons stated above, we see no reason to interfere with the finding of the High Court of Manipur that the Election Petition discloses a cause of action and that there is substantial compliance of the requirements provided under provisions of RPA and thus the petition cannot be dismissed under Order VII Rule 11 CPC.
13. The appeal is, therefore, dismissed.
14. Interim order(s), if any, shall stand vacated.
15. Pending application(s), if any, shall stand disposed of.

Result of the Case: Appeal dismissed.

[†]Headnotes prepared by: Nidhi Jain