
(2019) 05 MAN CK 0029
In the Manipur High Court
Case No : Writ Appeal (WA) No. 17 Of 2018

Chanambam Sharat Singh	Vs	APPELLANT
State Of Manipur And Others		RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Manipur Panchayati Raj (Election) Rules, 1995 — Rule 62
Manipur Panchayati Raj Act, 1994 — Section 103

Citation : (2019) 05 MAN CK 0029

Hon'ble Judges : Ramalingam Sudhakar, CJ; Lanusungkum Jamir, J

Bench : Division Bench

Advocate : I.Denning, S. Nepolean, Th.Tolpishak

Final Decision : Dismissed

Judgement

R.S., CJ

[1] Heard Mr. I.Denning, learned counsel for the appellant/ petitioner as well as Mr.S.Nepolean, learned Government Advocate for the State respondents and Mr.Th.Tolpishak, learned counsel for the private respondents.

[2] The appellant, on dismissal of the writ petition, W.P(C) No.846 of 2017 on 09.5.2018, has filed this appeal challenging the judgment and order of the learned Single Judge.

[3] The appellant/petitioner is the election agent of a candidate, namely, E. Hemanta Singh, who stood for election to the office of Zilla Parishad under 5-Waikhong Zilla Parishad constituency. The election was held on 7.10.2017. The counting of votes was held on 11.10.2017 and the appellant-petitioner participated as an election agent. It appears that the appellant submitted an application on 12.10.2017 to the Returning Officer requesting for rechecking the counting sheets for every table and also the postal ballots. This request was not considered by the Returning Officer. Aggrieved thereby, he has filed the writ

petition. Notice was issued and replied was submitted by the State and the learned Single Judge after going through the objections of the respondents, formulated the scope of dispute in the impugned judgment and order in para No.19 as follows:-

"[9] Thus, the issue to be decided now at this stage is whether the present petition filed by the petitioner namely, Chongtham Sharat Meitei, who is an election agent of a contesting candidate in an election, is maintainable or not, in view of the fact that an election petition has been already preferred by the candidate himself, which is now pending before the Election Tribunal."

[4] In support of the plea that Mandamus can be issued, the appellant relied upon certain decisions primarily contending that fundamental rights of the election agent is affected. The legal plea is that the Returning Officer was under an obligation under Rule 62 of the Manipur Panchayati Raj (Election) Rules 1995 to consider the application on its own merit.

[5] On the contrary, Mr. S.Nepolean, learned Government Advocate relied upon Section 103 of the Manipur Panchayati Raj Act, 1994 that has been relied and extracted in para No. 19 of the judgment as follows:-

"[19] Mr.Nepolean, learned Govt. Advocate for the State respondent has submitted that the matter pertains to election to Zilla Parishad which is governed by the provisions of the Manipur Panchayati Raj Act, 1994 and the rules framed thereunder.

As per Section 103 of the Manipur Panchayati Raj Act 1994, the Election Tribunal is to dispose of,

- (i) all election petitions challenging election to a Panchayat,
- (ii) matters relating to disqualifications of member of a Panchayat and
- (iii) any other election matter,

In such a manner as may be prescribed."

[6] On the maintainability of the writ petition and the legal avenue available by an aggrieved person, it was submitted by Mr. S.Nepolean, learned Government Advocate that any irregularity as alleged in the present case can be agitated before the Election Tribunal. The finding of this issue is in Para No.21 of the judgment:-

"[21] Mr.Nepolean, learned counsel further submits that if there be any non-compliance of statutory procedures as alleged by the petitioner in this case, challenge to such irregularity would lie before the appropriate election tribunal and not before this Court by filing a writ petition, relying on the decision of the Hon'ble Supreme Court in Nanhoo Mal & Ors Vs. Hira Mal & Ors reported in (1976) 3 SCC 211. In the aforesaid case of Nanhoo Mal (supra), the Hon'ble Supreme Court held, following the decision of the Hon'ble Supreme Court in N.P.

Ponnuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64, that there is hardly any room under Article 226 of the Constitution for adjudication in matters relating to election disputes."

[7] It was further pleaded by Mr. Nepolean that the appellant, election agent had no locus standi to file the petition once the election is over. Various decisions have been relied by Mr. Nepolean, learned Government Advocate to substantiate his plea that the appellant -writ petitioner has no legal right to maintain the writ petition. The plea that the election agent has an independent right to sustain the Mandamus and enforcement of the statutory duty in terms of Rule 62 of the Manipur Panchayati Raj Election Rules, 1995 was considered and negated by the learned Single Judge in para No.26 as follows:-

"[26] Firstly, though it is true that the petitioner was the election agent of the aforesaid candidate, Shri Elangbam Hemanta Singh, the agency is conditional in as much as the authority of the agent would be dependent upon the nature of transaction or the statutory limits that may be placed. Though the petitioner, as an agent, had filed an application before the Returning Officer by virtue of the authorisation under Rule 62 of the Election Rules law to move the Returning Officer for recounting of votes, the present petition by way of moving the High Court under Article 226 of the Constitution of India cannot be deemed to be a continuation of the process of redressal for his grievance. The action of the agent would again depend on the action taken by the principal. It has been noted that though the petitioner moved the application before the Returning Officer by filing an application on 12.10.2017 as mentioned above, thereafter, the election candidate himself had submitted an application before the Secretary, State Election Commission on the next date on 13.10.2017 seeking for a direction to be issued to the concerned Returning Officer to keep the election certificate in abeyance till the recounting. Thereafter, the candidate himself had filed an election petition on 10.11.2017 before the Election Tribunal raising the same grievance of wrongful counting of votes in respect of the polling station of Ward No.5/11/5 of Waikhong Zilla Parishad and also for declaring the election of the respondent No.4 as null and void.

In other words, the candidate himself had carried forward the grievance initially raised by the election agent to the appropriate forum as contemplated under the Manipur Panchayati Raj Act, 1994 and rules framed thereunder by filing an election petition as provided under Section 103 of the Act read with Rule 70. Thus, the grievance contained in the application filed by the petitioner before the Returning Officer on 12.10.2017 gets merged with the aforesaid election petition. In other words, once the election petition has been filed by the candidate himself, a separate and independent grievance at the instance of the agent cannot be entertained in another forum in as much as the grievance raised by the petitioner before the Returning Officer on 12.10.2017 becomes part of the cause of action of the election petition filed by the candidate and accordingly, the Election Tribunal would be the competent and appropriate forum to decide the

issues raised in this petition as well. The election petitioner would be at liberty pursue this particular issue raised in this petition by moving the Election Petition by filing appropriate miscellaneous application, if so advised, in accordance with the rules. This issue cannot be pursued before this Court independent of the election petition. Otherwise, it would amount to invoking two fora for the same cause of action, which is not permissible in law."

[8] Learned Single Judge further held that the conduct of the candidate to the post of Zilla Parishad in pursuing the election petition on his own would mean that he has taken the issue on himself and therefore, the election agent has no locus standi to proceed any further. Learned Single Judge thereafter came to the conclusion that the right that is alleged to have been infringed is that of the unsuccessful candidate and that the election agent is only acting on behalf of the participant.

Learned Single Judge held that the petitioner-appellant had no legal right to file the writ petition. For clarity, we reproduce para No.28 as such:-

"[28] Perusal of the pleadings in the writ petition does not indicate that the petitioner had been specifically authorised by the election candidate to move this Court under Article 226 of the Constitution of India. Though the petitioner has mentioned that he was the election agent of the candidate, Shri Elangbam Hemanta Singh, nowhere it has been pleaded in the petition that the petitioner was specifically authorised by the candidate to move this Court. Therefore, this Court would hold that the petitioner does not have the locus standi to file this petition on his own without being authorised by the election candidate. This is so, for the reason that ordinarily only a person whose legal right has been infringed can move the High Court seeking for issue of writ of Mandamus.

Therefore, the question which arises for consideration is what is the legal right of the petitioner which has been infringed. It cannot be said that the petitioner is moving for enforcement of his legal right. He is moving this petition for enforcement of the legal right of another person i.e., the candidate. If that is so, the aforesaid third person, the candidate, must have specifically authorised him to do so, which is not present in the present case.

It may be also stated that contention of Mr.Denning that the right of the election agent has been infringed or violated on refusal of the Returning Officer to consider his application cannot be considered to be the correct position of law. What has been infringed as alleged is the right of the candidate. If the votes which have been legitimately obtained by a candidate has been wrongly entered in favour of another candidate, it is the right of the candidate which has been infringed and not of the election agent. The election agent is only authorised to highlight such irregularities or authorised to make a complaint to the statutory authority regarding such violation of rules to the authority as in the present case. However, it cannot by any stretch of imagination be said that the right of the election agent has been violated by non-consideration of the application filed by

the election agent under Rule 62 of the Election Rules. Therefore, since the right violated is that of the candidate, only the candidate would have the right to approach this Court by filing appropriate writ. However, in the present case, the candidate has not preferred any petition by invoking the jurisdiction of this Court under Article 226 of the Constitution of India but by the election agent without any specific pleading that the petitioner was authorised to file this petition by the aforesaid election candidate. Mr. Denning's contention that since he is the election agent and authorised to act on behalf of the said candidate, he can independently invoke this jurisdiction of this Court under Article 226 of the Constitution of India, cannot be accepted. An agent cannot act independently of the Principal, unless specifically or by clear implication allowed to do so under the terms of the agency. The petitioner himself is not the aggrieved person and the forum under Article 226 of the Constitution of India is not the continuation of the redressal forum as provided under the Election Rules. Hence, the petitioner has no locus standi to file this petition."

[9] Learned Single Judge further held that since the unsuccessful candidate himself has moved the election tribunal, the question of election agent agitating the issue in the writ petition does not survive. Para Nos. 29 and 30.

"[29] That apart, once the election candidate himself has moved the Election Tribunal as mentioned above, the issue raised in this writ petition does not survive any more as the same has been already raised in the said election petition. It cannot be contemplated that while the election petition is pending consideration by the Election Tribunal, this issue will be decided by this Court, which would mean that the issue which is to be decided by the Election Tribunal will be decided by this Court which is not contemplated. A person can not invoke two fora at the same time. He has to choose only one forum. Since, election petition is the appropriate forum prescribed by statute, the forum available under Article 226 being a discretionary one, in the facts of the case can not be invoked.

[30] It may be also noted that the question raised in this petition is not purely a legal issue but an issue which involves disputed facts as to whether there was proper counting or not and whether the votes obtained by the petitioner had gone to the other candidates, etc. which would require weighing and appreciation of evidence. Thus, from that point of view also, normally the High Court does not exercise jurisdiction under Article 226 of the Constitution of India to decide disputed question of facts."

[10] Learned Single Judge after taking note of the election petition filed by the candidate and referring to the scope of Section 103 of the Manipur Panchayati Raj Act, 1994 held that the conduct of the unsuccessful candidate seeking remedy before the election tribunal, clearly bar the election agent to seek judicial review. Since there is an effective alternative remedy which has been invoked, Mandamus was declined. Para Nos.32 and 33.

"[32] It is now well settled that Courts do not normally interfere in the election

matters, if alternative remedies are available under the relevant statutes. In the present case, as already noted, Section 103 of the Manipur Panchayati Raj Act, 1994 provides for Election Tribunal to decide matters relating to election. As the present dispute raised in the petition is also an issue relating to the election, it will be certainly within the jurisdiction of the Election Tribunal. However, Mr. Denning relying on the decision of the Hon'ble Supreme Court in K. Venkatachalam (supra) has submitted that jurisdiction of the High Court cannot be ousted merely because it relates to an election petition. It may be noted that in the aforesaid decision, the Hon'ble Supreme Court was dealing with a case where the candidate was not at all eligible to contest the election and as such, when the candidate was not eligible, the election was to be declared void ab initio. However, such is not the scenario in the present case, as it is not the case that the elected candidate, namely, the respondent No.4 was not eligible at all, in which event the principle laid down in the aforesaid case could have been applicable. In the present case, as mentioned above, the issue involved is about the recounting of votes which is purely a question of fact which will require examination of the officials who were involved in the counting of votes and other agents, observers, etc. It is to be reiterated that jurisdiction under Article 226 of the Constitution of India for issuing writ of Mandamus is purely a discretionary one and though its limit cannot be circumscribed by any law or statute, it is circumscribed by well known judicial discipline, self restraint limitations placed by the Courts themselves.

[33] Further, one of the key features of the power of judicial review is that if there are effective alternative remedies available under the relevant Acts or statutes, this Court may refuse to exercise the discretionary power under Article 226 of the Constitution of India . In the present case, as noted above, there is an effective alternative remedy available under the Manipur Panchayati Raj Act, 1994 and the rules framed thereunder i.e. the Election Tribunal which had been already invoked by the candidate himself. The situation might have been different had the candidate not moved the election petition relating to the same issue raised in this petition. Therefore, this Court is of the view that since the election candidate had himself moved the Election Tribunal, he has invoked the alternative remedy available under the statute and in which event, this Court can decline any such petition relating to the same issue raised in the election petition."

[11] We have heard Mr. Denning, learned counsel for the appellant who reiterated the same arguments as was made before the learned Single Judge. We have also perused the decisions relied upon by him and considered the arguments. We have considered the contentions on behalf of the respondents.

The scope of Section 103 of the Manipur Panchayati Raj Act, 1994 in relation to election petition can take within its fold the issue raised by the appellant-writ petitioner. We are also in agreement with the finding of the learned Single Judge on locus standi, more particularly, in view of the conduct of the unsuccessful

candidate in pursuing his remedy before the election tribunal at the earliest point of time by filing the election petition.

[12] When the unsuccessful candidate has himself filed an application before the election tribunal on 13.10.2017, i.e., day after the appellant election agent filed the application before the Returning Officer for recounting, makes it clear that candidate has taken the cause by himself. The election agent becomes irrelevant in the election process. The unsuccessful candidate has become the main contesting party and he has proceeded in accordance with the Act to vindicate his claim before the election tribunal. The question of issuing of Mandamus on this plea was rightly rejected by the learned Single Judge . Shri Denning pleaded that some other issues on fact and law was urged before the learned Single Judge but not considered. This plea appears to be without basis. All aspects of the contention is dealt with by the learned Single Judge. If a specific plea is raised and argued but not reflected in the judgment then the petitioner should have sought for review or clarification which has not been done. It is to be presumed that no such argument was advanced. The judgment speaks for itself.

[13] We find no error in the reasons given by the learned Single Judge and accordingly, finding no merits, the writ appeal stands dismissed.