

(2019) 02 MAN CK 0009

In the Manipur High Court

Case No : Miscellaneous Cases (Election Petition) No. 30 Of 2018 In Election
Petition No. 11 Of 2017

Langpoklakpam Jayantakumar Singh And Others

APPELLANT

Vs

Laishom Ibomcha Singh And Others

RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 11, 11(iv), 151, Order 8 Rule 9
Representation Of The People Act, 1951 — Section 83

Citation : (2019) 02 MAN CK 0009

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : A. Bimol, S. Sasi, S. Biswajit

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

Heard Shri A. Bimol, learned Senior Advocate assisted by Shri S. Sasi, learned counsel appearing for the applicant/ Respondent No. 1 and Shri S. Biswajit Meitei, learned Advocate appearing for Respondent No. 1/petitioner.

[1] This is an application filed by the applicant/ Respondent No.1 under Order VIII Rule 9 read with Section 151 of CPC & Section 87 of Representation of the People Act, 1951 (hereinafter referred to as "the Act, 1951") praying for grant of leave to allow him to file a subsequent pleadings/ surrejoinder in answer to the replication filed by the Respondent No.1/ petitioner. The ground on which the instant application has been filed is that while going through the replication filed by the Respondent No.1/ petitioner, new facts are found to have been mentioned therein and the same are required to be controverted or clarified by him in the form of a subsequent pleadings/ surrejoinder in answer to the replication of the Respondent No. 1/ petitioner and in the event of the permission of leave not being granted, the allegations made in the replication shall cause prejudice to the applicant/ Respondent No. 1.

[2] An objection has been filed on behalf of the Respondent No. 1/petitioner stating that since the application has been filed only on 03/10/2018 after about 10 (ten) months from the date of filing the replication, the same is barred by delay and laches and that the application being MC(WP(C)) No. 8 of 2018 wherein prayer has been made to strike out the pleadings in the replication on the ground that new material particulars have been pleaded therein, is still pending for consideration by this court. The instant application cannot be entertained on the ground of constructive res judicata for the reason that the other aforesaid application is still pending and moreover, the applicant/ Respondent No. 1 cannot take two stances in respect of one and the same cause of action. The fact that the instant application has been filed as an afterthought to achieve something which the applicant/ Respondent No.1 failed to obtain in the earlier application. The election petition being completely different from the writ petition, the occasion of filing surrejoinder does not arise in the election petition and the material particulars made by the Respondent No. 1/ petitioner in his replication are by way of response to the facts given in the written statement filed by the applicant/Respondent No.1. Moreover, the present application has been filed with a view to delay the proceedings of the election petition as the applicant/ Respondent No.1 does not want to face the trial.

[3] The short question that arises for consideration by this court is as to whether new facts have been pleaded by the respondent No.1/ petitioner in the replication and in order to decide the issue, it becomes necessary for this court to examine the averments made in the election petition and the replication. The election petition was filed by the respondent No.1/ petitioner challenging the election of the applicant / respondent No.1 on the grounds that the nomination paper of the application / respondent No.1 has been improperly accepted by the Returning Officer and that the applicant/ respondent No.1 has made false statement in his affidavit to the effect that he has no Government dues except in respect of motor vehicle advance. The materials facts made in the election petition as required under Section 83 of the Representation of People Act, are that firstly, the applicant/ respondent No.1 has failed to open a bank account at least one day prior to the date of filing the nomination for the reason that on the day nomination, the scrutiny of the applicant/ respondent No.1's nomination paper was deferred for some time and when his nomination was again considered, one of his agents brought a pass book of an account opened that day only. When the objection was raised by the agents of the respondent No.1/ petitioner with respect to the nomination of the applicant/ respondent No.1, the matter was referred to the Election Observer or Expenditure Observer but without waiting their views, the Returning Officer accepted illegally the nomination of the Applicant/ Respondent No.1. The turmoil that took place during the course of scrutiny came to be published in the newspaper "Huyen Lanpao" on the next day. Further, secondly, the applicant/ respondent No.1 has filed a false affidavit by concealing his Government dues in respect of his landed property at Keirao Bitra under Patta No.54/410 of village No.54 - Wangkhem

which the respondent No.1/ petitioner came to know from the demand letter dated 20-04-2017 of the SDC, Keirao Mitra. Thirdly, on 07-04-2017 the applicant/ respondent No.1 submitted his statement of account supported by an affidavit but it did not show the expenditure for three days from the date of nomination ie. 13-02-2017 to 15-02-2017, although he deposited a sum of RS.10,000/- in the treasury under TRS No.453507 dated 13-02-2017 without the same being shown in the statement of account.

[4] In the written statement filed by the applicant/ respondent No.1, the material facts as averred in the election petition, were denied and it has been stated that as per the letter dated 15-10-2013, wherever a candidate has not opened a bank account or not intimated about the account number, the Returning Officer shall issue a notice to him to comply with instructions and that despite request being made by him, the Chief Electoral Officer did not bring to his notice about the existence of such a letter. It has further been stated that the procedural requirement of opening a separate bank account was brought to his notice only after the nomination papers had been filed by him and therefore, a separate bank account was opened as per the instructions of the Returning Officer. It is nowhere mentioned in the newspaper that the agents of the respondent No.1/ petitioner raised any objection. The receipt of the letter dated 20-04-2017 was not denied but it has been stated that when the applicant/ respondent No.1 challenged its correctness, a verification was done and after it was found that the revenue had been paid, the said letter was withdrawn. As regards the allegation of false affidavit in respect of Rs.10000/- not being shown in the statement of account, it has been stated that along with the affidavit, a register of maintenance of day to day accounts was submitted wherein the details had been shown including that of Rs.10000/- and the District Election Officer, after verifying the same, submitted a report thereof to the Election Commission of India which had accepted it.

[5] In the replication filed by the respondent No.1/ petitioner, it has been stated that in pursuance of the letter dated 15-10-2013, a notice dated 06-02-2017 was issued by the District Election Officer highlighting the instructions contained therein and the same was published in the newspaper on the next day. In September, 2011, the ECI had issued instructions mandating the requirement of opening a bank account and the applicant/ respondent No.1 being a retired judicial officer who had contested the election four times earlier, was aware of it and in particular, he opened an account on 02-01-2012 in respect of the election held on 09-01-2012. Moreover, the Officer on special duty (Election) wrote a letter dated 07-02-2017 to the Director, Institutional Finances, Manipur to instruct all the banks including Co-operative banks and post offices, to facilitate the opening a bank accounts by all candidates. The instructions issued by the ECI as regards the maintenance of purity of election by all concerned, vide letter dated 27-03-2003 are available in the Hand Book for candidates which were reiterated in letter dated 15-10-2013. In a reply dated 23-10-2017 to an application dated 27-09-2017 under the provisions of RTI Act, it is evident that

the bank account was submitted by the agent of the applicant/ respondent No.1 only 13-02-2017 and the Returning officer instructed the applicant/ respondent No.1 to open an account in his name which he did only on 16-02-2017 with the result that the expenditure incurred from 13-02-2017 to 15-02-2017 was not routed and reflected therein. The District Election Officer vide his letter dated 23-10-2017 in reply to an application dated 25-09-2017 under RTI Act, furnished copies of the cash register and bank register and on perusal thereof, it was discovered that the manner in which the expenditure was incurred by the applicant/ respondent No.1 was in violation of the instructions of the ECI and that the applicant/ respondent No.1 had concealed the names of donors and had removed with malafide motive the portion of the footnotes contained below schedule 9 of the prescribed format of Abstract Statement of Election Expenses. Thus, the nomination papers of the applicant/ respondent No.1 had not only been improperly accepted but also not complied with the instructions of the ECI.

[6] While going through the averments made in the election petition, the written statement and the replication, it is seen that the respondent No.1/ petitioner, in his replication, made an endeavour to explain what has been stated in the election petition. That is permissible in law but while doing that, he has pleaded some new facts. It has been submitted by the learned counsel appearing for the respondent No.1/ petitioner that the concept of 'sur-rejoinder' has been evolved in a case arising out of the writ petition and therefore, no such sur-rejoinder is required to be filed in the present petition. It has further been submitted by him that the applicant/ respondent No.1, in his application being MC(E.Pet.) No.8 of 2018 has prayed for striking out the pleadings in the replication, he has prayed in this application for permission to file sur-rejoinder thereto and that since the prayers are contradictory, the same is not permissible in law in view of the doctrine of constructive res judicata. The concept of constructive res judicata has been evolved from the doctrine of res judicata and it has later been provided in explanation (iv) of Section 11 of CPC. The principle underlying the rule of res judicata is that if an issue has been decided at an early stage against a party, it cannot be allowed to be re-agitated by him at a subsequent stage in the same suit. Res judicata is a plea available in a civil proceeding under Section 11 of the CPC, while the plea of constructive res judicata is available in respect of other proceedings. There can be no any dispute on this proposition. But in the present case, no issue has been decided by any Court at an earlier stage between the parties as regards the issue involved herein because of which the rule of res judicata can be said to be operating against them. Any decision given by this court while deciding the issue involved herein may, no doubt, have a bearing on the application being MC (E.Pet.) No.8 of 2018 which will be decided on its own merit keeping in mind the observations made herein. One point which the learned counsel appearing for the respondent No.1/ petitioner has emphasized, is that the application has been filed long after the replication being filed by the respondent No.1/ petitioner and that in terms of the decision rendered by the Hon'ble Supreme Court in *Ajay Arun Singh Vs. Sharadendu Tiwari & ors.*, (2016)

15 SCC 219, the filing of the application is to be deprecated. It may be true to that extent but the fact remains that while explaining the averments made in the election petition in the form of replication, some new facts have been pleaded therein, for which an opportunity is required to be given to the applicant/ respondent No.1 so that he could file a subsequent pleading/ sur-rejoinder thereto.

[7] In view of the above, the instant application being M.C.(El. Pet.) No. 30 of 2018 is allowed and the applicant/ respondent No.1 is granted two weeks time, from the date of this judgment and order, for filing a sur-rejoinder confining to the new facts pleaded in the replication.