

(2021) 11 MAN CK 0007

In the Manipur High Court

Case No : Miscellaneous Case (Election Petition) No. 28 Of 2021 Ref:- Election
Petition No. 11 Of 2017

Rajkumar Shivachandra Singh

APPELLANT

Vs

Maibam Sarat Singh

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Representation Of The People Act, 1951 — Section 97, 97(1), 98, 101, 112(3)

Citation : (2021) 11 MAN CK 0007

Hon'ble Judges : Sanjay Kumar, CJ

Bench : Single Bench

Advocate : Th. Khagemba, R.K. Maichael, Siddartha Shankar Dey, A. Golly

Final Decision : Dismissed

Judgement

Sanjay Kumar, CJ

Through Video Conferencing

The applicant in MC(EP) No. 28 of 2021 is the 2nd respondent in the main election petition. The applicant in MC(EP) No. 30 of 2021 is one of the substituted petitioners, who came on record under Section 112(3) of the Representation of the People Act, 1951, after the demise of the original election petitioner. Their prayer in these miscellaneous applications is on similar lines. The applications are accordingly taken up for disposal together.

The 2nd respondent prayed for framing of an additional issue. It reads as follows:

'Whether the election of the Respondent No. 1 as the Candidate of 12-Keishamthong Assembly Constituency to the 11th Manipur Legislative Assembly Election, 2017 is null and void and if null and void whether the Respondent No. 2 can be declared to be the elected candidate of 12-Keishamthong Assembly Constituency to the 11th Manipur Legislative Assembly, 2017?' While so, the applicant in MC(EP) No. 30 of 2021 sought amendment of Prayer No. II in the

election petition. The original Prayer No. II in the election petition reads as under:
'To declare the petitioner as duly elected candidate from the 12-Keishamthong Assembly Constituency'.

The applicant seeks to replace/substitute the word 'petitioner' appearing in Prayer No. II by the words 'any other candidate/respondent No. 2'. In effect, he is also praying that the 2nd respondent in the election petition be declared as elected after the election of the returned candidate, viz., the 1st respondent in the election petition, is set aside.

Heard Mr. A. Mohendro and Mr. Th. Khagemba, learned counsel for the applicant in MC(EP) No. 28 of 2021; Mr. R.K. Maichael, learned counsel for the applicant in MC(EP) No. 30 of 2021; and Mr. Siddartha Shankar Dey, learned senior counsel, assisted by Mr. A. Golly, learned counsel for the returned candidate, the 1st respondent in the election petition.

Section 98 of the Representation of the People Act, 1951 (hereinafter, 'the Act of 1951'), is titled 'Decision of the High Court' and reads to the effect that, at the conclusion of the trial of an election petition, the High Court shall make an order dismissing the election petition; or declaring the election of all or any of the returned candidates to be void; or declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Section 97 of the Act of 1951 deals with 'Recrimination when seat claimed'. Sub-Section (1) thereof states that if a declaration is sought in an election petition that a candidate other than the returned candidate has been duly elected, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election. The proviso thereto prescribes that the returned candidate or such other party would not be entitled to give evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of his intention to do so and also gives security as required by law.

Reference may also be made to Section 101 of the Act of 1951 which deals with the 'Grounds for which a candidate other than the returned candidate may be declared to have been elected'. It reads to the effect that if any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of the opinion that there is merit in his claim, the High Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

This being the statutory scheme, it may be noted that the original election petitioner had prayed that he should be declared elected after the election of the

returned candidate, the first respondent in the election petition, was set aside. The 2nd respondent in the election petition was also a candidate in the very same election but he did not choose to file an independent election petition. Be it noted that it was well within his right to file an election petition praying that in the event the election of the returned candidate was set aside and the original election petitioner in Election Petition No. 11 of 2017 was also held disentitled, then he, the 2nd respondent in this election petition, should be declared duly elected. Vagaries and vicissitudes of fate being well known, the 2nd respondent in this election petition could as well have prayed for such relief. In his wisdom, he did not choose to do so and as destiny would have it, the original election petitioner died. It is owing to this unforeseen development that the 2nd respondent in the election petition and the substituted petitioner, who came on record under Section 112(3) of the Act of 1951, now seek to fill in the gap by praying for a declaration that the 2nd respondent should be declared elected after the election of the returned candidate, the first respondent in the election petition, is set aside.

However, the proviso to Section 97(1) vests the returned candidate with the right to lead evidence against the claim now sought to be put forth by the 2nd respondent/substituted petitioner that the 2nd respondent should be declared elected. As a declaration in this regard is now sought belatedly after the completion of the trial, it would mean that this Court would have to allow a fresh trial so that the statutory right afforded to the returned candidate is saved. Having failed to take steps at the appropriate time, though it was open to him to do so, the 2nd respondent cannot wake up at this late stage and try to turn back the clock so as to fill in the void caused by the death of the original election petitioner.

As to whether this Court would have the power to independently declare any other candidate duly elected if the returned candidate's election is set aside, irrespective and exclusive of whether a declaration to that effect has been sought by any candidate, is an issue that may be considered at the time of hearing the election petition. Leaving aside that issue, this Court finds no merit in either of these applications, which are counter-productive to the progress of the main election petition, as the trial has already concluded.

The miscellaneous applications are accordingly dismissed, leaving open the issue mentioned hereinabove for consideration at the time of hearing of the election petition.

A copy of this order shall be supplied online or through whatsapp to the learned counsel for the parties.