
(2018) 10 MAN CK 0008

In the Manipur High Court

Case No : Miscellaneous Cases (Election Petition) No. 31 Of 2017 In Election
Petition No. 2 Of 2017

Yumkham Erabot Singh And Others

APPELLANT

Vs

Okram Henry Singh And Others

RESPONDENT

Date of Decision : 16-10-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 8 Rule 9
Representation Of People Act, 1951 — Section 81, 87
Specific Relief Act, 1963 — Section 16(c)
Negotiable Instruments Act, 1881 — Section 138

Citation : (2018) 10 MAN CK 0008

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : H. Ishwarlal, N. Ibotombi

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri H. Ishwarlal, learned Senior Advocate appearing for the applicant/petitioner and Shri N. Ibotombi, learned Senior Advocate appearing for the respondent No.1.

[2] This is an application filed by the applicant /petitioner praying for grant of leave to file a replication to the written statement of the respondent No.1 under Order VIII Rule 9 of the CPC read with Section 87 of the Representation of People Act, 1951.

[3] An objection on behalf of the respondent No.1 has been filed wherein it has been stated that the application has been filed, in the guise of filing such an application, with a view to amend his election petition in order to bring on record new pleadings and raise new grounds to challenge the result of the election which are not mentioned or raised in his election petition. It has further been

stated that if the prayer of the applicant/ petitioner is allowed, it would amount to allowing him to change his pleading and raise new ground of challenge in contravention of the provisions of Section 81 of the Representation of People Act, 1951. The subsequent pleading and replication sought for by the applicant/ petitioner which contains new pleading and the ground of challenge not incorporated in the election petition, is not permissible in as much as it is barred by time as provided under the provisions of Section 81 of the Representation of People Act, 1951. The relevant portions of the paras of the replication which, according to the learned counsel appearing for the respondent No.1, are objectionable, are reproduced hereinbelow:

"3.

It is submitted that on the day of scrutiny the petitioner wanted to examine the nomination paper of the respondent No. 1. However, the Returning Officer of 15-Wangkhei Assembly Constituency had refused the examination of the said affidavit for the reasons not known to the petitioner. Not only that the another candidate of the contesting candidates was also not allowed to see the affidavit filed along with nomination paper of the contesting candidates by the Returning Officer of 15-Wangkhei Assembly Constituency.

.....

6. That,.....

The abovesaid company had already served Legal Notice dated 07-01-2017 under the provisions of the Negotiable Instrument Act, 1881 upon the respondent No. 1 by registered post which was done on 09-01-2017 and the same was received by the respondent No. 1 on 10-01-2017 as seen from the delivery date given by the postal authorities.

It is further submitted that the respondent No. 1 has a higher circle in the Manipur Police Department and as such he might have been avoided the summons/ notice issued by the Ld. Chief Judicial Magistrate/ Imphal West."

[4] Shri H. Ishwarlal, the learned Senior Advocate appearing for the applicant/ petitioner has submitted that in the replication sought to be filed by the applicant/ petitioner, no new facts or new pleas have been taken and only the averments made in the election petition have been explained.

In other words, the replication is being sought to be filed in order to make clarifications of facts which have been stated in the written statement filed by the respondent No.1. The objections raised by the respondent No.1 are not sustainable in law for the reason that the same are based on few lines of the replication. In order to understand the case of the applicant/ petitioner, the pleadings have to be read as a whole which the respondent No.1 failed to do that and therefore, there is nothing wrong in granting leave to the applicant/ petitioner for filing replication. In support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court as well as the High

Courts. The first decision relied upon by him is the one rendered in *Shri Udhav Singh Vs. Madhav Rao Scindia*, (1977) 1SCC 511 wherein the appellant filed an election petition on two grounds, the Hon'ble Supreme Court observed:

"33. We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation.

Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole."

In *Syed Dastagar Vs. TR Gopalakrishna Setty*, (1999) 6 SCC 337 wherein the issue was as to how to construe a plea of readiness and willingness to perform to subserve to the requirement of Section 16(c) of the Specific Relief Act, 1963 and interpretation of its explanation, the Hon'ble Supreme Court held:

"9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded maybe in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and

not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

On the other hand, Shri N. Ibotombi, the learned Senior Advocate appearing for the respondent No.1 has submitted that the averments made by the application/ petitioner in the replication as quoted hereinabove, are nothing but new pleas which cannot be taken by the applicant/ petitioner without giving an opportunity for rebuttal. He has placed reliance in *Jeet Mohinder Singh Vs. Harminder Singh Jassi*, (1999) 9 SCC 386 wherein the appellant filed an election petition on the inter-alia grounds that the nomination paper filed by the respondent was invalid and therefore, should have been rejected, the Hon'ble Supreme held:

"45. The appellant filed replication to the written statement filed by the respondent. It is in the replication that the appellant has come out with an averment (vide para 8) that some amongst the electors who were threatened by Shri Sangram Singh, SHO were Jagseer Singh (not examined), Dharminder Singh, PW 13, Jaswant Singh (not examined), Jagraj Singh (not examined), and Mander Singh (not examined). Here itself, we may observe that material facts and particulars as to commission of corrupt practice are required to be given in the election petition and not in the replication filed much after the expiry of the period of limitation for filing election petition. The material facts and particulars alleged for the first time in the replication and not forming part of the averments made in the election petition cannot be tried and cannot be made the subject-matter of issues framed by the court. The learned Designated Election Judge has taken care to frame the issues only by reference to the averments made in the election petition and not by referring to the averments made for the first time in the replication. Firstly, the respondent does not have an opportunity of denying the averments - whether facts or particulars, introduced for the first time in replication. Secondly, as already stated material facts and particulars as to corrupt practice are required to be supported by an affidavit in the prescribed pro forma. The replication is not supported by any affidavit in the prescribed pro forma."

In *Jitu Patnaik Vs. Sanatan Mohakud & ors.*, (2012) 4 SCC 194, the Hon'ble Supreme Court held:

"24. We are unable to accept the submission of Mr Mukul Rohatgi. In long line of cases beginning from 1952 this Court has stated time and again that right to contest the election or to question the election by means of the election petition is neither common law nor fundamental right. Instead, it is a statutory right regulated by the statutory provisions contained in the 1951 Act. The 1951 Act is complete and self-contained code within which the rights claimed in relation to an election or election dispute must be found. It is not necessary to refer to all such decisions in this regard but reference to few of them, namely, *N.P. Ponnuswami v. Returning Officer*, *Jagan Nath v. Jaswant Singh*, *Jyoti Basu v. Debi*

Ghosal, Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi and Chandra Kishore Jha v. Mahavir Prasad shall suffice."

[5.1] The instant election petition has been filed by the petitioner challenging the election to the 11th Manipur Legislative Assembly held on 04-03-2017 in respect of the 15 Wangkhei Assembly Constituency. The material facts as stated therein are that a notification dated 07-02-2017 was issued by the Election Commission of India (hereafter referred to as "the ECI") announcing the programme of the election under the provisions of the Representation of the People Act, 1951 (Hereinafter referred to as "the Act"). Accordingly, the Returning Officer issued a public notice inviting nominations from amongst the intending candidates and in response thereto, some persons including the petitioner and the respondent No.1 submitted their nominations. The nominations filed by these three candidates, have been accepted by the Returning Officer without due scrutiny. It is mandatory on the part of the candidates to file an affidavit along with the nomination paper but in his affidavit, the respondent No.1 did not provide the details of his higher educational qualifications correctly except in respect of 12th standard, although he had stated in his affidavit, filed along with the nomination paper in respect of the 10th Manipur Legislative Assembly, that he did his graduation from Punjab University. The applicant/ petitioner applied for a certified copy of the affidavit filed by the respondent No.1 in respect of the 10th Manipur Legislative Assembly Election which was turned down by the Returning Officer. At column 5(ii) of the affidavit, the respondent No.1 had concealed the details of CrI.(C) case No.17 of 2017 pending before the Chief Judicial Magistrate, under Section 138 of the Negotiable Instruments Act, 1881, which was in fact pending at the time of filing the nomination. The cognizance had already been taken by the court in that case. It was found to have been closed on 01-04-2017. In respect of the special criminal trial under Section 21/25A/29/32 NDPS Act and 120B/420/468, 471 & 506 IPC, the respondent No.1 did not furnish the detailed information about it and had filled up the same in wrong column. However, the Returning Officer had accepted the nomination paper of the respondent No.1 improperly. Although the applicant/ petitioner did not raise any objection at the time of scrutiny due to lack of information, he submitted objections dated 23-02-2017 and 25-02-2017 to the Chief Election Commissioner, ECI; the Chief Electoral Officer, Manipur and the District Electoral Officer, Impahl-East against the respondent No.1 for filing false affidavit and concealing material facts thereof. His prayer was to re-examine the nomination paper of the respondent No.1 for disqualification. But no action was taken by them.

[5.2] In his written statement, the respondent No.1 stated that the returning Officer, after scrutinizing the nomination paper submitted by him, had accepted it and no complaint was lodged by the applicant/ petitioner before the Returning Officer at the time of scrutiny. He denied the averment that he had concealed material facts while submitting the nomination paper. As regards his education qualifications, it has been stated that due to bonafide mistake and inadvertence on his part, he had mentioned his educational qualification as BA in his affidavit

filed in respect of 10th Assembly election but he had mentioned in the present affidavit as 12th standard as he came to know that he should mention as 12th standard instead of BA. In respect of the Cril.(C) Case No.17 of 2017, he stated that he was not aware of the pendency of it at the time of filing nomination paper, as the summon was served upon Shri Boyes Kom and not upon him. So far as the special case being Special Trial (CBI) No. 27 of 2016/207 of 2016 is concerned, no charge sheet was filed till the filing of the nomination paper and this fact was clearly mentioned in his affidavit but due to bonafide mistake and inadvertence on the part of the respondent No.1, the same had been mentioned in column 5(i) and not in column 5(ii).

[5.3] In his replication sought to be filed, the applicant/ petitioner has reiterated what has been stated in the election petition and in addition thereto, certain averments including the ones quoted at para 3 above, have been made which, according to him, are explanations to what have been stated in the election petition. The details of the replication are not referred to and not reproduced herein because the issue involved herein relates to the portions of the replication quoted above.

[6] Since there is no and can be no any dispute between the parties as regards the law laid down by the Hon'ble Supreme Court in the decisions relied upon by the counsels appearing for the parties, the short issue that arises for consideration by this court is as to whether the averments made by the applicant/ petitioner in his replication and in particular, the ones quoted at para 3 above, are new facts which have not been taken in the election petition. In order to decide this issue, this court deems it appropriate to examine the pleadings minutely.

[7] After having perused the election petition as a whole, it is seen that the plea of the applicant/ petitioner is that the nomination paper of the respondent No.1 has been accepted by the Returning Officer improperly without examining it carefully. But due to lack of information, he did not raise any objection at the time of scrutiny. In the replication, it has been stated by the applicant/ petitioner that even though he wanted to examine the nomination paper of the respondent No.1 on the day of scrutiny, the Returning Officer declined the examination. Not only the applicant/ petitioner but the other candidate too was not allowed to examine the affidavit filed by the respondent No.1. This averment made in the replication cannot be said to be an explanation but is altogether a different plea and therefore, the same cannot be taken on record. As regards the averments made in para 6 of the replication, the objection raised by the counsel appearing for the respondent No.1 is in respect of two paras as quoted at para 3 above and out of the said two paras, the first one is an explanation with regard to the Cril. (C) Case No.17 of 2017 and cannot be said to be a new plea. The second para is a new plea, in the sense that in his election petition, the applicant/ petitioner did not whisper anything about the avoidance by the respondent No.1 of the receipt of summon/ notice issued by the Chief Judicial Magistrate, Imphal East. Having

heard the learned counsels appearing for the parties and perused the pleadings, this court is of the view that the application can be allowed with the above observations.

[8] In view of the above and for the reasons stated hereinabove, the application for grant of leave to file the replication is allowed in part and accordingly, it is directed that the replication filed by the applicant/ petitioner be taken on record except the following paras thereof:

"3.

It is submitted that on the day of scrutiny the petitioner wanted to examine the nomination paper of the respondent No. 1. However, the Returning Officer of 15-Wangkhei Assembly Constituency had refused the examination of the said affidavit for the reasons not known to the petitioner. Not only that the another candidate of the contesting candidates was also not allowed to see the affidavit filed along with nomination paper of the contesting candidates by the Returning Officer of 15-Wangkhei Assembly Constituency.

.....

6.

It is further submitted that the respondent No. 1 has a higher circle in the Manipur Police Department and as such he might have been avoided the summons/ notice issued by the Ld. Chief Judicial Magistrate/ Imphal West."