

(1999) 02 GAU CK 0018
Gauhati High Court (Imphal Bench)
Case No: Civil Rule No. 465 of 1998

Md. Siraj Ahamed

APPELLANT

Vs

The State Election Commission
and Others

RESPONDENT

Date of Decision: Feb. 3, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Manipur Panchayati Raj (Election) Rules, 1995 - Rule 71(1)
- Manipur Panchayati Raj Act, 1994 - Section 103, 106

Citation: AIR 2000 Guw 101 : (1999) 3 GLT 308

Hon'ble Judges: N.S. Singh, J

Bench: Single Bench

Advocate: M. Kotishwor Singh, for the Appellant; N. Promod Chandra Singh and H. Raghumani Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.S. Singh, J.

The order dated 19 May, 1998 passed by the learned Member, Election Tribunal, Imphal, Manipur in Election petition Misc. Case No. 1 of 1998 (Ref: Election Petition No. 1 of 1998) is the subject matter under challenge in this writ petition.

2. Supporting the case of the writ petitioner. Mr. N. Kotishwor Singh, the learned counsel contended inter alia, that the writ petitioner, the respondent No.4 and other 4(four) persons were the contesting candidates In the Election to the Pradhan of seat No.7/18, Kairang Khomidok Gram Panchayat and that the election was held smoothly on 31-1-1997; the writ petitioner was declared to have been elected by over 60 (sixty) votes more than his nearest rival candidate, namely, the respondent

No.4 and accordingly, on the same day a certificate of election was issued by the respondent No. 3 in favour of the petitioner but the petitioner heard that his election has been nullified by the respondent No.3 and subsequently, a notice was issued on 8th February, 1997 by the respondent No.3, thereby cancelling the certificate issued in favour of the writ petitioner as null and void, thus notifying the respondent No.4 as the returned candidate for the said. Gram panchayet: and being aggrieved by the impugned notification dated 8th February, 1997, the writ petitioner had challenged the validity of the said notification dated 8th February, 1997 before the Election Tribunal, Manipur, coupled with a prayer for declaring the Election Certificate dated 6th February, 1997 issued in favour of the writ petitioner as valid one and for declaring the subsequent Election Certificate dated 8th February, 1997 issued in favour of the respondent No.4 as null and void. According to the writ petitioner, he filed a miscellaneous application being Election petition Misc. case No. 1 of 1998 for grant of temporary injunction against the respondents restraining them to administer the oath of office as Pradhan of the said Gram Panchayat till the disposal of the main election petition under Order 39 Rules 1.2 and 3 read with Section 151 of the CPC and after hearing the parties the learned Member of the Election Tribunal, Manipur dismissed the application by holding that the Election Tribunal has no jurisdiction or power to entertain the present application filed under Order 39 read with Section 151 of the Code of Civil Procedure, Mr. Kotishwor, the learned counsel argued that the learned Member of the Election Tribunal has erred in holding that Election Tribunal is not a Civil Court inasmuch as the matter pertaining to grant of temporary injunction for restraining the taking of oath of the respondent No.4 is directly related to election matter for which Section 103 of the Manipur Panchayati Raj Act conferred upon the Election Tribunal to deal with any other election matter and rather, the Election Tribunal has jurisdiction to pass appropriate order under Order 39 or Section 151 of C.P.C. It is also argued that Rule 71 of the Manipur Panchayati Raj Act (Election) Rules, 1995 provides that the procedure applicable under the CPC 1908 will be applicable, which includes powers u/s 151 and Order 39 C.P.C. and that the Rules under the Manipur Panchayati Raj (Election) Rules, 1995 cannot restrict the scope of the Election Tribunal as has been provided u/s 103 of the Manipur Panchayati Raj Act, 1995. Mr. Kotishwor, learned counsel contended as the inherent power conferred by Section 151 C.P.C. has not been excluded by the Panchayati Raj Act, the Election Tribunal has jurisdiction to pass appropriate orders for grant of injunction or any interim order restraining taking of oath by the respondent No.4. It is also submitted by the learned counsel that where Section 103 of the Manipur Panchayati Raj Act conferred a Jurisdiction to deal with any other election matter, it impliedly also grant the power of doing or deciding a matter pertaining to an application under Order 39 C.P.C. or Section 151 C.P.C. but the learned Member of the Election Tribunal had failed to exercise jurisdiction conferred upon it and as such the impugned order deserves to be quashed and necessary direction may be made to the learned Tribunal for deciding the matter pertaining to temporary injunction on its merit.

3. At the hearing Mr. N. Promode Chandra Singh, learned counsel for the respondent Nos. 1, 2 and 3; the writ petitioner nowhere in his petition claimed or challenged the validity of the nos. of votes secured by respondent No.4 and as such the claim of the writ petitioner is quite unsustainable and also unjustifiable. According to Mr. N. Promode Chandra Singh Election Tribunal constituted u/s 103 of the Manipur Panchayati Raj Act, 1994 is not a Court but a creature of statute and as such the Election Tribunal has only such powers as conferred on it by statute expressly or by necessary implication and it has none of the inherent powers of an ordinary Court. It is also submitted by the learned counsel for the respondents that according to Rule 71(1) of the Manipur Panchayati Raj (Election) Rules, 1995, "Every dispute relating to election shall be enquired into by the Election Tribunal as early as may be in accordance with the procedure applicable under the CPC code 1908 to the Trial or Suits", and as such the language and expression of this Rule is quite clear that the Election Tribunal may borrow or apply the procedures available in the CPC while dealing with an Election petition. Supporting the case of the respondents Mr. Promode Chandra Singh, learned counsel had relied upon certain decisions and judgments rendered by the Apex Court as well as by different High Courts reported in [K. Kamaraja Nadar Vs. Kunju Thevar and Others](#), and contended that the present writ petition is not maintainable as remedy in a election petition to be presented after the election is over, there is no remedy provided at any intermediate stage in view of the facts and circumstances of the present case. Mr. H. Raghurani Singh, learned counsel appearing for the respondent No.4 supported the submissions and contentions advanced by Mr. N. Promode Chandra Singh, learned counsel for the respondent Nos. 1, 2, and 3.

4. Upon hearing the learned counsel for the parties I am of the view that the present writ petition is devoid of merits with the following reasons:

Power and jurisdiction to grant temporary injunction or, to grant it under Order 39 Rules 1, 2, and 3 entirely vests upon the competent Civil Court but not to the Election Tribunal which is not a Civil Court as enshrined u/s 103 read with Section 106 of the Manipur Panchayati Raj Act, 1994; and apart from it, an election dispute / contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to common law and the Election Tribunal do not possess common law power and jurisdiction but it has only such power as are conferred on it by statutes expressly or by necessary implication and, it has no inherent powers of a Civil Court. There is also no provisions under Manipur Panchayati Raj Act and Rules conferring the Election Tribunal for grant of temporary injunction but only the Rule 71(1) of the Manipur Panchayati Raj (Election) Rules, 1995 provides that every dispute relating to election shall be enquired into by the Election Tribunal as early as may be in accordance with the procedure applicable under the CPC 1908 to the Trial of Suit and it does not mean that all the provisions laid down under CPC are applicable to the election dispute and apart from it, in the absence of any express provisions under the related Act and Rules, the Election Tribunal shall have no power and

jurisdiction to invoke the provisions of law laid down under Order 39 or Section C.P.C. In my considered view the learned Member of the Election Tribunal have rightly made the following observations;

"4) Rule 74 of the Manipur Panchayati Raj Rules, 1995 provides the conditions under which the Election of the returned candidate may be declared as void. Rule 75 provides the nature of the declaration to be made by the Election Tribunal at the conclusion of the enquiry of the election disputes.

A combined and harmonious reading of the provisions of Part-VI of the Manipur PanchayatiRaj (Election) Rules, 1995 reveal that the Election Tribunal constituted u/s 103 of the Manipur Panchyati Raj Act. 1994 is only empowered to enquire into as to whether the election of any candidate was made in violation of the conditions given in Rule 74 and after the enquiry to declare such election as void if the tribunal is of the opinion that the election was in violation of the provisions of the above Rule;

5) the Election Tribunal has not been vested any power or jurisdiction to restrain any candidate or candidates who was/were declared by the State Election Commission and notified as elected candidate or candidates, from administering the oath of the office for which he or she was declared as elected ;

6) the petitioner filed the present application under Order 39 read with Section 151 of the Code of Civil Procedure, it is reiterated that the grant of injunction is within the discretion of the competent Civil Court or such Court having the inherent judicial power."

5. It is true that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such Acts, or employing such means as are essentially necessary to its execution. At this stage, I hereby recalled the legal maxim namely, "Cui jurisdictio data est, ea quoque coneessa esse videntur, sine quibus jurisdictio explirari non potest" meaning thereby, to whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. The grant of jurisdiction implies the grant of all powers necessary to its exercise. Here, in the instant case, the Election Tribunal can deal with election dispute and any other election matter borrowing or applying the required procedure available in the CPC while dealing with an election petition and it should be noted that the word "procedure" shall never be interpreted and it shall also cannot make the inclusion of the powers or provisions which are not specifically conferred upon the Tribunal under the related Acts and Rules as discussed above. The power for grant of temporary injunction or not to grant of it are not essentially necessary while deciding an election petition on its merit inasmuch as such power or inherent powers are not provided in the related Acts and Rules and over above this, the Election Tribunal do not possess common law power and that grant of those powers as discussed above are not necessary to its exercise or to its execution.

6. The Manipur Panchayati Raj Act and Rules provide for only one remedy, that remedy being an election petition to be presented after the election is over and as such there is no remedy provided at any intermediate stage. In this regard, a reference can be made to a decision of the Apex Court rendered in [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), wherein the Apex Court held thus, (at p. 69 of AIR)

"It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J. in *Wolver-hampton New Water Works Co. v. Hawkesford* (1859) 6 C. B. 336, in the following passage :

" There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law ; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to." The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd*; (1919) A. C. 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tabago v. Gordon Grant & Co.* (1935) A. C. 532 and AIR 1940 105 (Privy Council) and it has also been held to be equally applicable to enforcement of rights (see *Hurdutral v. Off. Assignee of Calcutta*) (1948) 52 C. W.N. 343. That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

7. Inherent powers arc of Court and an Election Tribunal is not a Court as they are created by the statute to decide certain disputes and are bound to decide them strictly according to law after following the prescribed procedure and have jurisdiction to do only that they are expressly empowered to do. Only those Courts which have general jurisdiction to do justice under the common law are competent to pass any order that have considered necessary in the interest of justice, even though they are not covered by express provisions of the law of procedure by

invoking its inherent powers/jurisdiction. Reference had already been made to the decision of the Apex Court reported in [K. Kamaraja Nadar Vs. Kunju Thevar and Others](#), which explain the nature of Election Tribunal. In my considered view, it would be proper exercise of discretion by the High Court either under Article 226 or 227 of the Constitution of India to decline to interfere with the impugned order as the impugned order is not an order passed by the Election Tribunal, Manipur without jurisdiction and rather it is a reasoned order.

Considering all these existing facts and circumstances of the case, I am of the view that the writ petitioner will have a remedy to question every step and action and decisions in the electoral process and every order that has been passed in the process of election before the Election Tribunal. Manipur and this Court while exercising its jurisdiction under Article 226 or 227 of the Constitution of India cannot consider the correctness, legality or otherwise of the impugned order passed by the learned Member of the Election Tribunal. Manipur at this stage as the Election Tribunal, Manipur has no jurisdiction to entertain an application under Order 39 or Sec. 151 of the C.P.C.

In the result, this writ petition is dismissed with costs of Rs. 1,000/-. Interim order passed by this Court on 10 June, 1998 stands vacated.

Despite the dismissal of this petition, I am constrained to make the following observations and directions.

The Election Tribunal, Manipur is directed to dispose of the related election petition as early as possible preferably within a period of three months from the date of receipt of this judgment and order in accordance with law. The parties shall appear before the Election Tribunal, Manipur on 8-2-1999.