

IN THE HIGH COURT OF SIKKIM AT GANGTOK.

Election Petition No. 14 of 2004.

Shri Nar Bahadur Bhandari, S/o late Balaram Bhandari, Resident of Samdur Busty, P.O. & P.S. Ranipool, East Sikkim. 31-Gangtok Assembly Constituency.

...Petitioner

-Versus-

Shri Narendra Kumar Pradhan, Son of late Ram Prasad, M.L.A., 31-Gangtok Constituency. and 2 others.

...Respondents

For the petitioner:

Mr. R.N. Mittal, learned senior counsel assisted by Mr. M.Z. Ahmed, ld. Sr. Advocate, Mr. D.K. Singh and Smt. B. Dutta learned counsels.

For the respondents: Mr. Niloy Dutta and Mr. S.P. Wangdi, learned senior counsels assisted by Mr. Surajit Bharali and Mr. O.P. Bhandari, learned counsels.

Present: Hon'ble Mr. Justice N.S. Singh, Chief Justice (Acting).

Date of Order: 19th April 2005.

ORDER

SINGH, C.J. (Actg.)

This is to dispose of the matter/issue as to whether this Court shall take up and hear the preliminary objection as



raised by the respondent No.1 regarding the maintainability of the present Election Petition or not, before examination of the witnesses of the parties. At the hearing, Mr. Niloy Dutta, learned senior counsel for the respondent No. 1 contended that the preliminary issue pertaining to the maintainability of the present Election Petition may be taken up first, as the Election Petition does not disclose the cause of action. Supporting his argument, Mr. Niloy Dutta, learned senior counsel relied upon the decision of the Apex Court rendered in Dhartipakar Madan Lal Agarwal vs. Shri Rajiv Gandhi reported in AIR 1987 SC 1577 and contended that if a preliminary objection is raised before the commencement of the trial, the court is duty bound to consider the same and, it need not postpone the consideration of it at the subsequent stage of the trial. It is also argued that there are other same and similar cases numbering nine viz. Election Petition Nos. 04/2004, 06/2004, 08/2004, 10/2004, 13/2004, 15/2004, 17/2004, 18/2004 and 20/2004 wherein the preliminary objection pertaining to the maintainability of the Election Petitions were taken up by this Court.

2. Mr. R.N. Mittal, learned senior counsel appearing for the petitioner submitted that the petitioner had already filed the list of witnesses and related documents and this Court was pleased to fix the case on 3rd December 2004 for examination of the witnesses of the petitioner and the witnesses were also



present on that day for examination and, if the Court once fixed the date for examination of witnesses, it would not be just and proper to take up the preliminary objection regarding the maintainability of the Election Petition as raised by the respondents and there are sufficient materials on record for sustaining the cause of action of the Election Petition.

- 3. It is not disputed that there are other nine Election Petitions, which are similarly situated with the present Election Petition. In those nine Election Petitions being Election Petition Nos. 04/2004, 06/2004, 08/2004, 10/2004, 13/2004, 15/2004, 17/2004, 18/2004 and 20/2004, this Court took up preliminary objection regarding the maintainability of those Election Petitions as raised by the respondent No. 1 and the matter was heard by this Court and the same is still pending. This is an admitted position.
- 4. In a case between Samar Singh, Appellant vs. Kedar Nath and others, Respondents reported in AIR 1987 SC 1926 the Apex Court held that the Court in exercise of its power under Order 7 Rule 11 CPC can reject the election petition even after settlement of issues, if the election petition does not disclose the cause of action. In view of the above proposition of law this Court require to see and examine as to whether the present Election Petition disclosed the cause of action or not. I am of the view that, what is the difficulty for



the parties to examine this issue for just determination of the real points in controversy between the parties. In a case between P.R. Sukeshwala and another, Petitioners vs. Dr. Devadatta V.S. Kerkar and another, Respondents reported in AIR 1995 Bombay 227, the Bombay High Court held that the petition regarding the maintainability of application or rejection of plaint cannot be discarded merely because it was filed after several adjournments. In another case between C. Krishna Yadav, Petitioner vs. Ale Narendra and others, Respondents reported in AIR 1996 Andhra Pradesh 231, the Andhra Pradesh High Court held that the objection as to non-compliance of mandatory requirements of Section 83 (1) (a) of Representation of the People Act can be entertained even after written statement is filed and petition is posted for trial.

5. On perusal of the available materials on record and after proper application of my mind in the matter, I am of the view that no prejudice shall cause to the parties if the preliminary objection regarding maintainability of the present Election Petition is taken up inasmuch as the party should be afforded reasonable opportunity of being heard on it and apart from that, even the Court fixed the date for examination of witnesses of the petitioner on 3rd December 2004 it shall not stand on the way of the Court to take up and hear the preliminary objection regarding the maintainability of the Election Petition to secure the ends of justice. Accordingly, it



is ordered that the preliminary objection as raised by the respondent No. I regarding the maintainability of the present Election Petition shall be taken up first in order to determine the real points in controversy between the parties; for which this case be listed on 18.05.2005 for hearing on preliminary objection.

(N.S. Singh) Chief Justice (Acting) 19.04.2005