

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

MC(EI. Petn.) No. 5 of 2023

(*Ref:-* EI. Petn. No. 13 of 2022)

SHOUGRA
KPAM
DEVANAN
DA SINGH

Digitally signed
by
SHOUGRAKPAM
DEVANANDA
SINGH
Date: 2023.05.29
11:32:02 +05'30'

Mr. Ahanthem Shanjoy Singh, aged about 46 years, S/o Ahanthem Surchandra Singh, a permanent resident of Wangoo Sabal, Wangoo Ahallup, P.O. Moirang & P.S. Kumbi, Bishnupur District, Manipur – 795133.

... Applicant

-Versus-

1. Mr. Sanasam Premchandra Singh, aged about 46 years, S/o (Late) Jabamjao @ Sanasam Jaramajao Singh, Kumbi Salangkonjin Part-2, Near Public Community Hall, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
2. Mr. Ningthoujam Mangi Singh, aged about 71 years, S/o (Late) Ningthoujam Ibomcha Singh, Kumbi Ward No. 9, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
3. Dr. Khagembam Romesh Singh, aged about 45 years, S/o Shri Khangembam Amrita Singh, Kumbi Khuga Wangma, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
4. Mrs. Naorem Sorojini Devi, aged about 43 years, W/o Shougrakpam Chandrakmar Singh, Saiton Maning Leikai, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
5. The Returning Officer, 29-Kumbi, Assembly Constituency, Manipur (of the 12th Manipur Legislative Assembly Election, 2022), Bishnupur at DC Office-795126.
6. The Principal, P.L.C. Academy, Yairipok, P.O. & P.S. Yairipok, District-Thoubal, Manipur-795149.
7. Uttar Purva Siksha Board, Guwahati, Assa (Bharatiya Educational Birubari, G.B. Market Complex, 1st Floor, GHY-16, Assam.
8. The Union of India, represented by the Secretary, Ministry of Human Resource Development, Department of School Education & Literacy, Govt. of India, Shastri Bhawan, New Delhi – 110001.

9. The State of Manipur, represented by the Commissioner/ Secretary (Education-S), Govt. of Manipur, at Imphal-795001.

... **Respondents**

-AND-

IN THE MATTER OF:

Election Petition No. 13 of 2022

Mr. Ahanthem Shanjoy Singh, aged about 46 years, S/o Ahanthem Surchandra Singh, a permanent resident of Wangoo Sabal, Wangoo Ahallup, P.O. Moirang & P.S. Kumbi, Bishnupur District, Manipur – 795133.

... **Petitioner**

-Versus-

1. Mr. Sanasam Premchandra Singh, aged about 46 years, S/o (Late) Jabamjao @ Sanasam Jaramajao Singh, Kumbi Salangkonjin Part-2, Near Public Community Hall, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
2. Mr. Ningthoujam Mangi Singh, aged about 71 years, S/o (Late) Ningthoujam Ibomcha Singh, Kumbi Ward No. 9, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
3. Dr. Khagembam Romesh Singh, aged about 45 years, S/o Shri Khangembam Amrita Singh, Kumbi Khuga Wangma, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
4. Mrs. Naorem Sorojini Devi, aged about 43 years, W/o Shougrakpam Chandrakmar Singh, Saiton Maning Leikai, P.O. Moirang & P.S. Kumbi, Dist. Bishnupur, Manipur-795133.
5. The Returning Officer, 29-Kumbi, Assembly Constituency, Manipur (of the 12th Manipur Legislative Assembly Election, 2022), Bishnupur at DC Office-795126.
6. The Principal, P.L.C. Academy, Yairipok, P.O. & P.S. Yairipok, District-Thoubal, Manipur-795149.
7. Uttar Purva Siksha Board, Guwahati, Assa (Bharatiya Educational Birubari, G.B. Market Complex, 1st Floor, GHY-16, Assam.
8. The Union of India, represented by the Secretary, Ministry of Human Resource Development, Department of School Education & Literacy, Govt. of India, Shastri Bhawan, New Delhi – 110001.

9. The State of Manipur, represented by the Commissioner/ Secretary (Education-S), Govt. of Manipur, at Imphal-795001.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the Applicant	::	Mr. Serto T. Kom, Advocate
For the respondents	::	Mr. N. Mahendra, Advocate; Mr. Ajoy Pebam, Advocate & Mr. Leo Rommel, Advocate
Date of Hearing	::	02-05-2023
Date of Judgment	::	29-05-2023

J U D G M E N T

[1] Heard Mr. Serto T. Kom, learned counsel appearing for the applicant, Mr. N. Mahendra, learned counsel appearing for the respondent No. 1, Mr. Ajoy Pebam, learned counsel appearing for the respondent No. 2 and Mr. Leo Rommel, learned counsel appearing for the respondent No. 3. None appeared for the other remaining respondents.

[2] The present application had been filed under Order VI Rule 17 of CPC read with Section 87 of the Representation of People Act, 1951 (hereinafter referred to as "**RP Act**", for short) with a prayer to allow amendment of the connected El. Petn. No. 13 of 2022 filed by the present applicant. For ready reference, the prayer made in the present application are reproduced hereunder:-

"P R A Y E R

In the premises stated above, it is prayed that your Lordships be pleased to allow the amendment of the above referred Election Petition No. 13 of 2022, by;

- (1) *Deleting the words and numerical from the above referred Election Petition which is reproduced hereunder:- "... and Sec. 101" from Page No. 1 of the Election Petition;*

- (2) *Deleting the words at Page No. 2 of the Election Petition which is reproduced hereunder:-*

“... and to declare the petitioner Janata Dal (United) candidate of the said 29-Kumbi, Assembly Constituency, Manipur, ELECTED.”

- (3) *Deleting the words at Para 2 Page No. 6 of the Election Petition, which is reproduced hereunder:- and to declare the petitioner Janata Dal (United) candidate of the said 29-Kumbi, Assembly Constituency, Manipur, ELECTED.”*

- (4) *Deleting the Prayer No. (ii) at Page 28 of the said plaint which is reproduced hereunder:-*

“(ii) Declare the Petitioner, Janata Dal (United) Candidate of the said 29-Kumbi, Assembly Constituency, Manipur, ELECTED,” and

- (5) *To correct Prayer No. (iii) as Prayer No. (ii) instead of Prayer No. (iii) in the event of allowing the amendment.”*

[3] The brief background which culminates in filing the present application is that the present applicant filed Election Petition No. 13 of 2022 before this court seeking for granting the following reliefs:-

“P R A Y E R

In the above stated facts, it is prayed that your Lordships be pleased to;

- (i) *Declare the election of the Returned Bharatiya Janata Party (BJP) Candidate/ Respondent No. 1, Shri Sanasam Premchandra Singh of 29-Kumbi, Assembly Constituency, Manipur, in the 12th Manipur Legislative Assembly Election, 2022 as VOID; and*
- (ii) *Declare the petitioner, Janata Dal (United) candidate of the said 29-Kumbi, Assembly Constituency, Manipur, ELECTED.*
- (iii) *Pass any other order or orders as your Lordships may deem fit and proper in the facts and circumstances of the case.*

And for this Act of kindness, the petitioner as duty bound, shall ever pray.”

[4] Respondents No. 1, 2, 3 and 8 in the said El. Petn. No. 13 of 2022 filed their respective written statements and the petitioner also filed replication to the written statements filed by the respondents No. 1 and 3. As respondents No. 4 to 7 did not appeared before this court despite service of notice, the election petition was proceeded ex-parte against them. After exchange of pleadings are complete, the said election petition was fixed on 10-01-2023 for framing of issues by an order dated 14-12-2022 passed by this court. The respondent No. 1 in the main El. Petn. No. 13 of 2022 filed El. Recr. Petn. No. 7 of 2022 and the respondent No. 2 in the said main El. Petn. No. 13 of 2022 also filed El. Recr. Petn. No. 8 of 2022. After exchange of pleadings amongst the parties in the said two election recrimination petitions are completed, the said two cases were also fixed for framing of issues vide order dated 17-10-2022 and 14-11-2022 passed by this court. Before framing of issues in connection with the main election petition as well as the two election recrimination petitions, the applicant filed the present application with a prayer for allowing amendment of the main El. Petn. No. 13 of 2022.

[5] The grounds given by the applicant for seeking such amendment are found in para 3 of the present application, which are reproduced hereunder for ready reference:-

“3. That the above mentioned portions sought to be amended were added in the above referred Election Petition by overlooking the facts and law for seeking such relief and as such, the deletion of the same are necessary for the purpose of determining the reals question in controversy between the parties without having to decide the issues to be framed arising out of the above Prayer No. (ii) which is sought to be deleted. In the event of allowing the deletion of the Prayer No. (ii) the Prayer No. (iii) would become Payer No. (ii), hence the prayer for the above mentioned amendment.

[6] At the time of consideration of the present application, Mr. Serto T. Kom, learned counsel appearing for the applicant advanced his argument on the basis of a totally new ground which are not pleaded in the present application. By referring to the provisions of Section 101 of RP Act and by relying on the judgment rendered by the Hon'ble Apex Court in the case of **"Prakash Khandre Vs. Dr. Vijay Kumar Khandre & ors."** reported in **(2002) 5 SCC 568**, It has been submitted by Mr. Serto T. Kom, learned counsel appearing for the applicant that the ingredients of Section 101 of the RP Act for declaring the candidate other than the Returned Candidate are, firstly, error in counting valid votes and if it is found that in fact the election petitioner or such other candidate received a majority of valid votes, he is to be declared as elected and secondly, votes obtained by the Returned Candidate were obtained by corrupt practice and but for such votes the petitioner or such other candidate would have obtained a majority of valid votes. The learned counsel further submitted that the first ingredient for declaring the election petitioner or other candidate to have been duly elected depends upon error for various reasons in counting of valid votes and if it is found that in fact the petitioner or such other candidate received a majority of valid votes, he is to be declared elected. It has also been submitted that the second ingredient provides for establishing that the votes obtained by the Returned Candidate were obtained by corrupt practice and but for such votes the petitioner or such other candidate would have obtained a majority of valid votes.

[7] The learned counsel for the applicant submitted that the election petitioner due to inadvertent mistake failed to mention any material facts, more specifically any of the two ingredients stipulated under Section 101 of the RP Act, which would amount to the cause of action for allowing the prayer No. (ii) made in the election petition, i.e., for declaring the petitioner, Janata Dal (United) candidate elected from 29-Kumbi Assembly Constituency in the 12th Manipur Legislative Assembly Election, 2022. It has also been submitted that in the absence of any material fact or cause of action in the election petition for claiming to declare the petitioner elected, this court has ample power to strike off the prayer No. (ii) made in the election petition to avoid wastage of precious time of this court in the trial in connection with the said prayer No. (ii).

[8] By referring to the provisions of Section 87 of the RP Act and by relying on the judgment of the Hon'ble Apex Court rendered in the case of **"Azhar Hussain Vs. Rajiv Gandhi"** reported in **1986 (Supp.) SCC 315**, it has been submitted by the learned counsel appearing for the applicant that the procedure provided under the Code of Civil Procedure (CPC) applies to the trial of election petition and that the court trying the election petition can act in exercise of the procedure provided under the CPC including O-VI R.-7 and O-VII R-11(a). It has also been submitted that the court dealing with the election petition is empowered to strike off or delete pleadings at any stage of the proceeding as provided under O-VI R-16 of the CPC, if the pleadings does not disclose any cause of action or if such pleadings are unnecessary or if such pleadings may delay the trial of the

petition. In support of his contention, the learned counsel cited the case law **“Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi”** reported in **1987 (Supp.) SCC 93**.

[9] Mr. Ajoy Pebam, learned counsel appearing for the respondent No. 2 submitted that under Section 82 of the RP Act, it is provided that in an election petition where the petitioner, in addition to claiming declaration that the election of all or any of the Returned Candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the Returned Candidates shall be joined as respondents in his election petition. The learned counsel submitted that as the present applicant, in addition to claiming the declaration that the election of the Returned Candidate is void, also claims a further declaration that he himself has been duly elected, all the contesting candidates including the respondent No. 2 have been impleaded as respondents in the election petition. The learned counsel further submitted that since the respondent No. 2 had been impleaded in the election petition, the respondent No. 2 had already filed his written statement to the said election petition. Mr. Ajoy Pebam, learned counsel also submitted that under Section 97 of the RP Act there is provision for filing Recrimination Petition if in an election petition a claim has been made for declaring that any candidate other than the Returned Candidate has been duly elected. The learned counsel submitted that as provided under Section 97 of the RP Act, not only the Returned Candidate but the

respondent No. 2 has also filed Recrimination Petition and in both the Recrimination Petitions, exchange of pleadings are completed and the matters have already been fixed for framing of issues. It has also been submitted by Mr. Ajoy Pebam that under Section 98 of the RP Act, it is provided that at the conclusion of the trial of an election petition, the High Court shall make an order, inter alia, 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. The learned counsel strenuously submitted that if the prayer made by the applicant in the present application is allowed, it will have the grave consequence of nullifying all the actions taken by the respondents in connection with the election petition and Recrimination Petitions in terms of the provisions provided under Sections 82, 87, 98, etc. of the RP Act, which is not permissible in law.

The learned counsel cited the following case laws:-

- 1) **“K. Kamaraja Nadar: Mariappan: M.R. Masani Vs. Kunju Theivar: V.R. Nedunchezhiyan: Election Tribunal, Ranchi”** reported in **1958 Legal Eagle (SC) 59.**

“33. As regards the amendment of a petition by deleting the averments and the prayer regarding the declaration that either the petitioner or any other candidate has been duly elected, so as to cure the defect of non-joinder of the necessary parties as respondents, we may only refer to our judgment about to be delivered in Mallappa Basapa v. Basavaraj Ayyappa, Civil Appeal No. 76 of 1958: (A.I.R. 1958 SC 698)(D) where the question is discussed at considerable length. Suffice it to say here that the Election Tribunal has no power to grant such an amendment be it by way of withdrawal or abandonment of a part of the claim or otherwise, once an Election Petition has been presented to the Election Commission claiming such further declaration.”

“34. Considering Civil Appeal No. 763 of 1957 in the light of the observations made above, we find that Sundaraju Pillai whose name was included in the list of contesting candidates prepared and published by the returning officer under S. 38 but who retired from the contest under S. 55A(2) before the commencement of the poll was included in the expression “contesting candidate” used in S. 82 and was by reason of the first respondent claiming a further declaration that the second respondent had been duly elected, a necessary party to the petition. Inasmuch as he was not joined as a respondent, the petition was liable to be dismissed under S. 90(3) of the Act.”

“35. This defect could not be cured by any amendment of the petition seeking to delete the claim for such further declaration and the Election Tribunal was clearly in error in allowing such amendment on the grounds disclosed in I.A. No. 3 of 1957 or otherwise.”

2) **“Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa & ors.”**
reported in **AIR 1958 SC 698.**

“16. If the withdrawal of a petition cannot be permitted and any person who might have been a petitioner is entitled to continue the proceedings, on a parity of reasoning, the withdrawal of a part of the claim also could not be permitted without allowing another person who might have been a petitioner an opportunity of proceeding with that part of the claim by substituting himself in place and stead of the petitioner who withdraws or abandons the same. If the constituency as a whole is interested in the petition presented before the Election Tribunal no such withdrawal or abandonment of a part of the claim could ever be permitted without giving an opportunity to any person who might have been a petitioner to continue the proceedings and pursue the petition to its logical conclusion.”

“17. The provisions of Order 23 Rule 1 of the Code of Civil Procedure also contain inherent evidence which militates against this contention. Order 23 Rule 1 sub-rule (2) provides for liberty being given by the Court to a party withdrawing or abandoning a part of his claim to file a fresh suit on the same cause of action, if so advised. In the very nature of things such liberty could not be reserved to a petitioner in an election petition. The provisions above referred to in regard to withdrawal of petitions do not provide for the same and if they do not do so, can it be urged that the provisions of Order 23 Rule 1 sub-rule (2), though they may not apply to the cases of withdrawal of petitions may nevertheless apply where the petitioner withdraws or abandons

a part of his claim? If these provisions do not apply to the withdrawal or abandonment of a part of the claim in the case of an election petition, could it then be urged that nevertheless the other provisions of Order 23 Rule 1 would apply and the petitioner would be at liberty to withdraw or abandon a part of his claim?"

"18. On a due consideration of all these provisions, we are of opinion that the provisions of Order 23 Rule 1 do not apply to the election petitions and it would not be open to a petitioner to withdraw or abandon a part of his claim once an election petition was presented to the Election Commission, more so when such a withdrawal or abandonment of a part of the claim would have the effect of depriving the returned candidate or any other party to the petition of the right of recrimination which had accrued to him under Section 97 of the Act."

3) **"Harnam Singh Vs. Tirath Singh"** reported in 1963 Legal Eagle (P&H) 377

"9. An election contest, as is well-settled, is not an action at law nor is it a suit in equity. It is a purely statutory proceeding created and governed by statute. Turning to the Act, therefore, we find that Section 90 which prescribes the procedure to be followed by the Tribunal provides, inter alia, for trial of every election petition by the Tribunal to be as nearly as possible in accordance with the procedure applicable under the CPC to the trial of suits, but this is expressly made subject to the provisions of the Act and the rules made thereunder. The provision of Order 6, Rule 17 of the Code would thus be attracted provided it is not inconsistent with any provision of the Act or the rules. The amendment of written statement would accordingly be governed by Order 6, Rule 17 of the Code and the considerations which control the amendment of election petitions by incorporating therein fresh charges would perhaps not stand in the way of the prayer for adding a new plea in defence. But apart from this consideration, all other facts which the Courts are enjoined or expected to keep in view in allowing or disallowing amendments would have to be borne in mind. The power of amendment of pleadings conferred by the Code is undoubtedly very wide and according to the language of Order 6, Rule 17, amendments may be allowed at any stage of the proceedings. At the same time, the power of amendment has been described to be discretionary. At the same time, the power of amendment has been described to be discretionary. In S.M. Banerjit Vs. Sri Krishna Agarwal, Subba Rao, J., speaking for the Court, spoke thus:

At this stage we must guard against one possible misapprehension. Courts and tribunals are constituted to do justice between the parties within the confines of statutory limitation, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. We must make it clear that within the limits prescribed by the decisions of this Court the discretionary jurisdiction of the Tribunals to amend the pleadings is as extensive as that of a Civil Court. The same well-settled principles laid down in the matter of amendments to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal.

10. *While considering the question of amendment of (sic)eadings in an election contest, in my opinion, it would be legitimate for the Tribunal not to ignore but (sic)o give due weight to the consideration of expeditious disposal of election petitions. In Section 90, the pro(sic)viso to Sub-section (1) empowers the Tribunal for reasons to be recorded in writing to refuse to examine any witness if, in its opinion, it is not material for the decision of the petition and the party tendering him is doing so, inter alia, with a view to delay the proceedings, Sub-section (6) makes an express provision that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within 6 months from the date of publication of the copy of the petition in the Official Gazette. Similarly, in Section 116-A, Sub-Section (5), it is provided that endeavour should be made to determine the appeal finally within 3 months from the date on which the memorandum of appeal is presented to the High Court. In the background of these provisions, in my opinion, amendment of written statements in an election contest cannot be treated with the same liberality with which the Court may be inclined to treat amendment of written statement in an ordinary suit, the element of delay being of fundamental importance in the disposal of an election petition.*

- “11. *In the case in hand a copy of the election petition in question was directed to be published on 18th April, 1962 and the written statement on behalf of the appellant (who was a Respondent in the election petition) was filed on 16th July, 1962, though it should have been filed on 9th July, 1962. One weeks' time was granted to him on payment of costs. Issues were settled on 21st July, 1962 and 8th September, 1962, was fixed for the evidence of the petitioners on which date, as already noticed, the application for amendment was presented. No cogent ground was disclosed in the application for*

the omission of this plea from the written statement filed on 16th July, 1962, the only excuse mentioned being that the matter had inadvertently not been raised in the written statement. Even this reason was not supported by any affidavit; nor was the application verified. In these circumstances, in my opinion, the Tribunal was fully justified in disallowing the amendment, for, however, wide the power to allow amendment of written statement in an election contest and however liberal its exercise may be described to fee, such amendment is not intended by law to be claimed as of right and for the mere asking, without establishing good grounds and justice in its support. If this were not so, then a returned candidate can be by merely seeking successive amendments of his written statement on payment of costs prolong the disposal of the election petition for the full or almost full duration of the Legislature and make the challenge to his election, at least for such duration, completely infructuous. This certainly cannot be, and, is, in my humble opinion, not the intention of the law. Justice delayed in election contest might well be justice defeated. In my opinion, therefore, the amendment sought in the instant case could not have been allowed without injustice to the Petitioner.

“12. As suggested by the Supreme Court in Banerji's case (5) the order disallowing amendment is passed in the exercise of discretionary jurisdiction. Though this jurisdiction, in as extensive as that of a Civil Court, nevertheless, as is the case with all discretionary jurisdictions, is has to be exercised in accordance with the well-recognised judicial principles in order to promote the cause of justice; in the case in hand no such recognised judicial principle is shown to have been violated by the Tribunal; nor am I convinced that the, amendment sought would have substantially promoted the cause of justice or that the impugned order has occasioned any failure of justice. It is true that Section 116-A does not in terms place any restriction on the power of the Court of appeal in reviewing the order appealed against and a discretionary order is as much open to scrutiny and review as any other order; at the same time it is clear that unless an appellate Court is satisfied that a discretionary jurisdiction has been wrongly exercised in violation of a well-settled rule and that it should have in the interest of justice been exercised in the contrary way, the impugned order is ordinarily not interfered with. I am unable in this case to hold that any such ground for interference has been made out.

“13. I am not unmindful of the fact that it is not Gurdial Singh, whose nomination papers were rejected, but this factor cannot be conclusive, for the simple reason that improper rejection of a nomination paper is per se fatal to an election, irrespective of the personality of the Petitioner in the election petition. It may be

remembered that an election petition is not a matter in which the only person interested are the parties to the petition or the candidates who strove against each other at the election; the public and certainly the electorates are also interested in it because an election is an essential part of our democratic process. It is, therefore, not possible to interfere with the order disallowing amendment."

[10] I have heard the rival arguments advanced by the learned counsel appearing for the parties at length and also carefully examined all the materials available on record. The only question for consideration is as to whether the application for amendment of the prayer clause thereby deleting the prayer for declaration of the election petitioner as a Returned Candidate can be permitted to be deleted/ withdrawn or not? In a number of reported cases, the Hon'ble Apex Court has consistently held that the right to elect or to be elected or dispute regarding election are neither fundamental right nor common law right but are confined to the provisions of the RP Act and the rules made thereunder and consequently the rights and remedies are all limited to those provided by the statutory remedies. It has also been consistently held by the Hon'ble Apex Court that the provisions of CPC would apply to the election dispute as nearly as may be and subject to the provisions of the RP Act and any rules made thereunder and the provisions of the code cannot be invoked to permit that which is not permissible under the RP Act.

[11] After hearing the rival submissions advanced by the learned counsel appearing for the parties, this court find considerable force and merit in the submission advanced by the learned counsel appearing for the respondent No. 2. This court is also of the considered view that if the prayer made in the present application is allowed, it will have the grave consequence of nullifying

[15]

all the actions taken by the respondents in connection with the election petition, in pursuance with the statutory provisions provided under the relevant provisions of the RP Act. The result of allowing the present application will bring about deletion of all the respondents except the Returned Candidate in the election petition, nullifying the two recrimination petitions filed by the respondents No. 1 and 2 in the election petition as provided under Section 97 of the RP Act or nullifying the relief which can be granted under Section 98(c) of the RP Act.

[12] In my considered view, the statutory provisions provided under Sections 82, 97 and 98 of the RP Act cannot be nullified or any action taken pursuant to the statutory provisions provided under the aforesaid sections of the RP Act cannot be rendered infructuous by invoking the provisions of the CPC. Just because the petitioner failed to plead material facts to make out a case for obtaining the relief of declaring himself as the elected candidate, it cannot be a ground for allowing the prayer of amendment made in the present application. In the result, I find no merit in the present application and the same is hereby dismissed, however without any order as to cost

JUDGE

FR / NFR

Devananda