

BEFORE

HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR

For petitioner No.1	:	Mr. RK Milan & Mr. RK Maichael, Advocates (not present).
For petitioner No.2	:	Mr. Ajoy Pebam, Advocate.
For respondent No.1	:	Mr. Siddhartha Shankar Dey, Senior Advocate, assisted by Mr. A.Golly, Advocate.
Date of last hearing and reserving of Judgment & Order	:	27.01.2022
Date of Judgment & Order	:	08.02.2022

JUDGMENT & ORDER (CAV)

Elections to the 11th Legislative Assembly of the State of Manipur were held on 04.03.2017. The election results were declared on 11.03.2017.

Langpoklakpam Jayantakumar Singh, respondent No. 1 in this election petition, the candidate of the National People's Party, was declared elected from 12-Keishamthong Assembly Constituency, with 10,000 votes out of the total 23,111 votes. Laisom Ibomcha Singh, the original petitioner in this election petition, sponsored by the Indian National Congress, secured the second position with 6,739 votes. Rajkumar Shivachandra Singh of the Bharatiya Janata Party, respondent No.2 herein, stood third with 5,003 votes. Respondents No. 3 to 7 were the other candidates in the election from this constituency but they secured far lesser votes.

This election petition was filed on 24.04.2017. The prayer of the original petitioner was to declare the election of respondent No. 1 from 12-Keishamthong Assembly Constituency as void and to declare him as the duly elected candidate from the said constituency.

[2] The original petitioner in this election petition died on 23.01.2021. MC (EP) No. 12 of 2021 was filed by one Maibam Sarat Singh, a voter of 12-Keishamthong Assembly Constituency, under Section 112(3) of the Representation of the People Act, 1951 (for brevity, 'the Act of 1951'), seeking to be substituted as a petitioner so as to continue the proceedings in this election petition. Similarly, MC (EP) No. 13 of 2021 was filed by Yendrembam Indira Devi, the widow of the original petitioner, praying to be substituted as a petitioner and to be allowed to continue the proceedings in the election petition. Both these applications were ordered on 19.03.2021. Maibam Sarat Singh and Yendrembam Indira Devi were accordingly substituted as petitioners No. 1 and 2 in this election petition in the place of the original petitioner.

[3] In essence, three grounds were urged by the original petitioner in this election petition in support of his allegation that the election of respondent No. 1 was void in terms of Section 100 of the Act of 1951:

- i) That the acceptance of respondent No.1's nomination was improper and such illegal acceptance of his nomination materially affected the result of the election. The basis for this ground was that respondent No. 1 had failed to open a separate bank account for his election expenses in accordance with the directions/instructions of the Election Commission of India.
- ii) That respondent No.1 had sworn to a false affidavit while filing his nomination, wherein he stated that he had no Government dues, except for a motor car advance, though he had pending Government dues, viz., land revenue dues for his landed property.
- iii) That respondent No.1 failed to maintain a true and proper account of his election expenses from the date of nomination till the date of

declaration of the election result, thereby violating the provisions of Section 77 of the Act of 1951, and such violation constituted a corrupt practice.

[4] Respondent No. 1 filed his Written Statement along with Annexures on 07.08.2017, contesting the pleas put forth in the election petition on technical grounds as well as on merits. Thereupon, the original petitioner sought the leave of this Court and filed his Replication along with Annexures on 23.01.2018. In turn, respondent No. 1 filed a Surrejoinder thereto on 03.10.2018, after obtaining permission from this Court.

[5] Three issues were framed in this election petition on 08.08.2019. These issues read as under:

- i) Whether the respondent No. 1 failed to open a separate Bank Account for the purpose of his election expenditure at least one day prior to the date of his nomination being filed on 13.02.2017 as per the mandatory instructions of the Election Commission of India as contained in its letter dated 15.10.2013 and if the answer is in the affirmative, whether the acceptance of his nomination paper by the Returning Officer has materially affected the result of the election.
- ii) Whether the respondent No. 1 has filed a false affidavit as regards the Government dues and in particular, the land revenue payable to the Government in respect of his landed property at Wangkhem Village, Keirao Bitra?
- iii) Whether the respondent No. 1 has given a false statement in his affidavit filed in respect of the election expenses and in particular,

the expenditures for the period from 13.02.2017 to 15.02.2017 as regards the nomination fee deposited by him on 13.02.2017.'

[6] On 11.09.2020, this Court noted that no physical hearing would be possible in the light of the notification issued by the High Court of Manipur due to the Covid-19 pandemic and directed that recording of evidence in this election petition be conducted by a local Commissioner appointed by the Court. Thereafter, on 05.10.2020, Mr. Ch. Momon, Advocate, was appointed as the local Commissioner to record the evidence of witnesses in this case.

[7] The original petitioner examined himself as PW-1 and Maisnam Manikchand Singh, one of his Election Agents, as PW-2. Respondent No. 1 examined himself as DW-1. He examined Maisnam Jagajit Singh, Yumnam Guneshwor @ Yaima Singh and Irengbam Bimolchandra, his Election Agents, as DW-2, DW-3 and DW-4 respectively. Arthur Worchuiyo, the then District Election Officer, Imphal West, was examined as Official Witness No. 1 and Goswaimayum Sorojini Devi, the then Election Officer, Imphal West, was examined as Official Witness No. 2.

Exs. P-1 to P-29 were adduced as documentary evidence by the original petitioner. Some of these exhibits were marked subject to the objections raised by respondent No. 1 as to the evidentiary value of the document in question, as it was not an original or certified copy and had not been filed in due course of law. Such objections were raised in relation to Exs. P-3, P-6 and P-9 to P-28. Exs. D-1 to D-8 were marked in evidence by respondent No. 1. Exs. X-1 to X-4 were marked in evidence by the official witnesses.

[8] MC (EP) No. 26 of 2021 filed by respondent No. 1 was numbered as such on 18.08.2021. Therein, he prayed for rejection and return of the documents filed by the original petitioner as Annexures A-11 to A-28 along with

his Replication. This prayer was made on the ground that no leave application was filed by the original petitioner to file such documents beyond the prescribed period of 45 days from the date of election of the returned candidate. Be it noted that these documents were marked in evidence during the trial, subject to respondent No.1's objections.

[9] MC (EP) No. 1 of 2022 was filed on 21.01.2022 by the substituted petitioner No. 2, the widow, to reopen the trial so as to call H. Jadumani Singh, Election Officer, as an additional witness and to grant her permission to mark the documents submitted by him as secondary evidence. This application was filed during the course of the hearing of this election petition.

[10] Heard Mr. Ajoy Pebam, learned counsel for substituted petitioner No. 2, the widow of the original petitioner; and Mr. Siddhartha Shanker Dey, learned senior counsel, assisted by Mr. A. Golly, learned counsel, appearing for respondent No. 1. Though Mr. RK Milan and Mr. RK Maichael, learned counsel, entered appearance for substituted petitioner No. 1 and appeared on earlier occasions, they failed to appear during the hearing of this election petition and the miscellaneous cases. Arguments were advanced by the other learned counsel on 21.12.2021, 19.01.2022, 21.01.2022, 24.01.2022, 25.01.2022 and 27.01.2022, but on none of these dates did either Mr. RK Milan or Mr. RK Maichael, learned counsel, choose to appear. This fact was noted by this Court on the last date of hearing, viz., 27.01.2022, when the judgment was reserved.

[11] At this stage, it may be noted that on 27.04.2021, after the substituted petitioners came on record, Mr. A. Mohendro, their learned counsel, informed this Court that they would not be pressing Issue No. 2 framed on 08.08.2019, with regard to the alleged filing of a false affidavit by respondent No. 1 as to his Government dues and, in particular, the land revenue payable in

respect of his landed property. This Court recorded the said submission and deleted Issue No.2.

Thus, consideration in this election petition is now limited to the other two issues, viz., Issues No. 1 and 3.

[12] Issue No. 1 relates to the alleged illegal acceptance of the nomination of respondent No. 1. Mr. Ajoy Pebam, learned counsel, would contend that respondent No.1 did not open a separate bank account for his election expenditure before he filed his nomination, as directed by the Election Commission of India, and his nomination was liable to be rejected on that ground. He would place reliance on Ex. P-2 in this regard. Ex. P-2 is the communication dated 15.10.2013 of the Election Commission of India, addressed to the Chief Electoral Officers of all the States and UTs. This communication dealt with opening of separate bank accounts by candidates for their election expenditure. The relevant portion thereof reads as under:

- 'i) In order to facilitate monitoring of election expenditure, each candidate is required to open a separate bank account exclusively for the purpose of election expenditure. This account can be opened any time only for the purpose of election, not later than one day before the date on which the candidate files his nomination papers. The Account Number of this bank account shall be communicated by the candidate in writing to the Returning Officer (RO) of the constituency at the time of filing of his nomination. Wherever the candidate has not opened the bank account or not intimated the bank account number, the RO shall issue a notice to each such candidate to comply with the Commission's instructions'

[13] Mr. Ajoy Pebam, learned counsel, would also rely on Ex. P-17 communication dated 03.01.2017 of the Election Commission of India to the Chief Electoral Officers of various States, including the State of Manipur,

wherein a Checklist was provided for the candidates for elections to the Legislative Assemblies of those States. This is one of the documents objected to by respondent No.1. By way of Clause 1 in the Checklist, the Election Commission required a candidate to open a bank account, exclusively for election expenditure purposes, at least one day before filing of the nomination.

[14] It is an admitted fact that respondent No. 1 filed his nomination on 13.02.2017 but opened a separate bank account for his election expenditure only on 16.02.2017. In effect, there was clear delay on his part in doing so, in terms of the Checklist requirement. The question that arises is as to what would be the impact and consequence of such belated opening of the bank account by him. Going by Ex. P-2 communication dated 15.10.2013, such delay would not be fatal as all that is to be done, in the event a candidate does not open a bank account, is for the Returning Officer to issue a notice to such candidate requiring him to comply with the Commission's instructions. However, the Checklist, communicated to the candidates under Ex. P-17 dated 03.01.2017, if it is to be considered at all, categorically required them to open such a bank account at least one day before the filing of the nomination.

[15] Mr. Ajoy Pebam, learned counsel, would contend that the aforestated instructions of the Election Commission are mandatory and that the failure on the part of respondent No. 1 to open a bank account at least one day prior to filing of his nomination on 13.02.2017 would be fatal. The status of such instructions shall be considered hereinafter but, notwithstanding such status, the ambiguity in the instructions is sufficient to reject such an argument. The direction to the candidates in this regard in the Checklist may have been in clear terms, if it is taken into account, but Ex. P-2 dated 15.10.2013 also made it clear that failure to abide thereby is not fatal.

[16] All the more so, as Section 77(1) of the Act of 1951 specifically states that a candidate at an election has to keep a separate and correct account of all expenditure in connection with the election 'between the date on which he has been nominated' and the date of declaration of the result thereof. The responsibility to maintain the bank account plainly commences from 'the date on which the candidate has been nominated'. Therefore, opening of the bank account would also be linked thereto. The meaning of this phrase would have to be construed logically as there is no definition in the Act of 1951 as to when a candidate can be said to have been nominated.

[17] Significantly, Section 79(b) of the Act of 1951 also defines 'candidate' to mean a person who has been or claims to have been duly 'nominated as a candidate at any election'. In this regard, it may be noted that Section 36 of the Act of 1951 deals with scrutiny of nominations and Section 36(8) states that, immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board. Thereafter, Section 38, dealing with publication of the list of contesting candidates, provides under sub-section (1) thereof that, immediately after the expiry of the period within which candidature may be withdrawn, the Returning Officer shall prepare and publish a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

[18] In this context, it may also be noted that merely because a political party nominates its candidate by giving him a ticket, he cannot be said to 'have been nominated for the election'. Such an interpretation would not hold good in

the case of an independent candidate as he would not be nominated by a political party and would decide on his own to contest the election. Trite to state, a candidate who has submitted his nomination can also withdraw the same before the stipulated date. Further, it is open to the Returning Officer to reject a nomination submitted by a candidate, if it is found to be wanting in any respect. Therefore, the date of filing of the nomination itself cannot be construed to be 'the date on which he is nominated'.

[19] In effect, given the statutory scheme and applying simple logic, the only rational meaning that can be given to the phrase is to construe it to mean the date on which the nomination submitted by the candidate is accepted as valid and he does not withdraw his candidature before the date stipulated. Thus, 'the date on which a candidate has been nominated' would be the date on which his nomination has been accepted as valid and his name is included in the list of validly nominated candidates, who have not withdrawn their candidature within the prescribed period, *i.e.*, the list of contesting candidates.

[20] As regards the status of the instructions of the Election Commission, it cannot be disputed that the Commission has power to fill in the gaps, if any, in the statute or the rules framed thereunder, by issuing instructions.

In **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi, and others [(1978) 1 SCC 405]**, the Supreme Court affirmed this and observed that the Election Commission would be entitled to exercise powers under Article 324 of the Constitution in an area not covered by the Act of 1951 and the Rules.

However, such instructions cannot override or contradict the statutory provisions. It is well settled that executive instructions issued by an authority would be subject to the relevant statute and cannot override it.

In **Lakshmi Charan Sen and others vs. A.K.M. Hassan Uzzaman and others [(1985) 4 SCC 689]**, the Supreme Court considered whether directions given by the Election Commission to the Chief Electoral Officers have the force of law under the Act of 1951 and held that such directions, though binding upon the Chief Electoral Officers, cannot be treated as if they are law and that violation of the same would not result in the invalidation of the election.

That being so, even if it is construed that instructions were issued by the Election Commission to the effect that opening of the bank account by the candidate must be at least one day prior to the filing of the nomination, the same would have to give way to the mandate of Section 77(1) of the Act of 1951, which requires him to maintain the account of election expenditure only from the date on which he has been nominated. In consequence, he would have to open his bank account only by the date that he can be considered a 'nominated candidate'. Therefore, the failure of respondent No. 1 to open a bank account before he filed his nomination on 13.02.2017 does not in any manner affect his nomination, which was otherwise found to be in order and was accepted as a valid nomination, and he was included in the list of contesting candidates.

Issue No. 1 is therefore answered against the petitioners and in favour of respondent No. 1.

[21] As regards Issue No. 3, it may be noted that this issue was framed on 08.08.2019, by which date the pleadings were complete, *i.e.*, the Replication as well as the Surrejoinder were already on record. By way of his Replication, the original petitioner sought to enlarge the scope of enquiry by filing various documents relating to the alleged election expenditure of respondent No. 1 after the filing of his nomination and during the course of electioneering. In spite of

the same, Issue No.3, as framed, merely speaks of whether respondent No. 1 gave a false statement in his affidavit filed in respect of election expenses and in particular, the expenditure for the period from 13.02.2017 to 15.02.2017. Therefore, no specific issue was framed as regards the expenditure allegedly incurred by respondent No. 1 after the filing of his nomination, as borne out by the new documents filed along with the Replication. It is these very documents that respondent No. 1 wants eschewed from consideration by way of his application in MC (EP) No. 26 of 2021. Be it noted that the documents filed along with the Replication were all photocopies. They were not even certified copies. No separate application was filed at that time to allow the original petitioner to adduce secondary evidence under Section 65 of the Indian Evidence Act, 1872.

[22] Mr. Ajoy Pebam, learned counsel, would contend that no objection was raised to the filing of the Replication at that point of time and, therefore, the documents filed therewith cannot now be questioned. However, the mere fact that no objection was raised to the filing of the Replication does not mean that the documents filed therewith were accepted straightaway by the other side or by this Court. Significantly, respondent No. 1 raised this issue in his Surrejoinder and he thereafter raised objections when these documents were marked in evidence, pointing out that the same were sought to be introduced without following the due procedure laid down by law. Reliance placed by Mr. Ajoy Pebam, learned counsel, on **Smt. Naseem Bano vs. State of U.P. and others [1993 Supp. (4) SCC 46]** is of no avail as it related to the doctrine of *non traverse* in the context of a writ petition and not an election petition.

[23] In the light of the decision of the Supreme Court in **Dhanpat vs. Sheo Ram (deceased) through LRs [(2020) 16 SCC 209]**, it may not have been necessary for the original petitioner to file a separate application for leading

secondary evidence but it was incumbent upon him to lay the foundation for adducing secondary evidence by stating the grounds therefor. In **Dhanpat** (*supra*), the Supreme Court held that there is no requirement that an application be filed in terms of Section 65 of the Indian Evidence Act, 1872, before secondary evidence is laid and it would be open to a party to either file an application or to lay foundation for leading of secondary evidence either in the plaint or in the evidence. However, neither in the Replication nor during the course of the trial was any foundation laid by the original petitioner as to why secondary evidence has to be allowed in this case.

Further, in **Jeet Mohinder Singh vs. Harminder Singh Jassi** [(1999) 9 SCC 386], the Supreme Court held that Section 83 of the Act of 1951 requires every election petition to contain a concise statement of the material facts on which the petitioner relies and in the event the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. As material facts and particulars as to commission of corrupt practices are required to be given in the Election Petition, the Supreme Court further held that 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 the issues framed by the Court. This decision therefore settles the issue squarely against the petitioners.

The documents are therefore liable to be rejected, despite being marked as exhibits during the course of the trial. MC (EP) No.26 of 2021 therefore deserves to be allowed.

[24] As already noted *supra*, a lengthy trial was held wherein both sides examined witnesses and marked documents in evidence. Official witnesses were also examined and four documents were marked through them. The application in MC (EP) No. 1 of 2022 filed by substituted petitioner No. 2 to call another official witness for marking more documents shall be dealt with hereinafter but it would suffice at this stage to note that consideration of the oral and documentary evidence in this case is not even necessary in the context of Issue No.3 in the light of certain crucial factors.

[25] It was the specific case of the original petitioner that the failure of respondent No. 1 to maintain a true and proper account of his election expenses from the date of filing of his nomination till the date of declaration of the result violated the provisions of Section 77 of the Act of 1951 and such violation was 'nothing but a corrupt practice'. Notably, Clause 21 of the Checklist provided under Ex. P-17 dated 03.01.2017 required that the candidate/agent make entries of all election expenses at appropriate places in the Cash Register, Bank Register and Day-to-Day Account Register from the 'date of filing of the nomination' by the candidate till the date of declaration of results. This document is to be rejected but even if this instruction is to be considered, it was contrary to Section 77(1) of the Act of 1951 which requires an account of election expenditure to be maintained only from the date on which the candidate has been nominated. Therefore, the instruction cannot prevail over the statutory mandate. The responsibility to maintain a true and proper account of the election expenditure commences with the date that the candidate has been nominated and ends with the date of declaration of the election result, both dates included.

[26] In this regard, it may be noted that Section 100 of the Act of 1951 details the grounds on which an election can be declared void. For the purpose

of this election petition, Section 100(1)(b) and Section 100(1)(d)(i) are relevant. Section 100(1)(b) relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. Section 100(1)(d)(i) relates to improper acceptance of a nomination, the subject matter of Issue No.1, which has already been dealt with hereinabove.

[27] Chapter II of Part VI of the Act of 1951, titled 'Disputes regarding Elections', deals with presentation of election petitions to the High Court and comprises Sections 80 to 85. Section 83 therein is titled 'Contents of Petition' and states that an election petition shall contain a concise statement of the material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and the same shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the purpose of pleadings. The *proviso* to Section 83(1) states that when the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. In this regard, reference may also be made to Rule 94A of the Conduct of Election Rules, 1961. Rule 94A provides that the affidavit referred to in the *proviso* to Section 83(1) shall be sworn before a Magistrate of First Class or Notary or Commissioner of Oaths and shall be in Form 25 appended to the said rules.

[28] Mr. Ajoy Pebam, learned counsel, fairly concedes that an affidavit in Form No. 25, sworn before a Magistrate of First Class or a Commissioner of Oaths, has not been filed in the case on hand though a specific allegation was

made by the original petitioner that respondent No. 1 had committed a 'corrupt practice' in maintaining the account of his election expenditure. Trite to state, an election petition has to be filed in strict conformity with the procedure prescribed under the Act and Rules. An allegation made in the election petition in violation of such prescribed procedure cannot be considered on merits.

[29] In **Jeet Mohinder Singh** (*supra*), the Supreme Court observed that a charge of corrupt practice is *quasi-criminal* in character and may entail extinction of a person's public life and political career and, therefore, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. *Per* the Supreme Court, to prove the charge of corrupt practice, mere preponderance of probabilities would not be enough and the charge has to be proved to the hilt, the standard of proof being the same as in a criminal trial. The Supreme Court also observed that when such allegations are made by way of a Replication, they would not be supported by an affidavit in the proforma provided under Rule 94A of the Conduct of Election Rules, 1961, which would amount to breach of the prescribed procedure.

[30] That apart, there is another crucial factor which needs to be taken into account. The sum and substance of the case of the original petitioner in this election petition was only that respondent No. 1 had failed to maintain a true and proper account of his election expenditure and more particularly, between the dates 13.02.2017 and 15.02.2017, as he had opened a bank account for that purpose only on 16.02.2017. Even the enlarged attack of the original petitioner, by way of his Replication, was that respondent No. 1 failed to account for some of his election expenditure and did not route the same through his bank account. No allegation whatsoever was made to the effect that respondent No. 1 had

spent more than the prescribed maximum amount, in terms of Section 77(3) of the Act of 1951. Despite the same, the original petitioner contended that respondent No.1 had committed a corrupt practice.

[31] Section 123 of the Act of 1951 deals with 'Corrupt practices'. Section 123(6) states that the incurring or authorization of expenditure in contravention of Section 77 would be deemed to be a 'corrupt practice' for the purposes of the Act of 1951. Section 77(1) of the Act merely requires a candidate at an election, either by himself or by his election agent, to keep a separate and correct account of all expenditure in connection with the election between the date on which he has been nominated and the date of declaration of the result thereof. Section 77(2) provides that the account should contain such particulars as may be prescribed. Section 77(3) mandates that the total of the said expenditure shall not exceed such amount as may be prescribed.

[32] In the case on hand, it was never the case of the original petitioner that respondent No. 1's election expenditure exceeded the maximum amount prescribed. His only allegation was that respondent No.1 had failed to maintain a proper account of his election expenditure and no more. The question that arises is whether the failure on the part of respondent No. 1 to maintain a true and proper account of his election expenses and failure to route it through his bank account, even if proved, would by itself be sufficient to constitute a 'corrupt practice'. This issue is no longer *res integra*. The Supreme Court has already considered this issue and the legal position in this regard stands crystallized.

[33] In **L.R. Shivaramagowda and others vs. T.M. Chandrashekar (Dead) by LRs and others [(1999) 1 SCC 666]**, the Supreme Court observed that what is referred to in Section 123(6) as a corrupt practice is only incurring or authorizing of excess expenditure in contravention of Section 77 thereof.

Section 123(6), *per* the Supreme Court, does not take into its fold the failure to maintain true and correct accounts and its language is clear that the corrupt practice defined therein can relate only to Section 77(3), i.e., incurring or authorizing of expenditure in excess of the amount prescribed. The Supreme Court further held that it cannot, by any stretch of imagination, be said that non-compliance with Sections 77(1) and (2) would also fall within the scope of Section 123(6) and consequently, such non-compliance cannot fall under Section 100(1)(b). The Supreme Court pointed out that failure on the part of the returned candidate to maintain an account as required by Sections 77(1) and (2) would in no case affect, and much less materially, the result of the election.

[34] In the light of the law laid down in **L.R. Shivaramagowda** (*supra*), it is clear that even if the original petitioner's allegation that respondent No.1 failed to maintain a proper account is accepted, it would not constitute a 'corrupt practice' under Section 123(6) of the Act of 1951. The decision in **Ashok Shankarrao Chavan vs. Madhavrao Kinhalkar and others [(2014) 7 SCC 99]** is distinguishable on facts as there is no allegation in the case on hand that respondent No.1 incurred election expenditure in excess of the prescribed maximum amount. The said decision therefore has no relevance presently.

In effect, Issue No. 3 is of no import as it would not constitute a 'corrupt practice' under Section 100(1)(b) of the Act of 1951 in any event. Further, the original petitioner failed to abide by the procedure prescribed when he chose to level the allegation that respondent No.1 had committed a corrupt practice. In consequence, the same cannot even be tried.

The issue is answered accordingly.

[35] In so far as MC (EP) No. 1 of 2022 is concerned, it may be noted that Arthur Worchuiyo, the then District Election Officer, Imphal West, was

examined as Official Witness No. 1 but he failed to produce documents. At that stage, upon being informed that Arthur Worchuiyo had stated that he could not bring the relevant records as regards the election expenditure of respondent No. 1, this Court passed an order on 15.12.2020 directing certain records to be produced by the District Election Officer, Imphal West, through a person deputed by him. Arthur Worchuiyo was directed to appear again before the Commissioner on the date fixed by him. In spite of this order, Arthur Worchuiyo did not appear before the Commissioner and only one H. Jadumani Singh, Election Officer, Imphal West, was present on 12.01.2021 along with the requisitioned documents. The Report dated 14.01.2021 of the Commissioner reflects that the original documents produced by H.Jadumani Singh were returned to him after obtaining certified copies thereof for ready reference. The original depositions of both the official witnesses and the certified copies of the documents requisitioned by this Court were forwarded by the Commissioner thereunder. The earlier Report dated 14.12.2020 of the Commissioner reflects that examination of Arthur Worchuiyo was not even completed due to non-production of the original documents and the partly recorded deposition of this official witness was forwarded to this Court.

[36] In effect, no steps were taken by the original petitioner to examine the official witness at that point of time for marking of the requisitioned documents that were produced by H. Jadumanai Singh, Election Officer, Imphal West. In any event, these documents also have no impact or bearing on the result of this election petition as they are relevant, if at all, in the context of the allegation that respondent No. 1 failed to maintain a true and proper account of his election expenditure. As already noted *supra*, even if there was any such failure on the part of respondent No. 1, it would not amount to a 'corrupt practice'

under Section 123(6) read with Section 77(3) of the Act of 1951. That being so, there is no purpose served in accepting the plea of substituted petitioner No. 2 to reopen the trial and call an official witness for marking these documents at this late stage. Further, this plea is highly belated and would be hit by the doctrine of laches as no steps were taken by the substituted petitioners to rectify the lapses in this regard prior to conclusion of the trial after their entry into the arena. Reliance placed by Mr. Ajoy Pebam, learned counsel, on **Mange Ram vs. Brij Mohan and others [(1983) 4 SCC 36]**, and **K.K. Velusamy vs. N. Palaanisamy [(2011) 11 SCC 275]**, is therefore of no avail. MC (EP) No. 1 of 2022 is therefore liable to be dismissed.

[37] On the above analysis, Issue No.1 is answered against the petitioners and in favour of respondent No.1. Issue No.3 is of no import or consequence, firstly, for failure on the part of the original petitioner to abide by the prescribed procedure and secondly, as it would not amount to a corrupt practice under Section 123(6) read with Section 77(3) of the Act of 1951 for the purposes of Section 100(1)(b) thereof, even if answered in favour of the petitioners.

In the result, the election petition stands dismissed.

MC (EP) No.26 of 2021 is allowed.

MC (EP) No.1 of 2022 is dismissed.

In the circumstances, there shall be no order as to costs.

CHIEF JUSTICE

FR

Sandeep