

(1998) 03 AHC CK 0108
In the Allahabad High Court
Case No : C.M.W.P. No. 6162 of 1998

Ansar Ahmad

APPELLANT

Vs

Sub-Divisional Officer, Kairana and others

RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 12(2), 13
Representation of the People Act, 1951 — Section 100(1), 101, 117, 81, 82
Uttar Pradesh Panchayat Raj (Settlement of Election Disputes) Rules, 1994 — Rule 3, 4, 4(1)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C

Citation : AIR 1998 All 341 : (1998) 3 AWC 1807 : (1998) RD 500

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Shiam Lal Mishra, for the Appellant; S.C., P.K. Singh and N.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—Sri Shiam Lal Mishra, learned counsel for the petitioner has raised a very Interesting question as to whether the Prescribed Authority u/s 12C of U. P. Panchayat Raj Act, is empowered to condone the delay in filing Election Petition beyond the period prescribed under Rule 3 of U. P. Panchayat Raj (Settlement of Election Dispute) Rules. 1994 or. In other words, whether the application of the Limitation Act is excluded by reason to Rule 3 of 1994 Rules. According to him, the provision of the Limitation Act is not applicable in special Statute relating to the dispute regarding election and, therefore, the order passed by the Prescribed Authority as well as by the Revisional Authority, condoning the delay in filing Election Petition long after 21 months is wholly without jurisdiction and, as such the writ petition is liable to be set aside.

2. Sri Pankaj Kumar Singh, learned counsel appearing on behalf of respondents, on the other hand contends that by reason of clause (vi) of sub-rule (1) of Rule 4 of 1994 Rules having provided that the Sub-Divisional Officer may at any time

dismiss the application, presented beyond time, indicates that it has given discretion to the Sub-Divisional Officer, which pre-supposes application of the Limitation Act in the said Statute and relies on two decisions in support of his contention namely in the case of Bhakti Bh. Mondal Vs. Khagendra K. Bandopadhyaya and Others, , and on the decision in the case of Bhoureylal and others v. Kunj Behari Lal AIR 1969 Raj 229. Relying on the Calcutta decision, he submits that there it has been held that the prescribed authority has power to condone the delay. Similarly relying on the decision in Rajasthan's case he contends that Panchayat Raj Act being a local law by reason of Section 29(2) of the Limitation Act the provisions of Sections 4 to 24 becomes applicable.

3. Shri Rahul Sripat, learned counsel appearing with Sri P. K. Singh, points out that the provision relating to Election dispute provided in the Panchayat Raj Act and the rules framed thereunder is a quite different from the provisions relating to election dispute provided in the Representation of People Act, 1951, and therefore, according to him the decision with regard to application of Limitation Act in respect to Election dispute under Representation of People Act, 1951, cannot be attracted. He also points out that in the present case election having been found void because of ineligibility of the elected candidates, this question cannot be gone into and as such the orders were rightly passed.

4. On the request of the Court Sri Arun Tandon, learned counsel agreed to act as *amicus curiae* in order to assist the Court. The Court appreciates the assistance rendered by Sri Tandon. He has referred to the case of Hukumdev Narain Yadav Vs. Lalit Narain Mishra, . In support of his contention, that the provision of Section 29(2) cannot be attracted in respect to election petition under Representation of People Act. According to him, right to elect and right to be elected are statutory rights flowing from the Statute. Therefore, unless it is provided from the Statute Itself, the provision of Limitation Act cannot be attracted. He further contents that the provision relating to election dispute provided in the Panchayat Raj Act are part material similar to these under Representation of Peoples Act, 1951. He further relies on the decision in the ease of AIR 1994 512 (SC) , for the proposition. He also relies on the decision in the case of Ramnandan Rai Vs. The District Judge, Sitamarhi and Others, , where election was challenged under Bihar Panchayat Election Rules. There it has been held that the Limitation Act is also excluded in respect of Election Petition under Panchayat Raj Act, on the analogy that the provisions of Panchayat Raj Act and those of Representation of Peoples Act are part material " the same. He further relies on the decision in Shamsher Singh v. VIIt Additional District Judge and others 1991 RD 434, both of this Court, relating to election dispute under Panchayat Raj Act, where it has been held that the provision relating to settlement of dispute of election being statutory fight, it has to be decided as provided under the Statute Itself.

5. I have heard Sri Shiam Lal Mishra, learned counsel for the petitioner, Sri Rahul Sripat and Sri B. K. Singh learned counsel for the respondent as well as Sri Arun

Tandon acting as amicus curiae at some length.

6. Section 12C of Panchayat Raj Act provides for disputing election only in accordance with the provisions contained in the said Section according to the prescribed manner. Section 12C provides that no election under the said Act can be "called in question except by application presented to such authority within such time and in such manner, as may be prescribed on the ground mentioned therein, which has been explained in various sub-sections of the said Section. Thus, it shows that the scope of the disputed election has" been subject to the limitation provided in Section 12C of the Act. It clearly indicates that the manner and time as prescribed are mandatory. The same cannot be decided otherwise than what is prescribed with regard to the time and manner of presenting the election petition. When section itself clearly indicates expressly that such a dispute is to be presented in such a manner and within such time as may be prescribed, there is no scope to attract anything foreign to what has been prescribed. Unless it is specifically prescribed, we cannot take the aid of any other provision, as it appears from the clear intention expressed in the section itself. The prescription as provided in Section 12C is prescribed through enactment of U. P. Panchayat Raj (Settlement of Election Disputes) Rules. 1994. The said Rule is Rule 3 provides that election petition u/s 12C has to be "presented before the Sub-Divisional Officer within whose jurisdiction concerned Gram Panchayat lies within 90 days after the date of which the result of election questioned, is announced....." Rule 3 limits time of presentation of the election dispute to 90 days from the commencement of result of the election. Thus, we see that authority has been prescribed and time within which it has to be presented has also been prescribed. The manner has also been prescribed with which I am not concerned. Manner of presentation as provided in Rule 3 does not provide for any relaxation or extension of time.

7. Though vehemently argued on behalf of respondents relying on clause (vi) of sub-rule (1) of Rule 4 that the use of expression "may" in the clause providing power to the Sub-Divisional Officer to dismiss the application unless accompanied by the treasury challan and presented within time creates discretionary jurisdiction either to dismiss or not to dismiss and that too at any time and thus this provision has been sought to be argued to enable the " Prescribed Authority to extend time upon condoning the delay.

8. But there is a fallacy in the said argument. Inasmuch as presentation part is contained in Rule 3 while Rule 4 deals with the procedure of hearing. If the presentation part does not provide for extension of time, the same cannot be borrowed from the procedure provided for hearing. When limitation is provided in one rule, had it been the Intention of the Legislature to provide for extension, in that event the same ought to have been included in Rule 3 Itself. The legislation has never been incoherent and every Scheme of legislation has always followed particular Scheme of provisions divided in different Sections, Chapter, Rules in compact and comprehensive manner.

9. Then again clause (vi) does not provide for extension of time, but it empowers the Sub-Divisional Officer to dismiss the election petition not presented within time at any time whether such objection has been taken or not or such objection has not been taken at the initial stage. It repeats the power to dismiss the election petition not presented within time, at any time. When clause has been provided for particular purpose, provided for particular purpose for hearing. It cannot be interpreted to Incorporate different purpose and different mode. The Legislature had never Intended to incorporate power to extend time in any direct method when it was open to the Legislature to Incorporate directly.

10. As contended by Sri Shiam Lal Mishra, learned counsel for the petitioner relying on Rule 62 of Panchayat Raj Rules, the interpretation as observed earlier appears to be reasonable. Inasmuch as Rule 62 of U. P. Panchayat Raj (Election of Members and Pradhan and Up-Pradhan) Rules, 1962 that except return and report mentioned in Rules 52 and 55, all other election papers shall be destroyed after one year unless there is any contrary direction given by the State Election Commissioner or by the competent authority or by authority hearing election petition. This rule also supports the view that it has never been Intended that time can be relaxed or extended.

11. So far as the Calcutta decision referred to by the learned counsel for the respondents is concerned, the same stands overruled in the decision in the case of Anwari Basavaraj Patil (supra). In the said decision in para 12, it has been observed ;

"It is also brought to our notice that certain High Courts have taken the view that both Section 5 and Section 12(2) of the Limitation Act are applicable to the proceedings under the Act. So far as the decision of this Court in V. C. Shukla is concerned, it is a decision dealing with the applicability of the provisions in Section 12(2) of the Limitation Act to an appeal preferred u/s 116(A) and not with the filing of an election petition. The said decision was considered and distinguished in H. N. Yadav on the above basis. At page 42 of the SCR (at page 86 of AIR) the Division Bench which decided H. N, Yadav distinguished the decision in Vidyacharan Shukla Vs. Khubchand Baghel and Others, , in the following words :

"Vidyacharan Shukla"s case (supra), is one which dealt with an appeal under the Act while what we have to consider is whether the Limitation Act is at all applicable to election petitions under the Act. Thirdly, Section 29(2) of the new Limitation Act does not now give scope for this controversy whether the two limbs of the old section are independent or integrated. No doubt Section 5 would now apply where Section 29(2) is applicable to even applications and petition unless they are expressly excluded. Even assuming that the Limitation Act applies to election petitions under the Act what has to be seen is whether Section 5 is excluded from application to such petitions."

Thus, the Division Bench then proceeded to examine whether the applicability of

Section 5 is excluded in the matter of filing of an election petition and came to the conclusion that it was so excluded. This aspect has already been dealt with herein above. So far as the decisions of the High Courts are concerned we cannot agree with them in so far as the applicability of Section 5 to filing of an election petition and/or recrimination notice is concerned in view of the decisions of this Court in H. N. Yadav."

Thus, we see the decision of Calcutta High Court referred to by the learned counsel for the respondent stands overruled along with several other decisions, namely Bhogilal Pandya Vs. Maharawal Laxman Singh and Another, and AIR 1876 Mad 70.

12. A distinction has been sought to be made by the learned counsel for the respondents to the extent that the said two decisions related to the matter concerning election dispute under Representative of Peoples Act, which is Central Act, Central Law and not the local law. Therefore, according to them the said decision cannot be attracted to the present context.

13. Apart from the said decision referred to above in the case of Hukumdev Narain Yadav Vs. Lalit Narain Mishra, , while considering the election petition under Representation of Peoples Act, it was held that Section 5 of the Limitation Act does not apply to the election petition under Representation of Peoples Act. The said decision has also been sought to be explained by the learned counsel for the respondents as the same is also decision on the Central Law. Relying on the Raj as than decision, it is contended that Panchayat Raj Act being local law by virtue of Section 29(2) of the Limitation Act, provisions of Section 24 are applicable. As I have already observed that the right to elect and right to be elected flows from the Statute. Therefore, the same has to be governed by the provisions contained in the Statute. Section 12C Itself confined the scope of questioning the election in very strict manner, as indicated above, there is little scope to fall back on any other law when rule is framed under Panchayat Raj Act prescribing time and manner for presenting election petition. It may also be noted that 1968 Calcutta decision had also proceeded on the basis of election under Panchayat Raj Act which stood overruled in Anwari Basavaraj (supra), quoted above.

14. Similar situation arose in the case of Ram Nandan Rai v. District Judge, Sitamarhi (supra) dealing with the election petition under Bihar Panchayat Election Rules incorporating similar provisions. Rule 72 (2) of the said rule provides that the election petition against a returned candidate shall be presented to the Election Tribunal within thirty days from the date of declaration of the result of the election. Interpreting this provision it was held that Section 5 of the Limitation Act is not attracted when election petition is presented beyond the said time prescribed. This decision has relied on a decision of the Apex Court in 1974 decision in the case of H. N. Yadav (supra). The observation made in paras 6 and 7 of the said decision would be useful for our purpose, which are quoted below :

"6. A similar question had arisen in connection with an election petition filed under the Representation of People Act, 1951 (hereinafter referred to as the Representation Act) in the case of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, . There an election petition challenging the election of the successful candidate was presented before the Court after the expiry of the period of limitation, under more or less similar circumstances the limitation expiring on Saturday when this Court was closed although the offices were functioning. The election petitioner of that case being under an impression that it has to be filed before the Election Judge, filed it on the next Monday. The learned Judge dismissed the election petition saying that it was barred by limitation. It was further held that Section 5 of the Limitation Act is not applicable, and, as such there was no power to condone the delay on appeal to the Supreme Court, it was urged that Section 5 of Limitation Act having not been expressly excluded by the Representation of Peoples Act is should have been held that Section 5 of the Limitation Act was applicable and the delay should have been condoned taking into consideration the facts and circumstances of the case. The Supreme Court after referring to Sections 81 and 86 of the Representation Act held as follows :

"For all these reasons we have come to the conclusion that the provisions of Section 5 of the Limitation Act do not govern the filing of election petition or their trial and in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay."

7. The relevant portion of Section 81 of the Representation Act is as follows :

"(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the-date of election of the returned candidate or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates." Sub-section (1) of Section 86 which is relevant in that context, is as follows :

"The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

Section 81 prescribes the period of limitation and sub-section (1) of the Section 86 provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81. It may be stated that even under the Representation Act there is no express provision excluding the application of the Limitation Act, as contemplated by sub-section (2) of Section 29 of the Limitation Act but it was observed by the Supreme Court in the case of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, :

"In our view even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference. It would nonetheless be open to the Court to examine whether and to what extent the nature of the subject-matter and scheme of the special law exclude their

operation."

It was pointed out that in view of the language of sub-section (1) of Section 86 which is a peremptory command of the Legislature that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, an election petition which has been filed beyond time has to be dismissed in limine and Section 5 or other sections of the Limitation Act are not attracted.

8. Rules 72 (2) and 77 of the Election Rules are very similar to the provisions of Section 81 and Section 86(1) of the Representation of People Act, Representation of People Act as well as the Election Rules both deal with the conduct of election and disposal of the election disputes, the only difference being that one deals with the election concerning Assemblies and Parliament and that other with the Gram Panchayats. In my view if Sections 81 and 86 have to be construed strictly because they have to deal with a special law dealing with election, containing the command of the Legislature, the Election Rules which are statutory in nature, have also to be similarly construed so that disputes concerning Gram Panchayat elections are decided as early as possible, if a person challenging an election petition has not approached, the Tribunal within the time prescribed, he should not be allowed to take recourse to Section 5 of the Limitation Act. It is well-known that person are elected to such offices, for a fixed term and, as such their elections, if at all challenged, should be challenged within the prescribed period. I am quite conscious that in some cases a person challenging such election may not be able to present the election petition on the last day of the period prescribed due to some circumstances beyond his control but that will not be a "justification" for holding that he is entitled to avail the provisions of Section 5 of the Limitation Act."

Instead of Incorporating my own reasoning, reasons can be best expressed through the observations made in the paras, quoted above, where the analogy between the provisions of Panchayat Raj Act and the Representation of People Act, have been considered and it was held that Section 5 of Limitation Act would not be attracted.

15. While considering the extent of applicability of CPC in the trial of election dispute under Panchayat Raj Rules, this Court in the decision in the case of Shamsher Singh (supra), had held that it is applicable only to the extent it has been made applicable by the Statute, relying on the decision and observation of Supreme Court in the case of Jyoti Basu and Others Vs. Debi Ghosal and Others, , where it has been held that the right to elect or to be elected though fundamental to democracy but is neither fundamental right nor common law. It is pure and simple statutory rule and so right to be elected and so is the right to dispute election. Outside of statute, there is no right to elect no right to be elected and no right to dispute election. The statutory creation they are and, therefore, subject to statutory limitation, election petition is not an action by common law nor in equity. It is a statutory proceeding to which neither common

law nor the principles of equity apply but only those rule which the Statute makes and applies. It is a special jurisdiction and special jurisdiction has always to be exercised in accordance with the Statute creating It. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A Court has no right to resort to them on consideration of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes Court is put in a strait-jacket."

16. Similar view was expressed in the case of Shamser Singh (supra) by this Court while dealing with the election petition under Panchayat Raj Act and Rules, where it has been held that "limitation for filing election petition has been fixed as 90 days and that a sum of rupees five hundred is to be deposited before presentation of the application, has to be followed since the same has been prescribed in the provision Itself.

17. Thus, for all these reasons, it is held that Section 5 of the Limitation Act cannot be attracted and Section 5 is not available for the purposes of condonation of delay in entertaining election petition filed beyond the period of limitation.

18. Thus, the order dated 2.5.1997 passed by the Prescribed Authority condoning the delay in presenting election petition beyond the period prescribed and the order dated 2.2.1988 passed by the 1st Additional District Judge, Muzaffarnagar in Civil Revision No. 118 of 1997 affirming the said order for condonation of delay are wholly without jurisdiction and cannot be sustained and accordingly both these orders are quashed. Let a writ of certiorari do issue accordingly.

19. The writ petition, therefore, succeeds and is allowed. There will be, however, no order as to costs.