

(2008) 07 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 4398 of 2007

Atharoddin Kazi

APPELLANT

Vs

Rajendra Indrale, Gabbar Bagwan, Shivrao Baraskar and
Mohan Birajdar

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Limitation Act, 1963 — Section 5
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 19, 20, 21
Representation of the People Act, 1951 — Section 80, 81

Citation : (2008) 6 ALLMR 769 : (2008) 4 BomCR 507 : (2008) 6 MhLj 322

Hon'ble Judges : J.N. Patel, J

Bench : Single Bench

Advocate : Laikh Baba Syed, holding for S.S. Kazi, for the Appellant; A.V. Patil, holding for V.D. Gunale, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, J.—This petition can be disposed of at the stage of admission.

2. Rule made returnable forthwith and by consent heard the learned Counsel for the parties.

3. The short question which arise for determination is whether the Election Tribunal constituted u/s 21 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, "Act of 1965") has jurisdiction to entertain the election petition, by condoning the delay.

4. The petitioner has impugned the order passed by the Election Tribunal which is the Ad-hoc Additional District Judge, Latur u/s 21 of the Act of 1965, condoning the delay in filing the petition on the ground that no such power vests with the Election Tribunal. It is the case of the petitioner that he contested the election of Municipal Council, Latur and was declared as elected and the results were published in official Gazette on 27-11-2006, whereas the respondent, who is the

original petitioner before the District Court contested election as a N.C.P. candidate but was defeated and therefore, he filed Election Petition.

5. It is contended that as the Election Petition was filed beyond the stipulated period and the application for condonation of delay was also filed, which was contested by the petitioner, as not maintainable, but the learned Ad-hoc Additional District Judge, Latur by impugned order dated 16-01-2007 allowed the application by passing following order.

Heard both the sides. Perused application and say. Of-course, there is some delay in filing the petition but according to me, the same will have to be condoned in the interest of justice, so that parties could get fair chance of trial and then court will be in a position to decide the matter on merit. Hence, application is allowed. Delay is condoned on cost of Rs. One hundred. The petition be registered on depositing the cost or making its payment directly to other side.

6. It is therefore contended by the learned Counsel for the petitioner that Section 21 of the Act of 1965 specifically provides that no election or nomination of a Councillor may be called in question, except by a petition presented to the District Court, by a candidate at the election or by any person entitled to vote at the election, within ten days from the date of publication of the names of the Councillors in the Official Gazette u/s 19 or 20, as the case may be. It is submitted that in absence of any provision in the Act of 1965 vesting jurisdiction in the District Court to condone the delay, the Election Petition ought not to have been entertained by the District Court u/s 21 of the Act of 1965, as it was not filed within ten days.

7. It is submitted that in the present case, the very fact that the respondent - original petitioner has filed the Election Petition beyond the period of ten days alongwith the application for condonation of delay, the impugned order deserves to be quashed and set aside. In support of his contention, he has placed reliance on the decision rendered by the Supreme Court in the case of Satya Narain Vs. Dhruja Ram and Others, wherein the Supreme Court while considering the presentation of the Election Petition under the Representation of the People Act (1951) and referring to Section 80 and 81 of the said Act was required to observe by placing reliance on its earlier decision in Charan Lal Sahu Vs. Nandkishore Bhatt and Others, as follows:

The right to challenge an election is a right provided by Art.329 (b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in

presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

It is therefore, submitted that as there is no such discretion left to the District Court under the Act of 1955 to condone the delay. Failure on the part of respondent -original petitioner to present petition to the District Court within ten days would oust him on the ground of delay. It is therefore, submitted that view taken by the District Court while condoning the delay though it was merely six days is not in accordance with law and it is nothing but exercising jurisdiction by the District Court not vested in it by the Act of 1965. Therefore, the impugned order deserves to be quashed and set aside.

8. Per contra, the learned Counsel appearing for the respondent - original petitioner states that in the given facts and circumstances, the court was justified in condoning the delay for which the court has given cogent reason, and therefore, no interference is called for. The learned Counsel appearing for original petitioner is not able to point out any provision in Act of 1965 which provides for condonation of delay.

9. It is a well settled law that if special statute provides for a remedy and also prescribes limitation for seeking such a remedy then the provision providing for period of limitation within which a person can seek remedy will have to be strictly construed and to that extent, provisions of Limitation Act would stand excluded. It appears that the learned District Judge fell in error in condoning the delay by exercising its discretion u/s 5 of the Limitation Act, which is not attracted in case of presentation of a dispute before the District Court as contemplated u/s 21 of the Act of 1965.

10. The Law of Limitation has to be applied with all its rigour when the statute so prescribe and the courts have no power to extend the period of limitation on equitable grounds. The order, condoning the delay cannot be sustained. Therefore, the impugned order is quashed and set aside, as a consequence of which the Election Petition stands dismissed, as not maintainable for the reason that the original petitioner failed to present it before the District Court within ten days from the date of publication of the name of the Councillor in the Official Gazette.

Rule made absolute, with costs, which is quantified as Rs. 10,000/- (Rs. Ten Thousand only).