
(2001) 01 AP CK 0028
In the Andhra Pradesh High Court
Case No : CRP No. 5185 of 2000

Chukka Yesuratnam

APPELLANT

Vs

Shaik Saidulu and others

RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Hyderabad Municipal Corporation Act, 1955 — Section 671, 71, 87
Limitation Act, 1908 — Section 12, 13, 5

Citation : (2001) 3 ALD 66 : (2001) 3 ALT 1 : (2001) 1 APLJ 317

Hon'ble Judges : G. Bikshapathy, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. D.V. Reddy, for the Appellant; Mr. P. Harinath Gupta, for the Respondent

Judgement

G. Bikshapathy, J

1. This civil revision petition is filed under Article, 227 of the Constitution of India of India assailing the Order dated 10-11-2000 passed by the Election Tribunal, Hyderabad in IA No.6 of 2000 in EPNo. 7 of 2000.

2. The 1st respondent filed election petition in EP No.7 of 2000 questioning the election of the petitioner herein - Mayor of the Municipal Corporation, Guntur. He also filed Interlocutory Application in IA No.6 of 2000 u/s 5 of the Limitation Act, seeking condonation of delay of 42 days in filing the Election Petition. The said application was heard by the Election Tribunal and by order dated 10-11-2000 the delay was condoned. The validity of the said order is challenged in this revision petition.

3. Learned Counsel for the petitioner submits that there is no power vested with the Election Tribunal to condone the delay in filing the Election Petition and that Section 5 of the Limitation Act is not applicable to the Election Petition, which is a original proceeding; therefore, the order of the Election Tribunal is illegal and liable to be set aside. He takes recourse to Section 71 of the Hyderabad

Municipal Corporation Act, 1955.

4. The question that arises for consideration is whether Section 5 of the Limitation Act can be invoked in respect of election petition. For proper appreciation of case, it is necessary to refer to Section 71, which reads thus:

"Election Petition :--(1) No election held under this Act shall be called in question except by an election petition which shall be presented in such manner as may be prescribed.

(2) An Election Petition Calling in question any election may be presented on one or more of the grounds specified in clauses (i) and (ii) of Sections 79 and 80 to the Election Tribunal by any candidate at such election or any voter, within two months from, but not earlier than the date of the election of the returned candidate or if there are more than one returned candidate at the election and the dates of the election are different is the latter of those two dates."

Chapter XX of the Act, relates to appeals and connected proceedings. Section 671 prescribes limitation for appeals or application, where no time is fixed under the Act. It also makes applicable Sections 5, 12 and 13 of the Limitation Act for computing the period of limitation. Section 671 reads thus:

"Limitation :--(1) In computing the period of limitation fixed for an appeal or application referred to in this Act, the provisions of Sections 5, 12 and 13 of the Indian Limitation Act, 1908 shall so far as may be, apply.

(2) When no time is fixed by this Act for the presentation of an appeal or application, such appeal or application shall be presented within thirty days from the date of the order in respect of or against which the appeal, or application is presented."

5. It is an admitted fact that the election petition was filed with delay, for which application was made to condone the delay. The learned Counsel for the respondent would contend that the expression "application" referred to in Section 671 has to be interpreted so as to include the election petition and therefore Section 5 of the Limitation Act can be invoked in case of any delay.

6. Sections 71 to 87 contain the procedure of presentation of election petitions and their disposal. In respect of any elections, the unsuccessful candidate is entitled to challenge the election u/s 71 of the Act by filing election petition. A definite period has been prescribed for filing such petitions. The Legislature had provided a substantive right to the unsuccessful candidate to challenge the election within a period of two months. Section 71 did not cave out any exceptions for condonation of delays. Therefore, when a specific limitation has been fixed u/s 71 and in the absence of application of Section 5 by reference, no petition can be entertained beyond the limitation fixed. Section 671 permits the application of Section 5 of Limitation Act but that has to be confined to appeals and applications under the Act. The Election Petition is neither an appeal nor application and it is an original proceeding. Therefore, we are of the, considered

opinion that Section 671 is not applicable to election petition filed u/s 71 of the Act and consequently the order of the Tribunal is not maintainable in law.

7. Therefore, we set aside the impugned order and hold that the Election Petition is barred by limitation. Accordingly, the civil revision petition is allowed. No costs.