

(1953) 03 PAT CK 0023

In the Patna High Court

Case No : Misc. Judicial Case No. 410 of 1952 and Civil Revision No. 751 of 1952

Dr. Shayamakant Verma

APPELLANT

Vs

Dr. Harishanker Prasad

RESPONDENT

Date of Decision : 04-03-1953

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 19
Bihar and Orissa Municipal Rules — Rule 24, 5(1), 5(2)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1954 Patna 65 : (1953) 1 BLJR 305

Hon'ble Judges : Ramaswami, J;Jamuar, J

Bench : Division Bench

Advocate : Lalnarain Sinha and Balbhadra Prasad Singh, in M.J.C. 410 of 1952, Padmanand Jha, in C.R. 751 of 1952, for the Appellant; Mahabir Prasad and Shambhu Saran, for the Respondent

Judgement

Ramaswami, J.—The question to be determined in this case is whether the Election Commissioner of Cham-paran acted in excess of his jurisdiction in entertaining the election petition filed by the opposite party, Dr. Shyamakant Verma, beyond the period of fourteen days from the date of the election as prescribed by Rule 5(1) of the rules framed by the Provincial Government u/s 19, Bihar and Orissa Municipal Act, 1922.

2. The material facts are not controverted. In March 1952 there was an election of the commissioners of the Motihavi Muni finality at which the petitioner, the opposite party and twenty other persons were elected as commissioners. A notification publishing the names of the commissioners so elected was duly published in an issue of the Bihar Gazette dated 30-4-1952. On 20-8-1952, five more persons were nominated by the State Government as Municipal Commissioners of the Motihari Municipality. It is stated that on 8-9-1952, there was a meeting of the commissioners for electing a chairman. The petitioner and the opposite party each secured an equal number of votes, but the President gave his casting vote in favour of the petitioner who was declared duly elected as

Chairman of the Municipality. As there was an apprehension of the breach of the peace, the District Magistrate directed the petitioner not to take charge of the office of the Chairman pending an enquiry.

On 21-10-1952, the District Magistrate informed the petitioner that he had received instructions from Government and that the petitioner would be permitted, to take charge as the Chairman of the Motihari Municipality from Jagannath Chaudhury who had been officiating as Chairman. This order was communicated to the opposite party, Dr. Harishanker Prasad, on the same date. On 27-10-1952, the opposite party filed an application before the Election Commissioner praying that the election of the petitioner, Dr. Shyamakant Verma, be declared as null and void on the ground that the entire election proceedings were illegal. An objection was raised on behalf of the petitioner to the effect that the election petition ought to have been filed within fourteen days from the date of the election, and the election petition not being filed within the time fixed, it ought to be rejected by the Election Commissioner. The objection was overruled by the Election Commissioner on the ground that the opposite party had sufficient cause for not filing the election petition within the prescribed period and the delay should be condoned.

3. Against this order the petitioner has filed an application u/s 115, Civil P. C. He has also filed an application under Article 226 of the Constitution as a matter of precaution.

4. At the commencement of the argument in the case Mr. Lalnarain Sinha pointed out that there are two decisions of a Division Bench of this Court holding that an Election Commissioner is a "Court" within the meaning of Section 115. Civil P. C. and that the High Court was competent to deal with an application in revision u/s 115 of the Code against the order of the Election Commissioner constituted under the rules made by the State Government by virtue of Section 19, Bihar and Orissa Municipal Act, 1922. See -- Abdul Razak Vs. Kuldip Narain, and -- Jamuna Prasad and Others Vs. Jogendra Prasad and Others, . These authorities are binding upon this Court, and in view of this circumstance the learned Advocate General conceded that the petitioner could maintain an application in revision in the present case.

5. The principal question, therefore, is whether the Election Commissioner acted in excess of his jurisdiction in holding that the election petition filed by the opposite party could be entertained even beyond the period of fourteen days prescribed by Rule 5. To put it in other words, the question is whether the period of limitation prescribed by Rule 5 is merely a directory provision, or whether it is a preliminary condition for the exercise of jurisdiction of the Election Commissioner in this case. On behalf of the petitioner Mr. Lal Narain Sinha contended that the rule of limitation prescribed in Rule 5 was a condition of jurisdiction and not a mere matter of procedure. It was pointed out by learned Counsel that the jurisdiction conferred by the rules was a special jurisdiction which must be exercised subject to the conditions prescribed by the same rules.

Learned Counsel relied upon the familiar principle that wherever a special jurisdiction is conferred on a Court or Tribunal by a statute and the special jurisdiction is conferred upon terms, it is essential that the terms must be complied with in order to create the special jurisdiction.

In my opinion, the argument of learned Counsel for the petitioner is well founded. The matter really turns upon the construction of Rule 5(1) in the setting and the context of the other relevant rules. Rule 5(1) states that "an election petition against a returned candidate shall be presented to the Election Commissioner within fourteen days ... or within fourteen days from the date of the election held under Sub-section (1) of Section 20, Section 23 and Section 28 of the Act, as the case may be". Rule 3 is also important. Rule 3 states that "no election shall be called in question except by an election petition presented in accordance with these rules". Rule 4 provides that "an election petition against any returned candidate may be presented to the Election Commissioner by any candidate or elector". Rule 5(2) states that "when the period prescribed by Sub-rule (1) for the presentation of an election petition expires on a day which is a public holiday within the meaning of Section 25, Negotiable Instruments Act, 1881 or has been notified by the Governor or by the High Court of Judicature at Patna to be observed as a holiday in" Government offices or Courts, the petition shall be considered as having been presented in due time if it is presented on the next succeeding day which is neither such a public holiday or a day So notified". Rule 10(1) is as follows :

"If there is any failure to comply with any of the provisions of Rule 5, Sub-rule (1) and Clause (s) of Sub-rule (2) of Rule 7, and Rules 8 or 9, the Election Commissioner shall summarily dismiss the petition."

If Rule 5(1) is construed in the context of Rules 2, 3 and 10, it is clear that the limitation of time prescribed by Rule 5(1) is not a mere matter of procedure but it is a condition of jurisdiction of the Election Commissioner to deal with the election petition. In this connection it was argued by the learned Advocate General appearing on behalf of the opposite party that Rule 24 conferred a general discretion upon the Election Commissioner to condone the delay made in filing the election petition in the present case. Rule 24 states :

"In respect of any matter not specifically provided for in these rules, the Election Commissioner Shall proceed in such manner as he considers proper in the circumstances of the case."

It was argued by the learned Advocate General that there is no specific rule dealing with condonation of delay, and Rule 24 was, therefore, applicable in the circumstances of the case. I am not able to accept this argument. Rule 5(1) prescribes a specific period of limitation and Rule 5(2) prescribes that in certain exceptional cases the delay in filing the election petition should be condoned by the Election Commissioner. There are specific provisions, therefore, for prescribing the period of filing the election petition and for prescribing on What

conditions a delay may be condoned. There is hence no warrant or justification for the argument, of the learned Advocate General that there is a general discretion conferred upon the Election Commissioner by virtue of Rule 24, and that it was open to the Election Commissioner to entertain an election petition beyond the period prescribed in Rule 5(1) or Rule 5(2) of the rules. On the contrary, I hold, for the reasons already indicated, that the limitation of time prescribed by Rule 5(1) is a matter of jurisdiction, and that if the Election Commissioner entertains an election petition beyond the period prescribed by Rule 5(1), he will be acting in excess of his jurisdiction.

6. The principle is illustrated by a line of authorities of which the decision in -- "Nusser-wanjee Pestonjee v. Meer Mynooddeen Khan" 6 I.A. 134 (C), is a leading example. In that case the question raised was whether an award made upon a submission to arbitration was within the provisions of Bombay Regulation No. VII of 1928 so as to entitle it to the force of a decree of Court or had the effect of only an ordinary award. Section 3 Clause 1 of this Regulation enacted, among other things, that the deed of reference must contain "the time within which the award is to be given". It was held by the Judicial Committee that since the deed of submission contained no provision for time, the award made by the arbitration was bad, and an award made under it, which had been ordered to be enforced as a decree of Court should be taken off the file, as the Court had no jurisdiction except upon the fulfilment of the requirements of the Regulation.

The same principle is repeated in -- AIR 1933 122 (Privy Council) , in which it was held that in order to justify a sale of a tenure u/s 208, Chota Nagpur Tenancy Act, 1908, all parties interested in the tenure must be joined as defendants in the rent suit, or be sufficiently represented. If all the parties are not joined or represented, the Revenue Court had no jurisdiction to order a sale of the holding u/s 208 of the Chota Nagpur Tenancy Act, and the jurisdiction of the Civil Court to question the sale was not excluded by Section 214 of the Act. To the similar effect is the decision in -- Jainandan Ram Tewari Vs. Ruria Uraon and Others, , in which the holding of a certain tenant was sold in execution of a rent decree u/s 208, Chota Nagpur Tenancy Act and the tenant deposited the amount due, but two days after the statutory period had expired u/s 212 of the Act. The Rent Suit Deputy Collector, in spite of the expiry of the statutory period, accepted the amount, and set aside the sale. It was held, by the High Court that the deposit made u/s 212 after the expiry of the statutory period was of no avail, and the Rent Suit Deputy Collector had no jurisdiction to make an order setting aside the sale.

The principle has been affirmed by the Judicial Committee in -- AIR 1949 239 (Privy Council) , in which the Subordinate Judge had upon a misconstruction of Section 2(4) of the Bengal Moneylenders Act held that the transaction in question was not a commercial loan and refused to interfere with the terms of the mortgage decree. It was held by Sir John Beaumont upon these facts that, the learned Subordinate Judge by a wrong decision on a question of law had refused

to exercise a jurisdiction vested in him by law, and it was open to the High Court to act in revision under Sub-section (b) of Section 115, Civil P. C. Applying the principle illustrated by these authorities, it is clear that the condition of limitation prescribed in Rule 5(1) is a preliminary condition upon which the jurisdiction of the Election Commissioner rests. Since the election petition had been presented in this case beyond the period of fourteen days prescribed by Rule 5(1), it must be held that the Election Commissioner acted beyond his jurisdiction in condoning the delay and in entertaining the election petition.

7. For these reasons I would make the rule absolute and set aside the order of the Election Commissioner dated 11-11-1952, admitting the election petition filed by the opposite party. The application in revision is accordingly allowed with costs : hearing fee five gold mohurs.

8. Miscellaneous Judicial Case No. 410 of 1952 under Article 226 of the Constitution is not pressed and is accordingly dismissed.

Jamuar, J.

9. I agree.