
(1958) 04 MP CK 0014
In the Madhya Pradesh High Court
Case No : First Appeal No. 8 of 1958

Gulsher Ahmed

APPELLANT

Vs

The Election Tribunal, Chhatarpur and Others

RESPONDENT

Date of Decision : 18-04-1958

Acts Referred:

Limitation Act, 1908 — Section 5

Representation of the People Act, 1951 — Section 116A(3), 90(3)

Citation : AIR 1959 MP 108 : (1958) 3 MPLJ 679

Hon'ble Judges : M. Hidayatullah, C.J.; G.P. Bhutt, J

Bench : Division Bench

Advocate : R.S. Dabir and R.K. Tankha, for the Appellant; U.K.S. Chaudhary and V.K. Sanghi, for the Respondent

Judgement

This is an application for extension of time under the proviso to Sub-section (3) of Section 116A, of the Representation of the People Act (hereinafter the Act) in this appeal, which has been admittedly filed late.

The facts of the case are as follows : The election petition was dismissed by the Tribunal u/s 90(3) for non-compliance with the provisions of one of the sections mentioned therein. The present appellant filed a petition under Articles 226 and 227 of the Constitution challenging that decision. It was held by a Division Bench, of which one of us (Chief Justice) was a member, that an appeal lay against the order u/s 98 read with Section 90 (3) of the Act. There being an alternative remedy available, the petition was ordered to be dismissed: Gulsher Ahmad Vs. The Election Tribunal and Others,

Before the order of the Division Bench was signed, the present appeal was filed, together with a prayer for extension of time and condonation of the delay. The reason stated in the application for extension of time was that the appellant had consulted shri R. S. Dabir, who advised him that no appeal lay and that the only remedy was under Article 226 and or Article 227 of the Constitution. The appellant submitted that he had acted bona fide on the advice of counsel and

that he had acted with due diligence inasmuch as he filed his appeal without any further loss of time.

On behalf of the answering respondent it was contended that another counsel of the appellant had advised the filing of an appeal and further that recourse was taken to the filing of a petition under Article 226 because the appellant wanted to avoid putting in the security of Rs. 500.

The appellant has filed a second affidavit in which he has stated that he had come prepared to make the deposit of Rs. 500 if an appeal had to be filed. He denied that there was any desire on his part to save himself from the provision which imposes the giving of security as a condition precedent to the filing of the appeal.

In support of his case the appellant has filed a copy of an order stated to have been passed by the Allahabad High Court, where it seems the view has prevailed that no appeal lies and that the only remedy open against an order u/s 90 (3) of the Act is by way of a petition under Articles 226 and 227 of the Constitution. The matter is not free from difficulty.

There is no doubt that the issue is a complicated one, and it is at best a debatable question whether an appeal lies or not. No doubt, anyone taking the risk of not filing an appeal to safeguard his position acts at his peril, but the law does contemplate that on sufficient cause being shown time for filing the appeal may be extended. The question is whether the advice of counsel which was accepted can come in to support a case for sufficient cause.

In AIR 1937 276 (Privy Council) at p. 278, their Lordships made the following observation :

"Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice."

From this observation it is clear that though there is no general rule that wrong advice of counsel can always be a sufficient cause there may be cases in which wrong advice bona fide given without negligence or carelessness may amount to sufficient cause. In the present case we find no evidence of negligence. Section 116A mentions only two sections, viz. Sections 98 and 99.

The decision of the Division Bench turned upon the meaning of the word "trial", which had been elaborately given by the Supreme Court in Harish Chandra Bajpai Vs. Triloki Singh, The Division Bench also took into account various other provisions where mention is made only of Sections 98 and 99 but consequential orders have to be passed and action has to be taken after the dismissal of the election petition.

The Division Bench gave the opinion that regard being had to the generality of

the meaning of the word "trial" as used in Chapter III (Part VI) and the further fact that the order dismissing the petition may be taken to be the end of the trial, however abbreviated, an appeal must be taken to be contemplated. It, therefore, held that orders u/s 90 (3) must be taken to be orders u/s 98 also, and consequently that appeal was the proper remedy.

This, of course, is only a possible view of the matter, and much can be said also on the other side. In these circumstances, though it would have been better if the appellant had filed an appeal with a request that it be treated as a petition under Articles 226 and 227 of the Constitution if no appeal lay, we cannot but say that that is a counsel of perfection.

We do not think that the appellant had any oblique purpose in filing a petition for writ rather than an appeal, and we accept his affidavit that he had the money ready to make the security deposit if required. We think that the opinion which was given by his counsel was an opinion which might well have been given, but which, as it transpires, is erroneous on the decision of this Court, though a contrary view has been taken in another High Court. We think, therefore, that sufficient cause has been made out.

The contrary opinion which was given to him was by a junior counsel, and we think that the appellant has not acted with negligence in accepting the advice of his senior counsel. We are of opinion that sufficient cause has been made out for the delay in filing the present appeal. We accordingly extend the time under the proviso to Sub-section (3) of Section 116A, but we made no order about the costs of this matter.

We further admit the appeal, which has already been delayed. Notice shall issue immediately on payment of process-fee within three days.