

(2001) 11 AP CK 0074
In the Andhra Pradesh High Court
Case No : CRP No. 4880 of 2000

P. Sai Lakshmi

APPELLANT

Vs

Patram Venkata Rao and Others

RESPONDENT

Date of Decision : 22-11-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Hyderabad Municipal Corporation Act, 1955 — Section 12, 13, 20, 21, 21
Limitation Act, 1908 — Section 12, 13, 5
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Representation of the People Act, 1951 — Section 81
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Citation : (2002) 1 ALD 623 : (2001) 6 ALT 630 : (2002) 2 RCR(Civil) 107

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J;B. Sudershan Reddy, J

Bench : Full Bench

Advocate : E. Ella Reddy, for the Appellant; D.V. Sitaramurthy, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.

QUESTION:

1. Whether the provisions of the Limitation Act, 1963 would apply to an election petition filed u/s 71(2) of the Hyderabad Municipal Corporation Act, (hereinafter referred to as "the Corporation Act") is the question involved in this application.

FACTS:

2. An election to the Visakhapatnam Municipal Corporation was held on 9-3-2000. The petitioner herein was declared elected on 11-3-2000. Questioning the said election a writ petition was filed which was marked as writ petition No. 8305 of 2000 on 8-5-2000 purported to be on the ground that at the relevant time no election tribunal was functioning. The said writ petition came up for

admission before a learned single Judge of this Court on 9-5-2000. At the time of hearing of the said matter a notification in G.O.Ms. No. 273, dated 8-5-2000 constituting election tribunal was produced whereupon this Court directed:

It is submitted by the learned Government Pleader for GAD that the Government has already constituted a Tribunal by issuing G.O. Ms. No. 273 dated 8-5-2000. In view of this the petitioners may approach the Tribunal. Hence, the writ petition is closed. The petitioners shall approach the Tribunal on or before 31st May, 2000.

3. The unofficial respondents herein filed an election petition on 31-5-2000 with an application under Sections 5 and 14 of the Limitation Act, 1963 as also Section 671 of the Corporation Act for condonation of delay of 21 days. The said application has been allowed. The petitioner herein questions the aforementioned order on the ground that the Limitation Act, 1963 has no application in relation to an election petition.

4. In support of the said contention reliance has been placed on *Tatineni Tulasi Lavanya Vs. Gogineni Sujatha and others*, .

5. Doubting the correctness of the said decision the matter has been referred to a full bench.

SUBMISSIONS:

6. Sri E. Ella Reddy, the learned senior Counsel appearing on behalf of the petitioner would submit that an election tribunal being a *persona designata* and not a Court Section 29(2) of the Limitation Act would not be attracted, and, thus, the provisions thereof and in particular Section 5 would not be applicable in such cases. Reliance in this connection has been placed on *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, and *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, . The learned Counsel would contend that this Court committed an error in passing the said order dated 9-5-2000 in terms whereof the period of limitation stood extended. Strong reliance in this connection has been placed on *Lachhman Das Arora Vs. Ganeshi Lal and Others*, . The learned Counsel would submit that Section 81 of the Representation of Peoples Act, 1951 is in *pari materia* with Section 71(2) of the Corporation Act and in that view of the matter it must be held that an election petition being an original proceeding, the provisions of Section 5 of the Limitation Act will have no application. Reliance in this connection has been placed on *Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others*, .

7. Sri D.V. Sitarama Murty, the learned Counsel appearing on behalf of the respondents, on the other hand, would contend that an election tribunal is a Court and as such the provisions of the Limitation Act will apply to an election petition. In any event, in terms of the provisions contained in Section 671 of the Corporation Act, Section 5 of the Limitation Act would apply in relation to an election petition, as the said term is synonymous with the term "application".

Reliance in this connection has been placed on. P. Philip Vs. The Director of Enforcement, New Delhi and Another, and Karnataka Theatres Ltd. Vs. S. Venkatesan and another, etc. etc., , Black's dictionary of law and Stroud's Judicial dictionary.

8. The learned Counsel would contend that this Court having regard to the peculiar facts and circumstances of this case acted within its jurisdiction in extending the time for filing the election petition. Reliance in this connection has been placed on Danda Rajeshwari Vs. Bodavula Hanumayamma and others, .

9. As regard the division bench decision of this Court in TATINENI TULSI LAVANYA's case (supra) it was submitted that the same was rendered without considering the decision of the apex Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, . In any event, the learned Counsel would contend, although a notification constituting an election tribunal was issued on 8-5-2000, for all intent and purport having regard to Rule 68 the said tribunal started functioning only from 25-5-2000 and even in that view of the matter, the petition must be held to have been filed within a reasonable time.

FINDINGS:

10. Section 5 of the Corporation Act provides for the constitution of Corporation. The term of the office of the members has been specified as 5 years in terms of Section 6. Section 7 provides as to when a general election is to be held. Section 13 bars the jurisdiction of the civil Court which reads thus:

No civil Court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in any electoral roll for the Corporation; or

(b) to question the legality of any action taken by or under the supervision of the electoral authority u/s 9 or Section 12.

11. Section 20 provides for disqualification for voting. Section 21 specifies the persons who would be qualified as being elected as member. Section 21-A provides for general disqualification. Section 22 deals with disqualification for being a member whereas Section 23 deals with disqualification for continuing as member. For the purpose of conduct of election a notification is required to be issued in terms of Section 24. Different provisions have been laid down in Sections 25 to 60 as regards conduct of elections. Section 61 provides for right to vote. Section 66 provides that as soon as may be after the result of an election has been declared, the Returning Officer shall report the result to the Commissioner and State Election Commissioner who shall cause publication of the declaration of results. Section 70 provides for the rule making power. Section 71 is in the following terms:

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 Section 79 and Section 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 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.

12. Section 72 provides as to who would be the parties to the election. Section 73 specifies the essential contents of an election petition. Relief which may be claimed by the petitioner is provided for in Section 74.

13. Section 75 reads thus:

Election Tribunal:--The Government shall appoint any person who is or has been or is eligible to be appointed as judge of the High Court as an Election Tribunal (hereinafter referred to as the Tribunal) for trial of petitions in respect of an election under this Act. This Tribunal shall deal with such petitions and proceedings in connection therewith in the prescribed manner.

14. Section 76 deals with the power of the tribunal and Sections 77 and 78 state that the decision and other orders which can be made by the tribunal. Section 79 provides for the grounds upon which an election can be declared void. Section 83 states that an appeal shall lie to the High Court against the order of Tribunal. Section 84 states that the order of the tribunal to be final and conclusive. Section 85 speaks of as to when the orders would take effect. In terms of Section 86 whenever a dispute or doubt arises whether a member has suffered disqualification, the Commissioner shall make a reference of the same to the Tribunal for its decision.

15. The procedure laid down for conducting an election petition as would appear from the provisions noticed hereinbefore do not leave any manner of doubt that the function of election tribunal is judicial in nature.

16. The tribunal has not only power to take evidence, it has also a limited power of a civil Court in terms of CPC as provided in Section 76. An order passed by the Election Commissioner is subject to the result of an appeal. An order of the election tribunal or the appellate tribunal, as noticed hereinbefore, is conclusive.

17. The matters relating to the constitution of the Tribunal for the purpose of adjudication of disputes relating to certain matters as enumerated therein being the subject matter of the Concurrent List, there cannot be any doubt, that the same comes within the purview of List III of VII Schedule to the Constitution of India. The Parliament as also the State have the legislative power to constitute tribunals for adjudication of disputes and provide for jurisdictional power of a Court.

18. The distinction between the Courts and the Tribunals is well known.

Reference in this connection may be made to the case of Gouri Shankar Bajoria Vs. Ram Banka, . There cannot be doubt whatsoever having regard to its nature of functions, the Tribunal is a Court within the meaning of the provisions of the Evidence Act as also the Contempt of Courts Act. The definition of "Court" as contained in the Indian Evidence Act is not exhaustive. It is for the purpose of the said Act alone that all authorities, which are legally authorised to take evidence, must be held to be Courts within the meaning of the said provision.

19. In Brajnandan Sinha Vs. Jyoti Narain, , it has been held that any Tribunal or authority whose decision is final and binding between the parties is a Court. In Shri Virindar Kumar Satyawadi Vs. The State of Punjab, , the Apex Court has made a broad distinction between a Court and quasi judicial Tribunal. In The Sitamarhi Central Co-operative Bank Ltd. Vs. Thakur Jugal Kishore Sinha, , a Division Bench of Patna High Court has held that the Assistant Registrars appointed under the Bihar and Orissa Co-operative Societies Act to be Courts. The said judgment has been affirmed by the Apex Court in Thakur Jugal Kishore Sinha v. Sitamarhi Central Cooperative Bank Ltd AIR 1967 SC 1434. In S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra, , the Board of Revenue has been held to be a Court subordinate to the High Court for the purpose of provisions of the Contempt of Courts Act. It is, thus, clear that the Tribunal, which is empowered to issue summons for appearance of any person and examine him on oath would be a Court within the meaning of the provisions of the Evidence Act, as also in terms of the Contempt of Courts Act.

20. All Courts are tribunals but all tribunals are not Courts, In essence the Tribunals may be called specialised Courts of law, although they do not fulfil the criteria of civil Courts as is understood in common parlance as they do not entertain suits on various matter. However, the Tribunals are bound by the rules of evidence and procedure as laid down under the law and are required to decide strictly as per law.

21. Election tribunal is a statutory tribunal. Its functions are not inquisitorial in nature. A District Judge presides over the election tribunal. Not only it has a judicial function to perform but its judgments are conclusive and binding.

22. It therefore follows that the tribunal, although not a civil Court in its true sense but being a Court is bound to act independently and impartially and exercise judicial authority without any fear or favour.

Sub-section (2) of Section 29 of the Limitation Act reads thus.

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or

local law.

23. Having regard to the scope and purport of the Act we are of the considered view that the tribunal is not a *persona designata* but is a Court. In *MUKRI GOPALAN* (supra) the Apex Court while considering the question whether the appellate authority constituted u/s 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 has power to condone the delay in filing of appeal before it under the said section, has held:

Once it is held that the appellate authority functioning u/s 18 of the Rent Act is not a *persona designata*, it becomes obvious that it functions as a Court.....

After repealing of Indian Limitation Act, 1908 and its replacement by the present Limitation Act of 1963 a fundamental change was made in Section 29(2). The present Section 29(2) as already extracted earlier clearly indicates that once the requisite conditions for its applicability to given proceedings under special or local law are attracted the provisions contained in Sections 4 to 24 both inclusive would get attracted which obviously would bring in Section 5 which also shall apply to such proceedings unless applicability of any of the aforesaid Sections of the Limitation Act is expressly excluded by such special or local law. By this charge it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 29(2) this provision is made applicable to the periods prescribed under the special laws. An express mention in the special law is necessary only for any exclusion. It is on this basis that when the new Rent Act was passed in 1965 the provision contained in old Section 31 was omitted. It becomes therefore apparent that on a conjoint reading of Section 29(2) of Limitation Act of 1963 and Section 18 of the Rent Act of 1965, provisions of Section 5 would automatically get attracted to those proceedings, as there is nothing in the Rent Act of 1965 expressly excluding the applicability of Section 5 of the Limitation Act to appeals u/s 18 of the Rent Act.

24. In view of the said decision of the Apex Court, thus, the provisions of the Limitation Act, 1963 shall apply to election proceedings.

25. Section 5 of the Limitation Act, however, has no application in respect of a suit.

26. In Black's Law Dictionary, Fifth Edition at page 1286, suit has been defined to mean:

A generic term, of comprehensive signification, referring to any proceeding by one person or persons against another or others in a Court of justice in which the plaintiff pursues, in such Court, the remedy which the law affords him for the redress of an injury or the enforcement of a right, whether at law or in equity. *Kohi v. U.S.* 91 U.S. 367; *Weston v. Charleston* 27 U.S. 449: 7 L.Ed. 481.

27. In P. Ramanatha Aiyar's Law Lexicon, 1997 Edition, it has been defined:

A process instituted in a Court of justice for recovery or protection of a right, the enforcement of a claim, or the redress of a wrong.

28. In Ballentine's Law Dictionary, Third edition at page 1236, it has been defined:

A legal proceeding of a civil kind

It must be conceded that the word, as applied to legal controversies, both by the legal profession and others, is now used and recognised as a generic term of broad significance, often understood and used, even by legislatures and Courts, to designate almost any proceeding in a Court, even though rarely, being applied to a criminal prosecution in certain connections. *Patterson v. Standard Acci. Ins. Co.* 178 Mic 288: 144 NW 491.

29. In Webster's New Twentieth Century, Unabridged, 2nd edition, 1978 at page 1822 it has been defined to mean:

Action to secure justice in a Court of law, attempt to recover a right or claim through legal action, Pursuit

An act of suing, pleading or request, a petition.

It is true that in terms of Section 2(b) of the Limitation Act an application would include a petition but for all intent and purport an election petition should be treated as a suit, being an original proceedings.

30. The words "application" and "suit" in a given situation are interchangeable. Only because under the statute an application is required to be made, the same would not mean that in a given situation the same may not be construed to be a suit and vice-versa.

31. Section 5 of the Limitation Act, having regard to the doctrine of purposive interpretation, in the opinion of this Court would mean that the Parliament has not made it specifically applicable in relation to a suit, which would mean an original proceedings in the context.

32. In *BSI Ltd. and Another, etc. Vs. Gift Holdings Pvt. Ltd. and Another, etc.*, his Lordship, Thomas, J., speaking for the Bench quoted with approval the meaning of the word "suit" as given in Bouvier's Law Dictionary which is in the following term:

Suit is a generic term of comprehensive signification, and applies to any proceeding in a Court of justice in which the plaintiff pursues, in such Court, the remedy which the law affords him for the redress of any injury or the recovery of a right... In its most extended sense, the word suit includes not only a civil action, but a criminal prosecution, as, indictment, information and a conviction by a Magistrate.

33. However, in the context of the case before the Supreme Court, it was held that the word "suit" envisaged in 22(1) of Sick Industrial Companies (Special

Provisions) Act, 1985 cannot be stretched to a criminal prosecution.

34. In KARNATAKA THEATRES LTD (supra) an application has been held to be an appeal.

35. Let us now consider the relevant provision of the Corporation Act. Section 670 of the Corporation Act reads thus:

Code of Civil Procedure to apply :--(1) Save as expressly provided by this Chapter the provisions of the Code of Civil Procedure, 1908, relating to appeals from original decree shall apply to appeals to the Judge from the orders of the Commissioner and the provision of the said Code relating to appeals from appellate decrees shall apply to appeals to the High Court.

(2) All other matters for which no specified provision has been made under this Act shall be governed by such rules as the Government may from time to time made after consultation with the High Court.

36. Section 671 of the Corporation Act provides for limitation which reads:

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.

37. In the aforementioned provision an election petition does not find place. The same refers to an appeal or application which terminology has also been used in Section 5 of the Limitation Act.

38. By reason of Section 671 of the Corporation Act only an appeal or an application referred to in the Act must be construed to be included therein as contradistinguished with an election petition. In any event, the provisions of Sections 5, 12 and 13 of the Limitation Act only shall apply in relation to an application or appeal.

39. Only some provisions of the Limitation Act thus have been made applicable only in respect of an application or appeal filed before one or the other authorities constituted under the Act but the same would not apply to an election petition.

40. Section 81 of the Representation of Peoples Act, 1951 which is in pari materia with Section 79 of the Act and reads thus:

Presentation of petitions :--(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 dates of their election are different, the later of those two dates.

Explanation :--In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

41. While considering the applicability of the law of limitation it was held by the apex Court in *Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others*, .

While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.

42. The next question which, therefore, arises for consideration is as to whether the order of this Court dated 9-5-2000 can be said to have been passed without jurisdiction. The answer to the said question must be rendered in the negative.

43. A writ petition was filed when no tribunal was constituted. Having regard to the doctrine of *ubi jus ibi remedium* it must be held that whenever there is a cause of action a remedy is available. A remedy cannot be enforced in vacuum. Constitution of a tribunal and functioning thereof are essential features which enable an aggrieved person to file an election petition. If no election tribunal was functioning where an election petition could be filed, the question of moving the said tribunal in terms of Sub-section (2) of Section 71 would not arise. Law does not postulate doing or performing some act which is impossible to be performed.

44. The time for filing such an application, therefore, must start from the date when the Tribunal begins functioning and is ready to accept an election petition. The statute of limitation although is a statute of repose but the same has to be construed in such a manner so that justice can be done to the parties.

45. In *Uttam Namdeo Mahale v. Vithal Deo and Ors.*, it has been held.

In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in the Limitation Act (Act 2 of 1963) stands excluded. The division bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise.

46. In the instant case, the respondent has filed an application within a reasonable time.

47. The order dated 9-3-2000 was passed in the presence of the writ petitioner. He was a party thereto. Therefore, it does not lie in his mouth now to raise the question of limitation when the order of this Court had been complied with.

48. In *DANDA RAJESHWARI* (supra) the apex Court upheld an order passed by this Court where in exercise of its jurisdiction under Article 226 of the Constitution it allowed the party to file an application by a specified date. Such order was passed in the interests of justice. One of the cardinal principles is that the Court's arm is long enough to do justice. Having regard to the fact that this Court merely passed an equitable order, we are of the opinion that the Court below cannot be said to have committed any mistake in accepting the election petition.

49. The civil revision petition is dismissed. There shall be no order as to costs.