

(1963) 10 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 954 of 1963

S. Gurmej singh	Vs	APPELLANT
The Election Tribunal, Chandigarh and Others		RESPONDENT

Date of Decision : 23-10-1963

Acts Referred:

Representation of the People Act, 1951 — Section 97

Citation : AIR 1964 P&H 337

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : H.L. Sarin, for the Appellant; A.C. Hoshiarpuri, for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This petition under Article 226 of the Constitution is directed against the order of the Election Tribunal dated the 5th January, 1963, holding that the recrimination petition u/s 97 of the Representation of People Act, 1951, is barred by time.

2. The facts of the case are as follows. The petitioner Gurmej Singh was elected to the Vidhan Sabha from the Fatehgarh constituency. Against his election, an election petition was preferred by respondent No. 2 Joginder Singh. Notice of that petition was issued u/s 86 of the Act to Gurmej Singh. It may be mentioned that in the election petition a claim had been made that if Gurmej Singh's election is set aside, the petitioner, that is, Joginder Singh be declared to have been duly elected by recounting the votes. For this reason, a right accrued to Gurmej Singh to file a recrimination petition u/s 97 of the Act. The petitioner was required to appear before the Tribunal on or before the 14th June, 1962. Therefore, he could appear at the latest by the 14th June, 1962, and the period of limitation for presentation of recrimination petition would start from 14th June, 1962, or from the date when he actually would appear because the relevant provision, namely, section 90(4) Explanation, envisaged that the trial is deemed to commence on the date when the respondent is called upon to appear

before the Tribunal and answer the claim, made in the petition.

3. The first contention of Mr. Sarin, learned counsel for the petitioner, is that when the petitioner appeared before the Tribunal on the 14th June, 1962, another date had to be given to answer the claim and, therefore, the limitation will start from the date fixed for answering the claim. I am, however, unable to agree with this contention. The requirement of the Explanation to section 90(4) is that when the respondent appears, he really appears to answer the claim and, therefore, the argument that another date has to be fixed for answering the claim is untenable. The limitation would, therefore, start running from 14th June, 1962.

4. Mr. Sarin then argued that the recrimination petition is filed in time on 16th of July, 1962 as the Election Tribunal is the District Judge, no civil business was to be conducted during the vacations, which were notified by this Court to commence from the 15th June, 1962, and end on the 14th July, 1962. The 15th July, 1962, being a Sunday the recrimination petition could be filed on the 16th July, 1962. In this connection reliance is also placed on section 10 of the General Clauses Act which is in these terms :

10.(1) Where, by any Central Act or regulation made after the commencement of this Act, or any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act 1877, applies.

(2) * * *.

It has been settled by a decision of this Court in Suraj Bhan Vs. Randhir Singh, , that section 10 of the General Clauses Act applies to proceedings before an Election Tribunal. To the same effect is the decision of the Patna High Court in Kaushalendra Prasad Narayan Singh Vs. R.P. Singh and Others, , and support can also be derived for this proposition from the decision of the Supreme Court in H.H. Raja Harinder Singh Vs. S. Karnail Singh, . Therefore, the contention of the learned counsel that the Tribunal was in error in holding that the recrimination petition was barred by time is sound and the decision of the Tribunal to the contrary can be quashed. The learned counsel for the respondent tried to meet this argument by reference to a Supreme Court decision in Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa and Others, . I have gone through that decision and I find that it has no applicability to the facts of the present case. In that case the question that arose for determination was: whether in an election petition in which a notice had been served on the respondent, the petitioner could withdraw the same ? Their Lordships of the Supreme Court observed that the petitioner could not, because the moment the notice was served on the

respondent, a right accrued to him to file a recrimination petition. In that case their Lordships were not called upon to decide the terminus a quo for such a petition and, therefore, that decision is of no assistance whatever.

5. Faced with this situation, the learned counsel for the respondent states that the petition must fail on the ground that it is belated. For this he relies on a decision of the Bombay High Court in *Gandhinagar Motor Transport Society Vs. State of Bombay*, wherein though the delay was of somewhat shorter duration than that in the present case the petition was rejected. In the present case, it may be mentioned, the impugned order was passed on the 5th January, 1933 and on the 7th January, 1963, an application was made for a copy of the same. The copy was delivered on the 18th January, 1963. The present petition was presented on the 30th May, 1963. Therefore there is delay in filing the petition under Article 226 of the Constitution of India and no satisfactory explanation has been given regarding this delay. Moreover I am bound by the Bombay decision as it was approved by this Court in *Kundan v. The State of Punjab* (1955) 57 P.L.R. 506.

6. In this situation though I have held that the impugned order is wrong and can be quashed, I don't allow the petition but dismiss the same as it is belated. In view of the fact that the petitioner has succeeded on the main point, there will be no order as to costs.