

(2014) 10 MAD CK 0053

In the Madras High Court

Case No : C.R.P.P.D. No. 1115 of 2013 and M.P. No. 1 of 2013

S. Poornima

APPELLANT

Vs

N. Balakrishnan

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 10, 11, 12, 13, 14, 14
Penal Code, 1860 (IPC) — Section 42
Representation of the People Act, 1951 — Section 100, 101, 81, 81(1)
Tamil Nadu Panchayats Act, 1994 — Section 258, 258(1)

Citation : (2015) 1 LW 62

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : N. Jothi for M.C. Govindan, Advocates for the Appellant; R. Margabandhu, Advocates for the Respondent

Judgement

T. Mathivanan, J.—Invoking the provisions of Article 227 of the Constitution of India, this memorandum of civil revision has been directed against the fair and decretal order, dated 8.2.2013 and made in the interlocutory application in I.A. No. 17 of 2012 in an unnumbered Election O.P. No. Nil/2012 on the file of the learned Principal District Judge, Vellore. The revision petitioner herein is the fifth respondent in the interlocutory application in I.A. No. 17 of 2012, whereas the respondent No. 1 is the petitioner in the above said interlocutory application as well as the petitioner in the unnumbered election petition and the respondents 2 to 8 are the respondents 2 to 4 and 6 to 8 in the above said application.

2. It is manifested from the records that the interlocutory application in I.A. No. 17 of 2012 seems to have been filed by the first respondent/petitioner under Section 258 of the Tamil Nadu Panchayats Act to condone the delay of 53 days in filing the election petition.

3. This petition was strenuously resisted by the respondents 2 to 8 including the

revision petitioner herein being the fifth respondent therein, however, the Election Tribunal, viz., the learned Principal District Judge, Vellore, had proceeded to allow the application on 8.2.2013 and thereby condoned the delay of 53 days in filing the election petition on condition that the first respondent/petitioner shall deposit a sum of Rs. 3000/- towards the cost of the revision petitioner herein (fifth respondent). This order has been impugned in this memorandum of civil revision.

4. The first respondent/petitioner was one of the candidates contested for the post of President of Nemili Town Panchayat, Vellore District, in the election held on 17.10.2011. In the said election, the revision petitioner/fifth respondent was also one of the contestants. After the completion of the election, the counting process was carried out on 21.10.2011.

5. Eventually, the revision petitioner/fifth respondent was declared as elected. The first respondent/petitioner, who had lost the election, had submitted a representation, dated 9.11.2011 to the State Election Commissioner, viz., the District Collector and the Executive Officer/Election Officer, Nemili Town Panchayat stating that the fifth respondent's date of birth was 21.5.1992 and on the date when the nominations were filed, she did not complete the age of 21 and as such she had to be disqualified.

6. Though the said representation was received by the second respondent/State Election Commissioner and other respondents, no action was taken. Under this circumstance, the first respondent/petitioner had approached this Court (High Court) by way of a Writ of Quo Warranto in W.P. No. 26717 of 2011 questioning the locus of the revision petitioner/fifth respondent for holding the post of President of Nemili Panchayat. In the said writ petition, it was contended by the first respondent/petitioner that as could be seen from the school records and birth certificate issued by the Sub Registrar, Nemeli, the revision petitioner/fifth respondent had not attained the age of 21 on the date of nomination.

7. The revision petitioner/fifth respondent had vehemently resisted the writ petition by filing her counter affidavit.

8. After hearing both sides, the Division Bench of this Court headed by D. Murugesan, J., while dismissing the above writ petition on 12.1.2012, has made an observation, which is extracted as under:--

"When this being a different question of fact, it cannot be adjudicated in a Writ Petition as the petitioner has to establish the case by filing a election petition before the Election Tribunal and for that reason, we are not inclined to express our opinion on any of the contentions made by the petitioner, the returning officer as well as the fifth respondent, namely, the elected candidates. The controversy can very well be resolved in the election petition under section 258 of the Tamil Nadu Panchayats Act. If the petitioner is advised to do so, he can resort to file an election petition.

Learned counsel appearing for the petitioner would however, submit that since, the petitioner had approached this Court by filing the Writ Petition on 17.11.2011, the period of pendency can be condoned for the purpose of filing election petition. In our opinion, the said request cannot be directly acceded to by this Court except observing that in case the petitioner is advised to file an Election Petition and an application seeking for condonation of delay is taken up, the pendency of the Writ Petition from 17.11.2011 till the disposal of this writ petition today shall also be considered as a proper explanation by the Tribunal and accordingly, necessary orders can be passed on the application for condonation of delay."

9. It appears that only on the basis of the observation made by the Division Bench of this Court, the first respondent/petitioner was constrained to file the unnumbered election petition on 27.1.2012 under Section 258 of the Tamil Nadu Panchayats Act to declare the election of the revision petitioner/fifth respondent as Chairman of Nemili Town Panchayat as null and void and consequently, declare the petitioner as elected Chairman of Nemili Town Panchayat and also for costs.

10. Along with that application, he has also taken out an application on 27.1.2012 under the very same provision of law, i.e., under Section 258 of the Town Panchyats Act to condone the delay of 53 days in filing the election petition.

11. As afore stated, this petition in I.A. No. 17 of 2012 was vehemently objected to by the revision petitioner/fifth respondent by filing her counter statement. However, the Election Tribunal has proceeded to allow the said application condoning the delay of 53 days on payment of costs as afore stated. Impugning the correctness of the order, this revision is filed by the revision petitioner/fifth respondent.

12. Heard Mr. N. Jothi, learned counsel appearing for the petitioner and Mr. R. Margabandhu, learned Counsel appearing for the first respondent and Mr. T. Jayaramaraj, learned Government Advocate appearing for the respondents 3 to 5.

13. The provisions of Section 258 of the Tamil Nadu Panchayats Act, 1994, (in short, "the Act") reads as under:--

"The provision of Section 258 of the Tamil Nadu Panchayats Act, 1994 (in short, "the Act") deals with "Election Petitions". Sub section 1 of Section 258 enacts as follows:--

(1) No election of a president or a chairman or a member shall be called in question except by an election petition presented to the District Judge of the district in which the panchayat is situated, within (forty-five days) from the date of the publication of the result of the election under this Act."

14. From the languages coined under sub-section 1 of Section 258 of the Panchayat Act, it is thus made clear that except by an election petition presented to the District Judge of the District in which the panchayat is situated within 45

days from the date of the publication of the results of the election under this Act no election of a president or a chairman or a member shall be called in question.

15. The underlined words disclose that subsection 1 of Section 258 of the Act is rigid and inflexible as it seems to be mandatory in nature. Therefore, if the election of a chairman or a member is to be challenged, an application to that effect under Section 258 of the Panchayat Act shall be filed within 45 days from the date of the publication of the results of the election.

16. Section 258 of the Act is *pari materia* to the provisions of Section 81(1) of the Representation of the People Act, 1951. Sub-section 1 of Section 81 of the Representation of the People Act, 1951 enacts as under:--

"An election petition calling in question any election must 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 45 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 the dates of election are different, a later of those two dates."

17. Section 258(1) of the Act does not provide for condoning the delay and therefore, obviously, the petition to condone the delay of 53 days under Section 258 of the Panchayat Act is absolutely wrong as there is no such provision available in the Act to condone the delay.

18. In para 3 of the counter statement filed by the revision petitioner/fifth respondent, she has highlighted the fact that the petitioner had presented an application in I.A. No. 17 of 2012 in the election petition No. Nil/2012 under Section 258 of the Act and he had also filed an unnumbered election petition in terms of Section 258 of the Panchayat Act. It means both the election petition as well as the interlocutory application have been filed under Section 258 of the Act only and that Section 258 of the Panchayat Act does not empower the Tribunal to condone any delay and that the delay in filing the election petition cannot be condoned by the election tribunal.

19. Now the question arises for the consideration of this Court is as to whether a mere observation made by this Court, while disposing of the writ petition in W.P. No. 26717 of 2011, can empower the Election Tribunal to condone the delay of 53 days in filing the election petition or can give entitlement to the first respondent/petitioner to file an application under Section 258 of the Panchayat Act to condone the delay of 53 days?

20. It is apparent that the observation made by this Court is *obiter dicta*. It is trite law that the *Obiter Dicta*, made by a court while passing an order or judgment, cannot give any entitlement or empowerment to any court to do or not to do an act which is ought to have been done or ought not to have been done by a specific provision of law.

21. While advancing his arguments, Mr. N. Jothi, learned counsel appearing for

Mr. M.C. Govindan, learned counsel, who is on record for the revision petitioner/ fifth respondent, has invited the attention of this Court to paragraph No. 6 of the impugned order passed by the election tribunal, wherein, the election tribunal has made reference to the decision in Shaik Saidulu @ Saida Vs. Chukka Yesu Ratnam and Others, .

22. In this case, the appellant Shaik Saidulu @ Saida had filed his nomination for the post of Mayor of Guntur Municipal Corporation on behalf of Indian National Congress Party on 21.2.2000. Upon scrutiny, the nomination papers of the parties contesting the appeals were found to be in order. Elections were held on 9.3.2000 and the first respondent, who contested the elections as a candidate of Telugu Desam Party was declared elected to the post of Mayor, Guntur Municipal Corporation on 11.3.2000.

23. Aggrieved by the result of the election, the appellant therein filed an election petition before the District Judge, Guntur on 29.3.2000 which was returned to him on 31.3.2000 on the ground that the District Judge was not the Tribunal to hear the election petition.

24. The Election Tribunal was constituted in the first week of May, 2000 when the courts were closed for summer vacation and its notification was allegedly published on 28.5.2000. After reopening of the Courts the appellant again filed the election petition before the District Judge, Guntur on 3.6.2000 allegedly not being aware of the constitution of the Election Tribunal. His election petition was again returned on 17.6.2000. After coming to know about the constitution of the election tribunal, the appellant had presented the election petition before the Tribunal on 22.6.2000. The Tribunal returned the election petition allowing the appellant 7 days time for filing the election petition along with an application for condonation of delay.

25. As per the direction of the Election Tribunal, the appellant again filed his election petition with an application under Section 5 of the Limitation Act seeking condonation of delay of 42 days in filing the election petition. The Election Tribunal allowed I.A. No. 6 of the appellant and condoned the delay in filing the petition.

26. Aggrieved by the order passed by the Election Tribunal, the respondent No. 1 therein moved the High Court of Andhra Pradesh invoking its supervisory jurisdiction under Article 227 of the Constitution of India praying for the dismissal of the election petition of the appellant on the ground of being barred by limitation. The High Court had allowed the petition vide the order impugned in that appeal and held that the petition filed by the appellant was barred by time. Thereafter, the appellant had approached the Apex Court by way of an appeal.

27. The Apex Court, after considering the catena of cases had found that, "the remedy provided under a statute cannot be defeated under the cloak of technicalities by adopting a hyper-technical approach. The free and fair elections are a guarantee of democratic polity and for achieving such an objective various

provisions are made applicable to the election laws, most important of which is the remedy of challenging the elections on the grounds specified under the statute. In the absence of the applicability of Section 5 of the Limitation Act, the rights of the aggrieved person, intended to challenge an election, can be defeated by the executive of the State by not appointing the Election Tribunal as is shown to have been done in the instant cases."

28. On coming to the present case on hand, the circumstances elicited in the above cited decision is not reflected in the given case on hand. Fortunately, at the time of filing the writ petition in W.P. No. 26717 of 2011 by the first respondent/petitioner before this Court seeking the writ of quo warranto against the revision petitioner/fifth respondent, the election tribunal was very much in existence, but he had not chosen to file the election petition challenging the election of the revision petitioner/fifth respondent before the election tribunal under Section 258(1) of the Act.

29. As afore stated in the foregoing paragraphs, on the obiter dicta given by the Division Bench of this Court, the first respondent/petitioner had filed the unnumbered election petition to declare the election of the revision petitioner/fifth respondent as null and void.

30. The decision in Phoolchand (deceased by Lrs.) and Others Vs. Shankerlal (through Lrs.) and Others, is also not made applicable to the present case on hand.

31. In this case, cited supra, the following two points were arisen for the consideration of the Madhya Pradesh High Court (Indore Bench).

"(1) That the appellants were in adverse possession of suit land even as per averments made by Shankerlal Bhat before Sub-Divisional-Officer, Alot. When he averred that he was dispossessed from 28.6.1949.

(2) For the purpose of getting the exclusion of period of limitation Shankerlal Bhat was not prosecuting the cause in the court which did not have the jurisdiction and also he did not prove that he was prosecuting the said cause diligently."

32. While considering the above said two questions the Madhya Pradesh High Court (Indore Bench) after taking into consideration of the provisions of Sections 14, 31 and Articles 64 and 65 of the Limitation Act (36 of 1963) has held that the provisions are declaratory and not remedial and the party pursuing his cause in Court having no jurisdiction and that the time spent in such proceeding is liable to be excluded.

32a. This is also not applicable for the given case on hand because it is not the case of the first respondent/petitioner that he had filed the earlier petition, i.e., W.P. No. 26717 of 2011 before the court which did not have jurisdiction.

33. Section 14 of the Limitation Act, 1963 deals with "Exclusion of time of

proceeding bona fide in court without jurisdiction". Sub-section 1 enacts that in computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature is unable to entertain it.

34. The policy of the section is to afford protection against the bar of limitation of a man honestly doing his best to get his case tried on the merits, but failing through the Court being unable to give him such trial. Section 14 aims to protect a bona fide plaintiff from consequences of mistake of his advisors, in prosecuting his claim.

35. It is trite law that what is not given by law cannot be given by a forum.

36. No doubt as decided by the Full Bench of this Court in All India Anna Dravida Munnetra Kazhagam Vs. The State Election Commissioner and Others, , within the known parameters, it would be open to the High Court in exercise of extraordinary jurisdiction under Article 226 to interfere in such matter, even before completion of election process or after conclusion of election process.

37. However, the mere observation, made by the High Court while disposing of the writ petition, cannot be construed that it would extend the period of limitation with reference to Section 258(1) of the Act.

38. Sub-section 2 of Section 14 of the Limitation Act, 1963 contemplates that in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

39. As observed in Azam Jung Vs. Mohd. Abdul Razzack , under Section 14 the litigant is entitled as of right to exclude the period spent in infructuous proceedings where he satisfies the Court that he was prosecuting the suit bona fide with due diligence.

40. On coming to the instant case on hand, admittedly, the first respondent/petitioner had not prosecuted the writ petition before the court which had got the defective jurisdiction. If it is so, as argued by Mr. Margabandhu, learned counsel for the first respondent/petitioner, the period can be excluded. But the averments of the petition filed in I.A. No. 17 of 2012 are not so. Therefore, sub-section 2 of Section 14 of the Limitation Act, cannot be taken umbrage by the first respondent/petitioner.

41. S.S. Subramani, J., learned Judge of this Court, as he then was, while penning down the judgment in the case of R. Stalin Vs. The State Election

Commissioner, State Election Commission, Vadapalani, Chennai-26 and Four others, has considered the question as to whether the District Judge has the power to condone the delay in presenting the election petition.

42. While answering to this question, he has also made reference to the similar cases, which came up before the Hon"ble Supreme Court of India in K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, and K. Kamaraja Nadar Vs. Kunju Thevar and Others, .

43. In Kamaraja Nadar"s case, the Apex Court has observed that the provisions of the Act go to show that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law, and a petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested. In this case, their Lordships have observed in paragraph 14 as under:--

"The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless the application thereof has been excluded by any enactment; the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.?"

44. S.S. Subramani, J., has also made reference to the decision in Simhadri Satya Narayana Rao Vs. M. Budda Prasad and Others, . In paragraph 8 of the above said decision. He has also made reference to the decision in Thoorotu Nookamma v. Election Commissioner, Peddapuram, E. Godavari District and another, (1958 (1) Andhra Weekly Reporter 241). Paragraph No. 8 reads as follows:--

"8. In Simhadri Satya Narayana Rao v. M. Budda Prasad and others 1991(1) S.C.J. 281, the same principle was enunciated. A Division Bench of the Andhra Pradesh High Court, in the case of Thoorotu Nookamma v. Election Commissioner, Peddapuram, E. Godavari District and another (1958 (1) Andhra Weekly Reporter 241) has considered a similar question under the Madras Village Panchayats Act, whether the provisions of the Limitation Act can be applied in the election proceedings under the Panchayat Act."

It was held thus:--

"Rule 1, sub-rule (3) of the Rules framed under the Madras Village Panchayats Act, says in unequivocal terms that an Election Commissioner acts as a persona designata and not as a Judge. Persona designata as the expression implies, is a person pointed out by name or other personal description in contra distinction to

one whose identity is to be ascertained by the office which he holds. As such the provisions of the Limitation Act which apply only to Courts do not apply to election petitions filed under the Madras Village Panchayats Act and the rules thereunder. The rules are a complete Code with regard to matters pertaining to panchayat elections; the procedure applicable to election petitions is contained within the four corners of these rules, and it is not permissible to travel beyond them for purposes of extending the period of limitation."

45. In paragraph 9, the learned Judge has observed after referring to the decision in K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, as under:--

"9. Under the Tamil Nadu Panchayats Act, the District Judge acts as an Election Tribunal and insofar as the panchayat elections are concerned, the Act is a self-contained Code. Similar provisions in the Representation of People Act, are provided in the Tamil Nadu Panchayats Act also. As their Lordships observed in K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, , the election dispute is not a common law right, but it is only a right created by a Statute, and naturally the petitioner cannot claim the benefit of Section 5 of the Limitation Act, which applies only to suit and to proceedings similar to suits, and to some of the criminal proceedings. Section 29(2) of the Limitation Act also may not have any application, in so far as the election disputes under the Tamil Nadu Panchayats Act, are concerned."

46. In Coal India Limited and Another Vs. Ujjal Transport Agency and Others, while filing an application for setting aside the arbitration award, the question of limitation was arisen for consideration.

47. In the above cited case, the appellant instead of filing an application to set aside the arbitration award, had in fact filed an appeal under Section 34 of the Arbitration and Conciliation Act.

48. On realising their mistake, the appellants had demonstrated their diligence and bona fides by filing applications under Section 34 immediately on reopening of court without waiting for formal order of withdrawal of appeal before a wrong forum.

49. While speaking on behalf of the Division Bench of the Apex Court, Hon"ble Mr. Justice R.V. Raveendran has considered the question as to whether the appellants were bona fide and diligently pursuing the remedy before a wrong forum.

50. While allowing the appeal, His Lordship has observed that if the period spent before wrong forum is excluded and the application was filed within three months then it was not barred by limitation 52. But this ratio cannot be made applicable to the present case on hand.

51. With reference to the above context, it is appropriate to have reference to the provisions of Section 29(2) of the Limitation Act, 1963.

52. Sub-section 2 of Section 29 of the Limitation Act enacts as under:--

"(2) 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."

53. As observed by S.S. Subramani, J., in R. Stalin's case (1998 II CTC 13), the Tamil Nadu Panchayats Act, 1994 itself is a self contained as well as a complete Code itself. Therefore, the provisions of the Limitation Act: much less the provisions of Section 14(2) of the Limitation Act would not in any way made applicable.

54. The Tamil Nadu Panchayats Act, 1994 is a local law which would signify a law intended to operate within a particular locality. According to Section 42 of I.P.C., a local law is a law applicable to a particular point of India. This definition cannot, however, serve as a guide to the meaning of the term local law in the Limitation Act, as observed in Diopadi v. Hira Lal ((1912) 16 IC 149) : (ILR 34 A 11496(FB).

55. In Akhtar Ali Vs. State of M.P. and Others, , an appeal against rejection of nomination paper was filed beyond prescribed time. An application for condonation of delay was also filed and it was rejected as not maintainable.

56. In this connection, the Madhya Pradesh (Gwalior Bench) has held in paragraph Nos. 16, 19 and 20 as under:--

"16. In the aforesaid connection, it may be noticed that if the provision of Section 29(2) of the Limitation Act is applied to the proceedings under Rule 17 (4) of the Rules of 1974, with the logical extension it will apply to the proceedings contemplated under Rule 43 of the Rules of 1974 making it permissible to entertain the election petition even after the expiry of the limitation on making out a sufficient cause for the delay. This could never have been intended in order to secure the finality of the election and the proper functioning of the public office, filled up on the basis of election in the public interest,

19. The law does not operate in a vacuum. It cannot be interpreted without taking into account the social, political and economic setting in which it is intended to operate. A mechanical approach is altogether out of step in the modern positive approach which is to have a purposeful construction that is to effectuate the object and purpose of the Act. In the present case, the obvious object is to get the election process completed within the frame work prescribed maintaining the time schedule for holding the election and fill up the public office as early as possible.

20. Taking into consideration the rules regulating the election proceedings and the filing of the election petition, it is apparent that it is a complete code in itself which does not admit of the application of the provision contained in Sections 4 to 24 as stipulated in Section 29(2) of the Limitation Act, 1963."

58. Similar is the case, under the Representation of People Act, in K. Venkateswara Rao and another v. Bekkam Narasimha Reddi and others. This decision has been referred to by the learned Single Judge of this Court in R. Stalin v. The State Election Commissioner, State Election Commission, Vadapalani, Chennai-26 and four others.

59. Mr. Margabandhu, in support of his contention has also placed reliance upon the decision in Ghasi Ram and Others Vs. Chait Ram Saini and Others, .

50. In this case also, the Apex Court with reference to Sub-clause 2 of Section 14 of the Limitation Act, has observed that the revision filed as per the advise of the lawyers cannot be said to be prosecuted in good faith and therefore, the time spent in revision is excludible while computing limitation for suit subsequently filed under Order 21 Rule 103.

60. This Court has also carefully gone through the above cited decision and found that this decision is also not made applicable to the present case on hand.

61. As observed in the opening paragraphs, the Writ petition in W.P. No. 26717 of 2011 was not filed in the court of having wrong jurisdiction. But knowing fully well that this court has got writ jurisdiction to question the locus of the revision petitioner/fifth respondent to be elected as the panchayat President, the first respondent/petitioner had filed the revision petition after invoking the extraordinary jurisdiction under Article 226 of the Constitution of India and while disposing of the writ petition this Court has observed that in our opinion, the said request cannot be directly acceded to by this Court except observing that in case the petitioner is advised to file an Election Petition and an Application seeking for condonation of delay is taken up, the pendency of the writ petition from 17.11.2001 till the disposal of this writ petition today shall also be considered as a proper explanation by the Tribunal.

62. This Obiter dicta cannot be of an entitlement to the first respondent/petitioner to file the election petition questioning the election of the revision petitioner/fifth respondent with the delay of 53 days.

63. Section 258(1) of the Tamil Nadu Panchayat Act, 1994 is very clear that the election petition shall have to be filed within the prescribed period of 45 days from the date of the publication of the result of the election.

64. The provisions of Section 258(1) of the Panchayat Act cannot be enlarged or extended to condone the delay in filing the election petition and therefore, it is not possible to file the election petition with an application to condone the delay. With this observation, the revision petition is allowed and the impugned order is set aside and the application in I.A. No. 17 of 2012 for condonation of delay of

53 days is dismissed as the election dispute is not the common law right, but it is only a right created by a Statute and naturally, the petitioner cannot claim the benefit of Section 5 of the Limitation Act or any other provisions of laws ranging from Sections 4 to 24 of the Limitation Act which applies to the suits and to some of the criminal proceedings.

In result, the revision is allowed with costs. Connected M.P. is closed.