

Serial No. 08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(EP) No. 2 of 2023
In El. Pet. No. 6 of 2023

Date of Decision: 18.07.2023

Shri. Renington Gabil Momin Vs. Shri. K. Plastingwell Pangiang

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Applicant (s): Mr. L.M. Sangma, Adv.
Mr. M. Lyngdoh, Adv.

For the Respondent/Opp. Party(s): Mr. K. Paul, Sr. Adv. with
Mr. S. Thapa, Adv.

i) Whether approved for reporting in Law journals etc.:		Yes/No

ii)	Whether approved for publication in press:	Yes/No
-----	---	--------

Oral:

1. By way of the instant Misc. Application, the returned candidate has raised an objection that the Election Petition being No. 6 of 2023, is not maintainable, as it is in violation of Section 81 of the Representation

of the People Act, 1951, (hereinafter referred to as R.P. Act), which stipulates that an Election Petition is to be presented within 45 days, whereas the Election Petitioner has filed the same on the 46th day. Reliance has been placed by the applicant on the following judgments.

- i) ***(1974) 2 SCC 133, Hukumdev Narain Yadav vs. Lalit Narain Mishra***
- ii) ***(1999) 8 SCC 532, Lachhman Das Arora vs. Ganesh Lal & Ors.***
- iii) ***(2018) 9 SCC 808, Suman Devi vs. Manisha Devi & Ors.***
- iv) ***MANU/SC/0568/1983, Satbir vs. Parasnni Devi & Ors.***

2. Mr. L.M. Sangma, learned counsel for the applicant has strenuously argued that, there is no provision for condonation, as the Act itself is self-contained, as has been laid down in the judgments quoted above. He submits that, the stipulation given in Section 81 being rigid, the Election Petition is therefore not maintainable and liable to be dismissed, at the threshold itself.

3. Mr. K. Paul, learned Senior counsel assisted by Mr. S. Thapa, learned counsel for the respondent/Opposite Party, has in reply firstly

referred to Section 10 of the General Clauses Act, 1897, which he submits is applicable and made provisions for such cases. The learned Senior counsel submits that the results of the Election was declared on 02.03.2023, and the Election Petition was filed on 17.04.2023, a day after the 45 day stipulation of Section 81 R.P. Act, due to the fact that 14.04.2023, was a holiday and 15.04.2023 and 16.04.2023 was a Saturday and Sunday respectively, and the Registry being closed on these dates, the Election Petition could not be filed. He further submits that, the judgment referred to, that is, *Hukumdev Narain Yadav vs. Lalit Narain Mishra (supra)* and *Lachhman Das Arora vs. Ganesh Lal & Ors. (supra)*, will have no application, inasmuch as, especially in the case of *Lachhman Das Arora vs. Ganesh Lal & Ors. (supra)*, there was a specific notification that, the Registry would be open for the purposes of filing of Election Petitions, which is not so in the present case. It is also submitted that, in such cases, where notification exists even Section 10 of the General Clauses Act, will not be applicable. He lastly submits that, the Election Petitioner having filed the Election Petition on the re-opening day itself, that is, on 17.04.2023, by operation of Section 10 of the General Clauses Act, the same is within time and the objection is therefore liable to be rejected.

4. Heard learned counsels for the parties. The undisputed legal position which has been held in many decisions of the Supreme Court and other High Courts, is that, the provision of Section 5 of the Limitation Act, do not govern the filing of Election Petitions and the R.P. Act, being a self-contained code, having specifically provided in Section 81, that any Election Petition calling in question any election, is to be filed before the High Court, within 45 days from the date of the election of the returned candidate, no Election Petition can be entertained thereafter.

5. In the instant case, the filing of the Election Petition on the 46th day, has been attributed to the fact that the 44th and 45th day, that is, the 15th and 16th of April, 2023 was a Saturday and Sunday, which prevented the Election Petition from being presented on the 45th day. The fact that, the Registry was closed on these 2 days is not disputed. Though, the applicant has tried to make out a case that, the Election Petition on the ground of delay is to be rejected, this Court is to examine as to whether Section 10 of the General Clauses Act, 1897, will come to the aid of the Election Petitioner. For the sake of convenience, Section 10 is reproduced hereinbelow.

“10. Computation of time.-(1) Where, by any [Central Act] or Regulation made after the

commencement of this Act, any act of 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 of 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 (15 of 1877), applies.

(2) This section applies also to all [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.”

6. A perusal of the above noted Section, shows that 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 on the next day, afterwards on which the Court or office is open.

7. In this regard, the decision rendered in ***Lachhman Das Arora vs. Ganesh Lal & Ors. (supra)***, has categorically held that, Section 10

of the General Clauses Act, would apply to Election Petitions since the Limitation Act, is not applicable. Further, the same judgment discusses as to whether the benefit of Section 10 of the General Clauses Act, could be availed of, to save the period of limitation, in view of the fact that in the case under consideration, a notification existed that allowed for hearing of Election Petitions or any matter arising out of the R.P. Act, during the summer vacations by the Punjab and Haryana High Court. However, because of the exception given in the notification, the Supreme Court held the Election Petition to be barred by time.

8. Coming to the instant case, as noted earlier, the aforementioned two dates which fell on the 44th and 45th day, the Registry was closed and there was no notification carving out any exception for filing of Election Petitions by the High Court. In this view of the matter therefore, Section 10 of the General Clauses Act, will be applicable to the instant Election Petition, as the same was presented on the 46th day, immediately on the re-opening of the Registry, and not on any other subsequent day. The presentation of Election Petition on the 46th day, being prevented from being filed on the 45th day, which was a Sunday, is therefore to be considered, as being done in due time, as per the provision of Section 10 of the General Clauses Act.

9. For the reasons stated above, the challenge to the maintainability of the Election Petition, on the ground of delay is hereby rejected and Misc. Case Application stands dismissed.

Judge

Meghalaya
18.07.2023
"D.Thabab-PS"

