

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.M. No.13-E of 2014 in/and
Election Petition No.5 of 2014 (O&M)

DATE OF DECISION : 8.5.2015

Navjot Singh

PETITIONER

VERSUS

Smt.Harsimrat Kaur Badal

RESPONDENT

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Shri S.S.Swaich, Advocate for the petitioner/non-applicant.

Shri Ashok Aggarwal, Senior Advocate and Shri M.L.Saggar,
Senior Advocate with Shri Sunny Saggar, Advocate for the
respondent/applicant.

MAHESH GROVER, J.

C.M. No.4E of 2015

Allowed as prayed for.

C.M. No.13E of 2014

In Election Petition No.5 of 2014 titled *Navjot Singh v. Smt.*

Harsimrat Kaur Badal, an application has been moved by the respondent under

Section 86(1) of the Representation of the People Act, 1951 (hereinafter referred to as the Act) with a prayer to dismiss the main election petition.

For the purpose of reference, Section 86(1) of the Act is reproduced here below :-

“86. Trial of election petitions.- (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation.- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.”

Section 81(1) of the Act provides for the period of limitation within which an election petition can be preferred. It is extracted here below :-

“81. Presentation of petitions.- (1) An election petition calling in question any election may be presented by 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.”

Section 82, on the other hand, provides for the necessary parties to

the petition which is also extracted here below :-

“82. Parties to the petition.- A petitioner shall join as respondents to his petition -

- (a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates ; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

Non-compliance of the aforesaid provisions of law i.e. Sections 81 and 82 of the Act by the petitioner is the primary cause of the instant application.

To put it briefly, the respondent to the petition states that the petition ought to be dismissed on the following grounds :-

- (1) Being barred by limitation, and
- (2) For want of non-joinder of necessary parties.

The counting of votes of election in question took place on 16.5.2014 and it is agreed that the limitation of 45 days would expire on 29.6.2014 while the petition was preferred on 30.6.2014.

It is also the common case of the parties that Section 10 of the General Clauses Act, 1897 would be applicable in computing the period of limitation.

Section 10 of the General Clauses Act, 1897 is extracted here

below:-

“10. **Computation of time.-** (1) Where, by any Central Act or Regulation made after the commencement of this Act, 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 (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.”

It is also conceded that the provisions of the Limitation Act would not apply and thus, the flexibility provided under the Limitation Act for condonation of delay would be of no consequence in view of the statutory provisions contained in the Representation of the People Act, 1950.

The case of the respondent/applicant is that the petitioner can take the benefit of Section 10 of the General Clauses Act only if the office was closed and the petitioner was unable to file the petition during vacation.

The petitioner/non-applicant, on the other hand, contends that there was no notification issued by the High Court indicating transaction of business during the vacation period and thus, the provisions of Section 10 of the General

Clauses Act would come to the rescue in which eventuality the petition filed on the opening day after the vacation would be within limitation.

It would be apposite to refer to the relevant law in this regard. In **Hukumdev Narain Yadav v. Lalit Narain Mishra** AIR 1974 S.C. 480(1) it was observed by the Hon'ble Supreme Court as below :-

“Even if section 4 of the Limitation Act does not apply S.10 of the General Clauses Act will certainly apply to election petitions to be filed under Representation of the People Act if the court is closed on the date when limitation expired. S.10 (1) of the General Clauses Act enables the filing on the next working day of the Court. However reading Rs.6 and 7 of the Election Rules made by the Patna High Court with R.26 of Chapter VII Part II of Patna High Court Rules an election petition can be presented on the last day of limitation. Even when the Judges are not sitting to receive or entertain an election petition on that day to the Registrar or his absence to the other officers specified in R.26.”

... ..

3. What we have to consider, however, is that whether having regard to the requirements of Rr.6 and 7 of the Rules for the Disposal of Election Petitions framed by the Patna High Court, that an election petition should only be filed before a Judge of the High Court sitting in open Court, and it could not be filed on a Saturday when the Judges do not sit and hence the filing of that petition on Monday, March 20, 1972, Sunday being a holiday, is in time. Even if it be held that the filing of the petition was beyond the time prescribed in S.81, it has

further to be considered whether the provisions of S.5 of the Limitation Act 36 of 1963 are applicable to such petitions and whether the petitioner has shown sufficient cause in the petition which has now been filed before this Court for not filing the petition in time to enable the Court to admit it after the prescribed period.

4. Three questions which require determination are -

- (1) Is the Court closed on Saturday, when the Judges do not sit for the purposes either of S.10 of the General Clauses Act, or S.4 of the Limitation Act?
- (2) By virtue of S.29(2) of the Limitation Act, are the provisions of Ss.4 to 24 of the said Act applicable to election petitions ?
- (3) If they are, and S.5 of the Limitation Act is applicable, do the facts of the case warrant condonation of delay ?

5. On the question whether the petitioner could have filed the petition on Saturday March 18, 1972, what has to be seen is whether the Court can be said to be closed within the meaning of either S.4 of the Limitation Act, 1963, or S.10 of the General Clauses Act, 1897, because under both the provisions where the prescribed period of limitation expires on a day when the Court is closed the petition could be filed on a day when the Court re-opens. Where, however, the provisions of the Limitation Act apply, the proviso to S.10(1) of the General Clauses Act in terms makes that provision itself

inapplicable. Under S.4 of the Limitation Act it is provided that where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court reopens. The Explanation thereof states that a Court shall be deemed to be closed on any day within the meaning of that section if during any part of its normal working hours it remains closed on that day. It was sought to be contended that even if the Limitation Act applies, S.4 would not apply because an election petition is neither a suit, nor an appeal nor an application, notwithstanding the definition of “application” contained in S.2(b) of the Limitation Act as including a petition. It is, in our view, unnecessary to examine the submission in this context because even if S.4 of the Limitation Act does not apply. S.10 of the General Clauses Act will certainly apply to election petitions to be filed under the Act as held by this Court in Harinder Singh v. Karnail Singh 1957 SCR 208 (AIR 1957 SC 271). In that case an election petition had to be filed \under R.119(a) of the Election Rules not later than fourteen days from the terminus a quo prescribed therein, but as the day on which it could be filed was a Sunday he filed it on the next day. The contention of the Solicitor-General was that S.10 of the General Clauses Act.

“can apply on its own terms only when the act in question is to be done “within a prescribed period”, that under R.119(a) of the Election rules the petition has to be filed “not later

than” fourteen days, that the two expressions do not mean the same thing, the words of the Rule being more preemptory, and that accordingly Section 10 of the General Clauses Act cannot be invoked in aid of a petition presented under R.119, later than fourteen days”.

This argument was rejected as being erroneous because, “broadly stated, the object of the Section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.”

Of course Section 10(1) of the General Clauses Act does not speak of a holiday, but refers to the Court or office being closed on the last day of the prescribed period to enable a party to do an act or take any proceedings on a certain day or within a prescribed period, as the next day on which the Court or office is open. If the Court is closed on the day when limitation expired, Section 10(1) of the General Clauses Act enables the filing on the next working day of the Court. But is the Court closed on a Saturday when the Judges do not sit though the office of the High Court is open ?

6. A long course of decisions have held that a Court is not

closed notwithstanding the fact that Judges do not sit on any day if otherwise the Court is open on that day. Harries, C.J., during the course of the arguments in *Lachmeshwar Prasad Shukul v. Girdhari Lal Chauduri*, ILR 19 Pat 123 = (AIR 1939 Pat 667 FB), observed that “Saturday” is a Court day although the Judges are not sitting on that day. The learned Chief Justice and Fazl Ali, J., as he then was, (Agarwala, J., dissenting) went to the extent of holding that even in the vacations the Court is not closed and money can be deposited. Turner, C.J., speaking for himself, Kernan, Kindersley and Muttusami Ayyar, JJ. (Innes, J., dissenting observed in *Nachiyappa Mudali v. Ayyasami Ayyar*. (1982) ILR 5 Mad 189 at p.192 (FB).

“The judicial sittings of the Court may be adjourned ; but the offices of the Court may still remain open for the presentation of pleadings. The Court may be open for this purpose although the Judge is not engaged in judicial functions or is not present in the Court-house or in the place where the Court is held. “A Bench of the Madras High Court in *In re. Thokkudubiyyanu Immaniyelu*, (1948) 1 Mad LJ 49 = (AIR 1948 Mad 521), dealt with a similar practice which is followed by all High Courts and this Court for the summer vacation when the Courts close. The notifications in respect thereof specify a period between Monday to Friday both days inclusive as the vacation. The Court reopens on a Saturday, but judicial

work starts only on the following Monday. It was held that the first day of the Court was a Saturday which was the day for receiving papers though the Judges actually sat for judicial work on Monday, as such an application, for which the prescribed period of limitation expired on Saturday, the 5th when the Court was open and was not filed on that day, but on Monday, the 7th, was held to be barred.”

In Manohar Joshi v. Nitin Bhaurao Patil and another AIR 1996

S.C. 796, it was held as below :-

“14. The question now is : Whether the applicability of Section 10 of the General Clauses Act to the presentation of election petitions under the R.P.Act is excluded ? No doubt the R.P. Act is a self contained Code even for the purpose of limitation prescribed therein. This, however, does not answer the question. It has to be seen whether the context excludes the applicability of Section 10 of the General Clauses Act which is in the part therein relating to the General Rules of Construction of all Central Acts. The legislative history of prescribing limitation of presentation of election petitions in accordance with sub-section (1) of Section 81 is also significant for a proper application of the context. Admittedly, Section 10 of the General Clauses Act applied when by virtue of the requirement in the then existing sub-section (1) of Section 81. The period of limitation was prescribed by Rules framed under the R.P. Act in Rule 119 of the 1951 Rules. This was expressly provided by Rule 2(6) of the 1951 Rules. There

is nothing to indicate that providing the period of limitation in sub-section (1) of Section 81 itself by substitution of certain words by Act 27 of 1956 instead of prescribing the limitation by Rules, was with a view to exclude the applicability of Section 10 of the General Clauses Act. The change appears to have been made to provide for a fixed period in the Act itself instead of leaving that exercise to be performed by the rules making authority. An express provision in Rule 2(6) of the 1951 Rule was required since the General Clauses Act *ipso facto* would not apply to Rules framed under the Central Act, even though it would be the Act itself. The context supports the applicability of Section 10 of the General Clauses Act instead of indicating its exclusion for the purpose of computing the limitation prescribed in sub-section (1) of Section 81 for presentation of election petitions.;

15. In view of the basic premise that the election petitioner is entitled to avail the entire limitation of 45 days for presentation of the election petition as indicated by Ramlal, (AIR 1962 SC 361) (supra), if the contrary view is taken, it would require the election petitioner to perform an impossible task in a case like the present, to present the election petition on the last day of limitation on which date the High Court as well as its office is closed. It is the under lying principle of this legal maxim which suggests the informed decision on this point, leading to only conclusion that Section 10 of the General Clauses Act applies in the computation of the limitation prescribed by sub-section (1) of Section 81 of the

R.P.Act for presentation of an election petition. So computed, there is no dispute that the election petition presented in the present case on 16.4.1990 was within limitation and there was no non-compliance of sub-section (1) of Section 81 of the R.P.Act.

16. We have reached the above conclusion independent of the above decisions of this Court rendered on petitions presented subsequent to the amendment of sub-section (1) of Section 81. It may straightway be said that in all these cases applicability of Section 10 of the General Clauses Act was either not doubted or was taken for granted. This is how the position has been understood for all these years and no case taking the contrary view has been cited at the Bar. This settled position is in conformity with the view we have taken on this point. There is no basis in law to take a different view.”

In (H.H.Raja) Harinder Singh v. S.Karnail Singh and others

1957 A.I.R. (SC) 271, it was held as below :-

“4. The first question turns on the interpretation of Section 10 of the General Clauses Act, which is as follows :-

“Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceedings 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.”

The contention of the Solicitor-General on behalf of the appellant is that this section can apply on its own terms only when the act in question is to be done “within a prescribed period”, that under Rule 119(a) the petition has to be filed “not later than” fourteen days, that the two expressions do not mean the same thing, the words of the Rule being more peremptory, and that accordingly Section 10 of the General Clauses Act cannot be invoked in aid of a petition presented under Rule 119, later than fourteen days. In support of this contention, he invites our attention to some of the Rules in which the expression “the time within which” is used, as for example, Rule 123, and he argues that when a statute uses two different expressions, they must be construed as used in two different senses. He also points out that whatever the Legislature intended that if the last date on which an act could be performed fell on a holiday, it could be validly performed on the next working day, it said so, as in the proviso to Section 37 of the Act, and that there would be no need for such a provision, if Section 10 of the General Clauses Act were intended generally to apply.

5. This argument proceeds on an interpretation of Section 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is

prescribed for the performance of an act in a Court or office, and that period expires on a holiday then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days provided in Rule 119(a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are “within fourteen days” or “not later than fourteen days”. That the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to Section 81 of the Act. Section 81(1) enacts that the election petition may be presented “within such time as may be prescribed”, and it is under this Section that Rule 119 has been framed. It is obvious that the rule-making authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words “not later than fourteen days” must be held to mean the same thing as “within a period of fourteen days”. Reference in this connection should be made to the heading of Rule 119 which is, “Time within which an election petition shall be presented”. We entertain no doubt that the Legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding

that Section 10 is not applicable to petitions falling within Rule 119.”

It would also be essential to notice that the cause of action to compute the period of limitation of 45 days would commence from the date of the candidate being declared elected. Prior to the amendment of 1956, there was no limitation prescribed and the only requirement under Section 81 was that a petition could be presented “in such form and within such time as may be prescribed”. One had to fall back on the rules made under the Act to seek interpretation of the word 'prescribed'.

However, such an ambiguity has been done away with on account of the amendment specifically providing a period of 45 days from the date of election of the returned candidate.

Section 67-A of the Act clarifies that the date on which the candidate is declared elected by the Returning Officer, is to be the date of election of that candidate.

On facts, therefore, there would be no ambiguity i.e. if a candidate was declared elected on 16.5.2014, the period of 45 days would end on 29.6.2014 being the period of vacation. The petition was filed on 30.6.2014.

In Lachhman Das Arora v. Ganeshi Lal and others AIR 1999 SC 3101, the Hon'ble Supreme Court observed as below :-

“The Representation of the People Act, 1951, in so far as it relates to the presentation and trial of election disputes is a complete Code and a special law. The scheme of the special law shows that the provisions of Ss.4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty five days, S.86(1)

of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the provisions of S.81 or S.82 or S.117, is straightway attracted. Whether S.10 of the General Clauses Act, 1897 can apply in a case where the prescribed period of limitation expires during the vacations of the High Court would, therefore, depend upon the terms of the Notification issued by the Punjab and Haryana High Court on 27.11.1995. The notification unambiguously provides that during the summer vacations i.e. period between June 1 to June 30, 1996 (both days inclusive) while the High Court of Punjab and Haryana at Chandigarh would remain closed for civil business, it would be open for "hearing of election petitions or any other matter arising out of the Representation of the People Act. Therefore, where the election petition had been filed, on reopening day of the High Court after summer vacations, but after the expiry of the period of forty-five days prescribed under S.81(1) of the Act, which period had expired during the period of summer vacations the benefit of S.10 of General Clauses Act was not available to the election petitioner to save the period of limitation. In view of the clear language of the notification, there was no impediment in the way of the appellant to present the election petition during the summer vacations. Further, the argument of the appellant that in view of the serious charges which had been levelled against the returned candidate in the election petition, the same ought not to have been dismissed on the ground of limitation, as the purity of

election process is required to be maintained is not sustainable. There is no quarrel with the proposition that it is the duty of the Courts to maintain the purity of election process but at the same time there is no gainsaying that the law of limitation may harshly affect a particular party, but it has to be applied with all its vigour when the Statute so prescribes. The Courts cannot extend the period of limitation on equitable grounds more particularly in the matter of filing of election petitions under the Act.

... ..

7. On its plain reading, S.81(1) lays down that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of S.100 and S.101 of the Act to the High Court by any candidate at such election or by an 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 the dates of their election are different, the later of those two dates. The Act is a special Code providing a period of limitation for filing of an election petition. **No period for filing of an election petition is prescribed under the Indian Limitation Act. The Act in so far as it relates to presentation and trial of election dispute is a complete Code and a special law. The scheme of the special law shows that the provisions of Ss.4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-**

five days, S.86(1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the provisions of S.81 or S.82 or S.117, is straightway attracted.

8. The next question, however, which arises for consideration is whether S.10 of the General Clauses Act, 1897 can apply in a case where the prescribed period of limitation expires during the vacations of the High Court ? Section 10 of the General Clauses Act reads :

Section 10.- Computation of time. (1) Where, by any Central Act or Regulation made after the commencement of this Act, 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, 1887 (15 of 1887) applies.

9. The proviso to S.10 makes the provisions of S.10 inapplicable to cases where the Indian Limitation Act applies and since Indian Limitation Act does not apply to election petitions filed under the Act, Section 10 of the General Clauses Act in terms would apply to the filing of election petitions also. According to S.10 (supra) an act should be

considered to have been done within the prescribed period, if it is done on the next day on which the Court or office is open. The inapplicability of S.10 (supra) would, however, depend upon the facts of each case and the manner in which the High Court transacts its business during the period of vacations.”

The observations of the Hon'ble Supreme Court in **Mohd.Ali v. Azad Mohd.** 1999(4) R.C.R.(Civil) 148 where the High Court had issued the following notification during vacations, would be relevant :-

“3. In *Lachhman Das Arora v. Ganesh Lal and others* 1999(4) RCR (Civil) 138 (SC) : Civil Appeal No.8343 of 1997, decided on September 1, 1999, this Court has considered the effect of the very same notification dated 27th November, 1995 on the filing of an election petition on the re-opening day of the High Court after summer vacations, when the prescribed period of limitation expired, during the summer vacations. After taking note of the provisions of the Representation of the People Act as well as Section 10 of the General Clauses Act, 1897, this Court has come to the conclusion that the election petition, was barred by time, because of the exception contained in the Notification itself. The opinion expressed in the said case applies to this case with full force. We adopt the reasoning given by the Bench in *Lachhman Das Arora's* case (supra) to this case also.

4. Faced with this situation, Mr.B.S.Malim, learned counsel appearing for the petitioner submitted that another

Notification had been issued by the High Court of Punjab and Haryana at Chandigarh on 27th May, 1996 and since the later Notification did not contain any exception, the benefit of Section 10 of the General Clauses Act, 1897, would be available to an election petitioner for filing the election petition on the re-opening day of the High Court after summer vacations. The Notification dated 27th May, 1996 on which reliance is placed reads thus :

“No.207/Genl./XVII.3. - It is notified for general information that the High Court of Punjab and Haryana at Chandigarh shall observe summer vacations from 1st June to 30th June, 1996 (both days inclusive) and following timings shall be observed during the period of vacation i.e. 1st June, 1996 to 30th June, 1996.

COURT TIMINGS : 10 a.m. to 4.00 p.m.
with lunch break
from 1.00 p.m. to 1.45 p.m.

OFFICE TIMINGS: 10.00 a.m. to 5.00 p.m.
with lunch break from
1.30 p.m. to 2.00 p.m.

By order of Hon'ble the Acting Chief Justice and Judges
(Sd/-)
Assistant Registrar(General)
for Registrar”.

5. In our opinion, reliance on this Notification to save the period of limitation is misplaced. The Notification of 27th May, 1996 (supra) does not in any manner supersede the

Notification issued by the High Court earlier on 27th November, 1995. The Notification dated 27th May, 1996 has to be read as supplementary to the Notification dated 27th November, 1995 because in the latter Notification court timings and office timings during the summer vacations have been prescribed. The effect of the Notification dated 27th November, 1995 has in no way been whittled down by the subsequent Notification dated 27th May, 1996 and on the contrary, the subsequent Notification, by prescribing the court and office timings, has clarified the manner in which the court business was to be transacted during the summer vacations. Both the notifications have, therefore, to be read together.

6. Mr.Malik then submitted that under Section 23-A of the High Court Judges(Conditions of Service) Act, 1954 every High Court shall have vacation or vacations for such period or period as may from time to time be fixed and during the period of vacations, the Court would not be considered as 'open' for any purpose. There is a basic fallacy in the argument. These provisions have nothing to do with the functioning of the High Courts. The transaction of court business during the vacations is not controlled by the High Court Judges (Conditions of Service) Act, 1954, but by the Notification issued by the High Court in that behalf.”

The non-applicant i.e. the petitioner on the other hand, would rely on a decision of the Hon'ble Supreme Court in **Simhadri Satya Narayana Rao v.**

M.Budda Prasad 1994(Sup1) SCC 449 wherein it was held as below :-

“8. There are no rules or standing orders issued by the Andhra Pradesh High Court providing for a uniform pattern of working during the vacations. It is the notification notifying the Sankranthi vacation which would indicate the manner and extent of functioning of the High Court during the vacation. Whether the Registry was open, if so, to what extent and for what type of work, can only be spelled out from the contents of the notification. It is, therefore, necessary to examine the scope and effect of the notification issued by the Andhra Pradesh High Court in this respect. The said notification is as under :

NOTIFICATION R.O.C. No.5463/89-C3
DATED DECEMBER 29, 1989

Notice is hereby given that the High Court of Andhra Pradesh will remain closed for Sankranthi vacation, 1990 from Tuesday the 2nd January to Friday the 12th January 1990 (both days inclusive).

The Hon'ble Shri Justice N.D.Patnaik will be the Vacation Judge from January 2, 1990 to January 6, 1990 and the Hon'ble Shri Justice Syed Shah Mohammed Quadri will be the Vacation Judge from January 7, 1990 to January 12, 1990.

The Vacation Judges will sit in Court at 10.30 a.m. on Wednesday the 3rd January 1990 and Tuesday the 9th January 1990 during vacation to dispose of applications of urgent nature unless otherwise notified.

Shri K.V.G. Krishna Murthy and Shri S.Raja Choudary

Assistant Registrars will be the Vacation Officers during the said vacation.

Notice of any application of an urgent nature shall be given to the Vacation Officers before 1.30 p.m. on Tuesday, 2nd January and the 8th January, 1990.

9. The first para of the notification, which is the operative part, states that “the High Court of Andhra Pradesh will remain closed for Sankranthi vacation, 1990 from Tuesday the 2nd January to Friday the 12th January 1990 (both days inclusive)”. The notification nowhere states that the Registry of the High Court would remain open. Notice to the effect that “the High Court of Andhra Pradesh will remain closed” cannot be understood by layman-litigant to mean that it would still be open for filing purposes. After the operative part which declares the closure of the High Court for Sankranthi vacation, the subsequent paras specifically indicate the matters which could be filed during the vacation. It is stated that two Hon'ble Judges would be the Vacation Judges for the specified period and they would dispose of applications of urgent nature. The designation of two Assistant Registrars as vacation officers and the provision of notice of urgent applications to the vacation officers a day earlier of sitting of the vacation Judges, goes to show that the Registry was not functioning in the ordinary course. A bare reading of the notification leaves no manner of doubt that the Andhra Pradesh High Court remained closed for all purposes except for applications of urgent nature for which vacation Judges

and vacation officers were designated. There was no provision for filing of election petitions in the notification and as such the filing of the election petition by the respondents on reopening day of the High Court by invoking Section 10 of the General Clauses Act, was justified.

10. In **Hari Shanker Tripathi v. Shiv Harsh** the notification issued by the Allahabad High Court stated that May 25 to July 7, 1974 would be observed as closed holiday in the High Court due to summer vacation. The period for filing the election petition had expired during the summer vacation and the election petition was filed on the reopening day of the High Court after the summer vacation. This Court held as under :

“For the reasons given above we are satisfied that as the period of limitation expired during the summer vacation which was a closed holiday by virtue of the notification issued by the High Court, the Registrar was not competent to entertain the election petition nor could the appellant have presented the election petition legally to the Registrar during such period. We are further satisfied that this is a case in which Section 10 of the General Clauses Act applies in terms and the appellant was fully justified in filing the election petition on the reopening day of the High Court, namely, July 8, 1974.”

11. We do not agree with the contention of Mr.Sitaramiah that in the absence of any bar in the notification the election

petitions under the Act can be filed during the vacations. It is the vacation notification which has to be looked up to find out whether the Registry is open for presenting the election petitions. The notification in this case unmistakably stated that the High Court would remain closed during Sankranthi vacation. No reasonable person would knock the door of the High Court during that period for filing an election petition.

12. The Andhra Pradesh High Court issued the Sankranthi vacation notification interpreted the same in the following words :-

It, therefore, follows that the notification referred to above, dated December 29, 1989 did not permit either of the Hon'ble Judges or the Registry to receive the election petitions during the Sankranthi vacation. As mentioned already, the notification says that the High Court of Andhra Pradesh will remain closed for the Sankranthi vacation from January 2, 1990 to January 12, 1990 (both days inclusive). The nomination does not clarify that the Judges of the High Court alone would refrain from work between January 2, 1990 and January 12, 1990 and that the Registry would function normally during the said period of vacation. The notification does not even further specify that the vacation officers are authorized to receive any papers presented to them other than notices of applications of urgent nature. In the light of the specific wording contained in that notification, I hold that the High

Court of Andhra Pradesh remained closed for the Sankranthi vacation from January 2, 1990 to January 12, 1990 which means that the Registry of the High Court also remained closed during the said period.

It is submitted by the learned counsel for the petitioners that the High Court Registry was open during the vacation and received as many as 25 election petitions. It is not necessary in these applications to consider whether the Registry was competent to receive those 25 election petitions during the vacation. This is not a relevant consideration for the disposal of these applications. What all is necessary to consider in these applications is whether in the light of the wording contained in the notification dated December 29, 1989, the High Court remained closed between January 2, 1990 to January 12, 1990 so as to enable the election petitioners to invoke Section 10 of the General Clauses Act ...

The learned counsel for the petitioners referring to the wording contained in Section 10 of the General Clauses Act tried to draw a distinction between the closure of the 'court' and 'office' on the last day of limitation and tried to submit that what all has been closed is the High Court but not the office. There is no scope to draw such an inference from the notification.

As I have mentioned already, the High Court of Andhra Pradesh, remained closed for the Sankranthi

vacation and the notification does not give room for any distinction being made between the court and the office which means the Registry of the High Court.”

13. We see no infirmity in the reasoning and the conclusions reached by the High Court. No other point was urged before us. We, therefore, dismiss the appeal with no order as to costs.”

In **Satbir v. Smt.Parasnni Devi and others** (Civil Appeals No.3192,3275 &3523 of 1982 decided on October 5, 1983), while dealing with a notification of the Punjab & Haryana High Court, the Hon'ble Supreme Court observed as follows :-

“These election appeals which we propose to dispose of by the common judgment arise out of an election held in 1982, the result whereof was declared on 21.5.1982. The period of 45 days available to the appellants for filing Election Petitions in the High Court expired on 5.7.1982 in the matter giving rise to C.A. No.3192 of 1982 and on 4.7.1982 in the matters giving rise to C.A. Nos.3275 & 3533 of 1982. Admittedly, the petitions were filed on 12th July, 1982 when the High Court opened after the summer vacation. The only point that has been argued vehemently by Mr.Goyal is that since the High Court was closed for summer vacation he was not bound under law to file any petition during vacation and could take advantage of the vacation though the period of 45 days expired during vacation, Mr.Goyal further argued that even though the petitioner could have filed the petition during

vacation if he so desired, he had nevertheless option to file the petition on the reopening that is a week after the expiry of 45 days. This argument appears to be based on a notification made by the Chief Justice regarding the work to be transacted during the summer vacation which runs thus

“HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Notification

No.406 Gen./XVII.3(a) Dated the 20.11.1981.

It is hereby notified for general information that the High Court of Punjab and Haryana at Chandigarh **will be closed for civil business except for hearing Election Petitions or any other matter arising out of the Representation of the People Act, 1951, urgent Civil Appeals/Petitions etc. including petitions under Article 226 of the Constitution, on account of long vacation in the year 1982 from 7th June to 9th July, 1982 (both days inclusive).**

During this period, except on Sundays and holidays Appeals/Petitions etc. will be received at the Court at Chandigarh from such persons as may choose to present them.

(Emphasis supplied)

BY ORDER OF THE HON'BLE
CHIEF JUSTICE AND JUDGE
REGISTRAR.”

From a perusal of the afore-extracted provisions of law as also the observations which have been made in a number of judgments noticed above, it

becomes clear that the High Court would have no power to extend the period of limitation ; the provisions of Section 10 of the General Clauses Act would apply but its applicability would largely depend on the facts of the case in particular, the notification issued by the High Court for the vacation period providing specification of the work permissible during this period.

The Court would now like to travel to the notification issued by the High Court of Punjab & Haryana governing the period of vacation from 2.6.2014 to 28.6.2014 (both days inclusive) as below :-

“HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

NOTIFICATION

No.57 Genl.XVII.3 DATED, Chandigarh the
7th May, 2014.

“It is hereby notified for general information that the High Court of Punjab and Haryana at Chandigarh will remain closed from 2nd June, 2014 to 28th June, 2014 (both days inclusive) for transacting Civil Business. However, the urgent petitions under Article 226 of the Constitution and other cases in which Hon'ble the Vacation Judge(s) is satisfied on account of the urgency, would be taken up during the aforesaid period. **The Election Petitions or any other matter arising out of the Representation of People Act, 1951, shall also be entertained. The regular work of the Court would commence on Monday the 30th June, 2014.**

BY ORDER OF HON'BLE THE CHIEF JUSTICE &
JUDGES.”

What is of significance is that election petition or any other matter arising out of the Representation of the People Act, 1951 was permitted to be entertained during this period.

If the notification is specific, then in view of the observations made by the Hon'ble Supreme Court in **Satbir v. Smt.Parasnni Devi and others'** case (supra) and **Lachhman Das Arora v. Ganeshi Lal and others'** case (supra), there would be no escape from the conclusion that the petitioner could have filed the Election Petition within the aforesaid period of vacation but he filed it on 30.6.2014 i.e. the opening day when the period of 45 days expired on 29.6.2014, delaying the petition by one day and with no power with the High Court to relax the period, the petition would necessarily have to be held to be beyond limitation.

Besides merely because Judges are not holding Court does not imply that the administration of the courts are at a standstill particularly when act of filing and receiving by the Court is a ministerial act, with the notification specifically enabling entertaining of all or any matters arising out of the Representation of the Peoples Act.

The judgment relied upon by the learned counsel for the petitioner/non-applicant in **Sukhbeer Singh v. Amarinder Singh** 2011(3) R.C.R. (Civil) 150 and the judgment rendered by the Hon'ble Supreme Court in **Simhadri Satya Narayana Rao v. M.Budda Prasad** 1994(Sup1) SCC 449 (supra) would be of no use to the petitioner as the notifications issued by the High Court were silent in this regard.

Similarly, in the judgment in **Sukhbeer Singh v. Amarinder Singh** (supra) where there was a brief recess in April, the notification did not provide specifically that election petitions could be received. For the purpose of reference, the notification relevant to the case relied upon in the said case is extracted here

below :-

“350 Genl/XVII.3 – It is hereby notified for general information that the days enumerated in the schedule below shall be observed as Holidays by the Punjab and Haryana High Court at Chandigarh during the Calender Year, 2007 :-

Sr.No.	Description of Holidays	Date on which falls	Day of the week	No. of Holidays.
XXX		XXX		XXX
11.	Good Friday	April 06	Friday	1
12.	Baisakhi/Dr. B.R.Ambedkar Jayanti.	April 14	Saturday	1
XXX		XXX		XXX

LOCAL HOLIDAYS 2007

XXX		XXX		XXX
5.	April 9		Monday	1
6.	April 10		Tuesday	1
7.	April 11		Wednesday	1
8.	April 12		Thursday	1
9.	April 13		Friday	1
XXX		XXX		XXX

16. The notification, unambiguously provides that 9th to 13th April 2007 are local holidays, whereas 14.4.2007 is a holiday, on account of Baisakhi/B.R.Ambedkar Jayanti and 15.4.2007 being a Sunday, the High Court would be closed. The High Court eventually re-opened on 16.4.2007 and the election petition was filed on 16.4.2007. The above notification does not make any reference to

any arrangement for work, much less urgent work to be taken up during vacations for obvious reasons. Work to be taken up during vacations is generally notified, in the cause list preceding a spell of vacations. Though, the notification amending the notification of holidays, was amended, after the declaration of election results, this notification dated 29.3.2007, published on 4.4.2007, notifying that 21.4.2007 and 28.4.2007 would be Court working days, does not state that election petitions could be filed during the spell of vacation i.e. from 9th to 15th April 2007 and does not disclose the nature of work to be assigned or entertained during vacations. The daily cause list issued on the eve of these vacations contains the following note, which reads as follows :-

“During the ensuing holidays commencing from 6.4.2007 to 15.4.2007, the following officers with their respective staff are put on duty to entertain Habeas Corpus Petitions from 6.4.2007 to 15.4.2007 and pre-arrest bail matters and such other urgent matters, if any, received during the aforesaid spell as may be permitted by His Lordship through Registry from 9.4.2007 to 13.4.2007 will be taken up by the Hon'ble Judge/s.

Name of Officers :-

1. Mrs. Tejinder Kaur Bakshi, Assistant Registrar
2. Mr. R.S. Gill, Assistant Registrar (Civil & Judl)
3. Mr. R.S. Ratol, Deputy Registrar (Protocol)
4. Ms. Nirmal Kant, Deputy Registrar (Accounts)
5. Mrs. Suman Chopra, Deputy Registrar (Writ)
6. Mr. A.P. Khurana, Deputy Registrar (Groupings)
7. Mr. Ranjit Singh, Deputy Registrar (Establishment)
8. Mr. M.P. Kohli, Assistant Registrar

9. Mrs.Vijay Bhandair, Assistant Registrar.”

For the afore-mentioned reasons, this Court is of the considered view that the Election Petition was beyond the period of limitation and thus, has to be dismissed on this score. C.M. stands allowed.

Since the election petition is being dismissed on the point of limitation, it may not be necessary for this Court to go into the issue of proper joinder of parties which is the second objection taken by the applicant.

The Election Petition stands dismissed.

May 8, 2015
GD

(MAHESH GROVER)
JUDGE