

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 109 of 2015**

1. Rana Ghosh S/o late S.K. Ghosh, aged about 44 years, R/o Sardar Bhagat Singh Ward, No.6, Patharaguda Para, Jagdalpur, District Bastar (CG)

---- Applicant

Versus

1. Khem Singh Dewangan, S/o Man Singh Dewangan, R/o Man Singh Gali, Sardar Bhagat Singh Ward, No. 6 Patharaguda Para Jagdalpur, District Bastar (CG).
2. District Election Officer, Jagdalpur, District Bastar (CG)
3. Assistant Election Officer, Jagdalpur, District Bastar (CG)
4. Returning Officer, Municipal Corporation, Jagdalpur, District Bastar(CG) (respondents 2 to 4 deleted).
5. State of C.G. Through Collector, Jagdalpur, District Bastar C.G.

----Respondents

For Applicant	: Shri Vishnu Koshta, Advocate
For State/ respondent	: Shri Lav Sharma, PL

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**Order on Board****05/01/2016**

1. Heard on admission.
2. The applicant has preferred the instant Civil Revision being aggrieved by the order passed by the Court below i.e. IInd Additional District Judge, Jagdalpur in Misc. Suit No. 18/2015 (Rana Ghosh Vs. Khem Singh Dewangan & Ors.) whereby and whereunder vide order dated 28.9.2015, the Court below has held that the Election Petition preferred by the petitioner under Section 441 of C.G. Municipal Corporation Act, 1956, challenging the Election of Councilor held for Sardar Bhagat Singh Ward, Ward No. 6 for which, voting was held on 29.12.2014 and counting was made on 4.1.2015 and in the result therein

respondent No.1 Khem Singh was declared elected and accordingly, the same was published in the gazette notification dated 5.1.2015. The petitioner/ applicant has preferred the Election Petition before the Court below on 20.2.2015. Before the Court below, the said petition was rejected as it was time barred and hence not maintainable. The Court below further held that doctrine of condonation of delay under the Limitation Laws is not applicable to the Election Petition.

3. Against the impugned order, the applicant has preferred the instant Civil Revision and had challenged the legality and propriety of the order passed by the Court below and has taken the ground that under the relevant provisions of Section 29 (2) of the Limitation Act, 1963, as the matter relates to special or local laws, the matter is covered under Section 5 of the Limitation Act and the Court below is required to appreciate the facts for the application under Section 5 of the Limitation Act and the Court below failed to appreciate the maintainability of the Election Petition after condonation of the delay and Court below ought to have heard the matter on its merits. The ground taken that as Section 5 of the Limitation Act is applicable, hence, the order passed by the Court below is perverse and without considering proper application of law, arbitrary hence it may be set aside. Further prayed that the Court below be directed to decide the Election Petition on its merits.

4. Heard counsel for the applicant on the maintainability of the instant Civil Revision.

5. Learned counsel for the applicant elaborately supported the grounds taken in the petition and submitted that as per **savings clause** of sub-section (2) of Section 29 of the Limitation Act, Section 5 is applicable. Learned counsel further submitted that the petition may be

admitted for hearing and after due hearing same may be allowed and the Court below may be directed to dispose of the Election Petition on its merits.

6. Learned counsel placed reliance on ***AIR 2002 SC 749 (Shaik Saidulu alias Saida Vs. Chukka Yesu Ratnam and others)*** wherein the Hon'ble Apex Court in a matter related to Hyderabad Municipal Corporation Act (2 of 1956) in Ss. 71, 671 has held that Election petition is an application under S.671 Section 5 of the Limitation Act is applicable and delay can be condoned. Learned counsel further submits that the Court below has committed a gross error while holding that Section 5 of the Limitation Act is not applicable in the matter.

7. For the purposes of appreciation regarding maintainability of the instant Civil Revision and also on the admission of the matter petition and annexed documents are perused.

8. On a close scrutiny, as per admitted position gazette notification has been published on 5.1.2015 and the Election Petition has been filed before the Court below on 20th February, 2015. As per the relevant provisions of C.G. Municipal Corporation Act, 1956 under Section 441 sub-section (3) (i), no petition presented under sub-section (2) shall be admitted unless it is presented within 30 days from the date of which the result of such Election was notified in the gazette.

9. As per bare reading of legal provision relevant and applicable in the matter, the legislature in a very affirmative state provided the above legal position. Thereby an Election Petition can only be admitted for hearing if the same is presented before the appropriate forum within 30 days from the notification in the official gazette. Undisputedly, the present petition is not filed within 30 days before the Court below.

10. Now the question for the maintainability of the instant petition is that whether Section 5 of the Limitation Act is applicable in the matter or not. Section 29 of the Limitation Act, 1963 reads as under :

“29. Savings- (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(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.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of “easement” in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.”

11. From the bare reading of relevant provisions of Section 29 of the Limitation Act, it shows that the provisions contained in Sections 4 to 24 (inclusive) shall apply in so far as and to the extent to which they are not expressly excluded by such special or local laws. In the present matter as per Section 441 of the C.G. Municipal Corporation Act, 1956, there is an express and exclusive bar for the presentation of Election Petition after 30 days from the publication of official gazette. I am not agree with the arguments advanced in this behalf by learned counsel for the applicant that application of Section 29 of the Limitation Act, the matter is covered and Section 5 of the Limitation Act.

12. The case law cited is of no help to the applicant as in the said matter Election Tribunal was constituted after the expiry of period of limitation prescribed for filing an Election Petition. Contrary to the position the forum available and working for hearing the Election Petition, with the above facts the case law cited is of no help to the applicant.

13. On the other hand, from perusal of the entire order, it is clear that the trial Court had not committed any illegality or impropriety in holding that Sections 4 to 24 (both inclusive) to the Limitation Act 1963 are not applicable as per the provisions of Section 441 of the C.G. Municipal Corporation Act, 1956 which expressly bar an Election Petition filed after 30 days from the publication of the result in the official gazette.

14. In the considered view of this Court, the trial Court has not committed any illegality or impropriety and the order passed by the Court has no scope for interference. The revision petition filed by the applicant is not worth admission as it is not maintainable.

15. Consequently, the revision petition is dismissed at the motion stage itself.

16. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE