

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.4120 of 2016 (O&M)

Date of decision : 12.08.2016

Amandeep Kaur @ Kulvir Kaur

...Petitioner

Versus

Swaranjeet Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Aakash Singla, Advocate for the petitioner.

Mr. Mohan Jain, Sr. Advocate with
Mr. Vikram Jain, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

CM No.15794-CII of 2016

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Reply on behalf of respondent has been taken on record, subject to all just exceptions.

Main Case

Mr. Aakash Singla, learned counsel appearing on behalf of the petitioner before raising the arguments has raised following questions:-

1. Whether in election petition filed under Section 176 of the Haryana Panchayat Raj Act, 1994, provision of Section 5 and

14 of the Limitation Act 1963 would apply?

2. Whether the petition filed by the respondent before the Civil Court was within the period of limitation and lacked bona fide?
3. Whether in the absence of any provision in the Act for condoning the delay, provision of Sections 4 to 24 by interpreting the provision as per Sub-Section 2 of Section 29 of the Limitation Act, 1963, would apply?

Before proceeding to the aforementioned questions, I would advert to the facts of the case.

The election petition for post of Sarpanch in Village Kamana, Tehsil Ratia, District Fatehabad was held on 24.01.2016 and the result was also declared on the same day. As per the provision of Section 176 (1) of Haryana Panchayati Raj Act, 1994, which reads thus:-

“176(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.”

Limitation to file the election petition is 30 days.

Mr. Aakash Singla, submits that instead of choosing the

statutory remedy in law, respondent on 11.02.2016 instituted a CWP No.2956 of 2016 challenging the election petition. The Division Bench of this Court vide order dated 15.02.2016 (Annexure P-1) disposed of the writ petition relegating the petitioner to avail remedy by filing election petition before the Civil Court. The order reads thus:-

“The petitioner questions the election of respondent No.6 for the office of Sarpanch of village Kamana, Tehsil Ratia, District Fatehabad. The election has already been held on 24.01.2016.

Since there is a statutory remedy of election petition available to the petitioner for which the Civil Court is notified as Election Tribunal, we decline to entertain this writ petition and relegate the petitioner to the above-stated alternative remedy. However, taking into consideration the totality of circumstances, it is directed that if any election petition is filed, the Election Tribunal shall make an endeavour to decide the same within a period of six months from the date of its filing. The petitioner shall be at liberty to take up all the pleas in the election petition.

The writ petition stands disposed of accordingly.

Dasti.”

He submits that instead of availing the remedy and particularly when there was clear cut direction yet respondent chose to file the petition before the concerned Deputy Commissioner i.e. Fatehabad actually was not filed on 23.02.2016, but on 24.02.2016, which fact is evident on the date of Vakalatnama, stamp of the petition and as well as process fee form. Period of 30 days i.e. limitation to file the election petition expired on 23.02.2016. Deputy Commissioner vide order dated 29.03.2016 (Annexure P-5) held that petition not maintainable and thereafter election petition under Section

176, as noticed above was filed on 18.04.2016. If at all, the provision of Section 14 had to be taken then there was delay of more than 8 days but in case provision of Section 5 of the Limitation Act are to be applied as being noticed by the Courts below even then the explanation of 55 days was not supported by any reasonable cause, much less, condition i.e. each and every day's explanation was conspicuously wanting.

He further submits that statute does not prescribe any extension of time in filing the election petition, therefore Sub-Section 5 of Section 14 of Limitation Act cannot apply. The respondent intentionally not disclose the factum of the order passed by this Court while relegating them to the Civil Court yet they filed petition before the Deputy Commissioner. The said Act was not only mischievous but fraudulent. Even the filing of the petition was in connivance with the office of the Deputy Commissioner, for, stamp of institution has been got entered on 23.02.2016 without realising the fact that the revenue stamp and the date on the Vakalatnama and Process Fee Form bears as 24.02.2016. The filing of the petition before the Deputy Commissioner cannot be said to be in good faith and legal issue with regard to the applicability of the Limitation Act is no longer res integra in view of the judgment rendered by Hon'ble Supreme Court in case **Lachhman Das Arora Vs. Ganeshi Lal, 1999 (4) RCR (Civil) 138**, wherein it has been held that law of limitation has to be applied with all vigour when the statute so prescribes. The Court cannot extend the period of limitation on equitable ground more particularly in the matter of filing of the election petition. He also cited judgment rendered by this Court in case **Deepak Mangla Vs. Nanakchand and others, 2015(3) PLR 69**, to contend that election petition

has to be filed before the expiry of the statutory period of 30 days and in that case also, the respondent, like in the instant case, had instituted a writ petition realising that remedy to challenge the election petition. The Court did not grant extension of time, in fact dismissed the application seeking condonation of delay. Judgment relied upon by the Court below i.e. **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department 2008(7) SCC 169** is not applicable to the facts of the case, so is the position with regard to the judgment rendered by Hon"ble Supreme Court in case **State of Goa Vs. Western Builders 2006(3) RCR (Civil) 475**. Thus, for all intents and purposes, election petition before the Deputy Commissioner was filed after 30 days by taking the reckoning date as 24.02.2016. The trial Court ought to have framed issue regarding the limitation but should not to have decided the same in the manner and mode, in essence, it should have given opportunity to the parties to lead evidence.

Per Contra, Mr. Mohan Jain, learned Senior Counsel assisted by Mr. Vikram Jain, learned counsel for the respondent, submits that order under challenge is perfectly legal and justified and is in consonance with the ratio decidendi culled out by Hon'ble Supreme Court recorded in the impugned order, much less, as per the provision of Sub-Section 2 of Section 29 of the Limitation Act. Mr. Jain, submits that respondents have not taken the benefit of Section 14 of the Limitation Act but as well as provision of Section 5. In support of his contention, he has relied upon following judgments:-

1. *Shaik Saidulu Alias Saida Vs. Chukka Yesu Ratnam and others, 2002 (3) SCC 130,*

2. *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others, 2008 (7) SCC 169,*
3. *ARM Group Enterprises Ltd. Vs. Waldorf Restaurant and others, 2003(6) SCC 423,*
4. *J. Kumaradasan Nair and another Vs. IRIC Sohan and others, 2009(12) SCC 175,*
5. *M/s Sonia Overseas Pvt. Ltd. Vs. Union of India and others, 2015(1) RCR (Civil) 114,*
6. *M/s Shree Durga Rice Mill Vs. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar, Patna and others, 2014(4) PLJR 340.*

to contend that power to condonation of delay and grant of extension of time under Section 5 is discretionary whereas under Section 14 (i.e. Exclusion of time) is mandatory if the requisite conditions are satisfied, in essence, Section 5 is broader in sweep than Section 14 as number of reasons can be advanced and established to say that there was sufficient cause in not filing the petition or application within the time. The ingredients in respect of Sections 5 and 14 are different. Section 14 of the Limitation Act deals with the exclusion of the time of proceedings bonafidely in a Court without jurisdiction. The import of Section is to afford protection to the litigants against the bar of limitation when the proceedings are instituted which by reasons of technical defect cannot be decided on merits and is dismissed. Section is intended to provide relief against the bar of limitation to exempt the certain period covered by bonafidely litigious activity. The provision of Sections 5 and 14 of the Limitation Act alike

should thus be applied in a broad based manner. He submits that intention behind Section 29(2) of the Act is simple and uncomplicated. It should be read to mean that in case a special or local law also provides for limitation for such appeal or application, such special law would prevail and limitation would prescribed and special law be read to the schedule of the limitation, in essence, that where the limitation is provided under the special and local law is the same what is provided in the Schedule to the Limitation Act, thus, schedule has to be read as it is. It does not need to be read in any manner but however in case limitation is different from the one provided in the Schedule, Court must read the limitation prescribed under the special or local enactment in the Schedule for the purpose of appeal or application under special or local enactment. The intention is to respect the provisions contained in the special or local law. The Legislative intent must be respected. He has also relied upon three Bench Judgment of Hon'ble Supreme Court in case *Hukumdev Narain Yadav Vs. Lalit Narain Mishra, 1974(2) SCC 133*, to contend that Section 5 of the Limitation Act though would not apply to the election petition under the Representation of Peoples Act but the Hon'ble Supreme Court observed that this is not what sub-Section 2 of Section 29 of 1992 of Limitation Act says because it provides that Sections 4 to 24 shall apply only in so far as and to the extent to which they are not expressly and excluded by such special or local law, in essence, Section 176 does not prescribe exclusion of the applicability of the Limitation Act and in case it is so, then as per the ratio decidendi culled out in the judgment cited (Supra) by relying upon the provisions of Sub-Section 2 of Section 29, the provision of Sections 4 to 24 of Limitation Act, would

apply. It is in this backdrop of the matter, the Courts below after examining the entire case law and the provisions of the Act, condoned the delay. The order is perfectly, legal and justified and does not warrant for interference and prays for dismissal of the revision petition.

Mr. Aakash Singla, in rebuttal has tried to distinguish the judgment referred on behalf of Mr. Jain, by referring to the facts and at this stage the Court raised the query to Mr. Singla, that it is the ratio decidendi which has to be applied not to the facts of each case and the question posed in the judgment cited on behalf of respondent was whether the Section 5 of the Limitation Act would apply to the election petition filed under the Hyderabad Municipal Corporation Act, 1955 or not. He has also cited Division Bench judgment of Hon'ble Madhya Pradesh High Court in case **Bhuvaneshwar Prasad @ Guddu Dixit Vs. State of Madhya Pradesh and others, 2008(5) MPHT 72**, to contend that the prescribed authority under the relevant Act i.e. M.P. Panchayat Raj Act had no jurisdiction to condone the delay and on similar lines cited the Division Bench judgment of Hon'ble Himachal Pradesh High Court in case **Ramesh Kumar Vs. Rajesh Kumar and others, 2015 AIR (H.P.) 85**. He also cited judgment rendered by Single Bench of this Court in **Parkasho Vs. Bholi Devi, 2013(1) RCR (Civil) 93**, to contend that in identical situation where the writ petition was filed after declaration of the result of Sarpanch, the petitioner therein had chosen to file election petition which was barred by law of limitation and liberty granted to avail the remedy would not be the ground for condonation of delay and urges this Court for setting aside of the impugned order.

I have heard learned counsel for the parties and appraised the

paper book and of the view that there is no merit and force in the submission of Mr. Aakash Singla, for, with all humility, I must observe that all the judgments referred to by Mr. Aakash Singla, the respected Hon'ble Courts were not rendered assistance regarding the provision of Sub-Section 2 of Section 29 of the Limitation Act. For the sake of brevity, provision of aforementioned Section, reads thus:-

“29(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.”

On conjoint reading of the provision of Section 29(2) and 176 (Supra), it is irresistibly concluded that there is no exclusion of the applicability of the Limitation Act and in case statute of the special or local law has not excluded the applicability or limitation then as per the provision, ibid the provision of Sections 4 to 24 of the Limitation Act would apply. No doubt the provision of Section 5 of the Limitation Act do not apply to the Representation of Peoples Act as it is a Court itself. It has also been held by this Court that mere filing of the writ petition in view of the remedy of the election petition would not be ground for seeking the condonation of delay but as the facts narrated above would reveal that the writ petition was filed within the period of limitation i.e. 11.02.2016 which

was disposed of to avail the statutory remedy on 15.02.2016 and the limitation of 30 days was to expire on 23.02.2016. It is also matter of record that election petition bonafidely was filed in the office of Deputy Commissioner on 24.02.2016 as it bears stamp of institution. The objection vis-a-vis filing of the election petition on 24.02.2006 before the Deputy Commissioner had not been taken by the petitioner before the Courts below which is evident from the reply filed by them vis-a-vis application seeking condonation of delay. On dismissal of the petition by Deputy Commissioner on 29.03.2016, the election petition has been filed on 18.04.2016 by taking the benefit of Sections 5 and 14 of the Act. I must appreciate the exercise and hardwork done by the Civil Judge in passing a very detailed, reasoned and perfect order while allowing the application seeking condonation of delay.

I am in agreement with the judgments relied upon by Mr. Mohan Jain, to the fact that the provision of Sections 5 and 14 of the Limitation Act are on a different pedestals, in essence, Section 5 is discretionary whereas Section 14 is exclusion of time which is mandatory. It has been consistently held by Hon'ble Supreme Court that Section 5 is broader in sweep than Section 14. There has been a distinction between the applicability of provision of Section 5 and 14 of the 1963 Act as they operate in different scenario. Trial Court noticed the fact that the respondent had been bonafidely pursuing the remedy particularly after the disposal of the writ petition realising that the Deputy Commissioner was competent to try and entertain the election petition. In fact the power had been given to the Civil Court. The impugned order came to be passed as the petitioner has

raised objection qua election petition being barred by limitation and the order under challenge tantamounts to deciding the issue of limitation.

Mr. Jain, during the course of arguments has also attempted to refer the merits of the election petition vis-a-vis the qualification of the petitioner but I refrain myself to delve as it will effect the merit and demerit of the respected defences as I am only confined to the questions (Supra) raised in the present petition. The petitioner could have taken objection in the written statement on limitation and allowed the trial election petition i.e. it could have been left open to the Court to decide the same at the final stage but on their insistence, the trial Court had no occasion to decide the question, therefore, request of Mr. Aakash Singla to keep issue of limitation open would be tantamount of re-writing the judgment on issue which has already been decided and, therefore, the request of Mr. Aakash Singla, is hereby rejected.

For the foregoing reasons, I do not find any illegality and perversity in the impugned order.

Order is perfect, legal and justified. There is no illegality and perversity and it cannot be said to have been passed without jurisdiction.

Revision petition stands dismissed.

12.08.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- Yes