

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 13262 of 2016

Date of Decision: 12.7.2016

Ramkishan

....Petitioner.

Versus

State of Haryana and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. J.P. Sharma, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. Through the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 20.5.2016 (Annexure P-1) passed by respondent No.10 vide which his election petition dated 24.2.2016 (Annexure P-2) was dismissed on the ground of limitation despite the filing of separate application dated 24.2.2016 (Annexure P-3) for condonation of delay. Further, a prayer has been made for quashing the result dated 10.1.2016 (Annexure P-8) of Ward No.5 for the post of Panch of village Dongra declaring respondent No.9 as winning Panch. Further, a writ of mandamus has been sought directing the official respondents to

recount the votes of Ward No.5, Gram Panchayat, Dongra Ahir, Tehsil

Kanina, District Mahendergarh for which application dated 29.4.2016 (Annexure P-4) was filed before respondent No.10. Also a prayer has been made directing the official respondents to declare the petitioner as elected Panch of Gram Panchayat, Dongra Ahir, Tehsil Kanina, District Mahendergarh as he was declared elected Panch of Ward No.5 but oath letter was issued in the name of respondent No.9 by the polling officers after recording the votes vice versa in the result (Annexure P-8).

2. A few facts necessary for adjudicating of the instant petition as narrated therein may be noticed. The election of Gram Panchayat Dongra Ahir, Tehsil Kanina, District Mahendergarh was held on 10.1.2016 for various posts. The petitioner and respondent No.9 contested for the post of Panch of Ward No.5. After voting, the counting was done on 10.1.2016 in the evening in which total 200 votes were polled out of which 30 votes were cancelled. Out of 170 votes, the petitioner had secured 92 votes whereas respondent No. 9 secured 78 votes and the petitioner was declared winning candidate of Ward No.5. However, no certificate was given in the evening on 10.1.2016. The oath ceremony of the Panches and Sarpanches were to be held on 16.2.2016. On 12.2.2016, Panchayat Secretary came in the village and informed respondent No.9 for participating in the oath ceremony to be held on 16.2.2016. The petitioner made enquiries and came to know that the Presiding Officer had wrongly recorded the secured votes of the petitioner and respondent No.9 vice versa. Accordingly, he made a representation dated 15.2.2016 (Annexure P-6) to respondent No.2 for preparing the correct result and declaring him the winning candidate. When no action was taken by the official respondents, the petitioner filed an election petition dated 25.2.2016 (Annexure P-2) before respondent No.2.

He also filed an application for condonation of delay on 25.2.2016 (Annexure P-3). An application dated 29.4.2016 (Annexure P-4) was also filed by the petitioner for recounting of the votes. In pursuance to the application, Annexure P-4, respondent No.9 made a statement dated 6.5.2016 that he had no objection for recounting of the votes and vide order dated 6.5.2016 (Annexure P-7), the case was adjourned to 11.5.2016 for consideration of the application for recounting of votes. Respondent No.9 was declared elected vide result dated 10.1.2016 (Annexure P-8). Respondent No.10 vide impugned order dated 20.5.2016 (Annexure P-1) dismissed the election petition being barred by limitation. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the election petition was maintainable as the same was filed within a period of 30 days from the date of knowledge of the petitioner. It was further submitted that respondent No.10 had wrongly dismissed the election petition being barred by limitation.

4. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

5. It is admitted that the petitioner and respondent No.9 contested for the post of Panch of Ward No.5 of Gram Panchayat, Dongra Ahir, Tehsil Kanina, District Mahendergarh for which the elections were held on 10.1.2016 and the result was also declared on the said date.

6. The question that arises in the present petition relates to the applicability of the law of limitation on the filing of the election petitions.

7. We proceed to examine relevant statutory provisions concerning the issue. Section 176(1) of the Haryana Panchayati Raj Act,

1994 (in short “the 1994 Act”) provides that if the validity of any election of a member of Gram Panchayat, Panch, Samiti or Zila Parishad or Sarpanch etc. 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 30 days after the declaration of the results of the election may file an election petition in the civil court of competent jurisdiction. Section 176(1) of the 1994 Act 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.”

8. Section 5 of the Limitation Act, 1963 (hereinafter referred to as “the Act”) is reproduced as under:-

“5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code or Civil Procedure, 1908 (5 of 1908), may be admitted after

the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.- The fact that the appellant or the applicant may misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.”

9. A plain reading of Section 5 of the Act shows that it has applicability only to appeals or applications, other than the applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. It nowhere provides for condonation of delay in the filing of the suits.

10. The similar question came up before this Court in **Civil Revision No. 6086 of 2011 (Parkasho v. Bholi Devi)** decided on 28.5.2012 and this Court held that the election petition filed under the 1994 Act after the lapse of the statutory period of 30 days from the date of declaration of the result shall be beyond limitation and liable to be dismissed.

11. The result to the post of Panch, Ward No.5, Gram Panchayat Dongra Ahir was declared on 10.1.2016 and as per the provisions of Section 176(1) of the 1994 Act, the election petition could be filed within 30 days after the date of declaration of the result of the election. The petitioner filed the election petition on 25.2.2016 after the lapse of statutory period of 30 days. Thus, in the absence of any specific provision empowering the civil court to entertain an election petition beyond statutory period of 30 days

after condoning the delay in filing the same, the petition filed by the petitioner on 25.2.2016 questioning the election result declared on 10.1.2016 was time barred and had been rightly dismissed by the civil court.

12. In view of the above, the present writ petition being devoid of any merit, is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 12, 2016
gbs

(RAMENDRA JAIN)
JUDGE