

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 3rd February, 2016

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W.P.(C) 5291/2013

VED PRAKASH

..... Petitioner

Through: Mr. Sudhir Naagar with Mr. Mohit Singh, Adv.

Versus

SUNIL KUMAR JHA & ORS

..... Respondents

Through: Mr. Amit Kumar, Adv. for R-1

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the judgment and order dated 20th May, 2013 of the District Judge, Shahdara of rejection (on an application under Order VII Rule 11 of the CPC) of a petition filed by the petitioner impugning the election held on 15th April, 2012 of the respondent no.1 as a Municipal Commissioner from Ward No.242, New Seemapuri, Delhi, on the ground of the election petition filed by the petitioner being barred by time and the provisions of Section 5 of the Limitation Act, 1963 invoked by the petitioner being not applicable to such petitions.

2. Notice of the petition was issued and counter affidavit has been filed by the respondent no.1. None of the other respondents have appeared despite service.

3. The counsels have been heard.

4. It is not in dispute that the election petition is prescribed to be filed within 15 days from the date of publication of the result of the election within the meaning of Section 14 of the Delhi Municipal Corporation Act, 1957 (MCD Act) and that the petition was not filed within the said period of 15 days. The petitioner along with election petition filed an application under Section 5 of the Limitation Act setting out the reasons for condonation of delay.

5. The learned District Judge has held:

- (i) that as per the dicta of the Supreme court in ***K. Venkateswara Rao Vs. Beekam Narasimha Reddi*** AIR 1969 SC 872 followed in ***Hukumdev Narain Yadav Vs. Lalit Narain Mishra*** AIR 1974 SC 480, Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of People Act, 1951 (RP Act) is a complete and self contained code which

does not admit of the introduction of the principles or the provisions of the Limitation Act;

- (ii) as per the dicta of the Supreme Court in ***Hukumdev Narain Yadav*** supra it is to be seen whether the scheme of the special law and the nature of remedy provided therein are such that the legislature intended it to be a complete code and if found to be so, the provisions of the Limitation Act have to be necessarily excluded. Reliance was also placed on ***Ravindra Chourasia Vs. Ramashankar*** ILR (2012) MP 1402 on an analogous provision in the Madhya Pradesh Municipalities Act, 1961 holding the provisions of the Limitation Act to be not applicable;
- (iii) that though Election Rules, 2012 have been framed vide Notification dated 28th February, 2012 qua the subject elections but the applicability of Section 5 of the Limitation Act is not extended thereunder also to the filing of election petitions;
- (iv) reliance was placed on ***Prithipal Singh Vs. Satpal Singh*** (2010) 2 SCC 15 holding the provisions of the Limitation Act

to be not applicable to the application under Section 25-B of the Delhi Rent Control Act, 1957 for leave to defend an eviction petition;

- (v) reliance was placed on *State of Himachal Pradesh Vs. Himachal Techno Engineers* (2010) 7 SCC 516 holding Section 5 of the Limitation Act to be not applicable to Section 34(3) of the Arbitration and Conciliation Act, 1996;
- (vi) the Delhi Municipal Corporation Act, 1957 is a complete code by itself which governs the subject matters provided therein and Rule 91 of the Rules aforesaid also provide that if the provisions of the Section 15 of the MCD Act are not complied with, the election petition shall be dismissed.

6. The counsel for the petitioner has drawn attention to the Section 29(2) of the Limitation Act which is as under:

“29. Savings.-

(1)

(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 Section 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.”

and has argued that there is nothing in the MCD Act expressly excluding the applicability of Sections 4 to 24 of the Limitation Act.

7. I am however unable to agree.

8. Section 15 of the MCD Act under the heading “Disputes regarding elections” is as under:

15. Election petitions. -- (1) No election of a councillor shall be called in question except by an election petition presented to the court of the district judge of Delhi within fifteen days from the date of the publication of the result of the election under section 14.

(2) An election petition calling in question any such election may be presented under any of the grounds specified in section 17 by any candidate at such election, by any elector of the ward concerned or by any councillor.

(3) A petitioner shall join as respondents to his petition all the candidates at the election.

(4) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall, with sufficient particulars, set forth the ground or grounds on which the election is called in question; and

- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings."

9. I have enquired from the counsel for the petitioner whether not the preemptory language of Section 15 prohibiting the election to be called in question except by an election petition presented within 15 days from the date of publication of the result of the election should be read as expressly excluding the applicability of Sections 4 to 24, particularly Section 5 of the Limitation Act and whether not applying Section 5 of the Limitation Act to the filing of an election petition would tantamount to diluting the preemptory language of Section 15. I have further enquired from the counsel for the petitioner that even if Section 5 of the Limitation Act was to be attracted, how it would apply to condonation of delay in filing of an election petition in as much as the same is applicable only to extension of prescribed time in an appeal or in an application and is not applicable to a suit and whether not the trial of an election petition before the District Judge is, as of a suit.

10. Notice in this regard may be taken of Section 18 of the MCD Act which provides for the procedure to be followed by the District Judge (for adjudication of disputes regarding elections) to be, as far as it can be made

applicable, the procedure prescribed in the Code of Civil Procedure, 1908 in regard to suits.

11. It has further been enquired from the counsel for the petitioner that if the provisions of Section 5 of the Limitation Act are not applicable to the institution of a suit, how can they be applicable to the institution of an election petition and / or for extending the period of limitation for instituting an election petition.

12. All that the counsel for the petitioner can state is that though the election petition before the District Judge is treated as a suit but is not a suit and remains in the nature of a petition. He also states that the Supreme Court in paragraph 11 of *Shaik Saidulu @ Saida Vs. Chukka Yesu Ratnam* (2002) 3 SCC 130 has treated the election petition as an application and not a suit. He is however unable to show any discussion or finding in this regard save that the election petition is referred to as an application therein. It is contended that in the said judgment, the provisions of Section 5 of the Limitation Act were held applicable to an election petition under the Hyderabad Municipal Corporation Act, 1955.

13. Per contra, the counsel for the respondent no.1 contends that the Supreme Court in the said judgment has relied on Section 671 of the Hyderabad Municipal Corporation Act to hold the provisions of Section 5 to be applicable and there is no *para materia* provision in the MCD Act.

14. Having considered the rival contentions I am of the opinion that the petitioner has been unable to dent the reasoning given by the learned District Judge and with which I concur.

15. I however add / elaborate:

- (i) Supreme Court in ***Jyoti Basu Vs. Debi Ghosal*** (1982) 1 SCC 691 has held that a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right; it is pure and simple, a statutory right; so is the right to be elected; so is the right to dispute an election. It was further held that outside of statute, there is no right to elect, no right to be elected and no right to dispute an election – statutory creations they are, and therefore, subject to statutory limitation. It was further reasoned that an election petition is not an action at Common Law, nor in equity;

it is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It was held to be a special jurisdiction and which special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity were held to be strangers to Election Law unless statutorily embodied and a Court has no right to resort to them on considerations of alleged policy because policy in such matters relating to the trial of election disputes is what the statute lays down.

- (ii) The statute in the present case namely the MCD Act, vide Section 15 thereof prohibits an election of a Councillor from being called in question except by an election petition presented in the Court of the District Judge of Delhi within 15 days from the date of publication of the result of the election. Interpreted in the aforesaid light, the statute has not created any right to call in question the election of a Councillor after 15 days from the date of publication of the result of the election. The statute having not created a right to challenge the election of a

Councillor after 15 days have expired from the publication of the result, to hold that Section 5 of the Limitation Act would apply would tantamount to creating a right to challenge the election of a Councillor even after 15 days of publication of result, when the special statute i.e. the MCD Act has expressly prohibited so.

- (iii) not only so, Section 21(2) of the MCD Act expressly provides that an election of Councillor, not called in question in accordance with the “foregoing provisions” shall be deemed to be a good and valid election. Therefrom it follows that upon non-presentment of an election petition within 15 days from date of publication of result of election, the election is deemed to be good and valid. An election which the law deems as good and valid, cannot be made bad and invalid by allowing the applicability of Section 5 of the Limitation Act.
- (iv) As far as the reliance by the counsel for the petitioner on Section 29(2) of the Limitation Act is concerned, the same in my view would have no application to a statute creating a right

to contest an election and prescribing the period of limitation therefor; since the right to contest the election has been held to be a purely statutory right and not a right in Common law or in Equity, it has but to follow that the provisions of Sections 4 to 24 of the Limitation Act are expressly excluded by the said statute creating a right to contest / challenge an election.

- (v) Supreme Court in *Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd.* (2009) 5 SCC 791 has held that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nevertheless be open to the Court to examine whether and to what extent, the nature of the provisions or the nature of the subject-matter and scheme of the special law exclude their operation. It was held that the applicability of the provisions of the Limitation Act is to be judged not from the terms of the Limitation Act but by the provisions, in that case the Central Excise Act, relating to filing of reference application to the High Court. The scheme of the Central Excise Act, 1944 was held to support the conclusion

that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by Court under Section 5 of the Limitation Act. It was held to be settled law that it is the duty of the Court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act.

- (vi) Mention may also be made of *Popat Bahiru Govardhane Vs. Special Land Acquisition Officer* (2013) 10 SCC 765 where it was reiterated that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Court has no power to extend the period of limitation on equitable grounds. The legal maxim *dura lex sed lex* which means the “law is hard but it is the law”, was held to be attracted in such a situation. A result flowing from a statutory provision, was held, can never be an evil.
- (vii) I also find a number of High Courts to have taken the view that the provisions of the Limitation Act are not applicable to election petitions under statutes other than the RP Act.

Reference in this regard can be made to ***Ramnandan Rai Vs. The District Judge, Sitamarhi*** AIR 1980 Patna 180 concerned with elections under the Bihar Panchayat Election Rules, 1959, ***Birender Kumar Vs. The State Election Commission*** MANU/BH/0136/2004 concerned with elections under the Bihar Panchayat Raj Act, 1993 reasoning that to hold otherwise would make the result of election vulnerable for long time, ***Anil Kumar Jha Vs. State of Bihar*** AIR 2011 Patna 1 (DB) concerned with elections under the Bihar Panchayat Raj Act, 2006 and the Bihar Panchayat Election Rules, 2006, ***Smt. Vijaya Vs. Smt. Mahammad Begum*** MANU/KA/0736/2009 concerned with elections under the Karnataka Municipalities Act, 1964 and ***Shri Umesh Tukaram Kamble Vs. Shri Shamrao Sakharam Patil*** MANU/MH/0861/2007 concerned with elections under the Bombay Village Panchayats Act, 1958.

- (viii) As far as the reliance by the counsel for the petitioner on ***Shaik Saidulu @ Saida*** supra is concerned, though Section 71(2) of the Hyderabad Municipal Corporation Act, 1955 under consideration therein required an election petition to be brought

within two months but Section 671 of the said Act provided that in computing the period of limitation, the provisions of Sections 5, 12 and 13 of the Limitation Act shall so far as may be, applied. It was for this reason that the Supreme Court held that the expression 'application' under Section 671 of the Act could be understood in a generic sense as a prayer made to an authority for some relief to set aside an order of another authority and since there was a specific provision making Section 5 of the Limitation Act applicable in computing the period of limitation for filing an application, an election petition was covered thereby.

- (ix) Though in the light of above, the petition in any case is liable to be dismissed but in my view the question of applicability of Section 5 of the Limitation Act to an election petition also does not arise for the reason that Section 5 is applicable only to appeals or applications and not to suits and an election petition is more akin to a suit than to an appeal or application to which Section 5 of the Limitation Act applies. Supreme Court in ***Hari Shankar Jain Vs. Sonia Gandhi*** (2001) 8 SCC 233 held that

when power to hear a dispute under an Act is conferred on the Court, then the dispute has to be determined according to rules and procedures of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers power in respect of manner and method of exercising that jurisdiction.

16. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 03, 2016
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