

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

CWP No.9440 of 2019

Date of Decision: 16.05.2019

Sonu

....Petitioner

Versus

State of Haryana and others

....Respondents

***CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL***

Present:- Mr. Sunil Kumar Bhardwaj, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Petitioner-Sonu has filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned judgment/order dated 02.02.2019 passed in the Election Petition filed by him and to set aside the election of respondent No.4.

Briefly, the facts of the case, as made out in the present petition, are that the election of Sarpanch of Gram Panchayat Village Bahadurgarh, District Jind was held on 10.01.2016. Petitioner as well as respondents No.4 to 12 contested said election and respondent No.4 (Sushil Kumar) was declared as elected. Said election was challenged by the petitioner by filing the Election Petition under Section 176 of the Haryana Panchayati Raj Act, 1994 (here-in-after called as 'the Act, 1994'), whereby, respondent No.4 was declared as elected before the Civil Judge (Junior

Division), Safidon-cum-Election Tribunal, Safidon by raising certain grounds and said petition was dismissed vide order dated 02.02.2019, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that respondent No.4 was in illegal and unauthorized possession of *Shamlat* land as per revenue record and was disqualified for contesting election. In the revenue record, the name of father of the petitioner was mentioned in column of *Khana Kast* of the Jamabandi for the year 2010-11. Respondent no.4 was in illegal and unauthorized possession over *Shamlat/Panchayat* land bearing No.71 measuring 10 Kanal 12 Marlas to the extent of 70/212 share corresponding to 3 Kanal 10 Marlas. Prior to him, his deceased father Bije Singh was in illegal and unauthorized possession of said land. As per provisions of Section 175 of the Act, 1994, no person can be Sarpanch or a Panch of a gram panchayat in case such person has been in illegal and unauthorized possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parisad during the period of one year preceding the date of election. It is also the argument of learned counsel for the petitioner that the learned Tribunal has failed to consider the fact that the respondent authorities, while filing written statement to the Election Petition, mentioned about illegal/unauthorized possession over the panchayat land. Without taking into consideration the provisions of Section 175(n) of the Act, 1994, the Election Petition has been dismissed, whereas, respondent No.4 could have been declared disqualified only on this ground.

We have heard the arguments of learned counsel for the petitioner and have also perused the judgment passed by the Election Tribunal.

On perusal of impugned judgment/order passed by the learned Tribunal, it appears that the Election Petition has been dismissed on the ground that it was time barred by the law of limitation as the Election Petition was to be filed within a period of 30 days from the date of election whereas it was filed after the expiry of period of 30 days. The election of Sarpanch was held and declared on 10.01.2016 and the Election Petition was filed on 10.02.2016. The period of 30 days had already expired. Apart from period of limitation, three more issues were there but those issues were not pressed. No cogent evidence was led in proof of those issues.

The facts of the case relating to contesting of election by the petitioner and respondent No.4 as well as other candidates, are not disputed. The issue involved in the present petition relates to applicability of law of limitation in filing the Election Petition. Section 176(1) of the Act, 1994 provides that if the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat is questioned by any person contesting the election or by any other 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, may file Election Petition in the Civil Court of competent jurisdiction. Section 176(1) of the Act, 1994 is reproduced as under :-

“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.”

Section 5 of the Limitation Act, 1963 is also relevant, which 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 21 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, practise or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.”

On perusal of provisions of Section 5 of the Limitation Act, 1963, it appears that it has applicability only to appeals or applications, other than the applications made under any of the provisions of Order 21 of the Code of Civil Procedure, 1908. It nowhere provides for condonation of delay in the filing of the suits.

The period of limitation for filing the election petition is 30 days after the date of the declaration of the results of the election and beyond that, no election petition can be filed. In the present case, the election petition was filed beyond the period of 30 days.

The same issue was there in case ***Parkasho vs Bholi Devi 2013***

(1) RCR (Civil) 93. In that case, the election petition was filed after the lapse of the statutory period of 30 days from the date of declaration of the result and the said petition was dismissed on the ground of limitation.

Similarly, in another judgment of Division Bench of this Court in case ***Ramkishan vs State of Haryana and others 2016(4) RCR (Civil) 633***, it was held that the election petition filed after the lapse of statutory period of 30 days from the date of declaration of result is liable to be dismissed being beyond the period of limitation. It was also held in said judgment that the election petition was filed after the lapse of statutory period of 30 days and in the absence of any specific provision empowering the court to entertain the election petition beyond the statutory period of 30 days after condoning the delay in filing the same, the petition was dismissed being time barred and it was held that the election petition was rightly dismissed by the Civil Court.

The same issue was there before Hon'ble the Apex Court in the latest judgment titled as ***Reji Thomas and others vs State of Kerala and others 2018 AIR (SC) 2236***, wherein, it was held that once the mechanism has been provided under Statute providing the time schedule for preferring election petition and in absence of provision in Statute for enlarging the time under any given circumstances, no court, whether High Court under Article 226 or the Apex Court under Articles 32, 136 or 142 of the Constitution can extend period in election matters. In matter of limitation in election cases, the Court has to adopt strict interpretation of provisions. The relevant portion of said judgment is reproduced as under :-

“ 11. Section 69 of the Act is the mechanism provided by the State Legislature as contemplated under Article 243 ZK(2) of the Constitution of India. Once the

*mechanism provided under the Statute provides for a time schedule for preferring an election petition, in the absence of a provision in the Statute for enlarging the time under any given circumstances, no court, whether the High Court under Article 226 or this Court under Article 32, 136 or 142 of the Constitution can extend the period in election matters. In the matter of limitation in election cases, the Court has to adopt strict interpretation of the provisions. This Court in **Smita Subhash Sawant v. Jagdeeshwari Jagdish Amin & Ors. reported in (2015) 12 SCC 169**, though in a different context, has held at paragraph 33 that “In the absence of any provision made in the Act for condoning the delay in filing the election petition, the Chief Judge had no power to condone the delay in filing the election petition beyond the period of limitation prescribed in law.”*

The same issue was there before Hon'ble the Apex Court in judgment titled as **Hukumdev Narain Yadav vs Lalit Narain Mishra 1974 AIR (SC) 480**. While relying upon the earlier judgment of Hon'ble the Apex Court in case **Charan Lal Sahu v. Nandkishore Bhatt 1973(2) SCC 530**, it was held that there is no question of any common law right to challenge an election as such any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. It was also observed that no discretion was conferred in respect of any such matters and it cannot be exercised even under any general law or on any principles of equity. In case, the mandatory provisions are there in the election petition and the election petition is not filed within the period prescribed, then in case of non-compliance of such mandatory provisions, the petition is liable to be dismissed.

Similarly in another judgment of Hon'ble the Apex Court in case ***Lachhman Das Arora vs Ganeshi Lal 1999(4) RCR (Civil) 138***, the following observation was made while dismissing the appeal of the appellant :-

*“ 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 effect 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. Since, it is a common ground that the election petition in the instant case had been filed one week after the expiry of the period of forty-five days, it was clearly barred by time. The High Court was, under the circumstances, fully justified in dismissing the election petition on that ground. We do not find any merit in this appeal which accordingly fails and is dismissed but with no order as to costs.
Appeal dismissed.”*

Hon'ble the Apex Court in case ***Jyoti Basu v. Devi Ghosal***

AIR 1982 Supreme Court 983 has observed as under :-

“..... that the right to elect or to be elected though fundamental to democracy but is neither fundamental right nor common law. It is pure and simple statutory rule and so is right to be elected and so is the right to dispute election. Outside of statute there is no right to elect no right to be elected and no right to dispute election. The statutory creation they are and therefore subject to statutory limitation, election petition is not an action by common law nor

in equity. It is a statutory proceeding to which neither common law nor the principles of equity apply but only those rules which the Statute makes and applies. It is a special jurisdiction and special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A Court has no right to resort to them on consideration of alleged policy because policy in such matters as those, relating to the trial of election disputes, is that the statute lays down. In the trial of election disputes Court is put in a straight jacket.”

In ***Rashpal Singh alias Rachpal Singh and others vs Jasvir***

Singh and others (P&H) 2010 (2) R. C. R. (Civil) 408, this Court held that an election petition is like on original suit in which delay cannot be condoned. The relevant paragraphs of the judgment are extracted below:-

10. The question in this case is whether election petition has been filed by the candidate (respondent No.1.) challenging the election of the appellants on the grounds provided under Section 89 (1) within 45 days from the date of election.

11. In the present case, facts have already been noticed.

12. Election was held on 26.5.2008. Writ petition was filed by respondent No.1. in this Court which was ultimately disposed of on 4.10.2008. Admittedly, the time which has been consumed by respondent No.1 in pursuing his remedy in the writ Court, was not condoned. Then the question is that if the limitation is counted from 4.10.2008, whether the election petition is within limitation ?. The answer is 'No' because the election petition has been filed on 15.12.2008 after the expiry of 71 days. The question then arises whether provisions of the Limitation Act, 1963 are applicable to the facts of this case for the purpose of condonation of delay.

13. In this regard, learned counsel for the appellants has relied upon a decision of the Apex Court in the case of **G.V. Sreerama Reddy & Anr. Vs. Returning Officer & Ors., 2009 (3) RCR (Civil) 937**. This was a case under the Representation of the People Act, 1951. Provisions of Section 81 (1) of the Act provides that election petition

should be presented within 45 days. The question arose whether provisions of Limitation Act, 1963 are applicable. The apex Court held that Limitation Act cannot apply to the proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act. Similarly, same language has been adopted in the Act in Section 76 that an election petition has to be filed within 45 days. The Apex Court held that the object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub section (1) along-with the other provisions in Chapters II and III, the object and intent of the Legislature is that this provision i.e, Section 81 (I) is to be strictly adhered to and complied with. Thus, the election petition is highly belated as respondent No.1 has failed to seek condonation of delay even at the stage when the writ petition was disposed of by this Court. Moreover, election petition is like an original suit in which delay cannot be condoned.

The matter was also considered by Andhra Pradesh High Court in *Vardhineedi Sree Devi vs Chegondi Ramalakshmi* 2007 (5) Andhra Law Times 727, wherein it was opined that an elected candidate cannot be kept in suspense during the entire tenure to the elected post as in case the Limitation Act is held to be applicable, sword of a possible challenge to his election will keep on hanging on his head. Relevant para 6 of the judgment is extracted below:-

“6. In Lachhman Das Arora's case (4 supra), Hikumdev Narain Yadav's case (3 supra) and Anwari Basavaraj Patil's case (1 supra), the Apex Court held that the courts cannot extend the period of limitation on equitable grounds particularly in the matter of election petitions. No doubt, the election petitions in those cases were filed under the provisions of the Representation of the Peoples Act. But, the ratio in those cases that the petition questioning the election has to be filed within the period of limitation prescribed, and question of extension of period of limitation does not arise, applies on all fours to election petitions filed under the A.P. Panchayat Raj Act also, because a candidate declared elected in an election cannot be kept under suspense during the entire tenure to the elected post, because if Section 5 of Limitation Act is held to apply to election petitions, it would tantamount in holding that the

election of the elected candidate would be subject to scrutiny by court i.e. Election Tribunal at any time during his tenure, which obviously is not the intention of the law makers. Just like limitation for filing a suit cannot be extended by invoking Section 5 of Limitation Act, period of limitation to file an election petition also cannot be extended by taking the aid of Section 5 of Limitation Act.”

In the present case, admittedly the election petition was filed after the expiry of statutory period of 30 days and the learned Election Tribunal has rightly dismissed the election petition filed by the petitioner.

In view of statutory provisions and ratio of judgments as mentioned above, no ground is made out to interfere with the impugned judgment dated 02.02.2019 passed by the Civil Judge (Junior Division), Sub Division, Safidon and hence, the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

16.05.2019
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No