

O.A.No. 412 of 2017

in
ELP.No. 17 of 2016

Order Reserved on	28.02.2020
Order pronounced on	17.06.2020

D. KRISHNAKUMAR, J.,

The prayer sought for in the Original Application is filed by the applicant to reject the election petition filed by the 1st respondent herein for non-compliance of the mandatory provisions under the Representation of People Act, 1951.

Election Petition is filed to declare that the election of the returned candidate, namely the 1st respondent herein, No.215, Tiruchendur Legislative Assembly Constituency, Thoothukudi District, Tamil Nadu held on 16.05.2016 in which result have been declared on 19.05.2016 as void.

2. Before going into the facts of the present Original Application, it would be relevant to mention the brief facts of the election petition filed by

the 1st respondent/election petitioner in the present application.

2.1 The 4th respondent issued an Election Notification on 22.04.2016, for conducting Election, No. 215 Tiruchendur Legislative Assembly Constituency under Section 30 of the Representation of People Act'1951 by fixing schedule dates for the Tamil Nadu State Legislative Assembly Constituency. Accordingly, date of filing of Nomination was commenced on 22.04.2016 and Last date of filing Nomination was fixed on 29.04.2016, last date for withdrawal of nominations on 02.06.2016, Date of Polling on 16.05.2016, Date of counting of Votes and Date of declaration of Result on 19.05.2016.

2.2 The 4th respondent, after scrutiny the nomination papers on 30.04.2016, released final list of 13 contesting candidates on 02.06.2016, including the 1st respondent in Form 7 A/Document No-13 and the 1st respondent was declared elected in the aforesaid assembly election on 19.05.2016. According to the Election Petitioner/1st respondent, the applicant has not disclosed the particulars as required under the Act and Rules in the prescribed Form. Therefore, certainly nomination paper suffers

from defect of substantial character and the Returning Officer ought to have rejected the nomination paper of the applicant/1st respondent. Challenging the declaration of results, the 1st respondent herein filed the Election Petition to declare that the election of the Returned candidate viz., the 1st respondent/applicant herein as void. The applicant/1st respondent in the Election Petition has filed the instant application to reject the Election Petition for non compliance of mandatory provisions under the Act.

3. According to the learned counsel appearing for the applicant, the allegation of the 1st respondent herein that the mandatory provisions as prescribed under the Representation of the People Act, 1951 have not been followed. The applicant has now filed the instant application to reject the Election Petition by raising grounds that as per Section 81(1) of the Representation of People Act, 1951 an election petition shall be presented within forty-five (45) days from the date of declaring the result of the election, but not earlier than the date of election of the returned candidate. The election petitioner has not filed the election petition within the prescribed time as stipulated under Representation of People Act, 1951, therefore, the

Election Petition is barred by limitation.

4. The learned counsel appearing for the applicant submitted that the High Court was remained open to entertain petitions. Further, the period of limitation should not be counted for calculating the limitation period of 45 days including leave period of summer vacation/holidays. When the court was open, petition should have been filed within the limitation period. Thus, the Election Petition is barred by limitation.

5. The learned counsel appearing for the applicant would further submit that the period of limitation to be counted including holidays and summer vacation. As per the amended Act, election petition has to be presented before the High Court. Once the prescribed period under the Act is expired, there is no provision to condone delay the election petitions. Further it is contended by the learned counsel that the Representation of People Act 1951 is a complete and self contained code, therefore the provisions under the Indian Limitation Act will not apply. As per Rule 7 of the Rules of the Madras High Court Election Petition 1967, an election petition can be

presented before the II Assistant Registrar (Original side), High Court, Madras or in his absence, before such officer of court as the Registrar of the High Court may direct. Thus, the election petitioners has not presented the election petition on or before 02.07.2016, but presented before this Court only on 04.07.2016, hence the same is liable to be rejected on the ground of non-compliance of mandatory provisions under the Representation of People Act, 1951.

6. On the other hand, the learned counsel appearing for the 1st respondent/ election petitioner has filed counter affidavit and strongly argued that as per Section 81 (1) of the Representation of People Act'1951 the present election petition was rightly presented before this Court on 04.07.2016 (Monday), since the 02.07.2016 and 03.07.2016 were falls on Saturday and Sunday respectively. Further contended that Section 10 of the General Clauses Act' 1897 applies to an Election Petition which permits filing of the Election Petition on the date when the Hon'ble High Court opened after Holidays, therefore the Election Petition was filed within the time prescribed and therefore he complied the provision of Section 81(1) of the

Representation of People Act'1951. Hence the instant application filed by the applicant seeking dismissal of the election petition as time barred is incorrect and denied. Therefore the grounds raised by the applicant are duly misconceived and the same are liable to be rejected.

7. Heard Mr. U.M.Ravichandran, learned counsel appearing for the applicant and Mr.M.Jothi Kumar, learned counsel appearing for the 1st respondent and perused the documents available on record.

8. Points for consideration in the present application are;

i. Whether the election petition filed by the 1st respondent is barred by limitation under section 81(1) of the Representation of People Act'1951.

ii. Whether Section 10 of the General Clauses Act '1897 permits to file an election petition on the date when the Hon'ble High Court re-opened after holidays.

9. According to the learned counsel appearing for the applicant, the 1st respondent/election petitioner has not presented the election petition on the last day i.e on 02.07.2016, but presented on 04.07.2016. The learned counsel

for the applicant relied on Sub Section 1 of the Section 81 of Representation of People Act, the same is extracted below;

Section 81(1) of Representation of People Act'1951: - Presentation of petitions:

“An election petition calling in question any election may be presented on one or more of the grounds specified in sub section (1) of Section 100 and Section 101 to the [High Court] by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

10. The learned counsel appearing for the applicant has relied upon following decisions to support his contentions;

(i). Hukumdev Narain Yadav Vs.Lalit Narain Mishra reported in AIR 1974 SC 480(1). In paragraph 10, the Supreme Court held as follows;

“..The appellant an elector in that constituency presented an election petition on Monday, March 20, 1972, instead of Saturday, March 18, 1972, which was the last day of limitation. The petition, however, was dismissed by the High Court as being time-barred.

In the said case the Supreme Court has framed two issues to determine when the Judges do not sit for the purposes either of Section 10 of the General Clauses Act or Section 4 of the Limitation Act or Section 5 of the Limitation Act is applicable to file election petitions and discussed in detail in paragraph 5 of the aforesaid Judgment. The relevant paragraphs are extracted hereunder;

“.....Section 10 of the General Clauses Act will certainly apply to election petitions to be filed under the Act as held by this Court in H.H. Raja Harinder Singh v. S. Karnail Singh MANU/SC/0056/1956 : [1957]1SCR208 . In that case an election petition had to be filed under Rule 119(a) of the Election Rules not later than fourteen days from the terminus a quo prescribed therein, but as the day on which it could be filed was a Sunday be filed it on the next day. The contention of the Solicitor-General was that Section 10 of the General Clauses Act

"can apply on its own terms only when the act in question is to be done "within a prescribed period", that under Rule 119(a) of the Election Rules the petition has to be filed "not later than" fourteen days, that the two expressions do not mean the same thing, the words of the Rule being more peremptory, and that accordingly Section 10 of the General Clauses Act cannot be invoked in aid of a petition presented under Rule 119, later than fourteen days".

This argument was rejected as being erroneous because "Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that

period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday."

Further, the learned counsel relied upon the paragraphs 20,23, 24 and 25 of the aforesaid judgment, which are extracted below;

"20. It is also significant that delay in the presentation of the election petition under the repealed Section 81 could be condoned by the Election Commission in its discretion under the proviso to the repealed Section 85 of the Act. But there was nothing in Section 85 which permitted the Election Commission to condone the non-compliance with the provisions of Section 117 of the Act. When the Act was amended and the jurisdiction was given to the High Court to entertain and try election petitions, a provision similar to the proviso for condoning delay was not enacted. This omission definitely expresses Parliament's intention not to confer the power to condone any delay in the presentation of the petition. The whole object of the amendment in 1966 was to provide a procedure for a more expeditious disposal of election disputes, which experience had shown had become dilatory under the former procedure where election trials were not concluded even after five years when the next elections were held, notwithstanding the fact that every petition was enjoined to be tried as expeditiously as possible and endeavour was required to be made to conclude the trial within six months from the date on which the election petition was presented to the High Court for trial.

23. In Charon Lal Sahu v. Nandkishore Bhatt and Ors. MANU/SC/0038/1973 : [1974]1SCR294 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 observed that if no discretion was conferred in respect of any of these matters, none can be exercised under any general law or on any principles of equity. If for non-compliance with the provisions of Section 82 and 117 which are mandatory, the election petition has to be dismissed under Section 86(1) the presentation of election petition within the period prescribed in Section 81 would be equally mandatory, the non-compliance with which visits the penalty of the petition being dismissed. The answer to the plea that if the petition were to be dismissed, allegations of serious corrupt practices cannot be enquired into and the purity of the elections cannot be maintained is that given by Mitter J., in Venkateswara Rao's case (Supra) where he said at p 689:

“That is however a matter which can be set right only by the Legislature. It is worthy of note that although the Act has been amended on several occasions, a provision like Section 86(1) as it now stands has always been on the statute book but whereas in the Act of 1951 the discretion was given to the Election Commission, to entertain a petition beyond the period fixed if it was satisfied as to the cause for delay no such saving clause is to be found now. The legislature in its wisdom has made the observance of certain formalities and provisions obligatory and failure in that respect can only be visited with a dismissal of the petition.”

24. Since the above decision in Venkateswara Rao's case (supra) in August 1968, though Parliament has made certain amendments in Section 8 of the Act in 1969, it has

not considered it necessary till now to amend the Act to confer, on persons challenging an election, benefits similar to those available to them under the proviso to the repealed Section 85 of the Act, for as we venture to think, it did not want delays to occur in the disposal of election petitions as in the past.

25. For all these reasons we have come to the conclusion that the provisions of Section 5 of the Limitation Act do not govern the filing of election petitions or their trial and, in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay.”

In the aforesaid paragraphs of the judgment, the learned counsel for the petitioner relied upon Section 5 of Limitation Act, which do not govern the filing of the election petition, therefore it was held that there is no power to condone the delay even otherwise after expiry of the limitation period.

On the facts, the respondent herein has not disputed that the 1st respondent herein has not filed any application to condone the delay in presenting the election petition. In view of the undisputed facts, elaborate discussion on the point of condonation of delay under Section 5 of Limitation Act is not necessary.

(ii) AIR 1999 SC 3558 in the case of Chandra Kishore Jha Vs. Mahavir

Prasad and others.

“4. At the time of presentation of the election petition in the open Court, on 17.5.1995, the following order was made by the learned designated election Judge:

“Shri Chandra Kishore Jha appears in person and is duly identified by his counsel, Shri P.K. Verma. The Election Petitioner files an election petition calling in question the election of respondent No. 1, Shri Mahabir Prasad to the Bihar Legislative Assembly from 86 Ghanshyampur Assembly Constituency. He also files a challan showing deposit of Rs. 2,000/- as security money. There being 20 respondents the election petitioner has also filed 20 extra copies of the election petition attested to be true copy by the election petitioner under his signature.

Learned Counsel while stating the circumstances in which the election petition has been filed without stamp report mentioned that the necessary challan showing deposit of the security money had been filed showing the receipt of the deposit by the Joint Registrar of this Court. It bears the date 16.5.95. The counsel also pointed out that necessary affidavit in support of the election petition had also been sworn yesterday i.e. on 16.5.95. Counsel stated all this to support his contention that the petition was ready in all respects for being filed yesterday and it has been handed over to the Bench Clerk of the court at 4.05 P.M. yesterday itself. Unfortunately, 'it could not be presented before the court on account of the fact that there was a death reference at 3.15 P.M. yesterday and after the reference the working of the court had been suspended for the rest of the day. The Bench Clerk of the Court, Shri Santosh Kumar Sinha, who is present testifies to the aforesaid fact which had been telephonically communicated to the Presiding Officer of the Court at his

residence yesterday itself. It may be mentioned that counsel for the petitioner at the very outset stated that he had been handed over the election petition by the Bench Clerk for being presented today.”

The learned counsel for the applicant specifically relying upon above paragraph of the judgment, has submitted that the 1st respondent ought to have presented the election petition within a stipulated period of 45 days.

(iii). In the case of Tarun Prasad Chatterjee Vs. Dinanath Sharma reported in (2000) 8 SCC 649:

14. By Section 81(1), the legislation fixes the period for filing election petition and at the same time states that no elector or candidate shall file election petition before the date of election of the returnable candidates and if there are more than one returned candidates at the election and dates of their election are different, the later of those two dates. The learned senior Counsel for the appellant contended that if the date of election of the candidate is excluded from computing the period of limitation of 45 days, the period of limitation would be extended by one day and, therefore, it is against the mandate of the statute. It was also contended that the filing of the application on the date of election of the returned candidate cannot be considered as a valid presentation of petition as envisaged in the section. We do not think that any such interpretation is possible by a conjoint reading of Section 81(1) of the R.P. Act, 1951 and Section 9 of the General Clauses Act, 1897. The first day for the period of limitation is required to be excluded for the convenience of the

parties and if the declaration of the result is delayed or is done late in the night, the candidate or elector would hardly get any time for presentation of the election petition. Law comes to the rescue of such parties to give full forty-five days period for filing the election petition. Nevertheless, any petition presented on the date of election of the returned candidate would be certainly within the period of limitation as it is a presentation on the date of election of the returned candidate.

Dispute in the afore said judgment is computation of limitation period under Section 81(1) of Representation of the People Act, 1951. The Hon'ble Supreme Court has held that first day for the period of limitation is required to be excluded for the convenience of the parties and if the declaration of the result is delayed or is done late in the night, the candidate or elector would hardly get any time for presentation of the election petition. Law comes to rescue of such parties to give full forty-five days for filing the election petition.

The said decision is not applicable to the facts of the present case.

(iv) In the case of Mohd. Ali Vs. Azad Mohd reported in AIR 1999 SC 3429:

Challenging the order of dismissal by the High Court of Punjab and Haryana made on the ground that the election petition was filed on the reopening day of High Court after summer vacation, after a period of limitation. The relevant portion is extrated hereunder;

“5. In our opinion, reliance on this Notification to save the period of limitation is misplaced. The Notification of 27th May, 1996 (supra) does not in any manner supersede the Notification issued by the High Court earlier on 27th November, 1995. The Notification dated 27th May, 1996 has to be read as supplementary to the Notification dated 27th November, 1995 because in the latter Notification court timings and office timings during the summer vacations have been prescribed. The effect of the Notification dated 27th November, 1995 has in no way been whittled down by the subsequent Notification dated 27th May, 1996 and on the contrary, the subsequent Notification, by prescribing the court and office timings, has clarified the manner in which the court business was to be transacted during the summer vacations. Both the Notifications have, therefore, to be read together.”

Arguments were made by the counsel for the applicant that as per Notification dated 27th May 1996, he filed the election petition after summer vacation, even though his limitation period was expired during summer vacation. But it was held as time barred in view of the earlier Notification dated 27th November 1995, which declares Court 'open' during summer vacation for hearing election petition and does not stand superseded by the subsequent notification. In view of the above, the aforesaid decision will not apply to the facts of the present case.

(v) In the case of Lachhman Das Arora Vs. Ganesh Lal and Others, reported in AIR 1999 SC 3101 :

The appeal was dismissed by the Supreme Court by relying upon the notification issued by the High Court of Punjab and Haryana. The relevant paragraph is extracted below;

“12. The above Notification unambiguously provides that during the summer vacations i.e. period between June 1 to June 30, 1996 (both days inclusive) while the High Court of Punjab and Haryana at Chandigarh would remain closed for civil business, it would be open for "hearing of election petitions or any other matter arising out of the Representation of the People Act". The learned Election Judge of the High Court was, under the circumstances, justified in holding that benefit of Section 10 of the General Clauses Act was not available to the election petitioner to save the period of limitation as undisputedly the election petition had been filed, on reopening day of the High Court after summer vacations, but after the expiry of the period of forty-five days prescribed under Section 81(1) of the Act, which period had expired during the period of summer vacations. In view of the clear language of the notification, there was no impediment in the way of the appellant to present the election petition during the summer vacations. The judgments in Hari Shanker Tripathi v. Shiv Harsh and Ors. and Simhadri Satya Narayana Rao v. M. Budda Prasad and Ors., (supra) relied upon by learned Counsel for the appellant are clearly distinguishable. In the notifications issued in those cases by the High Court of Judicature at Allahabad and the Andhra Pradesh High Court, respectively, the entire period of summer vacation was declared as "closed holidays" in the case of the High Court of Allahabad, and for the entire period of Sankranthi

vacation, the Andhra Pradesh High Court was also to remain closed. Unlike the notification of Punjab and Haryana High Court dated 27.11.1995, in none of the Notifications settling the vacations in the High Court of Judicature at Allahabad and the Andhra Pradesh High Court, was any exception made with respect to the hearing of election petitions or any other matter arising out of the Representation of the People Act. Section 10 of the General Clauses Act was, in those cases, clearly attracted to save the period of limitation by filing an election petition, on the first reopening day of the High Court, since the prescribed period of limitation had expired during the 'closed holidays' or 'Sankranti vacations'. It was in this fact situation that the cases of Hari Shanker Tripathi and Simhadri Satya Narayana Rao were decided. Those judgments, therefore, cannot advance the case of the appellant. On the other hand, the judgment of this Court in Satbir v. Smt Parsanni Devi and Ors., (supra) which considered a Notification issued by Punjab and Haryana High Court on an earlier occasion, in identical terms as the Notification dated 27.11.1995, applies with all force to the facts and circumstances of the present case. In Satbir's case (supra) the benefit of Section 10 of the General Clauses Act was denied to the election petitioner and the election petition, not filed within the period of forty-five days which expired during the summer vacations, but filed on the reopening day of the High Court after the summer vacations, was held as barred by time because of the exception contained in the Notification regarding the hearing of election petitions etc., during the period of summer vacations."

By relying upon the notification, the aforesaid appeal was dismissed by the Supreme Court holding that the election petition filed by the petitioner

during summer vacation was time barred. The aforesaid judgment also does not apply to the facts of the present application because of the exception contained in the notification regarding the hearing of election petition during the period of summer vacation. But in this case, no such exception was granted to file the election petitions on holidays.

(vi) In the case of The State of UP Vs. Ram Chandra Trivedi, reported in. (1976) 4 SCC 52:

In the aforesaid judgment, the Supreme Court has rendered that view expressed by larger Bench to prevail and must be followed in preference to those of similar Bench. The relevant paragraphs is extracted below;

“ 22. Thus on a conspectus of the decisions of this Court referred to above, it is obvious that there is no real conflict in their ratio decidend and it is no longer open to any one to urge with any show of force that the constitutional position emerging from the decisions of this Court in regard to cases of the present nature is not clear. It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India and Anr. v.K.S. Subramanian to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in

preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself. “

(VII). The case of Suman Devi Vs. Manisha Devi and Others, reported in. (2018) 9 SCC 808:

The learned counsel for the applicant relied upon the paragraph 8 &9 of the judgment. The same are extracted hereunder;

“8. In Charan Lal Sahu v. Nandkishore Bhatt a two Judge bench held that there is no common law right to challenge an election since it is purely a matter of Regulation by the terms of the statute. The right being statutory, the terms of the statute must be complied with.

9. A three Judge bench of this Court in Lachhman Das Arora v. Ganeshi Lal construed the provisions of Section 81(1) of the Representation of the People Act 1951, which prescribes a period of 45 days to file an election petition. Chief Justice Dr AS Anand, speaking for the Court, held thus:

“ 7. On its plain reading, Section 81(1) lays down that an election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101 of the Act to the High Court by any candidate at such election or by an elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates. The Act is a special code providing a period of limitation for filing of an election

petition. No period for filing of an election petition is prescribed under the Indian Limitation Act. The Act insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-five days, Section 86(1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, is straightaway attracted.””

In the present case on hand, the 1st respondent has not filed application under Section 5 of Limitation Act, therefore the aforesaid decision relied by the applicant will not apply to the facts of the case on hand.

11. Per contra, the learned counsel appearing for the 1st respondent/election petitioner has produced the following decisions in support of his contentions;

(i). In the case of Hari Shanker Tripathi Vs. Shiv Harsh & Others , reported in 1976 (1) SCC 897

The Hon'ble Supreme Court in the aforesaid case, has held that as per the notification, due to summer vacation, the court was closed. As the period

of limitation expired during the summer vacation, the Registrar of the High Court was not competent to entertain the election petition nor could the appellant have presented the election petition legally to the Registrar during such holiday period and so, it is a case to which Section 10 of the General Clauses Act, 1897 applies and the appellant was justified in filing the petition on the reopening day. The relevant portion of the judgment is extracted below;

“13. For the reasons given above we are satisfied that the period of limitation expired during the summer vacation which was a closed holiday by virtue of the notification issued by the High Court, the Registrar was not competent to entertain the election petition nor could the appellant have presented the election petition legally to the Registrar during such period. We are further satisfied that this is a case in which Section 10 of the General Clauses Act, applies in terms and the appellant was fully justified in filing the election petition on the re-opening day of the High Court, namely, July 8, 1974. In these circumstances the view taken by the High Court that the election petition was barred by time is wrong on a point of law and the finding of the learned Judge on issue No. 8 cannot, therefore, be sustained.”

By relying upon the aforesaid decision, the learned counsel for the 1st respondent submitted that in the present case, as per Section 10 of the General Clauses Act'1897, Election Petition came to be filed on the date, when the High Court opened after Holidays i.e on 04.07.2016.

(ii). Decision of Three Judge Bench of Hon'ble Supreme Court in the Case of Manohar Joshi Vs. Nitin Bhaurao Patil reported in 1995 SC 1307;

Issue before the Hon'ble Supreme Court was whether the election petition filed by the petitioner therein after the last date of limitation period can be treated as non compliance of Section 81 of the Representation of People Act. The Hon'ble Three Judge Bench of Supreme Court after detailed discussion with regard to limitation period for presenting the election petition, has held as follows;

“ 12. A similar question relating to applicability of Section 10 of the General Clauses Act arose when the limitation was prescribed by the Rules as required by the then existing Sub-section (1) of Section 81 in, H.H. Raja Harinder Singh v. S. Karnail Singh . It was held by this Court that Section 10 of the General Clauses Act is applicable to the presentation of election petitions. Thereafter, the same view has been taken in Hukumdev Narain Yadav v. Lalit Narain Mishra ; Hari Shankar Tripathi v. Shiv Harsh and Ors.; and Simhadri Satya Narayana Rao v. M. Budda Prasad and Ors. . The later decisions were in relation to election petitions filed after amendment of Section 81(1) by Act 27 of 1956 prescribing the limitation in this Section itself. Shri Jethmalani tried to distinguish those decisions on the ground that the earlier decision in H.H. Raja Harinder Singh v. S. Karnail Singh was followed without noticing the legislative change by amendment of Sub-section (1) of Section 81. In view of the fact that this point was not raised in themanner it has been done by Shri Jethrnalani before us, it is appropriate that we

consider the merit of this submission.

13. It is settled by the decision of this Court in Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd. that the litigant has a right to avail limitation upto the last day and his only obligation is to explain his inability to present the suit/petition on the last day of limitation and each day thereafter till it is actually presented. This being the basic premise, it cannot be doubted that the election petitioner in the resent case was entitled to avail the entire 'imitation of 45 days upto the last day, i.e., 14.4.1990 and he was required to explain the inability of not filing it only on 14.4.1990 and 15.4.1990 since the petition was actually presented in the High Court on 16.4.1990. If Section 10 of the General Clauses Act applies, the explanation is obvious and the election petition must be treated to have been presented within time.

14. The question now is : Whether the applicability of Section 10 of the General Clauses Act to the presentation of election petitions under the R.P. Act is excluded ? No doubt the R.P. Act is a self-contained Code even for the purpose of the limitation prescribed therein. This, however, does not answer the question. It has to be seen whether the context excludes the applicability of Section 10 of the General Clauses Act which is in the part therein relating to the General Rules of Construction of all Central Acts. The legislative history of prescribing limitation for presentation of election petitions in accordance with Sub-section (1) of Section 81 is also significant for a proper appreciation of the context. Admittedly, Section 10 of the General Clauses Act applies when by virtue of the requirement in the then existing Sub-section (1) of Section 81, the period of limitation was prescribed by Rules framed under The R.P. Act, in Rule 119 of the 1951 Rules. This was expressly provided by Rule 2(6) of the 1951 Rules. There is nothing to indicate that providing the

period of limitation in Sub-section (1) of Section 81 itself by substitution of certain words by Act 27 of 1956 instead of prescribing the limitation by Rules, was with a view to exclude the applicability of Section 10 of the General Clauses Act. The change appears to have been made to provide for a fixed period in the Act itself instead of leaving that exercise to be performed by the rule making authority. An express provision in Rule 2(6) of the 1951 Rules was required since the General Clauses Act ipso facto would not apply to Rules framed under the Central Act, even though it would to the Act itself. The context supports the applicability of Section 10 of the General Clauses Act instead of indicating its exclusion for the purpose of computing the limitation prescribed in Sub-section (1) of Section 81 for presentation of election petitions.

- 1. 15. In view of the basic premise that the election petitioner is entitled to avail the entire limitation of 45 days for presentation of the election petition as indicated by Ramlal (supra), if the contrary view is taken, it would require the election petitioner to perform an impossible task in a case like the present, to present the election petition on the last day of limitation on which date the High Court as well as its office is closed. It is the underlying principle of this legal maxim which suggests the informed decision on this point, leading to the only conclusion that Section 10 of the General Clauses Act applies in the computation of the limitation prescribed by Sub-section (1) of Section 81 of the R.P. Act for presentation of an election petition. So computed, there is no dispute that the election petition presented in the present case on 16.4.1990 was within limitation and there was no non-compliance of Sub-section (1) of Section 81 of the R.P. Act.*

- 16. We have reached the above conclusion independent of the*

above decisions of this Court rendered on petitions presented subsequent to the amendment of Sub-section (1) of Section 81. It may straightway be said that in all these cases applicability of Section 10 of the General Clauses Act was either not doubted or was taken for granted. This is how the position has been understood of all these years and no case taking the contrary view has been cited at the Bar. This settled position is in conformity with the view we have taken on this point. There is no basis in law to take a different view.

In the present case also, the election petitioner presented the election petition on 04.07.2016 on the next working day of High Court, which is well within the time limit as per the Act.

(iii).The case of *Tarun Prasad Chatterjee Vs. Dinanath Sharma, reported in 2000 (8) SCC 649:*

The question involved in the aforesaid case is whether in computing the period of limitation as provided in Section 81(1) of the Representation of the People Act, 1951, the date of election of the returned candidate should be excluded or not.

The Hon'ble Supreme Court had applied the provisions of the General Clause Act and accepted the contentions of the election petitioner therein and dismissed the appeal. The relevant portion is extracted below;

“14. By Section 81(1), the legislation fixes the period for filing election petition and at the same time states that no elector or candidate shall file election petition before the date of election of the returnable candidates and if there are more than one returned candidates at the election and dates of their election are different, the later of those two dates. The learned senior Counsel for the appellant contended that if the date of election of the candidate is excluded from computing the period of limitation of 45 days, the period of limitation would be extended by one day and, therefore, it is against the mandate of the statute. It was also contended that the filing of the application on the date of election of the returned candidate cannot be considered as a valid presentation of petition as envisaged in the section. We do not think that any such interpretation is possible by a conjoint reading of Section 81(1) of the R.P. Act, 1951 and Section 9 of the General Clauses Act, 1897. The first day for the period of limitation is required to be excluded for the convenience of the parties and if the declaration of the result is delayed or is done late in the night, the candidate or elector would hardly get any time for presentation of the election petition. Law comes to the rescue of such parties to give full forty-five days period for filing the election petition. Nevertheless, any petition presented on the date of election of the returned candidate would be certainly within the period of limitation as it is a presentation on the date of election of the returned candidate.”

15. In the instant case, the date of election of the returned candidate being 28.11.1998, the election petition filed on 12.01.1999 on exclusion of the first day from computing the period of limitation, was in time and the learned Single Judge rightly dismissed the petition filed by the appellant. The appeal is without any merits and the same is dismissed., however, without costs.”

(iv) Case of Raj Kumar Yadav Vs. Samir Kumar Mahaseth & Others
reported in 2005 (3) SCC 601:

In this decision aforesaid judgment, the Hon'ble Supreme Court following the earlier decisions, allowed the appeal and held that the High Court erred in holding that the presentation of election petition to be barred by limitation. The relevant portion is extracted hereunder;

“ 12. In Hukumdev Narain Yadav v. Lalit Narain Mishra, MANU/SC/0247/1973 : [1974]3SCR31, Election Petition Rules framed by Patna High Court came up for the consideration of the court and it was held that it may be that the presentation to the Judge will be the date of filing for the purpose of limitation, but that does not exclude a different procedure for filing in a case where limitation is about to expire and the conditions prescribed by Rule 6 in the matter of presentation cannot be complied with. Under the general rules governing the practice as to presentation of pleadings and documents in the High Court, an election petition can be presented on the last day of limitation, when the judges are not sitting to receive or entertain an election petition, to the Registrar or in his absence to some other officer in the Registry authorized to receive such presentation.

13. In Chandra Kishore Jha v. Mahavir Prasad and Ors., MANU/SC/0594/1999 : AIR1999SC3558, a different fact situation arose and the observation made by this Court therein, have to be read and understood in the light of the fact situation, which the Court was called upon to deal with. The question whether an election petition can be presented

to the Judge only in open court and not elsewhere did not arise for decision. At a few places the reference made to 'presentation in open court' is simply by way of reproducing the language of the Rule and not a finding of this Court or the ratio of the decision. However, the Court did hold that the applicability of Section 10 of the General Clauses Act, 1897 to Section 81 of the Act was not excluded. If it was not possible for the election petitioner to have presented the election petition to the designated Election Judge or in his absence to the Bench (as provided by the proviso to Rule 6) on the last day of the prescribed period of limitation then the presentation of the election petition on the very next day in the open court would be valid. Law does not expect a party to do the impossible - impossibilium nulla obligatio est.

14. Reverting back to the facts of the present case, we find that the election petition was handed over to the designated Election Judge on the last day of limitation at 4.25 p.m. when the learned Judge was still available within the court premises though he was not sitting in the open court, as the prescribed time of 4.15 p.m. ordinarily meant for transacting judicial work was over. The learned Judge did not himself receive the presentation nor did make any other order such as the one directing any official of the Registry to receive the same. The election petitioner had done all that was within

his power to do for the purpose of presentation but he failed. He made the presentation on the next day when the Judge was available and sitting in the open court. The presentation would be deemed to be within limitation and valid.

15. The learned designated Election Judge of the High Court has erred in holding the presentation to be barred by limitation. The view so taken cannot be countenanced.”

12. On analysing the aforesaid facts and circumstances of the case and the decisions cited supra, this Court is of the view that the election petition filed by the 1st respondent on 04.07.2016 instead of 02.07.2016 is within the time limit of 45 days under the Act in view of the fact that the last day and the next day (02.07.2016 & 03.07.2016) falls of saturday and sunday and the registry was also closed on the those days. Hence, there was no non-compliance of mandatory provisions by the 1st respondent as contended by the applicant.

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13. Considering the above facts and circumstances and the decisions cited supra, this Court finds no merits in the contentions of the applicant seeking rejection of the election petition on the ground of non-compliance under the provisions of Representation of People Act and the same is liable to be rejected. Accordingly, the Original Application filed by the applicant is dismissed. No costs.

Registry is directed to list the election petition during the 2nd week of July 2020.

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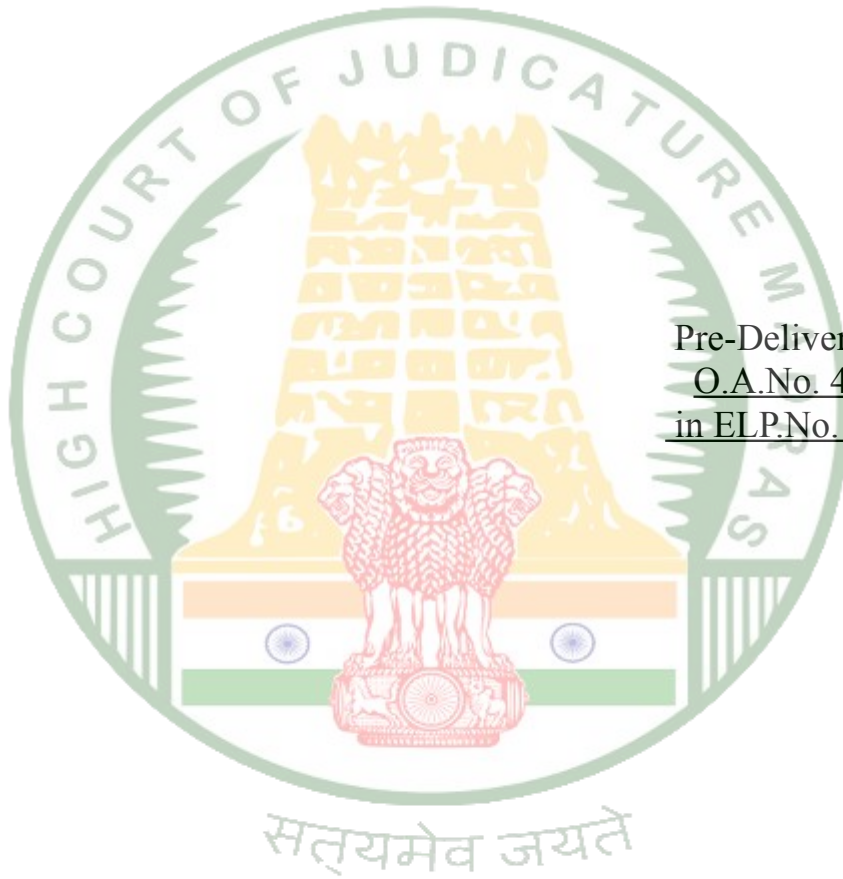
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D. KRISHNAKUMAR, J

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O.A.No. 412 of 2017
in ELP.No. 17 of 2016

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