

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2760 of 2022

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Ajay Kumar son of Lalan Sharma Resident of Village- Khajurwana P.S.-
Shakurabad Distt- Jehanabad.

... .. Petitioner/s

Versus

1. The State Election Commission through its Chief Election Commissioner Bihar Patna.
2. The Chief Election Commissioner, State Election Commission Bihar Patna.
3. The Secretary, State Election Commission Bihar Patna.
4. The State of Bihar Through the Chief Secretary Govt. of Bihar, Patna.
5. The Distt. Magistrate cum Returning Officer Jehanabad
6. The Block Development Officer cum Returning Officer Ratani
7. Ginni Devi W/o- Punchdev Kumar Prabhakar R/v- Mahadipur P.S.- Pandoul Distt.- Jehanabad.
8. Ashok Mistry S/o- Lal Babu Mistry Resident of Village- Khajurbana P.O.- Ratni Bazar P.S.- Shakurabad Distt.- Jehanabad.
9. Mamta Pd. Singh Chandel S/o- Basant Singh R/o- Pandaul, P.O.- Pandaul, P.S.- Shakurabad Distt.- Jehanabad.
10. Md. Wahid Alam S/o- Md. Gayasudin R/o- Poladpur, P.O.- Ratni Bazar, P.S.- Shakurabad Distt.- Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar No 1, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3
For the Respondent No. 7	:	Mr. Prakash Chandra Jha, Advocate
		Mr. Rajesh Kumar Choudhary, Advocate
For the SEC	:	Mr. Sanjeev Nikesh, Advocate
		Mr. Girish Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-10-2023

Heard the parties.

2. The petitioner who had unsuccessfully contested
the Gram Panchayat Election, 2021 for the post of Mukhiya from
Ratni Faridpur Gram Panchayat Election, which was held on



08.10.2021 filed the present writ petition seeking quashing of the order dated 10.01.2022 passed in Election Petition Case No. 25 of 2021 by the Civil Judge (J.D.) Election Tribunal Jehanabad whereby and whereunder the election petition has been dismissed on the point of admission being time barred.

3. The petitioner further sought a direction upon the Election Tribunal, Jehanabad to adjudicate the election petition on its own merit and pass an appropriate order in accordance with law.

4. The only point for consideration which has been posed before this Court is with regard to the applicability of Limitation Act to the proceeding relating to election dispute or as to whether the point of limitation shall be counted with effect from the date when the cause of action has arisen or shall be guided by the Rule 106 of the Bihar Panchayati Election Rules, 2006, (hereinafter referred to as Rule, 2006), which prescribes that an election petition against any elected candidate may be filed under Section 137 of the Act before the prescribed Court of law within 30 days from the date of declaration of the election result.

5. In order to make proper appreciation of the issue, this Court deems it apt to give the short matrix of the case, as



gleaned from the record.

6. Admittedly, the election for the post of Mukhiya was held on 08.10.2021 along with the other posts of Panchayat Samiti Member, Ward Member, Sarpanch and Panch. The counting was done together on 10.10.2021 and the result was also announced on 10.10.2021, itself.

7. It is submitted on behalf of the petitioner that on the date of counting, the voter turn out report was published which reveals that at the Booth No. 127 total 423 votes were polled but for the post of Mukhiya only 323 votes were counted. Though for other posts 423 votes were counted. The petitioner, who was present in the counting raised objection, but the same was not taken to notice thus, he filed a written objection before the Block Development Officer cum Block Returning Officer, Ratni pointing out the corrupt practice in counting and totalling the votes.

8. Despite the objection raised, as noted above, when no action was taken, the petitioner filed another application before the Secretary, State Election Commission highlighting the corrupt practice adopted by the authority concern in counting of votes and manipulations of number of votes, resulting into declaration of respondent no. 6 as successful



candidate for the post of Mukhiya of Gram Panchayat Raj, Ratni Faridpur. Certain other irregularities were highlighted by the petitioner, which in the submission of the petitioner was unimpeachable in character thus, in the light of the Full Bench judgment of the Hon'ble Court in the case of ***Rajani Kumari Vs. The State of Bihar and Others*** reported in **2019 (4) PLJR 673**, the petitioner filed a complaint before the State Election Commission on 19.10.2021 for declaring the Gram Panchayat Election 2021 for the post of Mukhiya, null and void.

9. Having found no response at the level of State Election Commission, the petitioner filed CWJC No. 18740 of 2021 seeking a direction upon the State Election Commission for adjudication of the complaint. The writ petition stood dismissed as not maintainable vide order dated 30.11.2021.

10. It is further case of the petitioner that thereafter, he got a letter vide Memo No. 2157 dated 13.12.2021 issued by the Returning Officer (Panchayat) cum Block Development Officer Ratni Faridpur stating therein, that necessary correction on online portal has been done. After issuance of the Memo No. 2157 dated 13.12.2021, prima facie, the official respondent accepted their mistakes showing manipulation in counting of the votes depicting corrupt practice and, as such, a cause of action



has arisen. He, thus, filed Election Petition Case No. 25 of 2021 before the Election Tribunal, Jehanabad on 24.12.2021, but the same was dismissed by taking into account that the result of the election has been published on 10.10.2021 and the election petition filed on 24.12.2021, thus, much beyond the period of limitation.

11. Learned counsel for the petitioner while assailing the order of the Election Tribunal has submitted that Election Tribunal failed to consider the fact that the cause of action has arisen, the date on which the Memo No. 2157 dated 13.12.2021 has been issued and thus, the election petition filed on 24.12.2021 is within the statutory period from the date of cause of action. He further submitted that the learned Tribunal while dismissing the election petition on the point of admission on account of being time barred has wrongly relied upon the judgment of the Hon'ble Supreme Court in the case of ***Kailash Vs. Nankhu and Ors.*** reported in ***AIR 2005 SC 2441*** and further judgment of this Court in ***Md. Zakir Hussain Vs. Hareshwar Prasad Singh and Ors.*** reported in ***2002 (1) BLJR 102***. Both the judgments are admittedly on the point of applicability of the provision of CPC and not on the point of limitation thus, not at all, applicable in the case of the petitioner.



12. Learned counsel for the petitioner also drew the attention of this Court on a judgment of the Apex Court rendered in the case of ***Shaik Saidulu @ Saida Vs. Chukka Yesu Ratam and Ors.*** and on the strength of the aforesaid judgment, he submits that in exceptional circumstances, the statutory period of limitation can be condoned. It would be apposite to quote the penultimate observations of the Apex Court which reads as follows:

We do not agree with the submissions made on behalf of the respondent that no period of limitation is prescribed for the election petition and that the provisions of sub-section (2) of Section 671 would be attracted excluding the applicability of Section 5 of the Limitation Act. The harmonious interpretation of various provisions of the Act would clearly show that the election petition was intended to be taken, by the Legislature, as an application for the purposes of limitation in terms of Section 671. Taking any other view would defeat the very purpose of the enactment providing for filing of an election petition calling in question any elections on the grounds specified under the Act. The remedy provided under a statute cannot be defeated under the cloak of technicalities by adopting a hyper-technical approach. The free and fair elections are a guarantee of the democratic polity and for achieving such an objective various provisions are made applicable to the election laws, most important of which is the remedy of



challenging the elections on the grounds specified under the statute. In the absence of the applicability of Section 5 of the Limitation Act, the rights of the aggrieved person, intended to challenge an election, can be defeated by the executive of the State by not appointing the Election Tribunal as is shown to have been done in the instant cases. In the appeal filed by Gogineni Sujatha, it is not disputed that the Election Tribunal was constituted after the expiry of period of limitation prescribed for filing an election petition. Similarly in the case of Shaikh Saidulu @ Saida sufficient time was allowed to lapse preventing the filing of the election petition for no fault of the appellant. Can an interpretation be accepted which facilitates the defeating of purpose of the Act? The answer is emphatically, No. In the instant appeals, the High Court appears to have adopted a very technical approach by totally ignoring the purpose and object of the Act and the conduct of the respondents in not constituting the Tribunal, with the result of preventing the aggrieved from approaching the Tribunal to challenge the election by way of election petition. The orders of the High Court, being contrary to law, are thus not sustainable.

13. While concluding his submissions he went on to submit that the highest Court of the land in “Re-Cognizance For Extension Of Limitation” [Suo Moto Writ Petition (C) No. 3 of 2020] after taking note of the outbreak of the Covid-19 pandemic has been pleased to condone the delay where the limitation period would have expired during the period between



15.03.2020 till 28.02.2020, even in matters relating to special laws which prescribe period of limitation of statutory proceedings.

14. Per contra, the aforementioned contentions raised by learned counsel for the petitioner has been vehemently refuted by the learned counsel for the State Election Commission. It is submitted that Section 137 (1) of Bihar Panchayat Raj Act 2006 provides the forum before which the election petition could be filed and tried in a manner and the procedure prescribed under the Act, 2006 and the rules made therein. Rule 106 of the Bihar Panchayati Election Rules, 2006 provides an election petition against any elected candidate may be filed under Section 137 of the Act before the prescribed Court of Law within 30 days from the date of declaration of the election result and there is no such provisions for condonation of delay in filing of the election petition beyond the statutory period of limitation. He, thus, submits that in any view of the manner, the delay in filing of the election petition cannot be condoned, all the more, there would not be any application of limitation Act in the matter of filing election petition under Bihar Panchayati Raj Act and Rules, 2006. He finally placed reliance upon judgment of the Apex Court in the case of ***Hukumdev Narain Yadav Vs. Lalit Narain***



Mishra reported in ***(1974) 2 SCC 133***.

15. Further, learned counsel for the respondent no. 7 while reiterating the statements made on behalf of the State Election Commission made heavy reliance upon a judgment of a Bench of this Court in case of ***Ramesh Singh Vs. The State of Bihar and Ors*** reported in ***2013 (2) PLJR 160***, wherein, while considering an identical issue the learned Court has held that, “while prescribing a limitation period for filing such election petition, the legislature has not vested any power in the election court for condoning the delay. In the aforesaid view of the matter, the election court could not have taken recourse to the general provisions of the Limitation Act for entertaining the election petition belatedly”.

16. This Court has given anxious consideration to the submissions advanced on behalf of the parties and also perused the materials available on record.

17. Undisputedly, the provisions of the Act, 2006 and Rules, 2006 relating to filing of the election petition and the trial to ascertain the legality/validity of election, is a complete code in itself, which creates rights and provides for their enforcement by a specially constituted Election Tribunal to the exclusion of all Courts.



18. Rule 106 of Bihar Panchayat Election Rules, 2006 in an unambiguous terms contemplates, “an election petition may be filed under Section 137 of the Act, 2006 before the prescribed Court of Law within 30 days from the date of declaration of the election result.” But unlike the other Act or Rules, no proviso to the rule has enacted for condoning the delay. Thus the statutory period prescribed under Rule, 106 is always to be read as mandatory.

19. It is well settled that, “the Indian Limitation Act, 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a court of law unless the application thereof has been excluded by any enactment. Limitation Act cannot apply to proceeding 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,”.

20. The applicability of the provisions of Limitation Act was considered by the Hon’ble Apex court in case of



Hukumdev Narain Yadav (supra) and for the reasons enumerated in the judgment, they have come to the conclusion that provisions of Section 5 of the Limitation Act do not govern the filing of the election petition or their trial.

21. It is trite law that special enactment prevails over general law; and all the more in a situation where the special enactment is a complete code in itself.

22. Now coming to the case in hand, where, heavy reliance has been made by the petitioner on Two Judge Bench decision of the Hon'ble Apex Court in case of **Shaik Saidulu @ Saida (supra)**. Having carefully gone through the judgment, this Court be pleased to observe that the same would not be applicable in the present case. In the case of **Shaik Saidulu @ Saida (supra)**, though identical issue was involved as to whether Section 5 of the Limitation Act was applicable to the election petition filed under the Hyderabad Municipal Corporation Act, 1955 but the provisions of law qua the fact was different. Under the Act, 1955 two months time was prescribed for questioning the election for filing an election petition. Simultaneously, Section 671, appearing in the part of miscellaneous provision under the Act, provides that in computing the period of limitation, fixed for appeal or



application, referred to in the Act, the provision of Sections 5, 12 and 13 of the Limitation Act shall, so far as may be applied.

23. The Hon'ble Supreme Court while holding the order of the Hon'ble High Court unsustainable held that even in case of election petition the provision of Section 671 of the Act would be applicable and any other view would defeat the very purpose of the enactment providing for filing an election petition. The Hon'ble Supreme Court held that remedy provided under the Statute cannot be defeated under the cloak of technicalities by adopting a hyper technical approach. This is also to be noted that in the afore-noted case the appellant being aggrieved by the result of the election filed an election petition before the District Judge, Guntur, which was returned to him that the Tribunal was not functioning and the same was constituted belatedly after two months thereafter. Subsequently, the appellant filed the election petition with an application under Section 5 of the Limitation Act, seeking condonation of delay, which was accepted. The respondent on being aggrieved moved the High Court of Andhra Pradesh and the impugned order of Tribunal was set aside by holding the election petition filed by the appellant barred by time.

24. Thus, unlike Hyderabad Municipal Corporation



Act, 1955, there is no such provision akin to Section 671, providing applicability of Sections 5, 12 and 13 of the Limitation Act. Hence, this Court unhesitatingly comes to the conclusion that the judgment relied upon by the petitioner is no more applicable in the present facts of the case, where the proceedings for resolving the election dispute or ascertaining the legality of the election is to be governed by the provisions/procedure prescribed under the Act, 2006 and the Rule, 2006.

25. This Court finds force in the submissions of the respondents that in absence of any provisions enacted under the Act, 2006 as well as Rule, 2006 the Election Tribunal could not have taken recourse to the general provisions of the Limitation Act for entertaining the election petition belatedly.

26. It is also to be noted that in any circumstances, the point of limitation shall be counted w.e.f. the date of declaration of the election result and not from any subsequent date, giving rise to any cause of action.

27. In view of the discussions made, hereinabove, this Court does not find any merit in the submissions of the petitioner and accordingly, not warranting any interference in the impugned order dated 10.11.2022 passed by the Election



Tribunal, Jehanabad. The present writ petition stands dismissed.
However, there shall be no order as to cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.10.2023.
Transmission Date	NA

