

Shri Chandrakant Shukla

Vs

Maharaja Martand Singh

Civil Appeal No. 1178 of 1971

(K. S. Hegde, P. Jagmohan Reddy, D. G. Palekar JJ)

03.01.1972

JUDGMENT

HEGDE, J. -

1. This appeal under Section 116-A of the Representation of People Act, 1951, is directed against the decision of the Madhya Pradesh High Court dismissing the election petition filed by the appellant on the ground that the same is barred by limitation.
2. The election petitioner is a voter in the Rewa Parliamentary constituency. The election with which we are concerned in this appeal was to the Parliament. That election was held on March 1, 1971. The counting was over on March 10, 1971. The same day the election results were announced. The respondent was declared elected. The election results were published in the Official Gazette on March 15, 1971. The election petition was filed on April 29, 1971.
3. Section 81(1) of the Representation of People Act, 1951, provides 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 to the High Court by any candidate at such election or by 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 the dates of their election are different, the later of those two dates. Section 67-A says :

"For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of Section 53 or Section 66, to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of that candidate."

Reading these two sections together it is clear that the election petition should have been filed within forty-five days from March 10, 1971. Hence, the petition filed by the appellant is clearly barred by limitation.

4. Though it was contended before the High Court that the election petition was filed within time, that contention was not pressed before us. The only contention taken before us was that there was sufficient cause to condone the delay in filing the election petition. As we are unable to accept that contention we are not examining the question whether the High Court had any power to condone the delay in filing the election petition.

5. Now coming to the question whether there was sufficient cause for condoning the delay the High

Court held that no such sufficient cause was shown. This is essentially a finding of fact and this Court ordinarily does not interfere with the decision of the High Court on questions of fact. Further, the relief asked for is essentially a discretionary relief and when a trial court exercises its discretion an appellate court is reluctant to interfere with that discretion unless there are very good grounds for doing so.

6. Now, turning to the facts of this case, in the application filed for the condonation of delay only reason advanced is that the petitioner believes that he has filed his election petition within time but if the court takes a different view then the delay may be condoned. No cause was shown for condoning the delay. But while giving evidence in the court the petitioner went much further. He deposed that before filing the election petition he consulted Shri Hari Shanker Saxena, an advocate, and that advocate told him that he has to file the election petition in the Gazette. No such averment was made in the petition wherein he sought the condonation of the delay nor Shri Hari Shanker Saxena was examined as witness in the case. Under those circumstances the High Court rightly disbelieved the evidence of the petitioner to the effect that he had consulted Shri Hari Shanker Saxena before filing the election petition. The High Court was of the opinion that the petitioner's version that he consulted Shri Hari Shanker Saxena is an after-thought. We agree with that conclusion. The petitioner has given no satisfactory explanation for the delay in filing the election petition. Hence, his election petition was rightly dismissed by the High Court.

7. In the result this appeal fails and the same is dismissed with costs.

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