Hukumdev Narain Yadav

Vs

Lalit Narain Mishra

Civil Appeal No. 870 of 1973

(P. Jagmohan Reddy, S. N. Dwivedi, P. K. Goswami JJ)

21.12.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. In the bye-election to the Lok Sabha from Darbhanga Parliamentary Constituency held on January 30, 1972, respondent Lalit Narain Mishra - a candidate of the Indian Nation Congress - was declared elected on February 2, 1972, by a margin 91,078 votes against his rival Ramsewak Yadav - a candidate of Socialist Party - at that election. The appellant an elector in the constituency presented an election petition on Monday, March 20, 19 instead of on Saturday, March 18, 1972, which was the last day limitation. The petition, however, was dismissed by the High Court being time-barred. Against that judgment and order this appeal has been filed under Section 116-A of the Representation of the People Act, - (hereinafter referred to as 'the Act').

2. It may be mentioned that Section 80-A was added to the by the Amendment Act 47 of 1966, whereunder the High Court given jurisdiction to try election petitions. This jurisdiction has to exercise ordinarily by a Single Judge of that Court and the Chief Justice could from time to time assign one or more Judges for that purpose. Section 81 prescribed the period of 45 days from the date of the election of a returned candidate within which an election petition calling in question any election on one or more grounds specified in sub-section (1) of Section 100 and Section 101 has to be presented to the High Court. If the provisions of Section 81 are not complied with Section 86 requires that the High Court shall dismiss the petition. There is no doubt that election petition in this case has been presented beyond the period of 45 days and had necessarily to be dismissed.

3. What we have to consider, however, is that whether having regard of the requirements of Rules 6 and 7 of the Rule for the Disposal of Election Petitions framed by the Patna High Court, that an election petition should only be filed before a Judge of the High Court sitting in open Court, and it could not be filed on a Saturday when the Judges do not sit and hence the filing of that petition on Monday, March 20, 1972. Sunday being a holiday, is in time. Even if it be held that the filing of the petition was beyond the time prescribed in Section 81, it has further to be considered whether the provisions of Section 5 of the Limitation Act 36 of 1963 are applicable to such petitions and whether the petitioner has shown sufficient cause in the petition which has now been filed before this Court for not filing the petition in time to enable the Court to admit it after the prescribed period.

4. Three questions which require determination are -

(1) Is the Court closed on Saturday, 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 ?

(2) By virtue of Section 29(2) of the Limitation Act, are the provisions of Sections 4 to 24 of the said Act applicable to election petitions ?

(3) If they are, and Section 5 of the Limitation Act is applicable, do the facts of the case warrant condonation of delay ?

5. On the question whether the petitioner could have filed the petition on Saturday, March 18, 1972, what has to be seen is whether the Court can be said to be closed within the meaning of either Section 4 of the Limitation Act, 1963, or Section 10 of the General Clauses Act, 1897, because under both the provisions where the prescribed period of limitation expires on a day when the Court is closed the petition could be filed on a day when the Court re-opens. Where, however, the provisions of the Limitation Act apply, the proviso to Section 10(1) of the General Clauses Act in terms makes that provision itself inapplicable. Under Section 4 of the Limitation Act it is provided that where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court re-opens. The Explanation thereof states that a Court shall be deemed to be closed on any day within the meaning of that Section if during any part of its normal working hours it remains closed on that day. It was sought to be contended that even if the Limitation Act applies, Section 4 would not apply because an election petition is neither a suit, nor an appeal nor an application, notwithstanding the definition of "application" contained in Section 2(b) of the Limitation Act as including a petition. It is in our view, unnecessary to examine the submission in this context because even if Section 4 of the Limitation Act does not apply, Section 1 (of the General Clauses Act will certainly apply to election petition to be filed under the Act as held by this Court in H. H. Raja Harinde Singh v. S. Karnail Singh. (1957) SCR 208 : AIR 1957 SC 271 : 12 ELR 421) 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 of which it could be filed was a Sunday he 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 don '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 expression 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 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 why he could have done on a holiday, on the next working day. Where, therefore, period is prescribed for the performance of an act in a Court or office, and the period expires on a holiday, then according to the Section the act should considered to have been done within that period, if it is done on the next days which the Court or office is open. For that Section to apply, therefore, all thing is requisite is that there should be a period prescribed, and that period should expire on a holiday."

Of course Section 10(1) of the General Clauses Act does not speak of a holiday, but refers to the

Court or office being closed on the last day of the prescribed period to enable a party to do an act take any proceedings on a certain on a certain day or within a prescribed period as the next day on which the Court or office is open. If the Court is closed on the day when limitation expired, Section 10(1) the General Clauses Act enables the filing on the next working day of the Court. But is the Court closed on a Saturday when the Judge do not sit though the office of the High Court is open ?

6. A long course of decisions have held that a Court is not closed notwithstanding the fact that Judges do not sit on any day if otherwise the Court is open on that day. Harries, C.J., during the course of arguments in Lachmeshwar Prasad Shukul v. Girdhari Lal Chaudhuri (ILR 19 Pat 123 : AIR 1939 Pat 667 : 185 IC 353) observed that "Saturday" is a Court day although the Judge are sitting on that day. The learned Chief Justice and Fazl Ali, J., as then was, (Agarwala, J., dissenting) went to the extent of holding even in the vocations the Court is not closed and money can be deposited. Turner, C.J., speaking for himself, Kernan, Kindersley and Muttusami the course of arguments in Lachmeshwar Prasad Shukul v. Girdhari Lal Ayyasami Ayyar : (ILR (1882) 5 Mad 189, 192)

> "The judicial sittings of the Court may be adjourned; but the offices of the Court may still remain open for the presentation of pleadings. The Court may be open for this purpose although the Judge is not engaged in judicial functions or is not present in the Court-house or in the place where the Court is held."

A Bench of the Madras High Court in In re Thokkudubivyanu Immaniyelu and Others, ((1948) 1 MLJ 49 : AIR 1948 Mad 521) dealt with a similar practice which is followed by all High Courts and this Court for the summer vacation when the Courts close. The notification in respect thereof specify a period between Monday to Friday both days inclusive as the vacation. The Court reopens on a Saturday, but judicial work starts only on the following Monday. It was held that the first day of the Court was a Saturday which was the day for receiving papers though the Judges actually sat for judicial work on Monday, as such an application, for which the prescribed period of limitation expired on Saturday the 5th when the Court was open and was not filed on that day, but on Monday the 7th, was held to be barred. See also Dwarka Prasad and Another v. Union of India; (AIR 1954 Pat 284 : ILR 1954 Pat 176) and Sajjansingh v. Bhogilal Pandya. (AIR 1958 Raj 307 : ILR (1958) 8 Raj 912)

7. It is, however, contended that having regard to Rules 6 and 7 of the Election Rules made by the Patna High Court under which an election petition has to be presented to a Judge or a Bench sitting in open Court, and since Judges do not sit on a Saturday there is no Court on that day to which an election petition could be presented. We have to deal with this aspect.

8. At one stage the power of the High Court to make election rules was canvassed, but ultimately the validity of the Election Rules as such was not seriously challenged, and hence it is not necessary for us to express our views in this regard. Even on the assumption that the High Court could make the Election Rules and they are valid, do Rules 6 and 7 of those Rules warrant the submission that the Court is closed on the day when the Judges do not sit, though the office of the High Court is open ? Rules 6 and 7 of the Rules are as follows :

> "6. Subject always to the orders of the Judge, before a formal presentation of the election petition is made to the Judge in open Court, it shall be presented to the Stamps Reporter of the Court, who shall certify thereon if it is in time and in conformity with the requirements of the Act, and the rules in this behalf, or is

> defective and shall thereafter return the petition to the petitioner for making the formal presentation after removing the defects if any :
>
> Provided that if on any Court day the Judge is not available on account of temporary absence or otherwise, the petition may be presented before the Bench hearing civil applications and motions".
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> "7. (1) The date of presentation to the Judge or the Bench as mentioned in the proviso to Rule 6 shall be deemed to be the date of the filing of the election petition for the purposes of limitation.
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> (2) Immediately after it is presented, the petition shall be entered in a special register maintained for this registration of election petitions."

A regarding of the above Rules would show that - (1) the petition must first be presented to the Stamp Reporter; (2) the Stamp Reporter has to certify thereon whether it is in time and in conformity with the requirements of the Act and the Rules in that behalf or is defective; and thereafter (3) the petition shall be returned to the petitioner for removing defects if any, and for formal presentation after removing the defects; (4) if the Judge who is designated to entertain and try election petitions is absent, the petition shall be presented before the Bench hearing civil applications and motion; and (5) the date of presentation before the Judge or Bench, as the case may be, as provided in the proviso to Rule 6 shall be deemed to be the date of filing the election petition for the purposes of limitation. It would appear from the above that the date of formal presentation to the Judge or the Bench, as the case may be, is the actual date of filing the petition. What happens when no the last day of the expiry of limitation for filing the petition, though a working day for the Court, if peradventure none of the Judges sit ? Though in a Court which has a number of Judges, such a contingency may not occur, but in a High Court which consists of only one Judge such as is envisaged in the proviso to Section 80-A of the Act and that High Court has rules similar to Rules 6 and 7, it would, if we accept the contention of the learned Advocate for the appellant, create an anomaly when the only Judge of the High Court is absent due to illness or some other cause and the petition cannot be presented even though the Court has not been closed. The appellant in these circumstances would have us say that the Court is closed. But this contention has no validity, because as is submitted by the learned Advocate for the respondent that Rules 6 and 7 of the Election Rules should be read subject to Rule 24 of the same Rules and if so read, the Patna High Court Rules, in so far as they are not inconsistent with the said Election Rules, shall apply mutatis mutandis to all election petition. A reference to Rule 26 of Chapter VII, part II of these Rules which regulate the procedure and practice before admission, would show what provision has been made in cases where appeals or applications have to be presented to a Bench and no Bench is sitting on the day when the limitation is due to expire. Rule 26 provides :

> "On any Court day on which no Bench is or has been sitting, any memorandum of appeal or application which might be barred by time and which is entertainable only by a Bench may be presented to the Register, or in his absence from Court on that day to the Deputy Register, or in their absence to the Assistant Registrar, who shall certify thereon that such memorandum of appeal or application was on that day presented to him :
>
> Provided always that no such presentation in the Registrar Deputy Registrar, Assistant Registrar, shall be of any effect, unless such memorandum of appeal or

application be presented to a Bench on the next subsequent day on which a Bench is sitting."

It was, however, contended by the learned Advocate for the appellant, though on a further consideration he did not think that he could sustain it, that Rule 26 makes a reference to an application and not to a petition : as such that Rule is inapplicable to an election petition. Since it has been raised, we can only say that such an argument would be misconceived because Rule 1 of Chapter III, part II states that every application to the High Court shall be by a petition written in the English language, Rules 2 to 10 further require what the petition should state, that it should be verified, how it should be entitled, what it should be accompanied with, etc. By these Rules which have been made applicable to election petitions by Rule 2 of the Election Rules, whenever an application has to be made to a High Court, it should be made by a petition, so that there is no warrant for the submission that Rule 26 does not deal with a petition, but only with an application.

9. It is further submitted that Rule 26 has no application as it is inconsistent with Rule 7 because under the latter Rule the date of presentation to a judge or a Bench is deemed to be the date of the filing of the election petition for the purpose of limitation, but Rule 26 provides for the presentation to the Registrar, etc. and after certification it is to be presented to a Bench on the next subsequent day on which the Bench is sitting. If that is the day for limitation, the learned Advocate submits then not other day on which it is not presented to a judge can be considered to be the day for limitation. If so, the presentation before the Registrar would be inconsistent with the requirements of Rule 7. In our view, there is nothing inconsistent in Rules 6 and 7 of the Election Rules and 26 of the Patna High Court Rules, because Rule 7(1) does not provide for a situation where the Judge do not sit and the period prescribed is deemed to expire on that day. It may be that the presentation to the Judge will be the date of filing the purposes of limitation, but that does not exclude a different procedure for filing in a case where limitation is about to expire, when the conditions prescribed in the proviso to Rule 6 of the Election Rules cannot be complied with. If Rule 7(1) of the Election Rules had stated that the date of presentation to the Judge shall be deemed to be the date of the filing of the election petition for the purpose of determining whether the petition is barred by time, then such a provision could be said to be inconsistent with Rule 26 of the High Court Rules. But that is not the case here. What Rule 7(1) provides is that the date of presentation to a judge or a Bench as mentioned in the proviso to Rule 6 which contemplates the presentation of a petition before a Bench hearing civil applications and motions on a court day, when a judge is not available on account of temporary absence or otherwise, but it does not provide for a contingency where a judge or a Bench is not sitting on any other day when the Court is not closed. That contingency is provided for by Rule 26. In our view, there is nothing inconsistent in Rules 6 and 7 of the Election Rules and Rule 26 of the High Court Rules. If as the practice of the High Court is that Judges do not sit for judicial work on a Saturday, there are no Benches sitting on that day and consequently any provision made to deal with such a contingency could not be said to be inconsistent with the Election Rules. This conclusion is further reinforced by a reference to Rule 13 of Chapter II, part I of the Patna High Court Rules whereunder the Registrar has power to receive an appeal under Clause 10 of the Letters Patent, to receive an application for Probate or Letters of Administration or for revocation of the same and to issue notices thereon, to receive a plaint or an appeal from the decree or order of a Subordinate Civil Court, etc. Rule 27 provides for the contingency when the Registrar is absent on the last day of limitation when such documents have to be filed. These Rules are consistent with the postulate that the Court is not in fact closed on a Saturday even though the Judges may not sit on that day. It would, in our view, be incongruous that a Court is open on Saturday for presentation of appeals, applications, plaints or decrees, etc. mentioned in Rule 13 of Part I of Chapter II referred to above even though the Judges are not sitting on that day, and yet closed on that same day for

presentation of election petitions. In our view, therefore, reading Rules 6 and 7 with Rule 26, there can be no manner of doubt that an election petition can be presented on the last day of limitation even when the Judges are not sitting to receive or entertain an election petition to the Registrar or in his absence to the other officers specified in Rule 26. In fact the Patna High Court had, no a similar point, held nearly seven years ago in Md. Gwais and Other v. Phul Bibi and Others, (CR No. 3 of 1965, dec. on 28-4-1965 (Pat HC) a copy of which has been placed before us, that where under Rule 13 Part II, Chapter VII, it is provided that application for review must be presented by way of notice in open Court to the Bench of whose judgment a review is sought, it could be filed on a Saturday if it is the last day of limitation. An argument similar to that addressed by the learned Advocate for the appellant was rejected on the ground that Saturday was a working day and that Rule 26 clearly refers to a Saturday on which no Benches sit.

10. Now that we have held that the Court is not closed and the petition could have been presented to the Registrar on Saturday, March 18, 1972, the question would be, does Section 5 of the Limitation Act apply to enable the petitioner to show sufficient cause for not filing it on the last day of limitation, but on a subsequent day ? Whether Section 5 is applicable to election petitions filed under Section 81 of the Act will depend upon the terms of Section 29(2) of the Limitation Act. Whether Section 5 could be invoked would also depend on the applicability of sub-section (2) of Section 29 of the Limitation Act to election petitions. Under this sub-section where a special or local law provides for any suit, appeal or application a period different from the period prescribed therefor by the Schedule, the provisions specified therein will apply only in so far as and to the extent to which they are expressly excluded by such special or local law. Under Section 29(2) of the Limitation Act of 1908 as amended in 1922, only Section 4, Sections 9 to 18 and Section 22 of that Act applied ordinarily unless excluded by a special or local law. Thus unless Section 5 was made applicable by or under any enactment the discretion of the Court to extend time thereunder would not be available. Similarly Sections 6 to 8 would not apply and neither acknowledgment nor payment (under the former Sections 19 and 20) could give a fresh starting point of limitation. Even Section 5 under the old Act was in terms inapplicable to applications unless the Section was made applicable by or under any of the enactment. The new Section 5 is now of wider applicability and as the objects and reasons state :

> "Instead of leaving it to the different States or the High Courts to extend the application of Section 5 of applications other than those enumerated in that Section as now in force, this clause provides for the automatic application of this Section to all applications, other than those arising under Order 21 of the Code of Civil Procedure, 1908, relating to the execution of decrees. In the case of special or local laws, it will be open to such laws to provide that Section 5 will not apply."

The present Section incorporates two changes : (1) a uniform rule making it applicable to all applications except those mentioned therein [by defining "application" as including a "petition" in Section 2(b)]; and (2) to all special and local enactments, unless excluded by any of them. The difference in the scheme of the provisions of sub-section (2) of Section 29 under the two Acts will be discernible if they are juxtaposed as under :

Section 29(2) of old Act Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law - (a) the provisions contained in Section 4, Sections 9 to 18,

and Section 22 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 (b) the remaining provisions of this Act shall not apply.

Section 29(2) of new Act Where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provision 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 Sections 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.

11. It will be notice that under the 1908 Act there are two limbs - (1) that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of Section 3 apply, as if such period were prescribed therefor in that Schedule : (2) for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the contained in Section 4, Sections 9 to 18 and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such appeal or local law. The remaining provisions of that Act are by virtue of clause (b) of sub-section (2) inapplicable. The two limbs of sub-section (2) are connected with the conjunction "and" and the question has been debated and there has been a cleavage of opinion as to whether those two limbs are independent or have to be read cumulatively and as an integrated whole. The decision of the Supreme Court in Vidyacharan Shukla v. Khubchand Baghel and Others, ((1964) 6 SCR 129 : AIR 1964 SC 1099 : 25 ELR 354) has by a majority held that both parts of Section 29(2) of the old Act should be read as one whole and the conjunction "and" would have to be read a as importing into what follows it, the conditions set out earlier and that the words following the conjunction "and" attract the conditions laid down by the opening words of the sub-section. This case was considering the applicability of Section 12(2) to appeals under Section 116-A of the Act which had provided a time limit for filing an appeal, but the first Schedule to the Limitation Act had not provided any. Even the absence of a provision prescribing a time limit in the First Schedule was considered by the majority as prescribing a different period, because when the First Schedule prescribes no time limit for a particular appeal but the special law prescribes a time limit for it, it prescribes a period different from that prescribed in the former. Where once the special or local law has provided a period different from that prescribed in the Schedule to the Limitation Act, sub-section (2) of Section 29 stands directly attracted and Section 3 and other Sections shall apply in so far as, and to the extent to which, they are not expressly excluded by such special or local law. Though Sinha, C.J., and Ayyangar, J., agreed with Subba Rao, J., as he then was, that even where the First Schedule did not prescribe a period of limitation for an appeal which is different from that prescribed in the special or local law the sub-section applied, and even if it is assumed that for the application of Section 29(2) a period that is different has to be prescribed for an identical appeal, then Art. 156 prescribes a different period, they did not agree with him, that the second limb of sub-section (2) is an independent provision providing for that category of proceedings to which the first limb does not apply. Sinha, C.J., Rajagopala Ayyangar and Raghubar Dayal, JJ., by majority held that the entire sub-section (2) of Section 29 of the Limitation Act has to be read as an integrated provision and the conjunction "and" connects the two parts and makes it necessary for attracting cl. (a) that the conditions laid down by the opening words of sub-section (2) should be satisfied. Raghubar Dayal and Mudholkar, JJ., also did not agree with the majority that where a right of appeal is given by some other law, the appeal must be regarded as the one under the Code of Civil Procedure, inasmuch as the words, under the Code of Civil Procedure cannot be read as meaning "governed in the matter of procedure by the Code of Civil Procedure". Subba Rao and Mudholkar, JJ., held that the second limb of sub-section (2) of Section 29 is wide enough to include

a suit, appeal or an application under a special or local law which is of a type for which no period of limitation is prescribed in the First Schedule. In the result, Sinha, C.J., Subba Rao, Raghubar Dayal and Rajagopala Ayyangar, JJ., held that the exclusion of time provided for by Section 12 of the Limitation Act is permissible in computing the period of limitation for filing an appeal in the High Court under Section 116-A of the Act.

12. It was contended before us that the majority decision requires reconsideration by a larger Bench, because a period of limitation which is different from that prescribed in any special or local law would mean that the Limitation Act should provide for a definite period which is different from that prescribed in the special or local law, a view which was taken by Mudholkar, J., in that decision. We do not think this would be a proper course, because in our view the matter was fully argued and considered by this Court, and while a different view can be taken, the need for certainty particularly in a matter concerning limitation where litigants have to be guided, the legal position should not be in doubt, when it is consistent with the view taken by this Court in other cases.

13. Secondly, Vidyacharan Shukla's case (supra) is one which dealt with an appeal under the Act while what we have to consider is whether the Limitation Act is at all applicable to election petitions under the Act. Thirdly, Section 29(2) of the new Limitation Act does not now give scope for this controversy whether the two limbs of the old Section are independent or integrated. No doubt Section 5 would now apply where Section 29(2) is applicable to even applications and petitions, unless they are expressly excluded. Even assuming that the Limitation Act applies to election petitions under the Act, what has to be seen is whether Section 5 is excluded from application to such petitions.

14. It has already been noticed that Vidyacharan Shukla's case has made Section 12(2) applicable to appeals under Section 116-A of the Act. The proviso to that Section confers power similar to that conferred by Section 5. Even in appeals to the High Court under Section 417 of the Code of Criminal Procedure it has been held in Lala Ram v. Hari Ram ((1970) 2 SCR 898 : (1969) 3 SCC 173) that Section 12 of the new Limitation Act will apply. On the ratio of Vidyacharan Shukla's case even where the Limitation Act has not prescribed the period of limitation in the Schedule different from that prescribed under Section 81 of the Act, sub-section (2) of Section 29 will be attracted and that position is not any the less different under the new Limitation Act. Vidyacharan Shukla's case is, however, decisive for attracting sub-section (2) of Section 12 to an appeal under Section 116-A of the Act as there was nothing in that Section to preclude its application. D. P. Mishra v. Kamal Narayan Sharma and Another ((1971) 1 SCR 8 : (1970) 2 SCC 369) again is a case in which the question of application of Section 12(2) of the Limitation Act to the computation of the period of limitation prescribed in Section 116-A of the Act in respect of an order delivered by the Election Tribunal on December 28, 1966, was considered. After excluding the time taken for obtaining a certified copy of the order by the respondent just before the Court closed for the summer recess, the memorandum of appeal could only be lodged on the re-opening of the Court. Following the decision in Vidyacharan Shukla's case this Case held that Sections 4 and 12 of the Limitation Act would apply, because "There is no provision in the Representation of the People Act, 1951, which excludes the application of Section 4 of the Limitation Act".

15. In Lala Ram's case to which a reference has been made already, a Bench of this Court to which one of us was a party (P. Jaganmohan Reddy, J.) considered the applicability of Section 12 of the Limitation Act to an application under Section 417(3) of the Code of Criminal Procedure. In that case an application for leave to the High Court was filed under sub-section (3) of Section 417 of the Code of Criminal Procedure against an order of acquittal by a Magistrate. It was claimed that two

days were necessary for obtaining the certified copy of the order of the Magistrate and the application would be in time if these two days were deducted. The High Court accepted the appeal and convicted the appellant. In appeal to this Court against his conviction the appellant contended that the period of 60 days mentioned in Section 417(4) was not a period of limitation within the meaning of Section 12 of the Limitation Act and that the sub-section barred the jurisdiction of the High Court to deal with the application if a period of 60 days had expired from the date of the order of acquittal. It was held that the application to the High Court was within time. It was, however, urged that Section 417 (4) contains a prohibition that no application under sub-section (3) shall be entertained by the High Court after the expiry of 60 days from the date of the order of acquittal and consequently the jurisdiction of the High Court to entertain such applications for leave to appeal is barred. The Court rejected the contention and relying on the case of Kaushalya Rani v. Gopal Singh ((1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152) as well as on Anjanabai v. Yeshwantrao Daulatrao Dudhe (ILR 1961 Bom 135, 137 : AIR 1961 Bom 154 : (1961) 1 Cri LJ 637) observed at p. 901 :

> "It is quite clear that the Full Bench of the Bombay High Court and this Court proceeded on the assumption that Section 417(4) of the Criminal Procedure Code prescribes a period of limitation. The learned Counsel, however, contends that there was no discussions of this aspect. Be that as if may, it seems to us that Section 417(4) itself prescribes a period of limitation for an application to be made under Section 417(3). It was not necessary for the Legislature to have amended the Limitation Act and to have inserted an Article dealing with applications under Section 417(3), Cr. P.C.; it was open to it to prescribe a period of limitation in the Code itself".

The basis of this decision is that sub-section (4) of Section 417 of the Code of Criminal Procedure is not in a negative from as contended for by the learned Advocate in that case, but that it has a positive content for performing an act and it prescribes a definite period within which an act has to be done.

16. In K. Venkateswara Rao and Anr. Bekkam Narasimha Reddi & Ors. ((1969) 1 SCR 679 : AIR 1969 SC 872 : (1969) 2 SCJ 505) to which we well shall refer more fully later, Vidyacharan Shukla's case was attempted to be pressed into service, but this Court repelled it and observed at pp. 688-689 :

> "In our view, the situation now obtaining in an appeal to this Court from an order of the High Court is entirely different. There is no Section in the Act as it now stands which equates an order made by the High Court under Section 98 or Section 99 to a decree passed by a civil Court subordinate to the High Court. An appeal being a creature of a statute, the rights conferred on the appellant must be found within the four corners of the Act. Sub-section (2) of the present Section 116-A expressly gives this Court the authority to entertain an appeal after the expiry of the period of thirty days. No right is however given to the High Court to entertain an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117".

17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming

that where a period of limitation has not been fixed for election petition in the Schedule to the Limitation Act which is different from that fixed under Section 81, of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, 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 nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provision of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petition and their trial.

18. It was sought to be contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But this is not what Section 29(2) of the Limitation Act says, because it provides that 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. If none of them are excluded, all of them would become applicable. Whether those Sections are applicable is not determined by the terms of those Sections, but by their applicability or inapplicability to the proceedings under the special or local law. A person who is a minor or is insane or is an idiot cannot file an election petition to challenge an election, nor is there any provision in the Act for legal representation of an election petitioner or respondent in that petition who dies, in order to make Section 16 of the Limitation Act applicable. The applicability of these provisions has, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act.

19. A Full Bench of this Court had in N. P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others (1952 SCR 218 : AIR 1952 SC 64 : 1 ELR 133) considered the provisions of the Act to determine whether any thing connected with the elections can be questioned at an

intermediate stage. In that case the rejection of a nomination of a candidate in an election under the Act was sought to be challenged by a petition under Art. 226 of the Constitution. After examining the various provisions of the Act, Fazl Ali, J., observed at p. 231 that "it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage". Again at p. 234 it was observed :

> "If part XV of the Constitution is a code by itself, i.e. it creates rights and provides for their enforcement by a special tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time schedule of the elections".

The observations that the provisions of the Act are a self-contained code were also made in the case of Venkateswara Rao referred to earlier. In that case, in a trial of an election petition after the issues were framed the appellants made an application to the Court for impleading one 'R' but it was dismissed. The first respondent then filed an application under Section 86(1) praying for the dismissal of the election petition on the ground that there had been non-compliance with Section 82(b) of the Act inasmuch as 'R' against whom corrupt practice had been alleged had not been made a party. The appellants filed an application seeking to withdraw the allegation against 'R' and in the alternative to implead him as a respondent. It was also prayed that delay in making the application may be condoned. The learned Judge of the High Court trying the election petition dismissed the aforesaid applications and refused to condone the delay. One of the contentions urged in the appeal was that Section 5 and Section 29(2) of the Limitation Act, 1963, were applicable to the case and the High Court and this Court had power to condone the delay made by the election petitioner in impleading a necessary party. This plea was rejected. Mitter, J., delivering the judgment of this Court for himself and Hidayatullah, C.J., after examining the relevant provisions of the Act in detail at pp. 682-686 observed at pp. 686-687 :

> "It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the Courts in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 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 : the extent of such application is governed by Section 29(2) to proceedings like an election petition in as much 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."

It would be a mere repetition again to refer to the provisions which were examined in such detail in that case except to notice that sub-section (5) of Section 86 gives a latitude to the petitioner upon such terms as to costs and otherwise as the High Court may deem fit to amend the particulars of any corrupt practice alleged in the petition and amplify it in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but the High Court shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. Now here is a definite indication that Section 5 of the

Limitation Act cannot be attracted, because no new corrupt practice not previously alleged in the petition can be allowed by way of an amendment. If this is not permitted, it is because any introduction of new particulars of a corrupt practice not previously alleged in the petition would have altered the structure of the petition and would amount to a new petition being filed after the period of limitation, which is, what is expressly prohibited.

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 method of disposal of election disputes, which experience and 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.

21. In Krishna Chander v. Ram Lal ((9173) 2 SCC 759) two of us (Jaganmohan Reddy and Dwivedi, JJ.) while holding that Section 82(b) of the Act was mandatory, the failure to comply with which was fatal to the maintainability of the petition, said : (p. 769) :

> "Apart from ensuring the purity of elections, and finality in regard to all election matters, one other consideration seems to be the expeditions disposal of election petition. Before the amendment of Section 82 by Act 27 of 1956 the unamended Section made it incumbent on a petitioner 'to join as respondents to his petition all candidates who were duty nominated at the election other than himself, if he was so nominated". The reason for the amendment of Section 82 has been stated in the notes on clauses to the Amendment Bill No. 33 of 1955 to be that the Section as it stands holds up the trial of an election petition because of the difficulty in serving a notice on all those who have been nominated. It is further stated : 'Naturally, it is only the returned candidate who takes any interest in contesting the election petition. Moreover, there is a provision in Section 90 which enables any other candidate to join as a respondent. It is accordingly proposed in this clause that Section 82 should be revised so that it is necessary to join as respondents only those candidates who are interested prima facie in the outcome of the petition. After the amendment the candidates under clause (b) of Section 82 are not impleaded merely because they are necessary parties in an election petition in which a declaration is sought that the election of all or any of the candidate would be void, but are impleaded as parties because there are allegations of corrupt practice against them in the election petition. Where action is taken under Section 90 an order under Section 98 of the Act dismissing the election petition or declaring the election of all or any of the returned candidates to be void and/or declaring the petitioner or any other candidate to have been duly elected, would delay the disposal of the election petition, because notice will have to be given to all the persons named under the proviso to sub-clause (ii) of clause (a) of sub-section (1) of Section 99. The provisions of Section 82(b) would

> avoid any such delay as they make it obligatory for a person filing an election petition when he makes an allegation of corrupt practice against any candidate to make him a party on pain of the petition being dismissed under Section 86(1) if he omits to do so."

22. It is interesting to see that although the Election Commission did not recommend what provisions of the Act should be amended, it nonetheless in its Report on the Third General Elections is India (1962) Volume I (General), after noticing the several causes of delay reported in its summary of recommendations under the heading 'Election petitions' at p. 125 as under :

> "(i) The objective of a quick decision of election disputes can only be achieved by placing the responsibility directly on the High Courts. Every election petition should be presented to the High Court of the State in which the election was held and tried by a permanent Judge on the rota for the trial of such petitions.
>
> (ii) Clause (1) of Article 324 of the Constitution should be amended by omitting the words 'including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with election to Parliament and to the Legislatures of States', simultaneously with the amendment of the election law providing for the trial of election petitions directly by the High Court."

This summary supports the above observations in the judgment.

23. In Charan Lal Sahu v. Nandkishore Bhatt and Others ((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 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 visit the penalty of the petition being dismissed. The answer to the plea if the petition were to dismissed allegation of serious corrupt practices cannot be enquired into and the purity of the election 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 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 in August 1968, though Parliament has made certain amendments in Section 8 of the Act in 1969, it has not considered if 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.

26. The appeal as well as C.M.P. No. 7820 of 1973 are accordingly dismissed but in the circumstances without costs.

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