

Mohd. Ali

Vs

Azad Mohd.

Civil Appeal No. 445 of 1998

(CJI Dr. A.S. Anand, S. Rajendra Babu, R.C. Lahoti JJ)

01.09.1999

ORDER

1. The election petition filed by the appellant challenging the election of the respondent was dismissed by the learned Election Judge of the High Court of Punjab & Haryana on the preliminary issue of limitation without trial on 4-7-1997. The order of the High Court has been put in issue before us through this appeal.

2. The facts are not in dispute. The period of 45 days prescribed for filing an election petition expired during the period of summer vacations of the High Court i.e., 1-6-1996 to 30-6-1996 (both days inclusive). The election petition was admittedly filed on the reopening day of the High Court after the summer vacations on 1-7-1996. The learned Election Judge considered the effect of notification dated 27-11-1995 issued by the High Court and held that the election petition filed on the reopening day of the High Court was barred by time because of the purpose of hearing election petitions etc. the Court was not "closed" during the summer vacations.

3. In *Lachhman Das Arora v. Ganeshi Lal* (1999) 8 SCC 532 this Court has considered the effect of the very same notification dated 27-11-1995 on the filing of an election petition on the reopening day of the High Court after summer vacations, when the prescribed period of limitation expired, during the summer vacations. After taking note of the provisions of the Representation of the People Act as well as Section 10 of the General Clauses Act, 1897, this Court has come to the conclusion that the election petition was barred by time because of the exception contained in the notification itself. The opinion expressed in the said case applies to his case with full force. We adopt the reasoning given by the Bench in *Lachhman Das Arora* case to this case also.

4. Faced with this situation, Mr. B. S. Malik, learned counsel appearing for the petitioner submitted that another notification had been issued by the High Court of Punjab & Haryana at Chandigarh on 27-5-1996 and since the later notification did not contain nay exception, the benefit of Section 10 of the General Clauses Act, 1987, would be available to an election petitioner for filing the election petition on the reopening day of the High Court after summer vacations. The notification dated 27-5-1996 on which reliance is placed reads thus:

"No. 207/Genl./ XVII.3. – It is notified for general information that High Court of Punjab & Haryana at Chandigarh shall observe summer vacations from 1-6-1996 to 30-6-1996 (both days inclusive) and following timings shall be observed during the period of vacation i.e. 1-6-1996 to 30-6-1996

Court timings 10.00 a.m. to 4.00 p.m.

With lunch break from

1. p.m. to
1.45 p.m.

Office timings 10.00 a.m. to 5.00 p.m.

With lunch break from

1.30 p.m. to 2.00 p.m.

By order of Hon'ble the Acting Chief Justice and Judge

Sd/-

Assistant Registrar (General)

Or Registrar"

5. In our opinion, reliance on this notification to save the period of limitation is misplaced. The notification of 27-5-1996 has to be read as a supplementary to the notification dated 27-11-1995 because in the latter notification court timings during the summer vacations have been prescribed. The effect of the notification dated 27-11-1995 has in no way been whittled down by 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 notification have, therefore, to be read together.

6. Mr. Malik then submitted that under Section 23-A of the High Court judge (Conditions of Service) Act, 1954 every High Court shall have vacation or vacations of such period or periods as may from time to time be fixed and during the period of vacations, the Court would not be considered as "open" for any purpose. There is a basic fallacy in the argument. These provisions have nothing to do with the functioning of the High Courts. The transaction of court business during the vacations is not controlled by the High Court Judges (Conditions of Service) Act, 1954, but by the notification issued by the High Court in that behalf.

7. For all we have said above, we find there is no merit in this appeal. The same is dismissed with costs.