

Chandra Kishore Jha

Vs

Mahavir Prasad and Others

Civil Appeal No. 42 of 1998

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

21.09.1999

JUDGEMENT

DR. A. S. ANAND, C.J.:-

1. Election of respondent 1 to the Bihar Legislative Assembly from 86, Ghanshyampur Assembly Constituency, held in March 1995, was challenged by the appellant through an election petition on various grounds. The election petition was resisted by the returned candidate and certain preliminary objections were also raised. The returned candidate on 14-8-1997 filed an application under Section 81(1) read with Section 86 of the Representation of the people Act, 1951 (hereinafter "the Act") on the ground that the petition presented on 17-5-1995 was beyond the period of limitation and thus liable to be dismissed under Section 86 of the Act. The application was decided in favour of the returned candidate and the learned Designated Election Judge vide order dated 3-10-1997 dismissed the election petition without trial, as barred by limitation. Aggrieved, the appellant is before us.

2. The only issue debated before us centres around the non-filing of the election petition within the prescribed period of 45 days from the date of election. Reference to some dates, which are not in dispute, becomes necessary at the outset.

3. After the polling of votes, counting of ballot papers took place on 31-3-1995. The result was declared on 1-4-1995. (Initially, there was some dispute with regard to the exact date when the result was declared, i.e., whether on 31-3-1995 or 1-4-1995 or 2-4-1995, but both before the learned Designated Election Judge as well as in this Court, on the basis of the record, it has been admitted by learned counsel for the parties that the result of the election was declared on 1-4-1995) The election petition was presented to the learned Designated Election Judge in "open court" on 1-5-1995. The prescribed period of 45 days within which the election petition could be filed expired on 16-5-1995.

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 1, Shri Mahabir Prasad to the Bihar Legislative Assembly from 86, Ghanshyampur Assembly Constituency. He also files a challan showing deposit of Rs. 2000 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 16-5-1995. The counsel also pointed out that necessary affidavit in support of the election petition had also been sworn yesterday i.e. on 16-5-1995. Counsel stated all this to support his contention that the petition was ready in all respects for being filed yesterday and it had been handed over to the Bench Clerk of the Court at 4.05 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 resented today."

5. The leaned Designated Election Judge opined that the presentation of the election petition on 16-5-1995 before the Bench Clerk was improper, the same not being in conformity with the High Court Rules and, therefore, could not save the period of limitation and that the presentation of the election petition made in the open court on 17-5-1995 was beyond the period of limitation and hence liable to be dismissed under Section 86(1) read with Section 81 of the Act, notwithstanding the fact that on 16-5-1995, after 3.15 p.m., the Designated Election Judge was not available in the court to whom the election petition could be resented in the open court.

6. With a view to examine the correctness of the above finding, it is desirable to take note of some of the relevant provisions of the rules of the Patna High Court. Chapter XXI-E lays down rules for disposal of election petitions filed under Section 81 of the Act.

7. Rule 6 of Chapter XXI-E reads thus:

"6. Subject always to the order of the Judge, before a formal presentation of the election petition is made to judge in open court, it shall be presented to the Stamp Reporter of the Court, who shall certify thereon if it is in time and in conformity with 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."

8. Rule 7 provides:

"7. (1) The date of presentation to the judge or the Bench as mentioned in the proviso to Rule 6 shall be the date of the filing the election petition for the purpose of limitation.

(2). Immediately after it is presented, the petition shall be entered in a special register maintained for the registration of election petitions."

9. Rule 9 reads:

"9. (1). As soon as may be, after an election petition has been presented and registered, it shall be placed before the judge for such orders as may be required to be passed under Section 86 of the Act.

(2). If the petition is not dismissed under Section 86(1) of the Act, a summons on the direction of the judge, shall be issued to the respondents to appear before the judge on a day not earlier than three weeks from the date of the issue of the summons, unless otherwise ordered by the Judge.

(3). The summons shall be for filing written statement and settlement of issues and shall be served on the respondents through the District Judge of the District to which the respondent belongs or in the district in which he ordinarily resides, in the manner provided for the service of summonses in the Code of Civil Procedure and District Judge concerned will make his best endeavour to get the summons before that date fixed."

10. Rule 13 of Chapter II Part I of the High Court Rules reads:

"13. In addition to the powers conferred upon him by other rules the Registrar shall have the following duties and powers:

Registrar shall have the following duties and powers:

- i. To receive an appeal under clause 10 of the Letters Patent.
- ii. To receive an application for Probate or Letters of Administration or for revocation of the same and to issue notices thereon.
- iii. To receive a plaint or an appeal from the decree or order of a subordinate civil court and to determine whether it shall be admitted and notice issued at once to the other side or be posted for hearing under Order XLI Rule 11, or otherwise laid before the Court for orders.

* * * *

11. Rule 24 of Chapter XXI-E Provides:

"24. The Patna High Court Rules, except insofar as they are inconsistent with the

above rules, shall apply mutatis mutandis to all election petitions. Where no specific provision is made in the Act, the Code or the High Court Rules, the Judge may pass such orders as he may consider necessary."

12. A combined reading of the above rules shows that an election petition is required to be presented, first to the Stamp Reporter of the Court, who shall certify thereon if it is within time and in conformity with the requirements of the Act and the rules made in that behalf or is defective, and in the event it is found to be defective, the same shall be returned to the petitioner for making formal presentation, after removing the defects. The election petition is then required to be presented to the Designated Election Judge in the "open court". The proviso to Rule 6 lays down 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. By virtue of Rule 7, the date of filing of an election petition to the Judge or the Bench as mentioned in the proviso to Rule 6. Thus, the date of presentation of the election petition in the open court to the Designated Election Judge or to the Bench, as the case may be, would be the actual date of filing of the election petition, for the purposes of limitation.

13. Under Rule 13, the Register of High Court in addition to his other powers has been clothed with the duty to receive certain memos of appeals, plaints and application for review, revision or restoration.

14. Rule 24 of Chapter XXI-E lays down that the Patna High Court Rules, except insofar as they are inconsistent with the rules contained in Chapter XXI-E shall apply mutatis mutandis to all election petitions but where no specific provision is made in the High Court Rule, " the Judge may pass orders as he may consider necessary."

15.

15. Having examined the rules, let us now take note of the fact situation as existing in the present case. There is no doubt that in the instant case, the appellant had made the security deposit and got his affidavit attested and had twenty copies of the election petition duly attested as true copies under his own signatures ready with him. It is also not in disputes that he did not go to the Court of the learned Designated Election Judge at 4.05 p.m. on 16-5-1995, but found him not present in the open court. The learned Designated Election Judge in the impugned order recorded :

"There is no disputes between the parties that nether the Court before which this election petition could be presented nor the Bench hearing civil applications and motions was available on 16-5-1995 after 3.15 p.m. when an obituary reference was held to mourn the demise of late Raj Ballav Prasad Sinha, an advocate of this Court and the then Hon^{ble} the Chief Justice declared while concluding the obituary speech that the Court shall not sit for the rest of the day. Its is this background that is has to be examined as to whether the election petition could have been presented on account of non- availability of the Court and the Bench hearing civil application and motions to the Bench Clerk."

and opined that the presentation of the election petition to the A bench Clerk was not proper. The learned Designated Election Judge was of the opinion that in view or Rule 24 of Chapter XXI-E read with rule 1 3 of Chapter II part I of the High Court Rules, the election petitioner ought to have presented the election petition to the Register. In the words of the

learned Designated Election Judge:

"Admittedly the election petition was presented at 4.05 p.m. on 16-5-1995 when neither the Hon^{ble} Judge nor the Bench hearing civil application and motions was available and in such a situation, in opinion, the election petition ought to have been presented before the Register of the Court as it is not in dispute that the Registrar was not available at 4.05 p.m. on 16-5-1995."

16. In our opinion, reliance on Rule 24 of Chapter XXI-E read with rule 113(III) of Chapter II part I of the High Court Rules is misplaced. The plain phraseology of Rule 6 read with the proviso thereto makes it abundantly clear that formal presentation of an election petition can be made only to the Designated Election Judge in the open court and "if on any court day the Judge in not available on account of temporary absence or otherwise. *The petition may be presented before the bench hearing civil applications and motions. (emphasis supplied)* Thus, the High Court Rules do not prescribe any other mode of presentation of and election petition except in the open court either before the Designated Election Judge or before the Bench hearing civil applications and motions, where the Designated Election Judge is not available on account of temporary absence or otherwise. The presentation of an election petition to the Registrar has not been prescribed as a mode of presentation of an election petition by the rules. An election petition is not included in any of the clauses of Rule 13. The learned Designated Election Judge rightly found that presentation of the election petition to the Bench Clerk on 16-5-1995 at 4.05 p.m. was not a proper presentation under the rules. In the absence of any provision in the rules presentation of an election petition being a purely statutory remedy, nothing is to be read into rules. Rule 24 (supra) cannot advance the case of the returned candidate any further because of the absence of mention of an election petition in Rule 13 (supra).

17. In our opinion insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or the rules thereunder and, therefore, an election petition could, under no circumstances, be presented to the registrar to save the period of limitation. It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in not other manner. (See with advantage: *State of U.P. v. King Emperor* (1935-36) 63 IA 372 : AIR 1936 PC 253 (II) *Rao Shiv Bahadur Singh v. State of V. P.* (AIR 1954 DV 322 : 1954 SCR 1098, *State of U.P. v. Singhara Singh* (AIR 1964 SC 358 : (1964) 1 SCWR 57. An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (Working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done. However, we cannot ignore that the situation in the present case was not of the making of the appellant. Neither the Designated Election Judge Before the Bench hearing civil applications and motions was admittedly available on 16-5-1995 after 3.15 p.m. after the obituary reference since admittedly the Chief Justice of the High Court had delcled that " the Court shall not sit for the rest of the day" after 3.15 p.m. Law does not expect a party to do the impossible [◆] *impossibilium nulla obligatio est* - as in the instant case, the election petition could not be filed on 16-5-1995 during the court hours, as for all intents and purposes , the Court was closed on 16-5-1995 after 3.15 p.m.

18. It is precisely to take care of a situation like this that Section 10 of the General Clauses Act gets attracted. It reads :

"10 computations of time-(1) Where, by any Central Act or regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court of office on a certain day or within a prescribed period, then if the court of office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court of office is open :

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (XV of 1877), applies."

(emphasis ours)

19. Since the Indian Limitation Act does not apply to an election petition, section 10 of the General Clauses Act would apply. As already noticed, the Patna High Court was, for all practical purposes, closed after 3.15 p.m. on 16-5-1995. It was, therefore; not possible for the appellant to have presented the election petition to the Designated Election Judge or in His absence to the Bench hearing civil applications and motions in the open court on that date, which was the last day of the prescribed period of limitation. Thus, the presentation of the election petition on the very virtue of Section 10 of the General Clauses Act, as presentation of the election petition within the prescribed period limitation. In the established facts and circumstances of the case, the learned Designated Election Judge fell in error in denying to the appellant the benefit of Section 10 of the General Clauses Act and dismissing the election petition as barred by time. The order of the learned Designated Election Judge cannot, under the circumstances, be sustained. The election petition must proceed to trial on merits.

16.

17. 20. Mr. P.S. Mishra, learned Senior Counsel for the returned candidate Respondent 1, when faced with this situation, submitted that the presentation of the election petition in the open court on 17-5-1995 was also not a Proper presentation because no certificate of the Stamp Reporter had admittedly been obtained by the appellants as required by Rule 6 of Chapter XXI-E before presenting the election petition in the open court to the Designated Election Judge and that the said defect was fatal. Mr. S. P. Singh, learned counsel appellant countered the submission by asserting that the appellant had done all that the said defect was fatal. Mr. S. P. Singh, learned counsel appearing for the appellant countered the submission by asserting that the appellant had done all that the appellant had done all that was required of him to do for filing the election petition and the order of the learned Designated Election Judge dated 17-5-1995, takes care of the objection raised by Mr. Mishra. This argument has not been considered by the learned Designated Election Judge as presumably the occasion to raise it did not arise but be that as it may, we would not like to express any opinion on this question. It would be open to the returned candidate to raise all such pleas as are available to him in law, including the plea above noticed, during the trial of the election petition before the learned Designated Election Judge. Equally, it would be open to the appellant to resist all such pleas in accordance with law. All such pleas shall be decided by the learned Designated Election Judge, as and when raised, in accordance with law.

18.

19. 21. Thus, for what we have said above the appeal succeeds and is allowed. The impugned order dated 3-10-1997 is set aside. The election petition shall be tried on merits by the learned Designated Election Judge expeditiously. There shall be no order as to costs insofar as this appeal is concerned.