

# RAJASTHAN HIGH COURT

Bhogilal Pandya

Vs.

Maharawal Laxman Singh

Election Petn. No. 12 of 1967

(L.N. Chhangani, J.)

08.09.1967

## ORDER

**L.N. Chhangani, J.**

1. The respondent No. 1 having raised the plea of bar of limitation a preliminary issue was framed as follows:-

"Whether the petition is barred by time and therefore liable to be dismissed ?"

2. Arguments were heard. There is no controversy over the facts. The respondent No. 1 was declared elected on 21-2-1967. The election petition was filed on 7-4-1967. The period from 21-2-1967 to 7-4-1967 is a period of 46 days if both the days mentioned are counted, whereas it is a period of 45 days if the date of the election is not counted. The petitioner's case is that 21-2-1967 the day on which the respondent No. 1 was declared returned cannot be counted in view of the provisions of Section 12(1) read with Section 29(2) of the Limitation Act, and Section 9 of the General Clauses Act. In support of his arguments he relied upon two judgments of the Supreme Court reported as *T.C. Basappa v. T. Nagappa*,<sup>1</sup> and *Vidyacharan v. Khubchand*,<sup>2</sup> Reliance was also placed upon *Thete Gopal Ramji v. Amolokchand, (Ele. Tri. Nasik)*<sup>3</sup> and *Kashinath v. Shibban Lal*,<sup>4</sup> The counsel for the respondent, however took the stand that in view of the specific language of Section 81 of the Representation of the People Act (hereinafter referred to as "the Act") Section 12(1) of the Limitation Act or Section 9 of the General Clauses Act cannot be invoked. It was also contended that an election petition is neither a suit nor an appeal or an application within the meaning of Sections 12(1) and 29(1) of the Limitation Act.

3. I have given the matter a very careful consideration and have come to the conclusion that the matter stands concluded by the two decisions of the Supreme Court. The first case is 10 Ele LR 14 . The question of limitation in that case arose under the following circumstances –

4. Under Section 81 of the Act, as it then stood, it was provided that the election petition may be presented within such time but not earlier than the date of the publication of the name or names of the returned candidate or candidates at such election under Section 67 as may be prescribed. Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 provided the limitation in the following terms :-

"An election petition calling in Question an election may :-

(a) in the case where such petition is against a returned candidate, be presented under Section 81 at any time after the date of publication of the name of such candidate under Section 67 but not later than fourteen days from the date of publication of the notice in the Official Gazette under Rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer."

In that case the notice of the return of election expenses was published in the Mysore Gazette on the 31st March, 1952 and the election petition was received in the office of the Commissioner on 14th April, 1952. The respondent raised the plea of limitation. The Tribunal overruled the plea of limitation. In an application for the issue of a writ of certiorari the Mysore High Court held that the election petitioner was not entitled to exclude 31st of March, 1952 while computing the period of limitation. On this ground and various other grounds the High Court issued a writ of certiorari and dismissed the election petition. On an appeal the Supreme Court reversed the decision of the High Court on the question of limitation and observed as follows :-

"The High Court seems to think that in computing the period of 14 days the date of publication is to be included. This seems to us to be an unwarrantable view to take which is opposed to the ordinary canons of construction. Dr. Tek Chand appearing for the respondent No. 1 plainly confessed his inability to support this view and we must hold therefore

that there is no question of the Tribunal's entertaining the election petition after the prescribed period in the present case."

5. In this case the Supreme Court decided the question on general consideration of the canons of construction.

6. In the latter Supreme Court case, the question of limitation in connection with an appeal under Section 116-A was considered with reference to Sections 12(2) and 29(2) of the Limitation Act. The majority conclusions arrived in that case may be summed up as follows :-

"Under Section 116-A(2) of the Representation of the People Act, 1951, the appeal under Section 116-A(1) by fiction, is equated with an appeal filed under the Code of Civil Procedure in the matter of not only the exercise of the powers, jurisdiction and authority but also in the matter of procedure to be followed from the date of receipt of the appeal to its final disposal. It is thus an appeal in respect of which the Limitation Act has prescribed a period of limitation under Article 156 of the First Schedule. But the Special Act, namely the Act of 1951 has prescribed by its Section 116-A(3) a period of limitation different from the period prescribed therefore by the First Schedule to the Limitation Act within the meaning of Article 29(2) of the Limitation Act. And so, Section 12 of the Limitation Act is attracted, and the appellant is entitled to exclude the time taken by him for obtaining the copy of the order".

7. This conclusion had the support of their Lordships Sinha, C.J., Subba Rao, Raghobar Dayal and Ayyangar, JJ.

8. Another majority conclusion arrived at was :-

"When the First Schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit to it, it can be said that under the First Schedule of the Limitation Act all appeals can be filed at any time but the special law by limiting it provides for a different period as while the former permits the filing of an appeal at any time, the latter limits it to the prescribed period. It is, therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference

between the special law and Limitation Act arose by the omission to provide for a limitation to a particular proceeding under the Limitation Act, and therefore, the appeal under Section 116-A(1) will be governed by Section 29(2), Limitation Act".

9. This conclusion had the support of B.P. Sinha, C.J., Subba Rao and Ayyangar, JJ. Mudholkar, J. while differing with the first conclusion emphasised that while the schedule of the Limitation Act provided residuary articles for suits and applications, it did not provide a residuary article for appeals, and observed that :-

"by reading Article 156 in the way it has done the High Court has virtually construed the only provision in the Limitation Act dealing with normal Civil appeals to the High Court as a residuary Article which would take in all appeals by whatever law they may be provided, merely because the procedure relating to appeals contained in the Code of Civil Procedure was applicable to them. This would go against the plain intendment of the Legislature."

10. It will be pertinent to observe at this stage that even the minority opinion of Mudholkar, J. cannot be legitimately pressed in aid in the present case. The schedule of the Limitation Act provides a residuary Article for applications, and therefore the main reasoning which induced Mudholkar, J. to take a different view in relation to appeals cannot be available in the case of election application. On both the majority and minority view it will be open to the petitioner to invoke the provisions of Section 12(1) read with Section 29(2) of the Limitation Act. Mr. Desai, however, submitted that the election petition cannot be treated as an application within the terms of the schedule of Limitation Act, so as to hold that the Limitation Act and the special law provide different periods of limitation. Under the old Limitation Act of 1908, Article 180 was a residuary Article for applications. There had been divergence of judicial opinion whether the applications under Article 181 of the old Limitation Act were confined to applications under the Civil Procedure Code or extended to applications under other Acts. The Supreme Court in *Shah Mulchand v. Jawahar*,<sup>5</sup> took the view that Article 181 applied only to the applications under the Civil Procedure Code. Perhaps there would have been some force in Mr. Desai's contention, under the old Law of Limitation although I need not record any definite decision on that point. The position under the present Limitation Act has materially changed. Subsequent to decision in AIR 1953 SC 98, the Law Commission recommended that the Limitation

Act should provide a period of limitation for original petitions and applications under Local and Special Laws. Having regard to this recommendation the "application" has been defined in the present Limitation Act so as to have a new meaning. It has been so framed as to include all petitions original or otherwise. Considering the definition of application I am unable to accept the contention of the counsel for the respondent that the election petition should not be treated as an application within the schedule of the Limitation Act so as to attract the provisions of Section 12(1) read with Section 29(2) of the Limitation Act.

11. Lastly under Section 9 of the General Clauses Act also the day from which the period of limitation is to be counted has to be excluded, and on this basis also the petitioner is entitled to exclude 21-2-1967. See (1952) 1 Ele LR 477 (Ele. Tri. Nasik). Reference be also made to AIR 1959 Allahabad 54. In that case in connection with an application for substitution under Section 110(3)(c) of the Act required to be filed within 14 days of publication of the notice of withdrawal the date of the publication of the notice of withdrawal was excluded by a reference to Section 9 of the General Clauses Act, in respect of the use of the word "of" instead of the word "from".

12. The extreme contention of the counsel for the respondent that an election petition cannot be considered a suit or an appeal or an application so as to attract Section 12(1) read with Section 29 of the Limitation Act is altogether devoid of force. An Election Petition has been provided for enforcement of certain rights conferred by statutory provision upon the contesting candidates or voters to question the election of returned candidates and in some cases also to secure the declaration of the return of defeated candidates. The rights to be enforced are primarily of a civil nature and the procedure prescribed is essentially one prescribed for the trial of civil suits although in the matter of proof of charges of corrupt practices standard of proof required for criminal charges is insisted upon. The Election Law having provided for an application or petition to move for enforcement of rights of a civil nature and the New Limitation Act providing for Limitation for applications under local law and special laws it is difficult to resist a conclusion that an election petition is an application. Any doubt in that connection can however be resolved by treating it as a suit and in that case also it is equally open to the petitioner to invoke Section 12(1) with Section 29. Of course there can be no question of the election petition being treated as an appeal. I have no doubt that the petitioner is entitled to the exclusion of the date of the return with the help of Sections 12(1) and 29 of the Limitation Act apart from the authority of the Supreme Court in 10

Ele LR 14 on the canons of construction.

13. Mr. Desai, however, made one more point to exclude the provision of Section 12(1) read with Section 29(2) of the Limitation Act and Section 9 of the General Clauses Act. He emphasised the words "but not earlier than the date of election" in Section 81 of the Act and submitted that the section contemplates the institution of election petition even on the date of election, and consequently this should be treated as the date of the commencement. I am unable to accept this argument.

14. In the first instance I may point out that Section 81 of the Act with reference to which the decision in 10 Ele LR 14 was taken by the Supreme Court also contained similar words such as "but not earlier than the date of the publication of the name or names of returned candidates or candidates at such election under Section 67". On the language of that section also, the election petition could be presented on the date of the publication of the name of the returned candidate. The counsel for the respondent however, pointed out Rule 119 which provided that the Election petition could be presented at any time after the date of the publication of the name of such candidate and contended that the language of the rule makes substantial difference. The short answer to this submission is that the rule framed under the Act cannot be construed so as to be inconsistent with the provisions of the main Act. To me it is clear the principle laid down in 10 Ele LR 14 does govern the present case also. I must observe that the language of Section 81 has been chosen to provide for cases where the dates of return of more than one candidates are different and it was not intended any way to affect the general principles governing the computation of the period of limitation. Even if the petitioner is entitled to present an election petition on the date of the return that should not affect the computation of the period of limitation in accordance with the statutory provision of law. It is worth mentioning in this connection that there is nothing to prevent a person obtaining a promissory note in his favor from instituting a suit on that very day and yet for the purpose of computing the period of limitation he is entitled to exclude the day when the promissory note was executed. The argument of the learned counsel based on the language of Section 81 is inadmissible.

15. In my opinion the petitioner is entitled to exclude 21-2-1967 both with reference to Section 12(1) of the Limitation Act read with Section 29(2) of the Limitation Act on the authority of AIR 1964 SC 1099 as also with reference to Section 9 of the General Clauses Act on the authority of 10 Ele LR 14 and the petition is within time in any

view of the matter.

16. The preliminary issue is decided against the respondent No. 1.

Order accordingly.

Cases Referred.

1. 10 Ele LR 14
2. AIR 1964 SC 1099.
3. (1952) 1 Ele LR 477
4. AIR 1959 All 54
5. AIR 1953 SC 98