

RAJASTHAN HIGH COURT

Dropadi

Vs.

Civil Judge

Civil Writ Petn. No. 2151 of 2001

(V.S. Kokje, J.)

26.07.2001

ORDER

V.S. Kokje, J.

1. The case was finally heard with the consent of the parties as the only point involved is a legal point as to whether the period for obtaining certified copy of the declaration of the election result could be excluded from the period of limitation prescribed under the Rajasthan Panchayati Raj Act, 1994 (in short 'the Act'), for the purpose of filing election petition.

2. The respondent No. 4 filed an election petition challenging the election of the petitioner. This was filed one day beyond the period of thirty days prescribed under the Act. It was contended by the election petitioner that she had filed the election petition within thirty days from the date of obtaining copy of the declaration of the election result. The point raised was as to whether the period sent in obtaining copy of the declaration of the election result could be excluded under Section 12 of the Limitation Act. Learned Civil Judge (Sr. Division) before whom the election petition is pending, heard the parties and held that the election petition was not time barred as it was filed within one month of obtaining copy of the result of the declaration. Actually, it has been held by the learned civil Judge that election petition had been filed within time and at the same time, he has held that the period spent in obtaining copy of the declaration of result of election deserved to be condoned. The petitioner challenges the action of entertaining the election petition by the learned civil Judge on the ground that it was a time barred petition and could not have been entertained. The contention of the petitioner is that Section 12 of the Limitation Act has no application to the case. Learned counsel for the respondent, on the other hand, supports the

impugned order.

3. I have heard learned counsel and perused the record. Section 43 of the Rajasthan Panchayati Raj Act, 1994 provides for the determination of dispute as to elections and reads as under :

"43. Determination of dispute as to elections.- (1) An election under this Act or the rules made thereunder may be called in question by any candidate at such election by presenting in the prescribed manner to the Distt. Judge having jurisdiction a petition in this behalf on the prescribed grounds and within the prescribed period :

Provided that an election petition presented as aforesaid may, for the reasons to be recorded, in writing, be transferred by the Distt. Judge for hearing and disposal to a civil Judge or Additional civil Judge (Senior Division) Subordinate to him.

(2) A petition presented under sub-section (1) shall be heard and disposed of in the prescribed manner and the decision of the Judge thereon shall be final."

4. Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 provides for the manner of challenging an election under the Act and provides that an election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the Distt. Judge having jurisdiction with thirty days from the date on which the result of such election is declared.

5. Section 29(2) of the Limitation Act, 1963 reads as under :

"29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 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."

6. On reading of the above provisions together, there is no doubt that the provisions of the Limitation Act from Sections 4 to 24 apply to election petition as well. This means

that Section 12 of the Limitation Act can also be pressed into service in election matters wherever it applies. Section 12 of the Limitation Act reads as under :

"12. Exclusion of time in legal proceedings.-

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the same requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or revised or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded."

7. Sub-section (1) of Section 12 of the Limitation Act requires that the date from which the period of limitation is to be counted for filing a suit, appeal or application, has to be excluded. Sub-sections (2), (3) and (4) of Section 12 of the Limitation Act relate to the exclusion of the time requisite for obtaining copy from the period of limitation. Sub-section (2) applies to appeal, an application for leave to appeal, revision or review. An election petition under the Rajasthan Panchayati Raj Act, 1994 cannot be said to be an appeal, an application for leave to appeal or application for revision or review of a judgment. Declaration of result also cannot be called a judgment. Sub-section (2) of Section 12 of the Limitation Act is therefore, clearly not applicable to the situation. Sub-section (3) of Section 12 of the Limitation Act relates to appeal, revision or review of a decree or order or leave to appeal from a decree or order and provides that the time requisite for obtaining a copy of the judgment on which the decree or order is founded, has to be excluded from the period of limitation. Obviously, an election petition under the Rajasthan Panchayati Raj Act, 1994 is not an appeal, application for revision, application for review or an application for leave to appeal from a decree or order. The declaration of result of election cannot be equated with a decree or order or judgment. Sub-section (3) of Section 12 of the Limitation Act is also therefore, clearly not applicable to the situation. Sub-section (4) of Section 12

of the Limitation Act applies to application for setting aside an Award. The declaration of result is not an Award and therefore, sub-section (4) also has no application to the election petition under the Rajasthan Panchayati Raj Act, 1994. It is, therefore, clear that benefit under sub-sections (2), (3) and (4) of Section 12 of the Limitation Act cannot be claimed for the purpose of counting limitation for an election petition under the Rajasthan Panchayati Raj Act, 1994. Of course, the date of the declaration of the result has to be excluded while computing the period of limitation for an election petition under sub-section (1) of Section 12 of the Act.

8. Learned counsel for the petitioner has relied on a decision of the Division Bench of Mysore High Court in *Nagappa v. Fakirppa*, ¹ wherein it has been held that the declaration of result of election is not an order or judgment for the purpose of Section 12(2) of the Limitation Act. The view being taken by me is therefore, reinforced by the aforesaid Division Bench decision of the Mysore High Court.

9. The writ petition, therefore, deserves to be allowed and is hereby allowed. The impugned order is set aside and the election petition is dismissed as time barred.

Petition allowed.

Cases Referred.

1. AIR 1970 Mys 73