

ANWARI BASAWARAJ PATIL AND ORS.

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v.

SIDDARAMAIAH AND ORS.

JANUARY 27, 1993

[KULDIP SINGH AND B.P. JEEVAN REDDY, JJ.]

B

Representation of the People Act, 1951 :

Section 97—Recrimination notice—Delay in filing of—Whether Section 5 of the Limitation Act, 1963 applicable.

C

Limitation Act, 1963:

Section 5—Whether applicable to recrimination notice under Representation of the People Act, 1951.

The first respondent, a defeated candidate, filed an election petition before the High Court for a declaration that the election of the appellant was void and that he himself had been duly elected. Since the notice could not be served on the appellant, and some other respondents in the ordinary course, it was published in a vernacular daily newspaper, as directed by the High Court, fixing the date of appearance of the respondents therein. The appellant appeared before the High Court on the date of publication of the notice and sought time for filing the written statement and after doing so submitted a recrimination notice under Section 97 of the Representation of People Act, 1951. Along with the recrimination notice he filed an application under Section 5 of the Limitation Act requesting the High Court to condone the delay in filing the same, since the appellant had given notice beyond the period of 14 days from the date of commencement of trial, prescribed under the proviso to Section 97(1).

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The High Court held that Section 5 of the Limitation Act was not applicable to a recrimination notice.

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Aggrieved, the appellant filed the appeal, by special leave, before this Court. It was contended that by virtue of Section 29(2) of the Limitation Act, all the provisions contained in sections 4 to 24 (both inclusive) of the Act applied to the proceedings under the Representation of the People Act, 1951, including the recrimination notice under Section 97.

H

A Dismissing the appeal, this Court,

HELD : 1.1. There is no provision in the Representation of People Act, 1951 making all or any of the provisions of the Limitation Act applicable to the proceedings under the Act. [318A]

B 1.2. The Act equates a recrimination notice to an election petition. The language of Section 97 makes the said fact abundantly clear. It provides that returned candidates or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election. The proviso to sub-section (1) applies the provisions of Sections 117 and 118 to such a recrimination notice. For non-compliance with the requirement of Section 117 an election petition is liable to be dismissed by virtue of sub-section (1) of Section 86. Sub-section (2) of Section 97 further provides that the notice referred to in sub-section (1) should be accompanied by the statement and particulars as required by Section 83 in the case of an election petition and should be signed and verified in like manner. [319C-E]

C 1.3. The proviso to sub-section (1) of Section 97 which requires such a notice to be given to the High Court within 14 days of the date fixed for the respondents to appear before the High Court to answer the claim or claims (reading the definition of 'commencement of trial' into it) has also a particular meaning and object behind it. The idea is that the recrimination notice, if any, should be filed at the earliest possible time so that both the election petition and the recrimination notice are tried at the same time. [319F]

E The recrimination notice is thus comparable to an election petition. If Section 5 of the Limitation Act, 1963 does not apply to the filing of an election petition, it does not equally apply to the filing of the recrimination notice. [319G]

F *H.N. Yadav v. L.N. Misra*, [1974] 3 S.C.R. 31, relied on.

G *V.C. Shukla v. Khubchand Baghel and Ors.*, [1964] 6 S.C.R. 129, distinguished.

H *Bhogilal Pandya v. Maharawal Laxman Singh*, AIR 1968 Rajasthan 145, *Bhakti Bh. Mondal v. Khagendra K. Bandhopandhya*, 1968 Calcutta

69, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 313 of 1993.

From the Judgment and Order dated 9.10.1992 of the Karnataka High Court in Election Petition No. 8 of 1991.

P.N. Misra for the Appellants.

R.N. Narasimha Murthy, E.C. Vidyasagar and Gopal Singh for the Respondents.

The Judgement of the Court was delivered by

B.P. JEEVAN REDDY, J. Heard the counsel for the parties. Leave granted.

This appeal raises the question whether Section 5 of the Limitation Act, 1963 is applicable to a recrimination notice given under Section 97 of the Representation of People Act, 1951. The learned Single Judge of the Karnataka High Court has held that it does not. His view is questioned by the returned candidate (first respondent in the election petition) before us.

The first respondent in the Election Petition who shall hereinafter be referred to as "appellant", was declared elected from Koppal parliamentary constituency during the general elections held for the 10th Lok Sabha. He contested on the Congress (I) ticket. The election-petitioner, referred to hereinafter as "the first respondent" had also contested from the said constituency on the ticket of Janata Dal. Having lost the election, the first respondent filed an election petition No. 8 of 1991 for a declaration that the election of the appellant from the said parliamentary constituency was void and for a further declaration that he himself has been duly elected therefrom. Since the appellant and some other respondents to the election petition could not be served in the ordinary course, the High Court directed publication of notice in a Kannada Daily Newspaper. It was so published on 4.11.1991 fixing the date of appearance of the respondents on 25.11.1991. The appellant (first respondent in the election petition) appeared before the High Court on 4.11.1991 and sought time for filing his written statement which he did on 6.11.1992. Thereafter, on 21.1.1992 he submitted the recrimination notice under Section 97 of the Act. By the said notice, the appellant expressed his intention to give evidence to prove that

A the election of the first respondent would have been void if he had been the returned candidate and a petition had been presented calling in question his election. Along with the recrimination notice he filed an application under Section 5 of the Limitation Act requesting the High Court to condone the delay in filing the same for the reasons stated therein. According to the proviso to Section 97(1), notice of such intention should have been given to the High Court "within 14 days from the date of commencement of trial". Admittedly, the appellant gave notice under Section 97(1) beyond the period of 14 days and hence the application under Section 5.

C For a proper appreciation of the question arising herein, it would be appropriate to notice the relevant provisions of the Representation of People Act besides Section 29(2) of the Limitation Act, 1963. First the provisions of the Representation of People Act. Section 97 reads as follows:

D "97. **Recrimination when seat claimed.**- (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:

F Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.

G (2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner."

H Sub-section (1) of Section 97 permits the returned candidate or any other party to give evidence (in an election petition seeking a declaration that any candidate other than the returned candidate has been duly elected) to

prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election. Sub-section (2) says that such a notice shall be accompanied by a statement and particulars required by Section 83 in the case of an election petition and shall also be signed and verified in the same manner. Proviso to sub-section (1) says that such a notice shall be given within fourteen days from the date of "commencement of trial" and the security and further security referred to in Sections 117 and 118 respectively is furnished. The expression "commencement of trial" has been defined in Explanation to Sub-section(4) of Section 86. The Explanation reads:

"For the purposes of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition."

According to the said definition, the notice of the recrimination should have been given in this case within fourteen days of 4.11.91. Admittedly, it was submitted beyond the said period. Section 83 deals with "contents of petition". According to sub-section (1) an election petition (a) shall contain a concise statement of the material facts on which the petitioner relies; (b) shall set forth particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of all the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such practice and (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso to sub-section (1) says that where a petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such practice and particulars therein. Sub-section (2) says that any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. Section 117 requires the election petitioner to deposit in the High Court, at the time of presenting an election petition, a sum of Rs. 2,000 as security for the costs of the petition in accordance with the rules of the High Court. Section 118 says that no person shall be entitled to be joined as a respondent under Sub-section (4) of Section 86 unless he has given such security for costs as the High Court may direct. Section 86(1) declares that "the

A High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117."

B There is no provision in the Representation of People Act, 1951 making all or any of the provisions of the Limitation Act applicable to the proceedings under the Act. The appellant, however, relies upon Section 29(2) of the Limitation Act. According to him by virtue of the said provision, all the provisions contained in Sections 4 to 24 (both inclusive) apply to the proceedings under the Act including the recrimination notice under Section 97. Sub-section(2) of Section 29, which alone is relied upon before us reads :

C "Where any special or local law prescribes for any suit,
D appeal or application a period of limitation different from
the period prescribed by the Schedule, the provisions of
Section 3 shall apply as if such period were the period
prescribed by the Schedule and for the purpose of deter-
E mining any period of limitation prescribed for any suit,
F appeal or application by any special or local law, the
G provisions contained in Sections 4 to 24 (inclusive) shall
H apply only insofar as, and to the extent to which, they are
not expressly excluded by such special or local law."

E In *H.N. Yadav v. L.N. Misra*, [1974] 3 S.C.R. 31, this court held that
the words "expressly excluded" occurring in Section 29(2) of the Limitation
Act do not mean that there must necessarily be express reference in the
special or local law to the specific provisions of the Limitation Act, the
operation of which is sought to be excluded. It was held that if on an
F examination of the relevant provisions of the Special Act, it is clear that
the provisions of the Limitation Act are necessarily excluded then the
benefits conferred by the Limitation Act cannot be called in aid to supple-
ment the provisions of the Special Act. That too was a case arising under
the Representation of People Act and the question was whether Section 5
of the Limitation Act is applicable to the filing of the election petition. The
G test to determine whether the provisions of the Limitation Act applied to
proceedings under Representation of People Act by virtue of Section 29(2)
was stated in the following words :

H "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."

On an examination of the provisions of the Representation of People Act and the earlier decisions of the Court, it was held that the Representation of People Act is a self-contained code and accordingly, it was concluded that "the provisions of s. 5 of the Limitation Act do not govern the filing of election petitions or their trial."

This decision, in our view, practically concludes the question before us inasmuch as the Act equates a recrimination notice to an election petition. The language of Section 97 makes the said fact abundantly clear. The relevant words are: "the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election." The proviso to sub-section (1) applies the provisions of Sections 117 and 118 to such a recrimination notice. It may be noticed that for non-compliance with the requirement of Section 117 an election petition is liable to be dismissed by virtue of sub-section (1) of section 86. Sub-section (2) of Section 97 further says that the "notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by Section 83 in the case of an election petition and shall be signed and verified in like manner." We may also say that the proviso to sub-section (1) of Section 97 which requires such a notice to be given to the High Court within fourteen days of the "date fixed for the respondents to appear before the High Court to answer the claim or claims" (reading the definition of "commencement of trial" into it) has also a particular meaning and object behind it. The idea is that the recrimination notice, if any, should be filed at the earliest possible time so that both the election petition and the recrimination notice are tried at the same time. The recrimination notice is thus comparable to an election petition. If Section 5 does not apply to the filing of an election petition, it does not equally apply to the filing of the recrimination notice.

In view of the above position, we do not think it necessary to deal with the several decisions cited before us relating to the interpretation of Sub-section (2) of Section 29 of the Limitation Act.

The counsel for the appellant brought to our notice a decision of this

A Court holding that the provisions of the Section 12(2) of the Limitation Act, 1908 are applicable to an appeal under Section 116(A) of the Representation of People Act, 1951 viz., *V.C. Shukla v. Khubchand Baghel and Ors.*, [1964] 6 S.C.R.129. It is also brought to our notice that certain High Courts have taken the view that both Section 5 and Section 12(2) of the Limitation Act are applicable to the proceedings under the Act. Reference is to 1968 Rajasthan 145, 1968 Calcutta 69 and (1976) 89 Madras La. Weekly 32. So far as the decision of this court in *V.C. Shukla* is concerned, it is a decision dealing with the applicability of the provision in Section 12(2) of the Limitation Act to an appeal preferred under Section 116(A) and not with the filing of an election petition. The said decision was considered and distinguished in *H.N. Yadav* on the above basis. At page 42 of the S.C.R., the Division Bench which decided *H.N. Yadav* distinguished the decision in *V.C. Shukla* in the following words :

D "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, s. 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 s. 5 would now apply where s. 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 s. 5 is excluded from application to such petitions."

F The Division Bench then proceeded to examine whether the applicability of Section 5 is excluded in the matter of filing of an election petition and came to the conclusion that it was so excluded. This aspect has already been dealt with hereinabove. So far as the decisions of the High Courts are concerned, we cannot agree with them in so far as the applicability of Section 5 to filing of an election petition and/or recrimination notice is concerned in view of the decision of this Court in *H.N. Yadav*.

For the above reasons, the appeal fails and is accordingly dismissed with costs.

N.P.V.

Appeal dismissed.