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SUMAN DEVI

v.

MANISHA DEVI AND ORS.

(Civil Appeal No. 8337 of 2018)

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AUGUST 21, 2018

[DIPAK MISRA, CJI AND DR. D.Y. CHANDRACHUD, J.]

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Haryana Panchayati Raj Act, 1994 – s. 176 – Election petition – Applicability of Limitation Act, when appeal filed after the period prescribed under the Act – Held: Election petition must be filed within a period of 30 days of the date of the declaration of results – Said period cannot be extended – Provision of s. 14 of the Limitation Act, 1963 is clearly excluded – Election petition which is filed after the prescribed period is barred by Limitation and is liable to be dismissed – On facts, grant of liberty to file a fresh election petition cannot obviate the bar of limitation – Fresh election petition filed by the first respondent was beyond the statutory period of 30 days, thus, is dismissed – Limitation Act, 1963 – s. 14.

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On facts, first respondent was permitted to withdraw the election petition challenging the election of the appellant-returned candidate, with liberty to institute a fresh petition. Thereafter, the first respondent filed a second election petition. Appellant filed an application under Order 7 Rule 11 CPC for rejection of the election petition on the ground that it was barred by limitation. First respondent then filed an application u/s. 5 read with Section 14 of the Limitation Act that if the limitation for filing the election petition had expired, the period spent between the filing of the earlier petition and its withdrawal may be excluded. Trial Court allowed the application under Order 7 Rule 11. However, the District Judge as also the High Court set aside the same. Hence, the present appeal.

Allowing the appeal, the Court

HELD: The Haryana Panchayati Raj Act, 1994 is a complete code for the presentation of election petitions. The statute has mandated that an election petition must be filed within a period of 30 days of the date of the declaration of results. This period

cannot be extended. The provision of Section 14 of the Limitation Act 1963 would clearly stand excluded. The legislature having made a specific provision, any election petition which fails to comply with the statute is liable to be dismissed. The High Court failed to notice both the binding judgments of this Court and its own precedents on the subject. The first respondent filed an election petition in the first instance to which there was an objection to maintainability under Order 7 Rule 11 CPC. Confronted with the objection under Order 7 Rule 11, the first respondent obviated a decision thereon by withdrawing the election petition. On facts, grant of liberty to file a fresh election petition cannot obviate the bar of limitation. The fresh election petition filed by the first respondent was beyond the statutory period of 30 days and hence is dismissed. The impugned order of the High Court is set aside. [Paras 9, 10] [33-F-H; 34-A, B]

Joginder Singh v Baldev Singh 2010 (1) PLR 769 ;
Rashpal Singh @ Rachpal Singh v Jasvir Singh 2009 (3) RCR (Civil) 408 ; *Chet Ram v State of Punjab* 2010 (4) PLR 718 ; *Darshan Singh v Karamjit Singh* 2012 (2) PLR 831 ; *Parkasho v Bhola Devi* 2012(3) PLR 541; *Deepa Mangla v Nanak Chand* CR No 523/2013 decided on 06.02.2015 ; *Hukum Dev Narain Yadav v Lalit Narain Mishra* (1974) 2 SCC 133 : [1974] 3 SCR 31 ; *Charan Lal Sahu v Nandkishore Bhatt* (1973) 2 SCC 530 : [1974] 1 SCR 294 ; *Lachhman Das Arora v Ganeshi Lal* (1999) 8 SCC 532 : [1999] 2 Suppl. SCR 174 – referred to.

Case Law Reference

2009 (3) RCR (Civil) 408	referred to	Para 3
2010 (4) PLR 718	referred to	Para 3
2012 (2) PLR 831	referred to	Para 3
2012 (3) PLR 541	referred to	Para 3
[1974] 3 SCR 31	referred to	Para 6
[1974] 1 SCR 294	referred to	Para 7
[1999] 2 Suppl. SCR 174	referred to	Para 8

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8337 of 2018.

From the Judgment and Order dated 11.08.2017 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 1120 of 2017.

B Ms. Kaveeta Wadia, Shashank Tripathi, Shish Pal Later, Johri Mal, Sonit Sinhmar, Devesh Kumar Tripathi, Advs. for the appearing parties.

The Judgment of the Court was delivered by

C **DR. D. Y. CHANDRACHUD, J.** 1. The appellant and the first respondent contested elections for the post of Ward Councilor, from Ward No 18 of the District Council of Mahendergarh. The results of election were declared on 28 January 2016. The appellant was declared to be the elected candidate. On 10 February 2016, the first respondent filed an Election Petition namely, Civil Suit 9/2016 (CS 1086/2016) under D Section 176 of the Haryana Panchayati Raj Act 1994 challenging the election of the appellant. Upon service of the election petition, the appellant filed an application under Order 7 Rule 11 of the CPC for rejection of the petition on the ground that the first respondent had failed to present it in person as required by Section 176. Notice was issued on E the application. The respondent filed her reply. On 1 March 2016, the first respondent moved an application for withdrawal of the election petition. The application was allowed by the Civil Judge, Junior Division on the same day and the first respondent was permitted to withdraw the election petition with liberty to institute a fresh petition. Subsequently on F 2 March 2016 the first respondent filed a second election petition, Civil Suit 361/2016 (CS 1106/2016). The appellant filed an application under Order 7 Rule 11 for rejection of the election petition on the ground that it was barred by limitation. An application was thereupon filed by the first respondent purportedly under Section 5 read with Section 14 of the G Limitation Act submitting *inter alia* that if the limitation for filing the election petition had expired, the period spent between the filing of the earlier petition and its withdrawal may be excluded since the first respondent was *bona fide* espousing her remedies. The appellant opposed the application.

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2. By a judgment dated 19 July 2016 the Trial Court allowed the application under Order 7 Rule 11 on the ground that the fresh election petition was presented after the expiry of 30 days prescribed for the institution of an election petition. The first respondent preferred an appeal which was allowed by the District Judge, Narnaul on 18 January 2017. The appellant challenged the order of the District Judge before the High Court. The Civil Revision has been dismissed by the impugned order of the High Court dated 11 August 2017. The High Court has observed thus:

“The application under Section 14 of the Limitation Act was filed subsequently when petitioner herein raised an objections(sic). Section 14 of the Limitation Act does not provide for filing of a separate application. In any case, now application under Section 14 of the Limitation Act has already been filed, therefore, the irregularity, if any, stand cured.”

3. The learned counsel appearing on behalf of the appellant submits that the Haryana Panchayati Raj Act 1994 is a complete code for the presentation and adjudication of election petitions. Counsel submitted that an election petition has to be instituted under Section 176 within 30 days from the date of the declaration of the results of the elections. An election petition which does not comply with Section 176 must be rejected outright. Learned counsel submitted that this view has consistently been followed in several decisions of the Punjab and Haryana High Court, to which a reference was made. These are: **Joginder Singh v Baldev Singh**¹, **Rashpal Singh @ Rachpal Singh v Jasvir Singh**², **Chet Ram v State of Punjab**³, **Darshan Singh v Karamjit Singh**⁴, **Parkasho v Bhola Devi**⁵ and **Deepa Mangla v Nanak Chand**⁶.

4. On the other hand, learned counsel appearing on behalf of the first respondent submitted that a triable case arises against the appellant for submitting a false certificate of Matriculation and hence, the order of the High Court may not be interfered with.

¹2010(1) PLR 769 paras 6 & 7

²2009(3) RCR (Civil) 408

³2010(4) PLR 718

⁴2012(2) PLR 831

⁵2012(3) PLR 541

⁶CR No 523/2013 decided on 06.02.2015

A 5. Section 176 of the Haryana Panchayati Raj Act 1994 provides as follows:

176. Determination of validity of election enquiry by judge and procedure:

B (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or 2 [* * *] Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election ,

C present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

D (2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where

E no such further relief is claimed, all the returned candidates ;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

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(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

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1[(aa) If on holding such enquiry the Civil Court finds that-

(i) on the date of his election a returned candidate was not qualified to be elected;

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(ii) any nomination has been improperly rejected; or A

(iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.]; B C

(b) If, in any case to which 2[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected : Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine. D E

(5) A person shall be deemed to have committed a corrupt practice- F

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or G

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A (c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

B Explanation 1.— A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

C Explanation 2.— The expression “vehicle” means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.”

D Sub-section (1) of Section 176 clearly specifies a period of 30 days from the date of the declaration of the results of the election within which an election petition has to be filed. There is no provision for condoning delay or for extending the period of limitation.

E 6. In **Hukum Dev Narain Yadav v Lalit Narain Mishra**⁷, while considering whether the provisions of the Limitation Act 1963 would be applicable to an election petition under the Representation of People Act 1951, P.Jaganmohan Reddy, J., speaking for a three Judge bench of this Court held thus:

F “..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.”

This Court held that the provisions of Section 5 of the Limitation Act do not govern filing of election petitions or their trial.

G 7. In **Charan Lal Sahu v Nandkishore Bhatt**⁸, a two Judge bench held that there is no common law right to challenge an election since it is purely a matter of regulation by the terms of the statute. The right being statutory, the terms of the statute must be complied with.

⁷(1974) 2 SCC 133

H ⁸(1973) 2 SCC 530

8. A three Judge bench of this Court in **Lachhman Das Arora v Ganeshi Lal**⁹, construed the provisions of Section 81 (1) of the Representation of the People Act 1951, which prescribes a period of 45 days to file an election petition. Chief Justice Dr AS Anand, speaking for the Court, held thus:

“7. On its plain reading, Section 81(1) lays down that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 of the Act to the High Court by any candidate at such election or by an elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates. The Act is a special code providing a period of limitation for filing of an election petition. No period for filing of an election petition is prescribed under the Indian Limitation Act. The Act insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-five days, Section 86(1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, is straightaway attracted.”

9. The Haryana Panchayati Raj Act 1994 is a complete code for the presentation of election petitions. The statute has mandated that an election petition must be filed within a period of 30 days of the date of the declaration of results. This period cannot be extended. The provision of Section 14 of the Limitation Act 1963 would clearly stand excluded. The legislature having made a specific provision, any election petition which fails to comply with the statute is liable to be dismissed. The High Court has failed to notice both the binding judgments of this Court and its own precedents on the subject, to which we have referred. The first respondent filed an election petition in the first instance to which there was an objection to maintainability under Order 7 Rule 11 of the CPC. Confronted with the objection under Order 7 Rule 11, the first respondent obviated a decision thereon by withdrawing the election petition. The

⁹(1999) 8 SCC 532

A grant of liberty to file a fresh election petition cannot obviate the bar of limitation. The fresh election petition filed by the first respondent was beyond the statutory period of 30 days and was hence liable to be rejected.

10. We, accordingly, allow the appeal and set aside the impugned order of the High Court dated 11 August 2017. We hold that the election petition filed by the first respondent shall stand dismissed There shall be no order as to costs.

Nidhi Jain

Appeal allowed.