

CASE NO.:
Appeal (civil) 652 of 2002

PETITIONER:
SHAIK SAIDULU @ SAIDA

Vs.

RESPONDENT:
CHUKKA YESU RATNAM & ORS.

DATE OF JUDGMENT: 23/01/2002

BENCH:
G.B. Pattanaik & R.P. Sethi

JUDGMENT:
(CA No.653 of 2002 @ SLP 8744 of 2001)

J U D G M E N T

SETHI, J.

Leave granted.

Both the appeals are filed against the similar orders of the High Court by which the election petitions filed by the appellants under Section 71 of the Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as "the Act") were dismissed on the ground that such petitions were barred by limitation. The High Court held that the provisions of Section 671 of the Act were not applicable to an election petition filed under Section 71 of the said Act. To arrive at such a conclusion, the High Court held that applications, referred to in Section 671 of the Act, did not include within its ambit, an election petition, as provided under the Act vide Section 71. The only question of law, argued before us, which would decide the fate of the appeals, is as to whether Section 5 of the Limitation Act is applicable to the election petitions filed under the Act or not.

The facts giving rise to the filing of the appeals are that the appellant Shaik Saidulu @ Saida (in Civil Appeal arising out of SLP 8034 of 2001) filed nomination for the post of Mayor of Guntur Municipal Corporation on behalf of Indian National Congress Party on 21.2.2000. Upon scrutiny, the nomination papers of the parties contesting the appeals, were found to be in order. Elections were held on 9.3.2000 and the first respondent, who contested the elections as a candidate of Telugu Desam party, was declared elected to the post of Mayor, Guntur Municipal Corporation on 11.3.2000. Aggrieved by the result of the election, the appellant filed an election petition before the District Judge, Guntur on 29.3.2000 which was returned to him on 31.3.2000 on the ground that the District Judge was not the Tribunal to hear the election petition. The Election Tribunal was constituted in the first week of May, 2000 when the courts were closed for summer vacation and its notification was allegedly published on 28.5.2000. After re-opening of the courts, the appellant again filed the election petition before the District Judge, Guntur on 3.6.2000, allegedly not being aware of the constitution of the Election Tribunal. His election petition was again

returned on 17.6.2000. After coming to know about the constitution of the election Tribunal, the appellant presented the election petition before the Tribunal at Hyderabad on 22.6.2000. The Tribunal returned the election petition allowing the appellant 7 days time for filing the election petition along with application for condonation of delay. As per direction of the Election Tribunal, the appellant again filed his election petition with an application under Section 5 of the Limitation Act seeking the condonation of delay of 42 days in filing the election petition. The Election Tribunal allowed IA No.6 of the appellant and condoned the delay in filing the petition. Aggrieved by the order passed by the Election Tribunal, the respondent No.1 moved the High Court of Andhra Pradesh invoking its extraordinary jurisdiction under Article 227 of the Constitution of India praying for the dismissal of the election petition of the appellant on the ground of being barred by limitation. The High Court allowed the petition vide the order impugned in this appeal and held the petition filed by the appellant barred by time.

The appellant Gogineni Sujatha (in Civil Appeal arising out of SLP 8744 of 2001) was a candidate to the elections of a Member of Vijayawada Municipal Corporation from Ward No.32. The respondent No.1 in that appeal was declared elected as Member of the Municipal Corporation from Ward No.32 on 9.3.2000. The appellant filed an election petition in the court of District and Sessions Judge, Krishna on 3.5.2000 as by that time no Election Tribunal, as contemplated under the Act, had been constituted. The Government constituted the Election Tribunal for the area on 13.5.2000, admittedly, after the period of limitation prescribed for filing the election petition under the Act. When the Election Tribunal issued notice regarding its appointment and invited applications for disputes with respect to the elections to the Municipal Corporations of Andhra Pradesh on 24.5.2000, the District Judge, Krishna returned the election petition of the appellant on 25.5.2000 directing him to file the same before the appropriate Tribunal by granting him seven days time. The appellant presented the election petition before the Election Tribunal at Hyderabad on 29.5.2000, concededly within the time allowed by the District Judge for presentation of such a petition. The appellant also filed an application for condonation of delay of 18 days under Section 5 of the Limitation Act. The Election Tribunal accepted the prayer and condoned the delay of 18 days vide its order dated 13.9.2000. Not satisfied with the order of the Tribunal, the respondent No.1 moved the High Court invoking its powers under Article 226 of the Constitution of India, praying that the order of the Election Tribunal be set aside. The High Court allowed the prayer of the respondent No.1 and held the election petition, filed by the appellant, not maintainable as per Limitation Act.

There is no dispute that the elections of the Mayor and the Members of the Corporations are governed by the provisions of the Act. Any person aggrieved has a right to challenge the election by way of an election petition under the Act. Section 71 of the Act provides: "Election Petition: (1) No election held under this Act shall be called in question except by an election petition which shall be presented in such manner as may be prescribed.

(2) An Election petition calling in question any election may be presented on one or more of the grounds specified in clauses (i) and (ii) of Sections 79 and 80 to the Election Tribunal by any candidate at such election or any voter, within two months 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 the election are different is the latter of those two dates."

Even though the period of limitation for challenging the election petition, under the Act, is provided vide sub-section (2) of Section 71, yet the Section or the Chapter in which it appears, does not stipulate as to the applicability or non-applicability of the provisions of the Limitation Act. However, Section 671, appearing in the Part of Miscellaneous Provisions under the Act, provides that in computing the period of limitation, fixed for an appeal or application, referred to in the Act, the provisions of Sections 5, 12 and 13 of the Limitation Act shall, so far as may be, apply. Sub-section (2) of Section 671 provides that when no time is fixed by the Act for the presentation of an appeal or application such appeal or application shall be presented within 30 days from the date of order in respect of or against which the appeal or application is presented.

This Court in *Hukumdev Narain Yadav v. Lalit Narain Mishra* [1974 (3) SCR 31] held that the provisions of Section 10 of the General Clauses Act would certainly apply to election petition filed under the Representation of People Act, 1951 without specifically deciding the applicability of Section 4 of the Limitation Act to the election petitions. The Court held that the applicability of Section 5 of the Limitation Act to election petitions, filed under the Representation of People Act, can be determined upon the terms of Section 29(2) of Limitation Act. It held:

"Whether s.5 could be invoked would also depend on the applicability of sub-s.(2) of s.29 of the Limitation Act to election petitions. Under this sub-section where a special or local law provides for any suit, appeal or application a period different from the period prescribed therefor by the Schedule, the provisions specified therein will apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. Under s.29(2) of the Limitation Act of 1908 as amended in 1922, only s.4, ss.9 to 18 and s.22 of that Act applied ordinarily unless excluded by a special or local law."

The Court further held:

"It was sought to be contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But this is not what s.29(2) of the Limitation Act says, because it provides that ss.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. If none of them are excluded, all of them would become applicable. Whether those sections are applicable is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. A person who is a minor or is insane or is an idiot cannot file an election petition to challenge an election, nor is there any provision in the Act for legal representation of an election petitioner or respondent in that petition who dies, in order to make s.16 of the Limitation Act applicable. 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 s.29(2) of that Act."

Again in Mangu Ram v. Municipal Corporation of Delhi [1976 (2) SCR 260], this Court held that the provisions of Section 5 of the Limitation Act were not applicable to the election petitions as sub-section (2) of Section 29 of the Limitation Act specifically excluded the applicability of Section 5 of the Limitation Act. However, in Limitation Act of 1963, sub-section (2) of Section 29 was deleted and the provisions of Sections 4 to 24 (inclusive) were made applicable to any special or local law prescribing different period of limitation for any suit, appeal or application. It was held that for non-applicability of Section 5 of the Limitation Act, the exclusion must be specific under the special statute.

In this case, the High Court, vide impugned order, made a distinction between application and petition to hold that the election petition, under the Act, was not an application referred to in Section 671 of the Act. Neither the application, nor the election petition is defined under the Act. The Dictionary meaning of the word "application" is: "(1) a formal request to an authority, (2) the action of putting something into operation, practical use or relevance, (3) the action of applying something to a surface, (4) sustained effort, (5) computing a program or piece of software designed to fulfil a particular purpose". The word "application" could be understood in a generic sense as a prayer made to an authority for some relief to set aside an order of another authority.

This Court in Prem Raj v. Ram Charan [AIR 1974 SC 968] observed that the plaint, which makes a request to the court, is an application. However, written statement was held not to be an application because it does not include any request to the court.

In P. Philip v. The Director of Enforcement, New Delhi & Anr. [AIR 1976 SC 1185] the Court held the word "application" is synonymous with the term "petition" which means a written statement of material facts, requesting the court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognised by law.

We have no doubt in holding that the word "application", as used in Section 671 of the Act, would include within its ambit an election petition wherein a voter or the candidate makes the prayer to the court and seeks the redressal of his grievances regarding the conduct of the elections. Holding election petition not to be covered within the term "application" would amount to adopting a hyper-technical approach which would defeat the very purpose of the Act and the provisions made therein for disputing the authenticity and the conduct of the election. To overcome the confusion regarding the definition between the application and the petition, a new definition of an application was inserted in the Limitation Act, 1963 which defined it to include a petition. The object of the new definition is to provide a period of limitation for original applications, interlocutory applications and petitions under special law, to which the Act has been made applicable.

In our considered opinion the High Court was not justified in holding that the election petition was not an application within the meaning of Section 671 of the Act. Sub-section (2) of Section 71 of the Act specifically provides the period of limitation for filing the election petition for which sub-section (1) of Section 671 of the Act would be applicable to attract the sub-section (2) of Section 71 thereby applying the provisions of Section 5 of the Limitation Act to the election petitions filed under the Act.

We do not agree with the submissions made on behalf of the respondent that no period of limitation is prescribed for the election petition and that the provisions of sub-section (2) of Section 671 would be attracted excluding the applicability of Section 5 of the Limitation Act. The harmonious interpretation of various provisions of the Act

would clearly show that the election petition was intended to be taken, by the Legislature, as an application for the purposes of limitation in terms of Section 671. Taking any other view would defeat the very purpose of the enactment providing for filing of an election petition calling in question any elections on the grounds specified under the Act. The remedy provided under a statute cannot be defeated under the cloak of technicalities by adopting a hyper-technical approach. The free and fair elections are a guarantee of the democratic polity and for achieving such an objective various provisions are made applicable to the election laws, most important of which is the remedy of challenging the elections on the grounds specified under the statute. In the absence of the applicability of Section 5 of the Limitation Act, the rights of the aggrieved person, intended to challenge an election, can be defeated by the executive of the State by not appointing the Election Tribunal as is shown to have been done in the instant cases. In the appeal filed by Gogineni Sujatha, it is not disputed that the Election Tribunal was constituted after the expiry of period of limitation prescribed for filing an election petition. Similarly in the case of Shaikh Saidulu @ Saida sufficient time was allowed to lapse preventing the filing of the election petition for no fault of the appellant. Can an interpretation be accepted which facilitates the defeating of purpose of the Act? The answer is emphatically, No.

In the instant appeals, the High Court appears to have adopted a very technical approach by totally ignoring the purpose and object of the Act and the conduct of the respondents in not constituting the Tribunal, with the result of preventing the aggrieved from approaching the Tribunal to challenge the election by way of election petition. The orders of the High Court, being contrary to law, are thus not sustainable.

The appeals are allowed accordingly by setting aside the impugned orders and remitting the cases back to the Election Tribunal for deciding the election petitions on merits. No order as to costs.

.....J.
(G.B. Pattanaik)

.....J.
(R.P. Sethi)

January 23, 2002