



2026:AHC:120626

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 26552 of 2024

Ajeet Nigam

.....Petitioner(s)

Versus

Additional District Judge And 5 Others

.....Respondent(s)

Counsel for Petitioner(s) : Sanjai Kumar

Counsel for Respondent(s) : Akshat Sinha, C.S.C., Sanyukta Singh

AFR

Reserved on 18.05.2026

Delivered on 26.05.2026

Court No. - 5

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Sanjay Kumar, learned counsel for the petitioner, Sri Sanjay Kumar Singh, learned Additional Chief Standing Counsel for respondent Nos. 1, 3, and 4, and Sri Akshat Sinha for respondent No. 2.
2. Though notices were issued to respondent Nos. 5 and 6 but as per the office report dated 23.10.2024, the notices have been delivered. Till the dictation of the orders, nobody has put in appearance on behalf of respondent Nos. 5 and 6.
3. A joint statement has been made by learned counsel for the parties that they do not propose to file any further affidavit. With the consent of the parties, the writ petition is being decided at the admission stage.
4. The case of the writ petitioner, as worded in the present petition, is that the State Election Commission had issued a notification bearing No. 206/Ra.Ni.Aa.Anu.4/Na.Ni./2023/Lucknow dated 09.04.2023 for the election of Corporators in Nagar Nigam throughout the State of U.P. The writ petitioner herein claims to have contested the election of Corporator, Ghaziabad Nagar Nigam, Ward No. 96, Nehru Nagar-III, on the symbol of camera. Respondent Nos. 2, 5, and 6 also contested the said election, which was scheduled on 11.03.2023. The petitioner was declared elected as the Corporator of Ghaziabad Nagar Nigam, Ward No. 96, Nehru Nagar-III, on 13.05.2023.

5. Being aggrieved by the declaration of the result of the Corporator, Ghaziabad Ward 96, Nehru Nagar-III, the respondent No. 2, Anil Swami son of Sri Krishna Bhargawa, instituted an Election Petition No. 20 of 2023 under Section 62 of the U.P. Municipal Corporation Act, 1959, questioning the election of the writ petitioner before the Court of District Judge, Ghaziabad. The election petition was presented on 01.07.2023. On the presentation of the election petition, the Court of District Judge, Ghaziabad, issued notices to the defendants in the said election petition.

6. Written statements came to be filed on 08.01.2024 by the petitioner-defendant. However, as many as 11 issues were framed by the Court of District Judge, Ghaziabad, on 28.03.2024, which are as under:-

- "(1) क्या याची के द्वारा याचिका में दिये गये आधारों पर विपक्षी सं० 1 का निर्वाचन शून्य घोषित कराने एवं स्वयं को निर्वाचित घोषित कराने का अधिकारी हैं?
- (2) क्या याची के द्वारा याचिका में दिये गये आधारों पर विपक्षी सं० 2 व 3 के विरुद्ध दण्डात्मक विभागीय कार्यवाही याचित किये जाने योग्य हैं?
- (3) क्या याची द्वारा याचिका का मूल्यांकन कम किया गया हैं?
- (4) क्या याची द्वारा याचिका में अदा किया गया न्यायशुल्क अपर्याप्त हैं?
- (5) क्या याचिका अवधि बाधित हैं?
- (6) क्या याचिका दोषपूर्ण होने के कारण आदेश 7 नियम-11 सी पी सी के प्रावधानों से बाधित हैं?
- (7) क्या याचिका राज्य निर्वाचन आयोग उत्तर प्रदेश के आदेश संख्या 688/रा०नि०आ० अनु० 4/2023 दिनांकित 21 जून 2003 से बाधित हैं?
- (8) क्या याचिका में पक्षकारों का कुसंयोजन एवं असंयोजन का दोष हैं?
- (9) क्या विपक्षी सं० 2 एवं 3 धारा 35 ए सी पी सी के तहत विशेष हर्जा पाने के अधिकारी हैं?
- (10) क्या याचिका उत्तर प्रदेश नगर निगम 1959 की धारा-71 के प्रावधानों से बाधित हैं?
- (11) क्या याची किसी अनुतोष को पाने का अधिकारी हैं?"

7. Vide order dated 31.05.2024 passed in Election Petition No. 20 of 2023, besides other issues, Issue No. 5 relating to the fact as to whether the election petition was time-barred or not was considered, the issue came to be decided in favor of the election petitioner and against the returned candidate (writ petitioner).

8. Questioning the order dated 31.05.2024 passed by the Court of Additional District Judge Court No. 6, Ghaziabad, in Election Petition No. 20 of 2023,

to the extent of deciding Issue No. 5 against the returned candidate (writ petitioner) in favour of respondent No. 2, the present petition has been preferred.

9. This Court entertained the writ petition on 04.09.2024 while passing the following order.-

"1. Heard learned counsel for the petitioner.

*2. Learned counsel for the petitioner submitted that election of Corporator was held on 11.05.2023 and the result was declared on 13.05.2023, in which petitioner was declared as elected candidate. He next submitted that against the aforesaid election respondent No. 2 has filed election petition No. 20 of 2023, who has also contested the aforesaid election. He next submitted that post of Mayor, Corporation is governed by the Uttar Pradesh Nagar Nigam Adhiniyam, 1959, Rule 62 of which provides objection upon the election of the Corporator and Rule 60(2) provides limitation of 30 days in which election petition shall be produced before the District Judge. He next submitted that admittedly election petition was filed with delay of 18 days and Issue No. 5 was also framed to this effect and ultimately, the same was decided in favour of respondent No. 2 on the ground that court was closed in the summer vacation and election petition was filed on the opening day after the summer vacation, therefore, he is entitled for the benefit of limitation. He next submitted that law is settled on the point that election petitions are accepted in the office of District Judge and further, this issue was dealt by this Court on many occasions and the Court has taken the firm view that in the election petition benefit of limitation would not be applicable. Therefore, impugned judgment and order dated 31.05.2024 is bad and liable to be set aside. In support of his contention, learned counsel for the petitioner placed reliance upon the judgments of Hon'ble Apex Court in the matter of **Reji Thomas and Others Vs. State of Kerala and Others: 2018 LawSuit(SC) 555**, judgment of this Court in the matter of **Shahnawaz Ali Vs. Election Tribunal District Judge Muzaffarnagar And 10 Others: 2024 LawSuit(All) 2010 & Civil Misc. Writ Petition No. 56867 of 2012 (Smt. Sharda Devi Vs. State of U.P. through Secretary and Ors.)**, judgment of Bombay High Court in the matter of **Ashok Shankarrao Chavan Vs. Anil Trayambakrao Patil: (1988)90BOMLR39**, judgment of Mysore High Court in the matter of **P Narappa Vs. A Shanker Alva: 1927 LawSuit(Kar)91**.*

3. *Matter requires consideration.*

4. *Issue notice to 2, 5 & 6, returnable within six weeks. Steps be taken within a week.*

5. *List this case on 23.10.2024.*

6. *Until further order of this Court, effect and operation of impugned judgment and order dated 31.05.2024 and further proceeding of Election Petition No. 20 of 2023 shall remain stayed."*

10. Assailing the order dated 04.09.2024, the second respondent, Anil Swami, election petitioner, preferred **Special Leave Petition (Civil) Diary No(S). 11311 of 2026**, in which the following orders were passed on 23.03.2026.-

"Delay condoned.

We have heard the learned counsel appearing for the petitioner.

In as much as the special leave petition has been filed against an interim order, we find no reason to interfere with the same.

However, taking into consideration the submission made by the learned counsel appearing for the petitioner and the fact that we are dealing with an election petition pertaining to an election that was conducted on 13th May 2023, we request the High Court to dispose of Writ (C) No.26552/2024 within a period of four months.

The Special Leave Petition stands disposed of, accordingly.

Pending application(s), if any, shall also stand disposed of."

11. Counter and rejoinder affidavits have been exchanged between the parties which are available on record.

12. Learned counsel for the returned candidate, the writ petitioner has sought to argue that the order dated 31.05.2024 passed by the Election Tribunal/Additional District Judge Court No. 6, in Election Petition No. 20 of 2023, deciding Issue No. 5 against the election returned candidate, cannot be sustained even for a single moment. Elaborating the submission, it is contended that as per sub-section (4) of Section 62 of the 1959 Act, the election of a Corporator can be challenged by an unsuccessful candidate while presenting an election petition before the Election Tribunal exercising jurisdiction in the city within 30 days of the declaration of the result of the election. Argument is that, as per the own saying of the election petitioner, the elections were conducted on 11.05.2023 and the results came to be

declared on 13.05.2023. Thus, the election petition could only be filed within 30 days, i.e. by 12.06.2023, however, the same came to be filed beyond 30 days, i.e. on 01.07.2023 which is after a delay of 18 days. Submission is that the provisions contained under the Limitation Act, 1963 are thoroughly inapplicable, and thus in absence of any provision for condonation of delay, it was not open for the Election Tribunal to have entertained the election petition. It is submitted that though the consideration which weighed with the election tribunal in treating the election petition to be within time on the premise that there happen to be summer vacations in the district court and the civil work came to be suspended and only criminal matters were being entertained is not a ground to hold the election petition to be within time while extending the period of limitation particularly when, though the courts dealing with civil matters are closed and civil work is not conducted but the office remains open and in order to overcome the hurdle of delay, it was always open for the election petitioner to have presented the election petition during the summer vacation before the Munsarim or the officers so authorized by the District Judge in the district court and while not doing so, the election petition was beyond the limitation period. In order to buttress the submission, reliance has been placed upon the judgment of the Hon'ble Apex Court in **Reji Thomas and Others Vs. State of Kerala and Others: 2018 LawSuit(SC) 555**, judgment of this Court in the matter of **Shahnawaz Ali Vs. Election Tribunal District Judge Muzaffarnagar And 10 Others: 2024 LawSuit(All) 2010 & Civil Misc. Writ Petition No. 56867 of 2012 (Smt. Sharda Devi Vs. State of U.P. through Secretary and Ors.)**, judgment of Bombay High Court in the matter of **Ashok Shankarrao Chavan Vs. Anil Trayambakrao Patil: (1988)90BOMLR39**, judgment of Mysore High Court in the matter of **P. Narappa Vs. A Shanker Alva: 1927 LawSuit(Kar)91**. Thus, it is prayed that the order dated 31.05.2024 passed by the Election Tribunal deciding Issue No. 5 against the petitioner/returned candidate and in favour of the election petitioner/respondent No. 2 be set aside, and the petition be allowed in toto.

13. Countering the submissions so made by the learned counsel for the petitioner, Sri Akshat Sinha, who appears for the election petitioner/ second respondent, has submitted that none of the contentions so raised by the learned counsel for the petitioner has any legs to stand. The submission is that though the provisions of the Limitation Act, 1963 do not apply in the

proceedings pertaining to the election of Corporator under the 1959 Act but the provisions contained under Section 10 of the U.P. General Clauses Act, 1904 squarely applies. The argument is that though the election took place on 11.05.2023, the result was declared on 13.05.2023 and as per sub-section 4 of Section 62 of the 1959 Act, the election petition is to be presented before the District Court exercising jurisdiction within 30 days of the declaration of the result. Thus, the limitation period was till 12.06.2023. However, since there were summer vacations in the District Court and the civil work was suspended, and only criminal work was being conducted, and an election petition being a civil dispute could not be entertained, thus, on the conclusion of the summer vacation and opening of the court on 1st July 2023, the election petition came to be presented. Thus, according to the election petitioner, there is no delay in filing the election petition. Reliance has been placed upon the decision of the Hon'ble Supreme Court in **(H. H. Raja) Harinder Singh vs. S. Karnail Singh, AIR 1957 SC 271.**

14. The learned Additional Chief Standing Counsel, who appears for the State, has adopted the submissions so made by the learned counsel for the election petitioner/second respondent, and according to him, he has nothing to add except the fact that the order passed by the election tribunal cannot be faulted in any manner whatsoever.

15. I have heard the submissions so made across the bar, and perused the record.

16. Before embarking and inquiry upon the tenability of the arguments of the rival parties, it would be apposite to have a survey of the statutory provisions governing the field.

U.P. Municipal Corporation Act, 1959

"62. Questioning of election of (Corporator).- [(1) The election of any person as [Corporator] may be questioned by any unsuccessful candidate at the election, or by any person whose nomination paper was rejected at the election, or by any elector of the ward concerned.]

(2) The petition may be presented on any one or more of the grounds mentioned in Section 71.

(3) The election of any person as (Corporator) shall not be questioned on the ground that the name of any person qualified to vote, has been omitted from, or the name of any person not qualified to vote, has been inserted in the

electoral roll or rolls.

[(4) The petition shall be presented to the District Judge exercising jurisdiction in the City within 30 days of the declaration of result of the election.]"

Uttar Pradesh General Causes Act, 1904

"10. Competition of time.- whereby any Uttar Pradesh Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then if the court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open. Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies."

General Rules (Civil), 1957

"[13. Work on Holidays.- Except with the consent of the parties, no suit, case, or appeal shall be heard on a day declared holidays for the subordinate Courts:

Provided that on a day declared holiday for the subordinate Courts, a Courts shall not refuse to do any act or make any order urgently required or which may with propriety be done or made out of Court.

32. Time for Presenting Applications.- Except as otherwise provided by these rules, applications and petitions which can be presented to the Munsarim of a Court shall be received on any day other than an authorised holiday between 10:30 a.m. and such hour as may be fixed by the Court:

Provided that an application or petition presented after such hour and before 4:00 p.m. may be received on the ground, if any, of limitation or any other urgent reason. The Presiding Officers when accepting complaints or applications after Court hours will note on such papers the time of their presentation."

17. Facts are not in issue. It is not in dispute that the election of the Corporator, Ghaziabad Nagar Nigam, Ward No. 96, Nehru Nagar-III, came to be conducted on 11.05.2023. It is also not in dispute that the result was declared on 13.05.2023, and the petitioner herein became the returned candidate. Parties are in agreement that for questioning the election of the Corporator, there happens to be a provision, being Section 62 of the U.P. Municipal Corporation Act, 1959. Perusal of the said provision would go to

show that the election of a Corporator may be questioned by an unsuccessful candidate at the election, or by a person whose nomination paper was rejected at the election, or by an elector of the ward concerned, on the specified grounds. As per sub-section (4) of Section 62 of the 1959 Act, the election petition is to be presented before the District Judge exercising jurisdiction in the city within 30 days of the declaration of the result of the election. Meaning thereby, the time period for presenting the election petition is within 30 days of the declaration of the result. As a matter of fact, it is also not in dispute between the parties that there happened to be summer vacations in the month of June 2023, i.e., from 1st June 2023 to 30th June 2023.

18. Interestingly, there is no dispute between the parties, and it is a matter of common knowledge also, that during the summer vacations, criminal work is being conducted irrespective of the summer vacations being there. However, so far as the civil work is concerned, only urgent matters are being entertained. The bone of contention between the parties is whether the non-functioning of the judicial work on civil side would be a ground not to present the election petition or not. In order to address the said issue, what would be relevant would be the notifications/circulars/orders issued from time to time either by the High Court on the administrative side or by the District Judge in that regard.

19. Rule 13 of the General Rules (Civil), 1957 talks about the work on holidays. According to it, except with the consent of the parties, no suit, case, or appeal shall be heard on a day declared a holiday for the subordinate courts and there is a proviso appended thereto that on a day declared a holiday for the subordinate courts, a court shall not refuse to do an act or make any order urgently required, or which may with propriety be done or made out of court.

20. Next comes Rule 32 of the 1957 Rules which itself provides for the time for presenting applications. According to which, except as otherwise provided by the Rules, applications and petitions which can be presented to the Munsif of a court shall be received on any day other than an authorized holiday between 10:30 AM and such hour as may be fixed by the court. A proviso is also appended thereto that the application or petition presented after such hour and before 4:00 PM may be received on the ground of limitation or any other reason, and the presiding officer then accepting

claims or applications after court hours will note on the paper the time of presentation.

21. Rule 13 and Rule 32 of the rules operate on different fields. Rule 13 talks about work on holidays, wherein even on holidays, with the consent of the parties, urgent matters can be entertained, whereas Rule 32 stipulates the time for presenting applications, and in urgency, beyond office hours, on exceptional reasons, while recording the same, the petitions can be accepted.

22. Now the next question which arises for consideration is whether there happens to be any specific notification issued for acceptance of an election petition during the vacations, either summer or winter. On a pointed query being raised to the parties, whether there happens to be any specific notification in that regard, the answer is in the negative. Notably, there is no provision under the 1959 Act which makes the Limitation Act, 1963 applicable. Thus, the courts, by a judicial fiat, cannot extend the period of limitation so stipulated in the statute for presenting the election petition.

23. Another aspect which needs to be noticed is the applicability of the U.P. General Clauses Act, 1904. Section 10 of the U.P. General Clauses Act, 1904 throws light upon the said aspect, according to which, an act or proceeding is directed to be allowed to be done or taken in any court or office on a certain day or within a prescribed period, then if the court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or the office is open. Meaning thereby, that once the courts are closed and the limitation period comes to an end on the date when the courts are closed, then on the opening day, if the proceedings are undertaken, then it would be within time and not time-barred. The issue whether the provisions of Section 10 of the General Clauses Act stands applicable in matters pertaining to election petitions is no more res integra. As the Hon'ble Apex Court in **(H. H. Raja) Harinder Singh (supra)** observed as under.-

"(5) This argument proceeds on an interpretation of S. 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section the act should be considered holiday,

then accorded to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days, provided in R. 119 (a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are "within fourteen days" or "not later than fourteen days". That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to S. 81 of the Act. Section 81 (1) enacts that the election petition may be presented "within such time as may be prescribed", and it is under this section that R. 119 has been framed. It is obvious that the rule-making authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words "not later than fourteen days" must be held to mean the same thing "within a period of fourteen days". Reference in this connection should be made to the heading of R. 119 which is, "Time with-in which an election petition shall be presented". We entertain no doubt that the Legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding that S. 10 is not applicable to petitions falling within R. 119."

24. The view taken in **(H. H. Raja) Harinder Singh (supra)** came to be followed in **Hukumdev Naraian Yadav Vs. Lalit Narain Mishra (1974) 2 SCC 133**, wherein the following was observed.-

"5. On the question whether the petitioner could have filed the petition on Saturday, March 18, 1972, what has to be seen is whether the Court can be said to be closed within the meaning of either Section 4 of the Limitation Act, 1963, or Section 10 of the General Clauses Act, 1897, because under both the provisions where the prescribed period of limitation expires on a day when the Court is closed the petition could be filed on a day when the Court re-opens. Where, however, the provisions of the Limitation Act apply, the proviso to Section 10(1) of the General Clauses Act in terms makes that provision itself inapplicable. Under Section 4 of the Limitation Act it is provided that where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court re-opens. The Explanation thereof states

that a Court shall be deemed to be closed on any day within the meaning of that Section if during any part of its normal working hours it remains closed on that day. It was sought to be contended that even if the Limitation Act applies, Section 4 would not apply because an election petition is neither a suit, nor an appeal nor an application, notwithstanding the definition of "application" contained in Section 2(b) of the Limitation Act as including a petition. It is, in our view, unnecessary to examine the submission in this context because even if Section 4 of the Limitation Act does not apply, Section 10 of the General Clauses Act will certainly apply to election petitions to be filed under the Act as held by this Court in **H. H. Raja Harinder Singh v. S. Karnail Singh**. In that case an election petition had to be filed under Rule 119(a) of the Election Rules not later than fourteen days from the terminus a quo prescribed therein, but as the day on which it could be filed was a Sunday he filed it on the next day. The contention of the Solicitor-General was that Section 10 of the General Clauses Act:

"can apply on its own terms only when the act in question is to be done 'within a prescribed period', that under Rule 119(a) of the Election Rules the petition has to be filed 'not later than' fourteen days, that the two expressions do not mean the same thing, the words of the Rule being more peremptory, and that accordingly Section 10 of the General Clauses Act cannot be invoked in aid of a petition presented under Rule 119, later than fourteen days".

This argument was rejected as being erroneous because:

"Broadly stated, the object of the Section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the Section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. open. For that Section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday."

Of course Section 10(1) of the General Clauses Act does not speak of a holiday, but refers to the Court or office being closed on the last day of the prescribed period to enable a party to do an act or take any proceedings on a

certain day or within a prescribed period, as the next day on which the Court or office is open. If the Court is closed on the day when limitation expired, Section 10(1) of the General Clauses Act enables the filing on the next working day of the Court. But is the Court closed on a Saturday when the Judges do not sit though the office of the High Court is open?"

25. The Hon'ble Apex Court, from a judgment of this Court, had the occasion to consider the contingency akin to what is finding presence in the present case relatable to expiring of the limitation period during the summer vacations and in **Hari Shanker Tripathi Vs. Shiv Harsh and others (1976) 1 SCC 897**, it was held as under:-

6. To begin with we would first deal with the case of *Hukumdev Narain Yadav (supra)*. What had happened in that case was that the election petition was filed on March 20; 1972 instead of being filed on Saturday March 18, 1972 which was the last day on which the limitation expired. The election petitioner sought to cross the bar of limitation on the ground that Saturday not being a working day of the Court, the petitioner was entitled to file the petition on the next working day, namely, Monday. This Court on a consideration of various factors negated this contention and held that even though the Judges of the High Court did not usually sit on Saturdays it was undoubtedly a working day of the Court and it could not be said that the Court was observing a closed holiday on Saturday. After referring to a large number of decisions and traversing various provisions of the Limitation Act, this Court observed as follows:-

".... 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 s. 4, ss. 9 to 18 and s. 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law....."

For all these reasons we have come to the conclusion that the provisions of s. 5 of the Limitation Act do not govern the filing of election petitions or their trial, and in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay."

This Court accordingly held that s. 4 as also s. 5 of the Limitation Act had no

application to the election petitions on the true interpretation of s. 29(2) of the Limitation Act. The Court also held on a reading of rr. 6 & 7 with r. 26 of the Patna High Court Rules that even though the Judges were not sitting on Saturdays the- election petition could be presented on a Saturday to the Registrar or other officers as envisaged by r. 26 of the Patna High Court Rules. In the instant case, however, the period of limitation provided by s. 81(1) of the Representation of the People Act appears to have expired during the summer vacation which according to the notification of the Allahabad High court was declared to be a closed holiday. By virtue of the notification of the Allahabad High Court dated September 22, 1973 when the High Court Calendar for 1974 was approved by the Court after inviting objections from the members of the public, a list of days had been mentioned to be treated as closed holidays. The last part of this notification runs thus:

"List of days to be observed as closed holidays in the High Court of Judicature at Allahabad during the year 1974.

Name of holidays	Date on which they fall		Days of the week	Number of days
	According to Gregorian Calendar	According to Indian Calendar (Saka Era)		
1	2	3	4	5
Summer Vacation	May 25 to July 7	Jyaistha 4 to Asadha 11, 1896	Saturday to Sunday	44

In view of this notification, therefore, the legal position would be that the sunder vacation, namely, the period starting from May 25 and ending on July 7, 1974, would be deemed to be close holidays in the High Court. Thus it follows that June 14, 1974, which fell within this period would also be a closed holiday. If, therefore, the period of limitation under s. 81 of the Representation of the People Act expired on June 14, 1974 which being a closed holiday right

upto July 7, 1974, then s. 10 of the General Clauses Act would apply in terms and the appellant would be fully justified in filing the petition on July 8, 1974 when the Court re-opened after the summer vacation. The relevant portion of s. 10 of the General Clauses Act runs thus:

"10. (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any, Court or office on a certain day or within a prescribed period, when, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be ' considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies."

Analysing the section it would appear that the following conditions must be satisfied before a litigant may take advantage of the protection of s 10 of the General Clauses Act.

(1) that any act or proceeding is allowed to be done or taken in any court or office on a particular day or within a prescribed period; (2) that if the court or office is closed on that day or the last day of prescribed period then the act or proceeding will be deemed to have been taken in due time if-it is done or taken on the next day afterwards on which the Court or office is open.

The proviso to s. 10 makes these provisions inapplicable to cases where the Limitation Act applies. In the instant case which arises out of the election petition it is manifest from the judgment of this Court on Hukumdev Narain Yadav (supra) that the provisions of ss. 4 and 5 of the Limitation Act do not apply. It is also clear from the notification of the High Court referred to above that the entire period of the summer vacation starting from May 25 to July 7, 1974, was a closed holiday. Thirdly the period of limitation prescribed by s. 8(1) of the Representation of the People Act expired on June 14, 1974 during the summer vacation. In these circumstances the inescapable conclusion would be that s. 10 of the General Clauses Act would apply in terms and the appellant would be entitled to file the election petition on July 8, 1974 as he did.

8. Another reason given by the learned Judge was that even though the High Court was closed its office was open and the Registrar was available to receive any election petition. This reasoning of the High Court fails to consider the distinction between the opening of the Court and opening of the office. While the Court may be closed, the office may remain open for conducting ministerial business or administrative work. So far as the election petitions are concerned they are matters of moment and if the power to receive these petitions was delegated to the Registrar by the Rules framed by the Allahabad High Court under the Representation of the People Act, the Registrar must be deemed to exercise a judicial power which could not be exercised when the Court was observing a closed holiday. It would appear that under the rules framed by the High Court of Allahabad regarding the trial of election petitions, r. 3 required that every election petition shall be presented to the Registrar and r. 4 laid down that after the office report etc. is complete the petition shall be laid forthwith before the Chief Justice for reference to the Bench concerned. The learned Judge seems to think that in view of these rules there was no impediment in the way of the appellant in filing the election petition before he Registrar who was available during the summer vacation even though the Court was closed. We are, however, unable to agree with this view. These rules clearly refer to a situation where the Court is open, because the Registrar has to take legal steps, namely, the placing of the petition immediately before the Chief Justice for reference to the Bench concerned and the assignment of a Judge. This could not be done when the Court was observing a closed holiday. The presentation before the Registrar as required by r. 3 of the aforesaid rules must be a legal presentation and not a physical presentation. For instance, if the Registrar visited the High Court on a Sunday or on any public holiday, could it be said that the election petition could be presented to him and the Registrar may be asked to entertain the same. The answer to this question must obviously be in the negative. Therefore, the position would be the same if the Court by virtue of the notification issued on September 22, 1973, was observing a closed holiday during the summer vacation. A similar question appears to have arisen before the Allahabad High Court in a case on appeal to the Federal Court where six weeks time for depositing security money expired during the High Court vacation and the Allahabad High Court clearly pointed out that the mere fact that certain ministerial officers of the Court were available to conduct the routine matters would not indicate that the Court was

open. In this connection the Allahabad High Court in Krishna Dhan Mullick v. Umratul Zohra Begam(l) . observed as follows:

"The six weeks within which security could be deposited expired during the High Court vacation. If the period expires on a closed holiday, it is not disputed that the time would be excluded in computing the period of six weeks. This is done under section 10 of the General Clauses Act (X of 1897)..... The fact that the Court for its own convenience deposes certain officers to receive the money does not give them a separate existence and it cannot be urged that while the Court is closed the office is open. There may be days when the learned Judges are not sitting and yet the Court may not be closed, but if the Court is closed then it cannot be said that the ministerial officers attached to the Court are an office within the meaning of the term in section 10 of the General Clauses Act and they have a separate existence from the Court."

We find ourselves in complete agreement with the observations made by the Division Bench in the aforesaid decision, and in fact this . clearly brings out the real distinction between the functioning of the office of the High Court and of the High Court itself.

9. Furthermore, it would appear from r. 10 of Ch. V of the Allahabad High Court Rules, that this is the only provision which empowers the Vacation Judge to hear certain types of matters. The rule may be extracted thus: E "10. (1) Criminal work shall continue to be dealt with during the vacation by such Judges as may be appointed for the purpose by the Chief Justice. They may also exercise the original and appellate jurisdiction vested in the Court in any miscellaneous matter or any civil matter connected with, relating to, or arising out of, the execution of a decree, which may in their opinion, require immediate attention. Such jurisdiction may be exercised even in cases which are under the Rules cognizable by two or more Judges, unless the case is required by any other law to be heard by more than one Judge. G (2) Subject to any general or special order of the Chief Justice, Vacation Judges shall, in the absence of the Chief Justice, exercise jurisdiction at Allahabad or Lucknow, as the case may be, in connection with the arrangement of Benches, listing of cases and other like matters."

A perusal of r. 10 would clearly indicate that only criminal work shall continue to be dealt with during the vacation by such judges as may be appointed for the purpose by the Chief Justice. The second part of r. 10 no doubt gives jurisdiction to the Vacation Judges to entertain other matter, but the rider is that those matters must require immediate attention. This rule nowhere empowers the Registrar to entertain or to receive an election petition. Rule 10 of Chapter V has a very limited scope and does not include election petitions which cannot be said to be cases of a criminal nature or those requiring immediate attention so as to be taken up even when the Court is observing a closed holiday. It is true, as the learned Judge pointed out, that the office of the High Court was open and the Registrar or the Deputy Registrar etc. were receiving a number of applications, but the mere fact that such a practice had grown which may not have been strictly justified by the statutory Rules would not have the effect of converting what is legally a closed holiday into a working day. Similarly as indicated above, this Court in Hukumdev Narain Yadav's case (supra) was not at all called upon to consider the significance of a closed holiday but was deciding a case where on all accounts the day on which the limitation expired was a working day of the Court and where the Court was factually and legally held to be open. In these circumstances, therefore, the analogy drawn by the learned Judge from that case does not hold good in the facts of the present case.

10. Mr. S. N. Misra appearing for the respondents advanced two contentions before us. In the first place he drew our attention to r. 3 of Chapter I of the Allahabad High Court Rules, the relevant part of which may be extracted thus:

" 'Registrar' includes- -

(i) the Deputy Registrar at Lucknow, in matters relating to the Lucknow Bench;

(ii) the Joint Registrar or any other officer, with respect to such functions and duties of the Registrar as may have been assigned to the Joint Registrar or such officer by the Chief Justice, and

(iii) in the absence of the Registrar, the Joint Registrar or any other officer authorized to act on his behalf;"

Rule 3 no doubt provides that the Registrar includes the Deputy Registrar and other officers. Rule 4 of Chapter I would have no application to the present case because this rule applies only to such cases where the period of limitation is prescribed by the Rules. In the instant case, the period of limitation is not prescribed by the Rules made by the High Court of Allahabad but by s. 81(1) of the Representation of the People Act itself, and therefore this rule cannot be of any assistance to the respondents.

11. It was then submitted that under s. 2(1)(h) of the Representation of the People Act, "public holiday" was defined as meaning any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881. It was contended that as the notification issued by the High Court declared the summer vacation to be a closed holiday it could not be construed as a holiday under s 25 of the Negotiable Instruments Act and it would not be deemed to be a public holiday of which the appellant could have taken any advantage. The argument is undoubtedly attractive but on a deeper probe it does not appear to be tenable. The term "public holiday" referred to in s. 2(1) (h) of the Representation of the People Act has nothing to do with any administrative functions exercised by the High Court but refers only to such contingencies as are mentioned in the conduct of the actual elections under the provisions of the Representation of the People Act. For instance s. 39(1)(a) provides thus:

39. (1) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college of a Union territory to elect a member or members is issued, the Election Commission shall, by notification in the official Gazette, appoint-

(a) the last date for making nominations which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday."

The word "public holiday" used in s. 39(1) (a) would undoubtedly refer to public holiday as defined in s. 2 (1)

(h) of the Representation of the People Act. So far as the disposal of the election petitions is concerned, once s. 80 confers the power on the High

Court to try an election petition, s. 2 (1) (h) would have no application what soever to the trial of such election petition by the High Court which will be governed either according to the Rules framed by the High Court under the Representation of the People Act or under the general Rules of the High. Court or in accordance with the Code of Civil Procedure. This is borne out by s. 87(1) of the Representation of the People Act which may be extracted as follows:

"87. (1) Subject to the provisions of this Act and of any rules made there under every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided * * * * *"

In the instant case the High Court having framed the Rules under the Representation of the People Act which provided for the presentation of the election petitions to the Registrar, which as we have held could only be done on a day which is not a closed holiday, the term "closed holiday" would have to be referred to as defined by the High Court Rules and not by s. 2(1) (h) of the Representation of the People Act. In these circumstances, therefore, the contention of the respondents on this score must be overruled.

12. For the reasons given above we are satisfied that as the period of limitation expired during the summer vacation which was a closed 6-5225CI/76 holiday by virtue of the notification issued by the High Court, the . Registrar was not competent to entertain the election petition nor could the appellant have presented the election petition legally to the Registrar during such period. We are further satisfied that this is a case in which s. 10 of the General Clauses, Act applies in terms and the appellant was fully justified in filing the election petition on the re opening day of the High Court, namely, July 8, 1974. In these B; circumstances the view taken by the High Court that the election t, petition was barred by time is wrong on a point of law, and the finding of the learned Judge on issue No. 8 cannot, therefore, be sustained.

13. The appeal is accordingly allowed, the order of the High Court dated February 10, 1975, is set aside and the matter is remitted to the

learned Judge for trying the election petition in-accordance with the law. In the special circumstances of this case we make no order as to costs in this Court."

26. Yet in **Manohar Joshi v. Nitin Bhaurao Patil and another (1996) 1 SCC 169**, again the issue came up for consideration regarding the applicability of Section 10 of the General Clauses Act in the matter of presentation of an election petition, and the following was observed.-

"14. The question now is : Whether the applicability of Section 10 of the General Clauses Act to the presentation of election petitions under the R.P. Act is excluded ? No doubt the R.P. Act is a self-contained Code even for the purpose of the limitation prescribed therein. This, however, does not answer the question. It has to be seen whether the context excludes the applicability of Section 10 of the General Clauses Act which is in the part therein relating to the General Rules of Construction of all Central Acts. The legislative history of prescribing limitation for presentation of election petitions in accordance with sub- section (1) or Section 81 is also significant for a proper appreciation of the context. Admittedly, Section 10 of the General Clauses Act applied when by virtue of the requirement in the then existing sub-section (1) of Section 81, the period of limitation was prescribed by Rules framed under the R.P. Act, in Rule 119 of the 1951 Rules. This was expressly provided by Rule 2(6) of the 1951 Rules. There is nothing to indicate that providing the period of limitation in sub-section (1) of Section 81 itself by substitution of certain words by Act 27 of 1956 instead of prescribing the limitation by Rules, was with a view to exclude the applicability of Section 10 of the General Clauses Act. The change appears to have been made to provide for a fixed period in the Act itself instead of leaving that exercise to be performed by the rule making authority. An express provision in Rule 2(6) of the 1951 Rules was required since the General Clauses Act ipso facto would not apply to Rules framed under the Central Act, even though it would to the Act itself. The context supports the applicability of Section 10 of the General Clauses Act instead of indicating its exclusion for the purpose of computing the limitation prescribed in sub-section (1) of Section 81 for presentation of election petition."

27. In **Chandra Kishore Jha v. Mahavir Prasad and others, (1999) 8 SCC 266**, the question relatable to expiry of the limitation period during the vacations came up for consideration, the following was observed.-

"17. In our opinion insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or the Rules thereunder and, therefore, an election petition could, under no circumstances, be presented to the Registrar to save the period of limitation. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage : Nazir Ahmad Vs. King Emperor, 63 Indian Appeals 372=AIR 1936 PC 253; Rao Shiv Bahadw Singh & Anr. Vs. State of V.P., 1954 SCR 1098 = AIR 1954 SC 322, State of Uttar Pradesh v. Singhara Singh & Ors., AIR 1964 SC 358 = (1964) 1 SCWR 57] An election petition under the Rules could only have been presented in the open Court upto 16.5.1995 till 4.15 P.M. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done. However, we cannot ignore that the situation in the present case was not of the making of the appellant. Neither the designated election Judge before whom the election petition could be formally presented in the open Court nor the Bench hearing civil applications and motions was admittedly available on 16.5.1995 after 3.15 P.M., after the Obituary Reference since admittedly the Chief Justice of the High Court had declared that "the Court shall not sit for the rest of the day" after 3.15 P.M. Law does not expect a party to do the impossible - impossibulum nulla obligatio est as in the instant case, the election petition could not be filed on 16.5.1995 during the Court hours, as far all intent and purposes, the Court was closed on 16.5.1995 after 3.15 P.M.

19. Since, Indian Limitation Act does not apply to an election petition, Section 10 of the General Clauses Act would apply. As already noticed, the Patna High Court was, for all practical purposes, closed after 3.15 P.M. on 16.5.1995. It was, therefore, not possible for the appellant to have presented the election petition to the designated election Judge or in his absence to the Bench hearing civil applications and motions in the open Court on that date, which was the last day of the prescribed period of limitation. Thus, the presentation of the election petition on the very next date i.e. 17.5.1995, in the open Court, would be considered, by virtue of Section 10 of the General Clauses Act, as presentation of the election petition within the prescribed period of limitation.

In the established facts and circumstances of the case, the learned designated election Judge fell in error in denying to the appellant the benefit of Section 10 of the General Clauses Act and dismissing the election petition as barred by time. The order of the learned designated election Judge cannot, under the circumstances, be sustained. The election petition must proceed to trial on merits."

28. So far as the reliance placed upon the judgment in **Reji Thomas (supra)** by the learned counsel for the petitioner is concerned, there is no quarrel with the proposition so laid down therein that no court, so much so the High Court, in exercise of jurisdiction under Article 226, can extend the period of limitation in election matters. As regards the reliance placed upon the judgment of **P. Narappa (supra)** is concerned, the said judgment is also not applicable, particularly when in the present case in hand there is no provision cited are brought on record to show that during the vacations there is any notification that election petitions could be entertained. With respect to the judgment in **Ashok Shankarrao Chavan (supra)** is concerned, the said judgment is also not applicable, particularly when in the said case there happen to be a notification issued by the High Court itself authorizing acceptance of election petitions during the vacations. The said notification is missing in the present case. Nonetheless, the judgment in **Shahnawaz Ali (supra)** is also not applicable, particularly when though Rule 13 and Rule 32 of the General Rules (Civil), 1957 were considered, the Court did not go into the issue which is being raised herein, on the ground that attempts were being made to file the election petition during the summer vacations. Apart from the same, there happens to be a judgment of the Punjab and Haryana High Court in **Navjot Singh Vs. Smt. Harsimrat Kaur Badal, 2015 AIR CC 2555**, wherein the entire law has been summed up, but the said judgment refers to a notification of the Punjab and Haryana High Court wherein there was a provision that election petitions can be accepted during the vacations.

29. Applying the principles as culled out in the above-noted decisions, in the facts and circumstances of the present case an irresistible conclusions stand drawn (a) The provisions of the Limitation Act, 1963 do not apply to election petitions (b) The provisions of Section 10 of the General Clauses Act do apply (c) The question of limitation for filing election petitions during vacations or holidays depends upon the notifications so issued by the appropriate authorities.

30. As regards, the reliance placed upon the calendar of the district courts Annexure CA-2 at page 12 relevant extract whereof has been made at page 13 of the counter affidavit, the same is also not in aid and assistance of the writ petitioner particularly when the said calendar only refers to the fact that the only criminal work is to be conducted and civil work is suspended except urgent. In absence of any rule/notification/circulars on the said subject, it cannot be said that the election petition is liable to be filed and accepted during the summer vacations particularly when Section 10 of the U.P. General Clauses applies with full force.

31. As noticed above in the present case, barring on Rule 13 and Rule 32 of the General Rules (Civil), 1957, no rule/notification/circular/order has been placed on record by either of the party to show that even in the summer vacations/holidays, the election petition so presented could be accepted.

32. Accordingly, this Court does not find any manifest illegality committed by the court below to accord interference. Resultantly, the writ petition is misconceived and is accordingly **dismissed**.

33. Interim order, if any, stands vacated.

(Vikas Budhwar,J.)

May 26, 2026

Rajesh