

[Limitation Extension Orders Passed By SC During Covid-19 Apply To Petitions Moved Under Representation Of People Act: Kerala HC](#)

2022 LiveLaw (Ker) 603

IN THE HIGH COURT OF KERALA AT ERNAKULAM

C. JAYACHANDRAN; J.

I.A.No.1 of 2021 in Election Petition No.5 of 2021; 11 November, 2022

MANI C. KAPPEN versus SUNNY JOSEPH

Sri. Krishnanunni Senior Advocate along with Deepu Thankan, Advocate for the Petitioner,(R1 in El.Pet), M/s P. Viswanathan, Senior Advocate along with Shibu Joseph, Ajith Viswanathan, K.T. Sebastian, Sanu S. Malakeel & Sayed Mansoor Bafakhy Thangal, Jeffin John, Balram S A, Advocates for the respondent 1 (Petitioner in El.Pet), Sri.Tom Jose Padinjarekara, Advocate for the Respondent 2 (R2 in El.Pet) M/s. Sebastian Joseph (Kurisummoottil), Elizebath George & Emmanuel Cyriac, Advocates for the Respondent 8, (R8 in El.Pet) P.C. Haridas, Advocates for the Respondent 7(R7 in El.Pet)

ORDER

1. The Election Petition is filed challenging the election of the first respondent from 093 Pala Assembly Constituency, alleging that the election was vitiated by undue influence and corrupt practices, as defined in the Representation of People Act, 1951 [hereinafter referred as 'the Act']. The first respondent in the Election Petition [returned candidate] preferred the above interlocutory application under Order VII Rule 11(d) of the Code of Civil Procedure, seeking rejection of the Election Petition, as barred by limitation. Petitioner in the I.A.[first respondent in the Election Petition] would allege that the Election Petition was preferred beyond the time stipulated in Section 81 of the Act, which prescribes an outer limit of 45 days from the date of election of the returned candidate, which, in the present facts was on 02.05.2021. The period of 45 days expired on 16.06.2021, whereas, the Election Petition was filed only on 13.07.2021. The petition is therefore hopelessly barred by limitation is the submission. The orders passed by the Honourable Supreme Court extending the period of limitation in the wake of wide spread of COVID-19 pandemic will not apply to a proceeding under the Act. The original order of the Honourable Supreme Court applies only to the period of limitation prescribed for any suits, appeals, applications or proceedings, which was subsequently extended to the proceedings under various other special Acts, however, not to the Representation of the People Act. The special Acts to which the benefit of orders of the Supreme Court extending the period of limitation are those, where there is no provision to condone the delay. Although the Supreme Court was aware of elections being conducted to the Legislative Assemblies, the period of limitation prescribed in the Act was not relaxed. On such premise, the petitioner [returned candidate] seeks dismissal of the Election Petition under Order VII, Rule 11(d), as barred by limitation.

2. The first respondent in the interlocutory application [petitioner in the Election Petition] filed a counter affidavit, contending that the order of the Honourable Supreme Court in the matter of "In Re: cognizance for extension of limitation" applies to all suits, petitions, applications, which takes within its sweep a proceeding under the Representation of the People Act as well. Explanation for the delay in filing the Election Petition has been specifically averred in paragraph no.39 of the Election Petition. The order of the Honourable Supreme Court extending the period of limitation stipulated under any general or special Acts is the law of the land, binding on all Courts of India. The instant interlocutory application seeking rejection of the Election Petition is wholly without any bonafides and the same is filed experimentally, to protract the matter. The first respondent would seek dismissal of the I.A. on the above premise.

3. Heard Sri.Krishnanunni, learned Senior Counsel, instructed by Sri.Deepu Thankan, learned counsel for the petitioner and Sri.P.Viswanathan, learned Senior Counsel, instructed by Adv.Shibu Joseph, learned counsel appearing for the first respondent, Adv.Tom Jose Padinjarekara, learned counsel appearing for the second respondent and Adv.Sebastian Joseph, Adv.Elizabeth George and Emmanuel Cyriac, learned counsel appearing for the 8th respondent. Perused the records.

4. Learned Senior Counsel for the petitioner in the I.A. contended that the instant Election Petition was filed beyond the period prescribed in Section 81 of the Act and therefore, liable to be dismissed summarily under Section 86 of the Act, r/w Order VII, Rule 11(d) of the Code of Civil Procedure. Although, the attention of this Court was invited to various provisions and definitions in the Limitation Act, especially to Section 29(2), the issue ultimately boils down to the interpretation of the Order of the Honourable Supreme Court dated 23.03.2020 in '**In Re: Cognizance for Extension of Limitation' [2020(2) KHC 524]**, whereby the Honourable Supreme Court has extended the period of limitation, taking note of the wide spread of the COVID-19 pandemic.

5. Learned Senior Counsel invited the attention of this Court to the first paragraph of the order, wherein, the Honourable Supreme Court specifically referred to "petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State)". According to the learned Senior Counsel, this direction applies only to proceedings, where a period of limitation has been prescribed under the general law or a special law. As per Section 2(j) of the Limitation Act, period of limitation means the period of limitation prescribed for any suits, appeals or applications by the schedule to the Limitation Act. Pressing into service another order of the Honourable Supreme Court in the context of extension of limitation [reported in **In Re: Cognizance for Extension of Limitation [2020(4) KHC 96]**], learned Senior Counsel submitted that, the Honourable Supreme Court took note of the distinction between prescribing a period of limitation and fixing a time to do certain acts, at paragraph no. 5 of the said order. It was specifically contended that the benefit of the original Order dated 23.03.2020 is extended to matters coming under the Arbitration and Conciliation Act, Pre-Institution Mediation and Settlement under Section 12A of the Commercial Courts Act, the Negotiable Instruments Act and also in the matter of service of notices, summons, exchange of pleadings. The essence of the argument raised by the learned Senior Counsel is that, since the benefit of the original order dated 23.03.2020 has not been extended to a petition under the Representation of the People Act, it is not within the province of this Court to extend the benefit of the orders of the Honourable Supreme Court to an Election Petition, so as to extend the period of limitation prescribed under the said Act.

6. Learned Senior Counsel further pointed out that the Honourable Supreme Court was quite aware of Election Petitions being filed in the interregnum throughout the Country. Nevertheless, the benefit was not extended to a proceeding under Act in question, wherefore, something which was not expressly done cannot be inferred, is the submission. In this regard, learned Senior Counsel relied upon the following decisions of the Supreme Court:

- (i) **Hukumdev Narain Yadav v. Lalit Narain Mishra [AIR 1974 SC 480]**
- (ii) **Suman Devi v. Manisha Devi and Others [(2018)9 SCC 808].**

In these cases, it was held that, Section 29(2) of the Limitation Act is not applicable to the Representation of People Act and therefore, in so far as the petition under Section 81 of

that Act, there arises no question of condonation of delay under Section 5 of the Limitation Act.

7. It was also pointed out that, subsequent clarificatory order of the Honourable Supreme Court dated 23.03.2020 was necessitated only because the first order does not take within its sweep the statutes to which the benefit was extended by subsequent orders.

8. Per contra, learned Senior Counsel for the respondent submitted that the original order dated 23.03.2020 speaks of 'all proceedings', with a period of limitation prescribed under the general law of limitation or under special laws. The Representation of People Act is a special law, which prescribes an outer limit of 45 days, within which an Election Petition has to be filed. Therefore, an Election Petition would also come within the sweep of the expression 'all proceedings' as employed in the first order dated 23.03.2020 of the Honourable Supreme Court. The learned counsel emphasized that, such orders were passed in exercise of the powers of the Honourable Supreme Court under Article 142, r/w Article 141 of the Constitution, wherefore, it goes without saying that, it partakes the character of law declared, for ensuring complete justice. It was pin-pointedly argued by the learned Senior Counsel that the orders were passed in the wake of alarming rise in the COVID-19 pandemic, which purpose has to be borne in mind while interpreting the present situation, as regards the applicability of the orders of the Honourable Supreme Court to an Election Petition, especially when physical presence of the petitioner is statutorily required (for the purpose of attestation) to file an Election Petition. Learned Senior Counsel referred to the various orders of the Honourable Supreme Court, whereby, the period of limitation is extended; and specifically to the Order dated 27.04.2021 [**In Re: Cognizance for Extension of Limitation (2021(3) KHC 122)**], whereby the original order dated 23.03.2020 was restored and the period of limitation prescribed under the general law and the special law stands extended until further orders. According to the learned Senior Counsel, merely because the Honourable Supreme Court had no occasion to consider the situation of extending the period of limitation under the Representation of Peoples Act, it cannot be said that the benefit of the orders are not available to the petitions under that Act. Learned Senior Counsel would therefore seek dismissal of the above interlocutory application, contending that the same is filed experimentally, as a dilatory tactic.

9. Having heard the learned senior counsel appearing on both sides, this Court finds little merit in the contentions raised by the petitioner in the above I.A. The prayer is one for rejection of plaint under Order VII Rule 11(d) of the Code. Section 81 of the Act stipulates a period of 45 days from the date of election of the returned candidate to file an Election Petition. Before this Court, there is no dispute with respect to the date on which the returned candidate was elected, i.e. 02.05.2021. The Election Petition was filed only on 13.07.2021, whereas the stipulated period of 45 days expired on 16.06.2021. By virtue of the authoritative pronouncements of the Honourable Supreme Court in **Hukumdev Narain Yadav supra**, **Suman Devi supra** and **Lachhman Das Arora v. Ganeshi Lal [1999(8)SCC 532]**, the legal position that Section 5 of the Limitation Act does not apply to Election Petitions under the Representation of the People Act is settled. The solitary point which arises for consideration is whether the extension of limitation prescribed under the general law or special statutes by virtue of the orders of the Honourable Supreme Court in '**In re: Cognizance for extension of Limitation**' dated 23.03.2020 [**2020(2) KHC 524**] and the subsequent orders would apply to an Election Petition under Act 43 of 1951.

10. This Court will straight away refer to the said order dated 23.03.2020 of the Honourable Supreme Court. It requires to be noticed as a prelude that the said order was necessitated on account of the wide spread of COVID-19 virus, resulting in litigants facing difficulties in initiating various legal proceedings before Courts of law due to lockdown and travel restrictions. In paragraph no.1 of the order, the Honourable Supreme Court refers to filing of “*petitions/ applications / suits / appeals /all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State)*”. Thereafter, in paragraph no.2, the Supreme Court extended the period of limitation in all such proceedings in the following words:

“To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further order/s to be passed by this Court in present proceedings.”

In paragraph no.3 of the order, the Honourable Supreme Court clarified that the order dated 23.03.2020 is passed in exercise of its power under Art.142, read with Art.141 of the Constitution of India, with a declaration that the order is binding on all Courts / Tribunals and authorities. For the purpose of communication of the order to all Subordinate Courts and Tribunals, the order was directed to be brought to the notice of the High Court.

11. Having regard to the purpose/necessity of such order dated 20-3-2020 and the sweeping language of wide amplitude employed by the Supreme Court, that is to say, '*all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State)*', there exists little room for any doubt as regards the scope and applicability of the order.

12. By virtue of a subsequent order dated 06.05.2020 in '**In re: Cognizance for extension of Limitation' [2020(3) KHC 427]**, the order dated 23.03.2020 was extended to proceedings under the Arbitration and Conciliation Act 1996, as also, to those under Section 138 of the Negotiable Instruments Act, 1881.

13. The next order to be taken note of is the order dated 10.07.2020 in '**In re: Cognizance for extension of Limitation' [2020(9) SCC 468]**. In this case, the Honourable Supreme Court considered the extension of time prescribed for performing a particular act, other than those cases where limitation is prescribed by general law or special law. After taking note of Section 29A and 23(4) of the Arbitration and Conciliation Act 1996, the Honourable Supreme Court held that, its orders dated 23.03.2020 and 06.05.2020 would apply for extension of the time limit prescribed by Section 23(4) of the Arbitration and Conciliation Act, as also, to the time prescribed under Section 12A of the Commercial Courts Act. Taking note of the difficulties in serving the summons, notices etc, during the lock-down period, the Supreme Court directed service by e-mail, fax, whatsapp, telegram etc, in the same order.

14. The fourth one is the order dated 08.03.2021 in '**In re: Cognizance for extension of Limitation' [2021(5) SCC 452]**. There, the Honourable Supreme Court noticed decrease in the spread of COVID, wherefore, the extension of limitation was put to an end in the following words:

“The period from 15/03/2020 till 14/03/2021 shall also stand excluded in computing the periods prescribed under S.23(4) and S.29A of the Arbitration and Conciliation Act, 1996, S.12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of S.138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings,

outer limits (within which the Court or Tribunal can condone delay) and termination of proceedings.”

15. However, owing to the surge of COVID 19 pandemic again, the Honourable Supreme Court revived its order dated 23.03.2020 by virtue of a subsequent order dated 27.04.2021 in '**In re: Cognizance for extension of Limitation**' [2021(3) KHC 122]. The following directions of the Honourable Supreme Court in the said decision is extracted hereinbelow:

“We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.”

16. By virtue of the clarification contained in paragraph no.7 of the order, the Honourable Supreme Court extended its order in computing the periods prescribed under the relevant provisions of the Arbitration and Conciliation Act 1996, the Commercial Courts Act, 2015 and Section 138 of the Negotiable Instruments Act, 1881 and quite importantly, to “any other laws which prescribed period(s) of limitation for instituting proceedings”.

17. Again the Honourable Supreme Court put an end to the extension of limitation by virtue of another order dated 23.09.2021 [2021(5) KHC 508], where again, by virtue of direction no. III in paragraph 8, the exclusion of the period was extended to cases which prescribes period(s) of limitation for instituting proceedings under any other laws as well.

18. Again, by order dated 10.01.2022 [2022(1) KHC 240], the Honourable Supreme Court restored its original order dated 23.03.2020 due to the drastic surge in the number of COVID cases in the country, where also, there is specific reference to periods being prescribed for instituting proceedings under any other laws.

19. The whole purpose of referring to the various order of the Supreme Court *in extenso* is only to point that, such orders manifest the clear intention of the apex court to extend the benefit of extension of the limitation period to all legal proceedings of whatever nature, the underlying cause being the spread of COVID-19 SARS virus, rendering it impossible/difficult for litigants to move out and institute their respective legal proceedings. The expression “all other proceedings”, where a period of limitation is prescribed under the general law of limitation or under the special laws is more than sufficient to understand that the Honourable Supreme Court intends to include all proceedings to come within the sweep of its order in the matter of extension of limitation. It is true, by virtue of its orders dated 06.05.2020 and 10.07.2020, reported in **2020(3) KLT 427** and **2020(4) KHC 96**, the benefit of the order dated 23.03.2020 is specifically seen extended to the proceedings under the Arbitration and Conciliation Act, Commercial Courts Act and the Negotiable Instruments Act. However, the same does not seek to exclude proceedings under such other enactments, which contains an outer limit within which such proceedings are to be initiated, as in the case of the Representation of the People Act, 1951, by virtue of Section 81 of the Act. The expression “all other proceedings” as employed in the original order dated 23.03.2020 and “any other laws which prescribed period(s) of limitation for instituting proceedings” as employed in orders dated 08.03.2022, 27.04.2021, 23.09.2021 and 10.01.2022 leaves no room for any doubt that the Supreme Court intends to extend the period of limitation/outer limit fixed under any enactment. This Court, therefore, finds little merit in the contention of the petitioner that the benefit of the orders extending limitation is not applicable to a proceeding under the Representation of the People Act, 1951.

20. This Court is fortified in its view and garner support from the maxim “*Lex non cogit ad impossibilia*”. The Honourable Supreme Court invoked its plenary powers under Art.

142, r/w Art. 141 to extend the periods of limitation fixed under the general or special laws, upon noticing the supervening impossibility/difficulty created by the COVID-19 pandemic. The observations of the Honourable Supreme Court in Lachhman Das Arora supra, which are extracted herebelow, would amplify that the Representation of People Act, 1951 is a special law prescribing a period of limitation for filing an Election Petition.

“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.”

21 . The state of affairs being thus, if the contention of the petitioner is accepted, the same would, for sure, invite the wrath of hostile discrimination between two sets of litigants, one enjoying the benefit of orders extending the period of limitation and the other, being deprived of the same, without there being any *intelligible differentia*. This Court also notices a similar view taken by a learned single judge of this Court in Election Petition No.11 of 2021 as per order dated 10.03.2022, to which, I respectfully concur.

The interlocutory application fails and the same is, therefore, dismissed.

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