

Neutral Citation No. - 2024:AHC:47288

Court No. - 39

Case :- ELECTION PETITION No. - 1 of 2024

Petitioner :- Jay Prakash And Another

Respondent :- Anjula Singh Mahaur And Another

Counsel for Petitioner :- In Person, Shiv Kumar Singh

Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Shiv Kumar Singh, learned counsel for the election-petitioners.

2. The petitioners describe themselves as 'electors' from Hathras, Sadar Constituency in the election of the Legislative Assembly of Uttar Pradesh. By means of the present election petition, they seek to impugn the election of respondent no.1 at the last concluded Assembly Election-2022.

3. Undisputedly, the respondent no.1 was declared successful at that election, on 10.3.2022. Section 81(1) of the Representation of the People Act, 1951 (hereinafter referred to as, 'the Act') reads as below:

*"81. **Presentation of petitions.**- (1) 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 to the [High Court] by any candidate at such election or any 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 dates of their election are different, the later of those two dates]."*

4. The present Election Petition was presented before this Court on 8.2.2024. On that date, it was reported beyond time by 655 days.

5. In such undisputed facts, it has to be first tested if the present Election Petition is competent i.e. entitled to be entertained, at all. For that

consideration, the Court does not propose to doubt or test the correctness of the facts disclosed in the present Election Petition. The averments made in the Election Petition may be examined on their face value.

6. For the above purpose, learned counsel for the election-petitioners has invoked Section 17 of the Limitation Act. For ready reference, Section 17 of the Limitation Act reads as below:

“17. Effect of fraud or mistake.-(1) *Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-*

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.”

7. Also, undisputedly, the respondent no.1 contested the election in question on the reserved seat, claiming reservation as a member of the Scheduled Caste, relying on a Caste Certificate issued to her disclosing her caste ‘Kori’.

8. In the above context, learned counsel for the election petitioners has referred to and relied on the pleadings made in paragraphs 11,12,13,14 and 15 of the Election Petition. They read as below:

“11. That from the narration made in the succeeding paragraphs it would be apparent that the respondent no.1 has played fraud with the election Commission of India and also the electors of the constituency by claiming her to be from KORI caste/scheduled caste category and thus contesting a seat of MLA mentioned in the preceding paragraphs, reserved for the scheduled caste category.

12. That thus it is beyond any doubt that the respondent no.1 has caused gross miscarriage of justice to the KORI Samaj by concealing her original caste and cheating the members of the constituency by representing herself to be of KORI caste. In other words a seat of MLA i.e. Hathras constituency of Hathras which was reserved for the scheduled caste category has been used to the disadvantage of their category by respondent no.1 who belongs to general category i.e. Thakur by caste. A copy of Form-26 under Rule-4A, as stipulated by the Election Commission of India and filled up by respondent no.1, indicating herself to be contesting on the reserve category seat of MLA, alongwith affidavit of its correctness is being filed herewith and marked as Annexure No.2 to this petition.

13. That the respondent no.1 has represented her native place in different documents as under :-

(i) Village Bhadsan, District-Etawah as per Scholar Registrar and Transfer Certificate from Arya Kanya Inter College and Tikaram Inter College, Aligarh. The service book of father of respondent no.1, namely Ranı Sewak Singh also indicates that he belonged to general category i.e. Bhadauria Thakur.

(ii) B Flat No.2 Heritage Apartment, Fatehabad Road, Agra, as per scheduled caste certificate dated 22.10.2005 issued by Tehsildar Sadar, Agra.

(iii) Mohalla Nagla Mali, Dhanipur Mandi, Tehsil- Koil, District-Aligarh as per scheduled caste certificate issued by Tehsildar, Tehsil-Koil, District-Aligarh dated 10.09.2008.

(iv) 31/35/7F2A, Sanjay Nagar, Okharra Marg, Rqajpur Chungi, Agra.

(v) Village Bohara, Post-Bohara, District-Kanpur Dehat as per letter of Village Pradhan Bohara, District-Kanpur Dehat dated 09.10.2005.

The aforesaid is in contrast to the following:-

(a) The Respondent no.1 namely Smt. Anjula Singh Mahaur had also accepted that her father was posted in different small town and therefore he recorded his name as Thakur in order to avoid misbehavior which was being caused to the Scheduled Caste/Scheduled Tribes in the society.

(b) Various subsequent caste certificates have been issued by different Tensildars of district Agra, Aligarh and Hathras and all the time the permanent address has been changed.

14. That none of the scheduled caste certificate mentioned above has been verified by cogent reasons and the authorities have come to their rescue by saying that she is not staying at the address given in the caste certificate and therefore it could not be verified. The District Level Committee, Agra has rescued itself by writing that although the grandfather of respondent no.1 belonged to Thakur by caste yet the original caste of the father of the respondent no.1 is not known. It is strange that the state authorities are in hand in gloves with the respondent no.1, being a sitting MLA of ruling party and therefore they are unable to even trace out the biological father of the respondent no.1 or even tracing out her permanent address. Some authorities have gone to the stretch that she originally belongs to Etawah district as per the records of her father and the others have gone to say that she probably originally belongs to Etah district. The third set states that she belongs to Kanpur Dehat. Needless to mention that father of petitioner who is no more, was a Tehsildar in the state of U.P. lastly posted at Aligarh and therefore it appears that respondent no.1 with the assistance of her father could manage the entire show of issuing the fake scheduled caste certificate in her favour.

15. That it is surprising that the District Level Caste Scrutiny Committee, Agra rather than relying upon the records of U.P. High School and Intermediate Education Board and also the different inter colleges, has proceeded to rely upon the records of primary school

Bhadsan, Etawah wherein it is indicated that the date of birth of Ram Sewak was 12.04.1935 and caste was written as KORI with the parentage of Balwant Singh. However it appears that the caste of Ram Sewak relied upon by the District Level Caste Scrutiny Committee as per primary School Bhadsan was in respect of some different Ram Sewak since the Ram Sewak Singh who was the father of respondent no.1 and retired as Tehsildar was although from Bhadsan village yet his date of birth in the official records of the state govt. i.e. F.R. Form-10 is shown as 12.08.1935.”

9. Then, to explain the delay, reliance has been placed on the pleadings made in paragraphs 67, 68 and 69 to the Election Petition. For ready reference, those read as below:

“67. That although the limitation prescribed for presentation of the Election Petition under Section-81 of the Representation of Peoples Act, 1951 is 45 days from the date of election of returned candidate yet in case of fraud the provisions of Section-81 of 1951 Act shall have no application. The fraud is a continuing wrong.

68. That the petitioners have discovered the fraud in the instant case on 25.01.2024. As per the law settled by the Hon'ble Supreme Court in the various cases, in case of fraud the bar of limitation shall not apply, otherwise it would reward the fraud. In the case of Pallav Seth Vs. Custodian and others dated 10.08.2001 (AIR-2001 SC- 2763), the Hon'ble Supreme Court while dealing with the identical provisions of limitation under Section-20 of the Contempt of Courts Act has held that the bar of limitation shall not apply in the case of fraud or the continuing wrong.

69. That, in the case of Bimlesh B. Desai and others Vs Bipin Vadilal Mehta and others, the Hon'ble Supreme Court, vide its judgment dated 11.7.2006, held that the question of limitation is a mixed question of law and facts and therefore a suit can not be dismissed as barred by limitation, without proper pleadings, framing of an issue of limitation and taking of evidence. Such principle would be equally applicable to a Company Petition. Therefore, the same principle would also apply to election petition.”

10. In such facts, it has been submitted by learned counsel for the election-petitioners, the respondent no.1 has played fraud and thus successfully contested the Legislative Assembly Election from the Hathras Sadar, constituency against that seat reserved for Scheduled Caste. Since, fraud played by respondent no.1 has been first revealed to

the petitioners on 25.1.2024, the limitation to file the present Election Petition commenced from that date and not earlier. He has relied on the decision of the Supreme Court in ***Pallav Sheth Vs. Custodian and others 2001 (7) SCC 549, Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju & others 2006 (1) SCC 212, Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others 2006 (5) SCC 638, A.V. Papayya Sastry and others Vs. Government of A.P. and others 2007 (3) AWC 2538 (SC).***

11. On the request made by the Court, Sri Nimai Das, learned Additional Chief Standing Counsel, has acted as Amicus Curiae. He would submit, in the present statutory proceedings arising under the Act, the High Court may never exercise its inherent jurisdiction outside the narrow confines of the Act. The consequences of delay in presenting the Election Petition are harsh and rigid. They allow for no accommodation to be made to condone the delay, howsoever genuine the reason may be. Relying on ***K. Venkereswara Rao and another Vs. Bekkam Narsimha Reddi and others AIR 1969 SC 872***, he would submit, there is no room to overlook the delay. In the context of the delay caused in filing the Election Petition, its consequence would remain one. Since, no other consequence is possible to be reached in such proceedings, dismissal of this petition may be offered at the very threshold.

12. Also, Sri Nimai Das would submit, in the present facts, there is no application made by the election-petitioners to condone or overlook the delay. Neither such application may have been entertained in these proceedings nor it may survive to the election-petitioners to cure any defect in that regard.

13. Having heard learned counsel for the election-petitioners and the learned Amicus Curiae, it is beyond any doubt-the period of limitation prescribed under the Act is rigid. It is also undoubted, the present proceedings are original in nature arising by way of statutory proceedings under the Act. Therefore, on first principle itself, condonation of delay

may never be permissible *de hors* the provisions of the Act. Then, while limitation to file an Election Petition is prescribed under Section 81 of the Act, section 86(1) of the Act reads as below:

“[86. Trial of election petitions.- (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.- An order of the High Court dismissing an election petition dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.”

14. Therefore, the consequence of non-compliance of Section 81 of the Act is prescribed. It is unequivocal. An Election Petition that does not comply with Section 81 of the Act may only invite a singular outcome/result. That has to be dismissal.

15. In ***K. Venkereswara Rao and another Vs. Bekkam Narsimha Reddi and others AIR 1969 SC 872***, it was observed as under:

“12. It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a court of law unless the application thereof has been excluded by any enactment: the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.”

(emphasis supplied)

17. It was argued that if a petition were to be thrown out merely because a necessary party had not been joined within the period of 45 days no enquiry into the corrupt practices alleged to have been committed at certain elections would be possible. This is however a matter which can be set right only by the Legislature. It is worthy of note that although the Act has been amended on several occasions, a provision like Section 86(1) as it now stands has always been on the

statute book but whereas in the Act of 1951 the discretion was given to the Election Commission to entertain a petition beyond the period fixed if it was satisfied as to the cause for delay no such saving clause is to be found now. The legislature in its wisdom has made the observance of certain formalities and provisions obligatory and failure in that respect can only be visited with a dismissal of the petition.

(emphasis supplied)

18. It is to be noted however that even though the Indian Limitation Act, 1963 does not apply to an election petition provisions like Sections 9 and 10 of the General Clauses Act, 1897 providing for computation of time which are in pari materia with Sections 12(1) and 4 of the Limitation Act would apply to such a petition.”

16. Any doubt with respect to applicability of Section 4 to 24 of the Limitation Act to Election Petition proceedings also stands removed by the subsequent decision of the Supreme Court in **Hukumdev Narayan Yadav Vs. Lalit Narain Misra AIR 1974 SC 480**, wherein it was observed as below:

“17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29 (2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it

would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial.

18. 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 Section 29 (2) of the Limitation Act says, because it provides that Sections 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 Section 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 Section 29(2) of that Act.

20. It is also significant that delay in the presentation of the election petition under the repealed Section 81 could be condoned by the Election Commission in its discretion under the proviso to the

repealed Section 85 of the Act. But there was nothing in Section 85 which permitted the Election Commission to condone the non-compliance with the provisions of Section 117 of the Act. When the Act was amended and the jurisdiction was given to the High Court to entertain and try election petitions, a provision similar to the proviso for condoning delay was not enacted. This omission definitely expresses Parliament's intention not to confer the power to condone any delay in the presentation of the petition. The whole object of the amendment in 1966 was to provide a procedure for a more expeditious method of disposal of election disputes, which experience had shown had become dilatory under the former procedure where election trials were not concluded even after five years when the next elections were held, notwithstanding the fact that every petition was enjoined to be tried as expeditiously as possible and endeavour was required to be made to conclude the trial within six months from the date on which the election petition was presented to the High Court for trial.”

(emphasis supplied)

17. Once, Section 4 to 24 of the Limitation Act do not apply to proceedings under the Act, the plea being advanced by the learned counsel for the election-petitioners-based on Section 17 of the Act that commission of fraud would postpone the start point of limitation to the date of discovery of that fraud, does not merit any further consideration.

18. On facts, only to complete the discussion, it may be noted, no pleading exists to reach any conclusion, even on *prima facie* basis that fraud has been committed. As to the specific pleading of discovery of fraud made on 25.1.2024, there is a complete absence of pleading that fraud even as alleged by the election-petitioners could not be discovered by them earlier, though the election-petitioners had acted with “reasonable diligence”. Therefore, even otherwise, the plea advanced by the election-petitioners is unsubstantiated.

19. In view of the above, the singular outcome of the writ petition cannot be avoided.

20. Insofar as, the precedents relied upon by learned counsel for the election-petitioners are concerned, the same are inapplicable. ***Pallav Sheth Vs. Custodian and others (supra)*** was a case under Contempts of

Courts Act, 1971. Reliance has been placed on the following passage of the report.

“Section 17 of the Limitation Act, inter alia, provides that where, in the case of any suit or application for which a period of limitation is prescribed by the Act, the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of the defendant or his agent (Section 17(1)(b)) or where any document necessary to establish the right of the Plaintiff or Applicant has been fraudulently concealed from him (Section 17(1)(d)), the period of limitation shall not begin to run until the Plaintiff or Applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the Plaintiff or the Applicant first had the means of producing the concealed document or compelling its production. These provisions embody fundamental principles of justice and equity, viz, that a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him to do so have been wilfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favour by virtue of such fraud.”

21. The Supreme Court has clearly noted, the limitation may not begin to run till fraud was discovered, despite “reasonable diligence” observed by the litigant. Clearly as noted above, such are not the facts brought before the Court.

22. In **Satrucharla Vijaya Rama Raju (supra)**, the issue of delay in institution of the proceedings was not involved. In **Ramesh B. Desai and others (supra)**, the proceedings arose under the Company Act. Similarly, in **A.V. Papayya Sastry and others (supra)**, the proceedings arose under the Code of Civil Procedure.

23. For the reasons noted above, the Limitation Act *per se* does not apply to proceedings under the Act. Further, the Act is a complete Code providing for singular consequence in filing belated Election Petition. Further, in absence of any other fact shown to the Court as may allow for any deliberation to arise, I find no useful purpose in avoiding the consequence of dismissal to visit the election-petitioners-by issuance of

notice to the respondent. Already two years (of the term of five years), are over.

24. The present Election Petition fails and is, accordingly, ***dismissed***.

No order as to costs.

Order Date :- 15.3.2024

CS/-

(S. D. Singh, J.)