

A

LACHMAN DAS ARORA  
v.  
GANESHI LAL AND ORS.

SEPTEMBER 1, 1999

B

[DR. A.S. ANAND C.J., S. RAJENDRA BABU AND  
R.C. LAHOTI, JJ.]

*Representation of the People Act, 1951: Sections 81(1) and 86(1).*

C

*Election—Limitation—Period of—Election petition—Filed on the reopening day of High Court after summer vacations after expiry of the prescribed period of limitation i.e., 45 days—But High Court notification clearly provided that election petition could be filed even during summer vacations—Held: If election petition is not filed within the prescribed period it will result in dismissal—Benefit of S.10 of the General Clauses Act not available to save period of limitation as election petition was filed on the reopening day of summer vacations during which the period of limitation had expired.*

D

*General Clauses Act, 1897:*

E

*Section 10—Election petition—Applicability of—Held Applicable to election petitions also and, therefore, if court is closed, petition can be filed on the next day on which the court re-opens—However, applicability of S.10 would depend upon the facts of each case.*

F

*Limitation Act, 1963:*

*Section 5—Period of limitation—Extension of—Equity—Held: Law of limitation has to be applied with all its vigour when the statute so prescribes—Court cannot extend the period of limitation on equitable grounds particularly in the matter of filing of election petition.*

G

**The respondent was declared elected to the State Legislative Assembly. The appellant, defeated candidate, filed a petition challenging the election of the respondent in the High Court on the reopening day after summer vacations. The respondent raised a preliminary objection to the effect that the election petition was not filed within the period of 45 days prescribed by Section 81(1) of the Representation of the People Act, 1951 and, therefore,**

H

the election petition was liable to be dismissed. A

The High Court, relying on a Notification issued by it which provided that the High Court was closed for civil business during the summer vacations except for hearing election petitions, dismissed the election petition on the preliminary issue of limitation without trial. Hence this appeal. B

On behalf of the appellant it was contended that since the High Court was closed on account of vacations, presentation of an election petition on the next day following the vacations, would render the election petition to have been filed during the prescribed period as provided under Section 10 of the General Clauses Act, 1897 and that in view of serious charges levelled against the respondent the election petition should not have been dismissed on ground of limitation. C

Dismissing the appeal, the Court

**HELD :** 1. No period of filing of an election petition is prescribed under the Limitation Act, 1963. The Representation of the People Act, 1951 insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Limitation Act do not apply. If an election petition is not filed within the prescribed period of *forty-five days*, Section 86(1) of the Act, which provides that the High Court *shall* dismiss an election petition which does not comply with the provisions of Section 81 or Section 117, is straightaway attracted. [178-G-H; 179-A] D

2. The proviso to Section 10 of the General Clauses Act, 1897 makes the provisions of Section 10 inapplicable to cases where the Limitation Act applies and since the Limitation Act does not apply to election petitions filed under the Act, Section 10 of the General Clauses Act in term would apply to the filing of election petitions also. According to Section 10 an act should be considered to have been done *within* the prescribed period, if it is done on the next day on which the Court or office is open. The applicability of Section 10 would, however, depend upon the facts of each case and the manner in which the High Court transacts its business during the period of vacations. [179-E-F] E F

*Satbir v. Smt. Parsanni Devi*, (1987) 73, Election Law Report 201, followed. G H

**A** 3. The benefit of Section 10 of the General Clauses Act was not available to the election petitioner to save the period of limitation as undisputedly the election petition had been filed, on the reopening day of the High Court after summer vacations, but after expiry of the period of forty—  
**B** five days prescribed under Section 81(1) of the Act, which period had expired during the period of summer vacations. In view of the clear language of the notification, there was no impediment in the way of the appellant to present the election petition during the summer vacations. [181-C-D]

*Shanker Tripathi v. Shiv Harsh*, [1976] 1 SCC 897 and *Simhadri Satya Narayana Rao v. M. Budda Prasad*, [1994] Supp. 1 SCC 449, held inapplicable.

**C** 4. There is no substance in the argument that in view of the serious charges which had been levelled against the returned candidate in the election petition, the same ought not to have been dismissed on the ground of limitation, as the purity of election process is required to be maintained. It is the duty of the courts to maintain the purity of election process but at the same time  
**D** there is no gainsaying that the law of limitation may harshly affect a particular party, but it has to be applied with all its vigour when the statute so prescribes. The Courts cannot extend the period of limitation on equitable grounds more particularly in the matter of filing of election petitions under the Act. Since,  
**E** it is a common ground that the election petition in the instant case had been filed one week after the expiry of forty-five days, it was clearly barred by time. The High Court was, under the circumstances, fully justified in dismissing the election petition on that ground. [181-D-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8343 of 1997.

**F** From the Judgment and Order dated 16.7.97. of the Punjab and Harayana High Court in E.P. No. 26 of 1996.

M.P. Jah, Ram Ekbal Roy and Anil Kumar Chopra for the Appellant.

**G** Adarsh Kumar Goel, Ms. Sheela Goel and S.S. Shamshery for the Respondents.

The Judgment of the Court was delivered by

**H** DR. A.S. ANAND, CJ. The appellant herein is aggrieved by the dismissal of his Election Petition by the learned Election Judge of the High

Court of Punjab and Haryana on the preliminary issue of limitation without trial. A

The first respondent was declared elected to the Haryana Legislative Assembly from Sirsa Assembly Constituency on 10.5.1996. The appellant, defeated candidate, called in question his election on various grounds by presenting an election petition on 1.7.1996 at 3.00 P.M. in the Registry of the High Court of Punjab and Haryana. The election petition was resisted and a preliminary objection was raised by respondent No. 1 to the effect that the election petition had not been filed within the period of 45 days as prescribed by Section 81(1) of the Representation of the People Act, 1951 (hereinafter "the Act") and was as such liable to be dismissed. The learned Election Judge on the basis of the preliminary objection, raised the following issue:- B C

"Whether the election petition has been filed within the period of limitation?"

Vide judgment dated 16th July, 1997, the issue was decided against the election petitioner and consequently the election petition was dismissed. In holding that the petition had been filed beyond the period of limitation of 45 days, the learned Election Judge relied upon a Notification issued by the Punjab & Haryana High Court dated 27.11.1995, by which calendar of summer vacations for the year commencing 1.1.1996 to 31.12.1996 had been settled by the High Court. D E

Learned counsel for the appellant, in challenging the impugned judgment of the High Court, submitted that since the High Court was closed for summer vacations between June 1 and June 30, 1996 (both days inclusive) the election petition presented in the Registry on the reopening day of the High Court on July 1, 1996, was within the period of limitation. Reliance in this behalf was placed on Section 10 of the General Clauses Act, 1897 and upon the judgments of this Court in *Hari Shanker Tripathi v. Shiv Harsh and Ors.*, [1976] 1 SCC 897 and *Simhadri Satya Narayana Rao v. M. Budda Prasad and Ors.*, [1994] Supp 1 SCC 449, to urge that where the High Court is closed on account of vacations, presentation of an election petition on the next day following the vacations, would render the election petition to have been filed during the prescribed period, if that period fell during the vacations. F G

On behalf of the returned candidate, on the other hand, it was asserted that since the Notification dated 27.11.1995 issued by the High Court itself provided that though the High Court was to remain closed for civil business H

A during the summer vacations, it was to remain open for the purpose of hearing an election petition, therefore, Section 10 of the General Clauses Act was not attracted. Reliance in support of the submission was placed on the judgment of this Court in *Satbir v. Smt. Parsanni Devi & Ors.*, (1987) 73 Election Law Reports 201, wherein a three-Judge Bench of this Court had considered a Notification issued by the Punjab & Haryana High Court on 20th November, 1981, in almost identical terms and held that since for the purpose of hearing of election petitions and filing of other matters under the Representation of the People Act, the Notification had provided an exception, benefit of Section 10 of the General Clauses Act was not available to an election petitioner to file the election petition on the next day following the summer vacations.

C We have given our thoughtful consideration to the submissions made at the bar.

Section 81(1) of the Act deals with the presentation of election petitions and provide:

D “81. *Presentation of petitions.*—(1) An election called 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”.

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

with the provisions of Section 81 or Section 82 or Section 117, is straightaway attracted. A

The next question, however, which arises for consideration is whether Section 10 of the General Clauses Act, 1897 can apply in a case where the prescribed period of limitation expires during the vacations of the High Court? Section 10 of the General Clauses Act reads : B

*S. 10 - Computation of time.* (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, 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: C

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (XV of 1887) applies: D

The proviso to Section 10 makes the provisions of Section 10 inapplicable to cases where the Indian Limitation Act applies and since Indian Limitation Act does not apply to election petitions filed under the Act, Section 10 of the General Clauses Act in term would apply to the filing of election petitions also. According to Section 10 (supra) an act should be considered to have been done within the prescribed period, if it is done on the next day on which the Court or office is open. The applicability of Section 10 (supra) would, however, depend upon the facts of each case and the manner in which the High Court transacts its business during the period of vacations. E F

The Rules and Orders of the Punjab and Haryana High Court do not settle the calendar of summer vacations. It is an admitted case of the parties that settlement of summer vacations is done by issuance of a Notification, which contains all matters connected therewith. The Punjab and Haryana High Court had, as in the previous years, issued a Notification on 27.11.1995, settling the summer vacations and providing therein the manner in which the High Court would function during the summer vacations. G

Whether the benefit of Section 10 of the General Clauses Act can be availed of to save the period of limitation in the present case would therefore, H

A depend upon the terms of the Notification issued by the Punjab and Haryana High Court on 27.11.1995. That Notification *inter alia* provides :

B “It is hereby notified for general information that the Court of Punjab and Haryana at Chandigarh will be closed for Civil business *except for hearing Election petitions or any other matter arising out of the Representation of People Act, 1951* urgent Civil Appeals Petitions etc. including petitions under Art. 226 of the Constitution of India on account of long vacations in the year 1996 from June 1 to June 30, 1996 (both days inclusive). The court will resume sitting on July 1, 1996 (Monday).

C During this period except on Sundays and Holidays Appeals/Petitions etc will be received at the Court at Chandigarh from such persons as may choose to present them”. (Emphasis ours)

D The above Notification unambiguously provides that during the summer vacations i.e. period between June 1 to June 30, 1996 (both days inclusive) while the High Court of Punjab and Haryana at Chandigarh would remain *closed for civil business*, it would be open for “*hearing of election petitions or any other matter arising out of the Representation of the People Act*”. The learned Election Judge of the High Court was, under the circumstances, justified in holding that benefit of Section 10 of the General Clauses Act was

E not available to the election petitioner to save the period of limitation as undisputedly the election petition had been filed, on reopening day of the High Court after summer vacations, but after the expiry of the period of *forty-five days* prescribed under Section 81(1) of the Act, which period had expired during the period of summer vacations. In view of the clear language of the notification, there was no impediment in the way of the appellant to present

F the election petition during the summer vacations. The judgments in *Hari Shanker Tripathi v. Shiv Harsh and Ors.* and *Simhadri Satya Narayana Rao v. M. Budda Prasad and Ors.*, (supra) relied upon by learned counsel for the appellant are clearly distinguishable. In the notifications issued in those cases by the High Court of Judicature at Allahabad and the Andhra Pradesh High

G Court, respectively, the *entire* period of summer vacation was declared as “*closed holidays*” in the case of the High Court of Allahabad, and for the *entire* period of *Sankranti vacation*, the Andhra Pradesh High Court was also to remain *closed*. Unlike the notification of Punjab and Haryana High

H Court dated 27.11.1995, in none of the Notifications settling the vacations in the High Court of Judicature at Allahabad and the Andhra Pradesh High Court, was any exception made with respect to the hearing of election petitions

or any other matter arising out of the Representation of the People Act. Section 10 of the General Clauses Act was, in those cases, clearly attracted to save the period of limitation by filing an election petition, on the first reopening day of the High Court, since the prescribed period of limitation had expired during the "closed holidays" or "Sankranti vacations". It was in this fact situation that the cases of *Hari Shanker Tripathi* and *Simhadri Satya Narayana Rao* were decided. Those judgements, therefore, cannot advance the case of the appellant. On the other hand, the judgment of this Court in *Satbir v. Smt Parsanni Devi & Ors.*, (supra) which considered a Notification issued by Punjab and Haryana High Court on an earlier occasion, in identical terms as the Notification dated 27.11.1995, applies with all force to the facts and circumstances of the present case. In *Satbir's* case (supra) the benefit of Section 10 of the General Clauses Act was denied to the election petitioner and the election petition, not filed within the period of forty-five days which expired during the summer vacations, but filed on the reopening day of the High Court after the summer vacations, was held as barred by time because of the exception contained in the Notification regarding the hearing of election petitions etc., during the period of summer vacations.

We are not impressed by the argument of learned counsel for the appellant that in view of the serious charges which had been levelled against the returned candidate in the election petition, the same ought not to have been dismissed on the ground of limitation, as the purity of election process is required to be maintained. There is no quarrel with the proposition that it is the duty of the Courts to maintain the purity of election process but at the same time there is no gainsaying that the law of limitation may harshly effect a particular party, but it has to be applied with all its vigour when the statute so prescribes. The Courts cannot extend the period of limitation on equitable grounds more particularly in the matter of filing of election petitions under the Act. Since, it is a common ground that the election petition in the instant case had been filed one week after *the expiry* of the period of *forty five days*, it was clearly barred by time. The High Court was, under the circumstances, fully justified in dismissing the election petition on that ground. We do not find any merit in this appeal which accordingly fails and is dismissed but with no order as to costs.

V.S.S.

Appeal dismissed.