

MOHD. ALI
v
AZAD MOHD.

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SEPTEMBER 1, 1999

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

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Representation of the People Act, 1951:

S.81 (1)—Election—Election Petition—Limitation for filing—Election petition filed in Punjab' and Haryana High Court on reopening of summer vacations—Period of limitation expired during summer vacation—Notification of High Court dated 27.11.1995 mentioning that for purpose of hearing election petitions the Court was not "closed" during the summer vacations—Held, election petition was barred by time because of the exception contained in the Notification itself—General Clauses Act, 1897—S.10—High Court Judges (Conditions of Service) Act, 1954—S.23-A—Limitation Act, 1963—S.5.

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Lachhman Das Arora v. Ganeshi Lal & Ors., Suppl. (2) SCR 174, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 445 of 1998.

From the Judgment and Order dated 4.7.97 of the Punjab and Haryana High Court in E.P. No. 24 of 1996.

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B.S. Malik, Altaf Hussain and Dr. K.S. Chauhan for the Appellant.

J.S. Attri and S. Khan for the Respondent.

The following Order of the Court was delivered :

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The election petition filed by the appellant challenging the election of the respondent was dismissed by the learned Election Judge of the High Court of Punjab and Haryana on the preliminary issue of limitation without trial on 4th July, 1997. The order of the High Court has been put in issue before us through this appeal.

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A The facts are not in dispute. The period of 45 days prescribed for filing an election petition expired during the period of summer vacations of the High Court i.e., June 1, 1996 to June 30, 1996 (both days inclusive). The election petition was admittedly filed on the re-opening day of the High Court after the summer vacations on July 1, 1996. The learned Election Judge considered the effect of Notification dated 27th of November, 1995 issued by the High Court and held that the election petition filed on the re-opening day of the High Court was barred by time because for the purpose of hearing election petitions etc., the court was not "closed" during the summer vacations.

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C In *Lachhman Das Arora v. Ganeshi Lal & Ors.*, Civil Appeal No. 8343/97 decided on September 1, 1999, this Court has considered the effect of the very same Notification dated 27th November, 1995 on the filing of an election petition on the re-opening day of the High Court after summer vacations, when the prescribed period of limitation expired, during the summer vacations. After taking note of the provisions of the Representation of the People Act as well as Section 10 of the General Clauses Act, 1897, this Court has come to the conclusion that the election petition, was barred by time, because of the exception contained in the Notification itself. The opinion expressed in the said case applies to this case with full force. We adopt the reasoning given by the Bench in *Lachhman Das Arora's* case (supra) to this case also.

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E Faced with this situation, Mr. B.S. Malik, learned counsel appearing for the petitioner submitted that another Notification had been issued by the High Court of Punjab and Haryana at Chandigarh on 27th May, 1996 and since the later Notification did not contain any exception, the benefit of Section 10 of the General Clauses Act, 1897, would be available to an election petitioner for filing the election petition on the re-opening day of the High Court after summer vacations. The Notification dated 27th May, 1996 on which reliance is placed reads thus:

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G "No. 207/Genl. XVII. 3. - It is notified for general information that High Court of Punjab and Haryana at Chandigarh shall observe summer vacations from 1st June to 30th June, 1996 (both days inclusive) and following timings shall be observed during the period of vacation i.e., 1st June, 1996 to 30th June, 1996.

Court timings: 10.00 a.m. to 4.00 p.m. with lunch break from 1.00 p.m. to 1.45 p.m.

H Office timings: 10.00 a.m. to 5.00 p.m. With lunch break from 1.30

p.m. to 2.00 p.m.

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By order of Hon'ble the Acting Chief Justice and Judges

(Sd)

Assistant Registrar (General)
For Registrar"

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In our opinion, reliance on this Notification to save the period of limitation is misplaced. The Notification of 27th May, 1996 (supra) does not in any manner supersede the Notification issued by the High Court earlier on 27th November, 1995. The Notification dated 27th May, 1996 has to be read as supplementary to the Notification dated 27th November, 1995 because in the latter Notification court timings and office timings during the summer vacations have been prescribed. The effect of the Notification dated 27th November, 1995 has in no way been whittled down by the subsequent Notification dated 27th May, 1996 and on the contrary, the subsequent Notification, by prescribing the court and office timings, has clarified the manner in which the court business was to be transacted during the summer vacations. Both the Notifications have, therefore, to be read together.

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Mr. Malik then submitted that under Section 23-A of the High Court Judges (Conditions of Service) Act, 1954 every High Court shall have vacation or vacations for such period or periods as may from time to time be fixed and during the period of vacations the Court would *not* be considered as 'open' for any purpose. There is a basic fallacy in the argument. These provisions have nothing to do with the functioning of the High Courts. The transaction of court business during the vacations is not controlled by the High Court Judges (Conditions of Service) Act, 1954, but by the Notification issued by the High Court in that behalf.

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For all that we have said above, we find there is no merit in this appeal. The same is dismissed with costs.

R.P.

Appeal dismissed.