

Sukhbeer Singh Vs Amarinder Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 9, 2008

Acts Referred: General Clauses Act, 1897 " Section 10
Limitation Act, 1877 " Section 5
Representation of the People Act, 1951 " Section 81(1)

Hon'ble Judges: Rajive Bhalla, J

Bench: Single Bench

Judgement

Rajive Bhalla, J.

C.M. No. 5 E of 2007

1. Prayer in this application, filed u/s 5 of the Limitation Act, is to condone the delay of four days in the filing of the Election Petition.

2. Counsel for the petitioner submits that though the election petition was filed within limitation, the application for condonation of delay had to be

filed, as the Registry raised an objection that the election petition is time barred. It is contended that the election petition was filed within the period

of limitation, prescribed u/s 81(1) of the Representation of People Act, 1951 (hereinafter referred to as "the Act").
General Elections to the Punjab

Vidha Sabha were held on 13.2.2007. As the result of the present election was declared on 27.2.2007, the limitation, for filing an election petition,

as prescribed under the Act expired on 13.4.2007. The election petition was filed on 16.4.2007. The period of limitation, however, CM No. 5-E

of 2007 in Election Petition No. 22 of 2007 2 stood extended to 16.4.2007, as the Punjab and Haryana High Court was closed for a spell of

vacations from 9.4.2007 to 15.4.2007. The High Court reopened on 16.4.2007, on which date, the petitioner filed the election petition.

3. It is further submitted that the Additional Registrar (J), after scrutiny under Rule 14(a) of Chapter 4-GG, High Court Rules and Orders, Vol. V.,

incorrectly recorded a note that the election petition was barred by limitation. The relevant extract of the note reads as follows :-

1. An election petition is required to be filed within 45 days from the date of declaration of result as provided in Section 81(1) of the

Representation of People Act, 1951. The result was declared in this case on 27.2.2007 and 45 days have expired on 13.4.2007 but it has been

filed on 16.4.2007 i.e. on 48th day. The High Court was closed w.e.f. 8th April, 7-15th April 2007, due to a spell of holidays from 7-15th April.

However, the election branch as well as the Cash Branch of this Hon"ble Court remained open upto 13.4.2007 for receiving election petitions as

limitation of filing the petition was going to expire on 13.4.2007.

4. It is argued that the note recorded by the Additional Registrar (J) that the limitation expired on 13.4.2007, as the election and cash branches

remained open upto 13.4.2007, for receipt of election petitions, is incorrect, as it disregards a significant fact that the notification of holidays, the

subsequent amendment thereto and the daily cause list, issued on the eve of the aforementioned spell of vacations by the Hon"ble High Court, does

not state that election petitions could be filed and would be entertained by the Registry of the Hon"ble High Court. The daily cause list, does not

state that the election branch or the cash branch would be open for filing and receipt of election petitions nor does it identify a designated officer,

who would receive election petitions, during this spell of vacations.

5. It is further contended that as per the notification of holidays, dated 6.12.2006, Annexure A-1, 9th to 13th April 2007 were local holidays, 14th

April 2007 was a holiday being Baisakhi/B.R. Ambedkar's Jayanti and 15th April 2007 was a Sunday. The High Court, therefore, remained

closed from 9th April 2007 to 15th April 2007. The period of 45 days, prescribed by Section 81(1) of the Act, expired on 13th April 2007, but

the limitation for filing of an election petition, stood extended to 16th April 2007, in view of Section 10 of the General Clauses Act.

6. It is further submitted that the cause list issued on the eve of the vacations, Annexure A-4, makes a reference to Habeas Corpus petitions, pre-

arrest bail matters and such other urgent matters, if any, received during the aforesaid spell as may be permitted by the Hon"ble Vacation Judge,

through the Registry. The note does not state that the election branch or the cash branch would remain open for receiving election petitions and

does not identify a designated officer, empowered to receive election petitions during this spell of vacations. It is, therefore, urged that the

petitioner was of the bona fide opinion that election petitions could not be filed and would not be entertained during this spell of vacations and

could, therefore, be filed on reopening of the High Court. The petitioner, therefore, filed his election petition on the reopening day on 16.4.2007.

7. It is further submitted that Annexure A-3 dated 29.3.2007/14.4.2007, a notification issued to amend the notification of holidays, issued after the

result was declared, strangely enough does not state that election petitions can be filed during vacations. It is, therefore, submitted that as limitation

for filing election petitions expired during vacations, the last day for filing the election petition would be extended to 16.4.2007, in view of Section

10 of the General Clauses Act.

8. For the above submissions, the petitioner places reliance upon a judgement of the Hon"ble Supreme Court reported as Simhadri Satya

Narayana Rao v. M. Budda Prasad, 1994 Suppl (1) SCC 449, where it is emphasised, that the Hon"ble Supreme Court, while considering, a

situation identical to the situation as obtains in the instant petition, held that as the Andhra Pradesh High Court was closed for all purposes, except

for applications of an urgent nature, the petitioner was entitled to invoke Section 10 of the General Clauses Act to assert that the election petition

though presented after 45 days, was within limitation. Reliance is also placed upon another judgement of the Hon"ble Supreme Court, namely Hari

Shanker Tripathi Vs. Shiv Harsh and Others, .

9. Counsel for the petitioner also refers to Rule 11 (ii) of Chapter 4 of Part GG, Vol. V of the High Court Rules and Orders, to submit that as per

the aforementioned rule, an election petition is to be presented to the Registrar during office hours on any working day. As 9th to 15th April 2007

were not working days, the petitioner could not have presented the election petition, during this period. It is, therefore, prayed that as the election

petition has been presented within limitation, the objections raised by Additional Registrar (J) be rejected and it be held that the election petition

has been filed within limitation.

10. Counsel for the respondent, on the other hand, strongly refutes the correctness of the above submissions and argues that the application for

condoning delay and the election petition must be dismissed. The application filed u/s 5 of the Limitation Act is not maintainable as the Limitation

Act does not apply to proceedings under the Representation of People Act. It is further submitted, by relying upon the Punjab and Haryana High

Court Rules and Orders, Vol. V Chapter 4, Part GG that an Election petition is to be presented before a designated officer and not before an

Hon"ble Judge, as was the situation before the Andhra Pradesh High Court. The judgement of the Hon"ble Supreme Court in Simhadri Satya

Narayana Rao (supra) would not, therefore, apply to the present case. As per the objections raised by the Additional Registrar (J), the election

and the cash branches were open during vacations and an officer was available for receiving election petitions. It is further submitted that during this

spell of vacations, 21 election petitions were filed upto 13th April 2007. It is further contended that the notification of holidays issued by the Punjab

and Haryana High Court, as also the note appearing in the cause list does not prohibit the filing of an election petition during the spell of vacations.

The petitioner's submission that he could only file the election petition on reopening is, therefore, incorrect.

11. It is further submitted that in view of the High Court Rules and Orders, the election branch remains open throughout the year, more particularly,

when a general election is announced. Election petitions are even entertained on a Sunday. The petitioner, therefore, cannot urge that he was

misled by the absence of any note in the notification of vacations or in the cause list that election petitions could be received during vacations.

12. Another argument pressed into service by counsel for the respondent is that the note appearing in the cause list, issued a day prior to the

vacations, clearly stipulates that urgent matters can be filed with the permission of the Hon"ble Vacation Judge, through the Registry. An election

petition is always urgent and could have been filed after obtaining the permission of the Hon"ble Vacation Judge. This argument is sought to be

fortified by reference to the fact that during the vacations, 21 election petitions were filed. It is, therefore, asserted that the petitioner's negligence

cannot be condoned by resort to the provisions of Section 10 of the General Clauses Act.

13. Another argument pressed into service, by counsel for the respondent, is that the High Court Rules and Orders are a complete code in

themselves and govern the receipt, filing, scrutiny etc. of an election petition. For the petitioner to, therefore, contend that he was unaware that an

election petition could be presented during the spell of vacations, is an attempt to misuse the provisions of Section 10 of the General Clauses Act.

14. I have heard learned counsel for the parties and perused the pleadings and the relevant documents.

15. Section 81(1) of the Act provides that an election petition shall be filed within 45 days of the declaration of the result of an election. The result,

in the present case, was admittedly declared on 27.2.2007. The limitation, therefore, to file an election petition expired on 13.4.2007. The election

petition was, however, filed on 16.4.2007. As noticed herein before as per Annexure A-1, dated 6.12.2006, the notification setting out holidays in

the Punjab and Haryana High Court, the public at large was informed, that the High Court would be closed from 9.4.2007 to 13.4.2007 for

vacations. 14.4.2007 would be a holiday, on account of Baisakhi/B.R. Ambedkar Jayanti and 15.4.2007 being a Sunday, the High Court would

be closed. A relevant extract of the notification of vacations dated 6.12.2006 (Annexure A-1) reads as follows :-

No. 350 Genl/XVII.3 - It is hereby notified for general information that the days enumerated in the schedule below shall be observed as Holidays

by the Punjab and Haryana High Court at Chandigarh during the Calender Year, 2007:-

Sr. Description of Date Day of the No. of

No. Holidays on week Holidays

which

falls

XXX XXX XXX

11. Good Friday April Friday 1

06

12. Baisakhi/Dr. April Saturday 1

B.R. 14

AmbedkarJayanti

XXX XXX XXX

LOCAL HOLIDAYS 2007

XXX XXX XXX

5. April 9 Monday 1

6. April 10- Tuesday 1

7. April 13 Wednesday1

8. April 12 Thursday 1

9. April 13 Friday 1

XXX XXX XXX

16. The notification, unambiguously provides that 9th to 13th April 2007 are local holidays, whereas 14.4.2007 is a holiday, on account of

Baisakhi/B.R. Ambedkar Jayanti and 15.4.2007 being a Sunday, the High Court would be closed. The High Court eventually re-opened on

16.4.2007, and the election petition was filed on 16.4.2007. The above notification does not make any reference to any arrangement for work,

much less urgent work to be taken up during vacations for obvious reasons. Work to be taken up during vacations is generally notified, in the

cause list preceding a spell of vacations. Though, the notification amending the notification of holidays, was amended, after the declaration of

election results, this notification dated 29.3.2007, published on 4.4.2007, notifying that 21.4.2007 and 28.4.2007 would be Court working days,

does not state that election petitions could be filed during the spell of vacations i.e. from 9th to 15th April 2007 and does not disclose the nature of

work to be assigned or entertained during vacations. The daily cause list issued on the eve of these vacations contains the following note, which

reads as follows :-

During the ensuing holidays commencing from 6.4.2007 to 15.4.2007, the following officers with their respective staff are put on duty to entertain

Habeas Corpus Petitions from 6.4.2007 to 15.4.2007 and pre-arrest bail matters and such other urgent matters, if any, received during the

aforesaid spell as may be permitted by His Lordship through Registry from 9.4.2007 to 13.4.2007 will be taken up by the Hon"ble Judge/s.

Name of Officers :-

1. Mrs. Tejinder Kaur Bakshi, Assistant Registrar
2. Mr. R.S. Gill, Assistant Registrar (Civil & Judl)
3. Mr. R.S. Ratol, Deputy Registrar (Protocol)
4. Ms. Nirmal Kant, Deputy Registrar (Accounts)
5. Mrs. Suman Chopra, Deputy Registrar (Writ)
6. Mr. A.P. Khurana, Deputy Registrar (Groupings)
7. Mr. Ranjit Singh, Deputy Registrar (Establishment)
8. Mr. M.P. Kohli, Assistant Registrar
9. Mrs. Vijay Bhandair, Assistant Registrar

17. Though the note makes a specific reference to Habeas Corpus Petitions, pre-arrest bail matters and urgent matters, it does not state that

election petitions can be filed during vacations or that the election and cash branches would be open for receiving election petitions. Further more,

the note does not identify, from the list of officers named, an officer designated to receive election petitions.

18. As general elections had concluded with the declaration of results and limitation for filing election petitions was to expire during this spell of

vacations, the cause list was necessarily required to contain a note that election petitions would be entertained during the spell of vacations, the

election and cash branches would remain open and a named designated officer nominated to receive election petitions. In the absence of such a

note, there was an error in cause list notifying the work to be taken up and the nature of the petitions to be entertained during this spell of

vacations.

19. The question that now merits consideration is, whether the absence of any reference to the filing/receipt of election petitions in the notifications

Annexures A-1 and A-4 and in the daily cause list can be held to be sufficient to give rise to a bona fide belief, in a person of ordinary prudence,

that election petitions, would not be entertained, during the spell of vacations and could therefore, be filed on reopening of the High Court. A

considered appraisal of the notification of vacations, the amendment thereto and the note appearing in the cause list, lead me to a conclusion that a

person of ordinary prudence could have been led to hold a bona fide belief that election petitions would not be entertained, during the spell of

vacations and could, therefore, be filed on reopening of the High Court. The fact that 21 election petitions were received during this spell of

vacations or that an election petition may be entertained even on Sunday are therefore, entirely irrelevant. In my considered opinion, the petitioner

was justified in his belief that the election petition could be filed on the reopening of the High Court.

20. Though, the provisions of Limitation Act do not apply to proceedings under the Representation of People Act, Section 10 of the General

Clauses Act, would come to the aid of the petitioner in the present situation. Section 10 of the General Clauses Act reads as follows :-

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;

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth-day of January, 1887.

21. As per the provisions of Section 10 of the General Clauses Act, if limitation expires on a date, when the Court is closed, the limitation would

stand automatically extended to the next working day and in the facts of the present case to the reopening of the Hon"ble High Court on

16.4.2007.

22. In Simhadri Satya Narayana Rao (supra), the Hon We Supreme Court, while considering a similar controversy and after reiterating that the

Limitation Act did not apply to the filing of election petition under the Representation of People Act, 1951 held as follows :-

9. The first para of the notification, which is the operative part, states that ""the High Court of Andhra Pradesh will remain closed for Sankranthi

vacation, 1990 from Tuesday the 2nd January to Friday the 12th January 1990 (both days inclusive)"". The notification nowhere states that the

Registry of the High Court would remain open. Notice to the effect that ""the High Court of Andhra Pradesh will remain closed"" cannot be

understood by layman-litigant to mean that it would still be open for filing purposes. After the operative part which declares the closure of the High

Court for Sankranthi vacation, the subsequent paras specifically indicate the matters which could be filed during the vacation. It is stated that two

Hon"ble Judges would be the vacation Judges for the specified period and they would dispose of applications of urgent nature. The designation of

two Assistant Registrars as vacation officers and the provision of notice of urgent applications to the vacation officers a day earlier of sitting of the

vacation Judges, goes to show that the Registry was not functioning in the ordinary course. A bare reading of the notification leaves no manner of

doubt that the Andhra Pradesh High Court remained closed for all purposes except for applications of urgent nature for which vacation Judges and

vacation officers were designated. There was no provision for filing of election petitions in the notification and as such the filing of the election

petition by the respondents on reopening day of the High Court by invoking Section 10 of the General Clauses Act, was justified.

11. We do not agree with the contention of Mr. Sitaramiah that in the absence of any bar in the notification the election petitions under the Act can

be filed during the vacations. It is the vacation notification which has to be looked up to find out whether the Registry is open for presenting the

election petitions. The notification in this case unmistakably stated that the High Court would remain closed during Sankranthi vacation. No

reasonable person would knock the door of the High Court during that period for filing an election petition.

23. A perusal of the above extract, leaves no manner of doubt that the controversy in the instant election petition is similar to the one in Simhadri

Satya Narayana Rao (supra), and is, therefore, squarely covered by the ratio of aforementioned judgement. In the instant case, as also in the

above case, the note appearing in the list issued on the eve of vacations did not contain any intimation that the Registry would be open for normal

functioning and/or election petitions could be filed and would be entertained during the spell of vacations. It was, therefore, held that the provisions

of Section 10 of the General Clauses Act, would apply and the election petition would be deemed to have been filed within limitation.

24. In the present case 9th to 13th April 2007 were vacations. 14/15th April 2007 were holidays, on which dates the Registry was completely

closed. No separate order/notification was issued that election petitions would be entertained during this spell of vacations. The election petition

was filed on 16.4.2007 i.e. upon reopening of the High Court and it would, therefore, have to be held to be within limitation, by invoking the

principle set out in Section 10 of the General Clauses Act.

25. As regards the respondent's submission that during the period of vacations, 21 election petitions were entertained, the said assertion is

irrelevant. Whether the Registry had a right to entertain the petitions during vacations or not and whether they were correctly entertained or not,

would not, in the absence of any intimation that election petitions could be filed during the spell of vacations, exclude the operation of Section 10 of

the General Clauses Act, 1897 or alter the nature of notification Annexure A-1 or the note appearing in the list issued on the eve of vacations.

26. Another submission by counsel for the respondent that Rule 6 of Chapter 4-GG of Punjab and Haryana High Court Rules and Orders,

provides that an election petition shall be presented within 45 days from the declaration of the result, in my considered opinion, would not oust the

applicability of Section 10 of the General Clauses Act. Another submission that Rule 11 (ii) of Chapter 4 of Part GG provides that an election

petition shall be presented before the Registrar of this Court on any working day. The election petition could, therefore, have been presented, as

the High Court was working, during vacations, merits rejection. The daily cause list does not state that the Registry would remain open during

vacations for receiving election petitions. The note appearing in the cause list issued on the eve of vacations, clearly details the officers on duty,

during vacations but does not refer to an officer designated to receive election petitions. The note does not set out specifically or by necessary

inference, that the Registry would be open for normal filing of petitions, whatever be their nature. Any ambiguity in a notification providing

information as to the working of a Court is likely to cause confusion and should, therefore, be specific as to the matters it seeks to inform.

27. As the notification Annexure A-1, the note in the cause list preceding vacations, Annexure A-4 do not specifically or by necessary inference,

state that election petitions would be entertained during vacations, Section 10 of the General Clauses Act would come to the petitioner's aid and

limitation for filing an election petition would close on 16.4.2007. The election petition filed on 16.4.2007 is, therefore, held to have been filed

within limitation.

28. In view of what has been stated herein above, the application stands disposed of accordingly.