

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:56237

Judgment reserved on 05.08.2024

Judgment delivered on 14.08.2024

Reserved

Case :- ELECTION PETITION No. - 3 of 2024

Petitioner :- Maneka Sanjay Gandhi

Respondent :- Rambhual Nishad And Others

Counsel for Petitioner :- Prashant Singh Atal, Amit Jaiswal Ojus

Law, Dr. Pooja Singh, Vijay Vikram Singh

Hon'ble Rajan Roy, J.

1. Heard Mr. Siddharth Luthra, learned Senior Advocate assisted by Mr. Prashant Singh Atal, Mr. Amit Jaiswal, Dr. Pooja Singh and Mr. Vijay Vikram Singh for the election-petitioner.

2. This Election Petition has been filed by the petitioner-Maneka Sanjay Gandhi challenging election of the returned candidate-Rambhual Nishad as Member of Parliament from Sultanpur 38-Lok Sabha constituency and that the same be declared as null and void and be set aside.

3. It is admitted case of the petitioner herein that the returned candidate was elected on 04.06.2024 and the result of was

declared on 06.06.2024. This election petition has been filed on 27.07.2024.

4. As per Section 81 of the Representation of People Act, 1951 (hereinafter referred as 'Act 1951') such an election petition can be filed within 45 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.

5. The election petition has apparently been filed beyond the period of 45 days prescribed in Section 81 of the Act 1951. Section 86 of the Act 1951 provides that the High Court shall dismiss an election petition which does not comply with the provision of Section 81 or Section 82 or Section 117 of the Act 1951.

6. Apparently, Section 86 (1) of the Act 1951 referred hereinabove is mandatory and in the event an election petition is filed beyond the period of 45 days prescribed in Section 81 of the Act 1951 the High Court does not have any option but to dismiss the election petition in view of provision contained in Section 86 (1) of the Act 1951. There is no provision under the Act 1951 which permits condonation of such delay and extension of the

limitation proscribed in Section 81 of the Act 1951 on any ground.

7. On being confronted, Mr. Luthra who joined the proceedings through Video Conferencing and argued the election petition submitted that the law has evolved and now Section 33-A has been added in the Act 1951 which requires a disclosure by the candidate about the criminal cases against him. The said provision gives a corresponding right to the elector etc. to information with regard to the person whom he is required to vote for. This right, according to him, is in fact part of the constitutional right as held in various decisions and in this context he relied upon decisions of Hon'ble Supreme Court of India in ***Vidyacharan Shukla vs. Khubchand Baghel and others; (1964) 6 SCR 129, Hukumdev Narain Yadav vs. Lalit narain Mishra; (1974) 2 SCC 133, Hari Shanker Tripathi vs. Shiv Harsh and Others; (1976) 1 SCC 897, Mangu Ram vs. Municipal Corporation of Delhi; (1976) 1 SCC 392, Bengal Chemists & Druggists Assn. vs. Kalyan Chowdhury; (2018) 3 SCC 41, Krishnamoorthy vs. Sivakumar and others; (2015) 3 SCC 467, Union of India vs. Assn. for Democratic Reforms and another; (2002) 5 SCC 294, People's Union for Civil Liberties (PUCL) and another vs. Union of India and***

another; (2003) 4 SCC 399, Lily Thomas vs. Union of India and others; (2013) 7 SCC 653, Resurgence India vs. Election Commission of India and another; (2014) 14 SCC 189, Public Interest Foundation and others vs. Union of India and another; (2019) 3 SCC 224, N. Balakrishnan vs. M. Krishnamurthy; (1998) 7 SCC 123 and Gopal Sardar vs. Karuna Sardar; (2004) 4 SCC 252. Relying upon the same, he also contended that much water has flown down the river and the law has evolved immensely since the decision in the case of **Hukumdev Narain Yadav** (supra) and the said decision as also the later decisions following it had not taken into consideration the insertion of Section 33-A in the Act 1951 and its impact. His submission was that the returned candidate had not disclosed four criminal cases pending against him and had submitted a false affidavit. It was also his submission that limitation should not legalize such illegal non-disclosures, as, ultimately the election was to the Parliament of India and considering the consequences on the functioning of the polity this by itself should be a ground for entertaining the election petition and for this Court to decide the same on merits.

8. The issue which has arisen in this election petition is no longer *res integra*. A three Judge Bench of Hon'ble Supreme

Court of India in the case of ***Hukumdev Narain Yadav*** (supra) had the occasion to consider the same. Question of applicability of Section 5 of the Limitation Act to an election petition was specifically an issue before the Supreme Court in the said case, apart from other issues involved. It is, therefore, fruitful to refer to relevant extracts of the said judgment, especially as the Supreme Court also considered the provision of Section 86 (2) of the Act 1951 and its impact on the election petition in the said context. It held as under:

"16. In K. Venkateswara Rao and Anr. v. Bekkam Narasimha Reddi & Ors.; AIR 1969 SC 872 to which we shall refer more fully later, Vidyacharan Shukla's case (supra) was attempted to be pressed into service, but this Court repelled it and observed at pp. 688-689:

"In our view, the situation now obtaining in an appeal to this Court from an order of the High Court is entirely different. There is no section in the Act as it now stands which equates an order made by the High Court under Section 98 or Section 99 to a decree passed by a Civil court subordinate to the High Court. An appeal being a creature of a statute, the rights conferred on the appellant must be found within the four corners of the Act. Sub-Section (2) of the present Section 116-A expressly gives this Court the discretion and authority to entertain an appeal after the expiry of the period of thirty days. No right is however given to the High Court to entertain an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117."

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 s. 81. Again, s. 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."

9. Hon'ble the Supreme Court opined in the said case that the applicability of the provisions of the Limitation Act by virtue of Section 29 (2) thereof is to be judged not from the terms of the limitation Act but by the provisions of the Act relating to filing of election petition and their trial to ascertain as to wherein it is complete code in itself which does not admit application of any provisions of the Limitation Act mentioned in Section 29 (2) of that Act.

10. Referring to various earlier decisions of Hon'ble Supreme Court of India including those wherein it has been held that the Act 1951 was a complete Code and also taking into consideration various amendments made by the Legislature in the said Act, especially Section 81 thereof, and the earlier existing Section 85 which empowered the Election Commission in its discretion to condone the delay in presentation of the election petition and also taking into consideration the decision of Hon'ble the Supreme Court in the case of **Charan Lal Sahu vs.**

Nand Kishor Bhatt; 1973 (2) SCC 530 wherein it had been held that there is no question of any common law right to challenge an election as such any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes and if no such discretion was conferred in respect of any of these matters none can be exercised under any general law or any principles of equity and if for non compliance of the provisions of Section 82 and 117 which is mandatory, the election petition has to be dismissed under Section 86 (1) of the Act 1951, presentation of election petition within the period prescribed in Section 81 of the Act 1951 would be equally mandatory, non-compliance of which visits the penalty of the petition being dismissed, it was held, for all the reasons mentioned, therein that provisions of Section 5 of the Limitation Act do not govern the filing of election petitions or their trial.

11. It also considered the plea that if the petitions were to be dismissed allegation of serious corrupt practices cannot be inquired into and purity of the elections cannot be maintained and found the answer to this plea in the judgment of Justice G.K. Mitter in **K. Venkateswara Rao and Anr. v. Bekkam Narasimha Reddi & Ors.; AIR 1969 SC 872** wherein his

Lordship opined that 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.

12. Their Lordships also took into consideration that since the decision in ***K. Venkateswara Rao*** (supra) decided in August, 1968, though the Parliament has made certain amendments in the Act 1969, it has not considered it necessary to amend the Act to confer, on persons challenging the election, benefits similar to those available to them under the proviso to the repealed Section 85 of the Act 1951, for, as it did not want delays to occur in the disposal of election petitions as in the past. Under the repealed Section 85 there was a provision for condonation of delay in filing election petition but there is no such provision in the Act 1951 existing as of now.

13. It is not out of place to mention that in **Hukumdev Narain Yadav** (supra), Hon'ble the Supreme Court also considered the constitution bench judgment in the case of **Vidyacharan Shukla** (supra).

14. **Hukumdev Narain Yadav** (supra) has been followed in various later decisions such as **1976 (1) SCC 897 (Harishankar Tripathi vs. Shiv Harsh and others)**; **2018 (9) SCC 808 (Suman Devi vs. Manisha Devi and others)**.

15. Another three Judge Bench of Hon'ble the Supreme Court in **Lachhman Das Arora vs. Ganeshi Lal and others; 1999 (8) SCC 532** construed the provisions of Section 81 (1) of the Act 1951 and has held as under:

"7. 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 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. 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."

This decision has been followed in the subsequent decision in ***Suman Devi*** (supra).

16. From the aforesaid discussion it is apparent that the Limitation Act, 1963, especially Section 5 thereof, is not applicable to election petitions. In fact, the applicability appears to be specifically excluded in view of the provision of Section 86 (1) of the Act 1951 which makes it mandatory for the High Court/ Election Judge to dismiss the election petition if it is not in conformity with the provision of Section 81 of the Act 1951.

17. It is not out of place to mention that the High Court while hearing an election petition operates as an Authority under Article 329 (b) of the Constitution of India whose jurisdiction is circumscribed by the statutory provisions contained in the Act 1951. The legal position in this regard has been settled by a three Judge Bench in the case of ***Thampanoor Ravi vs. Charupara Ravi and Others; (1999) 8 SCC 74***. The said judgment has been followed by a Division Bench of this Court on a reference made by a learned Single Judge in the context of an election petition bearing ***Election Petition No. 7 of 2022***

(Sheshmani Nath Tripathi (S.N. Tripathi In Short) vs. Shri Dinesh Rawat, The Returned Candidate. The High Court while hearing an election petition does not function as a Constitutional Court *per se* nor does it have extraordinary constitutional or inherent powers as has been held in **Thampanoor Ravi** (supra) and the Division Bench of this Court in **Sheshmani Nath Tripathi** (supra), therefore, the contention of Mr. Luthra that the violation of constitutional right to right to information should be considered is not acceptable. Unless and until the election petition is maintainable and is not barred by limitation, the merits of the matter cannot be considered. In fact such a plea has already been considered in **Hukumdev Narain Yadav** (supra) with reference to opinion of Justice Mitter in **K. Venkateswara Rao's** case as already referred earlier.

18. For all these reasons, this election petition being barred by Section 81 read with Section 86 of the Act 1951 and Order VII Rule 11(d) of the Code of Civil Procedure is liable to be dismissed. It is accordingly **dismissed**.

[Rajan Roy, J.]

Order Date :- 14.08.2024
Santosh/-