

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 31.8.2010

1) C.R. No.2287 of 2010 (O&M)

Chet Ram

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

2) C.R. No.2288 of 2010 (O&M)

Balwinder Kumar

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

3) C.R. No.2289 of 2010 (O&M)

Vijay Kumar

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

4) C.R. No.2290 of 2010 (O&M)

Rachna Chhabra

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

5) C.R. No.2291 of 2010 (O&M)

Kulwant Kaur

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK SINGH

-.-

Present: Mr. Vikas Bahl, Advocate
for the petitioner(s).

Mr. Satish Bhanot, Addl. A.G., Punjab.

Mr. R.P. Dhir, Advocate
for respondent No.3.

Mr. Munish Garg, Advocate
for respondent No.4.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

ALOK SINGH, J. (ORAL)

1. These are five revision petitions involving same questions of law and facts, hence, all are being disposed of with the consent of learned Counsel for both the parties, by this common order.

2. In the present petition, order impugned is dated 23.2.2010 passed by learned Deputy Commissioner-cum-Election Tribunal, Nawanshahr. Brief facts of the present case are that for the Municipal Committee, Nawanshahr, election was held on 30.6.2008 and the result was declared on the same day; respondent No.3 herein filed a writ petition being CWP No.14592 of 2008 before this Court challenging the election and its result dated 30.6.2008; a Division Bench of this Court vide order dated 20.8.2008, disposed of the writ petition with liberty to the petitioner therein to file an election petition before the Election Tribunal with further direction that if election petition is filed, it shall be decided expeditiously; against the order dated 20.8.2008, a review application was moved by the petitioner herein/returned candidate, however, same was also rejected; order dated 20.8.2008 was challenged before the Hon'ble Apex Court in SLP No.27853-27854 of 2008; the Hon'ble Apex Court vide order dated 1.12.2008 dismissed the Special Leave to Appeal with permission to the petitioner(s) herein to raise all questions of facts and/or law as permissible under the law before the Election Tribunal.

3. An election petition was filed by the respondent No.3 herein before the Election Tribunal on 3.9.2008 with certain defects. However, defects were removed on 24.9.2009. Alongwith the elec-

tion petition, an application for condonation of delay was also moved by respondent No.3 which was allowed by the Election Tribunal vide impugned order dated 23.2.2010.

4. Learned Election Tribunal in the impugned order dated 23.2.2010 has held that although provisions of Limitation Act are not applicable, however, in view of the filing of the writ petition prior to filing of the election petition and in view of the order passed by this Court directing the petitioner therein to file election petition and the direction that petition shall be disposed of on merit, delay in filing the election petition is condoned.

5. Feeling aggrieved from the order of the Election Tribunal dated 23.2.2010, returned candidates/petitioners herein have filed present revision petitions.

6. Mr. Vikas Bahl, learned Counsel for the petitioner(s) vehemently argued that election petition is filed under Section 76(1) of the Punjab State Election Commission Act, 1994 (for brevity 'Act, 1994') challenging the election of the Municipal Committee. He further states that as per Section 76(1) of the Act, 1994, election petition is to be filed within 45 days from the date of election of the returned candidate. He further states that Section 80 of the Act, 1994 further provides that if petition is not filed in accordance with Section 76 of the Act, 1994, the same shall be dismissed. Mr. Vikas Bahl, learned Counsel for the petitioner(s) while taking shelter of Section 76(1) and Section 80 of the Act, 1994 vehemently argued that if peti-

tion is not filed within 45 days from the date of election of returned candidate, Tribunal has no other option except to dismiss it in accordance with Section 80 of the Act, 1994. He further states that in view of Section 80 of the Act, 1994, limitation Act shall not be applicable in the matter of the election petitions filed under Section 76 of the Act. Mr. Vikas Bahl, learned Counsel for the petitioner(s) has heavily relied upon the judgment of the Hon'ble Apex Court in the matter of **Lachhman Das Arora vs. Ganeshi Lal and others** reported in **(1999) 8 Supreme Court Cases 532** and judgment of learned Single Judge of this Court in the matter of **Joginder Singh vs. Baldeep Singh and others** reported in **2010(1) R.C.R. (Civil) 78.**

7. Mr. R.P. Dhir, learned Counsel for respondent No.3/election petitioner argued that since this Court while disposing writ petitions filed by the election petitioner vide order dated 20.8.2008 directed the election petitioner to file an election petition and has further directed to decide the election petition, hence, learned Tribunal was well within its jurisdiction while condoning the delay. He further argued that even the Hon'ble Supreme Court in the SLP filed by the petitioner herein has directed that election petition shall be decided on merit in accordance with law, hence, election petition can not be dismissed on the ground of limitation and Election Tribunal was well within its jurisdiction while condoning the delay. He further argued that if petition is dismissed at the initial stage without condoning the delay it would amount to non-deciding of the petition at its own merit

as directed by this Court as well as the Hon'ble Apex Court. Mr. R.P. Dhir, learned Counsel for respondent No.3 has heavily relied upon the judgment of the Hon'ble Apex Court in the matter of **Shaik Saidulu alias Saida vs. Chukka Yesu Ratnam and others** reported in **AIR 2002 Supreme Court 749**.

8. I have carefully heard learned Counsel for both the parties and examined the relevant provisions of law and judgments cited by both the Counsel.

9. To appreciate the respective arguments advanced by learned Counsel for the parties, I deem it proper to reproduce Sections 76 and 80 of the Act, 1994.

“76. Presentation of petition:- (1) An election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

80. Trial of election petitions:- (1) *The Election Tribunal shall dismiss an election petition which does not comply with the provisions of section 76 or section 77 or section 103.*

Explanation:- An order of the Election Tribunal dismissing an election petition under this sub-section, shall be deemed to be an order made under clause (a) of Section 87.

(2) *Where more than one election petitions are presented to the Election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal may, in his discretion, try them separately or in one or more groups.*

(3) *Any candidate not already a respondent shall, upon application made by him to the Election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent.*

Explanation:- For the purposes of this subsection and of section 86, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Election Tribunal and to answer the claim or claims, as the case may be, made in the petition.

(4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow to particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice of the trial be continued from day-to-day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the Election Tribunal for trial.”

10. From the perusal of Section 76 of the Act, 1994, it can safely be said that election petition has to be filed within 45 days from the date of election of the returned candidate or if there are more than one returned candidates from the last date of the election of the last returned candidate. Section 80 of the Act, 1994 provides that if

election petition does not comply with the provision of Section 76 of the Act, 1994, then Court shall dismiss the petition. Word 'shall' used in Section 80 of the Act, 1994 makes it mandatory for the Tribunal to dismiss the petition, if it is not filed within 45 days from the date of the election of the returned candidate as provided by Section 76 of the Act, 1994.

11. Three Judges Bench of the Hon'ble Apex Court in the matter of Lachhman Das Arora (supra) while dealing with the election petition filed under the Representation of the People Act, 1951 in paragraph No.7 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 straightway attracted.”

12. Learned Single Judge of this Court while interpreting Section 76 of the Act, 1994 in the matter of Joginder Singh (supra) in paragraph No.7 has held as under:-

“7. Thus, from the above, it is apparent that while granting liberty to avail the remedy of election petition, no direction qua condonation of delay was passed. The mere fact that the High Court had dismissed the writ petition as withdrawn with direction to avail the remedy of election petition in accordance with law, in itself, does not amount to a direction for condonation of delay. Thus, to have condoned the delay on the ground that a liberty had been granted to the respondents to file election petition, can not be sustained. It is admitted that neither any application for condonation of delay was filed nor has any provision for condonation of delay has been pointed out by the learned counsel for the respondents. The provision of Section 76 of the 1994 Act, reproduced above, shows that the

election petition should have been filed within a period of forty five days from the date of election of the returned candidate. In the present case, the election of Gram Panchayat Mehal Khurd was held on 26.5.2008 and the forty five days were expired on 09.07.2008. The election petition was filed on 11.11.2008, which is clearly time barred and the same should not have been entertained.”

13. Facts of the present case are almost identical to the facts of Joginder Singh's case (supra). Learned Single Judge of this Court in the Joginder Singh's case has observed that if instead of filing election petition writ petition is filed and writ petition is dismissed by this Court with liberty to the petitioner to avail alternate remedy of filing election petition, then it will not amount to condoning the delay in filing the election petition.

14. From the order passed by this Court dated 20.8.2008, I am unable to find out any observation made by Divisional Bench of this Court of the effect that if election petition is filed the delay in filing the election petition shall be condoned on account of filing of the writ petition before this Court. Not only this, the Hon'ble Apex Court vide order dated 1.12.2008 has permitted the present petitioner/returned candidate to raise all questions of fact and/or law before the Election Tribunal. The Hon'ble Apex Court further directed the Tribunal to consider all the questions raised before the Tribunal on merit and to decide the petition in accordance with law. The only meaning of the

order of the Hon'ble Apex Court would be, if question of limitation is raised then Tribunal shall decide the question of limitation at its own merit in accordance with law. However, order of the Hon'ble Apex Court can not be interpreted to mean that question of limitation shall not be decided and election petition shall be decided at its own merit as suggested by Mr. R.P. Dhir, learned Counsel for respondent No.3/election petitioner.

15. However, in the matter of Shaik Saidulu alias Saida (supra), two Judges Bench of Hon'ble Apex Court while interpreting the Hyderabad Municipal Corporation Act has held that exclusion of Section 5 of the Limitation Act must be specified under the special statute and it has further been held that since Act is silent about the exclusion of the Limitation Act, hence, Section 5 of the Limitation Act can be pressed into service.

16. Although judgment of the Hon'ble Apex Court in the matter of Shaik Saidulu alias Saida (supra) was not referred before the three Judges Bench of the Hon'ble Apex Court in the matter of Lachhman Das Arora (supra), however, in view of the dictum of the Hon'ble Apex Court in the matter of Lachhman Das Arora (supra) (three Judges Bench), I have to follow the ratio laid down in the matter of Lachhman Das Arora (supra). In view of the above, I find that in the matter of election petition filed under the provisions of the Act, 1994, Limitation Act is not applicable in view of Section 80 of the Act and Tribunal has no other option except to dismiss the election peti-

tion if filed beyond 45 days from the date of election of the returned candidate.

17. In view of the observation made above, impugned order dated 23.2.2010 can not be sustained in the eyes of law. Present petition is allowed. Impugned order dated 23.2.2010 is set aside. Election petition is dismissed as being time barred.

18. A copy of this order be placed on files of the connected cases.

31st August, 2010
ashish

(ALOK SINGH)
JUDGE