

SIMHADRI SATYA NARAYANA RAO

v.

M. BUDDA PRASAD AND ORS.

DECEMBER 21, 1990

[KULDIP SINGH AND M. FATHIMA BEEVI, JJ.]

Election Law: Representation of the People Act, 1951. Section 81 and 86—Election petition—Filing on the re-opening day of the High Court after vacation—Statutory period of 45 days over during the vacation—Whether liable to be dismissed under section 86 of the Act?

Notification dated 29.12.1989 issued by the High Court notifying the Sankranthi vacation—Its interpretation and scope—No distinction can be made between the court and the office (Registry)—Manner and extent of functioning during the vacation—Whether in the light of the wording of the notification, the High Court remained closed between 2.1.1990 and 12.1.1990 so as to enable the election petitioners to invoke Section 10 of the General Clauses Act.

The appellant had contested for the assembly seat from Avinagoda constituency and declared elected on November 26, 1989 to the Andhra Pradesh Legislative Assembly. An election petition calling in question his election was filed by the respondents in the High Court of Andhra Pradesh on the re-opening day of the Court after Sankranthi vacation on January 15, 1990. As the statutory period of fortyfive days under section 81 of the Act had expired during the vacations, the appellant moved an application praying for dismissal of the election petition, *inter alia* on the ground of limitation. It was contended that the Registry was open during this vacation, two Assistant Registrars were on duty, urgent applications were disposed of by the vacation judges and in fact 25 election petitions were filed during this period. The High Court rejected all the contentions and dismissed his application and relying on Section 10 of the General Clauses Act held that filing of the Election Petition on the re-opening day of the Court was within limitation. The correctness of the decision of the High Court has been challenged by the successful candidate in this appeal by special leave. Affirming the judgment of the High Court and dismissing the appeal, this Court,

HELD: Sections 4 and 5 of the Limitation Act have no application to the election petitions under the Representation of the People Act. The benefit

A of Section 10 of the General Clauses Act can however, be availed to have limitation saved under the Act. [704D]

B The notification dated December 29, 1989 nowhere stated that the Registry would remain open. A bare reading of the said 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 re-opening day of the High Court by invoking Section 10 of the General Clauses Act, was justified. There is no infirmity in the reasoning and the conclusions reached by the High Court. [706C, 708C]

C *Hukumdev Narain Yadav v. Lalit Narain Mishra*, [1974] 3 SCR 31; *Hari Shanker Tripathi v. Shiv Harsh and Others*, [1976] U.J. (S.C.) 242 and *H.H. Raja Harinder Singh v. S. Karnail Singh*, [1957] S.C.R. 208, followed.

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4532 (NCE) of 1990.

E From the Judgment and Order dated 10.7.1990 of the Andhra Pradesh High Court in Election Application No. 282 in Election Petition No. 26 of 1980.

C. Sitaramaih, M.A. Chinnasama and M. Raghuraman for the Appellant.

B. Parthasarthy for the Respondents.

F The Judgment of the Court was delivered by

G **KULDIP SINGH, J.** The question for our consideration in this appeal is whether an election petition under the Representation of the People Act, 1951 (hereinafter called the Act) filed on the re-opening of the High Court after vacations, the period of forty-five days under Section 81 of the Act having run-out during the vacations, was liable to be dismissed under Section 86 of the Act.

H The elections to the Andhra Pradesh Legislative Assembly were held on November 22, 1989. The appellant contested the assembly-seat from Avinagoda constituency. He was declared elected on

November 26, 1989. An election petition calling in question the appellants election could be presented to the Andhra Pradesh High Court within 45 days from the date of declaration of the election-result of the appellant. It is not disputed that the said period of forty-five days expired on January 10, 1990. The election petition, challenging the election of the appellant was, however, filed in the High Court by the respondents on January 15, 1990.

The High Court of Andhra Pradesh remained closed for Sankranthi Vacation from Tuesday January 2 to Friday January 15, 1990 (both days inclusive). January 13 and 14, 1990 were holidays being second Saturday and Sunday. It was under these circumstances that the election petition was filed on the reopening of the High Court on January 15, 1990.

The appellant (returned candidate), filed an application before the High Court praying that the election petition be dismissed, *inter alia* on the ground of limitation. It was contended that the Act being a complete code for the determination of election disputes, its provisions have to be strictly complied with and the election petition filed beyond the the period of forty five days, was liable to be dismissed under Section 86 read with Section 81 of the Act. It was also contended that Section 5 of the Limitation Act was not applicable, the Registry of the High Court was open during the Sankranthi-vacation, two Assistant Registrars were on vacation duty, urgent applications were being disposed of by the vacation-Judges and 25 election petitions were in fact filed during the said vacations. The High Court rejected the contentions of the appellant and dismissed the application. The High Court came to the conclusion that the notification regarding Sankranthi-vacation did not make any distinction between the Court and the Registry of the High Court. It explicitly stated that the High Court would remain closed from January 2, 1990 to January 12, 1990. Relying upon Section 10 of the General Clause Act the High Court found that the filing of the election petition on the reopening day of the High Court on January 15, 1990 was within limitation. This appeal via special leave petition is against the judgment of the High Court.

This Court in *Hukumdev Narain Yadav v. Lalit Narain Mishra*, [1974] 3 S.C.R. 31 and *Hari Shanker Tripathi v. Shiv Harsh and Others*, [1976] U.J. (S.C.) 242 has held that Sections 4 and 5 of the Limitation Act has no application to the election petitions under the Act. It was further held, following *H.H. Raja Harinder Singh v. S. Karnail Singh*, [1957] S.C.R. 208 that Section 10 of the General

- A Clauses Act would in terms be applicable to the election petitions under the Act. Section 10 (relevant-part) is as under:

B “10. (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, applies.”

D The learned counsel for the parties have nor disputed the legal position that Sections 4 and 5 of the Limitation Act have no application to the election petitions under the Act. It is also not disputed that the benefit of Section 10 of the General Clauses Act can be availed to save limitation under the Act. But according to the appellant the High Court Registry was open during Sankranthi-vacation and as such the respondent could not invoke the provisions of Section 10 of the General Clauses Act.

F Mr. C. Sitaramiah, learned counsel for the appellant has argued that rule 3 of the Rules framed by the High Court to regulate the trial of election petitions provides that every election petition “shall be filed in the office of the Registrar by the petitioner or an advocate duly appointed by him”. He has also taken us through the notification dated December 29, 1989 issued by the High Court notifying the Sankranthi vacation. Relying on the contents of the notification he contended that the High Court Registry remained open during the vacations and as such in terms of rule 3 of the High Court Rules election petition could be presented during the vacations. All the arguments advanced before the High Court were reiterated. According to the learned counsel, not only the High Court Registry was open but even the Vacation Judges sat to dispose of urgent applications. He pointed out that in fact 25 election petitions were filed during Sankranthi-vacation which further goes to show that the Registry was open. The learned counsel finally contended that unless there is specific bar in the vacation-notification the election petitions can always be filed during long vacation.

There are no rules or standing orders issued by the Andhra Pradesh High Court providing for a uniform pattern of working during the vacations. It is the notification notifying the Sankranthi-vacation which would indicate the manner and extent of functioning of the High Court during the vacation. Whether the registry was open, if so, to that extent and for what type of work, can only be spelled-out from the contents of the Notification. It is, therefore, necessary to examine the scope and effect of the notification issued by the Andhra Pradesh High Court in this respect. The said notification is as under:

Notification. Dt. 29-12-1989 R.O.C. No. 5463/89-C3.

Notice is hereby given 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 Hon'ble Sri Justice N.D. Patnaik will be the Vacation Judge from 2-1-1990 to 6-1-1990 and the Hon'ble Sri Justice Syed Shah Mohammed Quadri will be the Vacation Judge from 7-1-1990 to 12-1-1990.

The Vacation Judges will sit in Court at 10.30 A.M. on Wednesday the 3rd January, 1990 and Tuesday the 9th January, 1990 during Vacation to dispose of applications of urgent nature unless otherwise notified.

Sri K.V.G. Krishna Murthy and Sri. S. Raja Choudary Assistant Registrars will be the Vacation Officers during the said Vacation.

Notice of any application of an urgent nature shall be given to the Vacation Officers before 1.30 P.M. on Tuesday and 2nd January and the 8th January, 1990

REGISTRAR (ADMN)."

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

A 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 vacations 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 re-opening day of High Court by invoking Section 10 of the General Clause Act, was justified.

D In *Hari Shanker Tripathi v. Shiv Harsh and Others*, (supra) the notification issued by the Allahabad High Court stated that May 25 to July 7, 1974 would be observed as closed holidays in the High Court due to summer vacation. The period for filing the election petition had expired during the summer vacation and the election petition was filed on the reopening day of the High Court after the summer vacation. This Court held as under:

F “For the reasons given above we are satisfied that the period of limitation expired during the summer vacation which was a closed holiday by virtue of the notification issued by the High Court, the Registrar was not competent to entertain the election petition nor could the appellant have presented the election petition legally to the Registrar during such period. We are further satisfied that this is a case in which s. 10 of the General Clauses Act, applies in terms and the appellant was fully justified in filing the election petition on the re-opening day of the High Court, namely, July 8, 1974.”

G 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.

The Andhra Pradesh High Court which issued the Sankranthi-Vacation notification interpreted the same in the following words:

It, therefore, follows that the notification referred to above, dated 29.12.1989 did not permit either of the Hon'ble Judges or the Registry to receive the Election Petitions during the Sankranthi Vacation. As mentioned already, the notification says that the *High Court of Andhra Pradesh will remain closed* for the Sankranthi vacation from 2.1.1990 to 12.1.1990 (both days inclusive). The nomination does not clarify that the Judges of the High Court alone would refrain from work between 2.1.1990 and 12.1.1990 and that the Registry would function normally during the said period of vacation. The notification does not even further specify that the vacation officers are authorised to receive any papers presented to them other than notices of applications of urgent nature. In the light of the specific wording contained in that notification, I hold that the High Court of Andhra Pradesh remained closed for the Sankranthi vacation from 2.1.1990 to 12.1.1990 which means that the Registry of the High Court also remained closed during the said period.

It is submitted by the learned counsel for the petitioners that the High Court Registry was open during the vacation and received as many as 25 Election Petitions. It is not necessary in these applications to consider whether the Registry was competent to receive those 25 Election Petitions during the vacation. This is not a relevant consideration for the disposal of these applications. What all is necessary to consider in these applications is whether in the light of the wording contained in the notification dated 29.12.1989, the High Court remained closed between 2.1.1990 to 12.1.1990 so as to enable the election petitioners to invoke Section 10 of the General Clauses Act

The learned counsel for the petitioners referring to

- A** the wording contained in Section 10 of the General Clauses Act tried to draw a distinction between the closure of the “court” and “office” on the last day of limitation and tried to submit that what all has been closed is the High Court but not the office. There is no scope to draw such an inference from the notification. As I have mentioned already,
- B** the High Court of Andhra Pradesh, remained closed for the Sankranthi Vacation and the notification does not give room for any distinction being made between the court and the office which means the Registry of the High Court.”

- C** We see no infirmity in the reasoning and the conclusions reached by the High Court. No other point was urged before us. We, therefore, dismiss the appeal with no order as to costs.

R.N.J.

Appeal dismissed.