DANDA RAJESHWARI

v.

BODAVULA HANUMAYAMMA AND ORS.

JULY 30, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Election Law :

A.P. Panchayat Raj (Election Tribunal) in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 1995 :

Rule 3—Election of Sarpanch—Declaration of result of the Election—Election petition—Limitation—Writ petition filed in High Court challenging the election of the returned candidate—High Court declined to go into the disputed questions of fact and observed that petitioners may file election petition within three weeks of the disposal of the writ petition and if such election petition is filed, Election Tribunal shall entertain the same without going into the question of limitation—Held, High Court rightly gave the directions.

Constitution of India, 1950 :

Article 226—Writ petition challenging election of Sarpanch—High Court declined to investigate into the disputed questions of facts and directed that it would be open to the petitioners to file an election petition as provided by Rule 3 of the A.P. Panchayats Raj Election Tribunal, in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 1995, and if such election petition is filed the Election Tribunal would decide the same on merits without going into the question of limitation. Held, High Court was right in giving the directions.

Union of India & Anr. **v.** *Kirloskar Pneumatic Co. Ltd.*, **(1996) 4 SCALE 317, distinguished.**

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 1368 of 1996.

From the Judgment and Order dated 26.3.96 of the Andhra Pradesh High Court in W.P. No. 13557 of 1995.

A L.N. Rao and S. Uday Kumar Sagar for the Petitioner.

The following Order of the Court was delivered :

The only question raised in this case is : whether the direction issued by the High Court in the impugned order to file the Election Petition within B three weeks from the date of the disposal of the writ petition and after filing of the petition to dispose of the same, without going into the question of limitation is valid in law ? The High Court of Andhra Pradesh in the impugned order dated June 26, 1995 in Writ Petition No. 11106 of 1995 and batch observed as follows :

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> "We are not inclined to go into the questions raised in this Writ Petition. The appropriate form is the Election Tribunal. It is open to the petitioners to file an election petition within three weeks from today and if such an petition is filed, the same shall be entertained by the Election Tribunal without going into question D of limitation and disposed it of in accordance with law as expeditiously as possible, in any event not later than four months from the date of filing of the Petition. No costs.

Shri B. Nageshwara Rao, counsel for the petitioner placing reliance on Rule 3 of the A.P. Panchayat Raj (Election Tribunal) in respect of E Gram Panchayats and Mandal Parishads and Zila Parishad Rules, 1995 (for short, the 'Rule') contended that the rules contemplate filing of an Election Petition within 30 days from the date of declaration of the result of the election. It reads as under :

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> "3(1) The election petition shall be presented within thirty days from the date of the declaration of result of the election.
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> Explanation : If the Court of the Subordinate Judge or the District Munsiff, as the case may be or the Officer of the Office of the Government who is the Election Tribunal is closed on the G last day of the thirty days aforesaid, the petition may be presented to be Election Tribunal on the next day afterwards on which such Court or Tribunal is open.
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> (ii) The petition shall contain a statement in concise from, the material facts on which the petitioner relies and the particulars of H any corrupt practices which he alleges and shall, where necessary,

he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908."

The remedy is statutory remedy and limitation is one of the conditions to entertain election petition. By judicial order the limitation cannot be nullified. In support thereof, he placed reliance on the judgment of this Court in *Union of India & Anr.* v. *Kirloskar Pneumatic Co. Ltd.,* (1996) 4 SCALE 317. We find no force in his contention. It is not his case that the High Court lacks Jurisdiction to entertain the writ petition against the election of a Sarpanch and declaration of the result of the election of a Sarpanch, etc. The High Court exercising its power under Article 226 of the Constitution declined to interfere in the election disputes since alternative remedy of filing election petition and adjudication has been provided in the relevant statutory rules. Far from saying that the High Court has no jurisdiction, High Court exercised self restraint in exercise of the power under Article 226 and directed the parties to avail of alternative remedy. In this case, admittedly, the elections of Sarpanch was held and result was declared on June 24, 1995 and the writ petition was filed on June 25, 1995. Power of the Government on the process of electoral rolls was challenged in a batch of writ petitions. The writ petition in question is also one of such writ petitions. Under the circumstances, the High Court thought it expedient that since elections were already held, the disputed questions of facts would be canvassed in an election petition as provided in Rule 3 of the Rules, the High Court rightly declined to investigate into disputed question of facts and refused to go into the question relegating the parties to pursue the remedy of election dispute. In view of this the High Court has rightly directed filing of the election petition within three weeks from the date of disposal of the writ petition and further directed the Tribunal not to go into the question of limitation and instead decide the matter on merits. This Court in *Kirloskar Pneumatic Co.'s* case held as under :

"According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr. Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in

A such cases the period of limitation would be three years. Learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The Power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act. are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr. Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law.

The ratio of the said decision has no bearing to the facts of this case. Therein, rules prescribed limitation to claim refund and the application was filed after limitation. The High Court had directed refund ignoring the limitation. In that context, it was held that no direction or mandamus could be issued to the authorities for disobeying the law.

The special leave petition is accordingly dismissed.

R.P. Petition dismissed.