

CASE NO.:
Appeal (civil) 595 of 2004

PETITIONER:
Raj Kumar Yadav

RESPONDENT:
Samir Kumar Mahaseth and Ors.

DATE OF JUDGMENT: 11/03/2005

BENCH:
CJI R.C. Lahoti, D.M. Dharmadhikari & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

R.C. Lahoti, CJI

An election petition presented under Section 81 of the Representation of the People Act, 1951 (hereinafter "the Act", for short) has been directed to be dismissed as barred by time. Feeling aggrieved, the election petitioner has filed this appeal under Section 116A of the Act.

Shorn of all details, suffice it to state that the last date of limitation for presenting the election petition was 28.8.2003. What transpired in the High Court at the presentation may be described in the words of the learned designated Election Judge himself from the impugned judgment of the High Court. The relevant part is extracted and reproduced hereunder :

"\005\005\005..The admitted position is that the period of limitation of forty five days expired on 27.8.2003 on which date the designated Judge was sitting in court till 4.15 P.M. The court hours having expired, the designated election Judge retired into the chambers where at 4.45 P.M. Sri P.K. Verma, the learned counsel for the appellant came and wanted to file this election petition. Since under High Court Rules the election petitions could be filed only in the open court, I, as the designated election Judge refused to accept the petition beyond court hours. Learned counsel said that though petition was made ready that very day for presentation, because of some delay in finalizing it, he had gone to the court after court hours but by that time the Judge had retired to his chambers. Learned Counsel also requested in chambers that the Court Officer might be directed to accept that by making an initial over the petition noting the time of presentation so that the petition might be presented on the next working day. Since High Court Rules did not permit that, I refused that prayer also.

This was how the learned counsel presented the petition in the open court on 28.8.2003\005\005\005"

The question arising for decision is : whether an election petition presented at 4.25 p.m. on 27.8.2003, the last date of limitation, admittedly 10 minutes after the Judge had risen from the open court but was available in chambers within the court premises can be said to be a valid presentation so as to be within the period of limitation?

Article 329 of the Constitution provides inter alia that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for, by or under any law made by the appropriate Legislature. Under Section 80 of the Act, no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. Under Section 80-A, the High Court has been conferred with jurisdiction to try an election petition. Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court assigned for that purpose by the Chief Justice. Under Section 81 of the Act, an election petition may be presented within forty five days from the date of election. The rule making power for carrying out the purpose of the Act has been conferred on the Central Government under Section 169. The Act does not confer power on the High Court to make any rules. However, the rule making power vests in the High Court under Article 225 of the Constitution.

The present matter arises from the High Court of Patna. Chapter XXI-E of the High Court Rules framed by the Patna High Court incorporates the rules for the disposal of election petition filed under Section 81 of the Act. Rules 6 and 7, relevant for our purpose, are reproduced hereunder :

"6. Subject always to the orders of the Judge, before a formal presentation of the election petition is made to the Judge in open Court, it shall be presented to the Stamp Reporter of the Court, who shall certify thereon if it is in time and in conformity with the requirements of the Act and the rules in this behalf, or is defective and shall thereafter return the petition to the petitioner for making the formal presentation after removing the defects, if any :

Provided that if on any Court day the Judge is not available on account of temporary absence or otherwise, the petition may be presented before the Bench hearing civil applications and motions.

7. (1) The date of presentation to the Judge or the Bench as mentioned in the proviso to Rule 6 shall be deemed to be the date of the filing of the election petition for the purposes of limitation.

(2) Immediately after it is presented, the petition shall be entered in a special register maintained for the registration of election petitions."

The limitation provided by Section 81 of the Act expires on 45th day from the date of election. The word 'day' is not defined

in the Act. It shall have to be assigned its ordinary meaning as understood in law. The word 'day' as per English calendar begins at midnight and covers a period of 24 hours thereafter, in the absence of there being anything to the contrary in the context (See : Ramkrishan Onkarmal Agarwal v. State of Maharashtra AIR 1994 Bom 87, 94; The Municipal Council of Cuddalore v. S. Subrahmanya Aiyar 16 MLJ 101; The Law Lexicon, P. Ramanatha Aiyar, pp. 470, 471). Thus, the election petition could have been presented upto the midnight falling between 27th and 28th of August, 2003.

The statutory period of limitation as provided by the Act cannot be taken away by the Rules framed by the High Court governing its procedure. The rules framed in exercise of the power conferred by Article 225 relate to procedural matters and cannot make nor curtail any substantive law. (See : Prabhu Narayan v. A.K. Srivastava (1979) 3 SCC 788, para 5). In S.A. Ganny v. I.M. Russell (1930) ILR 8 Rangoon 380 Carr J. said, "I am very clearly of opinion, independently of the authorities to that effect, that a High Court has no power to alter by rule any period of limitation prescribed in the Limitation Act. I am, however, also of opinion that when the High Court by rule gives a right of application for which no period of limitation is already prescribed the Court may also fix the period within that right must be exercised." And, Cunliffe J. said, "High Court Rules approximate very closely to Bye-laws. They can be altered at will. They can be canvassed. They are subordinate and domestic enactments. They must be intra vires of the power from which they derive and any other power in pari materia." In our opinion, the length of any period of limitation provided by a statute cannot be curtailed by rules of procedure framed by High Court. When the statute prescribes a particular day or date as the last day for any act being performed, it can be so done upto as late as the midnight immediately preceding the commencement of the next day.

We are also of the opinion that the High Court has not correctly interpreted Rules 6 and 7 of the High Court Rules. The rules are not meticulously well-drafted rules taking care of myriad situations which may arise. They appear to be more in the nature of directions aiming at convenient and smooth functioning of the High Court dealing with election petitions as also streamlining the procedure and practice of presentation. The designated Election Judge can always issue such orders as it may deem fit in the matter of presentation of the election petition. If the court is open, it is desirable that a formal presentation of the election petition is made to the Judge while sitting in open court. As the Judge himself is not expected to scrutinize the defects in the election petition presented to him, Rule 6 expects the election petition to be presented first to the Stamp Reporter of the court and then carried to the Judge for formal presentation. While presentation to the Stamp Reporter of the court is a presentation, the presentation before Judge in open court is a formal presentation. There would be nothing wrong if the election petitioner presents the election petition to the Stamp Reporter whereafter the election petition is carried to the Judge in open court either by the election petitioner or his counsel or by the Stamp Reporter or any official of the Registry under his directions. The Rule contemplates such presentation before the Stamp Reporter and the formal presentation to the Judge taking place on the same day and almost simultaneously as two steps of one transaction and in this background the date of presentation to the Judge or the Bench as described in Rule 6 is deemed to be the date of filing of the election petition. The process can also be reverse. If Stamp Reporter is not available,

the election petition may be presented to the Judge who may then send it for scrutiny to the Stamp Reporter or any other official of the Registry. At the time of presentation, the Judge may not be sitting in open court, but that does not mean that the Judge cannot receive the election petition. He can receive it and then send it to the Stamp Reporter of the court.

In Jamal Uddin Ahmad v. Abu Saleh Najmuddin and another (2003) 4 SCC 257, this Court has held that receiving an election petition presented under Section 81 of the Act is certainly not a judicial function which necessarily needs to be performed by a Judge alone; it is a ministerial function which may be performed by a Judge himself or be left to be performed by one of the administrative or ministerial staff of the High Court which is as much a part of the High Court.

As held by this Court in The State of Punjab and Another vs. Shamlal Murari and Another (1976) 1 SCC 719, "processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice." The election petition, in the present case, could have been presented at any time upto the midnight falling between 27th and 28th August, 2003 and it would be treated as filed within the period of limitation.

Confining the filing time to the working hours of the court is not what is specifically spelt out by Rules 6 and 7 of the Patna High Court Rules. The High Court, in its impugned judgment, seems to have thought that the election petition could have been presented only to the Judge and that too in the open court. The Judge would ordinarily sit in open court upto 4.15 p.m. of the day as per the rules or practice of the High Court but that time is not the end of that day. The availability of time falling within the meaning of the word 'day', as provided by Section 81 of the Act, cannot be curtailed by making a provision in the rules contrary to the Act itself. Ordinarily, no litigant and lawyer would like to delay the presentation till the fag end of the day and then present it at an odd time to the inconvenience of the Judge wherever he may be. However, exceptional situations cannot be completely ruled out. It would be better if the ministerial act of receiving the election petition presented to the High Court is left to the administrative or ministerial staff of the High Court either by clarifying or by making a suitable amendment in the Rules of the Patna High Court.

In Hukumdev Narain Yadav v. Lalit Narain Mishra (1974) 2 SCC 133, Election Petition Rules framed by Patna High Court came up for the consideration of the court and it was held that it may be that the presentation to the Judge will be the date of filing for the purpose of limitation, but that does not exclude a different procedure for filing in a case where limitation is about to expire and the conditions prescribed by Rule 6 in the matter of presentation cannot be complied with. Under the general rules governing the practice as to presentation of pleadings and documents in the High Court, an election petition can be presented on the last day of limitation, when the judges are not sitting to receive or entertain an election petition, to the Registrar or in his absence to some other officer in the Registry authorized to receive such presentation.

In Chandra Kishore Jha v. Mahavir Prasad and others (1999) 8 SCC 266, a different fact situation arose and the observation made by this Court therein, have to be read and understood in the light of the fact situation, which the Court was

called upon to deal with. The question whether an election petition can be presented to the Judge only in open court and not elsewhere did not arise for decision. At a few places the reference made to 'presentation in open court' is simply by way of reproducing the language of the Rule and not a finding of this Court or the ratio of the decision. However, the Court did hold that the applicability of Section 10 of the General Clauses Act, 1897 to Section 81 of the Act was not excluded. If it was not possible for the election petitioner to have presented the election petition to the designated Election Judge or in his absence to the Bench (as provided by the proviso to Rule 6) on the last day of the prescribed period of limitation then the presentation of the election petition on the very next day in the open court would be valid. Law does not expect a party to do the impossible \026 impossibilium nulla obligatio est.

Reverting back to the facts of the present case, we find that the election petition was handed over to the designated Election Judge on the last day of limitation at 4.25 p.m. when the learned Judge was still available within the court premises though he was not sitting in the open court, as the prescribed time of 4.15 p.m. ordinarily meant for transacting judicial work was over. The learned Judge did not himself receive the presentation nor did make any other order such as the one directing any official of the Registry to receive the same. The election petitioner had done all that was within his power to do for the purpose of presentation but he failed. He made the presentation on the next day when the Judge was available and sitting in the open court. The presentation would be deemed to be within limitation and valid.

The learned designated Election Judge of the High Court has erred in holding the presentation to be barred by limitation. The view so taken cannot be countenanced.

The appeal is allowed. The impugned judgment of the High Court dated 10.9.2003 is set aside. The election petition is held to have been filed within prescribed period of limitation. The High Court shall now proceed to deal with the petition in accordance with law.

No order as to the costs in this appeal.

Parties through their respective counsel are directed to appear in the High Court on 4.4.2005.