

Neutral Citation No. - 2024:AHC:95285

A.F.R.

Reserved on 30.04.2024

Delivered on 27.05.2024

Court No. - 6

Case :- WRIT - C No. - 27653 of 2023

Petitioner :- Shahnawaz Ali

Respondent :- Election Tribunal District Judge Muzaffarnagar And 10
Others

Counsel for Petitioner :- Ravi Anand Agarwal, Shreya Gupta

Counsel for Respondent :- Vivek Kumar Singh

Hon'ble Dinesh Pathak,J.

1. Heard Ms. Shreya Gupta, learned counsel for the petitioner, Shri Vivek Kumar Singh, learned counsel for the respondent no.2 and perused the record on board.

2. Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India assailing the order dated 03.7.2023 passed by District Judge, Muzaffarnagar whereby election petition filed on behalf of respondent No.2 under section 20 of the U.P. Municipalities Act, 1916 (in brevity 'Act, 1916'.) has been admitted and ordered to be registered as well as, simultaneously, notices were ordered to be issued to the defendant Nos. 2 to 11.

3. Facts culled out from the record are that election of Nagar Palika Parishad, Khatauli, District Muzaffarnagar was held on 04.5.2023 in pursuance of the notification promulgated on 09.4.2023. The present petitioner has been declared successful as President of Nagar Palika Parishad. Having been aggrieved with the result of the election declared on 13.5.2023, respondent No. 2 has filed an election petition on 09.06.2023

under Sections 19 and 20 of Act, 1916. Aforesaid election petition was filed during summer vacation along with an application under Rule 13 of General Rules (Civil), 1957 (in brevity '**Rules, 1957**') with a prayer to entertain the election petition. Said application was rejected, vide order dated 09.6.2023, and next date fixed viz. 02.07.2023 for hearing on admission of the election petition. On the first opening day, after summer vacation, in the month of July i.e. 01.7.2023, the election petitioner has moved miscellaneous application to entertain and register the election petition inasmuch as 01.07.2023 was the last date for the purpose of limitation to register the same and 02.07.2023, already fixed in the matter, was Sunday. Learned District Judge has rejected said miscellaneous application on the same day i.e. 01.7.2023 and fixed next date on 3.7.2023 for registration of the election petition. On the next date fixed i.e. 3.7.2023, election petition has been admitted and ordered to be registered, which is under challenge before this Court.

4. Learned Counsel for the petitioner, while assailing the order impugned dated 03.7.2023, has advanced two fold submissions; first, regarding the delay in filing the election petition on the ground that under section 20 of the Act, 1916 prescribed period of limitation is only 30 days since the date of result announced. However, in the instant matter, election petition has been filed and entertained on 03.7.2023, therefore, election petition was filed at belated stage. She has laid emphasis on Section 10 of General Clauses Act, 1963 and tried to submit that first opening day i.e. 01.7.2023 was the last date of limitation to entertain the election petition under section 20 of Act, 1916. However, election petition has been filed and entertained on 03.7.2023, thus, election petition was time barred. It is further submitted that law relating to the election petition is a special law, therefore, same may strictly be adhered to without any relaxation or laxity at the part of any party. The prescribed period of limitation as enunciated under Section 20 of the Act, 1916 is mandatory in nature. Therefore, court cannot extend the prescribed period of limitation for filing the election petition on its own

wisdom unless there is a provision under the law to condone such delay. It is next submitted that previously the election petition was refused to be registered twice vide orders dated 09.6.2023 and 01.7.2023 respectively, however, same have not been assailed before any competent court, therefore, aforesaid orders became final between the parties qua registering and admitting an election petition filed by respondent No 2.

5. Learned counsel for the petitioner, in her second submission, has questioned maintainability of the election petition on two grounds; first, non-joinder of the State as a defendant in the election petition inasmuch as three State officers are arrayed as defendants No.9 to 11 in the cause title of the election petition, however, State has not been impleaded through authority competent and, second ground taken, qua method to present the election petition, with a plea, that same was not presented by the election petitioner himself rather it was presented through counsel, therefore, same is filed in violation of the provisions as enunciated under Section 20 of the Act, 1916. In support of her submission, learned counsel for the petitioner has cited following judgments:-

1. *Sumitra Devi Vs. Special Judge/Additional District and Sessions Judge, E.C. Act, Hardoi and others decided by this Court on 12.6.2020.*
2. *Mahendra Vs. State of Up and others, 2021 0 Supreme (All) 474*
3. *Akhilesh (Dr. Akhilesh Kumar Dwivedi Vs. Shri Ramesh Chand), Neutral Citation 2023: AHC: 157150*
4. *Ansar Ahmad Vs. Sub-Divisional Officer, kairana and others, AIR 1998 Allahabad 341.*
5. *Smt. Sharda Devi Vs. State of UP through Secretary and others Neutral Citation 2012: AHC: 158098.*
6. *Reji Thomas and others Vs. The State of Kerala and others, 2018 0 AIR (SC) 2236.*
7. *Ram Nath Priyadarshi Suman Vs. The Chief Election Commissioner or India and three others, Neutral Citation No. 2021:AHC:71133*
8. *Smt. Phool Kumar Vs. Sub-division Officer, Tehsil Maholi District Sitapur and others in Misc. Single No. 7620 of 2020 decided on 9.11.2020*
9. *Mohan Lal and another Vs. State of UP through Secretary in Election Petition No. 1 of 2014 decided on 18.4.2014.*
10. *Smt. Sushma Vs. Sub-Divisional Magistrate, Kairana and 23 others, Neutral Citation No. 2017:AHC:77353.*

11. Viresh Kumar Tiwari Vs. Additional District Judge and others, Neutral Citation No. 2013:AHC:177152.

12. G.V. Sreerama Reddy and another Vs. Returning Officer and others in Civil Appeal No. 6269 of 2008 decided on 11.8.2009.

6. Per contra, learned counsel for the private respondent No.2 (election petitioner) has contended that the case was presented well within time on 09.06.2023 as required under Section 20(1) of the Act, 1916, however, hearing of the case has been deferred, after vacations, for dated 02.07.2024. Apart from that, vide order dated 01.07.2023, presence of the election petitioner has been acknowledged and the next date fixed on 03.07.2023 for registration of plaint after hearing the opposite party no.1 in the election petition (petitioner herein). Application under Rule 13 of the Rules, 1957 has been numbered as Misc. Case No.195 of 2023 whereby it is evident that election petition was presented within time. Learned counsel for the respondent No. 2 has tried to submit that presentation was done well within time and normal date was fixed for admission and registration of the plaint, therefore, election petition cannot be treated to be filed beyond prescribed period of limitation. It is further contended that other submissions, as advanced by learned counsel for the petitioner, are still to be adjudicated upon by the election tribunal, thus, the same cannot be adjudicated directly before this Court. The instant writ petition is liable to be dismissed being misconceived and devoid on merits.

7. In rejoinder, learned counsel for the petitioner submits that the District Judge has passed the order dated 09.06.2023, 01.07.2023 and 03.07.2023 in a very perfunctory manner by using the words 'Panjikrit' and 'Angikrit' etc. which is not sustainable in the eyes of law. Plea of equity cannot be entertained in the matter of election petition inasmuch as election law is a special provision to entertain the election petition. It is next submitted that the election petition was filed on 03.07.2023 and registered on 04.07.2023, which is evident from Annexure-SA-1 to the Supplement Affidavit filed by the petitioner. It is next submitted that owing to non-joinder of State of U.P., who is a necessary party under Section 79 and 80 C.P.C., as well as proviso

to Order 1 Rule 9 C.P.C., election petition filed on behalf of respondent no.2 is incompetent in the eyes of law.

8. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record it is manifested that instant writ petition is arising out of election petition filed under Section 20 of the Act, 1916. The returned candidate (petitioner herein) has questioned the election petition filed on behalf of respondent no.2 precisely on two grounds, as advanced by learned counsel for the petitioner, first; being barred by time and second; being not maintainable on the ground of non-joinder of the State Government and election petition has not been presented personally by the election petitioner. Order impugned dated 03.07.2023 evince that the learned District Judge (Election Tribunal) has simply admitted the election petition filed on behalf of respondent no.2 and issued a direction to register the same. Simultaneously, notices were ordered to be issued to other defendants in the election petition except defendant no.1 (petitioner herein).

9. This Court is skeptical of first point advanced by learned counsel for the petitioner qua filing of election petition beyond prescribed period of limitation. The provision for filing the election petition assailing the election of members of Zila Panchayat is enunciated under Section 20 of the Act, 1916. Having considered the point involved in the instant writ petition, scope of discussing Section 20 of the Act, 1916 lies in narrow compass except for the purposes of limitation to file the election petition. For ready reference, relevant part of Section 20(1) of the Act, 1916 is quoted herein below :-

“20. Form and presentation of election petitions.-(1) An election petition shall be presented within 30 days after the day of which the result of the election sought to be questioned is announced by the Returning Officer, and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies and set forth of the full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the dates and place of the commission of each such practice.”

10. As per Section 20, as mentioned above, election petition should be presented within 30 days after the date of which the result of election sought to be questioned is announced by the returning officer. I am convinced with the submissions as raised by learned counsel for the petitioner that election law should be interpreted strictly, particularly, with regard to the prescribed period of limitation for the purposes of entertaining the election petition inasmuch as there is no provision qua applicability of the Limitation Act, except Section 12 (2) of the Limitation Act as enunciated under Proviso to Section 23 of the Act, 1916. Therefore, the phrase “within 30 days” is relevant which starts from the date when result is announced by the returning officer. It is admitted to both the parties, and also a matter of record, that result of election for the post of President, Nagar Palika Parishad, Khatauli was declared on 13.05.2023, therefore, limitation for filing the election petition available to respondent no.2 was up to 12.06.2023. However, intending to avoid any delay, respondent no.2 has filed the election petition on 09.06.2023. Owing to summer vacations in the month of June, respondent no.2 has presented the election petition along with an application under Rule 13 of the Rules, 1957 for obtaining permission to file the election petition during vacation period. The Election Tribunal, owing to oppose made on behalf of the returned candidate, has rejected the application to leave for filing the election petition. Thereafter, second attempt was made by respondent no.2 on 01.07.2023, however, again permission has not been granted for want of presence of the petitioner and, ultimately, vide order impugned dated 03.07.2023, election petition was admitted and ordered to be registered.

11. Normally, as per law, suit is presented during the regular court hours and on the court working days. The exact time and procedure for presenting a suit may vary depending on the jurisdiction and the specific rules and practices of the court where the suit is being filed. For the purposes of filing of a suit during the vacation period, the provisions as enunciated under Rule 13 and 32 of the Rules, 1957 is required to be discussed, which are quoted

herein below :-

“13. Work on holidays. Except with the consent of parties, no suit, case, or appeal shall be heard on a day declared holidays for the subordinate courts:

Provided that on a day declared holiday for the subordinate Courts, a court shall not refuse to do any act or make any order urgently required or which may with propriety be done or made out of Court.

32. Time for presenting applications.-Except as otherwise provided by these rules, applications and petitions which can be presented to the Munsarim of a Court shall be received on any day other than an authorized holiday between 10.30 a.m. and such hour as may be fixed by the Court; provided that an application or petition presented after such hour and before 4 p.m. may be received on the ground, if any, of limitation or other urgent reason. Presiding Officers when accepting plaints or applications after Court hours will note on such papers the time of their presentation.”

12. Rule 32 denotes that applications and petitions/plaints shall be received by Munsarim of the court on any day other than an authorized holiday between 10:30 a.m. and such hours as may be fixed by the court. It further denotes that application or petition can be presented and received even after such hours and before 4:00 p.m. on the ground of limitation or other urgent reasons. However, the Presiding Officer has been entrusted duty to make a note on application or petition/plaint the timing of presentation, in case, he receives such documents after the prescribed hours. The phrase used in Rule 32 i.e. “except as otherwise provided by these rules” indicates the exceptional provision in Rules, 1957 wherein plaint/case/appeal can be presented even during authorized holiday. The provision as enunciated under Rule 13 of Rules, 1957 is an exception to Rule 32, which denotes that generally no suit, case or appeal shall be heard on the declared holiday for the subordinate court except with consent of parties, however, court shall not refuse to do any act or make any order urgently required or which may with propriety be done or made out of court.

13. Thus, it is evident that the petitioner has attempted to present the election petition within 30 days of declaration of election result, however, same has been got registered on 04.07.2023 in pursuance of the order impugned dated 03.07.2023. In support of her submissions, learned counsel for the petitioner

has placed reliance on the Full Bench decision of this Court in the case of **Sumitra Devi vs. Special Judge/Additional District & Sessions Judge & Others** (Misc. Single No.9920 of 2018 decided on 12.06.2020). In the cited judgment, provisions to file election petition under Section 12-C of the U.P. Panchayat Raj Act, 1947 (in brevity ‘**Act, 1947**’) has been examined by the Full Bench of this Court with respect to the question referred before him, which are quoted herein below :-

“1. Whether presentation of an election petition by the election petitioner personally is a mandatory requirement in view of Sub-section 3 of Section 12 C(1) of the Act, 1947 and Rule 3(1) of the Rules, 1994 and whether it's non-compliance is fatal or it would merely be ari improper presentation, a curable defect?

2. Whether the decision of the Single Judge Bench of this Court in the case of Viresh Kumar Tiwari (supra) lays down the law correctly with regard to the question framed at serial no. 1 or it is the division Bench judgment in the case Lal Bahadur Singh (supra) and the subsequent Single Bench judgment in the case of Urmila (supra) which lay down the law correctly?”

14. Learned counsel for the petitioner further submits that provision of Section 12-C of the Act, 1947 is *pari materia* to the provisions of Section 20 of the Act, 1916, therefore, the ratio decided by the Full Bench shall be made applicable as well in the facts and circumstances of the present case. I am not swayed by this submission inasmuch as point of discussion in the instant writ petition is very limited, to wit, as to when election petition is trated to be “presented”. Question referred in the cited case with regard to the method/procedure for filing an election petition is not much relevant to decide the instant writ petition, at this stage. However I would like to rely on Full Bench judgment to explain the phrase “presentation”.

15. Section 20 of the Act, 1916 clearly denotes that election petition shall be presented within 30 days. Thus, the phrase “presented” employed under Section 20 of the Act, 1916 has got graver importance for the purposes of deciding the limitation under Section 20 the Act, 1916. At page 9 of the judgment in the case of Sumitra Devi (supra), the Full Bench of this Court has expounded as under :-

“However, the words 'presented by any candidate' are significant. The

word "presented" is derived from the word "present". It conveys an act of presentation. One of the meaning assigned in the Chamber's dictionary (1993 Edition) to the word 'present', which appears apposite in the context of Section 12-C(3), is, to give, or furnish, specially formally or ceremonially; to deliver, convey or handover. Thus, the word 'presented' conveys an act of giving, filing or delivering, in the case of an election petition. The word "present" has been defined by the Oxford English Dictionary (Second Edition, 2014) to mean, the act of giving something to somebody especially at a formal ceremony.”

16. Thus, it is explicit that presentation of the plaint (election petition) is completed at that very moment, while it was given/produced/furnished/delivered before the authority competent in the manner as prescribed by the Act, 1916. It would not be out of place to mention that for the purposes of deciding the election petition, the procedure as provided in C.P.C. (Act V of 1998) has been made applicable by virtue of Section 23 of the Act, 1916 which denotes that except so far as may be otherwise provided by this Act or by Rule, the procedure provided in the C.P.C. in regard to suits, shall, so far as it is not inconsistent with this Act or any Rule and so far as it can be made applicable, be followed in the hearing of the election petitions. While applying the provisions of C.P.C., Section 23 of Act, 1916 denotes some provisos wherein certain provisions has been mentioned to be followed on certain events. To better explain the phrases viz “presentation”, “admission” and “registration” of the suit, reference of Section 26 C.P.C. and Order IV C.P.C. would not be out of place. For ready reference, Section 26 C.P.C. and Order IV C.P.C. is quoted herein below :-

“Section 26. Institution of suits.-(1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.
(2) In every plaint, facts shall be proved by affidavit.

Order IV

1. Suits to be commenced by plaint.—(1) Every suit shall be instituted by presenting a plaint [in duplicate] to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

2. Register of suits. The Court shall cause the particulars of every suit to

be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the complaints are admitted.”

17. Section 26 C.P.C. denotes that by way of “presentation of a complaint” or in such other manner as may be prescribed, every suit shall be treated to be instituted. Likewise order IV C.P.C. denotes that “presenting a complaint” [in duplicate] to the court or such officer as it appoints in this behalf, shall be treated as institution of a suit. In the context of “election petition” filed in Act, 1916, “suit” and “institution” may have different connotation as envisages in C.P.C., however, section 20 of Act, 1916 unequivocally enunciates that “election petition shall be presented”. Order IV C.P.C. can easily be explained in two parts. Rule 1 denotes about instituting the suit through presenting a complaint and Rule 2 denotes the admission/registration of suit. Mere presentation of the complaint does not amount its admission to register of the suit. After presenting the complaint, it is to be scrutinized by the Munsarim of the court, if there is any defect in submitting the complaint, the plaintiff is required to remove the defect which is a procedural part before registration, for the purposes of competence of the complaint to be entered in the register of the suits. It would not be befitting to discuss the remaining contents of Order IV C.P.C., which relates to competence of the suit, inasmuch as in the matter in hands only presentation of the complaint is to be considered for the purposes of reckoning the limitation. Rule 2 of Order IV C.P.C. abundantly make it clear that after presenting the complaint there is a provision where court shall cause the particulars of every suit to be entered in a book to be kept for the purposes and called the register of civil suit. Such entry shall be numbered in every year according to the order in which complaints are admitted. Thus, admission of the complaint and its registration as per satisfaction of the court concerned, subject to removal of defect, if any, is a distinct and subsequent event to the presentation of the complaint as enunciated under Rule 1 of Order IV C.P.C.

18. Having considered the provisions, as discussed above, in the given circumstances of the present case, it is evident that the election petition was

filed/presented well within time on 09.06.23, to wit, within 30 days from the date of declaration of the result, however, the election petition could not be admitted and registered inasmuch as it was filed during the summer vacation and opposite party in the election petition (petitioner herein), who had filed caveat application, has not given his consent to entertain the aforesaid election petition as required under the provisions enunciated under Rule 13 of Rules, Rules, 1957. As per Rule 13 of Rules, 1957, consent of the other party is mandatory for the purposes to entertain the suit/election petition during holidays/vacations. Thus, in absence of the consent, learned District Judge has not accorded leave for hearing the election petition. On the said date i.e. on 09.6.2023, learned Election Tribunal has deferred the hearing on admission for 02.7.2023. Having considered closing day on 02.7.2023, being Sunday, and the 01.07.2023 as a last day for the purposes of limitation, respondent no.2 has moved the miscellaneous application to prepone the hearing of election petition on admission, however, learned Election Tribunal has refused to accept the application for want of presence of the caveator (petitioner herein) and fixed 03.07.2023 as a day for hearing on admission. It is evident that respondent no. 2 has shown his *bona fide* conduct in taking sincere attempt to file/present the election petition well within prescribed period of limitation i.e. 30 days from the date of declaration of result. Under section 10 of the General Clauses Act, as cited by learned counsel for the petitioner, first opening day after vacation, in case limitation expires during vacation, shall be considered last day of limitation. Respondent no. 2 was fair enough in presenting plaint/election petition second time before the Election Tribunal on 01.07.2023 which was the first opening day just after summer vacations. The learned Election Tribunal, vide order dated 01.07.2023, has returned categorical finding that election petition will be registered after hearing defendant no.1 (petitioner herein).

19. Thus, the election petition could neither be admitted nor registered for want of hearing accorded to the returned candidate (petitioner herein). While passing the order impugned dated 03.07.2023, Election Tribunal has

considered this aspect of the matter and returned definite finding that election petition was filed well within the prescribed period of limitation i.e. 30 days and there is no such case where election petition filed on behalf of the plaintiff has been returned to him, rather hearing on admission was deferred on 02.07.2023. It is further observed that, owing to this event, plaintiff has moved a miscellaneous application on 1.7.2023 to admit and register the election petition on the same day, however, admission and registration of the election petition has been deferred for want of presence of defendant no.1 (petitioner herein). Finding returned by learned Election Tribunal as mentioned above has not been refuted by petitioner in the instant writ petition. No specific plea has been taken by the petitioner that election petition was never presented before the Election Tribunal on 9.6.2023 or 1.7.2023. Conversely, point of limitation as raised by counsel for the petitioner pales into insignificance in the light of the observation made by Election Tribunal, as mentioned above, in its order dated 03.07.2023. Learned Election Tribunal, in its order impugned, has tried as well to make out a difference between the filing and admission of the suit, as such, returned its finding that election petition was filed/presented within 30 days from the date of announcement of result, however, only admission of the election petition has been deferred which could be done even at later stage. Case law cited by the counsel for petitioner as mentioned above are not fully applicable in the instant matter. Facts and circumstances of all the cited cases are quite distinguishable in the given circumstances of the present case. All the judgments are relied upon by the learned counsel for the petitioner keeping in mind that delay was caused in filing the election petition after prescribed period of limitation. In the light of the facts, as discussed in preceding paragraphs, that no delay caused in presenting the election petition by respondent no.2 from the date of declaration of result, the cited case, placed reliance by the counsel for the petitioner, has got no relevance. Learned counsel for the petitioner has illegally assumed the condonation of delay allegedly caused in filing the election petition after prescribed period

of limitation, whereas, no such event occur in the given circumstances of the present case wherein election petition has been filed/presented at belated stage or delay has indirectly been condoned by learned Election Tribunal. Conversely, learned Election Tribunal has returned categorical finding that election petition was filed on 9.6.2023 i.e. well within prescribed period of limitation. Thus, there was no occasion for respondent No. 2 to challenge the order dated 09.06.2023 and 01.07.2023 passed by election tribunals, whereby hearing of said election petition on admission was deferred. On the other hand, even assuming for the sake of argument, as advanced by learned counsel for the petitioner, that election petition was filed belated on 03.07.2023 and registered on 04.07.2023, respondent No. 2 (election petitioner) can't be punished for the act of court competent who has deferred the admission and registration of election petition presented within time, as discussed above.

20. So far as the second submission qua maintainability of the election petition on two grounds, as advanced by learned counsel for the petitioner, is concerned, I am of the considered view that it would not be befitting to address these points at this juncture inasmuch as same has to be raised at the first instance before the Election Tribunal. After hearing both the parties and appraising the evidence adduced by them, the Election Tribunal shall decide such points on its own merits. Directly entertaining the question qua non maintainability of the election petition, without being addressed on this point by the court at the first instance, would not be appropriate. The petitioner (returned candidate) has still an opportunity to raise these objections in his written statement, which can more appropriately be addressed by the Election Tribunal.

21. In this conspectus, as above, in my considered opinion, respondent no.2 has presented election petition well within the prescribed period of limitation as enunciated under section 20 of the Act, 1916. There is no apparent delay in filing the election petition to annul the same under section 22 of Act, 1916 which denotes that not complying the provisions under section 20 of the Act,

1916 would be resulted into rejection of election petition. Finding returned by learned Election Tribunal has not specifically been denied in the writ petition. Remaining point advanced by the learned counsel for the petitioner is still open to be raised before the Election Tribunal. There is no justifiable ground to entertain the instant writ petition and interfere in the order impugned dated 03.07.2023 passed by Learned District Judge (Election Tribunal), which is hereby affirmed. There is no illegality, perversity or irregularity in the order under challenge so as to warrant the indulgence of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. There is nothing on the record to demonstrate as to how the present petitioner is prejudiced, or if there is any likelihood of causing miscarriage of justice to the petitioner, owing to the order under challenge.

22. Resultantly, instant writ petition, being misconceived and devoid of merits, is **dismissed** with no order as to cost.

Order Date:-27.05.2024

VR