

Hari Shanker Tripathi vs Shiv Harsh & Others on 3 February, 1976

PETITIONER:

HARI SHANKER TRIPATHI

Vs.

RESPONDENT:

SHIV HARSH & OTHERS

DATE OF JUDGMENT 03/02/1976

BENCH:

ACT:

Representation of the People Act (43 of 1951), ss. 2(1)(h), 39(1)(a), 81(1), 87(1) and the Rules framed by the Allahabad High Court under Act, rr. 3 and 4-Allahabad High Court Rules, 1952, rr. 4 and 10-Period of limitation under s. 81(1) for election petition expiring during summer vacation-Filing of petition on re-opening day-If barred-General Clauses Act (10 of 1897), s. 10-Applicability.

HEADNOTE:

The respondent was declared elected on April 30, 1974, in the election to the State Legislative Council. The period of limitation of 45 days, prescribed by s. 81(1) of the Representation of the People Act, 1951, for filing an election petition, expired on June 14, 1974, when the High Court was closed for the summer vacation. The appellant, therefore, filed the election petition on July 8, 1974, the re-opening day, challenging the respondent's election. The High Court dismissed the petition as having been filed out of time.

Allowing the appeal to this Court and remitting the matter to the High Court for disposal on merits.

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HELD . The High Court had issued a notification that the entire period of the summer vacation from May 25, to July 7, 1974 was a close holiday, As the period of limitation expired during the summer vacation, which was a closed holiday, the Registrar of the High Court was not competent to entertain the election petition nor could the appellant have presented the election petition legally to the Registrar during such period. and so, it is a case to which s. 10. General Clauses Act, 1897, applies and. the appellant was justified in filing the petition on the re-opening day. [312C-D; 313D-E, 318A-B]

(1) Under r. 3 of the Rules framed by the High Court under the Representation of the People Act, every election petition shall be presented to the Registrar. and r. 4 lays down that after the office report is complete, the Registrar shall place the petition forthwith before the Chief Justice for reference to the concerned Bench. But, from these rules it could not be held that there was no impediment in the way of the appellant in filing the election petition before the Registrar as the office of the High Court was open and the Registrar was available. even though the Court was closed. The presentation before the Registrar, required by r. 3, must be a legal presentation and not a mere physical presentation. If on a day the office is open and only Judges do not sit, it would undoubtedly be a working day of the Court and the election petition could be presented to the Registrar or other officer. But, if the Court was observing a closed holiday, then the Court is not open even though the office may remain open for conducting ministerial or administrative work. Rules 3 and 4 refer to a situation where the Court is open, because, the Registrar has to take the legal steps of placing the petition immediately before the Chief Justice for reference to the Bench concerned and the assignment of a Judge. This could not be done when the Court was observing a closed holiday

Hukumdev Narain Yadav v. Lalit Narain Mishra, [1974] 3 S.C.R. 31, explained.

Krishna Dhan Mullick v. Umratul Zohra Begam, I.L.R. [1949] All. 433, approved.

(2) (a) Further. r. 10 of the High Court Rules which is the only provision which empowers vacation Judges to hear matters, has a very limited scope and does not empower the Registrar to entertain or to receive an election petition. Under the rule normally. Only criminal work shall continue to be dealt with during vacation, and it is only when other matters require immediate attention

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that the vacation Judges have jurisdiction to entertain them. Election petitions A do not come under these two categories, so as to be taken up when the Court is observing a closed holiday. [315E, H-316B]

(b) The mere fact that a practice has grown up of the Registrar or Deputy Registrars or other officers receiving a number of applications, which was not strictly justified by the Rules, would not have the effect of converting what is legally a closed holiday into a working day. [316B-C]

(c) Rule 4 of the High Court Rules-which provides that 'there any particular number of days is prescribed by these Rules, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless, the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusive of that day also and of any succeeding day or days on which the offices of the Court continue to be closed'-

cannot be relied upon by the respondent, because, it applies only where the period of limitation is prescribed by the Rules. [316G]

(3) For taking advantage of s. 10, General Clauses Act, 1897, it is necessary that.

- (a) an act or proceeding is allowed to be done or taken in any court or office on a particular day or within a prescribed period; and
- (b) if the Court or office is closed on that day or the last day of the prescribed period then the act or proceeding will be deemed to have been taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

The proviso to the section makes the section inapplicable to cases where the Limitation Act applies.

In *Hukumdev Narain Yadav's* case [1974] 3 S.C.R. 31, this Court held that ss 4 and 5, Limitation Act, do not apply to election petitions. Therefore, s. 10, General Clauses Act applies in terms to the instant case. [313A-D]

H.H. Raja Harinder Singh v. S. Karnail Singh, [1957] S.C.R. 208, followed.

(4) 'Public holiday' is defined in s. 2(1)(h) of the Representation of the People Act to mean any day which is a public holiday for the purposes of s. 25, Negotiable Instruments Act, 1881. But the term 'public holiday' refers only to such contingencies as are mentioned in s. 39(1)(a) of the Act, in the conduct of the actual elections. Section 87(1) shows that so far as the disposal of election petitions is concerned once s. 80 confers power on the High Court to try them, s. 2(1)(h) would have no application whatsoever to their trial which will be governed either according to the Rules framed by the High Court under the Act, or the general Rules of the High Court, or in accordance with the C.P.C. In the instant case, the High Court having framed Rules under the Representation of the People Act, which provide for the presentation of the petition to the Registrar, which could only be on a day which is not a 'closed holiday', the term 'closed holiday' will have to be referred to and not 'public holiday' defined in s. 2(1)(h). [317B-H]

JUDGMENT:

CIVIL APPELLATE- JURISDICTION: Civil Appeal No. 699 of 1975.

From the Judgment and order dated 10-2-1975 of the Allahabad High Court in Election Petition No. 45 of 1974.

J. P. Goyal, S. P. Singh and G. S. Chatterjee for the appellant.

S. N. Misra, K. C. Agarwala, M. M. L. Srivastava and E. C. Agarwala, for the respondent.

The Judgment of the Court was delivered by FAZAL ALI, J.-This is an appeal against the judgment of S. Malik, J. Of the Allahabad High Court who was assigned as an Election Judge to hear the election petition filed by the appellant in the High Court. The election petition was filed by the appellant who was one of the ten candidates for the membership of the U.P. Legislative Council from Basti-cum-Gorakhpur Local Authority Constituency. The results of the aforesaid election were declared on April 30, 1974 and the appellant filed the election petition in the High Court on July 8, 1974, praying that the election of respondent No. 1 be declared void and that the appellant be declared to be duly elected. The election petition was placed for hearing before the learned Judge after he was assigned as a Judge to hear the election petition by the Chief Justice and the learned Judge framed 20 issues in the case. Issue No. 8 related to the question as to whether the election petition had been properly presented and was within time. As Issue No. 8 related to the maintainability of the petition on the point of limitation, the learned Judge took up this matter as a preliminary issue, and after hearing the parties he held that the petition having been filed beyond time merited dismissal under s.86(1) read with s.81(1) of the Representation of the People Act, 1951. The election petition of the appellant was accordingly dismissed by the High Court by its order dated February 10, 1975 and it is against this order that the present appeal has been preferred in this Court.

The facts of the case lie within a very narrow compass. It is not disputed that the results of the election were declared on April 30, 1974 and normally the election petition should have been filed in the High Court within 45 days from this date. Accordingly the period of limitation expired on June 14, 1974. The petition was, however, presented before the Registrar on July 8, 1974. The appellant relied on the fact that he was not in a position to file the petition in the High Court on June 14, 1974 because the High Court was closed for the summer vacation and as the High Court was observing a closed holiday the appellant was entitled to file the petition on the re-opening which was July 8, 1974 and accordingly he filed the petition on that day. The appellant, therefore, claimed that his petition was not time-barred in view of the provisions of s. 10 of the General Clauses Act, 1897 which would apply to this case.

The learned counsel for the appellant has reiterated the same argument before us as in the Court below and has submitted that for all intents and purposes the summer vacation being a closed holiday according to the notification issued by the High Court, the appellant was legally entitled to file the petition only on July 8, 1974 when the High Court re-opened.

The learned Judge of the High Court rejected the contention of the appellant on two grounds. In the first place the learned Judge thought that the matter was clearly covered by the decision of this Court in *Hukumdev Narain Yadav v. Lalit Narain Mishra*. (1) Second by, the learned Judge was of the opinion that although the High Court was closed for the summer vacation, the office of the High Court was open and the Registrar was available for entertaining any petition of an urgent nature which was filed by any petitioner and the Vacation (1) [1974] 3 S.C.R. 31.

Bench also functioned during the vacation. In these circumstances he learned Judge thought that there was no justification for the appellant to have waited till the re- opening of the High Court in order to file the election petition. Mr.. S. N. Misra appearing for the respondents more or less supported the view taken by the learned Judge and he also put forward certain additional arguments which will be dealt with later.

After having heard the arguments of the parties and going through the record, we find that the view taken by the learned Judge is legally erroneous. The learned Judge appears to have drawn an analogy from the facts in the case of Hukumdev Narain Yadav (supra) which appear to be clearly distinguishable from the facts of the present case. In the case of Hukumdev Narain Yadav this Court was not called upon to consider the legal significance of the Court having been closed due to summer vacation, but was considering a case where the Court was undoubtedly open but the petition was filed on the Monday instead of the previous Saturday which though a working day of the Court was not a day on which the Judges were usually sitting. Secondly the learned Judge appears to have completely overlooked the provisions of s. 10 of the General Clauses Act, particularly in view of the fact that this Court has held that ss. 4 or 5 of the Limitation Act did not apply to election petitions.

To begin with we would first deal with the case of Hukumdev Narain Yadav (supra). What had happened in that case was that the election petition was filed on March 20; 1972 instead of being filed on Saturday March 18, 1972 which was the last day on which the limitation expired. The election petitioner sought to cross the bar of limitation on the ground that Saturday not being a working 1 day of the Court, the petitioner was entitled to file the petition on the next working day, namely, Monday. This Court on a consideration of various factors negated this contention and held that even though the Judges of the High Court did not usually sit on Saturdays it was undoubtedly a working day of the Court and it could not be said that the Court was observing a closed holiday on Saturday. After referring to a large number of decisions and traversing various provisions of the Limitation Act, this Court observed as follows:-

".... for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in s. 4, ss. 9 to 18 and s. 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law....."

For all these reasons we have come to the conclusion that the provisions of s. 5 of the Limitation Act do not govern the filing of election petitions or their trial, and in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay."

This Court accordingly held that s. 4 as also s. 5 of the Limitation Act had no application to the election petitions on the true interpretation of s. 29(2) of the Limitation Act. The Court also held on a reading of rr. 6 & 7 with r. 26 of the Patna High Court Rules that even though the Judges were not sitting on Saturdays the- election petition could be presented on a Saturday to the Registrar or other officers as envisaged by r. 26 of the Patna High Court Rules. In the instant case, however, the period

of limitation provided by s. 81(1) of the Representation of the People Act appears to have expired during the summer vacation which according to the notification of the Allahabad High court was declared to be a closed holiday. By virtue of the notification of the Allahabad High Court dated September 22, 1973 when the High Court Calendar for 1974 was approved by the Court after inviting objections from the members of the public, a list of days had been mentioned to be treated as closed holidays. The last part of this notification runs thus:

"List of days to be observed as closed holidays in the High Court of Judicature at Allahabad during the year 1974.

----- Name of holidays Dates on which
they fall Days of Number of the week days According to According to Gregorian
Indian Calen Calendar dar saka era

1 3 4 5

----- Summer Vacation May 25 to
Jyaistha 4 to Saturday 44 July 7. Asadha 11, 1896 to Sunday ..

----- In view of this notification, therefore, the legal position would be that the sunder vacation, namely, the period starting from May 25 and ending on July 7, 1974, would be deemed to be close holidays in the High Court. Thus it follows that June 14, 1974, which fell within this period would also be a closed holiday. If, therefore, the period of limitation under s. 81 of the Representation of the People Act expired on June 14, 1974 which being a closed holiday right upto July 7, 1974, then s. 10 of the General Clauses Act would apply in terms and the appellant would be fully justified in filing the petition on July 8, 1974 when the Court re-opened after the summer vacation. The relevant portion of s. 10 of the General Clauses Act runs thus:

"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, when, 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:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies."

Analysing the section it would appear that the following conditions must be satisfied before a litigant may take advantage of the protection of s 10 of the General Clauses Act.

(1) that any act or proceeding is allowed to be done or taken in any court or office on a particular day or within a prescribed period; (2) that if the court or office is closed on that day or the last day of prescribed period then the act or proceeding will be deemed to have been taken in due time if-it is done or taken on the next day afterwards on which the Court or office is open.

The proviso to s. 10 makes these provisions inapplicable to cases where the Limitation Act applies. In the instant case which arises out of the election petition it is manifest from the judgment of this Court on Hukumdev Narain Yadav (supra) that the provisions of ss. 4 and 5 of the Limitation Act do not apply. It is also clear from the notification of the High Court referred to above that the entire period of the summer vacation starting from May 25 to July 7, 1974, was a closed holiday. Thirdly the period of limitation prescribed by s. 8(1) of the Representation of the People Act expired on June 14, 1974 during the summer vacation. In these circumstances the inescapable conclusion would be that s. 10 of the General Clauses Act would apply in terms and the appellant would be entitled to file the election petition on July 8, 1974 as he did.

In *H. H. Raja Harinder Singh v. S. Karnail Singh*(1) while interpreting s. 10 of the General Clauses Act, this Court pointed out the necessary conditions that are required to invoke s. 10 and held that s. 10 clearly applied to election petitions. In this connection this Court observed as follows:

"Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section' the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.. We entertain no doubt that the legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding that s. 10 is not applicable to petitions falling within Rule 119.

We are also unable to read in the proviso to s. 37 of the Act an intention generally to exclude the operation of s. 10 of the General Clauses Act in the construction of the Rules, as that will be against the plain language of Rule 2 (6) '
The (1) [1957] S.C.R. 208.

operation of such a beneficent enactment as s. 10 of the General Clauses Act is not, in our opinion, to be cut down on such unsubstantial grounds as have been urged before us. We are accordingly of opinion that the petition which the respondent filed on May 18, 1954, is entitled to the protection afforded by that section and is in time."

In these circumstances, therefore, s. 10 of the General Clauses Act furnishes a complete answer to the reasons given by the learned Judge in holding that the election petition filed by the appellant in the High Court was barred by time.

Another reason given by the learned Judge was that even though the High Court was closed its office was open and the Registrar was available to receive any election petition. This reasoning of the High

Court fails to consider the distinction between the opening of the Court and opening of the office. While the Court may be closed, the office may remain open for conducting ministerial business or administrative work. So far as the election petitions are concerned they are matters of moment and if the power to receive these petitions was delegated to the Registrar by the Rules framed by the Allahabad High Court under the Representation of the People Act, the Registrar must be deemed to exercise a judicial power which could not be exercised when the Court was observing a closed holiday. It would appear that under the rules framed by the High Court of Allahabad regarding the trial of election petitions, r. 3 required that every election petition shall be presented to the Registrar and r. 4 laid down that after the office report etc. is complete the petition shall be laid forthwith before the Chief Justice for reference to the Bench concerned. The learned Judge seems to think that in view of these rules there was no impediment in the way of the appellant in filing the election petition before the Registrar who was available during the summer vacation even though the Court was closed. We are, however, unable to agree with this view. These rules clearly refer to a situation where the Court is open, because the Registrar has to take legal steps, namely, the placing of the petition immediately before the Chief Justice for reference to the Bench concerned and the assignment of a Judge. This could not be done when the Court was observing a closed holiday. The presentation before the Registrar as required by r. 3 of the aforesaid rules must be a legal presentation and not a physical presentation. For instance, if the Registrar visited the High Court on a Sunday or on any public holiday, could it be said that the election petition could be presented to him and the Registrar may be asked to entertain the same. The answer to this question must obviously be in the negative. Therefore, the position would be the same if the Court by virtue of the notification issued on September 22, 1973, was observing a closed holiday during the summer vacation. A similar question appears to have arisen before the Allahabad High Court in a case on appeal to the Federal Court where six weeks time for depositing security money expired during the High Court vacation and the Allahabad High Court clearly pointed out that the mere fact that certain ministerial officers of the Court were available to conduct the routine matters would not indicate that the Court was open. In this connection the Allahabad High Court in *Krishna Dhan Mullick v. Umratul Zohra Begam*(1) . observed as follows:

"The six weeks within which security could be deposited expired during the High Court vacation. If the period expires on a closed holiday, it is not disputed that the time would be excluded in computing the period of six weeks. This is done under section 10 of the General Clauses Act (X of 1897)..... The fact that the Court for its own convenience deposes certain officers to receive the money does not give them a separate existence and it cannot be urged that while the Court is closed the office is open. There may be days when the learned Judges are not sitting and yet the Court may not be closed, but if the Court is closed then it cannot be said that the ministerial officers attached to the Court are an office within the meaning of the term in section 10 of the General Clauses Act and they have a separate existence from the Court."

We find ourselves in complete agreement with the observations made by the Division Bench in the aforesaid decision, and in fact this . clearly brings out the real distinction between the functioning of the office of the High Court and of the High Court itself.

Furthermore, it would appear from r. 10 of Ch. V of the Allahabad High Court Rules, that this is the only provision which empowers the Vacation Judge to hear certain types of matters. The rule may be extracted thus: E "10. (1) Criminal work shall continue to be dealt with during the vacation by such Judges as may be appointed for the purpose by the Chief Justice. They may also exercise the original and appellate jurisdiction vested in the Court in any miscellaneous matter or any civil matter connected with, relating to, or arising out of, the execution of a decree, which may in their opinion, require immediate attention. Such jurisdiction may be exercised even in cases which are under the Rules cognizable by two or more Judges, unless the case is required by any other law to be heard by more than one Judge. G (2) Subject to any general or special order of the Chief Justice, Vacation Judges shall, in the absence of the Chief Justice, exercise jurisdiction at Allahabad or Lucknow, as the case may be, in connection with the arrangement of Benches, listing of cases and other like matters."

A perusal of r. 10 would clearly indicate that only criminal work shall continue to be dealt with during the vacation by such judges as (1) I.L.R.[1949] All. 433.

may be appointed for the purpose by the Chief Justice. The second part of r. 10 no doubt gives jurisdiction to the Vacation Judges to entertain other matter, but the rider is that those matters must require immediate attention. This rule nowhere empowers the Registrar to entertain or to receive an election petition. Rule 10 of Chapter V has a very limited scope and does not include election petitions which cannot be said to be cases of a criminal nature or those requiring immediate attention so as to be taken up even when the Court is observing a closed holiday. It is true, as the learned Judge pointed out, that the office of the High Court was open and the Registrar or the Deputy Registrar etc. were receiving a number of applications, but the mere fact that such a practice had grown which may not have been strictly justified by the statutory Rules would not have the effect of converting what is legally a closed holiday into a working day. Similarly as indicated above, this Court in *Hukumdev Narain Yadav's case* (supra) was not at all called upon to consider the significance of a closed holiday but was deciding a case where on all accounts the day on which the limitation expired was a working day of the Court and where the Court was factually and legally held to be open. In these circumstances, therefore, the analogy drawn by the learned Judge from that case does not hold good in the facts of the present case.

Mr. S. N. Misra appearing for the respondents advanced two contentions before us. In the first place he drew our attention to r. 3 of Chapter I of the Allahabad High Court Rules, the relevant part of which may be extracted thus:

" 'Registrar' includes- -

- (i) the Deputy Registrar at Lucknow, in matters relating to the Lucknow Bench;
- (ii) the Joint Registrar or any other officer, with respect to such functions and duties of the Registrar as may have been assigned to the Joint Registrar or such officer by the Chief Justice, and

(iii)in the absence of the Registrar, the Joint Registrar or any other officer authorized to act on his behalf;"

Rule 3 no doubt provides that the Registrar includes the Deputy Registrar and other officers. Rule 4 of Chapter I would have no application to the present case because this rule applies only to such cases where the period of limitation is prescribed by the Rules. In the instant case, the period of limitation is not prescribed by the Rules made by the High Court of Allahabad but by s. 81(1) of the Representation of the People Act itself, and therefore this rule cannot be of any assistance to the respondents. It was then submitted that under s. 2(1)(h) of the Representation of the People Act, "public holiday" was defined as meaning any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881. It was contended that as the notification issued by the High Court declared the summer vacation to be a closed holiday it could not be construed as a holiday under s. 25 of the Negotiable Instruments Act and it would not be deemed to be a public holiday of which the appellant could have taken any advantage. The argument is undoubtedly attractive but on a deeper probe it does not appear to be tenable. The term "public holiday" referred to in s. 2(1)(h) of the Representation of the People Act has nothing to do with any administrative functions exercised by the High Court but refers only to such contingencies as are mentioned in the conduct of the actual elections under the provisions of the Representation of the People Act. For instance s. 39(1)(a) provides thus;

39. (1) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college of a Union territory to elect a member or members is issued, the Election Commission shall, by notification in the official Gazette, appoint-

(a) the last date for making nominations which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday."

The word "public holiday" used in s. 39(1)(a) would undoubtedly refer to public holiday as defined in s. 2(1)

(h) of the Representation of the People Act. So far as the disposal of the election petitions is concerned, once s. 80 confers the power on the High Court to try an election petition, s. 2(1)(h) would have no application whatsoever to the trial of such election petition by the High Court which will be governed either according to the Rules framed by the High Court under the Representation of the People Act or under the general Rules of the High Court or in accordance with the Code of Civil Procedure. This is borne out by s. 87(1) of the Representation of the People Act which may be extracted as follows:

"87. (1) Subject to the provisions of this Act and of any rules made thereunder every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided * * * * *

In the instant case the High Court having framed the Rules under the Representation of the People Act which provided for the presentation of the election petitions to the Registrar, which as we have held could r only be done on a day which is not a closed holiday, the term "closed holiday"

would have to be referred to as defined by the High Court Rules and not by s. 2(1) (h) of the Representation of the People Act. In these circumstances, therefore, the contention of the respondents on this score must be overruled. \ H For the reasons given above we are satisfied that as the period of limitation expired during the summer vacation which was a closed 6-5225CI/76 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. In these B; circumstances the view taken by the High Court that the election t, petition was barred by time is wrong on a point of law, and the finding of the learned Judge on issue No. 8 cannot, therefore, be sustained.

The appeal is accordingly allowed, the order of the High Court dated February 10, 1975, is set aside and the matter is remitted to the learned Judge for trying the election petition in-accordance with the law. In the special circumstances of this case we make no order as to costs in this Court.

V.P.S.

Appeal allowed.