

Tarun Prasad Chatterjee vs Dinanath Sharma on 10 October, 2000

Equivalent citations: AIR 2001 SUPREME COURT 36, 2000 (8) SCC 649, 2000 AIR SCW 3839, 2001 (4) LRI 1149, 2000 (9) SRJ 368, 2001 (1) UJ (SC) 345, 2001 UJ(SC) 1 345, 2000 (3) BLJR 2415, 2000 (1) JT (SUPP) 522, 2000 (6) SCALE 729, (2001) 1 ALLMR 543 (SC), (2000) 4 SCJ 244, (2001) 1 MAD LW 411, (2001) 1 PAT LJR 139, (2000) 7 SUPREME 85, (2001) 1 RECCIVR 45, (2000) 6 SCALE 729, (2000) 6 ANDH LT 15

Author: R.C.Lahoti

Bench: R.C.Lahoti

CASE NO.:
Appeal (civil) 2937 of 2000

PETITIONER:
TARUN PRASAD CHATTERJEE

Vs.

RESPONDENT:
DINANATH SHARMA

DATE OF JUDGMENT: 10/10/2000

BENCH:
R.C.Lahoti, K.G.Balakrishna

JUDGMENT:

Balakrishnan, J.

L.....I.....T.....T.....T.....T.....T.....T..J The short question involved in the present appeal is whether in computing the period of limitation as provided in Section 81(1) of the Representation of the People Act, 1951(hereinafter mentioned as "R.P. Act, 1951"), the date of election of the returned candidate should be excluded or not.

The appellant and the respondent herein contested the election of the Legislative Assembly held on

25.11.1998 from 127, Raipur Gramin Assembly Constituency of Madhya Pradesh. The appellant was declared elected on 28.11.1998. The respondent filed an Election Petition under Section 81(1) of the R.P. Act, 1951 challenging the election of the appellant. That Petition was filed on 12.1.1999. The appellant filed an application under Order 7 Rule 11 CPC read with Section 81 of the R.P. Act 1951, praying that the Election Petition was liable to be dismissed at the threshold as not maintainable as the same had not been filed within 45 days from the date of election of the returned candidate. The respondent contended that in view of Section 9 of the General Clauses Act, 1897, the Election Petition was filed in time. The plea of the respondent Election Petitioner was accepted by the learned Single Judge and that decision is assailed before us.

We heard both Mr. P.P. Rao, the learned senior Counsel on behalf of the appellant and Mr. B.S. Banthia, learned Counsel on behalf of the respondent. The contention of the appellant's Counsel is that in view of the specific language used in Section 81(1) of the R.P. Act 1951, Section 9 of the General Clauses Act, 1897 has no application and it was argued that the mandate of Section 81 of the R.P. Act provides that the Election Petition should be filed within 45 days of the date of election and not a single day beyond that, whereas the learned Counsel for the respondent contended that Section 9 of the General Clauses Act, 1897 is applicable and the date of election of the returned candidate is to be excluded in view of the application of Section 9 of the General Clauses Act, 1897.

In order to appreciate the rival contentions, the relevant provisions of the R.P. Act, 1951 and General Clauses Act, 1897 are to be looked into. Section 81 of the R.P. Act, 1951 reads as follows:-

81. Presentation of petitions. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidates at the election and dates of their election are different, the later of those two dates.

Explanation. In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

(Emphasis added) The "date of election" of the returned candidate has been defined under Section 67(A) of the R.P. Act, 1951, which is as under:-

"Date of election of candidate For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53, or section 66, to be elected to a House of Parliament or of the Legislature of the State shall be the date of election of that candidate."

Section 9 of the General Clauses Act, 1897 reads as follows:-

9. Commencement and termination of time. (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

As per Section 81(1) of the R.P. Act, the period of limitation prescribed for filing an election petition is forty-five days from the date of election of the returned candidate. It is also stated that it may not be filed earlier to the date of election of the returned candidate. Prior to Act No. 27 of 1956, the period of limitation for presentation of election petition was not provided in Section 81(1) of the R.P. Act, 1951. The period of limitation for presentation of election petition was provided under Rule 119 of Representation of the People (Conduct of Election & Election Petitions) Rules, 1951. In this code of rules, by Rule 2(6), it was expressly provided that the provisions of the General Clauses Act would apply. This express provision was required since the General Clauses Act would not normally be applicable to Rules framed under the Central Act. By Act No. 27 of 1956, a prescribed period for presentation of petition was provided under Section 81(1) of the R.P. Act, 1951 instead of giving such legislative power to the rule making authority. R.P. Act, 1951 being a self-contained code, it was held by courts in a series of decisions that the provisions contained in the Limitation Act have no application. However, in a line of decisions it has also been held that the provisions contained in General Clauses Act, 1897 are applicable in computing the period of limitation for filing election petition under the R.P. Act., 1951. There is nothing in Section 81(1) to indicate that the provisions contained in the General Clauses Act have no application.

This question came up for consideration in K. Venkateswara Rao & Another vs. Bekkam Narasimha Reddi & Others AIR 1969 SC 872 and it was held that Sections 9 and 10 of the General Clauses Act would apply in computing the period of limitation under Section 81(1) of the R.P. Act, 1951. It was observed in Para 20 at page 879 as under:-

"It is to be noted however that even though the Indian Limitation Act, 1963 does not apply to an election petition, provisions like Section 9 and 10 of the General Clauses Act, 1897 providing for computation of time which are in pari materia with Section 12(1) and 4 of the Limitation Act would apply to such a petition."

In Manohar Joshi vs. Nitin Bhaurao Patil & Anr. AIR 1996 SC 796, this question was dealt with in detail and this Court held that Section 10 of the General Clauses Act is applicable to the presentation of election petition. [See also: H.H. Raja Harinder Singh vs. S. Karnail Singh and Ors. AIR 1957 SC 271; Hukumdev Narain Yadav vs. Lalit Narain Mishra, AIR 1974 SC 480; Simhadri Satya Narayana Rao vs. M. Budda Prasad and Ors. 1994 Supp. (1) SCC 449.] So there cannot be any dispute to the proposition that Section 9 of the General Clauses Act would apply in computing the period of

limitation under Section 81(1) of the R.P. Act, 1951. However, the contention urged by the learned Counsel for the appellant in this case is that even if it is held that Section 9 has an application to a petition filed under Section 81(1) of the R.P. Act, 1951, it could be applied only in appropriate cases and is not to be applied universally. The contention of the appellant is that in view of the specific language employed in Section 81(1) of the R.P. Act, 1951, the words "within" and "from" used therein would indicate that Section 9 has no application. It was also urged that the legislative mandate is that the election petition should be filed within 45 days from the date of election of the returned candidate and not earlier than the said date or after 45 days of the said date. On these premises, it was argued that section 9 has no application in the instant case.

Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.

In Halsbury Laws of England, 37th Edition, Volume 3 page 92, it is stated as follows:-

"Days included or excluded. When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last- mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day"

are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

Section 9 says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any period of time, to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from the 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless the 1st January is excluded from the period of computation.

It was argued that the language used in Section 81(1) that "within forty-five days from, but not earlier than the date of election of the returned candidate" expresses a different intention and

Section 9 of the General Clauses Act has no application. We do not find any force in this contention. In order to apply Section 9, the first condition to be fulfilled is whether a prescribed period is fixed "from" a particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged and Section 9 of the General Clauses Act, 1897 require to exclude the first day. The words "from" and "within" used in Section 81(1) of the R.P. Act, 1951 do not express any contrary intention.

By Section 81(1), the legislation fixes the period for filing election petition and at the same time states that no elector or candidate shall file election petition before the date of election of the returned candidate and if there are more than one returned candidates at the election and dates of their election are different, the later of those two dates. The learned senior Counsel for the appellant contended that if the date of election of the candidate is excluded from computing the period of limitation of 45 days, the period of limitation would be extended by one day and, therefore, it is against the mandate of the statute. It was also contended that the filing of the application on the date of election of the returned candidate cannot be considered as a valid presentation of petition as envisaged in the section. We do not think that any such interpretation is possible by a conjoint reading of Section 81(1) of the R.P. Act, 1951 and Section 9 of the General Clauses Act, 1897. The first day for the period of limitation is required to be excluded for the convenience of the parties and if the declaration of the result is delayed or is done late in the night, the candidate or elector would hardly get any time for presentation of the election petition. Law comes to the rescue of such parties to give full forty-five days period for filing the election petition. Nevertheless, any petition presented on the date of election of the returned candidate would be certainly within the period of limitation as it is a presentation on the date of election of the returned candidate.

In the instant case, the date of election of the returned candidate being 25.11.1998, the election petition filed on 12.1.1999 on exclusion of the first day from computing the period of limitation, was in time and the learned Single Judge rightly dismissed the petition filed by the appellant. This appeal is without any merits and the same is dismissed, however, without costs.

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