

Ashif Khan Vs. Prasanta Kumar Das and ors.

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Court : Orissa

Decided On : Feb-24-2005

Reported in : 99(2005)CLT534

Judge : Sujit Barman Roy, C.J. and ;M.M. Das, J.

Acts : Orissa Municipal Act - Sections 19 and 399; Limitation Act, 1908 - Sections 5; Hyderabad Municipal Act - Sections 671

Appeal No. : W.P.(C) No. 38 of 2005

Appellant : Ashif Khan

Respondent : Prasanta Kumar Das and ors.

Advocate for Def. : R.K. Parida, Adv.

Advocate for Pet/Ap. : S.K. Rath, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. Heard Learned Counsel for the petitioner.

2. In this Writ Petition, the petitioner seeks to challenge the

JUDGMENT / ORDER

dated 2.11.2004 passed by the Learned District Judge-cum-Tribunal, Dhenkanal, Angul, in Election Petition No. 247 of 2003. The petitioner having lost the election to the seat of Councilor of Ward No. 1 of Talcher Municipality against Opp. Party No. 1, filed election petition before the Learned District Judge-cum-Tribunal, Dhenkanal, Angul, Section 19 of the Orissa Municipal Act (hereinafter referred to as 'the Act') provides that such election petition has to be presented/filed before the Tribunal within 15 days after the day on which the result of the election is announced, Admittedly, the result of the election was declared on 20.9.2003, but the election petition was filed on 27.10.2003. Therefore, the election petition having been filed much beyond the period of limitation of 15 days prescribed under Section 19 of the Act, the Learned Tribunal dismissed the election petition being barred by limitation. While filing such election petition for setting aside the election, an application under Section 5 of the Limitation Act was filed, to condone the delay, before the Learned Tribunal. The Learned Tribunal held that Section 5 of the Limitation Act does not apply to the election proceeding as contemplated under Section 19 of the Act and on that score, rejected the petition.

3. Learned Counsel for the petitioner referred to a decision of the Apex Court in Sheik Saidula @ Saida v. Chukka Yesy Ratnam and Ors., AIR 2002 SC 749. Referring to the said decision of the Apex Court, Learned Counsel for the petitioner submits that Section 5 of the Limitation Act would apply to election petition as contemplated under Section 19 of the Act. Learned Counsel for the petitioner further drew our attention to Section 339 of the Act. The said Section reads as follows :

'339. Limitation of time for appeal: Save as otherwise expressly provided or may be prescribed, every appeal under this Act shall, subject to the provisions of Section 5 of the India Limitation Act, IX of 1908, be presented ;

(a) where the appeal is against an order granting a licence or permission within thirty days after the date of the publication of the order on the notice board of the Municipal Council; and

(b) in other cases, within thirty days after the date of the receipt of the order or proceeding against which the appeal is made.'

4. A plain reading of the above Section clearly shows that under the said section, it is specifically provided that Section 5 of the Limitation Act would apply to appeals where such appeal is filed against an order granting a licence or permission or appeals in other cases which are required to be filed within the period prescribed under Sub-section (a) and (b) quoted above.

5. In the decision of the Supreme Court in the case of Sheik Saidula (supra), referred to by the Learned Counsel for the petitioner, we find that the said judgment was given in the context of Section 671 of the Hyderabad Municipal Act. It is clear from the said decision that Section 671 of the Hyderabad Municipal Act is not a provision which is in Pari materia with Section 339 of the Orissa Municipal Act. It also appears from the case that Section 671 of the said Act clearly provides that Section 5 of the Limitation Act would be applicable to an appeal as well as an application under the Hyderabad Municipal Act. In that view of the matter, the Supreme Court held that an election petition being an application, Section 5 of the Limitation Act would be applicable to an election petition filed under the Hyderabad Municipal Act as provided under Section 671 of the Act. But under Section 339 of the Orissa Municipal Act, it is clearly mentioned that Section 5 of the Limitation Act would apply to only appeals filed under the Act and nowhere it provides that it would also apply to applications. Therefore, we are unable to accept the contention raised by the Learned Counsel for the petitioner that by applying the above decision of the Supreme Court, the Learned Tribunal below should have exercised his power under Section 5 of the Limitation Act to condone the delay in filing of the election dispute before him. We, therefore, find no infirmity in the impugned order passed by the Learned District Judge-cum-Tribunal, in which the election petition filed by the petitioner was dismissed on the ground of limitation.

6. The Writ Petition is, therefore, dismissed at the threshold.