



IN THE HIGH COURT OF ORISSA AT CUTTACK

I.A. No.88 of 2024 & I.A. No.89 of 2024
ELEPET No.6 of 2024

(An applications under Sub-Section 4 of Section 86 of the Representation of People Act, 1951 and Section 5 of the Indian Limitation Act)

Pritiranjana Gharai ... Election Petitioner

-versus-

Pradeep Bal Samant
... Respondents

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr.U.K.Samal,
Advocate with
Mr.M.R.Mohapatra,
Advocate

-versus-

For Respondent : Mr. P.K.Rath, Sr. Advocate
Mr.P.K.Satapathy,
Advocate(For intervenor).
Mr.R.N.Parija, Advocate
(For intervenor)
Mr. G.K. Agarwal, DEO.

CORAM:
JUSTICE SASHIKANTA MISHRA

ORDER
17.01.2025.



Sashikanta Mishra,J. I.A. No.88 of 2024 is an application filed under sub-section 4 of Section 86 of Representation of People Act, 1951 by the Petitioner for being impleaded as Respondent in the main election petition. I.A. No. 89 of 2024 is an application seeking condonation of delay in filing of the petition for impleadment.

2. The Petitioner, of these applications, was a candidate for the post of member of legislative assembly of Odisha of 54 Sukinda Assembly constituency in the last general election 2024. He was an independent candidate and was allotted with the symbol 'Apple'. The present opposite party No.2-Pradeep Bal Samant was declared elected in the election with margin of 9577 votes defeating his nearest rival, opposite party No.1 namely, Pritiranjana Gharai of BJD. The present petitioner, Gunamani Shaw claims he came to know that the opposite party No.1-Pritiranjana Gharai of BJD has filed the above election petition before this Court challenging the election of Pradeep Bal Samant. He therefore,



contacted his lawyer and came to know about the filing of the said petition. It is stated that though he was an independent candidate in the 54 Sukinda Assembly constituency he has not been impleaded as a respondent in the election petition filed by Pritiranjana Gharai and that he seriously desires to be impleaded as a respondent in the petition and to file written statement. It is further stated that as per sub-section 4 of Section 86 of the Act, it is permissible for the petitioner to join in the aforesaid election petition as a respondent as he has not been impleaded as a respondent by the election petitioner.

3. In the application seeking condonation of delay it is stated that the petitioner came to know about the aforesaid proceeding on 15th October 2024 and further it transpired from the print and electronic media that the election petition was posted on 8.11.2024. Earlier, there was no occasion on his part to know about the election proceeding and only after publication in the local newspaper, he came to know about the same. As such, he filed this application seeking intervention in



the election petition and in the process, there has been delay of 38 days. On such grounds, it is prayed that the delay be condoned.

4. Written objection has been filed by the election petitioner Pritiranjana Gharai (Respondent No.1 in the present Interlocutory Application). It is stated that the election petitioner has not made any allegation against Gunamani Shaw, the petitioner of the I.A., and therefore, he is not necessary to be impleaded as a party. It is further stated that the election petition was presented on 15.7.2024 before this Court and on 29.7.2024, this Court admitted the same and issued notice to the sole respondent. After receiving summons the respondent appeared on 17.9.2024. The present I.A. has been filed on 8.11.2024. Referring to the provision under sub-section 4 of Section 86 of the Act, it is stated that an application for being impleaded as a respondent can be filed within 14 days from the date of commencement of trial and that trial of the petition shall be deemed to commence on the date fixed for the respondent to appear before the High



Court and answer the claim made in the petition. Admittedly, the sole respondent Pradeep Bal Samant appeared before this Court on 17.9.2024, which is the date fixed for commencement of trial. The present petition being filed on 8.11.2024 is therefore barred by time and therefore, liable to be rejected with cost. It is further stated that the provision of Section 5 the Limitation Act, 1963 is not applicable to election petitions. On such grounds, it is stated that the petition be rejected.

5. Heard Mr. P.K.Satapathy, learned counsel for the Petitioner and Mr. U.K.Samal, learned counsel appearing for Respondent No.1-election petitioner.

6. Mr. Satapathy would argue that admittedly there is delay of about 38 days in filing the present application. He submits that the requirement of filing the petition for impleadment within 14 days from the date of commencement of trial as per Section 86(4) is directory and not mandatory. In this context, Mr. Satapathy argues that the Representation of People Act provides different periods in four instances such as,



Section 81 which prescribes 45 days' time for filing of election petition, Order 8 Rule 1 of C.P.C. for filing of written statement, Section 97 which provides for 14 days' time for filing of recrimination petition and Section 86 (4), which also provides 14 days' time for filing of petition for impleadment.

It is argued by Mr. Satapathy that the period of 45 days provided in Section 81 for filing of election petition is followed by penal consequences for its breach under Section 86(1) of the Act to the effect that an election petition which does not comply with the provision of Section 81 shall be dismissed. In Order 8 Rule 1 of C.P.C. which is followed in case of election cases, there is no penal provision or any consequential bar expressly provided for filing of written statement after 90 days. In Section 97 a penal consequence is provided by using the word 'unless' in the proviso which means that if the recrimination petition is not filed within 14 days from the date of commencement of trial, the petitioner would not be entitled to give evidence. Mr. Satpathy therefore, argues that wherever



the legislature intended to provide for a mandatory time period for filing of petitions it has provided so specifically, but in sub-section 4 of Section 86, there is no such provision. As such, according to Mr. Satapathy, it cannot be said that the requirement of filing the petition for impleadment as per Section 86(4) of the R.P. Act being 14 days, is not mandatory but only directory. He further submits that the trial in the election petition under the Act is procedural in nature and the principles of Code of Civil Procedure is required to be followed for guidance. As such, the commencement of trial referred to in the Explanation to the provision is not to put a bar for filing of the application but only to explain the initial date for counting the period of 14 days.

7. On merits, it is stated that the Petitioner seriously desires to be a party to the proceeding and came to know about the proceeding from the media. It is further stated that the written statement has been filed only on 2.1.2025 and issues have not been framed, so actual trial has not commenced. As such, if



the petitioner is allowed to join in the proceeding no prejudice would be caused to the election petitioner. Finally it is submitted that the delay being neither intentional nor deliberate, the same should be condoned and the petitioner should be permitted to avail his statutory right of joining in the election proceeding. To buttress his contentions, Mr. Satapathy has relied upon a judgment of the Supreme Court in the case of ***Kailash vs Nanhku and others***¹.

8. Mr. U.K.Samal, learned counsel for the election petitioner, on the other hand, would argue that the relevant provision is clear and unambiguous and does not admit of any other interpretation than what is discernible from bare reading thereof. Mr. Samal further refers to Section 2 of sub-section 4 of the Conduct of Election Rules, 1961 to submit that except for the reference to the General Clauses Act therein, there is no other provision for extension of the period provided for filing of petition. Further, the Limitation Act does not apply. Mr. Samal further argues that even

¹ AIR 2005 SC 2441



otherwise the petitioner has not stated in clear terms as to why his presence is required in the election proceeding. Simply by stating that he seriously desires to be impleaded as a party does not satisfy the requirement of law. In support of his arguments Mr. Samal has relied upon the judgments of the Supreme Court rendered in the case of ***K. Venkateswara Rao and another vs. Bekkam Narasimha Reddi and others***², ***Jyoti Basu and others vs. Debi Ghosal and others***³, and of the Jammu and Kashmir High Court in the case of ***Hari Om Singh vs. Dr. Karan Singh***.⁴

9. Having heard learned counsel for the parties at length and upon going through the materials on record, this Court finds that admittedly, the petition for impleadment was filed beyond the period of 14 days prescribed under sub-Section 4 of Section 86 of the Act. It would be profitable to refer to the provision at the outset at this stage, which is quoted herein below;

² AIR 1969 SC 872

³ AIR 1982 SC 983

⁴ AIR 1980J & K 57



"86(4). Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent".

10. From a bare reading of the provision quoted above, it is clear that the statute has prescribed a definite period, that is, 14 days for filing of a petition for being impleaded as a party to the election proceeding. The question is, whether said time period is mandatory or directory in nature. In this regard it would also be profitable to refer to the Conduct of Election Rules, 1961 of which Section-2 reads as follows;

"Interpretation- (1) *In these rules, unless the context otherwise requires,*

- (a) *"Act" means the Representation of the People Act, 1951;*
- (b) *"ballot box" includes any box, bag or other receptacle used for the insertion of ballot paper by voters;*

[(ba) "counterfoil" means the counterfoil attached to a ballot paper printed under the provisions of these rules;]

(c) *"election by assembly members" means an election to the Council Sates by the elected members of the Legislative Assembly of a State by the members of the electoral college of a Union territory, or an election to the Legislative Council of a State by the members of the Legislative Assembly of at State;*

(d) *"elector", in relation to an election by assembly members, means any person entitled to vote at that election;*



(e) "electoral roll", in relation to an election by assembly members, means the list maintained under Section 152 by the returning officer for that election,

(f) "electoral roll number" of a person means-

(i) the serial number of the entry in the electoral roll in respect of that person;

(ii) the serial number of the part of the electoral roll in which such entry occurs; and

(iii) the name of the constituency to which the electoral roll relates;

(g) "Form" means a Form appended to these rules and in respect of any election in a State, includes a translation thereof in any of the languages used for official purposes of the State;

(gg) marked copy of the electoral roll" means the copy of electoral roll set apart for the purpose of marking the names of electors to whom ballot papers are issued at an election);

(h) "polling station", in relation to an election by assembly members means the poll

(1) "presiding officer" includes-

(1) any polling officer performing any of the functions of a presiding officer under sub-section (2) or sub-section (3) of section 26; and

(ii) any returning officer while presiding over an election under sub-section (2) of Section 29;

(iii) "returning officer" includes any Assistant returning officer performing any function he is authorized to perform under sub-section section (2) of Section 22;

(k) "section" means a section of the Act.

(2) For the purposes s of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if-

(a) he has placed a mark on such instrument or other paper in presence of the returning officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission, and

(b) such officer on being satisfied as to his identity has attested the mark as being the mark of that person.

(3) Any requirement under these rules that a notification, order, declaration, notice or list issued or made by any authority shall be published the Official



Gazette shall, unless otherwise expressly provided in these rules be construed as a requirement that it shall be published in the Gazette of India, if it relates to an election to, or membership of, either House of Parliament or an electoral college, and in the Official Gazette of the State, if it relates to election to, or membership of, the House or either House of the State Legislature.

(4) The General Clauses Act, 1897 (10 of 1897) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.”

As has been argued by Mr. Samal, learned counsel for the election petitioner, there is no other provision either in the Representation of People Act or in the conduct of Election Rules, 1961 providing for extension of the time period prescribed for filing of different petitions under the Act.

11. It has been argued that the provision is not mandatory but directory in nature. Whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern and these are to be asserted not only from the provision but also by considering its nature, its design and the consequences which would follow from construing it one way or the other. The above



was observed by the Supreme Court in the case of ***State of U.P. vs. M.L.Srivastava***⁵. It has also been held that when consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. This was held by the Supreme Court in the case of ***Rajsekhar Gogoi vs. State of Assam and others***⁶. However, it has also been held that in statutes conferring a power to be exercised on certain conditions, the conditions prescribed are normally held to be mandatory and the power inconsistent in those conditions is impliedly negative. This was held by the Supreme Court in the case of ***Haridwar Singh vs. Bagun Sumbrui and others***⁷. It has also been held that if an affirmative statute which is introduction of a new law directs a things to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other way. However, when it comes to the statutes conferring

⁵ AIR 1957 SC 912

⁶ AIR 2001 SC 2313

⁷ AIR1972 SC 1242



private rights and benefits, which is the case at hand, it has been held that when certain requirements are prescribed by a statute as preliminary to the acquisition of a right conferred by the statute, such prescriptions are mandatory for acquisition of the right or benefit. Reference in this regard may be had to the judgment of the Supreme Court in the case of ***Parekh Wadilal Jivanbhai vs. CIT, M.P., Nagpur***⁸. In the case of ***Shrinivasa Reddy and others vs The State of Mysore and others***⁹, the Supreme Court held that similarly if a person wants a stage carriage permit, it is necessary for him to make an application in the manner and within the time as prescribed under the Motor Vehicles Act.

12. So, from a conjoint reading of all the above decisions vis-a-vis sub-section 4 of Section 86 and particularly taking note of the use of the word 'shall' therein, there can be no manner of doubt that even if no consequences have been provided for not acting within the stipulated period, the provision has to be treated as mandatory for the simple reason that it seeks to confer a

⁸ AIR 1967 SC 448

⁹ AIR 1960 SC 350



particular benefit on a candidate by permitting him to join in the election petition as a party. Since a positive benefit is intended to be conferred by the statute then the requirement of the statute cannot be done away with.

13. While discussing the law in general with regard to interpretation of statutes as to whether the provision is directory or mandatory in nature it would also be profitable to refer to the judgments of the Supreme Court on the Representation of People Act as cited by Mr. Samal. In the case of **Venkataswara Rao** (supra), it was held that with regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1 Rule 10 subject to the added parties' right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible under the election petition, except under the provision of sub-Section 4 of Section 86. It was also held that an election petition stands on a different footing. The Indian Limitation Act does not apply to the proceedings under the Act. The Supreme Court observed in the following words;



“In our opinion however, the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the Peoples Act is a complete and self contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.”

Same view was taken in **Jyoti Basu (supra)** that the Representation of People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute.

In almost a similar case, the Jammu and Kashmir High Court interpreting the provision under a Sub-Section-4 of Section 86 held as follows;

“A bare reading of the Section shows that a candidate may be joined as a respondent, if he files an application in the High Court within 14 days from the date of commencement of the trial. The explanation to the Section lays down that the trial of an election petition shall be deemed to commence on the date fixed for the respondent to appear before the High Court and answer the claim or claims made in the petition. Thus, two conditions which must be satisfied are, (1) that the person seeking to be impleaded must have been a candidate and, (2) he must file the application within 14 days of the commencement of the trial of the election petition. The first condition in this case is



satisfied. However, the second condition is not satisfied. The present petition was filed by Shri Sat Paul on 23rd of April, 1980 in the court. After the election petition was registered and summonses were issued to the respondent, as required by law, the respondent appeared in court through M/s. O.N. Tikku and S.P. Gupta on 4th of April, 1980. Time was given to the respondents to file the written statement within four weeks. According to Mr. L.K. Sharma and which stand is supported by M/s. O.N. Tikku, S.P. Gupta and H.L. Bhagotra, the time of 14 days has to be reckoned from the date when the written statement is filed and not from the date of appearance of the returned candidate in court. I am afraid, I cannot agree. A copy of the summons which was served on the returned candidate stated inter alia:

You are hereby summoned to appear in this court in person or by duly authorised attorney or agent to answer all material questions relating to the petition, enclosed" 8. The explanation to Sub-Sec. (4) (supra) shows that the trial of an election petition commences on the date fixed for the respondent to appear in the High Court and answer the claim. The legislature did not leave it to the interpretation of the courts as to when the trial of an election petition would be deemed to commence. It expressly laid down that it would commence "on the date fixed for the respondent to appear before the High Court and answer the claims." That date in this case undoubtedly was 4th of April, 1980. The present application having been filed on 23rd of April was clearly beyond the time of 14 days period prescribed by Sub-Section (4) of Section 86. The argument that the time should start from the filing of the written statement is wholly fallacious. Can it be contemplated that the "commencement of the trial" can be delayed at the whims of the returned



candidate who has once appeared in the High Court to answer the claims made in the petition? The answer must be an emphatic 'no'. A returned candidate may delay the filing of the written statement and no premium can be put on such delay for the purpose of Section 86(4) of the Act. Thus, the application is beyond the prescribed period and not maintainable."

14. Thus, from a conspectus of the analysis of the statutory provisions and the settled provision of law narrated herein before, this Court finds that notwithstanding the fact that no specific consequences have been prescribed for not acting within the time period prescribed under the provision under sub-section 4 of Section 86, the provision itself is to be treated as mandatory in nature inasmuch as it seeks to confer a positive benefit on a candidate by permitting him to join the election petition as a party. In such event, he can only act within the four corners of the provision. That apart, it is also equally well settled that when a statute requires a thing to be done in a particular manner, the same has to be done in that manner or not at all. Therefore, in absence of any provision conferring power on the Court to enlarge the



time period prescribed in the statute, the Court is obviously denuded of its powers to do so. It would be acting beyond the statutory provisions, which is obviously not permissible.

15. For the foregoing reasons therefore, this Court holds that the application seeking condonation of delay (I.A. No.89/2024) is not maintainable in the eye of law and is therefore, dismissed. Consequently, I.A. No.88/2024 filed by the Petitioner for being impleaded as party to the election petition being filed beyond the stipulated period is also not maintainable in the eye of law for which the same stands rejected.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera