

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**ON THE 24<sup>th</sup> OF AUGUST, 2023**

**CIVIL REVISION No. 589 of 2023**

**BETWEEN:-**

**ANJALI JAISWAL W/O SHRI AJAY JAISWAL, AGED ABOUT  
38 YEARS, OCCUPATION: PARSHAD, ADDRESS:- LAL  
DARWAJA CHOUK RAJGADH DISTRICT DHAR (MADHYA  
PRADESH)**

**.....PETITIONER**

***(MS. ISHITA AGRAWAL, LEARNED COUNSEL FOR THE PETITIONER)***

**AND**

- 1. CHIEF ELECTION AND RETURNING OFFICER NAGAR  
PARISHAD ELECTION 2022-23, OFFICE OF SUB  
DIVISIONAL OFFICER, SARDARPUR DISTRICT DHAR  
(MADHYA PRADESH)**
- 2. COLLECTOR, COLLECTOR OFFICE, DISTRICT DHAR  
(MADHYA PRADESH)**
- 3. M.P. ELECTION COMMISSION, ELECTION COMMISSION,  
BHOPAL (MADHYA PRADESH)**
- 4. SMT. SAWERA JAISWAL W/O MAHESH JAISWAL, AGE  
ADULT, OCCUPATION: BUSINESS, R/O. CHANDRA  
SHEKHAR AZAD MARG, RAJGARH DIST. DHAR (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(NONE)***

***This revision coming on for admission on this day, the court passed the following:***

**ORDER**

This revision under Section 26 (2) of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as "the Act, 1961") has been preferred against the order dated 13.7.2023 passed by First Additional District Judge, Sardarpur, District Dhar in MJC (EP) No.27/2023 whereby the election

petition preferred by the petitioner has been dismissed as barred by time holding that provisions of Section 5 read with Section 14 of the Limitation Act, 1963 are not applicable to an election petition under Section 20 of the Act, 1961. The election petition was preferred by the petitioner calling in question election of respondent No.4 to the seat of President of Municipal Council, Nagar Parishad, Rajgarh, District Dhar.

2. Learned counsel for the petitioner has submitted that the Court below has erred in dismissing the election petition as barred by time by holding that provisions of Section 5 read with Section 14 of the Limitation Act, 1963 are not applicable to an election petition filed under the Act, 1961. On the contrary, the said provisions are very much applicable and ought to have been given due effect to and the delay in filing the election petition ought to have been condoned. Reliance has been placed on the decisions of the Supreme Court in *Shaik Saidulu @ Saida V/s. Chukka Yesu Ratnam & Ors.* (2002) 3 SCC 130 and *State of M.P. & Anr. V/s. Anshuman Shukla*, (2014) 10 SCC 814 and of the Bombay High Court in *Yogesh Mangalsen Bahai V/s. Ramesh Chimanrao Wable & Ors.*, (2008) SCC Online Bombay 12.

3. Heard the learned counsel for the petitioner and perused the record.

4. As per Section 20 (3) of the Act, 1961 non-filing of the election petition under the Act, 1961 within the prescribed period of limitation entails penalty of the petition being dismissed. The same reads as under:-

“(3) No petition presented under sub-section (2) shall be admitted unless-

(i) it is presented within thirty days from the date on which the result of such election or [nomination] was notified in the Gazette; and

(ii) it is accompanied by a Government Treasury receipt showing a deposit of two hundred rupees, in the case of [election or nomination to Municipal Councils] and one hundred rupees in the case of election or nomination to Nagar Parishads.”

5. The judgment in the case of *Shaik Saidulu @ Saida* (supra) was in respect to an election petition filed under the Greater Hyderabad Municipal Corporation Act, 1956 which contains Section 671 providing that in computing the period of limitation fixed for an appeal or application referred to in the Act, the provisions of Section 5 of the Limitation Act, 1963 shall apply. It is in that context that it was held that an election petition even though preferred after the prescribed period could be entertained upon an application under Section 5 of the Limitation Act filed for condonation of delay in filing the same being allowed.

6. The same is the factual situation in the case of *Yogesh Mangalsen Bahai* (supra). Therein the provisions of Bombay Provincial Municipal Corporation Act, 1949 were under consideration and by relying upon Section 435 thereof to the effect that in computing the period of limitation prescribed for an appeal or application, the provisions of Section 5 and 14 of the Indian Limitation Act, 1963 shall, so far as may be, apply, it was held that an election petition preferred beyond time could still be entertained if an application under Section 5 of the Limitation Act for condonation of delay in filing the same is allowed.

7. The provisions of the Act, 1961 do not contain any pari materia provision as regards application of Section 5 of the Limitation Act as contained in Bombay Provincial Municipal Corporation Act, 1949 or the Greater Hyderabad Municipal Corporation Act, 1955. Thus, in absence of any such provision, the Court below had no power or authority to entertain an application under Section 5 of the Limitation Act and to condone the delay in preferring the election petition.

8. In *Charan Lal Sahu V/s. Nandkishore Bhatt & Others, AIR 1973 SC 2464*, it was held that there is no common law right to challenge an election. Any discretion to condone the delay in presentation of the petition can only be provided under the statute governing election disputes. If no discretion is

conferred, none can be exercised under the general law or on any principle of equity.

9. Even otherwise, the applicability of Section 5 of the Limitation Act, 1963 to a special law which does not exclude the provisions of Section 4 to 24 of the Limitation Act by an express reference has been considered by the Supreme Court in a matter relating to the Representation of the Peoples Act, 1951 in *Hukumdev Narain Yadav V/s. Lalit Narain Mishra*, *AIR 1974 SC 480* and it was held as under:-

“11.....Even in a case where the special law does not exclude the provisions of S.4 to 24 of the Limitation Act by an express reference it would, nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and schemes of the special law exclude their operation. What the Court has to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete Code by itself which alone should govern several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act.”

“25. For all these reasons we have come to the conclusion that the provisions of Section 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.”

10. When the provisions of the Act, 1961 are examined in light of the aforesaid dictum it leaves no room for doubt that it is a self contained Code. The provisions thereof are such that they exclude the operation of Section 4 to 24 of the Limitation Act, 1963 hence the benefits therein cannot be called in aid to supplement the provisions of the Act, 1961 which being a self contained

Code leaves no room for applicability of Section 29(2) of the Limitation Act, 1963 hence Section 5 thereof does not apply to filing of an election petition under the Act, 1961.

**11.** The judgement in the case of *Yogesh Mangalsen Bahai* (Supra) was under the M.P. Madhyastham Adhikaran, Adhiniyam, 1983 in relation to applicability of Section 5 of the Limitation Act, 1963 to a revision before the High Court hence is not applicable to the facts of the present case which is in respect of an original proceeding.

**12.** As a result of the discussion, I do not find any ground to interfere in the impugned order rejecting the election petition of the petitioner as barred by time. The revision fails and is hereby **dismissed**.

**(PRANAY VERMA)**  
**JUDGE**

SS/-