

29. However, it is made clear if petitioner is found involved in any subsequent F.I.R., it will be open for the authorities to initiate fresh proceedings against the petitioner.

**(2024) 9 ILRA 1450**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 30.09.2024**

## BEFORE

**THE HON'BLE SAMIT GOPAL, J.**

Election Petition No. 11 of 2024

**Prahlad Singh** ...Petitioner  
**Versus**  
**Yogesh Chaudhary** ...Respondent

**Counsel for the Petitioner:**  
Amit Kumar Pandey, In Person

**Counsel for the Respondent:**

**Election Law –Election petition  
challenging the election of the returned  
candidate in MLC elections-petition filed  
beyond time by 92 days- beyond the 45-**

day limit prescribed by Section 81 of the Representation of People Act, 1951-no power in the Act for delay condonation-Act is a complete code and does not allow for the extension of the filing period or the application of the Limitation Act- if an election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, 1951-the High Court shall dismiss it-election petition held to be time-barred-petition dismissed. (Paras 13, 19, 20 and 21)

**HELD:**

There is no provision in the Act, 1951 for considering the period of limitation. There is nothing in the Act, 1951 which gives powers for condonation of delay, if any, and the extension of the period of limitation. The time prescribed for presentation of an election petition is provided specifically in Section 81 of the Act, 1951. The judgement in the case of Nijam Uddin (supra) as is being relied upon by the learned counsel for the petitioner is distinguishable in as much as the presentation of the present petition beyond 92 days is an admitted fact and as such nothing lay to be decided on the said fact. The case relied upon by the learned counsel for the petitioner has a different fact in as much as the fact about limitation was in dispute therein. The issue with regard to a delayed presentation of an election petition which arises in the present petition is an admitted fact and is no more res integra. (Para 13)

The High Court while hearing an election petition operates as an Authority under Article 329 (b) of the Constitution of India whose jurisdiction is circumscribed by the statutory provisions as per the Act, 1951. (Para 19)

After having heard learned counsel for the petitioner and perusing the records, it is settled that unless and until an election petition is maintainable and is not barred by limitation, the merits of the matter cannot be seen and considered. In the present matter, from the judgement relied by the learned counsel for the petitioner and the discussion as above, it is apparent that the provisions of Limitation Act, 1963 do not apply to election petitions. The filing / presentation of the election petition is strictly governed by Section 81 of the Act, 1951. The trial of the election petition is provided

under Section 86 of the Act, 1951. The Act specifically provides that if an election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of it, the High Court shall dismiss it. (Para 21)

**Petition dismissed.** (E-13)

**List of Cases cited:**

1. Nijam Uddin Choudhury Vs Aftab Uddin Laskar: Case No.: I.A. (Civil) / 1984 / 2023, decided on 16.10.2023

2. Hukumdev Narain Yadav Vs Lalit Narain Mishra: (1974) 2 SCC 133

3. Hari Shankar Tripathi Vs Shiv Harsh: (1976) 1 SCC 897

4. Lachhman Das Arora Vs Ganeshi Lal: (1999) 8 SCC 532

5. Suman Devi Vs Manisha Devi: (2018) 9 SCC 808

6. Thampanoor Ravi Vs Charupara Ravi: (1999) 8 SCC 74

(Delivered by Hon'ble Samit Gopal, J.)

1. Heard Sri Amit Kumar Pandey, learned counsel for the petitioner and perused the records.

2. The present election petition has been filed by the petitioner- Prahlad Singh challenging the election of returned candidate Yogesh Chowdhary (the respondent) as a Member of Legislative Council and that the same be set-aside and be declared null & void.

3. The case of the petitioner is that the returned candidate / respondent Yogesh Chaudhary has been declared as an elected person of the U.P. Legislative Council by the Returning Officer, a certificate dated

14.03.2024 has been issued to the said effect.

4. The present election has been presented on 30.07.2024 before the Registrar General of this Court. The petition has been filed beyond time by 92 days.

5. Section 81 of the Representation of People Act, 1951 (hereinafter referred to as 'The Act, 1951') reads as under:-

***"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 candidate 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.*

*(2) [\*\*\*]*

*(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."*

6. Section 86 of the Act, 1951 reads as under:-

**"86. Trial of election petitions.—**

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

*Explanation.*—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(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.

*Explanation.*—For the purposes of this sub-section and of section 97, the trial of a petition

*shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.*

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial."

7. As per Section 81 of the Act, 1951 an election petition may be presented to the High Court within 45 days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

8. The present petition has been filed beyond a period of 92 days as prescribed in Section 81 of the Act, 1951.

9. Section 86 (1) of the of the Act, 1951 provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act.

10. Learned counsel for the petitioner submitted that the respondent while disclosing & explaining his criminal antecedents in Format C-2 although disclosed 06 cases to be pending against him but did not disclose 01 other criminal case of which a complaint dated 05.10.2006 was filed by one Giriraj Singh against Giriraj Singh and 11 others for offences under Sections 420, 467, 468, 471, 120-B, 504, 506 I.P.C. in which the respondent is an accused at serial no. 3 which is pending trial before the court concerned. It is submitted that on coming to know about the same, the petitioner sent a complaint dated 29.03.2024 to the Chief Election Commissioner, Election Commission of India, New Delhi informing him about the same which has been delivered to him but no action has been taken. It is further submitted that subsequently the petitioner filed a petition being Writ-C No. 19843 of 2024 (Prahlad Singh Vs. Union of India and 3 others) which has been dismissed vide order dated 05.06.2024 by a Division Bench of this Court with an observation that if the petitioner was aggrieved by the election of the elected person, he can challenge the election as per the constitutional mandate by means of an election petition. The said order reads as under:-

*“1. The petitioner is aggrieved by the election of the*

*respondent no.4 as a member of the legislative council.*

*2. Learned counsel for the petitioner states that he had represented to the Chief Election Commissioner, New Delhi with regard to the wrong information, which was provided by the respondent no.4 in the Format-C2, while he was filling his nomination.*

*3. Learned counsel appearing for the Election Commission, Shri Jitendra Ojha and Additional Chief Standing Counsel, Shri Rajeev Gupta relying upon the Article 329 of the Constitution of India submitted that if any person is aggrieved by any Election, then he can challenge the same by means of any election petition.*

*4. In the instant writ petition the petitioner was aggrieved by the election of an elected person (respondent no.4). He can challenge the election as per the constitutional mandate by means of an election petition.*

*5. Having heard the learned counsel for the parties, we are definitely of the view that no interference is warranted in the instant writ petition.*

*6. Accordingly, the writ petition is dismissed.”*

11. It is submitted next that the petitioner then again sent a complaint dated 12.07.2024 to the Election Officer, Vidhan Sabha Secretariat, Lucknow, U.P. informing him about the same with the prayer to take appropriate action. It is submitted that the present election petition has thus been filed without any delay. Learned counsel for the petitioner has further placed before the

Court judgement of a learned Senior Judge of the Guwahati High Court at Guwahati in the case of **Nijam Uddin Choudhury Vs. Aftab Uddin Laskar : Case No. : I.A. (Civil) / 1984 / 2023**, decided on 16.10.2023 and while placing para 15 of the same has submitted that the issue of limitation has to be determined as a preliminary issue under Order XIV Rule 2 Code of Civil Procedure. It is submitted that as such in so far as the question of limitation is concerned, the present petition be entertained, notice be issued to the respondent and the matter be heard and decided on its merit.

12. The Act, 1951 is a Code in itself. It provides the period of limitation within which an election petition has to be filed in Section 81. Section 86 (1) of it deals with the issue where the provision of Section 81 has not been complied with. The Act specifically states that the High Court shall dismiss the petition which does not comply with the provisions of Section 81 of the Act, 1951.

13. There is no provision in the Act, 1951 for considering the period of limitation. There is nothing in the Act, 1951 which gives powers for condonation of delay, if any, and the extension of the period of limitation. The time prescribed for presentation of an election petition is provided specifically in Section 81 of the Act, 1951. The judgement in the case of **Nijam Uddin** (*supra*) as is being relied upon by the learned counsel for the petitioner is distinguishable in as much as the presentation of the present petition beyond 92 days is an admitted fact and as such nothing lay to be decided on the said fact. The case relied upon by the learned counsel for the petitioner has a different fact in as much as the fact about limitation

was in dispute therein. The issue with regard to a delayed presentation of an election petition which arises in the present petition is an admitted fact and is no more *res integra*.

14. The Apex Court in the case of **Hukumdev Narain Yadav Vs. Lalit Narain Mishra: (1974) 2 SCC 133** has held regarding the question of applicability of Section 5 of the Limitation Act to an election petition. It was held as under:

*“16. In K. Venkateswara Rao v. Bekkam Narasimha Reddi [AIR 1969 SC 872 : (1969) 1 SCR 679 : (1969) 2 SCJ 505] to which we shall refer more fully later, Vidyacharan Shukla case was attempted to be pressed into service, but this Court repelled it and observed at pp. 688-689:*

*“In our view, the situation now obtaining in an appeal to this Court from an order of the High Court is entirely different. There is no Section in the Act as it now stands which equates an order made by the High Court under Section 98 or Section 99 to a decree passed by a civil court subordinate to the High Court. An appeal being a creature of a statute, the rights conferred on the appellant must be found within the four corners of the Act. Sub-section (2) of the present Section 116-A expressly gives this Court the discretion and authority to entertain an appeal after the expiry of the period of thirty days. No right is however given to the High Court to entertain an election petition which does not comply*

*with the provisions of Section 81, Section 82 or Section 117.”*

*17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have 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 the 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. In our view, even in a case where the special law does not exclude the provisions of Sections 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 scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the*

*period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial."*

15. Further in the case of **Charan Lal Sahu Vs. Nandkishore Bhatt : (1973) 2 SCC 530** it has been held by the Apex Court that there is no question of any common law right to challenge an election and as such any discretion to challenge the delay in presentation of the petition or absolve the petitioner from the payment of security for costs can only be provided under the statute governing election disputes and if no such discretion was conferred in respect of any of these matters none can be exercised under any general law or any principles of equality and if for non-compliance of the provisions of Section 82 and 117 which is mandatory, the election petition has to be dismissed under Section 86 (1) of the Act 1951, presentation of election petition within the period prescribed in Section 81 of the Act 1951 would be equally mandatory, non-compliance of which visits the penalty of the petition being dismissed, it was held, for all the reasons mentioned, therein that provisions of Section 5 of the Limitation Act do not govern the filing of election petitions or their trial. The Apex Court held as under:-

*"3. The right to challenge an election is a right provided by Article 329(b) of the Constitution of India, which provides that no election to either House of*

*Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [(1952) 1 SCC 94 : AIR 1952 SC 64 : 1952 SCR 218 : 1952 SCJ 100 : 1 ELR 133] it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."*

16. Further the Apex Court in the case of ***Hari Shankar Tripathi Vs. Shiv Harsh : (1976) 1 SCC 897*** has held as under:-

*“6. To begin with we would first deal with the case of Hukumdev Narain Yadav. 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 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: [SCC pp. 142-43, 151, paras 11, 25]*

*“...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 Sections 4, 9 to 18 and 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such appeal or local law ....*

*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.”*

*This Court accordingly held that Section 4 as also Section 5 of the Limitation Act had no application to the election petitions on the true interpretation of Section 29(2) of the Limitation Act. The Court also held on a reading of Rules 6 and 7 with Rule 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 Rule 26 of the Patna High Court Rules. In the instant case, however, the period of limitation provided by Section 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 holiday in the High Court*

*of Judicature at Allahabad during the year 1974. ....*

*In view of this notification, therefore, the legal position would be that the summer vacation, namely, the period starting from May 25 and ending on July 7, 1974, would be deemed to be closed 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 Section 81 of the Representation of the People Act expired on June 14, 1974 which being a closed holiday right upto July 7, 1974, then Section 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 reopened after the summer vacation. The relevant portion of Section 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, then, 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 Section 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 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 Section 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 that the provisions of Sections 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 Section 81(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 Section 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."*

17. Further the Apex Court in the case of **Lachhman Das Arora Vs. Ganeshi Lal** : (1999) 8 SCC 532 has held as under:-

*"7. On its plain reading, Section 81(1) lays down that 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 of the Act to the High Court by any candidate at such election or by an 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 candidate at the election and the dates of their election are different, the later of those two dates. The Act is a special code providing a period of limitation for filing of an election petition. No period for filing of an election petition is prescribed under the Indian Limitation Act. The Act insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-five days, Section 86(1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, is straightaway attracted."*

18. Further the Apex Court in the case of **Suman Devi Vs. Manisha Devi** : (2018) 9 SCC 808 has held as under:-

*"7. In Hukumdev Narain Yadav v. Lalit Narain Mishra [Hukumdev Narain Yadav v. Lalit Narain Mishra, (1974) 2 SCC 133] , while considering whether the provisions of the Limitation Act, 1963 would be applicable to an election petition under the Representation of the People Act, 1951, P. Jaganmohan Reddy, J., speaking for a three-Judge Bench of this Court held thus : (SCC p. 147, para 18)*

*"18. ...The applicability of these provisions has, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act."*

*This Court held that the provisions of Section 5 of the Limitation Act do not govern filing of election petitions or their trial.*

*8. In Charan Lal Sahu v. Nandkishore Bhatt [Charan Lal Sahu v. Nandkishore Bhatt, (1973) 2 SCC 530] , a two-Judge Bench held that there is no common law right to challenge an election since it is purely a matter of regulation by the terms of the statute. The right being statutory, the terms of the statute must be complied with.*

*9. A three-Judge Bench of this Court in Lachhman Das Arora*

*v. Ganeshi Lal [Lachhman Das Arora v. Ganeshi Lal, (1999) 8 SCC 532] , construed the provisions of Section 81(1) of the Representation of the People Act, 1951, which prescribes a period of 45 days to file an election petition. Dr A.S. Anand, C.J. speaking for the Court, held thus : (SCC pp. 535-36, para 7)*

*“7. On its plain reading, Section 81(1) lays down that 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 of the Act to the High Court by any candidate at such election or by an 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 the dates of their election are different, the later of those two dates. The Act is a special code providing a period of limitation for filing of an election petition. No period for filing of an election petition is prescribed under the Indian Limitation Act. The Act insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-five days, Section 86(1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the*

*provisions of Section 81 or Section 82 or Section 117, is straightaway attracted.”*

*(emphasis in original)*

19. The High Court while hearing an election petition operates as an Authority under Article 329 (b) of the Constitution of India whose jurisdiction is circumscribed by the statutory provisions as per the Act, 1951.

20. The Apex Court in the case of ***Thampanoor Ravi Vs. Charupara Ravi : (1999) 8 SCC 74*** has thus held that a High Court hearing an election petition does not function as a Constitutional Court per se nor does it have extraordinary constitutional or inherent powers. It has been held as under:

*“12. Under Article 329(b) of the Constitution no election to a legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or made by the appropriate legislature. Under Section 80-A of the RP Act, the forum for adjudication of an election petition is the High Court. The scope of this provision is considered by this Court in Upadhyaya Hargovind Devshanker v. Dhirendrasinh Virbhadrasinghji Solanki [(1988) 2 SCC 1 : AIR 1988 SC 915] . In that decision, the question was whether an order made on an interlocutory application in an election petition could be the subject of a letters patent appeal. It was observed in that decision that conferment of power under the RP Act to try any*

*election does not amount to enlargement of the existing jurisdiction of the High Court. The jurisdiction exercisable under the RP Act is a special jurisdiction conferred on the High Court by virtue of Article 329(b) of the Constitution. Therefore, even though the High Court may otherwise exercise ordinary and extraordinary jurisdiction it would be difficult to envisage a situation that while trying an election petition in exercise of the jurisdiction conferred by the RP Act it can adjudicate upon the vires of the RP Act or any rule or order made thereunder and the election petition has to be tried in accordance with the provisions of the RP Act and thus the court cannot entertain and pronounce upon matters which do not fall within the ambit of Section 100 of the RP Act. Even an ordinary civil court will not have jurisdiction to decide questions arising under insolvency enactments; much less a special authority like the High Court when it is not invested with such power under the Insolvency Act. This Court in Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi [(1986) 4 SCC 78 : 1986 SCC (Cri) 399 : (1986) 2 SCR 823] reversed the view taken in Bhagwati Prasad [1985 All WC 682] on which reliance was placed by the respondent that the High Court can decide whether a person has acquired citizenship or lost citizenship. In that case a question arose as to whether in an election petition the High Court had jurisdiction to determine the*

*citizenship of a person. The High Court had taken the view that notwithstanding the statutory bar contained in Section 9(2) of the Citizenship Act that wherever a question arises as to whether, when and how a person has acquired the citizenship of another country it shall be determined by such authority in the manner prescribed by the rules of evidence as may be prescribed in that behalf; that since by virtue of Article 329(b) of the Constitution all questions arising in an election petition filed under the RP Act were exclusively triable in an election petition, it had the jurisdiction to decide the question whether a candidate had ceased to be an Indian citizen. This Court took the view that when such a question arises it would be a matter to be decided by the authority constituted under the Citizenship Act and when no decision is given by the competent authority under the Citizenship Act, the question whether he ceased to be a citizen of India could not be adjudicated in an election petition."*

*(emphasis supplied)*

21. After having heard learned counsel for the petitioner and perusing the records, it is settled that unless and until an election petition is maintainable and is not barred by limitation, the merits of the matter cannot be seen and considered. In the present matter, from the judgement relied by the learned counsel for the petitioner and the discussion as above, it is apparent that the provisions of Limitation Act, 1963 do not apply to election petitions. The filing / presentation of the election petition is strictly governed by Section 81

of the Act, 1951. The trial of the election petition is provided under Section 86 of the Act, 1951. The Act specifically provides that if an election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of it, the High Court shall dismiss it.

22. In view of the reasons as stated above, this Court comes to a conclusion that the present election petition is barred by Section 81 read with Section 86 of the Act, 1951 and is liable to be dismissed. It is thus ordered to be *dismissed*.

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**(2024) 9 ILRA 1462**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 19.09.2024**

**BEFORE**

**THE HON'BLE SHAMIM AHMED, J.**

Criminal Misc. Writ Petition No. 6581 of 2024

<b>Mohd. Hasan</b>		<b>...Petitioner</b>
	<b>Versus</b>	
<b>U.O.I. &amp; Anr.</b>		<b>...Respondents</b>

**Counsel for the Petitioner:**  
 Salman Abbas

**Counsel for the Respondents:**  
 A.S.G.I.

**Criminal Law – Constitution of India , 1950 - Article 226 -order of the Magistrate denying renewal of passport on the ground of lack of jurisdiction challenged whether the petitioner could renew his passport despite pending criminal proceedings-notification of Government of India dated 25.08.1993-Office Memorandum dated 10.10.2019-no restriction to the learned trial court to direct for grant of permission for renewal of passport-citizens of country entitled to passport-fundament right under Article**

**19(1) (d) of the Constitution of India-petition allowed. (Paras 8 and 9)**

**HELD:**

After considering the arguments as advanced by learned counsel for the parties as well as after perusal of record, this Court finds that Under Article 19(1)(d) and Article 21 of the Constitution of India, the citizens of the country are entitled for passport. In *Maneka Gandhi Vs U.O.I.* 1978 (1) SCC 248, the Apex Court has held that having passport is a fundamental right of the citizen of India and a citizen can not be deprived of such fundamental right.... (Para 8)

Thus, this Court after considering the aforesaid judgment of Hon'ble the Supreme Court in the case of *Maneka Gandhi (Supra)* is of the view that right to travel abroad is a part of the personal liberty guaranteed under Article 21 and 19 (1) (g) of the Constitution of India and in addition thereto a careful reading of provisions of the Passport Act and the Notification dated 25.08.1993 alongwith the Office Memorandum dated 10.10.2019 in the light of it's legislative backgrounds as mentioned above, it is clear that passport or travel document of a person, who is facing trial can be refused by the authority concerned during pendency of his criminal case, but there is no statutory bar for giving no objection by the court concerned. No hard and fast straight jacket formula can be laid down regarding issuance of permission or giving no objection by the court concerned for issuance of passport. It is always discretion of the court concerned and depend upon the facts and circumstances of each case, act and conduct of the accused as well as nature of alleged offence committed by him/her and stage of trial, etc. Some time on account of enmity or ill will one party enmesh the other party in a frivolous criminal case to settle his personal score, therefore, in the interest of justice, it is necessary to consider all aspects of the matter and surrounding circumstances while granting or refusing the no objection for renewal or reissue of passport or travel documents by the court concerned or by the authorities concerned and the trial in the above case is not likely to conclude very soon. These were relevant factors to be considered by the learned Trial Court while passing the impugned order.