FULL BENCH

Before S. B. Capoor, Inder Dev Dua and H. R. Khanna, JJ.

GURMEJ SINGH,—*Appellant.*

Versus

THE ELECTION TRIBUNAL, GURDASPUR AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 385 of 1963.

1964

March, 13th.

Constitution of India (1950)—Art. 226—Petition for writ of certiorari for quashing the order of Election Tribunal, dismissing recriminatory notice as time-barred filed after delay of more than 4 months—Whether liable to be dismissed on ground of delay—Existence of alternative remedy—Whether bar to the grant of writ—Judicial discretion—How to be exercised—General Clauses Act (I of 1897)—S. 10—Whether applies to Election Tribunals—Representation of the People Act (XLIII of 1951)—Ss. 81 (2) (b) and 97—Notice of recrimination—Whether can be sent by post to the Tribunal.

Dua, J. Contra

Held, per majority (Capoor and Dua, JJ., Khanna, J.,)

(1) That in the matters of election petitions, the policy of the law is that the controversy must be finally disposed of as expeditiously as possible as the right to be elected is of a fixed duration. The expeditious disposal of election controversies is to the interest of the parties to the contest as also the constituency because the constituency, and indeed the citizens at large, are substantially interested in seeing that the elections are fair and free and persons do not get elected by corrupt and illegal practices. The factor of delay has, therefore, to be looked at from the point of view of the constituency and the public as well.

(2) Where a Judge of the High Court, while deciding the writ petition, finds that the order of the Tribunal declining to entertain the recriminatory petition is erroneous, it will be proper and judicial

exercise of discretion not to decline the relief to the petitioner on the ground of delay or on the ground of existence of an alternative remedy by way of appeal from the final order of the Tribunal in the election petition. In such a case the appellate Court will have no option except to direct the Tribunal to entertain the recriminatory petition and dispose it of according to law after taking evidence. Time factor, in such cases, will also assume some importance because evidence on allegations of corrupt practices etc., must be taken without avoidable delay, lest it may either disappear or memory of witnesses may fail in regard to them. Time is destroyer of evidence and on occasions also of financial ability on litigants to go on; it may in some cases even break the will to carry on. To grant relief in such cases in spite of delay will tend to promote justice and expeditious disposal of election contests. Moreover the decision in the writ petition in favour of the petitioner, being inter-parties, is also likely to create somewhat embarrassing situation for the appellate Bench, in that, this order may well be urged to be binding on the respondent.

(3) Undue delay as a circumstance disentitling the aggrieved party to invoke the High Court's jurisdiction under Article 226 of the Constitution is not a statutory rule of limitation; indeed it is in part inspired by the consideration that the time of the High Court should not be wasted by invoking its extra-ordinary jurisdiction after long delay; the party seeking assistance of the High Court is accordingly expected to be reasonably prompt and vigilant in approaching it.

(4) The existence of an alternative remedy is not an absolute bar to the proceedings under Article 226 of the Constitution. Whether an alternative remedy is adequate, speedy and efficacious enough so as to disentitle the aggrieved party relief, under this Article has to be deter-

mined on the facts and circumstances of each case, keeping in view the true dictates of justice.

(5) The returned candidate who recriminates really becomes the counter-petitioner challenging the validity of the election of the candidate for whom the seat is claimed. Effective judicial probe into the charges levelled through recrimination should, therefore, not be lightly denied or unduly delayed.

(6) Discretion has to be exercised judiciously and not arbitrarily; it is legal and qualified, not fanciful or absolute; it must further the legislative purpose and cause of justice; it pertains to the sphere of what a Judge ought to do and not what he likes to do. On the facts and circumstances of this case, after holding the impugned order to be erroneous, the only proper and judicial exercise of discretion, was not to decline relief to the petitioner on the ground of delay alone. It may also be pointed out that the statute creating the right of appeal imposes no restriction on the appellate jurisdiction in regard to orders requiring exercise of judicial discretion, it being open to the appellate Bench to pass any order which, in its opinion, the learned Single Judge should, in law, have passed.

(7) The observations in *N.T. Veluswami Thevar* v. *G. Raja Nainar and others* (1) on the propriety of interference in writ petitions under Article 226 with interlocutory orders passed in the course of an enquiry before the Election Tribunal do not lay down an invariable and rigid rule of universal application prohibiting the High Courts from interfering with interlocutory orders and this view also finds some support from some later decisions of the Supreme Court. Those observations are not meant to hamper the free texture of the exercise of this Court's discretion on the particular facts and circumstances of the present case.

(1) A.I.R. 1959 S.C. 422.

(8) Section 10, General Clauses Act, 1897, is applicable to acts and proceedings directed or allowed to be done or taken in any Court or office and is not confined to civil Courts only. The Election Tribunal would, therefore, fall within its purview.

(9) The notice of recrimination, being in the nature of pleadings, cannot be sent by post to the Election Tribunal. The fact that section 97 of the Representation of the People Act, 1951, does not contain any provision identical with section 81(2)(b) of the Act, would seem to exclude that procedure and this notwithstanding the use of the word 'notice' for the recriminatory petition. *Held, per Khanna, J.*—

(i) Keeping in view provisions of section 90(6) and 116-A (5) of the Representation of the People Act, 1951, the High Court should normally be reluctant to interfere with the interlocutory orders of an Election Tribunal in writ petitions under Articles 226 and 227 of the Constitution even if it finds the orders of the Tribunal to be erroneous, because such an interference is bound to impede the speedy disposal of an election petition. Interference in writ petitions with interlocutory orders would also bring in its wake the right of appeal and the inevitable effect of that would be to delay the disposal of the election petition. It would, therefore, be a sound exercise of the discretion to refuse to interfere in a petition, under Articles 226 and 227 of the Constitution with the interlocutory orders of the Election Tribunal.

(ii) Even if the High Court can entertain writ petitions against interlocutory orders of the Election Tribunal, it should interfere with such orders in writ petitions only if such petitions are filed with utmost expedition. Delay or lack of diligence in the filing of such a petition would constitute a fatal infirmity. Whatever might be the position

when writ petitions are filed to enforce fundamental rights, so far as petitions against orders made in election petitions are concerned, it is of utmost importance that a petitioner approaching the High Court by means of a writ petition against an order of the Tribunal should act with great promptness and without delay. In case, however, the petitioner in the High Court is a successful candidate, who, by the very nature of things, is interested in delaying the disposal of the election petition, long delay of more than four months in filing the writ petition would be fatal. In ordinary writ petitions also the delay in approaching the High Court has always been taken into consideration in deciding whether the petitioner should be granted the relief.

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua, and the Hon'ble Mr. Justice H. R. Khanna to a Full Bench on 30th January, 1964, for decision of the important question of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice S. B. Capoor, the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice H. R. Khanna on 13th March, 1964.

Letters Patent Appeal, under Clause X of the Letters Patent against the Judement of Hon'ble Mr. Justice D. K. Mahajan dated 23rd October, 1963.

H. L. SARIN, V. P. SOOD, JAGMOHAN LAL SETH AND HARBHAJAN SINGH, ADVOCATES, for the Appellant.

A. C. HOSHIARPURI, ADVOCATE for the Respondents.

JUDGMENT

DUA, J.—The circumstances leading to this reference to Full Bench are fully stated in the referring order, dated 30th January, 1964, and need not be re-stated in detail. Indeed the arguments pro and con on the points raised on Letters Patent

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Appeal have also been stated almost in full in the same order. Only a brief reference may, therefore, be made to the facts so as to appreciate the points raised. During the course of hearing of an election petition challenging the election of Gurmej Singh, (appellant in this appeal) he desired to exercise his right of recrimination under section 97(1), Representation of the People Act, 1951 (hereinafter called the Act) to give evidence to prove that the election of Joginder Singh, (petitioner in the election petition) would have been void if he had been the returned candidate and a petition had been presented calling in question his election. Needless to point out that Joginder Singh, had claimed the seat for himself. The appellant had, in order to be entitled to give such evidence, to give notice to the Election Tribunal within 14 days from the date of commencement of the trial of the election petition of his intention to do so and to take some other steps with which we are not concerned at this stage. This notice in accordance with the provisions of the Act has been described in some decisions as recriminatory petition and this petition, it is common ground, was filed on 16th July, 1962. It is also common ground that by means of a notification issued by this Court, vacation in the Court of the District Judge, who was appointed Election Tribunal to try the petition in question, commenced from 15th June, 1962, and lasted till 14th July, 1962, and that 15th July, 1962, was a Sunday. The period of 14 days within which the notice under section 97 was required to be given it is agreed, is to be counted from 14th June, 1962. The learned Election Tribunal by means of an order, dated 5th January, 1963, dismissed the recriminatory petition as time-barred. The appellant approached this Court on 30th May, 1963, under Articles 226 and 227 of the Constitution challenging the order

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of the Election Tribunal dismissing his recriminatory petition.

The learned Single Judge went into the merits of the impugned order and, after considering *Suraj Bhan* v. *Randhir Singh* (2), *Kaushalendra Prashad Narain Singh* v. *R. P. Singh* (3), and *Harinder Singh* v. *S. Karnail Singh* (4), appeared to be of the view that section 10 of the General Clauses Act was applicable to the proceedings before an Election Tribunal and proceeded to observe that the contention that the Tribunal was in error in holding the petition to be barred by time is sound and that the decision of the Tribunal to the contrary is liable to be quashed. After expressing this opinion, the learned Single Judge following *Gandhinagar Motor Transport Society* v. *State of Bombay* (5), and *Kundan and others* v. *The State of Punjab. and another* (6), came to the conclusion that though the impugned order was wrong and could be quashed, the petition must be dismissed as belated.

Before us, the appellant's learned counsel has repeated his arguments urged before the Division Bench and has submitted that mere delay is by itself not conclusive and a writ petition should not be dismissed solely on account of delay if other considerations justify interference, for, delay is only one of the several circumstances which have to be taken into account. It has also been contended that delay of 4 months and 25 days from the date of the impugned order in the circumstances of the present case should not be considered to be by itself fatal. He has also tried to explain the delay by submitting that since the Tribunal was to deal with some of his other preliminary objections as well, he thought

(2) A.I.R. 1958 Punj. 483.
(3) A.I.R. 1958 Pat. 196.
(4) A.I.R. 1957 S.C. 271.
(5) A.I.R. 1954 Bom. 202.
(6) I.L.R. 1955 Punj. 1357 : 1955 P.L.R. 506.

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that he had better wait for the order of the Tribunal on his other objections, because in case he succeeded on those objections, it would have been unnecessary for him to bring the matter to this Court on writ side. In support of his contention that delay is not an absolute bar, he has relied on *Cantonment Board, Ambala Cantonment* v. *Messrs Lachhman Das-Hari Ram* (7), *Bhagwant Singh* v. *Union of India* (8), *Madhaji Lakhiram* v. *Mashrubhai Mahadevbhai Rabari* (9), *Mangat Ram Kuthiala* v. *Commissioner of Income-tax* (10), and *Basheshar Nath* v. *Commissioner of Income-tax, etc.* (11). In so far as the decisions in the cases of *Gandhinagar Motor Transport Society State of Bombay* (5), and *Kundan and others* v. *The State of Punjab and another* (6), are concerned, the learned counsel has *submitted* that in both these cases the petitions had also failed on merits and were not refused only on ground of delay. In regard to *Kundan's case,* he has further submitted that the delay, there was of not less than 2 years which, in any event, could not, but be held to amount to laches. I may here point out that in *Gandhinagar Motor Transport Society's case,* the Court did not throw out the petition on the merits. There were two preliminary objections raised and both of them prevailed. The other preliminary objection was founded on the ground that the plea of want of jurisdiction in the authority whose order was challenged on writ side had not been taken before the department and, therefore, could not be urged in writ proceedings. This objection was also upheld. Incidentally, it may be mentioned that in so far as the legal position relating to this objection is concerned, a Full Bench of this Court in

(7) I.L.R. 1962 (2) Punj. 439 : 1962 P.L.R. 456.
(8) 1962 P.L.R. 804.
(9) A.I.R. 1962 Guj. 235.
(10) (1960) 38 I.T.R. I.
(11) A.I.R. 1959 S.C. 149.

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Devinder Singh and another v. *Deputy Secretary-cum-Settlement Commissioner, Rural, Rehabilitation Department, Punjab and others* (12), has had occasion to consider it and the Bombay view has not been approved without qualifications. In Kundan's case (5), of course, the Bench went into the merits also, but the petition did not completely fail on the merits. Notice required by the statute was held not to have been given in accordance with law to the aggrieved party, but on the facts and circumstances of that case, silence of more than 2 years on the part of the petitioner, who remained in possession of the land in defiance of the orders passed by the Collector, was held to disentitle the petitioner to relief under Article 226.

On behalf of the respondents, the learned counsel, Shri Hoshiarpuri, has submitted that the delay in the case in hand is undue because though the impugned order was passed on 5th January, 1963, the writ petition in this Court was not presented till 30th May, 1963, when it is stressed, the Court was going to close for the summer vacation. It has been emphasised that the appellant has been trying to delay the disposal of the election petition because being a returned candidate, he wants to postpone the final disposal of the election petition for as long as possible. It has also been pointed out that though the learned District Judge took leave from 23rd June, 1962 to 15th July, 1962, he had in fact been working as Election Tribunal from 14th June, 1962 to 22nd June, 1962, and it is pointed out that if the appellant was really genuine and serious he should have been prompt and vigilant enough to give the required notice within this period. The learned counsel has also argued that the other preliminary objections raised by the

(12) I.L.R. 1964 (1) Punj. 908.

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appellant were disposed of by the Tribunal on 16th April, 1963, and the writ petition against those objections was dismissed on 18th September, 1963. The explanation, therefore, that the appellant was waiting for decision on those objections is, according to the respondents' learned counsel, untenable. The decisions in the cases of Gandhinagar Motor Transport Society and Kundan are, it is submitted, fully applicable to the case in hand and the principle that undue delay in approaching the writ Court should entail dismissal of the writ petition is applicable to the case in hand. Reference has in addition been made to *Messrs Sikri Brothers* v. *The State of Punjab and others* (13), *New Punjab Calcutta Transport Co., Ltd.,* v. *Commissioner of Police, Calcutta* (14), and *British India Corporation Ltd.,* v. *State of Utter Pradesh and others* (15), in support of the contention that a writ petition is liable to fail on account of unexplained delay or laches.

Mr. Sarin has, however, pointed out that delay in those cases was between 1¼ years and 2½ years which would *prima facie* be undue. It has been stressed that the broad proposition that undue delay is one of the factors which may be taken into account in declining jurisdiction on the writ side is unexceptional, but as to how much delay in a given case in the light of the attending circumstances should be considered to be fatal is a matter for which there can be no general rule and other cases cannot serve as binding precedents.

In the case in hand certain basic and salient features of the case have to be borne in mind. The controversy out of which this writ petition arises

(13) I.L.R. 1957 Punj. 1468 : 1957 P.L.R. 259.
(14) 66 Cal. Weekly Notes, 1029.
(15) (1962) 13 Sales Tax Cases 459.

is an election contest which concerns the right to be elected to the Vidhan Sabha which right is of a fixed duration. It is, therefore, the policy of the law that the controversy must be finally disposed of as expeditiously as possible; expeditious disposal being to the interest of the parties to the contest as also the constituency because the constituency, and indeed the citizens at large, are also substantially interested in seeing that elections are fair and free and persons do not get elected by corrupt and illegal practices. The factor of delay has, therefore, to be looked at from the point of view of the constituency and the public as well. The second factor which is peculiar to this case, as distinguished from other election contests, is that the Tribunal has declined to entertain the recriminatory petition and if the ground on which the Tribunal has so declined is clearly erroneous, then on an appeal from the final order of the Tribunal, the appellate Court would seem scarcely to have any option except to direct the Tribunal to entertain the recriminatory petition and dispose it of according to law after taking evidence. Time-factor in such cases would seem, in my opinion, also to assume some importance because evidence on allegations of corrupt practices, etc., must be taken without avoidable delay, lest it may either disappear or memory of witnesses may fail in regard to them. Time, it may be remembered, is destroyer of evidence and on accasions also of financial ability of litigants to go on; it may in some cases even break the will to carry on. Delay in the case in hand in the trial of recrimination may accordingly, in my view, fail to achieve the real purpose which Part VI of the Act is intended to serve.

Undue delay as a circumstance disentitling the aggrieved party to invoke this Court's jurisdiction under Article 226 is obviously not a statutory

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rule of limitation; indeed it is in part inspired by the consideration that the time of this Court should not be wasted by invoking its extraordinary jurisdiction after long delay; the party seeking assistance of this Court is accordingly expected to be reasonably prompt and vigilant in approaching it. If, therefore, this Court after hearing the petitioner admits the writ petition and issues a rule *nisi* and at the hearing after actually adjudicating upon the merits of the controversy comes to a positive conclusion in favour of the petitioner, that may also be a factor which, to some extent, may reasonably weigh against the refusal to exercise discretion in granting relief to the aggrieved party. The controversy raised in these proceedings would have inevitably to be considered by this Court if and when the matter comes up on appeal at a later stage. The decision in writ petition in favour of the appellant being inter-parties is also likely to create somewhat embarrassing situation for the appellate Bench, in that, this order may well be urged to be binding on the respondent on the basis of the observations of Sarkar J., in *Balwan Singh* v. *Lakshmi Narain* (16). The question whether if the election petition is dismissed, the returned candidate would or would not be entitled to come to this Court against the present interlocutory order declining to go into his allegations of corrupt practices against the election petitioner, need not be gone into because it was not canvassed at the bar and no point was sought to be made by either side. I would, however, refrain from being influenced by this consideration and would proceed on the assumption that on appeal the matter can legitimately be raised and gone into by this Court at a later stage: though the possibility of the appellant being deprived of his right to have his case duly adjudicated upon

(16) A.I.R. 1960 S.C. 770 at p. 777.

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by this Court with the consequence of shutting out investigation into the recriminatory charges, may also, with some force of reason till the scale in his favour in the present proceedings. Whether refusal at this stage to go into the merits of the controversy is going to debar the appellant for all times from raising this objection or whether on appeal he has an alternative remedy, from either point of view, in my opinion, and I speak with great respect, once this Court holds on the merits that the refusal of the Tribunal to entertain the recriminatory petition is erroneous in law, proper and judicial exercise of discretion on the facts and circumstances of this case should be not to decline relief on the ground of delay alone.

This brings me to the observations of the Supreme Court in N. T. Veluswami Thevar v. G. Raja Nainar, etc., (1), on which the respondents have placed great reliance. This point, it may be stated, was not raised before the learned Single Judge. It is desirable to read those observations at this stage:—

> "As the question has also been raised as to the propriety of interfering in writ petitions under Article 226 with interlocutory orders passed in the course of an enquiry before the Election Tribunal, we shall express our opinion thereon. The jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted; but then it is well-settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfer under Article 226".

Clearly, these observations, worded as they are, cannot possibly be construed to lay down a rigid

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bar to the exercise of discretion to interfere under Article 226 in all cases of interlocutory orders made by Election Tribunals. The ground for declining interference is stated to be that there is another remedy provided. In the case in hand, as observed earlier, after this Court arrives at the final conclusion that the impugned order is wrong on the merits, which conclusion may perhaps be argued on the authority of the observations in Balwant Singh's case to be binding on the respondents on appeal, would declining relief on the ground of existence of alternative remedy not mean merely delaying the recording of evidence on recrimination till after this Court acting on appeal formally endorses the order in writ proceedings? Would such exercise of discretion not promote the cause of justice? In my opinion, and I again speak with great respect, the observations in Thevar's case are not and could not have been meant to hamper the free texture of the exercise of this Court's discretion on the peculiar facts and circumstances of the present case. That these observations do not lay down an invariable and rigid rule of universal application prohibiting the High Courts from interfering with interlocutory orders would seem also find some support from several later decisions of the Supreme Court. One such decision is S. Gurmej Singh v. S. Partap Singh Kairon (17), decided by a Bench of five Judges including A. K. Sarkar J., who was also a party to Thevar's case. In Gurmej Singh's case, certain preliminary objections had been raised, one of them being whether Lambardar is a person in the service of Government or is covered by any of the clauses of section 123(7) of the Act. The Tribunal held that the Lambardar was a revenue officer and village accountant in the service of the Government

(17) A.I.R. 1960 S.C. 122.

within the meaning of section 123(7)(f). The returned candidate (respondent in the election petition) approached this Court under Article 226 and 227 and a Division Bench set aside the order of the Tribunal on this point. An appeal was taken to the Supreme Court by special leave and the controversy was settled on the merits, though if the observations in Thevar's case were to be construed to lay down a general invariable rule of universal application, the matter could easily have been disposed of on the short ground that the interlocutory order of the Tribunal should not have been allowed to be assailed under Article 226. The appellant in the Supreme Court, it may be pointed out, was represented by eminent counsel, who were not likely to have missed this point, particularly because by then the earlier judgment had even been reported in the All-India Reporter. There are also some other cases in which the Supreme Court has gone into and adjudicated upon the merits of the controversy raised by petitions under Article 226 from interlocutory orders. In Ch. Sube Rao v. Election Tribunal, Civil Appeal No. 971 of 1963, again a Bench of five Judges of the Supreme Court allowed an appeal from an order of the Hyderabad High Court quashing an order of the Election Tribunal upholding an objection based on non-compliance with section 81(3) of the Act. There also, instead of holding that the High Court was in error in entertaining a writ petition from an interlocutory order of the Tribunal disallowing objection of non-compliance with section 81(3), the Supreme Court went into the merits of the controversy and came to a positive conclusion that there had been substantial compliance with section 81(3) in the election petition and that the learned Judges of the High Court were in error in directing dismissal of the election petition.

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The existence of an alternative remedy, as the Supreme Court and also this Court have repeatedly pointed out, is not an absolute bar to the proceedings under Article 226. Whether an alternative remedy is adequate, speedy and efficacious enough so as to disentitle the aggrieved party relief under this Article has to be determined on the facts and circumstances of each case, keeping in view the true dictates of justice. In the case in hand, as discussed earlier, it appears to me that the cause of justice would be defeated, if, after holding the impugned order to be wrong in law, the relief is declined either on the ground of delay or on the ground of existence of an alternative remedy by way of appeal from the final order. I must not be understood to be minimising the importance of expeditious disposal of election contests. On the contrary, I am fully alive to it, and indeed in the peculiar circumstances, setting right the error by interference at this stage rather than refusal would tend to promote this object.

I am, however, also keeping in view the fact that an election is an essential part of the democratic process and one of the essentials of the law of election is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of that law or by corrupt practices. Enquiry into the allegations of corrupt practices should, therefore, be facilitated rather than allowed to be throttled. The Supreme Court has more than once laid stress on this aspect. The returned candidate, who recriminates, it may be pointed out, really becomes the counter-petitioner challenging the validity of the election of the candidate for whom the seat is claimed: see Jabar Singh v. Gandelal, Civil Appeal No. 1042 of 1963 decided by the Supreme Court on 20th December, 1963. Effective judicial probe into the charges

levelled through recrimination should, therefore, not be lightly denied or unduly delayed.

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Shri Hoshiarpuri has also contended that the learned Single Judge having declined to grant relief in his discretion, this Court should not on appeal interfere. Discretion, as is well-settled on high authority, has to be exercised judiciously and not arbitrarily; it is legal and qualified, not fanciful or absolute; it must further the legislative purpose and cause of justice; it pertains to the sphere of what a Judge ought to do and not what he likes to do. On the facts and circumstances of this case, after holding the impugned order to be erroneous, the only proper and judicial exercise of discretion, if I may say so with all respect, was not to decline relief to the petitioner on the ground of delay alone It may also be pointed out that the statute creating the right of appeal imposes no restriction on the appellate jurisdiction in regard to orders requiring exercise of judicial discretion, it being open to the appellate Bench to pass any order which, in its opinion, the learned Single Judge should, in law, have passed.

There is one other aspect, which has also some relevance. If ultimately on appeal, which is contended to be an adequate alternative remedy, the point in controversy would have to fall for decision by this Court, now that it has been fully argued and thrashed out first before a learned Single Judge, then before a Division Bench and again before, a Full Bench, is it not from a larger point of view more appropriate that this Court should decide the point at this stage rather than decline to go into it merely on the ground of delay? I am inclined to think it is.

Coming now to the point raised by the respondents challenging the correctness of the view

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of the learned Single Judge holding the recriminatory petition to be within time, the rival contentions have been reproduced in detail in the referring order and nothing new has been urged before us. Section 10, General Clauses Act, as its language shows, is applicable to acts and proceedings directed or allowed to be done or taken in any any Court or office and is not confined to civil Courts only. The Election Tribunal would therefore, fall within its purview. The learned Election Tribunal was, therefore, wrong in holding section 10 to be inapplicable to it and the learned Single Judge was, with respect, right in construing section 10 to apply to the proceedings before the Election Tribunals. This view also seems to get support from Suraj Bhan v. Randhir Singh (2) and Harinder Singh v. Karnail Singh (4).

It is common ground that the Court of the District Judge was closed for summer vacation from 15th June, 1962 to 14th July, 1962, per notification issued by this Court under section 47, Punjab Courts Act, and 15th July, 1962, was a Sunday. It is also not disputed that in accordance with section 87 of the Act, the District Judge was appointed the Election Tribunal in the instant case. Again, it is clear from the order of the Tribunal that the Presiding Officer was allowed to avail of 23 days' vacation during the period between 7th June, 1962 and 22nd July, 1962, as District and Sessions Judge and he actually availed of the vacation from 23rd June, 1962 to 15th July, 1962. The Court of the District Judge being closed from 15th June, 1962 to 15th July, 1962, any act or proceeding directed or allowed to be done or taken in that Court on any day between this period could obviously be done or taken on 16th July, 1962. In this State, the District Judges and the Additional District Judges have also been invested with the

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powers of Sessions Judges and Additional Sessions Judge, with the result that the office of what is described as the Court of the District and Sessions Judge remains open for criminal work, the aforesaid notification being inapplicable to the Courts of Session. In my opinion, therefore, merely because the Court and, therefore, the office of the Court of the Sessions Judge is not closed, would not deprive a litigant of the privilege conferred on him by section 10 of the General Clauses Act in so far as acts or proceedings to be done or taken in the Court of the District Judge are concerned. The question, however, arises: Can the Election Tribunal be considered to be closed between 15th June, 1962 and 15th July, 1962 ? The Tribunal was undoubtedly functioning up to 22nd June, 1962, up to which date, therefore, it can by no means be considered to be closed. From 23rd June, 1962 to 16th July, 1962, the Presiding Officer was admittedly on leave. There is nothing clear and cogent on the present record to show the practice of the Tribunal and whether the Presiding Officer had authorised his office staff to receive petitions like the recriminatory petition in question during his absence on leave. The approach and reasoning of the learned Tribunal in excluding the applicability of section 10, General Clauses Act, is clearly erroneous. But can the Tribunal be considered closed during the Presiding Officer's period of vacation so as to attract section 10? The notice of recrimination being in the nature of a counter-election petition, it would appear to me to partake of the character of a pleading. If there are no formal rules like those governing the Courts on this point, then the practice of the Tribunal would seem to me to constitute the law of the Tribunal. It may also be relevant to consider whether or not the Tribunal had authorised his office staff to accept such pleadings during his

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absence on leave. These points have not so far been adverted to either before the Tribunal or before the learned Single Judge. In my opinion, in the circumstances of this case, the proper course to adopt would be to set aside the order of the learned Single Judge as also of the learned Tribunal and to send the case back to the Tribunal for determining the question afresh. If the Tribunal has authorised his office staff to receive pleadings during his absence on leave or if according to the known practice of the Tribunal, the pleadings were being so received, then the recrimination should be held to be out of time, otherwise it should be held to be within time by virtue of section 10 of the General Clauses Act. We are informed by Shri Sarin from the bar that so far recording of evidence even in the main election petition has not started before the Tribunal as it has been waiting for the decision of this writ petition.

Two more contentions raised by Shri Hoshiarpuri may also be dealt with. It has been submitted on the analogy of section 81(2)(b) of the Act that notice of recrimination should have been sent by post to the Presiding Officer of the Tribunal. I am not impressed by this submission, for pleadings can be permitted to be sent by post only by clear provision of law. The fact that section 97 of the Act does not contain any provision identical with section 81(2)(b) would seem to exclude the procedure suggested and this notwithstanding the use of the word 'notice' for the recriminatory petition. The other contention is equally untenable. It has been urged that the appellant could have given the requisite notice before the Presiding Officer of the Tribunal went on leave. In my opinion, if the law gave the appellant 14 days from 14th June, 1962, for giving the requisite

notice of recrimination, then this period could not be cut down on the sole ground of the Presiding Officer having chosen to go on leave from 23rd June, 1962; the respondents' contention is also contrary to the principle under underlying section 10, General Clauses Act. Both the contention urged by the respondents are without merit and are repelled.

As a result of the foregoing discussion, I would allow the appeal, set aside the order of the learned Single Judge as also that of the learned Tribunal and direct the Tribunal to decide afresh the question of limitation of the recrimination in accordance with law in the light of the observations made above. Costs in this Court should be borne by the parties.

S. B. Capoor, J.—I agree.

Khanna, J.

Khanna, J.—I have gone through the judgment proposed to be pronounced by my learned brother Dua J., and with all respect regret my inability to concur.

The facts of this case are given in the order of reference and lie within a narrow compass. Gurmej Singh, appellant was elected to the Punjab Vidhan Sabha, from the Fatehgarh Constituency during the last general elections held in 1962. The votes declared to have been polled in favour of the appellant were '19139', while those in favour of Joginder Singh, respondent No. 2, who was the rival candidate, were '18178. There were some other candidates also, but we are not concerned with them.

Joginder Singh challenged the election of the appellant by means of an election petition on various grounds. Joginder Singh, also claimed a further declaration that he had been duly elected

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by recounting of votes. As a result of this plea, the appellant was entitled under section 97 of the Representation of the People Act, 1951, (Act XLIII of 1951), hereinafter referred to as the Act, to give evidence to prove that the election of Joginder Singh, would have been void if he had been the returned candidate and the petition had been presented calling in question his election. It appears that the appellant desired to exercise this right. According to proviso to sub-section (1) of section 97 of the Act, Gurmej Singh, in order to be entitled to give such evidence, had to give notice to the Election Tribunal within fourteen days from the commencement of the trial of the petition of this intention to do so and he had also to give security as required by sections 117 and 118 of the Act. Every such notice has to be accompanied by the statement and particulars required by section 83 of the Act in the case of an election petition and has to be signed and verified in the like manner. The parties were informed by the Election Commission, India, to appear before the Election Tribunal, on June 14, 1962, and it is common ground before us that the period of fourteen days contemplated by the proviso to sub-section (1) of section 97 of the Act was to be counted from June 14, 1962. The recriminatory petition was filed before the Election Tribunal on July 16, 1962. Question consequently arose for determination as to whether the recriminatory petition was within time. On behalf of the appellant it was urged before Shri Kul Bhushan, District Judge, Gurdaspur, who constituted the sole Member of the Election Tribunal, that as the civil Courts remained closed for the annual summer vacation from June, 15 to July, 14, 1962, and July 15, 1962, was a Sunday; the recriminatory petition, presented on July 16, 1962, was within time. Reliance on behalf of the appellant was placed on the provisions of section 10 of

the General Clauses Act. The Election Tribunal repelled this contention and held that the Tribunal, which had been created under the Act, was not a civil Court. It was further observed that though Shri Kul Bhushan enjoyed vacation of 23 days, the appellant could have presented the recriminatory petition within fourteen days from June 14, 1962, in spite of the fact that Shri Kul Bhushan had proceeded on vacation. Section 10 of the General Clauses Act was held to be of no help to the appellant. The recriminatory petition was, accordingly, held to be time barred and as such was dismissed. This order of the Election Tribunal was pronounced on January 5, 1963. The appellant applied for obtaining copy of the above order of the Tribunal on January 7, 1963, The certified copy was ready on January 17, 1963, and its delivery was taken on January 18, 1963. On May 30, 1963, the appellant filed writ petition under Articles 226 and 227 of the Constitution of India for quashing the above order of the Election Tribunal and for a declaration that the recriminatory petition had been filed within the prescribed time. Mahajan, J., before whom the writ petition came up for hearing, was of the view that section 10 of the General Clauses Act applied to the proceedings before the Election Tribunal and that the Tribunal was in error in holding that the recriminatory petition was barred by time. He, however, dismissed the writ petition on the ground that it was belated. The appellant, thereupon, filed the present Letters Patent Appeal and, in view of the importance of the questions arising in the case, Dua. J. and I directed that the appeal should be decided by a Larger Bench.

After hearing the learned counsel for the parties I am of the view that there is no merit in the appeal and the order of the learned Single Judge dismissing the writ petition on the ground

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of delay should be upheld. The entire scheme of the Act is that an election petition should be disposed of expeditiously and the reason for that is obvious. The members are elected to the Parliament and State Legislatures for a limited duration and if the successful candidates are allowed to obstruct the speedy disposal of the election petitions, the result might possibly be that in a large number of cases the election petitions would remain pending for the whole or major part of the life of the Parliament and Legislature and thus the very object of the filing of the election petitions would be set at naught. For this purpose it has been enacted in sub-section (6) of section 90 of the Act that 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 of publication of the copy of the petition in the Official Gazette under sub-section (1) of section 86. Previously there was no right of appeal against a final order of Election Tribunal, but by amendment made by Act 27 of 1956 a right of appeal was given against such orders of the Tribunal by adding section 116-A. It is provided in sub-section (5) of that section that every such appeal shall be decided as expeditiously as possible and endeavour should be made to determine it finally within three months from the date on which the memorandum of appeal is presented to the High Court. Keeping in view the above provisions of law, the High Cout, in my opinion, should normally be reluctant to interfere with the interlocutory orders of an Election Tribunal in writ petitions under Articles 226 and 227 of the Constitution, because such an interference is bound to impede the speedy disposal of an election petition. Question, however, arises, whether the High Court should interfere in a writ petition with the order of Tribunal if the High Court feels that

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the order is not correct. In this respect I am of the view that ordinarily even in such a contingency the High Court should be reluctant to interfere because the effect of holding to the contrary would be that in every writ petition the Court would first examine the merits of the order and would dismiss the writ petition only if it does not find the order to be erroneous. Such an approach would make the rule that normally there should be no interference in writ petitions with interlocutory orders to be wholly nugatory because the writ petitions against interlocutory orders would fail or succeed not because of the above rule, but because of the intrinsic merit of the order. Interference in writ petitions with interlocutory orders would also bring in its wake the right of appeal and the inevitable effect of that would be to delay the disposal of the election petition. I, therefore, am of the view that it would be a sound exercise of the discretion to refuse to interfere in a petition under Article 226 and 227 of the Constitution with the interlocutory orders of the Election Tribunal. I am fortified in this conclusion by the observations of their Lordships of the Supreme Court in *N. T. Veluswami Thevar* v. *G. Raja Narain and others* reported in (1), which read as under:—

> "As the question has also been raised as to the propriety of interfering in writ petitions under Article 226 with interlocutory orders passed in the course of an enquiry before the Election Tribunal, we shall express our opinion thereon. The jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted; but then, it is well settled that where there is another

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remedy provided, the Court may properly exercise its discretion in declining to interefere under Article 226. It should be remembered that under the election law as it stood prior to the amendment in 1956, election petitions were dismissed on preliminary grounds and the correctness of the decision was challenged in applications under Article 226 and in further appeals to this Court, with the result that by the time the matter was finally decided, the life of the Legislatures for which the election was held would have itself very nearly come to an end, thus rendering the proceedings infructuous. A signal example of a case of this kind is to be found in the decision reported in Bhikaji *Keshao Joshih* v. *Brijlal Nandlal Biyani* (18). It is to remedy this defect that the Legislature has now amended the law by providing a right of appeal against a decision of the Tribunal to the High Court under Section 116-A, and its intention is obviously that proceedings before the Tribunal should go on with expedition and without interruption, and that any error in its decision should be set right in an appeal under that section. In this view, it would be proper exercise of discretion under Article 226 to decline to interfere with interlocutory orders".

It has, however, been argued that an order holding a notice of recrimination under section 97 of the Representation of the People Act to be time-barred is to all intents and purposes a final order because such an order has the effect of dis-

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missing the recriminatory petition. Such an order can no doubt be questioned in the appeal against the final order disposing the election petition, but it is urged that it should not be treated at par with other interlocutory orders, for the purpose of writ petition. In this respect I am of the view that even if this Court can entertain writ petitions against such orders, it should interfere with such orders in writ petitions only if such petitions are filed with utmost expedition. Delay or lack of diligence in the filing of such a petition would, in my opinion, constitute a fatal infirmity. Whatever might be the position when writ petitions are filed to enforce fundamental rights, so far as petitions against orders made in election petitions are concerned having regard to the different provisions to which reference has been made earlier, it is of utmost importance that a petitioner approaching the High Court by means of a writ petition against an order of the Tribunal should act with great promptness and without delay. In case, however, the petitioner in the High Court, as in the present case, is a successful candidate, who by the very nature of things is interested in delaying the disposal of the election petition, long delay of more than four months in filing the writ petition would be fatal. In ordinary writ petitions also the delay in approaching the High Court has always been taken into consideration in deciding whether the petitioner should be granted the relief. In a Bench decision of this Court in *Kundan and others* v. *The State of Punjab and another* (6), it was observed as under:—

> "In a case where the extraordinary powers of this Court are sought to be moved the question of delay is in my view a very important matter. Where a person challenges the validity of an order on the ground that the authority passing

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> the order had exceeded its powers, the challenge must be made immediately or at any rate as soon as the aggrieved person has exhausted all other lawful remedies. If a person chooses to allow time to pass, this Court will not interfere. The importance of promptness in moving the High Court under "Article 226 of the Constitution has been emphasised more than once".

In another Division Bench case of this Court Messrs. Sikri Brothers v. The State of Punjab and others (13), it was observed as under:—

> "A Court exercising its equitable jurisdiction is extremely reluctant to examine the grievances of a person, who has not shown reasonable diligence in the assertion of his claim or, who has slept upon his rights for an unreasonable period of time or who has failed to show an excuse for his laches in asserting the said right. It is of the utmost importance, therefore, that a person, who seeks the intervention of this Court under Article 226 of the Constitution should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for his procrastination should find a place in the petition submitted by him and the facts relied upon by him should be set out clearly in the body of the petition".

If delay is a relevant consideration for the decision of the other writ petitions, the requirements of promptness and expedition become all the more manifest in the case of a writ petition by a successful candidate against the order of an Election Tribunal.

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The explanation furnished by the appellant in the present case for the delay in filing the writ petition is altogether puerile and cannot, in my opinion, stand judicial scrutiny. According to him as he had raised other objections and they were to be gone into by the Election Tribunal, he thought that in case he succeeded on those objections, it would be unnecessary for him to bring the matter to this Court on writ side. If this argument were to hold good, the appellant would be justified in filing the writ petition against the impugned order even after the decision of the election petition because he might as well argue that he had resisted the petition and thought that the petition might fail on its merits and as such it was not necessary to assail it before that on the writ side. It was for the appellant to offer some cogent explanation for the delay in filing the writ petition. He had not only failed to do so; the material on the record also indicates that he delayed the filing of the writ petition till the day when this Court was about to close for the vacation. The learned Single Judge refused to condone such a delay and, in my opinion, we should not interfere in appeal with the discretion exercised by him.

As the writ petition is being dismissed on the ground of delay, it is, in my opinion, not necessary or desirable to express any opinion on the question as to whether the recriminatory petition was or was not within time. I would, accordingly, leave this question open so that the aggrieved party may, if it so chooses, agitate it, if and when an appeal is filed against the final order in the election petition.

As a result of the above, the appeal fails and I would, accordingly, dismiss it. In the circumstances of the case, I leave the parties to bear their own costs of the appeal.

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ORDERS OF THE COURT

In view of the majority decision, the appeal is allowed, the order of the learned Single Judge as also that of the learned Tribunal set aside and the Tribunal directed to decide afresh the question of limitation of the recrimination in accordance with law in the light of the observations made above. Costs in this Court shall be borne by the parties.

B.R.T

FULL BENCH

Before Inder Dev Dua, Daya Krishan Mahajan and H. R. Khanna, JJ.

PADAM PARSHAD,—*Appellant.*

versus

LOK NATH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 998 of 1956.

1964

March, 18th.

Negotiable Instruments Act (XXVI of 1881)—Ss. 8 and 78—Heir of deceased holder of a promissory note—Whether can sue maker thereof for recovery of the amount due on the promissory note.

Held, that an heir of a deceased holder can bring a suit on the basis of the promissory note though such an heir cannot be said to be a holder within the meaning of section 8 of the Negotiable Instruments Act, 1881. Sections 8 and 78 of the said Act do not create any bar in the way of such an heir to sue on the basis of the promissory note and recover the debt due to the deceased holder. Section 78 cannot be construed to mean that the right to institute a suit on the basis of an instrument specified in the section merely vests in the holder and no other person whatever. The crux of the matter is whether the person who is suing or receiving payment on the basis of the promissory note can or cannot give a valid discharge. If he can give a valid discharge, there is no reason why he cannot maintain an action on the basis of the promissory note. In the case of a sole heir, the promissory note by reason of inheritance vests absolutely in him and in the very nature of things he is the only person who can give a valid discharge and can sue on the basis of the promissory note.