

CHAPTER VIII

APPEALS UNDER CLAUSE 15 OF THE LETTERS PATENT

1. The provisions of Chapters IV and V shall apply, so far as may be, to every Appeal under Cl. 15 of the Letters Patent.
2. Every appeal to the High Court under Cl. 15 of the Letters Patent shall be presented to the Registrar or such other officer as the Registrar may appoint, within thirty days¹ from the date of the judgment appealed from, unless the Court in its discretion, on good cause shown, shall grant further time.
3. The memorandum of appeal shall be drawn up in accordance with the provisions of Order XLI, R. I, Civil Procedure Code, and shall be subscribed by an advocate of the Court. It need not be accompanied by a copy of the Judgment appealed from. It shall be the duty of the officer to whom the memorandum is presented under R. 2 above to endorse thereon the date of presentation and send the same to the stamp reporter who shall satisfy himself that it is in order and within time and that there is a declaration by the Judge who passed the judgment that the case is a fit one for appeal except in the case of an appeal from the judgment of a single Judge passed in a first appeal including the First Miscellaneous Appeal when no such declaration will be necessary.²
4. The fee for the issue of notice to the respondents who did not appear in the appeal in which judgment was given shall be paid into Court by the appellant —
 - (a) in the case of an appeal from the judgment of a Judge sitting singly — within 21 days of the date on which the appeal is registered;
 - (b) In the other cases — at the time of presenting the memorandum of appeal.
5. The appellant at the time of paying the fee prescribed in the preceding rule shall also file printed forms of notices duly filled up in the manner prescribed in chapter V. R. 35.
6. Separate registers shall be opened for the entry of such appeals in the following form:

Note 1: Rule 2.— In this rule the words “thirty days” were substituted for the words “sixty days” vide Correction Slip No. 25 with effect from 1st January, 1964. Notification No. HC.XI/5/62/2342/R.C. dated the 5th May, 1964.

Note 2: Rule 3.— In this rule at the end the words “except in the case of necessary” were added vide Correction Slip No. 22, dated the 29th July, 1961. Notification No. XI.3/57-59/3629-RC. to come into effect on the date of the publication thereof in the Assam Gazette.

FORM

No. of the Appeal to the High Court and the date on which it is filed.....

No. of the original appeal to the High Court, date of the judgments of the Division Court or of the Judge sitting singly, appealed from, and name or names of the presiding Judge or Judges.

Appellant

Respondent

Advocate for appellant

Advocate for respondent

Particulars of suit

Date of issue of notice for service on the respondent.....

Date on which the appeal is heard and date of judgment of the Court.....

Nature of the order passed.....

Remarks.....

7. If the appeal is in order and is within time, the officer to whom the appeal was presented shall cause it to be registered. If the appeal is not in proper form, he shall proceed in the manner provided by Chapter V. R. 10(1).

8. If the process-fee be paid and the notice forms be filed within the period prescribed by Rr. 4 and 5, the Officer-in-Charge of the Judicial Department shall issue the notice of appeal in the prescribed form (see Forms Nos. 4 and 5. (Civil) Appendix I, at page No. 201, 202) for service on the respondent, and shall cause the notice to be served on the advocate or any one of the advocates who may have appeared for the respondent in the appeal in which the judgment was given. In any case in which the respondent may not have entered appearance in the appeal in which the judgment was given, the notice shall be served in the mode provided by Rr. 38 to 46 of Chapter V for the service of notice in ordinary appeals.

9. In every appeal under Cl. 15 of the Letters Patent, copies of the memorandum of appeal and of the judgment or judgments shall be typed, and four copies shall be prepared for use at the hearing.

10. No charge shall be levied from the parties on account of the preparation of these copies.

11. The paper books prepared for use at the hearing of the original appeal shall be used at the hearing of the appeal under Cl. 15 of the Letters Patent.

CHAPTER VIII-A

**SPECIAL PROVISIONS RELATING TO PROCEDURE IN ELECTION PETITIONS
UNDER THE REPRESENTATION OF PEOPLES ACT, 1951
(AS AMENDED BY ACT No. XLVII OF 1966)**

¹1. An election petition under S. 80-A of Representation of Peoples Act may be presented duly verified in the form prescribed under Ss. 82 and 83 of the said Act before the stamp reporter of this Court with a Court fee of Rs. 6.00 affixed thereon, within 45 days from 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 latter of those two dates. Every such petition shall be accompanied by —

(a) as many copies thereof as there are respondents mentioned in the petition together with one extra copy, all the copies being fully attested by the petitioner under his own signature to be a true copy of the petition and as many envelopes as there are respondents hearing requisite postage stamp to enable service to be effected by registered post with acknowledgment due;

(b) as many printed forms of notices, duly filled in, as there are respondents;

(c) an affidavit in support of the contents of the petition as prescribed in R. 83(c) of the aforesaid Act where necessary, and

(d) a challan showing the deposit of Rs.2,000 (Rupees two thousand) into the State Bank of India, Gauhati Branch in favour of the Registrar of the Court, as security for the costs of the petition:

²Provided that such deposit in respect of petition to be filed in the Benches at Kohima, Imphal and Agartala may be made in the State Bank of Kohima, Imphal and Agartala, as the case may be, in favour of the Deputy Registrar of the Bench concerned.

Note (I) — The petition shall be legibly type-written or printed in the English language, on durable foolscap paper or other paper similar to it in size and quality, bookwise, on one side of the paper, with not more than 20 or less than 18 lines, of about 10 words in each line on each page and with an inner margin of about an inch and a quarter-wide.

Note (II) — Any petition which is presented out of time and without

Note 1: Rule 1— The existing rules under this Chapter as inserted by Correction Slip No.13 were deleted and new present rules being substituted vide Correction Slip No. 35, dated the 8th March, 1967. Notification No. HC. KI-4/65/162-GRC. to take immediate effect, consequent to the amendment of the Representation of Peoples Act by Act No. XL, VII of 1966.

Note 2: The proviso after Rule. 1(d) was added vide Correction Slip No. 67, Notification No. HC. XI-4/65-68/7888/RC dated the 19.06.1974.

any of the above mentioned requisites duly satisfied shall forthwith be returned by the stamp reporter for refiling.

2. As soon as possible, the petition or petitions which is or are in time and in form shall be laid before the Judge or Judges assigned by the Hon'ble Chief Justice from time to time for trial of election petitions under sub-S. (2) of S. 80-A of the Representation of Peoples Act, 1951 for registration and other orders so that such petitions can be tried as expeditiously as possible in the manner laid down in R. 86(7) of the aforesaid Act.

3. As soon as the petition is registered, the notices in the prescribed form shall at once issue on the respondent or respondents by registered post with acknowledgment due.

4. If the postal acknowledgment has been received duly signed by the addressee or the envelope has been returned with the endorsement "Refused" the respondent shall be deemed to have been duly served. In all other cases, it shall be the duty of the petitioner to apply forthwith for service under Order 5, R. 20 of the Code of Civil Procedure.

Note — Under S. 87 of the Representation of Peoples Act, 1951 as amended, and any rule made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the C.P.C. 1908 to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons

Under Section 80-A of the Representation of People Act, the High Court is to try election petitions as inserted by the 1966 Act, which confers additional jurisdiction on High Court.

Case Law

Rule 1 is not at all in conflict with these substantive provisions of the law in any manner. The Representation of the Peoples Act does not provide the procedure for presenting the election petition and, therefore the High Court has framed Rules under Article 225 prescribing the procedure for presenting of the election petition. After all this Chapter VIII is to aid to the substantive requirements (i.e. Section 80, 80(A) and 81). Thus while appreciating the contention of the learned counsel that the substantive provisions of law relating to the election petitions (i.e. Section 80, 80(A) and 81, 82 of the Act) should be strictly construed and complied with, the High Court felt difficult to agree that the rules framed by the High Court prescribing the procedure for presentation of the election petition which is silent in the Act, is void.

The High Court was persuaded to hold that the filing of the election petition to the Stamp Reporter who is one of the important limbs of the High Court which is a legal entry must be deemed to have been presented to the High Court. While appreciating the contention of the learned counsel for the petitioner that the provisions of the law relating to election petition shall be strictly construed, the High Court felt that the tendency to be hyper-technical annihilating the real substance of the law, is also to be deprecated, if there is substantial compliance with the requirements of law. — *Melhupra Vero -Vs- Vamuzo, (1990) 1 GLR 290.*

to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

The provisions of the Indian Evidence Act, 1872, shall subject to the provisions of the Representation of Peoples Act, 1951 as amended from time to time be deemed to apply in all respects to the trial of an election petition.

5. The Chief Justice in his discretion may, in the interests of justice or convenience, authorise the trial of an election petition wholly or partly, at a place other than the place of the seat of the High Court.

6. When more than one election petitions are presented to the High Court in respect of the same election (constituency) 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 as analogous.

7. The Registrar of this Court shall, as soon as may be, after the conclusion of

Case Laws

Under S. 80-A of the Representation of Peoples Act, the High Court is to try election petitions as inserted by the 1966 Act, which confers additional jurisdiction on High Court.

The High Court has the power to frame Rules as provided under Article 225 of the Constitution. Section 117 also provides that costs and security for costs of the petition are to be deposited in accordance with the Rules of the High Court. The High Court has framed the Rules under Article 225 and/or other provisions enabling in this behalf prescribing procedure for presentation of an election petition filed under Section 80-A. In the Rules, it has been provided that an election petition may be presented to the Stamp Reporter. These rules are not framed under any provisions of the Act. The Rule is not inconsistent with the provisions in Section 81 as Section 81 has not provided the "instrumentality" to whom an election petition is to be presented under Section 81. Section 81 also does provide or specify that the petition shall be presented to the Chief Justice or not a Judge of the High Court.

The High Court is a legal entity. It consists of not only the Chief Justice and other Judges but also Officers of various departments. When the Stamp Reporter receives the election petition or the election petition is presented to the Stamp Reporter he does not do it as a delegate of the High Court. The Stamp Reporter, is a limb of the High Court and not a delegate as the Stamp Reporter is entrusted to perform his duties under the rules. By framing the rules, the High Court has not parted itself with the power to act under the Act. The Chief Justice is the head of the body. The Judges and Officers are limbs or parts of the body (High Court). It is, therefore, concluded that the said Rules are not inconsistent with the Articles 329 (b) and provisions of Section 81 or any other provisions of the Act.

For the foregoing reasons, the contention of the Respondent No. 1 that the Rule of this High Court prescribing the presentation of an election petition to the Stamp Reporter is in violation of Article 329(b) and Sections 80, 80-A and 81 and that the petition is to be presented to the Chief Justice or a Judge of the High Court must fall. *Abdul Jabbar -Vs- Syeda Anwara Taimur & Ors.* (1986) 1 GLR 257.

(Contd.)

the trial of an election petition intimate the substance of the decision or order of the High Court under Ss. 98 and 99 of the said Act to the Election Commission and the Speaker or the Chairman as the case may be of the House of Parliament or the State Legislature concerned and as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

8. As regards costs and security for costs, Ss. 177 and 122 of the aforesaid Act as amended from time to time will apply *mutatis mutandis*.

9. A petition for stay of operation of the order of the High Court under S. 98 or 99 of the aforesaid Act may be moved before the Judge of the High Court taking up election petitions, provided no appeal to the Supreme Court is filed or petition for stay is moved in that Court, in the meantime.

10. All interlocutory petitions should bear a Court fee stamp of Rs.6.00 thereon and may be filed before the Judge with permission of his Lordship.

Non-submission of envelopes with postage stamps and notices at the time of Election Petition at Agartala Bench was merely a procedural irregularity and it cannot be a ground for rejection/dismissal of the election petition. *Samir Ranjan Barman -Vs- Bhanu Lal Saha, (1990) 1 GLR (NOC) 7.*

The requirement of presentation of an election petition before the stamp reporter within 45 days from the date of election of the returned candidate is mandatory. Failure to present within the period of limitation is fatal. *Pabindra Deka-Vs- Manoranjan Das, 2005(2) GLT 133.*

Election petition is required to be presented in accordance with section 81 of the Representation of Peoples Act 1951. *Chandan Kumar Sarkar-Vs-Dipak Chandra Ruhidas, 2004(Supp) GLT 154.*

Defect in verification of election petition is curable. Kanakeswar Narzary-Vs- D.C., Kokrajhar, 2003(2)GLT 51.

Notes — For the convenience of the esteemed readers, certain provisions of the Representation of the People Act, 1951, are quoted below which relate to filing of Election Petition and interlocutory applications in Election Petition.

S. 81(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.

S.83(1)(C). shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings.

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

S.83(2). Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

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

S.118. Security for the costs from a respondent. — No person shall be entitled to be joined as a respondent under sub-section (4) of Section 86 unless he has given such security for costs as the High Court may direct.