
(1962) 11 MAD CK 0029
In the Madras High Court
Case No : A.A.O. No. 157 of 1961

A.G. Ranganatha Nayagar	Vs	APPELLANT
K. Kamalakannan and Others		RESPONDENT

Date of Decision : 07-11-1962

Acts Referred:

Constitution of India, 1950 — Article 14
Representation of the People Act, 1951 — Section 100(1), 80, 81

Citation : AIR 1964 Mad 42 : (1963) ILR (Mad) 815 : (1963) 76 LW 529

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Anantanarayanan, J

Bench : Division Bench

Advocate : K.N. Balasubramaniam and M. Manivarma Sarma, for the Appellant;
R. Srinivasan, K.S. Desikan, K. Raman, C.S. Prakas Rao and T.R. Ramachandra
and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—With reference to the Madras-cum-Chingleput-cum-North Arcot District (Local Authorities) Constituency for the Madras Legislative Council, a by-election occurred consequent on the vacancies caused by the retirement of four members. The notification in respect of this by-election . was published in the Fort St. George Gazette, Madras, on the 5th March 1960. 15th March 1960 was fixed as the last day for receiving nominations, the scrutiny was upon the 18th March and the 21st March was the last day determined for the withdrawal of nominations. The Andhra Pradesh and Madras (Alteration of Boundaries) Act LVI of 1959, came into force, as provided for u/s 1(2) of that Act, on the 1st of April 1960. It is not in dispute that, under this Act, certain areas originally forming part of Chittoor District of Andhra Pradesh (Tiruttani and Prodattur Panchayats) were added to the Constituency, Madras-cum-Chingleput-cum-North Arcot district, by retaining the identity of the districts forming the constituency, but enlarging one of the concerned districts by the addition of a taluk. On 7-4-1960, the Returning Officer in charge of this election issued a notification to the effect that those persons who were electors in Tiruttani and Prodattur areas were

entitled to vote for this election. The polling was held on 11-4-1960, and completed on 16-4-1960.

2. The results of the poll were as follows:

First respondent .. 230 votes Second respondent .. 211 " Third respondent .. 185 " Seventh respondent .. 144 " Petitioner (appellant) .. 35 "

3. The appellant sought to impugn this election by means of a proceeding Under Sections 80 and 81 of the Representation of the People Act, 1951 (Act 43 of 1951) both upon certain grounds relating to alleged corrupt practices committed by respondents 1 to 7, and upon the ground that the election itself was void, in the peculiar circumstances of its occurrence, Under Sections 100(1)(b), 100(1)(d) (ii), 100(d)(iii) and 100(1)(d)(iv) of Act 43 of 1951. We are not now concerned with the alleged corrupt practices. The proceeding was dismissed by the Election Tribunal of North Arcot; and the appeal is pressed before us solely with regard to the grounds arising from the enlargement of the area of the constituency, and of the voters, by the effect of Central Act LVI of 1959, which came into force on 1-4-1960, according to the learned counsel for the appellant, during the very middle of a process of election that had already begun. The issues that have been pressed in this form, could be very clearly and simply stated. Learned counsel argues that the process of election is not merely the polling on the date of poll, and the subsequent reckoning of votes, but is continuous process from the date of the notification of the vacancy, and the declaration of that an election will be held. He points out that in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , the Supreme Court has laid down that the term ""election" has a wider significance, and is a process, .and not merely an event. As Fazl Ali J. observed,

"In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In *A.V. Srinivasulu Reddy and Another Vs. S. Kuppuswami Gounder*, , the learned Judges of the Madras High Court, after examining the question, expressed the opinion that the term "election" may be taken to embrace the whole procedure whereby an "elected member" is returned, Whether or not it be found necessary to take a poll. With this view, my brother, Man J., expressed his agreement in *Sat Narain v. Hanuman Parshad*, AIR 1946 Lah 85, and I also find myself in agreement with it."

4. Consequently, the situation is indisputable in the present case that, during the very process of election, the constituency was enlarged to include electors who were not electors in respect of the constituency on the date of notification (5-3-1960); nor could any of such persons, even if they had a desire to do so submit a nomination and stand for election. One argument, no doubt, is that the very fact that these electors, who were included midway in the process, voted at the election, rendered it ipso facto void. But the appellant can, if at all, challenge the validity of the election only within the ambit of Section 100 of the Act. In that context, as (*Sri Balasubramaniam*) was practically compelled to concede, the

argument could not be urged with much force or conviction, in view of the factual results, of the poll, and the language of Section 100(1)(d)(iv) of the Act of 1951. Far, Sec, 100(1)(d) of the Act is to the effect that it must be shown :

"(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected..... (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any . "rules or orders made under the Act."

5. Now, the Representation of the People Act, 1950 incorporates by reference, certain definitions of the Act of 1951, and one of such definitions is that of a "Council Constituency" as signifying "a constituency provided by law for the purpose of elections to the legislative council of a State". Since, as we have already seen, it was Central Act LVI of 1959 which added the area containing the new voters to this constituency, the real question, if Section 100(1)(d)(iv) is to be relied upon, is not merely whether this addition of voters or an area to a constituency midway in the process of election is an irregularity or non-compliance with the Act and the rules, but also whether the result of the election was materially affected by this. On this aspect, the Election Tribunal had no difficulty in demonstrating that such material affection of the result could not be conceivably claimed by the appellant. There was even no such averment in the petition; but this apart, it is clear from the record that only 25 electors were newly included by virtue of the Act, which enlarged the area of the constituency. The alleged grievance is that if the appellant had timely notice, that is, if these electors had been included at the time of the original notification, he could have canvassed them and obtained all their votes.

Alternatively, the argument is that they were improperly permitted to vote, and that their votes ought to be discounted. But, in view of the wide margin between the appellant, who got 35 votes and was at the bottom of the poll, and the last winning candidate (144 votes), it is clear enough that, under no arithmetical computation, could the result have been affected by those votes. Hence the learned counsel was constrained to search further a field for pressing his appeal. He has argued that, irrespective of Section 100(1)(d)(iv) or the language or the other Sub-sections of Section 100(1), the election itself must be held void, because these Tiruttani voters could conceivably have got themselves nominated as candidates, if they have been included ab initio, and that might have effected the result of the election in a manner that could not even be estimated or assessed. In other words, the election for a constituency which is enlarged in area in the very middle of the process of election, is not an election for the same constituency, and is hence no election at all. The only course open to the Returning officer, after the coming into force of Central Act LVI of 1959 (1-4-1960), was to issue a fresh notification for election and call for fresh nominations. The election completed, for with the original notification and nominations, cannot lie legally sustained; it must be treated as a mere nullity, and this renders it unnecessary for the appellant to show that the result of the

election was materially affected by the irregularity or the illegality.

6. We have carefully considered those arguments, but we find that there is no authority to support such an extreme position, and that, on the contrary, it could well be contended that, in form, as well as substance, the constituency has retained its identity throughout, and that, therefore, no illegality has actually occurred. A difficulty at the threshold may first be disposed of. Section 17 of Act LVI of 1959 is to the following effect.

"Every sitting member of the Legislative Council of Andhra Pradesh or of Madras representing a Council Constituency, the extent of which is altered by virtue of Section 16 shall, as from the appointed day, be deemed to have been elected to the said Council by that constituency as so altered."

But the fiction enacted by this section cannot be pressed against the appellant, for the simple reason that, u/s 1(2) of the same Act LVI of 1959, this section came into force only from 1-4-1960, and the vacancies had already occurred, which related to this election, and nominations had been filed. It must also be conceded that Article 329(a) of, the Constitution may not help the respondents; for that only declares that the validity of the law relating to the delimitation of the constituencies cannot be called into question. Though Section 100 of the Representation of the People Act 1951, is the sole provision in that statute for challenging an election, it may be conceivably argued that where the circumstances justify an inference that there has been no election in the real sense for the concerned constituency, the form or semblance of the election of ought to be set aside, irrespective of whether the result has been materially affected or not. Learned counsel for the appellant urges that the fact that Tiruttani voters could not have been nominated for election in respect of this constituency, though no disqualification attaches to them (S. 16 of the Act, 1950) vitiates the very basis of the election. Firstly, it is not the election for the same constituency at all; as such it is null and void. Secondly, it is impossible to assess the results that might have supervened if any or all these persons had submitted nominations, and stood as candidates. The last ground is that the circumstances do involve a hostile discrimination as against those voters, which renders the election itself violative of Article 14 of the Constitution.

7. There is one short reply to the main contention of learned counsel for the appellant, which has to be clearly set forth before the authorities cited on this aspect are examined. It is that, in a strict view, the identity of the constituency has not been altered at all. There is no dispute that the constituency is Madras-cum-Chingleput-Cum-North Arcot District (Local Authorities.) Constituency, and that it was defined in the relevant notifications as comprising these Districts of administration. Central Act LVI of 1959, in its effect, retained the identity of the constituency, as so comprised by the three named districts, but added certain areas to one of the named districts. How does this affect the formal and substantial identity of the constituency, though it may be that, by virtue of" lawful alteration, the area of one of the districts has changed? Supposing, for

instance, that the area of a district forming an unit of a constituency had been changed by the inclusion of some territory of waste or unoccupied land, even midway during an election, could it be contended that the election finally held was for a different constituency? On this aspect, there has been no citation of a single relevant authority in favour of the appellant. The sole reference is a sentence in Paine's Law of Elections 1890 Edn. page 288 to the following effect:

"It has been held, on constitutional grounds, that a law creating a new country, so framed as to leave a portion of its territory unorganised, so that the voters within such portion could not participate in the election" of county officers was inoperative and void."

8. But the present is not a case of any failure to organise a portion of the territory of electorate. On the contrary, the present is a case in which the identity of the "constituency" as defined under the relevant provisions of law, has been throughout preserved; all that has happened is a local revision of the area of one unit of the constituency, which brought in some more electors, who were permitted to participate in the poll. We are unable to see how it could be legitimately conjectured that any of these 26 electors, or some of them, would have stood for the election themselves as candidates, had they been permitted actually to stand for elections by fixing a fresh period for recount of nominations after 1-4-1960. We cannot speculate upon the possible conduct of other persons, in having chosen to stand for election, had the situation permitted them to do so. Nor is this a proceeding challenging the election by one of such persons, on the ground that he intended to stand for this election, and was frustrated in his purpose.

9. On the contrary, authority is not wanting to show that under such circumstances, where the election is virtually and legally for the same constituency, though with a slightly enlarged area, the election cannot be set aside as void, merely because the electors in the fresh area were permitted to poll their votes, though they could not have stood for the election themselves, unless it could be demonstrated of course, that these facts have materially affected the result. In Rogers on "Elections" Vol. II (Parliamentary Election) 1928 Edn. at page 43, the following occurs with regard to polling districts, which are organised within a constituency, and the organisation of which, Kamalakannan (Anantanarayanan J.) A. I. R. conceivably, could affect by error the area of the constituency itself -

"an election is not to be questioned by reason of any non-compliance with the provisions of the section, or any informality relative to polling districts or polling places."

Again, even if we assume that the Returning Officer erred in not allowing for a fresh period for the Tiruttani voters to file their nominations and to stand as candidates, if they desired to do so, this irregularity on the part of the Returning Officer will not render the election void, unless his act or omission has affected

the result, and this can be shown by the appellant.

10. In Parker's "Election Agent and Returning Officer" 1.950 Edn. page 275, this principle is stated as follows:

"No Parliamentary election shall be declared invalid by reason of any act or omission by the Returning Officerif it appears to the Tribunal having cognisance of the question that the election was so conducted as to be substantially in accordance with the law as to elections, and that the act or omission did not affect its result."

Again, in Halsbury's Laws of England, 3rd Edn. Vol. 14 Section 185, reference is made to alterations in polling districts and places, and the conclusion is:

"an election cannot be questioned by reason of any non-compliance with these provisions or any informality relative to polling districts or polling officers places."

In the instant case, the alteration of the area of the constituency was made by law, which is not questioned, and is not questionable. Had the alteration, which occurred midway during an election, destroyed or affected the identity of the constituency, there may be something to be said for the view that the subsequent election would not be for the same constituency, and hence that a legal election can only take place afresh. But, admittedly, the constituency was the same throughout, in that it was defined as consisting of certain districts, and the identity of those units was also retained intact. It is hardly conceivable that, for instance, an election would be affected, if the middle of it, the geographical boundary of one district had been rectified, under the Survey and Boundaries Act, so that a portion of the land was either excluded or included.

It must be throughout kept in mind that the appellant is unable to urge that the result of the election has been affected, in any member that can be demonstrated. On the authority in Vashit Narain Sharma Vs. Dev Chandra and Others, , this must be shown before an election can be declared to be wholly void. In Narayan Bhaskar Khare Vs. The Election Commission of India, , one ground taken did relate to the Constitution of the electoral college, and the fact that its organisation would be different had the elections occurred in the Himachal Pradesh and two constituencies in the state of Punjab, but this ground of objection did not come up for final decision by their Lordships. The appellant herein does not claim that any or some of the 26 voters of Tiruttani would, if permitted, have stood as candidates after nomination, and that this would have materially affected the result of the election. All that he can urge is that it is impossible to say that they would not have stood, and that is precisely the point; for this is pure speculation. With regard to the actual votes themselves, the appellant has no case at all.

11. Under the circumstances, we are of the view that this main ground of objection must fail. The objection with regard to Article 14 of the Constitution is within a very brief compass, and might be immediately disposed of.

12. It is clear enough that we are not now concerned with Act LVI of 1959, nor is it contended before us that this law has violated Article 14 of the Constitution. The alleged hostile discrimination results merely from the fact that the Returning Officer did not deem it essential to issue a fresh notification, or call for further possible nominations from the electors of Tiruttani taluk. In other words, the legislative measure which altered the area of one district of the constituency, was not violative of Article 14. Since the legal identity of the constituency was unaffected, it cannot be said that the Returning Officer committed an error or illegality in continuing with the election, and permitting the newly added voters to poll. Hence, if it is his act which has made a discrimination this is purely the consequence of a legal and proper Act; it is not the adventitious consequence which can be avoided by Article 14, but only an actual denial of the protection of equal laws. Reference has been made by learned counsel for respondents to *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*, , for upholding a territorial classification as not violative of Article 14. The following passage from *V.S.K. Adhi Chettiar Suravelu Chettiar, Tanners, Vaniyambadi and Others Vs. State of Madras and Others*, , where Rajagopala Aiyangar J. extracts this principle from Willoughby in his *Constitutional Law of the United States* (2nd Edn) page 825, is here very pertinent and significant:

"...no one is guaranteed that in fact, through the fortuitous operation of a law which in itself is not discriminative, a special burden may not be imposed, or the enjoyment of a privilege taken away."

Further, a division of parish boundaries) was held not to affect a Parliamentary electoral constituency in *Foster v. Medwin*, (1880) 49 LJQB 297. Though the facts of that case were widely different, this supports the reasoning that we have pursued that where the identity of the constituency has been retained and there has been no illegality, the election cannot be avoided, apart from demonstrating that the result was affected, either on the ground that the election is a nullity, or on the ground that it involved a hostile discrimination against certain voters under Article 14 of the Constitution.

13. In the result, therefore, the appeal fails and is dismissed with costs.