

(1929) 09 MAD CK 0045
In the Madras High Court

(Chairman), Municipal Council

APPELLANT

Vs

Anantha Subramania Ayyar

RESPONDENT

Date of Decision : 04-09-1929

Acts Referred:

Citation : AIR 1930 Mad 258 : (1930) ILR (Mad) 653 : (1929) 30 LW 851

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The learned Sub-Judge has been tempted to give way to moral indignation and to exhibit great heat. This is a draw-back that has seriously impaired his judgment.

2. The question we have to decide is, have the rules for the preparation of electoral rolls been contravened to such an extent, as to render the proceedings of the "revising authority" wholly null and void? We state the question in this form having regard to Rule 6(b) which enacts inter alia:

The orders passed by the revising authority shall be final and shall not be liable to be questioned by any legal proceeding.

3. The plaintiff has therefore sought to show that the Board which decided against his claim was not properly constituted and that in consequence there was no decision which could become final, within the meaning of that provision. In view of the wording of this rule, we shall refrain, as far as possible, from referring in our judgment, to the various irregularities that have occurred, but do not affect the constitution of the Board or its jurisdiction.

4. Acting under Rule 2, the chairman decided to omit the name of the plaintiff from the preliminary roll on the ground that in regard to residence he did not possess the necessary qualification. Rule 3 refers to claims and objections. When a person feels aggrieved by the omission of his name, he prefers what is called a claim; when, on the other hand, a person feels aggrieved by the improper inclusion of another person's name, he may prefer an objection. These are for

the present the only parts of the rule with which we are concerned. We shall quote the very words, in so far as they are material, that relate to the preferring of an "objection."

Any person whose name is on the roll and who objects to the inclusion of the name of any other person whose name is on the roll, may prefer an objection to the revising authority.

5. Under this rule, the plaintiff preferred a claim and that is quite normal. An objection was also preferred by one Srinivasa Iyengar, an agent or a clerk of the chairman. As the rule stands, how can one object to the inclusion of a name, when that name has not been included? However, what really happened was, that Srinivasa Iyengar filed an objection stating that the plaintiff was not possessed of necessary property qualification. Two questions were thus raised before the revising authority:

(1) Was the plaintiff disqualified by reason of the fact that he was not residing within certain limits (the ground taken by the chairman) and

(2) Was the plaintiff disqualified not owning certain property in his own tight? (the ground taken by the chairman"s clerk).

6. Before proceeding with the narrative, we shall relate how the revising authority came into existence.

Rule 6 says:

The revising authority for each electoral roll in a municipality shall consist of the chairman as president and two non-officials who are not members of the Municipal Council to be nominated by the Collector of the District. The Collector shall also appoint two non-officials and two or more officials (specifying the order in which they shall be entitled to act, the non-officials taking precedence over officials) as members in waiting to take the place of any member of the revising authority including the president) who refuses to attend, or becomes incapable of attending, a sitting or who is personally or pecuniarily interested in, or gives evidence, in respect of, any claim or objection and is thereby rendered unfit to take part in the adjudication of such claim or objection.

7. The Collector nominated under this role:

(1) The Chairman of the Municipality.

(2) Mr. Rajagopala Naidu and

(3) Mr. Balasubramania Aiyar,

8. As members of the Revising Board. He appointed also as required by the rule certain members in waiting of whom two were non-officials and two officials. Of these four, we are concerned with one, namely, Mr. Kandaswami Udayar, a non-official.

9. Mr. Rajagopala Naidu, on his being informed of the Collector's proceeding, declined to serve on the Board stating that he did not wish "to be drawn into Srirangam politics" a very wise decision indeed, having regard to the facts revealed by this case. The Collector, on being informed of this, nominated Mr. Rangaswami Pillai in the place of the gentleman who declined to serve. The Board that heard the plaintiff's claim consisted, as original members of

(1) The Chairman,

(2) Mr. Balasubramania Aiyar; and

(3) Mr. Rangaswami Pillai.

10. The plaintiff objects that the appointment of Mr. Rangaswami Pillai was ultra vires. He puts his case thus. The very object of there being members in waiting is, that they may be called on to act when such a contingency occurs as has now actually arisen. When Rajagopala Naidu refused, was a member of the Waiting Board that should have stepped into his place. The Collector, had, therefore, no power to make a fresh nomination and the appointment of Rangaswami Pillai was consequently invalid. This objection has been upheld by the lower Court, but is, in my opinion, untenable. The rule consists of two distinct parts, first, referring to the revising authority, the second, to the Waiting Board. The members in waiting, on a true construction are not included in the revising authority. The rule very clearly lays down that body shall consist of certain three persons none of them being a member in waiting.

11. The second part of the rule provides that certain persons may be appointed to the Waiting Board "to take the place of any member of the revising authority." The fact that he takes the latter's place does not alter his status and convert him into a regular member. A Waiting Board is intended to be a reserve and can never become anything more than such reserve. Its members are outside the Board and they are to be called out in emergencies to act temporarily as substitutes. If it is borne in mind that a Revising Board is constituted to deal not with a single voter but with voters generally, the scheme of the section becomes quite apparent. For example, when the case of a particular voter is being considered, a member may refuse to attend that sitting. The voter may happen to be his relation, friend or enemy, or, he may have some interest in the property which the voter claims to be his. In such a case, he may very properly refuse to attend a sitting. But, does that fact ipso facto terminate his membership of the Board? He may nevertheless attend its other sittings and take part in them., The members of the Waiting Board are intended to step in at such times, and when the original member returns, they step out and go back into the reserve. Under this rule, there cannot be a proper Revising Board of two members and in appointing; the third, the Collector was perfectly right. The plaintiff's objection, therefore, fails.

12. The plaintiff next objects that the chairman was disqualified by interest from adjudicating upon his claim. He alleges that he has been vice-chairman for some

years and that there has been bitter enmity between him and the chairman. The latter was intent on seeing that he was not re-elected and it was with that object that he caused his name to be omitted on the roll. Though the case has been argued very fully and elaborately, still we must not lose sight of the fact that what we are hearing is an appeal from an order granting a temporary injunction. But, on such materials as exist, we must make up our minds, whether the plaintiff has made out this charge. The lower Court in holding in favour of the plaintiff relies on several facts and circumstances, but we propose to confine ourselves to two or three facts which have, in our opinion, a decisive bearing on the question to be tried. The chairman's objection was, as we have already said, based on certain rules in regard to residence, in the soundness of that objection, however, he seemed to have had little faith. The plaintiff thereafter preferred his claim. It was too late for the chairman to change his ground of attack. It was at this juncture that his clerk comes on the scene with what is called an objection. That related to quite a different ground, one based on want of property qualification. We have already pointed out that preferring an "objection" in the circumstances was out of the common. The question of the locus standi of Srinivasa Iyengar was then raised. The Revising Board, by a majority, decided the point against him and held that he had no right to be heard.

13. The chairman dissented taking a different view. On the material before us, we cannot resist the conclusion that it was at his instance that his clerk preferred that objection. Mr. Rangachari in his eloquent address, while admitting that this is a suspicious circumstance, urges that it may be capable of explanation. True it may be; but the chairman has had an opportunity both in the lower and in this Court and what explanation has been forthcoming? The case has been fought with great bitterness and every point argued very fully and we cannot help concluding that the chairman has failed to remove the suspicion, because he has no satisfactory explanation to offer.

14. We now pass on to another circumstance which tells against the chairman with equal if not greater force. On 9th June, the ruling to which we have referred, regarding the locus standi of Srinivasa Iyengar was given. Though it was held that he could not be heard, the Board decided to go suo motu into the merits of the objection. Thereafter there were some adjourned sittings with which we are not concerned. On 14th, the chairman makes a reference to the Government on a certain point and seeks its advice. He formulates the question thus: Some persons without title to property seek inclusion in the electoral roll on the ground that the tax bills stand in their names with the consent of the real owner. The transfer of a bill is not a transfer of property in the eye of the law. Attempts are frequently made by persons in such position to get their names improperly included in the electoral roll. He concludes his letter by saying:

It is necessary to put a stop to such malpractice. The Revising Board feels some difficulty in the matter and it is prayed that the Government may be pleased to favour us with their view early.

15. A perusal of this leads one to think that the reference has been made by, or at the instance of the Revising Board; but nothing of the sort; this was done as a matter of fact behind its back. Then again, was this reference made to the Government bona fide and in the ordinary course? The essence of the charge against the plaintiff was that the property belonged to his father but that the tax bills stood in his name. He answered it somewhat thus.:

True, my father's name appears as that of the owner, but I am a member of a joint family. The bills were transferred to my name with the consent of every member of that family. This happened some years ago and since then I have been paying the taxes.

16. These facts are not mentioned in the reference. The chairman states a hypothetical case having no relation to existing or actual facts. And how does he word his reference?

17. He, in terms, suggests to the Government the answer which he wishes to get.

18. The reference is forwarded on 14th and the Government sends its answer promptly on 17th which is very laconic.

The Government agree with the view expressed in the chairman's letter read above.

19. Having obtained this answer (which is styled a Government order), the chairman reads it out at the next sitting on 20th. We may here state that ultimately the point was found against the plaintiff by the votes of the chairman and Mr. Rangaswami Pillai, the third member, Mr. Balasubramania Aiyar, dissenting. The plaintiff states that it was the reading of the Government Order at the sitting, that clinched the question, for Rangaswami Pillai would otherwise not have supported the chairman. This may or may not be so; with that we are not concerned. The question is what does this conduct indicate? It is unnecessary to dwell further on the point. It is clear beyond doubt that from the very start the chairman had a personal interest in the result and his conduct on the Board shows that there was not even a semblance of fairness in his dealing with the plaintiff's claim. If the matter rested there, we would hold the decision as invalidated on the ground of bias.

20. But the plaintiff is precluded from raising this plea, as, by his conduct, he waived the objection on the ground of interest. On his own showing, he was aware from the very beginning that he could not hope to get justice from the chairman. It was on 1st June that the chairman's clerk came forward with his "objection." After that date, there were several sittings of the Board and the plaintiff never suggested that the Chairman was unfit to take part. On 20th June the Government Order was openly read out at the sitting of the Board. Even then, the plaintiff failed to urge that the chairman was disqualified by interest. On that day, the case was argued and on a certain point judgment was reserved. It was on the 22nd for the first time that the plaintiff hinted that the chairman

was actuated by bias. The truth is, that the plaintiff expected that the decision of the majority would be in his favour and not till he realized that expectation was unfounded that he demurred to the chairman being a member of the Board.

21. On the question of interest, *Frame United Breweries, Co. v. Bath Justices* [1926] A.C. 586, contains a very valuable exposition of the law by the House of Lords. In that case, certain licensing justices referred the question of renewal of a license to the compensation authority and resolved at a further meeting that a solicitor should be instructed to appear before that body and oppose the renewal on their behalf. The solicitor duly appeared and opposed. Three of the justices who sat and voted as members of the compensation authority had been parties to the resolution authorising the solicitor to appear on their behalf. It was held that those three justices were disqualified from sitting on the compensation tribunal on the ground of bias and its decision was set aside. Mr. Rangachari contends that the act of the Revising Board in the present case was not a judicial but an administrative act. This case shows that interest or bias invalidates a decision irrespective of the fact whether the tribunal is performing a judicial act or not. Lord Atkinson thinks that the subject matter of the proceeding was judicial as distinguished from administrative and Viscount Cave seems to agree with this view. Lord Sumner, on the other hand is of the opinion, that the act is an administrative act, whereas, Lord Carson thinks that:

Magistrates under the Licensing Acts are frequently compelled to mix up what might be called administrative with what might be called judicial action.

22. Administrative or judicial, the act was equally liable to be set aside if bias was proved on the part of the tribunal. On this point, all the four learned Lords were agreed. Mr. Rangachariar contends that the duties imposed by the rule on the chairman are such that certain amount of bias is inevitable. A very similar argument was put forward in that case. Viscount Cave meets it thus:

But, assuming this to be so, it by no means follows that a justice who was actively opposing the renewal of a license can adjudicate upon the question of renewal.... But the statute nowhere says that justices who elect to appear as opponents of the renewal and take active steps (such as instructing a solicitor) to make their opposition effective, may nevertheless act as Judges in the dispute; and in the absence of a clear provision to that effect, I think that the ordinary rule, that no one can be both party and Judge in the same cause, holds good.

23. Lord Carson, expresses himself to the same effect:

That, however, is not to my mind a reason for saying that the Magistrates are not to abstain from any action which might indicate a likelihood of bias, and the fact that there is no lis or what might be called any case existing between parties, affords no justification for not insisting upon the very elementary rule that a man cannot act as a Judge and as an advocate in carrying out the duties cast upon him.

24. *Rex v. Howard* [1902] 2 K.B. 363, does not lay down a different rule. What the powers and duties of a licensing justice were under certain statutes, was there under consideration. It was held that having regard to those statutes, the standard to be applied in considering the question of bias must be one which admits the right of the justice to be at one and the same time objectors and Judges, in the sense in which they are Judges in such matters; the reason being they are empowered by law to fill the two capacities. This case does not decide that bias or interest on the part of the tribunal does not invalidate its decision. Now turning to the rule, with which we are concerned, it does no more than declare what would have been the law without it. We are not prepared to construe it as laying down that some special kind of interest must be shown, some interest directly connected with the subject matter of the claim or objection. *Wakefield v. West Riding Railway Co.* [1865] 9 B. & S. 794, is a useful case on the point. The word "justice" was there defined by a certain section and the definition included the words "who shall not be interested in the matter." Cockburn, C.J., observes, that the rule proceeded on the notion that railway officials did not know the law and, therefore, it was important to inform them what the law was. The addition of the words in question did not alter the law, for the legislature inserted them under the belief, that if they did not include what would be implied, they would be taken to exclude it.

25. Also on the question of waiver, this case is an authority. The judgment lays down:

Nothing is better settled than this that a party aware of the objection of interest cannot take the chance of a decision in his favour and afterwards raise the objection.

26. The Chief Justice adds that this is the settled rule, although the law as an exception, may lay down by a positive enactment prohibiting an interested justice from acting in spite of assent. The present case clearly comes within the rule and not the exception.

27. The last objection of the plaintiff remains to be dealt with. We have already touched on what happened on 20th June. On that day, the question was argued before the Board in regard to the plaintiff's ownership of the property and the case was adjourned to 21st instant, judgment being reserved on the point. The chairman and Mr. Rangaswami Pillai prepared their judgment; holding that the plaintiff was disqualified and forwarded it to Mr. Balasubramania Iyer. He was unable to be present on the 21st and requested that the case might be postponed. The chairman then fixed the hearing to 3 p.m. on Saturday, the 22nd, Mr. Balasubramania Iyer wrote pointing out that he had to attend the Bench Court on each Saturday at that hour and that Monday would suit him. He added:

"I want to go through the notes of evidence in Mr. Ananthasubramania Iyer's case and also examine him on some more points before I come to a decision.

28. He suggested finally, that, if absolutely necessary, the Board might transact other businesses on that Saturday. What happened subsequently goes to the very root of the constitution of the Board. On 22nd, the Chairman and Mr. Rangaswami Pillai met and they were joined by Mr. Kandaswami Udayar, who, as we have said, was a member in waiting. To the Board so constituted the plaintiff objected. Then Mr. Kandaswami Udayar declined to act recording:

I am of opinion, after perusing Mr, Bala subramania Iyer's letter, that this case should be heard by him,

29. The only course open to an honest and sensible man; for, how could Mr. Kandaswami Udayar take part in pronouncing judgment on a matter not heard by him? But the other two chose, notwithstanding the absence of the third member, to deliver their judgment. In that judgment, which dealt only with what was known as property qualification, the plaintiff's right was negated. Thereupon, Mr. Kandaswami Udayar again added a note saying:

As I have not heard this case, I am unable to express any opinion.

30. This case was then adjourned to 24th. On that day, all the original three members of the Board met. The plaintiff then objected that the chairman having interest, the Board was not properly constituted. The following ruling was then given by the chairman and Mr. Rangaswami Pillai:

Further, when the hearing of the case is over and the majority judgment has been delivered, we cannot adjourn it now.

31. The fact is that after the 20th there was no kind of combined or joint action on the part of the members of the Board. The minds of the first two members had been made up, they had delivered their judgment and so far as they were concerned that judgment was final. What the opinion of their colleagues was mattered little to them. The latter, acting for himself, conducted some further enquiry, examined the plaintiff and wrote out a judgment in favour of the plaintiff. Are these irregularities mere defects of procedure, or do they affect the very constitution of the Board? The observations of Peacock, C.J., in *Khelat Chander Ghose v. Tarachand Koondoo* 6 W.R. 269 quoted by the Court (consisting of three Judges) in *Rohilkhand Kumaon Bank Ltd. v. Row* [1884] 6 All. 468 are in point. A final decision ought not to be pronounced in a case in which the Judges differ until by conference and discussion of the points in difference they have endeavoured to arrive at a unanimous judgment. To the same effect are the observations of a Full Bench of nine Judges in another case which are also quoted in *Rohilkhand Kumaou Bank Ltd v. Row* [1884] 6 All. 468. Applying this test, there was no proper judgment or decision in this case. The judgment pronounced was not that of the Board There was no conference and discussion of the points in difference. The other two did not wait to know what the third member's view was. They put it out of their power, to re-consider or alter their decision or to be influenced by the other member's view. This objection of the plaintiff must be uphold. The fact that the plaintiff's claim was formally rejected

by a separate order on the 24th is not relevant to the point under consideration. That order is signed by the chairman and Mr. Rangaswami Pillai. Under that appears a note that Mr. Balasubramania Iyer delivered a separate judgment. It is immaterial whether the formal order rejecting the claim was made before or after the delivery of the judgment by the third member. As we have said, it is impossible to regard the decision as that of a properly constituted Board. This objection of the plaintiff therefore prevails.

32. We may observe before closing that the question of residence, the majority did not think it worth their while to go into at all, although the enquiry arose out of, and owed its origin to this very objection. This, to our mind, is very significant.

33. In the result, we concur in the conclusion of the learned Sub-Judge, though with many of his reasons we do not agree. The order granting the injunction is confirmed and the appeal is dismissed with costs.