

(1925) 03 MAD CK 0034
In the Madras High Court

K.K.S. Mamundi Konar

APPELLANT

Vs

P. Shamsuddin Sahib Bahadur

RESPONDENT

Date of Decision : 12-03-1925

Acts Referred:

Ballot Act, 1872 — Section 2
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1925 Mad 1207 : 90 Ind. Cas. 771 : (1925) 22 LW 507 : (1925) 49 MLJ 381

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—This Civil Revision Petition is a petition praying that this Court will interfere and set aside a finding of the Election Court of the

Subordinate Judge of Trichinopoly in the matter of an election petition before it. At an election for a Councillor for the first ward in the Trichinopoly

Municipality held on 26th Sept., 1924, the Chairman, who was the Returning Officer, declared that the present petitioner was elected, having

polled 71 votes as against 70 votes for the respondent. The latter filed an election petition in the Subordinate Judge's Court, and on enquiry, the

Subordinate Judge decided that the correct number of valid votes was 72 for the respondent and 71 for the petitioner, and declared the

respondent duly elected. The petitioner applies for revision of that finding and declaration.

2. Only two points are pressed before me: firstly, that the votes, Exs. G and G1, are invalid votes, and were, therefore, wrongly counted in favour

of the respondent; and secondly, that the vote of P.W. 5, one Murugesan, was not a valid vote.

3. As to the first point, Exs. G and G1 appear to show, besides the cross-mark against the name of the respondent, lines scoring out the names of

the other candidates. The Returning Officer did not take these votes into consideration in respondent's favour apparently because of these lines.

The Election Court held them to be valid in spite of these lines. Before me the petitioner contends that the Election Court had no jurisdiction to go

behind the decision of the Returning Officer in a matter of this kind, that the Election Court is not a Court to which any authority is given to decide,

as a question of fact, whether a vote is or is not valid, and that the proper scope of the Election Court's jurisdiction is limited to an enquiry whether

the Returning Officer had or had not exercised the jurisdiction vested in him of deciding whether or not a vote was valid; in other words, petitioner

contends for the position that in the matter of the validity of a vote, the Returning Officer is the final authority. This contention seems to me justified

neither by the rules governing the conduct of election or enquiries by the Election Courts nor by reported decisions of the Courts of Law, either in

this country or in Great Britain. Rule 11 of the Rules for the Decision of Disputes as to the validity of an election held under the Madras District

Municipalities Act, 1920, clearly lays down that, in an enquiry of this kind, the Election Court has to decide whether or not "the result of the

election has been materially affected by the improper reception or refusal of a vote." To restrict this to an enquiry whether the Returning Officer's

reception or refusal of a vote was or was not within his jurisdiction is to make the rule almost otiose. The rule plainly gives the Election Court

jurisdiction to decide for itself whether the Returning Officer's rejection or refusal of a vote was proper, and, if it was not proper, and the result of

the election has been materially affected thereby, it may set aside the election and order a fresh one, or, if the result of the scrutiny is to give a

majority to another candidate, it may declare that candidate duly elected. The case-law referred to by the petitioner's learned vakil seems to me to

be entirely against him. The leading case on the point in *Woodward v. Sarsons* LR 10 Com. Pleas 733 at 748. distinctly lays down that the

decision in each case, namely, whether a ballot paper is void or not, is, "upon a point of fact, to be decided first by the Returning Officer, and

afterwards by the Election Tribunal on petition," and the Election Court proceeded in that case to decide for itself whether or not certain marks on

the ballot papers did or did not invalidate the votes. The same course was followed in the Stepney case 4 O'Mally and Hardcastle, 37 and the Wigtown case 2 O'Mallay and Hardcastle, 215 and numerous other cases might be quoted to the same effect. Section 2 of the Ballot Act, 1872, 35 and 36 Viet. c. 33 distinctly lays down that "the decision of the Returning Officer as to any question arising in respect of any ballot paper shall be final subject to reversal on petition questioning an election or return." It has not been suggested and no authority is quoted before me for the proposition that the law is different in this country. Election Courts in this country have from time to time in deciding such questions as to the validity of votes held a scrutiny of votes, etc., and I do not recall any instance in which their jurisdiction to do so has been questioned. It is plain that the Lower Court had ample jurisdiction to decide, as a question of fact, whether Exs. G and G i were valid votes. It has considered the question of their validity from the right point of view, namely, whether any reasonable ground had been shown for the conclusion that by the marks on the votes, the voters might be identified, and decided that they could not, and it held that the votes were valid. Such a decision was within its jurisdiction, and there is in that decision neither lack of jurisdiction nor irregular exercise of jurisdiction, which would give this Court authority to interfere u/s 115 of the Civil Procedure Code. It cannot be reasonably contended here that this Court has to decide for itself on the question of fact as to whether the votes were or were not invalid. This Court, in a Civil Revision Petition, has only to see that the Lower Court exercised its jurisdiction properly. I find, therefore, that there is nothing to be said in favour of petitioner's first point.

4. As to the second point, the question of fact for decision was whether P.W. 5 was or was not entered on the electoral roll as a voter. The petitioner urges that, as both P.W. 5 and R. W. 3 answer to the description namely "Murugesan, fitter," therefore the Roll so far as this name is concerned, is a document ambiguous or defective, within the meaning of Section 93 of the Indian Evidence Act, which prohibits evidence being taken to remove ambiguity or defect. I do not see what application Section 93 has to this case. All that the Polling Officer had to see when the voter presented himself to him was whether the name of the voter was on the roll. It cannot reasonably be contended that the Polling Officer has to

wait to the end of the day in respect of every vote in order to see if any one else of the same name appears and claims that he is the voter on the

Roll. P.W. 5 appeared to vote. His name corresponded with the name on the Roll and he was allowed to vote. There was no irregularity in the

procedure. It was open to petitioner to prove that P.W. 5 was not the person on the Roll, but that he did not do, nor does R. W. 3 claim that he is

the person on the Roll. There was no lack of evidence on which the Lower Court could conclude that P.W. 5's vote was valid, and there is no

case here either for interference u/s 115, Civil Procedure Code.

5. I, therefore, dismiss the petition with costs.