
(1958) 02 MAD CK 0017
In the Madras High Court

Kuppuswamy

APPELLANT

Vs

N. Ketty Muthu Goundan

RESPONDENT

Date of Decision : 21-02-1958

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 44(a)

Citation : (1958) 1 MLJ 419

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—In the second week of October, 1955, an election was held to the Municipal Council, Erode, from the 14th ward of

that town. The polling took place on 10th October, 1955. The votes were counted on nth October, 1955, when it was found that Ketty Muthu

Goundan had obtained 398 votes while his rival Kuppuswamy had obtained 447 votes. The latter was, therefore, declared duly elected. On 18th

October, 1955, the defeated candidate filed an election petition to set aside the election. On 13th November, 1957, the Principal Subordinate

Judge and Election Commissioner, Coimbatore, set aside the election and ordered a fresh election to be held: Kuppuswamy has filed this revision

petition to set aside the order of the Election Commissioner.

2. In order to understand the contentions of the parties it is necessary to mention some other facts. Exhibit A-3 is a copy of the electoral roll for the

ward and it is dated 20th May, 1955. Between 20th May, 1955 and nth October, 1955, this roll was revised. P.W. 1, the Deputy Tahsildar, who

was assisting the "Electoral Registration Officer" to revise the roll during the period deposed that out of numerous applications for inclusion of

names in the electoral roll 162 were allowed in August and September, 1955. On 22nd August, 1955, the Inspector of Municipal Councils and

Local Boards, Madras, wrote Exhibit A-8 to the Municipal Commissioner, Erode, directing him,

Irrespective of the time of receipt, as and when amendments (to the electoral roll) are received they should be duly published and incorporated in the proper place in the Municipal roll.

On 23rd September, 1955, however, the Government of Madras, issued an order, Exhibit A-10 in which they said,

The Government hereby cancel the orders in the memorandum referred to above and direct the Municipal Elections Officers (Municipal

Commissioners) forthwith not to publish u/s 44(a) of the Madras District Municipalities Act, 1920, any amendment to the electoral roll for any

territorial constituency of the Madras Legislative Assembly that may be received from the Electoral Registration Officers, until the ensuing elections

to Municipal Councils are over.

3. They also directed the Inspector of Municipal Councils and Local Boards to cancel forthwith his instructions in Exhibit A-8. The Commissioner

received a copy of Exhibit A-10 only on 26th September, 1955. But in the meanwhile, i.e., to say on the 23rd itself 84 voters had been added to

the list. The Election Commissioner took the view that these 84 persons had been wrongly included and that they were not entitled to vote on 10th

October, 1955. As the difference between the votes secured by the competing candidates was only 41 he further held that the result of the election

had been materially affected by reason of the mistake committed by the election authority. In the result he passed the order complained of.

4. Madras Act II of 1947 substituted the following Sub-section for the previous provision in Section 44(2) of the Madras District Municipalities

Act:

The executive authority or any person authorised by the election authority in this behalf shall prepare and publish in such manner and at such times

as the Provincial Government may direct, the electoral roll for the municipality or the alterations to such roll.

It will be noticed that this Sub-section empowered the Provincial Government to give directions in respect of two matters pertaining to elections;

(1) it empowered them to give directions as regards the manner of publication of the electoral rolls, and (2) it also empowered them to give

directions about the time-table relating to the preparation and publication of electoral rolls. In 1951, this Sub-section was replaced by another one.

That runs as follows:

As soon as may be after the electoral rolls for the Assembly constituencies which consist of, or comprise, the municipality or any portion thereof,

have been published, revised or amended in pursuance of the Representation of the People Act, 1950, any person authorised by the election

authority in this behalf shall publish in such manner as the State Government may direct, the portions of the said rolls which relate to the municipality

or of the alterations therein, as the electoral roll for the municipality or as alterations to such roll, as the case may be.

This new Sub-section deprived the State Government of the power it previously had to give directions relating to the time-table for the preparation

and publication of the electoral roll. It confined the power of the State Government to one matter, viz., the manner of publication. This means that

when they issued Exhibit A-10 the State Government had no jurisdiction or authority to tell the election authority that it could not include any

names.

5. If the matter had stood there the conclusion would have been that the names that were newly added to the electoral roll had been properly

added and that in consequence the election is not liable to be set aside. Mr. Mohan Kumaramangalam, the learned Advocate for the respondent,

however, argued that the matter does not stop there at all and that the election authority too had no power to add to the names in Exhibit A-3 in

the manner it did. He pointed out that in 1955 when the election which has given rise to the present petition was held the position was this. Under

the Representation of People Act, 1950, electoral rolls have to be prepared for all Assembly constituencies. Such rolls have also to be revised in

the manner prescribed by the Act and the Rules thereunder. The relevant parts or portions of these rolls formed the electoral rolls for the

Municipalities and the wards in the Municipalities. The election authority prescribed under the District Municipalities Act cannot embark on any

amendments or alterations of the rolls on its own authority. What it has to do is

merely to see that the relevant parts or portions of the rolls tally with the electoral roll of Assembly constituencies. That is made clear by Section 45 of the District Municipal Act as it was amended in 1950. That section limits the power of the election authority to make amendments in the electoral roll "for the purpose of bringing it into accord with the electoral roll for the relevant Assembly constituency." But that is not what the election authority tried to do in the present case. As the evidence of P.W. 1 the Deputy Tahsildar shows, between 20th May, 1955 and 11th October, 1955, numerous applications were received and entertained for inclusion of names in the electoral roll for the 14th ward. That was beyond the jurisdiction of the election authority. The persons added to the roll subsequent to the date of Exhibit A-3 were not entitled to vote at all and their number is very much more than the difference between the votes secured by the two candidates. It is impossible to escape the conclusion that the results of the election were affected by this error. To this reasoning of Mr. Mohan Kumaramangalam the learned advocate for the petitioner was unable to find an adequate reply. I must therefore hold that the conclusion of the Election Commissioner is right though for a reason wholly different from those which he assigned.

6. Mr. Narayanaswami Mudaliar, the learned advocate for the petitioner, raised another point. As mentioned earlier the result of the poll was

announced on 11th October, 1955. The election petition was presented on 18th October, 1955. Rule 2 of the Rules for the Decision of Election

Disputes under the Madras District Municipalities Act, 1920, runs as follows:

2 (1).--The petition shall be presented within seven days of the date of the declaration of the result of the election:

Provided that where the result of any election held in pursuance of Sub-clause (i) of Clause (1) of Section 177 of the Madras District

Municipalities (Amendment) Act, 1930, was declared before the publication of these rules in the Fort St. George Gazette, a petition questioning

such election may be presented under these rules within seven days from the date of such publication.

Mr. Narayanaswami Mudaliar drew attention to the fact that in the proviso the expression is "from the date of such publication". Section 9(b) of

the Madras General Clauses Act of 1891 lays down that the word "from"

exclude the date from which we have to start our reckoning. While in the proviso the preposition "from" is used, the preposition used in the body of the rule is "of". This means, said Mr. Narayanaswami Mudaliar, that we must count the date of the declaration of the results of the election as the first day. The word "of" is an inclusive word and is to be contrasted with the word "from" which is exclusive. If we count the nth of October as the first day the election petition would be but of time as it was presented only on the 18th of October.

7. No authority was placed before me that the preposition "of" is inclusive unlike the preposition "from" which the General Clauses Act makes exclusive.

8. On the other hand, I find in Stroud's Judicial Dictionary the following passage: "Of" is sometimes the equivalent of after, e.g. "within 21 days of the execution" (Grants of Life Annuities Act, 1776 (17 Geo. 3, C. 26), Section 3), *Ex parte Fallon* 5 T.R. 283; *Williams v. Burgess* 10 L.J.Q.B. 10.

9. The prepositions "of" and "from" therefore mean the same thing. It follows that the election petition therefore was presented in time.

10. In the result, the Civil Revision Petition fails and is dismissed with costs.