

(2003) 02 MAD CK 0090

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 1666 of 2002

K.V. Muthuramalingam

APPELLANT

Vs

Soloman and Election Officer-cum-Block Development Officer,
Kamudhi Panchayat Union

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 1 LW 740

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : M.V. Venkataseshan, for the Appellant; N.S. Varadachari, for the Respondent

Judgement

A. Ramamurthi, J.—The first respondent in Election O.P. No. 18 of 2001 on the file of Principal District Court, Ramanathapuram has

preferred the present revision petition aggrieved against the orders dated 28.11.2002.

2. The case in brief is as follows:- The first respondent herein, who is the petitioner in the election original petition, filed a petition u/s 258 of the

Tamil Nadu Panchayat Act and also under Rule 122 of the Tamil Nadu Panchayat Election Rules, for declaration that the election of the revision

petitioner herein is illegal and also to declare that he has been duly elected. On 18.10.2001, election was conducted for the post of Panchayat

President, Malaramanadhi Panchayat. The revision petitioner as well as the 1st respondent have contested. The revision petitioner was working as

a Contractor in Public Works Department as well as in Highways Department. He has not completed the work undertaken by him and it was

subsisting. The 1st respondent also gave a representation on 03.10.2001 that the revision petitioner is incompetent to contest the election; but the petition was rejected by the Election Officer. On 21.10.2001, votes have been counted and the revision petitioner got 578 votes and the 1st respondent herein got 407 votes and ultimately, the revision petitioner was declared as elected. Since the revision petitioner is totally disqualified to contest the election, it is illegal and hence the petition.

The revision petitioner herein and the 1st respondent in the election petition, filed a counter and denied the various averments. He has not taken any contract work in Panchayat Union at any point of time. No objection was also raised at the time of scrutinizing the nomination. The allegation that he has not finished work as undertaken by him is false. There is no merit in the election petition and it deserves to be dismissed.

The 2nd respondent, Election Officer-cum-Block Development Officer filed a counter admitting the election which took place on 18.10.2001 and the contest by the revision petitioner as well as by the first respondent. The revision petitioner has not taken any contract work in the Panchayat Union and he had finished all the works undertaken by him. None raised any objection in accepting the nomination of the revision petitioner. The 2nd respondent had conducted the election in accordance with the Rules. The votes were counted on 21.10.2001 and the revision petitioner was declared as elected.

P.Ws. 1 and 2 were examined and Ex.P-1 was marked on behalf of the petitioner in the main original petition / first respondent herein. The revision petitioner was examined as R.W.1 and the Block Development Officer was examined as R.W.2 and Exs.R-1 to R-6 were marked. The court below allowed the petition and declared that the election of the revision petitioner is illegal and declared the 1st respondent herein as elected.

Aggrieved against this, the present revision petition has been filed.

3. Heard the learned counsel for the parties.

4. The points that arise for consideration are

(1) Whether the revision petitioner is disqualified from contesting the Panchayat Election ?

(2) Whether the objection raised by the 1st respondent is sustainable under law ?

(3) Whether the order passed by the court below is proper and correct ?

(4) Whether the order declaring the 1st respondent herein as duly elected is proper and correct ?

5. POINTS:- It is not in dispute that election for the post of Panchayat President of Melaramanadhi was held on 18.10.2001 and the revision

petitioner as well as the 1st respondent had contested the election, in which the revision petitioner got 578 votes, whereas the 1st respondent got

407 votes and, as such, the revision petitioner was duly elected as the President. It is the specific case of the 1st respondent that the revision

petitioner was working as Contractor in Public Works Department as well as in Highways and the work was subsisting on the date of election and,

as such, he is disqualified from contesting the Panchayat President election. It is further stated that the objection was raised even at the time of

scrutinizing the nomination, but it was rejected.

6. The revision petitioner / 1st respondent in the main original petition, on the other hand, admitted that he was a contractor in Public Works

Department as well as Highways Department, but it will not be a disqualification so far as the panchayat is concerned. He has not undertaken any

work either in the Panchayat or in the Panchayat Union. Apart from that, none objected his nomination at the time of scrutiny. He was duly elected

as the President of the Panchayat and the disqualification alleged by the 1st respondent will not apply to his case. The 2nd respondent also

supported the case of the 1st respondent.

7. The court below based upon a decision of this Court in SANNIYASI ..vs.. SRINIVASAN AND THE RETURNING OFFICER,

SANKARAPURAM PANCHAYAT UNION, VILLUPURAM TALUK 2000 (3) L.W.553 came to the conclusion that although the revision

petitioner is a contractor in Public Works Department and Highways Department, he is disqualified from contesting the election in the Panchayat

also. The learned counsel for the revision petitioner contended that the order passed by the Election Tribunal is not correct. u/s 37(3)(c) of the

Panchayat Act, only candidates having subsisting contract with the Panchayat are disqualified from contesting the election. He did not have any

contract with any Panchayat. He never suppressed that he was a Government Contractor. The decision relied on by the court below, will not apply

to the facts of the case. The Tribunal also committed an error of jurisdiction in declaring elected the 1st respondent as President in the place of the

revision petitioner. The matter was also not referred to the competent authorities for consideration of disqualification as provided under Article

243(f)(2) of the Constitution of India.

8. The learned counsel for the revision petitioner pointed out that the decision relied on by the court below cannot be made applicable to the case

on hand and moreover, Article 243(N) of the Constitution of India has not been considered in the said decision. Moreover, the guidelines issued

by the Tamil Nadu Election Commission in the year 2001 relating to local body also has not been considered in the aforesaid decision and, as

such, it is only per incurium. No doubt, the decision in 2000(3) L.W.553 (cited supra) also is an election petition filed before the District Judge

challenging the validity of the election of a Chairman of the Panchayat Union Council under the Tamil Nadu Panchayat Act 21 of 1994 (hereinafter

referred to as "the Act"). This decision is mainly based upon Article 243-F of the Constitution of India as well as Section 9-A of the

Representation of People Act, 1951. Article 243-F reads as follows:-

243F. Disqualifications for membership:- (1) A person shall be disqualified for being chosen as, and for being a member of a Panchayat-

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty three

years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the

question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide"".

The learned Additional Solicitor, Chennai, appeared in the said case also stated that section 83 of Representation of People Act is in pari materia

with section 258(3) of the Act. Admittedly, the present revision petitioner had no contract whatsoever with the Panchayat in question; but no

doubt, he was a contractor in PWD and Highways Department.

9. To appreciate the contentions of the parties, it is necessary to reproduce section 37(3)(c) of the Act and it reads as follows:-

37. Disqualification of candidates:-

(1) xxx

(2) xxx

(3) A person shall be disqualified for election as a member if, at the last date for filing of nomination or at the date of election he is-

interested in a subsisting contract made with or any work being done for, any panchayat except as a share holder (other than a director) in a company"";

It is clear from the language employed in the section that a person will be disqualified for election only if he is interested in subsisting contract made

with or any work being done for any panchayat. Now, the revision petitioner is not having any subsisting contract with Melaramanadhi Panchayat

and prima facie it is clear that he is not attracted by the disqualifications referred to in section 37 of the Act. However, the court below was carried

away by the decision referred to above, which is mainly based upon Article 243-F of the Constitution, which stipulates that a person shall be

disqualified for being chosen as, and for being, a member of a Panchayat, if he is so disqualified by or under any law for the time being in force for

the purpose of elections to the Legislature of the State concerned. Because of this only, it was contended that if a person is disqualified for the

purpose of election to the Legislature of a State, he is also disqualified for being chosen as a member of the Panchayat. But, however, Article 243-

N of the Constitution had been lost sight of and if that is read together in conjunction with Article 243-F, the mistake could not have crept in.

10. Article 243-N reads as follows:-

CONTINUANCE OF EXISTING LAWS AND PANCHAYATS:- Notwithstanding anything in this part, any provision of any law relating to

Panchayats in force in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent

with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature, other competent authority or

until the expiration of one year from such commencement whichever is earlier.

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each house of the Legislature of that State"".

It is admitted that the Seventy third Amendment Act came into force on 20th April 1993. Article 243-N clearly indicates that any provision of any law relating to Panchayats in force in a State immediately before the date, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature, other competent authority or until the expiration of one year from such

commencement whichever is earlier. The Act came into force on 22nd April 1994, one year after Seventy Third Amendment of the Constitution of

India. Now, the question is whether Article 243-F of the Constitution of India will hold the field or section 37 of the Act will hold the field to

consider the disqualification of a person being chosen or being a member of the Panchayat. Act 21 of 1994 is a special enactment passed in

respect of the local bodies after the introduction of Section 243-N of the Constitution. Part 9 of the Constitution itself was introduced based upon

the Seventy Third Amendment of the Constitution. In my view, as per the Act, being a special enactment, section 37(3)(c) of the Act alone can be

made applicable to the case on hand.

11. The learned counsel for the first respondent relied upon Shorter Constitution of India by Durga Das Basu (Thirteenth Edition) relating to page

1133, Implementation by legislation as follows:-

A striking feature of these new provisions inserted in the Constitution by Articles 243-243ZG is that they are in the nature of basic provisions

which are to be supplemented by laws made by the respective State Legislatures, which will define the details as to the powers and functions of the various organs, just mentioned.

It is to be recalled that "local Government" including Self-Government institutions in both urban and rural areas is an exclusive State subject under

Entry 5 of List II of the 7th Schedule, so that the Union cannot enact any law to create rights and liabilities relating to these subjects. What the

Union has, therefore, done by inserting Parts IX and IXA in the Constitution is to outline the scheme which would be implemented by the several

States by making laws, or amending their own existing laws to bring them in conformity with the provisions of the 73rd and 74th Constitution

Amendment Acts".

12. Article 40 of the Constitution states that the State shall take steps to organize village panchayats and endow them with such powers and

authority as may be necessary to enable them to function as units of self-Government. However, these institutions have not been able to acquire the

status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged

supersessions, insufficient representation of weaker sections, inadequate devolution of powers and lack of financial resources. The insertion of Part

IX relating to the Act was designed to rectify several things which includes disqualification of membership of panchayat.

13. Article 243-O of the Constitution referred to Bar to interference by courts in electoral matters. According to sub-section (b), no election to

any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or

under any Law made by the legislature of a State. If that is taken into consideration, it is patently clear that the Act alone can be made applicable to

come to a conclusion, whether any disqualification is attached to the revision petitioner u/s 37 of the Act.

14. The guidelines issued by the Tamil Nadu Election Commission in the year 2001 relating to local bodies. Page 4 under 2.2 relates to

disqualification. Sub-clause () reads as follows:-

eP;"fs; ve;j Cuhl;rpapy; cWg;gpduhf my;yJ jiytuhfg; nghl;oapl
tpUk;g[fpwPh;fnsh me;j Cuhl;rpa[lD; kw;Wk; ve;j xU Cuhl;rpa[lDk; ve;j xU
ntiyf;fhd

my;yJ bghUl;fs; tH";Ftjw;fhd xg;ge;jjhuuhf ,Uf;ff;TlhJ.

This guideline was also not taken into consideration in the decision cited supra. It is, therefore, evidently clear that only if a person had a subsisting

contract with the said Panchayat, he is disqualified from contesting either as a member or as a President.

15. The Act is enacted and has come into force on 22.04.1994 for establishing a

three tier panchayat raj system in the State to the elected bodies

at the village, intermediate and district level in order to keep effect to the provisions of the Constitution Seventy Third Amendment Act, 1992.

16. It has been held in *Satya Narain Vs. Dhuja Ram and Others*, : that the right to challenge an election is a special right conferred under a self-

contained special law and the court will have to seek answer to the questions raised within the four corners of the Act and the powers of the Court

are circumscribed by its provisions. An election cannot be equated with a plaint in a civil suit.

17. It has been held in *C.G.SHANMUGHAM ..vs.. T.SUBRAMANIA MUDALIAR & OTHERS* 1996 1 L.W.42 , wherein execution

application filed by a judgment debtor claiming relief under Act 13 of 1980 was dismissed by the lower court and CRP against the said order was

heard in the absence of decree holder and allowed without noticing the Amendment Act of 1981 with retrospective effect. Subsequent execution

application was filed by judgment debtor placing reliance on section 7(1) of Amendment Act of 1981. But the decree holder took a plea on the

principle of res judicata in view of the decision in earlier CRP and it was accepted by the lower court. The decree holder preferred another CRP

against that order contending that erroneous judgment in earlier CRP will not have any binding force and was per incuriam. The contentions of

decree holder was accepted and execution petition directed to be restored and proceeded further"". In this decision, it has been observed as

follows:-

It is also clear that the order in CRP No. 1135 of 1981 was one given not only without noticing the provisions of Act 13 of 1980 as well as

Amendment Act 1981, but also one given contrary to the provisions contained in those Acts and, therefore, it is non-est in law. Further, in the

recent judgment of the Supreme Court *M/s. Devidayal Rolling Mills Vs. Prakash Chiman Lal Parikh and others*, : their Lordships have held that the

Court has a bounden duty to correct its own error. In this case, the error is apparent, and when it has been brought to the notice of the Court, it

cannot be allowed to remain"".

The principle in this decision can be made applicable to the case on hand and, as such, the decision relied on in 2000(3) LW 553 (cited supra)

cannot be made applicable to the case on hand since it is per incuriam and it has failed to take into consideration Article 243-N of the Constitution

as well as the guidelines issued by the State Election Commission relating to the local bodies clearly pointing out the guidelines for disqualification.

Hence, I am of the view that the decision of the court below mainly relied upon 2000(3) LW 553 (cited supra) is not a correct and proper one

and, as such, interference is called for.

18. The learned counsel for the 1st respondent, however, contended that Article 243-F brought under Seventy Third Amendment of the

Constitution relates to the Panchayat and, as such, it has overriding effect than the provisions of the Act. I am unable to agree with the contentions

of the learned counsel. The election to the local bodies comes under a separate category as referred to above and the State Legislatures alone

have got power to introduce the necessary Legislation. Apart from that, the Act came into force long after the Seventy Third Amendment Act of

Constitution of India and this being a special enactment, this alone can be made applicable to come to a conclusion, whether disqualification is

attracted or not. It is not proper to consider part IX of the Constitution to come to a conclusion that whatever disqualification applicable to a

candidate for the Legislature can be made applicable to the election of a member or a President of the Panchayat is not proper and correct. If that

is so, there was no necessity to introduce section 37 of the Act and also to issue separate guidelines by the State Election Commission relating to

the disqualification. Simply because the revision petitioner was a PWD and Highways Contractor, it will not be considered as a disqualification so

far as the Panchayat Election is concerned. Only if a person is having a subsisting contract with the Panchayat as specifically mentioned in section

37(3)(c) of the Act or under the guidelines issued by the State Election Commission, he will be disqualified from being a member or a president of

the panchayat. It is not the case of the first respondent that the revision petitioner is having any subsisting contract with Melaramanadhi panchayat.

Under the circumstance, I am of the view that the order setting aside the election of the revision petitioner by the court below is not proper and

correct and as such, it has to be interfered with. I hold that the revision petitioner is not disqualified from contesting the Panchayat Election and the

election petition filed by the first respondent is liable to be dismissed.

19. For the reasons stated above, the revision petition is allowed and the order passed by the court below dated 28.11.2002 is set aside and the

Election O.P. No. 18 of 2001 is dismissed. No costs. Consequently, CMP No. 17537 of 2002 is closed.