

(1931) 12 MAD CK 0007
In the Madras High Court

L.S.M. Govindaswami Pillai

APPELLANT

Vs

Ramalingaswami Pillai and Others

RESPONDENT

Date of Decision : 09-12-1931

Acts Referred:

Citation : AIR 1932 Mad 321 : 137 Ind. Cas. 868 : (1932) 35 LW 360 : (1932) 62 MLJ 644

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

1. This is an application for issue of a writ of certiorari to the Election Officer, Tanjore Municipality. The petitioner was a candidate for election as

Councillor to one of the wards of the Tanjore Municipality. u/s 49 of the District Municipalities Act, any person who is interested in a subsisting

contract made with, or any work being done for, the Municipal Council except as a shareholder in a company is disqualified for election as a

Municipal Councillor. Under the rules made under the Act, the Officer who has to deal with the nomination papers of the candidates is the Election

Officer. His duty is to receive nomination papers and under Rule 7(2) to examine them and decide all objections which may be made at the time to

any nomination and, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any

nomination on any of the grounds mentioned therein. One ground given is that a candidate is ineligible for election u/s 48 or Section 49 of the Act.

Objection was taken to the reception of the nomination paper of the petitioner here on the ground that he was disqualified u/s 49 of the Act"by

reason of the fact that he was interested in a subsisting contract with the Municipal Council; and the Election Officer after an inquiry rejected the

nomination paper finding that he was interested in a subsisting contract with the Municipality. Hence this application for a writ of certiorari. ""On the last occasion, we directed notice to the Government Pleader and other persons at the request of Mr. Vinayaka Rao, who then appeared for the petitioner here and ordered an interim stay of the election. The first respondent here of those other persons was the only one who received notice and appears here by counsel.

2. It is urged by Mr. Rajah Aiyar that this is a proper case for the issue of a writ of certiorari. But the Government Pleader contends that it is not, because it is only in cases where the Court or the Officer whose acts are sought to be made the subject of certiorari has acted without jurisdiction or in excess of jurisdiction or assumed a jurisdiction which it or he ought not to have assumed, that a writ of certiorari can issue. The second point is that even if he has acted in excess of his jurisdiction, writ of certiorari is a discretionary remedy and one which will be seldom exercised. Thirdly, he argues that the discretion of the Court where it exists should not be exercised in cases where there is another remedy to the hand of the petitioner.

3. The first question to be decided here is whether the Election Officer had jurisdiction, whether he acted in excess of it or assumed a jurisdiction which he ought not to have assumed. Clearly, the Election Officer had jurisdiction. The Act gives him jurisdiction, and him alone, to examine the nomination papers and scrutinise them and listen to objections and, having listened to those objections, to decide whether the nomination papers should be received or rejected. This has been the subject of a decision by the Calcutta High Court, even if it required any authority. Reference was made to *Manindra Chandra Nandi v. Provas Chandra Mitter* ILR (1924) 51 C. 279 a decision of Sanderson, C.J. and Richardson, J., in an appeal which came up to them from a judgment of Page, J. There the Returning Officer after summary inquiry acceded to the objection raised that the appellant there was not eligible for election to the Bengal Legislative Council on the ground that at the date of his nomination he was a member of the Council of State and rejected his nomination. It was held in the circumstances that the High Court should not interfere in the proceedings and question the validity of the Returning Officer's decision. On page 287, Page, J.,

says as follows:

In my opinion the duty to be performed by the Returning Officer under Regulation 21 is not ministerial but judicial, and the function with which he is thereunder entrusted is to entertain all objections duly made to nominations which have been properly presented to him under the rules, and to decide, having regard to such objections, whether the nomination impugned is to be accepted or rejected ; provided always that he is not entitled to refuse a nomination except upon one of the grounds specified in Regulation 21. At the scrutiny of nominations on the 11th October, the Returning Officer rejected the nomination of the applicant on grounds 1 and 3 of Regulation 21, because he found as a fact that at the date of his nomination the applicant was a member of the Council of State. In my opinion, whether or not the applicant at the material time was a member of the Council of State, and if so, whether his nomination paper ought to be refused, were matters within the ambit of the Returning Officer's jurisdiction, and it was his duty under the rules to decide them.

4. On appeal, Sanderson, C.J., said:

The Returning Officer, in my judgment, considered the question which was for his determination, and in considering that question he had to. put an interpretation upon the rules to which I have referred. He may have put a wrong interpretation upon them. Or he may have put a right interpretation upon them. In these proceedings it is not for us to say whether he was right or whether he was wrong. To my mind it is clear that he did not usurp a jurisdiction which he did not possess. He did not refuse a jurisdiction which was vested in him. Nor is it suggested that he was actuated by any mala fides or extraneous circumstances. The result is that, in my judgment, this Court should not interfere in these proceedings and under these circumstances. In my opinion that point alone is sufficient for the disposal of the appeal.

5. It is, in my view, too clear to really permit of any serious argument to the contrary, that the Election Officer here was acting within his jurisdiction in deciding this question. That being so, the further question is whether he having had jurisdiction to decide the case, this Court ought to interfere by means of writ of *tidrtiorari*. Upon this point there is the decision of *The QaeiM v. St. Okive's District Board of Works* (1857) 8 E. & B. 529 : 120

E.R. 198. There Lord Campbell, C.J., says:

I am of opinion that the *certiorari* ought not to have been granted, and that the rule to quash this order must be discharged. It is clear that the

decision of the inferior tribunal, if on a point which they had jurisdiction to decide, is final. And it seems that, on well-established principles quite

consistent with all that was said in *Regina v. Bolton* 1 Q.B. 66 in this case the Metropolitan Board of Works had jurisdiction to decide whether

the claimant had been an officer or not.... Then, if they, having jurisdiction to inquire, did think that, *de jure*, he was an officer and entitled to

compensation, their order by which they determined that he was so and awarded him compensation was within the Act, and not removable by

certiorari.

6. It is quite unnecessary to refer to any other decisions to the same effect and they are very numerous. That being so, it seems to me that this

Court clearly cannot, and even if it would, interfere by *certiorari* with the decision of the Election Officer. He may have been wrong. If he was

wrong, then that is a matter for which there is a remedy provided by means of an election petition. It is argued that it is not an efficacious remedy

and that it is unjust to relegate the petitioner to that remedy because all manner of things unfavourable to him might happen in the meantime. We

have been referred to a decision⁷ of this Court in *Sarvothama Rao v. Chairman, Municipal Council, Saidapet* ILR (1923) 47 M. 585 : 45 M.L.J.

23 a decision of Schwabe, C.J. and Wallace, J. Whatever may have been stated in that case, the observations there are, in my view, of no

applicability here. Moreover, one of the learned Judges who was a party to the judgment and who himself made some observations in the case,

has in a later case explained those observations away to a great extent, in *Desi Chettiar v. Chinnaswami Chettiar* (1928) 56 M.L.J. 162 a case in

which the facts were very closely similar to those in this, Wallace, J., says:

The petitioner is not without his remedy. His remedy lies in an election petition which we understand he has already put in. It is argued for him that

that remedy which merely allows him to have set aside an election once held is not as efficacious as the one which would enable him to stop the

election altogether; and certain observations at page 600 of *Sarvothama Rao v. The Chairman, Municipal Council, Saidapet* are quoted. In the first

place, we do not see how the mere fact that the petitioner cannot get the election stopped and has his remedy only after it is over by an election

petition will in itself confer on him any right to obtain a writ. In the second place, these observations were directed to the consideration of the

propriety of an injunction in a civil suit, a matter with which we are not here concerned. And finally it may be observed that these remarks were

made some years ago when the practice of individuals coming forward to stop elections in order that their own individual interests may be

safeguarded was not so common.

7. In my view, the remedy for the petitioner here is to prefer hereafter an election petition, and if he is able to show that the rejection of his

nomination paper by the Election Officer was wrong, then of course the election will be set aside and he will have an opportunity of standing again

for election to the Municipal Council.

8. For these reasons, in my opinion, this rule must be discharged. This case, I think, is a fit one for the award of increased costs to the respondents.

I fix the fee to the Government Pleader at Rs. 250 and the costs of the first respondent at Rs. 75. The interim stay granted is dissolved.

Cornish, J.

9. I am of the same opinion. It was admitted by the petitioner's counsel on the last occasion that the petitioner has a remedy by an election petition;

and therefore, even if a case was made out for the issue of a writ of certiorari, I do not think that the Court should exercise its discretionary power

in favour of the petitioner, the rule being that certiorari should only be granted when no other suitable remedy exists. See 23 CWN 986 (Privy

Council) . But I do not think there is ground for the issue of a writ of certiorari in this case. The Election Officer is, by the rules, empowered either

on his own motion or on objection made to him that a candidate is disqualified under s 49 to reject a nomination. That involves a power and duty of

deciding whether in fact the candidate is so disqualified." The Election Officer is the tribunal appointed by the Act and the rules for this purpose. It

has been argued that the order of the Election Officer holding that the petitioner is disqualified by reason of his being interested in a contract with

the Municipal Council is wrong. But the decision of a tribunal does not become without jurisdiction because it is wrong; and unless there is manifest

defect of jurisdiction in the order of the tribunal, the Court will not quash it: Reg v. St. Olave's Board of Works (1857) 8 E. & B. 529 : 120 E.R.

198 and Colonial Bank of Australasia v. Willan (1874) L.R. 5 P.C. 417. Even if the conclusion of the Election Officer was erroneous upon the

facts before him, he had jurisdiction to make the order, and there is no room for interference by certiorari.