
(1929) 10 MAD CK 0080
In the Madras High Court

M. Lakshumanayya and Others

APPELLANT

Vs

S. Rajam Ayyar and Others

RESPONDENT

Date of Decision : 01-10-1929

Acts Referred:

Citation : AIR 1930 Mad 195 : (1929) 30 LW 949

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—These petitions arise out of an election held on 27th August 1928, to fill three vacancies in the 3rd Ward of the Wallajah Municipality. The election was conducted by the Chairman and the result, so far as it concerns us, stood as follows:

Votes. 1. T.K. Ratnavelu Chetti ... 170 Elected. 2. M. Lakshmana Iyer ... 127 " 3. K.S. Mallappa Chettiar ... 123 " 4. S. Rajam Iyyar ... 116 " 5. P. Venkataswami Naidu ... 109 "

2. Accordingly 1, 2 and 3 were declared elected. An election petition (O.P. 11 of 28) was then filed by S. Rajam Ayyar (No. 4) in the Subordinate Judge's Court, Vellore, alleging that the Chairman had shown undue partiality, that he had counted votes in favour of the successful candidates which ought to have been rejected, that he employed an inadequate staff, that the results were announced without checking or verification, and that if there had been Subsequent check the petitioner and other candidates who had failed would have been elected. This petition was filed on 3rd September, and on 24th October, before the hearing had commenced, the petitioner applied for a recount (I.A. No. 699 of 28). This was granted, and the recount was carried out by a Commissioner with the following result:

Votes. 1. T.K. Ratnavelu Chetti ... 160 Elected. 2. S. Rajam Iyyar ... 124 " 3. P. Venkataswami Naidu ... 123 " 4. M. Lakshmana Iyer ... 120 " 5. K.S. Mallappa Chettiar ... 116 "

3. It will be seen that 4 and 5 in the prior list have displaced Nos. 2 and 3. The two candidates who were now defeated, M. Lakshmana Iyer and K.S. Mallappa Chettiar, thereupon applied (I.A. No. 752 of 28) for a scrutiny of the ballot papers, with a view to ascertain in whether they had been tampered with, but this was disallowed by the lower Court.

4. In arguing the main revision petition the contentions are raised that the learned Sub-Judge ordered the recount in circumstances not sufficient to give, him jurisdiction, and that he was in error in not directing the further Scrutiny asked for. On the first point it is urged more specifically, that a Court before ordering a recount must have evidence before it that the original Court was or may have been incorrect. MR.K.S. Krishnaswami Iyengar, has recourse to English Law in support of this position. In the Stepney case (4 O" M. & H. 34) the questions which arose were as to the stage in the proceedings at which a recount could be applied for and ordered, which does not now concern us and whether or not it could be claimed as a right. Denman, J. in delivering judgment, referring to an interlocutory conversation during the course of the hearing, says:

We decided against the contention that the respondent was entitled to a recount as a matter of right, but offered to hear any evidence tending to show there had been a mistake on the part of the returning officer. We heard witnesses on both sides upon the point, and were satisfied, I may say mainly upon the evidence of one of the witnesses called by the petitioner, that there were strong grounds for thinking that the return could not be strictly relied upon. We therefore determined upon directing a recount....

5. This case forms the sole cited authority for the exposition of the law on this point in Halsbury (Vol. 12, para. 891).

A recount is not granted as of right, but en evidence of good grounds for believing that there has been a mistake on the part of the returning officer the Court will make on order for a recount.

6. In Rogers on Elections, 19th Edition, Vol. 2, p. 301, it is stated that:

The practice now is to order a recount before the trial where there is reason to believe there has been a miscount. Application for it should be made by summons supported by affidavits showing grounds.

The form of order for recount (No. 85 at p. 933) of the same "Volume) contemplates the order being passed" upon hearing counsel for the petitioner and respondent and upon reading the affidavits of, etc."

7. Thus although in the Stepney case oral evidence was taken, it is enough to support the application by affidavit.

8. Let us now see what preceded grant of the application in the present case, I have already summarized the allegations which petitioner made in his main petition. I will now quote the following verbatim extracts from it:

The Chairman deputed only one clerk to mark the votes secured by all the candidates when he ought to have employed more than one clerk.... There was no subsequent check or verification of the votes marked by the clerk. The results were announced without checking or verification. If there had been subsequent check petitioner and other candidates who failed in the election would have been elected.

9. In his affidavit in support of his application for a recount he says:

I have stated in my petition that the Chairman showed undue partiality and counted many votes in favour of the successful candidates which ought to have been rejected.... I believe that if the votes were counted properly, I would have been elected.

10. In the counter affidavit it was objected that the petitioner was not entitled to the relief prayed for before he had satisfied the Court of the irregularities complained of. The learned Subordinate Judge in the course of his order, after quoting the passage in Rogers which I have given says:

A misconduct is alleged by the petitioner and this application is supported by a verified petition. I am therefore satisfied that there is a reasonable ground for the petitioner's belief that there has been a miscount.

11. Reading together the affidavit with the original petition, we find what that reasonable ground is, and if the Court considered the ground for the petitioner's belief to be reasonable, it must have felt, I presume, that there was room to doubt the correctness of the Court. It is not for me, dealing with this case in revision, to weigh the grounds upon which the Court acted. I have only to see that action was not marked by lack of jurisdiction or by material irregularity, in its exercise. It is quite clear that the learned Subordinate Judge was under no misconception as to what at any rate the English Law was, and applied his mind to the question whether or not a recount should be granted. It need hardly be said that from the nature of the case, proof that the count at the election was wrong cannot be given before the recount takes place. Usually nothing more can be alleged than cause to suspect the original count. An over strict insistence that an application should be supported by evidence of miscounting is therefore unwarrantable. I consider accordingly that there was a sufficient compliance with the English procedure applying to this matter. Nor, looking purely to Indian Law, do I discover any irregularity, Rule 6, Election Dispute Rules for District Municipalities renders the procedure laid down by the Civil P.C., applicable; and under Order 19, Rule 2 of the Code evidence may be given by affidavit upon any application. From this point of view the lower Court was dealing with the equivalent of an interlocutory application in a suit, and so far as I can see no question of jurisdiction is raised by the manner in which it dealt with it.

12. It is then said that having allowed the recount the learned Sub-Judge should have ordered the further scrutiny asked for. Into the merits of the case for this, and of the order dismissing the application, it is not permissible for a revising

Court to enter: see the Full Bench case *M. Appayya Gounder v. Dawood Sahib* [1925] M.W.N. 842. I can only say therefore that the order appears to have been passed with jurisdiction and so is final.

13. One of the results of the recount was, as has been seen, to provide P. Venkataswami Naidu with a seat. This man was a party (respondent 7) to the petition, and under Rule 12 (2)(a) it was competent to the Court to declare him duly elected. It is pointed out that he put in an application (I.A. No. 806 of 1928) to which he made only the three originally successful candidates parties, and it is urged that it is bad for nonjoinder of the remainder. I doubt whether any such application was in fact necessary; but a sufficient answer is that the objection comes from two of those who were made parties.

14. C.R. Ps. Nos. 1612, 1.613 and 1704 of 1928 are accordingly dismissed with costs to respondents in C.R.P. 1704.

15. There remains C.R.P. 4 of 1929, preferred by the Chairman. He had been made a party to the original petition, and in declaring the petitioner and respondent 7 in those proceedings duly elected the lower Court ordered that the Chairman should pay their costs. The learned Subordinate Judge found justification for this course in the carelessness evinced by the Chairman in counting the votes. The propriety of this order is open to the gravest doubt, because the question of the Chairman's personal culpability was not in issue and not tried. It is quite possible, for all that the enquiry shows, that he was the victim of misconduct on the part of others. These, however, it may be said, are not grounds for interference in revision; and I turn to a more fundamental objection to this part of the order. The Chairman, it is contended, was not a proper party to the petition; and the Court should have struck his name out. It is no doubt true that in England a returning officer may be impleaded as a respondent (Hals. 12, 821 and Rogers, Vol. 2, 266). But there is ground to hold that this is not the law in India. Under Rule 12, Municipal Council may appoint a legal practitioner or other person to attend and take such part in the inquiry as the Judge may allow. That does not of course in terms preclude a petitioner from making the Chairman a party, but it does suggest that the framers of the rules did not contemplate that he should do so. There is a statement in a report on a petition decided by the Election Commissioners of the Punjab *Govardhan Das v. Lal Chand* [1920] 61 I.C. 315. that there is no provision in the Indian as there is in the English Law for the returning officer being made a respondent, and that, so far as it goes, appears to be correct. In *Pulakam Ramakrishna Reddi and Another Vs. Nooney Panakalu*, it was held by Jackson, J., that a Chairman is not a proper party to an election petition and that the Court ought to have struck out his name. The point has not been so put in the arguments, but I conceive that, by force of Rule 6, the Court must guide itself by the terms of Order 1, Rule 3, Civil P.C., and here no right to relief was alleged to exist against the Chairman, so that he was not a proper party. On this view the order making him liable for costs cannot be supported and I set it aside, petitioner will recover his costs of

this petition from respondents.