
(1967) 03 MAD CK 0001
In the Madras High Court

M. Srinivasan

APPELLANT

Vs

S. Sadasivam and Others

RESPONDENT

Date of Decision : 03-03-1967

Acts Referred:

Citation : (1967) 80 LW 658 : (1967) 2 MLJ 383

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—This petition is filed by the successful candidate in Ward No. 7, Town Panchayat of Thottiam in Musiri Taluk in Tiruchi

District for quashing the order of the Election Tribunal, the District Munsif, Kulittalai, declaring the election to Ward No. 7 as void and directing

fresh elections to that Ward.

2. The elections to the Thottiam Panchayat took place on 2nd February, 1965. For Ward No. 7, three persons contested, viz., the petitioner and

respondents 1 and 2. The petitioner obtained 130 votes as against the first respondent who obtained 129 votes and the 2nd respondent who

obtained one vote. The petitioner was declared elected. The first respondent filed an election petition challenging the validity of the election of the

petitioner. Several objections were raised before the Election Tribunal, but it is unnecessary to state all of them. The Tribunal found that one

Angammal was improperly refused a ballot paper and if a ballot paper had been given to her, the result of the election would have been materially

affected. The petitioner raised the contention that the first respondent was disqualified to be a member on the ground that he had an interest in a

subsisting contract with Srinivasanallur Panchayat Board. The Election Tribunal

while holding that the first respondent had a subsisting contract with the Srinivasanallur Panchayat Board, found that as the election was for the Thottiam Town Panchayat, he was not disqualified.

3. In this petition, Mr. Selvaraj, learned Counsel for the petitioner contended that the Election Tribunal was in error in holding that the vote of

Angammal ought not to have been rejected. He further submitted that a person having a subsisting contract in any Panchayat is disqualified from

being a member of any other Panchayat.

4. Regarding the vote of Angammal, the Election Tribunal found that an irregularity had been committed by the Assistant Polling Officer in treating

Angammal's vote as a tendered vote and as such, it has materially affected the election results. Summing up the evidence on the point, the Tribunal

observed:

It is not the case and the evidence of the respondents that Angammal herself once came in the morning, exercised her franchise and the ballot

paper issued against her name had been entered as against her name correctly and she presented herself at the Polling Booth for the Second time

and again demanded a Ballot paper... So looking from any point of view it is obvious an irregularity has been committed by the Assistant Polling

Officer, probably under pressure of work which has resulted in treating the ballot paper given to Angammal as tendered one and that has materially

affected the result of the election.

5. The provision as to tendered vote is found in the Rules for the Conduct of Election of Members of Town Panchayat Rules, 1964. Rule 27(4)

provides that the elector after marking a tendered ballot paper in the voting compartment and folding it shall, instead of putting in into the ballot

box, give it to the Polling Officer who shall place it in a cover specially kept for the purpose. Proviso to Rule 37 Sub-rule (1) provides that no

cover containing the tendered ballot papers shall be opened and no vote recorded in such paper shall be counted. There is no provision in the rules

which enables a Returning Officer for dealing with the tendered votes. Rule 42 provides that the Returning Officer shall not open the sealed

packets containing tendered ballot papers or the marked copy of the electoral roll and Rule 43 requires the Returning Officer to retain the custody

of tendered ballot papers and that the packets shall not be opened and the

contents shall not be inspected or produced except under the orders of an election or other competent Court.

6. The Andhra Pradesh High Court in *Ramiah v. Koteswara Rao* (1965) 2 A.W.R. 179, had held that the Election Tribunal has power to count

the tendered votes. It is unnecessary to consider this question any further as this case can be decided without taking into consideration the tendered

vote. It has been found that an entry was made erroneously in the register against the name of Angammal that a ballot paper had been issued and

when Angammal presented herself, her vote was taken as the tendered "vote. But for this irregularity, Angammal would have voted and it is not

disputed that her vote might have materially affected the result of the election as the first respondent has obtained 129 votes as against the 130

votes secured by the petitioner. On this ground alone, the election is liable to be set aside.

7. It was submitted on behalf of the petitioner, that even if Angammal's vote is counted in favour of the first respondent, he would have got only

130 votes and as both the petitioner and the first respondent had secured only 130 votes each, the result ought to have been decided by casting of

lots. The procedure of drawing of lots cannot be adopted in this case. Rule 12 of Notification No. 10 made by the Government in exercise of its

powers u/s 178, Sub-section (2), Clause (ii) of Act XXXV of 1958 empowers the election tribunal at the conclusion of the enquiry to declare

whether the election of the returned candidate is void under Rule 11 or if the Election Court declares the election of the returned candidate as void,

it shall declare that any other party to the petition who has claimed the seat under the rules as duly elected, or order a fresh election. It will be seen

that Rule 12 does not enable the Election Court to direct drawing of lots. But it was contended by the learned Counsel for the petitioner that the

drawing of lots is a power that is necessary for disposing of the election petition and should be presumed even in the absence of a specific power.

This question also need not be decided as in any event a fresh election has to be ordered in this case.

8. The petitioner contended that the first respondent was disqualified to become a member as he had a subsisting interest in Srinivasanallur

Panchayat. The Tribunal held that the first respondent had interest in a subsisting

contract with Srinivasanallur Panchayat, but as Srinivasanallur

Panchayat did not come within the Thottiam Panchayat Unit, he was not disqualified to stand as a candidate. It was not brought to the notice of the

Election Tribunal that Section 25(2)(c) had been amended by amending Act XVIII of 1964 which came into force on 2nd September, 1964, to

the effect that a person shall be disqualified for election as a member, if on the date of nomination or election, he has interest in a subsisting contract

or with any work done for any Panchayat or any Panchayat Union Council. After the coming into force of this amendment, the first respondent

would be disqualified, if he had any interest in a subsisting contract in any panchayat. The view of the election tribunal that the 1st respondent was

not disqualified is wrong as the first respondent was suffering from a disqualification on the date of the election. It is not the case of the parties that

the electors were aware of the disqualification of the first respondent and they threw away the votes. In the circumstances, the votes polled by the

first respondent cannot be treated as invalid votes. The election was contested by three candidates, one of whom secured one vote. In *S. Gopala*

Aiyangar and Another Vs. M.K. Mahomed Ibrahim Rowther and Others, , a Full Bench of this Court following the principles laid down in *Hobbs*

v. Morey L.R. (1904) 1 K.B. 74, held that when the votes were given in ignorance of the disqualification under which the candidate of his choice

was in fact labouring, it would be inequitable to allow the votes to be thrown away for that reason and the only proper course was to order a fresh

election. This view had been followed by a Bench of the Andhra Pradesh High Court in the decision reported in *T. Jalayya v. N. Venkataswara*

Rao (1956) A.W.R. 1026 : AIR 1957 A.P. 658. The Supreme Court in *Keshav Lakshman Borkar v. Dr. D.L. Anande* (1960) 21 E.L.R. 466,

held that the question of throwing away votes cannot arise in the absence of some special pleading that particular voters had cast their votes with

knowledge or notice that the candidate for whom they had voted was not eligible for election and that consequently, they had deliberately thrown

away their votes in favour of a disqualified person. In this case, no such allegation has been made. The presence of the 2nd respondent makes it

impossible to predict the results of the elections. In the circumstances, the order of the Election Tribunal directing fresh elections will have to be

upheld, though for different reasons.

9. The petition is dismissed. No order as to costs.