

(1904) 09 MAD CK 0017
In the Madras High Court

N. Krishnaswami Iyengar

APPELLANT

Vs

Sivaswami Udayar and Others

RESPONDENT

Date of Decision : 12-09-1904

Acts Referred:

Citation : (1905) 15 MLJ 449

Judgement

1. The Advocate-General has argued at length the question of the irregularities referred to by the District Judge as having taken place in the holding of the election. He has also laid great stress upon the members having cancelled the election instead of proceeding to declare the result of: it Having regard to the conclusion we have arrived at with reference to the conduct of the appellant in connection with the election, we do not think it necessary to discuss the matter of the irregularities or to give a decision as to the procedure adopted by the members of the Committee, though, as at present advised, we ought to say they acted altogether beyond the scope of their powers and contrary to their duty in resolving to cancel the election.

2. We think that the appellant is not entitled to the declaration sought for by him inasmuch as upon the evidence we hold that he was disqualified to be elected as a member of the Committee with reference to Rule 19 of the rules framed by Government u/s 7 of Act XX of 1863. The evidence bearing on this point is quite short and consists of statements made by the appellant himself and one of his witnesses. The appellant admitted that he spent in connection with the election Rs. 2,000 or more and added that he kept no accounts of such expenditure. This was in his cross-examination. In his re-examination he stated, " the sum spent by me for the expenses of myself and my friends and canvassers in touring about the circle was about Rs. 500, and the cost of bringing my voters to Kumbakonam, train fare, cart hire, etc., was about Rs. 1,500. The voters live in 3 taluqs." The other witnesses stated : " I saw his (plaintiff's) agent, paying the voters their railway fare. Nothing more was paid to them so far as I know. No bribes were paid to them." It is matter of some surprise that the witnesses were not examined more in detail as to these expenses, We cannot altogether agree

with the suggestion that it lay upon the respondents to pursue the matter further. It was equally important for the appellant to place before the Court all the information in his power bearing upon the question so as to remove all suspicion in this matter. The District Judge came to the conclusion that the appellant spent money for the purpose of obtaining votes and acted in breach of Rule 19 referred to and we feel compelled to adopt the same view. No doubt, as urged by the Advocate-General, to warrant the appellant being declared disqualified within the meaning of the rule, it must clearly appear that money or other valuable consideration was given in return for votes; in other words that such consideration passed as the result of a bargain. This is the only proper view to be taken of the language of the rule itself, and that is also the construction to be placed upon the rule with reference to the general principles laid down in the leading case of *Cooper v. Blade* 6 H. L. C. 746 and the subsequent decisions in which that case has been referred to, explained or distinguished. Those cases turned upon the contents of the writing with reference to which the question whether the payment was made as a matter of bargain had to be decided. The present case is somewhat different in that there is no writing to be concerned and the decision depends upon inferences of fact we have to draw from the statements of the witnesses already noticed. The case of *Bolton Election Petition* is entirely dissimilar from the present. In that case it was found that there was no bargain at all and that the provision for carriage which was promised was altogether a unilateral act which might be accepted and acted upon or entirely ignored at the option of the other party. Here admittedly there was a payment to the voters themselves who had come to Kumbakonam for the very purpose of voting for the appellant and for him alone. This is clear from the appellant describing the parties to whom payments were made "as my voters" and his witness describing them as the appellant's voters. Such language implies a previous understanding as to what their votes were to be; and the payment in the circumstances can hardly be treated as otherwise than in return for the votes. If the appellant did not as he says keep accounts as regards the money spent by him in connection with the election, that is not a circumstance which can be treated as in his favour.

3. Having regard to the reason for the provision in Rule 19, it was incumbent upon the appellant to be able to furnish accurate information with reference to payments made by him to voters. His statement in this respect was not confined to Railway fare and cart hire, as appears from the word "&c," following upon them in his evidence, and this rendered it all the more necessary that the whole expenditure should be fully and duly accounted for if inferences adverse to him were to be excluded. For these reasons the appeal fails in our opinion and is dismissed with costs.