

(2003) 04 MAD CK 0186

In the Madras High Court

Case No : Writ Petition No. 22034 of 2001 and W.P.M.P. No. 32546 of 2001

N. Vellaichamy

APPELLANT

Vs

The Returning Officer Cum Commissioner, Mr. A. Ganesan,
Assistant Returning Officer, Pudupatti Village Panchayat,
Gandharvakottai Panchayat Union and P. Pechimuthu,
Vembanpatti Village, Pudupatti Panchayat

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 MLJ 660 : (2003) WritLR 634

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Ar. L. Sundaresan, for the Appellant; V. Subbarayan, for Respondent Nos. 1 and 2 and G. Sridharan, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The question raised in this writ petition relates to election for the office of Vice President of Pudupatti Panchayat. There is no dispute that a meeting of the Village Panchayat was convened on 31.10.2001 for the said election. Nominations were filed by the present petitioner and the third respondent. The Assistant Returning Officer (second respondent) was authorised to conduct the election.

2. It is the case of the petitioner that after the election was held the petitioners got four votes, the third respondent got three votes and the second respondent declared the petitioner elected as Vice President and prepared a record of the proceedings of the meeting accordingly, which was signed by all those who were present. It is stated that certificate was to be issued after sending report to the first respondent-the District Election Officer. It is alleged that at that stage the third respondent along with his henchmen came along with the deadly weapons and after attacking the second respondent, the minutes book was snatched

away. The second respondent immediately reported about the incident in writing to the first respondent and the latter lodged a criminal complaint against the third respondent and the other persons and the criminal case is pending. The petitioner had made written representation before the District Collector regarding issuance of the certificate. However, subsequently, the petitioner learnt that the first respondent has issued proceedings in Na.Ka. No. A3/4314/2001 dated 8.11.2001 fixing 19.11.2001 as the date of election for the Vice President of the Pudupatti Village Panchayat.

3. On the basis of the aforesaid allegations, the petitioner has prayed for the issuance of a Writ of Certiorarified Mandamus for quashing the proceedings dated 8.11.2001 and for a direction to the respondents 1 and 2 to issue certificate of election to the petitioner as Vice President of the Pudupatti Village Panchayat.

4. A counter affidavit has been filed on behalf of the first and second respondent and another counter affidavit has been filed on behalf of the third respondent. In the counter filed by the first and second respondent, practically all the basic averments made in the writ petition have been admitted. It has been stated that repoll has been ordered as per Rule 57 of the Tamil Nadu Panchayats (Elections) Rules, 1995. In paragraph 6 and 7 of the affidavit it has been stated as follows:

"6. I submit that Mr. A. Ganesan, Assistant Returning Officer in his statement said that Mr. N. vellaichamy elected as Vice-President of the Pudupatti Village Panchayat. After the election is over, the third respondent herein Mr. P. Pechimuthu returned back with rowdies and attacked the Assistant Returning Officer and snatched away the minutes book of the panchayat in which the proceedings of the Election meeting was recorded and the Ballot papers etc.

7. I submit that the second respondent has immediately reported the above said matter to me in writing. On receipt of the statement from the second respondent, I lodged a Criminal complaint against the third respondent and his henchmen with the Gandharvakottai Police Station and the Inspector of Police registered a case and filed F.I.R. No. 380/2001 on 31.10.2001."

5. In the counter affidavit filed on behalf of the third respondent it has been claimed that the third respondent got four out of seven votes and was eligible to become the Vice President of the Panchayat. In paragraph 5 of the counter affidavit it has been stated as follows:

".... On the contrary ,the 2nd respondent declared the petitioner as Vice-President contrary to the provisions of the Tamil Nadu Panchayat Act, 1994 and the Tamil Nadu Panchayats (Elections) Rules, 1995."

In paragraph 6 of the affidavit, the third respondent has stated that the allegations made in paragraph 4 and 5 of the writ petition affidavit are false and misleading and no such incident occurred and he was not involved in the said offence. In paragraph 7 it is further stated that

".... The petitioner some how got managed to lodge a false complaint against

me."

Along with the affidavit he has also enclosed the affidavits of three other members who have stated therein that they have voted for the third respondent. On the aforesaid basis, he has prayed that the writ petition should be dismissed.

6. Rule 57 of the Tamil Nadu Panchayats (Elections) Rules 1995 occurs in Part V of the Rules under the heading "Poll". Rule 57 relates to fresh poll in the case of destruction of ballot boxes and is extracted hereunder:

"57. Fresh poll in the case of destruction, etc., of ballot boxes-- (1) If at any election--

(a) any ballot box used at a polling station or at a place appointed for counting of votes is unlawfully taken out of the custody of the Presiding or the Returning Officer, or is accidentally or intentionally destroyed, or lost, or is damaged or tampered with to such an extent that the result of the poll at that polling station cannot be ascertained, or

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at the polling station, the Returning Officer, shall forthwith report the matter to District Election Officer and the State Election Commission.

(2) Thereupon, the District Election Officer shall, after taking all material circumstances into account either--

(a) declare the poll at the polling station to be void, appoint a day and fix the hours for taking a fresh poll at that polling station and direct that the day so appointed and the hours so fixed be published in the manner laid down in clause (b) of sub-rule (4) of rule 56, besides intimating the contesting candidates or their election agents; or

(b) if satisfied that the result of a fresh poll at the polling station will not in any way affect the result of the election or that the error or irregularity in procedure is not material, issue such directions to the Returning Officer as he may deem proper for the further conduct and completion of election.

(3) The provisions of these rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.

7. Part IV of the Rules relate to notification of election and nomination of candidates. These provisions as such are applicable to election of ward members of panchayat. Part VIII contains the rules relating to election of Vice Presidents of Village Panchayats. Rule 95 lays down that the provisions of Rules 75 and 88 shall apply to the election of Vice Presidents as they apply in relation to the election of Chairman of District Panchayats or Panchayat Union Councils. Rule 83 lays down the voting procedure. Rule 86 relates to counting of votes and is extracted hereunder:

"86.Counting of Votes-- After the voting by the ward members is over, the

Returning Officer shall open the ballot box in the presence of the ward members present, take out the ballot papers therefrom and record the number of votes obtained by each candidate in a statement."

Rule 88(1) is to the following effect:

"88. Declaration of result of election--(1) If the number of candidates is two, the candidate who obtains the largest number of votes shall be declared to have been duly elected. In the event of there being an equality of votes between the two candidates and the addition of one vote to any one of such candidate will entitle him to be declared duly elected, the Returning Officer shall draw lot in the presence of the ward members and the candidate whose name is drawn shall be deemed to have the additional vote and shall be declared to have been duly elected."

8. It is the contention of the petitioner that after counting was over, the second respondent had declared the petitioner as duly elected. This has been denied by the third respondent. Apparently this may appear to be a disputed question of fact which should not be decided in a writ petition. However, there are certain peculiar features which persuaded me to delve deep into the question, as otherwise lawlessness would be encouraged.

9. It is no doubt true that the third respondent has denied the allegation regarding the snatching of the minutes book, but the matter has to be decided on the basis of facts and circumstances which are clearly emerging from the records. It is seen that immediately after the incident, the second respondent has reported the matter to the first respondent, who in his turn, has promptly lodged a complaint before the police. Even though the third respondent has denied his complicity, not a single word has been whispered in his counter affidavit as to how and why the first and second respondent and particularly the second respondent have filed an affidavit supporting the allegations made in the writ petition. It is not alleged that the petitioner is in any way connected with the first and second respondent and they have got any motive to support the petitioner. In the F.I.R., which has been immediately lodged, it has been clearly indicated that the petitioner was elected and the third respondent now claims that in fact he had received four votes and the petitioner had received three votes. If this assertion would have been true, one would have expected the third respondent to raise a hue and cry immediately, instead of remaining quiet for a pretty long period.

10. The fact that there was an election and there was counting is not disputed by anybody. The only question is who had received the majority of votes. According to the version of the petitioner, which is well supported by the affidavit of the respondents 1 and 2 as well as contemporaneous documents on record, the petitioner had received majority of the votes.

11. It is significant to note that even in his counter affidavit, the third respondent has specifically stated

"..... On the contrary, the 2nd respondent declared the petitioner as Vice-President contrary to the provisions of the Tamil Nadu Panchayats Act, 1994 and Tamil Nadu Panchayat Election Rules, 1995."

These assertion makes it clear that the petitioner had been declared as elected. Whether this declaration was contrary to the provisions of the Act or not, the fact remains that the second respondent has declared the petitioner elected. Rules in Part VIII relating to election of Vice President, do not contain any provision to the effect that after the declaration is made, there can be fresh election. Rule 57 relied upon by the respondents relates to the question of election of ward member and is not made specifically applicable to election of Vice President, for which separate set of rules has been framed. Once it is found that the petitioner was declared elected, there is no reason as to why he should not have been allowed to function as Vice President and there is no justification directing that fresh election should be held. Keeping in view the peculiar facts and circumstances and the background of the case, it would be obvious abuse of the process of law if the lawlessness would be encouraged and fresh election would be directed to be held.

12. For the aforesaid reasons, the writ petition is allowed. It is however made clear that the discussion made in the writ petition shall not have any bearing in the criminal case, if pending, which has to be decided in its own merits, in accordance with law, on the materials available on record. Consolidated cost of Rs. 500/- to be paid by the respondent No. 3. Consequently, the connected W.P.M.P. is closed.