

(1936) 08 MAD CK 0051
In the Madras High Court

Nallamothu Venkatarayadu and Others	APPELLANT
Vs	
Juladi Subbiah and Others	RESPONDENT

Date of Decision : 03-08-1936

Acts Referred:

Government of India Act, 1915 — Section 107

Citation : AIR 1936 Mad 969

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is an application u/s 107, Government of India Act, and Articles 15 and 16, Letters Patent for calling up the proceedings of the Revenue Divisional Officer, Narasaraopet, dated 21st November 1935 and those of the District Collector, Guntur, dated 5th December 1935, passed in connexion with the objection petition presented by the petitioners, protesting against the election of certain persons, who are shown as respondents, as members of the village panchayat of Nadendla village. These respondents do not appear. The records were called for and notice to the respondents was ordered by my learned brother Burn, J. and the matter has been argued by Mr. Govindarajachariar for the petitioners, no one appearing on the other side. The main objection taken in this application is that the Revenue Divisional Officer failed to conduct an enquiry into the objection petition by way of taking such evidence as the petitioners might have adduced in support of their allegations in the objection petition, the main objection therein being that nonresidents of the village were permitted to take part in the voting which was by show of hands according to the rules under the presidency of the Tahsildar. The rule in question is Rule 18(a) which says that:

The Revenue Divisional Officer shall, after notice to the parties concerned, enquire into the objections and pass such orders as he deems fit, except that etc.

2. Clause (b) of that rule says that the orders of the Revenue Divisional Officer, shall, subject to the provisions of Rule 18-A be final. That rule provides that the Collector of the District may, either on his own motion or on a petition by anyone

affected by the order of the Divisional Officer set aside the election and order a re election, after giving notice to the parties concerned and hearing their objections, if in his opinion the result of the election has been materially affected by a contravention or erroneous interpretation of these rules. The next Rule 18-B provides that no decision or order under Rule 18 or 18-A shall be liable to be questioned in any civil Court; by suit or otherwise. These are the only rules which bear on the questions which are agitated in the present petition. The main argument has been directed to the absence of an enquiry by the Revenue Divisional Officer. The word "enquiry" used in the rule has not been defined in the rules themselves and it is contended that "enquiry" necessarily implies the taking of evidence, or at least some sort of evidence, whether admissible or not under the Evidence Act, and in support of this position, reliance has been placed on certain observations in *Labouchere v. Earl of Wharncliffe* (1880) 13 Ch 346. That was a case however in which an injunction was applied for by a member of a particular club to restrain the Committee of the club from interfering with his enjoyment of the use and benefit of the club. In other words, it was a proceeding in which a civil right was sought to be established or protected. That is not the case here.

3. The present case is one in which proceedings of the officers empowered to deal with objections to elections to the village panchayats are sought to be quashed and an order is sought directing them to deal with the objections in a particular manner. The question that arose in *Labouchere v. Earl of Wharncliffe* (1880) 13 Ch D 346 was whether the expulsion of Mr. Labouchere from the club by the club members was valid or not, and for that purpose it was necessary to prove that the rules of the club regarding expulsion should have been adhered to, and in that case it was found that the rules had not been observed in more than one particular. I do not think that case is helpful in deciding what was the nature of the enquiry that was to be held by the Revenue Divisional Officer and whether it involved necessarily the taking of evidence. In the particular case, it would appear that there was some material before the Revenue Divisional Officer in the shape of the report of the Tahsildar dated 17th November 1935. It is apparently on the basis of this report that the Revenue Divisional Officer came to the conclusion that the Tahsildar had taken sufficient measures to exclude non-residents from taking part in the elections. In these circumstances, I am unable to say that the Revenue Divisional Officer was wrong in coming to the conclusion that it would serve no useful purpose to examine witnesses, if that is what is meant by holding an enquiry in the matter. He observes that oral evidence would be forthcoming to any extent on both sides, and that it would be impossible to come to any decision as to which non-resident took part in the election. It is however not merely the order of the Divisional Officer that is sought to be quashed, but also the order of the Collector of the District on the appeal preferred by the petitioner. That order runs as follows:

I am not prepared to take up the matter under Rule 18-A. Sufficient valuable time has been wasted by Government servants already. The Tahsildar has

complied with the rules and I can trust his decision.

4. I am of opinion that this application is really frivolous and must be due to the factious spirit that prevails in the village. It will serve no useful purpose; on the other hand it would be undesirable for several reasons to interfere in a matter like this in certiorari proceedings. The whole intention of the rules framed for elections to village panchayats was that the matter should be left entirely to the revenue authorities and that the elections should not be made the subject of proceedings before civil Courts. No doubt the jurisdiction of the High Court cannot be taken away by any such rules framed by the Government. At the same time there is no reason, why, because there is jurisdiction, there should be interference as a matter of course when no reasonable ground exists for interference. So far as the Collector's order is concerned, it is not shown in what way he acted irregularly or in contravention of the rules. All that can be said against his order and I may add here that very little has been said so far as the District Collector's order is concerned, by the petitioner's Advocate, is that he erred in exercising his discretion in the matter of refusing to interfere with the order of the Divisional Officer. The question whether the election had been materially affected by a contravention or erroneous interpretation of the rules is one which is left by the rules entirely to the decision of the Collector and the correctness of his decision in the matter cannot be questioned even in these proceedings. There was no absence of jurisdiction or refusal to exercise jurisdiction so far as the District Collector was concerned, and even as regards the Revenue Divisional Officer, there might have been at the most a material irregularity in the exercise of his jurisdiction in not taking evidence before he decided to dismiss the petition. This irregularity is in my opinion, no sufficient ground for interference by way of certiorari proceedings. That power which the High Court possesses, is in my judgment not to be used nisi dignus vin-dice nodus, except when there has been clear injustice done.

5. This condition has not been fulfilled in my opinion in this case. I would finally observe that the officers who were mostly concerned in opposing this application, namely, the Revenue Divisional Officer and the Collector of the District, have not been made parties to these proceedings and notice has not gone to them of these proceedings. The petitioners have been thus attempting to get an order in their favour by inviting the Court to pass an order cancelling the orders of the Revenue Divisional Officer and the District Collector, without giving them an opportunity to be heard contra, a procedure which in their own case the petitioners would be the first to denounce as being wholly opposed to elementary motions of justice. This defect in my opinion, is fatal to the pronouncement of any order in favour of the petitioners in these proceedings but as this defect was discovered only after the argument was closed, I have thought it necessary to deal with the application on its so-called merits. The petition is dismissed.