

(2015) 06 MAD CK 0314

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 1997 of 2015 and M.P. Nos. 1 & 2 of 2015

P. Malliga

APPELLANT

Vs

P. Kalaivani and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 51A, 51-A, 51-B, 82, 86(1)

Citation : (2015) 06 MAD CK 0314

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Advocate : A. Navaneetha Krishnan, SC for M. Jothikumar, for the Appellant; R. Thamarai Selvan for D. Baskar, Advocates for the Respondent

Final Decision : Allowed

Judgement

M. Duraiswamy, J.—Challenging the order passed in Election Original Petition No. 8 of 2011, on the file of the learned Principal District Judge, Dharmapuri, the first respondent in the Election Original Petition has filed this Civil Revision Petition.

2. The First respondent filed an Original Petition under Sections 51-A and 51-B of the Tamil Nadu District Municipalities Act, 1920, (hereinafter referred to as the Act?), to declare the election conducted for the Dharmapuri Municipality 15th Ward Member, on 17.10.2011, as null and void and to declare that the victory of the revision petitioner as null and void.

3. The case of the first respondent was that in the election for the post of 15th ward member of the Dharmapuri Municipality held on 17.10.2011, the first respondent was the candidate for the said post in the panchayat election on behalf of the Dravida Munnetra Kazhagam? (hereinafter referred to as "DMK") party. The revision petitioner was the candidate on behalf of the All India Anna Dravida Munnetra Kazhagam? (hereinafter referred to as AIADMK ?) party. One Ilavarasi, Kalaiyarasi and Vijayalakshmi were also the candidates under the

independent logos.

4. The second respondent was the Election Officer and the third respondent was the District Election Officer and they were under the control of the first respondent. The first respondent lost his victory by a single vote. According to the first respondent, one Ramesh Kumar who is the Government servant has voted twice for the first revision petitioner and therefore, she was defeated in the election. The first respondent also contended that for violating the law during the election held on 17.10.2011 and in the counting held on 27.10.2011, since, the revision petitioner belongs to the ruling party, the respondents 2 and 3 were acting in her favour.

5. According to the first respondent, the said Ramesh Kumar is a close relative to the revision petitioner and since, he was nominated for the election work at Nallampalli Union, he voted by post. However, the said Ramesh Kumar was also voted in person in the Kodyur polling booth on 17.10.2011 at 10.00 am. In these circumstances, the first respondent filed Election Original Petition before the learned Principal District Judge.

6. According to the revision petitioner, the election was done under the supervision of the Election Officer and the first respondent has not objected during the course of election regarding the voting of Ramesh Kumar twice. Only after commencement of the results, she raised objections. Election was conducted by the Government. The Presiding Officer and the Returning Officer have done their duties in a proper manner and accounting of votes were also done in a proper manner, without any partiality. After the counting of the votes, the results were declared. Therefore, according to the revision petitioner, there is no irregularity in the election conducted on 17.10.2011.

7. Before the learned Principal District Judge, Dharmapuri, on the side of the first respondent, two witnesses were examined and three documents were exhibited as Exs.P.1 to P.3. On the side of the revision petitioner, R.W.1 was examined however, no document was marked on his side.

8. The learned Principal District Judge, Dharmapuri, took into consideration the oral as well as documentary evidence let in by the first respondent and also Ex.P.3 postal ballot of Ramesh Kumar and came to a conclusion that the said Ramesh Kumar had voted twice in favour of the revision petitioner. Finding that the said Ramesh Kumar has voted twice in favour of the revision petitioner, the learned Principal District Judge, Dharmapuri allowed the Election Original Petition and declared the election of the revision petitioner as Ward Member 15 of Dharmapuri Municipality, as null and void.

9. Aggrieved over the said order passed by the learned Principal District Judge, Dharmapuri, the first respondent in the Election Original Petition has filed the above Civil Revision Petition.

10. Heard Mr.A.Navaneetha Krishnan, learned Senior Counsel appearing for the

revision petitioner and Mr.R.Thamarai Selvan, learned counsel appearing for the first respondent.

11. Mr.A.Navaneetha Krishnan, learned Senior Counsel appearing for the revision petitioner submitted that the original petition in Election O.P. No. 8 of 2011 is liable to be rejected on the following grounds:-

(a) Under Section 51-A of the Act, all the contestants should be made as parties in the Election Original Petition and in the case on hand, the first respondent has made only the revision petitioner as the first respondent in the Election Original Petition, when there are three other candidates contested the election.

(b) As per Rule 122 of the Tamil Nadu Local Bodies (Election of Members to the District Planning Committee) Rules 1999 (hereinafter referred to as the Rules?), all the contestants should be joined as parties.

(c) As per Rule 122 of the Rules, since, the revision petitioner has not paid security deposit of Rs.2,500/- at the time of presentation of the Election Original Petition, the same is liable to be rejected.

(d) Non examination of Ramesh Kumar on the side of the first respondent.

12. Countering the submissions made by Mr.A.Navaneetha Krishnan, learned Senior Counsel appearing for the petitioner, Mr.T.Thamarai Selvan, learned counsel appearing for the first respondent submitted that the non impleading of the other contestants in the Original Petition, is not fatal to the case, for the reason that, the first respondent has not sought for a prayer to declare herself as the successful candidate and she sought for only to declare the election held on 17.10.2011 as null and void. Further, the learned counsel submitted that the first respondent has deposited the security deposit amount of Rs.2,500/- as directed by the learned Principal District Judge, Dharmapuri on 11.01.2012 and therefore, the first respondent has complied with the provisions of Rule 124 of the Rules.

13. That apart, the learned counsel for the first respondent has also submitted that since, the first respondent had examined the Municipal Authority as P.W.2, the question of non examination of Ramesh Kumar, is not a fatal to the case. In support of his contention, the learned counsel has relied upon the following judgements:-

(i) Kamaraj Nadar Vs. A. Kunju Thevar and Others, (1958) 1 MLJ 139 wherein, a Division Bench of this Court found that the payment made by the petitioner therein while filing the Election Petition, security deposit made to the credit of some other account can be condoned since, it is only a minor mistake however, the Division Bench held that the deposit of the said sum of Rs.1,000/- as security deposit, is a mandatory provision.

(ii) Jugal Kishore Patnaik Vs. Ratnakar Mohanty, AIR 1976 SC 2130 : (1977) 1 SCC 567 : (1977) 1 SCR 49 : (1976) 8 UJ 688 . In this judgement, the Hon''ble Apex Court held that, when there is no allegation of mal practice against any

candidate, the said candidate need not be impleaded in the election petition.

(iii) Shiv Chand Vs. Ujagar Singh and Another, AIR 1978 SC 1583 : (1978) 4 SCC 152 : (1979) 1 SCR 520 : (1978) 10 UJ 705 wherein, the Apex Court held as follows:-

"5. We are satisfied that if he is impleaded as a respondent the election petition cannot be dismissed under Section 86(1) of the Act. That provision states that the High Court shall dismiss an election petition which does not comply with the provisions of Section 82. The test is whether the election petition complies with Section 82, not whether the election petitioner has failed to comply with Section 82. The substance of the matter must govern because hyper-technicality, when the public policy of the statute is fulfilled, cannot be permitted to pay the procedural tyrant to defeat a vital judicial process, namely, investigation into the merits of the election petition."

(iv) Umarddin Behleem and etc. Vs. Dr. Chandra Shekhar Baid and Others, AIR 2008 Raj 41 . In this judgement, the Rajasthan High Court has held that, non compliance of Section 82 of the Representation of the People Act, 1950, shall be a valid ground for dismissal of the Election Petition. But, in that case, the petitioner has not claimed himself to be declared as a elected nor alleged corrupt practice against other candidates, therefore, the Rajasthan High Court held that non impleading of the contesting candidates other than the returned candidate would not be fatal, when further declaration is not claimed.

14. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also the judgements relied upon by the learned counsel for the first respondent, it could be seen that, the election was conducted for ward No. 15, Dharmapuri Municipality on 17.10.2011. The first respondent who has filed the Election Original Petition in E.O.P. No. 8 of 2011 belong to DMK party and the revision petitioner who was the first respondent in the Election Original Petition belong to AIADMK party.

15. The prayer sought for in the Election Original Petition is to declare the election held on 17.10.2011 as null and void and to declare the election of the revision petitioner as Member of Ward No. 15, Dharmapuri Municipality, as null and void.

16. On a perusal of Section 51-A of the Act, it is clear that the first respondent herein should implead all the candidates who contested the election as respondents to the Election Original Petition. In the case on hand, the first respondent has only impleaded the revision petitioner as the first respondent in the Election Original Petition and the other respondents are the official respondents. Even under Rule 122 of the Rules, where the petitioner, in addition to claim a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, of the contesting candidates other than the petitioner and where no such further declaration is claimed, all the returned candidates and any

other candidate against whom allegations of any corrupt practice should be made as parties in the petition. In the case on hand, the first respondent sought for to declare the election held on 17.10.2011 as null and void. When that being the case, the first respondent should have impleaded all the contesting candidates as respondents. In the election held on 17.10.2011, 5 candidates including the revision petitioner and the first respondent secured the following votes:-

17. When there is a specific prayer made to declare the election held on 17.10.2011 as null and void, the first respondent should have implead the other contesting candidates as parties to the Election Original Petition.

18. As per Section 51A of the Act and Rule 122 of the Rules, non impleading of the other contesting candidates, is fatal to the case of the first respondent. The contention of the learned counsel for the first respondent that since, there is no allegation made against the other candidates, there is no necessity for the first respondent to implead them as respondents, in the Election Original Petition, cannot stand for the reason that the first respondent has filed the Election Original Petition to declare the election conducted on 17.10.2011 as null and void, therefore, should have made all the contesting candidates as parties.

19. The next point that arise for consideration is, with regard to the payment of security deposit of Rs.2,500/-. As per Rule 124 of the Rules, at the time of presentation of the Election Original Petition, the petitioner (first respondent herein) should deposit along with the election petition a sum of Rs.2,500/- as security deposit, in cash, for the cost of the election. As per Rule 124 (2), if the provisions of Rules 119 to 122 or sub Rule (1) of Rule 124 are not complied with, on that ground, the Election Court, shall dismiss the petition. In the present case, the Election Original Petition was presented before the learned Principal District Judge, Dharmapuri on 13.12.2011, whereas, the first respondent paid the amount of Rs.2,500/- only on 11.01.2012. Therefore, it is clear that on the date of presentation of the original petition, the first respondent has not paid the security deposit amount of Rs.2,500/- as contemplated under Rule 124 of the Rules. In the case of non payment of security deposit as per Rule 124(2) of the Rules, the Election Court should dismiss the petition which was not considered by the Election Court, in this case. Since, the first respondent failed to pay the security deposit amount of Rs.2,500/- at the time of filing of the Original Petition, the learned Principal District Judge should have dismissed the petition.

20. The last point that arise for consideration is, with regard to the non examination of Ramesh Kumar. The learned counsel for the first respondent submitted that since, the first respondent examined P.W.2 who is the Municipal Authority to prove that Ramesh Kumar had voted twice, the non examination of Ramesh Kumar, is not fatal to the case. According to the first respondent, the said Ramesh Kumar had cast his vote twice i.e., one by post ballot and the second by in person on 17.10.2011. In order to establish that the said Ramesh Kumar had voted twice, through post ballot as well as in person, Postal Ballot No. 000146 was marked as Ex.P.3. The learned Principal District Judge, found that

the Ramesh Kumar had cast his vote in favour of the revision petitioner. With regard to the casting of vote in person on 17.10.2011 it was not established by the first respondent that the said Ramesh Kumar had cast his vote in person, in favour of the revision petitioner. The said Ramesh Kumar is a Teacher by profession. The petitioner who was examined as R.W.1, in her evidence, had stated that she do not know the said Ramesh Kumar and that she is not a consenting party for the act done by the said Ramesh Kumar. The statement made by the revision petitioner was also not disputed by the first respondent that the revision petitioner knew about the mall practice done by the said Ramesh Kumar and that she is also the consenting party. However, the Election Court erroneously came to the conclusion, in the absence of any evidence to that effect that, the said Ramesh Kumar is a member of the revision petitioner party and he had cast his vote twice in favour of her.

21. The learned Senior Counsel appearing for the revision petitioner also submitted that even the signature of the said Ramesh Kumar was not proved by the first respondent at the time of trial. In order to establish the case of the first respondent, she should have taken summons to the said Ramesh Kumar and examined him as a witness on her side. Even in the absence of any evidence to prove that the signature of the said Ramesh Kumar, the Election Court has come to the conclusion that the said Ramesh Kumar had cast his vote twice in favour of the revision petitioner. The finding of the Election Court is without any basis.

22. In these circumstances, the fair and decreetal order passed by the learned Principal District Judge, Dharmapuri in E.O.P. No. 8 of 2011 dated 16.04.2015, is liable to be set aside and accordingly set aside. The Civil Revision Petition shall stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.