

(1999) 02 MAD CK 0078

In the Madras High Court

Case No : C.R.P. No. 159 of 1999 and C.M.P. No. 968 of 1999

R. Vijayalakshmi

APPELLANT

Vs

Krishnaveni Lakshmaiyya and Others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 227

Tamil Nadu Panchayats Act, 1994 — Section 259

Citation : AIR 1999 Mad 391

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S.D.N. Vimalanathan, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Petitioner in Election O. P. 161 of 1996 on the file of Principal District Judge, Changanpattu/Election Tribunal,

constituted under Tamil Nadu Panchayat Act, is the revision petitioner herein. This revision is filed challenging the order of Tribunal dismissing her

election petition.

2. Election to District Panchayat Ward member -- Ward No. 5 Thiruvelangadu constituency was held on 9-10-1996. It is women constituency.

Petitioner contested election and she was allotted the symbol of two leaves. First respondent was given cycle symbol. In that election, first

respondent was declared elected by a majority of more than 7000 votes.

3. In the election petition it is said that the election of first respondent is void for various reasons. It is said that first respondent registered her name

in two villages as voter against the provisions of Section 18 of Representation of Peoples Act, 1950, and against Tamil Nadu Panchayat Act and

Rules. First respondent's name has been mentioned in Part I Ward No. 3 in roll No. 237. Her name also appears in Ward No. 4, roll No. 41.

First respondent's name has been described as Krishnaveni whereas she gave her name as Krishnaveni Lakshmaiah, which is against the Election

Rules and Regulations. She did not take steps to correct her name before filing nomination. At the time of nomination, petitioner objected to it and

requested second respondent not to accept the nomination, but the same was without any success.

4. For these allegations, first respondent submitted that it is true that she filed nomination as Krishnaveni Lakshmaiah and there was no objection

when nomination was filed. It is said that the identity of person is not disputed. Mere irregularity should not be taken into consideration for setting

aside election. It is also said she has obtained more than 7000 votes than petitioner and even if irregularities are taken into consideration, it cannot

be said that election is materially affected. Regarding the procedure in placing symbol, place where petitioner was placed in the ballot paper are all

valid and these are all not initiating circumstances.

5. Tribunal marked Exs. A1 to A3 on the side of petitioner and B1 to B7 on the side of respondent. Petitioner got herself examined as P.W. 1 and

her agent was examined as P.W. 2. First respondent was also examined as R.W.1. Taking into consideration facts and circumstances of case and

appreciating evidence, Tribunal came to the conclusion that no case is made out for setting aside election.

6. The allegation that- first respondent had registered her name in two wards was found to be correct but Tribunal found that the same will not

vitiating election and even if she has exercised her vote in both the wards, those two votes will have to be discarded. Regarding name of first

respondent as Krishnaveni and Krishnaveni Lakshmaiah, Tribunal held that when petitioner herself admitted that it relates to the same person and

voters also understood the person to whom they are voting, mere description will not affect the result of election.

7. I heard petitioner's counsel at the time of admission.

8. I have read the election petition which is also part of typed set of papers. It is seen that even though various irregularities are mentioned,

petitioner has not pleaded that these irregularities materially affected the result

of election.

9. Section 259 of the Tamil Nadu Panchayat Act provide for grounds for declaring elections to be void. Relevant portion of the section read thus,

Subject to the provisions of Sub-section (2), if the District Judge is of opinion -- (a)(b)(c) --omitted.

(d) that the result of the election in so far as it concerns a returned candidate has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person

acting with the consent of such candidate or agent, or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder,

the Court shall declare the election of the returned candidate to be void.

10. In one of the earlier decision reported in (1969) 3 SCC 548 , in paragraph 6 of the Judgment, this question was considered. In that case, at

the last moment, election booth was changed and naturally many of the voters were not even aware of the change of voting place. This was taken

as ground for declaring the election result, as void. Commenting Section 100(i)(d) (iv) of Representation of Peoples Act, their Lordships held thus,

..... As regards the change of the polling booth, the High Court has found that the place of polling booth at Mudari Bujurg was changed to

the new school about half a furlong away from the old school. But there is no allegation made in the election petition that due to the change of place

of voting, the result of the election so far as it concerned the respondent had been materially affected. According to Section 100(i)(d)(iv) of the Act

if there had been any non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the appellant

must show that the result of the election in so far it concerns the returned candidate has been materially affected, if he wants the election of the

returned candidate to be declared void.

11. In 1995 Suppl 3 SCC 318, (Charan Dass v. Surinder Kumar), appellant before Honourable Supreme Court was election petitioner. The

election was sought to be set aside on the ground of misconduct by means of wrongful counting and recount be ordered in the interests of justice,

fair play and good conscience. Honourable High Court of Punjab & Haryana after taking evidence held that the allegations are vague. The

correctness of the same was being considered by Honorable Supreme Court. In paragraph 3 of the Judgment, their Lordships said thus,

Before proceeding further, a glaring omission in the petition may be noticed here, namely, that it has not been alleged that the result of the election

has been materially affected by all or any of the alleged irregularities during counting. Seen in this context, the averments with regard to polling

booth 43-A even if taken to be correct do not warrant setting aside of the election of the successful candidate.

12. Tribunal has minutely considered the evidence and also provisions of law and come to the conclusion that no case has been made out. By

exercising power under Article 227, this Court; only need to consider whether Tribunal acted with jurisdiction and whether opinion expressed by

Tribunal is possible on the available materials. Under Article 227 cannot exercise power as appellate Court. I need only consider the legality of the

order and to see whether it is within jurisdiction. There is no procedural infirmity committed by the Tribunal. There is no case of manifest injustice

put forward by petitioner.

13. In the result, I do not find any merit in the Civil Revision Petition and the same is dismissed. No costs. Consequently, C.M.P. No. 968 of 1999

is also dismissed.