

(1925) 02 MAD CK 0031
In the Madras High Court

S. Gopala Aiyangar and Another

APPELLANT

Vs

M.K. Mahomed Ibrahim Rowther and Others

RESPONDENT

Date of Decision : 11-02-1925

Acts Referred:

Citation : (1925) ILR (Mad) 509 : (1925) 49 MLJ 606

Judgement

1. In this case the candidate who obtained the greatest number of votes at the election was unseated on the ground that he was interested in a

Municipal contract and that therefore he was disqualified from sitting. The petitioner claimed the seat but he did not allege that the disqualification

under which the successful candidate was ultimately found to labour was known to all or any of the voters who cast their votes for him. The first

argument on behalf of the 2nd respondent was that Rule 12 of the rules for the decision of disputes as to the validity of an election means that if the

seat was claimed by the petitioner, the Judge must declare him duly elected and that the option of ordering a second election only applies to cases

where the petitioner did not claim the seat. That seems to us a quite untenable view and we do not think that the draftsman of these rules--and it is

a matter of common knowledge that both the District Municipalities Act (V of 1920) and the rules drawn under it were very largely based on

English precedents and English decisions--could have meant to overlook the fundamental principles which have governed English Electoral Courts

for many years. The principles appear to be these and we cannot put them better than they were put in the argument of Mr. Corrie Grant in Hobbs

v. Morey (1904) 1 KB 74 He says, "" The principle of election law is that when there has been an election the candidate who is declared to be

elected must be shown to have the majority of votes." This prima facie requirement of the law is subject to a modification. He goes on "If, however, a candidate is disqualified by status, as in the case of a woman or a felon, the votes given for that candidate will be held to have been thrown away and the opposing candidate, although in fact he has received a less number of votes, will be declared to be elected." That was the argument which was accepted by the learned Judges and on which Mr. Justice Kennedy's judgment is based. There are several authorities which we need not trouble to go into. The effect of those authorities is that, if a voter throws away a vote by ignoring something which he could have known and which would have told him that he was throwing away his vote because he was giving it for a person who could never succeed in the election, then his vote has to be taken as wiped out of the election and if there are enough of such votes to destroy the majority, the man who has the next highest number of votes can be declared duly elected; but, if the votes were given in ignorance of the disqualification under which the candidate of his choice was in fact labouring, then it would be inequitable to allow the votes to be thrown away for that reason and the only proper course is to order a fresh election. There is a passage in the judgment of Kennedy, J. which is relied upon to show that in this case it would be a suitable course to have a further inquiry to see whether the second respondent can bring himself within the words of the learned Judge. Those words are these. He sets out the principle that the disqualification should be apparent and says : "As here the disqualification was not apparent and the petition does not allege that the voters knew of the respondent's disqualification (the only notices being notices to the Mayor and to the opposing candidate), and the petitioner had only a minority of votes, I do not think he can successfully claim the seat.

2. We respectfully accept the view put forward by Kennedy, J. as accurate though we see the very inconvenient consequence that might arise if

such an inquiry as is outlined were ever ordered. But as there is here no allegation of knowledge of the disqualification on the part of the persons

who voted for the unseated candidate, we agree that the proper course is the one suggested by the learned Judge and there is no cause to

interfere. Both the petitions are dismissed.