

(1953) 05 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 92 of 1953

Selva alias G. Sarangapani Chettiar

APPELLANT

Vs

C.L. Aravamudha Iyengar and Another

RESPONDENT

Date of Decision : 01-05-1953

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu District Municipalities Act, 1920 — Section 12(7), 303(2)

Citation : AIR 1953 Mad 969 : (1953) 66 LW 703 : (1953) 2 MLJ 293

Hon'ble Judges : Venkatarama Ayyar, J

Bench : Single Bench

Advocate : M.K. Nmbiyar and B. Punyakoti Chetti, for the Appellant; K. Rajah Aiyar, K.S. Ramamurthi and A.S. Raman and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatarama Ayyar, J.—This is an application for the issue? of a writ of certiorari for quashing the decision of the Subordinate Judge of

Kumbakonam in O. P. No. 93 of 1952. On 16-9-1952 there was a general election of members to the Municipality of Kumbakonam and in that

election both the petitioner and respondent 1 were returned as Councillors. The term of the now Councillors was to commence on 1-11-1952. On

that date the office of both the Chairman and the Vice-Chairman of the Municipality was vacant and accordingly the Revenue Divisional Officer,

acting under the provisions of Section 12(7), District Municipalities Act, issued a notice, Ex. A convening a meeting of the Councillors for election

of Chairman at 4 p. m. on 12-11-1952. At the same time he issued another notice, Ex. A-2 convening a meeting of the Councillors at 6 p. m. on

the same date for the election of Vice-Chairman. The Councillors duly met on 12-11-1952 at 4 p. m. and elected a Chairman. At 6 p.m. all of

them again met and proceeded to elect a Vice-Chairman. This meeting was presided over by the Councillor who had been elected as Chairman at the meeting held at 4 p, m. There were two candidates for election to the office of Vice-Chairman, the petitioner and respondent 1. It must be mentioned that all the Municipal Councillors, 32 in number were present at this meeting, that the two candidates refrained from voting and that 4 other members did not record their votes. Out of the 26 who voted, 13 were in favour of the petitioner & 13 in favour of respondent 1. There being a tie, there was a drawing of lots & therein the petitioner was declared elected. Respondent 1 then filed O. P. No. 93 of 1952 for setting aside the election on the ground that the Revenue Divisional Officer had no authority to convene a meeting for the election of Vice-Chairman and that the election held at 6 p. m. on 12-11-1952 was accordingly void. On an examination of the relevant provisions, the Subordinate Judge came to the conclusion that the Revenue Divisional Officer was not authorised to convene a meeting for the election of Vice-Chairman and he accordingly set aside the election. A question having been raised as to whether respondent 1 was not estopped by his conduct from disputing the validity of the election, he held that the provision of law relating to the convening of the meeting was mandatory, that there could be no estoppel against a statute and that the respondent was entitled to a declaration that there was no meeting in the eye of law and that there was no election. In the result, he set aside the election of the present petitioner as Vice-Chairman and ordered a fresh election. The present application has been taken out for quashing this order.

2. The first question that arises for determination in this petition is whether the Revenue Divisional Officer had authority to convene a meeting for the election of Vice-Chairman. The statutory provisions bearing on the question are these : Section 12(7), District Municipalities Act runs as follows :

When the office of Chairman is vacant or the - chairman has been continuously absent from jurisdiction for more than fifteen days or is incapacitated and there is either a vacancy in the office of vice-chairman or the vice-chairman has been continuously absent from jurisdiction for more than fifteen days or is incapacitated the revenue divisional officer shall,

after giving notice of not less than seven clear days to the councillors,
convene a meeting for the election of a chairman if there is a vacancy in that office and until a new chairman or vice-chairman is elected and
assumes office or either the chairman or the vice-chairman returns to jurisdiction or recovers from his incapacity as the case may be, the Revenue
Divisional Officer shall, notwithstanding anything contained in this Act or in the rules or notifications thereunder, be ex-officio member and chairman
of the council.

Section 13(a) enacts that ""The chairman of the municipal council shall make arrangements for the election of the vice-chairman"". In exercise of the
powers conferred by Section 303(2)(b), the Government have framed rules for the conduct of election of chairman and vice-chairman. Rule I of
these Rules is as follows :

I. (i) The election of Chairman or vice-chairman shall be held in the municipal office by the councillors at a meeting specially convened for the
purpose.

(ii) Such meeting shall be convened as soon as possible after the occurrence of the vacancy ---

(a) in the case of the election of chairman --(i) by the Revenue Divisional Officer, in cases falling under Sub-section (7) of Section 12 of the Act;

and (ii) by the Vice-Chairman in other cases; and

(b) in the case of the election of vice-chairman, by the chairman. Notice of the day and hour of meeting shall be given at least seven clear days

previous to the day of meeting. (3) Such meeting shall be presided over--

(a) If held for the election of Chairman, (i) in cases falling under Sub-section (7) of Section 12 of the Act, by Revenue Divisional Officer, and

(ii) in other cases, by the Vice-chairman, or if the vice-chairman himself intends to stand as a candidate at the election, or in his absence, by a

councillor, not intending to stand as a candidate at the election, chosen by the meeting to preside for the occasion, and

(b) if held for the election of vice-chairman by the chairman or in his absence, by a councillor, not intending to stand as a candidate at the election

chosen by the meeting to preside for the occasion.

Section 304(c) provides ""that all the rules made u/s 303 shall be published in

the official gazette and upon such publication shall have effect as if enacted in this Act". These are the material provisions bearing on the question.

3. The contention of Mr. M.K. Nambiar on behalf of the petitioner is that on 1-11-1952 there was a vacancy in the office of both the chairman

and the Vice-chairman of the municipality, that Section 12(7) provides that in that event the Revenue Divisional Officer is to be the ex-officio

chairman and that accordingly the notice issued by that officer on 1-11-1952 was in accordance with Section 13(a) which provides that the

chairman shall make arrangements for the election of a vice-chairman. With reference to Rule I, he argued that Section 12(7) provides that the

Revenue Divisional Officer shall be the chairman, notwithstanding anything contained in the rules and that therefore Rule I cannot prevail as against

the positive provisions of Section 12(7).

4. The contention of Mr. K. Rajah Aiyar for the respondent is that the power that is conferred on the Revenue Divisional Officer u/s 12(7) is only

to convene a meeting for the election of a chairman; that where the election is of a vice-chairman, Section 12(7) has no operation; that under Rule

I, the meeting for the election of a chairman is to be convened by the Revenue Divisional Officer when there is a vacancy in the office of both the

chairman and vice-chairman u/s 12(7) and by the vice-chairman in other cases; and that the meeting for the election of a vice-chairman must be

convened only by the chairman.

5. It is argued by Mr. M.K. Nambiar that Section 12(7) is in two parts, that the first part has reference to the matters that are dealt with in the

earlier portions of the section i.e., the election of chairman and the vice-chairman and that the second part is general in its scope and under that

provision the Revenue Divisional Officer could exercise all the powers of a chairman including the power to convene a meeting for the election of a

vice-chairman. But if the second part is a general provision, it can have no application in respect of matters for which special provision has been

made. "Generalia specialibus non derogant." With reference to the right to convene a meeting of councillors for the purpose of election, the

governing provision is the first part and as that authorises the convening of a meeting only for the election of a chairman, it must be taken that no

power is conferred on the Revenue Divisional Officer to convene a meeting of

councillors for the election of a vice-chairman "Ex-pressio unius est exclusio altering". If the construction contended for by Mr. Nambiar is to be adopted, the words "election of chairman" will serve no purpose and will be without significance.

6. Rule I makes a clear distinction between chairman and the Revenue Divisional Officer acting as a statutory chairman u/s 12(7) and therefore

under Rule I(2)(b) the person competent to convene a meeting for the election, of a vice-chairman is not the Revenue Divisional Officer acting as

chairman u/s 12 (7), but the chairman. Mr. Nambiar does not seriously dispute that the chairman contemplated by R. I is different from the

Revenue Divisional Officer who is authorised to exercise the powers of a chairman. But he argues that as Section 12(7) enacts that the Revenue

Divisional Officer is to exercise the powers of a chairman notwithstanding anything contained in the rules, Rule I(2)(b) cannot abridge the rights

conferred on him by Section 12(7) and cannot affect his rights to convene a meeting for the election of a vice-chairman. That would have been so,

if Section 12(7) had conferred a right on the Revenue Divisional Officer to convene a meeting for the election of a vice-chairman. But in terms it

confers on the Revenue Divisional Officer a power to convene meeting only for the election of chairman and on its true construction it does not

confer any power on him to convene a meeting for the election of vice-chairman. Thus, there is no conflict between Section 12(7) and Rule I(2)(b).

In this view, it is unnecessary to refer to the authorities cited by Mr. Rajah Iyer that a statute and the rules made thereunder should be read

together as forming one enactment and that the section should be interpreted in the light of the rules and so as not to render it inoperative. I agree

with the Subordinate Judge that the Revenue Divisional Officer had no authority to convene a meeting for the election of a vice-chairman and that

the notice, Ex. A. 2 is in contravention of Rule I(2)(b) of the Rules.

7. The next question for determination is whether the result of the election has been, as required by Rule 10, materially affected by the fact that the

meeting was convened not by the Chairman but by the Revenue Divisional Officer. The outstanding facts to be borne in mind with reference to this

aspect of the matter are that at the meeting which was actually held on 12-11-52 it was the chairman who presided and not the Revenue Divisional

Officer, that all the Councillors were present and participated in the meeting and the election was held without any protest, respondent 1 himself

taking an active part, consenting to stand for election as vice-chairman and taking the chance of his being returned as the vice-chairman. It is

difficult on these facts, to see how the result of the election would have been materially affected.

8. Mr. K. Rajah Aiyar contends that while the question whether the result of the election had been materially affected was capable of proof when

the objection is that the nomination paper had been erroneously received or that votes had been irregularly recorded, when the charge is that the

meeting which was held on a particular day was illegal, it would be impossible, in the very nature of the objection, to prove that the results of the

election had been affected. In such a case, it is argued, it would be necessary to take into account the position which might conceivably exist at the

notional point of time when a meeting convened in accordance with the rules will proceed to hold an election. It was stated that in the present case

the election was being fought on party lines, that after 12-11-1952 three of the neutrals joined the party to which respondent 1 belonged and that if

election had been held at a later date, the result would have been in his favour. Reliance was placed on the statement of the law in Halsbury's

Laws of England, Vol. 12, page 304, Para 592; Parker on Election Agent page 129; and the decision in --"Woodward v. Sarsons", (1876) 10

CP 733 (A), as supporting the position that what the law has regard to is the possibility that the result of the election might be affected and not

proof that it was in fact so affected. On this last point, Mr. M. K. Nambiar points out that the law on the subject is different in India and relies on

the statement of the law in Doabia's Law of elections page 155. In "the Bulandshahr case" (Hammond's election cases, pages 219 at p. 321) it

was observed as follows :

We have now to form an opinion whether the result of the election was materially affected by this non-compliance with the rules. It was argued for

the petitioner that he had only to show that it is possible that the result might have been affected. We are unable to accept this position. Section 42

directs us to report that the election is void if in our opinion the result of the election was materially affected. It does not say that we are to declare

the election void because the result of the election might conceivably have been affected.

In the "Lahore City case" (Hammod's Election cases p. 469 at page 474) it was observed :

Herein lies the difference between the English Common Law, if it could be applied, as we have shown, it cannot -- and the Indian Statute law, which we must apply; the former only requires the creation of a presumption that the result may have been affected; the latter requires the creation of a presumption that it has been affected.

Vide also "Patna case" (Hammond's election cases page 535 at page 537 and Bengal Legislative Council case (Indian Election cases by Doabia page 368 at page 378).

9. On these authorities, it would be necessary for the respondent to establish that the result of the election had been materially affected by reason of the fact that the meeting was convened not by the chairman but by the Revenue Divisional Officer. Mr. Rajah Aiyar, practically concedes that what all it might be possible for him to show is that if the election had been held at a later date, he would have been returned and argues that that should be sufficient to set aside the election.

10. I am unable to agree that in deciding whether the result of the election has been affected) it is permissible to take into account what might happen if the election were to be held at a future date. No authority has been cited in support of that proposition. On the other hand, the language of Rule 10 is that an election shall be declared void on account of non-compliance with the provisions of the Act or the rules made thereunder if the result of the election has been materially affected thereby. The election referred to in this rule is the election which has been actually held and is under challenge; and it would be opposed to the language and to the spirit of the provision to hold that it could be set aside on a consideration of the possibilities of a hypothetical election to be held at a future date. In my opinion, the question whether the result of a particular election has been materially affected must be determined with reference to the facts and circumstances as they stood on the date of the election. In that view, there are absolutely no grounds for holding that the result of the election which was held on 12-11-1952 has been materially affected by reason of the

meeting having been convened by the Revenue Divisional Officer. The evidence which the petitioner gave on this point makes interesting reading.

He stated that at the time of the election the party to which he belonged had a strength of 17 in the council, in which case, excluding himself, he

should have got 16 votes, whereas he got only 13 votes. This makes it difficult to accept the theory that the party of the respondent acquired fresh

accession of strength after the date of the meeting and that therefore he would have succeeded if the election were held on a later date. On the

materials, the respondent has failed to prove that the result of the election has been materially affected by non-compliance with R. 1.

11. It was argued by Mr. Rajah Ayyar that even if the Subordinate Judge had taken an erroneous, view on the construction of Rule 10 and its

application, this Court should not interfere in proceedings by way of writ under Article 226 of the Constitution. It is no doubt well-settled that mere

errors are not grounds for interference. But in the present case the Subordinate Judge has nowhere discussed Rule 10 and its bearing on the

question. He has no doubt referred in passing to the question whether the result of the election has been materially affected but there is no

discussion of the evidence of the petitioner already referred to and a reading of the judgment as a whole shows that he was of the opinion that Rule

1 was mandatory and that its non-compliance rendered the election void without more. But it is well-settled that non-compliance with Election

Rules would be a ground for setting aside the election only if the result of the election had been materially affected thereby and this is so whether

the rules in question are directory or mandatory. The real point for decision, therefore, is not whether the rules are directory or mandatory but

whether non-compliance thereof has affected the result of the election. The Subordinate Judge deals with this matter only casually and that in my

judgment is an error which goes to the jurisdiction of the matter and calls for interference in these proceedings. In -- "Mahabaleswarappa v.

Ramachandra Row", AIR 1936 Mad 669 (B), an Election Commissioner had set aside an election on the ground of irregularities without

determining whether the result of the election had been materially affected, by reason of such irregularities. Venkatasubba Rao and Cornish JJ.

issued a writ of certiorari quashing that decision on the ground that the jurisdiction of the Election Commissioner to set aside the election depended

on his finding that the result of the election had been materially affected by the irregularities. The decisions in -- "Rex v. Commissioner of income

tax", (1905) 91 LT 94 (C) and -- "Rex v. Board of Education", (1910) 2 KB 165 (D), were followed. Vide also -- A.K.G. Ahamad Thambi

Maraicair Vs. V.S. Basava Maracayar, and -- A. Palaniyappa Chettiar Vs. K.N. Krishnaswami Chettiar and Others, wherein on the same

principle this Court interfered u/s 115, Civil p. C. I must accordingly hold that the election of the petitioner is not liable to be set aside.

12. In the result, the order of the Election Commissioner is quashed. The petitioner will get his costs throughout from respondent 1. Advocate's fee

Rs. 100.