

(1916) 12 MAD CK 0017
In the Madras High Court

Syed Hasan Raza Sahib Shamsul Ulama and Others	APPELLANT
Vs	
Mir Hasan Ali Sahib	RESPONDENT

Date of Decision : 05-12-1916

Acts Referred:

Citation : (1917) ILR (Mad) 741 : (1917) 5 LW 419 : (1917) 33 MLJ 348

Hon'ble Judges : Ayling, J

Bench : Division Bench

Judgement

Ayling, J.—The suit out of which this appeal arises was brought by plaintiff (1st respondent) to declare the validity of his election as a

member of the committee of the Abbas Ashoor Khana or Thousand Lights Charities in Madras. These charities are governed by a scheme framed

by this Court in O.S. No. 392 of 1878. The decree in that suit (Exhibit VII) provides inter alia for a managing committee of five members

(including the president), and three muttawallis working under them. Vacancies in the committee were to be filled by election by an electoral body

consisting of the remaining committee members and the three muttawallis. According to plaintiff, he was validly elected in accordance with the rules

contained in the decree at a meeting held on 7th June, 1914.

2. Defendants Nos. 1, 4 and 5 who are admittedly members of the electoral body above referred to, raised various objections to the validity of the

election, which were all rejected as baseless by the City Civil Judge, who gave plaintiff the declaration sued for. Hence this appeal.

3. Before us, the validity of the election was attacked on three grounds. Two of these may be briefly disposed of. It was argued:

(1) that the procedure was in contravention of Rule 6 of a series of rules framed

for them selves by the committee and muttawallis in 1888 (Exhibit IV) and

(2) that the election was Void for failure to give notice of meeting to one Moulvi Mahomed Madhi Sahib, who, according to appellants, was one of the muttawallis at the time.

4. As regards (1), a consideration of Exhibit IV leaves no doubt in my mind that Rule 6, which is relied on, was only intended to govern the

proceedings at meetings of the managing committee, and has no application to elections by the committee and muttawallis conjointly. I may add

that I find no evidence that this procedure was ever followed at elections. In my opinion, the objection based on this rule is without foundation.

5. As regards (2), Moulvi Mahomed Madhi Sahib was at the time of his appointment as muttawalli in 1906 a boy of eleven years of age; and I

agree with the learned City Civil Judge that his appointment is altogether void and that he did not possess the status of muttawalli at the time of

plaintiff's election.

6. The third objection is of a more serious character. Excluding Moulvi Mahomed Madhi Sahib, there were six surviving members of the electoral

body on 7th June, 1914: (1) President of committee (1st defendant), (2) Three members of committee (defendants Nos. 2, 3 and 4 and (3) Two

muttawallis (Defts No. 5 and 6). Of these only 3 persons (defendants 2, 3 and 6) were present at the meeting. The other three are found to have

had notice of the meeting but they failed to attend and they oppose plaintiff's election. It is argued that plaintiff's election, not being the act of a

majority of the electoral body, is invalid.

7. The decree in O.S. No. 392 of 1878 simply directs that the surviving or continuing members of the committee and the muttawallis for the time

being do elect a person from the Shia sect to the vacancy; that each elector should have one vote and the President a casting vote in case of

equality, and that the person to whom the greatest number of votes is given be deemed to be elected. There is no provision for a quorum at an

electoral meeting, nor for a minimum number of votes to be recorded for a candidate to render his election valid.

8. The electoral body in this case is certainly "" a select and definite body""; and it is hardly disputed that the general rule of English Law regarding

such bodies is that any act of such a body by way of resolution at a meeting is only valid, when a majority of the body are present - Vide

Halsbury's Laws of England, Volume 8, page 351.

9. Mr. Ramachandra Aiyar has however argued that this rule is not to be rigidly applied to Indian bodies; that circumstances may justify its being

disregarded; that the practice of each body is the real test; and that before declaring the election invalid on this ground there are questions of fact

which require to be gone into. He relies on *Anantanarayana Aiyar v. Kuttalam Pillai* ILR (1899) M. 481 : 9 M.L.J. 203 and *In re Tavistock Iron*

Works Company : *Lyster's case* (1867) L.R. 4 Eq. 233.

10. I can find no ground for holding that this rule, considered as one of general application, is less applicable in India than in England, or is one

which we should not follow. There is nothing

(sic)

under the scheme the committee has power only to make rules for the meetings of the managing committee. I am also satisfied that Exhibit IV does

not purport to frame rules for any business other than that to be transacted at the meetings of the managing committee.

17. On the question whether the election of the plaintiff by three members of the committee is valid, I felt considerable doubts during the course of

the argument. To a certain extent, the authorities to which our attention has been drawn have run counter to many a preconceived idea of mine on

the question of quorum. I was under the impression that unless a quorum was fixed for a body of business men, any members of that body who

happened to be present at a meeting could validly bind the others by their resolution, provided due notice of the meeting was given to all. I am now

satisfied that this impression is not well founded. Again it is apparent that the quorum for a managing committee cannot be fixed by that committee.

The quorum should be settled by the larger body which elected the managing committee, unless that body empowered the committee to fix its own

quorum. In *In re Tavistock Iron Works Company* (1867) L.R. 4 Eq. 233 this position was made clear. The argument of counsel and the

authorities quoted in that case show that unless empowered to fix a quorum the committee could not agree to substitute the decision of a fixed

number among them for that of the whole committee.

18. A distinction is drawn between a committee consisting of a definite number and a body composed of an indefinite number of persons. The

distinction seems to be this : In the first class of cases, the number of the select body is fixed. In the second class of cases, the number is subject to

variation every year or at stated periods. For example, the number of electors of a Temple Committee or of a member for a Municipality is liable

to fluctuation. Residence for a particular period, or the attaining of age of minors can bring in new electors. Whereas in the case of a Select

Committee, the number is fixed. The procedure to be adopted at the meetings of these two different bodies is stated in Halsbury's Laws of

England, Volume 8, pages 351 and 352. It seems well settled that an election by a definite body can only be held when the majority of that body is

present to exercise the franchise. Regina v. Gippo Bailiffs Burgesses etc, of (1790) 2 Ld. Raym. 1232 : 92 E. R. 313, and Sir Robert Salisbury

Cotton and Davies (1795) 1 Str. 53 : 93 E.R. 380. Willis, J., in Mayor, etc., of Merchants of the Staple of England v. Governor and Company of

Bank of England (1887) 21 Q.B.D. 160, states the law thus:

The acts of a corporation are those of the major part of the corporators, corporately assembled; Com. Dig. tit. Franchise, F. 11; and omitting the

words "corporately assembled", this is declared by 33, Hen. VIII, c. 27, to be the common law. This means that, in the absence of special custom,

the major part must be present at the meeting, and that of that major part there must be a majority in favour of the act or resolution. It was so

decided in Easter Term 1693 : Hascard v. Somany (1826) 1 Freem. 504 : 89 E.R. 380, quoted in Viner's Abridgment, tit, Corporations, G. 3, pl.

7 : and it was said by Lord Mansfield in Rex v. Monday (1777) 2 Cowp. 530 : 93 E.R. 1224, to be undoubted law. By "corporately assembled"

it is meant that the meeting shall be one held upon notice which gives every corporator the opportunity of being present: See Smyth v. Darley

(1849) 2 H.L.C. 789 : 9 E.R. 1293. The notice need not necessarily be special, but there must be such knowledge, or such means of knowledge,

as to give each corporator the opportunity of attending.

19. Lord Kenyon, C. J., expressed himself very emphatically on this question in The King v. Bellringer (1792) 4 T.R. 810 : 100 E.R. 1315. See

also Howbeach Coal Company v. Teague (1860) 4 H. & N. 151 : 157 E.R. 1136,

and In re London and Southern Counties Freehold Land

Company (1885) 31 Ch. D. 23.

20. The decisions to which Mr. Ramachandra Aiyar drew our attention do not conflict with this view of the law In In re Tavistock Iron Works

Company; Lyster's case (1885) 31 Ch. D. 23, it was held that the Managing Committee, under the power vested in it, impliedly fixed two

members as forming the quorum; nor does Anantanarayana Aiyar v. Kuttalam Pillai ILR (1899) M 481 support the respondent, It may be that the

Temple Committee should not be spoken of as the constituent members. The word "constituent member" can only apply to the units of an electoral

body which, elects the Temple Committee. However that may be the actual decision in that case does not support the position, taken up by the

respondent.

21. It was suggested that the usage of the institution was in favour of electing a member of the committee in the way it was done on the present

occasion. In the first place, the scheme is of so recent an origin that there has been no time for the development of custom in this behalf, In the 2nd

place it is doubtful whether a custom can be pleaded with reference to a decree of court. The proper course would have been to apply for its

variation. Lastly, I am satisfied that the evidence to which our attention was drawn does not establish the alleged custom. Exhibit III only relates to

circulation. It is the same with Exhibit III (a). Exhibit XV has no reference to election at all. The mixed process of passing a resolution at a meeting

and then having it circulated among the absent members seems to have been gone through this instance. These documents afford no proof of the

custom now set up.

22. For the above reasons, I agree in holding that the plaintiff was not validly elected.

23. One other argument may be shortly disposed of. It was said that the election was invalid as Moulvi Mahomed Mahdi Sahib was not given

notice of the date and place of election. He is the son of the fifth defendant and is alleged to have been elected in 1906 when he was admittedly,

only eleven years of age. It is true that on the date of the present election he was a major. It is also true that on some previous occasion he was

consulted as if he was legally holding the office of trustee. The argument before

us was that as this gentleman was entitled to a hereditary trusteeship in the mosque, he was validly elected even though he was a minor at the time of election; and that on attaining age he was entitled to take part in the management of the institution and in discharging the other functions. I am unable to read Exhibit VII in the sense suggested by Mr. Viswanatha Sastri. The scheme directs that the managers should be elected. From among the male descendants of the plaintiffs and defendants, and in default of "competent male descendants of the plaintiffs and defendants from amongst the other descendants of Majeed Ool Dowlah Bahadur deceased in the pleadings of the said suit No. 198 of 1868 mentioned and in default of any competent male descendants of the said Majeed Ool Dowlah Bahadur then from amongst the members of the Shiah sect of the Muhammadan community of Madras.

24. This provision does not create a hereditary right, but only gives a preferential claim for selection.

25. Further when the scheme speaks of competent men, I feel no doubt that competency as to age was contemplated. Moreover, the

Muhammadan Law on this question seems clear. Both according to Imameea (the authority binding on the Shiah) and the Hanefee "Puberty and understanding are essential in all cases to a valid appointment".

26. The authorities quoted for the appellants only relate to hereditary trusteeship. In such cases, the kazi " is empowered to appoint a substitute

during the minority of the de jure Muttawalli. (Ameer Ali, Volume I, pages 353 and 445, IV Edition). In Piran v. Abdool Karim ILR (1892) C. 203

it was held that a Sajjadanishinship should not be conferred on a minor. The observations in page 220 do not suggest as was contended before us

that in the case of a Muttawalli a minor can be appointed. Mr. Tyabji in his Principles of Muhammadan Law at page 411, points out the distinction

between devolution and appointment by selection and says that "puberty is a sine qua non" in all cases of appointment.

27. It is clear, therefore, that the fifth defendant's son was not validly appointed and that failure to give him notice of the meeting did not render the proceedings invalid.

28. The decree of the learned City Civil Judge must be set aside. I agree in the order as to costs made by my learned brother.