
(1934) 02 MAD CK 0033
In the Madras High Court

T.S. Sankaranarayana Pillai	Vs	APPELLANT
A.M. Ahmed Miran Sahib and Others		RESPONDENT

Date of Decision : 13-02-1934

Acts Referred:

Citation : AIR 1934 Mad 357 : (1934) ILR (Mad) 582 : 150 Ind. Cas. 911 :
(1934) 39 LW 534 : (1934) 66 MLJ 601

Hon'ble Judges : Bardswell, J

Bench : Division Bench

Judgement

Bardswell, J.—These are two applications made by the same party for the issue of a writ of certiorari for quashing proceedings of the

Election Commissioner of Tenkasi. C.M.P. No. 5275 of 1933 relates to O.P. No. 41 of 1933 on the file of that officer and C.M.P. No. 5276 of

1933 relates to O.P. No. 40 of 1933 on his file.

2. On 21st March 1933 the President of the Tenkasi Panchayat Board resigned. The Vice-President in accordance with the rules took steps for a

meeting to be held to elect a new President and sent out notices on that behalf on the 23rd. But the President of the Taluk Board, being under the

impression that the Vice-President had taken no steps, proceeded to take action such as can be taken in such an event u/s 42, Madras Local

Boards Act, and wrote on the 24th to the Vice-President of the Panchayat Board asking him to convene a meeting on 30th March 1938 for the

election of a President. An inadequate time was allowed to the Vice-President for replying to this letter and as no reply was received within the

time allowed, the Taluk Board President, acting u/s 42, appointed a member of the Panchayat Board to convene a meeting for the election of a

President on the 30th March. The Vice-President of the Panchayat Board meanwhile went on with his arrangements for holding an election

meeting on the 31st March. On the 30th March an election took place and at this the petitioner to these petitions was unanimously elected. Though

respondent 1 here, who was petitioner in the two O. Petitions protested against the legality of the meeting, his protest was overruled and so he left

it along with some others. On the following day, 31st March 1933, there was another election, this being the one for which the Vice-President had

arranged, and at this again the Petitioner to these two petitions was elected unanimously.

3. The Election Commissioner has set aside both the elections and has ordered a fresh election to be held. I shall deal first with C.M.P. No. 5275

which is concerned with O.P. No. 41 of 1933, the petition which though later in number is concerned with the earlier of the two elections. The

Election Commissioner has held that the first election was void, in that the Taluk Board President had no jurisdiction to act u/s 42, and, further, had

acted with material irregularity and illegality in not giving the Vice-President sufficient time to comply with his order and had acted with undue haste

by not waiting for the receipt of a reply from the Vice-President before taking action u/s 42. That this finding is correct is not now disputed. What

is in question is, what are the consequences that should follow therefrom? There is one point taken for the petitioner which I cannot follow, It is

contended that as the election on 30th March was held to be void ab initio it was not an election held under the Act and therefore the Election

Commissioner could not deal with it. But an election to be void has to be declared to be so and it can only be so declared by an Election

Commissioner in proper proceedings, and so the logical result of this contention could only be a topsy turvy situation such as is known as

Gilbertian. The argument does not require serious consideration.

4. The two principal points for consideration are whether by taking an erroneous view of the legal position arising from the facts stated in the

original petition the Election Commissioner gave himself a jurisdiction which he properly had not got and secondly whether, even allowing that he

had jurisdiction, he acted in the exercise of that jurisdiction with material irregularity. Now under Rule 10(c) of the Rules framed for dealing with

disputes as to the validity of elections, in order that the Election Commissioner could interfere with the result of the election that has been held in

non-compliance with the Act or the rules framed thereunder, he had to be of the opinion that the result of the election has been materially affected

by such non-compliance. The Election Commissioner seems to have been a little uncertain as to what he should hold upon this matter. At the

conclusion of para. 18 of his judgment, which is the penultimate paragraph he says:

I think the election of the respondent would have to be set aside as having been made by a body of irresponsible persons.

5. This he evidently says with reference to the decision of Srinivasa Iyengar, J., in (Divi) Dwarkacharyulu Vs. Kothapalli Srikrishnan, . That

decision was clearly based on the fact that the members of the Union Board had not taken the oath of allegiance and the irresponsibility was plainly

due to no oath having been taken and not to any illegality in the way in which the meeting had been called. That ruling there, fore has no bearing

upon the present case. He also refers to In the matter of G.A. Natesan AIR 1918 Mad. 763 in which it is stated at p. 149 (of 40 Mad.), that

if a particular act must by statute be done at a particular kind of meeting, convened in a particular way, no meeting can do that act which is not a

meeting of that particular kind or has not been convened in that particular way.

6. This case hardly applies here, as the meeting held on March 30th would have been in order had the circumstances justified action u/s 42. The

case, further, has nothing to do with certiorari and does not override the provisions of Rule 10(c). Earlier in para. 18 the Election Commissioner

has taken the view that the result of the election was materially affected, but he has come to the conclusion apparently with some difficulty. At one

stage he says:

No doubt it is quite right to say that petitioner 1's chances had not been materially affected since he had never cared to compete as a candidate

and the question will arise only when he had competed but had failed on account of the illegal proceedings arising from the non-compliance of the

provisions of the Act.

7. He however goes on to say:

But in this case, when the non-compliance of (sic) the provisions of the Act goes

to the root of the matter and affects the holding of the election

itself, I do not think I can blame petitioner 1 for not competing in the election which was sure to be declared to be void. I think he had wisely

refrained from standing for the election and had been induced to do so by the very patent irregularity of the proceedings of 30th March 1933.

Hence I find that the election itself has been affected and it must naturally be held that the result of the election has also been materially affected.

8. The view thus expressed has now to be considered with reference to what is set out in the petition O.P. No. 41 of 1933. It has been held in

C.R. Venkatarama Ayyar Vs. B.S. Krishnaswami Chettiar and Others, , that a writ of certiorari may be issued when a Court, or similar authority,

gives to itself a jurisdiction which it properly has not got, by taking an erroneous view of the law. It has also been held In Mahomed Asan v. Bijli

Sahib AIR 1934 Mad. 269, that the Court is only entitled to interfere if there was want of jurisdiction at the commencement of the proceedings.

Once there is jurisdiction, any errors committed subsequently cannot take away the jurisdiction once obtained. The question which now arises

therefore is, did the election petition disclose an election offence which the Election Commissioner could take cognizance of?

9. I was a party to both these decisions and I would qualify what is quoted in the latter of them by saying that if in an inquiry for which there is

jurisdiction an error is made which can be regarded as something which went beyond the jurisdiction of the Court or was done without jurisdiction

and is not merely a wrong view of the law, then it appears that a writ can be granted. To this particular point I shall come a little later. I shall first

refer to what is set out in the petition O.P. No. 41 of 1933. It is stated there in para. 7 that petitioner 1, i.e.,

the present respondent 1, wanted to contest for the President's post.

10. And again it is recited in para. 12, that:

Petitioner 1 wanted to contest the election to the vacant office on 30th March 1933 and knowing that the election even if held on that day would

be declared invalid, refrained from standing as a candidate that day.

11. I cannot see how, what is thus set out shows that respondent 1 was really prevented, by the fact that the meeting was irregularly called, from

standing as a candidate. The assertion that he knew that the election would be

declared invalid is not to my mind sound since, as has been held in the decision on the other petition, the result of the election on that day would have prevailed as in fact it did prevail, unless and until it was set aside by the Election Commissioner. And, so, if respondent 1 had chosen to stand for the election--it is not suggested that anyone else wanted to stand except himself and the present petitioner--then, however irregular may have been the way in which the meeting had been called, it could not be said that the result of the election had been materially affected because of the irregularity. There is no contention that there was anything wrong with the meeting apart from the fact of its having been irregularly called.

12. When such is the case I do not think that the petition disclosed any ground on the strength of which, if it was made good, the election could be set aside. There is, indeed, no specific allegation that the result of the election was materially affected, but I take it that it might reasonably be held that there has been such an effect if an intending candidate has been prevented from standing, even though it would be impossible to say how the voting might have gone. Respondent 1 however does not allege that he was prevented from standing by anything but his own discretion. I must therefore take it that the Election Commissioner when he entertained the petition has given to himself a jurisdiction which he properly had not got by taking an erroneous view of the legal effect of what was set out therein.

13. Next as to what happened in the course of the inquiry : The allegation that respondent 1 wished to stand as a candidate was disputed by the present petitioner in his counter-statement and therefore had to be proved, but there is no proof of it, whatever. In fact respondent 1 did not give any evidence. Ex. C is a copy of the proceedings of the meeting held on 30th March 1933 from which it appears that petitioner 1 in the lower Court raised a point of order as to the legality of the meeting and moved that it should be dissolved, that his objection was overruled and the present petitioner was elected president as the only candidate nominated, petitioner 1 and others having left the meeting in protest.

14. The resolution however does not show that respondent 1 had any intention of standing as a candidate. It is clear to me on the authorities that this decision on a matter of fact in proof of which there was no evidence was beyond the scope of the Election Commissioner's jurisdiction. The

learned advocate for respondent 1 refers me to the Privy Council case in *Rex v. Nat Bell Liquors, Ltd.* (1922) 2 A.C. 128 but the case, is no

authority for the position that there can be a valid finding of fact in the absence of any record evidence of any kind in support of it. All that it

decides is that when there is a finding given upon evidence, even if that evidence is insufficient, a writ of certiorari will not be granted. There was

some evidence in that case and, as shown in one passage of the judgment (p. 165), when there is evidence;

it is not competent to the Superior Court...to consider...whether or not some evidence was forthcoming before the Magistrate of every fact which

had to be sworn to in order to render a conviction a right exercise of his jurisdiction.

15. That is the point which the judgment brings out as to the matter of evidence. As has been stated in *Rex v. Smith* (1800) 2 A.C. 128, which is

quoted in this Privy Council decision, and is referred to in Halsbury's Laws of England, (Hailsam's Edition] Vol. 9, p. 889 as correctly stating

the law on this subject:

If indeed there had been any evidence whatever however slight to establish this point, and the Magistrate who convicted the defendant had drawn

his conclusion from that evidence, we would not have examined the propriety of his conclusion; for the Magistrate is the sole judge of the weight of

the evidence.... There was some evidence from which he might draw the conclusion,

and again at p. 146 of the Privy Council judgment it is stated:

But the general view has been that, if there is some evidence, there is jurisdiction to hear and determine, and thereafter the superior Court will not

interfere.

16. In this case, as I have said, there is no evidence whatever as to any intention on the part of respondent 1 to stand as a candidate. As already

stated, I do not see how the fact that the meeting was irregularly held could prevent him from standing as such. In these circumstances I must hold

that the Election Commissioner in coming to the conclusion, that the result of the election was affected by the refraining of respondent 1 from

standing as a candidate, is one at which he had no jurisdiction to arrive in that he has come to it without reference to any evidence of any kind. I

cannot see how he can draw the inference, as it is suggested that he might, that respondent 1 intended to stand as a candidate from the fact that he was present at the meeting or a part of it, but did not stand, and afterwards put in a petition stating that he had intended to stand. Nor can I agree that the election was sure to be declared void. Had respondent 1 chosen to stand, as the only other person who wished to do so, then in the absence of any other irregularity, Rule 10(c) could have had no application and the election would have held good.

17. In the result then, I find that this is a case in which a writ should be issued quashing the proceedings of the Election Commissioner. The petition, C.M.P. No. 5275 of 1933, is therefore allowed and the election of 30th March 1933 will stand confirmed. The petitioner is allowed his costs on this petition.

18. C.M.P. No. 5276 of 1933 as to O.P. No. 40 of 1933 may be quickly disposed of. I agree with the Election Commissioner that the election of 31st March cannot stand. By Section 17, Local Boards Act, there can be an election only when there is a vacancy and in this case there was no vacancy. The President who had been elected on the previous day, at a meeting however irregularly called, was actually functioning and he could only be removed as the result of proper proceedings taken before the Election Commissioner. It is only after the election is declared void in accordance with Rule 12 of the Election Dispute Rules, that a seat or a post is regarded as vacant. The matter of there being no vacancy, in consequence of which there could be no election, is a fundamental one and it is not necessary to consider any other point with reference to this petition which is therefore dismissed except in so far as it objects to the order for a fresh election. That part of the Election Commissioner's order which directs that there should be a fresh election is set aside. No costs on this petition either in this Court or that of the Commissioner. Fee in C.M.P. No. 5275. Rs. 150.