

(1928) 08 MAD CK 0010
In the Madras High Court

Y. Desi Chettiar

APPELLANT

Vs

J.K. Chinnasami Chettiar, President, Union Board

RESPONDENT

Date of Decision : 14-08-1928

Acts Referred:

Madras Local Boards Act, 1884 — Section 54

Citation : AIR 1928 Mad 1271 : 113 Ind. Cas. 874 : (1928) 28 LW 642 : (1929) 56 MLJ 162

Judgement

1. The petitioner applies for a writ of certiorari to stay an election of members for the Union Panchayat, Kaveripatnam, which was fixed by the

President to take place on 31st May, 1928. On the petition he obtained a temporary order of stay and the petition has now been argued before us

on the merits.

2. The allegations on which the application is based are shortly that on 2nd May, 1928, the President issued a notice for the election to be held and

fixed 14th May, 1928 for nominations. The petitioner and some others were nominated. On 14th May, 1928 a new final electoral roll was

published which omitted the petitioner's name apparently on the ground that he had not paid his taxes. The day fixed for the scrutiny of

nominations was 17th May, 1928. On that day the President scrutinised the nominations on the footing of the new electoral roll and rejected the

petitioner's nomination as he was not on the roll. Petitioner maintains that the publication of the new electoral roll was not done in accordance with

the rules, that it was a mere unscrupulous plot to get rid of his nomination and that in any case the election must be held on the old roll, and claims

therefore a writ of certiorari to prevent the election being held on the new roll. The President denies that he received any nomination of the

petitioner or that he rejected it.

3. We think for several reasons that the application should not be granted. Assuming, without admitting, that the facts are as the petitioner alleges,

the essence of the petitioner's grievance is that the President decided the validity of the nominations by reference to the new electoral roll instead of

the old one. Petitioner maintains that even if the new roll was prepared and published while the scrutiny of the nomination list was pending, that

scrutiny ought to have been conducted under the old roll and not under the new one. We cannot see how this matter is in any sense of a judicial

nature. It is argued that because the rejection of the nomination was a judicial act--see C. Sarvothama Rao Vs. The Chairman, Municipal Council,

-the preparation of the roll which led to the rejection must also be a judicial act. This argument we do not follow. The roll had to be prepared

whether or not there was an election pending, and the two matters--the preparation of the electoral roll and the rejection of nominations--are

entirely separate functions. The preparation of a new electoral roll is in no sense a judicial act. It was purely a ministerial act, the creature of a

statute which does not declare any power in this Court to issue a writ of certiorari if the rules are not obeyed. Ordinary Civil Courts are given no

control over the preparation of such roll, and, under the rules, the roll once published is final. Under the rules also a new roll comes into force on

the date of its publication. The present roll therefore came into force on 14th Ma)", 1928 and as the scrutiny was not till 17th May, 1928, the

President was acting in accordance with the rules in checking the nominations by the new roll. To hold otherwise would mean that a body of

persons might be elected to serve for a term for which they were not on the electoral roll at all, and we are clear that Section 54 of the Local

Boards Act is wholly opposed to such a view. So that even if we were to hold that the President was acting as a judge in rejecting the nomination,

his act was in accordance with the rules and there is no fault to find with it. If, as we hold, he was not, he was not going outside his jurisdiction in

interpreting the rules, whether wrongly or rightly, and there would be no ground for the issue of a writ.

4. If the argument be that the new roll is invalid because it was not compiled according to the rules, the answer again is that the compilation of such

a roll is merely a ministerial act and not a judicial one, and that there is no statutory authority giving this Court power to issue a writ in matters of ministerial function.

5. The petitioner is not without his remedy. His remedy lies in an election petition which we understand he has already put in. It is argued for him

that that remedy which merely allows him to have set aside an election once held is not as efficacious as the one which would enable him to stop

the election altogether; and certain observations at page 600 of C. Sarvothama Rao Vs. The Chairman, Municipal Council, are quoted. In the first

place, we do not see how the mere fact that the petitioner cannot get the election stopped and has his remedy only after it is over by an election

petition will in itself confer on him any right to obtain a writ. In the second place, these observations were directed to the consideration of the

propriety of an injunction in a civil suit, a matter with which we are not here concerned. And finally it may be observed that these remarks were

made some years ago when the practice of individuals coming forward to stop elections in order that their own individual interests may be

safeguarded was not so common. It is clear that there is another side of the question to be considered, namely, the inconvenience to the public

administration of having elections and the business of Local Boards held up while individuals prosecute their individual grievances. We understand

the election for the elective seats in this Union has been held up since 31st May, because of this petition, the result being that the electors have been

unable since then to have any representation on the Board, and the Board is functioning, if indeed it is functioning, with a mere nominated fraction

of its total strength; and this state of affairs the petitioner proposes to have continued until his own personal grievance is satisfied.

6. For reasons given we hold that the petitioner is not entitled in law to a writ. The helpless position in which the petitioner complains that he now

finds himself goes no way towards supplying the lack of legal sanction. We, therefore, see no reason to interfere and dismiss the petition with costs.