

B.S. Moorthy Vs. Eli Vadapalli and ors.

LegalCrystal Citation : legalcrystal.com/799883

Court : Chennai

Decided On : Feb-17-1937

Reported in : AIR1937Mad660; 173Ind.Cas.169

Appellant : B.S. Moorthy

Respondent : Eli Vadapalli and ors.

Judgement :

Mockett, J.

1. This is a petition for the issue of a writ of certiorari praying that the order of the District Magistrate of East Godavari dated 23rd December 1936 declaring the petitioner's primary election void and the order of the Revenue Divisional Officer of Cocanada dated 31st December 1936 should be quashed. The determination of this matter turns very largely on the construction of the rules framed by the Governor of Madras in Council and it raises a point of some importance relating to the powers of the High Court. Para. 20, Schedule 5, Government of India Act, 1935, reads as follows:

In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council, the Governor, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this schedule and the provisions of Schedule 6 and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to: (1) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies; (2) the nomination of candidates; (3) the conduct of elections ...; (4) the expenses of candidates at elections; (5) corrupt practices and other offences at or in connection with elections; (6) the decision of doubts and disputes arising out of or in connection with elections; and (7) the manner in which the rules are to be carried into effect.

2. His Majesty in Council has passed an Order entitled 'The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936.' Rule 2, Part 3 of that order is as follows:

No election shall be called in question except by an election petition presented in accordance with the provisions of this part of this Order.

3. And by Rule 3(1), an election petition against any returned candidate may be presented to the Governor (a) by any candidate or elector on any ground; and by Rule 4(1) unless the Governor, exercising his individual judgment, dismisses a petition for non-compliance with the prescribed requirements, he shall, exercising his individual

judgment, appoint as Commissioners for the trial of the petition three persons who are, or have been, or are eligible to be appointed, Judges of a High Court, and shall appoint one of them to be the President. Under Rule 7 the election of a returned candidate shall be void if in the opinion the Commissioners (c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination.... Rule 3(2), Part 1, Introductory of the above Order, is important. It states:

The provisions of Parts. 2 and 8 of this Order shall, in relation to constituencies in which seats are reserved for candidates of any particular class, or in which the final voting is by members of an electoral college previously constituted for that purpose, have effect with such exceptions and subject to such adaptations and modifications as may be prescribed, but subject as aforesaid, any primary election for the purpose of electing candidates for reserved seats, or of constituting any such electoral college, shall be deemed to be part of the election of persons to fill the seats to be filled in the constituency.

4. The Governor of Madras in Council, exercising the powers conferred by Para. 20, Schedule 5 to the Government of India Act, above mentioned, has formulated rules for the conduct of elections for the constituencies of the Madras Legislative Assembly called; 'The Madras Legislative Assembly Electoral (Elections and Election Petitions) Rules, 1936.' Two sets of rules are provided. Rules 12 to 31 deal with primary elections. Rule 32, et seq deal with elections other than primary elections. In certain constituencies a seat is reserved for the scheduled castes. The primary elections deal with the election of candidates for the reserved seat. The scheme of the rules is that in the first place a panel of candidates should be prepared and in order to be elected to the Legislative Assembly a person must first be elected to the panel, i. e., he must first be nominated as a candidate for the panel; secondly, elected to the panel and thirdly, in order to reach the Assembly, elected from the panel to the Assembly. It is enough to say that the rules are elaborate and provide for the manner and time of the nomination by the electors of candidates for the primary election to the panel. The proposers and seconders for the nominations must be qualified voters in the constituency (Rule 13). The nomination paper delivered by or on behalf of a candidate for a seat in a constituency in which he is not entitled to vote shall be accompanied by a 'certified copy' [as defined in Rule 2(3)] of the entry containing his name in the electoral roll for the constituency in which he is entitled to vote: Rule 14(2).

5. Any nomination paper which is not resolved before 3 o'clock in the afternoon on the date appointed by the Governor for the nomination of candidates shall be rejected (Rule 17). On or before the date appointed for the nomination of candidates, each candidate shall deposit or cause to be deposited with the returning officer the sum of Rs. 50 in cash; and no candidate shall be deemed to be duly nominated unless such deposit has been made (Rule 22). Rules 28 and 29 are important. They provide for election to the panel. Rule 29(1): If the number of candidates ... exceeds four, a poll shall be taken. Rule 29(2): If the number of such candidates is four, all such candidates shall be declared to be elected to the panel. Rule 29(3): If the number of such candidates is less than four, all such candidates shall be declared to be elected to the panel. And then there is a proviso with which we are much concerned:

Provided that if the number of candidates nominated is one, such candidate shall at once be declared to be duly elected to fill the reserved seat in the constituency.

6. It must be remembered that, as pointed out, a tribunal set up by the Governor in Council has to decide the validity of elections to the Assembly. But Rule 103 makes special provision for the decisions of doubts and disputes as to the validity of primary elections but (and this cannot be over emphasized) as regards the election of candidates to the panel, the Governor in Council appears to have taken the view that that matter can be decided adequately and conveniently by the local officer and in a summary form, for it provides that an election petition against any candidate elected at a primary election, which we understand to mean elected to the panel, shall be presented in the City of Madras to the Collector and elsewhere in the Presidency to the District Magistrate. Those officers or even an officer deputed by them

shall after due notice to the respondents hold a summary inquiry at such time and place as he may fix, record evidence in the manner provided for summary trials in the Code of Criminal Procedure, 1898, and pass orders on the petition as quickly as possible on the lines of Paras. 7 to 10, of Part. 3 of the said order.

7. There is a striking contrast in the two procedures: the summary determination of matters relating to election to the panel compared to the formal procedure associated with election petitions. A single example will suffice. Under Para. 5 of the Order of His Majesty in Council dated 3rd July 1936 the Election Commissioners may order the Advocate-General of Madras to attend the hearing.

8. The above are the relevant provisions of law at this stage. The facts are as follows. In the Cocanada Rural General Constituency with which we are concerned, a seat is reserved for the schedule castes. The petitioner was a candidate for the panel and so was Mr. Eli Vadapalli, the first respondent in this petition. Nominal nomination papers were filed by five persons, the petitioner, Mr. Eli Vadapalli, and three others. The nomination papers of all the candidates except that of the petitioner were rejected. Consequently under the Proviso to Rule 29 the petitioner was at once declared elected to the reserved seat in the Legislative Assembly. He was not, it must be noted, elected to the panel because that was, according to the spirit of the rules unnecessary, there being only one candidate for one seat. He was, as stated above, declared elected to the Legislative Assembly. No question arises with regard to the nominations of the three other candidates but it is well to mention the grounds on which the nomination of respondent 1 was rejected. The grounds are two fold: (1) that his nomination paper was received after 3 o'clock and (2) that in any case there was a non-compliance with Rule 14(2) mentioned above in that his nomination paper, even if in time, was not accompanied by a certified copy of the entry containing his name in the electoral roll for the constituency in which he was entitled to vote, he not being a voter in this constituency. With regard to the merits of these contentions I am of course not concerned, especially in view of the considerations on which I arrive at my decision, but it will be later necessary to say a few words in view of the contention by respondent 1 that in any view of the case the merits are such that this Court should not interfere. We are more concerned with the course of events in the two lower tribunals. The Returning Officer decided against respondent 1 on both the points above mentioned and declared the petitioner elected to the Madras Legislative Assembly. On this respondent 1 filed a petition to the District Magistrate purporting to do so under Rule 103(b). The form of the prayer to this petition deserves notice. It is as follows:

The petitioner therefore prays that this Honourable Court may be pleased to declare that the election of the respondent is void and set it aside and order the respondent

to pay the costs of this petition to the petitioner.

9. It must be observed that it is directed and only directed to obtaining a declaration that the election of the respondent (present petitioner) to the Legislative Assembly is void. It does not even refer to the panel. Objection to the jurisdiction of the District Magistrate was at once taken by the petitioner. He argued what he has argued before us, viz., that the District Magistrate had no jurisdiction in the matter in that Rule 103 related to the elections to the panel and that he had been finally elected to the Madras Legislative Assembly. This objection was overruled by the District Magistrate who after considering the lower tribunal's order passed the following order:

'The Revenue Divisional Officer was not therefore justified in refusing the second nomination paper filed on behalf of the petitioner. Under the circumstances I hold that the result of the primary election has been materially affected by the improper refusal of this nomination paper filed in time on behalf of the petitioner. Under Rule 103(b) of the Rules, the election of the respondent at the primary election for the reserved seat of the Cocanada Rural Constituency held in pursuance of the Notification dated 21st November 1936 is declared void.

10. In pursuance of that order the Returning Officer passed the following order dated 31st December 1936:

In modification of the Notification published in this office on 11th December 1936, I do hereby declare that (1) M.R. Ry. Eli Vadapalli Garu and (2) M.R. Ry. B.S. Murthy Garu have been duly elected to the panel for contesting the scheduled classes reserved seat in the Rural General Constituency, Cocanada.

11. The petitioner argues that these orders are bad for lack of jurisdiction and that he having been duly elected to the Legislative Assembly, his election can only be declared void by the Governor in Council or a tribunal set up by him. The argument before us by the Government Pleader amounts virtually to this: Although it is conceded that elections to the Legislative Assembly can only be declared void by an order of the Governor in Council or a tribunal and although the District Magistrate is only given jurisdiction to decide questions relating to elections to the panel, yet, in the case of a member of the scheduled caste elected to the Assembly under the proviso to Rule 29, it must be inferred that the Legislature intended that in that case and in that case only even the election to the Legislative Assembly could be set aside by the order of the District Magistrate. In other words, that under Rule 103(a) an election petition against any candidate elected at a primary election should be understood to mean either to the panel or under the Proviso to Rule 29 to the Legislative Assembly. I should have thought that, if it was intended to take away such a valuable right of election to the Assembly by means of summary procedure prescribed in Rule 103, it would have been expressed in the clearest possible terms and I am most reluctant to draw any inference in favour of such a conclusion unless such inferences are inevitable from the wording of the rules.

12. That the position now before us has escaped the notice of the draftsman of these rules is evident but the rules have got to be construed as they stand. The language of Rules 12 to 32 makes it quite clear that one position and one position alone is contemplated--the nomination and election of candidates to the panel in order to enable them to stand for final election to the Assembly. Those rules are headed 'Primary Elections' and they deal with candidates for election to the panel and not to

the Assembly. That is a later stage. Rule 29 adumbrates the words 'elected to the panel.' Rule 103 is at the outset qualified by the words that it relates to primary elections held 'for the purpose of electing candidates for a seat' and the orders contemplated by Rule 103(c) clearly relate to orders passed in relation to such candidate. But at the time of the hearing before the District Magistrate the seat had been filled by the election of the petitioner. The order above mentioned dated 31st December of the Returning Officer merely declares that respondent 1 and the petitioner had been duly elected to the panel but the order of the District Magistrate admittedly declares the election of the petitioner to the Assembly void. The short question therefore is, has the District Magistrate power to declare the election to the Assembly void, and I am unhesitatingly of the opinion that he has not. I am not even satisfied that the Legislature intended that he should have such powers. There is nothing remarkable to my mind that when once a person has attained the status of a member of the Legislative Assembly, he should only be deprived of it by means of a formal election petition and I see no reason to suppose that that procedure which is so carefully elaborated in the rules should not have application to a member of the scheduled caste elected in this manner as much as to any one else. At any rate in the absence of any clear provision to the contrary I am far from disposed, to infer the opposite.

13. As a result of the above conclusions I hold that the petitioner's election to the Legislative Assembly has been declared to be void by a tribunal which had no jurisdiction to do so and that he is, having been deprived without jurisdiction of a right and one may add a valuable right--prima facie entitled to the issue of a writ of certiorari quashing that order. But the Crown has raised the point that this Court is not entitled to interfere by means of certiorari and relies in support of that proposition on Rule 7 of the Rules for the conduct of elections for the constituencies of the Madras Legislative Council. It reads as follows:

Every act done, proceedings taken or decision given under or with reference to the rules shall, subject to the provisions thereof and those of the Government of India (Provincial Elections, Corrupt Practices and Election Petitions) Order 1936 be final and no such act, proceeding or decision shall be called in question by means of a suit or otherwise in a Court of law.

14. Now that Rule purports to be made in accordance with the powers given to the Governor by para. 20, Schedule 5, Government of India Act, 1935. A perusal of para. 20 shows that the rules which the Governor

may make are specified as being for carrying into effect the foregoing provisions of this schedule and the provisions of Schedule 6 and securing the due constitution of the Provincial Legislature and in particular but without prejudice to the generality of the foregoing words with respect to (vi) the decision of doubts and disputes arising out of or in connexion with elections.

15. It is quite obvious from a perusal of the rules that the machinery set up for the purpose of the elections is intended to be final. No appeal lies from the decisions of the District Magistrate with regard to the scheduled caste panels or the tribunals appointed by His Excellency to hear election petitions. The decision of all these matters is left to him. Neither of those tribunals is a Court subject to the machinery of the Code of Civil Procedure and neither can be said to represent a Court for the purpose of invoking the provisions of Section 115 of the Code. This position is fully

dealt with by a Full Bench of this Court in *Lakshmanan Chettiar v. Kannappar*, : AIR1927Mad93 . It would appear then that Rule 7 very largely states what is the accepted law. The Government Pleader's argument therefore amounts to this that a combination of para. 20, Schedule 5 and Rule 7, Madras Legislative Council Rules, takes away also the powers of the High Court with regard to the issue of writs of certiorari, and to extend that argument to its logical conclusion it must follow that an elected member of the Madras Legislative Assembly whose election has been declared void by a tribunal having no jurisdiction to do so has no remedy in the High Court. Incidentally I might add it does not appear he has any remedy at all if this argument is correct. Under Section 223, Government of India Act, 1935, the powers of the High Court are the same as before the passing of this Act. But Section 223 is subject to the provisions of any Act of the appropriate Legislature-enacted by virtue of powers conferred on that Legislature by this Act. The point for decision therefore would seem to be have the powers of this High Court with regard to writs of certiorari been removed? It is I think axiomatic that certiorari can only be taken away by express negative words: vide Halsbury's Vol. 9, p. 861, para. 1455. So long ago as 1760 it was held in *Rex v. Moreley* (1760) 2 Burr 1040 that:

The jurisdiction of this Court is not taken away unless there be express words to take it away; this is a point settled.

16. In that case those who resisted the writ pleaded that the relevant statute enacted that

no other Court whatsoever shall intermeddle with any cause or causes of appeal from this Act but they shall be finally determined in the Quarter Sessions only.

17. The argument addressed to the Court was that

the above words meant no more than that the facts should not be re-examined but the legality may; or a want of jurisdiction may be taken advantage of,

and this argument appears to have found favour with the Court. In *Ex parte Bradlaugh* (1878) 3 QBD 509, Mellor, J. observed:

It is well established that the provision taking away the certiorari does not apply where there was absence of jurisdiction. The consequence of holding otherwise would be that a metropolitan Magistrate could make any order he pleases without question.

18. Those observations seem singularly applicable to this case *Ex parte Bradlaugh* (1878) 3 QBD 509 above cited is referred to by Ramesam, J. in *Venkatanarasimha Rao v. Municipal Council of Narasaraopet* : AIR1931Mad122 and the observations of the learned Judge are material in every aspect of the topic now under discussion:

Where it is laid down in statutes or bye-laws made under the statutes that proceedings under them shall not be removed by the writ of certiorari, then certiorari is said to be taken away by such statutes; that is it is taken away only by express negative words and not merely by words which direct that certain matters should be finally determined. But even in cases where certiorari is taken away, a writ may be issued if the authority acted without jurisdiction.

19. In *Colonial Bank of Australasia v. Willan* (1874) 5 PC 417 the Judicial Committee declared the law as follows at

There are numerous cases in the books which establish that notwithstanding the privative clause in a statute, the Court of Queen's Bench Division will grant a certiorari, but some of those authorities establish, and none are inconsistent with the proposition that in any such case the Court will not quash or remove, except upon the ground either of a manifest defect of jurisdiction in the tribunal that made it, or of manifest fraud in the party procuring it.

20. In this matter however I am prepared to found my decision on the fact that it does not appear that the provisions upon which the Government relies, expressly removed the rights of the High Court with regard to writs of certiorari. Nor indeed do I think even by implication it can be so argued. I think the intention and meaning of the rules is that all decisions of the tribunals set up shall be final with regard to all matters which they are competent to decide. It matters not whether those decisions are right or whether they are wrong but it is only in the case of a decision on a matter which such tribunals were never empowered to decide that the orders of this Court can be invoked. The Government of India Act, 1919, Section 106(2), is a clear example of a provision of a statute directly negating the power of the High Courts to issue a writ of certiorari or to exercise any jurisdiction in a certain specified matter, i. e. 'in any matter concerning the revenue'. In connexion with this section Venkataramana Rao, J. has considered the powers of this High Court relating to certiorari and the history of those powers is fully set out in *Thayagaraja Chettiar v. Collector of Madras* : AIR1936Mad398 . Supposing the Collector of Madras on the hearing of a petition against an election to the panel conceived it his duty for the furtherance of the elections to imprison a candidate, can it be doubted that an application for a writ of habeas corpus would lie to this Court? For the above reasons, I am satisfied that Rule 7 above referred to does not prevent this High Court from issuing a writ of certiorari in a case where a subject has been deprived of a right by one of the tribunals acting wholly without jurisdiction. In this respect this case differs from the cases cited to us of which a recent unreported case of this High Court, Appeal Against Order No. 99 of 1934 *Secretary of State v. Meyappa Chettiar* Since reported in : AIR1937Mad241 (*Varadachariar and Stodart, JJ.*), is an example. That, sustainable petitions such as this should be very rare is obvious from these most comprehensive rules and if the rules are carried out, they should not occur at all. This application is tenable owing to the wording of the relevant rules above cited. The matter can be easily clarified by further rules. Two further points remain. It has been contended that there has been a submission to the jurisdiction in this matter by the petitioner taking his chance of getting a decision on the merits. That can be dealt with shortly. In the first place, it must be observed that he at once objected to the jurisdiction and there is nothing on the record to show that he took his chance on the merits at all. The whole matter was disposed of in one argument. No evidence was called. As a counsel of perfection perhaps the petitioner might have been well advised to withdraw from the proceedings after making his submissions as to jurisdiction. But there is nothing in his conduct to preclude him from claiming this right. The English cases cited in *Latohmanan Chettiar v. Corporation of Madras* AIR 1927 Mad 130 do not support the Government Pleader's contention. In none of those cases was objection to the jurisdiction taken at all. The test which is clear from the authorities is whether there was anything in the conduct of the petitioner on which the writ should be refused--and I am quite unable to find any evidence of any such conduct.

21. Finally it is suggested that on the merits in the lower tribunals this Court should not interfere. It is stated that an election petition may be presented to the Governor-in-Council and I would have preferred to avoid any discussion on the merits but a few words about them are unavoidable in view of the above submission. Suffice it to say that even in the order of the District Magistrate it is clear that the certified copy of the entry containing the candidate's name in the electoral roll for the constituency referred to in Rule 14(2), Rule 2(3), did not accompany the nomination paper but another document accompanied it which the Revenue Divisional Officer regarded with suspicion. I am most reluctant at this early stage in the new regime to give any sanction to the suggestion that condition precedent need not be carried out and that substitutes therefor should be admitted apparently according to the discretion of any individual District Magistrate. As a result of the above conclusions an order will issue quashing the proceedings of the lower tribunals. The result will be that the petitioner has been duly declared elected to the Legislative Assembly. It is of course open to respondent 1 to impugn the validity of the election by an election petition in accordance with the provisions of Part 3 of the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936. The petitioner will have the costs of this petition, Rs. 100.

Lakshmana Rao, J.

22. I agree and would emphasize that Rule 103 of 'the Madras Legislative Assembly Electoral (Elections and Election Petitions) Rules 1936' provides for decision of doubts and disputes as to the validity of primary elections for electing candidates for a reserved seat and not the election of a candidate to a reserved seat as defined in Rule 3, Part 1 of 'the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order 1936.,' which cannot be questioned except by an election petition presented in accordance with the provisions of Part 3 of that Order. There was in this case an election of a candidate to the reserved seat by virtue of the declaration under the Proviso to Rule 19 of 'the Madras Legislative Assembly Electoral (Elections and Election Petitions) Rules' and the petition to the District Magistrate was to declare void and set aside the election of the petitioner to the reserved seat. The petition was not to set aside the election of the petitioner as a candidate for the reserved seat nor is it suggested that there are any grounds therefor. That being so, the District Magistrate had no jurisdiction to entertain the petition, and Rule 7 of the Madras Legislative Assembly Electoral (Elections and Election Petitions) Rules does not validate or legalise such proceedings. The order of the District Magistrate and the consequential order of the Returning Officer are therefore unsustainable, and certiorari can only be taken away by express negative words. Rule 7 does not, as pointed out by my learned brother, take it away expressly or impliedly and it is unnecessary to decide whether certiorari can be taken away by rules framed under Para. 20, Boh. 5, Government of India Act, 1935 and, even if it can be and is so taken away, certiorari may not be granted where the tribunal has acted without or in excess of jurisdiction.