

Thavasikani Nadar Vs. the Election Commissioner (Principal District Munsif of Ambasamudram) and anr.

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Court : Chennai

Decided On : Jul-26-1973

Reported in : (1974)2MLJ44

Appellant : Thavasikani Nadar

Respondent : The Election Commissioner (Principal District Munsif of Ambasamudram) and anr.

Judgement :

ORDER

T. Ramaprasada Rao, J.

1. The proceedings in this writ petition arise out of an order passed by the District Munsif, Ambasamudram, as an Election Commissioner, constituted under the provisions of the Tamil Nadu Panchayats Act, 1958. An election was held to choose the Chairman of the Panchayat Union, Kalakad on, 13 th August, 1970. The petitioner and the respondent were the contestants. The respondent secured nine votes and the petitioner eleven votes. The petitioner was declared elected as the Chairman. The respondent apparently desired to file an election petition. Under the rules, an election petition had to be filed within 15 days from the date of declaration of the result of the election. The election petition was filed on 27th November, 1970, nearly three months after the expiry of the prescribed period of limitation. When the respondent filed such an application before the Election Commissioner and pleaded that his failure to file the election petition in time was not wilful and that he was prevented from sufficient cause from filing it in time. The reasons given by the respondent for filing the election petition beyond the prescribed time were accepted as bona fide reasons and the delay in the presentation of the election petition was excused by the election Court. The petitioner as the respondent in the election petition stated that the election petition was not maintainable, as Section 5 of the Limitation Act does not apply to such petitions and that the election Court was persona designata and, therefore, unless there was an express power conferred under the Tamil Nadu Panchayats Act or the election rules made thereunder, the Election Commissioner (the District Munsif) as persona designata had no juis-jurisdiction to excuse the delay.

2. On the first question the Election Commissioner agreed that there was sufficient cause which prevented the respondent from filing the election petition in time. Exercising jurisdiction under Article 226 of the Constitution, I am not inclined to interfere with the finding on merits rendered by the Election Court. But the more important point is, whether the Election Court which designated as a tribunal persona designata had the power to entertain an application for excusing the delay in

the presentation of an election petition.

3. The Election Commissioner was of the view that Section 5 of the Limitation Act would apply and that he had the requisite jurisdiction. It is as against this part of the order that the petitioner is aggrieved.

4. The Election Court relying upon certain decisions cited by the respondent is of the view that any pleading presented before a tribunal which is *persona designata* but after the prescribed period of time, can be entertained by invoking Section 5 of the Limitation Act read with Section 29 (2) thereto. If a tribunal is specially designated as a *persona designata* then it is always understood that the person pointed out or described individually as the tribunal is the person who is to sit in judgment. As pointed out by the learned author Osborne in his 'A concise Law Dictionary' a *persona designata* means 'a person pointed out or described as an individual, as opposed to a person ascertained as a member of class, or as filling a particular character.'

5. A Full Bench of our Court in *Parthasarathy v. Koteswara Rao* 46 M.L.J. 201 : I.L.R.47 Mad. 369 A.I.R. 192 Mad. 561. pointed out that the jurisdiction of the High Court under Section 115 of the Code of Civil Procedure to revise the orders decided by a Judge designated as *persona designata* depends on whether the Judges therein referred to are acting as Courts, or acting merely as *persona designata*, that is to say, persons selected to act in the matter in their private capacity and not in their capacity as Judges. Thus, it is clear that the phrase '*persona designata*' is a pointer to the situation that it is a particular person that is referred to as the adjudicator and his power and jurisdiction is not to be judged by the office or the class to which he belongs. He acts as directed by the legal authority under which he is created. He being a creature of a particular statute, he has to look to the provisions of such a statute for exercise of his power as such a tribunal but cannot overstep the periphery of such a peculiar jurisdiction specially conferred on him. As pointed out by S. Ramachandra Iyer, C. J., in *Rathnam Pillai v. Sellappa Reddiar* (1963) 2 M.L.J. 381. the Election Commissioner (District Munsif) is not regarded as an ordinary civil Court with the trappings or right of appeal and right of revision. As the hummings of a civil Court are conspicuously absent in the tribunal designated as *persona designata* he has to strictly follow the procedure prescribed by the statute or the rules made thereunder under which his office itself is created.

6. Under similar circumstances, but while dealing with the Representation of the People Act of 1951, the Supreme Court in *Venkateswara Rao v. Narasimha Reddi* : [1969]1SCR679 . said that it is well settled that an election petition stands on a footing different from a civil proceeding and that the trial of such a petition and the powers of the Court in respect thereof are all circumscribed by the Act, and that the Limitation Act cannot apply to proceedings like an election petition, inasmuch as the Representation of the People Act is a complete and self contained Code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act. As the respondent was not represented, I requested Mr. S. Gopalarathnam to assist me as *amicus curiae*. In his usual manner Mr. Gopalarathnam, rendered considerable help to this Court to determine the limits of jurisdiction of a tribunal named as *persona designata*.

7. It is conceded by Mr. Gopalarathnam, that the rules framed for purposes of trying an election dispute arising under the Tami Nadu Panchayats Act, do not provide for

excusing the delay in the presentation of an election petition. No doubt the election rules do not expressly exclude the application of Section 5 of the Limitation Act. In such circumstances the District Munsif, who is the Election Commissioner in this case, if he was acting as a Civil Court might have probably exercised his discretionary jurisdiction and entertained the application, but as the trial of an election petition is not given to an ordinary civil Court but to a named individual as persona designata, namely, the District Munsif of a particular place the general dicta that in the absence of any prohibition under the Act under which the Court in functioning, the general enabling provisions under the Limitation Act could be attracted is not available to such a tribunal. If the Election Court is designated as persona designata it has a limited jurisdiction. It cannot expand such a special jurisdiction by invoking the principles of decency or convenience and ought not to sacrifice justice to notions of delicacy of its own.

8. In the absence of any special provisions enabling the Election Commissioner (the District Munsif) to excuse the delay in the presentation of an election petition, the invocation of the general principles and the normal provisions which would enable under similar circumstances, a Civil Court to excuse the delay will not apply to an election Court.

9. The order, therefore, is completely without jurisdiction and has to be set aside. The writ petition is allowed. There will be no order as to costs.

10. I express my thanks to Mr. S. Gopalarathnam for the ready and willing help he gave enabling me to decide the question in issue.

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