

In Re: M. Vijiaraghavalu Pillai,

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Court : Chennai

Decided On : Feb-06-1914

Reported in : 24Ind.Cas.134; (1914)26MLJ310

Appellant : In Re: M. Vijiaraghavalu Pillai,;madras City Municipal Act, lli of 1904 and Specific Relief Act, 187

Judgement :

Bakewell, J.

1. The name of the appellant has under Section 46 of the Madras City Municipal Act, 1904, been entered in the list of persons qualified for election as a Commissioner for one of the divisions of the City of Madras; and under Section 52, the list is conclusive as to his qualifications to be elected, subject to certain procedure for its amendment.

2. This applicant has been nominated as a candidate for election, and his name has been published in the list of candidates. Objection was made to the inclusion of the applicant's name in this list, and was rejected by the President of the Corporation, under Clause 5 of the rules framed by the Local Government by virtue of Section 413 of the Act. Under the same clause, a petition for revision of the President's decision may be presented to the Presidency Magistrate, whose decision is to be final, and one Appaswami Pillai, an elector, presented a petition. It is alleged that upon hearing this petition, the Magistrate considered an objection

to the inclusion of the applicant's name in the list of persons qualified for election, and that this objection was irrelevant to the inquiry before him, which should have been confined to objection to the preparation of the list of nomination. The Magistrate allowed the objection and decided that the applicant was not qualified for election as a Commissioner under Section 33 of the Act, which prescribes the necessary qualifications. He does not appear to have directed the applicant's name to be struck off the list, or indeed to have passed any order with reference thereto, but to have contented himself with a mere declaration of opinion as to the applicant's qualifications.

3. The present application which is based on Section 45 of the Specific Relief Act, 1877, prays for an order that the name of the applicant do continue to remain in the list of persons qualified for election as Municipal Commissioners for the City of Madras notwithstanding the order of the Magistrate. Section 45 of that Act empowers the High Court to make an order requiring a Specific Act to be done or forbore by a person holding a public office or by any Corporation or inferior Court.

4. The application does not specify the person or Court who should be ordered to act or forbear, and it is not clear with what irregular act or forbearance he is threatened. The application does not relate to the list of candidates for election, but to the list under Section 33, as to which it is not alleged that any action is threatened either by the President of the Corporation or the Magistrate. The Magistrate has not directed the list of candidates to be amended, and it does not appear that the President has taken or threatened to take, any step affecting that list.

5. An application for mandamus such as this virtually is, should point out clearly the Specific Act or forbearance and the individual, against whom it is directed, and this the applicant has failed to do.

6. Assuming that the applicant's contention be correct, and that the Magistrate has considered irrelevant matters, it cannot be said that he has acted outside his office or that there is any other reason why his procedure should not be reviewed by the Court in accordance with the provisions of the Procedure Code. (See Specific Relief Act, Section 45(d)).

7. The application is dismissed with taxed costs.

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