Y. Desi Chettiar Vs. J.K. Chinnasami Chettiar, President, Union Board

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Court : Chennai

Decided On : Aug-14-1928

Reported in : AIR1928Mad1271; 113Ind.Cas.874; (1929)56MLJ162

Appellant : Y. Desi Chettiar

Respondent : J.K. Chinnasami Chettiar, President, Union Board

Judgement :

ORDER

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 Sarvothama Rao v. Chairman, Municipal Council, Saidapet : AIR1923Mad475 -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 Sarvothama Rao v. Chairman, Municipal Council, Saidapet : AIR1923Mad475 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.