S. Vaithilingam Vs. S. Chandrasekaran

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Court : Chennai

Decided On : Oct-30-1974

Reported in : AIR1975Mad186

Judge : K. Veeraswamy, C.J., ;Natarajan and ;Sethuraman, JJ.

Acts : Tamil Nadu Panchayats Act, 1958 - Sections 178(2); Tamil Nadu Panchayats Election Rules, 1960 - Rule 6(1); Constitution of India - Article 227

Appeal No. : Civil Revn. Petn. No. 511 of 1972

Appellant : S. Vaithilingam

Respondent : S. Chandrasekaran

Advocate for Def. : R. Balasubramanian, Adv.

Advocate for Pet/Ap. : M. Srinivasan, Adv.

Disposition : Petition allowed

Judgement :
1. The civil revision petition in the first instance came before Kailasam, J. An election petition, under the Panchayats Act and the Election Rules framed thereunder was filed contesting the election. That petition was dismissed for default of appearance. An application under Order IX, Rule 9 of the Code of Civil Procedure was also dismissed, the Election Commissioner being of the view that

the rule was not applicable to Election Court and he could not. therefore, restore the election petition. Two points were urged before Kailasam, J. One was that, in view of Rule 6 of the Election Rules, the Election Court had Power under Order IX, Rule 9 of the Code of Civil Procedure to set aside the order of dismissal for default: Koti Reddi v. Venkavva. decided by the then learned Chief Justice and Somasundaram, J., held that Order IX did not enable the Election Court to restore the election petition. But, there, the disposal of the election petition was on merits. Nata-raian v. State of Madras. ILR (19601 Mad 449 which was decided by Ramaswami. J. and Ananthanarayanan. J., held, however. that, in order to render justice by Tribunals such as the Tribunal set UP under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, so long as they exercise judicial functions, the Tribunals should be held to possess inherent power to review their judgments, where due cause was shown. That was a case of an Estates Abolition Tribunal giving a decision in the first instance on the question whether a certain village was an inam estate or not within the ambit of the definition in Section 3(2)(d) of the Madras Estates Land Act. 1908. The ryots were not parties to that case. Subsequently, the same Tribunal rendered a different decision after the ryots were brought on record. The question was whether the Tribunal had power to review its own order. The Court opined that it had such power. This view was expressed not on the basis of any particular rule, but upon a consideration that a Tribunal exercising judicial functions should, in order to render justice, have inherent power to review its own judgment, where due cause was shown. Kailasam, J., found conflict of opinion in these two cases and regretted that had not been brought to the notice of the Court in ILR (1960) Mad 449. The learned Judge was also of opinion that after Harish Chandra v. Trilok Singh, no longer could be the law.

On that view he referred the question to a Full Bench, to wit, whether the Election Tribunal under the Panchayats Act had power to restore the election petition which was dismissed for default of appearance. The second point that was raised before the learned Judge was whether the application to set aside the order of the Election Tribunal declining to restore the election petition could be brought for attack under Article 227 of the Constitution. The learned Judge held that point in favour of the petitioner and it no longer arises before us.

2. We may at once state that, in our opinion, ILR (1960) Mad 449 was not right in its view that every Tribunal discharging judicial functions should, in order to enable it to do justice, have inherent power to review its own judgment where proper cause was shown. The Rules framed under Madras Act 26 of 1948 did not confer any such power. But the learned Judges spelt out inherent power from the nature of the functions discharged by the Estates Abolition Tribunal. We must observe that, where, a statute creates a Tribunal and vests powers in it prescribing the procedure for the exercise thereof, it is confined to such powers and procedure as had been conferred upon it. This is because the Tribunal is but a creature of the statute which, having brought it into existence has also limited its powers. If by necessary intendment of a particular provision made in that behalf the Court is of the view that such power is available, that is a different matter. But that was not what was held in ILR (1960) Mad 449. The Court was prepared to say that every Tribunal should have inherent power to set aside its own order where proper cause was shown, provided the function discharged by it was judicial. We are unable to concur with this view. We may also point out that ILR (1960) Mad 449 was not a case of dismissal of a petition for default. It was concerned, as we said, with a decision which the Tribunal had rendered first and which it had sought to review on a subsequent occasion. does not also appear to be apposite in deciding the instant case, because that was also a case of an election petition decided on merits. It is evident from the judgment therein that, though the party had not appeared, the election petition was proceeded with, evidence was taken and a conclusion was arrived at, on the basis of which the election petition was disposed of. The Court pointed out that having regard to Rule 6(1) and the enumeration of specific powers under the Second limb of that Rule, the provisions of the Code of Civil Procedure, more particularly Order IX, Rule 9 relating to restoration of a suit dismissed for default where sufficient cause was shown, would not be applicable. In other words, the learned Judges' view was that Rule 6(1) should be confined to the powers under the Code of Civil Procedure which pertain to trial and disposal of a suit, and that, once the election petition had been disposed of, thereafter the powers under the Code of Civil Procedure would not be available to the Election Tribunal. But the Court had no occasion to consider whether the Election Tribunal had at all power to dismiss an election petition for default of appearance without

going into merits after taking evidence. Our attention has been invited to a judgment in W. P. No. 595 of 1960 (Mad) which was rendered by one of us and which was a case of dismissal for default of appearance in an election petition. An application to restore the petition was dismissed on the ground that the Election Commissioner had no power and this order was sustained. In doing so, the Court followed . When Mallappa Basappa v.

Basavaraj Ayyappa, was relied on, the Court examined the scheme of the Election Rules under the Panchayats Act and ruled that it was different from that of Representation of the People Act. In this case too, the Court had no occasion to consider whether at all the Election Court had the power to dismiss an election petition for default of appearance without going into merits of the petition.

3. It is contended before us for the respondent that if as held in the Election Court had power to amend the petition, it should follow that the Election Court had also the power to dismiss an election petition for default of appearance without going into merits. We are unable to accept this contention.

4. The question of power to dismiss for default without going into merits will have to be examined in the light of the Rules read as a whole. The Rules for decision of election disputes relating to Panchavats say that no election held under the Panchayats Act can be called in question except by an election petition presented in accordance with those Rules to an Election Court. A Procedure _ is laid down as to how an election petition should be presented, including the period of limitation for filing and for service of summons. Rule 6, with which we are particularly concerned, is as follows;-

"(1) Every election petition shall be enquired into by the Election Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure. 1908, to the trial of suits:

Provided that it shall only be necessary for the Election Court to make a memorandum of the substance of the evidence of any witness examined by it.

(2) The Election Court shall have the powers which are vested in a Court under the Code of Civil Procedure. 1908, when trying a suit, in respect of the following matters:-

(a) discovery and inspection;

(b) enforcing the attendance of witness, and requiring the deposit of their expenses;

(c) compelling the production of documents;

(d) examining witnesses on oath:

(e) reception of evidence taken on affidavit; and

(f) issuing commissions for examination of witnesses, and may summon and examine suo motu any person whose evidence appears to it to be material."

Sub-rule (1) read by itself is no doubt wide enough, to cover the entirety of Order IX, Rule 9 of the Code of Civil Procedure. Whether the width of the power so conferred has been restricted by the enumeration of specific items under Sub-rule (2) does not arise for our consideration. But assuming that the power 'under Sub-rule (1) covers also Order IX. Rule 9 in its entirety, the question will be whether this- is not restricted by the scheme of the rest of the Rules. Rule 7 interdicts an election petition being withdrawn without leave of the Election Court. A procedure is indicated for grant of leave for withdrawal. In case leave is granted, the petitioner will be ordered to pay costs of the respondent as the Election Court thinks fit. Rule 9 says that an election petition shall abate on the death of a sole petitioner or of the survivor of several petitioners. In other words, where there is only a sole petitioner in an election petition, his death will bring about an end to the election petition. We may pause for a moment and observe that this is not the result under the Representation of the People Act, as pointed out by the Supreme Court in . Rule 11 specifies the grounds on which an

election can be set aside. Rule 12 follows it UP and contemplates that, at the conclusion of the enquiry the Election Court shall declare whether the election of

the returned candidate or candidates is void under Rule 11'. Sub-rule (3) of this Rule makes the order of the Election Court under Sub-rule (1) final. Equally, it makes as order of an Election Tribunal final under Sub-rule (2) which relates to declaration of the election of the returned candidate, declaration of any other party to the petition as having been duly elected or ordering a fresh election. Rule 13 shows that the moment an election is held to be void the seat shall be deemed to be vacant from the date of the order of the Election Court and the authority concerned shall forthwith take the necessary steps for holding fresh elections. These Rules, to our minds, suggest a scheme under which, once an election petition is filed, it has to be proceeded with to its conclusion on merits barring the two instances namely, withdrawal of the petition with the leave of the Court or termination of the petition by the death of the petitioner who happens to be the sole one. It is also significant that, once an order is made on merits, it shall be final. It is in the light of this scheme and Rules that we have to see the scope of Rule 6 (1) as to the extent to which Order IX, Rule 9 of the Code of Civil Procedure will be available to the instant case, Sub-rule (l) of Rule 6 visualises that it is only as nearly as may be that the Code of Civil Procedure, applicable to trial of suits may be extended. This implies that, if the Rules as we have considered contemplate a situation where an election petition has to end only on merits barring the two exceptional cases we have Pointed out, then there is no room for applying Order IX, Rule 9 of the Code of Civil Procedure in so far as it confers Dowers on a Civil Court to set aside an order of dismissal for default of appearance. It is hardly necessary to point out that an Election Tribunal or Commissioner under the Election Rules of the Panchavats Act is but a persona designate and not a Civil Court possessing all the powers under the Code of Civil Procedure. It is remarkable that even the High Court, while exercising powers under Section 115 of the Code of Civil Procedure, cannot dismiss a petition thereunder for default of appearance and, in any case, once that was done, it would have no power to restore it.

5. As may be seen from our observations supra it is not necessary, on the view we have taken, to decide whether, if the Election Tribunal had the power to dismiss the election petition for default of appearance without going into merits, it would have the power to set aside such an order. We have taken the view that the

Election Rules relating to decision of the election disputes under the Panchayats Act do not confer power upon an Election Tribunal to dismiss an election petition for default of appearance. The election petition could and should end only by an order under Rule 12 except in the two cases, namely. (1) where leave is granted for withdrawal and (2) where there is the death of the sole petitioner in the election petition. Accordingly the petition will stand allowed. No costs. We make it clear that by this order we mean that, the-order of dismissal for default without going into merits being without jurisdiction and. therefore, a nullity, the election petition has not been disposed of at all.