

T.C. Xavier Vs. E.C. Joseph

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Court : Chennai

Decided On : Oct-23-1924

Reported in : AIR1925Mad614; 87Ind.Cas.216; (1925)48MLJ268

Appellant : T.C. Xavier

Respondent : E.C. Joseph

Judgement :

Srinivasa Aiyangar, J.

1. The respondent in election petition O.P. No. 4 of 1922 before the Subordinate Judge's Court at Cochin was declared by the returning officer as the candidate duly elected for B ward in an election held for that ward in Cochin Municipality. The petitioner Mr. Joseph filed a petition for having it declared that the respondent's election was not valid and that it should also be declared that he was the person properly elected by the constituency at the election held. A civil revision petition has been filed in this Court on behalf of the respondent to revise the order of the Subordinate Judge by which he declared that the petitioner was the person who was duly elected and that the declaration that the respondent was the duly elected candidate was wrong.

2. To begin with, I am far from satisfied that on the facts of this case a revision petition under Section 115, Civil Procedure Code, is competent. There is no question which can be said to be a question of jurisdiction or of any material

irregularity in the exercise of jurisdiction by the Subordinate Judge. There may be cases where the mistakes committed by the Lower Court are so varied and so numerous as almost to amount to material irregularity in the exercise of jurisdiction, but this is not such a case and I am not called upon to express any opinion with regard to the possibility of a civil revision petition in such cases. I have been referred to the decision of Krishnan and Venkatasubba Rao, JJ., in the case of Ramasmami Goundan v. Muthu Velappa Gourdan (1922) 44 MLJ 1. So far as that case was concerned it would appear that the Lower Court declared the petitioner duly elected without giving any one an opportunity to show that his election was valid or invalid. The other observations in the course of the judgment regarding jurisdiction assumed by misconstruing a rule were apparently not necessary for the decision of that case as apart therefrom the Court was found to have jurisdiction. However, I am informed that this very question of the right of this Court to interfere in revision is now pending before the Full Bench of this Court. Anyhow in the view I have taken of the merits in this case, it has become unnecessary for me to express any decided view with regard to the extent of the jurisdiction of this Court to, interfere in revision in such election cases.

3. The petitioner in this Court was by the returning officer declared to have received 100 votes and the respondent 98 votes. The Subordinate Judge allowed the respondent five more votes out of the votes found by the returning officer to be invalid and refused to be counted by him for the respondent. This made the total number of votes in favour of the respondent 103. To the 100 votes obtained by the petitioner, one vote was added, namely, that of a person alleged to have been a minor but whose name was found included in the list of voters for the constituency. From the total so made up, namely, 101, two votes were deducted by the Subordinate Judge on the ground that one of those was a case of voting by false personation and another was a vote granted by a person who according to the list was no voter at all but whose official description happened to correspond with that given in the list. We therefore have as a result of these additions and subtractions made by the Subordinate Judge 103 votes in favour of the respondent and 99 in favour of the petitioner. Mr. T. M. Krishnaswami Aiyar, the learned vakil for the petitioner, has addressed considerable argument with regard to every one of the five votes and contended that all those five votes were wrongly included in the

votes for the respondent and should have been rejected by the Subordinate Judge.

4. I shall now deal with these five votes. With regard to one of these five votes, the objection to its being counted to is that the name of the candidate for whom the vote was no : cast seems struck out on the voting papers. This has been held not to invalidate the vote. Another vote shows that under the cross-mark made on the voting paper against the name of the respondent there appears a tracing of some letters which we cannot make out. From the voting papers it is clear for whom the voting was intended and I cannot say that the other marks on the voting paper are marks from which the voter may be identified. The third voting paper to which objection has been raised is the paper on which the cross-mark seems to be placed just midway between the names of two candidates. It has been argued by Mr. T. R. Ramachandra Aiyar that the intersecting angle is placed above the dividing line and that therefore the vote must be counted in favour of his client, the respondent. I have no doubt whatever that if the intersecting point was undoubtedly above the line and visibly so there could be no doubt that it ought to be counted for the respondent. But though it does appear to be slightly above the line, substantially the cross-mark is really bisected by the line between the names of the candidates and I am unable to gather from the mark any clear intention of the vote having been cast in favour of one candidate or the other. That vote would have to be excluded from the votes counted by the Subordinate judge in favour of the respondent. The remaining two voting papers have been objected to by the learned vakil for the petitioner, on the ground that in the one there is some Tamil writing and in the other there is the English letter C written on the voting papers in addition to the cross-mark. Such writing would invalidate the vote only if it should be found that the writing is a mark by which the voter may be afterwards identified. For all these positions indicated by me. the leading case of Woodward v. Sarsons 10 C P 733 is the leading authority. So far as any writing on the voting paper is concerned, which is attacked on the ground that it is a mark by which the voter may be identified, it seems to me that it must be either a mark which on the face of it shows or may show the person who has voted or with regard to which there is evidence on the record which shows that the mark was put in there by some pre-arrangement or conspiracy by reason whereof by looking at the mark one will be in

a position to say that it is the vote of such and such a person. No doubt there may also be other cases where from the very nature of the mark we may be able to infer the intention on the part of the person who put the mark there that the voter should or may be identified. In the case of such marks also the Courts would have no hesitation in declaring against the vote if such intention : could be gathered from the mere appearance of the writing. In the case of the two votes I am now considering it is clear that the writing alone is not sufficient to identify the voter, because in the one case though it appears to be a Tamil writing one cannot even be sure that it is any particular letter. In the other case no doubt there is the English letter C but I consider that being only a single and such a simple letter, it is not sufficient to form the ground of the identification of the writing of any person. I am unable to say that there is anything in the appearance of these marks from which I can reasonably infer that there was the intention on the part of the person making them that the voter or writer should be identified. In the result, therefore, one out of the five votes added by the Subordinate Judge to the votes obtained or declared to have been obtained by the respondent would have to be excluded from the count. Thus the total number of votes obtained by him would be 102. Mr. Krishnaswami Aiyar further argued that one of the votes recorded for the respondent has been proved in the Court below to have been recorded by a person whose name was not in the list. The learned Subordinate Judge has found that there has been no false personation with regard to that vote and I have not felt persuaded that the person who cast the vote was any other than the person who was entitled to vote. Remembering that in the evidence this particular person calls himself Parameswara Aiyar and that in the list he is called Easwara Aiyar, I am not prepared to say that the difference in the names was not due only to some mistake with regard to the name of the same individual. There is no reason to suppose that any case of false personation has been established. Seeing therefore that the votes according to my findings which are recorded in favour of the respondent total up 102, it seems to me unnecessary to consider the question of the votes with regard to the petitioner, because taking them at the highest the total is 101. It is therefore unnecessary for me to discuss the question of the two cases of false personation which were found against him by the Subordinate Judge and with regard to which Mr. Krishnaswami Aiyar has addressed arguments to me to show

that the findings of the lower Courts are wrong. Having therefore come to the conclusion that even on a careful scrutiny of the votes by me the finding of the Subordinate Judge is correct, there is no reason for me to interfere.

5. The Civil Revision Petition is accordingly dismissed with costs.

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