

C. Arumugham Vs. R. Sivaraman and anr.

C. Arumugham Vs. R. Sivaraman and anr.

SooperKanoon Citation : sooperkanoon.com/821472

Court : Chennai

Decided On : Mar-01-1967

Reported in : (1967)2MLJ257

Appellant : C. Arumugham

Respondent : R. Sivaraman and anr.

Judgement :

P.S. Kailasam, J.

1. This petition is filed for the issue of a writ of certiorari calling for the records in O.P. No. 11 of 1965 on the file of the Principal District Munsif (Election Commissioner), Nagercoil and to quash his order dated 28th February, 1966 setting aside the election and ordering fresh election.

2. The petitioner and the first respondent contested for Marungur Town Panchayat. The petitioner obtained 363 votes and the first respondent 139 votes. So, the petitioner was declared elected. The first respondent filed O.P. No. 11 of 1965 challenging the validity of the election. The election was challenged on several grounds but the Election Commissioner held that the election was invalid and set aside the election on the ground that the petitioner appointed one Mathavan Pillai and seven others as water-supply attenders in the Panchayat a day before the election and that amounted to a corrupt practice. He also found that though only 480 ballot papers were issued, 30 ballot papers were found in the box in excess of ballot papers issued. The Election Commissioner took the view that as there were unaccounted ballot papers, the election was materially affected. He therefore set aside the election and ordered a fresh election.

3. The complaint of the first respondent was that the petitioner appointed one Mathavan Pillai with the intention of securing the votes of the family of the said Mathavan Pillai. In the evidence the petitioner admitted that he appointed, Mathavan Pillai, but pleaded that he made the appointment in accordance with the directions of the Collector. The evidence also disclosed that Mathavan Pillai did not have any vote, and that the appointment was made in pursuance of the order of the Collector. The Election Commissioner in his order has stated that the petitioner had not only appointed Mathavan Pillai but also seven other persons on the eve of the election, that these appointments were made for the purpose of securing their votes and that therefore it amounted to a corrupt practice. It is neither alleged in the petition filed by the first respondent nor spoken to in the evidence of the respondent that 8 persons were appointed. It was only the petitioner who stated as R.W. 1 that eight persons were appointed in pursuance of the directions of the Collector. In the circumstances, the Election Commissioner was in error in saying that eight persons were appointed with improper motive for the purpose of securing votes. Even in respect of Mathavan Pillai, there is nothing to show that the appointment was improper. This ground, therefore, fails.

4. The second ground on which the election was set aside was that 30 ballot papers were found in excess in the ballot box. The Polling Officer was given 580 ballot papers out of which he utilised 483 ballot papers and the remaining 97 ballot papers were unused. Out of 483 used ballot papers, 5 ballot papers were cancelled

and 478 were actually utilised by the voters. The Returning Officer found in the ballot box not 478 ballot papers, but 508 ballot papers in total, of which the petitioner secured 363 votes and the first respondent 139 votes. It was pointed out that the accounts relating to ballot papers, Exhibits A-5 and 6, contained several mistakes. Therefore, from the mere fact that there was a difference in the total number of ballot papers in the box, it cannot be inferred that the result of the election had been materially affected.

5. The learned Judge relied on the decisions of the Calcutta High Court in *Nagendra Nath Sen v. J. Vas*, I.C.S., District Magistrate and Chairman, District Board, Khulna (1920) 32 C.L.J. 124, and of this Court in *Kalianna Goundan v. Marappan* : (1962)1MLJ123 , and came to the conclusion that it must be presumed that the result of the election had been materially affected. In the decision first cited, it was laid down that when the number of votes recorded exceeded the maximum that could be given, the election must be held to be invalid and void. The decision was rendered relating to Khulna District Board for the election of which there were no rules. So far as the elections to the panchayats are concerned, elaborate rules have been framed and it has to be found whether the election has to be set aside according to the rules. Rule 11(c) under Notification 10 of the Rules framed under the Madras Panchayat Act, 1958, provides:

If in the opinion of the Election Court (c) the result of the election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by any non-compliance with the provisions of the Act or the rules made thereunder, the election of such returned candidate shall be void.

Thus in order to declare an election void the Election Court should come to the conclusion that the result of the election has been materially affected. In *Kalianna Goundan v. Marappan* : (1962)1MLJ123 , the Court on an examination of the facts in that case came to the conclusion that there was an infringement of the rules and the officer conducting the election could not be acquitted of being a party to a fraud and therefore the Court was bound to declare the election void. When there had been contravention of the rules and the Election Officer could not be acquitted of malpractice, the entire election would have to be set aside as it could not be said with any certainty as to the number of votes polled by any of the candidates. Because of the irregularity votes that had been polled in favour of a particular candidate might have been taken out and instead false votes recorded in favour of the other candidate put in. But in this case there is no evidence that the ballot box had been tampered. During the election there was no complaint of any irregularity or non-observance of the rules. The ballot box was sealed and when it was opened in the presence of the concerned authorities, the seals were found to be intact. All the material that is available in this case is the fact that 30 more ballot papers were found in the box than the ballot papers issued to the voters. From this circumstance alone it cannot be said that the result of the election had been materially affected. It has to be borne in mind that the petitioner secured 363 votes and the first respondent only 139 votes. In the circumstances, the election could not be declared void.

6. The order of the Election Commissioner is set aside and the election of the petitioner is confirmed. This Writ petition is allowed. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com