

T. Doraibabu and anr. Vs. Sri Sundara Vinayagar, Sri Selva Vinayagar and Sri Anjaneyar Devasthanams, Represented by Its Managing Trustee P.S. Munusamy and ors.

T. Doraibabu and anr. Vs. Sri Sundara Vinayagar, Sri Selva Vinayagar and Sri Anjaneyar Devasthanams, Represented by Its Managing Trustee P.S. Munusamy and ors.

SooperKanoon Citation : sooperkanoon.com/826644

Court : Chennai

Decided On : Dec-21-1995

Reported in : (1996)2MLJ24

Appellant : T. Doraibabu and anr.

Respondent : Sri Sundara Vinayagar, Sri Selva Vinayagar and Sri Anjaneyar Devasthanams, Represented by Its Managi

Judgement :

Srinivasan, J.

1. Pursuant to our orders dated 3.11.1995 and 29.11.1995, the election officer has held the election and declared the results. He has produced the relevant records before us along with his report. There are 31 enclosures. On a perusal of the enclosures, it is seen that the election officer had taken more interest than expected of him, and conducted the election in an excellent and exemplary manner. We have no hesitation to say that he has performed his duty in the best manner possible and certainly it could not have been done better by anybody else. We are very happy to place on record our appreciation and also gratitude to the

election officer, Mr.P.B. Sethuraman, Advocate, Madras who has finished his work so magnificently.

2. When the plaintiff s counsel prayed for time to file objections to the report of the election officer, we were not inclined to grant time. We requested the counsel to state his objections. One of the objections raised is that the election officer has not mentioned the total number of community members, who exercised their franchise. There is a fallacy in this contention. In pages 16 and 17 of the report of the election officer he has stated clearly that the ballot box contained 497 votes. Out of that, 13 were found to be invalid. The remaining 484 votes were taken for the purpose of counting. According to learned Counsel, this is not sufficient to show the 'total number of persons, who exercised their franchise. We are unable to accept this contention. Unless the ballots are found inside the ballot box, one cannot say that a person has exercised his right to vote. It is seen that the signature of each voter is obtained in a register when he voted.

3. It is next contended that the election officer has not calculated the number of votes secured by each candidate and he has only taken note of the five persons, who have secured the largest number of votes. No doubt, in the report, he has mentioned only the names of the five persons, who have secured he largest number of votes, but enclosure No. 28 contains the counting sheets. In the last sheet, the number of votes secured by each candidate is mentioned very clearly. It has been done very methodically and we find that there is no error whatever in the report of the election officer in mentioning only the votes secured by the first five candidates. For the purpose of easy reference we give below the number of votes secured by each candidate.

Sl. No.

Name

Votes secured

1.

They Muthukrishnan

265

2.

U.Purushothaman

278

3.

N.Boopathy

271

4.

S.Chandramohan

257

5.

B.Chandran

242

6.

A.Thiruvengadam

72

7.

R.Vijayalingam

25

8.

V.Dilli Babu

46

9.

Jey. ArumughamChettiar

47

10.

A.Arumugham

25

11.

A.Thirunavukkarasu

163

12.

S.D. RamalingamChettiar

157

13.

E.Dhanapal

192

14.

K.Babu

169

15.

P.S. Munusami

160

4. Apart from that the election officer has taken care to write in a separate sheet on the date of announcement of the result, i.e., 18.12.1995, the names of the elected candidates and the votes secured by each of them. On the reverse side of the said sheet, the signatures of the agents of the respective candidates, have been obtained. We find that all the 15 candidates were represented by their respective agents and all the 15 of them have signed the said sheet.

5. Yet another objection raised by learned Counsel is that some of the persons, who did not belong to the community, have voted in the election and that therefore, is invalid. To rebut this contention, the election officer has drawn our attention to the enclosure No. 3 to his report. This is a record of proceedings of meeting held on 15.11.1995 at 5.00 p.m. It is seen therefrom that the counsel for the contesting parties, including Mr.R.S. Ramanathan, Advocate for the plaintiff, were present. It was agreed in the said meeting as follows:

It has been agreed by the parties to follow the following procedure for preparing the electoral list.

1. An advertisement shall be given in the Daily Dinanthi dated 17.11.1995 inviting the members of Salivahana Vamsa community to enroll themselves to vote in the meeting held for electing the Trustees of the 3 temples. The advertisement shall also contain the format of the application form.

2. The member of the community shall submit the application form in person and in the case of family, the applications for the members of the family can be submitted by any one of the family members and they must also produce any one of the following documents.

(a) Ration card.

(b) School certificate containing age and father's name.

(c) Certificate from any two members of the community having ration card along with proof of age if the age is between 21 and 40 from a qualified doctor.

3. In order to identify the community members the plaintiffs shall nominate one person, the defendants 1, 2, 3 and 8 shall together nominate one person and defendants 4, 5, 6 and 7 shall together nominate one person, who must be aged not less than 50 and the nominations must reach the Election Officer on or before 17.11.95 to assist the election officer.

6. Though that was the agreement, neither the plaintiff nor defendants 1, 2, 3 and 8 nominated any person to represent them. It is only defendants 4,5,6 and 7, who nominated their representative.

7. Then, the applications were received and the election officer requested two persons belonging to the community, viz., Mr.Muthukrishnan, retired from Highways Department, Government of Tamil Nadu and V.Doraikannu Chettiar son of Velu Chettiar, retired from B. & C. Mills, to help him to identify the persons, who belong to the community. It is with their help, the applications were scrutinised and there is no substance in the objection that the persons, who do not belong to the community, have also participated in the election. If the plaintiffs were so serious in their objections, they should have lodged their objections as and when applications were filed by such persons or immediately after seeing the voters' list. It is seen that on payment of charges, parties have been furnished with voters' lists also. Apart from that, copies of voters' lists were also displayed on the walls in all the three temples in question. Besides all this, the agents of all the candidates were present at the time when the voters exercised their franchise and none of the agents raised any objection that any of the voters exercising franchise, did not belong to that community. In such a situation, there is no substance whatever in the objections raised by the plaintiffs' counsel, and they are overruled.

8. Learned Counsel for one of the candidates, by name Arumugham Chettiar, whose name finds at serial No. 9 in the ballot paper, raised an objection that the names of the candidates are not mentioned in the alphabetical order in the ballot paper. Though there is no substance in this objection, the election officer has explained this by stating that he is not well acquainted with Tamil and he does not

know the tamil alphabetical order. Secondly, he has stated that some of the candidates have given their initials in English and some of them in Tamil, though the names are in Tamil. Therefore, he said that he has given serial number to the nominations filed before him according to the time when the nominations were filed with him. Further, in the ballot paper, we find not only the names of the candidates, but also their photographs and so, there is no chance of any voter being misled by the names being in an order, otherwise than alphabetical order. If any person wanted to vote for Arumugham Chettiar, he could have well done so, because his photograph also appears as against his name. In such a situation, there is no substance whatever in the objection raised by the said counsel.

9. Hence, we accept the report of the election officer and upheld the election held by him as per our directions. We declare that the following five candidates are elected as Trustees for the temples in question.

1. Thiru U.Purushothaman 278 votes. 2. Thiru N.Boopathy 271 votes. 3. They Muthukrishnan 265 votes. 4. Thiru S.Chandramohan 257 votes. 5. Thiru B.Chandran 242 votes.

They will be the trustees incharge of the said temples from to-day onwards in accordance with the scheme framed. The election officer has got a sum of Rs. 3,016.50 in his hands, after spending Rs. 16,983.50 for the election, out of Rs. 20,000 which he received from the receiver Thiru P.S. Srinivasan. The election officer is directed to hand over the said money along with the statement of accounts for his expenditure, to the newly elected trustees. The receiver can mention in his statement of accounts that he had handed over Rs. 20,000 to the election officer towards expenses, which has been accounted for by the election officer himself.

10. It is represented by learned Counsel appearing for the receiver that the receiver has to prepare the statement of account up to this date and he requires two weeks' time therefor. That need not detain or postpone the handing over of the charge by the receiver to the new trustees. It is represented to us that to-day being an auspicious day, being New Moon day and Hanumath Jayanthi day, the trustees are very eager to take charge. Hence, the receiver is directed to handover charge

to the trustees now elected to-day itself in the presence of the election officer.

11. As regards the remuneration of the election officer, he has already been paid Rs. 5,000 by the receiver towards initial remuneration. Learned Counsel for defendants 4 to 7 represents that a sum of Rs. 15,000 (Rs. fifteen thousand only) can be paid as remuneration for the services rendered by the election officer, which cannot be said to be excessive considering the enormity and laborious work done by the election officer. Other counsel appearing in this matter, have no opinion either for or against the said suggestion.

12. However, the election officer Mr. P.B. Sethuraman, Advocate, has stated categorically that he has done the work only because it is a matter relating to temples and what all he requires is only the blessings of the Lord. We have no doubt whatever that he will have blessings in abundance from the Lord. As the election officer insists that he will not receive any additional remuneration, besides what he has already received, we are not fixing any amount to be paid to him towards his remuneration. However, we direct the new trustees to take the election officer to the temples in question to-day itself and do appropriate temple honours to him.

13. The receiver is discharged and he is directed to file the statement of accounts up to this day on or before 5.1.1996 before this Court, after giving copies thereof to the counsel appearing for the parties in this case and they will form part of the records in the case.

14. This order will form part of our judgment in C.S. No. 68 of 1995 which has already been disposed by us in terms of our order dated 3.11.1995.

15. The First Assistant Registrar, Original Side, is directed to return the documents and other records relating to the conduct of the election to the new Trustees, after obtaining a proper receipt from them.

16. If anybody is aggrieved by the election and is desirous of objecting to the validity thereof, it is open to such person to file appropriate applications on grounds other than those dealt with by us herein, before the appropriate forum.

