

Vice-Chairman, Chidambaram Municipality Vs Ganasambandham Pillai

Court: Madras High Court

Date of Decision: Oct. 28, 1925

Citation: AIR 1926 Mad 798 : (1926) 24 LW 510

Hon'ble Judges: Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

The petitioner seeks to set aside two orders of the District Munsif of Chidambaram, one ordering the production and the other

ordering the attachment and seizure of the ballot boxes in the election of a Councillor for the 4th ward of the Chidambaram Municipality. There is

no ground for presumption from the record at this stage of the proceedings that the District Munsif had any jurisdiction to interfere with the final

election. It seems that when the final list of valid nominations was posted in accordance with Election Rule 5, the respondent found that his name

had been omitted. Accordingly he filed O.S. No. 502 of 1925 in the Court of the District Munsif of Chidambaram. His remedy would have been

to refer the matter to the Local Government under Rule 31 or to have filed an election petition under Rule 1 of the Election Dispute Rules. As Mr.

Justice Wallace observes in Sarvothama Rao v. Chairman Municipal Council Saidapet AIR 1923 Mad. 475. it is impossible in deciding the

propriety of an injunction to avoid deciding on the maintainability of the suit and it is better if the Court concerned decide the two questions

together. But the Munsif does not seem to have addressed his mind to this question of jurisdiction.

2. The law is quite clear, and is set forth both in the Madras ruling quoted above, and in Bhaishankar Nanabhai v. Municipal Corporation [1907]

31 Bom. 604 where a special tribunal out of the ordinary course is appointed by an Act to determine questions as to rights which are the creation

of that Act, then except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is

exclusive, Bhaishankar Nanabhai v. Municipal Corporation [1907] 31 Bom. 604. If this tribunal had functioned and given a decision, whether right

or wrong, I am clear that the civil Court would have no jurisdiction. It is only when the special tribunal has refused to function that a civil Court

exercises the jurisdiction which the proper tribunal has failed to exercise *Sarvothama Rao v. Chairman, Municipal Council, Saidapet* AIR 1923

Mad. 475.

3. It is idle for the respondent to complain that if that is the law, it deprived him of the speedy and drastic remedy which he personally desires. It is

only under the statute that he has any rights at all in this matter, and he must submit to the whole statutory scheme, instead of accepting the

privileges and repudiating disabilities. It is an essential condition of those rights that they should be determined in the manner prescribed in the Act

to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts for they never had any; there is no

change of the old order of things; a new order is brought into. being *Bhaishankar Nanabhai v. Municipal Corporation* [1907] 31 Bom. 604. Nor

are the reasons for the statute far to seek.

4. It is a positive practical necessity that those elections should be held and completed without being delayed at every stage by some person who

considers that he has a personal grievance; and it is highly important that the ordinary Courts of law should be kept entirely immune from the

excitement that elections invariably generate. It would be deplorable if Munsifs' Courts were to become the storm-centre of disputed elections. If

these principles require illustration the present case could hardly be bettered. An election has been held which ought not to be delayed because a

Chairman has to be elected in November yet all the ballot boxes for one ward are in the Munsifs Court, and the Munsif has plunged into the fray

not only with the fervour but with the vocabulary of the hustings. The respondent made yet a third application to have the taking of the votes

stopped by the injunction, and the Munsif ordered that the election should not proceed without the respondent as candidate, whereupon the

Chairman added his name as a candidate and proceeded. The Munsif describes this act, which was certainly not in contravention of the plain terms

of his order as an insult and gross insubordination. Evidently he regards himself as the authority in supreme control of the election, and the various

other functionaries are his subordinates; and it is precisely to avoid putting the Courts of Law in this intolerably invidious position that the

Legislature is careful to appoint special tribunals and to exclude the ordinary jurisdiction.

5. I find that the orders in question were passed without jurisdiction and order the District Munsif of Chidambaram to restore the ballot boxes to

the proper authority. The injunctions are cancelled, costs to petitioners.