Dr. V.K. John and Another Vs G. Vasantha pai and Another

Court: Madras High Court

Date of Decision: April 29, 1955

Acts Referred: Constitution of India, 1950 â€" Article 226
Representation of the People Act, 1951 â€" Section 100, 100(1), 101, 117, 67

Hon'ble Judges: Rajamannar, C.J; Somasundaram, J

Bench: Division Bench

Advocate: M.K. Nambiar, T. Ramaprasada Rao, N. Srivatsamani and V.P. Raman for appts, for the Appellant; K.V. Venkatasubramania Aiyar for Messrs, T. Krishna Rao and A. Narayana Pai, for the Respondent

Final Decision: Dismissed

Judgement

Rajamannar, C.J.
These two appeals are from the judgment of Rajagopala Aiyangar J. disposing of two writ petitions Nos. 719 and 723

of 1954. By the same judgment, the learned Judge disposed of two other writ petitions also; but we are not concerned with them. The two

petitions were filed under Art. 226 of the Constitution praying for the issue of a writ of certiorari calling for the records of the Election Tribunal,

Madras, in Election Petition No. 28 of 1954, and the proceedings of the Tribunal in I. A. Nos. 7 and 8 of 1954 in the said Election Petition, dated

1st November 1954, and to quash the same. There was a bye-election for two seats in the Madras Legislative Council from the Graduates

Constituency. There were four candidates for the two seats, namely, Dr. John, Dr. A., Srinivasan, Dr. M. Santhosham and Mr. G. Vasantha Pai.

The election was by postal ballot. The date of the poll was 8th April 1954. On 9th April 1954, the votes were scrutinised and counted, and Dr.

John and Dr. Srinivasan were declared elected as having polled the largest number of votes. The result of the election was published in the Fort St.

George Gazette on 12th April 1954. On 21st July 1954. Mr. G. Vasantha Pai filed an election petition, subsequently numbered as No. 28 of

1954, calling in question the said election. The two returned candidates, as well as the third candidate, Dr. Santhosaham, were imp leaded as

respondents 1 to 3. The Election Commissioner, New Delhi, constituted an Election Tribunal at Madras for the trial of the petition. The petitioner

prayed for an order (a) declaring the election to be wholly void, (b) declaring the election of both the returned candidates as void, (c) giving a

finding that the first respondent has been guilty of the corrupt practices specified in paragraphs, 8, 9 (a), and II, and the illegal practice specified in

paragraph 12 of the petition, and the second respondent has been guilty of the corrupt practices specified in paragraphs 8 and 11 of the petition,

and (d) for costs of the petition. The petition contained several allegations, which were directed against the first two respondents, Dr. John and Dr.

Srinivasan, individually and also allegations and circumstances which would render the whole election void, as for example, that the election was

not a free election. Dr. John and Dr. Srinivasan took out two applications I. A. NOS. 7 and 8 of 1954 respectively, inter alia, praying that the

Tribunal may be pleased to (1) direct the striking out of prayers (b) and (c) in paragraph 18 of the petition and (2) direct the striking out of

paragraphs 5 to 7, the latter part of paragraph 8, and paragraphs 9 to 16. The main grounds on which these applications were taken out were two:

(1) that under the Representation of People Act, a petitioner in an election petition can claim only one of the reliefs specified in S. 84 of the Act

and therefore the petitioner in the present election petition was not entitled to claim both the reliefs, namely, that the whole election was void and

also that the election of the two returned candidates, respondents 1 and 2, should be set aside, and (2) that the petition in so far as it prayed for the

relief of having the election of the returned candidates set aside, was barred by time, as it had not been filed within the period of limitation

prescribed by R. 119 (a) of the rules framed under the Representation of People Act. The Election Tribunal found that neither ground was

sustainable and rejected both the petitions, It is to quash the order of the Election Tribunal dismissing these applications that W. Ps. Nos. 719 and

723 were filed. Rajagopala Aiyangar J. agreed with the Election Tribunal on both the points and dismissed the writ petitions. Hence these two

appeals.

2. Before us. the same points were again pressed. The first ground of attack against the election petition, namely, that the petitioner was not entitled

to claim more than one relief in his petition is founded on the terms of S. 84 of the Representation of People Act. That section runs thus:

Relief that may be claimed by the petitioner;

A petitioner may claim any one of the following declarations:

(a) that the election of the returned candidate is void;

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;

(c) that the election is wholly void,

3. In what circumstances each of these three reliefs may be claimed is set out in Ss. 100 and 101 of the Act. S. 100 (1) gives the grounds for

declaring the election to be wholly void, and Sub S. (2) the grounds for declaring that the election of the returned candidate is void. S. 101 deals

with a case where a person who has filed an election petition has in addition to calling in question the election of the returned candidate, claims a

declaration that he himself or any other candidate has been duly elected. S. 98 was also relied on in this connection. It says :

At the conclusion of the trial of an election petition the Tribunal shall make an order

(a) dismissing the election petition; or

(b) declaring the election of the returned candidate to be void; or

(c) declaring the election of the returned candidate to be void; and the petitioner or any other candidate to have been duly elected; or

(d) declaring the election to be wholly void.

4. The contention on behalf of the appellants before us, respondents 1 and 2 in the election petition, is that S. 84 read with S. 98 of the Act

precludes an election petitioner claiming more than one of the declarations (a), (b) and (c) in S. 84, and as the petition in this case prays both for

declarations (a) and (c), either the petition should be dismissed or the petitioner should be compelled to elect one or other of these two reliefs. The

Tribunal in their order observed that the petitioner would not state if he was claiming the reliefs cumulatively or alternatively and he persisted in this

attitude even at the hearing of arguments. They then proceeded to say:

We may state that there is no question under the Act of granting such reliefs cumulatively because S, 98 already referred to empowers the Tribunal

to pass one of the orders specified therein. Such reliefs cannot therefore be asked for cumulatively and we treat the relief sought in this petition only

as being prayed for in the alternative.

5. The learned Judge, Rajagopala Aiyangar J. agreed with the Tribunal that this was the proper method of approaching the problem, and it was for

the Tribunal to decide eventually the relief which may be granted to the petitioner in the election petition. Before us, Mr. Venkatasubramania Aiyar

for the respondent (election petitioner) conceded that the respondent will not be entitled to obtain both the reliefs having regard to the terms of S.

98 of the Act, and that though the petition did not expressly mention the two reliefs as alternative, they may be treated as such. Apart from this

concession, we are of opinion that the petition is not liable to be dismissed on this ground. S. 81 of the Act provides that an election petition calling

in question any election may be presented on one or more grounds specified in Sub-S. (l) and (2) of S. 100 and S. 101. Sub-S. (1) relates to relief

(c), Sub-S. (2) to relief (a) and S. 101 to relief (b) in S. 84 of the Act. S. 81 permits an election petition on one or more of the grounds specified in

these several provisions. There is nothing, therefore, to prevent an election petitioner from alleging in the same petition grounds, some of which

would fall within Sub-S. (1) and others under Sub-S. (2) of S. 100. If so, it follows that the election petition may pray for more than one relief.

What, however, is clear is that the Tribunal can actually grant only one of these two reliefs or dismiss the entire petition under S. 98 of the Act. The

language, namely, ""A petitioner may claim any one of the following declarations "", is not inconsistent with the petitioner claiming any one of the

three alternatively. That this must be so will become evident by reference to a case where the petitioner not only seeks to set aside the election of

the returned candidates but claims that he should be declared duly elected. In such a case, cannot the petitioner claim relief (b) in the first instance,

and in the alternative relief (a) ? Obviously he can. The petitioner can claim that even if he cannot be declared duly elected the election of the

returned candidate may be declared void. It would be for the Tribunal to give the appropriate relief. Otherwise, a most absurd result will follow. If

the argument on behalf of the appellants were to be accepted, in such a case the petitioner will be compelled to choose either relief (a) or relief (b).

Suppose he chooses relief (b), namely, that the election of the returned candidate is void and that he himself or any other candidate has been duly

elected and the Election Tribunal find that there are grounds to declare the election of the returned candidate void, but the Tribunal do not think

that the petitioner is entitled to be declared duly elected. In such a case, what is to happen? Should the petition be dismissed? In our opinion, there

can only be one answer, namely, that the alternative and lesser relief, namely, a declaration that the election of the returned candidate is void, can

certainly be granted.

6. It may be pointed out that S. 85 lays down when an election petition is liable to be dismissed by the Election Commission, namely, if the

provisions of Ss. 81, 83 or 117 are not complied with. S. 84 is not among the sections mentioned. The decisions i Audesh Pratap Singh Vs. Brij

Narain and Others, and Mahadeo v. Jwala. prasad AIR 1954 Nag 26. (2) support the view that we are taking; and though the point did not fall to

be considered directly, the decision of the Supreme Court in Durga Shankar Mehta v. Tkakur Raghuraj Singh 1954 S.C.J. 723, (3), lends support

to the contention that an election petition can seek alternative reliefs. We agree with Rajagopala Aiyangar, J., that there is no substance in this

ground.

7. The second ground depends entirely on a construction of R. 119 of the Rules made under the Representation of People Act. S. 81 (1) of the

Act provides that an election petition may be filed within such time but not earlier than the date of publication of the name or names of the returned

candidate or candidates at such election under S. 67, as may be prescribed. It is in pursuance of this provision that R. 119 was made. It is as

follows:

Time within which an election petition shall be presented. An election petition calling in question an election may-

(a) in the case where such petition is against a returned candidate, be presented under S. 81 at any time after the date of publication of the name of

such candidate under S. 67 but not later than 14 days from the date of publication of the notice in the Official Gazette under R. 113 that the return

of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Office; and

(b) in the case where there are more returned candidates than one at an election and the election petition calls in question the election as a whole,

be presented under the said S. 81 at anytime after the date of publication of the names of all the returned candidates under S. 67 but not later than

60 days from the expiration of the time specified in Sub-R. (1) of R. 112 for the lodging of the returns of election expenses of those candidates

with the Returning Officer.

7. It is not necessary to refer to Rr. 112 and 113 mentioned in Cls. (a) and (b) of the above rule, as it is common ground that the present election

petition is beyond the time specified in Cl. (a) and within the time specified in Cl. (b). The question is which of the two clauses applies to the

present petition. Every one has agreed, the Tribunal and Rajagopala Aiyangar J. as well as Counsel on both aides, that the language of the rule

gives rise to several difficulties. One thing is obvious; the two clauses of R. 119 must be taken to provide for any election petition that may be

presented, what, ever the relief or reliefs prayed for might be. There is no direct decision dealing with this rule, which gives us any assistance.

Counsel expended, therefore, all their ingenuity in persuading us to construe the two clauses of the rule to suit their respective contentions. The

construction of the respondent, election petitioner, which was accepted by the Tribunal, and by Rajagopala Aiyangar J. is this: Where the petition

calls in question the election of more returned candidates than one, it does not fall within Cl. (a), and Cl. (b) would apply, when there are more

returned candidates than one and the election petition calls in question the election of each of the returned candidates, whatever be the grounds.

8. We are free to confess that R. 119 is not easy to construe, as it will be difficult to apply either Cl. (a) or (b) to certain election petitions. Giving

the question our deep consideration, we have arrived at the following construction of the two classes, taking into account the implication of the two

different periods in the two clauses. Cl. (a) would apply to every petition, in so far as it is directed against a returned candidate. If there is only one

returned candidate, Cl. (a) would apply, whether the relief prayed for is that his election should be set aside or the election should as a whole be

set aside because the result comes to the same thing, though the grounds may be different. When there are more returned candidates than one, an

election petition may pray for a declaration that the election of any one of them to be void. Even the, Cl. (a) would apply. It would equally, in our

opinion, apply when the election of more than one candidate is impugned individually. In such a case, though an election petition may comprise

reliefs directed against several candidates, for the purpose of limitation such a petition should be deemed to comprise several petitions, each

directed against one of the candidates returned, and time must be calculated under Cl. (a) with reference to each of them. We have come to this

definite opinion because under Cl. (a) the material date for computing time may differ with reference to each of of the returned candidates, because

the material date is the date of publication of the notice in the Official Gazette under R. 113, that the return of election expenses of such candidate

and declaration made in respect there of have been lodged with the Returning Officer. The date may not be the same for all returned candidates. In

such a case, obviously, it is in consonance with principles of equity and justice that the time within which an election petition could be presented

against the election of a particular candidate should be connected with the date relating to the return of his election expenses.

9. Clause (b) of R. 119 would, in our opinion, apply only to a case where there are more returned candidates than one and the election petition

prays that the election should be declared to be wholly void. With due respect to Rajagopala Aiyangar, J. we think that the words ""Calls in

question the election as a whole"" must be construed with reference to the provisions of S. 84 (c) and S, 100 (1). If what was intended was that Cl.

(b) should apply to a case where the election petition calls in question the election of each of several returned candidates, then appropriate

language could have been used, such as for example,

in the case where there are more returned candidates than one at an election and the election petition calls in question the election of all of them.

10. We think that the expression ""as a whole"" should be understood in the context with reference to the specific relief which is allowed to be

claimed, namely, a declaration that the election is wholly void. In our opinion, this is the only reasonable construction of R. 119, which avoids many

anomalies which would arise on any other construction. For instance, in a case where a petition is filed to declare the election of one of several

candidates to be void, if a petitioner finds that it will be out of time under Cl. (a) all that he has got to do is to attack the election of the other

candidates as well, and the petition would be in time. Or to give an extreme illustration, if according to R. 119 (a), the time has elapsed within

which a petition could be presented against every one of the returned candidates individually as for instance, where several petitions are filed, each

of them impugning the election of one of the candidates, nevertheless if in a single petition the election of all the candidates is sought to be declared

void, then the period of limitation would be that provided in Cl. (b), and the petition might be in time. In our opinion, such a result could not have

been contemplated. The division of R. 119 into (a) and (b) provides for several contingencies, namely, (1) where there is only one returned

candidate, (2) which there are more returned candidates than one, (3) when the election of a particular candidate is challenged, and (4) when the

entire election is sought to be declared wholly void. It is only by adopting the construction which we have indicated above, that the two clauses can

cover all the contingencies. We think it is a sound principle to deal with a single petition in which the election of more candidates than one is

individually impeached as really comprising several petitions against each of the candidates. Just as a suit brought against several defendants may

be in time against some of the defendants but out of time against others, or a suit brought for several reliefs may be barred by time in respect of

some of the reliefs and be in time in respect of others, an election petition may be in time in respect of some of the respondents but out of time as

against others, and equally it may be in time in respect of one relief but barred in respect of another relief. The position then, according to our

above construction, is that the petition against both respondents 1 and 2, so far as relief (b) in paragraph 18 of the petition is concerned, is out of

time under R. 119 (a). The petition, in so far as it seeks a declaration that the election is wholly void, is in time.

11. The next question is, whether because we have come to a conclusion different from the Tribunal''s on the question of limitation, we should

interfere. Mr. Venkatasubramania Aiyar, learned Counsel for the respondent, raised the objection that even assuming that the Election Tribunal

erred in law on a construction of R. 119, it would only amount to a wrong decision, and the Court should not issue a writ of certiorari to quash the

order of the Tribunal on the ground that it embodies a wrong decision in law. He drew our attention to the latest pronouncement of the Supreme

Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others,), in which there is an exhaustive consideration of the powers of the High

Court under Art. 226, and in particular, to the following passage;

The Court issuing a writ of ''certiorari'' acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will

not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has

jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of

appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence, and

substitute its own findings in ""certiorari"". These propositions are well settled and are not in dispute,

12. Reference may also be made to the prior decision of the Supreme Court in T.C. Basappa Vs. T. Nagappa and Another, in which the law was

thus stated;

An error in the decision or determination itself may also be amenable to a writ of ''certiorari'' but it must be a ''manifest error apparent on the face

of the proceedings'' e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be

corrected by ''certiorari'' but not a mere wrong decision.

13. On the other hand, Mr. M. K. Nambiar for the appellants relied upon a statement of the law contained in the decision of this Court in Dr. C.S.

Krishnaswamy Ayyar Vs. Mohanlal Binjani and Another, (3), and the decision of the English Court of Appeal in B. v. Northemberland

Compensation Appeal Tribunal, (1952) 1 A.E.R. 122. (4), In our opinion, the proper order to be passed by us under Art. 226 in this case is not

an order directing the issue of a writ of certiorari but really an order in the nature of a writ of prohibition. The result of our construction of R. 119 is

that the election petition is not maintainable against the respondents 1 and 2 so far as relief (b) in paragraph 18 is concerned. The Election Tribunal

will, therefore, have no jurisdiction to precede with the trial of the petition in respect of this relief. The fact that after listening to the parties they

overruled the objection as to their jurisdiction in this behalf does not make any difference. If, as we have now found, the Tribunal was not

competent to entertain the petition so far as that relief is concerned, the appropriate writ will, therefore, be a writ of prohibition prohibiting the

Election Tribunal from proceeding with the trial of the election pettier, so far as relief (b) in paragraph 18 of the petition is concerned. We

accordingly direct such a writ of prohibition to issue to the Election Tribunal. The appeals are, otherwise, dismissed. No order as to costs.