

(2009) 10 MAD CK 0195

Madras High Court

Case No: C.R.P. (NPD) No.448 of 2009 and M.P. No. 1 of 2009

M. Mahalakshmi

APPELLANT

Vs

S. Malathi and Others

RESPONDENT

Date of Decision: Oct. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 227
- Evidence Act, 1872 - Section 35
- Penal Code, 1860 (IPC) - Section 191
- Registration of Births and Deaths Act, 1969 - Section 8, 9
- Tamil Nadu Panchayats Act, 1994 - Section 258, 258, 33

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: M. Arumugam, for the Appellant; T.L. Rammohan for Respondent 1, K. Balaji, P.J. Jayakumar and Santhi Rakkappan, for Respondent 5, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The allegations contained in the Civil Revision Petition filed by this petitioner u/s 258 and 258 r/w 33(ii) of Tamil Nadu Panchayats Act, 1994 are in brief:

2. The petitioner contested for the post of the President of Sekkanur Village Panchayat, in the election which was held on 30.10.2006, in Electric bulb symbol. The first respondent also was one among the candidates who contested for the same post. The petitioner filed nomination paper on 27.09.2006, before the Assistant Returning Officer, who distributed Candidates Guide Book - 6 of 2006, containing the Tamil Nadu Panchayat (Election) Rules. The first respondent also filed her nomination paper on the same date.

2.1. The petitioner raised objections before the Assistant Returning Officer that the first respondent was only about 18 years of age and as per the guidelines, she is not at all eligible to contest the election. She also brought to the notice of the authority that the first respondent completed her 10th standard during the year 2003 in Government Girls Higher Secondary School, Ussoor and during the academic year 2003-05 in the said school she completed her plus I and plus II standards at the age of 17 years and the same can be seen from the admission records of the said school. The petitioner orally registered her objections before the Assistant Returning Officer that the first respondent was not eligible to file nomination paper. The first respondent did not produce school certificate with an ulterior motive to suppress her age and misrepresent that she was above 21 years.

2.2. The petitioner requested the authority to ascertain the actual date of birth or send for the copy of the age proof from the said school, but in vain. The first respondent also had got admission as a student in Tamil Nadu Mazhalayar Teachers Training School at Thendral Nagar, Sathuvachari, Vellore, where also she had not produced the school certificate. In spite of the objections, the Assistant Returning Officer admitted the nomination papers on 28.09.2006. It is understood that the date of birth of the first respondent is 03.06.1987 whereas she has mentioned in the nomination paper that she completed 21 years. The first respondent was only 18 years, 4 months and 24 days as on 27.09.2006. In view of the said disqualification of the first respondent, her election as President of Sekkanur may be declared as void and consequently declaring the petitioner as a duly elected President of the said Panchayat.

3. In the counter filed by the first respondent, the following are stated:

3.1. It is utterly false to state that on the day of scrutiny of nomination on 28.09.2006, the petitioner filed objection that this respondent had not completed 21 years of age. The construction of paragraph 4 of the petition is based on unbased presumption. After verification, she stood as candidate and got elected. The actual date of birth of this respondent is 03.06.1985 and not 03.06.1987. The authority mentioned in the petition to issue birth certificate of the first respondent is not authority to give such certificate. The petitioner is having alternative remedies. The year of marriage of the parents of the first respondent has not been clearly stated in the petition.

3.2. This respondent has not violated the rules and not suppressed the material facts. She has given the correct date of birth and after formalities, her nomination was accepted and was elected as successful candidate. The petitioner misleads the Court by incorrect particulars. Due to the family feud, this petition has been filed, hence, the petition may be dismissed.

4. The following are the allegations contained in the counter filed by the second respondent:

4.1. On 27.08.2008, the petitioner raised objections before the Assistant Returning Officer that the first respondent had not completed 21 years of age as required by Election Commission. She has not even completed 19 years as on 27.09.2006. The first respondent completed her plus II in 2005 only, in the Government Higher Secondary School, Ussoor. In spite of the oral objections of this respondent, the Assistant Returning Officer admitted the nomination paper of the first respondent, which was on the basis of school transfer certificate, attested by notary to show her age as if she has completed 21 years of age on the date of filing the nomination.

4.2. The first respondent is not at all an illiterate candidate. She has studied upto plus II and studying in the Teachers Training School. She was well aware of her date of birth as 03.06.1987 and even then she filed nomination by giving false information, which is an offence u/s 191 IPC. Hence, her election as Panchayat President may be declared as void and illegal.

5. Counter of fourth respondent, adopted by the fifth respondent, contains the following averments:

5.1. The first respondent had filed nomination form duly filled along with school transfer certificate attested copy for proof of age and notary affidavit to show her properties, age and address particulars for the post of President which shows her age as 21 years and she was eligible to contest the election. As per the transfer certificate, her date of birth was 03.06.1985. As on 27.09.2006, she had completed 21 years of age. She has mentioned her age as 21 years in nomination paper. There was no irregularity in admitting her nomination paper. No objection was raised at the time of scrutiny of the nomination paper either by the petitioner or her agent or any of the candidates who have contested. Copies of nomination forms along with enclosures were displayed in the notice board of the Village Panchayat Office, Block Development Office and in Collector's Office and no objection was received from the public or from the contesting candidates. Since the petitioner did not raise any objection at the first instance, she is estopped from raising the same at a belated stage.

5.2. It is denied that she orally objected before the Assistant Returning Officer and there was no written complaint. The election was held peacefully as per rules and regulations and procedures as contemplated under Tamil Nadu Panchayats Act and as per the directions of the superior authorities. The petitioner never produced any document to show the age of the first respondent was below 21 years. The petition is bad for non-joinder of State Election Commission and Assistant Returning Officer, hence, the petition is not maintainable in law on facts. So, the petition may be dismissed.

6. The learned Fast Track Court Judge, Vellore, after analysing the evidence, records and pleadings, dismissed the petition by observing that only to wreck vengeance the petitioner has filed this petition against the first respondent. Hence, the matter has

been carried before this Court in this revision.

7. It is the quintessence of contention of the petitioner that the first respondent is under-aged, who had not completed the prescribed age of 21 years on the date of filing of the nomination form on 27.09.2006 and her election to the post of President of Sekkanur Village Panchayat has to be set aside since she suffered the disqualification to contest the election. Prevailing over the oral evidence on record, the documentary evidence produced by the petitioner play vital role in this case to decide the matter. It is the contention of the petitioner that the first respondent was born on 03.06.1987 and the same got entered into the records right from inception which had been carried into the school records as well as the service particulars pertaining to her father, Durairaj, and that based upon the voter list, the Assistant Returning Office accepted her age, which is not sustainable.

8. The first respondent, in her evidence, would say that at the time of filing nomination, she had not produced any evidence evidencing her date of birth and that in the voter list, her age was mentioned as 21 years and her nomination accompanied the voter list and that excepting the voter list, she had not produced any document to show her age. Ex.R1 is the birth certificate issued by the Headquarters Deputy Tahsildar, Vellore, in which, her date of birth is mentioned as 03.06.1985 and the date of registration as 01.05.2008. Ex.R1 receives scathing attack from the side of the petitioner that the entries in Ex.R1 having not been made in accordance with the procedures contemplated in the Registration of Births and Deaths Act, 1969, and Rules framed therefore and hence, they lose evidentiary value.

9. The learned Counsel appearing for the petitioner Mr. M. Arumugam, would draw the attention of this Court to the relevant provisions in the said Act and the Rules as well, which go to show that the information as to any birth or death shall be given within 21 days from the date of birth or death and in case, if the information was delayed, within 30 days after the expiry of 21 days, on payment of prescribed fee. In case, even after the said 30 days if the occurrence of birth was not informed, then, on prescribed fee, within one year the belated information may be given to the Registrar along with production of an affidavit as stipulated and that even if no entry as to birth was made within one year, the same shall be registered only on the direction made by a Magistrate. The relevant provisions are as follows:

The Registration of Births and Deaths Act, 1969.

13. Delayed registration of Births and Deaths.- (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor; but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the

written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action.

The Tamil Nadu Registration of Births and Deaths Rules, 2000

5. Form for giving information of births and deaths.- (1) The information required to be given to the Registrar u/s 8 or Section 9, as the case may be, shall be in [Form Nos. 1,2 and 3] for the Registration of a birth, death and still-birth respectively, hereinafter to be collectively called the reporting forms. Information, if given orally shall be entered by the Registrar in the appropriate reporting form and the signature or thumb-impression of the informant obtained.

(2) The part of the reporting form containing legal information shall be called as "Legal Part" and the part containing statistical information shall be called as "Statistical Part".

(3) The information referred to in Sub-rule (1) shall be given within twenty-one days from the date of birth, death or still-birth.

10. The entries in Ex.R1 have been entered on 01.05.2008. It is not explained before this Court under what authority the entries have been made. It is not pleaded nor spoken by R.W.1 that she got order from a Magistrate to make the entry as to her date of birth after 23 years. R.W.1-the first respondent has not stated anything about the date of information to the Registration Department, in her evidence. In view of the contravention of relevant provisions as aforesaid, Ex.R1 has no probative value which easily wriggles out from consideration.

11. Much was said about the entries in the school records of the first respondent, where the date of birth of the first respondent has been entered as 03.06.1987. In addition, Ex.P12 has also been produced, which is the birth register maintained in Christian Medical College Hospital, Vellore, where the first respondent is stated to have born on 03.06.1987. Her parents' names entered therein are Deepam and Durairaj and she accepts that they are her parents. Producing Ex.P12, PW.6-Chief Medical Officer of a Branch of C.M.C. says that Ex.P12 is the entries available in the Birth Register maintained in the infirmary. P.W.2 is the Principal of Siddhartha Senior Secondary School, where the first respondent studied fourth and fifth

standards. He produced Ex.P4 Transfer Certificate issued from the school which shows her date of birth as 03.06.1987. P.W.3 is the Headmaster of Ussoor High School. She says that from sixth to tenth standards, the first respondent studied in the school and Ex.P6 is the Transfer Certificate issued by the school. It contains date of birth of the first respondent as 03.06.1987.

12. P.W.4 is working as Clerk in Record Section of Military Division in Bangalore. He says that on 01.11.1998, one Durairaj joined the army, who furnished his family particulars to the office in which he has stated that his daughter Malathi (first respondent) was born on 03.06.1987. The said Durairaj died in September 1994, he produced Ex.P8 and Ex.P9 which are the declarations of birth of child, by name Malathi and it was born on 03.06.1987 to him and Deepam and Kindred roll and names of heirs also reveals that the date of birth of Malathi as 03.06.1987. P.W.5 is the Correspondent of Ussoor Nursery and Elementary School, who produced Ex.P10 and Ex.P11 which is the transfer certificate and the admission register maintained in the school which shows that the date of birth of Malathi as 03.06.1987.

13. The learned Counsel appearing for the petitioner would urge that abundant evidence are available in this case to ascertain the correct date of birth of the first respondent as 03.06.1987 and hence on the date of filing of nomination forms on 27.09.2006, she had not reached the age of 21 years, but was only 19 years and hence, she suffered the disqualification as "under-aged". It is his further contention that the judicial pronouncements in this regard would indicate that unless the contrary is proved or the entries are shown to be wrongly made, the entries in the school records as to the date of birth of an individual can be relied upon. For this proposition of law, he relies upon various judgments of the Hon"ble Supreme Court as well as this Court.

14. In [Mayank Rajput Vs. State of U.P.](#), the Allahabad High Court after following the principles laid down by the Hon"ble Supreme Court has held that entry made in high school certificate is presumed to be correct and burden lies on either side to prove it or otherwise. In the said judgement, it is also observed that, (Para 32) reference was made to earlier decision of the Hon"ble Supreme Court in [Mohd. Ikram Hussain Vs. State of U.P. and Others](#), wherein certified copies from school registers were produced along with the affidavit of the father stating the date of her birth. The Hon"ble Supreme Court held that these amounted to evidence under the Indian Evidence Act and entries in the school registers were made ante litem motam. Further, in the same Allahabad High Court decision, another judgment of the Hon"ble Supreme Court in [Amrutlal Someshwar Joshi Vs. State of Maharashtra](#), is referred, wherein, it was held that school leaving certificate can be acted upon with reference to the date of birth given in the certificate.

15. A Full Bench of the Jharkhand High Court in a decision reported in 2007 4 L.W. 33 J.S. Kamta Pandey v. B.C.C.L. through its Chairman-cum-Managing Director and Ors. has observed that date of birth recorded in the Matriculation certificate duly

authenticated by the Education Board is a conclusive proof of age.

16. The learned Counsel appearing for the petitioner also says that the age mentioned in the voter list cannot be a evidence for the date of birth and for this proposition, he garnered support from the Hon"ble Supreme Court decision reported in [Sushil Kumar Vs. Rakesh Kumar](#), in which, it is held that the date of birth in voter list and Election Identity Card issued by the Election Commission was not conclusive. In this case, earlier judgment of the Apex Court has been referred. In [Birad Mal Singhvi Vs. Anand Purohit](#), it was held that an entry relating to the date of birth made in the school register is relevant and admissible u/s 35 of the Indian Evidence Act, but the entry regarding to the age of a person in a school register is not of much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.

17. The learned Counsel appearing for the respondent cites a Constitution Bench judgment of the Supreme Court reported in [Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others](#), in which Their Lordships were pleased to observe as follows:

The appellant's case is that once this wrong entry was made in the admission register it was necessarily carried forward to the Matriculation Certificate and was also adhered to in the application for the post of a Sub-Inspector of Police. This explanation was accepted by the Election Tribunal but was rejected by the High Court as untrustworthy. However, much one may condemn such an act of making a false statement of age with a view to secure an advantage in getting public service, a judge of facts cannot ignore the position that in actual life this happens not infrequently. We find it impossible to say that the Election Tribunal was wrong in accepting the appellant's explanation. Taking all the circumstances into consideration we are of opinion that the explanation may very well be true and so it will not be proper for the court to base any conclusion about the appellant's age on the entries in these three documents viz., Ex.2, Ex.8 and Ex.18.

18. In order to take recourse to the benefits of the said decision, it must be shown by the person who denies the entries in the school certificate that they were wrongly made and if such explanations convince the Court, then it may treat the said certificates as not conclusive. In the present case on hand, there is no such assertion on the part of the first respondent that the entries in the school registers and the hospital record were made wrongly. Excepting certain suggestions put in the cross-examinations of the petitioner's witnesses, there is no independent evidence to controvert the entries available in those records. The initial burden was on the petitioner to establish the entries in the said documents and the same was discharged by her. Then, the burden got shifted upon the first respondent who in turn has not discharged the same and hence, there is no impediment to place reliance upon the documents produced by the petitioner and to reach the conclusion that the correct date of birth of the first respondent is 03.06.1987.

19. R.W.2, the fourth respondent also says that in order to contest the election, one should have completed 21 years at the time of filing nomination. The first respondent did not produce any document to show her date of birth. There is no material to show that at the time of filing of nomination by the first respondent, the petitioner raised objection. It is stated that it was orally made. Mere failure to produce such documents would not weaken her case.

20. The learned Counsel appearing for the respondent also drew attention of this Court to a judgment reported in [K. Thangavelu Udayar Vs. V. Ramalingam and Others](#), in which, the scope of powers of this Court under Article 227 has been discussed in which it is held that since the revisions are under Article 227, the scope of enquiry is very much limited. Unless the petitioners can substantiate that the order of the Tribunal is perverse, in the sense that no man with some knowledge of law would have entered such a finding, the scope of interference is very limited. As far as the facts of this case are concerned, this Court discerns that the conclusion of the Court below is perverse. The election Tribunal has not appreciated oral and documentary evidence available on record in a proper perspective. Hence, interference with the order passed by the Court below, by this Court becomes imperative.

21. Ex.P3 is the particulars with reference to the number of votes polled and the votes secured by each candidate, which are as follows:

Total votes cast = 1960 Rejected votes = 125 Valid votes = 1835 M. Mahalaksmi = 528
S. Malathi = 702 P. Vasantha = 350 S. Jayanthi = 225

22. The petitioner would contend that if the first respondent goes out of picture, since she suffers disqualification on the date of filing of nomination on the reason that she had not completed 21 years, the next candidate (petitioner) having secured majority of votes among the remaining three candidates has to be declared as the successful candidate.

23(i). The upshot from the discussions in this judgment is to the effect that the election of the first respondent as President of Sekkanur Village Panchayat in the election held on 13.10.2006 has to be declared as null and void and it is declared as such.

23(ii). However, as per the prayer in the petition, the Court could not declare the petitioner as successful candidate in the election since majority of the votes were secured by the first respondent and declaration of such prayer would not reflect the mandate of the electorate. Hence, this Court directs the fourth and fifth respondents to take the matter to the authorities concerned to hold a fresh election in accordance with law.

In fine, the Civil Revision Petition stands disposed of in the above-said terms. No costs.