

Durai Muthuswami

Vs

N. Nachiappan and Others

Civil Appeal No. 646 of 1972

(D.G. Palekar, A. Alagiriswami JJ)

23.04.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal arises out of the election held to fill up a seat in the Tamil Nadu Legislative Assembly from the Sankarapuram Constituency, South Arcot District, held in March, 1971, in which the first respondent obtained 28,544 votes as against 28,472 votes obtained by the petitioner and was thus declared elected. This appeal arises out of the dismissal of the election petition filed by the appellant for setting aside the result of that election. Though many grounds had been urged before the High Court as well as in the petition of appeal in this Court, we are now concerned only with one ground which the High Court refused to go into and was the only which Shri Natesan appearing for the appellant urged before us.

2. Before the Returning Officer another candidate by the name Ramaswami had presented an objection petition to the reception of the 1st respondent's nomination on the ground that he had a subsisting contract with the Highways Department of the State of Tamil Nadu, and with the Panchayat Union, Thiagadurgam, and was also an agent for selling tickets in the raffle conducted by the State of Tamil Nadu. The Returning Officer rejected those contentions and accepted the nomination papers of the 1st respondent. Subsequently, Ramaswami withdrew from the contest and the appellant and the 1st respondent were the only candidates in the election. In his election petition the appellant had mentioned that on the date of presenting his nomination papers the 1st respondent had a subsisting contract with the State Government to widen and black-top the Ulundurpet-Salem road between 74 km. and 86 km., at an estimated cost of Rs. 2 lakhs, that on the eve of presentation of nomination papers he purported to surrender the contract by submitting an application for cancellation to the Division Engineer, Highways, Guddalore, whereas the contract was signed by the Superintending Engineer, Madras Circle on behalf of the Government of Tamil Nadu, that this letter of cancellation was not valid and therefore there was no valid cancellation of the contract. He, therefore, specifically urged that the election of the 1st respondent was void on that ground. The 1st respondent on the other hand maintained that the cancellation of the contract was valid and there was no subsisting contract on the date of filing of the nomination and that the contention of the petitioner that his election was void on that ground was not legally sustainable. He also improperly accepted the result of the election, insofar as it concerned the first respondent, had been materially affected, that allegation cannot be inquired into. He also contended that in any case the result of the election had not been materially affected. The learned Judge who dealt with this matter upheld the contention of the respondent on the ground that the allegations in the petition had not stated that the result had been materially affected by the alleged improper reception of the (1st respondent's) nomination papers. He was of the opinion that this allegation relating to the improper acceptance of

the nomination of the first respondent cannot be considered a valid ground, which could be gone into in the absence of a specific averment that the election had been materially affected. To complete the narrative it is necessary to mention that the appellant had filed an application for summoning the necessary documents in order to sustain his case. The documents necessary to be referred to, so far as the present appeal is concerned, are only four in number :

- (1) Objections to the nomination of the 1st respondent (N. Nachiappan) by A. Ramaswami.
- (2) Documents produced by the 1st respondent (N. Nachiappan) at the time of the security of nomination.
- (3) The signed agreement between the Superintending Engineer, Highways Madras Circle and N. Nachiappan in respect of the contract for widening the existing black-top surface to 22 ft., with Ulundurpet-Salem Road - Kilometre 74/2 to 86/4.
- (4) Proceedings of the Divisional Engineer, Highways and Rural Work, Guddalore of termination of the contract made by Rec. No. 8280/70-B-3, dated January 28, 1971.

The first two documents were to be summoned to be produced by the District Election Officer and the other two by the Superintending Engineer, Highway, Madras Circle.

3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may be presented on the or more of the grounds specified in sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1)(a), insofar as it is necessary for the purposes of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1) if the High Court is of opinion -

“(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act.....(b)
.....(c)(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected - (i) by the improper acceptance of any nomination, or (ii)(iii)##

the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate to be void should be of opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section 9-A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st

respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can, be therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper acceptance of the 1st respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the accepted of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted.

4. One other point which the learned Judge failed to notice is that on the allegations contained in the petition, if they were established, the respondent must be deemed to suffer the disqualification under Section 9-A of the Act and all that Section 100(1)(a) requires is that on the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or this Act. In order to declare his election void it is not necessary that the election petition should state that the result of the election was materially affected thereby. The question of the election being materially affected does not arise in a case falling under Section 100(1)(a).

5. Though it is not necessary to cite any authorities we may refer to a few decisions. In *Balakrishna v. Fernandez* ((1969) 3 SCR 603 : (1969) 3 SCC 238, 248, 250.), this Court pointed out that the first sub-section of Section 100 lays down the grounds for declaring an election to be void, that Section 100 and 101 deal with the substantive law on the subject of election, that these two sections circumscribe the conditions which must be established before an election can be declared void or another candidate declared elected. It further observed :

"The heads of substantive rights in Section 100(1) are laid down in two separate parts : the first dealing with situations in which the election must be declared void on proof

of certain facts, and the second in which the election can only be declared void if the result of the election, insofar as it concerns the returned candidate, can be held to be materially affected on proof of some other facts.... In the first part they are that the candidate lacked the necessary qualification or had incurred disqualification..... These are grounds on proof of which by evidence, the election can be set aside without any further evidence. The second part is conditional that the result of the election, insofar as it concerns a returned candidate, was materially affected by the improper acceptance of a nomination.... This condition has to be established by some evidence direct or circumstantial. It is, therefore, clear that the substantive rights to make an election petition are defined in these sections and the exercise of the right to petition is limited to the grounds specifically mentioned.

Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of the People Act. Here we have to consider Sections 81, 83 and 86 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies..... The section is mandatory and requires first a concise statement of material facts..... What is the difference between material facts and particulars ? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet".

That lays down the proper test. In *Konappa v. Viswanath* ((1969) 2 SCR 90 : AIR 1969 SC 604 : (1969) 1 SCJ 818.) this Court pointed out that :

"Where by an erroneous order of the Returning Officer poll is held which, but for that order, was not necessary, the court would be justified in declaring those contesting candidates elected, who, but for that order, would have been declared elected".

6. It was urged before us by Mr. Natesan that we should summon the documents which were only four in number and decide the case ourselves. We do not know whether any further material would or would not be necessary to establish the ground sought to be made out by the appellant or whether any oral evidence would be necessary. In any case we do not consider it either necessary or expedient that we should deal with the matter directly ourselves.

7. The appeal is, therefore, allowed and the order of the learned Judge is set aside. He will now proceed to determine only the question regarding the disqualification of the first respondent and, therefore, whether the acceptance of his nomination was improper. The first respondent will pay the appellant's costs.

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