

R. Chandran

Vs

M. V. Marappan

Civil Appeal No. 1724 of 1972

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

23.04.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal arises out of the election to the office of President of the Muthugapatti village Panchayat in Salem district of Tamil Nadu held on July 31, 1970, in which the appellant secured 1256 votes as against 1015 secured by the respondent and was declared elected. Thereupon the respondent filed an election petition before the Election Tribunal questioning the election. His contention was that the appellant had just completed 19 years of age and was, therefore, incompetent to be elected as President. The Election Tribunal held that it was not established that the appellant was below 21 years of age. It was contended before the Election Tribunal on behalf of the appellant that once his name was found in the electoral rolls his election cannot be questioned on the ground that his age was below 21. Relying upon the decision of the Madras High Court in *Viswanathan v. Rangaswamy* ((1966) 2 MLJ 560; AIR 1967 Mad 244 : ILR (1968) 1 Mad. 1.), the Election Tribunal rejected this contention, but as it had held in favour of the appellant on the question of age, it dismissed the election petition. On an application filed before the High Court of Madras by the respondent under Article 227 of the Constitution to revise the order of the Election Tribunal, a learned Single Judge took the view that the age of the appellant was not above 21. He went further and held that his age was below 19 though the election petitioner himself had contended that he was just above 19 and produced an extract purporting to be from the birth register of the village. According to the election petitioner the successful candidate's father had only two sons and the successful candidate was the second of them and the extract from the birth register related to him. According to the appellant his father had four sons, of whom he was the 3rd and he was aged 21. The learned judge held by a process of reasoning, which is a little difficult to follow, that the extract from the birth register produced before the Court did not relate to the appellant but related to the appellant's elder brother and, therefore, the appellant was below 19. The High Court treated the matter as though it was dealing with a first appeal under Section 96, C.P.C. and not its powers under Article 227 of the Constitution. It did not deal with the question of law which would have been its legitimate province.

2. However, the important question for decision in this case is whether once a person's name is found in the electoral roll of the village panchayat it is open to the Election Tribunal or any other authority to question the fact that he was above the age of 21. The decision of this Court which have held that in the case of an election to the Legislative Assembly the question of age could be gone into were only where Article 173 of the Constitution was attracted and the candidate was not over 25 it was a breach of the constitutional provision. Otherwise, in respect of the voters whose names are found on the electoral roll, this Court has consistently taken the view that the question of their

age cannot be gone into in a petition questioning an election.

3. In regard to elections to village panchayats either of members or of the President there is no constitutional provision laying down any age-limit. Article 326 of the Constitution, which lays down the principle of adult suffrage, lays down that all persons over the age of 21 shall be entitled to vote. But that is because the article specifically says so; otherwise as pointed out by the Punjab and Haryana High Court in *Roop Lal Mehta v. Dhan Singh* (AIR 1968 Punj 1 : ILR (1968) 1 Punj. 651.), any person over the age of 18 would be an adult. That apart, the State Legislature is fully competent to legislate in respect of qualifications of voters and candidates for election to various local bodies in the State and there is no constitutional limitation on them so as to make adult suffrage a requisite for a valid provision of law. They can as well make any person over the age of 18 eligible to vote and stand for election or they might take a retrograde step and provide, as was the situation some years ago, that only rate payers can be voters or candidate for election. Therefore, decisions of various courts which held on the basis of Article 326 of the Constitution that the age limited of 21 years is a requisite qualification for inclusion in the electoral rolls of those local bodies and names included in the roll otherwise would be non est are wholly unsustainable. Under this category come the decision of the Madras High Court, already referred to, as well as the Andhra Pradesh High Court in *Goverdhanareddy v. Elec. Tribunal* (AIR 1970 AP 56 : ILR 1968 Andh Pra 513.), and Kerala High Court in *P. Kunhiraman v. V. R. Krishna Iyer* (AIR 1962 Ker 190 : ILR (1962) 1 Ker 1 : 1961 Ker LJ 1400.).

4. This Court has, in numerous decisions beginning from the one in *Durga Shanker Mehta v. Thakur Raghuraj Singh* ((1955) 1 SCR 267 : AIR 1954 SC 520 : 1954 SCJ 723.), and down to its latest decision in *S. K. Choudhary v. Baidnath Panjiar* ((1973) 1 SCC 95.), consistently held that when once a person's name has been included in the electoral roll his qualifications to be included in that roll cannot be questioned either when he tries to cast his vote or to stand for election or even after the election is over. It is not necessary to refer to all of them or to quote from them. The only exception made has been in respect of the requirement under Article 173 of the Constitution.

5. Let us, therefore, consider the position of law under the Madras Village Panchayat Act. Under Section 20(1) of the Act every person who is qualified to be included in such part of the electoral roll for any Assembly constituency as relates to the village or town or any portion of the said village or town shall be entitled to be included in the electoral roll for the panchayat, and no other person shall be entitled to be included therein. It is not necessary for the purpose of this case of refer to the explanation to that section. Under sub-section (2) of that section any person authorized in this behalf by the Government shall, for the purposes of that Act prepare and publish in such manner and at such time as the Government may direct, the electoral roll for the panchayat or the alterations to such roll, as the case may be. There is a proviso and an explanation to this sub-section which we need not refer to for the purposes of this case. Sub-section (5) of the section provides that :

"Every person whose name appears in the electoral roll for the panchayat shall, so long as it remains in force and subject to any revision thereof which might have taken place and subject also to the other provisions of this Act, be entitled to vote at an election; and no person whose name does not appear in such roll shall vote at an election."

6. Thus, the section itself does not lay down the qualification for a voter, it only adopts the qualification laid down for persons to be included in the electoral roll of the Legislative Assembly constituency of which that village may be a portion. It follows, therefore, that all decisions of this

Court holding that when once a person's name has been included in the electoral roll, his right to vote cannot be questioned would be applicable in interpreting Section 20 of the Madras Panchayats Act. Section 22 lays down that :

"No person shall be qualified for elections as a member of a panchayat unless his name appears in the electoral roll of the Panchayat."

7. Section 23 to 26 refer to various disqualifications for membership which do not arise in this case. Under Section 30 the President shall be elected by the persons whose names appear in the electoral roll for the panchayat from among themselves.

8. In *Durga Shankar Mehta v. Thakur Raghuraj Singh* (supra), this Court observed :

"In other words, the electoral roll is conclusive as to the qualification of the elector except where as disqualification is expressly alleged or proved. The electoral roll in the case of Vasant Rao did describe him as having been of proper age and on the face of it therefore, he was fully qualified to be chosen a member of the State Legislative Assembly. As no objection was taken to his nomination before the Returning Officer at the time of scrutiny, the later was bound to take the entry in the electoral roll as conclusive; and if in these circumstances he did not reject the nomination of Vasant Rao, it cannot be said that this was an improper acceptance of nomination on his part..... It would have been an improper acceptance, if the want of qualification was apparent in the electoral roll itself..... But the election should be held to be void on the ground of the constitutional disqualification of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer."

9. This was a case where "Vasant Rao was under 25 years of age and, therefore, not qualified under Article 173 of the Constitutional." In *B. M. Ramaswamy v. B. M. Krishnamurthy* ((1963) 3 SCR 479 : AIR 1963 SC 458 : (1964) 2 SCJ 268.), this Court had to consider the case of an election to a Panchayat in the State of Mysore. There also the electoral roll was prepared on the basis of the electoral roll for the Assembly constituency in which the panchayat was included. Section 10 of the relevant Act provided that "every person whose name is in the list of voters of any panchayat constituency shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected as a member of the panchayat" which is more or less similar to Section 22 of the Madras Act. The name of the appellant in that case was admittedly included in the electoral roll of the Mysore Legislative Assembly but it was contended that the Electoral Registration Officer did not follow the procedure prescribed for such inclusion under the Representation of the People Act, 1950. This Court held that though this was not done, the inclusion of his name in the electoral roll was not a nullity and that the non-compliance with the procedure prescribed did not affect the jurisdiction of the electoral registration officer and it could not make the officer's act non est. This Court further proceeded to point out :

"The Act proceeds on the basis that the voter's list is final for the purpose of election..... In view of Section 10 of the Act it cannot be said that there is any improper acceptance of the nomination of the appellant, for, his name being in the list of voters, he is qualified to be elected as a member of the Panchayat. There is, therefore, no provision in the Act which enables the High Court to set aside the election on the ground that though the name of a candidate is in the list, it had been

included therein illegally."

10. The laws of various States regarding the preparation of electoral rolls for various local bodies in the States proceed on the basis of the electoral rolls prepared for the concerned Legislative Assembly constituency. Therefore, all the decisions of this Court regarding the finality of the electoral roll apply directly to the electoral rolls of the various local bodies.

11. After the decision of this Court in B. M. Ramaswamy's case (supra) there was no room for any further difference of opinion on the matter. It is, therefore, all the more surprising that the Andhra Pradesh High Court in Goverdhanareddy v. Elec. Tribunal (supra), and the Madras High Court in Viswanathan v. Rangaswamy (supra) took a different view even after taking note of the decision of this Court. Both these decision, as we have pointed out earlier, proceed on a wholly wrong assumption. Their attempt to distinguish the decision of this Court in B. M. Ramaswamy's case (supra) is pointless. (The provisions of Article 326 of the Constitution are not attracted in deciding upon the validity of the inclusion of a person's name in the electoral roll for a Panchayat merely because the Panchayats Act has adopted a part of the electoral roll for an Assembly constituency as the electoral roll for the Panchayat. And in any case all the decisions of this Court on the finality of the electoral roll and their not being liable to be questioned would equally apply to the electoral rolls of local bodies. For the reasons we have already given the view consistently taken by this Court that when once a name is found in the electoral roll its inclusion could not be questioned in any election petition must be followed. The decisions of the Madras, Andhra and Kerala High Courts, already referred to, should be held to be erroneous and that of the Gujarat High Court in Mahmadhusein v. O. Fidaali (AIR 1969 Guj 334 : 10 Guj LR 925.), Allahabad High Court in Ghulam Mohiuddin v. Election Tribunal (AIR 1959 All 357.), Bombay High Court in Jagannath v. Sukhdeo (AIR 1967 Bom 317 : 69 Bom LR 300), and Punjab and Haryana High Court in Roop Lal Mehta v. Dhan Singh (supra) as correct. In this case, therefore, it was not open either for the Election Tribunal or for the High Court to go into the question regarding the appellant's age. The latest decision of Kailasam, J., in P. Subramaniam v. S. Pachamuthu and Others (85 LW 567.), is consistent with the view we have taken.

12. The appeal is, therefore, allowed, the High Court's judgment set aside and the order of the Election Tribunal restored. The respondent will pay the appellant's costs.

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