

## B. M. RAMASWAMY

v.

## B. M. KRISHNAMURTHY AND OTHERS

(B. P. SINHA, C. J., S. J. IMAM, K. SUBBA RAO, K. N. WANCHOO, J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

*Election Dispute—Validity of election challenged—Authenticated lists of voters—Authority of courts to interfere—Mysore Village Panchayats and Local Boards Act, 1959 (Mys. 10 of 1959), ss. 9, 10, 13—Mysore Panchayats and Taluk Boards Election Rules, 1959, r. 3—Representation of the People Act, 1950 (43 of 1950), ss. 23, 24, 30—Representation of the People Rules, 1956, Rule 26.*

Elections were held to a Panchayat in the State of Mysore. The appellant and five others filed their nomination papers within the prescribed date. The appellant and respondent 2 were duly declared elected. Respondent 1 filed an election petition under s. 13 of the Mysore Village Panchayats and Local Boards Act, 1959, for a declaration that the appellant was not duly elected and he himself was duly elected. The Munsif held that on the date fixed for filing of nomination papers, the name of the appellant was not in the authenticated list of voters and, therefore, he was not entitled to file his nomination papers. The election of the appellant was set aside. The High Court upheld the conclusion of the Munsif on the basis of a different reasoning. It held that though the name of the appellant was included before the prescribed date in the electoral roll of the legislative constituency under s. 23 of the Representation of the People Act, 1950, it was so included in direct violation of r. 26 of the Representation of the People Rules, 1956, and, therefore, the said inclusion was void. The appellant came to this Court by special leave.

*Held*, that in view of s. 10 of the Act, it could not be said that there was any improper acceptance of the nomination papers of the appellant. As his name was in the list of voters, he was qualified to be elected as a member of the Panchayat. There was no provision in the Act which authorised the High Court to set aside the election on the ground that though the name of a candidate was in the list, it had been included therein illegally. The action of the Electoral Registration Officer in including the name of the appellant

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in the Electoral Roll might be illegal, but the same could not be questioned in a civil court. The mistake could be rectified only in the manner prescribed by law by preferring an appeal under r. 24 of the Rules or by resorting to any other appropriate remedy. The action of the Electoral Registration Officer was not a nullity. He had admittedly jurisdiction to entertain the application for inclusion of the name of the appellant in the Electoral Roll and take such action as he deemed fit. The non-compliance with the procedure prescribed did not affect his jurisdiction, although that might render his action illegal.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 233 of 1962.

Appeal by special leave from the judgment and order dated August 2, 1961, of the Mysore High Court in Writ Petition No. 814 of 1961.

*B. Vendantiengar* and *S. N. Andley*, for the appellant.

The respondents did not appear.

1962. July 30. The Judgment of the Court was delivered by

*Subba Rao J.*

SUBBA RAO, J.—This appeal by special leave arises out of a dispute in respect of the election to the Panchayat of Byappanahalli, from its first constituency, in the State of Mysore.

The calendar of events for the said election was as follows:

|  |               |
|--|---------------|
| Notification of election                               | ... 6-2-1960  |
| Date by which candidates had to file nomination papers | ... 16-3-1960 |
| Date of the scrutiny of nomination papers.             | ... 18-3-1960 |
| Poll.  | ... 13-4-1960 |
| Declaration of result.                                 | ... 14-4-1960 |

The appellant and five others filed their nomination papers within the prescribed date. The polling took place on the scheduled date, namely April 13, 1960. The candidates secured votes as mentioned under:

|              |               |
|--------------|---------------|
| Appellant    | ... 169 votes |
| Respondent 2 | ... 158 votes |
| Respondent 1 | ... 128 votes |
| Respondent 3 | ... 115 votes |
| Respondent 4 | ... 38 votes  |
| Respondent 5 | ... 46 votes  |

The appellant and respondent 2 were duly declared elected to the Panchayat.

Respondent 1 filed an election petition under s. 13 of the Mysore Village Panchayats and Local Boards Act, 1959 (Mysore Act No. 10 of 1959), hereinafter called the Act, in the Court of the Second Munsiff, Bangalore, for a declaration that the appellant was not duly elected and for a further declaration that the first respondent was duly elected. The case of the first respondent, as disclosed in his petition, was that on the date fixed for filing of nominations the appellant's name was not in the authenticated list of voters published under r. 3, cl. (5) of the Mysore Panchayats and Tuluk Boards Election Rules, 1959, hereinafter called the Rules, and, therefore, he was not entitled to file his nomination. It was his further case that the appellant was not ordinarily a resident of Byappanahalli and, therefore, he was disqualified from standing for the election from that constituency.

The learned Munsiff held on the second point that the appellant was ordinarily a resident of the said village and was, therefore, qualified to be included in the electoral roll of the Panchayat,

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but he came to the conclusion that his name was not included in the authenticated list of voters of the said Panchayat. On that finding, he set aside the election of the appellant and declared the first respondent, who secured the next highest number of votes, to have been duly elected in his place.

On appeal, the learned Judges of the High Court, after noticing the finding of the Munsiff to the effect that the appellant's name was not included in the authenticated list of voters for the Panchayat, observed that they did not agree with the reasoning given by the learned Munsiff, but they agreed with his conclusion on the basis of a different reasoning. They held that though the name of the appellant was included before the prescribed date in the electoral roll of the legislative constituency under s. 23 of the Representation of the People Act, 1950, it was so included in direct violation of r. 26 of the Representation of the People Rules, 1956, and that, therefore, the said inclusion was void. Having so held, they agreed with the learned Munsiff that the appellant's election was liable to be set aside. Hence the appeal. It may be mentioned that there was no appearance on the side of the respondents.

Before considering the point raised, it will be convenient to clear the ground. Section 9 of the Act reads:

“The electoral roll of the Mysore legislative Assembly for the time being in force for such part of the constituency of the Assembly as is included in any Panchayat constituency shall, for the purpose of this Act, be deemed to be the list of voters for such Panchayat constituency. The Secretary of the Panchayat shall maintain in the prescribed manner a list of voters for each Panchayat constituency.

*Explanation.*—For the purpose of this section, electoral roll shall mean an electoral roll prepared under the provisions of the Representation of the People Act, 1950 (Central Act XLIII of 1950) for the time being in force.”

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Section 10 says:

“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: .....

Rule 3 of the Rules prescribed the mode of maintenance and custody of list of voters. It says, among other things, that the Secretary of the Panchayat shall maintain a list of voters for each panchayat constituency, that he shall authenticate such list by affixing on it the seal of the Panchayat, and that he shall, from time to time, carry out in the authenticated copy of each such list, any corrections that may be made in the Electoral Roll of the Mysore Legislative Assembly and initial below each correction so made. It will be clear from the said provisions that the relevant part of the electoral roll of the Mysore Legislative Assembly is deemed to be the list of voters for the panchayat constituency, and that the Secretary of the panchayat has to maintain a duly authenticated separate list of voters of the said constituency. The learned Munsiff held that, as the said authenticated list of panchayat voters was not produced before him, it was not established that the name of the appellant was included therein on the date of nomination. The learned Judges of the High Court did not accept the said finding on the ground that they did not agree with the reasoning given by the learned Munsiff; but unfortunately they have not given their reasons for differing from him.

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But a perusal of the election petition shows that the first respondent accepted in his petition that the name of the appellant was included in the said authenticated list on the date when he filed his nomination paper. Presumably because of that fact the learned Judges of the High Court did not think fit to sustain the finding of the learned Munsiff. In view of the said admission in the petition, it cannot be expected of the appellant to summon the authenticated list to prove what has already been admitted.

This leads us to the consideration of the only substantial question that arises in the appeal. Learned counsel for the appellant contends that the High Court went wrong in considering the question of the legality of the inclusion of the appellant's name in the electoral roll of the Mysore Legislative Assembly, as, under s. 30 of the Representations of the People Act, the jurisdiction of civil courts to question the legality of an action taken by, or under the authority of, the Electoral Registration Officer, was barred.

It is common case that the name of appellant was included in the electoral roll of the Mysore legislative Assembly before the date prescribed for filing of nomination papers. But it is said that the Electoral Registration Officer did not follow the procedure prescribed in that behalf. The provisions relevant to the question raised may be read conveniently at this stage. Section 23 of the Representation of the People Act, 1950, reads:

- (1) Any person whose name is not included in the electoral roll of a constituency may apply in the manner hereinafter provided for the inclusion of his name in that roll.

Rule 26 of the Representation of the People (preparation of Electoral Rolls) Rules, 1956, says:

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- (i) Every application under sub-section (i) of section 23 shall be made in duplicate in Form 4 (Part I) and shall be accompanied—
- (a) where it is to the chief electoral officer, by a fee of ten rupees, and
  - (b) where it is to the electoral registration officer, by a fee of one rupee.
- (2) The fee specified in sub-section (i) shall be paid by means of non-judicial stamps.
- (3) The chief electoral officer or, as the case may be, the electoral registration officer shall immediately on receipt of such application, direct that one copy thereof be posted in some conspicuous place in his office together with a notice inviting objections to such application within a period of seven days from the date of such posting.
- (4) The chief electoral officer or, as the case may be, the electoral registration officer shall, as soon as may be after the expiry of the period specified in sub-rule (3), consider the objections, if any, received by him and shall, if satisfied that the appellant is entitled to be registered in the electoral roll, direct his name to be included therein.

Section 24 of the Representation of the People Act, 1950, provides:

An appeal shall lie within such time and in such manner as may be prescribed—

- (a) to the chief electoral officer, from any order of the electoral registration officer under section 22 or section 23, and

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(b) to the Election Commission, from any order of the chief electoral officer under section 23.

Rule 27 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956, prescribes the procedure for preferring appeals.

It is not disputed that an application was filed before the registration officer for the inclusion of the appellant's name in the electoral roll; it is also common case that the electoral registration officer did not follow the procedure prescribed in r. 26 relating to the posting of the application in a conspicuous place and inviting objections to such application. It cannot, therefore, be denied that the inclusion of the name of the appellant in the electoral was clearly illegal. Under s. 30 of the Representation of the People Act, 1950, no civil court shall have jurisdiction to question the legality of any action taken by, or under the authority of, the electoral registration officer. The terms of the section are clear and the action of the electoral registration officer in including the name of the appellant in the electoral roll, though illegal, cannot be questioned in a civil court: but it could be rectified only in the manner prescribed by law, i. e., by preferring an appeal under r. 24 of the Rules, or by resorting to any other appropriate remedy. But it was contended before the High Court that the action of the electoral registration officer was a nullity inasmuch as he made the order without giving notice as required by the Rules. We find it difficult to say that the action of the electoral registration officer is a nullity. He has admittedly jurisdiction to entertain the application for inclusion of the appellant's name in the electoral roll and take such action as he deems fit. The non-compliance with the procedure prescribed does not affect his jurisdiction, though it may render his action illegal.

Such non-compliance cannot make the officer's act *non est*, though his order may be liable to be set aside in appeal or by resorting to any other appropriate remedy.

The Act proceeds on the basis that the voters' list is final for the purpose of election. Under s. 10 of the Act, "every person whose name is in the list of voters of any Panchayat constituency shall, unless disqualified under this Act or under any other any other law for the time being in force, be qualified to be elected as a member of the Panchayat". The disqualifications are enumerated in s. 11. If he was not disqualified—in the present case, the finding is that there was no such disqualification—the appellant was certainly qualified to be elected as a member of the Panchayat. The Act confers a special jurisdiction on the Munsif to set aside an election, and he can do so only for the reasons mentioned in s. 13 (3) of the Act. The relevant provision is in s. 13 (3) (A) (d) (i) which relates to the improper acceptance of any nomination. In view of s. 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

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the name of a candidate is in the list, it had been included therein illegally.

In this view we do not propose to express our opinion on the question whether, if the election of the appellant was void, the Munsiff could have declared the first respondent to have been duly elected in his place.

For the aforesaid reasons, we cannot agree with the conclusion arrived at either by the learned Munsiff or by the learned Judges of the High Court. In the result, the appeal is allowed and the election petition is dismissed with costs throughout.

*Appeal allowed.*

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