

R. Chandran vs M. V. Marappan on 23 April, 1973

Equivalent citations: 1973 AIR 2362, 1974 SCR (1) 46, AIR 1973 SUPREME COURT 2362, 1973 2 SCC 166, 1974 (1) SCR 511, 1974 (1) SCR 46

Author: A. Alagiriswami

Bench: A. Alagiriswami, D.G. Palekar

PETITIONER:

R. CHANDRAN

Vs.

RESPONDENT:

M. V. MARAPPAN

DATE OF JUDGMENT 23/04/1973

BENCH:

ALAGIRISWAMI, A.

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ALAGIRISWAMI, A.

PALEKAR, D.G.

CITATION:

1973 AIR 2362

1974 SCR (1) 46

1973 SCC (2) 166

ACT:

Madras Village Panchayats Act. Ss. 20 and 30-Election of President from voters-Candidate's name included in voters list-Age qualification if conclusive.

Constitution of India, 1950, Art. 227-Power of revision-Scope of.

HEADNOTE:

The appellant was elected to the office of President of Village Panchayat of a village in Tamil Nadu. The respondent filed an election petition contending that the appellant had just completed 19 years of age and was therefore incompetent to be elected as President. The Election Tribunal dismissed the petition but the High Court, in revision under Art. 227 of the Constitution, took the view that the appellant was not above 21 years and set aside the election.

Allowing the appeal to this Court,

HELD : (1) The High Court erred in dealing with the matter as if it was dealing with an appeal under s. 96, C.P.C. [47F]

(2) In regard to the election to the village panchayats: either of members or of the President, there is no constitutional provision laying down any age limit. Under s. 30 of the Madras Village Panchayats Act. the President of a village panchayat shall be elected by the persons whose names appear in the electoral roll of the panchayat from among themselves. Section 20 of the Act does not lay down a qualification for a voter but 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. The provisions of Art. 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. Therefore, all the decisions of this Court regarding the finality of the electoral roll would apply to the interpretation of s. 20 that is, once a person's name has been included in the electoral roll his right to vote cannot be questioned when he tries to cast his vote or to stand for election or even after the election is over. [48E-F; 49BE; 50G-H]

Durga Shankar Mehta v. Thakur Raghuraj Singh, [1955] 1 S.C.R. 267, S. K. Choudhury v. Baidyanath Panjiar, [1973] 1 S.C.C. 95 and B. N. Ramaswamy v. B. M. Krishnamurthy, [1963] 3 S.C.R. 479, followed.

Mahmadhusein v. Q. Fidazali A.I.R. 1969 Guj., 334 Ghulam Mohiuddin v. Election Tribunal, A.I.R. 1959 All. 357, Jagannath v. Sukhdeo, A.I.R. 1967 Bom. 317 and P. Subramaniam v. S. Pachamuthu & Ors. 85 L.W. 567 approved.

Yiswanathan v. Rangaswamy, 1966 (2) M.L.J. 560: A.I.R. 1967 Mad. 244, Goverdhanareddy v. Election Tribunal A.I.R. 1970 A.P. 56 and P. Kunhiraman v. Y. R. Krishna Iyer, A.I.R. 1962 Kerala 190. over-ruled.

Roop Lal Mehta v. Dhan Singh, A.I.R. 1968 Punjab 1, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION :- Civil Appeal No. 1724 of 1972.

Appeal by special leave from the judgment and order dated April 17, 1972 of the Madras High Court in C.R. No. 1830 of 1971.

M. Natesan and J. Ramamurthi, for the appellant. K. Jayaram and K. Doraswami, for the respondent.

The Judgment of the Court was delivered by- ALAGIRISWAMI, J.-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 31-7-1970 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⁽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 Art. 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 had 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 Art. 227 of the Constitution. It did not deal with the question of law which would have been its legitimate province.

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 decisions 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 Art. 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.

(1) 1966 (2) M. L. J. 560 : A.T.R. 1967 Mad. 244.

In regard to elections to village panchayats either of members or of the president there is no constitutional provision laying down any age limit. Art. 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⁽¹⁾ 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 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 candidates for election. "Therefore decisions of various courts which held on the basis of Art. 326 of the Constitution that the age limit 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 of the Andhra Pradesh High Court in Goverdhanareddy v. Elec. Tribunal(2) and Kerala High Court in P. Kunhiraman v. V. R. Krishna Iyer(3). This Court has, in numerous decisions beginning from the one in Durga Shankar Mehta v. Thakur Raghuraj Singh (4) and down to its latest decision in S. K. Choudhary v. Baidyanath Panjiar(5), 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 Art. 173 of the Constitution.

Let us, therefore, consider the position of law under the Madras village Panchayat Act. Under s. 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 to 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 (1) A.I.R. 1968 Punjab 1. (2) A.I.R. 1970 A.P. 56. (3) A.I.R. 1962 Kerala 190. (4) 1955 (1) S.C.R. 267. (5) 1973 (1) S.C.C. 95.

not refer to for the purposes of this case. Sub-section(5) of that 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."

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. S. 22 lays down that :

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

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

In *Durga Shankar Mehta v. Thakur Reghuraj Singh* (supra) Court observed "In other words, the electoral roll is conclusive as to the qualification of the elector except where a 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 latter 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 on 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."

This was a case where "Vasant Rao was under 25 years of age and, therefore, not qualified under Art. 173 of the Constitution." In *B. N. Ramaswamy v. B. M. Krishnamurthy*(1) this Court had to consider the case of an election to a Panchayat in the State of Mysore. There (1) [1963] (3) S.C.R. 479.

-L944SuPCI/73 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 voters' list is final for the purpose of election..... 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 the name of a candidate is, in the list, it had been included therein illegally."

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.

After the decision of this Court in B. M. Ramaswamy's case 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 decisions, 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 is Pointless The Provisions of Art. 326 of the 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 elec- toral 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 electerol rolls of local bodies. For the owns 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(1), Allahabad Court in Ghulam Mohiuddin v. Election Tribunal(2) , Bombay High-Court in Jagannath v. Sukhdeo(3), 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. Subramanuam v. S. Pachamuthu & Ors.(4) is consistent with the view we have taken.

The appeal is, therefore, allowed, the High Courts judgment set aside and the order of the Election Tribunal restored. The respondent Will pay the appellant's costs. V.P.S. Appeal allowed (1) A.I.R. 1969 Guj. 334.

(2) AIR. 1959 All. 357.

(3) A.I.R. 1967 Rom. 317, (4) 85 L. W. 567.