

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Spencer.

NATARAJA MUDALIAR (PLAINTIFF), APPELLANT,

1911,
August 1,
2 and 8.

v.

THE MUNICIPAL COUNCIL OF MAYAVARAM AND ANOTHER
(DEFENDANTS), RESPONDENTS.*

Right of suit—Madras District Municipalities Act (IV of 1884)—Election as Municipal Councillor—Declaration of its invalidity by Collector under rule 36 of Election Rules—Civil Courts, no jurisdiction to question in—“Appointed by election” in sec. 10—Meaning of “election.”

An order of a Collector declaring the invalidity of an election of a candidate to a seat in a Municipal Council, passed under rule 36 of the Election Rules after enquiry and based on proper grounds (*i.e.*, those set forth in rule 35) and otherwise complying with the requirements of the Rules framed under section 250 of Madras Act IV of 1884 (District Municipalities Act) cannot be questioned in a civil suit; but is conclusive as far as the result of the election is concerned.

Bhaishankar v. The Municipal Corporation of Bombay, [(1907) I.L.R., 31 Bom., 604 at p. 609], followed.

Maxwell on Interpretation of Statutes, 4th Edn., p. 197, referred to.

Vijaya Rághava v. The Secretary of State for India, [(1884) I.L.R., 7 Mad., 466], *Sabhapat Singh v. Abdul Gaffur*, [(1897) I.L.R., 24 Calc., 107] and *Lalbai v. The Municipal Commissioner of Bombay*, [(1909) I.L.R., 33 Bom., 234], distinguished.

Per curiam.—The status of a Municipal Councillor is the creation of section 10 of Act IV of 1884, and the creation is subject, *inter alia*, to the conditions imposed by the Election Rules framed by the Governor in Council under section 250 of the Act and invested by clause (3) with the force of law. One of these rules is rule 36; the election gives the candidate elected no vested status, as the election is liable to be declared invalid; an invalid election can confer no status whatever.

The words “appointed by election” in section 10 refer only to a valid election, *i.e.*, one which is not set aside under rule 36.

Semble.—If an order is passed without any enquiry at all or is based on grounds other than those set forth in rule 35 a suit would probably lie to set it aside as *ultra vires*.

A suit for damages in consequence of an invalid order and a suit for a declaration of the validity of an election and an injunction stand on very different footings though based on the same facts. The former may be decreed, while the latter may not.

SECOND APPEAL against the decree of F. D’P. OLDFIELD, the District Judge of Tanjore, in Appeal Suit No. 362 of 1908

* Second Appeal No. 562 of 1909.

presented against the decree of T. A. NARASIMHACHARI, the District Munsif of Mayavaram, in Original Suit No. 232 of 1907.

The facts of this case are clearly set out in the judgment.

The Hon'ble Mr. T. V. Seshagiri Ayyar for the appellant.

S. Srinivasa Ayyangar for the first respondent.

The Government Pleader for the second respondent.

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JUDGMENT.—The plaintiff (appellant) was a candidate for a seat on the Mayavaram Municipal Council, and, at an election held on 13th December 1906, he secured the largest number of votes. An objection was preferred on the ground of bribery and corruption, and after an enquiry by the Divisional officer, the Collector passed an order under rule 36 of the Election Rules declaring the election invalid, and ordering a fresh election to be held.

The plaintiff then brought the present suit. He prayed (1) for a declaration that he had been duly elected and in consequence was entitled as such to exercise the rights and privileges of a councillor, (2) for an injunction restraining the Municipal Council from holding a fresh election.

His suit was dismissed in both courts. The District Munsif held that the Collector's order could be questioned in a civil suit, such as the present one, but, on going into the merits, he held that the bribery was proved, that the Collector's order was a proper one and that the plaintiff was entitled to no relief. The District Judge dismissed the appeal on the sole ground that the Collector's order was final, as far as the result of the election was concerned and could not be questioned in a civil suit.

Before us, argument on both sides has been directed solely to the question of whether the order of a Collector under rule 36 above quoted can be questioned in a Civil Court, and, if so, on what grounds. The learned vakil for the appellant wished to raise a further point, whether the Election Rules themselves were not *ultra vires*. We have, however, felt ourselves bound to refuse to go into this point. It is not taken in the appeal memorandum; and the omission was admittedly deliberate in view of the decision in *Secretary of State for India v. Venkatesulu Naidu* (1). The appellant's vakil states that he is now prepared to argue that this decision is wrong; but he has filed no memorandum of additional

(1) (1907) I.L.R., 30 Mad., 113.

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grounds of appeal as required by the rules of this Court. We therefore refused leave to argue this point.

Coming then to the sole point for decision, we may say at once that we are in substantial accord with the views of the learned District Judge who has discussed the matter very fully and ably in his judgment. We do not understand him to mean (and we ourselves are not prepared to say), that under no circumstances whatever could a Collector's order purporting to be passed under rule 36 of the Election Rules be called in question in a Civil Court. If such an order had been passed without any enquiry at all, or were based on grounds other than those set forth in rule 35, a suit would probably lie to set it aside as *ultra vires*. But, where, as in the present case, the order appears to have been passed after compliance with all the requirements of the rules, and purports to be based on proper grounds, we agree with the District Judge in holding that it cannot be questioned in a civil suit, but is conclusive as far as the result of the election is concerned. In other words, the candidate adversely affected cannot demand that a Civil Court should hold a fresh enquiry into the merits of the dispute, and, if it comes to a different decision on these, should treat the Collector's order as a nullity and give a declaration deciding the result and effect of the election. In this case, no formal defect in procedure has been relied on: the only allegation in the plaint is that the Collector's order is unsupported by "legal evidence," a plea which has been sufficiently dealt with by the District Judge.

These conclusions, in our opinion, spring naturally from the fact that the status of a Municipal Councillor is the creation of section 10 of the Madras District Municipalities Act (Act IV of 1884), and that creation is subject *inter alia* to the conditions imposed by the Election Rules framed by the Governor in Council under section 250 of the same Act, and invested by clause (3) with the force of law. One of these rules is rule 36 which empowers the Collector under certain circumstances to declare an election invalid, and order another election to be held. The election, which, as the plaintiff contends, gives him a vested status is, in fact, only held conditionally on its being liable to be declared invalid: and an invalid election can confer no status whatever. The appellant's vakil lays stress on the words "appointed by election" in section 10 of the Act, as indicating that a candidate

acquires by election alone, apart from subsequent notification of appointment, a status, which he can bring a civil suit to establish. But the term "election" in these sections undoubtedly means a *valid* election, one which is not set aside under rule 36. It is only such a valid election as could confer any status: and it is not therefore necessary for us to go into the question of what is the legal position of a candidate who has been validly elected, but whose appointment has not been notified under section 21-A of the Act.

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In support of our view that the validity of a Collector's order passed in substantial conformity with the requirements of the rules, cannot be questioned in a Civil Court, we may quote the remarks of JENKINS, C.J., in *Bhaishankar v. The Municipal Corporation of Bombay*(1): "Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts, for they never had any; there is no change of the old order of things; a new order is brought into being." And again, "the jurisdiction of the Courts can be excluded, not only by express words, but also by implication, and there certainly is enough in section 33 of the Municipal Act for this purpose; for there is no right which the plaintiff can at this stage assert as the subject of this suit, which is not subject to the condition that its essential basis must depend on the decision of the tribunal created for that purpose." We consider that, as in section 33 of the Act then in contemplation, so in rule 36 in the present case, there is certainly enough to bar by implication the jurisdiction of the Civil Court.

We may also quote Maxwell on the "Interpretation of Statutes," 4th edition, page 197 (or 5th edition, page 215-6): "Where, indeed, a new duty or *cause of action* is created by statute, and a special jurisdiction out of the course of the common law is prescribed, there is no ouster of the jurisdiction of the ordinary Courts, for they never had any."

(1) (1907) I.L.R., 31 Bom., 604 at pp. 609 and 610.

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The most pertinent of the cases relied on by the appellant are those reported in *Vijaya Rāgava v. Secretary of State for India*(1), *Sabhapat Singh v. Abdul Gaffur*(2) and *Lalbhai v. The Municipal Commissioner of Bombay*(3). We have carefully considered these rulings, but we do not find anything in them which should lead us to modify the views above indicated.

The first of these cases arose out of a suit brought by a Municipal Councillor for damages for wrongful removal from office under section 9 of Madras Act III of 1871. Apart from certain differences in the provisions of the Act, it can be distinguished from the present case on two broad grounds. In the first place, in that case, the Advocate-General on behalf of Government explicitly abandoned the plea that the plaintiff had been guilty of any misconduct or neglect of duty, the only grounds on which, under the section, Government were empowered to remove him. In its stead, he set up a purely discretionary power to remove which their Lordships held not to vest in Government. No such absolute discretionary power is in question here. Whether, if Government had stood by the position that the plaintiff had actually been guilty of misconduct or neglect, the Court would have deemed it proper to go into the truth of these allegations, it is difficult to say. The issues framed seem to raise no such question of fact. It is true that two of the learned Judges deal at considerable length with certain evidence bearing on plaintiff's conduct, but, as explained by HUTCHINS, J., this evidence was considered only as bearing on the question of damages. The second ground of distinction is that, as the suit was finally determined, it was one for damages only. The plaintiff had originally sued for two declarations: (1) that his removal was null and void, and (2) that he was entitled to hold office as Commissioner for the residue of his three years. The prayer for the second declaration was withdrawn and this is most important. Whether the prayer for the first declaration was also withdrawn is not certain (the statements in the judgments of HUTCHINS, J., and KERNAN, J., on this point being conflicting), but it is quite clear that it was not granted.

A suit for damages and a suit for the reliefs prayed for in the present suit stand on a very different footing. It is quite

(1) (1884) I.L.R., 7 Mad., 466. (2) (1897) I.L.R., 24 Cal., 107.

(3) (1909) I.L.R., 33 Bom., 334.

conceivable that a Court might grant damages claimed in consequence of an order, and yet decline to declare that the order was null and void. A comparison of the relief granted in the reported case, with the relief not granted (whether in consequence of a withdrawal or not) tends to suggest that such a distinction may have been actually drawn.

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The other cases are equally distinguishable. In *Sabhapat Singh v. Abdul Gaffur*(1) the Magistrate had set aside the election on the ground that the plaintiff, the candidate with most votes, was not qualified to stand. The suit was brought to declare that the plaintiff was a person qualified to vote and stand as a candidate (the qualifications were identical) and for a declaration that he was duly elected. We quite agree that the suit would lie as regards the first declaration, a matter which as the learned Judges point out affects the plaintiff's right to vote and stand at all future elections, and this is the chief point dealt with by them. The second declaration that he was duly elected was as a matter of fact refused. No doubt the learned Judges go into an objection to the election, which was not the basis of the Magistrate's order and say that they ought not to do anything to validate an election which was open to so grave an objection. This certainly suggests that they deemed the Civil Courts to have the power to override the Magistrate's order and adjudicate on the validity of an election. But inasmuch as they refused to exercise the power, the pronouncement, such as it is, is of the nature of an *obiter dictum* and the Court appears to have had in mind the special provisions of section 15 of the Act, then under consideration, which apparently reserves the jurisdiction of Civil Courts.

The case in *Lalhai v. The Municipal Commissioner of Bombay*(2) is really beside the point. It is merely an authority for holding that even discretionary powers must be exercised in a reasonable manner, and not capriciously or arbitrarily.

The second appeal is dismissed with costs.

(1) (1897) I.L.R., 24 Cal., 107. (2) (1909) I.L.R., 33 Bom., 334.