

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and
Mr. Justice Waller.

KONA THIMMA REDDI (PLAINTIFF—APPELLANT),
APPELLANT,

1923,
September
27.

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL
REPRESENTED BY THE COLLECTOR OF ANANTAPUR
(DEFENDANT—RESPONDENT), RESPONDENT.*

*Madras Local Boards Act (V of 1884), sections 13 and 144—
Rules made by Government under Section 144 (1)—Election of a
person as member of Taluk Board—Election set aside by Gov-
ernment on the ground that such person is likely to bring the
administration into contempt—Rule 33, clause (e)—Notice to
person affected, whether necessary—Inquiry—Forum—Power of
Government to make rules regarding forum and method of
inquiry—Rules therefor, whether ultra vires—Order without
notice, whether invalid—Natural Justice—Suit in a Civil Court,
whether maintainable.*

Sections 16 and 144 of the Madras Local Boards Act (V of 1884), empower the Government to make rules regarding the determination of the validity of elections, as well as rules prescribing the qualifications of a candidate for election; and the rules framed prescribing the forum and method of inquiry are not *ultra vires*, even though the rules were framed by the Government purporting to act only under section 144, sub-section (1) of the Act.

Where power is given to make rules under an Act, the fact that the Government purports to act under one section of the Act rather than another is not a ground for holding the rules to be *ultra vires* in View of SPENCER, J., *Lakshminarasimha Somayajiyar v. Ramalingam Pillay*, (1920) 39 M.L.J., 319, followed.

The Local Boards being creations of a statute, and that statute having given power to the Government to frame rules for the purpose of working the Act, it is perfectly open to the Government to create a forum for the purpose of deciding disputes as to elections directed to be carried out under the Act.

* Second Appeal No. 361 of 1921.

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Under rules 33 and 35 framed by the Government under the Local Boards Act, so far as they relate to objections to an election as a member of a Taluk Board on the ground mentioned in clause (e) of the former rule, viz., that the person is likely to bring the administration into contempt or that his being a member is dangerous to the public peace or order, the Collector is bound to refer the matter for the decision of the Government, and no inquiry by the Government or notice to the person affected is contemplated.

SECOND APPEAL against the decree of G. G. SOMAYAJULU, District Judge of Anantapur, in Appeal Suit No. 63 of 1920, preferred against the decree of the District Munsif of Gooty in Original Suit No. 750 of 1916.

This suit was instituted by the plaintiff against the Secretary of State for India in Council for a declaration that the order of the Government cancelling the election of the plaintiff as a member of the Taluk Board of Gooty was *ultra vires* and void, and that the election subsequently held and the appointment of another person as the successful candidate in the fresh election were also invalid, for a mandatory injunction directing his name to be published in the *Fort St. George Gazette* as duly elected, for an injunction prohibiting or cancelling the publication of the name of the other person as validly elected, and for damages. The plaintiff alleged that he was duly elected, but that the unsuccessful candidate, one T. S., filed an objection petition against the election before the Collector and the Government passed an order cancelling the plaintiff's election and ordering a fresh election on the ground that the plaintiff's presence in the Taluk Board as a member would bring the Local Fund Administration into contempt. The plaintiff further alleged that no notice was given to him either by the Collector or the Government before the latter passed the order, that no inquiry was held and that the rules framed by the Government as to the forum and mode of inquiry under which the Government acted were *ultra vires*, and

that the procedure was invalid as opposed to principles of natural justice. He further contended that the ground for cancellation of his election was not well founded as he was a respectable man and he set out his character and qualifications. The defendant pleaded that the rules in question were not *ultra vires*, that the Governor in Council was not bound to give notice to the plaintiff, that the Government made such inquiry as it thought fit into the truth or otherwise of the allegations in the objection petition, and came to the conclusion that the plaintiff was likely to bring the Local Fund Administration into contempt, that the discretion vested in the Government was absolute and that the plaintiff had no right to question the same in any Civil Court. The District Munsif dismissed the suit, and his decree was confirmed on appeal by the District Judge. The plaintiff preferred this Second Appeal.

T. Richmond for appellant.

C. V. Anantakrishna Ayyar (the Government Pleader)
for respondent.

JUDGMENT.

This appeal arises out of a suit filed by the plaintiff against the Secretary of State for India in Council for a declaration that the Government Order cancelling his election to the Gooty Taluk Board is *ultra vires* and illegal and does not affect the validity of his election, for a mandatory injunction directing his name to be published in the *Fort St. George Gazette* as duly elected, for an injunction prohibiting the Government from publishing the name of his rival candidate Subba Rao and for the recovery of Rs. 100 as damages. No evidence has been adduced in the suit. The election in question was held on the 13th of November 1915. It is not disputed that the plaintiff obtained the majority of votes, that the

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defeated candidate Subba Rao put in an objection petition and that the Government set aside the election of the plaintiff and ordered a fresh election on the ground that the plaintiff's presence in the Taluk Board as a member would bring the Local Fund Administration into contempt. This order of the Government is questioned by the plaintiff on two grounds. The first is that the rules under which the Government purported to act are *ultra vires* and that consequently he is not affected by the order, and secondly that, even if the rules are *intra vires*, there was no inquiry by the Government into the matter, that he was not given an opportunity of showing cause against the allegations made by the rival candidate and that on the merits it could not be said that his presence in the Taluk Board could have the undesirable consequences referred to by the Government as a ground for invalidating his election. He sets out his qualifications in the plaint.

The defence by the Secretary of State for India in Council was that the rules framed by the Government were valid, that under the rules the Government was not bound to give any notice to the plaintiff, that the discretion vested in the Government was absolute and unquestionable by a Civil Court and that the Government having made such inquiry as it thought fit and having come to the conclusion that it came, it was not open to the plaintiff to question the validity of its act. The Government denies that the plaintiff is entitled to any damages.

Two points were argued by Mr. Richmond before us, in Second Appeal. The first was that the rules were *ultra vires* and the second was that the whole proceedings were vitiated by the fact that no notice was given to the plaintiff who consequently had no opportunity to show cause against the objections raised by his rival candidate.

a violation of the elementary principles of natural justice, which, without more, would invalidate the proceedings.

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As regards the first point, section 16 of the Local Boards Act runs as follows:—

“The other members of the Taluk Board may be (a) either wholly appointed by the Governor in Council, or (b) partly so appointed and partly appointed by election by the members of the panchayats in the taluk from among their own number or by the tax-payers and inhabitants of the taluk, subject to such rules and conditions as may from time to time be prescribed by the Governor in Council.”

Section 144 of the Act provides that “the Governor in Council may, from time to time, frame forms for any proceedings for which he considers that a form should be provided, and make rules consistent with this Act (1) as to the qualifications of electors and of candidates for appointment by election and as to the method and time of election of elective presidents, vice-presidents and members of local boards; (1-a) as to the qualifications of electors and of candidates for appointment as members of a panchayat by election and the method and time of appointment of members of a panchayat by election in regard to the following matters.” Then follow a number of matters specified in sub-clauses (a) to (f), (f) being “any other matters regarding the system of representation and of election.” The Government have framed rules which purport to have been made under sub-section (1) of section 144 of the Local Boards Act and directed that the rules should come into operation on the 1st of January 1916. Rule 33 provides that the validity of any election may be questioned by a petition put in before the Collector of the District or the Divisional Officer within fifteen days after the result of the election has been declared, by any candidate who has not withdrawn or by not less than ten persons

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who have voted at the election, on any of the grounds mentioned therein. Ground (e) which is the only material ground necessary to be considered for purposes of this appeal runs as follows :—

“That the person whose election is questioned is likely to bring the Local Fund Administration into contempt or that his being a member of the Taluk Board is dangerous to the public peace or order.”

It provides that the Governor in Council or the Collector may act *suo motu* and take action on any facts affecting the validity of an election which may be brought to his notice whether by a petition by a rival candidate or otherwise. Rule 35 which is material for the consideration of the objection raised by Mr. Richmond runs as follows :—

“Objections to the validity of an election on the ground specified in rule 33 (e) (i.e., that the person whose election is questioned is likely to bring the Local Fund Administration into contempt or that his being a member of the Taluk Board is dangerous to the public peace or order) and objections on the ground of disqualification under rule 9 (d) and all cases which involve an interpretation of the rules shall be referred by the Collector for the decision of the Government. In all other cases of objection under rule 33, an inquiry shall be held by the Collector or at his discretion by the Divisional Officer, at which the contending parties shall have an opportunity of appearing in person or by representative, and orders shall be passed on the result of the inquiry by the Collector who may, at his discretion, dismiss the petition or, if he finds the election invalid, either order a new election or declare that the candidate who obtained the next highest number of votes to the candidate or candidates disqualified or found not to have been validly elected, has been duly elected. Provided that before declaring such next candidate to have been duly elected, the Collector shall notify his intention to do so to the other candidates and the petitioners who have impugned the election and shall consider any objections which may be lodged by them in writing within ten days

from the date of such notice. No appeal shall lie against the orders of the Collector passed under this rule."

It is therefore clear from the rules that so far as the objection that the person elected is likely to bring the Local Fund Administration into contempt is concerned, no notice to the person affected and no inquiry are contemplated by the rules, the reason very probably being that an inquiry into the nature of the ground referred to in clause (e) is not desirable in the public interests. It is contended by Mr. Richmond that the right of a person who is duly elected to a public office is a right which he is entitled to vindicate in a Civil Court and that it is not open to the Government, by rules framed under the Act, to create a forum and thus deprive the person elected of his ordinary legal remedies. It is also contended that as the rules purport to be framed under sub-section (1) of section 144 of the Local Boards Act, they could only embrace the subject specified in that clause as the matters to be dealt with by the rules and as none of those matters relate to inquiries into disputed elections, they cannot be relied on by the Government for the purpose now in question. We are unable to agree with either of these contentions. The Local Boards being creations of statute and that statute having given power to the Government to frame rules for the purpose of working the Act, we think it is perfectly open to the Government to create a forum for the purpose of deciding disputes as to elections directed to be carried out under the provisions of the Act. The Government in passing the Local Boards Act has not taken away any rights which had previously vested in the public and it is difficult to see how it can be said that restrictions could not be imposed by the Government acting on the rule-making power conferred by an enactment which creates new rights, so long as the rules are not repugnant to

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any of the provisions of the Act, nor do we think that, if power is given by the Act to make rules, the fact that the Government purports to make rules under one section rather than another would be a ground for holding that the rules are *ultra vires*.

In *Lakshminarasimha Somayajiyar v. Ramalingam Pillay* (1) the question arose as to whether under the Local Boards Act the Governor in Council has power to make rules ousting the jurisdiction of Civil Courts as to objections to the validity of elections. SADASIVA AYYAR, J., was inclined to the view that the Governor in Council had no power to make rules and that the rules framed by the Government were invalid. The learned Judge was of opinion that section 16 was too vague and that, as the rules were not made under section 16, but only under section 144 (1) which merely deals with the power to make rules as to the qualifications of the electors and of candidates for appointment by election and as to the method and time of election of elective presidents, vice-presidents and members of local boards, the power constituting a special tribunal to inquire into the validity of elections was not conferred by section 144 (1) under which the present rules purport to be framed. SPENCER, J., was of opinion that the rules were valid and that sections 16 and 144 gave the Government power to frame rules relating to the adjudication of disputes as regards the validity of elections. After referring to sections 16 and 144, the learned Judge observes as follows :—

“ But in any case I think that the words ‘ any other matters regarding the system of representation and of election ’ illustrate what is meant in clause (1) by the words ‘ method of election ’ of members of Local Boards. I think these words are wide

enough to cover the power of making rules to provide for the whole scheme of election and for the conduct of inquiries into complaints and objections to elections held or about to be held as well as to objections to the list of voters."

We agree with the view taken by SPENCER, J.

The question as to the validity of the rules framed under the District Municipalities Act arose for determination in more than one case. The District Municipalities Act contains provisions analogous to those in the Local Boards Act with regard to the matter in question. Sub-clauses 1 to 6 of section 250 (1) (a) of the District Municipalities Act correspond to sub-clauses (a) to (f) of section 144 (1-a) of the Local Boards Act and give power to the Government to make rules with reference to the matters specified in that section. Section 10 of the District Municipalities Act also contemplates the power of the Government to make rules. Rules were framed under the powers conferred by the District Municipalities Act. Rules 34 and 35 provide for cases of disputes as regards the validity of elections, and rule 35 (d) which is one of the grounds for setting aside an election, is that the person is likely to bring the Municipal administration into contempt or that his being a municipal Councillor is dangerous to the public peace or order. Rule 36 provides that in cases falling under rule 35 (d) orders should be passed by the Government and not by the Collector. In *Secretary of State for India v. Appa Rao* (1) the question arose as to the power of Government to frame rules under the District Municipalities Act. KRISHNAN, J., was, of opinion that the fact that the Government purported to frame rules under one sub-clause which did not refer to the matter rather than another which did so refer would not make the rules *ultra vires* and observed as follows:—

(1) (1928) 45 M.L.J., 156.

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“ Before a rule framed by a rule-making authority is declared *ultra vires*, the Court must be satisfied not only that it had no power to act under the power under which it purported to act, but also that it had no power at all under any law to so act. If power can be found elsewhere from the section quoted, the rules will be referred to that power and held not to be *ultra vires*.”

The learned Judge referred to *Rajam Chetti v. Seshayya* (1), *Queen-Empress v. Ganga Ram* (2) and *Halsbury*, Vol. 27, page 146. In *Secretary of State for India v. Venkatesalu Naidu* (3), the question arose as to the validity of the rules framed under section 250 (1) of the District Municipalities Act 4 of 1884 as amended by Act 3 of 1897. Rules were framed under section 250 as regards the power of the Government to veto the election of a person if, before his election, he is convicted of an offence which, in the opinion of the Governor in Council, disqualifies him from being a councillor. The plaintiff who was the respondent in the appeal was elected as a Municipal Councillor but the Government set aside the election on the ground that he was guilty of such an offence as unfits him to be a Municipal Councillor. The District Judge found that some of the rules framed under the Act were *ultra vires*. Referring to the contention that section 250 (1) (a) does not provide for a rule of the nature of rule 35 (1) (b) framed under it, MILLER, J., observed as follows:—

“ I am not prepared to decide that that is so, for it is not clear to me that section 250, clause (1) (a) (i), (vi) or (vii) would not cover the case. But even if it be so, the rule may be attributed to the power given by section 10 to prescribe conditions; and if the power is there, the rule is good though it purports to have been made under a different section.”

The learned Judge held that the rule was not *ultra vires* and illegal. WALLIS, J., was also of the same

(1) (1895) I.L.R., 18 Mad., 236 (F.B.).

(2) (1894) I.L.R., 16 All., 136 (F.B.). (3) (1907) I.L.R., 30 Mad., 113

opinion. We think that sections 16 and 144 read together give power to the Government to make rules when an election is contested and also to frame rules declaring the qualifications required of a person before he is validly elected and that the rules framed by the Government are not *ultra vires*.

Turning to the next question that the appellant was not given an opportunity to be heard before the Government passed orders, it is clear from the rules we have already referred to, that no inquiry is contemplated. Rule 35 states that objections to the validity of an election on the ground specified in rule 33 (e), and objections on the ground of disqualification under rule 9 (d) and all cases which involve an interpretation of the rules shall be referred by the Collector for the decision of the Government which shall be final, and that in all *other cases* of objection under rule 33 an inquiry shall be held by the Collector, etc. It is clear therefore that no inquiry is necessary. If the rule is valid, it seems to us that the Government has power to declare what shall be the nature and scope of the inquiry. Reference was made to the *Secretary of State for India v. Venkatesalu Naidu* (1), already referred to, where it was held that an inquiry was necessary before an election can be invalidated under rules 35 and 36 framed under the District Municipalities Act. But rule 35 requires an inquiry and the decision therefore cannot have any application to cases where no inquiry is required. We may point out that the Local Boards Act provides for inquiries whenever the Government thinks it necessary that the person affected ought to have notice, for example, section 24, clause (3) provides for the removal of a president, vice-president or member of a taluk board

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

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whose continuance in office is, in the opinion of the Government, dangerous to public peace or order or likely to bring the administration of the local board into contempt. But clause (2) states that when action is proposed to be taken in that matter no order shall be passed without giving an opportunity of explanation to the president, vice-president or member concerned.

We are therefore of opinion that both the objections taken fail. It is not necessary to consider the further question whether an action for damages would lie against the Secretary of State for India assuming that the rules framed by the Government were *ultra vires*. In the result the second appeal fails and is dismissed with costs.

K. B.
