

APPELLATE CIVIL.

*Before Sir Murray Coutts Trotter, Chief Justice,
Mr. Justice Phillips and Mr. Justice Kumaraswami
Sastri.*

S. GOPALA AYYANGAR AND ANOTHER (PETITIONERS),
PETITIONERS,

1925,
February 11.

v.

M. K. MAHOMED EBRAHIM ROWTHER, V. N. SESHA
IYENGAR AND ANOTHER (RESPONDENTS), RESPONDENTS.*

*Madras District Municipalities Act (V of 1920), sec. 49, cl. 2 (3)
—Rule 12 of Election Rules—Election of Councillor—
Candidate obtaining majority of votes unseated on ground of
disqualification—Interest in contract with municipality
—Right of candidate having next largest number of votes to
be declared elected—Knowledge of voters as to the disqualifi-
cation, how affects procedure—Fresh election, when ordered—
Election Rules, rule 12, construction of.*

Where a candidate in a municipal election, who obtained the majority of votes, was unseated on the ground that he was interested in a contract with the municipality and so disqualified from being a councillor, the candidate, who got the next highest number of votes, is not entitled as a matter of course to be declared elected under rule 12 of the Election Rules framed under the Madras District Municipalities Act (V of 1920).

It is only if the voters were aware of the disqualification of the candidate and still voted for him and there were enough of such votes to destroy the majority obtained by him, that the candidate next in order of votes is entitled to be declared elected; but if the voters were ignorant of the disqualification, a fresh election should be ordered.

Where there is no allegation in the petition by the second candidate that the voters were aware of the disqualification, no enquiry should be ordered as to the knowledge of the voters, with a view to declare the petitioner as elected. *Hobbs v. Morey*, [1904] 1 K.B., 74, followed.

* Civil Revision Petition No. 115 of 1924.

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REVISION PETITION under section 115, Civil Procedure Code, against the order of T. S. TYAGARAJA AYYAR, District Judge of Trichinopoly, in Original Petition No. 133 of 1923.

In an election held under the Madras District Municipalities Act (V of 1920) for the selection of a councillor of a ward in the municipality of Trichinopoly the first respondent secured the majority of votes, while the second respondent obtained the next largest number of votes. The petitioners, who were two of the electors, filed an application in the District Court, under rules 1, 2, 3, 11 and 12 framed under the Act, to cancel the election of the first respondent on the ground that he was disqualified to be a candidate for election as he was interested in a contract entered into by him with the municipality; the petition also prayed that the second respondent should be declared elected under rule 12 of the Election Rules; the petition did not allege that the voters who cast their votes for the first respondent had knowledge of his disqualification and yet gave him their votes. There was a later application, filed by the second respondent and another councillor under section 51 of the Act, for declaring the election of the first respondent invalid on the same ground and for declaring the second respondent (first petitioner therein) as duly elected. On the latter petition the District Judge passed an order holding the election of first respondent invalid on the ground of the disqualification mentioned. On the former petition, the learned Judge held that the second respondent should not be declared elected and ordered a fresh election. The petitioners preferred this Civil Revision Petition to the High Court.

D. Ramaswami Ayyangar for *C. S. Venkata Achariar* for petitioners.—The election of the first respondent has been held to be void; the second respondent who

got the next largest number of votes is entitled to be declared elected, if he applies. The provisions of rule 12 expressly require that the candidate who has the next largest number of votes should, if he applies, be declared elected, unless his election is void on any legal ground. See 12 Halsbury, page 1218, and Fraser on Elections, page 227; *Brown v. Benn*(1). If the disqualification is known to such a number of voters for the successful candidate, deducting which number the second man gets a majority over the first, the second is declared elected. Here there is no ground of invalidity for the election of the second respondent. The disqualification of the first respondent was well known to the electors.

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A. Krishnaswami Ayyar (amicus curiae).—The candidate who has the next largest number of votes does not always get declared elected as a matter of course when the successful candidate is unseated on ground of disqualification. If the disqualification is known to the electors and yet they throw away their votes on him, then if such votes being deducted, the second candidate gets a larger number of votes than the first, the latter is declared elected, *Hobbs v. Morey*(2) and *Boyce v. White*(3).

If the disqualification is known or obvious to electors (such as being a woman), the next candidate may be declared elected. *Beresford Hope v. Lady Sandhurst*(4), *Pritchard v. Mayor, etc., of Bangor*(5).

JUDGMENT.

In this case the candidate who obtained the greatest number of votes at the election was unseated on the ground that he was interested in a municipal contract and that therefore he was disqualified from sitting. The

(1) (1889) 5 T.L.R., 247

(3) (1905) 92 Law Times, 240.

(2) [1904] 1 K.B., 74.

(4) (1889) 23 Q.B.D., 79.

(5) (1888) 13 App. Cas., 241.

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petitioner claimed the seat but he did not allege that the disqualification under which the successful candidate was ultimately found to labour was known to all or any of the voters who cast their votes for him. The first argument on behalf of the second respondent was that rule 12 of the rules for the decision of disputes as to the validity of an election means that if the seat was claimed by the petitioner, the Judge must declare him duly elected and that the option of ordering a second election only applies to cases where the petitioner did not claim the seat. That seems to us a quite untenable view and we do not think that the draftsman of these rules—and it is a matter of common knowledge that both the District Municipalities Act (V of 1920) and the rules drawn under it were very largely based on English precedents and English decisions—could have meant to overlook the fundamental principles which have governed English Electoral Courts for many years. The principles appear to be these and we cannot put them better than they were put in the argument of Mr. Corrie Grant in *Hobbs v. Morey*(1). He says :

“the principle of Election Law is that, when there has been an election, the candidate who is declared to be elected must be shown to have the majority of votes.”

This *prima facie* requirement of the law is subject to a modification. He goes on

“If however a candidate is disqualified by *status* as in the case of woman or felon, the votes given for that candidate will be held to have been thrown away and the opposing candidate although in fact he has received a less number of votes, will be declared to be elected.”

That was the argument which was accepted by the learned Judges, and on which Mr. Justice KENNEDY'S judgment is based. There are several authorities which we need not trouble to go into. The effect of those

(1) [1904] 1 K.B., 74.

authorities is that, if a voter throws away a vote by ignoring something which he could have known and which would have told him that he was throwing away his vote because he was giving it for a person who could never succeed in the election, then his vote has to be taken as wiped out of the election and if there are enough of such votes to destroy the majority, the man who has the next highest number of votes can be declared duly elected ; but, if the votes were given in ignorance of the disqualification under which the candidate of his choice was in fact labouring, then it would be inequitable to allow the votes to be thrown away for that reason and the only proper course is to order a fresh election. There is a passage in the judgment of KENNEDY, J., which is relied upon to show that in this case it would be a suitable course to have a further inquiry to see whether the second respondent can bring himself within the words of the learned Judge. Those words are these. He sets out the principle that the disqualification should be apparent and says,

“ As here the disqualification was not apparent and the petition does not allege that the voters knew of the respondent's disqualification (the only notices being notices to the Mayor and to the opposing candidate) and the petitioner had only a minority of votes, I do not think he can successfully claim the seat.”

We respectfully accept the view put forward by KENNEDY, J., as accurate, though we see the very inconvenient consequence that might arise if such an inquiry as is outlined were ever ordered. But as there is here no allegation of knowledge of the disqualification on the part of the persons who voted for the unseated candidate, we agree that the proper course is the one suggested by the learned Judge and there is no cause to interfere. Both the petitions are dismissed.