

## APPELLATE CIVIL.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice,  
Mr. Justice Jackson and Mr. Justice Sundaram Chetti.*

1926,  
October 7.

O. A. O. K. LAKSHMANAN CHETTIAR, PETITIONER,

v.

1. COMMISSIONER, CORPORATION OF MADRAS,
2. CHIEF JUDGE, COURT OF SMALL CAUSES,  
MADRAS, RESPONDENTS.\*

*Certiorari, writ of—Jurisdiction of High Court—Jurisdiction derived from Supreme Court of Madras—Jurisdiction and powers of High Court, similar in scope to those exercised by Court of King's Bench in England—Objection to jurisdiction not taken by the applicant before the lower Court—Bar to issue of writ—Power exercised by High Court, discretionary—Objection, whether based on law or facts, not taken before lower Court, bar to obtaining writ.*

In the issue of a writ of certiorari, the High Court exercises a jurisdiction which has devolved on it from the old Supreme Court, and stands in the same position as the Court of King's Bench in England, and ought to follow the rules laid down by that Court in the decided English cases as to the scope and limitations of that jurisdiction.

Under the English decisions, the Court exercises, in such cases, a purely discretionary power, and will not exercise it in favour of a person, who has not taken before the lower Court an objection to its jurisdiction but has taken the chance of its decision on the merits in his favour.

Failure to object to jurisdiction before the lower Court is a bar to obtaining a writ of certiorari, whether the objection to jurisdiction is based on a pure point of law or based on facts which were or should have been within the knowledge of the applicant during the proceedings in the lower Court.

*Rex v. Williams*, [1914] 1 K.B., 608, and other English cases, relied on.

\* Civil Miscellaneous Petition No. 3304 of 1926.

PETITION praying that the High Court may be pleased to issue a writ of certiorari to the Commissioner, Corporation of Madras, and the Chief Judge of the Court of Small Causes, Madras, to send up the orders, etc., in the matter of the 29th division (Royapetta) election, to the High Court.

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The material facts appear from the judgment in C.R.P. No. 742 of 1926, printed at page 121 of this report (*supra*).

*Vere Mockett*, with *S. Rangaswami Ayyangar* for first respondent took a preliminary objection that the writ of certiorari cannot be obtained, as the applicant did not raise the objection to jurisdiction of the lower Court before the lower Court. The only point that was argued there was whether he was or was not an Honorary Presidency Magistrate, when he was nominated as a candidate for election. The applicant did not contend that the Chief Judge had no jurisdiction to decide on the merits. He submitted to the jurisdiction and took the chance of a decision on the merits. Under such circumstances he cannot obtain the writ of certiorari. See *Rex v. Williams*(1).

As a matter of practice of the Court of King's Bench in England, the discretionary power as to issue of a prerogative writ will not be exercised by the Court, unless objection to jurisdiction was taken before the lower Court. This is a case of waiver of jurisdiction: *Ex parte, Parish of Somersetshire*(2), *Re The West London Philanthropic Burial Society*(3); vide also other cases referred to in the judgment.

The principle is that the applicant cannot take a new point before the King's Bench Court, which was not taken before the lower Court. If objection to jurisdiction was not taken before the Justices no issue of a writ of certiorari (which is discretionary with the Court) will be granted by the Court. The jurisdiction of the High Court is subject to the same conditions and limitations as that of the Court of King's Bench in prerogative writs.

*K. S. Krishnaswami Ayyangar* and *K. S. Rajagopala Ayyangar* for petitioner.—It is true that no objection as to

(1) [1914] 1 K.B., 608.

(2) (1861) 25 J.P., 66.

(3) (1869) 20 L.T., 972.

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jurisdiction was taken either before the Commissioner or the Chief Judge. But it is no bar to raise the question of jurisdiction before the High Court. There has been and can be no waiver of jurisdiction in this case. The English cases referred to are distinguishable. If the question of jurisdiction depends on facts which were within the knowledge of the party but he still did not object but acquiesced in the exercise of jurisdiction by the lower Court, he cannot take the objection afterwards; but where the question of jurisdiction does not depend on facts, but is on the face of the proceedings and is a pure point of law, the objection can be taken for the first time in the higher Court. This contention is not opposed to the English cases. The case of *Rex v. Williams*(1) was considered in *Rex v. West Suffolk Compensation Authority*(2) and in the latter case, though the objection to jurisdiction was not taken in the lower Court, still the party was allowed to take it in the higher Court. In the English cases cited, the party had knowledge of facts which ousted the jurisdiction of the Court and yet did not raise the objection before the lower Court. If the question did not require any fact at all but the objection was on the face of the record, or depended on facts of which judicial notice should be taken, then the objection can be taken at any stage. In the case of appeals from a subordinate Court, this distinction is recognized. See *Ramlal Hargopal v. Kishan Chand*(3). The question is whether the conduct of the applicant in this case has been such as to disentitle him to this writ.

*Vere Mockett* in reply referred to *Queen v. Knox*(4), *Queen v. Justices of Salop*(5) and *Queen v. Justices of Leicester*(6).

*K. S. Krishnaswami Ayyangar* in reply to the new cases cited. The case of *Queen v. Knox*(4) is not shown to be one in which a point of law, as distinguished from one of fact, was involved in the objection to jurisdiction.

Rule 4 of Election Rules compels me to go before the Chief Judge from an order of the Commissioner on all the points raised before the latter. Does resort to the Chief Judge amount to a waiver of objection to jurisdiction? There is no absolute bar in the English cases against issue of a writ of certiorari in the circumstances of this case.

(1) [1914] 1 K.B., 608

(2) [1919] 2 K.B., 374.

(3) (1924) I.L.R., 51 Calc., 361 (P.C.).

(4) (1863) 32 L.J. (N.S.) (M.C.), 257.

(5) (1859) 29 L.J. (N.S.) (M.C.), 39.

(6) (1860) 29 L.J. (N.S.) (M.C.), 203.

## JUDGMENT.

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This is an application for a writ of certiorari directed to the Commissioner of the Corporation of Madras and the Chief Judge of the Court of Small Causes to call up their orders passed in the matter of Rao Bahadur Lakshmanan Chettiyar declaring him to be disqualified as a candidate at the election about to be held to select a Councillor for the 29th division of this city. Our interference is invoked on the ground that both these officers acted without jurisdiction and that therefore their orders should be quashed. In such a matter we act not under statute but under the inherent powers which devolve upon us from the old Supreme Court of Madras. We therefore stand with regard to prerogative writs in the same position as the Court of King's Bench in England and in our opinion we ought to follow the rules laid down by that Court in the decided English cases as to the scope and limitation of its jurisdiction. The facts were stated by us in our decision in C.R.P. No. 742 of 1926(1) and it is unnecessary to repeat them. The broad ground on which the jurisdiction of these officers is challenged is that whereas they were only empowered to inquire into disabilities appearing on the face of the nomination paper they in fact travelled outside that jurisdiction and went into a matter of substance which was arguable only on grounds not appearing on the face of the nomination paper. Mr. Mockett has taken the preliminary objection that certiorari will not lie where the person who applies for that writ has by his conduct taken the chance of a pronouncement in his favour by the lower Court on the merits. Mr. Krishnaswami Ayyangar, for the petitioner, has frankly conceded that his client did argue the case on the merits both before the Commissioner and before

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(1) P. 121, *supra*.

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the Chief Judge and that he did not only not confine himself to the contention that those officers had no jurisdiction to entertain an objection to the jurisdiction but that he did not take this point at all. The English authorities which were cited *prima facie* establish the proposition that in such circumstances the applicant cannot obtain a writ of certiorari *ex debito justitiae* but the Court is exercising a purely discretionary power. See *Queen v. Justices of Salop*(1), *Queen v. Justices of Leicester*(2), *Queen v. Know*(3), *Rea v. Williams*(4), *Rea v. West Suffolk Compensation Authority*(5). The point taken by Mr. Krishnaswami Ayyangar is that failure to object to the jurisdiction of the Court whose order is sought to be quashed only debars the applicant when the objection is one involving the investigation of facts which were or should have been within the knowledge of the applicant when he was before the lower Court, and does not apply to a contention of law. We see no warrant in the cases for drawing any such distinction, because in our opinion the test that they lay down is whether the applicant armed with a point either of law or of fact which would oust the jurisdiction of the lower Court has elected to argue the case on its merits before that Court. If so, he has submitted himself to a jurisdiction which he cannot be allowed afterwards to seek to repudiate. We are of opinion that the applicant has so conducted himself as to preclude this Court from exercising a discretionary jurisdiction in his favour. The petition will therefore be dismissed with taxed costs.

The interim order passed on the 1st October, will be vacated.

K. B.

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(1) (1859) 29 L.J. (N.S.) (M.C.), 39. (2) (1860) 29 L.J. (N.S.) M.C., 298.  
(3) (1863) 32 L.J. (N.S.) (M.C.), 257. (4) [1914] 1 K.B., 608.  
(5) [1919] 2 K.B., 374.

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