

APPELLATE CIVIL.

*Before Mr. Justice Phillips and Mr. Justice
Madhavan Nayar.*

1926,
March 10.

KRISHNASAMY CHETTIAR AND ANOTHER (PETITIONERS),
PETITIONERS,

v.

GHULAM MUHAMMAD GHOUSE SAHIB AND ANOTHER
(RESPONDENTS), RESPONDENTS.*

*Madras Local Boards Act (XIV of 1920)—Election Rules under
the Act, rule I—Only one candidate for presidentship, nomi-
nated—Such candidate, deemed elected—Election petition
filed against the appointment, competency of—Election,
meaning of.*

Where only one candidate for the presidentship of a local board has been nominated and in accordance with the rules has been deemed to be elected, no election petition will lie against this appointment.

Election means selection of one out of two or more candidates, and therefore the return of a solitary candidate is not, strictly speaking, an election by the electors, for the electors have had no say whatever in the matter.

REVISION PETITION filed against the order of the Subordinate Judge of Cuddalore in O.P. No. 44 of 1925.

The material facts appear from the judgment.

T. R. Ramachandra Ayyar and *S. R. Dikshit* for petitioners.

T. M. Krishnaswami Ayyar and *S. Srinivasa Ayyar* for respondents.

JUDGMENT.

The question here is whether where only one candidate for the presidentship of a local board has been nominated and, in accordance with the rules, has been deemed to be elected, an election petition will lie against this appointment. The question has been considered by

* Civil Revision Petition No. 1166 of 1925.

JACKSON, J., in *Srinivasachariar v. Venkatarama Iyer*(1) and he has come to the conclusion that no such petition will lie. His opinion is based on the wording of rule 1 of the rules for the decision of disputes. This decision is in a case under the Madras District Municipalities Act, whereas the question here arises under the Madras Local Boards Act, but the rules framed under each of these Acts are practically identical. The important words are in rule 1, that is,—

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“No election. . . shall be called in a question except by an election petition . . . by any candidate or elector against the candidate (here in after called the returned candidate) who has been declared by the president of a local board to have been duly elected.”

In the present case a successful candidate, who can hardly be called the “returned candidate” as he was the only one nominated, has not been declared by the president of the local board to have been duly elected, but under the rules he is *deemed* to have been elected. Similarly, it is difficult to hold that there was any other candidate who could present a petition or even any elector when no election has been held. Election means selection of one out of two or more and therefore the return of a solitary candidate is not, strictly speaking, an election by the electors, for the electors have had no say whatever in the matter. For these reasons we agree with the view taken by JACKSON, J. The authority to the contrary in *Sarvothama Rao v. The Chairman, Municipal Council, Saidapet*(2) is hardly in point, because this question was not argued before that Bench. The question there was whether Civil Courts had jurisdiction to entertain certain suits, and there is an observation in the judgment that the remedy lay by means of an election petition, but the point now taken was not discussed there. The petition is accordingly dismissed with costs.

K.R.

(1) (1924) 47 M.L.J., 762.

(2) (1924) I.L.R., 47 Mad., 535.