

## APPELLATE CIVIL.

Before Mr. Justice Cargenven and Mr. Justice  
Pakenham Walsh.

THIRUMALA CHETTIAR, PETITIONER,

1933,  
November 30.

v.

CHELLAM PILLAI, RESPONDENT.\*

*Election dispute—Order of Election Commissioner declaring election void and directing re-election—Writ of certiorari against, if lies—Local Board Rules—R. 6 and amended r. 1 (3) of—Effect of—Presentation of election petition to Election Commissioner—What amounts to.*

A writ of *certiorari* lies against the order of an Election Commissioner declaring an election void and directing a re-election. The amended rule 1 (3) of the Local Board Rules does not exclude the jurisdiction of the High Court to issue such a writ. The amendment has had no effect in altering the character of the inquiry which the Election Commissioner has to undertake or in making it any the less a proceeding of a judicial character.

The rule requiring an election petition to be presented to the Election Commissioner is sufficiently complied with by so presenting it as to enable it to reach the hands of the Election Commissioner. It is not necessary that it should be placed in his hands.

PETITION praying that in the circumstances stated therein the High Court will be pleased to issue an order calling for the records in Original Petition No. 72 of 1932 on the file of the Court of the District Munsif of Ambasamudram and directing the issue of a writ of *certiorari* vacating the order of the said Court of the District Munsif of Ambasamudram acting as Election Commissioner dated the 19th day of July 1933 and passed in the said Original Petition No. 72 of 1932 declaring the

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\* Civil Miscellaneous Petition No. 3918 of 1933.

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election of the petitioner therein void and directing a re-election in the said Original Petition No. 72 of 1932 on his file.

*B. Sitarama Rao* for petitioner.

*T. M. Krishnaswami Ayyar* and *K. V. Ramachandra Ayyar* for respondent.

The JUDGMENT of the Court was delivered by CURGENVEN J. CURGENVEN J.—This is an application for a writ of *certiorari* to vacate the order of the District Munsif of Ambasamudram as Election Commissioner in Original Petition No. 72 of 1932 on his file. The order declared the election of the petitioner void and directed a re-election.

We have heard some argument as to whether a writ of *certiorari* lies against the order of an Election Commissioner. Mr. T. M. Krishnaswami Ayyar has scarcely contested that on all ordinary principles such a writ would lie, the test of course being whether the officer against whose proceeding it is directed was acting in a judicial capacity. A construction of that phrase which we think we may adopt here has been given by SCRUTTON L.J. in *Rex v. The London County Council; The Entertainments Protection Association, Ex parte*(1) where he says :

“It is enough if the tribunal in question is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition.”

In the present case it is clear that the tribunal was exercising functions of a judicial character and indeed by rule 6 of the Local Board Rules for the decision of disputes it is provided that every election petition shall be enquired into as nearly

as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. The only case decided on this point is a decision of BARDSWELL J. in *Shanmuga Mudaliar v. Subbaraya Mudaliar*(1). But the learned Judge was not there called upon to discuss whether a writ would lie.

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A more specific objection has been raised that the amended rule 1 (3) of the Local Board Rules has been so framed as intentionally to exclude the jurisdiction of this Court to issue a writ. What appears to have happened is that the Full Bench ruling in *Parthasaradhi Naidu v. Koteswara Rao*(2) held that an Election Commissioner was not a *persona designata* but a Court, so that the ordinary revisional procedure of this Court would have application. The amendment was evidently designed to exclude that jurisdiction. But it has had no effect in altering the character of the inquiry which the Election Commissioner has to undertake or in making it any the less a proceeding of a judicial character. And we think it is not arguable that the Legislature can directly or indirectly deprive this Court of the jurisdictional powers which it has in the case of all such judicial proceedings, or indeed that any such result was contemplated by the amendment. Accordingly we think that a writ will lie in a case of this character.

It is not to be disputed however that it is of a purely discretionary character and only to be resorted to where the merits of the case call for it. We can find no such merits in the present instance. The first point raised is that the petition was presented not directly to the District

(1) (1932) 63 M.L.J. 932.

(2) (1923) I.L.R. 47 Mad. 369 (F.B.).

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Munsif in his capacity as Election Commissioner but to his Head Clerk. The rule certainly says that it shall be presented to the Election Commissioner but it does not, like, for instance, the Civil Procedure Code in the case of a plaint, require any intermediary for this purpose to be specially appointed by the Officer. There is no question that in the present case the petition reached the hands it was intended for and we think that the rule was sufficiently complied with by so presenting it and that it would be too strict a construction to require that it should be placed in the hands of the District Munsif himself. The objection that the deposit of Rs. 25, which has to be made with the application, was not so made appears to be without any foundation because we find that it was tendered on the date of presentation, 11th June, and accepted on that date. It is lastly said that the learned Election Commissioner has not recorded a definite finding upon the question whether the petitioner committed an offence described in rule 10 of the rules, viz., that he should have committed or abetted the commission of any election offence falling under section 58 of the Act. The finding appears to be that in the case of three voters the present petitioner stated to the Polling Officer that they were the real voters and this was found to be untrue, and the cases were found to be cases of false personation. The learned District Munsif has not stated this in very clear language but that undoubtedly is the finding at which he has arrived and we cannot interfere with it. The application is accordingly dismissed with costs. Vakil's fee Rs. 100.