

so much time allowed in excess of the proper time for appealing as is requisite, i.e., properly required, for obtaining the copies which he actually uses for the appeal. In this case no allegation is made that more than the requisite time for obtaining the copies on which the appeal has been filed has to be allowed to sustain the appeal. I therefore agree with the judgment just delivered.

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APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice Bardswell.*

M. K. MAHOMED ASAN MARACAIR (FIRST RESPONDENT),
APPELLANT,

1933,
December 19.

v.

A. K. BIJLI SAHIB BAHADUR AND TWO OTHERS
(PETITIONER AND RESPONDENTS 3 AND 4), RESPONDENTS.*

*Certiorari—Election dispute—Election Commissioner's order in
—Writ of certiorari in respect of—Issue of—Grounds
for—Circular of District Election Officer for gosha
women electors unveiling their faces on challenge of their
identity by candidate or his female agent—Legality of—
Candidate insisting upon their doing so pursuant to
circular—Offence under sec. 171-C of Indian Penal Code if
committed by—Madras Local Boards Act (XIV of 1920),
sec. 199 (2) (a) and (b)—Election Dispute Rules under—
Rules 19, 21 to 23 and 12 of—Applicability and effect of.*

The High Court will not interfere by a writ of *certiorari* with an order made by an Election Commissioner unless he has acted without jurisdiction or in excess of it. The High Court

* Letters Patent Appeal No. 77 of 1933.

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is only entitled to interfere if there was a want of jurisdiction at the commencement of the proceedings. Once there is jurisdiction, any errors whether of law or fact committed subsequently cannot take away the jurisdiction once obtained.

A circular issued by the District Election Officer before an election stated :

“ I am directed by the Inspector to inform you that gosha ladies will have to unveil themselves in the polling booths if their identity is challenged by the candidates or their female agents.”

Held (1) that the circular was not contrary to the spirit of rules 19, 20 and 23 of the Election Rules and was not illegal or *ultra vires* ;

(2) that a candidate would be acting in accordance with the circular in calling upon gosha women electors to unveil their faces before him and that, even if, as the result of his so doing, a large number of gosha electors had been scared away and had refrained from voting, no offence under section 171-C of the Indian Penal Code would be committed ; and

(3) that, where the question of the legality of the circular had to be decided before the Election Commissioner assumed jurisdiction and he was in error in holding that it was illegal and in supposing that the petition disclosed any offence, he had no jurisdiction to entertain the petition.

APPEAL under Clause 15 of the Letters Patent against the order of the High Court dated the 8th September 1933 and passed in Civil Miscellaneous Petition No. 2711 of 1933 praying for an order directing the issue of a writ of *certiorari* calling upon the third respondent therein to submit the records relating to Original Petition No. 56 of 1932 on his file, to make the writ *nisi* absolute and to quash the order and proceedings in the said Original Petition No. 56 of 1932 and also to make such other or further orders as to the High Court may seem fit.

S. Doraiswami Ayyar for *B. Pocker* and
K. T. M. Ahmed Ibrahim for appellant.

K. S. Krishnaswami Ayyangar for *S. Ramachandra Ayyar* for first respondent.

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Cur. adv. vult.

JUDGMENT.

BEASLEY C.J.—This is an appeal from an order made by RAMESAM J. on an application for a writ of *certiorari* quashing the order of the Election Commissioner in Original Petition No. 56 of 1932. The Commissioner was the Principal Subordinate Judge of Tinnevelly.

The appeal arises out of an election held for the Tiruchendur circle to the District Board of Tinnevelly. There were two seats for that circle, one being reserved for a Muhammadan and the other unreserved. There were three candidates for these two seats. One was Mr. Daniel Thomas Nadar who was elected and in respect of whose election no question arose. There were two other candidates for the remaining seat, namely, the petitioner before the Election Commissioner and the appellant here and the first respondent. The date fixed for the polling was the 15th October 1932. There were a large number of Muhammadans entitled to vote in the polling area in question, many of them being gosha ladies. Polling booths were set apart for women and the Inspector of Local Boards on the 3rd July 1932 issued a circular, Exhibit E, directing that the candidates themselves should be admitted to these booths or, if they employed agents on their behalf, they should be females and not males. In September 1932, a petition had been sent to the Inspector of Local Boards praying for special

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facilities to be given to women voters in the matter of recording their votes; and it is clear from the documents that the Election Authority did all that was possible to provide them. In consequence of this, five women polling officers were appointed at five of the booths. We are only concerned with three out of the five booths. The first respondent was represented by a woman agent at one booth, there being 300 purdah voters at that booth of whom 139 voted. The other two booths were in one hall and ballot boxes were placed in that hall at either end. In one of these booths there were 269 purdah voters and in the other 344 purdah voters. Only 13 voted in the former booth and one in the latter. The first respondent being a candidate sat in this room. Three days before the election, namely, the 12th October 1932, the District Election Officer sent a circular (Exhibit I) which plays a prominent part in these proceedings. That states :

“ I am directed by the Inspector to inform you that gosha ladies will have to unveil themselves in the polling booths if their identity is challenged by the candidates or their female agents.”

The election proceeded and it is alleged that the first respondent insisted on the gosha ladies who came to vote at the booth in which he sat showing their faces to him. The first respondent's case is that he merely insisted that they should unveil themselves to the female polling officer. The Election Commissioner does not accept the first respondent's version with regard to this. It is alleged that, as a result of this conduct of the first respondent, the gosha women voters were scared away being unwilling to unveil themselves before the first respondent through shame and

that the first respondent was, therefore, guilty of an offence relating to elections under section 171-C of the Indian Penal Code. The petitioner prayed that the election of the first respondent should be declared void, that the petitioner should be declared to have been duly elected to the seat or that a fresh election should be ordered. The Election Commissioner set aside the election and directed that a fresh election should be held. As before-mentioned, RAMESAM J. quashed that order.

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In the course of his order the Election Commissioner has very severely condemned Exhibit I which in his opinion was absolutely illegal, *ultra vires* and unwarranted. He also describes it as a curious and ill-conceived circular and as being contrary to the spirit of rules 19, 20 and 23. It is obvious that he makes Exhibit I wholly the basis of his decision. Finding that it was an illegal circular and *ultra vires*, he finds that the first respondent took advantage of it to scare away the gosha women voters by insisting on their unveiling before him and he considers that the petitioner was "enormously injured" to use his own language by the order of the District Election Officer contained in that document. RAMESAM J., however, has disagreed with this view of the Election Commissioner and is of the view that Exhibit I was not an illegal circular but on the contrary was within the spirit of the rules and a proper and reasonable facility in the interests of the women voters and the candidates themselves. He held that no offence under section 171-C, Indian Penal Code, had been committed. That being so, he was of the opinion that the Election Commissioner had acted without jurisdiction and

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he accordingly quashed his order and set the election aside.

The power of the High Court to set aside orders made by Election Commissioners which are final on Courts subject to the writ of *certiorari* has been considered in a number of decisions; and it is quite clear from them that the High Court will not interfere by a writ of *certiorari* with such orders unless the Election Commissioner has acted without jurisdiction or in excess of it. Recent decisions on this point are *Kumaraswami v. Muniratna Mudali*(1), *Shanmuga Mudaliar v. Subbaraya Mudaliar*(2) and *Govindaswami Pillai v. Ramalingaswami Pillai*(3). Where a Court has jurisdiction but is guilty of an error of law or fact, a superior Court cannot interfere. In my view, the whole case turns upon the answer to the question whether Exhibit I was illegal and *ultra vires* or not. Mr. S. Doraiswami Ayyar contends that it was and that there is nothing in the rules to warrant the issue of such a circular. We have, therefore, to consider the rules in question, namely, rules 19, 21, 22 and 23 of the Election Rules. Rule 19 says that special facilities in accordance with the instructions, if any, issued by the Election Authority in that behalf may be accorded to women electors. Rule 21 provides for the questioning of the elector and says that if the candidate or his polling agent so requires or indeed the polling officer, of his own accord, so requires, there may be put either or both of the following questions to the elector, namely, (1) "Are you the person enrolled as

(1) (1932) I.L.R. 56 Mad. 942.

(2) (1932) 63 M.L.J. 932.

(3) (1931) 62 M.L.J. 644.

follows (reading the whole entry from the roll)?" and (2) "Have you already voted at the present election at this polling station or at any other polling station?", and that, if the answer to the first question is in the affirmative and the second in the negative, the elector shall be supplied with a ballot paper. Rule 22—a rule with which we are not here concerned—relates to the case of a person who applies for a ballot paper after another person has voted as such elector. Rule 23 provides for challenged ballot papers and says that, if any candidate or polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the polling officer may require such person to sign his name and enter his address in the list of challenged votes or, if he is unable to write, to affix his thumb-impres- sion thereto, and may further require such person to produce evidence of identification and that, if the answers to questions described in rule 21 are satisfactory, the elector is to be allowed to vote after having been informed of the penalty for personation. There is another important rule which has to be mentioned and that is rule 12 which reads as follows :

"The polling officer shall keep order at the station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time and shall exclude all other persons except his own clerks, the candidates, one agent of each candidate at a time (hereinafter referred to as the polling agent) appointed in writing by the candidate, the police on duty, and such persons as may be admitted for the purpose of identifying the electors."

It is clear—and this is indeed conceded by Mr. S. Doraiswami Ayyar—that a candidate has the

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right to be in the polling booth. He can be represented by an agent if he desires or he can look after his own interests himself, and obviously to see the voters themselves is his privilege and right for the purpose of preventing impersonation. He is, therefore, entitled to be present and see that no person votes in the name of another whose name is on the electoral roll. Now it is necessary to refer to rule 19 again. Under that rule the Election Authority may provide special facilities to women electors to vote. It is quite obvious that, when the Election Authority provides such facilities for gosha women electors, he must also attach to them certain safeguards in order to prevent impersonation and, when he does so, he is acting, in my view, in accordance with those rules which are designed to prevent impersonation. Rules 21 and 23 do not provide the necessary or indeed any safeguards against impersonation by gosha women. When a veiled gosha woman elector applies for a ballot paper, upon what material is the candidate or his agent to challenge the elector? He cannot do so without seeing that person's face. Nevertheless, under rule 23 he has to undertake to prove that such person has committed the offence of personation. Rule 23 does not cover the case of gosha women electors. Moreover, the warning to the challenged elector, namely, as to the penalty for personation, would in the case of a gosha elector affixing her thumb-impression be entirely useless. How could such a thumb-impressionist thereafter be traced and the penalty enforced unless the thumb-impressions of many thousands of women were taken afterwards for comparison which is clearly

impossible? Rule 23, therefore, whilst providing safeguards in the case of the male elector and women who are not gosha, omits to do so in the case of gosha women electors; and if, whilst granting facilities under rule 19 to those women to vote, safeguards are not at the same time provided, it would be possible for wholesale impersonation to be practised; and I am utterly unable to understand the language used by the Election Commissioner towards the Election Authority and Exhibit I which he issued. In my opinion, it was essential that provision such as is set out in Exhibit I should be made; and there is nothing whatever to justify the violent language used towards the Election Authority and Exhibit I; and I entirely agree with RAMESAM J. in the criticism of that language. Unfortunately this utterly unreasonable view taken by the Election Commissioner of Exhibit I clearly became a sort of obsession. It was the root evil of the whole case. It being an illegal and unwarranted document, in his opinion, the first respondent took full advantage of it and scared away the gosha women electors. That is what runs throughout the Election Commissioner's order. It even causes him to criticise the action of the first respondent as follows:

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“ There is also this further fact that the first respondent is spoken to by all the witnesses to have sat and leaned on an easy-chair in front of the booth. The respondent agrees he sat on an easy-chair. To my mind, even this conduct seems to be perfectly improper and as tending to discourage and therefore interfering with the freedom of gosha muslim women voters from moving about and coming and recording their votes. . . . Especially seeing that it was a case of gosha muslim women a more proper and decent conduct would have been to sit on an ordinary chair with as little obstruction as possible.

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The evidence is that the first respondent got a private easy-chair and leaned himself on it in front of the booth."

It is difficult to see how the selection of an easy-chair instead of an ordinary chair as a resting place by a candidate can have any possible bearing upon the question of whether an election offence has been committed. I am clearly of the opinion that Exhibit I was not illegal or *ultra vires* and that the first respondent in calling upon the gosha women electors to unveil their faces before him was acting in accordance with that circular. If by so doing a large number of gosha electors refrained from voting or if, as the appellant describes it, they were scared away, that is a difficulty, if it is one, which seems to me to be attendant upon gosha women exercising the franchise. Certainly no election offence under section 171-C, Indian Penal Code, has been here disclosed. The gosha women electors were perfectly free to vote if they wished to do so and the first respondent did nothing which in law could be held to come within that section. This finding, however, does not conclude the matter although it goes a very long way towards doing so. The question is not whether there has been here any error in law on the part of the Election Commissioner; and this Court is only entitled to interfere, as has already been remarked, if there was a want of jurisdiction at the commencement of the proceedings. Once there is jurisdiction, any errors committed subsequently cannot take away the jurisdiction once obtained. The question which now arises, therefore, is, did the election petition itself disclose an election offence which the Election Commissioner could take cognizance

of? Reading the petition as a whole, I am satisfied that it was all based upon Exhibit I and the complaint that the first respondent was, therefore, not exercising any legal right to be present and to demand the gosha women electors to unveil before him, but was acting illegally. The question as to whether Exhibit I was illegal or not, upon which the whole case turns, was one which had to be decided before the Election Commissioner assumed jurisdiction and he was in error in supposing that the petition disclosed any offence. It certainly did not. He, therefore, had no jurisdiction to entertain the petition at all. The appeal is dismissed with costs. Advocate's fee Rs. 200.

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BARDSWELL J.—I agree.

A.S.V.
