

here with the conduct of the complainant. We are concerned with the conduct of the respondent and there is abundant evidence to show that he has been guilty of professional misconduct. It is said that as the result of his connection with this litigation he has lost a large sum of money. We are told that the amount by which he is out of pocket is over Rs. 4,000. This is of course punishment in itself but we consider that it is not sufficient. We consider that the conduct of the respondent has been such that he should be suspended from practice for three months from this date. We would add that the fact that the punishment inflicted by the Court is limited to suspension for three months does not mean that it will be so limited in another case. Agreements of this nature cannot be tolerated and in future the Court will not take such a lenient view.

AN ADVOCATE,  
In re.  
LEACH C.J.

V.V.C.

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### APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and Mr. Justice  
Krishnaswami Ayyangar.*

SEENI MADAR SAHIB (PETITIONER), PETITIONER,

v.

ABDUR RAHMAN SAHIB AND ANOTHER (RESPONDENTS),  
RESPONDENTS.\*

1939,  
April 28.

*Election—Two successful candidates—Single petition to set aside election—Maintainability—Election rules framed under Madras Local Boards Act (XIV of 1920)—Applicability and effect of—Desirability of amending the said rules.*

For one of the wards of a panchayat board two candidates had to be elected. One of the seats was a reserved seat ; the

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\* Civil Miscellaneous Petition No. 5334 of 1938.

MADAR SAHIB  
 c.  
 RAHMAN SAHIB. other was a general seat. There were two candidates for each seat. The petitioner was one of the candidates for the reserved seat but was unsuccessful. He filed a petition, to which he made the successful candidates the respondents, asking that both elections should be set aside. The petition averred that there had been impersonation and that the persons impersonated were the same in both the cases. The Election Commissioner held that the petitioner should have filed two petitions but gave him the option of treating the petition as an election petition in respect of one of the two seats.

*Held* that the Election Commissioner should have treated the petition which had been filed as a petition in each case and required the petitioner to make further provision with regard to costs.

The decision of the Election Commissioner meant that the petitioner was called upon to choose whether he would drop his charges against one of the two successful candidates, and for that there was no warrant in the Election Rules framed under the Madras Local Boards Act, 1920.

The desirability of amending the rules pointed out.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a writ to the Election Commissioner (District Munsif) of Tiruvellore calling for the records in Original Petition No. 40 of 1938 (Election Petition No. 3 of 1938) on his file and to quash the proceedings therein.

*V. Ramaswami Ayyar and M. Natesan* for petitioner.

*V. T. Rangaswami Ayyangar and K. Ramaswami Ayyangar* for respondents.

LEACH C.J. LEACH C.J.—The petitioner in this case was a candidate at the election held on 28th June 1938 of members to the Tiruvellore Panchayat Board. For the sixth ward of the board two candidates were to be elected. One of the seats was reserved for the Muhammadan community; the other was a general seat. There were two candidates for each seat and the

petitioner was one of the candidates for the reserved seat. He was unsuccessful and he filed a petition in which he asked that both elections should be set aside. The successful candidates are the respondents to this petition. Before the Election Commissioner a preliminary objection was taken to the validity of the petition. It was said that inasmuch as the petitioner was asking that the election in respect of the reserved seat and the election in respect of the general seat be set aside he should have filed two petitions. The Election Commissioner accepted this contention and gave the petitioner the option of treating the petition as an election petition in respect of one of the two seats. The petitioner then filed an application to this Court for a writ of *certiorari* with a view to the order of the Election Commissioner being quashed. A writ *nisi* was issued and the Court is now called upon to decide whether the rule shall be made absolute.

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In holding that it was necessary for the petitioner to file a petition in respect of each election the Election Commissioner had regard to the fact that the Election Rules framed under the Madras Local Boards Act, 1920, are drafted in the singular and that a deposit of twenty-five rupees has to be made in respect of the costs of the respondent. It is true that there is no express provision enabling an unsuccessful candidate or a voter to challenge the election of two candidates in one petition, but it does not necessarily follow from this that the Election Commissioner was justified in refusing to treat the petition which was filed as a petition in each case. The petition averred that there had been impersonation and that the persons impersonated were the same in both the cases. Each voter was given two ballot papers. There were four ballot

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boxes and a voter had the right to put the ballot papers in whichever box he selected, but he was not allowed to put two ballot papers in one box. It is obvious that in this case it would have been convenient to have tried the two matters together. Under the English rules this petition would have been accepted but it would have been treated as a petition in each case. *See* sections 22 and 23 of the Parliamentary Elections Act, 1868, and section 91 (3) of the Municipal Corporations Act, 1882. We consider that there was no justification for the action which the Election Commissioner took. He could have treated the petition as a petition in each case and could have required the petitioner to make further provision with regard to costs. His decision meant that the petitioner was called upon to choose whether he would drop his charges against one of the two successful candidates, and for this there is no warrant in the rules.

We consider that the rule should be made absolute and the order of the Election Commissioner quashed. The record will be returned to the Election Commissioner to proceed with the hearing of the petition according to law. The petitioner is entitled to his costs.

In order to prevent such questions arising in future it may be desirable to effect an amendment in the rules.

A.S.V.

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