

In Re: Sundaresa Ayyar

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Court : Chennai

Decided On : Oct-07-1955

Reported in : (1956)1MLJ204

Appellant : In Re: Sundaresa Ayyar

Judgement :

ORDER

Somasundaram, J.

1. This is a revision filed against the order refusing to accept the contention of the petitioner herein, who was a Revenue Inspector of a Municipality, that he is entitled to protection under Section 353-A of the District Municipalities Act.
2. The petitioner in the discharge of his duties, and by virtue of the delegation made to him by the Commissioner of the Municipality is said to have seized the complainant's cycle, for not possessing the necessary licence. For this a complaint has been filed against him under Sections 166, 170 and 341, Indian Penal Code.
3. A preliminary objection was raised that under Section 353-A of the District Municipalities Act the Court should not take cognizance except with the previous sanction of the State Government. Admittedly there is no sanction by the State Government. The question is whether the petitioner is entitled to the protection provided under Section 353-A of the Act.

4. That the petitioner is an officer of the municipality is not disputed. Under Section 107 of the Act the executive authority may at any time seize and detain any vehicle. But under Section 18-A (iii) the Commissioner, who is the executive authority in this case, may delegate any of his functions to any servant of the Council. It is by virtue of this clause, that the powers under Section 107 have been delegated to this servant of the municipality. He is, therefore, entitled to stop and seize the vehicle, if the necessary licence is not to be found on the vehicle. But Section 353-A specifically says that when the Chairman, any Councillor or the Executive Authority is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the State Government. Under Section 3(8)(c) 'Executive Authority' has been defined as meaning in the case of municipalities included in Schedule IX or notified under Sub-section (1) of Section 12-C the Commissioner, or if there is no Commissioner in charge, the Chairman. This is a case of a municipality notified under Sub-section (1) of Section 12. So the Commissioner is the Executive Authority. The definition does not say that it includes all servants and officers of the municipality, to whom the powers of a Commissioner are delegated. Therefore in Section 353-A the Executive Officer means only Executive Authority of a municipality, who in this particular case, is the Commissioner of the municipality. The protection is afforded only to the Commissioner and to the other two persons mentioned in the section, namely, the Chairman or the Councillor, it does not extend to the persons to whom the powers are delegated by the Commissioner.

5. In this connection, it is significant to note the provisions of Section 350 of the District Municipalities Act. There a suit for damages or compensation against any servant or officer or Municipal Authority or even any person acting under the directions of the same, shall not be instituted, unless the conditions mentioned in the section are satisfied. The conditions apply even to persons acting under the directions of the Municipal Authority. Similarly if protection against criminal proceedings given to the persons mentioned in the section is intended for all, the expression used in Section 350 would well have been used in Section 353-A as well. Apart from the plain meaning of the words (about which there is no ambiguity the failure to use such expressions as used in Section 350 in Section 353-A is

strongly indicative of the intention of the Legislature not to extend the protection to persons other than those mentioned in the section. It is true that the servants of the municipality, when they act under the delegated powers under Section 18-A (iii) have all the powers of the Executive Authority. But a mere clothing of an individual with all the powers of a higher authority will not make that individual the higher authority. Section 353-A will not, therefore, apply to the petitioner herein.

6. The order of the lower Court is correct, and this petition is dismissed.

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