

Balasundara Gounder Vs. the Judicial Authority and anr.

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Court : Chennai

Decided On : Apr-28-1969

Reported in : (1970)1MLJ344

Appellant : Balasundara Gounder

Respondent : The Judicial Authority and anr.

Judgement :

ORDER

A. Alagiriswami, J.

1. This writ petition raises a question of some interest with regard to the scope of the powers of the prescribed judicial authority under Section 28 of the Madras Panchayats Act, 1958. Under Section 26 of the Act, in so far as it is relevant for purposes of this case, a member shall cease to hold office as such if he acquires any interest in any subsisting contract made with, or work being done for, any Panchayat or any Panchayat Union Council except as a shareholder (other than a director) in a company or except as permitted by rules made under this Act. The second respondent herein filed a petition under Section 28 of the Act to the prescribed judicial authority, that is, the District Munsif, Tindivanam, alleging that the petitioner had become disqualified to be a member of the Panchayat Board under the provisions of Section 26 above referred to. That petition was adjourned for a number of days and was finally dismissed for default. Subsequently it

appears that the second respondent filed an application for restoration of the application which was dismissed for default and that was restored to file. The petitioner alleges that this was done without notice to him. That aspect of the matter I shall deal with later.

2. But his main point is that the prescribed judicial authority under Section 28 of the Act has no power to restore a petition dismissed by it for default. Notification 7 which finds a place at page 264 of S. V. Jayaraman on the Madras Panchayats Act, 1958 reads:

The Judicial authority to whom applications under Sub-section (1) of Section 28 of the Madras Panchayats Act, 1958, may be made shall be in the case of districts other than the Nilgiris, the District Munsif having territorial jurisdiction over the place in which the office of the Panchayat concerned is situated or if there is more than one such District Munsif, the principal District Munsif, and in the case of Nilgiris District, the Subordinate Judge, Ootacamund.

Provided that, in the case of districts other than the Nilgiris, the District Judge shall have power to transfer any such application to any other District Munsif? in the district.

3. The petitioner referred me to Rules found in notification 10 which are found at page 295 onwards of the same book by which the District Munsif having territorial jurisdiction over the place in which the office of the Panchayat Board is situated is constituted as an election Court for purposes of deciding disputes regarding elections and such a District Munsif is deemed to exercise such jurisdiction as a *persona designata* and not in his capacity as a District Munsif or a Judge or other officer of the Government. Those rules apply to this case as this is not a case of election dispute. We are concerned only with notification 7 to which I already referred.

4. The petitioner refers to the decision in *Tiruppulisami v. Manickam* (1954) 2 M.L.J. 680, where Rajamannar, C.J., in dealing with the question which arose under Section 51 of the District Municipalities Act, in which the language used is exactly the same as in Section 28 of the Madras Panchayats Act, held that the

District Judge in dealing with a question under Section 51 would be a Tribunal within the meaning of the term under Article 227 of the Constitution. Incidentally the learned Judge observed that the District Judge acting under Section 51 of the Act might be a persona designates, that is to say, he would differ from the District Court, over which he was presiding, and this observation is relied upon by the petitioner to urge that the prescribed Judicial authority in this case acting as persona designata. The question whether the District Judge deciding a question under Section 51 was a persona designata or was deciding it as a Judge, presiding over the District Court was not finally decided by that learned Judge, because it was not necessary for purposes of that case. The learned Judge was only referring to the argument of the Advocate before him and in relation to such an argument, went on to say that it cannot be said that the District Judge was not a tribunal within the meaning of the term in Article 227 of the Constitution. Even as an observation it is not a final expression of opinion. Therefore, this decision does not help to decide the question at issue before me. The petitioner also drew my attention to the decision in *Koti Reddi v. Venkayya* I.L.R. (1952) Mad. 104 : (1951) 1 M.L.J. 347, where a Bench of this Court in dealing with the question whether an Election Commissioner hearing an election petition was doing so as a persona designata, held that in the absence of an express provision empowering him to set aside his own orders either by way of a review or by way of application under Order 9, Civil Procedure Code, the Election Commissioner had no jurisdiction to set aside an earlier order of his. But in that case unlike as in this case the Election Commissioner' was not an officer presiding over a Court. In *National Telephone Co. Ltd. v. Postmaster General* L.R. (1913) A.C. 436, Viscount Haldane, L.C. pointed out.

When a question is stated to be referred to an established Court without more, it in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches.

Lord Parker of Waddington in the same case observed:

Where by statute matters are referred to the determination of a Court of record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court, its jurisdiction is enlarged, but all the incidents of such jurisdiction including the right of appeal from its-decision remain the same.

5. A similar view was expressed in the decision in *Adaikkappa Chetti v. Chandrasekhara Thevar* (1948) L.R. 74 IndAp 364 : I.L.R. (1948) Mad. 505 : (1948) 1 M.L.J.41, where the Privy Council has stated the rule:

The true rule is that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto.

6. It would follow that the District Munsif in this case, who normally decides all cases before him by applying the provisions of the Civil Procedure Code, was also entitled to apply the provisions of that Code in the matter which is referred to him under Section 28 of the Madras Panchayats Act, That was the view which Ramaprasada Rao, J., took in the decision in *Tirupathi Nadar v. Kandasami Nadar* (1968) 81 L.W. 642.

7. I am, therefore, of opinion that as in this case, the District Munsif, while dealing with a petition under Section 28 of the Madras Panchayats Act, deals with it as one of the ordinary Courts of the land, the procedural provisions which apply to matters which came up for decision before him, would also apply to a petition under Section 28 of the Act. The District Munsif was, therefore, competent to maintain an application for setting aside his own order dismissing the petition for default, if he considered that there were circumstances, justifying such an order.

8. But the petitioner says that before the District Munsif, it was pointed out that no notice was served on him before the order of dismissal was set aside on the application of the second respondent for default and that the witnesses, who are said to have attested the service of affixture, are fictitious, non-existent persons. if that is so, it is open to the petitioner to apply to the learned District Munsif to set aside the order restoring the application dismissed for default. The learned District Munsif would no doubt pass the necessary orders after taking evidence on the

subject. With these observations, the writ petition is dismissed. There will be no order as to costs.

9. I must thank Mr. R. Krishnamurthi, Advocate who, as amicus curiae was of considerable assistance to me in the disposal of this case.

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