

(1923) 09 MAD CK 0062
In the Madras High Court

Akula Sudarsana Rao

APPELLANT

Vs

J.A. Christian Pillai and Others

RESPONDENT

Date of Decision : 21-09-1923

Acts Referred:

Madras Local Boards Act, 1884 — Section 57

Citation : AIR 1924 Mad 396 : 76 Ind. Cas. 813 : (1923) 45 MLJ 798

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The first point argued is whether the petitioner ceased to be a Honorary Magistrate prior to his election on the 21st September, 1922. I agree with the District judge's finding that the appointment of the petitioner as President was made on 21-9-1922 though it was to take effect from 1-10-1922. This view has not been questioned before me.

2. The contention before me is that the petitioner resigned his office of Honorary Magistrate on 21-9-22 and that, though it was accepted on 17-10-22, he ceased to be a Honorary Magistrate from 21-9-22. Paine on Elections, page 201 shows that without acceptance, resignation amounts to nothing and the person resigning remains in office. To resign is not a matter of right. This is not inconsistent with the passage from Rogers on Elections, Volume II, page 27, 28-29 where it was said that there must be substantial renunciation. In the case cited at page 29 (Lanarkshire, 2 Doyl. 367) it is clear that the resignation was accepted though informally before the Election. In the other case cited at pp. 28-29 (Aberbrothok) the facts are not fully stated and there is nothing to show that the resignation was not accepted before the Election. It may be that the need for acceptance does not apply to honorary appointments and it is a question of fact in each case whether the resignation amounted to a renunciation without acceptance and may depend to a certain extent on the contents of the letter of resignation which is not filed in this case. But it is unnecessary to pursue this line of argument further as the petitioner never contended in the Court

below that he resigned on the 21st September. All that he said in the counter petition was that he was appointed on 1st October, 1922 and that he ceased to be an Honorary Magistrate before that date. There was no suggestion in it that he ceased to be an Honorary Magistrate on 21-9-22. In the course of the argument before the District Judge, the importance of this point became more patent and even then all that was said was that "he had sent his resignation on the 21st or 22nd." It is therefore clear that up to the filing of the Revision Petition, the petitioner had no definite case as to the date of the resignation. In the absence of an affidavit I am not satisfied that any point was conceded in the Court below and that the petitioner did not adduce his evidence under the impression that the date was conceded to be the 21st September.

3. The next point is whether respondents had any locus standi to file the petition u/s 57, Madras Local Boards Act. It is conceded before me that the effect of the words "shall cease to hold office and his seat shall be deemed to have been vacant" in Section 4(2) of the Amending Act of 1922 is that they did not cease to be members. But the contention is that they are unfit to exercise the functions and duties of a member of the Taluk Board and an unreported decision of Spencer and Devadoss, JJ. is relied on. But filing a petition u/s 57 is not one of the ordinary functions and duties of a member of the Taluk Board. It may be that, until he takes the oath, he is unfit to take his seat and therefore to discharge all the ordinary functions and duties of a member which can be discharged only by his taking seat at meetings. But if he continues to be a member (as conceded before me) who has not taken his seat, he is not incompetent to file the petition u/s 57.

4. On both grounds the petition fails. It is unnecessary to consider the point whether they are questions of jurisdiction and material irregularity in the disposal of the case. The petition is dismissed with costs.