
(1939) 07 MAD CK 0011
In the Madras High Court

A.R.A.N Thyagarajan Chettiar, Trustee of Sri
Koppudayanayagi Amman Temple

APPELLANT

Vs

The Secretary to Government of Madras, Revenue
Department and Others

RESPONDENT

Date of Decision : 31-07-1939

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 36

Citation : AIR 1939 Mad 940 : (1940) ILR (Mad) 204 : (1939) 50 LW 538 :
(1939) 2 MLJ 801

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The petitioner is the trustee of the Sri Koppudayanayagi Amman temple, Karaikudi. In front of this

temple and vested in the Municipal Council of Karaikudi is a tank, measuring 266 feet by 272 feet. The tank was in an insanitary condition and the

cost of putting it into a proper condition and of so maintaining it was said to be too costly. Consequently the Municipal Council decided to reduce

the size of the tank to 125 feet by 125 feet. The petitioner objected, and moved the Provincial Government to interfere under the powers

conferred upon it by Section 36 of the Madras District Municipalities Act, 1920. He asked for a direction that the tank be maintained at its original

size. As the result of the petitioner's representations the Government decided that the Municipal Council should only reduce the size of the tank

to 218 feet by 208 feet. The Municipal Council had not been given an opportunity of stating its case and it applied to the Government to revise its

order. After hearing what the Municipal Council had to say the Government by an order dated the 5th June, 1939, cancelled its previous order and

allowed the Municipal Council to reduce the size of the tank to 125 feet by 125 feet, as it had proposed. The petitioner now asks the Court to

issue a writ of certiorari against the Government and quash its order of the 5th June, 1939. The order, as required by Section 59 of the

Government of India Act, 1935, was issued in the name of the Governor of the Province. In *Penugonda Venkataratnam v. Secretary of State for*

India in Council, a Bench of this Court held that the Court had no jurisdiction to issue a writ against the Governor u/s 106(1) of the Government of

India Act, 1915, and no jurisdiction to issue a writ against the Governor ""acting with the Ministers,"" which was the application in that case. The

petitioner says that inasmuch as he is not asking for a writ to issue against the Governor, but only against the Provincial Government, his application

does not fall within that decision and that it lies by reason of the provisions of the Government of India Act, 1935. He contends further that the

Government has no power to revise its own order.

2. The position under the Government of India Act, 1935, is not here different from the position under the Government of India Act, 1915, and it is

abundantly clear that this Court has no power to issue a writ of certiorari in this case. By virtue of Section 223 of the Government of India Act,

1935, this Court possesses just the same powers as it had before that Act came into force. By virtue of Section 106(1) of the Government of India

Act, 1915, it had the jurisdiction and powers vested in it by the Letters Patent. In order to ascertain what those powers were we have got to go

back to the provisions of the Charter of the Supreme Court, which was granted on the 26th December, 1800. The Charter of the Supreme Court

expressly provided that it was not competent for the Court to hear or determine, or entertain or exercise jurisdiction in a suit or action against the

Governor-General or Fort William, or the Governor, or any member of the Council for or on account of anything done by them in their public

capacity or "" acting as Governor-General, or Governor and Council."" The Supreme Court was replaced by the High Court after the passing of the

Indian High Courts Act, 1861. Section 9 of that Act provided that the High Courts established under the Act should have and exercise such civil,

criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and such powers and authority

for and in relation to the administration of justice in the Presidency for which it was established as Her Majesty might grant and save as the Letters

Patent might otherwise direct and, subject and without prejudice to the legislative powers of the Governor-General of India in Council in relation to

such matters, should have and exercise the jurisdiction of the Courts in the same Presidency abolished by the Act. The Letters Patent granted to

this Court under that Act did not enlarge the powers of the Court by taking away the restrictions imposed by the Charter of the Supreme Court.

The restrictions consequently remained. Section 110 of the Government of India Act, 1915, expressly provided that the Governor-General, each

Governor, and the members of their respective executive councils should not be subject to the jurisdiction of a High Court by reason of anything

counselled, ordered or done by any of them in his public capacity only. The corresponding section in the Act of 1935 is Section 306 which states

that no proceedings whatsoever shall lie in and no process whatsoever shall issue from any Court in India against the Governor-General, against

the Governor of a Province or against the Secretary of State whether in a personal capacity or otherwise. There are these statutory provisions and

the prohibition in the Supreme Court Charter a prohibition which was not removed by the Letters Patent of the High Court. The position in this

respect is therefore the same as it was in 1800.

3. While accepting this to be the case so far as the Governor is concerned the learned Advocate for the petitioner says that by virtue of Section 49

of the Government of India Act, 1935, he is entitled to the issue of the writ against the Provincial Government. Section 49 says that the executive

authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but

nothing in the section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities or be deemed to

transfer to the Governor any functions conferred by any existing Indian Law on any Court, Judge, or officer or any local or other authority. It is

argued that this section expressly prevents the Governor from issuing an order u/s 36 of the Madras District Municipalities Act, 1920, and that the

Provincial Government alone can issue it. This is a far-fetched argument. The Provincial Government has full power u/s 36 of the Madras District

Municipalities Act, 1920, to control the actions of a Municipal Council. Section 59 requires all executive action of the Government of a Province to

be taken in the name of the Governor and the order in question, being an executive order lawfully passed and lawfully issued in the name of the

Governor and therefore his order, the Court has no power to interfere with it. It is impossible to differentiate between the Governor and the

Provincial Government in a matter of the nature of the one now before us. Section 49 has no bearing on the question.

4. Even if this Court has power to issue a writ of certiorari in this matter -I am firmly of the opinion that it has not-this is not a case in which it

should exercise it. The order was within the limits of authority and it cannot be said with reason that the Government has no power to cancel or

vary its own executive order. If it had not this power a wrong would be without a remedy, which is contrary to all principle.

5. For the above reasons this application must be dismissed with costs, two sets, one set in favour of the first respondent and the other set in

favour of the other two respondents.

6. Pending the hearing of this application an interim injunction was issued restraining the Chairman and the Commissioner of the Municipality, the

second and the third respondents, from further filling up the tank. As the result of the dismissal of this application the injunction will be dissolved.

The second and third respondents are entitled to their costs in the injunction application.

7. Memo, of costs will follow.