

(1964) 09 MAD CK 0037
In the Madras High Court
Case No : (sic) P. No. 1153 of 1964

Chinnathambi

APPELLANT

Vs

The Executive Officer, Adirampattinam Panchayat Board and
another

RESPONDENT

Date of Decision : 14-09-1964

Acts Referred:

Citation : (1964) 09 MAD CK 0037

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : R. Kallappan, for the Appellant; (sic) Martin, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—This petition is to quash the order of the District Munsif, Pattukottai, which is made under S. 28 of Madras Act XXXV of

1958, affirming that the petitioner had sustained a disqualification under S. 26 (3) of the Act. He found that the petitioner was absent from the

meetings of the Panchayat held on 26th April, 31st May and 29th June 1963. The last meeting prior to these dates was on 30th March 1963. The

petitioner attended the meeting held on 9th July 1963. The Munsif overruling the petitioner's stand, held that he had due notice of each of the

meetings in April to May 1963. He also held that there was no substance in the contention of the petitioner that on account of the fact he was

allowed to sit at the meeting on 9th July 1963, and sub-subsequent meetings, and the agenda along with the notices for each of the meetings had been

circulated to him, the Panchayat had waived the disqualification. Lastly it would appear to have been contended before the Munsif that in as much

as the executive officer had failed to bring disqualification to the notice of the Panchayat within the time prescribed by S. 27, the Panchayat could

not raise the question of disqualification. This contention again was not accepted by the Munsif. The above grounds for the petitioner are reiterated

in this Court. So far as the last ground is concerned, it is covered by *Kuppuswami v. Council of Corporation* ILR (1964) 1 Mad. 14. this Court

held:

The section no doubt casts a duty on the Commissioner to report about the sustaining of the disqualification by the absentee Councillor. But that is

merely to remind the council of its powers ; non submission of his report cannot detract or enlarge the powers of the council...It has been

contended on behalf of the first respondent that before the Council could get jurisdiction to exercise the power conferred upon it by Sub-S. 4 of S.

53, the Commissioner's report will be necessary, and the Council would be justified in exercising its power after such a report is received. We are

unable to agree with the contention. The power for restoration is conferred on the council. It cannot be read as being conditional or as coming into

existence on the Commissioner submitting a report. The report is intended merely as information to the council.

2. Though that case was decided under the Madras City Municipal Act, the principle of the judgment is applicable to the facts of this case as well.

3. So far as the second ground as to want of notice for the meetings held in April, May and June is concerned, the finding of the Munsif is a factual

one and this Court will not correct it in certiorari.

4. The first contention relating to waiver has also to be rejected. What precisely is meant by waiver in the context is not clear. If by waiver is meant

that the Panchayat condemned the disqualification sustained by the petitioner, there is no provision giving any such power to the Panchayat. Sec.

27 (2) contemplates restoration by the Panchayat on the application of the member concerned who has sustained the disqualification. It is true the

application need not necessarily be oral. But there should be an application to the Panchayat for restoration and only on such an application the

Panchayat can exercise its power of restoration subject to the restrictions contained in S. 27 (2). The disqualification is sustained automatically and

unless the member concerned is restored, he ceases to be a member. I am

therefore unable to accept this ground based on waiver. In my view the Munsif was right in rejecting this ground. The petition is dismissed. No costs.