

(1952) 11 MAD CK 0035
In the Madras High Court

Kakara Someswara Rao

APPELLANT

Vs

Kalidindi Ramakrishna Raju and Others

RESPONDENT

Date of Decision : 21-11-1952

Acts Referred:

Madras Local Boards Act, 1884 — Section 15, 16, 17

Citation : (1953) 1 MLJ 331

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Judgement

Chandra Reddy, J.—This is a petition for the issue of a Writ of certiorari to quash the proceedings in O.P. No. 41 of 1951. The petitioner was elected a member of the Panchayat Board, Polamur, Tanuku taluk, West Godavari district, in the year 1939 under the provisions of the Madras Local Boards Act (XIV of 1920) and continued to be as such, as there were no fresh elections subsequent to that. He was also elected as Vice-President of the Board in that year. The first respondent herein filed a petition u/s 19(1) of Act X of 1950 (hereinafter referred to as the Act) before the District Munsif of Tanuku alleging that the petitioner ceased to be a member of the Panchayat Board by reason of non-attendance of three consecutive meetings of the Board. That petition was necessitated by the fact that the petitioner disputed the disqualification and the first respondent was directed by the Inspector of Local Boards to agitate the matter before the appropriate judicial authority.

2. That petition was contested by the petitioner herein not only by denying the allegations regarding his absence at three consecutive meetings for which he had. notice but also by contending that the District Munsif has no jurisdiction to entertain the petition for the reason that Section 19(1) of the Act had no application to the facts of this case. It was the case of the petitioner that Section 19(1) did not govern this case as the alleged disqualification had not arisen under Act X of 1950. The District Munsif overruling the objections of the petitioner herein decided that he had jurisdiction to go into the matter, and that

on merits he found that the petitioner ceased to be a member, as he absented himself from three consecutive meetings held between 13th November, 1950 to 30th January, 1951.

3. Being aggrieved by this decision, the petitioner has presented this writ petition for the reliefs mentioned above.

4. The main ground of attack against the order of the learned District Munsif is want of jurisdiction in the District Munsif to declare that the petitioner has become disqualified. Mr. Bhimasankaram urged that as the disqualification had arisen before the Act came into force, the provisions of Section 19 of the Act were not applicable to the case on hand and therefore the District Munsif, who was the prescribed authority appointed under the rules framed under the Act, was not competent to go into the matter. Before the Act X of 1950 came into force, the provision applicable to disqualifications arising out of the absence of a member of a Panchayat Board from three consecutive meetings was Section 56 of the Madras Local Boards Act. Section 56 of the Madras Local Boards Act provided that:

Subject to the provisions of Section 57, a member of a local board shall cease to hold his office, if he

(A) absents himself from the meetings of the local board for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of his restoration to office as member under Sub-section (4), as the case may be, or if within the said period, less than two meetings have been held, absents himself from two consecutive meetings held after the said date.

5. Section 57 runs thus:

57. (1) Whenever it is alleged that any person who has been elected as member of a local board is disqualified under Sub-section (1) of Section 54, Section 55, Section 56 or Section 59 and such person does not admit the allegation, or whenever any member is himself in doubt whether or not. She has become disqualified for office u/s 56 or Section 59 such member or any other member may, and the president (Executive authority--side correction slip under Madras Act XIX of 1943) at the request of the local board shall apply to the District Judge of the district in which the area of the local board is situated.

6. In 1950 the Legislature of the Madras State passed Act X of 1950 to make better provision in a separate enactment for the administration of village affairs of panchayats. Under Sub-section 3 of Section 1 of the Act it was directed to come into force on such date as the Government might, by notification in the Fort St. George Gazette, appoint; by a notification issued in pursuance of this sub-section, the Government of the State of Madras directed that the Act should come into force on 1st April, 1951. Under the new Act the provision relating to disqualification arising out of absence from the meetings is enacted in Section 17

which runs as follows:

17. Subject to the provisions of Section 19, a member shall cease to hold office as such if he. (k) absents himself from the meetings of the panchayat for a period of three consecutive meetings reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of his restoration to office as member u/s 18, Sub-section (1), as the case may be, or if within the said period, less than three meetings have been held, absents himself from three consecutive meetings held after the said date.

7. The provision corresponding to Section 57 of the Madras Local Boards Act is contained in Section 19 of the new Act. Section 19 runs thus:

19. (1) Whenever it is alleged that any person who has been elected as a member of a panchayat is not qualified or has become disqualified u/s 13, 15, 16 or 17 and such person does not admit the allegation or whenever any member is himself in doubt whether or not he is not qualified or has become disqualified u/s 15, 16 or 17, such member or any other member may, and the executive authority shall, on the direction of the panchayat or of the Inspector, apply to the prescribed judicial authority whose decision shall be final.

8. As has been stated above, the State Government had appointed the District Munsif of the area within whose jurisdiction the panchayat is situated as the prescribed judicial authority u/s 19(1) of the Act.

9. The chief point for consideration in this case is whether the provisions of Section 19(1) are applicable to the present case. Admittedly, the petition was filed after the Act came into force. It is also conceded that the disqualification alleged in this case does not come within the purview of Section 17 as the alleged absence from three consecutive meetings was before the Act came into force. It is also significant that the expression used in Section 17(k) is "absents himself" and not "absents himself or had absented himself". It is unnecessary for me to go into the question whether the disqualification in this case falls outside the scope of Section 17 of the Act or not, as it is conceded by Mr. Venkatesam that the petitioner was disqualified u/s 56 of the Madras Local Boards Act and that the provisions of Section 17(k) of the Act are not attracted by the facts of this case.

10. What I have therefore to consider is whether Section 19 can be made applicable to this case. It will be seen that Section 19 specifically says that in order to enable either a member of the panchayat or the Executive authority to apply to the prescribed judicial authority, the dispute should relate to a disqualification arising u/s 13, 15, 16 or 17. So the prescribed judicial authority appointed u/s 19 can take cognizance of petitions founded on Section 13, 15, 16 or 17 only.

11. Mr. Venkatesam appearing for the first respondent tries to get over this difficulty by referring to Section 131 of the Act. Section 131 enacts:

131. (1) In regard to the first reconstitution, in accordance with the provisions of this Act, of panchayats in existence at the commencement thereof, and otherwise in first giving effect to the said provisions, they shall be read subject to the rules in Schedule III.

12. The rule relied upon by Mr. Venkatesam as helping him in the consideration of Section 19 is Rule 4 which states:

4. (1) The members of a panchayat holding office at the commencement of this Act, (other than its president and any village headman) shall be deemed to be the elected members of the panchayat under this Act and such members shall continue to hold office upto such date as the Government may, by notification, fix in this behalf, or in case no such date is fixed upto the date on which their term of office would have expired if this Act had not come into force.

13. Mr. Venkatesam argues that Section 19 read with this rule enables the prescribed judicial authority mentioned in Section 19 to adjudicate on questions arising u/s 56 of the Madras Local Boards Act. I do not see what bearing Rule 4 of Schedule III has on the construction of Section 19 of the Act. Rule 4 only enables members holding office at the commencement of the Act to continue to be members upto such date as the Government may fix, etc. It does not confer any jurisdiction upon the District Munsif to go into the questions arising under the Madras Local Boards Act. The very basis of the application u/s 19 in this case is that the petitioner ceased to hold office as a member of the panchayat long before the Act came into force. According to the first respondent, the petitioner was not a member at the commencement of the Act. So I fail to see how Rule 4 can come into play at all in this case.

14. Mr. Venkatesam next urges that Section 19 lays down only the procedure to be adopted in adjudicating upon the alleged disqualification and has therefore retrospective operation. He relies for this purpose upon a passage in Halsbury's Laws of England by Hailsham (2nd Edn.), Vol. 31, at page 508:

It is a question of construction whether a statute directly, or by necessary implication, takes away a right of procedure by substituting another, or leaves the former right co-existing with the latter. This question may be tested by inquiring whether the substituted procedure is a complete one, and whether it gives the parties interested in invoking it the same rights of being heard as they formerly possessed.

15. He also cited to me a passage from Craies on Statute Law (4th Edn.) at page 337:

It is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. But there is an exception to this rule, namely, where enactments merely affect procedure, and do not extend to rights of action. For it is perfectly settled that if the Legislature forms a new

procedure, that, instead of proceeding in this form or that, you should proceed in another and a different way, clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.

16. No doubt when enactments merely affect the procedure they are retrospective and the rights of the parties have to be enforced in accordance with the procedure laid down by the new Act. This proposition cannot be contested. But the point in this case is not whether the procedure laid down in Section 19 is retrospective or not. Section 19 comes into play only when there is disqualification u/s 13, 15, 16 or 17. That being so, the jurisdiction conferred by Section 19 on the prescribed judicial authority is restricted to cases arising under the four sections mentioned above. It would have been a different matter if instead of mentioning Section 17, a disqualification consequent upon the absence from three meetings was stated generally. On the other hand, the section in so many terms refers only to disqualifications u/s 17. Thus the jurisdiction conferred on the prescribed authority is a special one applicable to disqualifications under the sections mentioned therein and is controlled by Section 19. It looks to me that the reasonable construction that could be placed on Section 19 giving a plain meaning to the words of the section is that it is only in a case where it is alleged that a member has become disqualified under one or other of the sections referred to therein, and that is disputed by that member, that the prescribed judicial authority gets the jurisdiction to adjudicate on the disqualification. Since in this case the disqualification alleged does not fall u/s 17 of the Act, Section 19 of the Act cannot have any application. In my judgment the District Munsif who is the prescribed judicial authority under the new Act is competent to decide questions of disqualification only in cases arising u/s 19 of the Act. It follows that the District Munsif was not competent to entertain the application filed by the first respondent. This result is reached by me on a careful consideration of the relevant provisions of the Act. It is not necessary to consider in this case whether the petition could be presented to the District Judge u/s 57 of the Madras Local Boards Act and whether the first respondent should be directed to file that application before the District Judge in view of the fact that the new Village Panchayats are going to come into being very shortly.

17. For these reasons the writ petition is allowed, but having regard to the circumstances of this case, I direct the parties to bear their own costs.