

(1952) 12 MAD CK 0025

In the Madras High Court

Case No : Letters Patent Appeal No. 352 of 1952

Kalidindi Ramakrishna Raju

APPELLANT

Vs

K. Someswara Rao and Others

RESPONDENT

Date of Decision : 17-12-1952

Acts Referred:

Madras Local Boards Act, 1920 — Section 57

Madras Village Panchayats Act, 1950 — Section 131, 19(1)

Citation : AIR 1953 Mad 560 : (1953) ILR (Mad) 805 : (1953) 66 LW 171 : (1953) 1 MLJ 422

Hon'ble Judges : Rajamannar, C.J.;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : E. Venkatesam, V.V. Raghavan and M. Ramachandra Raju, for the Appellant;

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—The appellant before us, filed a petition u/s 19 (1) of Madras Act 10 of 1950 before the District Munsif of Tanuku alleging that respondent 1 had ceased to be a member of the Panchayat Board of Polamuru by reason of non-attendance of three consecutive meetings of the board. An objection was raised on behalf of respondent 1 that the District Munsif had no jurisdiction to entertain the petition. But the Munsif overruled the objection and decided on the merits that the respondent had ceased to be a member. The respondent thereupon applied to this Court for the issue of a writ of certiorari to quash the order of the District Munsif. That application came on before Chandra Reddi J. The learned Judge held that the District Munsif had no jurisdiction to entertain the petition and quashed his order. Hence this appeal.

2. On the allegations made by the appellant, we are of opinion that the learned Judge was right in holding that the petition u/s 19 (1) of the new Act of 1950 was not maintainable. That section obviously applies to cases of disqualification arising after the commencement of the Act. Section 19 (1) of the Act refers to

disqualifications under Sections 13, 15, 16 and 17. Section 17 speaks "in futuro". It says "a member shall cease to hold office as such", in certain contingencies. It is not alleged that respondent 1 assumed office under the Act and thereafter ceased to hold office. Reliance was placed on Section 131 which provides for transitory provisions in regard to the first reconstitution in accordance with the provisions of the new Act of Panchayats in existence at the commencement thereof and to Rule 4 (1) of Schedule 3 which contains such transitional provisions. Rule 4 (1) provides that

"the members of a panchayat holding office at the commencement of this Act shall be deemed to be the elected members of the Panchayat under this Act and such members shall continue to hold office under this Act upto such date as the Government may, by notification, fix in this behalf, and 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."

It is clear that the case of the appellant is that respondent 1 was not holding office at the commencement of this Act. Because he must be deemed to have ceased to hold office even before that date on account of his default in attending the meetings of the board. It follows that if the contention of the appellant is accepted Rule 4 (1) will not apply to respondent 1. Then who is to decide the question whether respondent 1 has ceased to hold office before the commencement of the new Act of 1950? Surely the District Munsif who is the tribunal prescribed under the new Act could not decide that question. The Madras Local Boards Act of 1920 which applied to panchayats as well before the new Act, specifically provides that a dispute as to disqualification of any member of the panchayats shall be referred to and decided by the District Court. But for Madras Act 10 of 1950 there can be no doubt whatever that the dispute now raised by the appellant would and should have been referred to the District Court. Now, has the passing of the new Act made any difference? Whatever might have been said if the new Act purported to repeal the Madras Local Boards Act in its entirety or in parts, we find actually no such repeal and new Act of 1950 contains only amendments of some of the provisions of the Madras Local Boards Act, 1920. Schedule 4 contains such amendments which include a complete omission of some of the provisions of the Local Boards Act. Section 57 of that Act, however, is not one of the sections either omitted or modified in any way. It appears to be fairly clear that if a dispute is raised that a member of a Panchayat had ceased to hold office at a time when the Madras Local Boards Act of 1920 applied to panchayats, then that dispute must be referred to the District Court in accordance with the provisions of Section 57 of that Act.

3. The petition filed before the District Munsif was, therefore, incompetent and the order of the learned District Munsif who had no jurisdiction to entertain the petition was rightly quashed by Chandra Reddi J. (4) The appeal is, therefore, dismissed.