
(1935) 10 MAD CK 0034
In the Madras High Court

K.R.M.T.T. Thyagaraja Chettiar

APPELLANT

Vs

The Collector of Madura

RESPONDENT

Date of Decision : 23-10-1935

Acts Referred:

Income Tax Act, 1961 — Section 46

Citation : (1936) ILR (Mad) 702 : (1936) 43 LW 396 : (1936) 70 MLJ 343

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is an application for the issue of a writ of certiorari to quash the proceedings of the Collector of Madura

taken in regard to the realisation of the arrears of Income Tax levied on the petitioner. The case of the petitioner is that he was assessed to Income

Tax for the years 1931-32, 1932-33 and 1933-1934 in the sum of Rs. 5,610-2-0 7,503-5-0 and 8,333-6-0 respectively totalling Rs. 21,746-

13-0. The notices of demand for the several years were respectively issued on the 31st January 1932, 31st January 1933 and 16th November,

1933. After assessment, proceedings u/s 46 of the Income Tax Act were commenced and certificates as required by the said section were issued.

In March, 1935 the Revenue Divisional Officer issued an order for arrest of the petitioner for the said arrears and the petitioner was arrested on

the 26th March 1935, when he gave 22 post dated cheques commencing from 1st April 1935 to 6th September 1935 and he was thereafter

released and then two of these cheques were cashed but. he understands that proceedings for arresting him had already been issued and he seeks

to quash them on the ground that they violate Section 46 (7) of the Income Tax Act in that the proceedings were not commenced within the

expiration of one year from the last day of the year in which any demand was made under the Act and also in contravention of the provisions of

Section 48 of the Revenue Recovery Act which requires as a condition precedent that there should be wilful default.

2. On behalf of the Government a preliminary objection has been taken that the jurisdiction to issue a writ is barred u/s 106(2) of the Government

of India Act, and even assuming jurisdiction, no writ can lie for quashing a ministerial act as in this case what is sought to be quashed is the warrant

issued. It was further contended that even the preliminary order in and by which the warrant was directed to be issued is also ministerial. The

argument based on Section 106 Clause (2) is thus put: Income Tax is revenue. The proceedings that are sought to be quashed were in respect of

acts ordered or done in the collection thereof and the Collector acted u/s 46 of the Income Tax Act, according to the law for the time being in

force. The writ of certiorari being an original writ, the jurisdiction is thus barred. It is contended in answer by Mr. K.V. Krishnaswami Ayyar that

Section 106(2) does not apply to this case as the original jurisdiction in that clause relates only to suits or actions instituted on the Original Side of

the Madras High Court as Section 106 (2) is nothing but a re-enactment of the saving clause in the Supreme Court Act 39 and 40 Geo. III, Ch. 79

and under that Act the Supreme Court has jurisdiction exercisable only within the limits of the Presidency Town"and the saving clause related only

to that jurisdiction. He relied on the Privy Council decision in *Alcock Ashdown and Co. Ltd. v. Chief Revenue Authority of Bombay* I.L.R.(1929)

53 Mad. 979 : 60 M.L.J. 25. He further contended that the act sought to be quashed is a judicial act. He also contended even if Section 106 (2)

may be said to have taken away the power to issue a writ of certiorari, if the act which is sought to be quashed is in excess of the jurisdiction of a

body which exercises judicial functions the High Court has power to issue a writ of certiorari in the exercise of its inherent jurisdiction.

3. Before examining the soundness of these contentions, it will be necessary to refer to the relevant provisions of the various statutes which define

the scope and extent of the power to issue the writ of certiorari possessed by the High Court. The jurisdiction which the High Court has to issue

writs of certiorari or other prerogative writs is derived from the Supreme Court and it has in this respect only such jurisdiction as the supreme

Court had. The Supreme Court of Madras was established by the Government of India Act, 1800 (39 & 40 Geo. III Ch. 79). It provided for the establishment of a Supreme Court of Judicature at Madras....:

With full power to exercise jurisdiction...and to be invested with such power and authorities, privileges and immunities...and subject to the same

limitations, restrictions and control within the said. Town of Madras and Territories dependent on the Government of Madras...as the said

Supreme Court of Judicature at Fort William in Bengali... invested with or subject to within the said Fort William or the Kingdoms or Provinces of

Bengal, Bihar and Orissa.

4. Therefore it is necessary to note what were the powers and limitations of the Supreme Court at Fort William in 1800. The Supreme Court at

Fort William was itself established by virtue of the East India Act, 1772, 13 Geo. III Ch. 63. Under the Letters Patent by which the Supreme

Court of Bengal was constituted, one of the powers it had was the power to issue a writ of certiorari conferred on it by Section 4 of the Letters

Patent. It is a well known fact that owing to the conflict which arose between the Judges of that Court and the Executive Government it was

thought desirable to define and restrict the powers of the Supreme Court. Accordingly 21 Geo. III Ch. 70 was passed. Among others there were

two limitations imposed on the powers of the Supreme Court:

(1) That the Governor General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort

William in Bengal for or by reason of any act or order, or any other matter or thing whatsoever counselled, ordered or done by them in their public

capacity only, and acting as Governor General and Council.

(2) And... the said supreme Court shall not have or exercise any jurisdiction in any matter concerning the revenue, or concerning any act or acts

ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor General in Council.

5. It will thus be seen that in two matters, that is in regard to the jurisdiction over the Governor General and Council and in regard to matters

concerning revenue, the jurisdiction has been curtailed.

6. These limitations again were emphasized and enacted by 39 and 40 Geo. III Ch. 79 and by the Letters Patent which were issued in pursuance

thereof constituting the Supreme Court at Madras. The Letters Patent provided in Clause 8:

That the said Chief Justice, and the said Puisne Judges, shall severally and respectively be, and they are all and everyone of them hereby appointed

to be Justices and Conservators of the Peace,(and Governors, within and throughout the Settlement of Fort St. George, and the Town of Madras,

and the limits thereof, and the Factories subordinate thereto, and all the Territories which now are, or hereafter maybe, subject to, or dependent

upon, the Government of Madras aforesaid; and to have such jurisdiction and authority as our Justices of our Court of King's Bench have, and

may lawfully exercise, within that Part of Great Britain called England, as far as circumstances will permit.

7. It is in virtue of this clause the Supreme Court derived the power to issue a writ of certiorari. The proviso in the Letters Patent defined the

exception to the jurisdiction of the Court. The relevant provision ran as follows:

Nor shall the said Court have or exercise any jurisdiction, in any matter concerning the Revenue, under the management of the said Governor and

Council respectively either within or beyond the limits of the said town or the Forts or the Factories subordinate thereto, or concerning any act

done according to the usage and practice of the country, or the Regulations of the Governor and Council.

8. Thus the Supreme Court had no power to issue a writ of certiorari or other Prerogative writs in matters concerning revenue within or beyond the

limits of the town of Madras or the Forts or factories subordinate thereto. The present High Court was constituted under Indian High Courts Act,

1861 (24 and 25 Vict.) Ch. 104. Section 9 of that Act runs as follows:

Each of the High Courts to be established under this Act shall have and exercise all such civil criminal, admiralty and vice-admiralty, testamentary,

intestate, and matrimonial jurisdiction, original and appellate and all such powers and authority for and in relation to the administration of justice in

the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such

directions and limitations as to the exercise of original, Civil and Criminal jurisdiction beyond the limits of the presidency towns as may be

prescribed thereby;

and save as by such Letters Patent may be otherwise directed and subject and without prejudice to the legislative powers in relation to the matters

aforesaid of the Governor General of India in Council, the High Court to be established in each presidency shall have and exercise all jurisdiction

and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time

of the abolition of such last mentioned Courts.

9. Dealing with this section Venkatasubba Rao, J., observed in *Penugonda Venkataratnam v. Secretary of State for India* I.L.R.(1929) 53 Mad.

979 : 60 M.L.J. 25:

They (the Letters Patent) contain in fact, no provision corresponding to Clause 8 of the Charter of 1800. The High Court, therefore, derives its

power to issue prerogative writs, not from any express clause in the Charter, but from Section 9 of the Act, which preserves intact the powers of

the abolished Courts. It follows therefore that the Letters Patent have not enlarged the jurisdiction of the High Court in certiorari.

10. Section 106 of the Government of India Act does not carry the matter further. Section 106(1) is as follows:

106. (1) The several High Courts are Courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect

of offences committed on the high seas, and all such powers and authority over or in relation to the "administration of justice, including power to

appoint clerks and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in them by

Letters Patent, and, subject to the provisions of any such Letters Patent, all such jurisdictions, powers and authority as are vested in these Courts

respectively at the commencement of this Act.

11. Therefore the question is, had the Supreme Court the power to issue a writ of certiorari in regard to matters of revenue and if so, subject to

what limitations? As will be seen from the provisions of the statutes already stated it had no jurisdiction to issue a writ of certiorari concerning any

act ordered or done in the collection of revenue according to the usage and the practice of the country or the regulations of the Governor and

Council. If the Supreme Court had no jurisdiction to issue a writ of certiorari, the High Court has no jurisdiction to do so. This application for the

issue of a writ is not therefore maintainable. I am also of opinion that the application is unsustainable in view of Section 106, Clause 2. I shall now

deal with the contention of Mr. Krishnaswami Ayyar on this point. In one sense his argument is self-destructive. According to him the jurisdiction

of the Supreme Court to issue a writ of certiorari was confined only to the Presidency Towns because the jurisdiction of the Supreme Court can

only be exercised within the limits of the Presidency Towns and not beyond it. If so, the High Court's jurisdiction being only such jurisdiction which

the Supreme Court had, his application to this Court for the writ of certiorari cannot lie. I do not agree with Mr. Krishnaswami Ayyar that the

phrase "original jurisdiction" in Section 106(2) should be confined to ordinary original Civil jurisdiction. There is no doubt an observation of the

late Chief Justice in *Govindarajulu v. Secretary of State* I.L.R.(1926) 50 Mad. 449 : 53 M.L.J. 355 which appears to lend support to the

contention of Mr. Krishnaswami Ayyar. The learned Chief Justice on page 455 commenting on Section 106 Clause 2 of the Government of India

Act observes thus:

In matters affecting the revenue, the Original Side of this Court and that side alone is debarred from interfering in revenue matters.

12. The learned Judges in that case were not considering the power of the High Court to issue a writ of certiorari. u/s 106, it will be seen the High

Court is vested with (1) the original jurisdiction more specifically described in Clause 12 and 13 of the Letters Patent and (2) the original

jurisdiction of the abolished Supreme Court which is conferred by the words "such jurisdiction, powers and authority as are vested in those courts

respectively at the commencement of this Act". It is not disputed that the writ of certiorari is issued in the exercise of original jurisdiction.

Venkataratnam v. Secretary of State for India (1929) I.L.R.53 Mad. 979 at 1017 : 1929 60 M.L.J. 25. As an exception to both sets of original

jurisdiction above mentioned S.106, Clause (2) has been enacted, just as they have enacted Section 110 in regard to exemption conferred in favour

of the Governor and Council. The wording of Section 106(2) is in my opinion very suggestive and instructive. The words "have not" and "may

not" are both declaratory and prospective and would aptly comprise also the jurisdiction vested in the Court at the commencement of the Act

apart from the jurisdiction vested by the Letters Patent.

13. Considerable stress was laid by Mr. K.V. Krishnaswami Ayyar on the decision of the Privy Council in *Alcock Ashdown and Company, Ltd.*

v. The. Chief Revenue Authority of Bombay (1923) L.R. 50 IndAp 227 : ILR 1923 47 Bom. 742 : 45 M.L.J. 592 (P.C.). In that case the Income

Tax officer refused to refer a case to the High Court of Bombay u/s 51 of the Income Tax Act of 1918. Both the Bombay High Court and the

Madras High Court had taken the view that an order u/s 45 of the Specific Relief Act could not be issued compelling the Income Tax Officer to

refer the case to them because of Section 106(2) of the Government of India Act. Their Lordships of the Judicial Committee negated this view

and held that:

The order of a High Court to a Revenue Officer to do his statutory duty would not be the exercise of original jurisdiction in any matter concerning

the revenue.

14. As I understand their observation, in their Lordships' view, to ask a revenue officer to do his statutory duty would not be a matter concerning

revenue. This is made clear by a passage from the previous paragraph:

To argue that if the Legislature says that a public officer, even a Revenue Officer, shall do a thing, and he without cause or justification refuses to

do that thing, yet the Specific Relief Act would not be applicable and there would be no power in the Court to compel him to give relief to the

subject, is to state a proposition to which their Lordships must refuse assent.

15. Two things are necessary to constitute a bar u/s 106(2) namely (1) an exercise of original jurisdiction, (2) a matter concerning revenue or the

collection thereof. In their Lordships' view as aforesaid there was no matter concerning revenue in the case. I do not think their Lordships meant to

decide there was no exercise of original jurisdiction as Section 45 of the Specific Relief Act refers to ordinary original civil jurisdiction.

16. Mr. Krishnaswami Ayyar attempted to argue that Income Tax is not revenue but this argument is not open to him after the ruling in *Messrs.*

Best and Co. Ltd. Vs. The Collector of Madras, .

17. Another argument of Mr. K.V. Krishnaswami Ayyar may be noticed namely even if the statute has taken away the writ, when a judicial body

acts ultra vires this Court can nevertheless issue the writ. The short answer to this is that the High Court had never any jurisdiction to issue the writ

in matters concerning revenue.

18. It was next contended by Mr. K.V. Krishnaswami Ayyar that the exception can only be in favour of acts which have been done according to

the law for "the time being in force and therefore if the act is not in conformity with the law and in direct contravention of it the jurisdiction is not

barred; In this case the Collector having acted in contravention of Section 46, Clause 7 he must be deemed to have not acted according to the law

for the time being in force. I am unable to accept this contention. This clause was interpreted very early by their Lordships of the Judicial

Committee in *Spooner v. Juddow* (1850) 4 M.I.A. 353. In that case it was found that the Collector illegally levied quit rent from a person who

was not liable to pay it. Dealing with the argument that the exception of jurisdiction would avail only when the act is according to the regulations of

the Governor and Council, Lord Campell observed:

There can be no rule more firmly established than that if parties bona fide and not absurdly believe that they are acting in pursuance of statutes and

according to law, they are entitled to the special protection which the legislature intended for them although they have done an illegal act.

19. His Lordship concluded the judgment thus:

We are bound to differ from the Judge below who says that the jurisdiction of his Court has not been taken away when the act complained of is not

warranted by the usage and practice of the country or by the Company's regulations.

20. If it concerned the revenue, or was a matter concerning an act bona fide believed to be done according to the Regulations of the Governor and

Council of Bombay his jurisdiction was gone, although prima facie it appeared to be a trespass over which his jurisdiction might be properly

exercised. Mr. K.V. Krishnaswami Ayyar sought to distinguish this case by relying on the observations of Baron Parke in *John Colder v. Robert*

Craigie Halket (1840) 2 M.I.A. 293. In that case there was an action on trespass brought to recover damages for the arrest and false

imprisonment of the plaintiff by the Magistrate of Foujdarry (criminal) of the Zillah of Muddeah in Bengal. The action was held not to lie by virtue

of 21 Geo. III Ch. 70, Section 24. It prohibited an action against any person exercising a judicial office for an act done by or virtue of the order of

the Court. Dealing with this His Lordship observed:

The object is to put the Judges of the Native Courts on the footing of Judges of the Superior Courts of Record or Courts having similar jurisdiction

to the native Courts here, protecting them from actions for things done within their jurisdiction though erroneously or irregularly done, but leaving

them liable for things done wholly without jurisdiction.

21. The question in this case is entirely different. It is not merely exemption from liability in a personal action. In *Spooner v. Juddow* (1850) 4

M.I.A. 353 their Lordships considered the jurisdiction of the Court from the point of view of the subject matter and ruled that in respect of the

subject matter the jurisdiction of the Court had been entirely taken away if the officer acted in the belief that he had jurisdiction. In the present case

it is not denied that certificates were issued in accordance with the provisions of Section 46 of the Income Tax Act and orders for arrest made and

warrants issued in pursuance of the said provision. Whether the said orders were justified on a right construction of the said provision does not

matter; but what matters is whether the Collector bona fide believed that he was acting according to the said provision. If so, the jurisdiction of the

Court to deal with the said act is gone. In this case it has been conceded that the Collector was not acting mala fide. I have therefore come to the

conclusion that the preliminary objection must prevail and that this Court has no jurisdiction to issue a writ of certiorari to quash the proceedings

concerned. I therefore, dismiss the petition with costs, namely Rs. 100 (to be paid by the petitioner).