
(1966) 09 MAD CK 0025
In the Madras High Court

M. Gopal Gounder

APPELLANT

Vs

The Panchayat Board and Another

RESPONDENT

Date of Decision : 27-09-1966

Acts Referred:

Citation : (1968) ILR (Mad) 461 : (1968) 2 MLJ 81

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—This petition is filed by a member of Manalurpet Panchayat praying for the issue of a writ of certiorari calling for the records connected with the resolution of the Panchayat Board, Manalurpet, dated 31st August, 1965, directing the petitioner to be removed and to quash the order.

2. The petitioner was elected as a member of the panchayat on 8th April, 1965. On 19th August, 1965, the Panchayat Extension Officer, Mugaiyoor Panchayat Union, having jurisdiction over the first respondent Panchayat Board, wrote to the President of the Manalurpet Panchayat stating that the petitioner is not qualified to be a member of the panchayat u/s 26(d) of the Panchayats Act (XXXV of 1958) and called upon the Panchayat to explain why no action was taken to remove the petitioner from the membership of the Panchayat. Appropriate action was threatened in case the Panchayat did not take steps to remove the petitioner from the membership of the Panchayat. In pursuance of the letter, of the Panchayat Extension Officer, dated 19th August, 1965, on 25th August, 1965, the President of the Panchayat issued a notice to the petitioner. The petitioner on 31st August, 1965 objected to the proposed removal disputing that he was disqualified to be a member and pointing out that the Panchayat had no jurisdiction to remove him from membership. On 1st September, 1965 the Panchayat met and passed a resolution-endorsed the memo of the Panchayat Extension Officer, dated 19th August, 1965 and removed the petitioner from his membership of the Panchayat by a majority of 6 to 5. This resolution is impugned as illegal and unsustainable in law as being beyond the powers of the

Panchayat.

3. Section 17 of the Panchayats Act prescribes that the term of office of the members of every Panchayat who are elected at the ordinary elections shall, save as otherwise expressly provided in or may be prescribed under this Act, be five years. Sections 25 and 26 relate to disqualifications of candidates and disqualifications of members. Section 25(1) and Section 25(2) provide that a person shall be disqualified for election, as a member if, at the date of nomination or election, he suffers from any of the disqualifications mentioned in Section 25(1) and (2), Clauses (a) to (g). Section 26 provides that subject to the provisions of Section 28, a member shall cease to hold office if he incurs any of the disabilities mentioned in Section 26, Clauses (a) to (j). The provision that he ceases to hold office u/s 26 is subject to the provisions of Section 28. Section 28 provides that whenever it is alleged that any person who has been elected as a member of a Panchayat is not qualified or has become disqualified under Sections 22, 24, 25 or 26 and such person does not admit the allegation, such member or any other member may, and the Executive Authority or the Commissioner as the case may be shall, on the direction of the Panchayat or Panchayat Union Council or of the Inspector, apply to the prescribed judicial authority whose decision shall be final. Thus it will be seen that if there is an allegation that a person who has been elected as a member of the Panchayat has become disqualified, the member concerned or any other member may and the authorities mentioned shall, on the direction of the Panchayat, apply to the judicial authority for decision on the question. In this case, as already pointed out, the petitioner does not admit his disqualification, and the procedure therefore, is that any member aggrieved should approach the judicial authority for decision after fulfilling the conditions laid down u/s 28. That has not been admittedly done in this case.

4. What has happened in this case is that on the memo. sent by the Panchayat Extension Officer complaining that the Panchayat had not taken action and removed the member from membership who has been disqualified, the Panchayat passed a resolution removing him. There is no authority vested in the Panchayat by the Act or by the Rules empowering it to remove a member. If there is a dispute as to whether a member has become disqualified or not the only procedure to be followed for removing him is u/s 28. The resolution of the Panchayat removing the petitioner is, therefore, beyond the powers conferred on the Panchayat under the Madras Panchayats Act. The resolution has to be quashed and is hereby quashed. The subsequent resolution by the Panchayat calling for fresh elections for the seat alleged to have been vacated by the petitioner will also be quashed.

5. The writ petition is allowed. There will be no order as to costs.