
(1914) 07 MAD CK 0051
In the Madras High Court

M. Vijiaraghavalu Pillai, P. Theagaroya Chetti and P.M.
Appasawmy Chetti

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 28-07-1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Extradition Act, 1903 — Section 4

Citation : 25 Ind. Cas. 345

Hon'ble Judges : Seshagiri Aiyar, J;Ayling, J

Bench : Division Bench

Judgement

1. These are petitions to revise the order of the Presidency Magistrate, George Town. Two applications were made to him by the counter-petitioners to declare that inclusion of the petitioner as a candidate for Municipal election by the President of the Corporation was illegal under Rule 5 of the Rules framed by the Government in pursuance of the powers given to them by Section 413 of Act III of 1904. The Magistrate allowed the applications. Against that order these petitions have been filed.

2. The learned Judge who admitted the petitions expressed doubts regarding the powers the High Court to revise the order of the Magistrate. We, therefore, called upon the petitioner's Vakil to argue that preliminary point. Mr. T. Ethiraja Mudaliar, who appeared for the petitioner, conceded that the petition did not lie u/s 439. He, however, contended that under the Charter Act the High Court was competent to revise the order. Section 15 says that the High Court shall have superintendence over all Courts which may be subject to its appellate jurisdiction. Is a Magistrate giving his decision under the rules framed by the Government in this behalf a Court subject to the appellate jurisdiction of the High Court? No procedure is prescribed by the rules; and although the Magistrate is competent to take evidence in the case, it is not suggested that this is in pursuance of any Statutory obligation to do so, The contention of the learned Vakil for the petitioner is that the Magistrate is ordinarily subject to the control of

the High Court, and any power given to him by the Local Government must be considered to have been conferred on him in his capacity as being subject to the supervising" power of the High Court, It seems to us that this contention is untenable. It was held in *Minaltslii Naitlu v. Subranianya Sastri* 11. M. 26 : 14 I.A. 160 by the Judicial Committee that the expression "Civil Court" in Section 10 of Act XX of 1863 does not import that the presiding officer is subject to the appellate authority of the High Court. They say: In the opinion of their Lordships the tenth Section places the right of appointing a member of the Committee in the Civil Court not as a matter of ordinary civil jurisdiction, but because the officer who constitutes the Civil Court is sure to be one of weight and authority and with the best means of knowing the movements of local opinion and feeling, and one can hardly imagine a case in which it would be more desirable that the discretion should be exercised by a person acquainted with the district and with all the surroundings." We are of opinion that similar considerations are responsible for the Local Government vesting in the Presidency Magistrate the discretion to pronounce an opinion on the competency or otherwise of a candidate for election. We may also, in this connection refer to Rule 1.1 of the Rules framed under the District Municipalities Act. The Local Government has empowered "Collectors to exercise the functions which the Presidency Magistrates in the town of Madras exercise under the rule in question. It has never been suggested that a Collector's decision can be revised by the High Court. The learned Vakil for the petitioner draws our attention to a decision reported as *Vasudeva Aiyar v. Devasbhanam* Committee of Negapatam 21 Ind. Cas. 451 : 14 M.L.T. 354 : (1913) M.W.N. 842 : 25 M.L.J. 536, which holds that the High Court has power to hear a revision petition u/s 115 of the CPC against an order passed u/s 10 of Act XX of 1863. We are informed that that decision is under appeal to His Majesty in Council, and apart from this we do not think the decision has any direct bearing upon the matter we have to decide. Mr. Ethiraja Mudaliar cited *Saionii Chetty v. Corporation of Madras* 18 Ind. Cas. 271 : 14 Cr.L.J. 271 : 23 M.L.J. 591 to show that the Magistrate acting u/s 171 of the City Municipal Act is subject to the jurisdiction of the High Court. The reason of that decision we take to be this. If the Magistrate had acted legally, he should have referred the matter to the High Court. By not doing so, he has illegally exercised jurisdiction to decide the matter himself and has prevented the High Court from exercising its jurisdiction in the matter. The learned Judge was, therefore, justified in that case in taking cognizance of the case in revision. The mere fact that Sections 172 and 176 of the City Municipal Act put the Presidency Magistrate under the control of the High Court in certain cases is not an argument for the position that in framing rules u/s 413 the Local Government invested the Magistrate with powers to be exercised subject to the superintendence of the High Court. The learned Crown Prosecutor argues that unless an officer is clothed with powers to give effect to his decision, he is not acting judicially. The reference to the functions of the Court in 3 Blackstone, pages 22 and 23, supports this contention. Lord Justice Fry in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson* (1892) 1 Q.B. 431 : 66 L.T. 513 : 40 W.R.

450 : 61 L.J.Q.B. 409 : 56 J.P. 404, makes some observations which define the functions of a Court of Law. Applying the tests mentioned by the Lord Justice, the Magistrate acting under the rules could not be regarded as a Court of Law. Reference may also be made to 9 Halsbury, page 9, where it is said: "Many bodies are not Courts, although they have to decide questions, and in so doing have to act judicially in the sense that the proceedings must be conducted with fairness and impartiality." To the same effect is the conclusion to which Mr. Justice Subramania Ayyar came in *Manavala Goundan v. Kuniarappa Reddy* 30 Ma. 326 : 17 M.L.J. 313 : 2 M.L.T. 267 regarding the competency of the High Court to revise the orders of the District Registrars u/s 622 of the old Code of Civil Procedure. We are, therefore, of opinion that the Presidency Magistrate in the particular instance is not a Court subject to the appellate jurisdiction of the High Court. He is in the position of a referee between the president and the candidate. The rule declares his decision to be final, as in the case of the Collector under the District Municipalities Act. The decision in *Balaji Sakharam v. Merwanji Nowroji* 21 B. 279 may also be cited in this connection. It was held in that case that a District Judge acting u/s 23 of the Bombay District Municipal Act was not subject to the revisional jurisdiction of the High Court. In *Rudolf Stallman v. Emperor* 10 Ind. Cas. 618 : 15 C.W.N. 736 : 12 Cri.L.J. 322 the learned Judges decided that the High Court had no jurisdiction under the Charter Act to revise the proceedings of the Presidency Magistrate acting under Sections 3 and 4 of the Extradition Act (XV of 1903). These authorities show that when quasi-judicial functions are delegated to an officer whose decisions are ordinarily subject to the revisional powers of the High Court, he is not with reference to the delegated power necessarily subject to our appellate or revisional authority.

3. We have given our careful consideration to these cases and we are constrained to hold that the High Court has no power to revise the order passed by the Magistrate in these cases.

4. For all these reasons we dismiss the petitions.