

(1925) 04 MAD CK 0078
In the Madras High Court

Mahammad Raza Saheb Belgami

APPELLANT

Vs

Sadasiva Rao and Others

RESPONDENT

Date of Decision : 27-04-1925

Acts Referred:

Citation : AIR 1926 Mad 297 : (1926) ILR (Mad) 49

Hon'ble Judges : Odgers, J;Madhavan Nayar, J;Madhavan Nair, J

Bench : Full Bench

Judgement

Odgers, J.—Civil Revision Petition No. 165 of 1923.—This is a petition to revise the order of the District Judge of Guntur confirming a surcharge order made by the Examiner of Local Fund Accounts (Ex. A) on the petitioner as Chairman of the Guntur Municipal Council. The ground for the surcharge is that the petitioner illegally issued cheques against the Municipal funds under the powers given him by Rule 55(1), part 2 of Schedule 4 of the Madras District Municipalities Act (5 of 1920), for the maintenance of 25 elementary schools managed by the Guntur Municipal Council, such objects not being authorized objects under Act 5 of 1920. On 13th July 1921, the Guntur Municipal Council passed a resolution (Ex. I), (a) to introduce the national system of education in all the institutions under the management of the Council; (b) to dispense with the annual grant by Government; (c) to conduct Municipal primary schools independently of Government control.

2. On 19th August 1921 (Ex. II), a committee of the Guntur Municipal Council was appointed to formulate the methods of working the national system of education. The 25 elementary schools had been up to this date recognized by Government under the Educational Rules and Government had made a grant towards their maintenance. On 15th August 1921, the Government issued two Government orders, No. 1583 (Ex. IV) was issued under Rule 37, Schedule 4 of the Madras District Municipalities Act (5 of 1920) as a special order. This Government order ran as follows:

No portion of a Municipal fund shall be applicable to the purpose of. maintaining

or aiding any educational institution which is not recognized or approved by the Government, the District Educational Council or any other authority duly authorized by the Government in this behalf to grant such recognition or approval.

(By order of the Government, Ministry of Local Self-Government.)

3. It may be here stated that Rule 37, Schedule 4 of the Madras District Municipalities Act, 1920, reads as follows:

The purposes to which the Municipal fund may be applied include all objects expressly declared obligatory or discretionary by laws or rules, and in general everything necessary for or conducive to, the safety, health, convenience or education of the inhabitants or to the amenities of the Municipality and everything incidental to the administration; and the fund shall be applicable thereto within the Municipality subject to these rules and such further rules or special orders as the Governor in Council may prescribe or issue; and shall be applicable thereto without the Municipality if the expenditure is authorized by this Act, or specially sanctioned by the Governor-in-Council.

4. So the Municipal fund is applicable to these objects within the Municipality "subject to these rules and such further rules, etc." The other G.O. No. 1584 (Exhibit P) was an order on the resolution of the Guntur Municipal Council set out above and reads as follows:

Recorded. 2. The Government presume that the Municipal Council does not require any financial help from the Government for any purpose.

(By order of the Government Ministry of Local. Self-Government).

5. The Guntur Municipal Council considered on 14th October 1921, these Government orders and on No. 1584, passed the following resolution:

This Council decided to dispense with Government grants only in regard to the national schools, but it is inexpedient that the Government should put a wrong interpretation upon it and presume that the Council does not require financial help from them for any purpose. The Council is of opinion that under these circumstances it is worthy only not to ask for financial help from the Government.

6. G.O. No. 1583, they considered and merely recorded. They also considered a letter from the Inspector of Schools (Ex. IX), requiring whether the Council intended to apply for recognition for the newly nationalized elementary schools and resolved that such recognition was unnecessary. On 22nd October 1921, the District Educational Council of Guntur met and adjourned a resolution (Ex. B) to withdraw recognition from the newly nationalized elementary schools "in accordance with G.O. No...dated..." Previously, on 8th October 1921, the Sub-Assistant Inspector of Schools informed the petitioner that he intended to inspect the schools of the Municipality as per my annual programme of work" (Ex. C), and, on 27th October 1921, the Chairman issued a memo.(Ex. C-1) to head

masters and headmistresses to that effect. The Inspector attended and extracts from his inspection book are (Ex. E), dated 31st October 1921. On 9th November 1921 (Ex. VII) the Government drew the attention of the Guntur Municipal Council to G.O. No. 1583 (Ex. IV) and added:

Since the Council has decided not to seek recognition for its schools, expenditure of Municipal funds on such schools is illegal.

7. That is the evidence on which the District Judge has, "come to the conclusion that as from the passing of Ex. I on 13th July 1921, the Municipal schools; ceased to be recognized by Government. The first contention addressed to us for the petitioner is that as these schools never ceased to be recognized, they did not fall within the mischief of G.Os. 1583 (Ex. IV) or 2208 (Ex. VII). The facts that the District Educational Council adjourned consideration of the resolution to withdraw recognition and that the schools were inspected as usual by the Government Inspector in October 1921, are cited to support this construction. It is to be observed as regards the first of these that the District Educational Council proposed to act in accordance with a certain G.O. (Probably No. 1583 is referred to). If so, it is quite possible that the Council-thought that any action on its part was unnecessary as Government had already treated these schools as unrecognized. That this latter is true there can be no doubt. It is perfectly clear from Ex. IV that Government rightly or wrongly purported not to recognize or approve the schools after the proceedings of the Guntur Municipal Council on 13th July 1921: see also Ex. IX. Exhibit IV clearly shows that Government assumed equal or superior" powers to the District Educational Council to recognize or approve. Section 41 of Act 8 of 1920 (Elementary Education) is relied on to show that recognition of elementary schools is to be applied for through the Inspector to the District Educational Council, which is the recognizing authority subject to an appeal to the Director of Public Instruction. Section 124, District Municipalities Act, makes the rules, etc., in Schedule 4 part of the Act. Section 304 gives the Governor-in-Council, power to amend or cancel the schedule. Rule 37, Schedule 4, has been set out above and appears to me to give the Government a final control over the expenditure of the Municipality. It is said for the petitioner that so long as the aims of the latter are educative, Government has no control over the kind of education which is provided. The objects of expenditure of Municipal funds are set out in Rule 40. The ways in which the Council may provide instruction are set out in Rule 48. This and Rule 47 (as to the duty of providing education generally), are part of Part II of the schedule of which Rule 37 (above) is the first rule and which sets out the authorized objects of expenditure. Reading these rules and Section 304 together, I feel no doubt that the clause "subject to these rules, etc." in Rule 37 would also apply to control Rule 48. Therefore Government cannot only refuse its own grant to schools of which it does not approve but can control the expenditure of the Municipality on such schools. I do not think the fact that a Government inspection of these schools took place in accordance with the Sub-Assistant Inspector"s programme, no doubt arranged long beforehand, as indeed he

states, has any bearing on the question. The Government did not wish to proceed to the extreme and it was not till 9th November 1921 (Ex. VII) that they definitely pointed out that expenditure on the schools was illegal. It appears to me that recognition is a matter of assent on both sides. Government must accept recognition and the Educational authority must desire it. As soon as either side withdraws, recognition is at an end. This is not an appeal. It is not necessary for me to say whether on the evidence I should have come to the same conclusion as the District Judge, but it appears to me there is evidence on which the District Judge could come to the conclusion he did with regard to this matter, viz., that the schools were unrecognized at any rate at the date from which the surcharge begins, viz., 10th August 1921.

8. The next point is as to the liability of the Chairman petitioner. It is said that u/s 22 of the District Municipalities Act the Chairman was bound to give effect to the resolution of the Council of 13th July 1921. Section 13 lays down the general duties of the Chairman ; by Section 13(c) he is to carry into effect the resolutions of the Council and by Section 13(e)

The Chairman of the Municipal Council shall perform all the duties and exercise all the powers specifically imposed or conferred on the Chairman by this Act, and subject, whenever it is herein-after expressly so provided, to the sanction of the Council, and subject to. all other restrictions, limitations and conditions, hereinafter imposed, exercise the executive power for the purpose of carrying out the provisions of this Act, and/be directly responsible for the due fulfilment: of the purposes of this Act.

9. The power of signing cheques on Municipal funds is given to the Chairman by Rule 55(1) of Schedule IV.

10. By Rule 56 to 62, the audit of accounts is controlled. By Rule 60 the auditors are to charge against any person making or authorizing the making of an illegal payment. Rule 62 provides that the Chair-man shall apply to the Court for payments of any sum certified as surcharged and it is said that this cannot apply to a case where the Chairman is. surcharged himself. It no doubt applies where the Chairman recovers from other members or from a former Chairman as might be done in this case. Section 353 of the Act renders the Chairman as well as the other members liable for loss, waste or misapplication of municipal money. On the other hand, it is said that Section 22 is opposed to Section 13(e) where the words "subject to all other restrictions, limitations and conditions hereinafter imposed" occur. This would bring in the restrictions already referred to in Rule 37, Schedule IV. It is perfectly clear to my mind that the Chairman is as liable as any member for misapplication of moneys. It may be hard that he be rendered so liable because he was merely carrying out a resolution of the Council though I think it is on record that he voted for that resolution himself. I think Section 13(e) and Rules 37 and 55(1) apply to this case. The Chairman cannot be obliged to carry out illegal resolutions and Section 22 provides that he is relieved from carrying out a resolution modified, suspended or cancelled by a controlling

authority. If the resolution of 13th July 1921 is to be construed as authorizing, him to spend municipal. money on the schools after the Council had dispensed with Government aid and control, it may be said that resolution was afterwards cancelled by a controlling authority; there are, however, no specific words to this effect in the resolution and there does not appear to be any subsequent resolution to that effect. The Chairman...signed the cheques and, as I have already found, he did so for an illegal purpose. He is, therefore, in my opinion liable; whether he has any remedy over against the other members is of course not open to discussion here.

11. A third point is raised for the petitioner. It has not been taken below. That is, that the G.Os. were signed thus by the Secretary to Government : "By order of the Government, Ministry of Local Self-Government." It is of course well known that education is a transferred subject u/s 45-A, Clause(1), Sub-clause (d) of the Government of India Act which came into force on 17th December 1920. The date of the District Municipalities Act is 29th June 1920. It is said that Rule 37 of Schedule IV of the District Municipalities Act provides that the " Special orders " must be prescribed or issued by the "Governor-in-Council" and that as these G.Os. were signed as set out above they are invalid as they do not conform to this express statutory provision. Section 49 of the Government of India Act provides as follows:

All orders and other proceedings of the Government of a Governor's province shall be expressed to be made by the Government of the province and shall be authenticated as the Governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceedings on the ground that they were not duly made by the Government of the province.

12. In my opinion this provision was made expressly to meet a case like this and must be taken to override the provision in Rule 37. There is thus no substance in this objection. These are the points raised in the Civil Revision Petition and in my opinion they all fail and the Civil Revision Petition must be dismissed with costs.

13. Civil Miscellaneous Petition No. 3407 of 1922.-This relates to the same subject-matter and is a petition for the issue of a writ of certiorari to bring in and quash the auditor's order of surcharge referred to in my judgment in Civil Revision Petition No. 165 of 1923.

14. That this remedy is open under the English procedure is undoubted. The Public Health Act, 1875, Section 247 (8), provides that: "Any person aggrieved by disallowance made (under (7)surcharges) may apply to the Court of Queen's Bench, for a writ of certiorari to remove the disallowance into the said Court, etc." cf. *Rex v. Roberts* [1924] 2 K.B. 695., *Rex v. Roberts, Ex parte Scurr* [1924] 2 K.B. 695. The question is. Is such a remedy open under the District

Municipalities Act ? Schedule IV, Rule 60, corresponds to the Public Health Act, 1875, Section 247 (7), but Sub-section(8) of the Statute runs as already set out above, whereas Rule 61 runs thus:

Any person aggrieved by disallowance surcharge or charge made, may, within fourteen days after he has received or been served with the decision of the auditor, apply to the Principal Civil Court of original jurisdiction to set aside such disallowance, surcharge, or charge, and the Court, after taking such evidence as is necessary, may confirm, modify or remit such disallowance, surcharge or charge with such orders as to costs as it may think proper in the circumstances or in lieu of such application any person-so aggrieved may appeal to the Governor-in-Council, who shall pass such orders as he thinks fit.

15. Rule 62 corresponds generally with Section 247(9). It seems to me therefore that the remedy by certiorari in this-particular matter is not open under the District Municipalities Act and that a substituted remedy has been provided in that Act for the remedy by certiorari given by the Statute. Therefore whatever may be or may not be the general powers of the Court to issue this writ, it seems to me that that power, if it ever existed in the present case, has been by implication removed by the Act, which provides another and specified remedy- Further, even if the power exists in the present case, no prima facie case has in my opinion been made out for its exercise by us. The petition must be dismissed with costs.

Madhavan Nayar, J.

16. Civil Revision Petition No. 165 of 1923. - The facts necessary for the decision of this Civil Revision Petition and the Civil Miscellaneous Petition are fully set out in my learned brother's judgment with which I agree.

17. The Civil Revision Petition is against the order of the District Judge of Guntur refusing to set aside the order made by the Examiner of Local Fund "Accounts, Madras, surcharging the petitioner, the Chairman of the Guntur Municipality, with Rs. 1,771-6-0. The surcharge certificate was issued by the first respondent under Rule 60(1) of Schedule IV of the Madras District Municipalities Act (v of 1920) which empowers every auditor to:

Disallow every item contrary to law and surcharge the same on the person making, or authorizing the making of, the illegal payment.

18. The case against the petitioner, as mentioned in the surcharge certificate, is that he issued cheques against the Municipal funds on different dates between the 10th of August 1921 and the 31st of October 1921 for amounts aggregating to Rupees 1,771-6-0 towards the salaries of teachers and for expenses in connexion with the maintenance of 25 educational institutions within the Municipality contrary to special orders issued by the Government under Rule 37 of Part II of Schedule IV of the District Municipalities Act, which made such payments illegal. The Guntur Municipal Council, by its resolution, dated the 13th

of July 1921, Exhibit I, decided to introduce : (1) the national system of education in all the institutions under management of the Council ; (2) to dispense with the annual grant by the Government; and (3) to conduct the Municipal primary schools independently of Government control. On the 10th of August 1921 the Government passed the following G.O. No. 1583 (Exhibit IV) under Rule 37, Schedule IV of the District Municipalities Act (V of 1920) as a special order and communicated it to all Chairmen of Municipal Councils including the Chairman of the Guntur Municipal Council.

No portion of a Municipal fund shall be applicable to the purpose of maintaining or aiding any educational institution which is not recognized or approved by the Government, the District Educational Council or any other authority duly authorized by the Government in this behalf to grant, such recognition or approval.

(By Order of the Government, Ministry of Local Self-Government.)

(Sd.) F.J. RICHARDS, Secretary to Government.

19. On the same date, reading the resolution of the Municipal Council, Exhibit I, the Government communicated to the Chairman, G.O. No. 1584 (Exhibit P) in which it was stated that:

The Government presume that the Municipal Council does not require any financial help from the Government for any purpose.

20. On the 9th of November 1921 the Government passed and communicated to the Guntur Municipal Council G.O. No. 2208 (Exhibit VII) in which, after drawing its attention to Exhibit IV, the Government stated that

Since the Council has decided not to seek recognition for its schools, expenditure of Municipal funds on such schools is illegal.

21. The question for our decision is whether the expenditure of Municipal fund by the Chairman on the educational institutions mentioned in the surcharge certificate subsequent to Exhibit IV is illegal.

22. Three arguments have been advanced before us by Mr. Krishnaswami Ayyar on behalf of the petitioner : (1) since the schools in question, which were already recognized schools (i. e., prior to Exhibit I), never ceased to be recognized, they did not fall within the ban of G.O. No. 1583, or of any other Government order passed in connexion with this matter and, therefore, the expenditure of Municipal funds on such schools is not illegal; (2) according to law, the Chairman of a Municipality is not liable to be surcharged for making illegal payments; and (3) G.O. No. 1583 and the other G.Os. issued by the Government are not valid orders as they were not issued by the Governor-in-Council as required under Rule 37, Part II, Schedule IV of the District Municipalities Act. I shall examine these arguments, separately.

(1) The 25 educational institutions under the control of the Guntur Municipality

were " recognized institutions " prior to the passing of the Madras Elementary Education Act (VIII of 1920). After the Elementary Education Act came into force, these continued to remain as recognized institutions (see Section 41, Clause IV of the Act), and the power to withdraw recognition or to confer it afresh was vested by the Act in the District Educational Council. It is argued by the learned vakil for the petitioner that the Government had, therefore, no power to withdraw the recognition already conferred upon the schools and, since the District Educational Council did not specifically withdraw the recognition consequent upon the passing of the Resolution, Exhibit I, the expenditure of the Municipal fund on these institutions is not illegal.

23. The various resolutions of the Council and the G.Os. passed by the Government are referred to in detail in my learned brother's judgment. I have no doubt that by Exhibit IV the Government purported not to recognize or approve of the Municipal schools after the Council had passed the resolution dated the 13th of July 1921, Exhibit I. In pursuance of it the Government on the same date communicated to the Municipality the order, Exhibit V, in which they presumed that the Municipality did not require any financial help. The proceedings set out in my learned brother's judgment show clearly that the order of the Government passed on the 10th of August 1921 was understood as an order withdrawing recognition and prohibiting the expenditure of the Municipal fund on the schools in question which ceased to be recognized on that date. The intention of the Government was, however, made absolutely clear by Exhibit VII, which clearly declared that expenditure of Municipal funds on the said schools was illegal. In my opinion, it is not necessary, for the purpose of this case, to consider whether after the passing of the Madras Elementary Education Act (VIII of 1920), the Government still had the power of granting recognition to the elementary schools or withdrawing it from them ; that the Government thought that it still had the power to grant recognition for the Municipal secondary schools is clear from its order, Exhibit VI, G.O. No. 1942, dated the 5th of October 1921, which is to the following effect: in G.O. No. 1583, L. & M., dated 10th August 1921, the Government issued a special order under B. 37, Schedule IV of the Madras District Municipalities Act, 1920, prohibiting the expenditure of Municipal funds on educational institutions which are not recognized or approved by the Government, the District Educational Council or any other authority duly authorized by the Government in this behalf to grant such recognition or approval. u/s 41 of the Madras Elementary Education Act, 1920:

District Educational Councils are empowered to grant recognition to Municipal elementary schools. The Government are now pleased to authorize the Director of Public Instruction to grant recognition for Municipal secondary schools for the purpose of this order.

24. Rightly or wrongly, the Government purported to withdraw the recognition of the elementary schools in question and consequently passed orders prohibiting

expenditure on those schools. The real question to be considered is whether the Government have the power to control the expenditure of Municipal funds by passing special orders prohibiting the expenditure. If such power is vested in the Government, whether the exercise of it in any particular case is justifiable or not, it is clear that expenditure contrary to such orders will be contrary to law and illegal, and the auditor will, therefore, be entitled to surcharge the same on the person making, or authorizing the making of, such expenditures under Rule 60 (1) of Part II, Schedule IV. Rule 37 of Part II, Schedule IV of the Madras District Municipalities Act provides that:

The purposes to which the Municipal fund may be applied include all objects expressly declared obligatory or discretionary by laws or rules, and in general everything necessary for, or conducive to, the safety, health, convenience or education of the inhabitants or to the amenities of the Municipality and everything, incidental to the administration ; and the fund shall be applicable thereto within the Municipality subject to these rules and such further rules or special orders as the Governor-in-Council may prescribe or issue.

25. Section 124 of the Act makes the rules and tables embodied in Schedule IV as part of Ch. VI which relates to taxation and finance. u/s 304

The Governor-in-Council may make rules altering, adding to, or cancelling Schedule II, Schedule V, Schedule VI or Part II of Schedule IV.

26. According to the District Municipalities Act, the expenditure of the Municipal fund is limited to purposes including. "education" specified in Rule 37 and referred to in detail in the subsequent rules and "the fund is to, be applied thereto within the Municipality, subject to these rules and such further rules or special orders as the Governor-in Council may prescribe or issue."

27. This makes it clear that the Government can prohibit by passing special orders the expenditure of the Municipal fund on schools of which it does not approve; it, therefore, follows that the payments made by the Municipal Chairman for defraying the expenses of these schools, subsequent to the 10th August 1921, are illegal inasmuch as they were made contrary to Government orders prohibiting such expenditure. The Auditor was, therefore, rightly entitled, under Rule 60(1) of Part II, Schedule IV of the District Municipalities Act, to surcharge the amount on the person making, or authorizing the making of, such illegal payments.

28. The second question for consideration is as regards the liability of the Chairman of the Municipality. Mr. Krishna-swami Ayyar's argument to show that the Chairman is not liable to be surcharged are based on Sections 13(c), 22, 40(1) and Rule 62 of Schedule IV of the District Municipalities Act. According to Section 13, Clause (c): "The Chairman of the Municipal Council shall carry into effect the resolutions of the Council." Section 22 states that:

The Chairman shall be bound to give effect to every resolution of the Council

unless such resolution is modified, suspended or cancelled by a controlling authority.

Section 40(1) lays down that:

The Governor-in-Council may, by notification, remove any Chairman, if he, without an excuse sufficient in the opinion of the Governor-in-Council, omits or refuses to carry out any resolution of the Municipal Council.

29. These sections show that the Chairman of a Municipality is bound to carry out the resolutions of the Municipal Council and, if he refuses to do so, he is liable to be removed by the Governor-in-Council. If so, it is argued that he is not liable to be surcharged for giving effect to the resolution, dated the 13th July 1921. This argument is sought to be supported by an inference drawn from Rule 62. This rule provides that:

Every sum certified to be due from any person by auditors under this Act shall be paid by such person to the Chairman within 14 days after the intimation to him of the decision of the auditors unless within that time such person has appealed to the Court or to the Governor-in-Council against the decision; and such sum, if not so paid, or such sum as the Court or the Governor-in-Council shall declare to be due, shall be recoverable on an application made by the Chairman to the Court in the same way as an amount decreed by the Court.

30. It is pointed out that since this rule makes provision for the Chairman to recover from persons sums certified to be due from them by the auditor, it is to be understood that the Act does not contemplate that the Chairman is liable to be surcharged by the auditor. In reply to this argument the learned Government Pleader relies on Section 13, Clause (e) and points out that the suggested inference of the non-liability of the Chairman does not follow from Rule 62. Section 13, Clause (e), states that:

The Chairman of the Municipal Council shall perform all the duties and exercise all the powers specifically imposed or conferred on the Chairman by this Act, and subject, whenever it is hereinafter expressly so provided, to the sanction of the Council, and subject to all other restrictions, limitations and conditions hereinafter imposed, exercise the executive powers for the purpose of carrying out the provisions of this Act, and be directly responsible for the due fulfilment of the purposes of this Act.

31. The words "subject to all other restrictions, limitations and conditions hereinafter imposed," introduce the restrictions referred to in Rule 37 and thus impose limitations on the Chairman's duty to carry out the resolutions of the Council. I think Sections 22 and 13 of the Act should be read together and subject to the limitation imposed by Rule 37; and, if so read, it would follow that the payments made by the Chairman in this case in carrying out the resolution of the Council, dated the 13th July 1921, in view of the special orders of the Government prohibiting the expenditure of the Municipal fund would be illegal

payments, and as he was the person who made such illegal payments by issuing cheques under Rule 55(1), Schedule IV of the Act, the auditor would be entitled to surcharge him for making such illegal payments. Rule 62, Schedule IV of the Madras District Municipalities Act does not warrant the inference that the Chairman is not liable to be surcharged. The rule only points out how the Chairman may recover the surcharged amount. Under that rule a Chairman may recover, in the way indicated therein, the surcharged amount from any person from whom the sum is certified to be due by the auditor under the Act including a former Chairman as in this case. I am, therefore, of opinion that the Chairman of a Municipality is liable to be surcharged under the Act for making illegal payments.

32. The third and the last argument addressed on behalf of the petitioner relates to the form of the Government order. The Government orders in question were issued "By order of the Government, Ministry of Local Self-Government" and signed by the "Secretary to Government. "Under Rule 37, Schedule IV of the District Municipalities Act, "further rules or special orders referred to therein should be prescribed or issued by the" Governor-in-Council."

33. It is argued that, since the Government orders in this case were issued "By order of the Government, Ministry of Local Self-Government" and not by the "Governor-in-Council," the Government orders are invalid as they do not conform to the express statutory provision contained in the District Municipalities Act. There is no force in this contention. The District Municipalities Act was passed on the 29th June 1920, and the Government of India Act came into force in Madras by notification on the 17th December 1920. u/s 45-A, Clause (1), Sub-clause (d) of the Government of India Act, education has been made a "transferred subject." Section 46(1) provides that the presidency of Fort St. George shall be governed, in relation to reserved subjects, by a Governor-in-Council, and in relation to transferred subjects, by the Governor acting with Ministers appointed under the Act. Section 49(1) of the Government of India Act lays down that:

All orders and other proceedings of the Government of a Governor's province shall be expressed to be made by the Government of the province, and shall be authenticated as the Governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

34. The Government orders in question have been authenticated as mentioned in this section. It is stated in the same section that:

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceeding on the ground that they were not duly made by the Government of the province.

35. In view of this provision, the objection that the Government orders in this case are invalid, as they do not conform to the statutory provision of the District Municipalities Act cannot any longer be entertained in any legal proceeding and

must be overruled.

36. In the result, I agree that this Civil Revision Petition should be dismissed with costs.

37. C.M.P. No. 3407 of 1922.-This Civil Miscellaneous Petition has been filed for the issue of a writ of certiorari to bring in and quash the certificate of surcharge made by the auditor. Reliance has been placed by the learned vakil for the petitioner on the decisions in *Rex v. Roberts* (1), and *Rex v. Roberts Ex parte Scurr* (2), to show that in England such writs are issued for quashing surcharge orders. These decisions are under the English Public Health Act, 1875, which contains provisions relating to surcharge and also provides for applications by aggrieved persons" to the Court of King's Bench for writs of certiorari to remove their disallowance in the said Court: see Section 247, Cls (7), (8) and (9). The rules in the District Municipalities Act relating to surcharge seem to be framed on the analogy of the provisions of the English Public Health Act with this important difference that for the statutory remedy by way of certiorari provided for in Section 247, Clause (8) of the English Act, the Indian Act by Rule 61 substitutes application to the principal Civil Court of Original Jurisdiction, or in lieu of such application, appeal to the Governor-in-Council as remedies of persons aggrieved by surcharge orders : (see Rule 61). The English decisions, being based upon a specific provision of the English Public Health Act which provides for the making of applications for writs of certiorari, are not of much use in considering the question arising under the Indian Act which does not provide for any such applications. On the other hand, the absence of such a provision in our Act coupled with the substitution of another provision in its place rather suggests that the Legislature thereby intended that this remedy should not be open to aggrieved persons under the District Municipalities Act. Writs of certiorari are not generally granted when other equally efficacious remedies exist under the law for the satisfactory redress of the grievances complained of.

38. Such being the case, the petitioner is not entitled to ask for the issue of a writ. I have already shown in my judgment in the Civil Revision Petition that he has not succeeded in showing that the order of the learned District Judge is wrong. I do not say anything about the general powers of this Court to issue writs of certiorari in relation to such matters as we are now considering ; nor do I express any opinion on the question whether the general power of this Court to issue the writ, if it ever existed in the present case, could be taken away by implication by the District Municipalities Act. I may also state that it has not been argued with reference to authorities whether this very ancient remedy, which is the ordinary process by which the High Court brings up for examination the acts of bodies of inferior jurisdiction and which is frequently spoken of as being applicable only to "Judicial acts" and not to purely ministerial acts (see *Rex v. Woodhouse* [1906] 2 K. B. 501, does exist in respect to certificates of surcharge made by auditors.

39. I agree that this petition also should be dismissed with costs.