

(1924) 10 MAD CK 0040
In the Madras High Court

Maya Krishna Kone

APPELLANT

Vs

Kulasekhara Mudaliar

RESPONDENT

Date of Decision : 24-10-1924

Acts Referred:

Madras Local Boards Act, 1884 — Section 55

Citation : AIR 1925 Mad 465 : (1925) ILR (Mad) 392 : (1925) 21 LW 144 :
(1925) 48 MLJ 116

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—The petitioner in this case was duly nominated for election to a Union Board according to the rules relating thereto.

The President of the Taluq Board rejected the nomination of the petitioner on the ground that he was a person disqualified to be nominated under

the provisions of Section 55 of the Local Boards Act, Act XIV of 1920. Under Clause 4 of that section, no officer or servant holding office under

the Act or an honorary Magistrate for the local area over which the Local Board concerned has jurisdiction is competent to be appointed as a

member of such Local Board. The ground on which the President of the Taluq Board held the petitioner disqualified was that the petitioner was a

member of the Panchayat of the village which exercised criminal jurisdiction within the same jurisdiction and that as for the services rendered by the

petitioner as a member of the Panchayat in the administration of criminal justice he was not paid, he was an honorary Magistrate within the meaning

of Clause 4 of Section 55 of the Local Boards Act.

2. The word "Magistrate" is defined by the Madras General Clauses Act (Act I of 1891), Section 3, Clause 18. It sets out that the term

Magistrate"" shall mean any person exercising all or any of the powers of a Magistrate in the Code of Criminal Procedure, 1882."" And when we

come to the Criminal Procedure Code we find that there are only four classes of Magistrates, namely, the Presidency Magistrates, Magistrates of

the First Class, Magistrates of the Second Class and Magistrates of the Third Class. Section 77 of the Village Courts Act, Madras Act II of 1920,

provides that excepting Section 403 of the Code of Criminal Procedure nothing contained in the Criminal Procedure Code shall apply to Village

Courts. From this it necessarily follows that a member of the Village Panchayat exercising criminal jurisdiction u/s 76 of the Village Courts Act is

not a Magistrate within the meaning of the Local Boards Act. Having regard to the definition of the Magistrate in the General Clauses Act no

person can be said to be exercising any powers of the Magistrate under the Code of Criminal Procedure to whom under the express terms of

Section 77 of the Village Courts Act, the Code of Criminal Procedure is made inapplicable. Further there can be no doubt whatever that a

member of a Village Panchayat derives his jurisdiction in criminal cases not from the Criminal Procedure Code but from the Village Courts Act.

3. It has been also attempted to be argued by the learned vakil for the petitioner that under the Village Courts Act it is a body of persons that is

constituted into a Criminal Court and vested with magisterial powers and that therefore no individual member of that body could be said to be a

Magistrate. I cannot possibly accede to such a contention. The object with which I take it that under the Local Boards Act an Honorary

Magistrate is disqualified to be appointed as a member of the Taluq Board or the Union Board is that there may frequently be cases in which the

Board is prosecuting and that it would be opposed to. all the principles that a person who is really in the position of a prosecutor should also be a

Judge.

4. Having regard therefore to the principle underlying this disqualification I have no hesitation in rejecting this contention that a member of a body

exercising the powers of a Magistrate is not a Magistrate. But having regard to the definition of the Magistrate I cannot hold that a member of the

Village Panchayat is an Honorary Magistrate within the meaning of the Local Boards Act. I have therefore come to the conclusion that the Lower

Court was clearly wrong in holding that the action of the President of the Taluq Board in rejecting the nomination of the petitioner was right.

5. I therefore allow the petition of the petitioner in the Lower Court and setting aside the declaration of the election of the respondent as a properly

appointed member of the Union Board, direct that the nomination of the petitioner be accepted as right and that an election be held on that basis.

6. The respondent will pay the petitioner his costs both in this Court and in the Lower Court.