

(1975) 11 MAD CK 0007
In the Madras High Court

Ramaswamy Reddiar

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 17-11-1975

Acts Referred:

Citation : (1976) ILR (Mad) 146 : (1976) 89 LW 218 : (1976) 1 MLJ 321

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

V. Ramaswami, J.—This is an appeal against the decision in W.P. No. 6583 of 1975. The appellant was the President of Malayaperumal

Agaram Panchayat within Cuddalore Panchayat Union Council. In his proceedings dated 2nd January, 1975 the Divisional Development Officer,

Chidambaram, intimated the appellant that he had ceased to hold office of President, as he had been disqualified u/s 26(1) of the Tamil Nadu

Panchayats Act, 1958 (hereinafter called the "Act," for nonpayment of house-tax for the assessment years 1973-74 and, 1974-75 within the time

prescribed. But the same proceedings the appellant was informed that he could apply to the prescribed judicial authority u/s 28 of the Act on the

question as to whether he had become disqualified. Thereafter the appellant filed O.P. No. 5 of 1975 on the file of the District Munsif's Court,

Cuddalore, for a declaration that the appellant was not disqualified and for cancellation of the order of the Divisional Development Officer,

Chidambaram, dated 2nd January, 1975. In his order dated, 13th September, 1975, the learned District Munsif of Cuddalore held that the

appellant had failed to pay the tax in time for the assessment years 1973-74 and 1974-75 and that, therefore, he was disqualified. In view of

Section 26(i) of the Act he ceased to hold the Office of President by reason of such disqualification. The appellant filed a writ petition praying for

the Issue of a writ of certiorari to quash this order. It was contended before the learned single Judge that on the day when the first respondent viz.,

the Divisional Development Officer, chose to invoke the provisions of Section 26(i) of the Act, he was not in arrears of tax and that, therefore, the

first respondent was not justified in passing the order in question. It was also contended before the learned Judge that Section 26(i) will come into

operation only when a member fails to pay the arrears of tax and that tax can be said to be in arrears only when a bill or notice of demand is

served on him requiring to pay the amount of tax within a particular period and that the tax was not paid within such a time allowed. The learned

Judge held that payment of the amount within the time prescribed was the relevant criterion for determining the disqualification u/s 26(i) of the Act

and even if the appellant had paid before the first respondent made the order dated 2nd January, 1975, the payment would not remove the

disqualification already suffered. On merits the learned Judge held that Section 26(i) of the Act would come into operation on the failure to pay the

tax within the time prescribed and neither the provisions of the Panchayats Act, nor the rules contemplate the issue of any notice or bill of demand

in order to make the house-tax due from the appellant. The learned Judge also had distinguished the three decisions in Mohammad Ismail

Maracayar v. Melacheval Panchayat (1964) 77 L.W. 520, Chandkhan v. W.N. Govind AIR 1973 Bom. 1 and the decision in M.R. Raghupathy

v. A. B. Ramachandra Reddy and Anr. W.P. No. 2663 of 1970 dated 16th September, 1970. Accordingly the learned Judge held that the

appellant had ceased to be a Panchayat President and dismissed the petition. It is against this order the appellant had filed this appeal.

2. The house-tax that were found to be in arrears were for the years 1973-74 and 1974-75. The tax for 1973-74 was paid on 14th September,

1974 and that for 1974-75 was paid on 14th November, 1974. Section 26 of the Act is imperative and a member ceases to hold office on

incurring of any of the disqualifications referred to therein. One such disqualification is ""failure to pay arrears of any kind due by him (otherwise than

in a fiduciary capacity) to the Panchayat or the Panchayat union council within three months after such arrears became due."" Section 120 of the

Act enables the Panchayat to levy on all houses in the village house-tax and the other provisions in that section dealt with the basis and the method of levying such tax. The Act also authorises the framing of rules for the assessment and collection of all taxes due to the Panchayat. The rules relating to assessment of the house-tax provide that when the Panchayat has resolved to assess houses for the purpose of house-tax, the rates fixed by the Panchayat may either be proportionate to the value of each house, or may be progressive with reference to the value of the house. The karnam of the village shall prepare and furnish to the executive authority a house-tax assessment in the prescribed form and the executive authority should sign the same in token of accepting the assessment. The executive authority shall thereafter cause assessment books to be prepared in conformity with the house-tax assessment made by the karnam. As soon as the assessment books are prepared, the executive authority shall by beat of drum in the town give public notice thereof and of the place or places where the books may be inspected. If any objection is taken to the assessment or the valuation, the assessment books could be amended in the manner prescribed. The rules also prescribe for appeals and revisions against the order made on such objections. Subject to these provisions the assessment has been made final. If the Panchayat decides to increase the rate or revise the valuation, it shall be done only after such public notice and individual notices as prescribed in the rules. The provision is also made for correcting the assessment of individuals where it appeared to the executive authority that the property has been inadequately assessed or inadvertently or improperly omitted to be assessed. But, as already stated, if once the assessment has been made as per the provisions, it is made final. Thus, unless a general revision or special revision is made, the assessment in respect of the house-tax is continued year after year. The house-tax is payable either half-yearly or yearly as the Government may, in general notification, decide and there is no dispute in this case that the tax in respect of the Panchayat in question was payable yearly. Rule 3 relating to the collection of house-tax reads as follows:

3. Persons liable to pay house-tax.--(1) The house-tax shall be paid by the owner of the house within sixty days after the commencement of the year.

(2) If the owner of a house fails to pay the whole or any part of the house-tax due thereon within sixty days after the commencement of the year

the executive authority may, if the said tax has not remained unpaid for more than twelve months, require the occupier for the time being of such

house to pay the amount within a specified period, not being less than thirty days.

The general rules relating to the collection of taxes provide for distraint and sale of movable property for recovery of the amount of tax, but before

such coercive proceedings are taken, the Rules require the executive authority to serve upon the person a bill for the amount due and the default of

the person to pay the bill within such time as may be mentioned in that bill. On a reading of these provisions, the learned Judge had held that neither

the Act nor the Rules contemplate the issue of any bill or notice demanding payment for house-tax and it shall be payable within two months of the

commencement of the year in respect of which the tax was due. We are in entire agreement with this view of the learned Judge. It may be noticed

that only for taking coercive proceedings when the amount was not paid within the period of two months prescribed, the rules specifically provide

for the issue of a notice demanding payment within a particular time and for payment of the dues within two months no such notice was

contemplated. The resolution of the Panchayat to levy the tax and the preparation of the assessment books when it becomes final automatically

brings into existence a liability for payment of house-tax from the year from which the Panchayat resolved to levy the house-tax. The effect of Rule

3 is to make the house-tax payable within a period of two months from the commencement of the year. Therefore the appellant's liability to pay

the tax within the period of two months prescribed is not dependent on any bill or notice being issued. The word "year" is defined in Section 2(37)

of the Act as financial year. The tax was, therefore, payable with reference to the financial year for 1973-74. Thus for 1973-74 the tax was

payable on or before 30th May, 1973 and for 1974-75, it was payable on or before 30th May, 1974. The respective amounts when not paid on

or before 30th May, 1973 and 30th May, 1974 became arrears and Section 26(i) of the Act allowed a further period of three months after the

amounts became an arrear in order to attract the disqualification. Therefore, if the amount had not been paid by 31st August, 1973 in respect of

1973-74 and 31st August, 1974 in respect of 1974-75, the appellant incurred disqualification automatically. In this case, as already stated, the

amounts were paid only on 14th September, 1974 and 14th November, 1974. The appellant had therefore, incurred the disqualification.

3. In the appeal the Learned Counsel for the appellant relying on Rule 32 of the Assessment and Collection of Tax Rules contended that a tax

could be said to be in arrear only when a notice demanding payment was issued and the amount was not paid within the time mentioned in the

notice. Admittedly in this case no notice was issued by the Panchayat and, therefore, the amount could not be stated to be in arrear. Rule 32 reads

as follows:

32. Recovery of arrears of tax.--If any tax due from any person remains unpaid in whole or in part at the end of the period specified in Sub-rule (i)

of Rule 26 and if such person has left India or cannot be found, the said tax or such part thereof as remains unpaid together with all sums payable

in connection therewith shall be recoverable as if it were an arrear of land revenue.

Rule 26(i) referred to therein relates to the distraint and sale of movable property. We have already held that this provision relating to the distraint

and sale of movable property is attracted only after the amount had become in arrear by nonpayment of the same within the period of two months

prescribed by the rules for payment. Rule 32 in terms, therefore, applies only to a case where the amount was not paid within the period of two

months and distraint proceedings were initiated and after the issue of notice for the distraint proceedings without paying the amount the person had

left India or cannot be found. In such an event the arrears could be recovered as if it were an arrear of land revenue. This rule, therefore, does not

make it obligatory on the executive authority to issue a notice demanding the payment of house-tax before he could be considered to be in arrear

of the amount within the meaning of Section 26(i) of the Act. We are also in entire agreement with the judgment of the learned single Judge that the

decisions, in Mohammad Ismail Maracayar v. Melacheval Panchayat (1964) 77 L.W. 520 and Chandkhan v. M.N. Govind AIR 1973 Bom. 1

related to the particular language used in the relevant provisions which were under consideration in those decisions and the provisions were not

similar to the one on hand. We are also of the view that the decision in M.R. Raghupathy v. A.B. Ramachandra Reddy and Anr. W.P. No. 2683

of 1970, dated 16th September, 1970, related to a licence fee and since the renewal of a licence depended on the volition of the person holding

the licence, the non-payment for renewal of the licence fee will not attract any disqualification.

4. In the result, the writ appeal fails and it is dismissed.