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(1935) 12 MAD CK 0027

In the Madras High Court

Secy. of State — APPELLANT

Vs

Sivasankaram Pillai — RESPONDENT

Date of Decision : 09-12-1935

Acts Referred:

Citation : AIR 1936 Mad 412 : (1936) 43 LW 507

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—These revision petitions arise out of proceedings taken in the District Court of Anantapur to set aside certain surcharge certificates issued by the Examiner of Local Fund Accounts against one Sivasankaram Pillai, who for some years was the President of the Taluk Board of Penukonda. The lower Court has sat aside the surcharge certificate in respect of some of the items complained against, but confirmed it so far as certificate Ex. E was concerned. C.R.P. No. 658 has been preferred against this portion of the lower Court''s judgment. C.R.P. No. 594 has been filed by the Government and it raises a general question of principle as to the propriety of impleading the Government as a party to proceedings arising out of surcharge certificates.

2. Dealing with C.R.P. No. 658, the certificate in question was issued in respect of a sum of Rs 53-12-0 being the diminution of revenue to the Local Board consequent upon the allowance of profession-tax appeals in ten cases. It would appear that these appeals were filed out of time, but nevertheless the Board considered the appeals and reduced the tax. On behalf of the petitioner it seems to have been contended before the learned District Judge that Section 213, Local Boards Act, makes Section 5, Lim. Act, applicable to such cases and that the Board having considered the matter of the delay and nevertheless allowed the appeals, there was nothing that he could be held liable for. The learned District Judge, in para. 9 of his order observes as follows:

What Mr. Sivasankaram did here was merely to place all these time-barred appeals before the Board for its consideration and orders. The question of delay

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and condonation seams to have been perfunctorily passed over. In view of the mandatory wording of Schedule 4, Rule 28, I hold that these appeals were illegally heard and the refunds were illegally granted and that the loss to the Taluk Board is the direct result of the negligence of Mr. Sivasankaram.

3. On behalf of the Government it has been contended that this is a finding of fact or at any rate this is not a finding with which we ought to interfere in revision u/s 115, Civil P.C. The language of Section 213 does not put it beyond doubt whether the principle of Section 5, Lim. Act is or is not applicable to appeals, which are specifically provided for in Schedule 4. It is possible to read the provisions enacted in Schedule 4 as a provision to the contrary, within the meaning of the opening words of Section 213, so that the whole of Section 213 including the reference to Section 5, Lim. Act, will be excluded in such cases. But it seems to us equally possible to put the other interpretation upon the section whereby the provision to the contrary will merely substitute Rule 28, Schedule 4 in place of Clauses (a) and (b) of Section 213 and not to exclude the reference in the opening clause of Section 213 to Section 5, Lim. Act. Whichever interpretation may be put upon the section, it is obvious that the act of hearing appeals and reducing the profession tax is an act of the Board as a corporate body and not an act of the President in his individual capacity or even in his capacity as President. It is too much to expect anything like a formal judgment by the Board in such cases giving reasons for excusing the delay. It may be that the learned District Judge is justified in his remark that the question of delay and condonation was perfunctorily passed over, but in law the capacity of the President must be kept distinct from the capacity of the Board as a body, and we think that the learned District Judge omitted to keep this distinction clearly before his mind. On this ground we must set aside the surcharge certificate even in respect of this item.

4. On the larger question raised in the Government''s revision petition we are unable to say that on the rules, as they now stand, it was improper to have impleaded the Collector as respondent to the petition. We quite agree that prima facie the matters dealt with by the Examiner of Local Fund Accounts do not concern the public revenues of India as such but only the funds of the local bodies concerned. We have no sufficient information before us as to whether the Examiner of Local Fund Accounts is paid out of public revenue or in the last resort his salary is recovered from the Local Boards; but leaving this aspect of the matter alone, we are pressed by the fact, that the resort to civil Courts in such cases is one expressly provided for by the statutory rules and as it is not an ordinary common law suit we must prima facie look to the rules themselves to indicate who the proper parties to the proceedings are. Clause 7 of the rules provides that in default of payment by the person against whom a surcharge certificate is issued, the money may be recovered on an application by the Collector of the district to the Court, in the same way as an amount decreed by the Court. This very nearly puts the Collector in the position of a decree-holder and it will be anomalous to hold the Government not to be a proper party to such

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proceedings while the rule authorizes the Collector to execute the final order in the case.

5. It is possible no doubt to say that as these surcharge certificates are primarily for the benefit of the revenues of the Local Board concerned, the Local Board ought to be the respondent to such proceedings; but cases have arisen and are conceivable where the Local Board itself as a body has approved of a number of items of expenditure which are afterwards taken exception to by the Examiner and it will be very embarrassing if the Board should be made respondent to proceedings arising out of a surcharge certificate in such oases. We can only throw out these suggestions for the consideration of the Government with a view to make a better provision in the rules themselves in respect of such proceedings. For instance, there is a provision in Section 173, Madras Estates Land Act, that the Secretary of State shall not be made a party to proceedings arising out of survey and settlement operations under the Estate Lands Act. It will be open to the Government to introduce some such provision in respect of the suits arising out of surcharge certificates. It may also be possible to provide that the costs incidental to such proceedings shall be taken or paid out of the funds of the Local Board concerned. But with the rules as they stand, we do not think that it is open to the Court to give such directions. With these remarks we must dismiss C.R.P. No. 594 of 1933. There will be no order as to costs in either of these civil revision petitions.

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