

(1943) 07 MAD CK 0032
In the Madras High Court

Thota Surayya

APPELLANT

Vs

Inspector Municipal Councils and Local Board and Others

RESPONDENT

Date of Decision : 28-07-1943

Acts Referred:

Citation : AIR 1944 Mad 148

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The Inspector of Local Boards. surcharged the President, who is the appellant, and the other members of the Panchayat Board, who are the respondents 2 to 12, in a sum of Rs. 665-11-9 which was paid by way of interest to the son of the appellant on a sum of money borrowed by the appellant as President of the Board for the purpose of carrying out a work that had been sanctioned by the Government. Of the eleven members of the Board, five, including the appellant, filed O. P. No. 13 of 1939 under Rule 6 of the rules framed under the Madras Local Boards Act to have the surcharge on them set aside. Their application was dismissed by the District Judge. They carried the matter in appeal to this Court and their appeal, numbered as C. M. A. No. 660 of 1941, was dismissed. Subsequently, the remaining six members filed the petition with which we are here concerned, which was numbered as O. P. No. 18 of 1939 on the file of the District Judge of West Godavari. They impleaded not only the Inspector of Local Boards, but also the appellant and the other four members who were joined with him in O. P. No. 13 of 1939. The learned District Judge discussed at considerable length the affairs of the Board and came to the conclusion that a good deal of money had been wasted; but he did not hold, as the Inspector of Local Boards seems to have found, that the interest which was the subject of the surcharge was not in fact paid. Subsequent to the loan, the Government declared that it was not permissible to charge interest on loans that had not been expressly authorised by Government; but at the time when this loan was taken that rule had not come into force. So it is rather difficult to see the ground on which the learned District Judge surcharged the appellant.

However that may be, he considered that respondent 2 as President of the Board was almost entirely responsible for the gross mismanagement of the affairs of the Panchayat; and so he ordered him to personally make good the sum of Rs. 600 out of the total of Rs. 665-11-9 paid by way of interest and distributed the liability to pay the remaining Rs. 65-11-9 among the other ten members of the Board.

2. A preliminary objection has been taken by the respondent members that an appeal does not lie. A provision for an appeal against an order of the District Judge has now been made; but there was no such provision at the time when O. P. No. 18 of 1939 was filed. Under such circumstances, a Bench of this Court has held in *Examiner of Local Fund Accounts, Madras v. Subramania Mudaliar* AIR 1943 Mad. 208 that an appeal would not lie even though at the time when the order was passed there was a provision for an appeal. That decision was with regard to an identical amendment of the rules framed under the Madras District Municipalities Act. I understand that another Bench of this Court in A.A.O. No. 177 of 1941 on 18th September 1942, followed *Examiner of Local Fund Accounts, Madras v. Subramania Mudaliar* AIR 1943 Mad. 208 in a case on this Local Boards Act. In fact, no distinction can be drawn between the two Acts; because the amendments were introduced at the same time in identical language. I must therefore hold that no appeal lies.

3. Mr. Krishnamurti then asks me, in view of my decision that no appeal lies, that this appeal may be treated as a civil revision petition. This has been done. The first point taken by him is that under E. 6 as it now stands the only permissible respondent to an application is the Inspector of Local Boards; for a note to that rule says that where an application is made to the Court under Clause (a), the auditor shall be the sole respondent thereto and the applicant shall not be entitled to make either the Local Government or any other person a party to the proceedings. Although no party to this appeal, except the respondents not represented here, is interested in opposing this argument, there is as far as I can see no answer to it; for the note seems clear enough. If that is so, then it would follow that the order of the District Judge cannot affect the liability of the respondents to O. P. No. 18 of 1939, including the appellant. Moreover, as already noted, the appellant and four other members were unsuccessful in their application in O. P. No. 13 of 1939 and so their obligations have been fixed by the order in that petition. The order of the District Judge is, however, effective as far as the petitioners in O.P. No. 18 of 1939 are concerned; and as they have not appealed, they are liable for the very small sums for which they have been found liable by the District Judge. The civil revision petition into which C. M. A. No. 108 of 1942 has been converted is allowed, but as the petitioner has failed in the civil miscellaneous appeal which he filed, there will be no order as to costs.