

(1954) 04 MAD CK 0006
In the Madras High Court
Case No : C.R.P. No. 473 of 1954

V. Tiruppuliswami Naidu

APPELLANT

Vs

A.P. Manickam Chettiar

RESPONDENT

Date of Decision : 02-04-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (1954) 04 MAD CK 0006

Hon'ble Judges : Rajamannar, C.J

Bench : Single Bench

Advocate : M.K. Nambiar, L.S. Veeraraghava Ayyar and R. Tirumalachariar, for the Appellant; S. Mohan Kumaramangalam and V. Venkataraman, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is a petition filed under Art. 227 of the Constitution and under S.115 C.P.C. to revise the order of the District

judge of South Arcot passed on an application presented to him by a Councillor of the Tindivanam Municipality under S.51 of the District

Municipalities Act, 1920, praying that it may be adjudged after inquiry whether or not the respondent to his application was disqualified under S.50

of the said Act. The petitioner in the Court below who will be referred to as ""the petitioner"" in this C.R.P. was elected as a Councillor for one of.

the wards in the Tindivanam Municipality in 1952. The respondent to the said petition who will be referred to as ""the respondent"" was also elected

similarly for another ward and subsequently elected Chairman of the Municipality. The petitioner alleged that the respondent had ceased to hold his

office by reason of S.50 (1) (b) of the Act in that he became a leper. The learned

District judge held that the respondent was therefore disqualified and hence has ceased to hold his office as Municipal Councillor. It is against this order of the District Judge that the present revision petition has been filed. Under S.50 (1) (b) of the Act, a Councillor shall cease to hold his office if he becomes of unsound mind, a deaf mute, or a leper. S.51 of the Act provides inter alia that whenever it is alleged that any person who has been elected as a Councillor is disqualified under S.50 and such person does not admit the allegation, any Councillor may apply to the District Judge of the District in which the Municipality is situate, and the said District Judge, after making such inquiry as he deems necessary, shall determine whether or not such person is disqualified under that section. Cl.3 of the section provides that pending such decision, the Councillor shall be entitled to act as if he were not disqualified.

2. The learned Judge held, accepting the report from the Superintendent, Government Lady Willingdon Leprosy Sanatorium, Tirumani, Chingleput, that the respondent was afflicted with leprosy. In view of this, he held that the respondent had ceased to hold office. Several contentions were urged before him by the respondent who is the petitioner before me. It was first contended, relying on a certificate given by one Dr. Rajah on 16-2-1954 that the respondent was not a leper on the date of the inquiry, he could not be held to have ceased to hold his office under S.50 (1) (b).

Learned Counsel for the respondent argued that the material date for ascertaining whether or not a particular Councillor had ceased to hold office on account of a disqualification was the date of the inquiry. In my opinion, this contention is opposed to the plain language of S.50. That section enacts that if a Councillor becomes subject to one or other of the disqualifications enumerated therein, he shall cease to hold his office. No doubt, in case of dispute, S.51 provides for recourse to the District judge. But it is not as a result of the order of the District Judge that a Councillor ceases to hold his office. The Councillor ceases to hold office because of the supervening disqualification. It may be that no application has been filed under S.51. It may be that no application is filed late. It does not mean, however, that merely because an application has not been filed or had not been filed within certain time that the Councillor, though disqualified under anyone of the provisions (a) to (i), nevertheless does not cease to

hold his office till determination by the District Judge. This point is, I think, covered by the observations of Wallace J. in Subbaraya Goundan v.

Muthukumaraswami Goundan 51 M.L.J. 265=24 L.W. 606. In that case, the learned Judge was dealing with the analogous provision, S.57 of the

Madras Local Boards Act of 1920. The learned Judge repelling an argument similar to one addressed to me, said :

There is no limitation for an application under S.57 and one might never be put in at all. This does not mean, for example, that a person of unsound

mind, deaf mute, a leper, a convict, an insolvent etc. remain members until some one takes out an application under S.57 to the District Judge.

These persons cease ipso facto to be members, as S.56 states, and the proviso to S.56, "subject to the provisions of S.57" can only mean that in

cases where an application under S.57 is put in, the operation of S.56 is not final, but is subject to the decision of the District Judge under S.57.

The learned Judge also pointed out that if an application is put in under S.57 of the Local Boards Act (corresponding to S.51 of the District

Municipalities Act) and the District Judge decides that he had ceased to be a member, then he ceased to be a member from the date fixed in S.56,

though for the purpose of saving the validity of proceedings in which he might have taken part after he had ceased to be a member he is deemed to

be duly qualified. With respect, I am in entire agreement with the above observations of Wallace J. and following them, I hold that Councillor

ceases automatically to hold office if he becomes disqualified in one or other of the ways mentioned in Cls. (a) to (i) of S.5 (1) of the Act. In this

case, I take the District Judge's finding to mean that the respondent was suffering from leprosy in any event from 19th December 1953, and

earlier. He therefore, became a leper and ceased to hold office.

3. It was next contended that though the respondent might be suffering from leprosy on 19th December 1953 when he was examined by the

Superintendent of the Leprosy Sanatorium, it was not proved that the respondent had not been suffering from that disease prior to his election and

he had contracted it only thereafter. The attitude taken up by the respondent in defence before the learned District Judge was one of complete

denial of having ever suffered from leprosy. It was not suggested on his behalf that he had been a leper even prior to the date of his election, and

that therefore S.50 which dealt with a supervening disqualification would not have any application at all. The learned Judge considered and rightly,

that he was not called upon to decide the question whether the respondent was a leper even before his election. I do not, therefore, think that it is

necessary to have a definite finding by the learned District Judge that the respondent contracted leprosy before or after his election.

4. Learned Counsel for the respondent adverted to what according to him is the policy of the Act underlying provisions like S.50 of the Madras

District Municipalities Act and S.56 of the Local Boards Act, and contended that as the real criterion was whether the concerned Councillor could

satisfactorily carry out his duties as a Councillor, the material time would be the time of the inquiry. I see nothing in the language of the statute to

support this contention.

5. I agree with the learned District Judge that the respondent ceased to hold office because of the supervening disqualification, namely, that he had

become a leper. In this view, it is not necessary to deal with the contention raised on behalf of the respondent's Counsel that the civil revision

petition itself is not maintainable, because S. 115. C.P.C. will have no application, and Art. 227 of the Constitution would not apply, because the

District Judge dealing with an application under S. 51 of the Act would be a persona designata, and not a Court or Tribunal. As I said, it is not

necessary to decide that question, though I may indicate my opinion that the contention is not well founded. The District Judge acting under S.51 of

the Act might be, as Mr. Mohan Kumaramangalam described him, a persona designata, that is to say, he was different from the District Court over

which he was presiding. But I do not agree with him that he therefore was not a tribunal within the meaning of that term in Art.227 of the

Constitution. Vide the recent decision of the Supreme Court in Waryam Singh and Another Vs. Amarnath and Another, . In the result the civil

revision petition is dismissed with costs.