

The Examiner of Local Fund Accounts Vs. Sp.Rm.Rm. Ramaswami Chettiar

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Court : Chennai

Decided On : Aug-14-1940

Reported in : AIR1941Mad891(2); (1941)2MLJ403

Appellant : The Examiner of Local Fund Accounts

Respondent : Sp.Rm.Rm. Ramaswami Chettiar

Judgement :

Wadsworth, J.

1. These two revision petitions arise against an order of the District Judge setting aside two surcharge orders passed by the auditor under rules framed under Section 199 of the Madras Local Boards Act, against the president of a Union Panchayat Board.

2. The facts are not in dispute. In two criminal cases in which subordinates of the Board were concerned, the president made payments to advocates in excess of the scale which the Board itself could sanction. The fees were paid by the president in anticipation of the Board's sanction under the emergency powers conferred upon the president by Section 22 of the Madras Local Boards Act. The payments were reported to the Panchayat Board which duly ratified them though they were beyond its sanctioning power, Objection was taken by the auditor because of the failure to obtain the Government's sanction as required under the rules. Thereupon, an application was made to the Government to sanction these payments but it was rejected. The auditor therefore surcharges the president who had made the payments.

3. Rule 5 of the Surcharge Rules framed by the Local Government empowers the auditor to disallow an item of expenditure which is contrary to law and to surcharge it upon 'the person making or authorising the making of the illegal payment.' Clearly this rule permits the auditor to surcharge either the person who makes the payment or the person who authorises the payment to be made. It seems to follow therefore that the surcharge made by the auditor upon the president in this case is not illegal and the decision in Secretary of State for India v. Sivasankaram Pillai (1935) 70 M.L.J. 404 : I.L.R. 59 Mad. 876, which proceeds upon the second portion of Rule 5 (1) and deals with an act causing loss for which the Board is corporately responsible has no clear relevance. At the same time it is certainly arguable on the facts of the present case that though the president who made this payment can be legally surcharged for it, the members of the Board who voted in ratification of the president's action are equally responsible and it is somewhat inequitable to place the whole burden upon the president alone. This seems to be the view taken by the learned District Judge and I doubt whether in revision the correctness of that view can be canvassed. Rule 6 of the surcharge rules empowers the person aggrieved to apply to the civil Court to

set aside the surcharge and a Court is empowered after taking such evidence as is necessary to confirm, modify or remit the surcharge. There is no limitation put upon the powers of the Court in dealing with such an application and I am not prepared to say that the civil Court has no jurisdiction in a proper case to remit a surcharge, which, though legally recoverable, should equitably have been made upon others than the persons surcharged. It would of course have been better had the learned District Judge in view of his conclusion upheld the surcharge to the extent of the president's proportionate share as a member of the Board. But I do not think it is desirable in revision to interfere with the decision on this ground. If it was the intention of the framers of the rules to limit the jurisdiction of the civil Court merely to ascertaining whether a surcharge is in accordance with law or not and to give the civil Court no power to go into the merits of the surcharge and its equity, that should have been clearly expressed in the rules.

4. In the result, therefore, the petitions are dismissed with costs. (Advocate's fee one set.)

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