

APPELLATE CIVIL.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice,
Mr. Justice Jackson and Mr. Justice Sundaram Chetty.*

O. A. O. K. LAKSHMANAN CHETTY (PETITIONER),
PETITIONER,

1926,
September
30.

v.

J. S. KANNAPPAR AND TWO OTHERS (RESPONDENTS),
RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sec. 115—Revision petition to High Court—Court—Madras City Municipal Act (IV of 1919)—Rule 4 of the rules made under the Act by Governor in Council—Objection petition before election as to qualification of candidate for election, before Commissioner of Corporation—Revision before Chief Judge of Presidency Small Cause Court—Nature of order—Chief Judge, whether a Court or persona designata—Revision to High Court from his order, whether competent—Jurisdiction—Extent of jurisdiction before Commissioner and Chief Judge—Madras City Municipal Act (IV of 1919), ss. 59 and 347—“Elections” in sec. 59, meaning of—Rule 4, whether ultra vires.

The Chief Judge of the Presidency Small Cause Court at Madras, in deciding a revision petition preferred to him under rule 4 of the rules made by the Governor in Council under the Madras City Municipal Act, 1919, acts as a *persona designata* and not as a Court; and consequently the High Court has no jurisdiction to entertain a revision petition against his order in such a case.

The Municipal Corporation of Rangoon v. M. A. Shaker, (1925) I.L.R., 3 Rang., 560 (F.B.), followed; and *Parthasarathi v. Koteswara Rao*, (1924) I.L.R., 47 Mad., 369 (F.B.), distinguished.

The word “Elections” in section 59 (2) (b) of the Madras City Municipal Act means completed elections and does not cover disputes *before* such elections and the section does not authorize the Governor in Council to make rules in respect of

* Civil Revision Petition No. 742 of 1926.

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Quære: Whether the jurisdiction of the Commissioner of the Corporation of Madras, and of the Chief Judge of the Presidency Small Cause Court, is not confined to questions of form, or extends to an enquiry as to the disqualifications of the candidate, which do not appear on the face of the nomination paper but would involve an enquiry into facts.

Desirability of an amendment of the Madras City Municipal Act, so as to make it clear whether the limited or extended jurisdiction is conferred by the Act, pointed out.

PETITION to the High Court to revise the order of the Chief Judge of the Presidency Small Cause Court, Madras, in Municipal Election Revision Petition No. 1 of 1926.

The petitioner was nominated by some of the electors on 17th August 1926. The petitioner was an Honorary Presidency Magistrate. He resigned his office by a letter of resignation, dated 11th August 1926, and addressed to Government, which reached the Government on 14th August.

The Government passed their order on the 19th August 1926 withdrawing the power of an Honorary Presidency Magistrate, from the petitioner. Some of the registered voters preferred an objection petition before the Commissioner of the Corporation of Madras on the 20th August 1926, under rule 4 of the Election Rules, and the latter decided that the petitioner was disqualified to be a candidate as he was an Honorary Presidency Magistrate on the date of his nomination. A revision petition was filed by the petitioner before the Chief Judge of the Presidency Small Cause Court against the order of the Commissioner; but the petition was dismissed by the Chief Judge; against the latter's

decision, this civil petition was preferred to the High Court. The further facts appear from the Judgment.

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Vere Mockett (with him *M. Dumodara Naidu* and *S. Rangaswami Ayyangar*) for respondent, took a preliminary objection that the Civil Revision Petition was not competent.

The High Court had no jurisdiction to revise the order of the Chief Judge of the Presidency Small Cause Court. The case depends on the special language of the Madras City Municipal Act and rules framed by the Governor in Council under the Act. The Chief Judge, in acting under rule 4, is not a Court but a *persona designata*. The fact that the Presidency Small Cause Court is comprised of several Judges and the Chief Judge is invested with this jurisdiction under the rules, shows that the Chief Judge is not acting as a Court but as a *persona designata*. This identical question has been decided by a Full Bench of the Rangoon High Court in *The Municipal Corporation of Rangoon v. M. A. Shakur*(1). The decision of the Full Bench in *Parthasarathi v. Koteswara Rao*(2), is distinguishable as there the power was vested in a District Judge, who was the sole member of the District Court. The decision in *Vijiaraghavulu Pillai v. Theagaroya Chetti*(3), is a decision directly in point and has not been overruled by the Full Bench in 47 Mad., 369. Reference was made to Rogers on Election, page 723, rules 8, 11 and 12. The Indian Procedure is different from that in England in election cases. The nature and extent of the jurisdiction of the Commissioner and the Chief Judge is laid down by rule 3 of the Election Rules. The Commissioner can publish a list of candidates, as it appears to him to be valid and on objection to the qualification of a candidate, he can decide as to the validity of the objection.

K. S. Krishnaswami Ayyangar (with him *K. S. Rajagopala Ayyangar*) for petitioner.—Section 59 of the Madras City Municipal Act (IV of 1919) is the crucial section; section 54 does not apply to disputes before election, and has no relevancy to the present case. Rule 4 should be read with section 59 of the Act. Then it will be evident that the Chief Judge is a Court and not a *persona designata*. The rule should be construed in the light of the provisions of the City Municipal Act and those of the Presidency Small Causes Courts Act.

(1) (1925) I.L.R., 3 Rang., 560 (F.B.).

(2) (1924) I.L.R., 47 Mad., 369 (F.B.). (3) (1915) I.L.R., 38 Mad., 581.

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Where an established Court is afterwards invested with power to try some additional matters, that will not make it a *persona designata*: See *National Telephone Co., Limited v. Postmaster-General*(1).

The Presidency Small Cause Courts Act, section 6 and rules 4 and 6 framed by the High Court under the Act in 1912, show that the Chief Judge or any other Judge of that Court acting singly, should be deemed to be acting as a Court. The definition in rule 3, clause 3 also supports this view. If the three Judges of the Presidency Small Cause Court cannot sit alone and function as a Court, the mention of the Chief Judge in rule 4 of the Election Rules may be *persona designata*. But when each Judge can sit alone as a Court, then the mention of the Chief Judge alone in the rules framed by the Governor in Council under the City Municipal Act, is as a Court and not as a *persona designata*. Rule 4 of the Election Rules should be construed in the light of these provisions as referring to the Chief Judge as a Court, though the construction of rule 4 as referring to him as a *persona designata* may not be *ultra vires* by virtue of section 347 of the Act.

Vere Mockett in reply.—Sections 54 and 59 of the City Municipal Act make a distinction between Chief Judge and the Presidency Small Cause Court. Under the Land Acquisition Act, the Chief Judge alone deals with land acquisition cases; there he is acting purely as a *persona designata*.

The JUDGMENT of the Court was delivered by

COUTTS TROTTER, C.J.—This is a civil revision petition brought by Rao Bahadur Lakshmanan Chettiar against an order made by the Chief Judge of the Small Cause Court in the following circumstances. On the 17th August 1926 the petitioner was nominated as a candidate for election as a divisional Councillor for the 29th Division of the City. It is not in dispute that the nomination paper was regular on the face of it but it was said that the petitioner was disqualified for these reasons. For some time past he had been an Honorary Presidency Magistrate of this City. On the 11th of August he tendered

his resignation having in mind no doubt section 52 (1) (b) (iv) of the Madras City Municipal Act of 1919, which disqualifies a Presidency Magistrate (which has been held to include an Honorary Magistrate) for election as a Councillor. That resignation reached the Government on the 14th of August and Government passed an Order in the following terms :—

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“The Governor in Council withdraws the powers of Honorary Presidency Magistrate for the City of Madras conferred on the undermentioned gentleman (i.e., the petitioner) who has resigned his appointment.”

On the 20th of August an objection was put forward by the respondents alleging that the withdrawal by the candidate from his appointment as Presidency Magistrate only took effect by virtue of the Government Order withdrawing his powers which was subsequent to his nomination, and that therefore the nomination was bad. The objection was heard by the Commissioner acting under rule 4, hereinafter to be referred to, of the rules made under the Act and a petition was put in for revision before the Chief Judge of the Court of Small Causes under the same rule. Both officers pronounced the nomination to be invalid and struck the candidates name off the list of nominations in accordance with rule 3. Against that decision of the Chief Judge this revision petition is brought.

Two main points have been argued before us— the first, which goes to the root of the whole matter, being that this Court has no jurisdiction to entertain any such petition, on the ground that the Chief Judge of the Small Cause Court is not a Court subject to the machinery of the Code of Civil Procedure but a *persona designata* whose decision is not only not appealable but cannot be called up in revision. It has been held by a Full Bench of this Court, *Parthasarathi Naidu v.*

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Koteswara Rao(1), that the fact that his decision is not appealable so far from being a ground for holding that revision will not lie—points decisively in the opposite direction. The appellant's contention as to the character in which the Chief Judge decided this matter depends partly upon a consideration of the relevant sections of the Municipal Act and the rules made thereunder, partly on the effect of certain authorities which were cited to us. Section 59 (2) (b) of the Act provides that

“the Governor in Council may make rules which may provide for the adjudication by the Court of Small Causes of disputes . . . arising out of elections.”

In our opinion “elections” within the meaning of that section means completed elections which have resulted in the creation of a councillor; and does not cover disputes arising before such election; but though rule 4 with which we are primarily concerned purports to be made under section 59 we are of opinion that it is rendered valid by the generality of the powers conferred on the Governor in Council by section 347 of the Act, and that the rule is not vitiated by its description as having been made under a section which is not applicable. Rule 4 gives power to a registered voter to make an objection to the list of candidates. Thereupon

“the Commissioner is to give his decision on the objection in writing, which decision shall be final unless a petition for revision is put in before the Chief Judge,” and in such case it is argued that the Chief Judge acting under rule 4 is, in effect, the Court of Small Causes functioning through him alone and that his decision is, therefore, subject to revision. It is said that this position is confirmed by Order I (a), rule 6 of the rules of the Small Cause Court, 1912. That rule runs as follows:—

(1) (1924) I.L.R., 47 Mad., 389 (F.B.).

“The Judges may sit apart or together at any time and any one or more of the Judges so sitting apart shall have all the judicial authority which is given to the Court by the principal Act or any other enactment for the time being in force, except in cases in which by such Act or other enactment or any rule or order having the force of law such powers are exercisable only by two or more Judges of the court or only by the Chief Judge.

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It shall be competent to the Chief Judge to direct that any application, petition or suit shall be heard by a Bench consisting of two or more Judges of the Court.”

The argument is that if by any Act or rule a matter shall be referred to the Chief Judge alone, he is nevertheless acting as the Court. We are of opinion that this rule only applies to cases where the reference made by the Act or rule in question is clearly to the Court, though functioning through the Chief Judge and that it leaves untouched the real question which we have to decide: namely whether this power was conferred by rule 4 made under the Municipal Act upon the Chief Judge as the Court functioning through himself or upon him as *persona designata*. Looking at the Municipal Act, it is clear that the draftsman of that Act was quite alive to the distinction between the Court of Small Causes (*vide* section 59) and the Chief Judge of that Court (*vide* section 54). It is difficult to resist the inference that when the Chief Judge is referred to in the Act he was meant to act as a *persona designata* and not as representing the Court. The Full Bench decision in *Parthasarathi Naidu v. Koteswara Rao*(1) was relied upon for the proposition that whenever jurisdiction is vested in the Judge of a Court it must be deemed to be vested in that Judge as representing that Court. In that case a vesting of jurisdiction in a District Judge was held to be equivalent to vesting the jurisdiction in the District Court, thereby subjecting his decision to the

(1) (1924) I.L.R., 47 Mad., 869 (P.C.).

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revisional powers of the High Court. It was pointed out in a judgment of a Full Bench in the Rangoon Court, *The Municipal Corporation of Rangoon v. M. A. Shalwar*(1), reviewing all the authorities, with which we respectfully agree, that though that reasoning may apply to a Court which by its constitution has only one Judge it cannot govern a case where jurisdiction is conferred on a single member of a Court consisting of three Judges. It is obvious that words might easily have been used to indicate that while jurisdiction was conferred on the Small Cause Court, that Court should only function through its Chief Judge. We think that that distinction drawn by the Rangoon Court was correctly drawn and that nothing in the decision of the Full Bench in *Parthasarathi Naidu v. Koteswara Rao*(2) precludes us from holding, as we do hold, that under the Municipal Act and the rules the Chief Judge for this purpose is a *persona designata* and not merely a selected member of the Court chosen to represent it. That being so, we have no jurisdiction to entertain this revision petition, and it must be dismissed with costs.

But we think it is desirable that we should say a few words on the second point which was elaborately argued before us. That point was that the Commissioner and the Chief Judge were confined to questions of form, and that it was entirely outside the ambit of their jurisdiction to enquire into grounds of disqualification which did not appear on the face of the nomination paper and would involve an enquiry into facts. The position of a returning officer in England is analogous generally to that of the Commissioner under the Madras City Municipal Act, and it has been decided by a series of decisions in England, of which we need only cite *Pritchard v. Mayor, etc., of Bangor*(3), and *Hobbs v.*

1) (1925) I.L.R., 3 Rang., 560.

(2) (1924) I.L.R., 47 Mad., 369.

(3) (1888) 11 A.C., 241.

Morey(1), that the returning officer is only to decide objections arising on the face of the nomination paper itself and not to go into questions relating to the personal qualifications of the candidate. Under section 52 of the Madras Act, among the disqualifications enumerated are that the person concerned is of unsound mind, or is interested in a contract with the Corporation. If the position be right that such allegations are to be investigated not after election but at the stage of candidature, the Commissioner might be faced with a series of elaborate enquiries relating to persons who might never reach the stage of election or appointment as a Councillor, might indeed receive no votes at all. It is said that, nevertheless, the effect of the Madras Act is to throw the burden of conducting such enquiries upon the Commissioner with regard to every candidate at the stage of nomination. In view of our decision on the main point, it is unnecessary to pronounce upon this question. But we think it desirable to point out the doubts that have been raised as to the effect of the Madras Act and to suggest that it should be amended in a manner that shall make it clear whether it is intended to invest the Commissioner with the wide powers suggested by the respondents or to confine him to the purely ministerial function with which alone he would be clothed if the principle of the English cases is to be applied. If the latter view is to prevail, there seems to be no good reason for granting an appeal to the Chief Judge or indeed to any other tribunal.

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(1) [1904] 1 K.B., 74.
