

PEDDABBA
REDDI
v.
VARADA
REDDI.
WALLER, J.

RYVES, JJ., held that the question whether a witness was "compelled" to answer a particular question was, in each case, one of fact. In *Bai Shanta v. Umrao Amir* (1), a Full Bench of the Bombay High Court took the same view of section 132 as was taken by the Full Bench in the 3 Madras case.

Following the ruling in *The Queen v. Gopal Doss*(2) I must find that, in this case, the petitioner who answered a question or questions put to him by his Counsel without seeking the protection of section 132 of the Evidence Act is not entitled to that protection. All that he is entitled to is the limited privilege afforded to him by section 499 of the Indian Penal Code. He must prove that he made the imputations against the respondent in good faith for the protection of his own or some other person's interest. I agree that the petition should be dismissed.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Cargenven.

1928,
October 9.

T. SIVASANKARAM PILLAI AND FIVE OTHERS
(PETITIONERS) ACCUSED.*

Local Boards Act (XIV of 1920) Madras, sec. 16—President of Taluk Board—Communication to individual members tendering his resignation—If proper—Power of Government to decide question—President—If public servant—Sec. 197, Criminal Procedure Code—Applicability of.

A communication by a President of a Taluk Board tendering his resignation of his office as such President addressed to each

(1) (1925) I.L.R., 50 Bom., 162 (F.B.). (2) (1891) I.L.R., 3 Mad., 271 (F.B.).

* Criminal Revision Case No. 298 of 1928.

member of the Board separately is not a proper resignation within the meaning of section 16 of the Madras Local Boards Act.

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The Act contains no provision empowering the Government to decide a question of this character and any order that Government may issue on the matter will not be binding upon a Court of Law.

A President of a Taluk Board is a public servant and under section 197 of the Code of Criminal Procedure the sanction of the Local Government is necessary to prosecute him for any offence alleged to have been committed by him as such public servant.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Joint Magistrate of Penukonda in Calendar Case No. 62 of 1927.

V. L. Ethiraj and *S. Ranganatha Ayyar* for petitioners.

K. S. Vasudevan for Public Prosecutor for the Crown.

JUDGMENT.

This case arises out of an occurrence which took place at a meeting of the Taluk Board of Penukonda held on the 24th August 1927 and which resulted in the conviction of six persons by the Joint Magistrate of that place. The first petitioner, Mr. T. Sivasankaram Pillai, was a nominated member of the Taluk Board and had been elected President. Whether he was still President when the meeting in question was held is in dispute, but he took the chair in that capacity. While the meeting was proceeding, one of the members, R. Siddana Gowd, who was the complainant in the criminal case, entered and took the attendance register for the purpose of signing it. The President told him not to do so; as he had disqualified himself as a member by failure to attend some previous meetings. As he persisted the

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President told another member, now the second petitioner, to take the book from him, and in so doing the second petitioner pushed the complainant so that the chair in which he was sitting was broken and he fell, sustaining some slight injuries. The President, after some further disorder ordered some of the servants of the Board to evict the complainant from the meeting and they accordingly turned him out. Upon these incidents is founded the criminal case. The learned Joint Magistrate has found that Mr. Sivasankaram Pillai had ceased to be President at the time of the occurrence, and that his action was therefore unauthorized. He has convicted him accordingly of abetment of voluntarily causing hurt and wrongful restraint and sentenced him to pay a fine of Rs. 50. The second petitioner has been convicted of voluntarily causing hurt and sentenced to pay a fine of Rs. 25, while of the remaining four petitioners (accused Nos. 3, 4, 5 and 7), who are Board servants, accused Nos. 4 and 5 have been convicted under sections 352 and 341, Indian Penal Code, and accused Nos. 3 and 7 under section 352, Indian Penal Code only. Each of these four persons has been fined the nominal sum of one anna.

The contention raised in this Criminal Revision Petition against these convictions is that the Joint Magistrate was in error in holding that Mr. Sivasankaram Pillai had ceased to be President at the time of the occurrence. If he was still President, two separate consequences, it is said, would follow. In the first place, his prosecution could not have been undertaken without the Local Government's sanction under section 197 of the Criminal Procedure Code and, secondly, he would then have been acting within his rights in evicting the complainant. The facts upon which it was successfully contended in the lower Court that he had ceased to be

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President are briefly these. It appears that the members of the Board had split into two parties, one supporting the President and the other hostile to him. On the 15th January 1927 the Board by 10 votes to 8 passed a token resolution reducing the education budget by one rupee as a protest against the President's administration. In consequence of this, on the 16th February, the President sent to each member separately a tender of his resignation in the terms of Exhibit II. The next meeting of the Board was fixed for the 25th February and the subject of this resignation was put down on the agenda as resolution or item No. 92. At the meeting, one of the members proposed that this item should be advanced in position and disposed of before the other intervening items, but the President disallowed the proposal for want of notice. Thereupon the opposite faction withdrew and held a separate meeting outside at which they passed a resolution accepting the resignation. A copy of their proceedings has been filed as Exhibit V. Meanwhile, and before the subject of his own resignation was reached, the President adjourned the meeting of the Board till 8 a.m. on the following day (the 26th), waited for half an hour, and there being no quorum within that time, further adjourned the remainder of the agenda, including the question of his own resignation. The members of the other faction, who had been waiting outside, then entered the room, appointed one of their number as President and seemingly in derogation of their own previous action, again passed a resolution accepting the President's resignation. So far as the proceedings of the Board or of its members are concerned, it may be said that matters stood thus at the time of the occurrence.

Section 16 of the Madras Local Boards Act enables a President to resign by giving notice to the Local

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Board. The question accordingly is whether notice of resignation was so given. It is clear I think that a Local Board is something other and more than the mere sum of its individual members. Section 6 (3) of the Act declares it to be a body corporate with perpetual succession and a common seal and vests it with the capacity of suing or being sued in its corporate name. It would follow upon general principles and by analogy with other bodies corporate that such a body can transact business only at duly constituted meetings and that this is so, is borne out by the provisions of the Act and the rules framed thereunder. Those rules are contained in Schedule II. Rules 1 and 2 lay down the circumstances in which meetings of the Board shall be held, and rule 3 provides that no meeting shall be held, except in cases of urgency, unless notice of the hour and the business to be transacted has been given seven days in advance. Rule 6 prohibits the transaction of any business at a meeting unless at least one-third of the number of members are present; and *a fortiori* no business can be transacted otherwise than at a meeting. There is of course no question but that any resolution of the Board passed in circumstances at variance with these and other rules would be invalid. Section 16, it is true, does not require that the resignation should be accepted, only that notice of it should be given to the Board. But it appears to me that the act of receiving such notice is as much business to be transacted by the Board in accordance with the rules framed for its meetings as any other of its activities, and consequently that such receipt could only take place at a duly constituted meeting. The notice circulated by Mr. Sivasankaram Pillai to the members on the 16th February was accordingly not a notice to the Local Board, and was not a notice received by the Local Board; and

I cannot hold that by issuing it to each member and upon its receipt by each member his resignation of the office of President took effect. It needs no further discussion of the provisions of the Act to justify the conclusion that the two so-called meetings of the opposite faction on the 25th and 26th February were not properly constituted meetings of the Local Board, and that no steps taken at those meetings with regard to the resignation were valid. My conclusion accordingly is that the President did not give notice of his resignation to the Local Board and that he cannot be held to have resigned.

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The learned Joint Magistrate has based his conclusion upon this point not upon the terms of the Act but upon a Government Order—G.O. No. 2310, L. & M., dated 21st June 1927—apparently passed after correspondence with the President and the dissentient members. It expresses the Government's view that the resignation communicated by Mr. Sivasankaram Pillai to all the Taluk Board members on the 16th February took effect as soon as the notice of resignation reached the members, and it proceeds to direct him to hand over charge to the Vice-President. It will be seen that this does not amount to an order depriving the President of his office, whether or not it would be competent to the Government to pass such an order. I read it merely as an expression of opinion that the intimation given of his resignation by the President to the members amounted to notice to the Local Board under section 16. Such an expression of opinion does not of course prevent a Court of Law from coming to a contrary conclusion, since the Act contains no provision empowering the Government to decide a question of this character. The Joint Magistrate makes reference also to a suit (O.S. No. 12 of 1927) filed in the District Court of

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Anantapur to declare that the first petitioner had ceased to be President. After the learned District Judge had reached the conclusions at which I have myself arrived, and recorded them in a judgment, the Plaintiffs, doubtless being aware of what the result would be, withdrew the suit. The circumstance does not of course in any way affect the issue before me.

On the finding that Mr. Sivasankaram Pillai was still President, it is clear that the sanction of the Local Government to his prosecution was necessary under section 197 of the Criminal Procedure Code. One need look no further than to the illustration to section 21 of the Indian Penal Code for proof that a member of a Taluk Board is a public servant; and under section 43 of the Local Boards Act, the President of a Taluk Board can only be removed by the Local Government. Thus the prosecution of the first petitioner was irregular for want of sanction.

That does not of course dispose of the matter as against the other petitioners. If, however, the first petitioner was lawfully presiding at the meeting, it has not been contended before me that what he did or caused the other petitioners to do would in the circumstances have amounted to any offence. Under section 32 of the Act, the President is empowered to preserve order and the complainant seems deliberately to have flouted the first petitioner's authority on the ground that he was no longer President. If he sustained any slight injuries in so doing, they were of his own seeking.

I allow the Criminal Revision Petition, set aside the convictions, acquit the petitioners and direct that the fines, if paid, be refunded.

B.C.S.