APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1934, October 31.

KONDHO RAYAGARU (PETITIONER), PETITIONER,

v.

THE DISTRICT COLLECTOR OF GANJAM (RESPONDENT), RESPONDENT.*

Madras Local Boards Act (XIV of 1920), *ss.* 199, 227—*Surcharge Rules, r.* 5—*Limitation—Rule* 5 *not inconsistent with sec.* 227 *and not* ultra vires.

Rule 5 of the Surcharge Rules framed by the Local Government under the authority conferred by section 199 of the Madras Local Boards Act (XIV of 1920), which does not prescribe limitation, is not inconsistent with section 227 of the Act which provides that certain suits shall be commenced within three years, and is not *ultra vires* the Local Government. Section 227 provides merely that the suits referred to therein shall be commenced within three years, whereas the Surcharge Rules do not deal with suits at all, the machinery provided by them being altogether different. The laws of limitation are creatures of statute. What the section of the Act contemplates is the filing of a suit and it is for such a suit that the limitation is prescribed; a rule that does not provide limit of time in regard to certificates granted under the special procedure laid down is not inconsistent with the section.

Section 214 of the Indian Companies Act, 1882, *Connell* v. *The Himalaya Bank, Ld.*, (1895) I.L.R. 18 All. 12, and *Ramasami* v. *Streeramulu Chetti*, (1896) I.L.R. 19 Mad. 149, referred to.

Further, section 227 of the Act and rule 5 of the Surcharge Rules are not co-extensive. The suits referred to in that section are against members of the Board, whereas under rule 5 of the Surcharge Rules the loss may be recovered even from an employee or servant.

The words "surcharge," "disallowance" and "charge," as used in the Surcharge Rules, explained.

* Civil Revision Petition No. 1549 of 1931.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act, praying the High Court to revise the order of the District Court of Ganjām, dated the 16th day of March 1931 and passed in Original Petition No. 54 of 1929.

D. Ramaswami Ayyangar for *C. S. Venkatachariar* for petitioner.

P. V. Rajamannar for *The Government Pleader* (*P. Venkataramana Rao*) for respondent.

JUDGMENT.

This case raises the question of the validity of a surcharge certificate granted in pursuance of the rules made under the Madras Local Boards Act (Madras Act XIV of 1920). Section 120 of that Act provides for the appointment of auditors of the accounts of Local Funds. Section 199 enacts that the Local Government may make rules to carry out all or any of the purposes of the Act not inconsistent therewith and goes on to say that, in particular and without prejudice to the generality of the foregoing power, they shall have power to make rules

> " as to the powers of auditors to disallow and surcharge items and as to the recovery of sums disallowed or surcharged " (clause o).

Under the authority conferred by this section, the Local Government made certain rules, known shortly as Surcharge Rules, with which we are now concerned. Rule 3 says that the auditors appointed under section 120 of the Act shall report to the Board (to quote only the relevant part) any loss of money caused by the neglect or misconduct of any person responsible for such loss. Then rule 4 follows, which provides that the

KONDHO RAYAGARU v. DISTRICT COLLECTOR, GANJAM.

President shall forthwith remedy the defect that has been pointed out by the auditor. Then, we come to the most important rule, which is rule 5. It must first be noted that this rule refers to a different auditor, different from the auditor already referred to. The powers and duties of this auditor are not strictly confined to auditing, but as quasi-judicial functions are to be performed by him, the auditor referred to is one "empowered by the Local Government". So much of that rule as is material may be quoted in full :—

> Rule 5 (1) Any auditor empowered by the Local Government may disallow every item contrary to law and surcharge the same on the person making or authorizing the making of the illegal payments, and may charge against any person responsible therefor the amount of any deficiency or loss incurred by the negligence or misconduct of that person or of any sum which ought to have been but is not brought to account by that person and shall, in every such case, certify the amount due from such person.
>
> (2) The auditor shall state in writing the reasons for his decision in respect of every disallowance, surcharge or charge and furnish by registered post a copy thereof to the person against whom it is made.

In the present case what happened was this. Some amounts of house-tax collected by the bill-collector had not been brought into account. This fact was pointed out in the audit reports both for 1924-25 and 1926-27. Under rule 4 already mentioned, the President ought to have remedied the defect, but that was not done. Thereupon the auditor empowered by the Local Government under rule 5, i.e., the Examiner of Local Fund Accounts, issued a certificate dated 12th June 1929 charging the President of the Board with the amount of the loss on the ground that it was incurred by his negligence. Under rule 6 any

person aggrieved by the decision of the auditor has a right to apply to the principal civil Court of original jurisdiction to set aside or vary that decision. The President applied under that rule to the District Judge of Ganjām, who in part modified the auditor's decision but, as regards the major portion of the claim, confirmed it. In this revision petition the District Judge's order is attacked.

It is first contended that rule 5 in question is *ultra vires* the Local Government. The argument is put thus : Section 227 of the Act provides for a suit for compensation against a member of the Local Board for any loss due to his neglect or misconduct, and clause 2 of that section enacts :

> " Every such suit shall be commenced within three years after the date on which the cause of action arose."

It is argued that if the Surcharge Rules have the effect of abrogating this rule of limitation, they are *ultra vires*, being inconsistent with section 227 of the Act. Section 199 says that rules may be made

> " to carry out all or any of the purposes of the Act not inconsistent therewith ".

That the Surcharge Rules have the effect of carrying out the purposes of the Act cannot be gainsaid. But the question then is, are these rules inconsistent with the Act or any provision thereof ? Section 227 provides merely that the suits shall be commenced within three years, whereas the rules do not deal with suits at all. The machinery provided by them is altogether different, prescribing as they do a summary mode of recovery. The laws of limitation, as has been said, are creatures of statute ; under the common law there was no limit of time prescribed for the enforcing of rights. What the section of the

KONDHO RAYAGARU v. DISTRICT COLLECTOR, GANJAM.

Act contemplates is the filing of a suit and it is for such a suit that the limitation is prescribed; a rule that does not provide limit of time in regard to certificates granted under the special procedure laid down is, in my opinion, not inconsistent with the section.

I may point out in this connection that it was held that, under the Indian Companies Act of 1882, the special proceeding provided for by section 214 was not subject to any rule of limitation; *Connell* v. *The Himalaya Bank, Ld.*(1). [See also *Ramasami* v. *Streeramulu Chetti*(2).] But under the present Companies Act, section 235 expressly enacts that applications in respect of misfeasance or breach of trust are in the nature of suits governed by the provisions of the Indian Limitation Act. The Legislature may, if it chooses, enact a provision on the lines of section 235 (3) of the Indian Companies Act, but the Courts cannot import a rule of limitation where the Legislature has either by design or accident failed to prescribe a period.

It may also be observed that section 227 and rule 5 are not co-extensive. The suits referred to in that section are against members of the Board only, but under the rule the loss may be recovered even from an employee or servant. The contention therefore that the rules are *ultra vires* fails.

There was some argument in regard to the words "surcharge", "disallowance" and "charge"; but nothing material turns upon the use of those words. Rule 5 is modelled on section 247, clause 7, of the Public Health Act of 1875; with certain

(1) (1895) I.L.R. 18 All. 12. (2) (1896) I.L.R. 19 Mad. 149.

slight alterations that section has been reproduced. COZENS-HARDY M.R. points out in *Rex* v. *Roberts*(1) that the word "surcharge" is not used in the English Act just mentioned in its strict technical sense. The expression "surcharge and falsify" refers to the mode of taking accounts in Chancery : if any of the parties can show an omission for which credit ought to be given, that is surcharge ; if anything is inserted that is wrong, he is at liberty to show it, and that is falsification (Wharton's Law Lexicon). But "surcharge" is used in another sense—an overcharge of what is just and right ; a declaration by an auditor that a person is personally liable to refund a particular part of public money illegally expended by him (*Ibid*). According to Murray's Oxford Dictionary, "surcharge" means (i) the act of showing an omission in an account or statement showing this ; (ii) a charge made by an auditor upon a public official in respect of an amount improperly paid by him. The first has to do with a wrong omission, the second with a wrong insertion, and the two meanings are thus contradictory. It is therefore clear that the three words in question have no special legal significance attached to them.

It is next argued that it has not been shown that the President has been negligent. I am not prepared to interfere in revision with the lower Court's finding on this point, which is a finding of fact.

In the result, the civil revision petition fails and is dismissed with costs.

K.W.R.

(1) [1908] 1 K.B. 407, 418.