

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

WP(C).No. 3321 of 2015 (M)

PETITIONER:

M.S.BINU, AGED 30 YEARS,
S/O.MURALI.S, ASWATHY BHAVAN, CHELLAMKODE,
POOVATHOOR, NEDUMANGADU, THIRUVANANTHAPURAM.

BY ADVS.SRI.M.P.ASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE NEDUMANGAD MUNICIPALITY
REPRESENTED BY ITS SECRETARY, NEDUMANGAD,
THIRUVANANTHAPURAM.
3. DR.BIJU RAMESH
MANAGING PARTNER, HOTEL INDRAPRASTHA, NEDUMANGAD P.O.,
THIRUVANANTHAPURAM.
4. THE PRINCIPAL SECRETARY
LOCAL SELF GOVERNMENT (R.C.) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

ADDL. R5 TO R7 IMPEADED:

5. K.J. BINU, AGED 37, S/O. KARUNAKARAN NAIR,
RESIDING AT ANAMKONAM HOUSE, VALICODU,
NEDUMANGAD P.O - 695 541.
6. S. RAVEENDRAN, AGED 62 YEARS, S/O. SREEDHARAN,
RESIDING AT AKSHARA, PUTHENVILA, ARASU PARAMB,
NEDUMANGAD P.O. - 695 541.
7. M. RAJENDRAN NAIR, AGED 53 YEARS,
S/O. MANOHARAN PILLAI,
RESIDING AT VEEDARUKONATHU VEEDU, POOVATHOOR P.O.,
NEDUMANGAD, PIN - 695 561.

WP(C).No. 3321 of 2015 (M)

: 2 :

(ADDL.R5 TO R7 IMPEADED AS PER ORDER DATED 16.02.2015 IN
I.A. NO. 2346 OF 2015)

R2 BY ADV. SRI.P.RAMAKRISHNAN
R3 BY ADV. SRI.P.RAVINDRAN (SR.)
R3 BY ADV. SRI.SREEDHAR RAVINDRAN
R5-R7 BY ADV. SRI.ANEESH JOSEPH
R5-R7 BY ADV. SRI.M.RAMESH CHANDER (SR.)
R BY SMT. SANJEETHA K.A., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-02-2015, ALONG WITH WPC. 3322/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1: PHOTOCOPY OF THE SIGNED LIST OF 20 MEMBERS WHO OBJECTED THE ISSUANCE OF NOC.

EXT.P2: PHOTOCOPY OF THE FRONT PAGE OF THE OBJECTION FILED BEFORE THE GOVT. ON 20/12/2013.

EXT.P3: PHOTOCOPY OF THE REFERENCE ORDER DATED 19/03/2014.

EXT.P4: PHOTOCOPY OF THE RELEVANT PORTION OF THE REPORT OF THE TRIBUNAL IN REFERENCE NO. 3/2014.

EXT.P5: PHOTOCOPY OF THE ORDER DATED 23/01/2015.

EXT.P6: PHOTOCOPY OF THE OBJECTION CERTIFICATE.

RESPONDENTS' EXHIBITS :

EXHIBIT R5(a): TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 257/2014 DATED 03.01.2014.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) Nos. 3321 & 3322 of 2015

Dated this the 16th day of February, 2015.

JUDGMENT

Introduction:

Both the writ petitions are filed — one by an ex-councillor and another by a present councillor of the first respondent Municipality — impugning the order of the Tribunal for Local Self Government Institutions, Thiruvananthapuram, ('the Tribunal' for brevity).

2. Since both the writ petitions raise the same issue against the same set of respondents, this Court has proposed to dispose of them through a common judgment. I take the facts as pleaded in W.P.(C) No.3322 of 2015 for narrative purpose, apart from referring to the parties as arrayed therein.

Facts in Brief:

In WP (C) No.3322 of 2015:

3. The facts in brief are that the petitioner is the Secretary of the Kerala Madhya Nirodhana Samithi, Thiruvananthapuram District; he is said to have served the first respondent Municipality as its Vice-Chairman for eight years and as Acting Chairman for one year. The petitioner is also said to be the office

bearer of various other governmental Organisations, apart from being a native of Nedumangad Taluk. The petitioner in WP (C) No.3321 of 2014 is a councillor in presenti.

4. In its meeting held on 18.12.2013, the first respondent Municipality included as one of its items in the agenda for its council meeting the proposal to grant 'No Objection Certificate' (NOC) for beer parlour to be established by the 6th respondent. On the said day, out of total number of 39 Councillors, since two remained absent, among the members present, 20 Councillors voted against the proposal to grant NOC to the 6th respondent. Notwithstanding their request to ascertain the intention of the others also whether they were fully supporting the resolution or remaining neutral, the Chairperson got agitated and quit the meeting. It is the grievance of the petitioners that despite the opposition by the majority Councillors, i.e., 20 out of 39, two being absent, later it was, however, recorded in the minutes of the meeting that the resolution had been passed in favour of granting of NOC to the 6th respondent.

5. On 20.12.2013, within 48 years, all the 20 Councillors are said to have submitted Ext.P1 representation before the Government; consequently, the 5th respondent is said to have

issued Ext.P2 stay order against the decision of the first respondent Municipality recorded in its minutes as item No.5.

6. As a matter of subsequent development, aggrieved by Ext.P2 stay order issued by the 5th respondent, the 6th respondent filed W.P.(C) No.257 of 2014 before this Court; on the other hand, the petitioner, being the ex-Vice Chairperson, though not presently a Councillor, filed W.P.(C) No.300 of 2014 challenging what is said to be a false and forged entry in the minutes book of the council. This Court eventually disposed of both the writ petitions through Exts.P3 and P4 Judgements directing the Government to decide the issue raised by the Councillors keeping in view Section 57 of the Kerala Municipality Act, 1994 ('the Act' for brevity).

7. The Government, in turn, referred the matter to the Tribunal through Ext.P5 order. On an elaborate consideration of the issues raised in the reference, and after hearing all the parties concerned, the learned Tribunal passed Ext.P6 order. While upholding the contention of the petitioner and other similarly placed persons that the resolution was passed by the first respondent Municipality improperly, the learned Tribunal has nevertheless held that the Government does not have the power

to cancel a decision taken by the Municipal Council on 18.12.2013, especially in the face of Section 57 of the Act. Thus, aggrieved by the second limb of the decision of the learned Tribunal that the Government cannot cancel a decision of the respondent Municipal Council, the petitioner has filed the present writ petition.

In WP (C) No.3321 of 2015:

8. Insofar as W.P.(C) No.3321 of 2015 is concerned, it was filed by one of the present Councillors assailing the same order of the learned Tribunal. It is pertinent to note that, at a later point of time, three more Councillors got impleaded themselves through I.A.No.2346 of 2015 as additional respondents 5 to 7. Incidentally, these additional respondents have also supported the claims and contentions of the petitioners in both the writ petitions.

Rival Submissions:

For Petitioners in WP (C) No.3322 of 2015:

9. In the above factual background, Dr.S.Gopakumaran Nair, the learned Senior Counsel for the petitioner in W.P.(C) No.3322 of 2015, has contended that on 18.12.2013, only 37 out of 39 Councillors were present and that by raise of hands 20

Councillors, the majority, opposed the proposal to grant NOC to the 6th respondent. Despite a clear request on their part to ascertain the views of the rest of the Councillors i.e, the remaining 17, the Chairperson, who persistently supported granting of NOC to the 6th respondent, felt agitated and left the meeting of the Councillors in a fit of apoplexy. According to the learned Senior Counsel, soon thereafter a melee broke out, allegedly orchestrated by the learned Chairperson, resulting in chaos and tearing of the records with a view to destroying the evidence as to who actually participated in the council meeting and who voted against the proposal.

10. The learned Senior Counsel has also submitted that all 20 Councillors submitted, within 48 hours, a common signed representation on 20.12.2013 to the Government bringing to its notice the gross impropriety and illegality said to have been committed by the Chairperson and her supporters. Having issued a stay against the resolution 'passed' allegedly at the behest of the Chairperson and the minority Councillors, later, especially in the light of the judgments of this Court in Exts.P3 and P4, the Government through Ext.P5 referred the matter to the learned Tribunal under Section 57(1) of the Act.

11. Eventually, the Tribunal, on reference, through Ext.P6 has held that the resolution has been passed in violation of Section 57 (1) of the Act, but the Government cannot interdict the said resolution by invoking the powers under Section 57(1) of the Act. In expatiation of his submissions, the learned Senior Counsel would contend that the Tribunal, having categorically held that the resolution passed is expressly illegal, it ought not to have been bogged down by technicalities, which according to him are of no consequence, disabling the Government from taking remedial steps on the issue raised by the majority Councillors.

12. The learned Senior Counsel has taken pains to draw a distinction between the resolution passed illegally and those passed in gross violation of the procedural safeguards imposed under the statute. According to him, though Section 509(7) provides for alternative remedy in the form of an appeal, once it has been established that the resolution has been passed without majority i.e., without any authority, the question of alternative remedy should not come in the way of the aggrieved Councillors, more particularly when they are the majority, approaching the Government for redressal of their grievance. The learned Senior Counsel has eventually submitted that the Government, in his

view correctly, instead of deciding the matter on merits, owing to statutory restrictions in that regard, referred it to the Tribunal, which is competent to take a decision on the issue.

13. The learned Senior Counsel has laid stress on the aspect that the Tribunal has found the entire process adopted by the Chairperson and the minority Councillors as being vitiated, falling foul of Section 57(1) of the Act. Nevertheless, the learned Tribunal has, contends the learned Senior Counsel, gone astray on a misconceived conclusion that only a single Councillor could complain, but not more than one Councillor, inasmuch as an expression in the singular has been employed under Section 57 (1) of the Act. According to the learned Senior Counsel, in terms of Section 13(2) of the General Clauses Act, the singular takes into its fold the plural and vice versa, and as such, the finding of the Tribunal to that extent cannot be sustained.

14. The learned Senior Counsel has also submitted that Section 509(7) of the Act cannot come in the way of a mere reference, falling short of adjudication by the Government itself. According to him, in the end, it is the Tribunal that has decided the issue. As such, the objection regarding the alternative remedy is insubstantial and unsustainable.

For Addl. Respondents 5 to 7 in WP (C) No.3322 of 2015:

15. Sri.Ramesh Kumar, the learned Senior Counsel appearing for the additional respondents 5 to 7 in W.P. (C) No.3321 of 2015, in support of the contentions already advanced by the learned Senior Counsel appearing for the petitioner in W.P. (C) No.3322 of 2015, has submitted that what has been interdicted under Section 57(3) of the Act is entertaining of the matter on merits by the Government, but not a mere reference to the Tribunal. Referring to Section 447 of the Act, the learned Senior Counsel would contend that the respondent Municipality exercises its powers under the said section to grant permission to any person to start a beer parlour. Section 57(3) of the Act, in contra distinction with Section 509(7) of the Act thereof, refers to both the decision and resolution; on the other hand, Section 509 (7) of the Act only refers to the decision but not the reference to be appealed against.

16. In further elaboration of his submissions, the learned Senior Counsel has submitted that if both the decision and resolution ought to be taken into the fold of Section 509(7) of the Act, the very Section 57(1) becomes otiose. According to him, no interpretation that renders any part of legislation otiose can be

taken recourse to.

For the Petitioner in WP (C) No.3321 of 2015:

17. The learned counsel for the petitioner in W.P.(C) No. 3321 of 2015 has also made elaborate submissions, but as they are in tune with the submissions made by the learned Senior Counsel appearing for the petitioner in W.P.(C) No.3322 of 2015, no specific reference has been made to them. It is, however, essential to refer to his additional contention that the Kerala Panchayath Raj Act, 1994 contains an analogous provision in Section 191 thereof. This Court in Vanaraj v. Santhanpara Grama Panchayat (2014 (1) KLT 1065), has, according to him, held that the alternative remedy is no bar.

For the 3rd Respondent in WP (C) No.3321 of 2015:

18. Sri.P.Ravindran, the learned Senior Counsel appearing for the 3rd respondent in W.P.(C) No.3321 of 2015 has drawn my attention to paragraph 4 of the order of the Tribunal in Ext.P6 to contend that on 18.12.2013 only 18 persons raised hands opposing granting of NOC to the 6th respondent. Since two Councillors were admittedly absent, the majority, i.e, 19 Councillors, remained supportive of the proposal to granting NOC

to the 6th respondent. According to him, this averment made by the Secretary of the first respondent Municipality, supported by the 3rd respondent, the Chairperson of the Municipality, as reflected in paragraph 5 of the impugned order of the learned Tribunal, stands unrebutted.

19. The learned Senior Counsel has drawn my attention to Rule 15 of the Kerala Municipality (Procedure for Meeting of Council) Rules, 1995 ('the Rules' for brevity) to drive home the point that any Councillor had any dissent on the minutes of the meeting shall inform the same in writing within forty eight hours after receiving a copy of the proceedings to the Secretary and the Chairman of the meeting. According to him, this mandatory procedural safeguard has not been taken recourse to by the so-called majority Councillors.

20. The learned Senior Counsel has further contended that the question of Chairperson exercising casting vote would have arisen on the equality of votes on either side of the proposal, but in the present instance, since the majority i.e., 19 Councillors, supported the decision to grant NOC, the eventuality of the 3rd respondent exercising her power under Rule 11 of the Rules has not arisen. It is the further contention of the learned Senior

Counsel that in terms of Rule 13 of the Rules, no resolution of a Council shall be modified or cancelled except through a resolution passed in a meeting of council specifically convened for the purpose within three months of passing such resolution.

21. In a conspectus, the learned Senior Counsel would contend that in the light of Rules 15 and 13 of the Rules, the course of action adopted by the petitioners as well as other Councillors in approaching the Government by submitting Ext.P1 cannot be sustained. The learned Senior Counsel has also contended that as per Rule 10 (3) of the Rules, the decision taken by the Chairperson in the matters of holding and presiding over the meeting is conclusive and final and no challenge shall be laid against it. When a specific query has been put by this Court, the learned Senior Counsel would answer that 20 persons, who submitted their joint-representation before the Government, included those who absented themselves on 18.12.2013.

22. It is, however, relevant to mention that both the learned counsel appearing for the petitioners in the respective writ petitions and the learned Senior Counsel for the additional respondents 5 to 7 in W.P.(C) No.3321 of 2015 have contested the above statement of the learned Senior Counsel for the 3rd

respondent.

23. Eventually, to his credit, the learned Senior Counsel for the 3rd respondent has submitted that the finding of the Tribunal that a petition can be maintained only by a single Councillor, but not by a plurality of them is indefensible. Accordingly, the Court is given to understand that the 3rd respondent does not desire to defend the said finding of the learned Tribunal.

24. At any rate, the learned Senior Counsel has strenuously contended that the finding of the learned Tribunal that in the face of Section 57(3) of the Act, the petitioners ought not to have approached the Government invoking Section 57(1) of the Act, and that the very reference made by the Government to the learned Tribunal cannot be sustained, cannot be found fault with.

25. Eventually, summing up his submissions, the learned Senior Counsel has submitted that since Section 57(3) of the Act has been couched in mandatory terms, it excludes any option for the petitioners to take recourse to Section 57(1) of the Act. Under those circumstances, the decision rendered by the Tribunal holding that despite the procedural impropriety on the part of the respondent Chairperson and others, there is no power of interdiction on the part of the Government, is unassailable and

unexceptionable, concludes the learned Senior Counsel for the 3rd respondent.

For the 6th Respondent in WP (C) No.3322 of 2015:

26. Sri.Elvin Peter P.J., the learned counsel for the 6th respondent, adopting the submissions made by the learned Senior Counsel for the 3rd respondent, has submitted that the finding of the learned Tribunal that the resolution was passed in violation of the procedural parameters fixed under the Act and the Rules was due to a mistaken impression as could be found from page 17 of the order impugned. In elaboration, the learned counsel would contend that the learned Tribunal proceeded as if this Court in Exts.P4 & P5 had positively directed the Tribunal to conclude in those lines; this Court, on the contrary, has only observed that the issue has to be adjudicated upon by the Government in accordance with law.

27. According to the learned counsel, Section 57(3) of the Act imposes a clear embargo, and as such the Government ought not to have referred the matter to the Tribunal.

In Reply:

28. Dr.S.Gopakumaran Nair, the learned Senior Counsel appearing for the petitioner in W.P.(C) No.3322 of 2015, in reply,

has drawn my attention to paragraph 17 of Ext.P6 order of the Tribunal. He has emphasized that the Tribunal has not rendered its finding on the procedural impropriety committed by the Chairperson and other minority Councillors merely based on the directions of this Court in Exts.P3 and P4 judgments. According to him, the finding was rendered on an independent consideration of the issue.

29. Heard the learned counsel for the petitioners and the learned counsel for the respondents in both the writ petitions, apart from perusing the record.

Issues:

1. Whether the petitioners' and other councillors' approach to the Government through Ext. P1 complaint is vitiated on the ground of availability of an alternative statutory remedy of appeal under Section 509 (7) of the Act?
2. Whether the reference of the Government to the learned Tribunal under Section 57 (3) of the Act, based on Ext.P1 complaint, can be sustained?
3. Whether the statutory appeal under Section 509 (7) of the Act does not cover the resolutions of the Municipal Council; in the alternative, whether the appeal remedy is confined to the decisions under Section 57 (1) of the Act?
4. Whether the finding of the learned Tribunal that the decision taken in agenda No.5 of the Municipal Council is illegal, thus being adverse to the contesting respondents, be assailed by them without laying proper challenge against it?

5. Has the learned Tribunal rendered the finding referred to in Issue No.3 merely based on the directive of this Court in Exts.P3 & P4 judgments?
6. Whether the petitioners and other councilors ought to have taken recourse to Rules 13, 15, etc., of the Rules in the first place?

Discussion:

In re, Issue Nos.1 & 3:

30. As both the issues are interrelated, I deem it appropriate to address them compendiously. Before addressing those issues, it pays to examine the statutory scheme of the Act.

Statutory Scheme:

31. Section 57 of the Act, to the extent relevant reads thus:

“57. Power to suspend and cancel resolutions etc.— (1) The Government may, *suo-motu or on a reference* by the Chairperson the Secretary, *or a Councillor* of the Municipality or on a petition received from a citizen, *cancel or amend a resolution passed or a decision taken by the council, which in their opinion,-*

(a) has not been legally passed or taken; or

(b) is in excess or abuse of the powers conferred by this Act or any other law; or

(c) ...

(d) ...

(2) ...

(3) The Government shall not entertain any petition for cancellation or amendment of any resolution or decision of the council if an alternate [sic, alternative] redressal is available to the petitioner through the Tribunal under section 509.

...”

(emphasis added)

32. It is further relevant to examine the provision providing for hierarchical remedies, i.e., Section 509, which, to the extent relevant, is as follows:

“509. Appeal and revision — (I) An appeal may be preferred to the Council against any notice issued or any order passed or action taken by the Chairperson or the Secretary under any of the provisions of this Act other than Sections 390, 391, 395, 406 and 408 or the rules or bye-laws or regulations made thereunder.

...

(7) An appeal may be preferred to the Tribunal, *against any decision passed by the Council or any order or notice issued by the Chairperson or Secretary on the basis of such decision* or any matter provided in Sections 310 to 508 other than Sections 390, 391, 395, 406 and 408 or the rules, bye-laws or regulations made thereunder, within thirty days from the date of passing of such decisions, order or notice. (emphasis added)

33. A reading of the above provisions makes it manifestly clear that the Government can even suo-motu, apart from the complaint of Councillor of the Municipality, etc., cancel or amend a resolution passed or a decision taken by the council. The power can be exercised, provided the resolution has not been legally passed or the decision not legally taken. It can be a case of taking a decision in excess or abuse of powers conferred. The only hurdle that comes in the way of the government, if it is not exercising its powers suo-moto, is the availability of an alternative remedy under section 509 of the Act.

34. Thus, Section 57 (3) of the Act essentially leads us to Section 509(7), as per which an appeal can be filed before the Tribunal against any decision passed by the Council within thirty days from the date of passing of such decisions, order or notice.

35. It is too well established a cannon of construction to admit of any dispute that from among a series of expressions, if all of them have been employed in one provision and only a few have been employed in a another provision, it is axiomatic that in the latter the rest of the expression stand excluded from the purview of the statutory operation. It is to be observed that legislature abhors redundancy and surplus age; it is believed to employ every expression with precision. Even if two expressions, having some shared meaning, thus being synonymous in some aspect but not in all other aspects, are used in a series, they are presumed to have been used in their distinctive senses rather than in an overlapping manner, subject of course to the interpretative devise of ejusdem generis. In fact, the Hon'ble Supreme Court in Manohar Lal v. Vinesh Anand ((2001) 5 SCC 407 (at page 411)) has observed that one of the golden canons of interpretation is that the legislature always avoids surplus age

and attributes a definite meaning to each of the words mentioned in the statute.

36. In Sections 57(1) & (3) of the Act, both the expressions 'decision' and 'resolution' have been employed. If we examine section 509(7) of the Act, it is evident an appeal lies to the Tribunal only against a decision passed by the Council. Though semantically both the expressions — resolution and decision — are synonymous, at legislative level resolution is a formal decision taken collectively in terms of a policy with an enforceable objective. In other words, a resolution being a formal expression of the collective decision of an elected body, it needs something more to be executable, whereas a decision is final and readily executable. In Section 509(7) the decisions having a ring of finality have been made the subject matters of adjudication; but the resolutions being more in the nature of an executionary expression, rather than the one executed, it is kept within the administrative fold rather than adjudicatory fold.

37. In my considered view, there is a discernible differentia between a decision and a resolution. There is a specific legislative objective in making one the subject matter

of adjudication and the other still a matter of executive correction. Thus, with the legislature consciously omitting 'resolutions' from the purview of Section 509(7) of the Act, it cannot be contended that the approach of the petitioners or other councilors to the Government has suffered from any statutory shortcoming, such as the hurdle of alternative adjudicatory remedy. Once it is held that resolution is not appealable under Section 509(7) of the Act, the argument of the contesting respondents on the issue of alternative remedy crumbles. Thus are held issue Nos.1 & 2 in favour of the petitioners.

In re, Issue No.2:

38. The next issue to be considered is whether the Government has committed any irregularity in referring the matter to the learned Tribunal. Under Section 57 of the Act, if a resolution passed or a decision taken by the council has not been legally passed or taken; or passed or taken in excess or abuse of the powers conferred by this Act or any other law, the Government shall refer the matter for the consideration of the Tribunal. The Tribunal shall, after giving the Municipality an opportunity of being heard, furnish a report to the Government

with its finding. In such an eventuality, the Government may cancel, amend or approve that resolution or decision.

39. Indeed, the adjudication undertaken by the Tribunal in this process though partakes the character of a quasi-judicial determination, it is in fact akin to exercising of consultative jurisdiction. That is why unlike a formal judicial decision, the findings of the Tribunal would not bind the Government, which may take the said finding into account while arriving at a final decision. Thus, viewed in a conspectus, the issue No.2 is to be answered, and is answered, in favour of the petitioners and against the contesting respondents.

In re, Issue Nos.4 & 5:

40. In the concluding paragraph of Ext.P6 order, the learned Tribunal has observed that the decision taken on agenda No.5 of the Municipal Council in its meeting held on 18.12.2013 is illegal and arbitrary. No specific challenge has been laid against this finding of the learned Tribunal. The only defence offered by the contesting respondents to this finding is that the learned Tribunal has, labouring under a mistaken impression, rendered the finding as if this Court in Exts.P3 & P4 judgments had issued directions to that effect.

41. A perusal of paragraph 17 of Ext.P6 order of the learned Tribunal does not lead to any such conclusion as has been contended by the learned counsel for the contesting respondents. Though there is a passing reference to the direction given by this Court in the above referred judgments that this Court directed the Government to decide whether the impugned decision was validly passed or whether there was a manipulated decision in spite of the objection raised by majority of the councilors, the learned Tribunal has, however, independently adjudicated the issue. As such, I am afraid, the contention of the learned counsel for the contesting respondents that the finding is perverse for it had been rendered without application of mind or based on an assumed directive of this Court cannot be sustained. Even otherwise, polemically, however erroneous a finding may be, there ought to be a formal challenge laid against it, for a finding of binding nature cannot simply be wished or explained away. Thus are answered issues 4 & 5 against the contesting respondents.

In, Issue No.6:

42. Another contention raised by the learned counsel for the contesting respondents is that in terms of Rule 13 of the

Rules, no resolution of a Council shall be modified or cancelled except through a resolution passed in a meeting of the Council specially convened for the purpose within three months of passing such resolution, by a support of not less than one half of the sanctioned number of members. According to them, since no such procedure has been adopted, the entire approach of the petitioners and other councilors in challenging the resolution passed by the Municipal council is vitiated.

43. Firstly, the resolution of council ought to be a validly passed one — a precondition of paramount importance. Under any changed circumstances, if the council decides to modify, recall, or cancel the resolution it is required to follow the procedure prescribed under Rule 13 of the Rules. The said rule is a safeguard against any whimsical or cavalier approach, given the pulls and pressures a civic administration faces. The upshot of the above proposition is that, once the resolution itself is vitiated, having been mired in procedural controversy as to the very manner of its passing, and its sanctity has been robbed by the controversy, there cannot be any presumption to any validly passed resolution. Thus, the question of taking recourse to Rule 13 of the Rules by the councilors, in my considered view does not

arise.

44. Further the finding of the learned Tribunal is that the Government lacks the power to cancel the resolution passed by the Municipality. In the light of the above discussion, once the hurdle posed through Section 57(3) of the Act is removed, under sub-section (1) thereof, there can be no further impediment for the Government to interdict the said 'resolution.' I, therefore, am of the opinion that the finding of the learned Tribunal cannot be sustained on that count either.

Vanaraj's case:

45. It is of considerable importance to note that Section 191 of the Kerala Panchayat Raj Act is in pari materia with Section 57 of the Act. While interpreting the said provision, a learned Division Bench of this Court has held thus:

“Reading of above Section makes it clear that even a member of Panchayat can challenge decision of Panchayat or seek modification or cancellation of decision. As a matter of fact, any citizen aggrieved by such decision of Panchayat can approach Government seeking remedy as contemplated under S.191(1) of the Act. Accordingly, petitioner taking part in decision making process will not disentitle him to challenge said decision when a third party can challenge such a decision. In the present case, challenge is not on the ground that there was no proper decision making process. Challenge is based on statutory provisions i.e., violation of R.11 of above said Rules.”

External Aid to Interpretation: Pari Materia Provisions:

46. It can be stated without fear of contradiction that both the Panchayat Raj Act, 1994, and the Kerala Municipality Act, 1994, have the similar object, purpose and scheme, in aiding the civic administration at different levels. Thus the provisions are in pari materia with each other. It is a well-known cannon of construction to take aid of the interpretation of a pari materia provision to throw light on an analogous provision in another cognate enactment.

Rule 15: Dissenting Note:

47. It is also the contention of the learned counsel for the contesting respondents that the petitioners or other councilors could have given a dissenting note in terms of Rule 15 of the Rules, which reads thus:

15. Dissenting note on decision,— A member shall, if he has any dissent on the minutes of the meeting, inform the same in writing within forty-eight hours of receipt of the proceedings to the Secretary and the Chairman of the meeting.

48. In the factual backdrop of the case, it may have to be remembered that it is not a case of a resolution passed by the majority, in which event, the minority member or members could have given any dissent on the minutes of the meeting. The

expression 'minutes of meeting' presupposes legitimately passed minutes of meeting. When the very manner of conducting the proceedings is contested and when no valid or legitimate minutes of meeting are alleged to have been passed, the question of any aggrieved councilor taking recourse to expression of dissent does not arise. At any rate, it can be seen all the 20 councilors submitted their objections to the Government within 48 hours.

In the facts and circumstances, having regard to the above discussion of the various issues, Ext.P6 order of the Tribunal cannot be sustained, and is, therefore, set aside. As a result, the writ petitions are allowed. Nor order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.