

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.21746 of 2014

G.Thirumoorthy

.. Petitioner

Vs.

1.The Director
Town Panchayat
Kuralagam, Chennai 108.

2.The Collector
Tiruvannamalai District
Tiruvannamalai.

3.The Assistant Director
Town Panchayat
Vellore Zone, Vellore 09.

4.M.Dhakshinamoorthy

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the third respondent herein to convene the meeting as per section 40-A(3) of the Tamil Nadu District Municipalities Act, 1920.

For Petitioner : Mrs.P.T.Asha
for M/s Sarvabhauman Asso.

For Respondents : Mr.R.Vijayakumar - R1 to R3
Addl. Govt.Pleader

Ms.S.P.Arthi - R4

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O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mrs.P.T.Asha, learned Counsel appearing for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 to 3 and Ms. Arthi, learned counsel appearing for the fourth respondent. .

3.The petitioner has come forward with this Writ Petition for issuance of writ of mandamus to direct the third respondent to convene the meeting as per section 40-A(3) of the Tamil Nadu District Municipalities Act, 1920 (Act).

4.The petitioner is an elected Ward Councillor of the Vettavalam Town Panchayat and he and 8 other Ward Councillors have addressed a letter to the authority expressing their 'No Confidence Motion' against the Vice Chairman of the Town Panchayat, who is the fourth respondent herein, citing various reasons. Since the said request has not been dealt with in accordance with section 40 A (3) of the Act, the petitioner is before this Court by way of this Writ Petition.

5.A counter affidavit has been filed by the fourth respondent denying and disputing the allegations made against him and stated that the allegations made in the complaint said to have been signed by 8 Ward Councillors are all false.

6.The learned counsel for the petitioner has invited the attention of this Court to the complaint letter dated 20.5.2014, in which all the Ward Councillors are said to have signed and affixed their seal. Subsequently in another letter addressed to the Assistant Director of Town Panchayats by the fourth respondent, the said Ward Councillors have signed stating that all the activities done by the fourth respondent are perfectly valid and therefore it is submitted that the signatures which are contained in the alleged requisition for 'no confidence motion' are forged documents.

7.The learned Additional Government Pleader by referring to the proceeding of the Executive Officer of the respondent Town Panchayat dated 5.6.2014, submitted that enquiry was conducted, as there was an allegation that signatures have been forged and ultimately a direction has been issued to register a criminal complaint against the persons who have committed forgery. Therefore, it is submitted that unless and until the Forensic Department gives a report, the matter cannot be proceeded with.

8.Heard the submissions made by the learned counsel appearing on either side and perused the materials placed on record.

9.The legal issue involved in this Writ Petition is as to whether the procedure under section 40-A of the Act, was followed. Under the said provision the motion of no confidence in respect of

Vice-Chairman of Municipalities has been dealt with. Sub section (1) of Section 40-A, states that subject to the provisions of this section, a motion expressing want of confidence in the Vice-Chairman may be made in accordance with the procedure laid down and sub section (2) of section 40-A of the Act states that written notice of intention to make the motion, in such form as may be fixed by the State Government, signed by such number by councillors as shall constitute not less than 3/5th of the sanctioned strength of the council, together with a copy of the motion which is proposed to be made, shall be delivered by any two of the councillors signing the notice in person together, to the Regional Director of Municipal Administration. In terms of sub section (3) of Section 40-A of the Act, the Regional Director of Municipal Administration shall, then, convene a meeting for the consideration of the motion, to be held at the municipal office, at a time appointed by him which shall not be later than thirty days from the date on which the notice under sub-section (2) was delivered to him. He shall give to the councillors notice of not less than fifteen clear days of such meeting and of the time appointed thereof.

10. The petitioner would state that they have complied with the requirement under section (2) 40-A of the Act. A written notice of intention to make a motion of no confidence has been signed by 3/5th of the sanctioned strength of the council and presented by two Councillors in person. Therefore, in terms of sub section (2) of section 40-A of the Act, the next procedure to be adopted is to convene a meeting. In the interregnum, the third respondent appears to have embarked upon an enquiry as regards the allegations made that signatures of certain Councillors have been forged in the representation with an intention to convene a meeting for moving a motion of no confidence. The procedure under section 40 A of the Act, does not empower the third respondent to embark upon any such enquiry. If the fourth respondent has made any allegation that signatures of certain Councillors have been forged or if the Councillors have come forward with the complaint that their signatures have been forged, they should not be left without any remedy. It is always open for them to set the law in motion and it is well open to them to raise such an issue at the time when the Regional Director of Municipal Administration convenes a meeting under section 40-A (3) of the Act. However, on a wrong interpretation of the statutory provision, it appears that a parallel proceedings have been initiated by the respondents 2 & 3 and there is also a recommendation made to register a criminal complaint. In the interregnum the matter has been referred to the Forensic Department for verification of the signatures.

11. In my view such a procedure could not have been adopted since section 40-A of the Act, does not contemplate such a power and action shall be initiated only by the Regional Director of Municipal

Administration, by exercising his power under sub-section (3) of Section 40-A of the Act. Therefore, de horse the action taken by the respondents 2 & 3, and the recommendations made for initiation of criminal proceeding against the members who have alleged to have committed forgery and fraud, there is no option left in terms of statute for the Regional Director of Municipal Administration, except to convene a meeting.

12. Accordingly, the Writ Petition is disposed of by directing the Regional Director of Municipal Administration, to convene a meeting and consider the written notice said to have been presented by the petitioner and others on 20.5.2014. In the meeting so convened, it is always open to the Regional Director of Municipal Administration, to consider the validity of the notice whether it satisfies the statutory requirement, whether any fraud or forgery has been committed, thereafter, it is open to the Regional Director of Municipal Administration, to proceed in accordance with law.

13. The learned counsel for the fourth respondent submitted that the fourth respondent has lodged a complaint against the misdemeanors committed by the petitioner and the said representation has not been taken into consideration by the authorities.

14. In the light of the above submissions, it is always open to the first respondent to look into the complaint made by the fourth respondent against the petitioner. Further, it is made clear that the above order will not stand in the way of the Ward Councillors initiating appropriate action in their discretion, if there is any allegation of forgery committed by any other third party. The Regional Director of Municipal Administration, shall comply with the above direction, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Director

Town Panchayat

Kuralagam, Chennai 108.

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2.The Collector
Tiruvannamalai District
Tiruvannamalai.

3.The Assistant Director
Town Panchayat
Vellore Zone, Vellore 09.

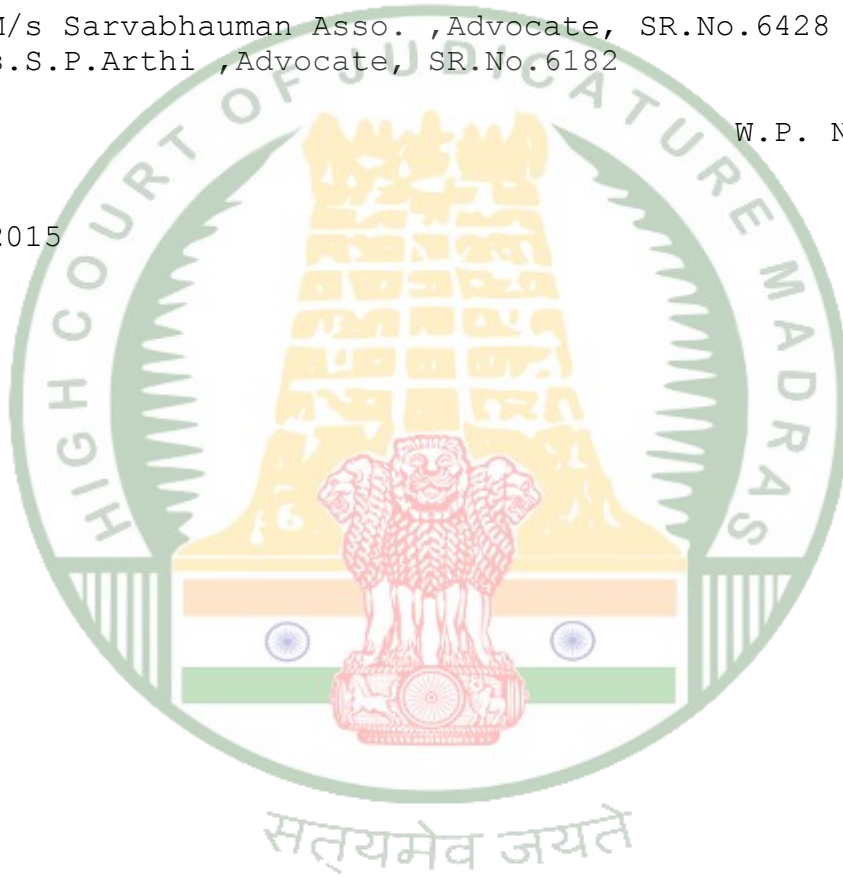
4.The Regional Director, Municipal Administor
Chennai.

1 cc to M/s Sarvabhauman Asso. ,Advocate, SR.No.6428

1 cc to Ms.S.P.Arthi ,Advocate, SR.No.6182

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