

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 07.08.2015

+ **W.P.(C) 6194/2014 & CM No.14979/2014** (*for stay*)

TAJDAR BABAR & ORS

..... Petitioners

Through: Mr.K.C. Mittal and Mr.V. Pratap,
Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Sanjay Jain, ASG with
Mr.Jasmeet Singh, CGSC, Ms.Kritika
& Mr.Akash Nagar, Adv. for UOI.
Ms.Sana Ansari, Adv. for Ms.Zubeda
Begum, Adv. for R-7.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. The petitioners, four in number, were nominated as members of the New Delhi Municipal Council (NDMC) as provided under Section 4(1)(d) of the New Delhi Municipal Council Act, 1994 (NDMC Act).
2. This writ petition is filed aggrieved by two Notifications dated 05.09.2014 issued by the Government of India, Ministry of Home Affairs dissolving the NDMC in exercise of the powers conferred by Section 398(1) and appointing the Chairperson and other members afresh under Section 4(1) of the NDMC Act.
3. NDMC was constituted by Notification dated 18.01.2011 in terms of Section 4 of the NDMC Act and it consisted of (i) the Chairperson appointed under Section 4(1)(a) from amongst the officers of the Central

Government; (ii) the Chief Minister, Delhi and a Member of the Legislative Assembly, Delhi as provided under Section 4(1)(b); (iii) five Members from amongst the officers of the Central Government nominated by the Central Government under Section 4(1)(c) and (iv) two other members (petitioners 1 & 2) who were nominated by the Central Government in consultation of the Chief Minister of Delhi in terms of Section 4(1)(d). Subsequently, there was an amendment to the NDMC Act which came into force with effect from 01.03.2012 thereby increasing the strength of the nominated Members under Section 4(1)(d) from 2 to 4. That apart, the Member of Parliament representing the Constituency which comprises wholly or partly the New Delhi area has also been made a Member of the Council by inserting Clause (e) to Section 4(1). In terms of the said amendment, by Notification dated 09.07.2013 the petitioners 3 & 4 were also nominated as Members under Section 4(1)(d) of the NDMC Act. Thus, all the four petitioners were in the Council as nominated Members as provided under Section 4(1)(d) of the NDMC Act.

4. The Government of India, Ministry of Home Affairs issued a notice dated 30.06.2014 alleging that NDMC had grossly failed in the performance of the duties imposed on it and had failed to deliver efficient services to the public in regard to the municipal administration and calling upon to show cause by 07.07.2014 as to why the directions under Section 395 of the NDMC Act should not be issued.

5. Assailing the said notice dated 30.06.2014, the four petitioners herein filed W.P.(C) No.5035/2014 alleging that the action of the respondents was not *bonafide* and that the show cause notice dated 07.07.2014 was issued with an intention to dissolve the Council.

6. The said writ petition was dismissed by this Court by order dated 11.08.2014 leaving it open to the respondents to consider the explanation that has already been submitted and pass an appropriate order in accordance with law. It was also made clear that any decision taken by the respondents shall be communicated to the petitioners and thereupon, if aggrieved, the petitioners are at liberty to work out the appropriate remedy as available under law.

7. Thereafter, the Government of India, Ministry of Home Affairs issued a fresh Notification dated 05.09.2014 purportedly in exercise of the powers conferred by Section 398(1) of the NDMC Act thereby dissolving the Council. It is further mentioned in the said Notification that the reply submitted by the NDMC to the show cause notice dated 30.06.2014 was received on 07.07.2014 and that after considering the same, the Central Government was of the view that the Council is persistently (a) making default in the performance of the duties imposed on it by or under the New Delhi Municipal Council Act, 1994; (b) failed to deliver efficient service to the public and generally in regard to the municipal administration; and (c) the Council has never kept the Ministry informed about serious/sensitive issues relating to revenue loss and security. Thus it was concluded that in exercise of power conferred by Section 398(1) and in supersession of the Notification dated 18.01.2011, the Central Government has decided to dissolve the NDMC. On 05.09.2014 itself, another Notification was issued constituting a new Council with the Members specified therein in exercise of the powers conferred by Section 3(1) and Section 4 of the NDMC Act. Under the said notification dated 05.09.2014 apart from appointing the Chairperson and other members as provided under Section 4(1) of the NDMC Act, the respondent Nos.3 to 6 herein have been nominated as

members in terms of Section 4(1)(d). Thus, by virtue of the said notification, the term of the writ petitioners who were the nominated members under Section 4(1)(d) of the NDMC Act in the dissolved Council came to an end with effect from 05.09.2014 and in their place respondent Nos.3 to 6 have become nominated Members of NDMC.

8. Aggrieved by the said action of the Government of India (respondent No.1), the present writ petition is filed praying for:

- “A) Certiorari quashing Section 398 of the NDMC Act being invalid, unreasonable, unworkable, ambiguous and creating an ambiguous situation as it is in conflict with the Section 4 of the NDMC Act as partial dissolution of the NDMC cannot be effected;
- B) Certiorari quashing and set aside Show Cause Notice No.14011/23/2014-Delhi-II dated 30.06.2014 issued u/s 394 of the Act in furtherance to dissolve the NDMC, as being without jurisdiction, contrary to the Act, apart from being arbitrary, unjustifiable, unreasonable, against the principles of natural justice and for malafide reasons.
- C) Quash and set aside the Notification Nos.2238(E) and 2239(E) both dated 05.09.2014 whereby the NDMC has been dissolved and reconstituted by respondent no.1 and declare that the action of the respondents in nominating respondent nos.3 to 6 as member u/s 4(1)(d) of the Act is illegal, arbitrary and unconstitutional and in violation of the provisions of NDMC Act. Further to hold and declare the nomination of respondent nos.3 to 6 in place of the petitioners is liable to be set aside and the same may be quashed and set aside.
- D) Hold and declare that the respondent nos.3 to 6 are not entitled to act or discharge any of the duties and responsibilities as member u/s 4(1)(d) of the Act as they have not been validly nominated in place of the petitioners.
- E) Prohibition, prohibiting the respondents from obstructing or in any other manner preventing the petitioners from acting and discharging their duties as members until the expiry of their term on 17.1.2016 and further from discontinuing the facilities and

perks being given to the petitioners as members until now including the office, telephone, car, residence and other facilities etc.

F) Pass any other order or direction as this Hon'ble Court may please deem fit and proper."

9. The grounds on which the impugned action is assailed by the petitioners may be summed up as under:

- (i) The show cause notice dated 30.06.2014 as well as the two impugned Notifications dated 05.09.2014 are *mala fide* and nothing but an attempt to oust the petitioners.
- (ii) The NDMC which was constituted vide Notification dated 18.01.2011 for a term of five years is entitled to continue till 17.01.2016. The Council shall continue for the entire period of five years in tune with the object of introducing Part IX-A of the Constitution of India by the 74th Amendment to the Constitution.
- (iii) By virtue of the impugned Notifications dated 05.09.2014, the petitioners alone were removed and therefore, the same amounted to partial dissolution of the Council which is not permissible under law.
- (iv) Section 398 of NDMC Act is unreasonable, unworkable and creates an ambiguous situation since it is in conflict with Section 4 of the NDMC Act.
- (v) Duration of Municipality as held in *Kishan Singh Tomar vs. Municipal Corporation of City of Ahmedabad and Ors* **(2006) 8 SCC 352**, is fixed for a term of five years and that every municipality shall continue for five years.

- (vi) The reconstitution of NDMC by Notification dated 05.09.2014 immediately after its dissolution was apparently with the sole object of removing the petitioners while continuing the other Members in the Council.
- (vii) The impugned action is politically motivated since there is a change in the political power at the Centre.
- (viii) No individual notice was served on the petitioners nor any opportunity was afforded to them before dissolving the Council.
- (ix) There is no provision under the Act to remove the nominated Members on any ground. Particularly, in the absence of any allegation against the petitioners of misconduct or failure to perform their duties, they cannot be removed.
- (x) The grounds mentioned in the Show Cause Notice dated 30.06.2014 have nothing to do with the statutory functions of NDMC under Section 11 & 12 of the NDMC Act. Therefore, there is no cause for the dissolution of the Council under Section 398 of the NDMC Act.
- (xi) The respondents 1 & 2 failed to comply with the order in W.P.(C) 5035/2014 dated 11.08.2014 directing them to communicate the decision taken pursuant to the show cause notice dated 30.06.2014. Having allowed the said order to become final, the respondents 1 & 2 cannot pass the order of dissolution of the Council without communicating the decision.
- (xii) The impugned Notifications dated 05.09.2014 were not preceded by any such decision pursuant to the show cause notice.

(xiii) The impugned Notifications dated 05.09.2014 both dissolving and reconstituting the Council were issued in a discreet manner, which itself shows that the impugned action is arbitrary and not bona fide.

10. In the counter affidavit filed on behalf of the Ministry of Home Affairs, Government of India, it is stated that the Central Government is empowered to get inspected or examined any Municipal department or office or any service or work undertaken by Council or any property belonging to the Council, issue direction to the Council and dissolve the Council after following the due procedure under Sections 394, 395 and 398 of NDMC Act, 1994 respectively. It is further stated that after considering the reply of the Council, the gazette Notification dated 05.09.2014 was issued dealing with each and every averment of the reply dated 07.07.2014 as well as the representation dated 26.08.2014 of the petitioners. It was decided to dissolve the Council under the provisions of Section 398 of NDMC Act, 1994 and it was decided to reconstitute the Council immediately keeping in view the vitality and importance of activities/functions of NDMC. It is also stated that a bare perusal of the Show Cause Notice dated 30.06.2014, reply dated 07.07.2014, Minutes of Meeting dated 05.07.2014 and more particularly representation dated 26.08.2014 shows that the respondents had taken action under Section 398 of NDMC Act. Since the petitioners were given opportunity to make their representation by giving show cause notice and their reply was taken into account the impugned notifications were in accordance with law apart from being in conformity with the order dated 11.08.2014 of this Court.

11. We have heard the learned counsel for both the parties.

12. Section 4 of the NDMC Act which provides for composition of the NDMC as amended by Act 5 of 2012 with effect from 01.03.2012 may be extracted hereunder:

“4. Composition of the Council.-(1) The Council shall consist of the following members, namely:-

(a) a Chairperson, from amongst, the officers, of the Central Government or the Government, of or above the rank of Joint Secretary to the Government of India to be appointed by the Central Government in consultation with the Chief Minister of Delhi;

(b) two members of Legislative Assembly of Delhi representing constituencies which comprise wholly or partly the New Delhi area;

(c) Five members from amongst the officers of the Central Government or the Government or their undertakings, to be nominated by the Central Government; and

(d) four members to be nominated by the Central Government in consultation with the Chief Minister of Delhi to represent from amongst lawyers, doctors, chartered accountants, engineers, business and financial consultants, intellectuals, traders, labourers, social workers including social scientists, artists, media persons, sports persons and any other class of persons as may be specified by the Central Government in this behalf;

(e) the Member of Parliament, representing constituency which comprises wholly or partly the New Delhi area.

(3) Out of the thirteen members referred to in sub-section (1), there shall be, at least,-

(a) three members who are women;

(b) two members belonging to the Scheduled Castes, out of which one member shall be from the members nominated under clause (d) of sub-section (1).

(4) The Central Government shall nominate, in consultation with the Chief Minister of Delhi, a Vice-Chairperson from amongst the members specified in clauses (b) and (d) of sub-section (1).”

13. As could be seen, the Council consists of the Government officials, Members of Legislative Assembly of Delhi, Member of Parliament representing the constituency which comprises wholly or partly the New Delhi Area apart from individuals representing various classes of persons specified in Clause (d) of Section 4(1) to be nominated by the Central Government in consultation with the Chief Minister of Delhi.

14. As per Section 5(1) of the NDMC Act the duration of the Council shall be five years from the date appointed for its first meeting unless dissolved earlier. Since NDMC was constituted by notification dated 18.01.2011, the term of the same would expire on 17.01.2016 unless dissolved earlier.

15. As per the scheme of NDMC Act, the Municipal Government of New Delhi shall vest in the Council. The obligatory functions and discretionary functions of the Council have been enumerated in detail in Sections 11 and 12 of the NDMC Act. Chapter IV of the NDMC Act, consisting of Sections 13 to 20, provides in detail the appointment and the functions of the Chairperson. Section 18 specifically provides that the entire executive

power for the purpose of carrying out the provisions of the NDMC Act or any other Act which confers any power or imposes any duty on the Council, shall vest in the Chairperson. Section 13(2) makes it clear that the Chairperson shall hold office for a term of 5 years, in the first instance, and the same may be renewed from time to time for a term not exceeding 1 year at a time. Sub-section (3) of Section 13 empowers the Central Government to remove the Chairperson from office at any time if it appears to that Government that he is incapable of performing the duties of his office or has been guilty of neglect or misconduct in the discharge of such duties which renders his removal expedient.

16. However, it is significant to note that the NDMC Act does not contain any specific provision for the tenure of the individual members of the NDMC. Section 6 of the NDMC Act merely provides for disqualification of the membership of the Council and as per sub-Section (2) of Section 8 if during 3 successive months a member of the Council is absent from all the meetings thereof without permission of the Council, then the Council may recommend to the Central Government that the seat of such member may be declared vacant. A reading of Sub-Section (1) of Section 8 further indicates that it is open to a member of the Council to resign his seat by writing under his hand addressed to the Chairperson and delivered to him upon which his seat shall become vacant.

17. Thus, it is clear that except where the member himself resigns his seat or where a recommendation is made by the Council that the seat of a member may be declared vacant on the ground of his absence from the meetings during 3 successive months, the tenure of a member is co-terminus with the Council.

18. So far as the tenure of the Council is concerned, as noticed above, Section 5(1) of the NDMC Act provides that the Council shall continue for 5 years from the date appointed for its first meeting unless sooner dissolved under Section 398. The power to dissolve a Council under Section 398 is conferred on the Central Government for the reasons stated in sub-Section (1) of Section 398. However, the proviso to Section 398(1) mandates that the Council shall be given a reasonable opportunity of being heard before its dissolution. Sections 395 and 398 may be reproduced hereunder for ready reference:

“395. Directions by Central Government. - If, whether on receipt of a report or on receipt of any information or report obtained under section 393 or section 394 or otherwise, the Central Government is of opinion, -

- (a) that any duty imposed on the Council by or under this Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner; or
- (b) that adequate financial provision has not been made for the performance of any such duty,

it may direct the Council within such period as it thinks fit, to make arrangements to its satisfaction for the proper performance of the duty, or as the case may be, to make financial provision, to its satisfaction for the performance of the duty and the Council shall comply with such directions:

Provided that unless in the opinion of the Central Government the immediate execution of such order is necessary, it shall before making any direction under this section give the Council an opportunity of showing cause why such direction should not be made.”

“398. Dissolution of the Council. - (1) If, in the opinion of the Central Government, the Council is not competent to perform, or persistently makes default –

- (a) in the performance of, the duties imposed on it by or under this Act or any other law, or exceeds or abuses its power; or

- (b) fails to deliver efficient service to the public and generally in regard to the municipal administration; or
- (c) to comply with the directions given to the Council by the Central Government in regard to matters to clauses (a) and (b), the Central Government may by an order published, together with a statement of the reasons therefore, in the Official Gazette, dissolve the Council;

Provided that the Council shall be given reasonable opportunity of being heard before its dissolution.

- (2) When the Council is dissolved by an order under sub-section (1) –
 - (a) all members shall, on the date of dissolution, vacate their offices as such members;
 - (b) during the period of dissolution of the Council, all powers and duties conferred and imposed upon the Council by or under this Act or any other law, shall be exercised and performed by such officer or authority as the Central Government may appoint in that behalf; and
 - (c) all property vested in the Council shall, until it is reconstituted, vest in the Central Government.
- (3) An order of dissolution made under this section together with a statement of the reasons therefor shall be laid before each House of Parliament and the Legislative Assembly of the National Capital Territory of Delhi as soon as may be, after it has been made.

(emphasis supplied)”

19. In the case on hand, by the impugned notification dated 05.09.2014 the Central Government chose to exercise the power conferred under Section 398(1) and accordingly dissolved the NDMC that was constituted on 18.01.2011. It is no doubt true that under the proviso to Section 398(1) it is mandatory to provide a reasonable opportunity of being heard before dissolution, however, such opportunity should be given to the Council but not to the individual members. Therefore, the grievance of the petitioners that there was no individual notice to them before dissolving the Council, on the face of it, has no statutory basis. It may be reiterated that the tenure of

the members of the Council is co-terminus with the Council and, therefore, once the Council is dissolved their tenure automatically comes to an end. Therefore, the contention of the petitioners that the impugned notification of dissolution virtually amounted to removal of the petitioners without following due process of law is baseless and without any substance. Under the scheme of the Act, the members are not entitled to individual notice either under Section 395 before making arrangements for proper performance of the duty imposed on the Council or under Section 398 for dissolving the Council. The directions if any are to be issued under Section 395 to the Council but not to the individual members.

20. In identical circumstances, the Supreme Court in *Kamal Jora vs. State of Uttarakhand* **(2013) 9 SCC 396** upheld the view expressed by the High Court of Uttarakhand in *State of Uttarakhand v. Kamal Jora (Special Appeal No.288 & 289 of 2011 dated 21.12.2011)* that Municipal Councils are juristic entities and where an opportunity of hearing is given to a Municipality, it is in sufficient compliance with the requirement of giving a reasonable opportunity of being heard as provided under the proviso to Article 243U (1) of the Constitution of India.

21. However, the question that remains for consideration is whether the notification dated 05.09.2014 dissolving the NDMC was preceded by a notice to the Council as required under the proviso to Section 398(1). According to the Central Government, the show-cause notice dated 30.06.2014 constitutes sufficient compliance with the requirement of the proviso to Section 398(1).

22. It is vehemently contended by Shri K.C. Mittal, the learned counsel appearing for the petitioners that the notice dated 30.06.2014 issued under

Section 395 of the NDMC Act under no circumstances can be treated as the show-cause notice contemplated under the proviso to Section 398(1).

23. On the other hand, the contention of the learned ASG appearing for the respondent Nos.1 and 2 is that Section 395 being the foundation for dissolution of the Council under Section 398, the impugned notification of dissolution dated 05.09.2014 cannot be held to be bad on the ground of failure to provide an opportunity of being heard in terms of the proviso to Section 398(1). It is also submitted by the learned ASG that for invoking the power under Section 398 of the NDMC Act, what is required is the subjective satisfaction of the Central Government as to the persistent default on the part of the Council in performance of its duties and since such persistent default was established from the reply received from the Council to the notice issued on 30.06.2014, the dissolution of the Council under the impugned notification cannot be found fault with on any ground whatsoever.

24. A perusal of the notice dated 30.06.2014 shows that there was a specific allegation that the Council was making default in the performance of the duties imposed upon it under the NDMC Act and failed to deliver efficient service to the public in regard to the Municipal Administration. It is evident from Section 398(1) that the allegations in the notice dated 30.06.2014 are the grounds upon which the Central Government may order dissolution of the Council. It is no doubt true that by the said notice dated 30.06.2014 the Council was called upon to show-cause as to why a direction under Section 395 of the Act should not be made and there was no specific mention about the proposed dissolution of the Council under Section 398 of the Act. However, the Council was made known of the allegations that it has been making default in the performance of the duties imposed on it and

has failed to deliver efficient service to the public in regard to the municipal administration and the Council has been called upon to submit its explanation. Therefore, on consideration of the reply received from the Council if the Central Government is satisfied that there was persistent default on the part of the Council in the performance of the duties, it appears to us that nothing precludes the Central Government from dissolving the Council.

25. It is no doubt true that the very purpose of giving a reasonable opportunity of being heard would be defeated if the action proposed is not indicated in the show cause notice. However, in the present case the Council to whom a reasonable opportunity is required to be given under the statute has understood the consequences of the notice and submitted its reply. Moreover, the Council did not raise any objection as to the order passed under Section 398 of the NDMC Act and the impugned notifications have not been challenged by the Council. That being so, the petitioners who are only the nominated members of the Council and whose tenure is co-terminus with the Council cannot challenge the dissolution of Council on any ground whatsoever.

26. For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly dismissed.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

AUGUST 07, 2015

'anb'/kks