

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2016

Coram

The Hon'ble Mr. Justice T.S.SIVAGNANAM

Writ Petition No.8450 of 2016

&

W.M.P.Nos.7517 and 7518 of 2016

1.Bose S. Ramachandran
2.D.Saravanan
3.P.Natarajan
4.N.Tamizharasan
5.K.Sardhar
6.G.DhatchinamoorthyPetitioners

Vs.

1. The Chairman
Cuddalore Municipality Council,
Cuddalore District

2.The Commissioner
Municipal Engineer
Cuddalore Municipality Council
Cuddalore DistrictRespondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari to call for the records of the impugned orders dated 29.02.2016 passed by the 1st respondent and the same was communicated by the 2nd respondent vide letter No. vide Na.Ka.No.2155/2016/C2 dated 01.03.2016 and quash the same.

For Petitioner : Mr.K.Balu

For Respondent : Mr.R.M.Muthukumar, Govt.Advocate

O R D E R

In this writ petition, the petitioners are six in number, who are all the elected councilors of the various wards in Cuddalore Municipality. By the order impugned in this writ petition, the Chairman of the respondent Municipality viz., the 1st respondent has invoked Section 30(2) of the Tamil Nadu District Municipalities Act (hereinafter referred to as the

'Act') and placed the petitioners under suspension thereby prevented them from attending three consecutive meetings of the Municipal council.

2. Mr.K.Balu, learned counsel appearing for the petitioners submitted that the order passed by the 1st respondent invoking Section 30(2) of the Act is wholly without jurisdiction, illegal and with malafide intentions. It is further submitted that the 1st respondent has no power to suspend the petitioners for three consecutive meetings without approval of the Municipal council and the order of suspension is against Section 20 of the Act. Further, it is submitted that if a elected councilor is absent for three consecutive meetings he automatically suffers a disqualification. Further, it is submitted that the impugned orders have been passed in utter violation of principles of natural justice and the petitioners have not been afforded any opportunity and the order has been passed only to stifle the petitioners from expressing the views of the general public and demanding implementation of welfare schemes in the Municipality.

3. Mr.R.M.Muthukumar, learned Additional Government Pleader appearing for the respondents has produced the original files and submitted that because of the problems created by the petitioners in the conduct of the meeting, the Chairman has taken the impugned action and had rightly invoked Section 30(2) of the Act and suspended the petitioners for three consecutive meetings. It is further submitted that if the petitioners have any grievance against the impugned proceedings, they can submit a representation and the said representation will be placed before the Council and the decision taken by the Council in such meeting shall be final. In this regard, learned counsel referred to an earlier occasion when such power was invoked and the councilors were placed under suspension by order dated 25.02.2014, and the councilors had placed representations which were considered and orders were passed. Therefore, it is submitted that the petitioners are free to submit representation to the 1st respondent, who will then place the matter in the meeting for taking decision in terms of Section 30(3) of the Act.

4. Heard the learned counsel for the parties and perused the materials placed on record.

5. Section 30 of the Act deals with when the chairman and councilor to abstain from taking part in discussion and voting. Sub section (1) of Section 30 states that no chairman or councilor shall vote on, or take part in, the discussion of any question coming up for consideration at a meeting of the council or any committee, if the question is one in which, apart from its general application to the public, he has any direct or indirect pecuniary interest by himself or his partner. Sub

Section(1) of Section (30) would have no application to the facts of this case as in the impugned order, it has not been stated that the petitioners have any direct or indirect pecuniary interest in the subject matter. Subsection (2) of Section (30) states that the chairman may prohibit any councilor from voting or taking part in the discussion of any matter in which he believes to have such interest, or he may require to absent himself during the discussion. This provision empowers the chairman to do two things viz., to prohibit any councilor from voting or taking part in discussion of any matter and such power of prohibition can be exercised if the chairman believes that such councilor has such interest. Subsection 2 further provides that if the chairman is of the belief that the councilor may have such interest, he may also direct him to be absent during the discussion. Sub section (3) of Section (30) states that such council, thereby meet the councilors against whom the chairman has taken a decision under Sub section (1) or Sub section (2) of Section 30, may challenge the decision of the chairman, who shall thereupon put the question to the meeting and the decision of the meeting shall be final. Therefore, for a person to invoke the procedure under Sub section (3) of Section 30, he/she should have been visited with an order either under Section 30 (1) or 30 (2). In the instant case, no doubt it is true that the 1st respondent has referred to Section 30(2) in the impugned order as the source of power. However, the reason appears to be not clearly disclosed in the impugned proceedings, but the reason does not relates to a matter in which there is an allegation that the petitioners have either a direct or indirect interest in the subject matter. Only under such circumstances, the chairman of the Municipality could either invoke his power under Sub section (1) or Sub section (2). Even while invoking such power, the chairman is not empowered to prevent the councilor from attending three consecutive meetings and the language of the statute pertains to the discussion on of "any matter" which obviously can refer to a subject or a group of subjects and this power cannot be used to prevent a councilor from attending three consecutive meetings. Further more, Sub section (2) of Section 30 requires the chairman to exercise the power if he believes that the councilor has such interest either direct or indirect pecuniary interest etc., Therefore, the satisfaction of the chairman is necessary for invoking such power and such decision should prima facie be found in the order passed invoking Sub section (2) of Section 30. Admittedly, there is no such allegation made against the petitioners that they have any direct or indirect pecuniary interest by themselves or by their partners. Thus the impugned proceedings issued invoking Sub section (2) of Section 30 is wholly without jurisdiction. Reference made by the learned Additional Government Pleader to the past practice is of little avail. Since at that point of time the councilors did not chose to challenge the power of the chairman to invoke Section 30(2)

on similar lines. Merely because the earlier proceedings were not put to challenge, it cannot be a ground to refuse to consider the challenge to the impugned proceedings at this juncture on the grounds raised. Further more, unless and until the contingencies required under Sub Section (1) and (2) of Section 30 are met and the chairman is satisfied that the councilor may have such interest and passes an order then alone such councilor can challenge the decision of the chairman in terms of Sub section (3) of Section 30. That apart, the statute does not empower the chairman to pass an order by virtue of which the elected member would automatically loose his elected office. There is no provision under the Act empowering the chairman to pass an order such as the one which are impugned in this writ petition. These observations should not be misunderstood to state that the elected councilors can take law into themselves and yet the chairman of the Municipality should be a mute spectator. If there is a law and order problem it empowers the chairman to evict such member in the manner known to law. The observations contained in this order are made in the context of a challenge to the impugned proceedings on the ground of lack of jurisdiction as it has been passed by reference to Section 30(2) of the Act. It is needless to say as elected councilors they not only owe a duty to themselves to act in the manner befitting of an elected representative but owe a larger duty to the electorate which elected them with the fond hope and belief that they will ensure that their living standards are made better and their lawful entitlements reach them at the appropriate time.

6. In the light of the above discussion, the writ petition is allowed and the impugned proceedings are quashed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman
Cuddalore Municipality Council,
Cuddalore District

2.The Commissioner
Municipal Engineer
Cuddalore Municipality Council
Cuddalore District

+1cc to Mr.K.Balu, Advocate, S.R.No.14440

+1cc to Mr.R.M.Muthukumar, Advocate, S.R.No.14316

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&
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