



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 08.02.2021

Pronounced on 24.03.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WP (MD) No. 5978 of 2020

and WMP (MD) Nos. 5176 & 5177 of 2020

R.Selvam

... Petitioner/Petitioner

Vs.

1. The Secretary to Government,
Housing and Urban Development
(UD4(2) Dept,
Fort St. George, Chennai-2.

2. The Director of Town & Country
Planning, Ezhilagam, Chennai.

3. Mathimaran, Member Secretary,
Local Planning Authority,
Corporation Office Complex,
Anna Maligai, Madurai - 2.

... Respondents/Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent in proceedings G.O.Ms No.60, Housing and Urban Development UD 4(2) Dept Dt 17.3.2020 and quash the same and consequently directing the 1st respondent to allow the petitioner to continue as a member of Local Planning Authority, Madurai.

For Petitioner : Mr.Veerakathiravan, Senior Counsel
for Mr.S.Ramsundarvijayaraj
for M/s.Veera Associates

For Respondents : Mr.Sricharan Rangarajan
Additional Advocate General
assisted by Mr.B.Bhagawathy
Government Advocate

ORDER

The petitioner was appointed as a member of the Madurai Local Planning Authority vide G.O (Ms) No.141, Housing and Urban Development [UD4(2)] Department dated 17.06.2013. The petitioner continued to be a Member till his removal from the said post by the

<https://hcservices.ecourts.gov.in/hcservices/>



impugned G.O (Ms)No.68, Housing and Urban Development [UD4(2)] Department dated 17.03.2020. The removal is questioned in this writ petition. The petitioner wants this Court to direct the Government to allow him to continue as a member of the Madurai Local Planning Authority.

WEB COPY

2. In the affidavit filed in support of the writ petition, the petitioner claimed that he is a social activist and considering his track record, he was appointed in honorary capacity. No tenure was fixed. According to the petitioner, he came to know in January 2020 that a number of applications seeking approval from the local planning authority have been kept pending. When the petitioner raised this issue, friction arose between one Mathimaran, the Member-Secretary on the one hand and the petitioner on the other. The petitioner also submitted a written complaint in this regard on 24.01.2020 protesting the indifference on the part of the Member Secretary. It is in this background, the impugned order of removal came to be passed by the Government.

3. The respondents have filed a detailed counter affidavit. The allegations made by the petitioner have been denied. It is also contended that the petitioner can only continue as Member during the pleasure of the appointing authority. The Government received a recommendation for removal of the petitioner and for appointing another person in his place. The proposal was considered and found to be in order and that is how the impugned G.O came to be issued. The respondents have sought dismissal of the writ petition.

4. According to the learned Senior Counsel appearing for the petitioner, the removal smacks of malafides and is arbitrary. In as much as the petitioner was not put on notice, the principles of natural justice have been grossly violated. The respondents ought to have conducted an enquiry, because, by such uncereemonious sacking, a stigma has been cast on the petitioner's name and reputation.

5. I have carefully considered the rival contentions and went through the materials on record. The Tamil Nadu Town and Country Planning Act, 1971 was enacted for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith. Chapter III of the said statute provides for declaration of planning areas and constitution of planning authorities. Section 11 of the Act deals with constitution of regional planning authority and local planning authority. Section 11 (3) of the Act is relevant to the case on hand and it reads as follows :

"11. Constitution of town and country planning authorities.-

1)...

2)...



WEB COPY

3)The local planning authority constituted under sub-section (1) other than the local authority which has been declared as the local planning authority under the said sub-section shall consist of-

(a)the Chairman to be appointed by the Government;

(b)the representatives of local authorities as specified below:-

(i)in cases where there is only one local authority functioning in a local planning area and such local authority has not been declared as the local planning authority, two representatives nominated by that local authority and the Chief Executive Officer of that local authority;

(ii)in other cases where there are two or more local authorities functioning in a local planning area, such persons not exceeding four in number who are members of the local authorities functioning in the whole or part of the area, appointed by the Government;

(c)three other persons to be appointed by the Government of whom one shall be a member of the State Legislature representing a constituency which consist of, or comprises in, or relates to, the local area; and

(d)a Member-Secretary to be appointed by the Government"

6.The petitioner herein was appointed on 17.06.2013 as Member of the Local Planning Authority, Madurai by the Government in exercise of its powers conferred by clause (c) of sub-section 3 of Section 11 of the Act. It is true that G.O (Ms) No.141, Housing and Urban Development [UD4(2)] Department, dated 17.06.2013 does not specify the petitioner's tenure. From this, one cannot infer that the petitioner can hold the said post in perpetuity. It is not the case of the petitioner that applications were invited from the members of the general public or that any special qualification was prescribed for the said post or that the petitioner was appointed through a selection process. It was purely a political appointment. Hence, as rightly contended by the learned Additional Advocate General Mr.Sricharan Rangarajan, the petitioner can only hold the said post during the pleasure of the appointing authority. Section 21 of the General Clauses Act, 1897 reads as follows :

"21.Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.- Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."



7.As per Section 21 of the General Clauses Act, 1897 the power of appointment would also include within it the power to remove. That is why, G.O (Ms) No.141 dated 17.03.2020 refers to the very same provision, namely, Section 11(3)(c) of the Tamil Nadu Town and Country Planning Act, 1971. The question is whether the petitioner ought to have been heard or put on notice before the passing of the impugned G.O. The answer is clearly in the negative.

8.The learned Additional Advocate General would draw my attention to a catena of decisions in this regard. A quick reference to them would be in order. The Hon'ble Delhi High Court in **M.L.Sondhi vs. Union of India (MANU/DE/0147/2002)** held that the rules of natural justice do not require that an opportunity to be heard must be given to a nominee whose removal may be as arbitrary and unilateral as his appointment. Where the dispute is essentially political in nature, the court should steer clear from its vicissitudes, vagaries and fluctuating fortunes.

9.The Hon'ble Supreme Court in the decision reported in **(1993) 2 SCC 242 (Om Narain Agarwal and others vs. Nagar Palika, Shahjahanpur and others)** held that where appointments to a statutory body initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. Even if it is provided that the appointee shall hold the office during the pleasure of the Government, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of the principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal puts any stigma on the performance or character of the nominated members. The entire exercise is done purely on political considerations.

10.Though the learned Additional Advocate General subjected the entire issue projected before me to a sophisticated legal analysis, his submission predicated on plain commonsense provided an easy and quick solution. Quoting a biblical saying "for all who draw the sword will die by the sword", he argued that one who enters through backdoor must also exit likewise. The petitioner who was appointed on political considerations has been forced to leave as the political ambience ceased to be conducive. He should not now complain. Rather he should look for greener pastures. Certain battles are rather fought at the hustings than in court halls.



11. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

WEB COPY

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary to Government,
Housing and Urban Development
(UD4(2) Dept,
Fort St. George, Chennai-2.
2. The Director of Town & Country
Planning, Ezhilagam, Chennai.

WP(MD)No.5978 of 2020

and

WMP(MD)Nos.5176 & 5177 of 2020

24.03.2021

ES(CO)

TR(24.03.2021) 5P 3C