



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2022

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (MD) .No.5694 of 2022

and

W.M.P. (MD) .No.4549 of 2022

A.Prakash

... Petitioner

Vs.

The Commissioner,
Thanjavur City Municipal Corporation,
Gandhiji Road,
Thanjavur - 613 001.

...Respondent

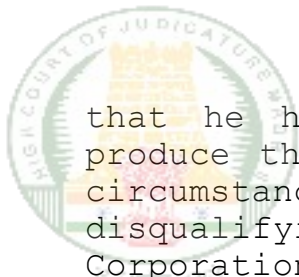
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent pertaining to the impugned order bearing Na.Ka.No.7276/2021/MCA1 dated 25.03.2022 issued by the respondent and quash the same.

For Petitioner	:	Mr.AR.L.Sundaresan, Senior Counsel for Mr.J.Anandkumar
For Respondent	:	Mr.N.Dilip Kumar, Standing Counsel.

ORDER

This Writ Petition has been filed challenging the order dated 25.03.2022 passed under Section 59(1)(e) of the Coimbatore City Municipal Corporation Act disqualifying the petitioner as a Councillor of Thanjavur City Municipal Corporation.

2. The petitioner has challenged the impugned order on the ground of violation of principles of natural justice. According to him, he was not granted sufficient opportunity by the respondent to raise all objections available to him under law. According to the petitioner, the request for adjournment was not granted by the respondent. It is the contention of the petitioner that a specific request was made by the petitioner requesting the respondent to postpone the hearing on the ground that the petitioner needs to provide documentary evidence and it was not acceded to by the respondent. According to the petitioner, on receipt of the notice for personal hearing, he sought for an adjournment on the ground



that he has to collect the necessary documents and thereafter, produce the same before the respondent. Under the aforementioned circumstances, the petitioner has challenged the impugned order disqualifying him as a Councillor in the Thanjavur Municipal Corporation.

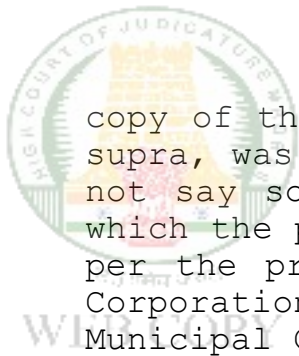
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3. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner and Mr.N.Dilip Kumar, learned Standing Counsel, who accepts notice on behalf of the respondent Corporation.

4. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner drew the attention of this Court to the documents filed along with the Writ Petition. In particular, he referred to the impugned order and would submit that based on a statement given by the petitioner's brother that the petitioner is having personal interest in the contract awarded to the petitioner's brother, the impugned order has been passed disqualifying the petitioner as a Councillor. Learned Senior Counsel for the petitioner would further submit that without affording any opportunity of hearing with regard to the statement made by the petitioner's brother, the impugned order has been passed against the petitioner disqualifying him as a Councillor. He would also submit that the copy of the statement made by the petitioner's brother was also not furnished to the petitioner by the respondent.

5. However, Mr.N.Dilip Kumar, learned Standing Counsel for the respondent Corporation would submit that there is an alternate statutory appellate remedy available to the petitioner as per the provisions of Section 62 of the Coimbatore City Municipal Corporation Act, which enables him to approach the Sub Court, if aggrieved by the impugned order. He would also submit that as per the provisions of Section 62 (3) of the said Act, once the statutory appeal is filed, pending any final decision by the Sub Ordinate Judge on the statutory appeal, the Councillor shall be entitled to act as if he was not disqualified. He would also submit that there is no stigma cast upon the petitioner and therefore, no prejudice would be caused to him. He would also submit that notice of personal hearing was issued to the petitioner calling upon him to come for personal hearing, but the petitioner failed to utilize the same and instead, has sought for further adjournment by giving flimsy reasons, which were not acceptable to the respondent Corporation. According to him, the respondent has rightly rejected the request made by the petitioner for further adjournment and has rightly passed the impugned order after giving due consideration to the objections raised by the petitioner.

6. Admittedly, only based upon the statement made by the petitioner's brother that the petitioner is having interest in the contracts of the Corporation, show cause notice was issued against the petitioner which culminated in the impugned order disqualifying the petitioner as a Councillor. As seen from the impugned order, a



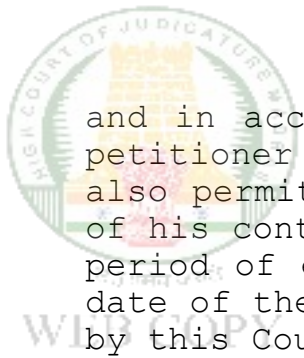
copy of the statement made by the petitioner's brother, referred to supra, was not furnished to the petitioner. The impugned order does not say so. The impugned order is a disqualification order under which the petitioner has been disqualified to act as a Councillor as per the provisions of Section 59 of the Coimbatore City Municipal Corporation Act, 1981, which also applies to Thanjavur City Municipal Corporation.

7. Being a disqualification order, this Court is of the considered view that the stigma will be cast upon the petitioner, if after holding a proper enquiry, it is found that the petitioner is an innocent person. Though the learned Standing Counsel for the respondent Corporation would vehemently argue that Section 62(3) of the Coimbatore City Municipal Corporation Act, 1981 protects the interest of the petitioner by stating the pendency of the statutory appeal before the Sub Ordinate Judge, the Councillor shall be entitled to act as if he were not disqualified, this Court is of the considered view that as an elected Councillor, though the statute provides protection as per the provisions of Section 62(3) of the aforesaid Act, the said protection is only to protect the personal interest of the petitioner which the public at large may not be aware of. As a disqualified person, certainly, the petitioner's image in the public would have been damaged. Therefore, this Court is of the considered view that unless and until the petitioner was afforded proper opportunity of hearing by the respondent, the question as to whether the petitioner is innocent or guilty cannot be adjudicated.

8. In the case on hand, as seen from the impugned order as observed earlier, the petitioner has sought for ten days' time to come for personal hearing and submit documentary evidences in support of his contentions, which was rejected by the respondent. He has not asked for a long period for personal enquiry and for submission of documents. Only 10 days' time has been sought by the petitioner, which, in the considered view of this Court, cannot be treated as inordinate delay or a case of protraction of proceedings. Further, as observed earlier, only based on the statement given by the petitioner's brother, the impugned order has been passed.

9. This Court, after giving due consideration to the aforementioned factors, is of the considered view that the respondent has violated the principles of natural justice and therefore, the impugned order has to be necessarily quashed and the matter has to be remanded back to the respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner including granting him the right of personal hearing within a time frame to be fixed by this Court.

10. For the foregoing reasons, the impugned order dated 25.03.2022 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration on merits



and in accordance with law, after affording a fair hearing to the petitioner including granting him the right of personal hearing and also permitting him to produce all documentary evidences in support of his contentions. The respondent shall pass final orders within a period of eight (8) weeks from the date of the first hearing. The date of the first hearing before the respondent Corporation is fixed by this Court on 06.04.2022.

11. With the aforesaid direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Lm

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:

The Commissioner,
Thanjavur City Municipal Corporation,
Gandhiji Road,
Thanjavur - 613 001.

+1 CC to M/s.J.ANANTHAKUMAR, Advocate (SR-15483[F] dated 30/03/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-15852[F] dated 31/03/2022)

W.P. (MD) .No.5694 of 2022
30.03.2022

RD(04.04.2022) 4P 4C