



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.7788 of 2022

W.M.P. (MD) .No.5849 of 2022

WEB COPY

S.Raja Mohamed

... Petitioner

Vs

1.The District Collector,
Theni, Theni District.

2.The Commissioner,
Periyakulam Municipality,
Periyakulam,
Theni District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the notice issued by the 2nd respondent in his proceedings in Na.Ka.No.565/2022/F1, dated 12.04.2022 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel for
M/s.Ajmal Associates

For Respondents : Mrs.S.Jeyapriya, for R1
Government Advocate
Mr.N.Dilip Kumar, for R2
Standing Counsel

ORDER

This writ petition has been filed challenging the impugned notice, dated 12.04.2022, issued under Section 49 of the Tamil Nadu District Municipalities Act, 1920, seeking for disqualification of the petitioner as a Vice Chairman of the Municipality on the ground that he has acquired interest in a contract involving the Municipality prior to his election, which is still subsisting.

2. The petitioner has challenged the impugned show cause notice on the following grounds:

- a) The second respondent has issued the notice without jurisdiction and without authority under law.
- b) According to the petitioner, having become a *functus officio* after the declaration of the results and the notification of the same, the second respondent is not empowered to seek for disqualification of the petitioner as he does not have power to do so under the statute.
- c) It is also challenged on the ground that the second respondent has pre-determined the issue by declaring in the impugned notice



that the petitioner is disqualified as a Vice Chairman, though the petitioner has been only called for enquiry and to submit his explanation under the impugned notice.

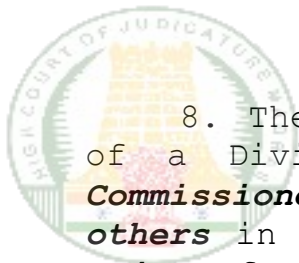
3. Heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioner, Mrs.S.Jeyapriya, learned Government Advocate, who accepts notice on behalf of the first respondent and Mr.N.Dilip Kumar, learned Standing Counsel, who accepts notice on behalf of the second respondent.

4. The learned Senior Counsel for the petitioner drew the attention of this Court to Section 49 of the Tamil Nadu District Municipalities Act, 1920 and in particular, he would refer to Section 49(2)(c) of the said Act and the proviso contained therein and would submit that the said provision will apply only to a case prior to the election, when the petitioner submits his nomination and will not apply to a post-election case.

5. The learned Senior Counsel for the petitioner also drew the attention of this Court to the impugned notice as well as the decision of the Honourable Supreme Court in the case of **Siemens Ltd. Vs. State of Maharashtra and others** reported in **(2006) 12 Supreme Court Cases 33** and would submit that the impugned notice squarely falls within the proposition laid down in the said decision, under which, it has been held that if the show cause notice has pre-determined the issue, it can be challenged by way of a writ petition.

6. It is also submitted by the learned Senior Counsel for the petitioner that if at all the respondents are aggrieved by the election of the petitioner, they can challenge the same only by filing an Election Petition under Section 51-A of the Tamil Nadu District Municipalities Act, 1920. He also drew the attention of this Court to the said Section.

7. Per contra, Mr.N.Dilip Kumar, learned Standing Counsel appearing for the second respondent would rely upon Section 50 of the very same Act and in particular, he referred to Section 50 (1) (d) of the Act and would submit that only in accordance with the said provision, the impugned communication has been sent to the petitioner, though the Section has been wrongly mentioned in the communication. He would submit that as per the aforementioned provision, if the petitioner has acquired any interest in any subsisting contract made with or work being done for the Council, he is liable for disqualification. He also drew the attention of this Court to Section 51 of the Act and would submit that if the petitioner is aggrieved by the disqualification proceedings, he ought to have filed an application under Section 51 of the said Act, before the District Judge concerned. According to him, instead of approaching the concerned District Judge, he has filed this writ petition, which is not maintainable.



8. The learned Standing Counsel also relies upon the judgment of a Division Bench of this Court made in the case of ***The Commissioner, Avadi Municipality, Avadi, Chennai Vs. U.Geetha and others*** in ***W.A.No.1040 of 2013*** and the decision of a learned Single Judge of this Court in the case of ***S.Indumathi Vs. The President, Selection Grade Town Panchayat, Mukkudal, Tirunelveli District and another***, dated 23.04.2009. According to him, as per the said decisions, there is no statutory obligation on the part of the Municipality to file a petition for deciding the question of disqualification of a Councillor. According to him, as per the said decisions, the Councillor would suffer disqualification forthwith, once a communication has been sent under Section 50 of the Act. The issue raised by the respective counsels has to be examined at length.

9. This Court is of the considered view, after hearing the submissions made by the respective counsels, that the issue raised by the respective Counsels has to be examined at length, since the matter is listed only for admission today. This Court suggested to the Standing Counsel as to whether there is any possibility to get instructions as to whether the impugned notice can be withdrawn or not. After a short pass over, the learned Standing Counsel for the second respondent obtained instructions from his client to withdraw the impugned notice. However, he sought for liberty to the respondents to initiate fresh proceedings for disqualification as against the petitioner under the provisions of Tamil Nadu Municipalities Act, which was vehemently opposed by the learned Senior Counsel in view of the grounds raised by the petitioner in this writ petition, which has been stated supra. Since it has been vehemently opposed, the issue raised by the respective Counsel are left open by this Court for the respective parties to agitate the same as and when the plea arises and as and when any fresh proceedings are initiated before this Court at later stage.

10. In view of the withdrawal of the impugned notice by the second respondent, nothing survives for further adjudication in this writ petition. After recording the submissions made by the learned Standing Counsel for the second respondent, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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.

WEB COPY

To

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Theni, Theni District.

2.The Commissioner,
Periyakulam Municipality,
Periyakulam,
Theni District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-20749[F] dated 25/04/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-20805[F] dated 25/04/2022)

+1 CC to M/s.SPL.GP (SR-20902[F] dated 25/04/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-20997[F] dated 25/04/2022)

W.P. (MD)No.7788 of 2022

Date:22.04.2022

SA(11.05.2022) 4P 7C