



W.P.(MD)Nos.24078 & 23981 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.11.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD)Nos.24078 and 23981 of 2022

and

W.M.P.(MD)Nos.18184 and 18762 of 2022 in W.P.(MD)No.24078 of 2022

and

W.M.P.(MD)Nos.18069 and 18761 of 2022 in W.P.(MD)No.23981 of 2022

W.P.(MD)No.24078 of 2022:-

P.Jaganathan

.. Petitioner

Versus

1.Tirunelveli Corporation,
Rep. by its Commissioner,
Tirunelveli.

2.The Assistant Commissioner (Administration),
Tirunelveli Corporation,
Tirunelveli.

3.S.M.Saravanan,
Mayor,
Tirunelveli Corporation,
Tirunelveli.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondents from transacting the agenda to permit the petitioner to continue as Member of Tirunelveli Corporation Council or not in the meeting proposed to be held on 20.10.2022 till the outcome of adjudication under Section 62 of Coimbatore City Municipal Corporation Act.



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For Petitioner : Mr.C.Mani Shankar
Senior Counsel
for Mr.M.Saravanan

For Respondents 1 and 2 : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.A.Sivanupandian
Standing Counsel

W.P.(MD)No.23981 of 2022:-

M.Muthulakshmi

.. Petitioner

Versus

1.The Tirunelveli City Municipal Corporation Council,
Through its Mayor,
Tirunelveli City Municipal Corporation,
Tirunelveli.

2.The Mayor,
Tirunelveli City Municipal Corporation,
Tirunelveli.

3.The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.

4.The Assistant Commissioner
(Administration),
Tirunelveli City Municipal Corporation,
Tirunelveli.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the impugned Agenda Resolution No.10 of the first respondent, dated 20.10.2022, and quash the same as illegal.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for Mr.S.Angappan



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W.P.(MD)Nos.24078 & 23981 of 2022

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.A.Sivanupandian
Standing Counsel

COMMON ORDER

W.P.(MD)No.24078 of 2022 is filed by one P.Jaganathan seeking issuance of a Writ of Mandamus, forbearing the respondents from transacting the Agenda to permit him to continue as a Member of Tirunelveli Corporation Council or not in the meeting proposed to be held on 20.10.2022 till the outcome of the adjudication under Section 62 of the Coimbatore City Municipal Corporation Act, 1981.

2. W.P.(MD)No.23981 of 2022 is filed by one M.Muthulakshmi, seeking issuance of a Writ of Certiorari, to quash the impugned Agenda Resolution No.10 of the first respondent, dated 20.10.2022, as illegal.

3. It is alleged that the Petitioner in W.P.(MD)No.24078 of 2022, namely, P.Jagannathan, Ward Member, 30th Ward, Thachanallur Zone, Tirunelveli Municipal Corporation and the Petitioner in the other Writ Petition, namely, M.Muthulakshmi, Ward Member, Ward No.2 of the above said Corporation have not participated in three consecutive meetings of the Tirunelveli Corporation and hence, they have to be disqualified, which subject



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has been placed as Agenda Resolution No.10 of the first respondent, dated 20.10.2022 of the Corporation. As per Section 59(1) of the Coimbatore City Municipal Corporation Act, 1981, which is also applicable to the Tirunelveli City Municipal Corporation, if any member failed to participate in three consecutive meetings, they will be disqualified from the posts they held and the said subject has been placed in the Tirunelveli Municipal Council Meeting on 20.10.2022.

4. The learned Senior Counsel appearing for the petitioner in W.P. (MD)No.23981 of 2022 submitted that the Petitioner - M.Muthulakshmi has undergone surgery on 11.08.2022 for her uterus tumor and the Doctor advised her to take bed rest and hence, she could not attend the three meetings consecutively and there is no negligence on the part of the petitioner and the same was not considered by the authorities.

5. The learned Senior Counsel appearing for the petitioner in W.P. (MD)No.24078 of 2022 submitted that the Petitioner - P.Jagannathan has already undergone bypass surgery in the year 2020 at Kaveri Hospital, Chennai and he is in post-surgical treatment and the Doctor advised him to avoid frequent travelling and to take rest. In the said circumstances, the petitioner was served with a notice in the month of August, 2022 for the



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meeting, dated 24.08.2022. In the meanwhile, on 20.08.2022, he had developed severe chest pain and after taking preliminary tests, the petitioner has been asked to remain under observation for few days. Hence, he could not attend the meeting of the Council held on 24.08.2022 and the said fact was also intimated to the Commissioner. While so, the second respondent has sent a notice dated 15.09.2022, referring to Section 59(1)(l) of the Coimbatore City Municipal Corporation Act, 1981, which is also applicable to the Tirunelveli City Municipal Corporation and informed that if any Member failed to participate in the three consecutive meetings, he will be disqualified. Further, the second respondent reminded that the petitioner failed to attend the Council Meeting held on 29.07.2022 and 24.08.2022 and called upon him to participate in the next Council Meeting. In the said notice, the date and time of the proposed meeting of the Council for the month of September 2022 was not at all indicated. After enquiry, he came to know that the meeting would likely to be held on 21.09.2022. The petitioner was present at Corporation Office on 21.09.2022. However, due to absence of the Commissioner, the meeting was not conducted on 21.09.2022 and the said fact was also reflected in the local daily newspapers on 22.09.2022. Immediately, on 26.09.2022 the petitioner sent a letter, explaining the facts to the Commissioner and the Assistant Commissioner, Tirunelveli Corporation and requested them to send a notice for future meetings of the Council. While the matter stood thus, the petitioner



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received a communication dated 13.10.2022, alleging that a Meeting of the Council was conducted on 21.09.2022 and he remained absent for the meetings held on 29.07.2022, 24.08.2022 and 21.09.2022. By referring to Section 59(1)(l) of the Coimbatore City Municipal Corporation Act, 1981, which is applicable to the Tirunelveli City Municipal Corporation also, the Mayor informed that due to failure to attend three consecutive meetings, the petitioner has been disqualified.

6. The Assistant Commissioner (Personnel), Tirunelveli Corporation, filed counter affidavits and denied the averments made in the Writ Petitions. The learned Additional Advocate General submitted that as the petitioners are Councilors/Public Servants, they must participate in the Council Meeting without absence. However, they failed to attend three consecutive meetings. As per Section 59(1)(l) of the Coimbatore City Municipal Corporation Act, 1981, which is applicable to the Tirunelveli City Municipal Corporation also, if any Councilor, who failed to attend the Meeting of the Council for the period of three consecutive months, he/she would be disqualified. The said provision reads as under:-

"59. Disqualification of Councilors:-

(1) Subject to the provisions of Section 62, a Councilor or a person referred to in clause (b) and (c) of subsection (2) of section 5 shall cease to hold office as



such if he -

.....

(l) fails to attend the meetings of the Council for a period of three consecutive months beginning from the date of the commencement of his term of office or of the last meeting he attended, or of his restoration to office as Councillor under sub-section (4), as the case may be:

Provided that no meeting which a Councillor does not attend shall be counted against him under this clause, if due notice of that meeting was not given to him:

Provided further that no meeting that was adjourned for want of quorum shall be counted against him under this sub-section.

Explanation. - A meeting held under sub-rule (2) of rule 3 of Schedule I or rule 6 of that Schedule shall not be deemed to be a meeting within the meaning of this clause;

(2)

(3)

(4) In the case of a person who has ceased to be a Councillor in consequence of failure to attend meetings, the matter shall be reported by the Commissioner to the Council at its next ordinary meeting and the Council may at that meeting restore such person to office."

7. The disqualification under Section 59(1)(l) of the Coimbatore City Municipal Corporation Act, 1981, is an automatic and it would hold good, unless it is set aside by the competent Court under Section 62 of the said Act.



8. The learned Additional Advocate General further submitted that on 21.09.2022 the Council Meeting was held and presided over by the Mayor. In the aforesaid Meeting, Deputy Mayor was present and 44 Ward Councilors were participated and resolutions were passed. As per Section 59(4) of the said Act, after intimation of the factum of disqualification in writing by the Commissioner, the Council has power to restore such person to the Office. Hence, Agenda No.10 was proposed in the Meeting to be held on 20.10.2022. Without considering these aspects and also without waiting for the decision of the Council, the petitioners filed the present Writ Petitions. Hence, the Writ Petitions are liable to be dismissed on the ground of premature.

9. The learned Additional Advocate General also submitted that Section 62 of the Act provides for adjudication mechanism in case of dispute arose in respect of disqualification due to failure to attend three consecutive meetings. The said provision reads as under:-

"62. Decision of questions of disqualification of Councillors.-

(1) Whenever it is alleged that any person who has been elected or co-opted as a Councillor is disqualified under Section 59, Section 60, Section 61 or Section 84 and such person does not admit the allegation or whenever any Councillor is himself in doubt whether or not he has become so disqualified for office, such



Councillor or any other Councillor may and the Commissioner, at the request of the Council or on a direction from the Government, shall apply to the Subordinate Judge having jurisdiction over the City or if no Subordinate Judge having jurisdiction over the city or if no Subordinate Judge has such jurisdiction, to the District Munsif having such jurisdiction.

(2) The said Subordinate Judge or District Munsif, after making such inquiry as he deems necessary shall determine whether or not such person is disqualified under Section 59, Section 60, Section 61 or Section 84.

(3) Pending the decision under sub-section (2), the Councillor shall be entitled to act as if he were not disqualified.

....."

10. As per the above said provision, the Subordinate Judge or District Munsif is the competent authority to determine the issue regarding disqualification of a Councillor under Section 59 of the said Act. Therefore, the petitioners ought to have approached the competent Civil Court to determine the issue involved in the present Writ Petitions.

11. When the matter was taken up for hearing on 19.10.2022, this Court directed the first respondent to keep the impugned Agenda Resolution No.10, dated 20.10.2022, in abeyance till the outcome of the writ petitions on the ground that no notice has been served on the petitioners properly as per the



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rules. Now, the learned Standing Counsel produced documents to show that notices have been received by the husband and wife of the respective petitioners/Councilors, which has been disputed by the petitioners.

12. After filing of the present Writ Petitions, the petitioners have approached the Additional Subordinate Court, Tirunelveli and filed suits in O.S.Nos.360 and 376 of 2022 and the same have to be adjudicated by letting in evidence and no summon has been served on the respondents in the said suits. After receipt of summons, the respondents should file their written statements within the time limit prescribed under the Code of Civil Procedure. After filing the written statements, the Court has to frame the issues within a period of four weeks and since the matter relates to disqualification of the elected members and the term of the petitioners is five years, the suits have to be listed for trial forthwith and the same cannot be kept pending like an ordinary suit and the Court has to look into all the aspects and try to dispose of the matter after conducting trial, on or before **31.03.2023**.

13. It is made clear that the learned Additional Subordinate Judge, Tirunelveli, shall dispose of the suits in O.S.Nos.360 and 376 of 2022 without being influenced by any of the observations made in this order. It is also made clear that the parties shall not take unnecessary adjournments during the time



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of trial. Both the parties are directed to co-operate with the learned Additional Subordinate Judge, Tirunelveli, in disposing of the suits within the aforesaid time limit prescribed by this Court.

14. It is represented that both the suits are listed on different dates for hearing, *i.e.*, on 21.11.2022 and 09.12.2022. Therefore, the respondents are at liberty to file an advance hearing petition before the learned Additional Subordinate Judge, Tirunelveli, for simultaneous trial, since the issues involved in both the matters are one and the same.

15. These Writ Petitions stand disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No
smn2

09.11.2022

To

1.The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

2.The Assistant Commissioner (Administration),
Tirunelveli Corporation,
Tirunelveli.

3.The Tirunelveli City Municipal Corporation Council,
Tirunelveli City Municipal Corporation,
Tirunelveli.



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4.The Mayor,
Tirunelveli City Municipal Corporation,
Tirunelveli.

Copy to:-

The Additional Subordinate Judge,
Tirunelveli.



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V.BHAVANI SUBBAROYAN, J.

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Common order made in
W.P.(MD)Nos.24078 and 23981 of 2022

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