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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 08th March, 2022

+ W.P.(C) 11576/2021& CM APPL. 35710/2021

SH VIJAY KUMAR & ORS. Petitioner

versus

EAST DELHI MUNICIPAL CORPORATION
& ANR.

.... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rahul Mehra Senior Advocate with Mr. Dhairya Gupta and Mr. Chaitanya Gosain Advocates.

For the Respondents: Ms. Mini Pushkarna, Standing Counsel, East DMC with Ms. Khushboo Nahar and Ms. Latika Malhotra, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioners, the elected/nominated councillors of Respondent No.1/ East Delhi Municipal Corporation, seek quashing of orders dated 27.09.2021 and 30.09.2021 passed by the Respondent No. 2/the Mayor of East Delhi Municipal Corporation whereby, petitioners have been suspended from attending the meetings of Respondent No.1 for a period of 15 days under Section 79 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the "Act") on the



ground of alleged misconduct.

2. Learned senior counsel for the petitioner submits that the impugned order is wholly without jurisdiction as the same has been passed purportedly in exercise of power under Section 79(3) of the Act, without issuing any withdrawal order to the petitioners under Section 79(2) of the Act, which is a prerequisite for issuance of an order under 79(3) of the Act.

3. He submits that even otherwise, the disputed allegations of misconduct on part of the petitioners, as stated in the impugned order, can at best attract punishment only under Section 79(2) of the Act and Respondent No. 2 could not have ordered suspension of the petitioners at the first instance. He, therefore, submits that the impugned order, being contrary to the provisions of the Act, is illegal and is liable to be quashed.

4. Learned counsel appearing for the parties inform that the period of 15 days expired on 12.10.2021 and accordingly the order of suspension has worked itself out as the period is over. In view of the same the merits of the order of suspension is no longer required to be adverted to. However, the question that still remains for consideration is with regard to the interpretation with Section 79 Act.

5. Learned Senior Counsel for the petitioner submits that under



Section 79 of the Act, the Mayor can suspend a councillor for 15 days, if the councillor engages in grossly disorderly in two meetings within 15 days of each other and has been asked to withdraw from the remainder of the meeting each time.

6. Learned Senior Counsel further submits that suspension for a maximum period of 15 days would have to be mandatorily preceded by the councillor being asked to withdraw from two successive meetings within 15 days of each other. He submits that in the instant case the impugned order of suspension was passed without complying with the requirements of Section 79 of the Act.

7. An affidavit dated 25.10.2021 was filed by the Respondent Corporation alleging that there was disruption caused by the Petitioners in the meetings of the House of the EDMC on 27.07.2021, 27.08.2021 and 27.09.2021. It is stated that on 27.09.2021 the Petitioners had been suspended from the House for a period of 15 days.

8. The affidavit further states that the records had been perused and that the Petitioners had not been asked to withdraw from two successive meetings within 15 days of each other as envisaged in Section 79(2) of the Act, It is stated that the suspension order was justified and had been rightly issued by the Mayor but the procedure as envisaged in Section 79 of the Act has not been followed.



9. Additional affidavit has been filed on 28.02.2022 by the Mayor wherein it is contended that the meeting of the Corporation are normally held once in a month and as such the period as stipulated in Section 79 of the Act providing with regard to the time period i.e. “*within 15 days*” is to be interpreted as two successive meetings which are held normally once in a month.

10. It is further contended that there are situations where Mayor orders the Councillors to withdraw from the meeting but they continue to attend the meeting and continue with their disorderly conduct. In those circumstances, the Mayor has no option but to suspend the meeting for a short period and when the meeting is resumed, said Councillors who had been asked to withdraw are permitted to attend the meeting and in if they are once again found to be indulging in disorderly conduct, the Mayor orders them to withdraw from the meeting a second time on the same date. It is submitted this would amount to compliance of the provisions of Section 79 of the Act.

11. Learned counsel for the respondent submits that the provision of Section 79 of the Act have to be read in a meaningful manner and in consonance with the objective of Section 79 of the Act, which deals with maintenance and preservation of orderly conduct during the course of the meeting.

12. For the purposes of interpreting Section 79 of the Act and the



contentions raised by the respondent, reference may be had to Section 72(1) of the Act which stipulates that Corporation shall ordinarily hold at least one meeting in every month for a transaction of the business. (emphasis supplied)

13. Perusal of Section 72 of the Act shows that there is no mandate in the statute that there can only be one meeting in a month. Said section stipulates that there shall be at least one meeting in a month which implies that there can be several meetings in a month and the meeting may or may not be with a gap of 15 days each. It is not in dispute that in the past several meetings have been held in a month.

14. Section 79 of the Act reads as under: -

“79. Maintenance of order at, and admission of public to, meetings; withdrawal and suspension of councillors and aldermen-

(1) The Mayor or the person presiding over a meeting shall preserve order threat and shall have all powers necessary for the purpose of preserving such order.

(2) The Mayor or the person presiding over a meeting may direct any councillor 2 or persons referred to in clause (b) of sub-section (3) of section 3 whose conduct is in his opinion grossly disorderly to withdraw immediately from the meeting, and any councillor 2 [or persons referred to in clause (b) of sub-section (3) of section 3 so directed to withdraw shall do so forthwith and shall absent himself during the remainder of the



meeting.

(3) If any councillor or persons referred to in clause (b) of sub-section (3) of section 3 is ordered to withdraw a second time within fifteen days, the Mayor or the person presiding may suspend such councillor 2 or persons referred to in clause (b) of sub-section (3) of section 3 from attending the meetings of the Corporation for any period not exceeding fifteen days and the councillor 2 or persons referred to in clause (b) of sub-section (3) of section 3 so suspended shall absent himself accordingly:

Provided that the Mayor may at any time decide that such suspension be terminated:

Provided further that such suspension shall not debar the suspended councillor 2 or persons referred to in clause (b) of sub-section (3) of section 3 from serving on any committee of the Corporation of which he is a member.

(4) Subject to sub-section (5) every meeting shall be open to the public, unless a majority of the 3 members and persons referred to in sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (3) of section 3 present at the meeting decide that any inquiry or deliberation pending before the Corporation shall be held in private.

(5) The Corporation may make regulations for the purpose of admission of the member of the public to its meetings and for the removal by force, if necessary, of any member of the public admitted to a meeting for interrupting or disturbing the proceedings of the meeting.

(6) In the case of grave disorder arising in a meeting the Mayor or the person presiding may, if he thinks it



necessary to do so, adjourn the meeting to a date specified by him.”

15. Section 79 (1) of the Act confers on the Mayor or the person presiding over a meeting all powers necessary for preserving the order at a meeting. Section 79(1) confers general powers on the Mayor or the person presiding over the meeting to issue such directions as may be required for preserving the order at the meetings.

16. Section 79(2) and (3) of the Act lays down conditions to regulate the exercise of such power by the Mayor or the person presiding over the meeting.

17. Section 79 (2) of the Act empowers the Mayor or the person presiding over the meeting to direct any Councillor whose conduct, in the opinion of the Mayor or the person presiding, is grossly disorderly to withdraw immediately from the meeting and such Councillor, so directed, shall have to forthwith withdraw and absent himself during the remainder of the meeting.

18. Section 79(3) of the Act stipulates that if any Councillor is ordered to withdraw a second time within 15 days, the Mayor or the person presiding may suspend such Councillor from attending the meetings of a Corporation for any period not exceeding 15 days and the Councillor or alderman so suspended shall absent himself



accordingly.

19. The submissions of learned counsel for the respondent that if the Councillor does not withdraw from the meeting and continues with the disorderly conduct and is required to withdraw a second time in the same meeting, same would be in compliance with Section 79 (3) is not sustainable.

20. Section 79 (2) stipulates once a direction is issued by the Mayor or the person presiding over the meeting to a Councillor to withdraw from the meeting, said Councillor has no option but to withdraw from the meeting forthwith and absent himself during the remainder of the meeting.

21. The contention in the additional affidavit dated 02.03.2022 that in the instant case when the Mayor ordered the Councillor to withdraw from the meeting they continued to attend the meeting and continued with the disorderly conduct so the Mayor had no option but to suspend the meeting for a short while say for half-an-hour and when the meeting was resumed said Councillors continued to attend the meeting and also continued with disorderly conduct and were accordingly asked to withdraw again and as such were suspended for a period of 15 days, would not be in compliance of the provisions of Section 79 (2).



22. Once a Councillor has been directed to withdraw from the meeting, the Councillor has no option but to withdraw from the meeting forthwith and cannot continue to attend during the remainder of the meeting. In case there is noncompliance, the Mayor will have to take such steps as are admissible in law to ensure compliance with the direction to withdraw. It cannot be said that powers under Section 79 (3) would be available to the Mayor in the same meeting. For the reasons that once the Councillor has been asked to withdraw and withdraws then there cannot be a second order in the same meeting as the Councillor is deemed to be absent from the remainder of the meeting.

23. Section 79 (3) uses the expression “15 days” for two purposes. Firstly, for a gap of less than 15 days for a second suspension and secondly for the maximum period of suspension, which cannot be for a period exceeding 15 days.

24. In case the same expression is to be read down as contended by learned counsel for the respondent, to mean a direction to withdraw a second time in the successive meeting, then the same expression would have to also be read down the period of suspension. Reading the expression “15 days” to mean a successive meeting would run counter to Section 79(3).

25. As noticed herein above in terms of Section 72 there is no



restriction on the Corporation from holding more than one meeting in a month. In case meetings are held within a gap of 15 days then the provision of Section 79 (3) can be easily complied with.

26. The requirement of holding meeting at least once in a month as mandated by Section 72 is to ensure that Corporation at least meets 12 times in a year if not more.

27. Keeping in view the scheme of the Act, particularly Section 79 (1) I am of the view that there is no cause to read down the provisions of Section 79(3) to mean a successive meeting.

28. Even otherwise in the present case, the direction to remove has not been passed in a successive meeting but has been passed in the very same meeting in which the first direction to withdraw was passed.

29. The scheme of Section 79 clearly envisages that there cannot be two successive directions to withdraw in the same meeting so as to attract the provisions of Section 79 (3).

30. In view of the above, it is clarified that for Section 79 (3) to come into operation there has to be a direction to withdraw a second time within 15 days and not a second direction to withdraw in the same meeting or in a successive meeting held after a gap of 15 days.



31. The petition is accordingly disposed of in the above terms.

32. It is clarified that this Court has neither considered nor commented upon the merits of the direction issued by the Mayor to the petitioners to withdraw or the defence of the Petitioners thereto.

MARCH 8, 2022
‘rs’

SANJEEV SACHDEVA, J

