



WP(MD)No.25375 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**WP(MD)No.25375 of 2023
and
WMP(MD)No.21539 of 2023**

N.Seenithai @ Chitra

... Petitioner

v.

1.The District Collector/Inspector of Town
Panchayat,
District Collector Office, Tirunelveli District.

2.Nanguneri Town Panchayat,
Rep.through its Executive Officer,
Nanguneri Town Panchayat,
Nanguneri, Tirunelveli District.

3.Nanguneri Town Panchayat Council,
Rep.through its President,
Nanguneri, Tirunelveli District.

... Respondents

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 impugned council meeting notice by Nanguneri Town Panchayat dated 09.10.2023, 3rd respondent (as far as agenda No.12) and quash the same as illegal.



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For Petitioner : Mr.V.Meenakshi Sundaram

For Respondents : Mr.M.Prakash,
Additional Government Pleader for R1

Mr.K.S.Selvaganesan,
Additional Government Pleader for R2 and R3

ORDER

Heard the learned counsel on either side.

2.The petitioner is 11th ward councillor of Nanguneri Town Panchayat. Resolution was moved against the petitioner for disqualifying her on the ground that she had absented herself from three consecutive council meetings. Resolution was passed and decision had been taken to disqualify the petitioner. The said decision is put to challenge in this writ petition.

3.The petitioner had moved this Court even before the convening of the meeting. When the matter was listed on 18.10.2023, I adjourned it by permitting the council meeting to go on. It was made clear that the decision taken by the council shall be communicated to the petitioner. Pursuant to the direction given by this Court, the meeting was adjourned to this morning and resolution was passed. Copy of the resolution has been made available.



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Since this development had taken place during the pendency of this writ petition, the relief is moulded and the case is heard on merits.

4.It is not in dispute that the meeting was convened on 11.07.2023. and again on 11.08.2023. The third meeting was to be held on 07.09.2023 but it was adjourned to 08.09.2023. The case of the respondents is that the petitioner did not attend any of the three meetings. The question that calls for consideration is whether the petitioner can be said to have been disqualified. The learned counsel for the petitioner called upon this Court to set aside the impugned decision and grant relief as prayed for.

5.The learned Additional Government Pleader appearing for the respondents 2 and 3 submitted that the petitioner had by her conduct incurred the disqualification set out in Section 50(1)(i) of the Tamil Nadu District Municipalities Act, 1920 and that in any event, the petitioner has an alternative remedy under Section 51 of the Act. The respondents asserted that the petitioner did not attend any of the meetings. They called upon this Court to dismiss this writ petition.

6.Let me see if the petitioner has to be relegated to avail the alternative remedy. Section 50(1) of the Act reads as follows :



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"50.Disqualification of councillors .— (1) Subject to the provisions of Section 51, a Councillor shall cease to hold his office, if he —

(a) is sentenced by a Criminal Court to such punishment and for such offence as is described in sub-section (1) of Section 49 ;

(aa) is convicted of an offence punishable under the Protection of Civil Rights Act, 1955 (Central Act 22 of 1955)].

(b) becomes of unsound mind, a deaf-mute, or a leper ;

(c) applies to be adjudicated or is adjudicated a bankrupt or insolvent ;

(d) subject to the proviso to 1 clause (c) of sub-section (2) of Section 49, acquires any interest in any subsisting contract made with, or work being done, for the Council except as a shareholder (other than a director), in a company

(dd)is employed as paid legal practitioner on behalf of the Council or accepts employment as legal practitioner against the Council;

"(ddd) does not belong to Scheduled Caste or Scheduled Tribe, but has been elected from the seat reserved for Scheduled Caste or Scheduled Tribe as the case may be"

(e) is appointed as an officer or servant under this Act or as an honorary magistrate for the municipal town;

(f)accepts employment under or becomes the official subordinate of any other Councillor;

(g) ***



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(h) ceases to reside in the Municipality or within two miles thereof ;

(hh) fails to pay arrears of any kind due by him (otherwise than in a fiduciary capacity) to the Municipality, within three months after a bill or notice has been served upon him under this Act, or where in the case of any arrear this Act does not require the service of any bill or notice, within three months after a notice requiring payment of the arrear (which notice it shall be the duty of the Executive Authority to serve at the earliest possible date) has been duly served upon him by the Executive Authority; or

[(i) absents himself from the meetings of the Council for a period of three consecutive months reckoned from the date of commencement of his term of office, or of the last meeting which he attended, or of his restoration to office as [Councillor] under sub-section (4), as the case may be, or of within the said period, less than three meetings have been held, absents himself from three consecutive meetings held after the said date :

Provided that no meeting from which a Councillor absents himself shall be counted against him under this clause, if due notice of that meeting was not given to him."

It is well settled that mere existence of an alternative remedy will not bar the jurisdiction of the writ court. In any event, a question of law has been posed and I deem it my duty to answer the same. The learned counsel for the



petitioner points out that Explanation to Section 51(1)(i) of the Act will have to be read in consonance with the explanation appended to it. It reads as follows :

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

(2) Notwithstanding anything contained in clause (a) of sub-section (1), the State Government may direct that such sentence shall not operate as a disqualification.

(3) Where a person ceases to be a Councillor under clause (a) of sub-section (1) or under Section 60), he shall be restored to office for such portion of the period for which he was elected as may remain unexpired at the date of such restoration, if and when the sentence or order is annulled on appeal or revision or [the disqualification caused by the sentence or incurred under Section 60 is removed by an order of the State Government [and any person elected to fill the vacancy in the interim shall on such restoration vacate office.

(4) Where a person ceases to be a Councillor under clause (i) of subsection (1), the Executive Authority shall at once intimate the fact in writing to such person and report the same to the Council at its next meeting. If such person applies for restoration suo moto to the Council on or before the date of its next meeting or within fifteen days of the receipt by him such intimation, the Council may at the meeting next after the



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receipt of such application restore him to his office of Councillor:

Provided that a Councillor shall not be so restored more than twice during his term of office.”

Sub Rule (2) of Rule 2 of Schedule – III is as follows :

“In cases of urgency, the chairman may convene a meeting on giving shorter notice than that specified in sub-rule(1).”

In this case, the third meeting was scheduled to be held on 07.09.2023. It was adjourned to 08.09.2023. There is nothing on record to show that due notice was given to the councillors for holding the meeting on 08.09.2023. Therefore, the absence in the third meeting cannot be put against her. That apart, the petitioner had categorically stated that she did attend the second meeting on 11.08.2023. The respondents pointed out that if the petitioner attended the same, her signature would have been affixed in the attendance register. According to the respondents, since the petitioner's signature is not there, it has to be concluded that she did not attend the meeting on 11.08.2023. It is seen that on 11.08.2023, some of the councillors staged a walk-out. Following the said walk-out, press men took photographs of the members standing outside. It can be seen therefrom that the petitioner had attended the meeting on 11.08.2023 and staged walk out. Since the



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petitioner had staged a walk-out, her absence in the rest of the meeting cannot be put against her and the disqualification set out in under Section 50(1)(i) of the Tamil Nadu District Municipalities Act, 1920 is not attracted. It is declared that the petitioner has not attracted the disqualification attributed to her.

7.With these observations, this writ petition is allowed. No costs.
Connected miscellaneous petition is closed.

20.10.2023

Index : Yes / No
Internet : Yes / No
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To

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G.R.SWAMINATHAN, J.

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