



W.P(MD)No.3946 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3946 of 2024
and
W.M.P(MD)No.3826 of 2024

- 1.M.Selvam
- 2.R.Sargunam
- 3.A.Subbulakshmi
- 4.G.Krishnakumari
- 5.R.Indira Gandhi
- 6.S.Gokila
- 7.Anusiya
- 8.Palaniyammal
- 9.A.Nagaraj
- 10.A.Ayyanar Prabhu
- 11.K.S.Chandramohan
- 12.S.Sathish Kumar



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13.P.Manikandam

14.Rajkumar

15.J.Viyajan

16.V.Ananthi

... Petitioners

Vs.

1.The Director of Municipal Administration,
Chennai.

2.The Regional Joint Director of Municipal
Administration,
294, Melakal Main Road,
Madurai.

3.The District Collector,
Theni,
Theni District.

4.The Chairperson,
Theni Allinagaram Municipality,
Theni Allinagaram,
Theni District.

5.Jahangir Batcha,
The Commissioner,
Theni Allinagaram Municipality,
Theni Allinagaram,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Declaration, to declare the resolution

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allegedly passed in the council of Theni Allinagaram Municipality by majority pursuant to the agenda dated 01.02.2024 (88 items) as illegal and arbitrary and further directing the respondents 4 and 5 to conduct council meeting and put the agenda for voting in the manner prescribed under Rule.161 of the Tamilnadu Urban Local Bodies Rules.

For Petitioners : Mr.B.Saravanan
Senior Counsel
for Mr.C.Jeganathan

For Respondents : Mr.D.Gandhiraj
Special Government Pleader
for R.1 to R.3

Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.G.Kaleeswaran for R.4

Mr.K.Govindarajan
for S.Venkatesh for R.5

ORDER

Heard both sides.

2.The question raised in the writ petition is whether the petition mentioned resolution was rightly passed on 21.02.2024 by Theni, Allinagaram Municipality. The total membership of the council is 33.



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One member had passed away. From the attendance register it is seen that 16th petitioner herein, namely, V.Ananthi did not sign the attendance register. Therefore, I have to necessarily proceed on the assumption that she did not attend the meeting on the said date.

3.Before me there are as many as 16 ward members. The stand of the petitioners is that majority of the members opposed resolution on the said date and that in any event, the resolution was not put to vote as envisaged under Rule 161 of the Tamil Nadu Urban Local Bodies Rules, 2023.

4.The learned Senior Counsel appearing for the petitioners took me through the averments set out in the affidavit filed in support of the writ petition.

5.The chairperson has filed detailed counter affidavit and her learned counsel took me through its contents. The learned Additional Advocate General strongly submitted that the present writ petition has no merit and that it deserves to be dismissed.



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6.I carefully considered the rival contentions and went through the materials on record.

7.The learned counsel on either side made available the videograph of the proceedings. I had the benefit of viewing the same. I must straightaway observe that even though the chairperson had entered in the minutes that the seventh petitioner herein, namely, Anusiya had supported the resolution, I could see from the video that Anusiya was also opposed to the resolution. I would not fault the chairperson for having done so. This is because one of the members vociferously shouted that those who are opposing the resolution must stand up. When such a call was given, Anusiya did not get up from her seat. She is found seated and the persons who were standing alone were counted. With the benefit of hindsight, I can render a finding that 15 members opposed the resolution.

8.The stand of the respondents is that the remaining 15 members supported the resolution. The learned Senior Counsel appearing for the petitioners would state that one cannot presume or assume that all the



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remaining 15 members supported the resolution. It is quite possible that on account of their party affiliation, some of them might have abstained from supporting the resolution in which event 15 members opposing the resolution would have constituted the majority.

9. There is some substance in this contention. But then, the fact that the Chairperson had entered the names of the remaining persons as those supporting the resolution in the minute book is public knowledge. If really those individuals had not supported resolution they would have certainly come before this Court and made clear their position. Such a thing has not happened. Hence, I proceed on the premise that the members were equally divided.

10. Rule 161(2) of the Tamil Nadu Urban Local Bodies Rules, 2023 states that when there is equality of votes, the Chairperson or presiding member may exercise a casting vote. From a reading of the averments in the counter affidavit filed by the fifth respondent, I can safely come to the conclusion that the casting vote would have been in favour of the resolution. That apart, Rule 164(1) of the Rules provides an effective



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remedy as rightly contended by the learned Additional Advocate General and the learned counsel appearing for the Chairperson. Rule 161 reads as follows:

“161. Method of recording of votes.—

(1) All resolutions of the council shall be caused to be read over in that meeting and where no objection is raised, all such resolutions shall be deemed to have been passed by the council.

(2) If two or more elected members of the council require for a poll to be taken before passing of a resolution, the Chairperson shall put the resolution for voting by the elected members. The Chairperson shall then ask the elected members who are in favour of the resolution to raise their hands and then ask the elected members who are against the resolution to raise their hands. After recording the names of the elected members who are in favour and against the resolution, the Chairperson shall announce the result. When there is equality of votes, the Chairperson or the Presiding member may exercise a casting vote.



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(3) The procedure for recording of votes on no confidence motion against Chairperson or Deputy Chairperson as referred to in section 51 of the Act, shall be by secret ballot in accordance with the procedure to be followed for the conduct of election to Chairperson and Deputy Chairperson.”

Before me there are 16 members. If majority is on their side, nothing stops them from invoking the procedure laid down in Rule 164(1). If such requisition is given by the petitioners herein, the council meeting should be convened within six (6) days. The entire proceedings should be videographed. The fifth respondent shall follow the procedure set out in Rule 161(2) of the Tamil Nadu Urban Local Bodies Rules, 2023. In view of the aforesaid two reasons, I am not inclined to interfere.

11.This writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To
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Chennai.
- 2.The Regional Joint Director of Municipal
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Madurai.
- 3.The District Collector,
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Theni District.



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G.R.SWAMINATHAN, J.

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