



W.P(MD)No.17410 of 2024

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 30.07.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.17410 of 2024**

**and**

**W.M.P.(MD)Nos.14942 & 14943 of 2024**

K.Jayachandran

... Petitioner

Vs.

1.The Corporation,  
by its Commissioner of Corporation,  
O/o.Madurai Municipal Corporation,  
Melur Main Road, Outpost,  
Naganakulam,  
Madurai-625 020.

2.The Mayor,  
O/o.Madurai Municipal Corporation,  
Melur Main Road, Outpost,  
Naganakulam,  
Madurai-625 020.

... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceeding in C3/002022/2022 dated 28.06.2024 passed by the 2<sup>nd</sup> respondent and quash the same as illegal and consequently direct the 2<sup>nd</sup> respondent to cancel the punishment awarded to the petitioner.



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For Petitioner : Mrs.K.M.Priscilla Jancy

For Respondents : Mr.Veera Kathiravan,  
Additional Advocate General,  
assisted by  
Mr.S.Vinayak.

### **ORDER**

The petitioner is an independent councillor representing Ward 62 in Madurai City Municipal Corporation. Vide communication dated 28.06.2024, the second respondent suspended the petitioner for two ordinary meetings. Challenging the same, this writ petition has been filed.

2. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

3. The Commissioner of Madurai Corporation has filed counter-affidavit. The learned Additional Advocate General took me through its contents.

4. The stand of the respondents is as follows:-

The petitioner had effected illegal drainage pipeline connection in his



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ward; it led to the registration of a criminal case. The petitioner raised the issue in the council meeting held on 28.06.2024. The petitioner blamed the Municipal Commissioner by making inappropriate remarks. The petitioner conducted himself in an improper manner. Even though the Mayor called upon the petitioner to apologize and withdraw his remarks, the petitioner refused to do so. The Mayor directed the petitioner to resume his seat. The petitioner did not comply with the direction and continued to speak, thereby disturbing the proceedings. In view of his persistent conduct, the impugned order came to be passed by invoking Rule 160(8)(iii) of the Tamil Nadu Urban Local Bodies Rules, 2023.

5. The learned Additional Advocate General would point out that the resolution was passed unanimously by the other members and that it is still in force. The remedy open to the petitioner is to invoke Rule 164 by placing the matter before the council in an ordinary meeting within three months. He would argue that without exhausting the said remedy, the present writ petition cannot be maintained. According to him, due process was adhered to and that there is no merit in this writ petition. He pressed for dismissal of the writ petition.



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6. I carefully considered the rival contentions. Let me deal with the objection regarding the non-exhaustion of alternative remedy. Rule 164 which according to the respondents provides an alternative remedy, reads as follows:-

**“164. Cancellation or modification of a resolution already passed by the council.—**

(1) Any resolution passed by the council which requires cancellation or modification may be placed before the council in an ordinary meeting within three months from the date of passing such resolution. No resolution shall be modified or cancelled beyond the period of three months from the date of passing such resolution without getting prior permission from the Director.

(2) The council after taking into consideration all the relevant factors prevailing on the date of the meeting may either cancel or modify the resolution accordingly.

(3) The Commissioner shall send a report to the Director along with a copy of the resolution subsequently passed within fifteen days from the date of passing of such resolution.”

The impugned order is based on the resolution passed by the council. The option of going back to the council for rescinding the resolution cannot be considered as an efficacious alternative remedy. The petitioner has been barred from attending two ordinary meetings. I fail to understand as to how the petitioner as a suspended member place the matter for fresh consideration by the council. Even assuming the council would cancel the resolution, the



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impugned order would have partly worked itself out. Such a consequence ensues because the impugned order is one of suspension from attending a meeting.

7. The question that calls for consideration is whether the impugned communication is in consonance with the statutory provision. Rule 160(8) of the Tamil Nadu Urban Local Body Rules, 2023 is as follows:-

**“160. Procedure to be followed in the meeting.—**

(8) (i) A member shall be guilty of breach of the rules governing the proceeding of the council, if he,—

(a) uses any objectionable or unparliamentarily words or language in his speech and refuses to withdraw such words or refuses to tender apology as required by the Chairperson. Such part of the speech shall not be recorded in the proceedings of the council meeting;

(b) wilfully disturbs the peaceful and orderly conduct of the meeting;

(c) refuses to obey any order of the Chairperson;

(d) fails to resume his seat when the Chairperson rises from his chair or when he is called upon to do so by the Chairperson; or

(e) commits any other act or conducts himself in any disorderly manner, which may bring disrepute or discredit to the Council.

(ii) Where the Chairperson is of opinion that any member is



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guilty of any breach of order referred to in clause (i), he may order the member to withdraw from the meeting and to be absent for the remainder of the day's proceedings. In case such member is not withdrawing from the meeting, the Chairperson may evict such member from the council hall. The decision of the Chairperson shall be final.

(iii) If any member commits the breach of order referred to in clause (i) for the second or subsequent times, any member or the Chairperson may move a resolution for suspension of the member for any one or two ordinary meetings, and on the resolution being passed by the Council, the member concerned shall be deemed to be suspended as resolved by the Council.”

8. The impugned communication has been issued by invoking Clause (iii) of sub-rule 8 of Rule 160. It states that if a member commits the breach of order referred to in clause (i) for the second or subsequent times, a member can be suspended for any one or two ordinary meetings based on the council resolution.

9. Recidivism is a concept recognised in Criminal Jurisprudence. A recidivist is a repeat offender. To deal with such category of persons, law provides for an enhanced punishment. Section 13 of the Bharatiya Nyaya Sanhita, 2023 is as follows:-



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**“13. Enhanced punishment for certain offences after previous conviction-** Whoever, having been convicted by a Court in India, of an offence punishable under Chapter X or Chapter XVII of this Sanhita with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.”

Section 31 of the Narcotic Drugs and Psychotropic Substances Act, 1985 provides for enhanced punishment for offences committed after a previous conviction. Section 234 of the Bharatiya Nagarik Suraksha Sanhita, 2023 deals with contents of charge. Sub-section 7 of Section 234 reads as follows:-

“ (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit, to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.”



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10. The Bharatiya Nyaya Sanhita, 2023 penalises public nuisance and continuance of nuisance after injunction to discontinue. Sections 292 and 293 correspond to Sections 290 and 291 of the Indian Penal Code. Section 291 of the IPC provides for enhanced punishment when public nuisance is repeated or continued even after enjoined by the public authority not to repeat or continue such nuisance. The scope of Section 291 of IPC was considered by me in ***Selvam and others V. State (Crl.O.P.(MD)No.16135 of 2021 dated 09.11.2021)***. I held that Section 291 of IPC cannot be invoked in the very first instance and that a formal proceeding from the competent authority must have been issued between the commission of an act of public nuisance and its repetition. The statement by the informant police that the accused did not pay heed to their instruction will not constitute an offence under Section 291 of IPC. I followed a vintage decision reported in ***ILR (1886) 8 All 99 (Queen-Empress V. Jokhu)***.

11. M.N.Kaul and S.L.Shakdher in their “Practice and Procedure of Parliament” opine that disobedience to the orders of the House, whether such orders are of general application or require a particular individual to do or abstain from doing a particular act is a contempt of the House. Erskine May's “Treatise on the Law, Privileges, Proceedings and Usage of Parliament” also



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states that any act which obstructs the Parliament proceedings may be treated as a Contempt.

12. A Municipal Corporation is a mini Parliament. The Mayor who presides over the proceedings is akin to the Speaker. May in his Treatise writes that whenever the Speaker rises to intervene in a debate, he should be heard in silence, and any Member who is speaking or offering to speak should immediately sit down. This Parliamentary procedure is equally applicable to the proceedings of Municipal Corporations. The petitioner herein erred in not complying with the directions of the Mayor. The petitioner appears to have realised his lapse. That is why, he has filed a solemn affidavit undertaking to conduct himself in an appropriate manner in future so as to uphold the dignity and decorum of the council.

13. Any disobedience of the order passed by the Mayor constitutes breach of order. It has to necessarily invite action and they partake the character of Contempt proceedings. A Contempt proceeding is in the nature of Quasi-criminal action. The Municipal council is statutorily endowed with the power to hand-out punishment to the erring member. The punishment can be an order to withdraw from the meeting and to be absent for the remainder of the



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day's proceedings. If the member is still defiant, he can even be evicted from the council hall. This is set out in Clause (ii) of sub-rule 8 of Rule 160 of the Tamil Nadu Urban Local Bodies Rules, 2023. Clause (iii) provides for enhanced punishment when there is breach of the order referred to in Clause (i). Clause (iii) is intended to deal with recidivism. Applying the interpretation made in the case of Section 291 of IPC by extension of analogy, I hold that before invoking Clause (iii), Clause (ii) must have been exhausted. In other words, Clause (iii) of sub-rule 8 of Rule 160 cannot be resorted to in the very first instance. That is why, I am not able to agree with the contention of the learned Additional Advocate General that persistent defiance by itself can be a ground for imposing enhanced punishment. Before invoking Clause (iii), an order should have been passed under Clause (ii). In this case, admittedly, no such order was passed under Clause (ii). I therefore hold that invoking Clause (iii) is without jurisdiction.

14. In this view of the matter, the impugned communication is quashed. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**30.07.2024**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
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**G.R.SWAMINATHAN, J.**

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