

(1991) 03 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 2865 of 1991

A. Ashok

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 40

Tamil Nadu District Municipalities Act, 1920 — Section 8(4A)

Tamil Nadu Municipal Council (Conduct of Election of Chairman and Councillors) Rules, 1978 — Rule 10(1)(B)

Tamil Nadu Municipal Councils (Appointment of Special Officers) Act, 1991 — Section 3(1)

Citation : AIR 1992 Mad 172

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Advocate : Mr. P. Peppin Fernando, for the Appellant;

Judgement

1. The prayer in the writ petition is as follows:

.....to pass a writ of mandamus or any other writ or order of similar nature directing the respondents to conduct the Election of Chairman and

Councillors for all the Municipalities in Tamil Nadu within a date to be fixed by this Hon"ble Court.....

2. The petitioner, voter in Ward No. 9, Palayamkottai who is also a tax payer has come to this Court praying to direct the respondents to conduct

elections for all the Municipalities. It seems the petitioner has contested in the year 1986 Municipal Election and lost by a narrow margin. As he is

interested in the public affairs, in particular Municipal affairs, of the Palayamkottai Municipality, he has come up to this Court with this writ petition

styling as Public interest litigation, The petitioner alleges in the affidavit that the Municipal election took place for all the Municipalities is Tamil Nadu

on 23-2-1989, that the tenure of office of the Chairman and Councillors was originally three years, that by Tamil Nadu Act IV of 1989 it has been

extended to five years and that the period of office of the Chairman and Councillor expired on 3-3-1991. In such circumstances, a bill has been

introduced by the State Government to provide for appointment of the Special Officers to Municipal Councils in the State of Tamil Nadu, that two

Acts have been passed by the Government viz. Act 14 of 1991 and 15 of 1991. Act 14 of 1991 provides for appointment of Special Officers to

Municipal Councils in the State of Tamil Nadu. Act 15 of 1991 provides for the appointment of Special Officers to Panchayats and Panchayat

Union Councils in the State of Tamil Nadu. The main purpose of the Act is the appointment of Special Officers for a period from 3-3-1991 to 10-

4-1991. The petitioner also alleges in the affidavit that by the appointment of Special Officers, there will not be an elected body for the Municipal

Administration in Tamil Nadu. It is also alleged that a nation like ours cannot be deprived of the right of having elected representatives. It is further

stated that the Public will not have easy access to represent their grievance before a Special Officer, that administration of the Municipality by a

Special Officer will lead to unnecessary waste of Municipal funds and that elected bodies will serve better the interest of public than the officials. It

is further alleged in the affidavit that if Special Officers are appointed the possibility of the election in the near future will be ruled out, that the

Government will postpone the election by giving some lame excuse, that the reasons for the appointment of Special Officers are also not sound, that

the term of the office of Special Officer will expire on 10-4-1991, that as per Rule 10(1)(B) of the Tamil Nadu Municipal Council Conduct

(Election of Chairman and Councillors) Rules 1978, it is necessary that there should be 35 days between the approval of the tentative and the

actual date of approval. It is also alleged that the tenure of office of Special Officers is only 37 days and as such it is impossible to hold election

after 3-3-1991 and before 10-4-1991. It is further alleged that this shows that the State Government has no intention to hold elections and the

petitioner refers to Arts. 12 and 40 of the Constitution of India. The petitioner also alleges that the move is for holding regular periodical elections.

Though it is admitted in the affidavit that the State Government has no sufficient cause to postpone ordinary elections, it is alleged that there should

be compelling reasons for such postponement of election. The petitioner refers to S. 8(4A) of the Tamil Nadu District Municipalities Act and

apprehends that the same procedure would be adopted by the State Government for not conducting elections. With these allegations, the petitioner

has come up before this Court with the prayer stated supra.

3. I have heard the arguments of Mr. P. Pappin Fernando, the learned counsel for the petitioner is extenso. I have also gone through the affidavit

filed in support of the writ petition. The short point that arises for consideration is whether a writ of mandamus could be issued to conduct elections

for Chairman and Councillors for all the Municipalities in the State of Tamil Nadu on a date fixed by this Court. The learned counsel relying upon

the decision in *Awas Samasya Niwaran Sanstha, Indore and Another Vs. State of M.P. and Others*, contends that a mandamus can issue to

compel the State Government to take steps for re-constitution of the Council within a reasonable time. He also relies on a decision in *Munnry Mian*

v. State of Madhya Pradesh, AIR 1981 NOC 58 wherein the Nagpur High Court, exercising its extraordinary jurisdiction, issued directions to the

State Government to hold elections where no elections were held for 13 years. In *Mukutdhari Sharma Vs. The State of Madhya Pradesh and*

Others, a Division Bench of the Madhya Pradesh High Court has held that the re-constitution of Councils must be done within a reasonable time.

In *Om Prakash Sood and Another Vs. State of Himachal Pradesh and Another*, a Division Bench of the Himachal Pradesh High Court has issued

a mandamus to hold elections within ten months. In that case, the State had not held elections for a very long time, nearly for 24 years. Relying

upon the decisions mentioned above, the learned counsel for the petitioner prays that a writ of mandamus should be Issued as prayed for. I am

not able to agree with the contention of the learned counsel for the petitioner.

4. The State Legislature has enacted Acts 14 and 15 of 1991. Act 14 of 1991, is an Act to provide for appointment of Special Officers to

Municipal Councils in the State of Tamil Nadu. S. 3(1)(a) of Act 14 of 1991 reads as follows:

.....Notwithstanding anything contained in the District Municipalities Act, the State Government shall appoint Special Officers to exercise the

powers and perform the functions of the Municipal Council established or

constituted by or under the District Municipalities Act, of the Chairman of such Municipal Councils and of the Committees established or constituted by or under the District Municipalities Act.....

The term of the office of the Special Officer will end by 10-4-1991. Apart from that, as pointed out by the learned counsel for the petitioner, Sub-

section (4 A) of S. 8 of the Act empowers the State Government, for sufficient cause to postpone, or alter the date of as ordinary or casual

election from time to time. On a reading of S. 8 (4a) of the Act and Act 14 of 1991. I do not think a writ of mandamus can be issued at this stage.

This is not a case where the elections for Municipalities were postponed for a very long time. Elections for Chairman and Councillors were held

only in the year 1986. When the term came to an end, the elections are postponed now. That is all. As such, the cases relied on by the learned

counsel for the petitioner, as mentioned above, will not apply to the facts of the case. In the Coimbatore Municipal Council Rep. by its Chairman

C.P. Hanjappa, Coimbatore v. The State of Tamil Nadu Rep. by the Secretary to Government, Rural Development and Local Administration

Department Madras, (1970) MLH HC71, Ismail, ,1. (as he then was) had occasion to consider the question whether there was any obligation on

the State Government to hold ordinary elections to the Coimbatore Municipal Council before the expiry of the term of office of the present

Councillors. In that case, the learned Judge pointed out that the Municipal Council was different from Municipal Councillors who constitute such a

body corporate and that, even if the entire office of the councillors was vacant, still the body corporate would continue to be in existence till the

existence of the body corporate was brought to an end by any special provisions in that Act itself. In that case, the learned Judge rejected the

argument of the learned counsel for the petitioners therein that the Government was under an obligation to hold the elections to the Municipal

Council before the occurrence of the vacancies and that obligation could be enforced by the issue of a writ of mandamus. If the facts of the case on

hand is looked upon, it is much worse. In view of the provisions which I have already extracted, I do not think that this Court can issue a writ of

Mandamus straightway at this stage. Article 40 of the Constitution, referred to by the learned counsel appearing for the petitioner, is Part IV of the

Constitution of India states that the "State shall take steps to organise Village Panchayats and endow them with such powers and authority as may

be necessary to enable them to function as units of self-Government. "The case before me is not a case where anybody denies local self-

Government. Municipal Council are already in existence. Only the elections are postponed. Considering the fact that the Legislature has conferred

power on the Executive to postpone elections and that it has been done so, I do not think a writ of mandamus can be issued at this stage. Surely,

as on date, the petitioner cannot complain that the elections have been postponed without a time limit. Nor the petitioner can contend that no

elections had been conducted for a long time. The power of this Court to issue a writ of mandamus is different from exercising that power in a

particular situation.

It is true that in all the cases relied on by the learned counsel for the petitioner, it had been held that this Court has got the power to issue a writ of

mandamus when a statutory duty is not performed. There cannot be any dispute about it. But it depends upon the facts and circumstances of each

case. As I have already pointed out the elections to Municipal Council were held only in the year 1986. When the legislature empowered the State

Government to postpone the elections, taking into account the existing conditions. I do not think this Court can issue a writ of mandamus to hold

elections. It is well settled that no mandamus can issue against a Statute. In none of the cases by the learned counsel for the petitioner, such a

provision like sub-section (4A) of S. 8 of the District Municipalities Act, has been considered at all. As such I do not see any reason to direct the

State to conduct elections for Municipalities in the State of Tamil Nadu, as prayed for.

5. Apart from that, I do not think that the right to vote and stand for election to the office of a Council is a fundamental right guaranteed under the

Constitution. It is well settled that the right to vote or stand for election to the office of the Chairman or Councillors is a creature of the statute. It is

only a right conferred by statute and it is not a fundamental right. It has been held so in N.P. Ponnuswami Vs. Returning Officer, Namakkal

Constituency and Others, followed by the cases in Nanhoo Mal and Others Vs. Hira Mal and Others, and in S.T. Muthusami Vs. K. Natarajan

and Others, . As such, I do not think the petitioner herein can claim he has a fundamental right to stand for elections. If a right is conferred upon a person by a statute that right is restricted under the statute itself. If elections can be held under the District Municipalities Act, it can be postponed also under the very same enactment. As such, the petitioner cannot have any grievance and come up to this Court for the ssue of a writ of mandamus. Whether there can be any extraordinary circumstances in which this Court could exercise its power under Art. 226 of the Constitution in relation to elections it is not now necessary to consider. In my view, it is a sound exercise of discretion to bear in mind the policy of the legislature in such matters. As such, I am of the view that such writ petitions should not be lightly entertained. I am not convinced with the allegations made in the affidavit filed in support of the writ petition that Special Officers cannot function properly in the absence of Councils. It will depend upon the particular officers. A case can be found where even councils do not function properly. It is entirely for the Government to decide as to when and how to hold elections, taking into consideration the situation prevailing in the State. There are no merits in the writ petition and accordingly the writ petition will stand dismissed.

6. Petition dismissed.