

(2003) 08 AP CK 0107

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17121 of 2003

Amjadullah Khan

APPELLANT

Vs

Government of A.P., Municipal Administration and Urban
Development Department

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Hyderabad Municipal Corporation Act, 1955 — Section 679A, 679AA

Citation : (2003) 6 ALD 204

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : G. Vidyasagar Sagar, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner is a Corporator of Municipal Corporation of Hyderabad (MCH). He was elected in the elections held for the Corporation in January 2001 from Chenchalguda Ward. He is before this Court challenging the order passed by the respondent being G.O. Ms. No. 385, Municipal Administration and Urban Development (Elec.II) Department, dated 7-8-2003 purporting to be u/s 679AA of the Hyderabad Municipal Corporation Act, 1955 ("the Act"). By the impugned order, the petitioner has been suspended by the Government.

2. The case of the petitioner is as follows: After the onset of monsoon, due to failure on the part of the Municipal Corporation, an epidemic of viral disease broke out. In this ward, no steps were taken to avert and abort the spread of epidemic. On 13-7-2003, Master Sohail, a boy fell sick due to viral fever and ultimately he died in Princess Durru Shehvar Children Hospital on 13-7-2003. This caused consternation to the people of the locality. They were highly agitated and worked up against the Municipal Corporation for not maintaining sanitary conditions and cleanliness.

3. The petitioner statedly addressed a letter to the Hon'ble Chief Minister of the State highlighting the death of the child and about the unhygienic conditions prevailing in the locality known as Bagh-e-Jahanara within the territorial limits of Chenchalguda Ward. He also requested the Municipal Corporation and Hyderabad Metro Water Supply and Sewerage Board to take appropriate action in the matter. On 15-7-2003, the Commissioner of MCH visited Dabeerpura and Bagh-e-Jahanara areas. According to the petitioner, when the Commissioner and other officials visited the area, the people were agitating. There was heated exchange between the officials and the people who gathered there. He visited the place immediately and tried to pacify the situation. Sensing that the situation is going out of control, he escorted the Commissioner to the car requesting her to leave the place. When the officials started leaving, the people who gathered there started pelting stones on the vehicles and it is only he controlled the situation.

4. It appears, the officials and other senior officers who accompanied the Commissioner on 15-7-2003 submitted a report to the Commissioner to take appropriate action against the petitioner u/s 679AA of the Act for his alleged involvement in the incident of pelting stones and causing damage to the car. The Commissioner sent up a report vide letter dated 16-7-2003 requesting the Government to consider strict action against the petitioner. The Government issued a show-cause notice on 18-7-2003 by way of memo calling upon the petitioner to show-cause as to why he should not be suspended u/s 679AA of the Act for allegedly endangering the lives of Government personnel, damaging the Government property, obstructing the officers from performing official duties by threatening and using physical force. The petitioner obtained a report submitted by the Additional Commissioners of MCH and official of HMWSSB as well as the report of the Commissioner and submitted explanation denying the allegations made in the memo. He stated that the Commissioner visited Bagh-e-Jahanara after the death of the child Sohail, but the same was suppressed in the report, and that he never involved in endangering the lives of the Government personnel and damaging Government property. He also objected to the report submitted by the Commissioner on the ground that true facts were suppressed. Be that as it is, the Government passed the impugned order holding that the explanation submitted by the petitioner on 29-7-2003 "does not reveal any clinching evidence of his innocence against the host of witness statements filed by officials of the Municipal Corporation of Hyderabad." The order of suspension of the petitioner is for his alleged misbehaviour with the staff and officers of the Corporation and for endangering the lives of the Government personnel; damaging Government property; obstructing officials from performing official duties; and using physical force.

5. The Assistant Secretary to Government in the Municipal Administration Department has filed a counter-affidavit on behalf of the Government, which in effect contains the same contents as in the show-cause and the impugned order. It is, therefore, not necessary to refer to the same in detail. It is suffice to refer to paragraph 11 of the counter-affidavit which reads as under:

.....it is respectfully submitted that the entire contention raised by the petitioner is fake. He being a responsible representative of the people ought to have submitted the real facts to this Hon'ble High Court instead of misrepresenting the facts. Where a serious incident taken place in which two drivers/ employees of the Corporation were seriously injured, which incident has taken place at the instance of the Corporator in the presence of the higher officials of the Corporation, the Government has exercised the powers of H.M.C. Act and initiated proceedings for suspension of the Corporator in view of the misbehaviour of the Corporator. The Government after considering the evidence, reports and also explanation submitted by the petitioner has come to a conclusion that the petitioner has willfully, cautiously misbehaved, manhandled, destroyed the property of the Corporation and abused his position along with his supporters on 15-7-2003. Therefore, the Government has no other option except to exercise the powers u/s 679AA of the H.M.C.Act in the interest of the Corporation and in the smooth functioning of the Municipal Administration and also in the interest of the public at large.

6. Sri G. Vidyasagar, learned Counsel for the petitioner, raised two contentions. He would submit that the ingredients required for suspending the Corporator as per Section 679AA of the Act are not present in the case, and, therefore, exercise of power suffers from legal malice. Secondly, he would urge that the impugned order is bad in law for non-consideration of explanation submitted by the petitioner and also for non-disclosure of reasons for exercise of power u/s 679AA of the Act.

7. Learned Government Pleader for Municipal Administration, Sri Y.Rama Rao, refutes the contentions made by the learned Counsel for the petitioner. He submits that the petitioner prevented the Commissioner and other officials from discharging their duties while they were on inspection in accordance with Section 637 of the Act. The petitioner was responsible to the damage caused to three cars and also injuries caused to the driver. Due to the untoward misbehaviour of the petitioner, the Commissioner and other officers were prevented from discharging their official duties and they were forced to flee the area and thereby the provisions of Section 679AA of the Act are attracted.

8. The two questions that require consideration are whether in the facts and circumstances of the case, exercise of power u/s 679AA of the Act is valid? Secondly, whether reasons disclosed in the impugned order are sufficient compliance with well known principles of administrative law?

9. Section 619AA of the Act was not originally on the statute book. It was inserted by A.P. Act No. 13 of 1999 with effect from 24-3-1999. A similar provision being Section 59A was also inserted in the A.P. Municipalities Act, 1965 by A.P. Municipal Laws (Amendment) Act, 1999 (Act No. 13 of 1999). Indeed, Section 679AA of the Act and Section 59A of the Municipalities Act as amended by Act No. 13 of 1999 are ipsissima verba.

10. Section 679 AA of the Act reads as under.

679-AA (1) The Government may, either suo motu or on a representation of a Mayor or Deputy Mayor or Member or Commissioner or employee of Municipal Corporation, by notification in the Andhra Pradesh Gazette, suspend the Mayor or the Deputy Mayor or a Member, who in their opinion wilfully misbehaved or manhandled any other Member or Officer or employee of the Corporation or destroyed the property of the Corporation or used unparliamentary language or abused his position in the course of meetings of the Corporation or during the discharge of any duty vesting upon the Mayor or Deputy Mayor or any Member or Officer or employee, so as to lead a situation in which the Municipal Administration cannot be carried on in accordance with the provisions of this Act or the financial stability of the Council is threatened.

(2) The Government shall, before taking action under Sub-section (1) give the Mayor or the Deputy Mayor or the Member concerned an opportunity for explanation, and the notification issued under the said Sub-section (1) shall contain a statement of the reasons for the action taken by the Government.

(3) The Government may, suo motu, or on an application made by the Mayor or the Deputy Mayor or the Member revoke the order of suspension issued under Sub-section (1).

(4) The amendments made to the Hyderabad Municipal Corporations Act, 1955 by Sections, shall extend to and shall apply also to the Visakhapatnam and Vijayawada Municipal Corporations and also to other Corporations constituted under the Andhra Pradesh Municipal Corporations Act, 1994.

11. If we paraphrase Sub-section (1) of Section 679AA of the Act and recast for a better understanding the purport of the said provision it would be somewhat as follows. If a situation results in which Municipal Administration cannot be carried on in accordance with the provisions of the Act or the financial stability of the Council is threatened due to (i) wilful disobedience or willful misbehaviour or (ii) if a Mayor or Deputy Mayor or a member wilfully misbehaved or manhandled any other Member or Officer or employee of the Corporation; or (iii) destroyed the property of the Corporation or (iv) used unparliamentary language or abused his position in the course of meetings of the Corporation or during the discharge of any duty or (v) misused his office in the discharge of duties, such Mayor, Deputy Mayor or a Member may be suspended by the Government.

12. In this case, there is no allegation that the petitioner used unparliamentary language or abused his position in the course of meetings of the Corporation or in his discharge of duties as such member. The only allegation is that the petitioner misbehaved and destroyed the property of the Corporation. The question, therefore, would be whether from the admitted facts it can be said that the petitioner has "wilfully" disobeyed, misbehaved and wilfully destroyed the property of the Corporation. The entire basis for passing of the impugned order is not any independent enquiry conducted by the Government. The order is passed

on the report submitted by the Commissioner on 16-7-2003 regarding the alleged attack on the Commissioner and senior officers of the Corporation on 15-7-2003 by the petitioner. The crucial part of the report reads as under.

After about 15 minutes of our reaching there the Corporator along with his followers rushed to the spot in an extremely agitated mood and started shouting at the officers. When the Additional Commissioner (South Zone) tried to intervene he was pushed back and threatened with dire consequences. The Corporator started pushing and beating all the officers of HMWS&SB present including the Assistant Medical Officer of Health, Executive Engineers and officers of HMWS & SB. Though the other members of the public tried to restrain him he was neither in a position to control himself nor listen to the people's problems. Sensing the situation, I thought it prudent to return. I got into my vehicle along with Additional Commissioner (South Zone) and Additional Commissioner (Health and Sanitation) and left the spot. As we were leaving and started coming out of the area, the Corporator and a few of his followers suddenly started attacking the carcade and those present by pelting huge stones. The drivers and other staff had to get out of the cars to save their lives.

13. Even a bare look at the same would show that the people who gathered at Bagh-e-Jahanara, were agitated and when the Additional Commissioner tried to intervene, the petitioner questioned and dashed the Additional Commissioner. Further, the report goes on that when the Commissioner thought it prudent to return and got into the vehicle along with the Additional Commissioner (South Zone) and Additional Commissioner (Health and Sanitation) and started leaving the area, the petitioner and few others allegedly started attacking the carcade by pelting stones and that drivers and other staff had to get out of the cars to save their lives. However, the Commissioner's car did not stop and left the place. This report is at variance with the report submitted by the other officers like Additional Commissioner (South Zone) and Additional Commissioner (Health and Sanitation) and another official of HMWS&SB. The same is to the following effect.

.....Sri Amjadullah Khan, Corporator, Chanchalguda Division along with his followers rushed to the spot in an agitating mood and started shouting at the officers. When the Additional Commissioner (South Zone), MCH tried to pacify the Corporator and tried to explain the position, the said Corporator pushed Additional Commissioner (South Zone), abused and threatened him with dire consequences. Subsequently he started beating up the HMWS&SB employees and also started pushing the AMOH and the Executive Engineers of MCH. He was neither in a position to control himself nor listen to the citizens problems. He was blaming MCH & HMWS&SB for the death of the child and demanding Rs. 1 lakh and threatened to go away and not to tour the area. When the frightened officers started withdrawing from the area sensing trouble, the Corporator suddenly started pelting stones at the vehicles of MCH & HMWS&SB. The drivers who were in the vehicles got out of the cars and started running down the streets. The said Corporator along with his followers continued pelting stones at the officers and

staff. In the process two of the drivers were severely injured due to stone pelting.....

14. According to the report of the senior officers as seen from the above, the petitioner was blaming the officials of the Corporation and HMWS&SB for the death of the child and demanding presumably a compensation of Rs. 1 lakh. He threatened them to go away and not to tour the area. When the officials were about to leave, he started pelting stones. The Commissioner says that when the car started there was pelting on the carcade and the report of the officers says that the petitioner and others allegedly started throwing when they were about to leave. In both the reports, except briefly pointing out some followers of the Corporator, the number is absent. Both the reports do not speak of death of the child two days earlier allegedly due to viral fever as a result of poor sanitary arrangements. Both the reports admit that the people who gathered at the spot were in an agitating mood.

15. A careful reading of the reports indeed support the version of the petitioner to some extent. There is no doubt that there is some controversy as to whether the petitioner was present at the time Commissioner was present at the spot or came 15 minutes thereafter. This cannot, however, be gone into in these proceedings for the reason that a criminal case is already registered against the petitioner at Police Station, Rein Bazar and also due to the reason that it is a disputed question of fact. Even assuming that the petitioner was present with his followers in an agitating mood by the time the Commissioner went to the spot, can it be said that the petitioner and his followers acted in a pre-planned manner in which event alone the attack is wilful. The answer to the question certainly must be negative. Indeed, the report of the officers and Commissioner belie the theory that the petitioner was waiting even before they went there. He came there after fifteen minutes of the Commissioner reaching there.

16. The petitioner has placed before this Court various newspaper clippings reporting the incident that occurred in the area on 13th, 14th and 15th July, 2003. Indeed, the learned Government Pleader also does not dispute that a child died due to some disease, which ultimately resulted in severe pulmonary hemorrhage. He also does not deny that after the onset of monsoon in 2003, for about a week or so, there was widespread viral fever of epidemic proportion. A boy aged four years died and there were complaints of poor and inadequate sanitary conditions in the area. Naturally, people who are helpless due to these diseases get agitated. Being the representative of the locality the petitioner who is required to take care of the welfare of the people and the people of the area, having come to know about the visit of the Commissioner, were extremely worked up and indeed they questioned the Additional Commissioner (South Zone). When he tried to pacify the situation, then only the petitioner appears to have allegedly pushed back him requesting him to go back from the area. This factual scenario might have resulted in pelting of stones on the car of the Commissioner. This, however, cannot be attributed to the petitioner as a guilt.

17. It is now well settled that the term "wilful" connotes such conduct on the part of a person who acts in such a manner knowing fully well about the consequences of such injury or such behaviour. If a person's conduct results in damage to the property, the same can never be treated as wilful misbehaviour. Section 679AA refers to wilful misbehaviour or wilful destruction of property. It would be incorrect to infer that a duly elected Corporator of the Municipal Corporation would behave willfully in destroying the property unless such allegations are proved by acceptable evidence. The impugned order concludes that the petitioner's explanation does not reveal any clinching evidence on the face of the record. It is the Government who issued the show cause notice indicting the petitioner for questionable behaviour. Therefore, it is for the respondents to clinchingly prove before this Court that the conduct of the petitioner on 15-7-2003 would attract the provisions of Sub-section (1) of Section 679AA of the Act. Though it refers to statements allegedly made by officers, those statements are not placed before me. The petitioner has placed before the Court the report submitted by the officers of the Corporation and HMWS&SB and also the report submitted by the Commissioner. These reports cannot be treated as conclusive insofar as considering the merits of the case. These reports at best may be relevant to initiate the process under Sub-section (1) of Section 679AA of the Act, but they can never be treated as conclusive proof for exercising power by the Government. Section 679AA, as stated, was inserted by A.P. Act No. 13 of 1999, which was preceded by Legislative Assembly Bill No. 6 of 1999. The statement of objects and reasons appended to the Bill reads as under:

Statement of Objects and Reasons

In order to ensure discipline during the Council meeting and for smooth running of the affairs of the Municipalities and the Municipal Corporations, the Government have decided to amend the Andhra Pradesh Municipalities Act, 1965 as well as Hyderabad Municipal Corporations Act, 1955 empowering the Government to suspend the Chairperson/ Mayor or Vice-Chairperson/Deputy Mayor or Member, who in their opinion, willfully misbehaved or manhandled any other Member or Officer or employee of the Council or Corporation or used unparliamentary language or abused his position in the course of meetings of the Council or Corporation or during discharge of the official duties vested upon any Chairperson/Mayor or Vice-Chairperson/Deputy Mayor or Member or Officer or employee.

18. The intention of the Legislature for introducing Section 679AA in HMC Act and Section 59A in A. P. Municipalities Act is very clear from the statement of objects and reasons. It was done in order to ensure discipline during the Council meetings and for smooth running of the affairs of the Municipalities and Municipal Corporations. It was also intended to empower the Government to suspend Chairperson/Mayor or Vice-Chairperson or Deputy Mayor or a Member who, in the opinion of the Government, willfully misbehaved or manhandled any other

Member or officer or employee of the Corporation or destroyed the property. The provision is of drastic nature. It is a penal provision, which, in a given case, can as well prohibit any elected member or all members from attending Council meetings and represent in the meetings. Therefore, being a penal provision, it must be interpreted strictly. On true construction of Section 679AA of the Act, it is not possible to accept the submission of the learned Government Pleader for Municipal Administration that the ingredients for exercise of power under Sub-section (1) of Section 679AA of the Act are present in the case. It must, therefore, be held that the order suffers from illegality.

19. In a recent judgment in *State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti*, , the Supreme Court considered the scope of legal malice and observed as under:

The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others". (See *Words and Phrases Legally Defined*, 3rd Edn., London Butterworths, 1989.)..... Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 14) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action, by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act". The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other.....Legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not/taken bona fide for the . purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings.

20. If the authority exercised power without regard to the facts disclosed before it, the same amounts to exercise of power with malice in law though such case may not fall in the category of malice in fact.

21. The second point for consideration is method and manner of exercise of power. After receiving the show-cause notice dated 18-7-2003, the petitioner submitted an explanation running into four pages. He also referred to mitigating circumstances in his favour. The Government did not consider this. After referring to the incidents that occurred on 15-7-2003 as contained in the report submitted by the Commissioner, the Government concluded as under:

And whereas, with reference to the above said show-cause notice, Sri Amjadullah

Khan, Corporator, Chanchalguda Division, Municipal Corporation of Hyderabad has submitted his explanation in the reference 3rd read above which does not reveal any clinching evidence of his innocence against the host of witness statements filed by officials of the Municipal Corporation of Hyderabad. Hence Sri Amjaduttah Khan is held liable for suspension under Sub-section (1) of Section 679AA of Hyderabad Municipal Corporation Act, 1955.

22. Except stating that the petitioner did not produce any clinching evidence, no reasons are disclosed. There is not even a whisper that the petitioner's conduct has resulted in a situation by which administration of Municipal Corporation cannot be carried on or that financial stability of the Corporation is threatened. This is in spite of the fact that the Commissioner observing that the alleged conduct of the petitioner results in large scale ramifications -in future. The impugned order does not even say that the ramifications apprehended by the Commissioner will be true if an order of suspension is not passed. In a matter like this, what would be the effect of nondisclosure of reasons. In *Sri Sarvaraya Sugars Limited Vs. Government of A.P. and Others*, , I have considered this aspect of the matter and observed that every executive action, be it an action based on subjective or objective satisfaction of the authority, must be supported by reasons. It is also well settled that in all cases and in all situations reasons should be communicated to the person at whose instance a decision is taken. May be some decisions taken by the executives do not require any reasons. Some times, the policy laid down by the political executive would itself be a sufficient reason for executive action. However, it must be noted that when an action is taken under a statute and statute itself specifically requires a decision to be supported by reasons, all such decisions should be supported by reasons contained in the files. It is again a matter of drawing an inference whether the file in which the subject is dealt with contains reasons or not. A reference may be made to the judgments of the Supreme Court in *S.N. Mukherjee Vs. Union of India*, , and *Union of India and others Vs. E.G. Nambudiri*,

23. In *S.N. Mukherjee v. Union of India* (supra), a question arose whether the Government of India, while exercising power of revision/review under the provisions of the Army Act, is required to record reasons. The Court considered two questions; (i) Is there any general principle of law which requires an administrative authority to record the reasons for the decision? and (ii) If so, does the said principle apply to an order confirming the findings and sentence of Court-martial and post confirmation proceedings under the Act? After referring to the precedents in other jurisdictions like U.S.A. and U.K. as well as the precedents of the Supreme Court, the Court came to the conclusion that non-disclosure of reasons for an administrative decision violates the principles of natural justice. Though there is a general rule for recording reasons, there is no general rule that reasons should be communicated in every case. It depends on the nature of the power exercised. When quasi-judicial power is exercised, it goes without saying that reasons not only have to be recorded but must be communicated to the aggrieved person. The same is not the case when the

authorities exercise administrative powers. When the recording of reasons is either explicitly or impliedly dispensed with by the statutory or authorized instrument, it is not necessary to record reasons. The relevant passage from the judgment in S.N. Mukherjee's case (supra) must be excerpted, which is as under:

The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement.....

23. In *Union of India v. E.G. Nambudiri* (supra), the Supreme Court opined that though there is no statutory duty cast upon an administrative authority to record reasons when an application for some benefit, concession or largesse is rejected, yet minimum reasons should be recorded for doing so. It was also observed that reasons need not be at one place by one officer and reasons can be gathered from the entire file. It was held:

.....In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the Court to interfere with such orders

merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a Court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action.

24. While it is now well settled that when a statutory/executive order does not disclose reasons, the same would violate the rule of natural justice. Judicial review is now accepted as a basic structure of the Constitution. If statutory orders do not give any reasons, the power of judicial review would itself be rendered nugatory, for there would not be any material for this Court to review. Where the Court comes to a conclusion that the order impugned is bad for non-disclosure of reasons, ordinarily the Court remits back the matter to the authority. In this case, however, the facts disclosed do not warrant such remand to the Government.

25. The submission made by the learned Government Pleader needs to be considered. The learned Govt. Pleader submits that by reason of Sub-section (3) of Section 679 AA of the Act, it is always open to the petitioner to approach the Government or the Government may suo motu revoke the suspension order. This according to the learned Government Pleader is a sufficient safeguard against any arbitrary exercise of power under Subsection (1) of Section 679AA of the Act. I am afraid, I cannot agree with the same. The power conferred on the Government is a drastic power which needs to be exercised in a rare case having regard to the objects for which the provision was inserted by the Legislature by A.P. Act No. 13 of 1999. Unfortunately, the time during which the Mayor, Deputy Mayor or a Member can be placed under suspension is not there. The Government cannot keep them under suspension perennially, say for a term of five years. I am also of the considered opinion that after insertion of Article 243U of Constitution (Seventy-fourth) Amendment Act, 1992, unless and until it is considered to be absolutely necessary, an elected body cannot be suspended or dissolved. Similarly, an elected member cannot be suspended on mere surmises.

26. In the result, for the above reasons, the writ petition is allowed and the impugned order is set aside. The petitioner shall be entitled to exercise all rights, powers and privileges as a Corporator of Municipal Corporation of Hyderabad. There shall be no order as to costs.