

**(1961) 12 MAD CK 0025**

**In the Madras High Court**

**Case No : Writ Ptn. No's. 1115 and 1117 of 1961**

A.P. Kadirvelu Naiker

APPELLANT

Vs

K.M. Lakshmana Mudaliar and Another

RESPONDENT

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**Date of Decision : 15-12-1961**

**Acts Referred:**

Bankruptcy Act — Section 32

Constitution of India, 1950 — Article 226

Tamil Nadu District Municipalities Act, 1920 — Section 50, 50(1), 50(4)

**Citation : AIR 1962 Mad 314**

**Hon'ble Judges : Jagadisan, J**

**Bench : Single Bench**

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**Judgement**

Jagadisan, J.—In both these writ petitions, filed under Art. 226 of the constitution the petitioner is an elected councilor of the Arcot

Municipal Council and the first respondent is also a councillor and chairman of the said Municipal Council. The prayer in W. P. No. 1115 of 1961

is for the issue of writ in the nature of quo warranto questioning the right of first respondent to hold office as chairman of the Council. The relief

sought for in W. P. 1117 of 1961 is one for the issue of the writ of mandamus directing the second respondent, the commissioner of the Municipal

Council Arcot to comply with the provisions of Sec. 50(4) of the District Municipal Act.

2. The petitioner submits that the first respondent has become disqualified to continue as member of the Municipal Council, Arcot and a fortiori to

function as the Chairman. The ground of disqualification urged is that the first respondent absented himself from the meetings of the Council for a

period of three months consecutively since the date he attended on 12-4-1961.

The first respondent denies having become subject to any disqualification. He submits that he attended a meeting of the council on 17-6-1961 and

through this meetings was a special meeting under Rule 8 of Sch III Of The Madras District Municipalities Act, it was not a meeting covered by the

Explanation to S.50 of that Act and that his attendance at such meeting saves him from the disqualification arising out of non-attendance of

meetings. There is thus a dispute between the parties as to whether the first respondent is dissented to hold office under S.50(1) (i) of the District

Municipalities Act. That provision reads as follows:

Subject to the provisions of S.5, a councillor shall cease to hold his office, if he..... (i) absents himself from the meeting of the Council for a

period of three consecutive months reckoned from the date of commencement of his term of office, or the last meeting which he attended or of his

restoration of office as councillor under sub-sec.(4), as the case may be, or if with in the said period less than three meetings have been held,

absents himself from three consecutive meetings held after the said date.

Section 50(4) provides,

Where a person ceases to be a Councillor under clause (i) of sub-section (i), the executive authority shall at once intimate the fact in writing to such

person and report the same to the Council at its next meetings. If such person applies for restoration suo motu to the Council on before the date of

its next meetings or within 15 days of the receipt of such application restore him to his office councilor

3. The Act provides a machinery for adjudication of disputes arising out of an alleged disqualification of any member to hold office, and that is

S.51. It is as follows:

1. Whenever it is alleged that any person who has been elected as a councilor is disqualification under sub-sec. (1) of S.48 Sec. 49, S. 50 or Sec

60 and such person admit the allegation or whenever any Councillor is himself in doubt whether or not he has become disqualified for office, under

S.50 or S.60, such councillor or any other councillor may, and the executive authority, at the request of the council, shall apply to the District Judge

of the district in which the Municipality is situated.

2. The said Judge, after making such inquiry as he deems necessary shall determine whether or not such person is disqualified under Sub-Sec. (i)

of S. 48, Sec. 49, Sec. 50 or Sec. 60 and his decision shall be final.

3. Pending such decision the councillor shall be entitled to act as if he were not disqualified.

It cannot be doubted that an information in the nature of a quo warranto will not be issued by this court under Art 226 as a matter of course. It is

only a discretionary relief which the court can grant or refuse according to the facts and circumstances of each case.

The Court would inquire into the conduct and of the applicant and the court might in its discretion decline to grant a quo warranto

information where it would be vexatious to do so, or where an information would be futile in its results which was equally appropriate and effective,

(Halsbury's Laws of England Volume II, 3rd Edn. page 149).

4. The petitioner has failed to avail himself of the special remedy provided for declaring the office vacant as prescribed by S.51 of the Act. It is

contented by Mr. T. Chengalvarayan learned counsel for the petitioner, that the statutory remedy under sec.51 of the Act is not adequate,

efficacious or speedy, and that writ of quo warranto should not be refused on the ground of the subsistence of the order remedy. I must observe

that there is no averment in the affidavit in support of the application that the statutory remedy was not availed by the petitioner because its

inefficiency or futility. There is no reason for the petitioner to apprehend that his remedy before the District Judge provided for under the Act will

not stand him in good stead.

5. Learned counsel for the petitioner relied upon the decision in the King v. Bear 1903 2 KB 693, and contended that the remedy by way of quo

warranto was the only proper remedy and that cannot be barred by reason of other statutory provisions. In that case debtor was adjudicated a

bankrupt in April 1899 and in the following July obtained an order of discharge, subject to suspension for two years and half which came into

operation in January 1902. In November 1902 an election was held of councillors for a municipal borough at which he was nominated and

declared elected. In 1903, a rule nisi was obtained for a quo warranto calling on him on to show cause why he held and exercised the office of

borough councillor. It was held that the remedy by quo warranto was taken away by S.87 of the Municipal Corporation Act. Only in those cases

where the election was questioned on the ground of disqualification for election, and that bankruptcy being by S.32 of the Bankruptcy Act a

disqualification not merely for election, but also for holding the office of councillor, quo warranto would lie.

It is really unnecessary to consider the applicability of implication of the ratio of that decision to the present case as the question is not whether a

quo warranto under Art. 226 will lie. Undoubtedly the writ is maintainable but yet the court has got a discretion to grant or refuse it. Even in

England the rule as it now obtains, is thus set out in Halsbury's Laws of England, Vol. II 3rd Ed. page 145,

Certain limitations were imposed on the scope of the information by statutory provisions to the effect that elections to certain offices should not be

questioned on the ground that the person elected was at the time of election disqualified, save by election petition. In 1933, an alternative form of

proceedings was substituted for informations in respect of the qualifications of persons acting as members of a local or as mayors of boroughs, and

it was provided that except in the form so substituted no proceedings, whether by way of information in the nature of quo warranto or otherwise

should be taken against a person on the ground that he had, while disqualified for acting as a member of a local claimed or mayor of a borough, so

acted or claimed to be entitled so to act. In 1938 all informations in the nature of quo warranto were abolished, and it was provided that in any

case where a person acted in an office in which he was not entitled to act and an information in the nature of quo warranto would have lain against

him, the High Court might, at the instance of any person who would have been entitled to apply for such an information, grant an injunction

restraining the former from so acting and might (if the case so required) declare the office to be vacant.

6. It seems to be clear that the relief of quo warranto is only a discretionary relief, and that it can be refused on the ground that the applicant can

pursue other remedies particularly prescribed by the very statute under which he complains that a person has usurped a public office.

7. I am therefore of opinion that W. P. No. 1115 of 1961 should be dismissed observing that the petitioner is free to move to the appropriate

District Court under S.51 of the Act.

8. I am also of opinion that no mandamus can issue against the Commissioner of the Municipal Council directing him to act under S.50(4) of the

Act. The petitioner admittedly did not move the Commissioner and demand the-- performance of his statutory duties under any disqualifications by

reason of the non-attendance of the meetings. It may yet be open to the petitioner to apply to the Act and to move this court afresh, if the

Commissioner improperly refuses to discharge his statutory functions.

9. These petitions are dismissed and the rule nisi issued in each case is discharged. The petitioners will pay the costs of the respondents in W. P.

No. 1115 of Advocate's fee Rs. 100 one set.

10. Petitions dismissed.