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(1999) 04 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No. 2028 of 1999

Arokya Das alias Das Chinnasavari and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Karnataka Municipalities Act, 1964 — Section 316, 42

Citation : (2000) ILR (Kar) 2794 : (2000) 5 KarLJ 62 : (2000) 4 KCCR 256 SN

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri A.K. Subbaiah, for the Appellant; Sri D''Sa, Government Advocate and Sri N.B. Bhat, for the Respondent

Judgement

1. The petitioners, in this petition, are the Councillors of the second respondent-Municipal Council.

2. In this petition, the petitioners have called in question the correctness of the order dated 11th of January, 1999, a copy of which has been produced as Annexure-E, passed by the first respondent, wherein the first respondent has, in exercise of the power conferred on it u/s 316 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act"), dissolved the second respondent-Municipal Council on various charges set out in the said order.

3. A few facts that may be relevant for the disposal of this petition, may be stated as under:

(a) The election to the second respondent-Municipal Council was held on 7th of January, 1996 and thereafter, Council was constituted by means of notification dated 12th of January, 1996. However, the election to the Offices of the President and Vice-President as required u/s 42 of the Act, was not held. Under those circumstances, one of the Councillors of the second respondent-Municipal Council filed Writ Petition No. 7248 of 1996 before this Court and in the said petition, this

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Court, by means of its order dated 9th of April, 1996, issued a direction to the respondents in the said writ petition to hold the first meeting of the second respondent-Municipal Council and conduct election to the Offices of the President and Vice-President as expeditiously as possible. Pursuant to the said direction, election to the Offices of the President and Vice-President was held on 25th of May, 1996 and their term came to an end with effect from 25th of November, 1998. According to the petitioners, though in terms of Section 42 of the Act, election to the Offices of the President and Vice-President was required to be held before the expiry of the term of the Offices of the President and Vice-President, the Offices of the President and Vice-President were again kept vacant and on account of that, the Deputy Commissioner of the District occupied the Office of the President; and under these circumstances, the petitioners and others filed Writ Petition No. 36786 of 1998 before this Court and this Court, in the said writ petition, by its order dated 15th of December, 1998 directed the first respondent-State to hold election to the Offices of the President and Vice-president within four weeks from the date of receipt of the said order. It is on record that even as on this day, in spite of the direction given by this Court, the election to the Offices of the President and Vice-President has not yet been held.

(b) The first respondent-State has issued show-cause notice dated 26th of November, 1998, a copy of which has been produced as Annexure-C, levelling certain charges against the second respondent-Municipal Council and directing the Municipal Council to show cause as to why the Council should not be dissolved by the first respondent in exercise of the power conferred on it u/s 316 of the Act. Pursuant to the said show-cause notice, a meeting of the second respondent-Municipal Council was convened on 3rd of December, 1998 and pursuant to the decision taken in the said meeting, an explanation dated 4th of December, 1998, a copy of which has been produced as Annexure-D, was sent to the first respondent. The thrust of the explanation, as could be seen from Annexure-D, is that the charges levelled against the Municipal Council are unfounded and relate to the period long prior to the assumption of the Office by the Councillors of the Municipal Council and as such, the Municipal Council cannot be dissolved. After the receipt of the explanation, the first respondent had called for a report from the Commissioner of the second respondent and pursuant to the said direction given, the Commissioner of the second respondent had sent a report along with his letter dated 8th of December, 1998 to the first respondent with regard to the charges levelled against the second respondent-Municipal Council. After the receipt of the report of the Commissioner, the first respondent not being satisfied with the explanation offered by the Councillors of the second respondent-Council, passed the impugned order at Annexure-E, dated 11th of January, 1999. Subsequently, Annexure-E was also published in Karnataka Gazette dated 19th of January, 1999.

4. Sri A.K. Subbaiah, learned Counsel appearing for the petitioners, in support of the prayer of the petitioners that the impugned order is liable to be quashed, made three submissions. Firstly, he submitted that all the charges levelled

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against the second respondent-Municipal Council related to the period prior to the constitution of the Municipal Council with the present members by means of notification dated 12th of January, 1996 and as such, even assuming but without conceding, that the charges are true, the said charges cannot be made the basis to dissolve the second respondent-Municipal Council. In this connection, he drew my attention to the statement of objections filed on behalf of respondents 1 and 2 and contended that it is not in dispute that all the charges levelled against the second respondent-Municipal Council relate to the period prior to the constitution of the Municipal Council with the present Councillors, though an attempt is made in the impugned order to state that there is default on the part of the present Municipal Councillors in discharging their duties as required under the provisions of the Act and protecting the interest of the Municipal Council. Elaborating this submission, Sri Subbaiah pointed out that the consequences of the dissolution of the Municipal Council is of very serious nature which would seriously affect the reputation of the Councillors and they cease to be Municipal Councillors; and therefore it is not permissible to dissolve the properly constituted Municipal Council in the purported exercise of the power conferred on the first respondent u/s 316 of the Act for the deficiencies and defaults committed by the earlier Councillors in the discharge of their duties. Secondly, he submitted that the order impugned came to be passed in total disregard of the requirements of Section 316 of the Act. Elaborating this submission, Sri Subbaiah pointed out that since the consequences of passing the order of dissolution is of very serious nature, it is imperative that before passing an order of dissolution, a personal hearing is required to be given to the Municipal Council. According to him, the reasonable opportunity contemplated under the proviso given to sub-section (1) of Section 316 of the Act, contemplates giving of a personal hearing in addition to the show-cause notice; and in the instant case, admittedly, the personal hearing has not been given; and the report of the Commissioner of the second respondent-Municipal Council was called for subsequent to the receipt of the explanation at Annexure-D by the first respondent and as the same having been made the basis of the impugned order at Annexure-E, the said order is liable to be quashed on the ground that the same came to be passed in disregard of the principles of natural justice. Finally, he submitted that the impugned order came to be passed totally on account of extraneous and irrelevant considerations. Elaborating this contention, he submitted that since the group of Councillors belonging to the party in power in the State, do not constitute the majority in the Municipal Council to elect the persons belonging to their group as President and Vice-President, the impugned order came to be passed on account of the pressure brought on the first respondent. In support of this submission, he drew my attention to the averments made in paragraphs 2 and 3 of the writ petition, wherein it is alleged by the petitioners that the impugned order came to be passed on account of the pressure brought by the group of Councillors who do not command majority in the Municipal Council to elect the persons belonging to their group, as President and Vice-President of the Municipal Council, and as to how some of the Councillors had to approach this Court to seek for a direction to

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hold the election to the office of the President and Vice-President on two occasions by filing Writ Petition Nos. 7428 of 1996 and 36786 of 1998.

5. However, Sri D''Sa, learned Government Advocate, while strongly supporting the order impugned, submitted that there is absolutely no merit in the submissions made by Sri Subbaiah. He pointed out with reference to the language employed in Section 316 of the Act, that what is required u/s 316 of the Act is that the first respondent-State should be satisfied that the Municipal Council is not competent to perform, or persistently makes default in the performance of the duties imposed on it or undertaken by it by or under the Act, or any other law, or exceeds or abuses its power or refuses to carry out the directions given to it under the provisions of the Act or any other law or is functioning in a manner prejudicial to the Municipal Council. According to him, the Municipal Council is a permanent body. The order that is required to be made is with reference to the Municipal Council and not with reference to the Councillors. In other words, it is his submission that the order made u/s 316 of the Act is against the Municipal Council and not against the Councillors and therefore it is immaterial whether the charges levelled against the Council relate to the period either prior or later to the constitution of the Council with the new Councillors after the election. In support of this submission, he drew my attention to Section 10 of the Act, wherein it is stated that every Municipal Council is a body corporate and it shall have perpetual succession and common seal etc. Therefore, according to the learned Government Advocate, even for the earlier default committed by the members of the Council prior to the constitution of the new Council, it is permissible for the State Government to dissolve the Council, provided that the requirements of Section 316 of the Act are satisfied. Secondly, he submitted that the charges levelled against are of very serious nature and since the order impugned has been passed keeping in mind the interest of the Municipal Council and also the public interest, it is not appropriate for this Court to interfere with the said order in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India. According to him, since the first respondent, after considering the objections filed by the Municipal Council, has taken a decision and the said decision being fair and reasonable, the order impugned is not liable to be interfered with by this Court. He submitted that the lapses committed by the earlier Councillors are also condoned by the present members who constitute the Council and they have failed to take any remedial action to rectify the lapses. In this connection, he drew my attention to paragraph 3 of the statement of objections and also the relevant portion of the impugned order. It is his further submission that what is contemplated under the proviso given to sub-section (1) of Section 316 of the Act is only giving of a reasonable opportunity of giving show-cause notice setting out the charges on the basis of which tentative decision is taken to dissolve the Municipal Council; and the opportunity contemplated under sub-section (1) of Section 316 of the Act does not contemplate giving of a personal hearing either to the Municipal Council or to the Councillors. Insofar as the submission of Sri Subbaiah with

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regard to the allegations of mala fides is concerned, Sri D''Sa pointed out that the allegations of mala fides made are vague and ambiguous and lack in material particulars; and merely on the ground that the election to the offices of the President and Vice-President was not held, and on account of that, this Court gave a direction to hold the election, cannot be a ground to come to the conclusion that steps were taken to dissolve the Municipal Council on account of extraneous or irrelevant considerations. Therefore, he submits that the contention of the petitioners based on the allegations of mala fides, is liable to be rejected.

6. Sri N.B. Bhat, learned Counsel appearing for the second respondent, supported each of the submissions made by Sri D''Sa.

7. In the light of the rival submissions made by learned Counsel appearing for the parties, the question that would fall for my consideration is as to whether the impugned order passed by the first respondent dissolving the second respondent-Municipal Council deserves to be quashed by this Court?

8. The Act provides for the constitution of City Municipal Councils and Town Municipal Councils for urban areas in the State. The second respondent is a City Municipal Council. Section 10 of the Act relied upon by Sri D''Sa which provides for incorporation of the City and Town Municipal Councils, reads as under:

"10. Incorporation of City and Town Municipal Councils.--

(1) In every Municipal area, there shall be a Municipal Council, and every such Municipal Council shall be a body corporate by the name of "the City Municipal Council. ....." or "the Town Municipal Council of.....", as the case may be, and shall have perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract and may by the said name sue and be sued through its Chief Officer or Municipal Commissioner.

(2) Save as otherwise provided in this Act, the Municipal Government of a Municipal area shall vest in the Municipal Council".

Chapter II of the Act provides for the constitution of Municipal areas. Section 11 of the Act provides for constitution of Municipal Councils. Various other provisions provided under Chapter II of the Act provide for the preparation of voters list, qualification and disqualification of a person being elected as a Councillor. Section 37 of the Act provides for offences and penalties for electoral offences. Section 38 of the Act provides for control of elections and states that the superintendence, direction and control of the preparation of list of voters for, and the conduct of all elections to the Municipal Council shall be vested in the State Election Commission. Section 41 of the Act confers power on the Government to remove any Councillor elected under the Act on recommendation of the Municipal Council after conducting such enquiry as it deems necessary, if such Councillor has been guilty of misconduct in the discharge of his duties, or of any disgraceful

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conduct or has become incapable of performing his duties as a Councillor. Sub-section (1) of Section 42 of the Act provides that for every Municipal Council, there shall be a President and a Vice-President. Sub-section (2) thereof provides that the Councillors of the Council shall, at the first meeting of the Council after the general election and at a subsequent meeting held immediately before the expiry of term of offices of President and Vice-President, chose two members from amongst the elected Councillors to be respectively President and Vice-President of the Municipal Council. Sub-section (2-A) of Section 42 provides for the reservation to the office of the President and Vice-President to be made by the State Government. Sub-section (5) of Section 42 of the Act provides for the power of the Deputy Commissioner or such other person, referred to in the said sub-section, to perform the functions of the President in the event of the office of the President falling vacant. Sub-section (9) of Section 42 of the Act provides for removal of President and Vice-president of the Municipal Council by expressing want of confidence. Section 316 of the Act provides for dissolution of the Municipal Council. It is useful to extract Section 316, which reads as hereunder:

"316. Power of Government to dissolve a Municipal Council in certain circumstances.--(1) If, in the opinion of Government any Municipal Council is not competent to perform, or persistently makes default in the performance of the duties imposed on it or undertaken by it or under this Act, or any other law, or exceeds or abuses its power or refuses to carry out the directions given to it under the provisions of this Act or any other law or is functioning in a manner prejudicial to the Municipal Council the Government may, by an order published, together with a statement of the reasons therefor, in the Official Gazette, declare the Municipal Council to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and may dissolve it:

Provided that before making an order of dissolution as aforesaid reasonable opportunity shall be given to the Municipal Council to show cause why such order should not be made.

(2) When the Municipal Council is dissolved by an order under sub-section (1) the following consequences shall ensue,--

(i) all the Councillors of the Municipal Council shall, on such date as may be specified in the order vacate their office as such Councillors without prejudice to their eligibility for election under sub-section (3);

(ii) during the period of dissolution of the Municipal Council, all powers and duties conferred and imposed on the Municipal Council by or under this Act or any other law shall be exercised and performed by such officer as the Government may from time to time appoint in that behalf;

(iii) all property vested in the Municipal Council shall, until it is reconstituted, vest in the Government.

(3) When a Municipal Council is dissolved it shall be reconstituted in the manner

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provided under this Act, before the end of six months from the date of such dissolution:

Provided that where the remainder of the period for which the dissolved Municipal Council would have continued is less than six months, it shall not be necessary to hold any election under this section for constituting the Municipal Council for such period.

(4) A Municipal Council constituted upon the dissolution before expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipal Council would have continued had it not been dissolved.

(5) An order of dissolution of a Municipal Council under sub-section (1) together with a statement of the reasons therefore shall be laid before both Houses of the State Legislature as soon as may be after it is made".

9. From the scheme of the Act, it is clear that either City Municipal Councils or Town Municipal Councils are constituted in the urban areas of the State and they are required to be managed by the Councillors who are elected by the voters as provided under the provisions of the Act. As noticed by me earlier, the Act also provides for the office of the President and Vice-president to the Municipal Council. The provisions in the Act make it clear that in respect of several matters provided in the Act, the Municipal Council has to take a decision and administer the rights of the parties and the properties located within the Municipal area. The Municipal Council, there cannot be any doubt, is a local self-Government, like Municipal Corporation or Zilla Panchayat or a Taluk Panchayat. Further, it is also necessary to point out that by means of the Constitution of India (Seventy-fourth Amendment) Act, Part IX-A came to be incorporated to the Constitution of India providing for the constitution of Municipalities; composition of Municipalities; constitution and composition of Wards Committees; powers, authority and responsibilities of Municipalities, etc., in every State. Article 243-Q of the Constitution provides that there shall be constituted in every State --(a) a Nagar Panchayat for a transitional area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of Part IX-A of the Constitution. Further, Article 243-U of the Constitution provides that every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Therefore, unless a Municipality constituted under the Act is dissolved as provided under the provisions of the Act, the term of the Municipality is fixed for a period of five years under Article 243-U of the Constitution. Part IX-A of the Constitution makes the constitution of the Municipality a constitutional obligation on the State Government which, in turn, guarantees the constitutional rights to the residents who reside within the municipal area to be managed by their elected representatives. The said right guarantees to the voter to participate in the election to be held to the Municipal Council and to continue as a Municipal Councillor, if elected, till the expiry of the term of the Municipal Council. As noticed by me earlier, the term of the Municipal

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Council is constitutionally fixed for a period of five years. However, in view of Section 316 of the Act, the term of five years constitutionally fixed under Article 243-U of the Constitution is subject to the order that is being made by the Government in exercise of the power u/s 316 of the Act. Keeping these matters in mind, the Court will have to examine the validity of the order impugned. As noticed by me earlier, it is the contention of Sri Subbaiah that the impugned order has been passed in disregard of sub-section (1) of Section 316 of the Act.

10. As it can be seen from Section 316 of the Act, the first respondent-State Government can pass an order dissolving a Municipal Council provided the State Government is of the opinion that any Municipal Council is not competent to perform or persistently makes default in the performance of the duties imposed on it or undertaken by it under the Act. or any other law. or exceeds or abuses its power or refuses to carry out the directions given to it under the provisions of the Act or any other law or is functioning in a manner prejudicial to the Municipal Council. The said provision further provides that such an order is required to be published in the Official Gazette. The words "in the opinion of the Government" clearly indicate that the opinion is required to be formed by the Government on objective assessment of the materials placed before it that a Municipal Council -- (1) is not competent to perform; (2) persistently makes default in the performance of the duties imposed on it or undertaken by it by or under the Act or any other law; (3) exceeds or abuses its power or refuses to carry out the direction given to it under the provisions of the Act or any other law; or (4) is functioning in any manner prejudicial to the Municipal Council. The aforesaid four circumstances are the conditions precedent which are required to be satisfied before the Government passes an order dissolving the Municipal Council. As noticed by me earlier, the Government has to form its opinion on objective assessment of the materials placed before it. This is also clear from the words employed in the said provision wherein it is stated that the order passed by the Government must be published in the Official Gazette together with a statement of the reasons for such an order being made. A reading of Section 316 of the Act makes it clear that it is not permissible for the Government to make an order dissolving a Municipal Council in a whimsical or arbitrary manner at its sweet will and pleasure. This is so because the dissolution of the Municipal Council in a democratic set up would have not only serious repercussions in managing the affairs of the Municipal Council, but also would have serious repercussions on the reputation and the political life of the members of the Council. Though the Municipal Council is a permanent entity in the eye of law as contended by Sri D''Sa, insofar as the order passed dissolving the Municipal Council is concerned, in my view, the requirement of law is that the deficiencies which empower the State Government to pass an order of dissolution under sub-section (1) of Section 316 of the Act, must be referable or attributable to the conduct or the action of the Councillors of the Municipal Council. Clause (a) of sub-section (1) of Section 11 of the Act provides that the Municipal Council shall consist of such number of directly elected Councillors specified in the said clause. Clauses (b)

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and (c) of sub-section (1) of Section 11 of the Act provide for other category of persons who constitute the Municipal Council. Therefore, there cannot be a Municipal Council without its Councillors and other persons, who constitute the Council as provided under clauses (b), (c) and (d) of sub-section (1) of Section 11 of the Act. In my view, if the scheme of the governance of the Municipal Council, as noticed by me earlier, is kept in mind, it can be attributable only to the action of the members of the Municipal Council. In the instant case, it is not in dispute that all the charges levelled in the show-cause notice at Annexure-C, which is also made as basis of the impugned order at Annexure-E, relate to the period prior to the constitution of the Municipal Council by means of notification dated 12th of January, 1996. In this connection, it is useful to refer to the relevant portion of paragraphs 2, 3 and 5 of the Statement of Objections filed on behalf of respondents 1 and 3. which read as hereunder:

"2. It is submitted that the 1st respondent-State Government, on the basis of material secured by it from the 3rd respondent and other aggrieved parties, had the conduct of the 2nd respondent-Municipal Council and of its elected members and other officials investigated over a period of time.

3. ... As a result of the investigation, it appeared that the Municipal Council had been guilty of serious lapses which had been condoned by the present members who had not only failed to take remedial action but had been actively condoning the said allegations. The 1st respondent having thus come to the conclusion that there was sufficient material to seriously consider superceding the Municipal Council, issued the Annexure-C show-cause notice.

5. It is submitted that the Municipal Council is a body corporate with perpetual succession and seal. It is irrelevant who its members are, at any particular point of time. The Municipal Council is to be looked at as a permanent body and its conduct considered from that perspective. Hence, it would not be open to the incumbent members to wash their hands of all responsibility for the performance of the Municipal Council either on the ground that the acts and omissions took place during the term of any preceding elected members. The sitting members having not personally participated in the initiation stage of the alleged defaults cannot be absolved of their acts and omissions which had and continue to have the effect of condoning, perpetuating or not remedy such past and continuing illegalities. The stand taken by the Municipal Councillors that their predecessor Councillors were in office at the time of the alleged illegalities is untenable, when no remedial action had been taken by the present incumbents. By their conduct the present Municipal Councillors had not only not remedied the lapses of their predecessor Councillors, but worse had actively connived, abetted and encouraged in various ways, such illegalities to perpetuate and increase the losses of the Municipal Council as made clear in the Annexure-C and E notifications. This is proof positive that they have acted in a manner prejudicial to the Council and hence, is just and sufficient cause for the supersession of the Municipal Council.....".

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(emphasis supplied)

Therefore, from the stand of the first respondent, it is clear that all the charges levelled in the show-cause notice at Annexure-C related to the period prior to the constitution of the Municipal Council with the present members. In my view, connecting the deficiencies of the Councillors, who were in the Office during the period prior to the constitution of the Municipal Council with the present Councillors, to dissolve the Municipal Council which came into office in the year 1996, would be wholly arbitrary and unreasonable and that is not the purpose and object of sub-section (1) of Section 316 of the Act which confers power on the State Government to dissolve the Municipal Council. This is also clear from the circumstances that the power is given to the State Government to dissolve a Municipal Council if the direction given by the Government under the Act or any other law, is not followed. Therefore, the default or incompetency to perform duties or abuse of the power or functioning in a manner prejudicial to the interest of the Municipal Council, as observed by me earlier, must be directly attributable to the conduct of the members of the Municipal Council and must have direct nexus with their action. This is also clear from the provisions contained in sub-section (3) of Section 316 of the Act, which provides that when a Municipal Council is dissolved, it shall be reconstituted in the manner provided under the Act before the end of six months from the date of such dissolution. Therefore, sub-section (3) of Section 316 makes it clear that the Municipal Council at all times, except for the short duration of the maximum period of six months, should be managed by the elected representatives. Under these circumstances, it is not possible to accept the contention of Sri D''Sa and Sri Bhat that even for the deficiencies of the members of the earlier Council, an order for dissolution could be passed as what is required to be considered by the Government is as a body and not its members. In my view, if the said submission is accepted, it would be giving uncontrolled and arbitrary power to the Government, which is not contemplated u/s 316 of the Act and Chapter IX-A of the Constitution, It is well-settled principle of law that every action of the State while exercising the power conferred on it, must be fair and reasonable. Such an action would be considered as fair and reasonable if the power conferred on an authority is exercised within a reasonable period within which the authority is required to act upon. If the argument of Sri D''Sa and Sri Bhat that for the default of the Municipal Council during the period prior to the constitution of the new Municipal Council is accepted as correct, it would mean that the deficiencies or defaults that had taken place 10 to 15 years prior to the initiation of the action u/s 316 of the Act can also be made as a ground to dissolve the Municipal Council constituted after holding fresh elections. In my view, such an action is not permissible and not contemplated u/s 316 of the Act because if it is allowed, the exercise of such power would be highly arbitrary, unfair and unreasonable. In a democratic system in which we are working, the elected representatives of the local self-Governments may belong to different group of people or belong to a different political party than the party in power in the State. Under these

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circumstances, for no fault of the elected representatives and for the default committed by the earlier Councillors, if an elected body is thrown out, in my view, it would be a mockery of democracy even at local self-Government levels. Therefore, if the charges levelled against the Municipal Council relate to the defaults or deficiencies attributable on the part of the Municipal Council prior to the constitution of the second respondent-Municipal Council with the present Councillors, I am of the considered opinion that it is not permissible to pass an order dissolving the second respondent-Municipal Council on the basis of the said charges.

11. Then, one other question that would arise for consideration is as to whether the present Municipal Councillors have condoned the deficiencies or defaults committed by the Council prior to the constitution of the second respondent-Municipal Council with the present Councillors as sought to be made out in the impugned order and also in the statement of objections? It is not the case of the first respondent in the show-cause notice that the present Councillors have in any manner condoned the deficiencies or defaults of the earlier Council. It is not one of the charges levelled against the Municipal Council in the show-cause notice at Annexure-C. It is only in the impugned order the said case is sought to be made out. If, as a matter of fact, the present Municipal Council had in any manner condoned the illegal actions or defaults of the earlier Council, as contemplated under sub-section (1) of Section 316 of the Act, it should have been made a specific charge in the show-cause notice at Annexure-C issued to the Municipal Council and the Municipal Council should have been afforded an opportunity to meet the said charge. The same having not been made, in my view, the said ground cannot be made out as a ground to dissolve the Municipal Council. Whether the present Councillors of the Municipal Council have condoned the action of the Municipal Council prior to the constitution of the Municipal Council by the present Councillors, is a matter on which a detailed enquiry has to be made and the explanation of the Municipal Council is required to be considered by the first respondent. Therefore, in the absence of any charge being levelled against the Municipal Council in the show-cause notice at Annexure-C, in my view, the same cannot be made as a ground to pass the impugned order at Annexure-E. It is no doubt true that under sub-section (1) of Section 316 of the Act, if a Municipal Council refuses to carry out the directions given to it under the provisions of the Act or any other law, it is a ground to dissolve the Municipal Council. In the instant case, it is not the case of the respondents that at any point of time, the first respondent had given any direction under the Act or in any other law, directing the Municipal Council after its reconstitution by means of notification dated 12th of January, 1996, and the said direction was not carried out by the Municipal Council. This is not one of the charges levelled against the Municipal Council in show-cause notice at Annexure-C. This is also not the stand taken in the statement of objections. But, the impugned order at Annexure-E proceeds to make out a case of default on the part of the present Councillors in not taking remedial measures for the defaults committed by the Councillors prior

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to the reconstitution of the Municipal Council with the present members, on the basis of the report given by the Commissioner of the second respondent-Municipal Council pursuant to the report called for by it. Admittedly, the report had been called for by the first respondent subsequent to the explanation at Annexure-D. The Municipal Council is not given an opportunity to meet the report or to submit its explanation to the allegations made against the Municipal Council or its Councillors, by the Commissioner in his report sent to the first respondent along with his letter dated 18th of December, 1998. Therefore, it was not permissible for the first respondent to rely upon the report of the Commissioner which was collected behind the back of the Municipal Council and its Councillors, and make it as a ground to pass the impugned order dissolving the Municipal Council. The action of the Municipal Council is highly arbitrary and unreasonable and lacks fairness in action apart from the fact that the said action is also in disregard of the principles of natural justice. The reasonable opportunity contemplated under the proviso given to sub-section (1) of Section 316 of the Act and also Article 243-U of the Constitution contemplates that the first respondent, before passing an order dissolving the Municipal Council, must give a reasonable opportunity to the Municipal Council of explaining every material that is sought to be used against the Municipal Council. As noticed by me earlier, the dissolution of the Municipal Council results in serious consequences, both from the point of view of administration of the local self-Government which is expected to continue in office and manage the affairs of the Municipal Council, and also the personal reputation, integrity, capability and political life of a Councillor of the Municipal Council. Therefore, on this ground also, the impugned order is liable to be quashed.

12. Now, let me examine the second contention urged by Sri Subbaiah that the impugned order came to be passed in total disregard of the provisions of sub-section (1) of Section 316 of the Act. The view I have taken above while considering the first contention of Sri Subbaiah, to a large extent, supports the contention of Sri Subbaiah that the impugned order came to be passed in disregard of Section 316 of the Act. But, one other question that remains to be answered is as to whether a reasonable opportunity to be given to the Municipal Council before passing an order of dissolution as contemplated u/s 316 of the Act, is the personal hearing which is required to be given either to the Municipal Council or its Councillors. In my view, having regard to the scheme of the Act and the provisions contained in Part IX-A of the Constitution, though a personal hearing is not contemplated to be given either to the Municipal Council or its Councillors, but such personal hearing is required to be given to the Municipal Council. Article 243-U of the Constitution fixes the terms of the Municipal Council for five years unless it is sooner dissolved under any law made for that purpose. The said provision further provides that before an order of dissolution is made, the Municipality concerned should "be given a reasonable opportunity of being heard". It is useful to extract clause (1) of Article 243-U of the Constitution, which reads as hereunder:

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"243-U. Duration of Municipalities, etc.--(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

....."

The mandate of the proviso given to clause (1) of Article 243-U of the Constitution is that even if a law is made conferring power for dissolution of a Municipal Council before the expiry of its term of five years fixed under clause (1) of Article 243-U of the Constitution, the Municipality which is likely to be affected on account of such an action, should be given a reasonable opportunity of being heard. Sri Subbaiah would submit that the provisions contained in Section 316 of the Act should be read along with the proviso given to Article 243-U of the Constitution and if it is so read, in addition to giving of a show-cause notice, the Municipal Council against which the show-cause notice is issued, should be heard before an order is made after receipt of the explanation of the Municipal Council to the show-cause notice issued. According to him, since the consequences of making an order is of very serious nature, the requirement of the section as well as Article 243-U has to be strictly complied with before an order dissolving the Municipal Council is made; and the words "being heard" used in the proviso given to Article 243-U must be understood in the context as of affording a ''personal hearing'' to the Municipal Council. Sri D''Sa and Sri Bhat would submit that the words "being heard" in the circumstances must be understood as giving of a show-cause notice. As observed by me earlier, the consequences of dissolving a Municipal Council is of very serious nature. There cannot be any doubt that the consideration of the matter after personal hearing and consideration of the matter on the basis of the explanation submitted to a show-cause notice, on many occasions, would make all the difference. The deficiency or default referred to under sub-section (1) of Section 316 for passing an order under that provision dissolving a Municipal Council must, in my opinion, be a persistent default. It cannot be on account of a single default or a few defaults which are of minor nature. Under these circumstances, when the Constitution specifically provides that the Municipal Council concerned should "be given a reasonable opportunity of being heard before its dissolution", in my view, the said provision must be understood as giving of a personal hearing. If this view is taken, it would not cause any injustice or hardship either to the Municipal Council or to the Government because an order of dissolution is not an order under the scheme of the Act, which is required to be passed as an emergency measure to remedy the defects. Under these circumstances, if an elected body is to be thrown out of the power on the ground that there has been serious deficiency in their performance as provided under sub-section (1) of Section 316 of the Act, in my view, it is imperative that after the receipt of the explanation, if any, submitted by the Municipal Council, the Municipal Council should be given a personal hearing by

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the Government. The constitutional provision contained in Article 243-U of the Constitution, as observed by me earlier, specifically states that "the Municipality shall be given a reasonable opportunity of being heard before its dissolution". The said provision contemplates two things. Firstly, it contemplates of giving a reasonable opportunity before an order of dissolution is passed; and secondly, the said "opportunity is of being heard". When the constitutional provision mandates giving of an opportunity "of being heard" before an order of dissolution is made, the opportunity "of being heard" contemplated under the scheme of the constitutional provision cannot be diluted or taken away by not providing for an opportunity of being heard, which confers power on the State Government u/s 316 of the Act, to dissolve the Municipal Council. As noticed by me earlier, the constitution of the Municipal Council is a part of the scheme of the constitutional provision. Therefore, if sub-section (1) of Section 316 of the Act, which confers power on the State Government to dissolve the Municipal Council, is to be understood as conferring power on the State Government to dissolve a Municipal Council without giving "a reasonable opportunity of being heard" before dissolving the Municipal Council, the said provision may have to be struck down as running counter to the mandate of clause (1) of Article 243-U of the Constitution. But, it is well-settled that while interpreting a provision of law, if the provision of law can be read down to save the provision from the vice of unconstitutionality, the Court will have to so read the provision and interpret the same. On this ground also, I am inclined to take the view that the reasonable opportunity of being given to the Municipal Council to show cause as to why an order of dissolution should not be made as provided under the proviso given to sub-section (1) of Section 316 of the Act, implies in it "affording of an opportunity of personal hearing" to the Municipal Council. In the instant case, admittedly that has not been done. Therefore, on this ground also, the impugned order is liable to be quashed.

13. Insofar as the contention of Sri Subbaiah relating to the mala fides is concerned, in the light of my above conclusion that the impugned order dissolving the Municipal Council is liable to be quashed, I find it unnecessary to consider the same.

14. In the light of the discussion made above, I am of the view that the order impugned is liable to be quashed. Accordingly, impugned order at Annexure-E, dated 11th of January, 1999 and the subsequent notification published in the Karnataka Gazette dated 19th of January, 1999, are hereby quashed.

15. In terms stated above, this petition is allowed and disposed of. Rule is issued and made absolute.

16. Sri D''Sa, learned Government Advocate, is permitted to file his memo of appearance within four weeks from today.

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