

(2007) 11 MAD CK 0185

In the Madras High Court

Case No : Writ Petition No. 34715 of 2007

M. Rani Munirathinam

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 5
Constitution of India, 1950 — Article 226
Tamil Nadu District Municipalities Act, 1920 — Section 23A

Citation : (2008) 1 MLJ 532

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S. Parthasarathy for R. Bharathkumar, for the Appellant; I. Paranthaman, Additional Government Pleader, V. Raghavachari, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition challenges the G.O.(D) No. 426, Municipal Administration and Water Supply (TP2) Department, dated

12.9.2007 passed by the first respondent. By the said impugned Order, the Government by exercise of its power u/s 40-A of the Tamil Nadu

District Municipalities Act, 1920 (hereinafter referred to as the ""Act"") and accepting the resolution passed by the Councillors of Pallipattu Town

Panchayat by way of ""No Confidence Motion"" against the petitioner, being the President directs the removal of the writ petitioner as Chairman of

Pallipattu Town Panchayat, Tiruvellur District from the office of the Chairman of the said Town Panchayat. Originally the petitioner was elected as

a Ward Councillor of No.1, Pallipattu Town Panchayat and thereafter, she was elected by majority of ward members as Town Panchayat

President, which was allowed for ladies quota on 28.10.2006. There are totally 15 members in the Town Panchayat.

2. It is the case of the petitioner that the Vice President of the Town Panchayat in order to bring one Mrs. Usha Rani as President had obtained

signatures from 10 members by threat and force and moved a No Confidence Motion by giving a letter on 21.6.2007. It was pursuant to the said

letter stated to have been signed by 10 members, presented to the second respondent, the Assistant Director of Town Panchayats, the second

respondent has issued a notice u/s 40-B of the Act intimating the members about the convening of a meeting on 4.7.2007. Since as required under

the Act, 15 clear days notice was not there, the said meeting stood cancelled and another notice was issued by the second respondent on

3.7.2007 convening a meeting of the Panchayat on 19.7.2007. On 19.7.2007, the Panchayat meeting is stated to have been held and a motion for

removing the petitioner from the post of President is stated to have been carried out. It was on 27.8.2007, the petitioner moved this Court by filing

the writ petition in W.P. No. 27629 of 2007 challenging the meeting called for by the second respondent dated 3.7.2007 on the basis that the

second meeting is not contemplated under the Act. Notice of motion was ordered by this Court on 22.8.2007 and an order of interim injunction

passed restraining the first respondent, the State of Tamil Nadu from passing further orders pursuant to the meeting held on 19.7.2007 for the

purpose of removal of the President of the Pallipattu Town Panchayat. Initially, the order of injunction was granted for two weeks and that was

extended by another two weeks on 6.9.2007. On 25.9.2007, this Court disposed of the writ petition with a direction to the petitioner to give a

representation to the first respondent. It is the case of the petitioner that as per the direction, the petitioner has given a representation to the first

respondent on 8.10.2007 and the first respondent has not passed any order. In the meantime, the impugned G.O., came to be passed on

12.9.2007 by virtue of the powers conferred u/s 40-A of the Act by accepting the resolution of the Panchayat dated 19.7.2007 ordering removal

of the petitioner from the Chairmanship and that G.O., is now being challenged. It is also relevant to point out that in the meantime, certain

amendments were incorporated into the Act, especially relating to Section 40-A. One of the provisions of the amendment by way Ordinance is

that any motion expressing want of confidence in the chairman or vice-chairman made u/s 40-A and pending before any officer, authority or the

Government, as the case may be, as provided in Section 40-A, immediately before the commencement of this Ordinance, shall abate. The

petitioner challenges the G.O., mainly on the ground that the second notice issued by the second respondent on 3.7.2007 calling for Panchayat

meeting is not contemplated under the Act. That apart, on 22.8.2007, when this Court has passed an order of interim injunction restraining the first

respondent, the Government is not empowered in passing any further orders pursuant to the meeting of the Panchayat held on 19.7.2007 and

particularly when the injunction was in force. It was during that time, the G.O., came to be passed on 12.9.2007 and therefore, the G.O., is to be

treated as non est since the Government Order is against the order of this Court.

3. The second respondent has filed a counter affidavit. The main defence raised by the second respondent is that passing of the Government Order

is pursuant to the resolution of the Panchayat dated 19.7.2007. At the time, when the meeting was called, there was no order restraining the

Panchayat from proceeding with the meeting and therefore, the resolution passed by the Panchayat is deemed to be in existence and in that event,

the natural consequence for the Government is to issue notification u/s 40-A(12) of the Act. Therefore, there is nothing wrong in the notification

and the Government Order issued by the Government.

4. Further, it is the case of the Government that when once the Gazette Notification is issued, it is expected to be known to every one and the

petitioner cannot take refuge under a cover stated to have been posted on 1.11.2007, even though Government Order is dated 12.9.2007 and

according to the first respondent, the petitioner is well aware of the Notification issued even on 12.9.2007 itself.

5. It is also the case of the first and second respondents that in the earlier writ petition ultimately, the decision was not in favour of the petitioner but

only the petitioner was directed to give a representation to the Government, the first respondent and therefore, the pendency of the injunction

application or even an injunction order cannot be deemed to be a bar for the Government to exercise its statutory function invoking the provisions

of the Act.

6. The councillors who have brought the resolution for motion also filed an intervening application. They have also filed an affidavit to the effect that

issuing of Gazette Notification u/s 40-A(12) of the Act is a natural consequence of the resolution passed by the Panchayat meeting on 19.7.2007

and on that day, when the Panchayat passed a resolution, there was no impediment on the part of the Panchayat in passing such a resolution and it

is not even the case of the petitioner that any force has been used for the purpose of getting resolution passed and therefore, the impugned

notification should be held valid. It is also the further case of the interveners that the Government has caused publication on 12.9.2007 not only in

respect of the petitioner but also the chairman of four other panchayats. Therefore, it can never be held as if a mala fide act only against the

petitioner.

7. Mr. S. Parthasarathy, learned Senior Counsel appearing for the petitioner would submit that while it is true that the meeting was held on

19.7.2007 and in any event assuming that a resolution was passed on 19.7.2007, when once the Court order is in existence restraining the

Government, namely, the first respondent from passing any consequential order pursuant to the resolution of the Panchayat dated 19.7.2007,

naturally such consequential order passed by the Government in disobedience of the order of injunction passed by this Court should be deemed to

be non-est in eye of law. According to the learned Senior Counsel, the G.O., dated 12.9.2007, the date on which the injunction was in force,

should be ignored. If that being the legal position even it should be presumed that pursuant to the resolution passed by the Panchayat on

19.7.2007, the Government has not taken any further action in notifying the said proceedings. According to the learned senior Counsel, the

resolution only remains without any further action of issuing notification and therefore, proceedings are deemed to be pending. In the meantime, the

amendment has come into effect to the Act, which makes it very clear that the resolution should abate.

8. The learned Senior Counsel has relied upon the judgments in Surjit and others Vs. Harbans Singh and others etc. etc., to substantiate his

contention that any action taken by the party during the pendency of the restraint order of the Court should be deemed to be a non-est.

9. On the other hand, Mr. I. Paranthaman, learned Additional Government Pleader appearing for the respondents has produced the entire files

relating to the said resolution and other files. His submission is that as far as the Government's conduct in passing the notification is concerned, it is

a statutory duty which has been performed and therefore, it cannot be said that the Government is favouring a group of persons, and what all the

Government has done is only pursuant to the resolution passed by the Panchayat on 19.7.2007. Further, the factum of injunction came to the

notice of the Government only on 14.9.2007 by which time all process for issuing the impugned notification were completed and notification

issued.

10. The learned Additional Government Pleader for the respondents has relied upon various decisions in support of his contention namely, in *Pulin*

Das Kakati v. Rajendra Nath hazarika reported in AIR 1972 Gauhati 25 (V 59 C 8), in *Balakrushna Behera and Anr. v. Satya Prakash Dash*

reported in 2007 AIR SCW 6630 and in *Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, .*

11. It is true that while going through the files, it is revealed that till 14.9.2007, the order of interim injunction passed by this Court was not brought

to the notice of the first respondent and therefore, the contention of Mr. I. Paranthaman, learned Additional Government Pleader for the

respondents is that the Government has passed the G.O., without any mala fide intention, and in any event it remains a fact that injunction was in

force on the date of the Government Order and the injunction order was passed after hearing the counsel for the Government.

12. Mr. V. Raghavachari learned Counsel for the interveners while reiterating the contents of the affidavit filed by the interveners would submit that

what is done by the Government is a statutory function and nobody can find fault with them. The learned Counsel has relied on various judgments

especially in *Jaisingh Vithoba Girase Vs. State of Maharashtra and Others, .* in *Manujusna Kadam v. Government of A.P.* reported in AIR 1998

Andhra Pradesh 195, in *Samala Jayaramaiah Vs. Government of Andhra Pradesh and Others*, apart from 1999 (9) SCC 16 *Maharaha*

Chintamani Saran Nath Shahdeo v. State of Bihar and Ors. to show that there is absolutely lack of jurisdiction in this case and usurpation of any

jurisdiction would amount to revival of an illegal order.

13. Heard Mr. S. Parthasarathy, learned Senior Counsel appearing for the petitioner, Mr. I. Paranthaman, learned Additional Government Pleader

appearing for the respondents and Mr. V. Raghavachari, learned Counsel appearing for the interveners and also perused the entire records

including the files produced by the learned Additional Government Pleader.

14. Section 40-A of the Act as it stood before the Ordinance came into effect is in the following terms:

Section 40-A. Motion of no-confidence in Chairman or vice-chairman:

(1) Subject to the provisions of this section, a motion expressing want of confidence in the chairman or vice-chairman may be made in accordance

with the procedure laid down herein.

(2) Written notice of intention to make the motion in such form as may be fixed by the State Government, signed by such number of councillors as

shall constitute not less than one half of the sanctioned strength of the council, together with a copy of the motion which is proposed to be made,

shall be delivered by any two of the councillor, signing the notice in person together, to the Regional Director of Municipal Administration.

(3) The Regional Director of Municipal Administration shall then convene a meeting for the consideration of the motion, to be held at the municipal

office, at a time appointed by him which shall not be later than thirty days from the date on which the notice under Sub-section (2) was delivered to

him. He shall give to the councillors notice of not less than fifteen clear days of such meeting and of the time appointed therefor.

(4) The Regional Director of Municipal Administration shall preside at the meeting convened under this section, and no other person shall preside

there at. If within half an hour after the time appointed for the meeting Regional Director of Municipal Administration is not present to preside at the

meeting, the meeting shall stand adjourned to a time to be appointed and notified to the councillors by the Regional Director of Municipal

Administration under Sub-section (5).

(5) If the Regional Director of Municipal Administration is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn

the meeting to such other time as he may appoint. The date so appointed shall not be later than thirty days from the date appointed for the meeting

under Sub-section (3), Notice of not less than seven clear days shall be given to the councillors of the time appointed for the adjourned meeting.

(6) Save as provided in Sub-sections (4)(5) a meeting convened for the purpose of considering a motion under this section, shall not for any reasons be adjourned.

(7) As soon as the meeting convened under this section has commenced, the Regional Director of Municipal Administration shall read to the council the motion for the consideration of which it has been convened, and declare it to be open for debates.

(8) No debate on any motion under this section shall be adjourned.

(9) Such debate shall automatically terminate on the expiry of two hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of two hours, as the case may be, the motion shall be put to the vote of the council.

(10) The Regional Director of Municipal Administration shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(11) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall forthwith on the termination of the meeting be forwarded by the Regional Director of Municipal Administration to the State Government.

(12) If the motion is carried with the support of not less than three-fifth of the sanctioned strength of the council, the State Government shall, by notification, remove the chairman or vice-chairman.

(13) If the motion is not carried by such a majority as aforesaid, or if the meeting cannot be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same chairman or vice-chairman shall be received until after the expiry of six months from the date of the meeting.

(14) No notice of a motion under this section shall be received within six months of the assumption of office by a chairman or vice-chairman.

15. Therefore, Section 40-A of the Act, as it stood before the amendment, which came into effect on 4.10.2007 empowered the Panchayat to

move no confidence motion against the chairman or vice-chairman by way of a motion signed by not less than one half of the sanctioned strength

and the same having been presented by minimum two councillors to the Regional Director of Municipal Administration. As per Sub-section 12, the motion carried out by not less than three-fifth of the sanctioned strength of the council has to be notified by the State Government by which the removal of the chairman or vice-chairman comes into effect. It is also stated in Section 40-A(13) that if such resolution was not passed for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same chairman or vice-chairman shall be received until after the expiry of six months from the date of the meeting.

16. Some amendments were incorporated u/s 40-A of the Act relating to

i) submission of motion, which was originally by half of the sanctioned strength of the council is now made as three-fifth of the total number of members of the council

ii) in respect of carrying out a motion, it was three-fifth of the sanctioned strength and the same has been made as four-fifth of the sanctioned

strength. Likewise, in respect of the disability in moving further motion as contemplated u/s 40-A(13), instead of six months, the same has been

increased to one year. Likewise there is a consequential change u/s 40-A(14) also. The said amendment by way of Ordinance has come into effect

from 4.10.2007.

17. It is true that when a no confidence motion was moved against the petitioner, out of the total number of councillors namely, 15, 10 councillors

have signed in the same and it is also not in dispute that minimum requirement of two councillors have presented the same before the second

respondent and it is also not in dispute that a resolution has been carried out on 19.7.2007 in the meeting of the Panchayat which was convened.

Even though the contention raised as a point that there is no right on the part of the second respondent to issue a second notice, the same is not

insisted at this stage and therefore, the issue is left open. It is relevant to point out that originally notice was given on 25.6.2007 for convening a

meeting on 4.7.2007. Probably after finding that 15 clear days were not available, the said meeting was not convened. It is clear that a notice was

given on 3.7.2007 and that notice is under the provisions of the Act by giving 15 days and the meeting was held and the resolution was carried out.

It remains a fact that on the date of resolution namely 19.7.2007, the petitioner

has not moved the Court and the petitioner has ultimately approached this Court on 22.8.2007 by filing the writ petition in W.P. No. 27629 of 2007. That writ petition was filed challenging the notice given by the second respondent on 3.7.2007 convening the meeting on 19.7.2007. Pending the writ petition, the petitioner filed an interim application praying for interim injunction restraining the first respondent State Government from passing any further orders. It is not in dispute that on 22.8.2007, this Court has passed an order of interim injunction restraining the State Government namely, the first respondent from passing any further orders pursuant to the meeting held on 19.7.2007 for the purpose of removal of the President of the Pallipattu Town Panchayat and that order of injunction was subsequently extended on 6.9.2007 for another two weeks i.e. upto 20.9.2007. It is in between this time when the order of injunction was in force, the impugned G.O came to be passed on 12.9.2007. Therefore, the question to be decided is as to whether the impugned Government Order, which was passed on 12.9.2007, at the time when the injunction order was working against the first respondent, the Government was competent to pass such order or such notification issued by the Government is valid in law. If the G.O passed on 12.9.2007 is not valid due to reason of the pendency of injunction against the first respondent for passing notification or orders, then it is only natural that the resolution of the Panchayat passed on 19.7.2007 remains not notified. As enumerated above, the resolution passed by the Panachayat on 19.7.2007 comes into effect after notification is effected u/s 40-A(12) of the Act and that notification is issued by the Government.

18. In Surjit and others Vs. Harbans Singh and others etc. etc., , the Supreme Court had an occasion to decide about the validity of any alienation or assignment made in defiance of the Court's order irrespective of whether it was of the property per se or of the decree pertaining assignment as non est. The Supreme Court has ultimately held that when the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Supreme Court has further held that in such circumstances, it is the duty of the Court and also the right to treat the alienation or assignment as having not taken place at all for its

purposes. The relevant portion of the Supreme Court in this regard is para-4, which reads as follows:

4. As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in

which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property

worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates

to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any

appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the

alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court

intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to

exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having

not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties

on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial Court as parties to the suit, in

disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement

presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit.

On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treated by

the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application

of the assignees for impleadment under Order 22 Rule 10 CPC.

19. Therefore, it is clear that when once an order of injunction is in operation against the first respondent, it can be safely presumed that the

notification issued by the first respondent on 12.9.2007, has to be ignored and has to be treated as non-est in eye of law.

20. The judgments referred to by Mr. I. Paranthaman, learned Additional Government Pleader for the respondents on the face of it have no relevance to the facts of this case at all.

21. In *Pulin Das Kakati v. Rajendra Nath Hazarika* reported in AIR 1972 Gau 25 (V 59 C 8), the Gauhati High Court had to deal with Order 3

Rule 5 of CPC, wherein notice to pleader regarding presumption as to its communication to party was held to be rebuttable and not conclusive.

22. In *Mariyappa Vs. V.R. Ramakrishna Rao and Others*, the Karnataka High Court was dealing about the civil contempt case, wherein the plea

of ignorance of order of interim stay was considered. On the fact of the said case, the Karnataka High Court has held that the sale deed was

executed by the power of attorney agent on the same day of passing of order of interim stay without knowledge of the same and the Power of

attorney holder was not impleaded. In that context, the Karnataka High court has held that there was no deliberate disobedience of the Court

order.

23. A similar view was taken by the Supreme Court in *Balakrushna Behera and Anr. v. Satya Prakash Dash* reported in AIR 2007 SCW 6630

That was relating to the publication of results by the University. As per the direction of the Court, the University has published the results and while

dealing with it, the Supreme Court has held that there was no willful disobedience even though there was some delay in executing the same.

24. The judgment of the Supreme Court in *Balwant Singh and Others Vs. Mool Chand and Others*, is not applicable to the facts and

circumstances of the present case. That was a case, wherein the Supreme Court had an occasion to deal about the exparte interim order granted in

favour of the petitioner, which was likely to affect the third parties interest and causing the grave injustice to the non-petitioners by holding that

under Article 226 of the Constitution of India, the Court has to correct such injustice. Equally, the judgments relied upon by Mr. V. Raghavachari,

learned Counsel for the interveners have no relevance to the facts and circumstances of the present case.

25. In *Jaisingh Vithoba Girase Vs. State of Maharashtra and Others*, , wherein the Bombay High Court had an occasion to decide about an

election of the chairman and Vice Chairman under Maharashtra Agricultural

Produce Marketing (Regulation) Act, 1964. That was also a case where no confidence motion against Chairman u/s 23-A of the Act was moved and the Division Bench of the Maharashtra High Court has held that Section 23-A are the regulating procedure for expressing no confidence against Chairman and Vice-Chairman as a complete the Code in itself and there is no abdication of powers and the powers vested with the Collector is not unguided power and that does not suffer from excessive delegation.

26. It is relevant to point out that under the provisions of the said Act, there is no similar provision as that of the notification by the Government about the no confidence motion contemplated u/s 40-A(12) of the District Municipalities Act. Likewise, even in two other cases relating to the Andhra Pradesh Panchayat Raj Act, 1994, which were also relating to no confidence motion moved against the Chairman of Zilla Parishad, the same was the issue. A careful reading of those judgments show that in those cases, there are no provisions for the purpose of the resolution to be passed by the Panchayat and notified by the Government.

27. The next judgment, which is relied upon by Mr. V. Raghavachari, learned Counsel for the interveners relates to the tenancy laws under the Bihar Land Reforms Act decided by the Supreme Court. That was the case in Maharaja Chitamani Saran Nath Shahdeo v. State of Bihar and Ors. reported in 1999 8 Supreme Court Cases 16. The Supreme Court has held that though the Act vests no powers on Board of Revenue, order of member of the Board directing action to be taken for refund of excess compensation paid was held to be valid and proper holding that if such an order passed by the Member of Board, who has actually no jurisdiction to set aside such an order, then it will amount to revival of an invalid order of compensation to the appellant.

28. Mr. V. Raghavachari, learned Counsel for the interveners heavily relied upon the said judgment of the Supreme Court to show that if notification of the Government is set aside, it means that the Panchayat, which has got legal right to pass resolution and which has in fact passed a resolution on 19.7.2007 in accordance with law will be invalid and it will amount to making a valid act of the Panchayat as invalid, particularly when the said resolution of the Panchayat dated 19.7.2007 was not challenged.

29. As enumerated above, under the provisions of the Act, there is a specific provision u/s 40-A(12) stating that any resolution passed by the

Panchayat will have to be notified by the Government to the effect that the Chairman or President is removed. Therefore, it is clear that it is as on

the date of notification removal comes into effect. Since on the said date impugned G.O., the order of injunction was in force, the impugned order

has to be ignored and therefore, it should be presumed that it is only a resolution of the Panchayat dated 19.7.2007, which is in existence, which

will be operative only if it is properly notified as per Section 40-A(12) of the Act. In the meantime by advent of the amendment by way of

Ordinance which has come into effect, from 4.10.2007 u/s 40-A pending proceedings are stated to be abated. Therefore, in my considered

opinion when once the impugned G.O., is to go, since it will be treated as non est in law, it should be presumed that the resolution of the Panchayat

dated 19.7.2007 remains before it is notified, the amendment has come into effect and therefore the resolution of the Panchayat dated 19.7.2007

pending notification deemed to be abated.

30. In view of the same, the writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.