
(1990) 01 MAD CK 0016
In the Madras High Court

N. Vijaya Kumar

APPELLANT

Vs

The Municipal Council and Others

RESPONDENT

Date of Decision : 29-01-1990

Acts Referred:

Constitution of India, 1950 — Article 14

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

Citation : (1990) 1 MLJ 409

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is for issuance of mandamus to direct the respondents to restore the petitioner to the

office of Councillorship, Pollachi Municipality, Pollachi, pursuant to the powers vested in them u/s 50(4) of the Tamil Nadu Municipality Act and as

prayed for in his letter dated 2.1.1989.

2. It is alleged in the affidavit that the petitioner was duly elected as Council or from the 11th Ward of the Pollachi Municipal Town and was

functioning from 3.3.1986. It is admitted that the petitioner did not attend the meetings of the council held on 31.8.1988, 26.10.1988 and

21.12.1988. By letter dated 28.12.1988, the petitioner was informed that by reason of non-attendance of the meetings he has incurred

disqualification u/s 50(1)(i) of the Tamil Nadu District Municipalities Act, 1920. It seems that on 2.1.1989 the petitioner gave a reply stating that

due to his sickness he could not attend the meetings and also prayed for restoration to the councillorship. It seems that though the Municipal

Council scheduled the item of restoration as one of its agendas, however, adjourned the matter to 28.2.1989 and again to 5.5.1989. The chairman

inimically disposed towards the petitioner, adjourned the matter finally to 5.5.1989. On 5.5.1989, the Council refused to accede to the petitioner's request and reconfirmed the removal from councillorship.

3. The petitioner further alleges in the affidavit that u/s 50(4) of the Act, the respondents are bound to restore the petitioner to the office of the Councillorship in the event of his compliance of that Section. It is also alleged that this is the first time he ever sought the restoration and there was no restoration attempted for more than twice. It is also stated that Section 50(4) of the Act enjoins a statutory duty on the first respondent herein to re-admit the petitioner to the office, either at the next meeting after receipt of application for restoration or subsequently. That power is a power coupled with a duty to be exercised in favour of the applicant. It is also stated that it cannot be said that power can be exercised at the arbitrary discretion of the respondents that that it would lead to a violation of Article 14 of the Constitution of India. Section 50(4) of the Act gives only a power to be exercised in favour of the applicant. It is further stated that the refusal to restore the petitioner to the Councillorship is a malafide exercise of the power by the respondents against law.

4. Notice of motion was ordered by me on 14.6.1989 and Mr. K. Sridhar, learned Additional Government Pleader appears for the respondents.

5. Mr. Sundaravardan, learned Counsel for the petitioner contends that a reading of Section 50(4) of the Act clearly shows that a duty is cast upon the Chairman to restore a councillor who has incurred disqualification by virtue of Section 50(1)(i) of the Act or any other clause of Section 50 of the Act. Learned Counsel further argued that refusal on the part of the respondents Municipality to restore the membership of the petitioner amounts to violation of Article 14 of the Constitution of India.

6. Mr. K. Sridhar, learned Counsel appearing for the Municipality on the other hand contends that Section 34 and 36 of the Act enables the Government to cancel the resolution and moreover Section 34 of the Act provides a supervisory control for the Government.

7. I have considered the arguments of both the learned Counsel for the petitioner and the learned Additional Government Pleader. Section 50 of the Act speaks about the disqualification of Chairman or Councillors. Section 50(1)(i) of the Act reads thus:

Disqualification of Chairman or councillors (1) subject to the provisions of Section 51, the chairman or a councillor shall cease to hold his office, if

he absents himself from the meetings of the council for a period of three consecutive months reckoned from the date of commencement of his term

of office or of the last meeting which he attended, or of his restoration to office as (the chairman or) councillor under Sub-section (4), as the case

may be or if within the said period, less than three meetings have been held, absents himself from three consecutive meetings held after the said

date....

Provided that no meeting from which (the Chairman or) a councillor absents himself shall be counted against him under this clause, if due notice of

that meeting was not given to him.

Explanation: A meeting held under Sub-rule (2) of Rule 2 of Schedule HI or Rule 3 of that Schedule shall not be deemed to be a meeting within the

meaning of this clause.

Section 50(4) of the Act gives power to the Council to restore the membership on certain conditions. A similar provision is found in Section 27(2)

of the Tamil Nadu Panchayat Act 1958. Kailasam J. (as he there was) in an unreported decision in W.P.No. 1020 of 1966 dated 12.4.1966 has

held that the word ""may restore"" cannot be read as ""shall restore"" and has held that the local authority has an option to restore or not and the

discretion rests in the local authority. The learned Judge also held that a person has no right to demand restoration of his membership. In my view

this decision clearly applies to the facts of this case and answers the contentions raised by Mr. Sundaravaradan on behalf of the petitioner.

8. Apart from that I do not see any violation of Article 14 of the Constitution of India since the petitioner has no right to demand restoration of

membership. As rightly pointed out by the learned Additional Government Pleader the petitioner has not challenged the resolution refusing to

restore the petitioner. So far the resolution of the Municipal Council is on the Minutes Book I do not think that a Mandamus can issue. It is

fundamental that when an order or proceedings is there a Mandamus cannot be issued ignoring that order of proceedings. That apart I am of the

view that the petitioner has a right to invoke the revisional jurisdiction of the Government and the government has got ample powers to see that any

resolution passed is legally passed or not. When there is a resolution refusing to restore the petitioner to the office and if he feels aggrieved in my view, the petitioner can approach the Government to sort out his grievance. On that ground also the writ petition is liable to be dismissed. There are no merits in the writ petition and accordingly it is dismissed. No posts.