
(1962) 11 MAD CK 0053
In the Madras High Court
Case No : Writ Appeal No. 212 of 1962

N.S. Devarajan

APPELLANT

Vs

The State of Madras and another

RESPONDENT

Date of Decision : 02-11-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) ILR (Mad) 1075

Hon'ble Judges : Ramachandra Iyer, C.J.; Srinivasan, J

Bench : Division Bench

Advocate : P.R. Gokulakrishnan and S. Jayakumar, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal is filed under Cl. 15 of the Letter Patent against the judgment of Veeraswami J. rejecting the appellant's application for the issue of a Writ of Certiorari to quash the order of the Government in G.O.Ms. No. 2268 (Rural Development and Local Administration Department) dated 18th October 1962, directing the Commissioner of the Corporation of Madras to arrange for the convening of the meeting of the Council of the Madras Corporation. The Corporation of Madras is a statutory body constituted by the Madras City Municipal Act, 1919, for the purpose of carrying on the Municipal Administration of the City. The statute also creates certain other authorities and defines the respective duties and powers of such authorities. Such of the duties that the Corporation Council has and those form the main part of the Government of the City, can be done only in a duly constituted meeting of the Council. No meeting can obviously function without a head; there should also be an agency to convene it. The City Municipal Act provides for the election of one of the members of the Council as Mayor who is to preside over every meeting of the Council and who by virtue of his office is also given certain prerogatives and incidental rights. But so far as the Council is concerned, his duties consist in facilitating the transaction of business by convening and conducting of meetings

and doing things incidental thereto. The appellant is a member of the Council of the Corporation. Under R. 2 of the Sch. II of the Act, the Council of the Corporation should meet in the Municipal Office for the transaction of business at least once in every month upon such day and at such hour as it may arrange and also at other times as often as the Mayor convenes the meeting, he being given the power to fix the date and hour of the meeting. With the object of enabling it to meet and for the due performance of its business the Council has framed Regulations under the powers vested in it by S. 31 fixing the minimum number of ordinary meetings of the Council to be held in a month. Regulation No. 9 prescribes that the Council should have two ordinary meetings at the Corporation Buildings at 5-15 p.m. on the first and third Tuesdays of every month. But this is only the minimum as fixed by the Council; the Mayor can always call for meetings of the Council at other times as often as may be necessary. He is also to arrange for special meetings, if so required by the members of the Council. All meetings will have to be presided over by the Mayor but if the Mayor is unavailable or unable to preside for any reason it cannot be said that there should be or could be no meeting of the Council. S. 32 of the Act says:

Every meeting of the Council shall be presided over by the Mayor, in his absence by the Deputy Mayor and in the absence of both the Mayor and the Deputy Mayor by a Councillor or Alderman chosen by the meeting to preside for the occasion.

2. Essentially, therefore, the office of a Mayor is one created for the benefit of the Corporation Council, to facilitate its transaction of business. In the Madras Corporation, the Mayor who is himself a member of the Council is elected once a year. On 28th November, 1961, Sri Kuchelar, the present Mayor was elected by the Council. There was an ordinary meeting of the Council of the Corporation on 21st August, 1962, Nearly a week thereafter the Mayor (Sri Kuchelar) participated in an illegal picketing demonstration. He was convicted by the Chief Presidency Magistrate, Madras, under S. 7 (9) of the Criminal Law Amendment) Act and sentenced to suffer simple imprisonment for three months. No meeting of the Council was thereafter convened. The business of the Corporation remained at a stand-still. The Chief Executive Officer of the Corporation (The Commissioner) found himself unable to carry on the day-to-day administration with reference to certain matters without the necessary sanction of the Council. Suits which had to be filed after obtaining the sanction of the Council, and there were several of them, could not be filed, although the period of limitation prescribed for them was running out. The number of subjects which had to be disposed of by the Council had accumulated, nearly to one hundred, some of them requiring immediate decision. There was no move on the part of the Mayor who was undergoing imprisonment to convene a meeting of the Council although it was obligatory on it to meet twice a month. The entire month of September, went by without a single meeting and it is said that there was no indication of any meeting being convened for the month of October as well. From the arguments addressed to us we gathered the impression that the Mayor will be

able to take steps to convene the meeting of the Council, only after his release which sounds as if public duties are subordinate to individual conveniences. The Commissioner duly apprised the Government of the deadlock. In the purported exercise of the powers in it under S. 42 of the Act, the Government of Madras thereupon passed an order (G. O. No. 2268 dated 18th October, 1962, Rural Development and Local Administration Department), which after reciting some of the facts set out above, directed the Commissioner of the Municipal Corporation of Madras to arrange for the convening of the Council for October, 1962 and on such other subsequent days as the Council may decide for the purpose of disposing of all urgent subjects brought before the Council, the order further directed the Commissioner to discharge the duties assigned to the Mayor by Rr. 2 to 5 of Sch. II of the Act and the Regulations made thereunder for the purpose of convening the meeting of the Council as aforesaid.

3. It will be apparent from the terms of the order that what the Commissioner was called upon to do, is purely the ministerial act of convening a meeting of the Council. The conduct and control of the proceedings and the decisions therein will undoubtedly rest with the Councillors who meet. For example, the Councillors will have to choose one among them to preside over the meeting as both the Mayor and the Deputy Mayor will be absent.

4. Soon after the Government issued the order the appellant who claims to belong to the same political persuasion as the Mayor came forward with an application to this Court under Art. 226 of the Constitution for the issue of a writ of certiorari to quash the order on the ground that it was beyond the legitimate powers of the Government, it being his case that convening of the meetings of the Council so long as there is a Mayor, is his exclusive right and could not be taken over by any other authority.

5. Veeraswami, J., rejected the petition holding that it was obligatory on the part of the Councillors to meet in accordance with the rules and regulations and as there was a failure to perform such a duty by the Councillors, the Government were justified in issuing the directions.

6. In this appeal against the judgment of the learned Judge, Mr. Gokulakrishnan appearing for the appellant has in a strenuous argument reiterated the same point which he urged before the learned Judge, namely, that so long as there is the Mayor for the Corporation, it would be his right and exclusive privilege to convene and arrange for the meeting of the Council. Learned Counsel further contended that as the power conferred on the Government under S. 42, is confined to issuing directions to a municipal authority alone, it cannot validly exercise such a power over a person, the Mayor, who is not a municipal authority as defined by S. 4 of the Act. The argument proceeds on a misapprehension of the position. As stated earlier, the duties relating to municipal Government are imposed by the Act on the Council, which will have to perform them in its corporate capacity. That can be done only at a meeting of the Council. Failure to meet will be breach of duty on the part of the Council. S. 42 provides a

machinery for compelling the Council or other municipal authority to perform its duty which it had defaulted. That section runs:

If, on receipt of any information or report obtained under S. 40 or 41, the Provincial Government are of opinion--(a) that any duty imposed on any municipal authority by or under this Act has not been performed or has been performed in an imperfect, inefficient or unsuitable manner or (b) that adequate financial provision has not been made for the performance of any such duty, the State Government may by an order direct the Council or the Commissioner within a period to be specified in the order to make arrangements to their satisfaction for the proper performance of the duty or to make financial provision to their satisfaction for the performance of the duty as the case may be, provided that, unless in the opinion of the State Government, the immediate execution of such order is necessary the State Government shall, before making an order under this section, give the Council an opportunity of showing cause why such order should not be made.

7. We have already referred to the position of a Mayor. He is a Councillor of the Corporation; he is elected by the Council for the due performance of its corporate acts. In the former capacity as a member of the Council he has the statutory obligations to perform, namely, to meet with other Councillors for transaction of Corporation business. As Mayor (apart from what the statute has assigned to him) his obligations are to the Council of which he is the elected head. His failure to convene the meeting will amount to a failure to do his duty to the Council; by his failure, the Council itself will commit a breach of its duty. Neither a refusal, nor unwillingness nor inability of the Mayor will absolve the Council of its duty. A Mayor is elected to facilitate the performance of the duty by the Council and it will be the inverse of sound reason to say that that body cannot do its duty unless he is willing that it should do it. When, therefore, the Mayor fails to convene a meeting, there arises a default on the part of the council, a Municipal Authority, and the Government will have the right to step in and issue such directions as may be necessary for convening it. But it has been contended that as an agenda is an essential for every meeting and as such agenda could be prepared only by the Mayor under Regulation II which prescribes that he is to cause notice to be served on the members of the business to be transacted at a meeting it will not be open to any other authority to prepare the agenda and consequently no valid meeting can take place. The regulation referred to is one framed by the Corporation itself for the due performance of its business. It cannot obviously override the provisions of the statute which make it obligatory on the Council to meet. Again Regulation II contemplates a normal case where the Mayor performs his duties. It will obviously have no application to a case where there is a failure on his part to do it. Further the preparation and forwarding of the agenda is a ministerial act which can always be done by others. The Government while exercising its power under S. 42 can direct any person to convene a proper meeting of the Council and perform all the necessary and incidental preliminary acts therefore.

8. Two other objections have been raised to the validity of the Government Order in question. The first is that as the Government did not obtain a report under S. 40 or 41, its order is not competent. Secondly, the Government should, before passing the order it did, have given notice to the Council affording it an opportunity of showing cause why the order should not be passed. From the terms of S. 42, it will be seen that the power of the Government, to direct the Council to perform its duties is not dependent on the receipt of any report under Ss. 40 and 41: it can act on an enquiry on the basis of any information. The word "information" in S. 42 is of wide import. It may be, as in this case, merely a communication from the Commissioner of the Corporation or it may even be on receipt of information from other sources, written or oral. The second aspect of the contention urged by Mr. Gokulakrishnan is equally without substance. The proviso to the section which casts a duty on the Government to give the Council an opportunity to show cause against its remissness, will apply only to ordinary cases and not when there is an urgent need for the act to be done. The matters which we have referred to earlier as requiring the attention of the Council, required such attention immediately. Further the question of urgency for the exercise of the power vested in the Government under S. 42 is one entirely for the Government under S. 42 to decide. No objective approach is required under the section; what all is necessary is that there should be an urgency. We are, therefore, of the view that there was a failure on the part of the Corporation Council to do its duty of meeting together to dispose of the business for which it exists; and there being the failure it will be competent to the Government to direct it to meet and also to give directions to the Commissioner to arrange the essential preliminaries for a proper meeting of the Council. The appeal fails and is dismissed.