
(1998) 12 KL CK 0041
In the High Court Of Kerala
Case No : O.P. No. 15058 of 1998

P.A. Thomas

APPELLANT

Vs

Angamally Municipality

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Constitution of India, 1950 — Article 348(3)

Citation : (1999) 1 KLJ 203

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : Benny Gervacis, for the Appellant; P. Santhalingam and M.K. Damodaran, Advocate General, for the Respondent

Final Decision : Allowed

Judgement

P. Shanmugam, J.—This Original Petition raises an important question viz. whether a member of a Municipal Council elected by the people can be suspended for a period of six months from the Municipal Council invoking the power u/s 38(3) of the Kerala Municipality Act? The petitioner also seeks for a declaration to declare sub-section (3) of Section 38 of the Kerala Municipality Act, 1994, hereinafter referred to as "the Act", as violative of the Constitution of India. The petitioner is a councillor of Angamally Municipality elected from Ward No. VII in the year 1995 for a term of five years. The Council consists of 24 members and their party strength as at present is shared equally 12:12 by LDF and UDF. The attempt of UDF to move no confidence motion against the Chairperson of the Council could not succeed twice during the year 1997. Thus there is a strong and effective opposition to the functioning of the ruling front in the Municipal Council. The present problem arose in the special meeting held on 24-7-1998.

2. As per notice dated 18-7-1998 (Ext. P4) a special meeting of the Municipal Council was proposed on 24-7-1998 at 11 a.m. for electing members for the three Standing Committees. However, by notice dated 21-7-1998 (Ext. P5) the

election to the Standing Committee for Taxation and Finance was removed from the agenda on the ground that the term of the said Committee continues till 30-7-1998. On 24-7-1998 when the members assembled at the Council hall for meeting, one of the Councillors Smt. Mercy Varghese belonging to the opposition was not permitted to sign the attendance register or to attend to the meeting on the plea that she was late. Besides the election to all the three Standing Committees including the one adjourned were proposed in the same meeting. Both these were resented by the opposition members including the petitioner by raising a point of order. Thereafter it is alleged that the Chairperson, 1st respondent herein, walked out dispersing the meeting and threatening the petitioner that he will teach the petitioner a lesson and that he will be suspended. On the same day the 1st respondent issued the impugned notice suspending the petitioner from the Municipal Council for a period of six months in exercise of his power u/s 38(3) of the Act and Rule 7(4) of the Kerala Municipalities (Procedure for meeting of the Council) Rules, 1995. The Original Petition is filed challenging the order of suspension and for a declaration.

3. The 1st respondent has filed a brief counter denying all the allegations. According to him, all the decisions were taken by majority. Extremely urgent items were passed even though they were not in agenda in the interest of the Municipality. It is further states that Mrs. Mercy Varghese was late by 50 minutes. The election to the Standing Committee for Finance and Taxation has not yet been held.

4. I have heard the counsel for the petitioner and the respondent and Advocate General on behalf of the State.

5. The submissions made on behalf of the petitioner are as follows: The order of suspension is in excess of the power conferred u/s 38 (3) of the Act. The chairperson has no power to suspend a member for more than one meeting and in any event he has no jurisdiction to suspend the petitioner from the Municipal Council. If such a power is assumed it will be unguided and arbitrarily. According to him, the legislature did not intend to confer such a sweeping power on the Chairperson of the meeting. The order of suspension is made on malafide grounds in order to dispense with the petitioner and to reduce the strength of the opposition and also to pave the way for a disqualification of the petitioner.

6. Learned Advocate General Mr. M.K. Damodaran laid emphasis on the expression "if disobeyed" and "for such period". According to him, suspension as a measure of punishment is meted out only in cases where the member disobeys the direction of the Chairperson to withdraw from the meeting. According to him the original Malayalam version of the Act and Rule 10(4) of the Rules do not contain the words "the meeting" and, therefore, the intention of the legislature is clear. He also submits that there is an effective remedy u/s 57 of the Act to the Government to cancel only order or resolution as against any arbitrary orders or decision.

7. Learned Counsel appearing on behalf of the respondents submits that there is no specific pleading in support of the contention of the petitioner that Section 38(3) of the Act is referable only to a particular meeting. According to him, it is for the Chairperson to decide the period of suspension. In the Malayalam version of Section 38(3) of the Act the words "meeting" are not there and the same language is adopted for the purpose of the Rules. They do not confine the particular meeting for the purpose of suspension. If the section is read as a whole, it would make it clear that the order of suspension can be imposed for any period. The word "meeting" must be understood as to mean the whole session and not necessarily the particular meeting. If the interpretation sought by the petitioner is given it will create repugnancy which has to be avoided. The ordinary meaning of the words would show that a suspension can be imposed on a member for any period. While repudiating the grounds of mala fide, Learned Counsel for the Municipality submits that all the decisions were taken by the majority of the members. He also submits that the impugned order was necessitate because of the obstruction caused against the smooth conduct of the Council meeting. According to him, he misbehaved by shouting and creating noise and hitting the dias repeatedly. The petitioner refused to withdraw from the Council hall and obstructed the Council proceedings which amounts to serious indiscipline. Therefore, he was suspended from the Municipal Council for a period of six months.

8. From the pleading and the arguments the following points arise for consideration:

- (i) Whether the power of suspension can extend to period beyond one meeting u/s 38(3) of the Act;
- (ii) Whether the Chairperson can suspend a member from the Municipal Council u/s 38(3) of the Act;
- (iii) Whether the Chairperson can imposed the suspension as a measure of punishment u/s 38(3);
- (iv) Whether the impugned order is actuated by mala fide;
- (v) Whether Section 38(3) is arbitrary and unconstitutional.

9. In the Scheme of the Kerala Municipality Act, 1994 the relevant provisions come under the following heads:

CHAPTER III

CONSTITUTION OF MUNICIPAL AUTHORITIES

S.14 Functions of the Chairperson.

S.15 Powers of Chairperson.

THE COUNCIL

S.31 Rights and Powers of Councillors.

S.38 Presidency of Council

S.39 Councillor when to abstain from taking part in discussion and voting.

CHAPTER V

S.66 Removal of Chairperson, Deputy Chairperson or Councillor from Office.

CHAPTER VI

ELECTION TO MUNICIPALITIES

S.91 Disqualification of Councillors.

10. Section 38 of the Act comes under the heading "The Council" and deals with "Presidency of Council". Sub-section (1) of Section 38 states that Council meeting shall be presided over by the Chairperson or in his absence by the Deputy Chairperson or the Chairman of the standing Committee and in their absence, by a Councillor chosen by the Councillors present from among themselves. Therefore the Council need not be presided over by the Chairperson of the Municipal Council. The person presiding shall have all the powers of the Chairperson under sub-section (4). Sub-section (3) of Section 38 is the provision, the interpretation of which has led to the controversy. It is as follows:

(3) Where any member behaves in a disorderly manner and causes obstructions to the conduct of a meeting, the Chairperson or the person presiding shall direct such member to withdraw forthwith and if disobeyed, he shall be suspended from the meeting for such period as the Chairperson or the person presiding may decide and the member suspended shall, immediately thereafter withdraw from the meeting, failing which he shall be removed by using reasonable force, if necessary:

Provided that the Chairperson or the person presiding may, at any time at his discretion, and shall, at the instance of the council supported by a resolution passed to that effect, cancel the order of suspension.

The ingredients of sub-section (3) are as follows:

- i) A member behaving in a disorderly manner and causing obstruction to the conduct of a Council meeting;
- ii) The Chairperson directing such a member to withdraw forthwith;
- iii) Disobedience of the member to withdraw;
- iv) Consequently the member being suspended from the meeting;
- v) The suspension is for such period as may be decided;
- vi) The member suspended shall immediately withdraw from the meeting;

vii) On his failure the member shall be removed by using reasonable force, if necessary.

11. On a plain reading and understanding of the provision it appears that the disorderly behaviour and obstruction is in reference to the conduct of a meeting and in order to continue the meeting unhindered the Presiding Officer directs such member who is causing obstruction to withdraw from the meeting and on his disobedience he is suspended from the meeting for such period as the Presiding Officer decides. Thereafter the member has to withdraw from the meeting failing which he shall be removed by force.

12. G.P. Singh in Principles of Statutory Interpretation while laying down the "basic principles" in Chapter 1 states as follows:

When the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The rule case is in the following form: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver. The rule is also stated in another form: "When a language is plain and Unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself And said GAJENDRAGADKAR, J.: "If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

13. In *Sr. Suptd. R.M.S. Cochin v. K.V. Gopinath* (AIR 1972 SC 1487) on the rule of interpretation Their Lordships held as follows:

As has often been said that if "the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense", "and not to limit plain words in an Act of Parliament by considerations of policy if it be policy, as to which minds may differ and as to which decisions may vary".

14. In *Om Prakash v. Dig Vijendrapal* (AIR 1982 S.C.1230) the Supreme Court held as follows:

Primarily the language employed is the determining factor of the intention of the legislature. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. The question of interpretation arises only when the language is ambiguous and, therefore, capable of two interpretations".

Again in *Shivram v. Radhabai* (AIR 1984 SC 786) the Supreme Court held that it is often said where the words of a statute are clear and unambiguous, there can arise no question of construction. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to Judges, it may

be safely presumed that the legislature intended what the words plainly say. This is the true basis of the so-called golden rule of construction that "where the language of an Act is clear and explicit. We must give effect to it, -for in that case the words of the statute speak the intention of the legislature". A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the legislature. In *Nasimuddin v. S.T.A. Tribunal* (AIR 1976 SC 331) it is held that if there are two interpretations of the words in an Act the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. It should be read according to ordinary grammatical meaning.

15. Keeping these principles the provision can be now examined. The question now in this case is whether the words "for such period" denotes only the particular meeting or can it mean the period beyond the meeting also. The expression "meeting" occurs in three places in this sub-section. The first expression is preceded by an indefinite article "a". The subsequent expression meeting is preceded by definite article "the". As per the grammatical understanding "the" which is a definite article points out some particular person or thing. The definite article "the" is used when it speaks of a particular person or thing or one already referred to. In this case the definite article "the" before the expression meeting therefore refers only the meeting that has been convened where the obstructions to the conduct of the meeting has taken place. Ordinarily Municipal Council meetings are held only for a day and not for a session. If the intention is to suspend from other meetings as well the expression should have been in plural without the definite article preceding it. That it should have been like this "he shall be suspended from meetings for such period". In other words the suspension cannot go beyond that meeting.

16. The purpose sought to be achieved is only to permit the meeting to go on unobstructed and not to be used as a punishment. Therefore, this cannot give rise two meaning so as to interpret the meeting as to mean a session or composed of meetings and a member may be suspended for any number of meetings and that period will extend to other meeting also. Such an extended definition will give power to the Chairperson who can even be the Councillor chosen for a particular meeting to exercise the power over the subsequent meetings also. The administration of the Municipality v? sits with the Municipal Council u/s 29 of the Act. The powers, functions and responsibilities of Municipality are set out u/s 30 of the Act. The Kerala Municipality (Procedure of Meeting of Council) Rules, 1995, is framed u/s 36 of the Act. Rule 3 of the said Rules states that the Council shall meet atleast once in a month on the specific day and time. There shall be no meeting on holidays. The meeting shall not commence before 9 a.m. and shall end by 6 p.m. except in case of emergency. Rules 3 and 4 are as follows:

3. Place of Meeting and time: Every Municipality shall have an office and council

meeting shall be convened at the Municipal Office atleast once/in a month or as necessary at fixed date and time by the Chairperson.

But such meeting shall not be convened on days declared as public holidays by Government Notification.

More so, except in emergent situations, no meeting shall be convened before 9 0'clock in the morning and after 6 0'clock in the evening.

4. Notice of the meeting and agenda.

(1) Notice specifying the date and time and matters to be discussed shall be given to the members at least 3 full days before the specified date of the meeting.

The above-mentioned full days shall include declared public holidays but not the days on which notice has been received and the days on which meeting has been convened.

2. Copies of the notice of the meeting and agenda shall be published in the office notice board.

A combined reading of Rules 3 and 4 makes it clear that the Municipal Council can be called upon to meet for a specific purpose for prescribed agenda by giving three days clear notice on a specified date and time. The meeting cannot go on indefinitely in contra distinction with a session consisting of meetings of the body for several days. These provisions give no room for the doubt that a suspension can only be for the period of the meeting. The purpose of sending the member out of the meeting by an order of suspension and if he disobeyed by using reasonable force, if necessary is to allow the meeting to go on. The suspension period even can be for a short period of one hour or half-a-day of the meeting, or as the full day.

17. There is a specific provision for removal of a Councillor from Office u/s 66 of the Act by the Government on the following grounds:

- a) If he has been guilty of misconduct in the discharge of his duties or
- b) If he abuses his powers or
- c) Makes persistent default in the performance of his duties and functions or
- d) Becomes incapable of performing his duties and functions.

But before doing so the Government shall provide an opportunity of being heard and after an enquiry of it is necessary.

18. The power to remove Councillor is specifically conferred on the Government with an inbuilt safeguard of opportunity of being heard. Neither Section 14 nor Section 15 dealing with functions and duties of Chairperson confer the power of suspension, removal or control over the members. Therefore, it is plain that

Section 38 deals with presiding over the Council and the conduct of the meeting. The Chairperson cannot assume the power of removal from the Council as a measure of punishment. The expression suspension itself denotes that it is only for a temporary period during the course of meeting. If the suspension is to go beyond one meeting then it would amount to removal which will have to be u/s 66 of the Act. Therefore the Chairperson has no power or jurisdiction to remove a member from the Council and it would only from the particular meeting. Besides this may lead to disqualification of a member u/s 91 which has a serious consequences.

19. Rule 302 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly gives insight to the method of conduct of the Assembly proceedings and the power of the Speaker. The said Rule is as follows:

302(1) The Speaker shall preserve order and have all powers necessary for the purpose of enforcing his decisions.

(2) He may direct any member whose conduct is, in his opinion, grossly disorderly to withdraw immediately from the Assembly, and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the days' meeting. If any member is ordered to withdraw a second time in the same session, the Speaker may direct the member to absent himself from the meetings of the Assembly for any period no longer than the remainder of the session, and the member so directed shall absent himself accordingly. The member so directed to be absent shall not be deemed to be absent for the purpose of clause(4) of Article 190 of the constitution.

(3) The Speaker may in the case of grave disorder arising in the Assembly suspend any sitting for a time to be named by him".

Keeping in view the right of an elected representative vis-?-vis the power to control the meetings, and the analogous provision it is amply clear that the Chairperson cannot suspend the member for a period beyond the meeting and that it cannot be as a measure of punishment.

20. Article 348(3) of the Constitution of India states that the translated text of the English language published in the Gazette shall be deemed to be the authoritative text. Hence the contention that the Malayalam version has to be followed cannot be accepted. Even so the expression "withdraw from the meeting" indicates that the suspension can only for the meeting and cannot extend the period beyond one meeting. A learned Judge of this Court Sreedharan, J., as he then was, observed in *Thanga Dorai v. Chancellor, Kerala University* (1995(2) KLT 663) that Article 348(3) empowers the State Legislature to have a translation of the Article in English language which shall be deemed to be authoritative text of the Act.

21. Even assuming that the expression "suspension from the meeting for such period" is capable of more than one construction that results in friction in the

system to be avoided. The learned author G.P. Singh says (Principles of Statutory Interpretation) with "regard to Consequences" (Page 87) says as follows:

If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which lead to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preferences should be given to that construction which avoids such results. This rule has no application when the words are susceptible to only one meaning and no alternative construction is reasonable open".

22. Further in the absence of any guidelines as to the exercise of the power of suspension for more than one meeting it will lead to an arbitrary and unguided power of removing a member from the fixed tenure of his office. Assuming for the sake of argument that the petitioner had conducted himself in a disorderly manner in a meeting suspension as a measure of punishment for a period of six months deprives the right of a member without any notice, opportunity. The power has been exercised without any guidelines and arbitrary manner. It can be any period from one hour to five years. Such conferment of power on a Chairperson who may happen to preside over for a day without guidelines will amount to conferring an arbitrary power. Hence necessarily this power is to be exercised and confined to that meeting and not more. Otherwise this can conveniently be used for removing an inconvenient member especially in a Council divided equally and where there is a possibility of serious opposition for no confidence motion. The challenge to the action u/s 38(3) of the Act and in the interpretation and scope of the provision was not considered in O.P. No. 518/97 and W.A. No. 899/97. Hence the decision has no application to the facts of this case.

23. The petitioner has raised a specific plea of mala fides against the 1st respondent. According to him, the discrepancy between Ext. P7 suspension order and Ext. P8 minutes in reference to the nature of the occurrence falsify the allegations. The argument of counsel is that the 1st respondent on finding that the incident narrated in Ext. P7 order would not warrant the issuance of suspension order had deliberately included some more events so as to justify a serious order of suspension for a period of six months. In Ext. P7 order the allegations are that the petitioner shouted and created noise obstructing the smooth conduct of the meeting. Further allegation is that he has gone upto the Chairman's dias pointing his fingers and shouting and hitting the dias repeatedly and inspite of asking to withdraw he disobeyed and obstructed the Council proceedings. This, according to Ext. P7 order, amounts to indiscipline. Whereas in Ext. P8 minutes it is stated that the petitioner stood up shouting, tore the application forms for the candidates and again he took possession of the forms, threatening, the Municipal employees and overturning to the desks and chairs

shouted the chairman. He is also said to have surrounded the Chairman and abused him. Thus more ingredients of obstructive behaviour added in Ext. P8 minutes which are not found in Ext. P7 order.

24. It is submitted on behalf of the petitioner that since one of the members were not permitted to sign the attendance register and that the election to the Standing Committee for Taxation and Finance which was sought to be conducted a point of order was raised. According to counsel for the petitioner, since the 1st respondent wanted to his own men to be inducted in the Standing Committee, the adjourned election was taken up and hence he was justified to raise the point of order. In order to reduce the opposition strength in the Council, the 1st respondent had resorted to the suspension for a period of six months for no acceptable reason.

25. The fact remains that initially notice for election of three Standing Committees on 24-7-1998 was subsequently modified by restricting only to the election of two Standing Committees and however, in the meeting held on 24-7-1998 the election for the postponed Standing Committee was also sought to be made and secondly the allegations made in Ext. P7 are referable to the shouting and creating noise and hitting on the dias repeatedly whereas Ext. P8 minutes shows something more serious. It would be clear that the 1st respondent himself was not satisfied that obviously the grounds stated in Ext. P7 may not warrant for a suspension for a period of six months and therefore more serious allegations are included in Ext. P8. There is no explanation for this discrepancy.

26. Thus petitioner has raised three points in support of mala fides against the 1st respondent.

(1) Ext. P8 minutes is an improvement and creation (Ground F)

(2) The purpose of suspension is to reduce the strength on the Council (Ground D)

(3) Petitioner is justified in raising the point of order and it cannot be termed as shouting. (Ground E).

The petition narrates in detail the events, the background and the grounds for his allegation. On the contrary I find the counter affidavit is vague and general. As to the averments as to how the events led to alleged obstruction what is stated in the counter is this: "out of frustration and dejection even non-controversial matters are objected to by the petitioner". For the averments made in paras.12, 13, 14 and 16 there is no specific reply. The person allegations made against the 1st respondent remain unrequited. Therefore, it is clear that there is substance and force in the allegation of mala fides against the 1st respondent who had passed the order Ext. P7 and in the absence of specific denials it has to be held that grounds of bias and mala fide are established.

27. In *Tata Cellular v. Union of India* (JT 1994 (4) SC 532) while dealing with the

scope of judicial review held that it is not for the court to determine whether a particular decision taken is fair. It is only concerned with the manner in which those decisions have been taken. The order can be judicially reviewed on grounds of illegality, irrationality and procedural impropriety. If the decision-maker does not understand the law correctly, it is illegal.

28. In this case from Ext. P7 order and his stand it is clear that the 1st respondent is under the erroneous impression that a member can be removed from the meeting but also from the Council. Secondly suspension can be imposed as a measure of punishment. Therefore the impugned order is illegal and is liable to be set aside.

29. In *M/s. Shri Sitaram Sugar Company Ltd. & Anr. v. Union of India & Ors.* (JT 1990 (1) SC 462) the Supreme Court held that judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power. Then Lordship observed:

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it".

Applying the principles laid down and for reasons stated above has to be held that the impugned orders are illegal and are therefore quashed. In the light of the finding and conclusions in reference to Sec. 38(3) of the Act, the question of constitutionality of Sec. 38(3) does not arise for consideration.

For all these reasons excepting prayer (b) (i) the Original Petition is allowed.