

(1971) 02 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 2748 of 1969

R. Varadarajan

APPELLANT

Vs

Salem Municipal Council and Another

RESPONDENT

Date of Decision : 01-02-1971

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 162, 163, 165, 166, 180

Citation : AIR 1973 Mad 55

Hon'ble Judges : Palaniswamy, J

Bench : Single Bench

Judgement

1. The petitioner, Varadarajan, who is a member of the Salem Municipal Council challenges the validity of a resolution passed by the said Council

on 21-8-1969 allotting a place at the junction of the Victory Market Road and Govindaswamy Pillai Road opposite to Bose Maidan in Salem

Town for the purpose of erecting a statue of the late Chief Minister of this State, Thiru. C.N. Annadurai. He prays for the issue of a writ of

certiorari to quash the said resolution on the ground that it is beyond the powers of the Municipal council. A Committee called "Anna Statue

Erection Committee" appears to have been formed with one Thiru Rarajam as its Chairman. The said Anna Statue Erection Committee is the

second respondent in this writ petition, whereas the Salem Municipal Council is the first respondent. The Statue Committee made a request to the

Municipal Council to accord permission to it to install a statue of the late Chief Minister. This subject came up for consideration before the Council

on 21-8-1969. One member of the Council moved the resolution to accord sanction for the said installation. Another member proposed an

amendment stating that the place suggested was narrow and congested and

that, therefore, any other suitable place may be selected. This amendment was put to vote. Only 10 members voted for the amendment, whereas 21 members voted for the original resolution. Thus the resolution was carried by majority. The petitioner was not present at the time when the resolution was passed. In pursuance of this resolution, the statue committee erected a statue at the aforesaid place and the statue was proposed to be unveiled by Thiru V. V. Giri, President of the Indian Union, on 15-9-1969. The petitioner presented this petition on 11-9-1969 and the same was admitted on 12-9-1969. The petitioner prayed for the issue of a temporary injunction to restrain the unveiling of the statue, in C. M. P. No. 12216 of 1969. Alagiriswami, J., before whom that petition came up for hearing, dismissed it holding that the petitioner made the above request for injunction deliberately at the last moment just before the unveiling, that if the petitioner ultimately succeeded, it would not be difficult to shift the statue to another place and that, therefore, the circumstances did not warrant the grant of the interim injunction. With the result, the statue has been unveiled.

2. The contention of the petitioner is that under the District Municipalities Act, 1920, (hereinafter referred to as the Act) constructing anything in the nature of the permanent structure on a public street, is expressly forbidden that the Municipal Council has no power to grant permission to construct the statue on a public street, and that as such, the resolution according sanction is illegal. It is also his contention that the statue is a "building" within the meaning of the Act and that it has not been constructed in accordance with the provisions of the Act and the rules made thereunder. He claims the relief of writ of certiorari to quash the resolution in his capacity as a member of the tax paying general public and also as a sitting councilor.

3. The Commissioner of the Salem Municipality has filed a counter-affidavit alleging that the resolution is valid and legal, that there are no errors apparent on the face of the record, that the statue has been installed on an existing traffic island, that there is enough width of 35 feet on either side of the pedestal that the construction does not cause any permanent obstruction, that after construction, the statue has been handed over to the Municipal Council and has become the Municipal property and that, as such, the

building rules which do not apply to Government or quasi-

Government buildings are not applicable to the statue. The second respondent has filed a counter-affidavit supporting the contentions raised by the

first respondent and further alleging that the petitioner is not entitled to ask for the issue of a writ of certiorari.

4. The contention of the petitioner is that the impugned resolution is ultra vires the powers of the Municipal Council. The Act contains elaborate

provisions regarding public street, and private street, within the Municipal area. Section 162 enjoins a duty upon the Municipal Council to cause all

public streets to be maintained and repaired at the cost of the Municipal fund. It also gives power to the council to meet the cost of all

improvements to such streets as may be necessary and expedient for the public safety and convenience. Powers are conferred upon the Municipal

Council to lay out and make new public streets, (Section 163), to acquire any land for the purpose of opening or widening any public street

(Section 165) and to prescribe for any public street a building line or a street alignment (Section 166). Section 180, which is relevant for this case,

reads:

No one shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street except as

hereinafter provided." Section 180-A declares that all streets vested in or to be vested in or maintained by a Municipal Council shall be open to

persons of whatever caste or creed. Section 181 imposes a prohibition against door, gate, bar or ground-floor window from hanging or from being

placed so as to open outwards upon any street, except with a licence from the executive authority. Section 182 confers power upon the executive

authority to require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction situated against or in

front of such premises and in or over any street. Section 183 confers certain powers upon the executive authority and the Municipal Council.

Under sub-section (1) of that section, the Municipal Council is entitled to grant a licence to the owner or occupier of any premises to put up

verandas, balconies and sunshades to project over a street, subject to such conditions and restrictions as it may think fit. Under sub-section (2),

the executive authority is empowered to grant a licence, subject to such

conditions and restrictions as he may think fit, for temporary erection of pandals and other structure in a public street, vested in the council or in any other public place, the control of which is vested in the council. Sub-section (3) confers power upon the Municipal Council to lease road sides and street margins vested in it for occupation on such terms and conditions and for such period as the council may fix. But the power to grant a licence to allow certain projections over streets or the power to grant a lease of road sides and street margins cannot be exercised, if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such (sub-section (4)). Thus the Legislature has made comprehensive provisions concerning public streets and conferring certain limited powers on the executive authority and the Municipal Council in regard to certain specified construction and in regard to occupation of roadsides and street margins. Except the constructions and occupations that may be so permitted by the Municipal Council or executive authority, no one can build any wall or erect any fence or other obstruction or projection or make any encroachment in or over any street. No power is conferred upon the Municipal Council to allow any person to put up any permanent construction, however small it may be, in the middle of a public street. The fact that no express prohibition is contained against granting such permission does not mean that the power to grant such permission could be inferred. A statutory body like the Municipal Council cannot claim any implied powers by the mere absence of a provision of bar. Its powers are limited and circumscribed by the statute creating it. The following observations in Halsbury's Laws of England, Volume 8, Second Edition, at pages 72 and 73, bring out the limitation of powers of statutory bodies:--

Where a corporation is created by statute its powers are limited and circumscribed by the statute creating it and extend no further than is expressly stated there in or is necessarily and properly required for carrying into effect the purpose of its incorporation or may be fairly regarded as incidental to or consequential upon, those things which the Legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited.

5. Express prohibition is contained in Section 180 against constructing anything which would be an obstruction in or over a street except as

provided in the Act. The exceptions are (1) projections such as balconies, sunshades etc., (2) constructions such as steps and drainage, (3)

temporary erection of pandals and (4) lease of roadsides and street margins. Of these, constructions falling under (1) and (2) above could be

permanent; but their location should necessarily be only at the end of the street margin. Only temporary structures, like a pandal could be erected

in the middle of a street. From the restrictions placed upon the power of the Council with respect to the location of the places in the street upon

which projections etc., could extend and occupation could be permitted by way of lease, and having regard to the scheme underlying Sections 180

and 183, it necessarily follows that the Municipal Council has no power to grant permission to anybody to construct anything permanent in the

middle of a public street. It is admitted that the statute in question has been erected in the middle of the Victoria Market Road--vide paragraph 8

of the counter-affidavit of the first respondent. It is also admitted that the statue is a permanent structure erected over a concrete pedestal 6"x 6" in

the middle of the street--vide paragraph 14 of the counter-affidavit of the first respondent. No doubt, the place where the statue has been erected

is a traffic island. But the existence of a traffic island does not make the construction of the statue lawful. Traffic island is intended for the proper

regulation of the traffic and is liable to be removed if such removal is necessary. Its size also is liable to be reduced if there is need for such

reduction. Even if the traffic is need for such reduction. Even if the traffic island is removed, the statue would continue to exist at the same place.

Therefore, the fact that the statue has been erected on a traffic island does not make the constructions lawful.

6. The fact that at the place where the statue has been erected the street has 35 feet width on either side would not also make the construction of

the statue unobjectionable. It is contended on behalf of the respondents that the construction does not or is not likely to cause public inconvenience

or materially interfere with the use of the road as such. These are irrelevant considerations so far as the facts of this case are concerned. Absence

of public inconvenience or of material interference with the use of the road as such would be relevant only in the case of grant of licence to

projections and erections specified in Section 183 (1) and to the occupation of road sides and street margins u/s 183(2). These considerations are wholly irrelevant in a case where the permanent construction is in the middle of a public street. Anything constructed permanently in the middle of a public street would cause hindrance to free passage of vehicular traffic as well as pedestrians and would thus constitute obstruction within the meaning of Section 180.

7. Elaborate provisions have been made in Sections 191 to 206 of the Act regulating the construction of buildings. "Buildings" is defined in Section 3(3) thus:--

"Building" includes a house, out-house, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding eight feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.

Any person intending to construct a building should follow the procedure laid down in the Act. The construction of a building shall not be begun

unless and until the executive authority had granted permission for the execution of the work (Section 199). The fact that there is no roof over the

statue does not make the statue any the less a building, for, the definition of the word, "Building" does not require that there should be roof to make

a structure a building. Even a wall, (which is not a boundary wall, not exceeding eight feet in height) is a building within the meaning of the Act.

Therefore, there is no substance in the contention that the statue is not a building merely because it has no roof over it. Equally untenable is the

contention that the building rules do not apply to the statue because the statue has since become the property of the Municipality. At the time of the

construction, the statue belonged to the Statue Erection Committee and it is only after the construction that the said Committee handed over the

statue to the council. Therefore, the exemption of Municipal buildings from the operation of the building rules cannot be claimed in the instant case.

8. Mr. Mohan, learned Government Pleader, appearing for the Municipal Council, contended that the statue is a monument, that under Rule 43(1)

(b) of Schedule IV of the Act, a statutory liability is cast upon the Municipal Council to maintain monument vested in the Municipality and that as

such the existence of the statue cannot be questioned. This is an untenable

argument. No doubt, the cost of maintenance of public property like monuments vested in the Municipality is an expenditure which is obligatory on the Municipal Council. It is doubtful how far a statue can be called a monument. Even if it is conceded for the sake of argument that the statue is a monument, it should be legally vested in the Municipality before the Municipality can claim to spend the Municipal funds for the maintenance of such a monument. Legal vesting is a condition precedent for such expenditure. Any monument that may be constructed unlawfully and given to the Municipality cannot be a property upon which the Municipality can legally claim to spend its fund for its maintenance. The mere necessity to spend the municipal funds upon such a monument does not make the construction lawful, if it was at its inception unlawful. If the argument of the learned Government Pleader were to be accepted, it will lead to anomalous and absurd results. An illegal act does not and cannot become legal by the mere fact that the result of such an act brings into existence certain legal obligations. For example, an illegitimate child is in law entitled to be maintained by his or her putative father. But such legal obligation on the father cannot make the illegal connection legal. Except relying upon Rule 43 (1)(b) of Schedule IV of the Act, Mr. Mohan could not find any argument to get over the effect of Sections 180 and 183 of the Act which, read together, lead to the irresistible inference that the construction of the statue is in clear violation of these provisions and is hence unlawful.

9. For all the foregoing reasons, it follows that the grant of permission to erect the statue as a permanent construction in the middle of the public street is in clear violation of Section 180 read with Section 183 of the Act. I find that the impugned resolution of the Municipal Council is illegal.

10. The next question is, has the petitioner locus standi to maintain this petition? As already pointed out, he has sought relief in two capacities: (1) as a tax paying member of the general public, and (2) as a sitting member of the Municipal Council. I shall consider the second aspect first. As a sitting member, the question presents two aspects. The first is, is the petitioner entitled to insist that the Municipal Council should not have passed the impugned resolution? The second is, has the resolution, if left, as it is, a tendency or likelihood of affecting the petitioner in any way in his capacity as a sitting member of the Council? The petitioner has sought the writ

jurisdiction of this Court under Article 226 of the Constitution, the relevant portion of which reads thus:--

226 (1). Notwithstanding anything in Article 32, every High Court shall have power, throughout territories in relation to which it exercises

jurisdiction, to issue to any person or authority including in appropriate cases any Government, within those territories directions, orders, or writs

including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of

the rights conferred by Part III and for any other purpose.

The right, the infringement of which the petitioner complains as a sitting member of the Council, is undoubtedly not a fundamental right

contemplated in Part III of the Constitution. But this court has jurisdiction under Article 226 to issue appropriate writ for any other purpose. In

invoking the jurisdiction of this Court under the later part of Article 226 the petitioner should make out Locus Standi. In dealing with this aspect, it

is observed by the learned authors, Kair and Lawson, in ""Cases in Constitutional Law"" 5th edition at pages 406 and 407 :

As has already been said..... the direct control of public authorities becomes especially necessary when a subject cannot show that he has

suffered the infringement of an actual right. The question, therefore, arises, what sort of locus standi an applicant for relief must have. The matter

has been mainly discussed of recent years in relation to the prerogative orders, and the view is generally held that, although the older decisions

seem to apply different tests to the various orders, at the present day the matter is entirely in the hands of the judges, except where the Crown

applies for an order and probably also where the applicant, though a subject, can show that an actual right of his has been infringed (Reg. v.

Surrey JJ., (1870) 5 QB 466. This discretionary power of the judges, since it allows them to refuse an order on general grounds, also makes it

unnecessary for them to insist on any proof of locus standi in the applicant; they can in a proper case say that his interest is too remote without

giving any special reasons. Thus the prerogative orders can be granted at the instance of any person who has an interest sufficient to satisfy the

Judges that he has reasonable grounds for his application, and, for instance, it was once a matter of course for a brewery company to apply for

certiorari to quash a licence granted to a rival company. This freedom from strict rules of Locus Standi would seem to be one of the most valuable characteristics of the prerogative orders.

11. The right of obtaining an order of certiorari is not limited to judicial acts or orders in strict sense, that is to say, acts or orders by a court of law

sitting in a judicial capacity. It extends to acts and orders of a competent authority which have the effect of affecting the right of an individual. In

dealing with the wide scope of certiorari in ""Constitutional Law"" by Wade and Phillips, it is observed at pages 668 and 669 where certain

illustrations are given:

As illustrations of the wide scope of certiorari three examples may be given:--

At the instance of an adjacent owner, certiorari was granted to quash a decision of a district council permitting development of land in an area

where, under a town planning scheme, permission might have given rise later to a claim for compensation payable from the rates, the reason for

quashing the decision was that a councillor voted for the permission who was the developer estate agent.

Certiorari lay against a country council which purported to act under its statutory powers as a licensing authority by granting permission to a cinema

proprietor to open his cinema on a Sunday at a time when the Sunday opening of places of entertainment was expressly forbidden by statute.

Certiorari lay to quash a decision of the General Medical Council removing a doctor's name from the medical register. The Council was under a

statutory obligation to hold a "due inquiry" but had refused to hear fresh evidence to dispute a finding in the Divorce Division of the High Court that

the Doctor had committed adultery with a patient.

12. Though the powers of issuing certiorari are wide, the person seeking the exercise of that power, must have a right the infringement of which or

threat to injury which, can alone be a ground of complaint. This principle is thus stated by Hughes, J., in McCabe v. Atchison, (1914) 235 US 151

It is an elementary principle that in order to justify the granting of this extraordinary relief, the complainant's need of it and the absence of an

adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any

difference that other persons who may be injured are persons of the same race

or occupation. It is the fact clearly established, of injury to the complainant not to others--which justified judicial interference.

13. Construing the scope of Article 226, Kania, C. J., in the *The State of Orissa Vs. Madan Gopal Rungta*, observed :--

The language of the Article shows that the issuing of writs of directions by the Court is not founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article.

14. Following the foregoing principle, the Supreme Court observed in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, .

The first question that falls to be considered is whether the appellant has locus standi to file the petition under Article 226 of the Constitution. The argument of learned Counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein, and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *The State of Orissa Vs. Madan Gopal Rungta*, this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be

enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

15. Cases have arisen under Sec. 45 of the Specific Relief Act, 1877, in which the question whether a party having some interest in property,

franchise or personal right, and complaining of injury thereof can maintain a petition under that section has been considered in detail. The principles

applicable under that section are similar to the principles applicable to a writ of mandamus. In the matter of G. A. Natesan and K. R. Ramanathan,

ILR 40 Mad 125 AIR 1918 Mad 763 the question of maintainability of an application u/s 45 of the Specific Relief Act to compel the Syndicate of

the Madras University to do certain things at the instance of two members of the Madras University, arose for consideration. The applicants, who

were members of the Senate, protested against a certain resolution of the Senate and required the Senate to forward their protest to the

Chancellor. The applicants' contention was that certain ruling given by the Vice-Chancellor was invalid. The Syndicate refused to forward the

protest of those two members. Thereupon, the members filed a petition u/s 45 of the Specific Relief Act for compelling the Syndicate to carry out

their request. The question arose whether they were entitled to the relief asked for. The learned Advocate-General, appearing for the Syndicate,

attempted to argue on the strength of the decision in the Queen v. Guardians of the Lewisham Union, (1897) 1 QB 498 that every member of the

Senate was interested along with the petitioners in seeing that the University regulations were carried out and that, therefore, the petitioners did not

have special interest which would justify to take out a petition under Sec. 45 of the Specific Relief Act. Coutts Trotter, J. as he then was, rejected

that contention as being wholly fallacious and pointed out that a right might be enjoyed in common with every subject of the Crown, but when that

right is infringed in the case of an individual subject, there at once arises in that individual a further right to seek the protection of the Court to

enforce such right. The learned Judge further pointed out that the question in every case must be whether a right has been infringed qua the

petitioner and the mere fact that the petitioner shares the right with other

persons cannot debar him from obtaining the necessary relief under the law. It is further pointed out that the mere fact that the Senate as a whole might have been interested in the maintenance of the rights of one of its members did not preclude the petitioner from litigating his specific rights to have his protest forwarded to its proper destination. The Bench upheld the maintainability of the petition and granted the relief.

16. In *The Municipal Corporation for the City of Bombay Vs. Govind Laxman Savant*, a similar question regarding the maintainability of a petition

u/s 45 of the Specific Relief Act by a ratepayer as against the Municipal Corporation complaining of an attempt to misapply the municipal fund

arose for consideration. Speaking for the Court, Chagla, C. J., observed at pages 231 and 232:

It is perfectly true that the law ordinarily discourages a large body of persons who have a common interest from litigating with regard to their

interest in separate suits. The policy of the law is that in such cases a representative suit should be brought in which the interest of all should be

finally and completely adjudicated upon. But to this ordinary rule there are certain exceptions, and the most important exception is that when you

have members of a corporation who are all equally interested in the corporation carrying out its activities according to its charter, if the corporation

acts illegally or contrary to its charter or misapplies its funds, then every member of the corporation has right to file a suit to prevent the corporation

from so acting. The same principle applies to a ratepayer. Every ratepayer has the right to prevent the public body to which he pays the rate from

acting contrary to law or contrary to its own charter. In those cases the law assumes that the member of the corporation or the ratepayer has a

specific legal interest which entitles him to come to Court in support of his right and in order to prevent the corporation or the public body from

acting contrary to law or other own charter. There seems to be no reason in principle why the member of the corporation or the rate-payer should

only come to Court by way of a suit, and why he should be debarred from invoking the jurisdiction of the Court u/s 45.

17. In *Dr. S.C. Barat and Another Vs. Hari Vinayak Pataskar and Others*, , the question arose whether at the instance of some members of the

Jabalpur University, a petition under Article 226 of the Constitution praying for

the issue of a Writ of Mandamus would lie against the Chancellor of the University complaining of the illegality of the appointment of Vice-Chancellor. The appointment of the Vice-Chancellor had to be made in accordance with certain provisions of the Jabalpur University Act, 1956. The petitioners' complaint was that the appointment was made illegally or contrary to the provisions of that Act. With that allegation they asked for the issue of a writ of mandamus commanding the Chancellor to fill up the office in accordance with the provisions of the Act. In dealing with the maintainability of the Writ Petition, Dixit, C. J., speaking for the Bench, observed at page 189:--

It is well-settled that a person having a real and specific interest in the subject-matter of the petition is entitled to initiate mandamus proceedings.

The person applying for a writ of mandamus must have some interest in property, franchise or personal right, an injury to which alone can entitle him to ask for the issue of the writ. No particular quantum of right is necessary in order to entitle him to relief. It is not necessary that the person

applying should have a special interest in the subject-matter. One of the petitioners here is a member of the Executive Council and the other of the

Academic Council. The University is a corporate body constituted under the University Act and clearly all the members of the Court, the Executive

Council, the Academic Council and even the Registered Graduates are all equally interested in the University functioning according to the

provisions of the Act. If, therefore, the appointment of the Vice-Chancellor of the University has been made illegally or contrary to the provisions

of the Act, then every such member has the right to question the validity of the appointment and ask for the issue of a writ of mandamus

commanding the filling of the office in accordance with Section 11.

18. Mr. Nadanasabapathi, learned Counsel appearing for the petitioner, drew my attention to the decision of Ramaprasada Rao, J., in W. P. No.

1922 of 1969 (Mad) relating to the validity of certain resolutions passed by the Salem Municipal Council, which is the first respondent in the instant

case. That petition was filed by a sitting member of the Council. He questioned the legality of certain resolutions. On a consideration of the

contentions of the Municipal Council the learned Judge upheld the contention of the Petitioner with regard to some of the resolutions holding that

they were ultra vires the powers of the Council and quashed the same. But it does not appear that any contention was raised on behalf of the

Municipal Council regarding the maintainability of the Writ Petition at the instance of the member of the Council. Therefore, that decision is not of

much use in considering the point in controversy in this case, namely, the maintainability of the writ petition. It would be seen from the foregoing

decisions that the petitioner, as a sitting member of the Municipal Council, has got certain rights, one such being to see that the Municipal Council

acts according to the provisions of the Act.

19. The other aspect of the right of the petitioner to make the petition as a sitting member raises the question whether the impugned resolution has a

tendency or is likely to affect his continuance as a member during the normal period of the term of the Municipal Council. If the answer to this

question is to be in the affirmative, unquestionably he has locus standi to make a complaint. According to the petitioner, the impugned resolution is

ultra vires the powers of the Council and is in excess of the powers of the Council. It is also his contention that by passing this resolution the

Municipal Council has abused its powers with the object of satisfying the wishes of the majority of the members who belong to a particular political

party. The Act contains necessary provisions conferring power upon certain authorities for the purpose of controlling the functions of the Municipal

Council. The District Collector concerned and the State Government have been constituted as such authorities. The State Government have wider

powers than the District Collector. Section 34 (2) empowers these two authorities to do certain things such as calling for any document in the

possession of the Council, requiring the Council or the executive authority to furnish any plan, estimate, etc., and requiring the Council or executive

authority to furnish any information or report on any municipal matter. Powers are also conferred on those authorities to record in writing for the

consideration of the Council or the executive authority any observations they (the Government) or he (the District Collector) may think proper in

regard to the Council's or Executive Authority's proceedings or duties. Some emergency powers have been conferred on the Collector, but they

are not necessary to be adverted to Section 41, confers upon the State Government the power to dissolve or supersede the Municipal council, if,

in their opinion, the Municipal Council is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers. the procedure to be followed before exercising this power is also laid down. The Municipal Council concerned will have an opportunity to show cause against the proposal. Thus, the State Government can take action under this section, if, in their opinion, the Municipal Council exceeded or abused its powers. The complaint of the petitioner in the instant case is that the Municipal Council exceeded its powers in passing the impugned resolution and abused its powers for certain political considerations at the instance of the majority party. The petitioner is entitled to say that on account of this invalid resolution a situation has arisen where the Government could take action u/s 41. If such action had been taken, the result would be dissolution or supersession of the Council. In that event, all the members of the Council shall be deemed to have vacated their offices. The petitioner is entitled to say that such consequence affects his right to continue as a member for the normal term and that, therefore, he is personally interested in seeing that the Municipal Council does not exceed or abuse its powers. It is true that the Government have not so far taken any action on the impugned resolution. The reasons are not apparent. Nor did the District Collector bring to the notice of the Council that the resolution was in violation of the provisions of the Act. These powers conferred on the controlling authorities are coupled with the duty to take necessary action. One of the objects underlying the controlling powers is to prevent abuse or misuse of the power of the Council by the majority. The council is an elected institution composed of members elected according to the rules of election. It derives its powers only under the statute and not from political parties to which the majority of the members for the time being may belong. If the majority goes wrong in spite of protest by the minority and passes a resolution in violation of the Act, the minority cannot be left without a remedy. I asked the learned Government Pleader what solution he would suggest if the impugned resolution were to be held to be illegal as being ultra vires the powers of the Council even if the Government had not taken any action on the impugned resolution. He said that as the Act does not confer expressly a power on the minority members to initiate any action, the only alternative for the minority is to appeal to the electorate to see that the

majority, who, according to the minority, committed the illegal act, is not returned to power for the next term. I am surprised at this argument. It is

no doubt a good political philosophy, but certainly not a valid legal argument. The arm of law is not so short as the learned Government Pleader

assumes. Every member of a corporate body has a right to see that the corporate body acts within the ambit of the powers conferred on it by the

statute to which it owes its existence and also to see that on account of the illegal act of the majority, his right, as a member, is not placed in

jeopardy. If Article 226 of the Constitution cannot come to the help of such a person, it would not serve the purpose for which it has been

enacted.

20. Thus, I am of the view that the petitioner has made out a case in his capacity as a sitting member of the council to maintain this petition in order

to see that the council does not exceed or abuse its powers and pass an illegal resolution and also to see that the impugned resolution does not

place his right to continue as a member in jeopardy on account of the possibility of action being taken by the Government for superseding the

Council.

21. We may next examine the right of the petitioner to maintain this petition as a tax-payer. In order to show that, on account of the impugned

resolution, the Council is likely to waste the municipal funds, the petitioner has made certain allegations. It is stated that the Chairman of the

Municipal Council openly said that to avoid congestion or traffic at the place selected for erecting the statue, the adjacent municipal building would

be demolished and the licence granted to the Caltex Petrol Bunk located nearby would not also be renewed. The petitioner has further alleged that

on enquiry he was informed by the Municipal Commissioner that orders for demolishing the Municipal building would be issued and that a sum of

Rs. 13,000/- would be required for such demolition. These allegations have been made with a view to make out that as a result of the impugned

resolution, municipal fund is going to be wasted. These allegations are denied by the respondents. There is no proof that there was any such

likelihood, of municipal fund being wasted as alleged by the petitioner. At the time when the writ petition was filed, the petitioner was obviously not

aware as to who was going to maintain the statue after its erection. The

impugned resolution does not say as to who should maintain the statue after its erection. It merely accorded sanction for the erection of the statue at the place specified. In paragraph 16 of the counter-affidavit of the first respondent it is alleged:--

In this case the Council has already permitted for erection of a statue in its land and the Committee arranged the erection and handed it over to the Council by its letter dated 15-9-1969 received by the first respondent Council on 10-11-1969 for maintenance.

Ignoring the lack of clarity in this sentence, it could be inferred from it that the statue became the property of the Council either from 15-9-1969 or

10-11-1969. As already noted, the writ petition was filed on 11-9-1969 and was admitted on 12-9-1969. As the impugned resolution made no

reference as to who should spend for the future maintenance of the statue, the petitioner has not made any allegation about it in the writ petition. In

the counter filed on behalf of the Municipal Council it is stated that the statue has become the property of the Municipal Council and is, therefore,

liable to be maintained by the Municipal Council from the Municipal funds. I have already adverted to Rule 43 (1)(b) of the Rules framed under the

District Municipalities Act dealing with the cost of such maintenance. Now it is apparent from the counter-affidavit of the first respondent that the

municipal fund is going to be utilised for the maintenance of the statue. It is, therefore, contended on behalf of the petitioner that the petitioner, as a

tax payer, is entitled to question the action of the Municipal Council. As this fact was made known only in the Counter-affidavit, the petitioner is

entitled to ask the court to take that into account in considering the question whether he has a legal right to maintain the writ petition as a tax payer.

It is undisputed that at the instance of an individual tax payer, even a suit would lie for an injunction restraining the Municipality from misapplying

the municipal funds. The authorities, both English and Indian, on this aspect are uniform. In *Yaman v. Municipality of Sholapur*, I.L.R.(1898) Bom

646 the question of maintainability of a suit at the instance of an individual tax payer against the Municipality to restrain it from misapplying its fund

arose for consideration. After reviewing the English and Indian authorities, Tyabji, J., summed up the position at page 651 thus:

These authorities seem to me to show very clearly, first that the plaintiffs can

sue in their individual capacity if they are sufficiently interested in the municipal fund, and secondly, that any interest however small is sufficient to entitle them to do so.

This decision was followed by another Bench of the Bombay High Court in *The Municipal Corporation for the City of Bombay Vs. Govind*

Laxman Savant, already referred to. The same view was taken by the Calcutta High Court in *Narendra Nath Chakravarty Vs. Corporation of*

Calcutta and Others, . In a recent case decided by Alagirisami, J., in W. P. Nos. 1587 and 1568 of 1969 (Mad), (*Chittibabu. v. Commr.,*

Corporation of Madras), the learned Judge reviewed the English and Indian Authorities and observed:

The result of these decisions may be stated to be that where a Corporation or a statutory body acts in excess of its statutory powers and

misapplies its funds, a share-holder of the Corporation or a rate-payer is entitled to maintain a writ to prevent the Corporation or the local authority

from acting beyond the scope of its authority.

Thus, on principle and on the foregoing authorities it follows that the petitioner, as a tax-payer, is entitled to make a complaint that the Municipal

Council should not spend the municipal funds for the maintenance of the statue that has been erected in violation of the provisions of the Act.

22. The learned Government Pleader argued that if the right of a tax payer to maintain a writ petition were to be recognised, it would mean that

every resolution would be challenged at the instance of those who do not subscribe to it on the ground of some irregularity or some other defect.

He said that in such a case the functions of elected bodies would be completely paralysed. I am unable to accept this argument. It is true that this

court would be far exceeding its proper functions if it were to assume jurisdiction to enforce performance on public bodies of their statutory duties

without requiring clear evidence that the person who seeks its interference has a legal right to insist upon those authorities either to perform or to

forbear from performing any act. This court cannot claim general power of superintendence or control over public and statutory bodies irrespective

of the nature of the right of the person invoking its jurisdiction and the nature of complaint of infringement of that right. If there is violation of a

statutory provision by a statutory body, it is open to any person having specific

or individual grievance of that violation to approach this Court. The fact that there is a possibility of a number of such persons approaching this Court, making similar complaints, is not a ground to hold that in individual cases the Court should not exercise its jurisdiction and discretion.

23. Excepting the argument that a person belonging to a minority party in an elected house like the petitioner feeling aggrieved by the impugned resolution passed by the majority should wait till the next elections of the Municipal Council hoping to be returned in a majority, the learned Government Pleader did not draw my attention to any other circumstance to show that the petitioner is not in anyway entitled to maintain this petition. No ground of availability of any efficacious remedy or any conduct on the part of the petitioner disentitling him from asking the Court to exercise its discretion was pointed out on behalf of the respondents.

24. To recapitulate, I am satisfied that the impugned resolution is violative of the provisions of the Act and is hence illegal. The petitioner has locus standi to maintain this petition, both as a sitting member of the Council and as a tax-payer.

25. It is unfortunate that those who are responsible for passing the impugned resolution have done more harm than good to the memory of the late

Chief Minister. I do not mean to say anything on the question as to the wisdom in erecting the statue, as that is not the function of this Court. All

that this Court is concerned with is to find out whether the impugned resolution is valid or not. Those who voted for the resolution failed to realise

that, functioning as members of the statutory body, they cannot do anything, however laudable it may be, in the name of that body in flagrant

violation of the statute to which that body owes its existence. Their ill advised and misguided action in passing the illegal resolution leaves no

alternative except its cancellation. The unfortunate but inevitable consequence of the cancellation would be the shifting of the statue from its present

place to any unobjectionable place. This unpleasant situation would have been avoided if the authorities having control over the Municipal Council

had taken prompt action to prevent the execution of the illegal resolution. For reasons best known only to them, that was not done. Sentiment,

however deep and genuine, cannot override the express provisions of the statute which should be respected and obeyed. I have given such serious

consideration as this case deserves and I am left with no option except to quash the impugned resolution. In the result, the writ petition is allowed

and the impugned resolution is quashed. I direct the parties to bear their respective costs.

26. Petition allowed.