(1961) 09 MAD CK 0011

In the Madras High Court

S. Ethiraja Mudaliar APPELLANT

Vs

The Revenue Divisional Officer RESPONDENT

Date of Decision : 08-09-1961

Acts Referred:

Citation : (1962) 1 MLJ 388

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The petitioner is the Municipal Chairman of the Chingleput Municipal Council. He seeks for a writ of mandamus or other

appropriate writ to restrain the Revenue Divisional Officer from placing before the Council a notice of motion of no confidence duly presented to

him by certain members of the Municipal Council.

2. According to the petitioner, he received a notice from the Revenue Divisional Officer informing him that a written notice of intention to make a

motion of no confidence against the petitioner had been presented to the Revenue Divisional Officer on 17th August, 1961, u/s 40-A(2) of the

District Municipalities. Act. The Revenue Divisional Officer gave notice to the petitioner that a meeting of the Municipal Council would be held in

that connection at 3 P.M. on 12th September, 1961. A copy of the no confidence motion was also attached to this notice issued to the petitioner.

It is to prevent the Revenue Divisional Officer from holding the meeting that the writ has been asked for.

3. The learned Counsel advanced two grounds. The first is that the written notice required by Section 40-A(2) was in fact presented to the

Revenue Divisional Officer on the 10th August. The notice that was issued to this petitioner by the Revenue Divisional Officer himself stated

definitely that this written notice of intention was presented to the Revenue Divisional Officer on 17th August, 1961. But the learned Counsel for

the petitioner relies upon a news item published in The Hindu of the 13th August, under date nth August, that fifteen members of the Chingleput

Municipal Council had given notice of their intention to move a no confidence resolution against the sitting Chairman. From this the learned Counsel

seeks to infer (apparently from similar news items in other newspapers also) that the written notice of the motion should have been presented to the

Revenue Divisional Officer on the 10th August. If that is so, according to the learned Counsel, under Sub-section (3) of Section 40-A the Revenue

Divisional Officer should have convened the meeting for the consideration of the motion at a time appointed by him which shall not be later than

thirty days from the date on which the notice under Sub-section (2) was delivered to him. If the meeting is fixed to take place on the 12th of

September, it is obviously beyond the period of thirty days and such a meeting would be in violation of the specific provision contained in the Act.

4. This argument would no doubt be sound if the learned Counsel can establish that the written notice of the intention to move the resolution was in

fact presented to the Revenue Divisional Officer on or before the 12th August. On the material placed before me, which contains the notice issued

by the Revenue Divisional ''Officer himself, it is perfectly clear that the written notice was presented to the Revenue Divisional Officer only on the

17th August. The meeting convened for the 12th September is within the time stipulated by the provision. This ground fails.

5. The next ground advanced is of a somewhat far-reaching scope. Now, it appears that the written notice of the intention to move a no confidence

motion was accompanied by certain reasons. The copy of this written notice that is placed before me reads thus:

Motion expressing want of confidence in Chairman....

This Council expresses its want of confidence in Sri S. Ethiraja Mudaliar, present Chairman of the Chingleput Municipal Council for reasons

mentioned herein.

6. Then follow several reasons. It is on the basis of this written notice of intention that the Revenue Divisional Officer purported to proceed under

Sub-section (3) in convening the meeting in question. What is argued before me is that the reasons that are contained in this written notice all relate

to matters which are not germane to the functions of the petitioner as the Chairman of the Municipal Council, that they are libellous in their

character and that therefore the Revenue Divisional Officer was not justified in acting upon this record as a written notice of intention to move a no

confidence resolution. Firstly, I may state that under Sub-section (2), before the Revenue Divisional Officer can convene a meeting what is

required is that he should have before him a written notice of the intention. Although the section specifies that it should be in such a form as may be

fixed by the State Government, the learned Counsel informs me that no specific form has been prescribed. It is not denied that the other

requirement of Sub-section (2) as to the number of councillors who should subscribe to the written notice is complied with in this case. Nor is it the

case of the petitioner that the notice was not delivered by any two of the councillors signing the notice in person together. But what is contended

before me is that it is not only within the jurisdiction of the Revenue Divisional Officer but also his duty to examine whether the material which forms

the basis of the no confidence resolution deals with matters which have no relevance at all with the functions of the Chairman and that if such

material is sought to be agitated for the purpose of the no confidence motion, the learned Counsel suggests that the Revenue Divisional Officer is

bound under the law to disregard it, that is, to treat it as if it were not a written notice of intention to move a no confidence resolution. I am frankly

unable to follow this reasoning. In my opinion, Section 40-A gives no discretion of the kind contemplated to the Revenue Divisional Officer. It is

true that the Revenue Divisional Officer is called upon to convene a meeting and ascertain the result of the meeting. But beyond that the Revenue

Divisional Officer has no functions whatsoever and he would certainly be exceeding his authority if he disregarded the written notice of intention

and chose to treat it as one which did not conform to the requirements of Sub-section (2).

7. Learned Counsel refers to a decision in In the matter of In Re: G.A. Natesan, a fellow of the University of Madras; In Re: K.B. Ramanathan, a

fellow of the University of Madras, and to certain observations of Courts Trotter, J., therein. The observations he relies on are as below:

So far from having a discretion vested in them the functions of the Syndicate under Regulation 64 appear to me to be purely ministerial. Of course,

that which they have to forward must be a protest, and they would doubtless be justified in refusing to forward something, that was not a protest at

all; e.g., a bill of exchange to take the illustration given by my learned brother in the course of the argument. It may be also that if the protest

contained grossly scandalous or indecent matter they would be justified in refusing to forward it, but that is purely an academic speculation which

has no bearings on the present case. Im my opinion if the document is a protest against the resolution, the Syndicate must forward it as it stands,

and if the Syndicate takes upon itself to say that the given document, which purports to be such a protest, is, in fact, something else, it does so at its

peril....

I am unable to see any application of that case to the facts of the case before me. As observed in the opening words of this passage, it is clear that

what the Syndicate was doing was only a ministerial action. But what the Revenue Divisional Officer has been charged with in the present case is a

statutory duty. So long as the material placed before him conforms to the statutory requirement, he has no alternative but to carry out the further

duties enjoined upon him by Sub-section (3); of Section 40-A of the Act, notwithstanding that certain reasons may have been incorporated in the

written notice of the intention to make a motion of no confidence and those reasons might take in matters irrelevant to the discharge of the duties of

the petitioner as Chairman. There is clearly the expressed intention to move a motion of no confidence and so long as it is there, the Revenue

Divisional Officer has to, my mind no alternative but to convene the meeting. This argument fails to impress me as at all sound.

8. It follows that what the Revenue Divisional Officer seeks to do is nothing more than the statutory duty enjoined upon him and nothing has been

shown t6 me to indicate that he is acting in excess of his jurisdiction.

9. The petition fails and is dismissed.?

