

**(1956) 03 AP CK 0013**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 142 of 1956**

Venugopalan and Others

APPELLANT

Vs

Commissioner, Vijayawada Municipality and Another

RESPONDENT

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**Date of Decision : 22-03-1956**

**Acts Referred:**

Constitution of India, 1950 — Article 171(3), 226  
District Municipalities Act — Section 351B  
Taxation and Finance Rules — Rule 42

**Citation : (1956) 03 AP CK 0013**

**Hon'ble Judges :** Viswanath Sastri, J; Krishna Rao, J

**Bench :** Division Bench

**Advocate :** A. Ramachandraiah, for the Appellant; M. Seshachalapathi, Government Pleader, for the Respondent

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## **Judgement**

Viswanatha Sastri, J.—This is a petition by three rate-payers and electors of the Vijayawada Municipality praying for the issue of a writ of mandamus directing the Respondents, the Commissioner of Vijayawada Municipality and the Regional Inspector of Municipal Councils and Local Boards, not to hold the municipal elections for Wards Nos. 7, 12, 15 and 30 of the Municipality on 26-3-1956, as notified by them.

It is common ground that the Councillors elected at the last ordinary elections for these Wards vacated their seats, for one reason or another, before their term of three years was over and that casual vacancies as defined in Section 3(7) of the Madras District Municipalities Act (here in after referred to as "the Act") occurred in the office of councillors for these wards before October, 1955. It is to fill up these casual vacancies that casual elections have been fixed to be held on 26-3-1956.

There were earlier attempts by some of the rate-payers by means of suits in the District Munsif's Court, Vijayawada, to restrain the Respondents from holding elections for filling up these casual vacancies but they proved unsuccessful.

2. u/s 8(1) of the Act before it was amended by Act XI of 1955 the term of office of Municipal councillors elected at the ordinary elections was 3 years from the first of November following the elections. u/s 8(5) a councillor elected at a casual vacancy holds office only so long as the councillor in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

The term of office of the councillors of the Municipality elected at the last ordinary elections or at casual elections would have expired on 31-10-1955, u/s 8 (1) and (5) of the Act as it stood -before the amendment by Act XI of 1955 and there would have been an ordinary election for all the wards before that date. The amending Act provided that the term of office of councillors should be three years reckoned from the first July following the ordinary elections instead of from the first of November as fixed by Section 8(1) of the Act as it originally stood.

The term of office of the sitting municipal councillors which would have expired on 31-10-1955 was extended up to 1-7-1956, by Section 4 of Act XI of 1955 which runs as follows:

4 Extension of the term of office of councillors holding office at the commencement of this Act-

Not with standing anything contained in the principal Act. the term of office of the councillors holding office at the commencement of this Act and of those who may be elected in their places at casual elections shall extend up to, and expire at noon on the first day of July 1956; and the State Government shall cause elections to be so held that the newly elected councillors may conies into office at noon on the first day of July. 1956 and hold officer for the period mentioned "n Section 8 of the principal Act as amended by this Act.

In addition to this provision a further amendment was made by adding a new Sub-section (1-A) to Section 8 of the Act in these terms :

(1-A) The State Government may, by notification, for sufficient cause to be started therein, direct that the term of office of co any council as a whole shall extend up to, or expire at, noon on such date as may be specified in the not, such date being not later, or, as the case may be earlier than three months from the date -on which such term expires under Sub-section (1); the State Government may, from time to the by notification, after such date and fix another date instead.

The amending Act XI of 1955 received the assent of the Governor on 20-10-1955 and was published in the Official Gazette on 22-10-1955.

3. The contention of the Petitioners is that in respect of wards Nos. 7, 12, 15 and 30 there were no councillors holding office at the commencement of Act XI of 1955 the seats having fallen vacant before October, 1955 and that no casual elections could now be herd for these wards on the basis of the casual vacancies having occurred during the period of the extension of the term of office of the councillors u/s 4 of the amending Act. Section 4 extends the term of office of

only those councillors who hold "office at the commencement of this Act and of those who may be elected in their places at casual elections."

The section does not extend the term of office of councillors generally or as a whole but only of the particular councillors who hold office at the commencement of the Act. It provides for casual elections only when any of the councillors term was extended u/s 4 died or vacated his office during the extended period. Section 8 (11) of the Act refers to "the term of office of councillors" and Section 8 (1-A) introduced by the amending Act, refers to extension of "the term of office of councillors of any council as a whole" while Section 4 of the amending Act extends the term of office only of the councillors actually holding office at the commencement of that Act. Under, the proviso to Section 8(4) of the Act, a casual vacancy occurring within three months before the normal date of retirement of a councillor should be filled up not at a casual election but only at the next ordinary election.

Now the casual vacancies with which we are concerned, existed before October, 1955 and could have been filled up not at casual elections but only at ordinary elections under the Act as it stood before the amendment. We do not find anything in the language of Section 4 of Act XI of 1955 which permits or authorises the filling up of casual vacancies that occurred before October, 1955, by casual elections held after the amending Act came into force. It is only for filling up casual vacancies occurring among councillors who were holding office when the amending Act came into force that casual elections are authorised by Section 4 of the amending Act.

4. The argument of the Respondent's counsel is that the intention of the Government was to extend the term of office of all councillors as a whole or as a body till 1st July, 1956, so that the council could function in full strait till the next ordinary elections and that casual vacancies that occurred before October, 1955, could be filled up u/s 8 (4) of the Act which stood unaffected by the amendment.

It is possible that some such idea might have crossed the mind of the draftsman of section of the amending Act but we cannot give effect to unexpressed intentions and we have to go by the words of Section 4 of the amending Act which do not admit of any doubt or ambiguity. Indeed the language is intractable and against the respondent contentions.

Our duty is not to make the law reasonable, but it as it stands according to the real sense of the words and leave the remedy to others. It follows that the casual elections ordered to be held on 26th March, 1956, are not authorised by law and the elections, if held, would be a farce having no legal effect.

The further contention of the Petitioners is that the elections are being held on an electoral roll which was not in existence on 31st January, 1956, the date on which notice of the casual elections to be held on 26th March, 1956, was published by the Respondents.

It appears that a revised electoral roll was published on 11th February. 1956, well in advance of the date fixed for the elections. It is argued that the elections held on the basis of the revised electoral roll would be illegal. Section 45 of the Act empowers the election authority to make amendments to the electoral roll for any municipality for the purpose of bringing it into accord with the electoral roll for the relevant Assembly Constituency. In the present case the wards have not been altered and there is no allegation that the corrected electoral roll is defective in any material particular.

There is no provision in the Act or the Rules that the electoral roll as it stood when the date of election was notified should not be amended and brought up to date before the election. This contention of the Petitioners is therefore overruled.

6. It was contended on behalf of the Respondents that the Petitioners were not entitled to a writ of mandamus in the circumstances of this case. Reference was made to the following dictum of Goddard, C. J., in *R. v. Dunsheath; ex parte Meredith* 1950 2 AER 741 at p. 743 (A).

It is important to remember that mandamus is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty and specially affects the rights of an individual, provided there is no more appropriate remedy."

Reliance was also placed on the decision of C.C. Ghose, J., in *In Re: Jatindra Mohan Sen Gupta*, , that only a person whose property, franchise or personal right would be injured by the doing or forbearing of a specific act by any person holding a public office was entitled to apply for redress u/s 45 of the Specific Relief Act which governed the case.

According to the learned Judge, the applicant must, show "that he has a real and special interest in the subject-matter and a specific legal right to enforce!" distinct from other persons. Article 226 of the Constitution is wider in scope than Section 45 of the Specific Relief Act and empowers the High Court to issue a writ of mandamus for the enforcement of any of the fundamental rights conferred by part III "and for any other purpose", that is to say for the enforcement of ordinary legal rights and duties.

In *T.C. Basappa Vs. T. Nagappa and Another*, the Supreme Court held that under Article 226 writs could be "issued in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of, jurisdiction in the mftW of granting such writs In English Law". Again in *Election Commission, India Vs. Saka Venkata Subba Rao and, . Patanjali Sastri, C.J.*, held that Article 226 of the Constitution conferred power to issue writs "with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England.

7. In England the principles on which a mandamus would issue to a person a public office to do or forbear from doing any special act in the nature of a public,

duty have been settled by judicial decisions. In Halsbury's Laws of England, Vol. 9, pages 744, 745, the law is thus stated :

The writ of mandamus is a high prerogative writ of a most extensive remedial nature

Its purpose is to supply defects of justice; and accordingly, it will issue, to the end that justice may be done, in all cases where there is a special legal right and no special legal remedy for enforcing such rights; and it may issue in cases where, although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and effectual.. The Court will take a liberal view in determining whether or not the writ shall issue, -not scrupulously weighing the " degree Of public importance attained by the matter which may be in question, but applying the remedy in all cases where, upon a reasonable construction, it can be shown to be relevant.

8. We have to keep to the broad and fundamental principles that regulate the exercise of the jurisdiction in the matter of granting Writs under the English law.

9. On behalf of the Respondents, it was urged that no personal or proprietary right nor the franchise of the Petitioners was in any way affected by the proposed elections and that they Were free to vote at the elections and also stand as candidates if they chose. The Petitioners had not suffered any special or particular injury and their grievance, if any, was shared by all the citizens of Bezwada. It was argued that therefore they had no specific right to ask for a writ of mandamus.

That the existence of such a right is a necessary Qualification in the applicants is clear but it is not necessary that the right in the individual applicant and in no one else. If other rate payers had an equal interest with the applicants to see that the law was obeyed, that by itself, would be no bar to the grant of relief to the applicants who seek the protection of the Court to enforce their rights which is infringed. See C. A. Natesan In re ILR Mad 125 at p. 143 : AIR 1918 Mad 763 at p. 769) (E). The Municipal Corporation for the City of Bombay Vs. Govind Laxman Savant,

10. It cannot be said that the applicants have no specific legal right to be enforced or that their right would not be affected or infringed by the act of the Respondents in holding the elections. The matter may be looked at in one of two ways. The applicants are electors in the constituencies to which the proposed elections relate. They can rightly claim that in a democratic set up it is, heir valuable right not only to exercise their vote but ,also to see that their wards are properly represented in the municipal council and for that purpose elections conducted in accordance with the law framed for that purpose.

A violation of the statutory rules of election affects the applicants who are voters in the wards and it is for this reason that voters are given an equal right with the candidates, to can in question an illegal and invalid election. The applicants have

another and a more substantial right as ratepayers who contribute to the municipal fund and they have a right to prevent the municipal authorities to which they pay rates, from spending municipal funds on unauthorised and illegal elections. Under Rule 42 (c) of the Taxation and Finance Rules. Part II, framed under the District Municipalities Act, a municipal council is authorised to incur expenses in connection with elections, that is to say, elections authorised by law.

As ratepayers, the applicants have a specific legal interest which entitles them to come to Court for the protection of that interest and in order to prevent the misapplication of municipal funds on elections held contrary to law. This aspect of the matter is well brought out in the Irish case of *The Queen v. Drury* ILR (1894) 89 (G) extracted in *The Municipal Corporation for the City of Bombay Vs. Govind Laxman Savant*, . The relevant passage from the judgment of Johnson, J., in the Irish case is as follows ;

It may, I think, be taken in general that a person is aggrieved when his legal rights are directly affected by the decision of which he complains or when he has legal ground for saying he is "aggrieved"; and a ratepayer whose pocket is directly affected by a decision allowing the misappropriation of a rate which he is compelled to pay or its application to purposes which are unauthorised or illegal, is a person whose legal rights are directly affected by such a decision and has legal ground for saying that he is aggrieved by it. And it makes no difference whether he is so particularly aggrieved individually or is one of a class so particularly aggrieved.

11. This principle was accepted by the learned Judges in *The Municipal Corporation for the City of Bombay Vs. Govind Laxman Savant*, , which we respectfully follow. Ratepayers who have contributed to the municipal rates are injured in their property within the meaning of the rules regulating the issue of a writ of mandamus if the rates are misapplied for unlawful enterprises. The contention of the Respondent that the applicant has no locus standi to apply for a writ must, therefore, be overruled.

12. The Respondents relied upon the decision in *In Re: P. Ramamoorthi*, , where the Court held that the remedy under Article 226 of the Constitution could only be invoked at the instance of a person who had a personal grievance against any act of the State in its executive capacity which inflicted a legal injury upon him.

The Court declined to interfere with the nomination of a person by the Governor to the Madras Legislative Council in the exercise of his powers under Article 171 (3) (e) and of the Constitution at the instance of the applicant as a member of the Legislative Assembly, because the applicant had no personal and direct interest in the matter of the nomination and neither his personal nor property right was infringed thereby.

The Petitioners in this case as ratepayers and voters of the municipality stand on a different footing. Reference was also made to the decision in *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and*

Others, , for the position that the interest of the applicant must be directly affected by the order complained against and that) the powers under Article 226 of the Constitution should be

sparingly used and only in those cases where, the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him.

13. A different "Opinion was expressed by Martin B.. in Rochester (Mayor of) v. Reg. (1858) Bl & El 1024 (J), who said:

Instead of being astute to discover reasons for not applying the is great constitutional remedy (of mandamus) we think it is our duty to be vigilant to apply it in every case to which, by any U reasonable construction, it can be made applicable.

14. There Is no need, In my opinion either j for lavishness or parsimony in the exercise of the Court's powers and the position is correctly stated 1 In the passage from Halsbury's Laws of England t, (2nd Edition) Vol 9, page 745 already extracted.

15. It was further argued that it was one of the conditions for the grant of relief that there was a demand of that which the applicants seeking the mandamus desire to enforce and that such demand was met by a refusal. This is undoubtedly the rule m England which was also incorporated in Section 46 of the Special Relief Act.

The plea is not one of form but of substance, the reason for the rule being that the party complained against should have known what it was that he was required to do and should have had the means and opportunity of considering whether or not he should comply and the Court must be satisfied that the party complained against was determined not to do what was demanded.

It is therefore sufficient if there is in substance a demand, and refusal may be inferred from conduct, no particular form or language being necessary, A demand is not required where it is manifest that it would be but an idle ceremony, in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, at p 151 : AIR 1952 SC 16 at p 22) (K), the Supreme Court observed as follow;

In England the refusal need not be in so many words. All that is necessary is to show that the party complained of has distinctly determined not) to do what is demanded (Section 9 Halsbury's Laws of England, Hailsham edition, page 772). And in the United States of America a demand is not required ""where it is manifest it would be but an idle ceremony"" (See Ferris on Extraordinary Legal Remedies, page 281). The law in India is not different except that there must be a demand and a denial in substance though neither need be made in so many words.

16. It has been held, though not without a note of dissent, that in special cases

and Under special circumstances the Court may dispense with proof of a formal demand and refusal of relief previous to the application. *Sheo Shanker v. Madhya Pradesh State Government* ILR 1951 Nag 646: (AIR 1951 Nag 58) (FB) (L).

17. In the present case it is admitted in the countermanded it of the Respondents that a suit Order Section N o. 626 of 1955 was filed m the Court of the District Munsif of Vijayawada by a ratepayer for an injunction restraining the Respondents from holding the elections on 28th October, 1955, as processed and an interim injunction petition was also filed. The application for interim injunction was opposed by the Respondents and was dismissed.

Again two other ratepayers filed Order Section No. 138 of 1956 on the file of the same Court for an injunction restraining the Respondent from holding the elections fixed for 26th. March 1956, and applied for an interim injunction. Again the application the interim injunction was opposed by the Respondents. It was thereafter that the present application for a writ of mandamus was filed. In these circumstances, the objection as to the absence of a formal demand for justice and refusal has no force and it is also significant that no such point was taken in the counter-affidavit filed by the Respondents.

It might be stated that the District Munsif's Court had no power to grant an injunction, permanent or temporary, restraining any proceeding for the conduct of any election by reason of the Prohibition contained in Section 351B of the District Municipalities Act and it was because that there was no longer effective remedy available to the Petitioners, that they came to this Court with the present application.

18. Lastly it was suggested on behalf of the Respondents that the application was one for a declaratory relief and such relief could not be granted on an application under Article 226 of the Constitution. Reference was made to *Maqbulunissa and Others Vs. Union of India (UOI)* and Another, , where it was held that the powers of issuing writs should not be utilised for giving what is in essence a declaratory relief that the applicant was a citizen of India. In the present case the application is one for an order directing the Respondents to forbear from holding elections to the municipal council and not for any declaratory relief.

19. For these reasons, the rule is made absolute and an order will issue directing the Respondents to forbear from holding the elections for wards Nos. 7, 12, 15 and 30 of the Vijayawada Municipality fixed for. 26th March, 1956. In view of the bona fide, though erroneous interpretation of Section 4 of Act XI of 1955 (Andhra State) by the Respondents, there will be no order as to costs.