

(1993) 07 KL CK 0070

High Court Of Kerala

Case No: W.A. No 531 of 1993-C

Government of Kerala and
Another

APPELLANT

Vs

George C. Kappan and Others

RESPONDENT

Date of Decision: July 13, 1993

Acts Referred:

- Kerala Municipalities Act, 1960 - Section 45, 54, 8(1)

Citation: (1993) 2 KLJ 1044

Hon'ble Judges: M. Jagannadha Rao, C.J; K. Sreedharan, J

Bench: Division Bench

Advocate: Cyriac Joseph A.A.G 1, for the Appellant; P.C. Chacko for Respondents 1 to 11,
for the Respondent

Final Decision: Dismissed

Judgement

M. Jagannadha Rao, C.J.

This appeal, preferred by the Government of Kerala and the Regional Joint Director of Municipal Administration, is against the judgment of the learned Single Judge in O.P. 3252 of 1993 K dated 7th April 1993 wherein the learned Judge allowed the writ petition filed by Respondents 1 to 11. The Commissioner of Palai Municipality, who was the third Respondent in the writ petition, is now the 12th Respondent in this appeal.

2. The Municipal Council, Palai was constituted in 1988 for a term of five years with effect from 1st February 1988 and the said term expired on 31st January 1993. The said term was extended by a notification, Ext. P-1 dated 28th January 1993, issued by the Government under the proviso to Section 8(1) of the Kerala Municipalities Act, 1960 (hereinafter referred to as "the Act"). In fact, the said notification was a general one applying to all the Municipalities in the State and the term of all the Municipalities was extended for a period of six months from 1st February 1993.

Pursuant to the said notification, writ Petitioners Respondents 1 to 11 in this appeal) had a right to continue in office upto 31st July 1993.

3. However, Government issued Ext. P-2 notification on 24th February 1993, again exercising powers under the proviso to Section 8(1) of the Act, this time confining the notification to Palai Municipality only and reducing the term to 25th February 1993. In other words, while all the Municipal Councils including the Palai Municipal Council had their term generally extended by six months from 1st February 1993 upto 31st July 1993, the reduction in the said extended term was effected by Ext. P-2 dated 24th February 1993 only in respect of Palai Municipal Council thereby terminating its term with effect from 25th February 1993 under Ext. P-2. It was Ext. P-2 notification that is questioned before the learned Single Judge.

4. The learned Single Judge mentioned that though clear mala fides were alleged in the petition, that contention was not pressed before him at the time of hearing. On the legal issue, it was contended that the power under the proviso to Section 8(1) of the Act could not have been exercised by the Government for the purpose of reducing the term of a single Municipal Council. The learned Judge also referred to the provisions of Section 54 of the Act which contemplates supersession of a Municipal Council on certain grounds after giving an opportunity to the Council to show cause. The learned Judge came to the conclusion that while Section 8 is a general provision, Section 54 deals with specific situation of misfeasance or malfeasance on the part of a Municipal Council and that Government could not invoke the proviso to Section 8(1) for purposes which specifically come u/s 54. The learned Judge observed in para 7 as follows:

The proviso [to Section 8(1)] is of general application relating to the term of office of Municipal Councillors as such. The considerations which prevail upon Government while exercising powers under the proviso to Section 8(1) are more in the realms of policy and of subjective satisfaction than the objective approach based on concrete facts which informs Section 54. The fields occupied by the two sections are thus different. While Section 54 is in the nature of a punitive action which requires an opportunity to show cause, Section 8 is in the planes of Governmental policy, which is not related to any punitive action. Therefore, if in a given case, the action is really punitive in nature, in the circumstances covered by Section 54, that should be resorted to, and not Section 8. I am therefore of the view that the notification Ext. P-2 issued in purported exercise of the powers conferred by the proviso to Section 8(1) is not warranted in law. The said proviso has been invoked for purposes other than that for which it was intended in law. Ext. P-2 is therefore ultra vires the proviso to Section 8(1).

The learned Judge again observed in para 8 that:

Government cannot indirectly get rid of a Municipal Council by resort to Section 8 without recourse to Section 54 in circumstances falling under it.

In the result, the writ petition was allowed.

5. In this appeal preferred by the State and Anr. , two contentions have been raised before us by the learned Additional Advocate General-I. The first contention is that the proviso to Section 8(1) of the Act permits the Government to reduce the term of a single Municipal Council or a group of Municipal Councils and it is not as if the said proviso which deals with extension or reduction of the term of Municipal Councils should be invariably exercised uniformly in regard to all Municipal Councils in the State. It is submitted that there may be special situations which come to the notice of the Government in relation to a particular Council or certain Municipal Councils which may necessitate either extension or reduction of the term of Municipal Council, such a situation not necessarily falling u/s 54 of the Act. Alternatively, it is contended that the impugned notification, Ext. P-2, need not be quashed inasmuch as the reasons mentioned in Ext. P-2 notification for reduction of the term, even if they fall u/s 54, do not necessitate any notice to the Municipal Council. According to learned Additional Advocate General, the irregularities pointed out by Ext. P-2 are so grave and borne out by records and there is no chance of the Municipal Council contradicting the said allegations. It is also stated that the extended term is likely to come to an end, even as per the earlier extension, Exi. P-1, on 31st July 1993 and, therefore, it is a fit case where no interference is called for.

6. On the other hand, it is contended by the learned Senior Counsel for the Respondents-writ Petitioners, Sri P.C. Chacko, that the learned Single Judge was right in coming to the conclusion that there was, colourable exercise of power under the proviso to Section 8(1) of the Act. The reasons mentioned in the notification, Ext. P-2, are reasons squarely falling u/s 54 of the Act and relating to alleged irregularities committed by the Municipal Council and it is not permissible for the Government to resort to the proviso to Section 8(1) of the Act. The Councillors should have been given a notice u/s 54 of the Act. Therefore, the impugned notification, Ext. P-2 is a colourable exercise of powers and is also in violation of principles of natural justice. Alternatively, it is contended that the proviso to Section 8(1) can never enable the Government to exercise its powers for extension of the term or reduction of the term in regard to any particular Municipal Council or group of Municipal Councils. It should always be exercised in respect of all the Municipal Councils. According to learned Counsel, the main part of Section 8(1) prescribes the term for all the Municipal Councils and, therefore, the proviso is to be read in the context of Section 8(1) and must take colour from it. Therefore, the powers under the proviso can be exercised only for the purpose of extension or reduction of the term of all the Municipal Councils and not in regard to a single Municipal Council or group of Municipal Councils.

7. From the aforesaid contentions, the following two points arise for consideration:

(1) Whether the power under the proviso to Section 8(1) of the Act for extension or reduction of term of a Municipal Council has to be exercised in respect of all the

Municipal Councils or whether the said power can be utilised for extending or reducing the term of a single Municipal Council or group of Municipal Councils?

(2) Whether, on the facts of the case, having regard to the reasons mentioned in the impugned notification, Ext. P-2 dated 24th February 1993, there is colourable exercise of power under the proviso to Section 8(1) of the Act and whether the Government should have indeed resorted to Section 54 of the Act and issued notice to the Council in regard to the alleged irregularities committed by the Municipal Council?

8. Point No. 1.- Elaborate arguments were advanced by learned Counsel on both sides as to the scope of the proviso to Section 8(1) of the Act and as to whether powers under the proviso must be exercised by the Government for extension or reduction of the term of all the Municipal Councils or whether it could also be exercised in regard to a single Municipal Council or group of Municipal Councils. Inasmuch as we are agreeing with the learned Single Judge on Point No. 2, we do not find it necessary to decide Point No. 1. Point No. 1 is disposed of accordingly.

9. Point No. 2.- The point for consideration, here, is whether by the issue of Ext. P-2 notification dated 24th February 1993, the Government is guilty of colourable exercise of its power and whether it should have issued a notice u/s 54 of the Act.

10. Before we advert to the sections, it will be necessary to refer to the contents in the notification, Ext. P-2 dated 24th February 1993, wherein power is purported to have exercised under the proviso to Section 8(1) for certain stated reasons. Ext. P-2 reads as follows:

S.R.O. No. 313/93.- In exercise of the powers conferred by the proviso to Sub-section (1) of Section 8 of the Kerala Municipalities Act, 1960 (14 of 1961), the Government of Kerala hereby reduce the term of office of the elected Councillors of Palai Municipality by a period of five months and seven days with effect from the 25th day of February 1993.

The Explanatory Note attached to the said Ext. P-2 notification reads as follows:

The five year term of the office of the elected members of the Municipal Councils in the State was due to expire on the 31st January 1993, The general elections to the Councils could not be conducted before that date and hence, the Government in exercise of the powers conferred by the proviso to Sub-section (1) of Section 8 of the Kerala Municipalities Act, as per the Notification issued under G.O. (P) 16/93/LAD, dated the 28th January 1993 and published as S.R.O. 177/93 in the Kerala Gazette Extraordinary No. 101, dated the 28th January 1993, extended the term of officers of the elected Councillors of all the Municipalities in the State for a further period of a six months with effect from the 1st February 1993. Now it has been brought to the notice of the Government that the Municipal Council, Palai is acting in violation of the provisions of the Kerala Municipalities Act and in utter disregard and defiance of

the instructions issued by the Government and the Director of Municipal Administration. The Council as per its resolution No. 6, dated the 3rd February 1993 decide to set aside the proceedings initiated by the Municipal Commissioner against a building constructed in violation of the Rules and the Government Orders, and to assess that building for property tax. As per resolution Nos. 1 and 2 dated the 17th February 1993, the Council decided to discard the instructions issued by the Government and the Director of Municipal Administration with regard to the preparation of Municipal Budget. It has also been brought to the notice of the Government that pandemonium prevailed in the Council meetings held on 3rd February 1993 and 15th February 1993 and that the Council meeting on 17th February 1993 was held with the help of the police. The Standing Committee of the Council is also not functioning properly. In these circumstances, Government have decided that the term of office of the elected Councillors of the Palai Municipality may be reduced to the extent necessary, so that the term may be allowed to expire on the 24th day of February 1993.

It would thus be seen that the reasons for reducing the term of the Municipal Council, Palai from 31st July 1993 to 25th February 1993 are as follows:

- (1) The Municipal Council, Palai was acting in violation of the provisions of the Act and in utter disregard and defiance of the instructions issued by the Government and the Director of Municipal Administration,
- (2) The Council, as per its resolution dated 3rd February 1993 had decided to set aside the proceedings initiated by the Commissioner against a building constructed in violation of the Rules and Government Orders and to assess that building for property tax.
- (3) As per resolution Nos. 1 and 2 dated 17th February 1993, the Council decided to discard the instructions issued by the Government and the Director of Municipal Administration with regard to the preparation of Municipal budget.
- (4) It had been brought to the notice of the Government that allegedly pandemonium prevailed in the Council meetings held on 3rd and 15th February 1993 and that the Council Meeting on 17th February 1993 was held with the help of police.
- (5) It was also alleged that the Standing Committee is also not functioning properly.

These are the five reasons given by the Government in the impugned notification, Ext. P-2, for exercising powers under the proviso to Section 8(1) of the Act. Now let us examine the respective powers conferred on the Government by the Legislature under the proviso to Section 8(1) and u/s 54 of the Act.

11. Section 8(1) of the Act reads as follows:

8. Term of Councillors and filling up of seats.- (1) The term of office of councillors shall, save as otherwise expressly provided, be five years commencing from such

date as the Government may, by notification in the Gazette, appoint:

Provided that the Government may, by notification in the Gazette extend or reduce the said term by such period as may be specified in the notification.

It may be noticed that the proviso was added by Act 4 of 1993 with effect from 27th February 1993 under the Kerala Municipalities (Amendment) Act, 1993.

12. Section 54 of the Act which deals with the power of the Government to dissolve or supersede Councils reads as follows:

54. Government's Power to dissolve or supersede council.- (1) If in the opinion of the Government a council persistently makes default in performing the duties imposed on it by law, or exceeds or abuses its powers, the Government may, by notification, direct that the council be dissolved and reconstituted on such date as the Government may fix in that behalf; or the Government may, if they think necessary, supersede the council for a specified period not exceeding two years:

Provided * * * *

(2) Before publishing a notification under Sub-section (1), the Government shall Communicate to the council concerned the grounds on which they propose to do so, fix a reasonable period for the council to show cause against the. proposal and consider its explanations or objections, if any:

Provided that where a council has disobeyed an order issued u/s 45, the Government shall not be bound to follow the procedure laid down in this Sub-section.

(emphasis supplied)

No arguments were advanced before us in regard to Section 54 obviously because the Government's contention was that Section 54 was not attracted to the facts of the case.

13. In our view, the five reasons mentioned in Ext. P-2 notification dated 24th February 1993 are clearly reasons which fall u/s 54 of the Act. The Government was, therefore, bound to inform the Municipal Council of the said grounds and issue a show cause notice and call for an explanation from the Municipal Council. The Government was, therefore, not entitled to exercise powers under the proviso to Section 8(1) of the Act and treat the same as a case of reduction of the term of a Municipal Council. When the reasons for the reduction, as expressly specified in Ext. P-2, fall clearly u/s 54, resort cannot be had to the proviso to Section 8(1) for that will clearly amount to a colourable exercise of powers.

14. In other words, even assuming that the powers under the proviso to Section 8(1) could be exercised, by the Government in the case of a single Municipality or group of Municipalities and not in regard to all the Municipalities in the State (a point

which we have not decided as stated under Point No. 1), the said power could not, on the facts of the present case, have been exercised by placing reliance on the proviso to Section 8(1). The reasons mentioned in Ext. P-2 notification, in our view, clearly come within the scope of Section 54 of the Act and it is incumbent on the Government to have informed the Municipal Council the said grounds and sought explanation.

15. The contention of learned Additional Advocate General that even assuming that Section 54 of the Act applied to the facts of the case, issue of a notice would be an empty formality on facts cannot be accepted. Such a contention was rejected in the case of supersession of the Delhi Municipal Committee see: [S.L. Kapoor Vs. Jagmohan and Others](#), . It was observed that Section 238(1) of the Punjab Municipal Act contemplated and required for an opportunity to be given to the Municipal Committee before an order of supersession was passed. It was observed:

The status and office and the rights and responsibilities and the expectation of the committee to serve its full term of office certainly creates sufficient interest in the Municipal Committee and their loss, if superseded, entails civil consequences so as to justify an insistence upon the observance of principles of natural justice before an order of supersession is passed.

16. The contention raised in that case was that the principles of natural justice were met inasmuch as the persons had already made a representation, but the said contention was rejected holding that it was incumbent on the Government to issue a notice mentioning the allegations against the Committee. It was observed:

The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met.

It was further held:

If there was any earlier correspondence between the Municipal Committee and any other authority about the subject matter or any of the allegations, if information was given and gathered it was for entirely different purposes and could not be a substitute for the opportunity.

It was further stated that "non-observance of natural justice was itself a prejudice".

17. In our view, the above said decision is directly applicable to the facts of the present case and, therefore, the learned Single Judge was right in allowing the writ petition. Point No. 2 is answered accordingly.

18. A contention has been raised for the Appellants that the term of the Municipal Council is to expire on 31st July 1993 and that, therefore no interference is called for and reliance is placed on para 26 of the above said judgment of the Supreme Court. In that case, the matter proceeded on a concession made by the counsel for the

Municipal Committee. There is no such concession before us by the counsel for the Respondents-writ Petitioners. We have, therefore, no option but to confirm the judgment of the learned Single Judge.

For all the aforesaid reasons the Writ Appeal fails and it is accordingly dismissed.