

(2013) 10 MAD CK 0117

Madras High Court

Case No: Writ Petition No. 20591 of 2011 and M.P. No. 1 of 2011

K.S. Masthan

APPELLANT

Vs

The District Collector and The
Executive Officer

RESPONDENT

Date of Decision: Oct. 3, 2013

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: B. Thingalaval for Mr. G. Sankaran, for the Appellant; V.R. Kamalanathan, Addl. Govt. Pleader for R1 and Mrs. V.M. Velumani, Spl. Govt. Pleader for R2, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

By consent of the learned counsel on either side, this writ petition itself is taken up for final disposal. Heard Mr. B. Thingalaval for Mr. G. Sankaran, learned counsel for the petitioner, Mr. V.R. Kamalanathan, learned Additional Government Pleader for the 1st respondent and Mrs. V.M. Velumani, learned Special Government Pleader appearing for the 2nd respondent.

2. The challenge in this writ petition is to a show cause notice issued by the 1st respondent in Na. Ka. No. 2488/2011/TP3 dated 27.08.2011, calling upon the petitioner to explain to the charges framed against him within a period of seven days, otherwise, under the relevant rules, final orders will be passed and the petitioner seeks to quash the same as illegal.

3. The brief facts, leading to filing of this writ petition, as stated by the petitioner in the affidavit filed in support of the petition, are as under:

i) He is the elected Chairman of Gingee Town Panchayat of 18 wards, out of which, 18 Councillors were elected during the Local Body Election held in October, 2006.

The petitioner was elected as Councillor from VII Ward. Thereafter, he contested for the post of Chairman of Town Panchayat and was elected as Chairman and assumed Office in October, 2006. It is his submission that from the date of assumption of charge as Chairman of Town Panchayat, he has been discharging his duties for the welfare of the general public in strict adherence to the provisions of District Municipalities Act and the rules made thereunder without any deviation.

ii) He is a public spirited person rendering services to the general public without any expectation. The entire public within the Town Panchayat limits have reposed confidence on him and he was elected as the President of Gingee Town Panchayat for the period from 1986 to 1991. There was no election for the period from 1991 to 1996. Again in the year 1996, he was directly elected as the Chairman of Town Panchayat for the period from 1996 to 2001 after the advent of Nagar Palica Act. Again, for the next term 2001 to 2006, he was directly elected as Chairman of Gingee Town Panchayat. In view of the meritorious service and various welfare activities carried out by the petitioner in all respects, he was again elected as the Chairman of Gingee Town Panchayat for the period 2006 to 2011.

iii) While so, to his shock and surprise, the first respondent has issued the impugned notification dated 27.08.2011, purported to have been issued u/s 50(d) of Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as "the Act") calling upon the petitioner to offer his remarks within seven days by referring to two resolutions, one passed in the year 2002 and another in 2005, when he was a Chairman in the earlier term.

iv) In the show cause notice, it has been stated that there was a Resolution No. 74 dated 03.07.2002 passed by the Town Panchayat Council, granting lease of land to one Veerakumar without conducting public auction-cum-tender and there is another Resolution No. 366(13) passed by the Town Panchayat Council on 30.03.2005 fixing ground rent for the pathway leading to MSB Cycle Stand belonging to one M. Saidhani Bi, wife of the petitioner.

v) The impugned show cause notice was served on him on 02.09.2011 and the same was issued with a view to prevent him from contesting the forthcoming Local Body Election. That apart, the impugned order suffers from serious infirmity of lack of jurisdiction inasmuch as the first respondent is not the competent authority to issue notice under the Act, therefore, it is submitted that the impugned notice is without jurisdiction and is issued in violation of all canons of law and without taking note of the fact that the alleged resolutions will not attract Section 50 of the Act and thereby the petitioner has no other efficacious, alternate and speedy remedy except to approach this Court.

4. The petitioner has mainly challenged the impugned show cause notice on the following grounds:

- i) The first respondent is not the competent authority to initiate any action under the Act and has also not followed the procedure properly before issuing the same;
- ii) The relevant provisions of law relates to disqualification of Councillor within the particular time and the same cannot be elongated to the subsequent term and thereby, there cannot be any action under the Act with reference to the resolutions passed during the earlier term.

5. The first respondent has filed a counter affidavit, wherein, besides refuting the averments made in the petition, it has been stated as under:

- i) The writ petition is not maintainable either in law or on facts and has been filed only on misconception. The first respondent has issued the show cause notice dated 27.08.2011, which is impugned in the writ petition, calling upon the petitioner to submit his explanation for acting in violation of the Act. The petitioner instead of submitting his explanation, has straight away approached this Court. Unless he submits his explanation, no further action can be taken in view of pendency of the writ petition;
- ii) The first respondent, while admitting the fact that the petitioner is the Chairman of Gingee Town Panchayat for long time, denied that he is a public spirited person and the people have reposed confidence in him and is discharging public duty without any blemish;
- iii) The petitioner had acted in violation of the provisions of the Act and he was a party to two Resolution Nos. 74 dated 03.07.2002 and 366(13) dated 31.03.2005. By the first resolution, he was instrumental in granting lease of land to one Veerakumar without conducting public auction-cum-tender and vide second resolution, the ground rent was fixed for the pathway leading to MSB Cycle Stand belonging to one M. Saidhani Bi, who is none other than his wife, due to these two resolutions, he caused huge loss to the Panchayat, as the property of Panchayat was leased out for very meagre amount. Since these two leases are even continuing today, the first respondent has issued show the cause notice for the resolutions passed during his previous term, which is absolutely valid and legal.
- iv) As per Section 50 of the Act, the first respondent is the competent authority. On the other hand, only if the first respondent initiates and passes order u/s 50 of the Act, then cause of action to approach the District Judge u/s 51 of the Act, arises.
- v) It is also denied that the first respondent has issued the impugned show cause notice with an ulterior motive to prevent the petitioner from contesting the election in October 2011 as also the allegation that the impugned notice suffers from infirmity for lack of jurisdiction. On the whole, the first respondent prayed for dismissal of this writ petition.

6. I have considered the rival submissions and perused the materials available on record.

7. The impugned show cause notice has been issued by the 1st respondent on 27.08.2011, calling upon the petitioner to submit his explanation as to why action should not be taken against him for violation of the provisions of the Act in extending two leases, viz., one to Veerakumar without conducting auction-cum-tender vide Resolution No. 74 dated 03.07.2002 and another to M. Saidhani Bi, wife of the petitioner, by fixing ground rent for the pathway leading to MSB Cycle Stand vide Resolution No. 366(13) dated 30.03.2005. Though the petitioner has raised the plea that the 1st respondent is not the competent authority to issue such show cause notice and the allegations levelled against him are untrue, it is for him to justify the same with the competent authority by proving falsity of the allegations made against him, as ab abusu ad usum non valet consequentia (the abuse of a thing is no argument against its proper use), but to the contrary, the petitioner has knocked at the door of this Court even at the premature stage, by stating that the impugned show cause notice is without jurisdiction.

8. Section 50 of the Act provides for disqualification of Councillors, which provides that subject to the provisions of Section 51, a Councillor or a person referred to in clauses (b) and (c) of sub-section (2) of Section 3-C or clauses (a) and (b) of sub-section (2) of Section 3-Q or clauses (b) and (c) of section (3) of Section 7 shall cease to hold his office, if he, subject to the proviso to clause (c) of sub-section (2) of section 49, acquires any interest in any subsisting contract made with, or work being done, for the council except as a shareholder.

9. From the reading of the above provisions, it is pertinent to mention that the petitioner has to submit his explanation to the show cause notice by giving necessary information as to whether he has acquired any interest in any subsisting contract made with or work being done instead of approaching the Court even at the initial stage itself.

10. The law is also well settled that in the event of violation of fundamental rights or infringement of any legal right either under the Statute or under any other laws and violation of principles of natural justice, an individual may approach this Court, seeking interference of this Court. In the absence of any such ingredients and legal right, it is not appropriate for the petitioner to seek remedy by challenging the show cause notice. The course adopted by the petitioner, namely, not chosen to submit his explanation, in my considered view, does not have any legs to stand. Therefore, this writ petition lacks merit and substance.

11. The Hon'ble Supreme Court in the case of Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, has been pleased to lay down as under:

It is well settled by a series of decision of this Court that ordinarily no writ lies against a charge sheet or show cause notice vide Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, The Special Director and Another Vs. Mohd. Ghulam Ghous and Another, Ulagappa and Others Vs. Divn.

Commr. and Others, , State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, .

12. The Hon"ble Supreme Court in this very judgment held that in some very rare and exceptional cases, the High Court can quash the charge sheet or show cause notice, if it is found to be without jurisdiction, or for some other reason, if it is wholly illegal, though normally, the High Court should not interfere. In the absence of any such violation and infringement of rights, there is no scope for this Court to interfere with such show cause notice impugned in this writ petition. Accordingly, while rejecting the claim of the petitioner, this writ petition is disposed of, with liberty to the petitioner to move the 1st respondent by way of suitable explanation to the show cause notice dated 27.08.2011 within a period of four weeks from the date of receipt of a copy of this order. On receipt of such explanation, it is for the 1st respondent to consider the same on merits and after affording opportunity of hearing to the parties concerned, pass appropriate orders in this matter. No costs. Consequently, connected miscellaneous petition is also closed.