

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

ALFRED THANGARAJAH DURAYAPPAH

Appellant

- and -

1. W. J. FERNANDO, Commissioner
of Local Government, Colombo
 - 10 2. N. NADESAN, Executive Engineer,
P. W. D. Jaffna.
 3. S. C. MANICA VASAGAR, Assistant
Commissioner of Local Government,
Jaffna.
 4. MURUGEYSAN TIRUCHELVAM, Minister
of Local Government
- Respondents

CASE FOR THE 1ST, 2ND and 3RD RESPONDENTS

RECORD

- 20 1. The Appellant above-named appeals from the
judgment of the Supreme Court dated 22nd September
1966 whereby it dismissed with costs the Appellant's
Petition in which he prayed inter alia for mandates
in the nature of writs of certiorari and Quo
Warranto to
- pp.36-41
p.1 l.25 -
p.10, l.23
- 30 (a) "cancel and set at nought" the order of the
4th Respondent who is the Minister of Local
Government (hereinafter called the
Minister) dissolving and superseding the
Jaffna Municipal Council (hereinafter called
the Council) and the appointment of the 1st,
2nd and 3rd Respondents-Respondents (herein-
after called the Respondents) as Special
Commissioners;
- p.9 ll.33-42

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RECORD

p.9 1.42 - (b) grant an interim injunction to restrain the
 p.10 1.8 Respondents from exercising the functions
 of Special Commissioners;

p.10 11.9-17 (c) declare that the Appellant is the duly
 elected Mayor of the Council and that he
 is entitled to exercise the functions
 conferred on him by law.

2. In the application and the supporting
 affidavit, dated 19th June 1966, the Appellant
 alleged, inter alia that:

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p.3 11.32-35 (a) Circumstances did not exist to warrant an
 order under Section 277(1) of the Municipal
 Councils Ordinance (Cap.252, Vol.IX,
 Legislative Enactments of Ceylon 1956 Ed.,
 hereinafter called the Ordinance) being
 made by the Minister;

p.3 11.36-40 (b) The Minister misconstrued the said section
 and was influenced by extraneous circum-
 stances;

p.3 1.41 - (c) The Minister was influenced by two ex-
 p.4 1.6 Mayors who, like the Minister, belonged to
 the Federal Party;

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p.4 11.7-29 (d) The motive of the Minister in making the
 order for the dissolution was to prevent
 the Appellant and his party from carrying
 on their good work and so avoid defeat at
 the general election due to take place in
 December 1966;

p.4 11.30-39 (e) A fair and impartial consideration of the
 circumstances leads to the conclusion that
 the Council was "very highly competent";

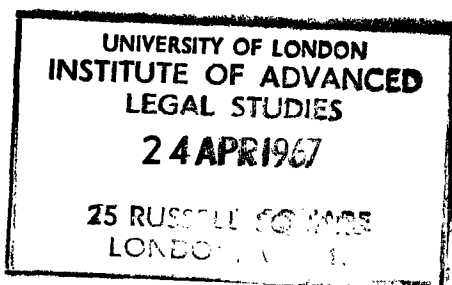
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p.4 1.40 - (f) The order of the Minister is bad in law and,
 p.5 1.6 as a consequence, the order of the Governor-
 General appointing the Respondents is also
 bad; and

p.5 11.34-41 (g) The Minister had no power under the
 Ordinance to make order for the removal or
 displacement of the Mayor and the Governor-
 General had no power to appoint any person
 to supersede him.

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3. The Minister and the Respondents opposed the application and in the affidavits filed on their behalf the following statements of fact appear:

- (a) Towards the end of March 1966 and in the course of April 1966, the Minister received a number of representations against the Council and these included representations from -
- (i) The Joint General Secretary of the All Ceylon Tamil Congress (the political party to which the Appellant belonged);
- (ii) The Ceylon Federal Party to which the Minister belonged;
- (iii) The member of Parliament for Nallur, a constituency in the Jaffna Peninsula; and
- (iv) Other prominent citizens of Jaffna.
- (b) The Minister requested the 1st Respondent, the Commissioner of Local Government (who is a Sinhalese and who is not alleged to have been connected in any way with the politics of Jaffna) to proceed to Jaffna to investigate the complaints and submit a report thereon. The 1st Respondent is the head of the Department of Local Government for the whole of Ceylon and a senior civil servant with special experience in local government administration.
- (c) The 1st Respondent investigated the complaints and gathered certain material (referred to hereafter) from the minutes of the meetings of the Council and other official documents in the files of the Council.
- (d) On his return to Colombo on the morning of 29th May, the 1st Respondent reported to the Minister. On the same day the Minister made the order under section 277(1) of the Ordinance dissolving the Council.

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4. The following passages are taken from the said report of the 1st Respondent:

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p.47 11.5-22

"In pursuance of the Hon. Minister's order conveyed to me by your letter AB/B/466 of 24th April 1966, I visited Jaffna on 27.5.1966 and investigated the matters connected with the Hon. Minister's order on 27th and 28th inst. I had the fullest co-operation of the Mayor Mr. Alfred Duraiappah, the Municipal Commissioner, Mr. Hudson Selvarajah and other Municipal Staff with regard to my investigations. Mr. Manikkavasagar, A.C.L.G. Jaffna, assisted me.

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Going through the minutes of the Meetings of the present Council from its inception, covering the terms of office of four Mayors within a period of 2½ years, I came across many instances where the Council's decisions savoured of irresponsibility, incompetence, misconduct and abuse of authority."

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p.52 11.14-23

"I am alarmed at the trend of events and make haste to place this report in your hands so that immediate action may be taken to arrest further deterioration of conditions.

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The Municipal Council of Jaffna by its conduct has proved that it is not competent to perform the duties imposed upon it. I see no alternative to immediate dissolution."

p.45 11.1-24

5. The Minister's order under section 277(1) of the Ordinance dissolving the Council contains the following recital: "Whereas, it appears to me that the Jaffna Municipal Council is not competent to perform the duties imposed upon it."

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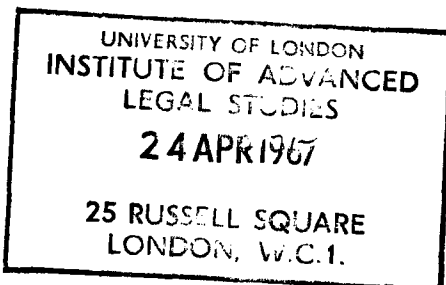
p.45 11.12-14

6. The relevant subsections of section 277 of the Municipal Councils Ordinance (Cap.252 Vol.IX, Legislative Enactments of Ceylon 1956 Ed.) are as follows:

"277. (1) If at any time, upon representation made or otherwise, it appears to the Minister that a Municipal Council is not competent to perform, or persistently makes default in the performance of, any duty or duties imposed upon it, or persistently refuses or neglects

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4.



10 to comply with any provision of law, the Minister may, by Order published in the Gazette, direct that the Council shall be dissolved and superseded, and thereupon such Council shall, without prejudice to anything already done by it, be dissolved, and cease to have, exercise, perform and discharge any of the rights, privileges, powers, duties, and functions conferred or imposed upon it, or vested in it, by this Ordinance or any other written law.

(2) By any subsequent Order published in like manner -

20 (a) the Governor-General may appoint a Special Commissioner to have, exercise, perform and discharge such of the rights, privileges, powers, duties and functions conferred or imposed upon, or vested in, the Council or the Mayor by this Ordinance or other written law as may be set forth in such Order, or in any Order or Orders amending the same; or

(b) the Minister may direct that a new Municipal Council in accordance with the provisions of this Ordinance shall be constituted for the Municipality in place of the dissolved Council.

30 (3) Every Order made under this section shall contain such directions as may be necessary for the purpose of giving effect to the Order, and shall, on publication in the Gazette, have the force of law."

40 7. The application from which this appeal arises and another application number 235/1966 in which the Minister was the only Respondent and in which too a mandate in the nature of a writ of certiorari to quash the order of the Minister was asked for were taken up and argued together. At the hearing Counsel for the Appellant based his claim to the writs on two grounds, namely, that the Minister failed to observe the rules of natural justice and that he acted in bad faith. Later in the course of the argument, however, Counsel for the Appellant indicated that the ground of mala fides was not seriously pressed and

p.40 11.32-37

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the only question which was thereafter debated was whether the terms of section 277 of the Ordinance obliged the Minister to act judicially.

pp.36-41 8. The Supreme Court (Sansoni C.J. and Siva Supramaniam J.) by its judgment and order dated 22nd September 1966, (reasons for which were given on the 29th of September 1966) dismissed the application with costs.

9. Their Lordships' reasons may be summarised as follows:

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p.40 11.32-37 (a) The Court found against the Appellant on the issue of mala fides in the following passage taken from the Reasons: "Mr. Thiagalingam suggested at the opening stages of his argument that the Minister had acted mala fide because the Federal Party were in a minority in the Council. I do not see any grounds for such an allegation, which was not pressed seriously".

p.38 11.16-22 (b) The Court followed the decision in Sugathadasa v. Jayasingha (59 New Law Reports 457) with which they agreed notwithstanding the argument that this decision was no longer good authority in view of the decision in Ridge v. Baldwin (1964 A.C.40).

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p.37 1.35 -
p.38 1.15 (c) Sugathadasa's case had been heard by three judges who unanimously held that the Minister, in making an order under section 277(1), is not acting judicially and, consequently, that he was not bound to give the councillors a hearing.

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p.39 11.16-19 (d) The Court took the view that the decision in Ridge v. Baldwin has no application because the powers of the Disciplinary Committee and the subject matter of the Act and regulations considered in that case were totally different. Further, there was no requirement in section 277(1) that the Minister should hold an inquiry; and this was in contrast to section 280 of the Ordinance which provided for an inquiry.

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p.39 1.30 -
p.40 1.17 (e) The Court adopted the principles laid down in R. v. Electricity Commissioners (1924)

1 K.B. 171 Nakuda Ali v. Jayaratna (1951 A.C. 66)

(f) In regard to the contention that the Minister made an error of law, Sansoni C.J. said:

p.41 11.11-25

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"The Commissioner in his report alleged that in some matters the Council had virtually abdicated its powers and duties in favour of the Mayor, and that there had been irresponsible decision on the part of the Council, such as the suppression or creation of posts on grounds which could not be supported. It is quite impossible for us to say in these circumstances that the Minister's Order, based on his opinion that the Council was not competent, contained an error of law. But even this question would only arise for consideration if Certiorari was the appropriate remedy. I am of the view that it is not, and Sugathadasa's case is sufficient and binding authority for that view."

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10. In regard to the question of mala fides, it is respectfully submitted that in view of the strong finding of fact by the Supreme Court and of the fact that it was virtually abandoned by the Appellant's Counsel at the hearing before the Supreme Court, the question cannot properly be regarded as a live issue before the Board.

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11. In regard to the decision of the Supreme Court that the Minister was not under a duty to hear the Council before making the order under section, the Respondents adopt, with respect, the reasons contained in the judgment appealed from in the Judgment of the Supreme Court in the Sugathadasa case and in the case filed for the 1st Respondent (the Minister).

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12. If (as the Respondents submit) the Supreme Court has rightly refused the Appellant's application for a writ of certiorari to quash the Minister's order dissolving the Council, the question whether the writ of quo warranto is still available to the Appellant is not in issue since the Appellant's case before the Supreme Court was presented on the footing that the

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entire application and the reliefs asked for therein depended on the Appellant being successful in obtaining a certiorari to quash the order of the Minister. The writ of quo warranto and the declaration prayed for in the Appellant's petition were treated by the Appellant's counsel as consequential remedies. Hence it is that the judgment of the Supreme Court contains no separate reasons for refusing the writ of quo warranto. The Appellant having failed in his application for a writ of certiorari, his application for a quo warranto was rightly refused.

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13. The Respondents respectfully submit that this appeal should be dismissed with costs for the following among other

R E A S O N S

1. BECAUSE the Respondents have exercised the functions and duties of Special Commissioners in obedience to the order of the Governor General which has the force of law.
2. BECAUSE the Appellant, having failed to obtain a writ of certiorari to quash the Minister's order, was rightly refused the other remedies prayed for including the writ of quo warranto.
3. BECAUSE the Supreme Court rightly refused to quash the Minister's order by way of certiorari.

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WALTER JAYAWARDENA.

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CASE FOR THE 1ST, 2ND and
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