

~~PC~~  
6-1-6-2

Judgment  
29, 1966

IN THE PRIVY COUNCIL

Appeals  
No. 29 of 1966

ON APPEAL  
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
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

C A S E FOR THE FOURTH RESPONDENT

Record

1. This is an appeal from a Judgment and Order  
of the Supreme Court of Ceylon, dated the 22nd  
September, 1966, dismissing, with costs, the  
Appellant's Petition for -
  - (A) A Mandate in the nature of a Writ of  
Certiorari to quash the Order made by the  
Minister of Local Government (this Respondent),  
dated the 29th May, 1966, under the Municipal  
Councils Ordinance (C.252) Section 277(1),  
directing, on the ground of incompetency,  
the dissolution and supersession of the  
Jaffna Municipal Council (hereinafter  
referred to as "the Council").

p.36.L.28

p.37.LL.1-2

p.9.LL.32-40

p.45

~~P.L.~~  
~~64162~~

87105

2.

Record

p.46 (B) A Mandate in the nature of a Writ of Quo Warranto to annul the appointments of the 1st, 2nd and 3rd Respondents hereto as Special Commissioners to have, exercise, perform and discharge all the rights, powers, duties, etc. of the Council or the Mayor thereof made by Order of the Governor General, dated the 30th May, 1966, under Section 277(2)(a) of the said Ordinance. 10

pp.9-10 (C) An interim injunction restraining the 1st, 2nd and 3rd Respondents hereto from exercising and/or performing any of the rights, powers, functions, or duties, of the Council or of its Mayor (the Appellant).

p.10.LL.9-17 (D) A declaration that the Appellant, as the duly elected Mayor of the Council is entitled to act as such until the election of a new Mayor according to law.

(E) Costs. 20

2. The main questions for determination on this appeal are -

(A) Whether the Appellant can question the validity of the said Orders in these proceedings.

(B) Assuming that the answer to (A) is in the affirmative, whether or not the said Orders are valid.

As presented in the Court below the Appellant's case was that, in making the said Order dissolving and superseding the Council, this Respondent did not duly discharge the judicial duty which, in relation to the Order, is imposed by law upon him, inasmuch as, in breach of the rule of natural justice - audi alteram partem - he did not give to the Appellant (the Mayor) and Members of the Council an opportunity to be heard in defence of the allegations against them upon which the Order was based. Further, that the said Order shows an error of law upon its 30 40

UNIVERSITY OF LONDON  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

24 APR 1967

25 RUSSELL SQUARE  
 LONDON, W.C.1.

~~87104~~

face inasmuch as it purports to be made on the ground that the Council was "not competent" to perform the duties imposed upon it. The Appellant's entire case as presented in the Supreme Court was that he was entitled to a Mandate in the nature of a Writ of Certiorari quashing this Respondent's allegedly judicial Order, dated the 29th May, 1966, and that he was thereupon entitled to certain consequential relief including a Mandate in the nature of a Writ of Quo Warranto, involving the appointment of the 1st, 2nd and 3rd Respondents hereto as Special Commissioners.

This Respondent's case rests quite simply upon the submission that the circumstances of this case clearly disclose that the impugned Order dissolving the Council was made by him in the normal course of the discharge of his executive duties and in the legitimate exercise of a wide and absolute discretion which cannot be questioned in a Court of law; and that the Order was not made by him in the performance of any judicial or quasi-judicial duty or any duty analagous to those performed by a Judge administering the law. This Respondent, therefore, submits that the Appellant's application for a Mandate in the nature of a Writ of Certiorari to quash a valid Order which statutorily has the force of law is misconceived and not maintainable.

3. Relevant portions of the Municipal Councils Ordinance (C.252) and the Courts Ordinance (C.6) are included in an Annexure hereto.

4. The facts, briefly stated, are as follows:-

Having received numerous and serious representations from various sources (including the joint General Secretary of the Political Party in Jaffna which supported the Appellant as Mayor) in regard to the working of the Council this Respondent, as Minister of Local Government, by his letter, dated the 20th May, 1966, (Ex. 4R9), informed the Appellant that he had directed the Commissioner of Local Government (the 1st Respondent - herein, also, referred to as "the

Record

Commissioner") to visit the Council, enquire into the allegations, and report to him immediately. He asked the Appellant to co-operate with the Commissioner.

By his letter, dated the 22nd May, 1966 (Ex. 1R1), the Commissioner notified the Appellant that he would visit Jaffna on the 27th May, 1966, and would call at the Appellant's office on that day in connection with the matters referred to in this Respondent's said letter of the 20th May, 1966.

10

p.47.LL.10-15

5. In the investigation of the Council's affairs which followed, the Commissioner, who had two assistants with him, received the fullest co-operation from the Appellant, the Municipal Commissioner and other members of the Municipal Staff.

Ex.4R10.p.47

The investigations, however, disclosed to the Commissioner numerous irregularities of a serious nature and details of these were included in his Interim Report (Ex. 4R10) dated the 29th May, 1966, which he sent to this Respondent.

20

p.47.LL.16-22

6. Paragraph 2 of the said Interim Report (Ex. 4R10) of the Commissioner was as follows:-

"2. 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.

30

p.47.LL.22-28

"Scheduled posts in the Council appear to have been suppressed either to by-pass the authority of the Local Government Service Commission or to get rid of the present holders of their posts. Labourers appear to have been appointed above the cadre, without even financial provision.

p.47.LL.28-35

"I shall be making a detailed report regarding these matters. But the minutes of

40

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

24 APR 1967

25 RUSSELL SQUARE  
LONDON W.C.1.

87105

the last two or three Meetings of the Council reveal a most unhealthy, unsatisfactory and even alarming trend of events. I, therefore, hasten to send this interim report so that immediate action may be taken."

Record

10 The Commissioner then, in support of his findings, set out some of the resolutions of the Council, together with other relevant information, taken from the minutes of the meetings of the Council held on various dates between the 11th April, 1966, to the 17th May, 1966.

p.47.L.36 to  
p.52.L.13

He concluded as follows:-

"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.

p.52.LL.14-18

20 "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.52.LL.19-24

30 7. After a careful consideration of all the material relevant to the working of the Council that was before him, this Respondent, by virtue of the statutory power vested in him, decided to direct that the Council should be dissolved and superseded and made an appropriate Order to that effect. The Notification of the Order in the Ceylon Government Gazette Extraordinary, dated the 29th May, 1966, (Ex. "B") was as follows:-

"The Municipal Councils Ordinance  
Order

Ex.B.p.45

40 "Whereas it appears to me that the Jaffna Municipal Council is not competent to perform the duties imposed upon it, I, Muregeysen Tiruchelvam, Minister of Local Government, do, by virtue of the powers vested in me by Sub-section (1) of Section 277 of the Municipals Councils Ordinance

Record

(Chapter 252) as amended by Act No.12 of 1959 by this Order direct that the said Council shall be dissolved and superseded on the 29th day of May, 1966.

(Sgd.) M.T. Tiruchelvam

Colombo, May 29th 1966. Minister of Local Government."

8. On the next day, the 30th May, 1966, the appointment of the Special Commissioners (present 1st, 2nd and 3rd Respondents) by the Governor General to have and exercise the powers of the Council was thus notified in the Ceylon Government Gazette Extraordinary (Ex. "C"):-

10

Ex."C".p.46

"THE MUNICIPAL COUNCILS ORDINANCE ORDER"

"By virtue of the powers vested in me by sub-section (2)(a) of Section 277 of the Municipal Councils Ordinance (Chapter 252) as amended by Act No.12 of 1959, I, William Gopallawa, Governor-General do, by this Order -

20

(a) appoint Mr. Wattage Johanis Fernando, Commissioner of Local Government, Mr. Namasivayam Nadesan, Executive Engineer, Public Works Department, and Mr. Sivasubramaniam Chinnayanandaguru Manica Vasagar, Assistant Commissioner of Local Government, to be Special Commissioners to have, exercise, perform and discharge all the rights, privileges, powers, duties and functions conferred or imposed upon, or vested in, the Jaffna Municipal Council or the Mayor thereof by that Ordinance or by any other written law, and

30

"(b) declare that this Order shall come into operation on the 30th day of May, 1966.

"Colombo, 30th May, 1966

W. Gopallawa  
Governor General."

40

9. Aggrieved by the changes, the Appellant, on the 20th June, 1966, filed a petition in the Supreme Court, in which, on numerous grounds, he maintained that the said Orders were invalid. He prayed for a Mandate in the nature of a Writ of Certiorari and for the other remedies as stated in paragraph 1 hereof.

Record  
p.1

10 There was filed also, at or about the same time, and in the same Court, a petition by a Member of the Council, praying, on similar grounds, for a Mandate in the nature of a Writ of Certiorari to quash the said Orders.

10. A brief summary of some of the more important grounds upon which the Appellant's petition was based may be stated thus:-

(A) "There did not exist any circumstances warranting the exercise of the powers vested in the Hon. Minister " [this Respondent] " under Section 277(1) of the said Ordinance".

p.3.LL.32-35

20 (B) The Minister had misconstrued the words "not competent" in the said Section, and had been "influenced by extraneous circumstances".

p.3.LL.36-40

(C) "The Mayor of any Municipal Council cannot be removed save and except as provided by Section 15 of the said Ordinance". The Minister therefore was not authorised in law to remove the Mayor.

p.5.LL.43-44

p.6.LL.6-9

30 (D) The Minister had violated a principle of natural justice (audi alteram partem) inasmuch as he had not given the Council and/or the Mayor an opportunity to explain, correct, or contradict the charges or allegations made against them.

p.9.LL.2-18

(E) The Minister, in making the said Order of dissolution, had been influenced by extraneous circumstances.

p.3.LL.36-40  
p.9.LL.16-18

40 (F) The Minister had acted mala fide and was improperly influenced by political motives and by a personal animus against the Appellant.

p.7.L.28 to  
p.8.L.2  
p.9.LL.13-14

Record

p.6.L.42 to  
p.7.L.24

As to his interest in filing the petition, the Appellant said that as Mayor, and as a member, of the Council, he had a right and a duty to safeguard and protect the rights of the Council and of the people in the Municipal Ward whom he represented.

p.5.L.20

He said, also, that a cause of action had accrued to him which enabled him to invoke the assistance of the Court.

p.30.L.35 to  
p.31.L.30

11. In answer to the Appellant's petition, this Respondent, in his affidavit, dated the 17th August, 1966, said that various oral and written representations against the administration of Municipal affairs by the Council had been made to him by individuals and organisations, in consequence of which he had asked the Commissioner of Local Government (the 1st Respondent) to investigate the complaints and report to him which the Commissioner had done.

10

The affidavit continued as follows:-

20

p.31.LL.31-38

"7. Upon the material so placed before me by the Commissioner of Local Government .. . . . . appeared to me that the Municipal Council of Jaffna was not competent to perform the duties imposed on it and I made the Order that the said Council be dissolved and superseded.

p.31.LL.38-43

"I specifically state that in deciding to make the said Order, and in making the said Order, I was not influenced by improper motives nor did I act at the instigation of, or in conspiracy with, the members of the Federal Party, as suggested by the Petitioner.

30

p.31.L.44 to  
p.32.L.5

"8. I would have, in the normal course, even though I had no legal obligation so to do, given the said Council and its Mayor an opportunity to show cause against the action I proposed to take. But the urgency of the situation to the extent indicated in the report of the first Respondent" <sup>4</sup> i.e. the Commissioner of Local Government <sup>7</sup> "made me decide that I should take immediate action."

40



12. Also, in answer to the Appellant's petition, the Commissioner of Local Government (who was then, as he still is, the 1st Respondent), in his affidavit, dated the 17th August, 1966, said, inter alia:-

Record

10 "4.(b) On the 27th May, 1966, I called at the Municipal Office, Jaffna, at 10 a.m. The Petitioner was present at the office. I requested him to make available to me for inspection, the relevant documents including the minutes of the Council since 1st January, 1964, which was the date of the commencement of the term of office of the Councillors then in office. The Petitioner instructed the Municipal Commissioner to make available these minutes and any other documents which I might require. On the 27th and 28th I examined these minutes and other relevant material. I had the 20 assistance of the Assistant Commissioner of Local Government, Jaffna, the Municipal Commissioner and other Officers of the Council in my work. I did not finish looking into the minutes till 9 a.m. on the 28th working both at the Council Office and at the Residency where I stayed for the night. I did not call for the Petitioner's explanation in respect of any matter I had investigated and referred to in my report 30 '4R10' as I gathered all the facts stated therein from the minutes of meetings of the said Council in which the Petitioner participated and from files of documents of the said Council the contents of which were known to the Petitioner.

p.20.L.33 to  
p.21.L.20

40 "(c) I left Jaffna at about 3 p.m. for Colombo and early next morning I telephoned the Honourable Minister at his residence in Colombo and informed him that I had visited the Jaffna Municipal Council and conducted an investigation as directed by him and gave him a general idea of my findings. Thereafter I called on him at his bungalow taking with me all notes I had made. I informed the Minister in detail of the facts that I had gathered from my

p.21.LL.21-34

Record

examination of the official minutes of the Council and from other documents which I had inspected at the Council's Office.

p.21.LL.34-46

"I also told the Minister that on this material I had formed the opinion that the Council had virtually abdicated its powers and duties in favour of the Petitioner i.e. the Mayor. I brought to his notice many instances of decisions of the Council which savoured of irresponsibility, incompetence, misconduct and abuse of authority. I further told him that the situation was alarming and called for immediate action on his part. Later that same evening I handed my report to him."

10

p.22.L.8

13. In paragraph 6 of his said affidavit the Commissioner of Local Government (the 1st Respondent) gave short details of some of "the illegal and/or undesirable acts of the said Council". These were as follows:-

20

p.22.LL.11-17

(a) "The disbandment of the Standing Committees of the said Council which had been elected at the beginning of the year 1966, under the provisions of Section 26(1) of the Municipal Councils Ordinance and the election of fresh Committees without warrant in law."

p.22.LL.18-31

(b) The regular practice of passing resolutions dealing with important matters involving expenditure of Council funds without notice of the business to be transacted at the meetings as required by Section 19 of the Municipal Councils Ordinance being given but "with the permission of the House". Out of 19 items decided upon at three Council meetings, members received the required statutory notice only in respect of 7 items.

30

p.22.LL.32-37

(c) "The wholesale delegation by the Council of all its powers under Sections 229(c) and 229(d) of the said Ordinance which

40

is calculated to nullify the statutory safeguards against corruption and waste of the said Council's funds".

Record

- (d) "The authority given to the Finance Committee to sub-delegate the powers under Sections 229(c) and 229(d) already delegated which is still further calculated to nullify even more the statutory safeguards against corruption and waste".

p.22.LL.38-44

10

14. Further short details of the "illegal and/or undesirable acts" of the Council given in paragraph 6 of the affidavit of the Commissioner of Local Government (the 1st Respondent) were as follows:-

- (e) "The decision to dispense with the procedure prescribed by Sections 227, 228 and 229 of the said Ordinance".

p.23.LL.1-3

- (f) "The consequent entrustment of all powers of the Council to enter into contracts to the Mayor.

p.23.LL.4-6

20

- (g) "The decision to give the power to the Mayor to create new posts and fill them on temporary or permanent basis without prior monetary provision for them."

p.23.LL.7-10

- (h) "The act of the Mayor in engaging labourers and masons and thereby increasing their cadres without prior financial provision and prior sanction of the said Council."

p.23.LL.11-14

30

- (i) "The decision to permit the Mayor to allot new unused open sheds (market stalls) at the Grand Bazaar at his discretion without calling for tenders."

p.23.LL.15-18

- (j) "The suppression of the post of Works Engineer, a post listed in the First Schedule of the Local Government Service Ordinance and creation of the post of Superintendent of Works Grade I."

p.23.LL.19-23

40

<p><u>Record</u> p.23.L.24 to p.27.L.35</p>	<p>15. In paragraph 7 of his said affidavit, the Commissioner of Local Government (present Respondent No.1) gave examples of how "the Council also appeared to resort to the expedient of suppressing or creating posts in order to by-pass the authority of the Local Government Service Commission or to get rid of some officers and appoint others in their places"; in</p>	
<p>p.24.L.36 to p.25.L.22</p>	<p>paragraph 8 he gave details of how the Appellant had authorised the laying of electric lines (other than service lines) without the approval of the Chief Electrical Inspector in contravention of Section 13(1) of the</p>	10
<p>p.25.L.23 to p.27.L.33</p>	<p>Electricity Act; and in paragraph 9, after giving details of serious irregularities in regard to the water supply schemes of the Council (<u>e.g.</u> the fact that tenders were not called for, that the deviation from the normal procedure was not approved by the Council and that "Orders were placed with one firm not for</p>	20
<p>p.27.LL.10-19</p>	<p>items in the estimate, but for items available with the firm.") he concluded thus:-</p>	
<p>p.27.LL.35-42</p>	<p style="padding-left: 40px;">"All this waste of public funds was occasioned by the Mayor undertaking jobs without the benefit of suitable technical advice, or of tender procedure, which gives the Council a chance to penalise a contractor, and recover damages from him if the work is bad."</p>	
<p>p.27.L.43 to p.28.L.11</p>	<p>16. In paragraph 10 of his said affidavit, the Commissioner of Local Government (present Respondent No.1) said that the Council had</p>	30
<p>p.28.LL.12-14</p>	<p>"budgeted for a deficit for the last two years in succession without finding any source of additional revenue" and that it had declined to sanction an appropriate increase in the rate it levied on the annual values of properties situated within its area; in paragraph 11 he said that "the arrears in property rates alone left uncollected by the said Council in 1966 amounted to about a million</p>	40
<p>p.28.L.15 to p.29.L.8</p>	<p>rupees"; and in paragraph 12 he said that upon the Auditor-General's Certificates of Surcharge, dated, respectively, the 8th June, 1962, the 31st August, 1957, and the 1st October, 1965, the following sums were due from the Appellant and</p>	

- others: Rs.29,850/74 (for misconduct in authorising, by Resolution No.52 of 13th March, 1959, fruitless expenditure, the details of which are set out in the Certificate), Rs.4,905 (for negligence in voting for the acceptance of tenders other than the highest in respect of leases of the right to collect rents) and Rs.28,572/50 (for negligence in purchasing two scavenging lorries without complying with the provisions of Sections 228 and 229 of the Municipal Councils Ordinance and against the advice of the Municipal Commissioner and the Municipal Accountant).
- 10
17. In his affidavit, in reply, dated the 31st August, 1966, the Appellant denied the allegations made against the Council in documents which were produced by the Respondents hereto.
- 20
- In paragraph 6 of this affidavit he repeated his former allegation that, in making the Order of dissolution of the Council, this Respondent was influenced by improper motives; he said, further, that this Respondent had acted in excess of jurisdiction, and without giving him a hearing; in paragraph 7 he denied inter alia the truth of certain averments made in this Respondent's affidavit; and, in paragraph 8, he said that the affidavit of the 1st Respondent was "not relevant to these proceedings and ought to be ruled out", and, further, that certain statements made in it were false.
- 30
18. The Appellant's Application (together with the other Application filed by a Member of the Council) came up for hearing in the Supreme Court before a Bench consisting of Sansoni C.J. and Siva Supramaniam J. who dismissed both Applications on the 22nd September, 1966.
- 40
- Reasons for the dismissal of the Applications were given by the learned Judges on the 29th September, 1966.
19. Delivering the main Judgment of the Supreme Court, Sansoni C.J. (with whom Siva Supramaniam J. agreed) said:-

pp.33-35

p.34.LL.5-10

p.34.LL.25-35

p.34.LL.36-41

p.35.LL.1-3  
p.35.LL.5-22

pp.36-37

pp.36-41

Record

\*See para.24,  
post.

"The main ground on which the Applications have been supported before us is that the Minister failed to observe the rules of natural justice in that he did not hear the Mayor and members of the Council before making his Order. The other grounds urged were that the Minister acted mala fide\* and that the affidavit filed by him discloses an error of law on the face of it. It seems to me that if the main ground fails, both Applications fail."

10

20. The learned Chief Justice drew attention to a previous decision of the Supreme Court which, in his view, effectively barred the remedies sought by the Appellant. He said:-

p.37.L.33 to  
p.38.L.15

"The chief obstacle in the way of the petitioners is, as those who drafted the petitions obviously realised, the decision of three Judges of this Court in Sugathadasa v. Jayasinghe (1958) 59 N.L.R. 457. That too was an application for Certiorari and Quo Warranto, coupled with an application for a Mandamus, filed in consequence of an Order made by the Minister of Local Government under Section 277(1) dissolving the Colombo Municipal Council. The Court there held (to quote from the headnote) 'that, although a summary dissolution of the Council necessarily affects the legal rights of its members as a body it is independent of considerations of policy and expediency. Section 277(1) of the Municipal Councils Ordinance does not impose any duty on the Minister to act judicially or quasi-judicially before he exercises his power of summary dissolution. The Minister must be guided only by the merits of the case and is not obliged to give a hearing to the Councillors and to consider their objections if any. He is the sole judge as to whether the Council is not competent to perform its duties, provided, however, that there is no misconstruction of the words 'not competent' and there are sufficient circumstances from

20

30

40

which it is apparent to him that the Council is not competent to perform the duties imposed upon it.'

Record

10 "Now Sugathadasa's Case, having been decided by three Judges, is binding upon us. If we disagree with the conclusion reached there, our duty is to refer the present Applications to a fuller Bench. But we agree with that decision in spite of the argument presented by Mr. Thiagalingam."

21. The learned Chief Justice next referred to, but rejected, the argument, advanced on behalf of the Appellant (and the other Applicant) that inasmuch as the Council and Mayor had not been heard in regard to the allegations made against them before the Order dissolving the Council was made, there was a failure to observe the principle of natural justice (audi alteram partem) such as had occurred in the case of Ridge v. Baldwin [1964] A.C.40 in which the House of Lords had held that the purported dismissal of a Chief Constable by a Watch Committee was, on that ground, a nullity.

20

p.38.LL.23-30

The learned Chief Justice said that the facts of Ridge v. Baldwin could be distinguished from those of the present case on the following grounds:-

- (A) The terms of Section 277(1) of the Municipal Councils Ordinance were entirely different to those of Section 191(4) of the Municipal Corporations Act, 1884, which governed the decision in Ridge v. Baldwin.
- 30
- (B) In subject-matter the relevant portions of the two enactments bear no resemblance to each other.
- (C) The disciplinary powers of a Watch Committee in England cannot reasonably be equated with the power given in Ceylon to the Minister of Local Government. The dismissal of a Chief Constable from his office is a
- 40

p.39.LL.8-18

p.39.LL.15-18

p.39.LL.12-15

p.39.LL.26-37

Record

punishment in deciding which the Watch Committee acts judicially or quasi-judicially. "It does not by any means follow that a Minister acts in the same way when he considers whether a Council should be dissolved."

p.39.LL.3-5  
LL.19-25

(D) In Ridge v. Baldwin the failure to follow the Police Discipline Regulations was another reason which contributed to the invalidity of the Chief Constable's dismissal. In the instant case that reason would apply to a case under the Municipal Councils Ordinance Section 280 (Notice by the Minister of Local Government to Council of inquiry into the performance by the Council of its work or duties) but not to one, as this was, under ibid Section 277(1) - (which makes no such provision).

10

p.39.LL.26-45

22. In the view of the learned Chief Justice, this Respondent when acting under the said Section 277(1) was not bound to do so judicially, or to act analagously to a Judge, and he was clear, therefore, that certiorari did not lie. He founded himself on R. v. Electricity Commissioners [1924] 1 K.B.171, 205 and Nakudda Ali v. Jayaratne [1951] A.C. 66 P.C. (51 N.L.R. 457) in which last-mentioned case Lord Radcliffe, in delivering the Judgment of the Board, had said:-

20

30

p.40.LL.1-16

"In truth the only relevant criterion by English Law is not the general status of the person or body of persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision. When it is a judicial process or a process analagous to the judicial, certiorari can be granted."

The learned Chief Justice, having quoted these words, observed that "Nothing in Ridge v. Baldwin (supra) or any other decision has affected the correctness of the rule laid down in this passage."

40



23. On the subject of quasi-judicial decisions, the learned Chief Justice, having referred to Vine v. National Dock Labour Board [1957] A.C.488 (in which Lord Somervell had observed that there was no well-marked category of activities related to such decisions), said:-

Record  
p.40.LL.17-23

10 "Thus each case has to be considered as it arises, and the answer depends on the wording of the statute, the subject-matter dealt with, and the circumstances under which the power to act is conferred.

p.40.LL.23-32

"Our task is made easy in this respect by the judgment in Sugathadasa's Case,\* and it is not necessary to go over the same ground again."

\*(1958) 59  
N.L.R.457

24. On the subject of mala fides in this Respondent which, earlier in his Judgment, he had said was one of the grounds "urged" by the Appellant's Counsel, the learned Chief Justice said:-

20 "Mr. Thiagalingam" [for the Appellant] "suggested at the opening stages of his argument that the Minister had acted mala fide because the Federal Party were in a minority in this Council. I do not see any grounds for such an allegation which was not seriously pressed".

p.40.LL.33-38

30 Having regard to the fact that the allegation of mala fides, which was not seriously pressed by the Appellant's Counsel, was rejected by the Supreme Court, this issue is not, in the Respondent's submission, an appropriate subject for review.

40 25. The learned Chief Justice referred to the further argument advanced on behalf of the Appellant that "the Minister made an error of law, disclosed on the face of his affidavit, when he said that he made the Order of dissolution upon the material placed before him by the Commissioner of Local Government". It was argued that the report of the Commissioner did not disclose that the Council had acted in any way contrary to the terms of the Municipal Councils Ordinance.

p.40.LL.37-45

Record

In rejecting this argument, the learned Chief Justice said:-

- p.40.L.45 to  
p.41.L.4 (A) The Supreme Court, in hearing the Applications, was "not acting as an appellate authority examining the correctness of the Minister's determination. The power of making that determination has been given exclusively to the Minister by Parliament."
- p.41.LL.4-10 (B) The Court could not reverse the Minister's determination even if it took a different view as to the correctness of it. Nor could it say that because it disagreed with that determination the Minister had made an error of law. 10
- p.41.LL.11-21 (C) In view of the statements made in the Commissioner's report "that in some matters the Council had virtually abdicated its powers and that there had been irresponsible decisions on the part of the Council, such as the suppression or creation of posts on grounds which could not be supported" it was quite impossible for the Court to say that the Minister's Order based on the incompetency of the Council contained an error of law. 20
- p.41.LL.21-25 (D) In any event the question whether or not the Minister had erred in law as disclosed on the face of his affidavit could only arise if Certiorari was the proper remedy which was not the case here. 30
26. In conclusion, the learned Chief Justice (with whom Siva Supramaniam J. agreed) said:-
- p.41.LL.26-33 "It appears to me that if it had not been for Lord Reid's judgment in Ridge v. Baldwin there would have been nothing for the Petitioners to urge in these applications. Even that judgment does not, in my view, shake the correctness of the judgment in Sugathadasa's Case.\* 40
- \*(1958)59 N.L.R.  
457

For these reasons the Applications fail and must be dismissed with costs."

Record

27. Against the said Judgment of the Supreme Court this appeal is now preferred to Her Majesty in Council, leave to appeal having been granted to the Appellant by Orders of the Supreme Court, dated the 7th October, 1966, and the 15th October, 1966.

pp.42,43

10 In this Respondent's respectful submission the appeal should be dismissed, with costs, for the following among other:-

R E A S O N S

- 20 1. BECAUSE this Respondent's Order directing the dissolution and supersession of the Council, made under Section 277(1) of the Municipal Councils Ordinance, was a ministerial Order made in the course of normal administrative and executive duties and not in the exercise of any duties of a judicial or quasi-judicial nature or any duties analagous to those of a judge in a Court of law.
- 30 2. BECAUSE a similar interpretation of the said Section 277(1) by a Bench of three judges of the Supreme Court in Sugathadasa v. Jayasinghe (1958) 59 N.L.R. 457 was before the legislature when it enacted Act No.12 of 1959 which effected various amendments in the said Section 277 but did not amend the material sub-section (1) thereof.
3. BECAUSE, therefore, the Appellant's Application for a Mandate in the nature of a Writ of Certiorari is misconceived and not maintainable.
4. BECAUSE the rule of natural justice - audi alteram partem - is not applicable to the circumstances in which a decision is made by the Minister under the said Section 277(1) to dissolve a Municipal Council.

Record

5. BECAUSE, on any true interpretation of the said Section 277(1), it is clear that the test of competency or otherwise of the Council is a subjective test and is a matter within the absolute discretion of the Minister of Local Government and is not subject to investigation in a Court of law.
6. BECAUSE, by the terms of Sub-Section (3) of the said Section 277, both the impugned Orders are valid and have the force of law.
7. BECAUSE, for reasons stated therein, the Judgment of the Supreme Court is right.

10

E.F.N. GRATIAEN.

R.K. HANDOO.

A N N E X U R E

THE MUNICIPAL COUNCILS ORDINANCE (C.252)

(As amended by Act No.12 of 1959)

15. (1) Any Councillor elected as Mayor or Deputy Mayor of the Council shall, subject to the provisions of Sub-sections (2) and (3), hold office as such until the expiration of the term of office of the Councillors then in office:

Record  
Term of  
office,  
vacation of  
office, etc.  
of Mayor and  
Deputy Mayor

10        Provided however that the person holding office as Mayor on the date of such expiration shall be deemed for the purposes of this Ordinance or of any other written law, to be the Mayor of the Council until a new Mayor is elected.

20        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 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.

Power of  
Minister to  
dissolve  
Council for  
incompetency,  
etc.

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

(a) the Governor-General may appoint a Special Commissioner or Special Commissioners 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

40        (b) the Minister may direct that a new

Record

Municipal Council in accordance with the provisions of this Ordinance shall be constituted for the Municipality in place of the dissolved Council.

(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.

(3A) After the revocation of the appointment, or after the resignation or death, of the Special Commissioner or Special Commissioners appointed under Sub-section (2) upon the dissolution of a Municipal Council under Sub-section (1), the Minister shall make an Order under paragraph (b) of Sub-section (2) directing 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. 10

(4) Whenever, in consequence of the exercise of the powers conferred by this section, it becomes necessary for any period of time to elapse between the dissolution of the Council and the appointment of a Special Commissioner or Special Commissioners or the constitution of a new council, or between the cessation of the holding of office by the Special Commissioner or Special Commissioners who was or were appointed and the constitution of a new Council, the Municipal Commissioner shall during such period have, exercise, perform and discharge all the rights, privileges, powers, duties and functions vested in or conferred or imposed on the Council, the Mayor, or the Deputy Mayor, by this Ordinance or by any other written law. 20 30

(5) Where the Minister in pursuance of the provisions of this section, directs that a new Council in accordance with the provisions of this Ordinance shall be constituted in place of a dissolved Council, the new Council shall from the date of the constitution thereof, be the successor of the dissolved Council for all purposes relating to the Municipality and the provisions of Section 325 " Municipal Councils to be successors of 40

local authorities<sup>7</sup> "shall apply with the necessary modifications in the case of the constitution of the new Council in the same manner as if all references to any local authority in that Section were references to the dissolved Council and as if all references to a Municipal Council in that section were references to the new Council."

Record

Record

A N N E X U R E

THE COURTS ORDINANCE (C.6)

42. The Supreme Court or any Judge thereof, at Colombo or elsewhere, shall have full power and authority to inspect and examine the records of any Court, and to grant and issue, according to law, mandates in the nature of writs of mandamus, quo warranto, certiorari, procedendo, and prohibition, against any District Judge, Commissioner, Magistrate, or other person or tribunal

10

. . . . .



No. 29 of 1966

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

---

BETWEEN:

ALFRED THANGARAJAH DURAYAPPAH  
Appellant

- and -

1. W.J. FERNANDO, Commissioner  
of Local Government, Colombo
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

---

C A S E

FOR THE FOURTH RESPONDENTS

---

T.L. WILSON & CO.,  
Solicitors,  
6, Westminster Palace Gardens,  
LONDON, S.W.1.