

1956

Present : Basnayake, C.J., and Pulle, J.

M. H. MOHAMED, Petitioner, and (1) W. GOPALLAWA,
(2) DR. N. M. PERERA, Respondents

S. C. 531—IN THE MATTER OF AN APPLICATION FOR A WRIT OF MANDAMUS ON WILLIAM GOPALLAWA, COMMISSIONER OF THE COLOMBO MUNICIPAL COUNCIL, UNDER SECTION 42 OF THE COURTS ORDINANCE (CHAP. 0)

Municipal Council—Summoning of meetings which are to be presided over by the Commissioner—Procedure—Municipal Councils Ordinance, No. 29 of 1947, as amended by Act No. 7 of 1954, ss. 19 (2) (a) (b) (c), 20 (2), 21—Mandamus.

Where a second Special Meeting of a Municipal Council is summoned by the Commissioner in terms of sections 19 (2) (b) and 20 (2) of the Municipal Councils Ordinance to consider whether or not a resolution which was passed at a previous Special Meeting should be confirmed, there is no obligation in law to set out the specific motion which is to be moved at the second meeting, provided that it is clear from the notice convening the meeting that the members are required to attend a meeting at which the matter for consideration is whether or not the resolution referred to in the notice should be confirmed. If the notice convening the meeting satisfies the requirements of section 20 (2), the Commissioner is, by virtue of section 19 (2) (c), under a duty to permit the meeting to transact the business for which it has been convened.

APPPLICATION for a writ of *mandamus* on the Commissioner of the Colombo Municipal Council.

H. V. Perera, Q. C. with *H. W. Jayawardene, Q.C., Edmund Cooray* and *Izadeen Mohamed*, for petitioner.

S. Nadesan, Q.C., with *Walter Jayawardena* and *T. Senathirajah*, for first respondent.

Colvin R. de Silva, with *Walter Jayawardena* and *A. B. Perera*, for second respondent.

Cur. adv. vult.

February 8, 1956. BASNAYAKE, C.J.—

The petitioner is a member of the Municipal Council of Colombo. The first respondent is the Commissioner and the second respondent is the Mayor of that Council. The petitioner asks for a mandate in the nature of a writ of mandamus directing the first respondent—

- (a) to continue the Special Meeting which commenced at 2.30 p.m. on Monday the 17th of October, 1955, till the business, notice of which he had given, is transacted and concluded; and
- (b) for the said purpose to summon all the Councillors to re-assemble on a date and at a time to be fixed by this Court by giving to each Councillor such notice as this Court might direct.

No relief is claimed against the second respondent.

The material facts relating to the application are as follows :—

On 23rd September, 1955, a requisition to convene a Special Meeting of the Municipal Council under section 19 (2) (a) of the Municipal Councils Ordinance, No. 29 of 1947, as amended by Act No. 7 of 1954, (herein-after referred to as the Ordinance), was made to the first respondent in writing signed by sixteen Councillors. That requisition was as follows :—

“ In terms of Section 19 (2) (a) of the Municipal Councils Ordinance No. 29 of 1947 as amended by the Municipal Councils (Amendment) Act No. 7 of 1954, We the undersigned sixteen members of the Colombo Municipal Council do hereby request you to convene a special meeting of the Colombo Municipal Council to consider the resolution herein below set out for the removal of Dr. N. M. Perera from the office of Mayor of the said Municipal Council.

The resolution above referred to :—

“ This council resolves that Dr. N. M. Perera be removed from the office of Mayor of the Colombo Municipal Council in terms of Section 19 (2) (a), 19 (2) (b), and Section 15 (2), of the Municipal Councils Ordinance No. 29 of 1947 as amended by Municipal Councils (Amendment) Act No. 7 of 1954.

Proposer : Mr. M. H. Mohamed,
Member for Maligawatte ”.

On the same date the petitioner addressed a letter to the Municipal Commissioner in the following terms :—

“ With reference to the requisition signed by me and fifteen other members of the Council and delivered to you this day requesting you to convene a Special Meeting of the Council to consider a resolution for the removal of Dr. N. M. Perera from the office of Mayor of the Colombo Municipal Council,

I do hereby give you notice that the resolution in the said requisition fully set out which is in the following terms, to wit,

“ This council resolves that Dr. N. M. Perera be removed from the office of the Mayor of the Colombo Municipal Council, in terms of Section 19 (2) (a), 19 (2) (b), and Section 15 (2) of the Municipal Councils Ordinance No. 29 of 1947 as amended by Municipal Councils (Amendment) Act No. 7 of 1954,

will be moved by me at the said Special Meeting. ”

A Special Meeting was summoned for 1st October, 1955, by the first respondent in pursuance of the requisition, and notice of that meeting, dated the 24th of September, 1955, was sent by him to each of the members in the following terms :

“ Whereas a requisition for a Special Meeting of the Council in terms of Section 19 of the Municipal Councils Ordinance No. 29 of 1947, as amended by Municipal Councils (Amendment) Act No. 7 of 1954, has been made to me, I, W. Gopallawa, Municipal Commissioner, Colombo; in terms of the provisions of Section 20 of Ordinance No. 29 of 1947, as amended by the Municipal Councils (Amendment) Act No. 7 of 1954, do hereby summon you to a Special Meeting of the Council to be held at 9.30 a.m. on Saturday the 1st October, 1955, at the Town Hall, Colombo, to consider the following motion :—

Mr. M. H. Mohamed, Member for Maligawatte, to move :—

“ This Council resolves that Dr. N. M. Perera be removed from the office of the Mayor of the Colombo Municipal Council, in terms of Section 19 (2) (a), 19 (2) (b), and Section 15 (2) of the Municipal Councils Ordinance No. 29 of 1947 as amended by Municipal Councils (Amendment) Act No. 7 of 1954 ”.

At the meeting held on 1st October, 1955, the resolution that Dr. N. M. Perera be removed from the office of Mayor of the Colombo Municipal Council was passed by the requisite majority and the first respondent proceeded in terms of section 19 (2) (b) to summon a meeting (hereinafter referred to as the second meeting) to consider whether or not that resolution should be confirmed. The notice of that meeting dated the 5th of October, 1955, was as follows :—

“ Whereas the Municipal Council of Colombo at its Special Meeting held on 1st October, 1955, in terms of the provisions of Section 19 of Ordinance No. 29 of 1947, as amended by the Municipal Councils (Amendment) Act No. 7 of 1954, has passed the following resolution by not less than one half of the total number of Councillors :—

“ This Council resolves that Dr. N. M. Perera be removed from the office of the Mayor of the Colombo Municipal Council, in terms of Section 19 (2) (a), 19 (2) (b), and Section 15 (2) of the Municipal Councils Ordinance No. 29 of 1947 as amended by Municipal Councils (Amendment) Act No. 7 of 1954 ”.

I, W. Gopallawa, Municipal Commissioner, Colombo, in terms of Section 19 of the Municipal Councils Ordinance No. 29 of 1947, as amended by the Municipal Councils (Amendment) Act No. 7 of 1954,

do hereby summon you to another Special Meeting of the Council to be held at 2.30 p.m. on Monday the 17th October, 1955, at the Town Hall, Colombo, to consider whether or not that resolution should be confirmed."

On the date of the second meeting, the first respondent presided as required by section 19 (2) (c) of the Ordinance. At the commencement of the meeting he called upon the Secretary to read the notice convening the meeting. After it was read the first respondent addressed the assembled members thus :—

"Gentlemen, now you will consider whether or not that resolution should be confirmed".

Then a member, Dr. W. D. de Silva, rose to a point of order that the meeting was irregular as only 16 had voted for the resolution for the removal of the Mayor. He contended that unless 17 members voted for the resolution the requirements of section 15 (2) would not be satisfied. The first respondent overruled the point of order.

The petitioner states in his affidavit that immediately after this ruling he rose from his seat to move the confirmation of the resolution passed at the previous Special Meeting "to remove the second respondent from the said office of Mayor". The second respondent interrupted the petitioner with these words :—

"I do not know why the hon. member for Maligawatte has risen. But I want to ask one or two questions. I presume, Mr. Commissioner, what was just now read out by the Secretary of the Council is the agenda for this day.

Commissioner : That is so.

Dr. N. M. Perera : May I have that recorded, Sir, because that is very important.

Commissioner : Yes.

Dr. N. M. Perera : The second point, Sir, is, may I know whether any notice of a motion has been given ?

Commissioner : No notice has been given. This is the notice.

Dr. N. M. Perera : I would like that also recorded.

I want to rise to a point of order and I would like your patient consideration because, if I may say so without any attempt to prejudice your mind, this is a matter over which I have had occasion to consult legal opinion, and I am submitting my point of order on that basis".

The second respondent then proceeded to elaborate his point of order and the first respondent ruled as follows :—

"Dr. N. M. Perera rises to a point of order that there is no resolution before the House whether or not the following resolution passed on 1st October 1955, be confirmed :—

“ This Council resolves that Dr. N. M. Perera be removed from the office of the Mayor of the Colombo Municipal Council, in terms of Section 19 (2) (a), 19 (2) (b), and Section 15 (2) of the Municipal Councils Ordinance No. 29 of 1947 as amended by Municipal Councils (Amendment) Act No. 7 of 1954 ”.

In the absence of any notice of such a resolution it is not open to any Councillor at this meeting to move that the resolution passed at that meeting be confirmed or rejected.

Section 3 (2) of Act 7 of 1954, requires that a resolution for the removal of a Mayor or a Deputy Mayor from office be passed by not less than one-half the total number of Councillors and it be confirmed by a resolution similarly passed at another special meeting of the Council convened under paragraph (b) of that sub-section. That Section contemplates two resolutions: the first resolution as required by section 19 has been passed; there is no notice of a similar resolution before the House. In the absence of such a resolution I uphold Dr. Perera's point of order ”.

I declare the meeting closed ”.

Learned Counsel for the petitioner submitted that once the resolution for the removal of the Mayor was passed the first respondent was bound by law to convene the second meeting within the time prescribed in section 19 (2) (b) and cause notice of that meeting and of the business to be transacted thereat to be served in terms of section 20 (2) of the Ordinance. He further submitted that the first respondent having complied with the requirements of both those provisions was under a legal obligation to permit the meeting which he convened to transact its business.

Learned Counsel for the respondents, while conceding that the first respondent had complied with the requirements of sections 19 (2) (b) and 20 (2) to the extent only of convening a meeting, contended that the notice does not set out the business to be transacted thereat. Counsel further submitted that the statement in the notice that the meeting was summoned for the purpose of considering whether or not the resolution passed at the earlier meeting should be confirmed was not a notice of the business to be transacted thereat. They argued that the notice served under section 20 (2) should set out the specific motion to be moved at the second meeting and that unless that were done there would be no notice of the business to be transacted at the meeting.

Counsel further contended that, as no notice of the business to be transacted at the meeting had been given, the petitioner was precluded by section 21 of the Ordinance from bringing up any business at that meeting without the permission of the Council. Counsel also argued that to enable the first respondent to specify in the notice the business to be transacted at the second meeting the petitioner should have, in terms of by-law 10 of the Council's by-laws regulating meetings, given, to the Secretary of the Council, notice of the motion he proposed to move. As the petitioner failed to comply with that by-law, the first respondent

had no alternative but to serve the notice in the form in which it has been given. To this argument Counsel for the petitioner replied that the first respondent's notice specified the business that was to be transacted at the meeting, and that therefore there was no need to ask for the permission of the Council under section 21 of the Ordinance. In support of his argument he referred us to the practice and procedure in regard to the notice of meetings of shareholders of companies and of the Bank of Ceylon.

The only question for decision is whether the notice in the instant case set out the business to be transacted at the second meeting as required by section 20 (2) of the Ordinance.

In our opinion sections 15 (2), 19 (2), and 20 (2) of the Ordinance contain the entire machinery for the summoning of meetings which are to be presided over by the Commissioner.

By-law 10 which governs meetings of the Council convened under sections 19 (1) and 20 (1), and which are presided over by the Mayor, is a by-law made under a repealed Ordinance. It is continued in force by section 318 of the present Ordinance and is not designed for the case of Special Meetings presided over by the Commissioner.

There was therefore no obligation in law on the petitioner to give notice of the motion he proposed to move at the meeting convened under section 19 (2) (b) to consider whether the resolution for the removal of the Mayor should be confirmed or not.

It is clear from the notice convening the meeting that the members were required to attend a meeting at which the matter for consideration was whether or not the resolution referred to in the notice should be confirmed. In our opinion the notice of the meeting specifies the business to be transacted thereat and satisfies in every way the requirements of section 20 (2). The business of the second meeting is indicated in section 19 (2) (b) and that was communicated to the members in the notice convening the meeting.

If the notice satisfies the requirements of section 20 (2) was the petitioner entitled in law to move at the second meeting a motion to the effect that the resolution passed at the previous meeting for the removal of the Mayor be confirmed? We think he undoubtedly was.

It is reasonable to infer that when the legislature clothed the Commissioner with the powers vested in him by sections 19 (2) and 20 (2) it impliedly granted him all such powers as are necessary for the proper and effectual execution of the powers expressly granted to him. In the exercise of those powers the Commissioner was free to regulate the meetings convened by him in accordance with the accepted rules of procedure at such meetings.

Learned Counsel for the second respondent also urged that the first respondent had performed the statutory duties imposed on him by sections 19 (2) (b) and 20 (2) of the Municipal Councils Ordinance and that a mandamus did not lie. He has undoubtedly discharged his functions under section 19 (2) (b) and 20 (2); but as presiding officer

by virtue of section 19 (2) (c) he was under a duty to permit the meeting to transact the business for which it was convened. In view of his wrong decision on the point of order that was raised by the second respondent he failed to discharge his duty to give the meeting an opportunity of deciding whether or not the resolution passed by the Municipal Council on 1st October 1955 should be confirmed. The first respondent by an erroneous decision on the point of order raised by the second respondent could not disable himself from performing the duty enjoined by law of transacting the business of the meeting at which he presided.

In our opinion the petitioner is entitled to the mandate he seeks. We accordingly direct the Commissioner to continue the Special Meeting which commenced at 2.30 p.m. on Monday, 17th October 1955, till the business notice of which he has given is transacted and concluded, and for that purpose to summon all Councillors to re-assemble on a date and time to be notified by him by giving the Councillors at least four days, notice before the meeting. We also direct that the date so notified by him for the continuation of the meeting of Monday, 17th October 1955, shall be a date not later than fourteen days from the date on which this order is served on him by the Fiscal.

The petitioner is entitled to the costs of this application as against the first respondent.

PULLE, J.—I agree.

Application allowed.
