

1954

Present : Sansoni J.

S. V. SEENIVASAGAM *et al.*, Petitioners, and
S. KIRUPAMOORTHY, Respondent

S. C. 154—Application for a Writ of Mandamus

Town Councils Ordinance, No. 3 of 1946—Special meetings of Council—Section 39 (2)—Its provisions are peremptory—By-laws—Scope of their effect—Mandamus—Alternative remedy—Effect of such remedy in regard to issue of writ.

Mandamus lies to compel the Chairman of a Town Council to convene a special meeting of the Council in terms of section 39 (2) of the Town Councils Ordinance. Any by-law which is inconsistent with the provisions of the main Ordinance must give way to the latter. Further, an alternative remedy which is provided by a by-law but which is not as convenient, beneficial and effectual as *mandamus* cannot be a bar to the application for *mandamus*.

APPPLICATION for a writ of *mandamus* against the Chairman of the Town Council, Kankasanturai.

S. Nadesan, Q.C., with *A. Nagendra*, for the petitioners.

H. V. Perera, Q.C., with *H. Wanigatunga*, for the respondent.

Cur. adv. vult.

October 20, 1954. SANSONI J.—

This is an application for a writ of mandamus. The respondent is the Chairman of the Town Council, Kankasanturai, and the petitioners are three members of that Council who complain that by their letter dated 6th February, 1953, they requested the respondent to convene a special meeting of the Council in terms of section 39 (2) of the Town Councils Ordinance, No. 3 of 1946, to discuss a particular motion, but he ruled the motion out of order. The petitioners ask that the respondent be commanded to convene a meeting to discuss the motion which was in the following terms :—

“ As there is dissatisfaction among the ratepayers of this Council that there were bribery, corruption, threats and undue influence exercised during the election of the present Chairman of this Council, this Council resolves to request the authorities concerned to appoint an independent commission to inquire into the same and to take suitable action against such offenders so as to maintain the prestige and dignity of this Council.”

The election of the respondent as Chairman took place at a meeting held on 10th January, 1953.

Now section 39 of the Ordinance is in the following terms :—

(1) The ordinary meetings of a Town Council shall be held for the despatch of business upon such day or days in every month as may be fixed by the Council.

(2) The Chairman may convene a special meeting of the Council whenever he may consider it desirable and shall, whenever requested in writing by any two or more members of the Council to convene a special meeting for any purpose specified in such writing, forthwith convene a special meeting for that purpose. Two days' notice of the day appointed for any such special meeting shall be given to, or left at the residence of, each member of the Council.

Mr. Nadesan for the petitioners submitted that the respondent had no power to rule the motion out of order. He based his argument on the peremptory wording of sub-section (2) which, he submitted, does not give the Chairman any discretion at all in the matter. He stressed the change of language from “ may ” to “ shall ” and he claimed that the sub-section was quite clear as to the duty cast on the Chairman once he received the request in writing from two or more members. He put his case so high as to claim that the purpose specified by the members need not have anything to do with the administration or business of the Council, but in this part of his argument I think he went further than the necessity of the case demanded. Mr. H. V. Perera on the other hand submitted that a special meeting was not fundamentally different from an ordinary meeting, the only point of difference being that it was a meeting summoned out of turn in order to discuss urgent business, but only business which was relevant to the powers and duties of a Town Council. In this view of the matter he submitted that the by-laws made by this Council pub-

lished in the *Government Gazette* of June 30th, 1950, applied both to ordinary and special meetings and he relied especially on by-laws 8 (a), (b), (c) and (d).

Those by-laws read as follows:—

(a) Every notice of a motion shall be in writing signed by the member of the Council giving the notice. Unless such notice has been in the hands of the Secretary five clear days exclusive of Sundays and Government holidays before the meeting of the Council, the motion may not be included in the agenda.

(b) All notices of motions shall be dated and numbered as received, and shall be entered by the Secretary upon the agenda in the order in which they are received.

(c) Before any notice of a motion is placed on the agenda paper it shall be submitted to the Chairman, who, if he be of opinion that it is out of order, shall order that such motion shall not be included in the agenda and shall cause the giver of the notice to be so informed.

(d) Every motion of which notice is given shall be relevant to some question affecting the administration of the Council's affairs.

If these by-laws apply to a special meeting such as the petitioners requested the respondent to convene—and the purpose specified by the petitioners was to discuss a particular motion—then notice of that motion has to be given to the Secretary five clear days before the meeting, it has to be submitted to the Chairman, if the Chairman is of the opinion that it was out of order he can refuse to include it in the agenda, and his opinion is not ordinarily subject to review by this Court. Since the purpose of the special meeting was only to consider the petitioners' motion, if the respondent in the exercise of his discretion was entitled to rule it out of order there was, of course, nothing to be gained by summoning the meeting. It will thus be seen that the main point of dispute in this matter is whether the respondent had a discretion or not in the matter of convening a special meeting for the purpose of discussing this particular motion. The crucial question to be answered in determining this matter is whether by-laws 8 (a) to 8 (d) apply in this case or not, and on the answer will depend the result of this application.

Now it seems to me that the words of section 39 (2) are free of any ambiguity. They impose an obligation on the Chairman; they vest in him no discretion; and they provide the procedure to be followed with regard to the giving of notice to the members of the Council. Where the meaning of the words of a statute are as clear and unambiguous as those of this sub-section, I do not think it is open to a Court to restrict their meaning. This does not mean that an abuse of the powers given to members cannot be checked if they should try to take undue advantage of this provision: Now with regard to the question whether by-laws 8 (a) to 8 (d) apply to a special meeting or not, it seems to me that they do not, because all that section 39 (2) requires, once the Chairman has received a written requisition specifying the purpose, is that two days'

notice of the day appointed for the meeting should be given and that the meeting should be convened for the specified purpose. The purpose should be specified in the notice to be given to each member and there is no agenda paper such as by-law 8 requires the Secretary to prepare beforehand. The other steps which by-law 8 requires the Secretary to take in such preparation therefore have no place where a special meeting is contemplated. Many of the by-laws are desirable and even necessary, and apply to both special and general meetings, because they do not conflict with the provisions of the Ordinance; their purpose is clearly to ensure that meetings are conducted decently and in order. By-laws 8 (a) to 8 (d) in my opinion apply only to motions which members wish to submit at ordinary meetings. They are inconsistent with the peremptory provisions of section 39 (2) because, (1) they require notice of a motion to be given to the Secretary, (2) they require five clear days' notice, (3) they vest a discretion in the Chairman in that they confer on him the right to refuse to include a motion in the agenda; in short they lay down a procedure which is materially different from, and more onerous than, that stipulated in section 39 (2). Consequently the well settled rule that by-laws which are inconsistent with the provisions of the Ordinance will have to give way to the latter will apply—*De Silva v. De Silva*¹. It is of some interest to find that the Ordinance provides in sections 33 and 35 for special meetings to be convened for two particular purposes, viz., the election of a Chairman and the removal from office of a Chairman. Those sections do not contemplate anything more than notices being issued to the members indicating those particular purposes. They certainly do not contemplate compliance with by-laws 8 (a) to 8 (d) and I consider that the inapplicability of those by-laws to a meeting convened under Section 39 (2) is equally plain. It may well be that they were never intended, by those who framed them, to apply to special meetings...

I should not wish it to be thought, however, that the words "any purpose" in section 39 (2) include any purpose under the sun, for that would be to construe the sub-section as though it stood in isolation, ignoring the fact that it is part of the Ordinance. It is necessary to give those words a reasonable construction having regard to the other provisions of the Ordinance and, if necessary, to modify their meaning to avoid an absurdity. Although I am not dealing with such a case, suppose two or more members should request the Chairman to summon a meeting to discuss a motion of an entirely scurrilous, or unlawful, nature, or one which could not even remotely concern a Town Council; I doubt if the Chairman would be bound to convene such a meeting, and it is unlikely that this Court would permit those members to avail themselves of a discretionary remedy like *Mandamus* to attain such an object. An argument put forward against the grant of the present application was that two or more members may require a special meeting to discuss some outrageous motion which no sensible Chairman could place before a meeting. As I have already indicated, the Court is not powerless to prevent an abuse of its process particularly when the remedy is a discretionary one. There is the rule that a Court will take into account the light in which the relators appear from their behaviour and

¹ (1943) 44 N. L. R. 337.

conduct and motives and the consequences which the issue of a writ of Mandamus will entail—*Inasitamby v. Government Agent, N. P.*¹. But the motion which I am dealing with in this case cannot be said to be plainly one which does not fall within the ambit of the words “any purpose”, giving those words a liberal construction in the light of the other provisions of the Ordinance. I am unable to agree with the objection raised on behalf of the respondent that the proposed motion could not possibly come within the purposes contemplated by section 39 (2). In my opinion the Chairman should have complied with the request made of him and convened a special meeting.

Another objection raised for the respondent was that the petitioners had an alternative remedy which they should have exercised and that there was no need for them to seek the extraordinary remedy by way of Mandamus. The remedy referred to is that provided in by-law 1 (b) which reads :—

No business shall be brought before or transacted at any meeting, ordinary or special, other than the business specified in the notice of the meeting, without the permission of the Council.

and by-law 8 (h) which reads :—

Before any motion of which previous notice has not been given is moved in Council it shall be reduced to writing signed by the mover and handed to the Secretary.

In regard to by-law 1 (b) it was submitted that the petitioners could have obtained the permission of the Council at an ordinary meeting and then moved the motion in question. But this pre-supposes that the Council would have granted such permission. I cannot see why this Court should deprive the petitioners of a procedure which is clearly indicated in the Ordinance itself. The objection to the procedure under by-laws 1(b) and 8 (h) is that there are obvious advantages in a procedure which requires that all the members of the Council should be given due notice of the purpose of, and the business to be transacted at, a meeting; such prior notice enables them to attend the meeting if they consider the motion of sufficient importance, while they may not attend an ordinary meeting the notice regarding which does not mention the particular motion; it also enables them to consider the motion beforehand. That is the reason of the rule which requires due notice to be given of every meeting, and if special business is to be done it is essential that timely and adequate notice of it should be given to all the members. This point has not been considered in *Goonasinghe v. Municipal Council of Colombo*². The alternative remedy suggested should be equally convenient, beneficial and effectual—*Perera v. Municipal Council, Colombo*³, and it is not in this case.

For these reasons I consider that the application of the petitioners should be allowed with costs.

Application allowed.

¹ (1932) 34 N. L. R. 53.

² (1947) 48 N. L. R. 66.

³ (1944) 46 N. L. R. 85.