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GLI.G. 2

Judgments
29, 1966

IN THE PRIVY COUNCIL

No. 29 of 1966

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

ALFRED THANGARAJAH DURAYAPPAH
OF CHUNDIKULY,
MAYOR OF JAFFNA

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. MURUGEYSEN THIRUCHELVAM,
THE HONOURABLE THE MINISTER OF
LOCAL GOVERNMENT

Respondents

RECORD OF PROCEEDINGS

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Solicitors for the
Respondents.

CLASS MARK

ACCESSION NUMBER

~~P.C.~~

87104

~~GL162~~

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
24 APR 1967
25 RUSSELL SQUARE
LONDON, W.C.1.

IN THE PRIVY COUNCIL

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT</u>		
1.	Petition	20th June 1966	1
2.	Affidavit of Petitioner in support of the Petition	19th June 1966	10

No.	Description of Document	Date	Page
3	Affidavit of 1st Respondent	17th August 1966	19
4	Affidavit of 4th Respondent	17th August 1966	29
5	Affidavit of Petitioner in Reply	31st August 1966	33
6	Reasons of Supreme Court for dismissing Petition	29th September 1966	35
7	Order granting Conditional Leave to appeal to Her Majesty in Council	7th October 1966	42
8	Order granting Final Leave to appeal to Her Majesty in Council	15th October 1966	43

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
B	Order of Minister of Local Government dissolving Council	29th May 1966	45
C	Order of Governor-General appointing Special Commissioners	30th May 1966	46
4R10	Report of Mr. W.J. Fernando on Jaffna Council	29th May 1966	47
1R1	Letter, Commissioner of Local Government to A. Duraiyappah	22nd May 1966	53
	Telegram, Proctor Sangarapillai to Minister of Local Government	30th March 1966	54

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INSTITUTE OF ADVANCED
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87104

EXHIBITS - CONTINUED

Exhibit Mark	Description of Document	Date	Page
4R3	Letter, E.M.V.Naganathan to Minister of Local Government	29th March 1966	55
4R4A	Letter, K.Subramaniam to Minister of Local Government	17th March 1966	56
4R5	Letter, S.C.Mahadeva and Others to Minister of Local Government	12th April 1966	58
4R6	Letter, S.C.Mahadeva and Others to Minister of Local Government	12th April 1966	65
4R7	Letter, Ratnasingam to Minister of Local Government	Undated	67
4R8	Letter, V.Kandiah to Minister of Local Government	7th April 1966	70
4R9	Letter, Minister of Local Government to A. Duraiyappah	20th May 1966	75
4R11	Letter, M.Tiruchelvam to Minister of Health	20th April 1966	76

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
<u>In the Supreme Court</u>	
Journal Entries	20th June 1966 to 31st August 1966

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED - CONTINUED

Description of Document	Date
Petition of the Appellant for Conditional Leave to Appeal to Her Majesty in Council	23rd September 1966
Order dismissing the Petition of 20th June 1966 with costs	29th September 1966
Petition of the Appellant for Final Leave to Appeal to Her Majesty in Council	11th October 1966

EXHIBITS TRANSMITTED BUT NOT REPRODUCED

Exhibit Mark	Description of Document	Date
1R2A	Minutes of proceedings of Jaffna Municipal Council	31st March 1966
1R3A	Minutes of proceedings of Jaffna Municipal Council	11th April 1966
1R4A	Minutes of proceedings of Jaffna Municipal Council	29th April 1966
1R5A	Minutes of proceedings of Jaffna Municipal Council	17th May 1966

IN THE PRIVY COUNCIL

No. 29 of 1966

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

ALFRED THANGARAJAH DURAYAPPAH
OF CHUNDIKULY
MAYOR OF JAFFNA Appellant

AND

- 10 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
- 20 4. MURUGEYSEN THIRUCHELVAM
THE HONOURABLE THE MINISTER OF
LOCAL GOVERNMENT Respondents

RECORD OF PROCEEDINGS

No. 1

PETITION

IN THE SUPREME COURT OF CEYLON

IN THE MATTER OF AN APPLICATION
FOR/OR IN THE NATURE OF WRITS OF
CERTIORARI AND QUO WARRANTO

against

In the
Supreme Court

No. 1

Petition

20th June 1966

In the
Supreme Court

No. 1

Petition

20th June 1966
continued

- (1) WATTAGE JOHANIS FERNANDO,
Commissioner of Local
Government, Colombo,
- (2) NAVASIVAYAGAM NADESAN, Executive
Engineer P.W.D. Jaffna,
- (3) SIVASUBRAMANIAM CHINAYANANDAGURU
MANICAVASAGAR, Assistant
Commissioner of Local
Government, Jaffna,
- (4) MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government,

10

S.C. No.250/66

AND FOR AN INJUNCTION

ALFRED THANGARAJAH DURAIAPPAH
of Chundikuly, Mayor of Jaffna.

PETITIONER

Vs.

- (1) W.J. FERNANDO, Commissioner of
Local Government, Colombo.
- (2) N.NADESAN, Executive Engineer
P.W.D., Jaffna.
- (3) S.C.MANICA VASAGAR, Asst.
Commissioner of Local
Government, Jaffna.
- (4) MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government.

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RESPONDENTS

On this 20th day of June 1966.

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The Humble Petition of the Petitioner above-named
appearing by S.VELAUTHAPILLAI his PROCTOR sheweth as
follows :-

1. That the Petitioner was duly elected as a
Member of the JAFFNA MUNICIPAL COUNCIL hereinafter
referred to as "the Council" at the General Election
held in December 1963 to represent Ward No. 4 of the
said Council for a period of 3 years commencing from
1.1.1964 and was duly elected Mayor of the said

Council on 31.3.1966 and has been functioning as such Mayor from 31.3.1966.

In the
Supreme Court

No. 1

Petition

20th June 1966
continued

10 2. That by an order dated May 29, 1966,
published in the Ceylon Government Gazette
(Extraordinary) bearing No.14,697/4 and dated
29.5.1966 marked "B" and filed herewith The Hon.
The Minister of Local Government the 4th
Respondent above-named purporting to act under
Section 277(1) of the Municipal Councils
Ordinance (Cap.252 of the Revised Legislative
Enactments of Ceylon Volume II) has dissolved and
superseded the said Council forthwith and the
Governor General has by Government Gazette
Extraordinary No. 14,697/7 dated 30th May 1966
marked "C" filed herewith appointed the First,
Second and Third Respondents above-named as
Special Commissioners of the said Council and has
purported to authorise them to act inter alia for
and to have, perform and discharge all the
20 rights, privileges, powers, duties and functions
vested in or conferred or imposed on the Council
and the Mayor by the said Ordinance or by any
other written law.

3. That the 1 to 3 Respondents have, in
pursuance of the said order started to and are
exercising, performing and discharging the said
rights, privileges, powers, duties and functions
as from 4th June 1966.

30 4. That the said Order of dissolution is
bad in law and of no force or avail in law on one
or more of the following grounds :-

(a) that there did not exist any
circumstances warranting the exercise of the
powers vested in the Hon. Minister under Section
277(1) of the said Ordinance,

40 (b) that the Hon. Minister has misconstrued
the words "not competent" occurring in the said
section and has been guided and/or influenced by
extraneous circumstances in arriving at the said
misguided decision,

(c) that the Hon. Minister who belongs to
the Federal Party has obviously taken into
consideration and has been guided and influenced
by the fact that two previous Mayors of the said

In the
Supreme Court

No. 1

Petition

20th June

1966

continued

Council viz: Messrs S.C. Mahadeva and S.Nagarajah, both of whom belonged to the said Federal Party could not continue in office as Mayor of the said Council by reason of certain acts of the opposition group in the said Council of which group the Petitioner was and is a member,

(d) that the Petitioner verily believes that the Hon. Minister has been led to take the view that if the Petitioner and his group of members in the said Council, who have a total voting strength of 11 as against 5 of the said Federal Party, were allowed to continue in office, the cumulative effect of the vast improvement schemes initiated and undertaken and zealously pursued by the Petitioner and his said group of supporters in the said Council and which said items of work are not confined to or concentrated in any particular ward of the said Council would be to convince the voters of the various Wards of the said Council that the only group of Councillors who could be expected to do the minimum utility service to the town could be none other than the group to which the Petitioner has the good fortune to belong, and in the circumstances the Federal Party to which the Hon. Minister belongs could not hope to have a look in at the next General Election which under normal circumstances should take place in December 1966;

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(e) that a fair and impartial consideration of the work done by the said Council after the Petitioner's appointment as Mayor aforesaid would, far from suggesting any incompetence on the part of the said Council, in truth and in fact show clearly that the said Council was very highly competent to have, exercise, discharge and perform all the rights, powers and duties conferred or imposed upon it by Statute or otherwise;

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(f) that in the premises aforesaid the purported dissolution of the said Council by the Hon. Minister is bad in law and/or of no force or avail in law and all subsequent steps taken by him, especially the appointment by the Governor General of the First, Second and Third Respondents as Special Commissioners of the said

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Council are bad in law and the first, second and third Respondents are assuming and/or discharging and exercising rights, powers and duties which they are not entitled to have and exercise and perform and their appointment as such Special Commissioners is wholly unwarranted in law.

In the
Supreme Court

No. 1

Petition

20th June 1966
continued

10 5. That accordingly the First, Second and
Third Respondents are not competent to and are
not entitled to have, exercise, discharge and
perform any of the rights, powers and duties which
by operation of the said Ordinance only the
Petitioner as duly elected Mayor, is entitled to
have, exercise and perform and the wrongful
assumption and exercise of the said rights,
powers and duties by the First, Second and Third
Respondents has caused and continues to cause
grave prejudice and irreparable loss and damage
to the Petitioner, which said loss and damage
cannot in the circumstances be assessed in money
20 and accordingly a cause of action has accrued to
the Petitioner to invoke Your Lordships' Court to
declare that that the said dissolution superseding
and appointment are wrong in law and to grant an
interim injunction restraining the First, Second
and Third Respondents forthwith from having,
exercising performing or in any manner whatsoever
interfering with the rights, duties and powers
vested in the Petitioner by law as the duly
elected Mayor of the said Council.

30 6. That in any event, as a matter of law,

(a) The Honourable Minister had not the
power to dissolve the said Council under section
277(1) of the said Ordinance,

40 (b) the Governor General had not the power
to appoint the First, Second and Third
Respondents or any others as Special
Commissioners of the said Council and to
authorise them to have exercise, take over and
perform the rights, privileges, functions and
duties of the Council and/or of the Mayor of the
said Council;

(c) the Mayor of any Municipal Council
cannot be removed save and except as provided by
section 15 of the said Ordinance;

In the
Supreme Court

No. 1

Petition

20th June

1966

continued

(d) that the Petitioner as the duly elected Mayor of the said Council shall be deemed for the purpose of the said Ordinance or of any other written law, to be the Mayor of the said Council until a new Mayor is elected;

(e) that the statute has not conferred on the Hon. Minister any power to remove or supersede a Mayor of any Municipal Council duly elected;

(f) that where the statute has not conferred on the Hon. Minister the power to remove a duly elected Mayor of a duly constituted Municipal Council, the Governor General is not entitled to displace or supersede the Council and/or the Mayor by any act of his purporting to appoint any other person to supersede the Council and/or the Mayor or to have, exercise and/or perform rights, privileges or duties which by law only the Council and/or the Mayor can have, exercise and perform. 10

7. That in the premises aforesaid the Petitioner has both as Mayor and as the Chief Executive head of the Council a just grievance to come to Your Lordships' Court for redress which only Your Lordships' court can grant. 20

8. That Your Lordships' Court be further pleased to give adequate consideration and due weight to the fact that the unwarranted act of the Hon. Minister aforesaid in dissolving and superseding the Council strikes at the very root of democratic Government and that as a result of the said unwarranted act the citizens of Jaffna have been deprived of their undoubted civic right to govern themselves by a body of persons of their choice in whom they have the utmost confidence and the aforesaid acts of the Hon. Minister and the Governor General really amounts to an interference with the said right and has substituted therefor the autocratic rule of nominees or employees responsible to a Minister owing allegiance to a political party. 30 40

9. That the Petitioner both as Mayor and Chief Executive officer of the Council and as member representing Ward No. 4 of the said

Council has the undoubted right and duty to safeguard and protect the rights, powers and privileges of the said Council and in particular of the persons living in the said Ward and is accordingly a person having the necessary interest in bringing up the matters averred hereinbefore to the notice of Your Lordships' Court.

In the
Supreme Court
No. 1
Petition
20th June 1966
continued

10 10. That on 31st March 1966 the Federal Party members boycotted the meeting held for the election of the Mayor and have ever since been threatening to have the Council dissolved and that was the reason for their not attending the meeting and they have staged walk-outs in subsequent meetings of the Council.

20 11. That in April 1966 when the Petitioner met the Hon. Minister in his office and inquired from him whether there was any **truth in the** story spread in Jaffna by the Federal Party members in Council and their supporters outside about the threatened dissolution of the Council, the Hon. Minister denied the same and said that any complaints made will be referred to the Petitioner and proper investigation made before any step is taken and assured the Petitioner that he will not do anything behind the Petitioner's back. But notwithstanding the said assurance the
30 Fourth Respondent has thereafter acting mala fide and without following the principles of **natural** justice dissolved the Council acting under Section 277(1) of the said Ordinance. It is submitted that the Order of the Fourth Respondent cannot be supported under the said Section 277(1).

40 12. (a) That the Petitioner humbly submits as a further proof of the animus of the Fourth Respondent against the Petitioner the fact that the Fourth **Respondent** wrote to the Hon. The Minister of Health to transfer the Petitioner's wife who is the present School Medical Officer Jaffna out of Jaffna,

(b) The Fourth Respondent told the Petitioner about this transfer and the Minister of Health has effected the said transfer and the Petitioner submits that the motive for the

In the
Supreme Court

No. 1
Petition
20th June
1966
continued

said transfer was to cause as much inconvenience and injustice to the Petitioner.

13. That though on behalf of the Council and in pursuance of a resolution passed by the Council (with the Federal Party members voting against) the Petitioner invited the Hon. Minister to consent to and give the Petitioner a suitable date for a reception to be accorded to him, he did not reply to the same, nor acknowledge same.

14. That the Petitioner is a Proctor of this Court practising in Jaffna for the last 19 years and was Mayor of the Council from 1958 - 1960 and successfully contested the two Parliamentary Elections held in March and July 1960 and defeated the Federal Party Candidate each time and was and is persona non grata with the Federal Party and the Petitioner respectfully submits that the motive underlying the dissolution of the Council was to undermine the Petitioner's political position and prestige and ruin his chances of getting returned at the next Parliamentary Election and that the Council has been dissolved for electing the Petitioner as the Mayor.

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15. That on 27th May 1966 the First and Third Respondents above-named came to the office of the Council and asked the Petitioner for permission to see the Minutes books of the Council which permission the Petitioner readily gave. Thereafter when they had finished looking into the Minutes and were about to leave the office the Petitioner asked them whether there was any allegation or anything that required the Petitioner's explanation but they said that there was nothing but only wanted permission to go through the old minutes.

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They sat in the Council Chamber all alone and were going through the Minute book by themselves. No questions were asked from anyone to my knowledge.

40

16. That on 28th May 1966 the First Respondent returned to Colombo by car in the evening and must have arrived in Colombo the next morning and the Council was dissolved the

same evening by the said Gazette notification.

In the
Supreme Court

No. 1

Petition

20th June 1966
continued

10 17. That an opportunity had not been given to the Council and/or to the Mayor to explain or to correct or re contradict any charges or allegations against the Council as contemplated by law and in fact the Fourth Respondent did not follow the procedure he followed in respect to Municipal Council of Nuwara Eliya where mal-administration was alleged, and an opportunity was given to the Council and Mayor thereof to explain and show cause why the Council should not be dissolved. It is submitted that the Fourth Respondent did not act bona fide in dissolving the Jaffna Municipal Council and he has misconstrued the words "not competent" occurring in Section 277(1) and has taken into consideration extraneous matters as averred hereinbefore.

20 18. That the first and third Respondents are two of the 3 Commissioners appointed by the Governor General 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.

19. That the said Commissioners have assumed duties as from 4th June 1966.

30 20. That the Petitioner files herewith an affidavit verifying the above facts.

WHEREFORE the Petitioner prays :-

- 40 (a) That Your Lordships' Court be graciously pleased to grant and to issue Mandates in the nature of Writ of Certiorari and Quo Warranto to quash the said order of dissolution and cancel and set at nought the appointment of the First, Second and Third Respondents as Special Commissioners of the JAFFNA MUNICIPAL COUNCIL;
- (b) To grant and to issue forthwith pending the final disposal of this application

In the
Supreme Court

No. 1

Petition
20th June
1966
continued

an interim injunction restraining the First, Second and Third Respondents or any one or more of them from having exercising and/or performing any of the rights, powers, functions or duties which by law only the Council and/or the Petitioner can have, exercise perform and discharge;

- (c) A declaration that the Petitioner as the duly elected Mayor of the Jaffna Municipal Council is vested with and is entitled to have exercise and perform or discharge all the rights functions duties and powers conferred on him by law till the election of the new Mayor as contemplated by law; 10
- (d) For costs and for such other and further relief in the premises as to Your Lordships' Court in the premises shall seem meet. 20

Sgd: S. Velauthapillai
PROCTOR FOR PETITIONER.

No. 2

AFFIDAVIT OF THE PETITIONER IN SUPPORT
OF THE PETITION

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June
1966

IN THE SUPREME COURT OF CEYLON.

IN THE MATTER OF AN APPLICATION
FOR/OR IN THE NATURE OF WRITS OF
CERTIORARI AND QUO WARRANTO. 30

against

- (1) WATTAGE JOHANIS FERNANDO,
Commissioner of Local Government,
Colombo.
- (2) NAVASIVAYAGAM NADESAN, Executive
Engineer P.W.D., Jaffna.

- (3) SIVASUBRAMANIAM CHINAYANDAGURU
MANICAVASAGAR, Assistant
Commissioner of Local Government,
Jaffna.
- (4) MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government.

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

AND FOR AN INJUNCTION

10 ALFRED THANGARAJAH DURAIPPAH of
Chundikuly, Mayor of Jaffna.

PETITIONER

Vs.

- (1) W.J.FERNANDO, Commissioner of
Local Government, Colombo.
- (2) N.NADESAN, Executive Engineer
P.W.D., Jaffna.
- (3) S.C.MANICA VASAGAR, Asst.
Commissioner of Local Government,
Jaffna.
- 20 (4) MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government.

RESPONDENTS

I, ALFRED THANGARAJAH DURAIAPPAH of
Chundikuly, do hereby solemnly sincerely and
truly declare and affirm as follows :-

1. I am the Petitioner abovenamed.

30 2. I was duly elected as a Member of the
JAFFNA MUNICIPAL COUNCIL hereinafter referred to
as "the Council" at the General Election held in
December 1963 to represent Ward No. 4 of the
said Council for a period of 3 years commencing
from 1.1.1964 and was duly elected Mayor of the
said Council on 31.3.1966 and has been function-
ing as such Mayor from 31.3.1966.

3. That by an order dated May 29, 1966,
published in the Ceylon Government Gazette
(Extraordinary) bearing No. 14,697/4 and dated

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

29-5-66 marked "B" and filed herewith The Hon. the Minister of Local Government the 4th Respondent abovenamed purporting to set under Section 277(1) of the Municipal Councils Ordinance (Chap. 252 of the Revised Legislative Enactments of Ceylon Volume IX) has dissolved and superseded the said Council forthwith and the GOVERNOR GENERAL has by Government Gazette Extraordinary No. 14,697/7 dated 30th May 1966 marked "C" filed herewith appointed the First, Second and Third Respondents abovenamed as Special Commissioners of the said Council and has purported to authorise them to act inter alia for and to have, perform and discharge all the rights, privileges, powers, duties and functions vested in or conferred or imposed on the Council and the Mayor by the said Ordinance or by any other written law.

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3. That the Respondents have, in pursuance of the said Order started to and are exercising, performing and discharging the said rights, privileges, powers, duties and functions as from 4th June 1966.

20

5. That the said Order of dissolution is bad in law and of no force or avail in law on one or more of the following grounds :-

(a) that there did not exist any circumstances warranting the exercise of the powers vested in the Hon. Minister under Section 277(1) of the said Ordinance;

30

(b) that the Hon. Minister has misconstrued the words "not competent" occurring in the said section and has been guided and/or influenced by extraneous circumstances in arriving at the said misguided decision;

(c) that the Hon. Minister who belongs to the Federal Party has obviously taken into consideration and has been guided and influenced by the fact that two previous Mayors of the said Council viz: Messrs S.C.Mahadeva and S. Nagarajah, both of whom belonged to

40

the said Federal Party could not continue in office as Mayor of the said Council by reason of certain acts of the opposition group in the said Council of which group I was and is a member;

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

10

- (d) that I verily believe that the Hon. Minister has been led to take the view that if I and my group of members in the said Council, who have a total voting strength of 11 as against 5 of the said Federal Party, were allowed to continue in office, the cumulative effect of the vast improvement schemes initiated and undertaken and zealously pursued by me and my said Group of supporters in the said Council and which said items of work are not confined to or concentrated in any particular ward of the said Council would be to convince the voters of the various Wards of the said Council that the only group of Councillors who could be expected to do the maximum utility service to the town could be done other than the group to which I have the good fortune to belong, and in the circumstances the Federal Party to which the Hon. Minister belongs could not hope to have a look in at the next General Election which under normal circumstances should take place in December 1966;

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30

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- (e) that a fair and impartial consideration of the work done by the said Council after my appointment as Mayor aforesaid would, far from suggesting any incompetence on the part of the said Council, in truth and in fact show clearly that the said Council was very highly competent to have, exercise, discharge and perform all the rights powers and duties conferred or imposed upon it by Statute or otherwise;
- (f) that in the premises aforesaid the purported dissolution of the said Council by the Hon. Minister is bad in

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

law and/or of no force or avail in law and all subsequent steps taken by him, especially the appointment by the Governor General of the First, Second and Third Respondents as Special Commissioners of the said Council are bad in law and the First, Second and Third Respondents are assuming and/or discharging and exercising rights, powers and duties which they are not entitled to have and exercise and perform and their appointment as such Special Commissioners is wholly unwarranted in law.

10

5. That accordingly the First, Second and Third Respondents are not competent to and are not entitled to have, exercise, discharge and perform any of the rights powers and duties which by operation of the said Ordinance only I as duly elected Mayor is entitled to have, exercise and perform and the wrongful assumption and exercise of the said rights, powers and duties by the First, Second and Third Respondents has caused and continues to cause grave prejudice and irreparable loss and damage to me, which said loss and damage cannot in the circumstances be assessed in money and accordingly a cause of action has accrued to me to invoke Your Lordships' Court to declare that the said dissolution superseding and appointment are wrong in law and to grant an Interim Injunction restraining the First, Second and Third Respondents forthwith from having, exercising, performing or in any manner whatsoever interfering with the rights, duties and powers vested in me by law as the duly elected Mayor of the said Council.

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30

6. That in any event, as a matter of law,

- (a) the Honourable Minister had not the power to dissolve the said Council under section 277(1) of the said Ordinance;
- (b) the Governor General has not the power to appoint the First, Second and Third

40

Respondents or any others as Special Commissioners of the said Council and to authorise them to have, exercise, take over and perform the rights, privileges, functions and duties of the Council and/or of the Mayor of the said Council;

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

10

(c) the Mayor of any Municipal Council cannot be removed save and except as provided by section 15 of the said Ordinance;

(d) that I as the duly elected Mayor of the said Council shall be deemed for the purposes of the said Ordinance or of any other written law, to be the Mayor of the said Council until a new Mayor is elected:

20

(e) that the statute has not conferred on the Hon. Minister any power to remove or supersede a Mayor of any Municipal Council duly elected;

30

(f) that where the statute has not conferred on the Hon. Minister the power to remove a duly elected Mayor of a duly constituted Municipal Council, the Governor General is not entitled to displace or supersede the Council and/or the Mayor by any act of his purporting to appoint any other person to supersede the Council and/or the Mayor or to have, exercise and/or perform rights, privileges or duties which by law only the Council and/or the Mayor can have exercise and perform.

7. That in the premises aforesaid I have both as Mayor and as the Chief Executive head of the Council a just grievance to come to Your Lordships' Court for redress which only Your Lordships' Court can grant.

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8. That Your Lordships' Court be further pleased to give adequate consideration and due weight to the fact that the unwarranted act of the Hon. Minister aforesaid is dissolving and superseding the Council strikes at the very root

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

of democratic Government and that as a result of the said unwarranted act the citizens of Jaffna have been deprived of their undoubted civil right to govern themselves by a body of persons of their choice in whom they have the utmost confidence and the aforesaid acts of the Hon. Minister and the Governor General really amounts to an interference with the said right and has substituted therefor the autocratic rule of nominees or employees responsible to a Minister owing allegiance to a political party.

10

9. That I both as Mayor and Chief Executive officer of the Council and as member representing Ward No. 4 of the said Council has the undoubted right and duty to safeguard and protect the rights, powers and privileges of the said Council and in particular of the persons living in the said Ward and is accordingly a person having the necessary interest in bringing up the matters averred hereinbefore to the notice of Your Lordships' Court.

20

10. That on 31st March 1966 the Federal Party members boycotted the meeting held for the election of the Mayor and have ever since been threatening to have the Council dissolved and that was the reason for their not attending the meeting and they have staged walk-outs in subsequent meetings of the Council.

11. That in April 1966 when I met the Hon. Minister in his office and inquired from him whether there was any truth in the story spread in Jaffna by the Federal Party members in Council and their supporters outside about the threatened dissolution of the Council, the Hon. Minister denied the same and said that any complaints made will be referred to me and proper investigation made before any step is taken and assured me that he will not do anything behind my back. But notwithstanding the said assurance the Fourth Respondent has thereafter acting mala fide and without following the principles of natural justice dissolved the Council acting under Section 277(1) of the said Ordinance. It is submitted that the Order of the Fourth Respondent cannot be supported under the said section 277(1).

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40

12. (a) That I humbly submit as a further proof of the animus of the Fourth Respondent against me the fact that the Fourth Respondent wrote to the Hon. the Minister of Health to transfer my wife who is the present School Medical Officer Jaffna out of Jaffna.

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

10

(b) The Fourth Respondent told me about this transfer and the Minister of Health has effected the said transfer and I submit that the motive for the said transfer was to cause as much inconvenience and injustice to me.

20

13. That though on behalf of the Council and in pursuance of a resolution passed by the Council (with the Federal Party members voting against) I invited the Hon. Minister to consent to and give me a suitable date for a reception to be accorded to me, he did not reply to the same nor acknowledge same.

30

14. That I am a Proctor of this Court practising in Jaffna for the last 19 years and was Mayor of the Council from 1958 - 1960 and successfully contested the two Parliamentary Elections held in March and July 1960 and defeated the Federal Party Candidate each time and was and in persona non grata with the Federal Party and I respectfully submit that the motive underlying the dissolution of the Council was to undermine my political position and prestige ruin my chances of getting returned at the next Parliamentary Election and that the Council has been dissolved for electing me as the Mayor.

40

15. That on 27th May 1966 the First and Third Respondents abovenamed came to the office of the Council and asked me for permission to see the Minutes books of the Council which permission I readily gave. Thereafter when they had finished looking into the Minutes and were about to leave the office I asked them whether there was any allegation or anything that required my explanation but they said that there was nothing but only wanted permission to go

In the
Supreme Court

No. 2

Affidavit of
the Petitioner
in support of
the Petition

19th June 1966
continued

through the old minutes.

They sat in the Council Chambers all alone and were going through the Minute book by themselves. No questions were asked from anyone to my knowledge.

16. That on 28th May 1966 the First Respondent returned to Colombo by car in the evening and must have arrived in Colombo the next morning and the Council was dissolved the same evening by the said Gazette notification. 10

17. That a opportunity had not been given to the Council and/or to the Mayor to explain or to correct or to contradict any charges or allegations against the Council as contemplated by law and in fact the Fourth Respondent did not follow the procedure he followed in respect to Municipal Council of Nuwara Eliya where maladministration was alleged, and an opportunity was given to the Council and Mayor thereof to explain and show cause why the Council should not be dissolved. It is submitted that the Fourth Respondent did not act bona fide in dissolving the Jaffna Municipal Council and he has misconstrued the words "not competent" occurring in Section 277(1) and has taken into consideration extraneous matters as averred hereinbefore. 20

18. That the first and third Respondents are two of the 3 Commissioners appointed by the Governor General 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. 30

19. That the said Commissioners have assumed duties as from 4th June 1966.

Signed and affirmed to at)
Colombo on this 19th day) Sgd: Alfred T. Duraiappah
of June 1966.)

Before me,

Sgd:.....

JUSTICE OF THE PEACE.

AFFIDAVIT OF THE 1ST RESPONDENT
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the
Supreme Court

No. 3

Affidavit of
1st Respondent

17th August
1966

IN THE MATTER OF AN APPLICATION
FOR/OR IN THE NATURE OF WRITS OF
CERTIORARI AND QUO WARRANTO.

AGAINST

- 10
- (1) WATTAGE JOHANIS FERNANDO,
Commissioner of Local Government,
Colombo.
 - (2) NAVASIVAYAGAM NADESAN, Executive
Engineer, P.W.D., Jaffna.
 - (3) SIVASUBRAMANIAM CHINAYANDAGURU
MANICA VASAGAR, Assistant
Commissioner of Local Government,
Jaffna.
 - (4) MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government.

20

AND FOR AN INJUNCTION

ALFRED THANGARAJAH DURAIAPPAH of
Chundikuly, Mayor of Jaffna.

PETITIONER

S.C.Application
No. 250 of 1966.

Vs.

- 30
- (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) MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government.

RESPONDENTS

I, WATTAGE JOHANIS FERNANDO, being a

In the
Supreme Court
No. 3

Affidavit of
1st
Respondent
17th August
1966
continued

Buddhist do solemnly, sincerely and truly declare
and affirm as follows :-

1. I am the First Respondent abovenamed,
the Commissioner of Local Government.

2. I have been Commissioner of Local
Government since 1st November, 1965, and was
Assistant Commissioner of Local Government for 11
years before that during which period I had been
both at Head Quarters as well as in charge of
several Regions. I have also been Special
Commissioner in the Urban Council Towns of
Anuradhapura, Moratuwa and Panadura. Prior to
assuming duties as Commissioner of Local
Government I was Government Agent, Kandy.

10

3. The second and the third respondents
along with myself have been duly appointed
Special Commissioners of the Municipal Council
of Jaffna under the provisions of Section 277(2)
of the Municipal Councils Ordinance.

4. -

20

(a) At the request of the Fourth Respondent,
the Honourable Minister of Local
Government, I visited the Jaffna Municipal
Council Office for the purpose of
inquiring into various allegations of
maladministration that had been made to
the Fourth Respondent in regard to the
working of the said Municipal Council.
I informed the Petitioner by letter, a
certified copy of which is annexed hereto
marked "1R1", the date and purpose of my
visit.

30

(b) On the 27th of May, 1966, I called at the
Municipal Council 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

In the
Supreme Court

No. 3

Affidavit of
1st Respondent

17th August
1966

continued

10

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 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 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 "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.

20

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

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5. I annex hereto marked "1R2", "1R3", "1R4" and "1R5" certified copies of the minutes of the

In the
Supreme Court

No. 3

Affidavit of
1st
Respondent

17th August
1966
continued

proceedings of the meeting of the Municipal Council of Jaffna held on 31st March 1966; 11th April 1966; 29th April 1966 and 17th May 1966 respectively. I annex also translations in English of the said minutes "1R2", "1R3", "1R4" and "1R5" marked "1R2A", "1R3A", "1R4A" and "1R5A" respectively.

6. I state that the following are amongst the illegal and/or undesirable acts of the said Council -

(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.

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

(c) The wholesale delegation by the Council of all its powers under Sections 229(c) and 229(d) of the said Ordinance which is calculated to nullify the statutory safeguards against corruption and waste of the said Council's funds.

(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.

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- (e) The decision to dispense with procedure prescribed by Sections 227, 228 and 229 of the said Ordinance.
- (f) The consequent entrustment of all powers of the Council to enter into contracts to the Mayor.
- (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
- (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.
- (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.
- (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.

In the
Supreme Court
No.3
Affidavit of
1st Respondent
17th August
1966
continued

7. The said Council also appeared to resort to the expedient of suppressing or creating posts in order to bypass the authority of the Local Government Service Commission or to get rid of some officers and appoint others in their place. For example -

- (i) The Jaffna Rest House is classified as a Class I Rest House. When the Rest House Keeper was transferred by the Local Government Service Commission, the said Council attempted to get his transfer deferred but failed in their attempt, and the rest house keeper sent in his papers for retirement. On the retirement taking effect, the said Council suppressed the post of Rest House Keeper and created in its place the post of caretaker which is not a post falling within the first schedule of the Local Government Service Ordinance, and appointed a waiter in the same Rest

In the
Supreme Court

No. 3

Affidavit of
1st
Respondent
17th August
1966
continued

House to the said post of caretaker with effect from 1st January, 1966. The Minister thereupon transferred the control of the Rest House from the Municipality to the Government Agent, Jaffna District. The Mayor at that time was S.C.Mahadeva.

- (ii) The said Council by one resolution created the post of Electrical Engineer and suppressed the post of Electrical Superintendent on the ground that a qualified engineer was essential to supervise the electricity scheme but by another resolution suppressed the post of Works Engineer and created the post of Works Superintendent Grade I, when it has budgeted large sums of money for the construction of roads and model markets. It recommended that one Mr. Selladurai a Grade II officer already in the service of the Council be elevated to the new post.

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- (iii) Resolution No. 13 passed on 11th April 1966, reads as follows :-

"In view of the delay in the execution of works in the Works Department for want of an additional Supervisor of Works, I propose Mr. J. Emmanuel who had worked previously, and has experience in the building works, be appointed as Works Supervisor; if no financial provision has been made in the budget, financial provision to be made in the Supplementary budget; and that all formalities of calling for applications be dispensed with".

30

8. Under Section 13(1) of the Electricity Act any extension of the electrical distribution system by the laying of electric lines other than service lines may not be done without the prior approval of the Chief Electrical Inspector. The Petitioner ordered the extension and the laying of electric lines along the Eachamodai Pasayoor Lane in his own Ward without obtaining such approval. Both the Municipal Commissioner and the Accountant made written submissions to the Petitioner pointing out the irregularity of the procedure. The Municipal Commissioner's minute on the subject reads as follows :-

40

"Mayor,

Reference your minute of 8.5. and that of E.S. dated 9.5. I am of the view that the laying of the Electric lines other than service lines should be carried out after obtaining the approval of the Chief Electrical Inspector. Budgetary provision should also be available on pre-determined estimates."

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In the
Supreme Court

No. 3

Affidavit of
1st Respondent

17th August
1966

continued

The Petitioner's orders on this submission reads as follows :-

"E.S./Commr.

This has been delayed. No sanction need be obtained to extend street lights. I have discussed the matter with the authorities. Even otherwise pending approval, to be done immediately."

20

On these orders works costing Rs.4,180/= have been done. The work has not been checked or approved by the Chief Electrical Inspector yet.

9. -

(i) Stage I of the water supply scheme of the said Council was completed by the Department of Water Supply and Drainage at a total cost of Rs.3,333,655/- and was meant to supply water to five wards of the Jaffna Municipality right through the day and night. No individual house connection were contemplated at all in this scheme. When the said Department handed over this scheme in October 1963, the Department had provided 248 stand-pipes (which was more or less the maximum number which could be given without adversely effecting the scheme) to distribute this water. Thereafter the said Council without any reference to the Department of Water Supply and

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In the
Supreme Court

No. 3

Affidavit of
1st
Respondent
17th August
1966
continued

Drainage kept on installing additional stand-pipes totalling 135 and also provided house connections totalling 350. Most of the extensions were given by the said Council which came into office in January 1964 and which has now been dissolved.

This scheme intended to supply water right through the day and night has thus been curtailed to supply water for only 6 hours a day in 3 staggered stages between 7 a.m. and 4 p.m.

10

(ii) The Petitioner after he became Mayor ordered the further extension of water supply to Columbuturai Ward which was represented by an ardent supporter of his. He initiated action for the said extension on his own responsibility and without any reference to the Department of Water Supply and Drainage. The estimates for such extensions, were not prepared by an officer competent to do so, but by Mr. Selladurai, a Grade II Works Superintendent, who is not competent either to prepare estimates or supervise the scheme.

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30

(iii) An estimate for Rs.8,000/= appears to have been prepared by this Works Superintendent on the orders of the Mayor, for the supply of 3" G.I. Pipes. The Mayor had also directed that quotations be called for on 7.4.66 inspite of the submissions made by the acting Accountant that for works costing more than Rs.1,500/= tenders should be invited. On 11.4.1966, Messrs. Vaithilingaf & Sons quoted for the supply of 2" and 4" pipes and not for the 3" pipes provided for in the estimate.

40

(iv) On 17.4.66 the Works Superintendent (Mr. Selladurai) whom the Mayor had elevated to a higher position submitted a fresh estimate on the basis of the materials available with Messrs Vaithilingam & Sons (i.e. 2" and 4" G.I.Pipes). The estimate was also doubled from the original Rs.8,000/= to Rs.17,000/=

In the
Supreme Court
No. 3
Affidavit of
1st Respondent
17th August
1966
continued

10

(v) The entire procedure was teeming with irregularities -

- (1) Tenders were not called for
- (2) Deviation from tender procedure was not approved by the Council.
- (3) Orders were placed with one firm not for items in the estimate, but for items available with the firm.

20

(vi) When the pipes so purchased from the said Messrs Vaithilingam and Sons were installed, it was found that these pipes were not the ones used for water distribution but meant only for sewerage purposes and hence cannot stand the pressure of water. The pipes burst in several places and the Municipal Commissioner noted on his inspection that "the leakages were found tied with strings" and "workmen were covering some leakages with large quantity of cement".

30

(vii) 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.

40

10. The said Council has budgeted for a

In the
Supreme Court

No. 3

Affidavit of
1st
Respondent

17th August
1966
continued

deficit for the last two years in succession without finding any source of additional revenue. It declined to increase the rate levied by it which is only 12 per centum of the annual value of properties situated within its area. Even when my predecessor in office suggested to the said Council that an additional rate of six per centum on the annual values should be levied for areas served by water supply the said Council decided only on a two per centum increase.

10

11. The arrears in property rates alone left uncollected by the said Council in 1966 amounted to about a million rupees.

12. -

(i) Upon the Auditor General's certificate of surcharge dated 8th June, 1962, there is now due from the Petitioner and eight others, two of whom were until the dissolution of the .Said Council members of the Finance Committee, Rs.29,850/74 for negligence or misconduct in authority by resolution No. 52 of 13th March, 1959, fruitless expenditure the details of which are stated in the said certificate.

20

(ii) Upon the Auditor General's certificate of surcharge dated 31st August, 1957, there is now due from the Petitioner and seven others a sum of Rs.4,905/- for negligence in voting for the acceptance of tenders other than the highest tenders in respect of the leases of the right to collect rents for occupation of space in Small Bazaar and Sengunthar Market for 1957.

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40

(iii) There is also due from the Petitioner upon the Auditor General's certificate of surcharge dated 1st October, 1965,

Rs.28,572/50 for negligence in purchasing two scavenging lorries without complying with the provisions of Sections 228 and 229 of the said Ordinance and against the advice of the Municipal Commissioner and the Municipal Accountant.

In the
Supreme Court
No. 3
Affidavit of
1st Respondent
17th August
1966
continued

10 Signed and affirmed to by)
the deponent Wattage)
Johanis Fernando at) Sgd: W.J.Fernando
Colombo on this 17th day)
of August 1966.)

Before me,

Sgd: D. Danforth

JUSTICE OF THE PEACE.

NO. 4

AFFIDAVIT OF THE 4TH RESPONDENT

20 IN THE MATTER OF AN APPLICATION
FOR/OR IN THE NATURE OF WRITS OF
CERTIORARI AND QUO WARRANTO.

In the
Supreme Court
No. 4

AGAINST

Affidavit of
4th Respondent
17th August
1966

- 30
1. WATTAGE JOHANIS FERNANDO,
Commissioner of Local Government,
Colombo.
 2. NAVASIVAYAGAM NADESAN, Executive
Engineer, P.W.D., Jaffna.
 3. SIVASUBRAMANIAM CHINAYANDAGURU
MANICA VASAGAR, Assistant
Commissioner of Local Government,
Jaffna.
 4. MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government.

In the
Supreme Court

No. 4

Affidavit of
4th
Respondent
17th August
1966

AND FOR AN INJUNCTION

ALFRED THANGARAJAH DURAIAPPAH of
Chundikuly, Mayor of Jaffna.

PETITIONER

S.C. Application)
No.250 of 1966..)

Vs.

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. MURUGEYSEN TIRUCHELVAM, The
Honourable Minister of Local
Government

10

RESPONDENT

I, MURUGEYSEN TITUCHELVAM, being a Hindu
do solemnly, sincerely and truly declare and
affirm as follows :-

20

1. I am the Fourth Respondent abovenamed,
the Minister of Local Government.

2. I admit only such of those averments
as are herein specifically admitted; I am
unaware and deny the other averments in the
affidavit.

3. I admit the averments in paragraphs 1,
2, and 3 of the said affidavit. With regard to
the averments in paragraph 4 of the said
affidavit, I state that the first, the second
and the third respondents were appointed to
function as from 30th May, 1966, as Special
Commissioners in terms of Section 277(2) of the
Municipal Councils Ordinance.

30

4. Consequent to representations made
to me orally and in writing both by individuals
and by organisations, I requested the Commissioner

of Local Government, the first respondent abovenamed, to examine the allegations made against the administration of the said Council, to investigate the complaints and to report to me. I produce the representations made to me in writing marked "4R1", "4R2", "4R3", "4R4", "4R5", "4R6", "4R7" and "4R8" together with an English translation of "4R4" marked "4R4A".

In the
Supreme Court
No. 4
Affidavit of
4th Respondent
17th August
1966
continued

10 5. By letter of 20th May, 1966, I informed the Petitioner that various allegations had been made in regard to the work of the Jaffna Municipal Council and that I had directed the Commissioner of Local Government to visit this Municipal Council, inquire into these matters and report immediately. I requested the Petitioner to lend the Commissioners of Local Government all the co-operation necessary for this purpose. I produce a copy of the said letter marked "4R9".

20 6. In pursuance of my request the first respondent, after informing the Petitioner, visited Jaffna and carried out investigations on the 27th and the 28th of May, 1966. The first respondent reported to me personally on the morning of the 29th of May, 1966, and later in the day at my request he summarised his oral report and reduced it to writing and submitted it to me. I annex hereto a copy of the said written report made by the first respondent to me marked "4R10" and initialled by me for purpose of
30 identification.

40 7. Upon the material so placed before me by the Commissioner of Local Government, the first respondent abovenamed, referred to by me in the last preceding paragraph it appeared to me that the Municipal Council of Jaffna was not competent to perform the duties imposed on it and I made order that the said Council be dissolved and superseded. 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.

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

In the
Supreme Court

No. 4

Affidavit of
4th
Respondent

17th August
1966
continued

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 made me decide that I should take immediate action.

9. With regard to the averments in paragraph 12 of the Petitioner's affidavit, I state that I explained to the Petitioner that I considered it politically undesirable that while he was Mayor his wife should be a Municipal employee in the same Municipal Council upon secondment from Government and that I had sent to the Minister of Health a letter requesting her transfer out from the Municipal Council for this reason. I, however, informed the Minister of Health that I had no objection to her serving the Government in Jaffna; she is yet employed in Jaffna. I produce a copy of the said letter dated 20th April, 1966, marked "4R11".

10

10. I admit that as stated in paragraph 13 of the Petitioner's affidavit that I was invited to consent to give a suitable date for a Civic Reception; while admitting that I did not reply to the Petitioner in writing I informed him orally that I could not accept the Civic Reception by the Municipal Council of Jaffna. I have also refused invitations to Civic Receptions from other Local Bodies namely the Municipal Council, Badulla and the Municipal Council, Matale.

20

30

Signed and affirm to by)
the deponent Murugeysen)
Tiruchelvam at Colombo on)
this 17th day of August,)
1966)

Sgd. M. Tiruchelvam

Before me,

Sgd. D. Danforth

JUSTICE OF THE PEACE.

NO. 5

In the
Supreme Court

AFFIDAVIT OF THE PETITIONER IN REPLY

No. 5

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Affidavit of
Petitioner
in Reply

31st August
1966

In the matter of an Application
for/or In the nature of Writs of
Certiorari and Quo Warranto

AGAINST

1. Wattage Johanis Fernando,
Commissioner of Local Government,
Colombo.
2. Navasivayagam Nadesan, Executive
Engineer, P.W.D., Jaffna.
3. Sivasubramaniam Chinayandaguru
Manica Vasagar, Assistant
Commissioner of Local Government,
Jaffna.
4. Murugeysen Tiruchelvam, The
Honourable Minister of Local
Government.

10

20 S.C.No. 250/66

AND FOR AN INJUNCTION

Alfred Thangarajah Duraiappah of
Chundikuly Mayor of Jaffna

PETITIONER

Vs.

1. W.J. Fernando, Commissioner of
Local Government Colombo.
2. N. Nadesan, Executive Engineer,
P.W.D. Jaffna.
3. S.C. Manica Vasagar, Asst.
Commissioner of Local Government,
Jaffna.
4. Murugeysen Tiruchelvam, The
Honourable Minister of Local
Government.

30

RESPONDENTS

In the
Supreme Court

No. 5

Affidavit of
Petitioner
in Reply

31st August
1966
continued

I, Alfred Thangarajah Duraiappah of Chundikuly do hereby make Oath and state as follows :-

1. I am the Petitioner abovenamed.
2. I deny the allegations against the Council contained in documents 4R1-R8 and also the several averments in the 1st and 4th Respondents affidavit that are not expressly admitted herein or in my affidavit filed with my Petition. 10
3. The Political grouping of members in the Council and the tenure of office of the Mayors during the relevant period referred to in 4R5 are substantially correct.
4. I admit the receipt of 4R9. I was not informed of the various allegations referred to therein. The Commissioner Mr. W.J.Fernando desired to have access to the Minutes of the Council. I made them available to him. No application for any files or documents was made. No inquiry was made of me either by the Minister or by anyone else in respect of any matter. 20
5. 4R10 refers to steps taken by the Council in accordance with law.
6. I state expressly that the Minister was influenced by improper motives and he acted in excess of jurisdiction and without hearing me. The Council and I, as the Mayor thereof, were functioning in accordance with law, and were at the relevant date and even now are competent to carry out the duties imposed on the Council by law and both the Council and I were in fact performing these duties. 30
7. The averments in paras 8 and 9 of the Minister's affidavit are false and untrue. The contents of 4R11 are equally untrue and is relevant to show that the Minister acted mala fide in dissolving the Council, the prime object being to prevent me from functioning as Mayor and remove me from the Mayorship. 40

8. The affidavit of Mr. W.J. Fernando is not relevant to these proceedings and ought to be ruled out. The averments in the affidavit contain the various acts done by the Council in accordance with law. The averments in para 11 of the affidavit are false. The allegations in para 12 (1) and (2) are false and relate to events of a bygone time. There was no certificate of surcharge issued under the hands of the Auditor-General in respect of the said sum of Rs.29,850.74 while the claim in respect of the sum of Rs.4,905/- was refused in the Magistrate's Court of Jaffna and was later affirmed by Your Lordships' Court in Revision Application No. S.C.360/65 M.C.Jaffna 5193 on the 18th day of June 1966 with costs payable to the Mayor and the members and the said costs have not yet been paid. Para 12(3) of the said affidavit is false inasmuch as negligence is attributed to me and the question of the alleged surchargs is now sub-judice and is pending in the Magistrate's Court of Jaffna.

10

20

Signed and Sworn to
at Colombo on this
31st day of August
1966

Sgd. Alfred T.
Duraiappah

Before me,

Sgd. G.S.Sivaprakasam

JUSTICE OF THE PEACE

30

NO. 6

REASONS OF SUPREME COURT FOR
DISMISSING PETITION

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Application for a Mandate in the nature of a Writ of Certiorari on the Minister of Local Government, Colombo.

In the
Supreme Court

No. 5

Affidavit of
Petitioner

31st August
1966

continued

In the
Supreme Court

No. 6

Reasons for
dismissing
Petition
29th September
1966

In the
Supreme Court

No. 6

Reasons for
dismissing
Petition

29th September
1966

(Application No.235/1966)

Present: Sansoni, C.J., and Siva Supramaniam, J.

Counsel: C.Thialingam, Q.C., with C.Chellappah,
E.B.Vannitamby, T.Parathalingam, M.S.M.
Nazeem, and C.Motilal Nehru for the
Petitioner.

V.Tennakoon, Q.C., (Solicitor-General),
with R.S.Wanasundera and A.G.de Silva,
Crown Counsel for the Respondent.

Application for a Mandate in the nature of Writs of Certiorari and Quo Warranto and Injunction on WATTAGE JOHANIS FERNANDO and others. 10

(Application No.250/1966)

Present: Sansoni, C.J., and Siva Supramaniam, J.

Counsel: C.Thiagalilingam, Q.C., with C.Chellappah,
E.B.Vannitamby, T.Parathalingam, M.S.M.
Nazeem and C.Motilal Nenru for the
Petitioner. 20

H.W. Jayewardene, Q.C., with N.Nadarasa,
S.S.Basnayake and Bala Nadarajah for
the 1st to 3rd Respondents.

V.Tennakoon, Q.C., (Solicitor-General)
with R.S.Wanasundera and A.G.de Silva,
Crown Counsel for the 4th Respondent.

Argued on: 11th, 18th, & 22nd, September, 1966.

Decided on: 22nd September, 1966.

Reasons delivered on: 29th September, 1966.

Sansoni, C.J.

30

These two applications for Writs were

heard together, and we dismissed them at the end of the argument. We now give our reasons.

In the
Supreme Court

No. 6

Reasons for
dismissing
Petition

29th September
1966

continued

10

Application No.235, filed by a member of the Municipal Council of Jaffna, is for a Writ of Certiorari against the Minister of Local Government. Application No.250 has been filed by a member of the same Council, who was also functioning as Mayor from 31st March 1966, for Writs of Certiorari and Quo Warranto, 1st, 2nd and 3rd Respondents in this application are the three Special Commissioners appointed by the Governor General, and 4th Respondent is the Minister of Local Government. In both applications the Petitioners complain that the Minister's Order dated 29th May 1966 made under section 277(1) of the Municipal Council Ordinance, Cap.252, is bad, and they ask that it be quashed. By that Order the Minister, stating that it appeared to him that the Jaffna Municipal Council was not competent to perform the duties imposed upon it, directed that the said Council shall be dissolved and superseded.

20

30

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.

40

The chief obstacle in the way of the petitioners is, as those who drafted the petitions obviously realized, 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 application for 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 head note) "that, although a summary dissolution of the Council necessarily affects the legal rights of its members as a body and is independent of

In the
Supreme Court

No. 6

Reasons for
dismissing
Petition

29th September
1966
continued

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

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.

20

The main plank of his argument was the House of Lords decision in Ridge v. Baldwin (1964) A.C.40. He urged that if this authority had been in existence at the time Sugathadasa's case was heard, that case would have been decided differently. I am quite unable to agree. Ridge v. Baldwin was an action brought by a Chief Constable against the members of a Watch Committee, asking for a declaration that the purported termination of his appointment as Chief Constable was illegal, ultra vires, and void. He ultimately obtained the declaration asked for, and the reasons given by the House of Lords were :-

30

- (1) That the Plaintiff, not being a servant of the Watch Committee, could be dismissed only on the grounds set out in section 191(4) of the Municipal Corporation Act, 1882 which ran "The Watch Committee may at any time dismiss a Constable whom they think negligent in the discharge of his duties, or otherwise unfit for the same;" and the committee were bound to observe the principles of

40

natural justice, which they had failed to do.

- (2) The requirements of the Police discipline Regulations applied, and as they had not been followed the purported dismissal was a nullity.

In the
Supreme Court

No. 6

Reasons for
dismissing
Petition

29th September
1966
continued

10 In my view this decision has no relevance to the present applications. They have to be decided according to the meaning we give to section 277(1) of the Municipal Councils Ordinance, which is in entirely different terms from section 191(4) of the English Act. The disciplinary powers of a Watch Committee cannot be equated with the power given to the Minister of Local Government. The subject matter of the Act considered in Ridge v. Baldwin is totally different from the Municipal Councils Ordinance.

20 The second reason set out above for the decision in Ridge v. Baldwin would apply to a case under section 280 of the Municipal Councils Ordinance, but not, in my view, to one under section 277(1). For section 280 provides (while section 277(1) does not) for the giving of notice and the holding of an inquiry.

30 The first reason stems from the view that the Watch Committee acts judicially or quasi-judicially when the dismissal of a Constable from his office, which is a punishment, is decided upon. It does not by any means follow that a Minister acts in the same way when he considers whether a Council should be dissolved. And unless, as Atkin L.J. said in his oft-quoted dictum, in R. v. Electricity Commissioners (1924) 1 K.B. 171 at 205, he has to act judicially, Certiorari does not lie to question his Order. The principle laid down by Atkin L.J. has been approved and applied by the Privy Council in Nakkuda Ali v. Javaratne (1950) 51
40 N.L.R. 457, and we cannot possibly disregard it, even though Lord Reid did not quite approve of the interpretation put upon it in that and other cases. Apart from Lord Reid, none of the other noble and learned Lords expressed any opinion on that point.

In the
Supreme Court
No. 6
Reasons for
dismissing
Petition
29th September
1966
continued

We are unquestionably bound by the decisions of the Privy Council, and in Nadduda Ali's case it was definitely decided that Certiorari lies only in cases where tribunals or bodies have to act analogously to a Judge. "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 analogous to the judicial, certiorari can be granted," said Lord Radcliffe in that case. Nothing in Ridge v. Baldwin or any other decision has affected the correctness of the rule laid down in this passage.

10

A difficulty arises sometimes because, as Lord Somervell said in Vine v. National Dock Labour Board (1957) A.C.488, the "phrase 'quasi-judicial' suggests that there is a well-marked category of activities to which certain judicial requirements attach. An examination of the cases shows that this is not so." 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. 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.

20

30

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 this Council. I do not see any grounds for such an allegation, which was not seriously pressed.

He also argued 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. It is necessary to point out that we are not acting as an appellate

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10 authority examining the correctness of the Minister's determination. The power of making that determination has been given exclusively to the Minister by Parliament. Even if we were to take a different view as to the correctness of it after hearing Mr. Thiagalingam's submissions, it would not be open to us to reverse it; nor could we say that, because we disagreed with that determination, the Minister has made an error of law.

In the
Supreme Court

No. 6

Reasons for
dismissing
Petition

29th September
1966

continued

20 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 decisions 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.

30 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. For these reasons the applications fail and must be dismissed with costs.

Sgd. M.C.Sansoni

Chief Justice

Siva Supramaniam, J.

I agree.

Sgd. V. Siva Supramaniam

Puisne Justice

ORDER GRANTING CONDITIONAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNSEL

In the
Supreme Court

Application for Conditional Leave to Appeal to
Privy Council in S.C.250/'66

No. 7
Order grant-
ing
conditional
leave to
Appeal to
Her Majesty
in Counsel
7th October
1966

Present: Abeyesundere, J. & Siva Supramaniam, J.

Counsel: C.Chellappah with Elmo Vannitamby,
M.S.M.Nazeem and C.Motilal Nehru for
the Petitioner.

N.Nadarasa with S.Sharvananda for the
1st to 3rd Respondents instructed by
A.H.M.Sulaiman, Crown Proctor.

10

J.G.T.Weeraratne, Senior Crown
Counsel, with H.A.G. de Silva for the
4th Respondent instructed by A.H.M.
Sulaiman, Crown Proctor.

Argued and

decided on: October 7, 1966.

Abeyesundere, J.

The proposed appeal to Her Majesty in
Council involves a question of great public
importance as it relates to the interpretation of
Section 277 of the Municipal Councils Ordinance
which confers power on the Minister of Local
Government to dissolve a Municipal Council where
such Council appears to the Minister to be
incompetent. We therefore grant conditional
leave to the applicant to appeal to Her Majesty
in Council on the usual terms, security being
Rs.3000/- in cash.

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30

Sgd. A.W.H.Abeyesundere

PUISNE JUSTICE

Siva Supramaniam, J.

I agree.

Sgd. V. Supramaniam

PUISNE JUSTICE

NO. 8

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the
Supreme Court

No. 8

Order granting
final leave to
Appeal

15th October
1966

10

In the matter of an application
for Final Leave to Appeal to
the Privy Council under the
Rules set out in the Schedule to
the Appeals (Privy Council)
Ordinance.

S.C.Application
No.250 of 1966
for a Mandate in
the nature of
Writ of
Certiorari or
Quo Warranto.

Alfred Thangarajah
Durayappah of Chundikuly,
Mayor of Jaffna.

PETITIONER

S.C.Application
No.377 of 1966
(Conditional
Leave to Appeal)

Vs.

S.C.Application
No.409 of 1966
(Final Leave to
Appeal)

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. Murugeysen Thiruchelvam, The
Honourable Minister of Local
Government.

20

RESPONDENTS

The Application of Alfred Thangarajah
Durayappah of Chundikuly, Mayor of Jaffna, for
Final Leave to Appeal to Her Majesty the Queen
in Council from the judgment and decree of the

30

In the
Supreme Court

No. 8

Order granting
final leave to
Appeal

15th October
1966
continued

Supreme Court of the Island of Ceylon pronounced on the 22nd day of September 1966 in S.C. Application No.250 of 1966, having been listed for hearing and determination before the Honourable Gardiye Punchihewage Amaraseela Silva, Puisne Justice, and the Honourable Anthony Christopher Augustus Alles, Puisne Justice, in the presence of C.Chellappah Esquire, with Elmo Vannithamby Esquire, M.S.M.Nazeem Esquire and C.M. Nehru Esquire, Advocates for the Petitioner and A.A.G. de Silva Esquire, Crown Counsel for the 4th Respondent and there being no appearance for 1st to 3rd Respondents, order has been made by Their Lordships on the Fifteenth day of October 1966 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

10

Sgd. N. Navaratnam

REGISTRAR OF THE SUPREME COURT.

EXHIBIT "B"

Exhibit
"B"

ORDER DISSOLVING COUNCIL

Order dis-
solving
Council

THE CEYLON GOVERNMENT GAZETTE

EXTRAORDINARY

29th May
1966

No. 14,697/4 - SUNDAY, MAY 29, 1966

(Published by Authority)

PART IV - LOCAL GOVERNMENT

Local Government Notifications

THE MUNICIPAL COUNCILS ORDINANCE

10 L.D.-B 42/57

ORDER

20 WHEREAS it appears to me that the Jaffna Municipal Council is not competent to perform the duties imposed upon it, I, Murugeysen Tiruchelvam, Minister of Local Government, do, by virtue of the powers vested in me by sub-section (1) of section 277 of the Municipal Councils Ordinance (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.

M.Tiruchelvam

Minister of Local Government.

Colombo, May 29, 1966.

Exhibits

-46-

Exhibit "C"

EXHIBIT "C"

Order
appointing
Special
Commissioners
30th May 1966

ORDER APPOINTING SPECIAL COMMISSIONERS

THE CEYLON GOVERNMENT GAZETTE

EXTRAORDINARY

No. 14,697/7 - MONDAY, MAY 30, 1966.

(Published by Authority)

PART I : SECTION (I) - GENERAL.

Government Notifications

L.D. - B 42/57.

G.G.O.No.X.37/66.

THE MUNICIPAL COUNCILS ORDINANCE

10

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 -

(a) appoint Mr. Wattage Johanis Fernando, Commissioner of Local Government, Mr. Namasivayam Nadesan, Executive Engineer, Public Works Department, and Mr. Sivasubramaniam Chinmayanandaguru Manica Vasagar, Assistant Commissioner of Local Government, to be the 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

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30

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

W. Gopallawa,
GOVERNOR-GENERAL.

Colombo, 30th May, 1966.

EXHIBIT 4R10

REPORT OF COMMISSIONER, MR. W.J.FERNANDO

CONFIDENTIAL

Hon. Minister/

S/L. G.,

Exhibits

Exhibit "4R10"

Report of
Commissioner,
Mr. W.J.
Fernando

29th May 1966

10 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 matter connected with the Hon. Minister's order on 27th and 28th instant. 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.

20 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 $2\frac{1}{2}$ years, I came across many instances where the Council's decisions savoured of irresponsibility, incompetence, misconduct and abuse of authority. 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 these posts. Labourers appear to have been appointed above the cadre, without even financial provision. I shall be making a detailed report regarding these matters. But
30 the minutes of 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.

3. I quote below some of the resolutions of the Council for your information, from the minutes of the meeting held on 11.4.66:-

40 Para 11. "With permission of the House, resolved to authorise Mayor to

Exhibit "4R10"

Report of
Commissioner,
Mr. W.J.
Fernando

29th May 1966
continued

Para 15.

spend Rs.50,000 out of G 17 Revenue for development expenditure within () drains (8 for, 6 against, one did not vote.)"

"Resolved to disband the Sub-Committees elected on 17.1.66, the Finance Committee, Works Committee and Electricity Committee, Health Committee. The following were elected to the new Finance Committee:-

T.Kandiah, A.Nadaraja,
K.V.Dewendran, M.S.Peri-
mpanayagam and A.
Thuraisingham."

(The Committees referred to are the Standing Committees elected under Section 26(1) of M.C. Ordinance.)

Para 12.

"With permission of the House resolved under Legislative Enactments Cap.252 (Municipal Councils) Section 26(8) and 32, to hand over its powers under Section 229(c) and (d) to The Finance Committee and Authorize the Finance Committee from time to time to delegate its powers under those Sections to the Chairman of the Finance Committee (the Mayor)."

(8 for, 6 against, one did not vote).

From the minutes of the meeting held on 29.4.66:

"Resolved that in addition to the powers already delegated by the Council's resolution No.12 of 11.4.66 the Finance Committee be empowered to approve estimates and to give directions in regard to the purchasing of materials or execution of works, to dispense with

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tender procedure if and when necessary, to waive security deposits to give extensions of time for works and for supply of materials and the merits of each case; with authority to redelegate all or any of these powers and functions to the Chairman of the Finance Committee (The Mayor)"

Exhibit "4R10"

Report of
Commissioner,
Mr. W.J.
Fernando

29th May 1966
continued

From the draft minutes of the meeting of 17.5.66:-

10 "With the permission of the House it was resolved that as there is a dearth of labour the Mayor be given the power to create posts and fill them on a temporary or permanent basis. It was also resolved to make monetary provision for the same in a supplementary budget."

The following items which were sprung on the meeting of 17.5.66 as a surprise from the Finance Committee have also been approved by the Council :-

20 "Resolves that in view of the highly insanitary conditions of the town to -

(I) (1) Ratify the casual and substitute conservancy and scavenging labour engaged during April 1966 and to engage thereafter on the authority of the Mayor.

(2) To increase the existing cadre of conservancy and scavenging labour by an additional 50 casual labour.

30 (3) Provision of Rs.10,000 to be made in a supplementary budget to meet the cost of extra labour.

(4) Rs.3 per diem be paid for a conservancy labourer for extra work done to cover up another Conservancy labourer's work.

(II) Considered substitute and casual labour engaged and to be engaged by the Work's Department (vide Memo of the Acting W.E. dated 14.5.66).

40

Exhibit "4R10"
 Report of
 Commissioner,
 Mr. W.J.
 Fernando
 29th May 1966

(The acting W.E. referred to is the Works Superintendent Grade II who is being recommended to the Local Government Service Commission to be appointed to the post of S.W. Grade I on the suppression of the post of Works Engineer).

- (1) Resolved that the cadre of the labour force of the Works Department to be 150 inclusive of the permanent labour force of 45. 10
- (2) To ratify substitute and casual labour and carpenters employed from 1.4.66 and authority to be granted to the Mayor for employing labour for carrying out necessary works of the Council.
- (3) That the cadre of substitute and casual masons be 25 inclusive of the permanent masons (presently 6) and they be paid a daily wage (in view of the difficulty of obtaining masons for Rs.5/-) of Rs.6/- all inclusive as from 1.6.66. 20
- (III) Considered papers re unused open sheds in Grand Bazaar.
- (1) To give new unused open sheds at Grand Bazaar on area basis to applicants living within the Jaffna Town area. 30
- (2) To authorise the Mayor to make the allocation of these unused open sheds as envisaged in (1) above.
- (IV) Considered allocation of lands adjoining Nallur Market and Mutharaisanthi - Resolved to allocate vacant spaces adjoining Nallur Market and Mutharaisanthi to applicants for putting up temporary shops on the usual terms and conditions and the allocation to be made by the Mayor. 40

Arising from the recommendations of the Finance Committee meeting of 14.5.66

and ratified by Council meeting on 17.5.66.

Exhibit "4R10"

- (1) Suppression of Post of Works Engineer and creation of Post of Works Superintendant Grade 1 Mr. Selladurai S.W. Grade 11 to be appointed to the new post.

Report of
Commissioner,
Mr. W.J.
Fernando

29th May 1966
continued

- (2) Resolved to ratify appointments made by the Mayor of 2 Watchers to the power station yard. (This arose from the shifting of E.S. and Electrical Foreman from the power station to the Town Hall overnight).

1 Night-Watcher for Grand Bazaar Market. Necessary provision to be made in supplementary budget.

- (3) To ratify any appointment or appointments made by the Mayor already so as to grant authority to the Mayor to make any casual, temporary or additional appointments as the Mayor considers essential.

3. "Provide a sum of Rs.10,000/- in a supplementary budget to cover all appointments."

The decisions of the Council reproduced above need no elaboration. They speak for themselves. Everybody seems to be in a mighty hurry - Mayor, Finance Committee and Council. They have no time even to examine whether Finances are available. In fact according to the information available to me the deficit in the last year's budget was in the region of Rs.200,000 and this year it is already in the region of Rs.70,000/-. The sequence of events as revealed in the above decisions most of which we have taken outside the agenda at each meeting, is interesting.

The Standing Committee on Finance elected at the beginning of the year is disbanded. A new Committee packed with

Exhibit "4R10"
Report of
Commissioner,
Mr. W.J.
Fernando
29th May 1966
continued

people of a particular group is elected. Resolutions are passed in a mighty hurry delegating virtually all the powers of the Council to the Finance Committee and in turn to a Mayor whose very survival depends on a most slender majority. Powers surrendered by the Council include powers to enter into contract doing away with tender procedure and to create new posts and make appointments. The Mayor, on his turn wastes no time in putting into practice the powers most unusually delegated to him.

10

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.

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.

20

Sgd. W.J.Fernando

C.L.G.

29.5.1966

CERTIFIED TRUE COPY

Sgd.

for Permanent Secretary to the Ministry
of Local Government.

30

This is the Identical document)
marked 4R10 and referred to in) Sgd. M.
my affidavit dated 17th day of) Tiruchelvam
August, 1966.....)

Before me,

Sgd. D. Danforth

JUSTICE OF THE PEACE

EXHIBIT "1R1"

LETTER, COMMISSIONER OF LOCAL GOVERNMENT
TO A. DURAIYAPPAH

AB/6/15/7.

22nd May, 1966.

Exhibits

Exhibit "1R1"
Letter,
Commissioner
of Local
Government to
A.Duraiyappah
22nd May 1966

Dear Mr. Duraiyappah,

10 I shall be visiting Jaffna on the
27th instant and will call at your office at
about 10.00 a.m. in connection with matters
referred to in Hon'ble Minister's letter No.
AB/B/466 of 20.5.66 to you.

I shall be grateful if you will be so
good as to be present and give me your
assistance and co-operation for this purpose.

Yours sincerely,

Sgd: W.J.Fernando

Commissioner of Local Government.

Alfred Duraiyappah Esquire,

Mayor of Jaffna.

20 CERTIFIED TRUE COPY

Sgd:.....

for Permanent Secretary to the Ministry
of Local Government.

This is the identical document marked 1R1)
and referred to in my affidavit dated 17th)
day of August 1966.)
Sgd: W.J.Fernando

Before me,

Sgd: D.Danforth.

JUSTICE OF THE PEACE.

Exhibits

EXHIBIT "4R2"

Exhibit "4R2"

TELEGRAM, SANGARAPILLAI TO MINISTER
OF LOCAL GOVERNMENT

Telegram,
Sangarapillai
to Minister
of Local
Government
30th March
1966

t e l e g r a m

HON. MINISTER,
LOCAL GOVERNMENT,
COLOMBO.

JAFFNA URGENT 15

PUBLIC DESIRE DISSOLUTION JAFFNA MUNICIPAL
COUNCIL.

10

PROCTOR SANGARAPILLAI.

30.3.66

CERTIFIED TRUE COPY

Sgd.....

for Permanent Secretary to the Ministry
of Local Government.

This is the identical document)
marked 4R2 and referred to in) Sgd. M.
my affidavit dated 17th day of) Tiruchelvam
August, 1966.....)

20

Before me,

Sgd. D.Danforth.

JUSTICE OF THE PEACE.

EXHIBIT "4R3"

LETTER, E.M.V.NAGANATHAN TO MINISTER
OF LOCAL GOVERNMENT

House of Representatives.

29th March 1966.

The Hon.M.Tiruchelvam Esq.,Q.C.,
Minister of Local Government,
Colombo.

Exhibits
Exhibit "4R3"
Letter, E.M.V.
Naganathan to
Minister of
Local
Government
29th March
1966

My dear Minister,

10 I have been made aware by a large number of
leading citizens and ratepayers of Jaffna that
they have completely lost confidence in the
present Municipal Council of Jaffna. They
declare that the present Council is not competent
to discharge the duties and functions with which
it has been entrusted.

20 As at present constituted there can be no
stable administration and the conditions as
prevailing at present are conducive to bribery,
corruption and maladministration in the affairs
of the Municipality.

I therefore wish to inform you that I am
fully in accord with responsible public opinion
here, that the Municipal Council of Jaffna should
be dissolved forthwith.

Yours sincerely,

Sgd: E.M.V.Naganathan

M.P. for Hallur.

CERTIFIED TRUE COPY

Sgd.....

for Permanent Secretary to the Ministry
of Local Government.

30 This is the identical document)
marked 4R3 and referred to in) Sgd. M.
my affidavit dated 17th day of) Tiruchelvam
August,1966.....))

Before me,

Sgd. D.D.anforth

JUSTICE OF THE PEACE

Exhibits

EXHIBIT "4R4A"

Exhibit "4R4A"

LETTER, K.SUBRAMANIAM TO MINISTER OF
LOCAL GOVERNMENT

Letter, K.
Subramaniam to
Minister of
Local
Government
17th March
1966

Ilankai Thamil Arasuk Kadchi (Ceylon
Federal Party)

(Vannaar-Pannai Branch)

24, Sivaprakasam Road,

Vannaar - Pannai.

17.3.1966

To the Hon. Minister of Local Govt.
Colombo.

10

Dear Sir,

Herewith is sent a resolution passed by
our Executive Committee which met on 13.3.66.
I'd request humbly that suitable action be
kindly taken.

Yours,

Sgd - K.Subramaniam,

Hony. Secretary.

Resolution of 13.3.66.

20

- (1) The administration of the Municipal Council, Jaffna has been adversely affected by frequent No-Confidence resolutions on the Chairman and by cliquism. Consequently the rate payers have suffered immensely and the City brought to a degraded state.
- (2) All know that there are some Municipal Council Members who enhance their individual positions and prosperity by converting circumstances to suit their own ends and are for that purpose

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engaged in preventing the use of public funds for the public good without fear or favour but spend same in selfish ways to their own benefits.

Exhibit "4R4A"
Letter, K. Subramaniam to Minister of Local Government 17th March 1966 continued

(3) Therefore, this Committee requests that:

(i) this Municipal Council be immediately dissolved and its administration be entrusted for some to a Special Commissioner;

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and (ii) a Commission of Inquiry be appointed to inquire into these faults and to take suitable action.

(4) This Committee believe that the dissolution of the Municipal Council, (Jaffna):

20

(A) would expose the guise of a certain small number of people with neither loyalty nor self-esteem, who masquerading as the Council Members (M.M.C's) are only interested in creating ways and means to suit their selfish and personal ends.

and (B) thereby would help to create a whole-some and conducive environment some time hence.

Sgd. K.Subramaniam
Hony. Secretary.
17.3.1966.

30

Translated by me
Sgd. T.S.Mariyanayagam
Interpreter Mudaliyar,
Supreme Court, Colombo.

This is the identical document
marked 4R4A and referred to in
my affidavit dated 17th day of
August, 1966.....)

Sgd. M.
Tiruchelvam

Before me,

Sgd. D.Danforth

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Exhibits

EXHIBIT "4R5"

Exhibit "4R5"

LETTER, S.C.MAHADEVA AND OTHERS TO MINISTER
OF LOCAL GOVERNMENT

Letter, S.C.
Mahadeva and
others to
Minister of
Local
Government
12th April
1966

JAFFNA,
12.4.1966

The Hon'ble Minister of Local Government,
Colombo.

Honoured Sir,

We the undersigned members of the
Municipal Council, Jaffna wish to bring to your
attention the following facts. 10

The present Council consisting of 17
Councillors is mainly divided into 3 groups Viz:
The Federal Party Group consisting of 7,
Duraiappah Group consisting of 5, and another
Volatile Group of 5 of whom are some Tamil
Congress Members. In this alignment of forces
Mr. T.S.Durairajah was elected Mayor for 6 months
and Mr. S.C. Mahadeva was Mayor for 1½ years and
Mr. S.Nagarajah Mayor for 2 months. Of the 20
Group of 9 who elected Mr. S.C.Mahadeva 2 Members
crossed over and brought forward a no confidence
motion against him (Mr. S.C.Mahadeva) in June 1965
backed by nine members, but this no confidence
motion was defeated by the defection of a 1
member. Then Mr. S.C. Mahadeva carried on till
December 1965 and during this period he enjoyed
the whole hearted support of only 8 members and at
the time of the presentation of the 1966 budget
far-reaching changes were made in the budget 30
proposals by the Council as a result of a fresh
regrouping of forces supporting Mr. S.C.
Mahadeva.

In January, 1966 Mr. S.Nagarajah was
elected Mayor with the support of 9 of the 17
Councillors. In the very next month a motion of
no confidence was given as a result of the very
gentleman who proposed Mr. S.Nagarajah as Mayor
crossing over to the other side for reasons well

known to the public.

Exhibits

Exhibit "4R5"

Letter, S.C.
Mahadeva and
others to
Minister of
Local
Government
12th April
1966

continued

10 The no confidence motion was submitted on
28.2.1966 and soon after many of the members who
had signed the motion were missing because some
of them about whose position Mr. A.T.Duraiappah
the man behind the no confidence motion was
doubtful were taken away from Jaffna and kept
apart under his care and hospitality. It is a
significant fact that the Deputy Mayor was miss-
ing from the Council since the notice of the no
confidence motion was given. It would be perti-
nent to mention here that it was the Deputy
Mayor who by his frequent formation of new
alliances was responsible for the Mayoral
changes referred to. It is significant that
between the dates of the notice of no confidence
given on 28.2.66 and thereafter the 1st meeting
on 8.3.66 and the date of the confirmation
meeting on 24.3.66 that these nine members were
20 virtually out of Jaffna avoiding all contact with
their constituents and friends. Such conduct
cannot be explained by normal standards of
honest political behaviour.

30 Again it may be pointed out that Mr. A.G.
Rajasooriar who is a member and Chairman of the
Pulopalai V.C. is a person disqualified under the
law from sitting or voting in the Council and he
cannot be considered a member of this Council.
Mr. Rajasooriar is one of the group of 9 which is
backing the present Mayor. Another Councillor
Mr. M.M.Sultan has resigned his membership.

40 In this precarious situation the present
Mayor to sustain himself in office has already
resorted to various malpractices within the few
days he has been in office. Thus there is no
prospect of a stable, fair and impartial
administration of the affairs of the Council
and the Mayor is willy nilly compelled to dance
to the tune of his 8 supporters, the defection of
any one of whom will result in his removal and in
this process the wards represented by the 8
members opposed to him will be neglected.

We feel it is our duty to place before you
some of the misdeeds of the present Mayor since
he assumed office, only 10 days ago.

Exhibits
Exhibit "4R5"
Letter, S.C.
Mahadeva and
others to
Minister of
Local
Government
12th April
1966
continued

(1) On assuming office he appointed one Dr. S. Rajasooriar one of the defeated candidates at the Municipal elections and a henchman of his and a person without any qualifications or experience in Public Health as the M.O.H. of the Council when there is already in office an M.O.H. appointed by the Central Government. This appointment was made disregarding the advice of the Commissioner who while pointing out the impropriety of this appointment refused to sign the letter of appointment. 10

(2) Mr. S.C.Mahadeva former Mayor during his time of office directed that the work of reporting on the building applications submitted to the Council be attended to by the Works department, which had as its Head a qualified Engineer. This work was taken away from the Health Department in view of the allegations of bribery and corruption among the officers in that section and given to the Engineers Department. It is a notorious fact that for a good number of years building applications have received the approval of the Mayor in flagrant violation of the salutary provisions of the Housing and Town Improvement Ordinance. It is also a well known fact since this work was entrusted to the Works Department there has been a marked respect for the law and a genuine appreciation of the provisions of the Housing and Town Improvement Ordinance. The present Mayor who has held office some years back and enjoyed an unenviable reputation as a person who paid scant regard for the provisions of the said Ordinance. On his assumption of office now he has already prepared the ground for a repeat performance of his earlier misdeeds. On the very day he was elected Mayor he promptly made order that the building section should revert to the Health Department where his hand picked choice is the M.O.H. and his wife is the Assistant M.O.H. He has also made order that the building application forms brought in conformity with the relevant law at the instance of Mr. S.C.Mahadeva former Mayor be dispensed with and the old inadequate application forms be revived. The Council by its unanimous resolution of 15.9.1965 decided that only approved plan drawers be empowered to draw plans 20 30 40

submitted to the Council. The decision was made as it was common knowledge that the employees of the Council and even officers who were entrusted with the task of reporting on the plans were in the habit of drawing the plans themselves. The practice opened the door to bribery and corruption and also disrespect to the provisions of the law. The present Mayor has ruled that the old practice be restored and covering sanction for this measure has been obtained subsequently by a resolution of the Council passed by 9 - 7 votes at the very first meeting held after Mr. Thuraiappah was elected as Mayor. The present Mayor has already started approving plans regardless of the provisions of the Law.

Exhibits
Exhibit "4R5"
Letter, S.C.
Mahadeva and
others to
Minister of
Local
Government
12th April
1966
continued

(3) The Works Department of the Council was riddled with bribery and corruption and as there was no responsible Head of the Department, there was waste and misuse of the Council's funds. It is in the works Department that the major portion of the Council's funds is expended annually, and as a result of which the essential works did not receive proper attention. To remedy this state of affairs only his sense of Public service and duty to his native town persuaded the present Works Engineer, a very highly qualified man, to accept the present post. He retired early on the language issue and was offered many tempting jobs in the private sector, but accepted about Rs.300/- the difference between his pension and retirement salary from the Council. He was appointed to the post on 1.1.65. After his appointment the work of the department was stream lined and he brought to our notice the malpractices prevalent in the department chiefly the practice of the contractors drawing money for works done in fact by Council's labourers. During this short period he detected two Works Supervisors Misappropriating bags of cement. He was able to get work done at nearly half the expenditure incurred in the previous years. The quality of the work done by the contractors showed marked improvement. He was a stumbling block to those who indulged in corrupt activities. As a result there has been a cruelly callous move by the present Mayor and his supporters to remove him from his post. This has been achieved by the Mayor's Group refusing

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Exhibits
Exhibit "4R5"
Letter, S.C.
Mahadeva and
others to
Minister of
Local
Government
12th April
1966
continued

to grant leave to him to leave the Island to participate in the world Tamil Conference to be held in Kuala Lumpur because technically no leave had been granted to him through no fault of his as he had made his leave application within the prescribed time and had duly informed the Mayor and the Commissioner and obtained their permission to leave the Island.

(4) The Electrical Supdt. of the Council is an efficient and honest officer. The Electricity Department was also one where malpractices were prevalent. The present Electrical Supdt. Grade I, has succeeded in cleaning up the department. Moreover he has done splendid work in connection with the improvement schemes undertaken by the Council as a result of a loan of 2½ lakhs of Rupees obtained from the Central Government and has completed the major portion of the work at minimum cost and thereby had greatly improved the electricity service of the town. But as this officer has earlier refused to toe the line with the Mayor and his companions in their old habits there has once again been a deliberate scheme to remove him from office which object has been achieved by the devious method of suppressing the post of Electrical Supdt. Grade I, by a resolution passed by 9 - 7 votes at the meeting held on 11.4.66. The present Mayor has been summoning conferences to discuss electricity matters for which he has invited only a few members of his group and disregarded the duly constituted Electricity Committee. At these conferences he has apportioned duties to be performed by various officers which is normally a matter within the purview of the Head of the Department which action will naturally impair the effective administration of the Department. He has also made order discontinuing the normal practice of employing Electricity Foreman for night duty against the advice of the Electrical Supdt. This order will gravely jeopardise the electricity service of the Council in times of emergency at nights.

The Electrical Supdt. with the consent of the Commissioner interdicted two Council labourers for an affray committed in the Council premises while on duty. The Mayor has ordered

the re-instatement of these two labourers after the said labourers had seen him without inquiring into the matter or consulting the Electrical Supdt. These practices impair the efficiency and discipline of the Department.

Exhibits
Exhibit "4R5"
Letter, S.C.
Mahadeva and
others to
Minister of
Local
Government
12th April
1966
continued

10 (5) On assuming office the present Mayor, contrary to the instructions received from the Water Works Department, Colombo not to do any water service extension without prior approval, had ordered extensions in ward 5 represented by a supporter of his. Moreover this ward does not fall within Stage I of the Water Supply Scheme which is in operation now. He has employed the whole labour force of the Council to do work even on public holidays and overtime after normal hours. A sum of Rs.24,000/- has been provided for water service extension during this year and nearly half the amount is being spent in this ward with the result that other wards particularly those represented by those who do not support the Mayor will suffer. The cast iron pipes which were kept in reserve for use in any emergency are being used for this extensions contrary to the advice of the Works Engineer.

20

30 (6) The present Mayor true to his past form has started appointing persons of his choice as labourers without advertising vacancies and calling for applications. While Mr. S.C.Mahadeva prevented waste of Council funds by a sound adjustment of the Council's labour cadre the present Mayor in callous disregard of the rules and regulations and the by laws of the Council had already made three new appointments and in one such instance has ordered the re-employment of a person who has been discontinued by the Council earlier. He had also handed back the power of supervision of the minor staff to an utterly unreliable employee from whose hands Mr. S.C.Mahadeva has earlier taken away such power and entrusted it to a very honest, efficient and smart officer belonging to the Local Government Service.

40

(7) At the first meeting held by the present Mayor on 11.4.66 items mentioned in a supplementary agenda of which statutory notice was not given were decided upon in spite of the

Exhibits
Exhibit "4R5"
Letter, S.C.
Mahadeva and
others to
Minister of
Local
Government
12th April
1966
continued

protest we raised. In utter disregard of the vehement objections raised by us items and motions which were not even included in the supplementary agenda and of far reaching consequences and financial implications and which were not of any urgent importance were rushed through. To mention a few (a) the Standing committee which had been duly constituted in January this year in terms of the Ordinance were illegally reconstituted with the sole purpose of packing the Committees with his supporters. 10
(b) Suppression of the post of Electrical Supdt. Grade I (c) creation of an immediate appointment of a favourite to the post of Works Supervisor without the recommendation of the Finance Committee and without financial provisions. (d) the refusal of leave to the Works Engineer after he had left the Island even though he had sent his leave application within the due date and obtained the verbal approval of the Mayor and the Commissioner. 20
(e) Allocation of Rs.2000/- for each ward for construction of a drain has been taken away and the full amount of Rs.50,000/- given to the Mayor to be spent at his descretion. This is with a view to depriving wards represented by those opposing him. There is a strong likelihood that this large amount of money will bemisspent and misused.

We therefore request you, Sir, to take necessary action on these matters. 30

Thanking you,
We remain,
Yours faithfully,

- | | |
|-----------------------|--------------------------|
| 1. Sgd - S.C.Mahadeva | 4. Sgd - N.T.Selladurai |
| 2. Sgd - S.Nagarajah | 5. Sgd - P.F.Zavier |
| 3. Sgd - J.S.Alagiah | 6. Sgd - N.Anthonipillai |

CERTIFIED TRUE COPY
Sgd.....

For Permanent Secretary to the Ministry
of Local Government

This is the identical document)
marked 4R5 and referred to in) Sgd. M.
my affidavit dated 17th day of) Tiruchelvam
August, 1966.....)

Before me,
Sgd. D.Danforth
JUSTICE OF THE PEACE.

EXHIBIT "4R6"

LETTER, S.C.MAHADEVA AND OTHERS TO
COMMISSIONER OF LOCAL GOVERNMENT

Jaffna.

12.4.66.

The Commissioner of Local Government
Colombo.

Sir,

10 Jaffna Municipal Council - Irregularities
in making appointments etc.

We the undersigned Members of the Jaffna Municipal Council feel that it is our duty to bring to your notice the following matters.

1. Mr. A.T.Durayappah has been elected Mayor of the Council on 31.3.1966. He has the support of 9 out of the 17 Councillors.

20 2. On assuming office he has appointed one Dr. S.Rasasooriar as M.O.H. of the Council while there is in office the M.O.H. appointed by the Central Government. The Municipal Commissioner pointed out the irregularity of this appointment but the Mayor has disregarded the advice given by the Commissioner.

30 3. At a meeting held on 11.4.66 the Mayor took up for discussion the question of granting leave to the Works Engineer. This item was not included in the agenda or even in the order paper for the day. This officer applied for leave in time and had left the Island after duly informing the Mayor and the Commissioner. The Mayor's group bent on removing this officer has decided not to grant him leave. This will result in the officer being removed.

4. At the same meeting a motion statutory notice of which was not given was taken up, in spite of objections. The Electrical Supdt. who is an honest and efficient officer is persona non

Exhibits
Exhibit "4R6"
Letter, S.C.
Mahadeva and
others to
Commissioner
of Local
Government
12th April
1966

Exhibits
Exhibit "4R6"
Letter, S.C.
Mahadeva and
others to
Commissioner
of Local
Government
12th April
1966
continued

grata with the Mayor's group. At the said meeting a motion for the suppression of the post of Electrical Supdt. Grade 1 was passed by 9 - 7 votes. The suppression of this post is absolutely uncalled for and this has been deliberately done to eliminate the present Electrical Supdt. whom they consider will be an impediment to their activities.

5. At the very same meeting another action which involves grave financial implications and procedural matters was suddenly brought up without any notice whatsoever and was passed by 9-7 votes inspite of the vehement objections and protest raised by us. By this motion a new post of "Works Supervisor" was created and in this very same motion an appointment to this post has also been made. The said appointment has been given to a favourite of the Mayor's group who is a close relative of the Member for ward 17 one of the Members responsible for the election of the present Mayor. In this connection it may be noted that the Finance Committee had at a meeting held in January '66 rejected the move to create a post of Works Supervisor. No financial provision has been made in the current year's Budget. There is an impending vacancy for the post of Works Overseer. This is a scheduled post and appointment will be made by the Local Government Service Commission. It is quite likely that this post of Works Overseer may be suppressed in view of the creation of the new post of Works supervisor.

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6. The Mayor has ordered the reemployment of a person who has been earlier discontinued by the Council. He has ignored all rules and regulations and the by laws of the Council.

We place these matters before you for your consideration.

We remain,

Yours faithfully,

Sgd/- S.C.Mahadeva (Ward 6)
Sgd/- S.Nagarajah (Ward 9)

40

Sgd/- J.S.Alagiah (Ward 16)
Sgd/- N.T.Sellathurai (Ward 14)
Sgd/- P.F.Xavier (Ward 3)
Sgd/- N.Anthonipillai (Ward 15)

Exhibits
Exhibit "4R6"
Letter, S.C.
Mahadeva and
others to
Commissioner
of Local
Government
12th April
1966
continued

Copy to: Hon'ble Minister of
Local Government,
Colombo.

CERTIFIED TRUE COPY
Sgd.....

10 for Permanent Secretary to the Ministry
of Local Government.

This is the identical document)
marked 4R6 and referred to in) Sgd. M.
my affidavit dated 17th day of) Tiruchelvam
August, 1966.....)

Before me,

Sgd. D.Danforth

JUSTICE OF THE PEACE

EXHIBIT "4R7"

20 LETTER, RATNASINGAM TO MINISTER OF
LOCAL GOVERNMENT

Exhibit "4R7"
Letter,
Ratnasingam
to Minister
of Local
Government
(Undated)

The Minister of Local Govt.

Dear Sir,

Section 15 (2) & 277(1) of Cap.252

&

The Jaffna Municipal Councillors

The framers of the Legislation in Cap.252
made wholesome provision in section 15(2) & 277(1)

Exhibits
Exhibit "4R7"
Letter,
Ratnasingam
to Minister
of Local
Government
(Undated)
continued

thereof.

Whilst section 15(2) provides for the removal of a Mayor who has lost the confidence of the RATEPAYERS and therefore the confidence of the COUNCILLORS from Office by a vote of NO CONFIDENCE, yet section 277(1) provides a saving clause should the Councillors lapse into abuse of this section 15 (2) by enabling the Minister to dissolve the Council should the Councillors persist in such abuse. Hasn't such a situation arisen in Jaffna today? The very key persons who elected the Mayor in January have overthrown him in March. Has This Mayor done something within this short period to lose the confidence of the ratepayers and Councillors or is there any other SINISTER motive behind this move?

10

Application of the provisions under section 15(2) of Cap. 252 appears to be the only law the Jaffna Councillors are aware of or have they reduced this to a state of ABSURDITY ? As they say in Tamil a "garland in the hands of a monkey". In fact some City Fathers of Jaffna appear to use the section 15(2) as a weapon to intimidate the Mayor to connive for their misdeeds. One of the reasons adduced by one of the Councillors for the recent no confidence motion is that the Mayor adheres to the regulations under the Housing and Town Improvement Ordinance. The Councillors presume to know better than the framers of the regulations.

20

30

If you will study the history of the Jaffna Municipal Council you will note that "NO CONFIDENCE MOTIONS" take first place. There have been perhaps more NO CONFIDENCE MOTIONS in Jaffna than in all the other Municipal Councils in the Island put together (Colombo, Kandy and Galle inclusive). Mayors have been unseated for no reasons whatever even after a week, 90 days or 60 days of elevation to the CHAIR. The interest of the RATE PAYERS or the development of the CITY take only last place. The situation has reached such a pitch that the masses (rate-payers) appear to lose confidence in the proper Authorities. If this state of affairs continue perhaps no proper thinking person will turn up at the forth-coming huskings to cast a vote.

40

In the Ceylon Daily News of 30.1.1966 we read with pleasure that the Hon'ble Ministry warned the Jaffna Municipal Council even with dissolution in connection with its management of the Rest House. This Rest House subject is however an infinitesimal fraction of the present crisis. At long last we awakened to the fact that we have a Minister who will not be swayed by sentiments but will take firm action in all matters.

10

Exhibits
Exhibit "4R7"
Letter,
Ratnasingam
to Minister
of Local
Government
(Undated)
continued

It is time that some one will call a halt to these DESIGNS and :-

- i. Dissolve the Jaffna Municipal Council forthwith.
- ii. Hand over the administration to a Special Commissioner who has no vested interest in Jaffna - a foreigner to Jaffna.
- iii. Appoint a Commission to de-limitate the wards of the Council, taking into consideration the possible extensions of the area and the elimination of "POCKETS".

20

Can any one gain-say that the present Jaffna Municipal Councillors as a body are not competent to perform the duties cast upon them by the Constitution in that they persistently seek to make and un-make Mayors at the cost of the development of the City and their service to the Rate-payers?

Yours faithfully,

Sgd. Ratnasingam.

SM/28.

CERTIFIED TRUE COPY

Sgd. Illegibly

For Permanent Secretary to the Ministry
of Local Government.

This is the identical document)
marked 4R7 and referred to in)
my affidavit dated day)
of August, 1966.)

Before me

JUSTICE OF THE PEACE

Exhibits

EXHIBIT "4R8"

Exhibit "4R8"

LETTER, V.KANDIAH TO MINISTER OF
LOCAL GOVERNMENT

Letter, V.
Kandiah to
Minister of
Local
Government
7th April
1966

698/4, Sabapathy Veethy,
Jaffna.

7th April 1966

Copy to the Commissioner, M.C.Jaffna.
Hon. The Minister of Local Government.

Sir,

Municipal Council, Jaffna.

10

May I place the following facts before you, which relate to the conditions existing under the administration of the Jaffna Municipal Council. These conditions would warrant the appointment of a Special Commissioner to administer the Municipality of Jaffna, who will render immediate relief and rectify unjust sanctions.

2. The Jaffna Municipality has schemes, I understand, to extend its limits apparently to levy more rates and taxes. If it has thought it prudent and convenient to tread the path of its predecessor, the Urban Council, and failed to provide essential and adequate amenities to the existing area or areas, possibly for the past half a century or more, taking the terms of the two local bodies together, it is manifestly unfair for the Central Government to permit any further expansion to this local body.

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3. The conditions that exist are as follows :-

(i) ELECTRICITY

My area which comes under Ward No. 10 of the Jaffna M. C. and under the Nallur Electorate of the Central Government has no electricity either for the streets or for residences.

Letter, V.
Kandiah to
Minister of
Local
Government
7th April
1966
continued

Petitions of the public were not heeded. As a last resort I took an M. P. to the Mayor last year and presented a petition signed by the residents of this area. "Wait for better times" was the reply of the Mayor. It is always the others who have to wait. The area of the V. C. which is adjoining mine, and which the M. C. now wants to take over, has long enjoyed efficient supply of electricity. It is well known, and can be verified, that the supply of electricity under this Municipality is the worst in Ceylon. I say this with first hand knowledge of the entire Ceylon.

10

(ii) CONSERVANCY

This area of mine very often goes under every other day service of the conservancy labourer. He skips two and three days at a stretch too. Repeated petitions of the citizens seldom brought in relief. Whether the petition was to the M. O. H. or the Mayor, or the Commissioner, the result was the same. Regularity of the labourer for a whole week is a rarity in this area. The sight of an investigating officer of whatever rank is another rarity, while a similar complaint under the Colombo Municipality, even over the phone, would have brought half a dozen men to the spot including the Chief of the Department.

20

(iii) SCAVENGING

This service is rendered fortnightly or at greater intervals at present. Seldom or never is the whole refuse removed. Once glass pieces neatly parcelled, labelled, and left by me on the heap of sweepings were not removed; I had to appeal to the Commissioner. My neighbour's glass pieces were buried by the road side because the scavengers refused to remove them.

30

(iv) SOIL POLLUTION

Adjoining gardens with bushes or rank vegetation are used by some men and women as common land to defacate. The Mayor too was written to. The officers of the M.O.H. have expressed helplessness. While village areas have improved this Municipality has not. Yet there is only a

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Exhibits
Exhibit "4R8"
Letter, V.
Kandiah to
Minister of
Local
Government
7th April
1966
continued

paper campaign to eradicate T.B. . Circulation of literature on sanitation printed at our expense seems to be the only active move to eradicate diseases.

(v) DISQUALIFICATION OF BUILDING SITES.

There is a bye-law that buildings should be 7 feet away from the boundary. A latrine was put up at a distance of 3 feet from the boundary of my land without Municipal Sanction. A new house plan showing the latrine as an existing one was passed without demur. I objected to this encroachment in a written petition which was handed over to the Mayor by an M. P. in my presence on 10.5.1965. Six months later the Mayor was content to direct the Buildings Department to echo the argument of the Public Health Inspector that there was no well close by. Please see copy of the letter No. 534/64 of the works Department dated 1.11.1965 which is a reply to my representations with the M. P. It is worth noting that the Mayor did not reply himself.

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This is proof positive that one who goes to this Municipality first secures not only the vantage ground but is able to disqualify neighbours from building houses or sinking wells thereafter. Even after I presented this matter to the Mayor with an M. P. he has not rectified the blunder of the P. H. I.

Was action taken against the citizen for putting up a latrine without section? Did the P. H. I. who inspected the building site notice a newly built latrine, and make a report to that effect? Did officers of the Building Department make an inspection? In a case like this an efficient administrator would have ordered the shifting of the latrine at the expense of the officers responsible for the lapse. Here the citizens have been penalised.

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(vi) ROAD METALLING

The road called Sabapathy Veethi always went under water during heavy rains and became impassable for traffic because it was not high enough and there wasn't sufficient outlet for the storm water. When it was being metalled a few

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years ago with about 2 inch metal just enough to hide the gravel below I wrote to the Commissioner to inspect and verify. But no one turned up, nor was there a reply. The road remains to this day at low level. At election time there was promise profuse to put them right.

4. Thinking minds could always pose the question "Who is responsible for this "indifference?". I was able to get two answers:

- 10 (i) "The member of your area is under the impression that you people did not vote for him"
- (ii) "The system in the Jaffna M. C. is to allocate funds to each member. It is he who directs the spending of it."

20 The members of the Tamil Congress, Federal Party, and Communist Party, have all had turns to represent us in the Municipal Council. I am not sure if the people of this area always blacked the loser.

5. The injustice to us is all the greater when we have donated lands 13 years ago for road widening. In the other parts of Ceylon the local bodies pay compensation for such acquisition.

30 6. If each member showers his favours on his pet area all the time and other area or areas have no voting strength to oust him, does it follow as a democratic principle that the Mayor or the Commissioner too should turn a deaf ear to the petitions of the handicapped areas? I might cite an instance. When one of the past Mayors chanced to come to our road he was told of the absence of the street lighting in this area. "Haven't you got it so long? I will see you get it in two days." was his observation. Six years have passed since, and nothing was done.

40 7. There is therefore a just cause for us to institute legal action against this Municipality for the apathy and negligence of the administrators. While a public body will not hesitate to use public funds to defend its

Exhibits
Exhibit "4R8"
Letter, V.
Kandiah to
Minister of
Local
Government
7th April
1966
continued

Exhibits
Exhibit "4R8"
Letter V.
Kandiah to
Minister
of Local
Government
7th April
1966
continued

members and servants a citizen or a group of citizens cannot muster enough funds for such a public cause. So we can only appeal to the Central Government to rescue us. It seems imperative that a Special Commissioner who is strong enough to revoke all wrong orders of the Mayors, to recommend punishment to Government servants attached to Local bodies, and to exercise stern discipline, should be appointed to this Municipality.

10

I am, Sir,

Yours faithfully,

Sgd. V.Kandiah

Govt. Pensioner.

CERTIFIED TRUE COPY.

Sgd. Illegibly.

for Permanent Secretary, Ministry
of Local Government.

Colombo 16.8.1966.

This is the identical document)
marked 4R8 and referred to in)
my affidavit dated day)
of August, 1966.)

Before me,

JUSTICE OF THE PEACE.

EXHIBIT "4R9"

LETTER, MINISTER OF LOCAL GOVERNMENT
TO A.DURAIYAPPAH

Exhibits
Exhibit "4R9"
Letter,
Minister of
Local
Government to
A.Duraiyappah
20th May 1966

20th May, 1966.

My dear Mayor,

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Various allegations have been made in regard to the working of the Municipal Council, Jaffna. I have directed the Commissioner of Local Government to visit your Municipal Council, inquire into these matters and report immediately.

2. I shall be grateful if you will be so kind as to render him all the co-operation necessary for this purpose.

Yours sincerely,

Minister of Local Government.

Alfred Duraiyappah Esq.,
Mayor of Jaffna.

CERTIFIED TRUE COPY

Sgd Illegibly.

for Permanent Secretary to the
Ministry of Local Government

This is the identical document)
marked 4R9 and referred to in) Sgd. M.
my affidavit dated 17th day of) Tiruchelvam
August, 1966.....)

Before me

Sgd D.Danforth

JUSTICE OF THE PEACE

EXHIBIT "4R11"

LETTER, M.TIRUCHELVAM TO MINISTER
OF HEALTH

Exhibits
Exhibit "4R11"
Letter, M.
Tiruchelvam
to Minister
of Health
20th April
1966

20th April, 1966

My dear Minister,

I am informed that Mrs. Alfred Durayappa is working as an Assistant Medical Officer of Health in the Jaffna Municipality and that she is holding this office on secondment from the Government.

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I consider that it is politically undesirable that the wife of the Mayor should be an employee of the Municipality and in the circumstances, I shall be grateful if you will take early action to have her reverted to Government Service.

I need hardly say that there can be no objection to her serving the Government in Jaffna.

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Yours sincerely,

(M.Tiruchelvam)

Hon. M.D.H.Jayawardene, M.P.,
Minister of Health.

CERTIFIED TRUE COPY

Sgd.....

for Permanent Secretary to the
Ministry of Local Government

This is the identical document)
marked 4R11 and referred to in)
my affidavit dated 17th day of)
August, 1966,.....)

Sgd. M.
Tiruchelvam

Before me,

Sgd.....

JUSTICE OF THE PEACE.

IN THE PRIVY COUNCIL

No. 29 of 1966

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

ALFRED THANGARAJAH DURAYAPPAH
OF CHUNDIKULY,
MAYOR OF JAFFNA

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. MURUGEYSEN THIRUCHELVAM,
THE HONOURABLE THE MINISTER OF
LOCAL GOVERNMENT

Respondents

RECORD OF PROCEEDINGS

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Respondents.