

**The Returning Officer (Special Officer) Tiruchirapalli Municipality and anr.
Vs. S. Ramachandran and ors.**

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Court : Chennai

Decided On : Mar-10-1971

Reported in : AIR1972Mad17; (1971)2MLJ264

Judge : K. Veeraswami, C.J. and ;Raghavan, J.

Acts : Madras District Municipalities Act - Sections 49(2)

Appeal No. : Writ Appeal Nos. 24 to 37 of 1971

Appellant : The Returning Officer (Special Officer) Tiruchirapalli Municipality and anr.

Respondent : S. Ramachandran and ors.

Judgement :

K. Veeraswami, C.J.

1. The common point in these appeals is whether the respondents had sustained disqualification under Section 49(2)(g) of the Madras District Municipalities Act. There is no dispute that on the date of filing nominations to wit, 14th December 1970, there was an order of surcharge against each of the respondents, which made them jointly and severally liable to the Municipality in a certain sum. Against the orders of surcharge, there were appeals, but they failed,. From the appellate orders, further appeals were filed to this court, which are said to be pending. On 16th December 1970, the nominations of the respondents were rejected on the ground of the disqualification under the provisions we mentioned. The order rejecting the nominations was quashed by Ramaprasada Rao, J. on the ground that through the first part of Section 49(2)(g) was satisfied, the second part of it was not.

2. We are in entire agreement with the learned Judge. It is argued for the appellants that once the surcharge order was made, of which the respondents had notice, the conditions for sustaining the disqualification under Section 49(2)(g) had been satisfied. We do not accept this contention for this reason. On the date of filing the nominations, there was an order of stay in operation, the effect of which was that so long as it was in force, although the surcharge order was in operation and therefore the liability of the respondents existed, they could not have been called upon to pay the amount. The second part of Section 49(2)(g) contemplates that not only there should be an arrear and that it should be due for payment, but it must be such in respect of which a demand could be made for payment and that the time stipulated for payment had expired. In other words, it was not enough that there was arrear and due. But what was due should be capable of being realised by way of demand or

notice. When the respondents by reason of the stay orders were not liable to pay the amount, we are of opinion that the second part of Section 49(2)(g) is not satisfied. Reliance was placed for the appellants on an order of Srinivasan and Sadasivam, JJ. in Writ Appeal No. 492 of 1967 (Mad), M. Manickam v. B. R. Venkatachalapathi. But there before the suit was filed to recover the arrears, as the records showed, several demands had been made by the Panchayat for refund of the money remaining with the candidate, but the demands were not complied with. This is what the learned Judges stated-

'It appears from the records of the suit that demands had been made upon the appellant by the Executive Officer prior to the filing of the suit. The plaint itself would have constituted a demand or notice of claim.'

3. That is not the case here. The question is not whether the respondents had notice of the arrear. The stay order of this court effectively prevented the respondents from sustaining the disqualification under Section 49(2)(g) on the date of the filing of nominations.

4. On that view, the appeals are dismissed. No costs.

5. Appeal Dismissed.

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