

ABDUL BAIZ
CHAIRMAN, URBAN COUNCIL, PUTTALAM
v
NAWINNA, CHIEF MINISTER, NORTH WESTERN PROVINCE
AND OTHERS

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA) AND
WIJEYARATNE, J.
CA 1320/2001
SEPTEMBER 8, 2003

Urban Councils Ordinance, No. 61 of 1931, sections, 184, and 184(1) a – Local Authorities Powers of Supervision and Administration Statute, No. 1 of 1996 (NWP) – Warrant issued – Inquiry – Term of 3 months – Report tendered outside 3 month period – Validity – Commissions of Inquiry Act, section 4 – Pradeshiya Sabhas Act, No. 15 of 1987, sections 185 (2) 3 (a) . (i) (ii) and (iii), and 187 – Provincial Councils (Special Provisions) Act, No. 12 of 1989 – Compensation.

The petitioner sought to quash the order made by the 1st respondent whereby he had suspended the petitioner. It was contended that the warrant issued for an inquiry to be held by the 4th respondent for a term of 3 months was invalid in as much as the inquiry and the order had been made outside the period of 3 months stipulated in the warrant and therefore the 4th respondent was *functus*, and that the report was bad in law and the 1st respondent could not have acted upon the findings in terms of the order aforesaid.

Held:

- (i) Time is not of essence in the warrant that has been issued, the reference to time is merely discretionary and not mandatory.

APPLICATION for a *writ of certiorari*.

Case referred to:

Mohamed Ishak v Morais – (1996) 1 Sri LR 145

N.M. Shahied with A.S.M. Rafees and M.I.M. Azver for petitioner.

Wijedasa Rajapakse, P.C., with *Rasika Dissanayake* for 1st and 2nd respondents.

Y.J.W. Wijayatilake, Deputy Solicitor-General for Attorney-General.

November 3, 2003

SHIRANEE TILAKAWARDENA, J. (P/CA)

The petitioner has preferred this application seeking a *writ of certiorari* to quash the order marked Y5 made by the 1st respondent whereby he has suspended the petitioner which order was published in Government Gazette bearing No. 1192/29 dated 13th of July 2001. He had also sought to restrain the 3rd respondent from taking any steps under the Local Authorities Elections Act to appoint a member to the Puttalam Urban Council in place of the petitioner. 01

At the hearing of this application parties agreed that this case would be confined to one single issue which was whether the warrant issued by the Minister of Local Administration of the North Western Provincial Council for an inquiry to be held by the 4th respondent for a term of three months in terms of section 184 of the Urban Councils Ordinance No. 61 of 1931 as amended read with Local Authorities Powers of Supervision and Administrative Statute No. 1 of 1990 of the North Western Province was valid in law in so much as the inquiry and the order had been made outside this period of three months, which had been stipulated in the said warrant. It is conceded that the appointment of the 4th respondent to hear and inquire into this matter had been made by p13 and had been made on the 28th of March 2000 and the original warrant required the 4th respondent to report in three months of such notification. Document X, it was also admitted that the inquiry had commenced on the 26th of June 2000 and that there had been two extensions that had been granted. It was conceded that though there was no specific provision for extension of time under the Commission of Inquiries Act section 4 when a warrant was issued even by the President that the time could either be enlarged or extended by the Appointing Authority. Indeed in section 184 (i) (a) of the aforesaid Urban Councils Ordinance the lacuna in the Ordinance itself was to be resolved by reference to the powers of a Commission of Inquiry appointed under the Commissions of Inquiry Act. It appears that in terms of this provision the period was extended on 27/06/2000 by 1R1 and 27/09/2000 by 1R2. The period therefore on the extension admittedly expired on 27/12/2000. It is also admitted by parties that the last date of inquiry was 08/03/2001 and the report of 10 20 30

the Judicial Officer though not dated was after the expiry of three months period 27/12/2000 (since the written submissions had been accepted on 05/03/2001).

The graveman of the argument of the counsel for the petitioner therefore was that the 4th respondent was *functus* after 27th of December 2000 and the report is therefore bad in law and that the 1st respondent could therefore not have acted upon the findings made in terms of the order aforesaid. 40

The two matters therefore that this Court has to decide upon are whether (1) the time is of essence in holding of such inquiries (2) whether the rules setting the time limits are one which is directory or mandatory and if it is merely directory then the consequences of making such order from outside such period would merely be an irregularity which could not render the order *functus*. 50

In this context, the decision of *Mohamed Ishak v Morais*⁽¹⁾ has much relevance. In terms of this judgment specific reference had been made regarding the time limit which was given to conclude an inquiry made in terms of the Pradeshiya Sabhas Act, No. 15 of 1987, section 185 (2), (3) and section 185 (3) (a) (i), (ii) and (iii) read with section 2(1) of the Provincial Councils (Special Provisions) Act, No. 12 of 1989. A reading of these acts shows that the wording is very similar to that contained in the present act that is being invoked by the parties in this case.

In that case it had been stated that "the requirement to deliver the order in three months in section 185 of the Act, No. 15 of 1987 is directory and not mandatory. The petitioner having delayed the inquiry by taking various objections cannot complain of the transgression of the temporary span". In this case too if the attendance sheet which has been annexed with the order from 27/06/2000 until 03/05/2001 shows that the petitioner had hardly attended the inquiry, though the respondent had attended the inquiry on every single date. It also shows that even the counsel for the petitioner had failed and neglected to appear on more than 6 dates of inquiries. It is also relevant that challenge to the appointment had not been made at the very first opportunity when such inquiry was extended nor was it referred to until the very end of the case. In all these circumstances of this case we find that there is no merit in 70

the submissions of the petitioner that at the time of the making of the report by the 4th respondent he was *functus* as we hold that the time is not of essence in the warrant that has been issued in this case and furthermore specially in view of the several extensions that have been made and furthermore that in any event the reference to time is merely directory and not mandatory. Accordingly at the time of the rendering of the order that the 4th respondent was not *functus* and such submission by the petitioner is untenable in law. 80

It is also relevant to mention at this stage that at the hearing of the argument counsel appearing for the petitioner conceded that S.C. Application 407/01 (F/R) had also been filed on the same matter. This has not been pleaded in the petition of the petitioner and even though the S.C. Application had been filed and sought to challenge the same order Y5 and had been dated the 30th of July 2001 such application was subsequently dismissed by the Supreme Court. The petitioner has also filed an application bearing No. 370/2000 in this Court but that application too has been withdrawn. In the circumstances of this case the only ground that had been urged by counsel before this Court was that he was invoking the writ jurisdiction of this Court on the basis that the report tendered by the 4th respondent was made at a time that the 4th respondent was *functus* and therefore that the 1st respondent had no powers to act upon such report is untenable. Therefore in law such would not be a basis for challenge of the order of the 1st respondent referred to as Y5. Accordingly the application is dismissed with costs in a sum of Rs. 5000/-. 90 100

WIJEYARATNE, J. - I agree.

Application dismissed.