

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 8TH DAY OF JUNE 2022 / 18TH JYAISHTA, 1944

WP(C) NO. 23175 OF 2021

PETITIONERS:

- 1 RAJAN J. PALLAN
AGED 56 YEARS
S/O I.JOSE PALLAN, PALLAN HOUSE, KUNDUVARA,
CHEMBUKKAVU,
THRISSUR-20.

- 2 JOHN DANIEL,
S/O DANIEL, EZHUTHUPURAKKAL HOUSE, PONNUVEETTIL
LANE, PATTURAICKAL, THRISSUR-22.

BY ADVS.
V.M.SYAM KUMAR
SNEHA RAJIV
P.F.ROSY
K.M.BASHEER

RESPONDENTS:

- 1 MUNICIPAL CORPORATION OF THRISSUR,
M.O.ROAD, THRISSUR, REPRESENTED BY ITS SECRETARY,
PIN-680001.

- 2 THE SECRETARY,
MUNICIPAL CORPORATION OF THISSUR, MO ROAD, THRISSUR,
PIN-680001.

- 3 MAYOR,
MUNICIPAL CORPORATION OF THRISSUR, M.O.ROAD,
THRISSUR, PIN-680001.

WPC 23175/2021

2

BY ADV S.ANANTHAKRISHNAN

OTHER PRESENT:

SRI.SANTHOSH .P.PODUVAL, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02.06.2022, THE COURT ON 8.6.2022 DELIVERED THE FOLLOWING:

“CR”

P.V.KUNHIKRISHNAN, J

W.P.(C.) No. 23175 of 2021

Dated this the 8th day of June, 2022

JUDGMENT

The petitioners are the elected members of the Thrissur Corporation Council. The above writ petition is filed challenging Exts.P2 and P4. Ext.P2 is a proceeding issued by the 3rd respondent rejecting the request of the petitioners and 22 other members of the Council for convening a meeting in accordance with Kerala Municipality (Procedure for Meeting of Council) Rules, 1995 (Hereinafter referred to as Rules 1995). Ext.P4 is the proceedings of the 2nd respondent by which the 2nd respondent also rejected the prayer of the petitioners and 22 others for making the arrangement to convene the meeting as per Rule 7(2) of the Rules, 1995.

2. The short facts are like this:- According to the petitioners, the master plan that had been purportedly evolved for Thrissur Corporation had given rise to widespread criticism alleging lack of transparency in its creation and for its contents. It is stated by the petitioners that the demand to discuss the master plan and issues concerning the same had been raised by them within the Corporation Council and before the general public. It is the case of the petitioners that though it was proposed to be discussed at one point of time, the 3rd respondent consistently scuttled the attempts to deliberate the said matter in the Council. Hence, Ext.P1 notice was issued under Rule 7(1) of the Rules, 1995 before the 3rd respondent by the petitioners and 22 other members. But as per Ext.P2 reply, the 3rd respondent rejected the request based on a legal opinion. It is stated in Ext.P2 that two writ petitions are pending before this Court as W.P.(C.) No. 20287/2021 and W.P.(C.) No. 12935/2021. According to the 3rd respondent, if a meeting is

convened to discuss about the cancellation of the master plan, that will affect the cases pending before this Court. Since Ext.P2 was issued by the 3rd respondent, it is stated in the writ petition that the petitioners and other members of the Council decided to convene the meeting in accordance with Rule 7(2) of the Rules, 1995. For making arrangements for convening the meeting in accordance with Rule 7(2) of the Rules, 1995, the 1st petitioner submitted Ext.P3 to the 2nd respondent. But the 2nd respondent rejected the same as evident by Ext.P4 based on Ext.P2 decision of the 3rd respondent. Aggrieved by the same, this writ petition is filed.

3. Heard Advocate V.M.Syamkumar, who appeared for the petitioners, and Advocate Ananthakrishnan, the learned Standing Counsel who is appeared for the respondents.

4. The learned counsel for the petitioners submitted that if 1/3rd members of the Council request the 3rd respondent to convene a meeting of the Council, the 3rd respondent has no

other option but to convene the meeting, if the conditions in the proviso to Rule 7 are complied. The counsel submitted that, there is no case to the respondents that the conditions provided in the proviso to Rule 7(1) are not complied. In such circumstances, Ext.P2 order is unsustainable. The counsel further submitted that when the petitioners requested the 2nd respondent to make arrangements for convening the meeting in accordance with Rule 7(2) of the Rules, 1995, the 2nd respondent simply endorsed the order of the 3rd respondent and rejected the same as per Ext.P4. According to the petitioners, this is in total violation of Rule 7(2). Therefore, the counsel for the petitioners contended that Exts.P2 and P4 are unsustainable, and it is in total violation of Rule 7 of the Rules, 1995. The Standing Counsel appearing for the respondents submitted that a detailed counter affidavit is filed by respondent Nos. 1 and 2. The Standing Counsel submitted that the master plan of Thrissur Corporation was sanctioned by the Government

in accordance with Section 36(8) of the Kerala Town and Country Planning Act, 2016 (In short Act, 2016). It was further stated that the notice regarding the sanctioned master plan was published by the Government in the extra ordinary Gazette No.1995/1995 dated 26.2.2021, which is produced along with the counter affidavit as Ext.R1(a). Moreover, the draft master plan was published in Kerala Gazette No.22 on 6.11.2012 and the objections and suggestions were invited. Subsequently, the master plan was approved by the District Planning Committee in its meeting dated 19.6.2014 and thereafter, the Municipal Council as per its resolution dated 26.11.2019 adopted and approved the same and forwarded it to the Government. It is stated in the counter affidavit that the master plan was sanctioned by the Government. It is also stated that the Municipal Council does not have the administrative power to cancel a master plan sanctioned by the Government. The Council has to publish the master plan as per Section 36 (10) of

the Act, 2016 and thereafter, prepare an execution plan for the first five years. It is submitted that the Chairman has the power to disallow any resolution if it does not comply with the conditions laid down in Sub Rule 4 of Rule 18 of Rules, 1995. It is stated that the resolution sought to be moved as stated in Ext.P1 is specifically barred under Sub-Rule 4(a) and (f) of Rule 1995. It is also submitted that though the word used in Rule 7 is "shall", the same will be operative only if the agenda of the meeting requested to be held invoking Rule 7 is in conformity with the procedure laid down under Rule 18 of the Rules, 1995. It is also contended that the members will be able to invoke sub-rule 2 of Rule 7 only if the Chairman does not respond to their notice under Rule 7. It is the case of the respondents that the Chairman has communicated that the meeting cannot be held in view of the bar under Rule 18 and hence, Rule 7(2) has no application. A reply affidavit is also filed by the petitioner denying the averments in the counter affidavit.

5. The short point to be decided in this writ petition is whether the Chairman is bound to convene the meeting if a request is submitted as per Rule 7 of the Rules, 1995 and whether the Chairman can reject such request based on Sub-clause Clause 4 (a) and (f) of Rule 18.

6. The Government of Kerala framed the Rules, 1995 in exercise of the powers conferred under Secs.19 and 36 of the Kerala Municipality Act, 1994 r/w Section 565 thereof. Rule 3 of the Rules 1995 deals with the place and time of meeting of Municipalities. Rule 4 of the Rules 1995 deals with notice and agenda of the meeting. Rule 5 deals about emergency meeting. Rule 6 deals with preparation of agenda. Rule 7 deals with the requisition for convening of meeting. Rule 18 deals with the procedure for moving resolution in the Council meeting. For refusing to convene a meeting under Rule 7, whether the Chairman can invoke his powers under Rule 18(4)(a) and (f) is the question to be decided in this writ petition. For deciding the

same, it will be better to extract Rule 7 of the Rules 1995 first.

"7. Requisition for convening of meeting.-(1) *The Chairman shall, if so requested in writing by not less than one third of the members in the Council, existing at that time convene the meeting of the Council:*

Provided that the notice requesting the convention shall contain a date other than a public holiday for convening the meeting and the subject or subjects to be considered in the meeting and such notice shall be given to the Chairperson or in his absence to the Secretary or in the absence of both, to the officer having charge of the office at that time, ten days prior to the date proposed in the notice for convening the meeting, at the Municipal office on working hours:

Provided further that the Chairperson may, if so thinks fit, accept a notice with less than ten days.

(2) The members who have issued notice under sub-rule (1) may, if the Chairperson does not convene the meeting within three days from the receipt of the notice under sub-rule (1) on the day specified therein, convene the meeting by giving notice to other members as provided in rule 4. No subject other than the subjects mentioned in the notice shall be discussed in such meeting."

7. The rule states that the Chairman shall, if so requested in writing by not less than one third of the members in the Council, existing at that time convene the meeting of the Council. So there is no ambiguity in the rule for any other

interpretation except the inference that if a request in writing by not less than one third of the members of the Council is submitted for convening a meeting, the Chairman shall convene the meeting. But as per proviso to the Rule 7(1), the notice requesting the convention shall contain a date other than a public holiday for convening the meeting and the subject or subjects to be considered in the meeting and such notice shall be given to the Chairperson or in his absence to the Secretary or in the absence of both, to the officer having charge of the office at that time, ten days prior to the date proposed in the notice for convening the meeting, at the Municipal office on working hours. Therefore, one of the conditions that have to be fulfilled for requesting to convene the meeting as per Rule 7(1) is that the request should come from one third of the members in the Council, existing at that time. Moreover the notice requesting the convention shall fulfill the requirements laid down in the proviso to Rule 7(1). If the conditions in the proviso

to Rule 7(1) of the Rules, 1995 are complied and if there is a request from one third of the members of the Council existing at that time to convene the meeting of the Council, the Chairman has no other way except to convene the meeting. The second proviso to Rule 7(1) also says that the Chairperson may, if so thinks fit, accept a notice with less than ten days.

8. The contentions raised by the respondents is that Rule 7 of the Rules 1995 is to be read along with Rule 18 of the same Rules. The respondents relied on Rule 18(4)(a) and (f). It will be better to extract Rule 18 of the Rules, 1995 for a proper decision of the case.

"18. Procedure for moving resolutions in the Council Meeting-(1) A Councillor who intends to move a resolution shall give seven clear days a notice of such intention in writing to the Chairperson along with a copy of that resolution:

Provided that the Chairperson may include a resolution in the agenda by a shorter notice than seven days.

(2) No Councillor shall move more than one resolution in a meeting.

(3) The Chairperson shall examine all the resolutions and shall have power to disallow any resolution which in his opinion does

not comply with the conditions laid down in sub-rule (4).

(4) a resolution in order to be admissible shall comply with the following conditions, namely:

(a) It shall relate to matters coming within the administrative power of the Municipality,

(b) It shall be clearly and precisely worded;

(c) It shall relate to a single matter,

(d) It shall not contain argument, hypothetical inferences, ironical expressions or defamatory statements;

(e) It shall not refer to the conduct or character of person except that in his official or public position;

(f) It shall not refer or relate to a matter which is under adjudication by a court of law.

(5) The Chairperson may decide to allow and to give priority to resolutions and may disallow any resolution part or in full which in his opinion contravenes the provisions of the Act or the rules made thereunder and his decision thereon shall be final.

(6) The resolution allowed by the Chairperson shall be included in the agenda.

(7) The President shall, when any resolution is disallowed and not included in the agenda on any ground under sub-rule (4), intimate the fact to the councillor concerned intimating the reasons for disallowing the resolution.

(8) A Councillor in whose name a resolution is included in the agenda may, when called either move or withdraw of the resolution by making a statement.

(9) If a member allowed to move a resolution is absent, any other Councillor authorised by him may, with the permission of the Chairperson, move the resolution and if not so moved, it shall be deemed to have been withdrawn.

(10) Every resolution moved by a Councillor shall be seconded by another Councillor.

(11) The discussion on a resolution shall be confined to the contents of the resolution.

(12) Any Councillor may move amendments to resolutions during discussion subject to sub-rules (4), (5) and (10).

(13) The Councillor who has moved a resolution or amendment to a resolution shall not withdraw the same except by leave of the Council.

(14) A resolution included in the agenda shall, if not discussed in that meeting, be deemed to have lapsed.

(15) The Chairman shall put amendments to vote ordinarily in the order in which they have been moved and if the amendments are lost, but the original motion to vote.

(16) A resolution which has been discussed and rejected by the Council shall not be moved again before the lapse of six months from the date of rejection.

(17) The time allotted for a resolution shall not exceed half an hour at any Council meeting."

(underline supplied)

9. The heading of the Rule 18 reads as this:

"Procedure for moving resolution in the Council

meeting". The heading of Rule 7 reads as: "**Requisition for convening a meeting**". Therefore, the headings of the rules itself shows that these two Rules are applicable in two different situation. Requisition for convening a meeting and procedure for moving a resolution in the Council meeting is different. The question of procedure for moving resolution in the Council meeting is applicable only if there is a meeting is convened. Once a meeting is convened, the procedure for moving a resolution in the Council meeting can be followed by the respondents. But a request for convening a meeting cannot be rejected for the reasons mentioned in Rule 18. A request for convening the meeting as per Rule 7 can be rejected only if the conditions mentioned in the proviso to Rule 7(1) are not complied with or if the request is not made by one third of the members in the Council existing at that time. Rule 18(4)(a) states that a resolution in order to be admissible shall relate to matters coming within the administrative power of the

Municipality. Rule 18(4)(f) states that the resolution in order to be admissible shall not refer or relate to a matter which is under adjudication by a court of law. As I observed earlier, the procedure for moving a resolution in the Council meeting and the requisition for convening the meeting are different. Once a request is made by the one third of the members in the Council strictly in accordance to Rule 7(1) read with its proviso, the Chairman has no other option but to convene the meeting. The procedure for moving the resolution in the Council meeting is applicable only after convening the meeting.

10. In this case, Ext.P2 order was passed by the 3rd respondent rejecting the request for convening the meeting mainly based on the pendency of some cases before this Court. That is not a ground to reject a request for convening a meeting as per Rule 7(1). The 3rd respondent need not rely on Rule 18 while considering a request under Rule 7(1). The Chairperson only needs to look into whether the conditions in Rule 7(1) and

its proviso are complied, and if the same is complied with, the Chairperson has no other option but to convene the meeting. The procedure for moving a resolution in the Council meeting is separately narrated in Rule 18. Moreover, Rule 18 starts with the words, "*a Councillor who intends to move a resolution*" and Rule 7 says about the requisition for convening of a meeting of the Council. Therefore, Rule 7 and Rule 18 are independent Rules and for deciding to convene a meeting by the Chairman under Rule 7(1), the resolution that is going to be introduced in the council meeting need not be considered at that stage. Therefore, Ext.P2 order will not stand, *prima facie*, in the light of Rule 7(1) and its proviso.

11. The next challenge in the writ petition is Ext.P4 order of the 2nd respondent. As per Rule 7 (2), the members who have issued notice under sub-rule (1), may, if the Chairperson does not convene the meeting within three days from the receipt of the notice under sub-rule (1) of that Rule on the day specified

therein, convene the meeting by giving notice to other members as provided in Rule 4. Rule 4 deals about notice and agenda of the meeting. In this case, the Chairman refused to convene a meeting and issued Ext.P2 relying Rule 18(4) (a) and (f) of the Rules 1995. This Court already found that Ext.P2 is unsustainable. The petitioners requested the 2nd respondent to make arrangements for convening the meeting as evident by Ext.P3. The same was rejected by the 2nd respondent based on Ext.P2 order of the 3rd respondent. *Prima Facie*, such a stand of the 2nd respondent cannot be accepted. The convening of meeting by the members as per Rule 7(2) is their right, if the request for convening a meeting under Rule 7(1) is rejected by the Chairman. When the Rules 1995 allow the members to convene a meeting under Rule 7(2) as provided in Rule (4), if the request under Rule 7(1) is rejected by the Chairman, it is the bounden duty of the 2nd respondent to make necessary arrangements to convene the meeting. In the counter affidavit,

the 2nd respondent took a stand that the members will be able to invoke sub-rule (2) of Rule 7 only if the Chairman does not respond to their notice under Rule 7(1). This Court cannot endorse such a stand of the 2nd respondent. The Rule is crystal clear and there is no ambiguity. The Rule says that the members who have issued a notice under sub Rule (1) may, if the Chairman does not convene the meeting within three days from the receipt of the notice under sub Rule (1), they can convene a meeting by giving notice to other members as provided in Rule 4. The word used in Rule 7(2) is **“the Chairperson does not convene the meeting”** and not **“the Chairperson does not respond to a notice under Rule 7(1)”**. As per Ext.P2, the Chairperson informed that he is not in a position to convene a meeting for the reasons mentioned in it. Simply by sending a reply or response to a notice under Rule 7(1), which is against Rule 7(1), the right of the members to convene a meeting under Rule 7(2) cannot be taken away. If the

Chairman does not convene a meeting even after fulfilling the conditions in Rule 7(1) and its proviso, the members have a right to convene the meeting. Therefore, Ext.P4 order of the 2nd respondent also will not stand.

12. Therefore, Exts.P2 and P4 are unsustainable for the reasons mentioned above. But the prayers in Ext.P1 which leads to Ext.P2 are now infructuous because the request in Ext.P1 was to convene a meeting on 27.10.2021. Therefore, the petitioners and the other members are free to file a fresh requisition for convening a meeting, if they intend to do so, strictly in accordance with Rule 7(1) of the Rules, 1995. If such a request is made, the 3rd respondent is bound to consider the same in the light of the observations made in this judgment.

Therefore, this writ petition is allowed in the following manner:

- i. Exts.P2 and P4 are quashed.
- ii. The petitioners and the other members of the

Council are free to submit a request for convening the meeting on a specific date strictly in accordance with Rule 7 read with its proviso and if such a request is received, the 3rd respondent will consider the same strictly in accordance to Rule 7(1) and its proviso.

- iii. If the request for convening the meeting is rejected or if the 3rd respondent does not convene the meeting, even though the conditions in Rule 7 and its proviso are fulfilled, the 2nd respondent will do the needful to facilitate the petitioner and other members to convene a meeting strictly in accordance to Rule 7(2) of the Rules 1995.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

APPENDIX OF WP (C) 23175/2021

PETITIONERS EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTICE DTD.08.10.2021
PREFERRED BY THE PETITIONERS AND OTHER 22
MEMBERS OF THE COUNCIL.
- Exhibit P2 TRUE COPY OF THE REPLY DTD.09.10.2021
ISSUED TO THE 1ST PETITIONER BY THE 3RD
RESPONDENT ALONG WITH ITS ANNEXURE.
- Exhibit P3 TRUE COPY OF THE REPRESENTATION
DTD.20.10.2021 PREFERRED BY THE 1ST
PETITIONER BEFORE THE 2ND RESPONDENT.
- Exhibit P4 TRUE COPY OF THE LETTER DTD.21.10.2021
ISSUED BY THE 2ND RESPONDENT TO THE 1ST
PETITIONER.

RESPONDENTS EXHIBITS

- Exhibit R1(a) TRUE COPY OF THE RELEVANT PAGE OF NOTICE
CONCERNING THE SANCTIONING OF THE MASTER
PLAN PUBLISHED IN GAZETTE DATED
26/02/2021.

/True copy/

P.A.to Judge