



THE MADRAS LEGISLATIVE COUNCIL

THE MADRAS DISTRICT
MUNICIPALITIES (AMENDMENT) BILL,
1967 (L.A. BILL No. 2 OF 1967)

(REPORT AND PROCEEDINGS OF THE SELECT
COMMITTEE)

JUNE 1967

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GOVERNMENT OF MADRAS
1967

*Legislative Council Department
Madras-9*

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COMPOSITION OF SELECT COMMITTEE.

- Chairman.*
1. Hon. Thiru S. MADHAVAN, *Minister for Law and Co-operation.*
- Members.*
2. Hon. Thiru M. MUTHUSWAMY, *Minister for Local Administration.*
3. Thiru M. AIYASWAMI.
4. Thiru M. ETHIRAJALU.
5. Thiru M. JENGAL REDDIAR.
6. Thirumathi S. MANJUBASHINI.
7. Thiru M. RAJAH IYER.
8. Thiru S. RAJAMARTEHANDAN.
9. Thiru K. RAJARAM.
10. Thiru K. RAMADASS.
11. Thiru R. RAMAN NAIR.
12. Thiru S. S. RAMASWAMI PADAYATCHI.
13. Thirumathi SARASWATHI PANDURANGAM.
14. Thiru N. R. THIAGARAJAN.
15. Thiru R. VENKATARAMAN.

Secretariat.

Thiru G. M. ALAGARSWAMY—*Secretary.*

REPORT OF THE SELECT COMMITTEE ON THE MADRAS
DISTRICT MUNICIPALITIES (AMENDMENT) BILL,
1967 (L.A. BILL No. 2 OF 1967), AS PASSED BY THE
ASSEMBLY.

To

THE HON. THE LEGISLATIVE COUNCIL,
MADRAS.

The Select Committee appointed to consider the Madras District Municipalities (Amendment) Bill, 1967 (L.A. Bill No. 2 of 1967), as passed by the Legislative Assembly, has the honour to make the following report.

2. The Bill was passed by the Legislative Assembly on the 28th March 1967. It was laid on the Table of the Council on the 29th March 1967 and was taken up for consideration on the same day.

3. The Committee was appointed by a resolution of the Council, dated the 29th March 1967.

4. The Committee held three sittings. At its first meeting held on the 31st March 1967, the Committee decided to invite Dr. P. V. Rajamannar to attend its future meetings.

5. The Committee subjected the clauses of the Bill to a detailed scrutiny. It considered an amendment suggested by Thiru R. Venkataraman, enabling the Government to reconstitute the municipal council by appointing the members of the superseded council. Some Members of the Committee were of the opinion that as the municipal council had been superseded and was, therefore, non-existent, in the eye of law, the council could not automatically be revived by means of legislation. They, however, felt that in accordance with some precedents, the council could be reconstituted by nomination. Other Members of the Committee felt that the superseded council could be revived by means of legislation. The Committee, therefore, decided to return the Bill to the House without any amendment but to recommend to the Government to move an amendment, as annexed to the Report, in the Legislative Council.

FORT ST. GEORGE, MADRAS-9,
17th June 1967.

S. MADHAVAN,
Chairman.

ANNEXURE.

(Vide paragraph 5 of the Report.)

For clause 2 the following shall be substituted :—

2. *Amendment of section 41, Madras Act V of 1920.*—In section 41 of the Madras District Municipalities Act, 1920 (Madras Act V of 1920), after sub-section (5), the following sub-section shall be inserted, namely :—

“(5-A) (a) Notwithstanding anything contained in this section or section 368, if the State Government are satisfied that there has been a change in the circumstances under which the notification superseding the council under sub-section (1) or sub-section (4) was published, whether before or after the publication of the Madras District Municipalities (Amendment) Act, 1967, in the *Fort St. George Gazette*, they may, by notification, reconstitute the municipal council by appointing—

(i) as members of the reconstituted municipal council, all persons who, on the date on which supersession took effect, were members of the council; and

(ii) as chairman and vice-chairman of the reconstituted municipal council, the persons who, on the date referred to in sub-clause (i), were holding office as chairman and vice-chairman respectively of the council.

(b) The members of the council including its chairman and vice-chairman appointed as aforesaid shall hold their offices only so long as they would have been entitled to hold such offices if the council had not been superseded.”

PROCEEDINGS OF MEETINGS OF THE SELECT
COMMITTEE.

(As approved by the Chairman.)

Friday, the 31st March 1967.

The Select Committee on the Madras District Municipalities (Amendment) Bill, 1967 (L.A. Bill No. 2 of 1967) met in the Members' Lounge Room (Assembly Wing), Fort St. George, Madras-9, at 11 a.m. on the 31st March 1967. The following Members were present :—

1. The Hon. Thiru S. MADHAVAN, *Minister for Law and Co-operation (Chairman).*
2. The Hon. Thiru M. MUTHUSWAMY, *Minister for Local Administration.*
3. Thiru M. AIYASWAMI.
4. Thiru M. JENGAL REDDIAR.
5. Thirumathi S. MANJUBASHINI.
6. Thiru S. RAJAMARTHANDAN.
7. Thiru K. RAJARAM.
8. Thiru K. RAMADASS.
9. Thiru R. RAMAN NAIR.
10. Thirumathi SARASWATHI PANDURANGAM.
11. Thiru N. R. THIAGARAJAN.
12. Thiru R. VENKATARAMAN.

Secretariat.

Thiru G. M. ALAGARSWAMY—*Secretary.*

The Secretary to Government, Law Department and the Secretary to Government, Rural Development and Local Administration Department, were also present.

On being requested by the Chairman, Thiru R. Venkataraman suggested that he would like the Bill to be amended providing for the following procedure to be adopted by the Government in reviving a superseded Municipal Council :—

Either *suo motu* or on the representation of somebody, the Government might have the supersession examined by a person or a body who would look into the circumstances and facts and then decide whether the order of supersession should be rescinded and the Municipal Council restored or revived. In exercising this function this body would function more or less as a quasi-judicial body like the Regional Transport Authorities and other such bodies. A judicial body might not be necessary as judges could not go into the merits of municipal administration,

Thiru Venkataraman said that he would like such a body to advise the Government before supersession was ordered but he was not sure whether the Government would accept his suggestion. It would be good if they had such a body to go into the question of both supersession and revival by notification. The quasi-judicial body might be constituted even with a single senior official like a senior Member of the Board of Revenue.

The Chairman wanted to know whether it was the desire of the Member that the procedure contemplated under sub-section (1) (a) should be made applicable in the case of revival of municipal councils. Thiru R. Venkataraman said that all that he was anxious about was that a procedure should be followed in reviving a municipal council as it was his view that it could not be done by a mere executive order as was contemplated under the Bill under consideration. The question of rescinding the order of supersession could be referred to an authority *suo motu* by the Government or on representation received from anybody. That would enable that body or authority to take into account the changed circumstances and come to a decision. If the Government would be prepared to accept his suggestion, they could move an amendment to the Bill as a Government amendment.

Asked by the Chairman whether under the provisions of the District Municipalities Act or other Statutes, the Government could not take power to rescind an order and reconstitute a superseded body, Thiru R. Venkataraman said to his knowledge there were no provisions nor could there be any legal provision for reviving a dead thing or a non-existent body. The analogy of revival of Companies in the process of liquidation could not be made applicable to the case under discussion because the companies could be revived only during the pendency of the liquidation proceedings and not after the final liquidation order was passed. In the case of the Municipalities, he said, once an order of supersession or dissolution was passed, the office-bearers and members ceased to exist and the council could be revived only on holding fresh elections under section 368 of the Act. He also pointed out that the provisions in the West Bengal Act amounted to constitution of the Council by nomination, in which process some new members and some old members could be nominated. He also informed the Secretary, Local Administration Department, that at the time the 1920 Act was passed, it could not have been the intention of the then Government that the superseded council should be revived except under section 368, namely, holding fresh elections.

Thiru Venkataraman added that if the Government accepted his suggestion for the appointment of a quasi-judicial body to go into the question of supersession and re-constitution of municipal

councils, it would absolve them of any charge of political motives. They could say that they had only acted on the recommendation of an independent quasi-judicial body. Even if the case went up to the High Court, the court could go only into questions of law and not of facts. Of course, it was always open to the Court to go into patent errors.

He suggested Dr. P. V. Rajamannar, a Member of the Council, could be consulted in the matter and he might also be invited by the Committee to attend its meeting and offer his advice.

Thiru Venkataraman, replying to the Chairman, said that they would be in order in suggesting an amendment to sub-sections (1) and (5) of section 41 of the Act, if they were not outside the scope of the Bill.

Thiru Venkataraman said that the power sought to be taken by the Government under the Bill was too drastic as was described by Dr. Lakshmanaswami Mudaliar in the Council. He also said that the power of revival was not inherent in the power of supersession. By an order of revival the Government sought to create something that was not existent. He referred also to the speech made by him in the Council and said that suspension was different from supersession or dissolution. If it was the intention of the framers of the Act that only a temporary vacuum should be created in the administration of the councils, they could have used the expression 'suspension' instead of 'supersession' or 'dissolution' and also not provided a separate section that the revival could be only by holding fresh elections.

Thiru Venkataraman, continuing, said that the Law Secretary could consult Dr. Rajamannar on the following points, namely:—

(1) Whether in law it would be proper to revive a municipal council which had been superseded and thus become extinct, and

(2) Whether even if it was so, it could be done by a mere executive order or whether some procedure should be prescribed for such revival.

He was sure if no such procedure is prescribed for revival, somebody would take up the matter before the court.

The Committee decided to invite Dr. Rajamannar to attend the future meetings of the Committee.

The Committee then adjourned to meet again at 11 a.m. on Saturday, the 1st April 1967.

Saturday, the 1st April 1967.

The Select Committee on the Madras District Municipalities (Amendment) Bill, 1967 (L.A. Bill No. 2 of 1967) met in the Members' Lounge Room (Assembly Wing), Fort St. George, Madras-9, at 11 a.m. on the 1st April 1967. The following members were present :—

1. The Hon. Thiru S. MADHAVAN (*Chairman*).
2. The Hon. Thiru M. MUTHUSWAMY.
3. Thiru M. AIYASWAMI.
4. Thiru M. ETHIRAJALU.
5. Thirumathi S. MANJUBASHINI.
6. Thiru S. RAJAMARTHANDAN.
7. Thiru K. RAJARAM.
8. Thiru K. RAMADASS.
9. Thiru R. RAMAN NAIR.
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12. Thiru N. R. THIAGARAJAN.
13. Thiru R. VENKATARAMAN.

Secretariat.

Thiru G. M. ALAGARSWAMY—*Secretary.*

The Secretary to Government, Law Department, and the Secretary to Government, Rural Development and Local Administration Department, were also present.

At the outset, the Chairman informed the Committee that Dr. P. V. Rajamannar had expressed his inability to be present at to-day's meeting.

Thiru R. Venkataraman said that his idea was to get Dr. Rajamannar's view whether a defunct body could be revived. His own view was that a defunct body could not be revived.

The Secretary, Law Department, said that the term 'deemed to have vacated' was only a legal fiction and that on that account it did not amount to any fraud on the powers or colourful exercise of power. There was no question of violation of fundamental rights either. After all, the Government were going to undo a thing which had been found to be wrong by the High Court.

The Secretary, Rural Development and Local Administration Department, said that the order of supersession was only an administrative order and that the members of the Council superseded were elected members. In view of this, he wanted to know whether it would not be enough or legal to restore them by means of another executive order nullifying or cancelling the original order of supersession.

Thiru R. Venkataraman suggested that the best course would be to adopt the provision in the West Bengal Act, which empowered the Government to nominate the members of the defunct body to the revived body. Such nominated members could function till the term of the original Council was over. This would solve the legal problem.

The Chairman observed that if the present provision gave retrospective power, then no problem would arise on account of the words "shall be deemed to have vacated", as then the interpretation would be only 'suspension'.

Thiru R. Venkataraman said that it would be violence of language and reiterated his earlier view that the West Bengal provision was the best in the circumstances. His suggestion would mean 'reconstitution by nomination and a new body would come into existence with the old members'.

The Committee accepted the suggestion.

Thiru R. Venkataraman said that section 41 (5) should be first amended so as to provide for a new sub-clause empowering the Government to reconstitute the Municipal Council by appointment of the members of the defunct body for the unexpired portion of the Council's term, if the Government were satisfied that it was necessary to do so, by means of a notification, notwithstanding anything contained in section 368. This amendment would be in keeping with the provisions contained in the West Bengal Act. Then would follow the 'consequences' provided in the Bill in clause (2).

The Chairman agreed that the amendment may be submitted by Thiru R. Venkataraman to-day and informed the Committee that the Bill as amended could be considered at the next meeting of the Committee and the Report approved.

The Committee then adjourned.

Thursday, the 15th June 1967.

The Select Committee on the Madras District Municipalities (Amendment) Bill, 1967 (L.A. Bill No. 2 of 1967), as passed by the Assembly met in the Members' Lounge Room (Assembly Wing), Fort St. George, Madras-9, at 3 p.m. on the 15th June 1967. The following Members were present :—

1. The Hon. Thiru S. Madhavan (Chairman).
2. The Hon. Thiru M. Muthuswamy.
3. Thiru M. Aiyaswami.
4. Thiru M. Jengal Reddiar.
5. Thirumathi S. Manjubashini
6. Thiru M. Rajah Iyer.
7. Thiru S. Rajamarthandan.
8. Thiru K. Rajaram.
9. Thiru K. Ramadass.
10. Thiru R. Raman Nair.
11. Thirumathi Saraswathi Pandurangam.
12. Thiru R. Venkataraman.

Secretariat.

Thiru G. M. Alagarwamy—*Secretary.*

The Secretary to Government, Law Department and the Secretary to Government, Rural Development and Local Administration Department, were also present.

Thiru R. Venkataraman suggested the following amendment :—

For clause 2, the following shall be substituted :—

'2. *Amendment of section 41—Madras Act V of 1920.*—In section 41 of the Madras District Municipalities Act, 1920 (Madras Act V of 1920), after sub-section (5), the following sub-section shall be inserted, namely :—

(5-A) (a) Notwithstanding anything contained in this section or section 368, if the State Government are satisfied that there has been a change in the circumstances under which the notification superseding the council under sub-section (1) or sub-section (4) was published, whether before or after the publication of the Madras District Municipalities (Amendment) Act, 1967, in the *Fort St. George Gazette*, they may, by notification, reconstitute the municipal council by appointing—

(i) as members of the reconstituted municipal council, all persons who, on the date on which supersession took effect, were members of the council; and

(ii) as chairman and vice-chairman of the reconstituted municipal council, the persons who, on the date referred to in sub-clause (i), were holding office as chairman and vice-chairman, respectively, of the council.

(b) The members of the council including its chairman and vice-chairman appointed as aforesaid shall hold their office only so long as they would have been entitled to hold such offices if the council had not been superseded.' "

The chairman said that the amendment proposed by Thiru R. Venkataraman had already been circulated to Members. The Government felt difficulty about reconstituting the municipal council by appointment. Supersession, according to the Government, meant only suspension and it was only proposed to revive the council by legislation and not to re-appoint the suspended body.

Thiru R. Venkataraman said that though the words 'supersession' and 'dissolution' had the same legal effect even according to the old 1920 Local Boards Act, once a body was superseded under the existing Act, it ceased to exist and the Government could not create a precedent to revive a non-existent body by legislation. All that they could do was to re-appoint the members to the council as was contemplated in the West Bengal Act.

The Chairman said that if, in the view of the Government, the order of supersession was not correct, they should have power to revive the council. For this they would have to be armed with power by amending the law. The Legislature could confer such power by law on the Government.

Thiru K. Rajaram said that as the effect of revival and re-appointment was the same, there could not be any difficulty in the Government accepting the amendment proposed by Thiru R. Venkataraman.

Thiru M. Rajah Iyer felt that if the Government were empowered to reconstitute the council by re-appointment of members, the Government would have discretion in the matter of nomination of members to the council.

The Chairman pointed out that the amendment itself restricted the re-appointment to the members of the superseded council alone. Therefore, there was consensus among the Members of the Committee that 'revival' and 'reconstitution by appointment' had the same effect. The Government were advised that 'supersession' had the same effect as 'suspension' and therefore, 'revival' would be a better form of reconstitution than 'reconstitution by appointment'. He, therefore, felt that the amendment might not be insisted upon and the Bill be returned without any amendment.

Thiru R. Venkataraman said that 'supersession' could never mean 'suspension' and, at any rate, it was not so according to the law as it stood. As a matter of policy, he was for reconstitution of a municipal council only by holding of fresh elections. But because the Government wanted to revive a superseded council, he would agree to its reconstitution by appointment as there was a precedent in the West Bengal Act and in the old Madras Local Boards Act, 1920. He felt that even in future the Government should not revive by legislation an institution or body that was defunct and non-existent.

The Chairman said that the Government had considered all aspects of the matter and were not in a position to accept the amendment. Since it had been conceded that the Legislature could confer power on the Government to revive a superseded body but only contended that revival should not become a precedent, he observed that the difficulties in the legal interpretation of the words 'supersession', 'suspension' and 'dissolution' might be set right in the comprehensive Bill that the Government proposed to bring forward soon and that the Amending Bill, as passed by the Assembly, might be accepted by the Committee for the time being.

Thiru R. Venkataraman said that it might be perfectly correct in law to revive a defunct body but that it had never been done anywhere. That was why even in the West Bengal Act they had power to reappoint a superseded council and not to revive it. So also was the case in Madras in the Madras Local Boards Act, 1920.

The Chairman regretted the inability of the Government to accept the amendment and invited the views of the Members on the amendment.

A view was expressed that the Committee might recommend to the Government to move an amendment in the Council on the lines to the amendment suggested by Thiru R. Venkataraman.

The Secretary pointed out that the Committee could make a report only to the Council and either amend the Bill or return the Bill without amendments, and not make any suggestions or recommendations to the Government.

After further discussion on this, the Committee decided that the Bill be reported back to the Council without any amendment and that the operative paragraph of the report be as follows:—

"Some Members of the Committee were of the opinion that as the municipal council had been superseded and was, therefore, non-existent, in the eye of law, the council could not automatically be revived by means of legislation. They, however, felt that it

accordance with some precedents, the council could be reconstituted by nomination. Other Members of the Committee felt that the superseded council could be revived by means of legislation. The Committee, therefore, decided to return the Bill to the House without any amendment but to recommend to the Government to move an amendment, as annexed to the report, in the Legislative Council."

The Committee authorized the Chairman to sign the report on its behalf.

G. M. ALAGARSWAMY,
Secretary.