
(2010) 08 CHH CK 0039
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 455 of 2010

Aivez Kumar Dewangan

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Chhattisgarh Municipal Act, 1961 — Section 16, 16(1), 16(2), 3(18), 36
Constitution of India, 1950 — Article 243U

Citation : (2010) 4 MPHT 98

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Heard learned Counsel appearing for the parties.

2. Challenge in this petition is to the notification dated 151-2010 (Annexure P-1) whereby under the provisions of Section 16(1) of the Chhattisgarh Municipalities Act, 1961 (for short "the Act, 1961") a committee comprising of President, Vice President and six Members was constituted in respect of the Municipal Council, Birgaon (for short "the Respondent Council").

3. The indisputable facts, in brief, as projected by the Petitioner, are that the Respondent Council was constituted on 17-1-2003 and accordingly a committee was constituted and notified under the provisions of Section 16 of the Act, 1961. Thereafter, election of the office bearers of the Respondent Council took place on 19-12-2004. First meeting of the elected Council took place on 151-2005. The term of the elected Council came to an end on 17-1-2010. Thereafter, it was incumbent upon the authorities to hold election of the office bearers of the Council under the provisions of law. Instead of conducting the election, the State Government exercising its power u/s 16 (1) of the Act, 1961 constituted a committee comprising of President, Vice President and six Members by notification dated 151-2010 (Annexure P-1). On 11-9-2009, a notification was published to include six villages namely, Rawanbhata, Achholi, Beergaon, Urla,

Sarora & Urkura within a territorial limit of Respondent Council inviting objections from a person or local authority. Thereafter, vide notification dated 22-12-2009 (Annexure P-6) the said villages were included within the territorial limit of Respondent Council. The impugned notification dated 15-1-2010 was issued, which was contrary to the provisions of law. Thus, this petition.

4. Shri Sharma, learned Counsel appearing for the Petitioner, submits that under the constitutional scheme of Article 243U of the Constitution of India and Section 36 of the Act, 1961, the election of a municipality should be completed before the expiry of its duration, i.e., five years from the date of election. In the case on hand, without taking recourse to hold the election to elect the office bearers of the Respondent Council, the State authorities have taken recourse to constitute a committee under the provisions of Section 16 of the Act, 1961.

5. Shri Sharma further submits that the power u/s 16 (1) of the Act, 1961 can be exercised only for the first time when an area is declared to be a municipality, not thereafter. Admittedly, the Municipality was notified in the year 2003 and thereafter, by inclusion of certain other villages by subsequent notifications after inviting objections, do not create a new Municipal Council.

6. Shri Sharma next submits that for the purpose of constituting the committee consisting of a President, Vice President and such number of Members for the first time is to ensure election of the office bearers elected by the voters of the area within a period of six months, as is clear from the provisions of Sub-section (2) of Section 16 of the Act, 1961. Once, the Municipal Council was already in existence the exercise of power u/s 16 of the Act, 1961 was contrary to the scheme and the same was not permissible in law. The State Election Commission is under an obligation to hold the election as early as possible without permitting nomination of candidates to the committee, which is contrary to the scheme of Constitution of India.

7. On the other hand, Shri Roy, learned Panel Lawyer appearing for the State, submits that the first election of the Respondent Council was held on 15-1-2005 and the same came to an end on completion of five years, i.e., on 17-1-2010. The State in its return averred that since other areas in the vicinity of the Respondent Council were subsequently brought within the territorial limit of Respondent Council by notification dated 22-12-2009 (Annexure P-6), this may be presumed that provisions of Section 16 of the Act, 1961 would be applicable, as the new Municipal Council has more areas than the earlier one. The only option left was to notify the committee as provided under the provisions of Section 16 of the Act, 1961.

8. Shri Agrawal, learned Counsel appearing for the Respondent Nos. 5 to 12, adopts the return filed by the State/Respondent No. 1.

9. The Respondent No. 4, though served with a notice, has not chosen to enter appearance.

10. Section 16 of the Act, 1961 reads as under:

16. Exercise of powers of Council pending its constitution.- (1) When an area is declared to be a Municipality for the first time under this Act, the State Government shall, by notification, constitute a Committee consisting of a President, a Vice-President and such number of members as it may deem fit and such a Committee shall be deemed to be a Council for the purpose of this Act:

Provided that no person shall be appointed as President or Vice-President or member of such a Committee who is ineligible to hold such office in the Council under this Act.

(2) A Committee constituted under Sub-section (1) shall continue to function until a Council is constituted under this Act or until the expiration of six months from the date of its constitution which is earlier.

(3) The State Government may, by notification, at any time remove the President, Vice-President or a member of the Committee and appoint any other person eligible to be so appointed in his place. (4) Notwithstanding anything contained in Sub-section (1), the provision of Sections 41, 47 and 48 shall not apply to the Committee.

11. "Municipality" has been defined u/s 3 (18) of the Act, 1961. "Municipality" means a Municipal Council or a Nagar Panchayat constituted u/s 5 of the Act, 1961.

12. Section 5 of the Act, 1961 provides that there shall be constituted a Municipal Council for a smaller urban area and a Nagar Panchayat for a transitional area, that is to say, an area in transition from a rural area to an urban area. Section 5A of the Act, 1961 provides for power of Governor to include or exclude certain areas. In the case on hand, certain areas were included in the Respondent Council after following due process.

13. Section 8 of the Act, 1961 provides for effect of including a local area in a Municipality that when a local area has been included in a Municipality by a Notification u/s 5A, all notifications, rules, bye-laws, orders, directions notices and powers made, issued or conferred under this Act and in force throughout the Municipality at the time, shall, unless the State Government, by notification otherwise directs apply to such local areas.

14. Section 16 of the Act, 1961 provides that when an area is declared to be a Municipality for the first time under this Act, the State Government shall, by notification, constitute a committee consisting of a President, a Vice-President and such number of members as it may deem fit and such Committee shall be deemed to be a Council for the purposes of the Act.

15. Sub-section (2) of Section 16 provides that a Committee constituted under Sub-section (1) shall continue to function until a Council is constituted under this Act or until the expiration of six months from the date of its constitution which is

earlier.

16. In the case on hand, the Committee was constituted under the provisions of Section 16 (1) of the Act, 1961, which can function at the most until the expiration of six months. The period of the Committee has even otherwise come to an end on expiry of six months, i.e., by 14-7-2010.

17. Now, the question is as to whether inclusion of certain areas amounts to constitution of a Municipal Council. The present case, though, has become academic, as the Committee constituted under the provisions of Section 16 (1) of the Act, 1961 has already come to an end after expiry of six months. Further, on bare perusal of the provisions of the Act, 1961, it is nowhere stated that inclusion of a village or two villages would always constitute a fresh Council to invoke power u/s 16 of the Act, 1961.

18. Provisions of Section 8 of the Act, 1961 makes it clear that when certain areas are included in Municipality all notifications, rules, bye-laws, orders, directions, notices and powers made, issued or conferred under the Act shall apply to such local areas unless the State Government by notification otherwise directs. Thus, when the Municipality was already in existence there was no vacuum, which necessitates notification for constitution of a committee, as the same is applicable only when for the first time Municipality is created, as there is no notification, rules, bye-laws, orders, etc., available at the time of constitution of a Municipality.

19. In the present case, certain areas have been included, which do not constitute a new Municipality. Mandate of the Constitution in Part IX and Part IX-A is to have elected local bodies. By devising a new method of nominating and constituting fresh committee without election at all time, impinge on the constitutional mandate.

20. A Constitution Bench of the Supreme Court in *Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others*, , observed as under:

13. So, in any case, the duration of the Municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections to the Municipality are conducted before the expiry of its duration of five years as specified in clause (1) of Article 243U.

14. The Counsel for the Respondents contended that due to multifarious reasons, the State Election Commission may not be in a position to conduct the elections in time and under such circumstances the provisions of Article 243U could not be complied with *stricto sensu*.

21. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new Municipality every five years and in order to avoid the mischief of delaying the process of

election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State Governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for the Parliament and State Legislatures. In fact, in the domain of elections to the Panchayats and the Municipal Bodies under the Part IX and Part IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

21. For the reasons mentioned hereinabove and applying the well settled principles of law to the facts of the present case, the constitution of Committee is bad when the first election to constitute a Municipality was held and before expiry of five years, no election was held. It was substituted by the authorities by constituting the Committee, which is not sustainable in law.

22. In the result, the notification dated 151-2010 (Annexure P-1) is quashed. Accordingly, the writ petition is allowed. However, having regard to the fact that even the term of the committee has come to an end on expiry of six months, the State Election Commission is directed to take appropriate steps to hold fresh election of the Respondent Council, in accordance with law, at the earliest.

23. There shall be no order as to costs.