

(2001) 07 AP CK 0107

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14245 of 2001

C. Prakash Goud

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 01-07-2001

Acts Referred:

Constitution of India, 1950 — Article 243
Hyderabad Municipal Corporation Act, 1955 — Section 5(2), 585
Hyderabad Municipal Corporation Act, 1994 — Section 6
Municipal Corporation (Reservation of Seats) Rules, 1995 — Rule 10

Citation : (2001) 5 ALD 34 : (2001) 5 ALT 359

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. K.R. Prabhakar, for the Appellant; Additional Advocate General, Mr. Ghanta Rama Rao and Mr. V.V. Prabhakar Rao, for the Respondent

Judgement

1. The petitioner in the instant writ petition prays for issuance of an appropriate writ declaring the action of the authorities in not holding elections to the Municipal Corporation of Hyderabad as arbitrary, illegal and unconstitutional. The petitioner accordingly prays for issuance of a consequential direction directing the respondents to take immediate steps for the conduct of elections for the Municipal Corporation of Hyderabad.

2. A quarter century ago, in 1921, Gandhiji made a profound comment on a note sent by the then Government of Bombay regarding the Ahmedabad, Surat and Nadiad Municipalities. The note sent by the Government was not in tune with the rising spirit of the people and had the tendency of interfering with the affairs of the Municipalities. The comment is beautiful and is timeless. It may be first ever and the most understanding statement on decentralisation of power and the role of Municipalities. It is worth to be reproduced:

The Government of Bombay note regarding the Ahmedabad, Surat and Nadiad Municipalities shows that it refuses to see the writing on the wall. Its dictatorial

tone is now no longer in keeping with the rising spirit of the people. Its incitement to the individual ratepayers to sue the councillors who believe they have performed their duty is hardly dignified. The proper course for the Government was to let the Municipalities take their course and not to invite trouble. As it is, the Government note is calculated to precipitate a crisis. The councillors must take up the challenge and dare the Government to disregard the Municipalities if they choose. The Municipalities must have the right to misgovern themselves if they wish. If a city is misgoverned, it is as much the ratepayers' fault as is the Councillors'. But our wise Government whilst recognising the independent existence of the Municipalities wants to stick to the letter of the law which killeth and would itself rule instead of letting the Municipalities alone so long as they do not cost the Government anything. The Municipalities must now take up the challenge and prepare for action on their part. Government may succeed in getting a few ratepayers to file suits. That will be the least it can do. The most it can do is to disband the Municipalities concerned. And the most of the Government should prove most welcome, if only the Protestants are a strong body. Assuming that they are, they must simply educate the ratepayers to understand what is happening and to prepare them for battle. I can seek swaraj peeping even- through the Government note if the latter take and the former are ready for action. So long as there is no disbandment, the Municipalities have all power; as soon as there is disbandment, the Government is powerless assuming of course that the ratepayers are strong, intelligent and united. The ratepayers are all that but they require to be organized for action. Hitherto the people have the football of officials or so-called representatives. Non-co-operation enables the people to become the players in the game. Representatives must represent or they perish. (See the Selected works of Mahatma Gandhi, Twenty One volume by the Publications Division)

3. The elected term of the Hyderabad Municipal Corporation came to an end in the year 1991. Ever since, the Corporation is under the management of the Special Officer appointed by the State Government. The Special Officer exercises all the powers, performs the duties and discharges the functions of the Corporation, Commissioner and the Standing Committee. All rolled into one.

4. The legal and constitutional obligations of the State Government and the State Election Commission to hold the elections to the Corporation is not in dispute. Even according to the State Government and the State Election Commission, the elections to the Hyderabad Municipal Corporation are required to be held. The reasons if any as to why the elections could not be held for a period of more than a decade perhaps need not be gone into in this case. Learned senior Counsel for the petitioner Sri S. Ramchander Rao did not make any serious issue about the same. It is contended that interest of justice would be met if an order is passed directing all the concerned authorities to hold the elections to the Hyderabad Municipal Corporation forthwith.

5. In the counter-affidavit filed by the State Government, it is submitted that the

Government in exercise of the power conferred by Section 585 read with subsection (2) of Section 5 of the Hyderabad Municipal Corporation Act, 1955 and Section 6 of the Andhra Pradesh Municipal Corporations Act, 1994, the Government of Andhra Pradesh made the Municipal Corporation (Reservation of Seats) Rules, 1995 relating to reservation of seats in the Municipal Corporation in favour of Scheduled Castes, Scheduled Tribes and Backward Classes. Rule 10 of the said Rules makes the provision for providing seats in favour of Backward Classes by drawal of lots.

6. It is submitted that a similar provision providing reservation of seats in favour of Backward classes by drawal of lots for Gram Panchayats and Offices of Sarpanchas came up for consideration before a Division Bench of this Court in *Prakasam District Sarpanchas Association and another Vs. Govt. of A.P. and others*, . The Court held that by making reservation in favour of Backward Classes through drawal of lots, the objects of reservation would be defeated and that providing reservation by drawal of lots is not acceptable to the rule of law. This Court accordingly in the said case directed the State Government to identify the Backward Class voters from the existing voters list and on such identification of Backward Class voters from the existing voters list, reservation of seat/offices in favour of Backward Classes to be made in descending order on rotation basis as far as possible.

7. It is the case of the State Government that it is under obligation to amend Rule 10 of Municipal Corporation (Reservation of Seats) Rules, 1995 so as to be inconformity with the Judgment of this Court in *Prakasam District Sarpanchas Association (supra)*. The Government accordingly made amendment to the Rules vide G.O. Ms. No.334 [MA and UD (Elecs.II)] Department dated 21-7-2001 providing reservation of seats to Backward Classes on rotation basis with reference to the largest percentage of voters of the said category to the total number of voters of the ward in the Municipal Corporation concerned in the descending order. The amendment is accordingly notified vide G.O. Ms. No.334 dated 21-7-2001.

8. It is further explained that as in the case of Gram Panchayat elections, the identification of Backward Class voters is to be carried out by taking Multi-purpose House Hold Survey Data for the purpose of Municipal Corporation elections also.

9. It is required to notice that pursuant to the directions of this Court, the Government furnished the schedule indicating the minimum time required to complete the process to enable the State Election Commission to hold the elections to the Corporation in the form of statement which is to the following effect:

MINIMUM TIME REQUIRED

1.

MPHS data has to be divided into(Assembly Constituency-wise) Polling Station-wise basing on the House Nos.

15 days (from) 23-7-2001 to 6-3-2001)

2.

Identification of B.C. voters from the : MPHS data and marking the same in the Assembly Electoral Roll of Polling Station-wise. (2846 Polling Stations in (12) Assembly Constituencies having Voters strength 27, 14,627).

30 days (from 7-8-2001 to 5-9-2001)

3.

Making sufficient copies of the Electoral Roll marked with B.Cs for publication of the same in the following offices:-

MCH Commissioner's Office -1

District Collector's Office-1

MCH Zonal Add. Commissioners' Offees-4

MCH Deputy Commissioners Offices-6

R.D.O offices ?2

M.R.O offices -13

Sanitary Ward offices-52

10 days (from 6-9-2001 to 15-9-2001)

4.

Publication of such lists of B.C. voters on the notice boards of ward offices and important Government offices.

1day (16-9-2001)

5. Time for filing objections 15 days (from 17-9-2001 to 1-10-2001)

6.

Enquiry and finalization of the objections and updating of draft Electoral Rolls marked with B.Cs.

(i)

Sorting out the claims and objections Polling station-wise, and appointment of Verification Officers and training to the above officers

10 days (from 2-10-2001 to 11-10-2001)

(ii)

Field verification of claims and Objections by the Verification Officer (if objections are filed, notices have to be given to the clamant and objector)

21 days (from 12-10-2001 to 11-11-2001)

(iii)

Marking of B.C. voters in the Electoral Rolls after verification

10 days (from 2-11-2001 to 11-11-2001)

7.

Validating the same in the Ward Sabhas to be called for this purpose (The Sabhas will be conducted in the (52) Sanitary Ward offices basing on the jurisdiction. (6) DMCs and one Zonal Additional Commissioner has to conduct Ward Sabhas simultaneously in (52) Sanitary Wards, depending on the jurisdiction of Wards.

8 days (from 12-11-2001 to 19-11-2001)

8.

Preparation and Publication of final Electoral Rolls (Wards-wise for 100 wards) with B.C. voters.

(i)

Verification of Ward boundaries with reference to polling Station-wise and bifurcating the Assembly Electoral Rolls into Ward-wise Electoral Rolls, (Electoral Rolls of 2846 Polling Stations have to be arranged into ICO wards basing on the ward boundaries)

15 days (from 20-11-2001 to 4-12-2001)

(ii)

Bifurcation of Ward-wise Electoral Rolls into (Municipal Elections) Polling Station-wise Electoral Rolls restricting the voters strength 750 to 1000 as far as possible.

15 days (from 5-12-2001 to 19-12-2001)

(iii)

Physical verification of approximately (3600) Polling Stations on field and making relocation of Polling Stations : wherever required. (In MCH 70% of the Polling Stations are located in Private Institutions. Therefore it is highly essential to verify physically each and every Polling Station before Publication),

10 days (from 20-12-2001 to 29-12-2001)

(iv)

Draft Publication of list of Polling Stations and calling for objections and

convening of meeting with representations of Political Parties, disposal of objections and final Publication of list of Polling Stations. (As per the guidelines issued by SEC!.

10 days from (30-12-2001 to 8-1-2002)

(v)

Making sufficient copies of Electoral Rolls of Polling Station-wise and Ward-wise. Copies of Electoral Rolls have to be supplied to Political Parties for which a symbol has been reserved by SEC and some more copies have to be kept in reserve for sale as number of independent may contest for the post of Mayor and Ward members and at least (10) marked copies have to be kept ready for each Polling Station to be used during the Polling day.)"

10 days (from 9-1-2002 to 18-1-2002)

9.

Making Reservation of Seats (wards) to STs, SCs and Woman on the basis of 1991 Census Population and making reservation of seats for B.Cs on the Electoral Rolls information.

7 days(from 19-1-002 to 25-1-2002)

10.

Gazelle Notification of the Reservation of Seats (Wards) in MCH obtaining Gazette Notification and intimation to State Election Commission by State Government

7 days (from 6-1-2002 to 2-2-2002)

A minimum period of (195) days (i.e., from 23-7-2001 to 2-2-2002) is required to complete this process.

10. However in the counter-affidavit it is admitted that the exercise of de-limitation of wards was completed on 23-6-2001 by issuing final notification. The 12 Assembly Constituencies in the Municipal Corporation of Hyderabad area were divided into 100 Wards on the basis of average population of 30,000 (plus or minus 10%) per ward.

11. It is submitted mat the population of Hyderabad Municipal Corporation area as per 1991 census is approximately 29 lakhs and this population has been divided into 100 wards. It is an admitted fact that the Backward class population figures are not reflected in the 1991 Census which gives population figures only of Scheduled Castes and Scheduled Tribes. But the Multi-purpose House Hold Survey data provides details of the population figures of the entire Municipal Corporation of Hyderabad area. For proper identification of Backward Classes, the said data is required to be divided into Assembly Constituency Polling Station-wise Electoral lists basing on the house numbers. Even according to the averments made in the counter-affidavit the process had already commenced

and is expected to be completed by 6-8-2001. It is stated that while the available population figures relates to the 1991 Census, the Electoral Voters Lists have been prepared and updated upto 1-1-2001 as per which the number of Voters in the Municipal Corporation of Hyderabad area is above 27-14 lakhs, out of which the Backward class voters are required to be identified from the Multi-purpose House Hold Survey data and marked in the Assembly Electoral Rolls Polling Station-wise list. There are about 2846 Polling Stations in the 12 Assembly Constituencies, falling within the Municipal Corporation of Hyderabad area.

12. A detailed explanation is submitted in the counter-affidavit as to why so much of time is required for completing the process ultimately culminating in the issuance of Gazette Notification, providing reservation of seats (wards) in the Municipal Corporation of Hyderabad, and intimation of the same to the State Election Commission by the State Government.

13. In view of the admitted legal and constitutional position that the State and the State Election Commissions are under the constitutional obligation to hold the elections, the only question that falls for consideration is as to whether the time required by the State Government for completing the exercise is reasonable in the facts and circumstances of the case?

14. It may have to be noticed that the judgment in Prakasam District Sarpanchas Association's case (supra) was delivered by this Court on 13-12-2000 holding the reservations made in favour of the Backward Class by drawal of lots is impermissible. This Court took the view that by making reservations either in favour of Backward Classes or for that matter in favour of any category through drawal of lots, the object of reservations would be defeated. The Court no doubt, deprecated the method of reserving seats in favour of Backward Class by drawal of lots. That is the reason which compelled the State Government to fall in line to suitably amend the Municipal Corporation (Reservation of seats) Rules. 1995 immediately so as to be in conformity with the law declared by this Court. But the necessary steps appears to have been initiated only after the direction by this Court dated 13th July, 2001 requiring the State Government to submit that the schedule for holding the elections to the Municipal Corporation of Hyderabad. In the circumstances, the criticism levelled by the learned senior Counsel appearing on behalf of the petitioner that the State did not make any serious attempt whatsoever to hold the elections to the Municipal Corporation of Hyderabad may gain some legitimacy.

15. The Supreme Court in an unreported decision in WPN0.(Civil) No. 719 of 1995 dated 12-8-1997 observed that "the concerned States cannot be permitted to withhold election of Panchayats except in case of genuine supervening difficulties to hold such elections, unforeseen natural calamities in the State like flood, earthquake etc., or extremely urgent situation prevailing in the State, for which election of panchayats cannot be held within the time frame. It will be unfortunate if the concerned States remains insensitive to the constitutional

mandate of holding election of Panchayats in time and by unjustified action, allows old bodies to continue in the office of the Panchayats. We hope and trust that the State Government will be alive and sensitive to the duties and responsibilities flowing from the mandates of the Constitution in holding Panchayat elections."

16. It is needless to observe that the requirement to hold the Panchayat elections in time would be equally be applicable for holding the elections to the Municipalities as well as the Municipal Corporations. As observed by the Supreme Court, the concerned State cannot remain incentive to the constitutional mandate of holding election to the local bodies.

17. The Constitution (Seventy-Fourth Amendment) Act noticed that in many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged suppression and inadequate devolution of powers and functions. It is further noticed that the Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-Government. It is under those circumstances and having noticed the inadequacy, provisions relating to Urban Local Bodies were incorporated in the Constitution particularly for ensuring regular conduct of elections and for providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

18. Article 243-P of the Constitution of India defines the Municipality means as institution of self-government constituted under Article 243-Q in turn mandates that there shall be constituted in every State (a) a Nagar Panchayat (by whatever name called) for a transitional area.....(b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area.

19. The Municipal Corporation after the advent of the Constitution Seventy-Fourth Amendment are no more appendages of the State Government. Their existence and continuation is not at the mercy of the State Governments. They are institutions of self-government and the Municipalities and the Municipal Corporations so constituted have acquired constitutional status. They are expected to be vibrant democratic units at the grass root level. Their management is certainly not to be entrusted to the officers nominated by the State Government. Holding of regular elections is the constitutional mandate. Exception is only in case of unforeseen natural calamities like, flood, earthquake etc., or extremely urgent situation prevailing in the State. The inaction on the part of the State Governments in a given situation to hold the elections may amount to violating the constitutional mandate. The State Government is expected to be alive and sensitive to its constitutional obligation, duties and responsibilities flowing from the mandates of the Constitution to hold the elections to the Municipalities and the Municipal Corporations. Holding of elections does not depend upon the sweet Will and pleasure of the State Government.

20. The Seventy-Third and Seventy-Fourth Amendment to the Constitution of India signifies a major attempt to redefining the people as a true basis for the State authority. It is an attempt to return and retransfer at least some of the powers to the people for determining their own destiny and course of development. The intendment of the Seventy-Third and Seventy-Fourth Amendment to the Constitution and its essence is clear that the destiny of the people cannot be exclusively orchestrated by the Central and the State Governments. They alone cannot be the arbiters. The object of the amendment is the empowerment of the people and decentralisation of power. The Panchayats, Municipalities at various levels have to function as units of self-government. They cannot be treated as agent of the State or Central Government. These local self-Governments are not meant for monitoring the programmes and projects sanctioned by the State or the Central Government as the case may be, since the power to the people has been the declared objective of the constitutional amendments.

21. Introduction of Parts IX and IX-A in the Constitution of India by way of Seventy-Third and Seventh-Fourth Amendment Act has been a conscious exercise to provide democratic space for cities and communities through the process of decentralisation. Only vested interests may perceive the noble attempt, a threat to their power and patronage. More often than not attempts were made to delay the process of decentralisation by various means. But the constitutional mandate provides and protects the process of decentralisation.

22. The policies of economic liberalisation and globalisation influence the investment, income, resources and their distribution process to a large extent would be influenced by market forces. "There are winners and losers. Cities are the theatres where these gains and losses take place. Citizens cannot be reduced to mere spectators when the cities become the casinos of global players" (See K.C. Sivaramakrishna's Power to the People by Konark Publishers Private Limited). Survival of the polity will itself may perhaps to a large extent would depend upon the concern and the responsibility to be shared by different levels of Government. The local self-government are meant to play constructive role and share the responsibility. Such responsibilities cannot be entrusted to the nominees or agents of the State Government. Elected representatives alone are to be entrusted with such responsibilities.

23. The provisions of the Municipal Corporations Act, the Rules made thereunder and the issue relating to holding of elections may have to be viewed in the aforementioned background. The provisions of the Act and the Rules have to be interpreted to be in line with the constitutional mandate. Viewed as such, holding of elections at the expiry of term of the elected representatives is the Rule. Postponement of elections is an exception, as observed by the Supreme Court, only in case of genuine supervening difficulties.

24. The pleadings and contentions in this regard and schedule for holding the elections provided by the State Government is to be examined in the background

of the legal and constitutional position.

25. According to the averments made in the counter-affidavit, the number of voters in the Municipal Corporation of Hyderabad area is about 27-14 lakhs. There are about 2846 Polling Stations in the 12 Assembly Constituencies, falling with the Municipal Corporation of Hyderabad area. All that the State is required to do is to identify the Backward Class voters from the data already available with the State. The Backward Class voters are required to be identified by making the same in the Assembly Constituencies Polling Station-wise Electoral list. In the circumstances, it is difficult to accept the plea of the State that it would require a minimum period of 195 days i.e., from 23-7-2001 to 2-2-2002 to complete the process. Where there is a will there is a way. It may not be difficult for the might State with men and machinery and resources at its command to undertake the simple exercise of identification of the Backward Class voters for the purpose of reservation of seats to the Municipal Corporation of Hyderabad and complete the same expeditiously.

26. There is no plausible explanation offered by the State as to why it required so much time to suitably amend the Rules relating to reservation of wards in the Municipal Corporation of Hyderabad in favour of Backward Class voters to be in tune with the judgment of this Court in *Prakasam Sarpanchas Association's case* (supra).

27. The Court finds it difficult to accept the schedule given by the State suggesting the period of 195 days for completing the process. Any further postponement of the elections and the inaction on the part of the State to hold the elections would be detrimental to the public interest.

28. Having regard to all the facts and circumstances of the case, I consider it appropriate to direct the respondents to complete the exercise of identification of Backward Class votes and make reservations of seats (Wards) in favour of Scheduled Castes and Scheduled Tribes, Women and Backward Classes and accordingly issue notification of the reservation of the seats and intimate the same to the State Election Commission. The State Election Commission shall take necessary steps to hold the elections to the Municipal Corporation of Hyderabad. The process in this regard ultimately culminating in the declaration of the result of the elections shall be completed within a period of ninety days from today.

29. There shall be an order accordingly. The writ petition is accordingly disposed of with the directions as above. No order as to costs.