
(2011) 09 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (C) 7548 of 2010

Campaign for People Participation

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 21, 226
Delhi Development Act, 1957 — Section 6

Citation : (2011) 09 DEL CK 0021

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Anil K. Aggarwal and Abhay Kumar, for the Appellant; A.S. Chandhiok, ASG, Rajdipa Behura and Gurpreet Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner, Campaign for People Participation, through its President, has prayed for declaring the New Delhi Municipal Corporation Act, 1994 (for brevity, "the 1994 Act") as ultra vires Part IXA and also violative of Articles 13, 14, 19 and 21 of the Constitution of India and further to issue a mandamus directing the Respondent to take necessary steps immediately for directing election of the Municipality of New Delhi area.

2. It is averred in the petition about the growth of local self governance and the concept of village republic with further reference is made to the Punjab Municipal Act, 1911, formation and changes in the Delhi Municipal Committee from time to time and enactment of the 1994 Act, the 73rd and 74th amendments in the Constitution wherein Chapter IX has been introduced in respect of the Panchayats and Chapter IXA in respect of the Municipalities. It is urged that these amendments have come into existence to spread democracy at the grass root level conferring more responsibility on the people. A reference has been made to the statement of objects and reasons for bringing the aforesaid

amendments in the Constitution and further reference has been made to the Constitution Bench decision in *Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others*, to highlight the underlying constitutional significance of the said amendment.

3. It is averred that the Constitution has recognized the importance of elected members of Panchayats and Municipalities. It is urged that emphasis laid on the responsibility of elected members of the municipal authorities has been highlighted by the Apex Court in the decisions of *M.C. Mehta v. Union of India* AIR 2004 SC 4618 and *M.C. Mehta Vs. Union of India (UOI) and Others*,

4. It is further urged that in pursuance of the constitutional amendment, New Delhi Municipal Council Ordinance, 1994 was promulgated and, thereafter, the 1994 Act was enacted. It is contended that in abject contravention of the constitutional provision, the municipality constituted under the impugned Act does not provide for the proper structure of the municipality inasmuch as there are a number of ex officio members and not elected representatives. It is highlighted that in the absence of representation of the local people, the concept of urban local self governance which has been engrafted into the scheme of the Constitution of India after the introduction of Chapter IXA is flagrantly violated. The provisions in the Act are totally counter to the constitutional mandate and, therefore, they deserve to be declared ultra vires.

5. Though this Court had asked the Union of India to file the counter affidavit, yet Mr. A.S. Chandhiok, learned Additional Solicitor General, on 18.5.2011, had submitted that the controversy raised in this petition is covered by the decision rendered in *Rama Aggarwal and Ors. v. Union of India and Ors.* 112 (2004) DLT 533 (DB). Be it noted, on that day, this Court had directed to file the counter affidavit and, thereafter, the matter was taken up on 17.8.2011. On 17.8.2011, as Mr. Chandhiok had forcefully submitted that the controversy having been covered, there is No. necessity to file the counter affidavit, the matter was finally heard without the return.

6. In support of the stand put forth in the writ petition, it is submitted by Mr. Aggarwal, learned Counsel for the Petitioner, that the decision in *Rama Aggarwal and Ors.* (supra) is not applicable to the case at hand if the relief clause is appropriately appreciated and the ratio laid down in the decision in *Rama Aggarwal and Ors.* (supra) is studiously scrutinized. It is contended by him that Article 243ZB does not confer unfettered and unbridled power on the Executive and, therefore, the notification issued on 24.5.1994, being beyond the scope of the said Article, is ultra vires. It is further submitted that the said notification lapsed after expiry of the period meant for issuance of Ordinance and, hence, he has not assailed the said notification. The learned Counsel would vehemently argue that he has challenged the provisions pertaining to the constitution of the Municipality in Delhi which totally run counter to Article 243ZE and, hence, the entire Chapter relating to it under the 1994 Act deserves to be declared ultra vires.

7. Mr. Chandhiok, learned Additional Solicitor General, in countering the aforesaid submission, contended that Article 243ZE is not applicable to the National Capital Territory of Delhi in view of S.O. No. 1125(E) dated 12.11.2001. That apart, it is urged by him that this Court has upheld the validity of the Ordinance and the notification dated 24.5.1994 which was the subject matter of Civil Writ Petition No. 1277/2001. The learned Additional Solicitor General has further proposed that once the power has been exercised for issuing the notification and this Court has held it to be valid, there is No. justification for reopening the issue.

8. Chapter IXA of the Constitution deals with Municipalities. Article 243R deals with the composition of municipalities. It reads as follows:

243R. Composition of Municipalities. - (1) Save as provided in Clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide

(a) for the representation in a Municipality of

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under Clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

9. Article 234ZB reads as follows:

243ZB. Application to Union territories. - The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such

exceptions and modifications as he may specify in the notification.

10. On a perusal of Article 243ZB, it is quite vivid that the New Delhi Municipal Council (NDMC) is a part of the National Capital Territory of Delhi and, therefore, the provisions of Part IXA of the Constitution of India could be modified in its application to NDMC by issuing a notification under the proviso to the said Article. A notification has been issued on 24.5.1994 by the President carving out the exception. The said notification reads as follows:

Ministry of Home Affairs

NOTIFICATION

New Delhi, the 24th May, 1994

S.O.391(E) - In exercise of the powers conferred by the proviso to Article 243ZB of the Constitution, the President hereby directs that the provisions of Part IXA of the Constitution shall apply to the National Capital Territory of Delhi insofar it relates to the New Delhi Municipal Council to be constituted under the New Delhi Municipal Ordinance, 1994, subject to the following exceptions and modification, namely:

1. For Article 243R, the following article shall be substituted, namely:

243R. The New Delhi Municipal Council shall consist of

(a) ten members nominated by the Central Government of whom three shall be members of the Legislative Assembly to the National Capital Territory of Delhi representing constituencies which comprise wholly or partly the area consisting of the New Delhi Municipal Council;

(b) a chairperson appointed by the Central Government; and

(c) the Member of Parliament representing the constituency which comprises wholly or partly the New Delhi area, who shall be a special invitee for the meetings of the Council but without a right to vote.

2. For Article 243T, the following Article shall be substituted, namely:

"243T. Out of the eleven members referred to in Article 243R, as modified hereinbefore, at least three members shall be women and one member shall be from the Scheduled Castes."

3. The New Delhi Municipal Council

(a) Where it is dissolved before the expiry of its duration under Clause (1), shall be reconstituted within a period of six months of such dissolution; and

(b) where, it is dissolved after the expiry of its duration, shall be reconstituted before such expiry."

(ii) Clause (4) shall be omitted.

4. For Article 243V, the following Article shall be substituted, namely:

"243V. No. person, other than a Member of the Legislative Assembly of the National Capital Territory of Delhi, shall be disqualified for being nominated as a member of the New Delhi Municipal Council on the ground that he holds an office of profit for purposes of elections to the Legislature of the National Capital Territory of Delhi under any law for the time being in force".

11. It is worth noting, a challenge to the said notification was made in the case of Prof. M.L. Sondhi v. Union of India and Ors. CWP No. 1516/1997 but the said writ petition was dismissed for non-prosecution. In Rama Aggarwal and Ors. (supra), a relief was sought for quashing of the Delhi Development Act, 1957 along with other prayers. The prayer "E" read as follows:

E. This Hon"ble Court may be pleased to consider clubbing the CWP No. 1516/1997, Prof. M.L. Sondhi v. Union of India and Ors. with this matter, so that the challenge to the vies of the New Delhi Municipal Council Act, 1994, in that petition, on the ground of it being volatile of the Constitutional 74th Amendment Act could be considered by this Hon"ble Court along with the above matters.

12. Be it noted, the Bench observed that CW No. 1516/1997 had nothing to do with the said writ petition. While not allowing the prayer for clubbing, the Division Bench referred to Article 243Q of the Constitution of India and, thereafter, opined that Delhi is not a State but a Union Territory and is governed by the special provision contained in Article 239AA and Article 239B of the Constitution. In that context, the Bench proceeded to state thus:

5. In terms of Clause 8 of Article 239AA the provision of Article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and Legislative Assembly, as they apply in relation to Union Territory of Pondicherry, the administrator and its Legislature, respectively; and any reference in that article to "Clause (1) of Article 239A" shall be deemed to be a reference to this Article or Article 239B, as the case may be.

6. In terms of Article 239 of Constitution of India, a Union Territory is a separate entity. Part IXA of the Constitution, therefore, cannot have any application in relation to Delhi in its entirety. The applicability is circumscribed by the other provisions of the Constitution. Furthermore, the Delhi Development Authority Act, 1957 has been enacted by the Parliament. The said Act had been enacted to provide for the development of Delhi according to plan and for that purpose, necessary power was vested in the said Authority.

7. The provisions of Delhi Development Authority and MCD Acts are to be read together. There is No. conflict between the said two Acts. Section 6 of the Delhi Development Authority Act mainly provides for objectives of the Authority. It has not been pointed out that the said Act, in any way, is inconsistent to the provisions of the MCD Act.

8. It is not in dispute that the powers given to the legislative assembly of NCT of

Delhi are in consonance with the constitutional scheme and Parliament is competent and has power to enact any law for Union Territory or for any of the State with reference to the different lists in the 7th Schedule of Constitution in terms of Clause 4 of Article 246 of the Constitution of India.

9. In that view of the matter the submission of the learned Counsel to the effect that MCD must be a body which is a local authority and power of the legislation of the State is incorrect.

10. Article 243W of the Constitution merely provides for an enabling provision. Only in terms of Article 243ZB the provisions of part IXA may apply to Union Territories which is subject to issuance of appropriate notifications as may be issued by the President.

13. After so holding, the Bench referred to the notification dated 24.5.1994 which we have produced hereinabove. Relying on the said notification, the contention that was advanced in the backdrop of Article 243Q was negative.

14. It is seemly to state that by virtue of the powers conferred under Article 243ZB on the President, the said notification has been issued. The proviso to Article 243ZB categorically postulates that the President by public notification may direct that the provisions of Chapter IXA shall apply to any Union Territory or part thereof subject to such exceptions and modifications specified in a notification. As the notification would show, Articles 243R, 243T, 243U and 243V have been substituted. On a scanning of the provisions relating to the composition of the Delhi Municipal Council, it is manifest that it is in accordance with the constitutional provision which has been substituted to be made applicable to Delhi. It is worth noting that such a power is inherent in the Constitution itself. If the notification is issued in pursuance of the constitutional provision, No. fault can be found with the provisions engrafted in the 1994 Act. The submission that the notification lapsed after the expiry of the period for the Ordinance, stands repelled as totally bereft of substance inasmuch as the notification relates to the exercise of power under Article 243ZB of the Constitution. By virtue of the said notification, what has been held is that Chapter IXA of the Constitution shall apply with exceptions and modifications to the Delhi Municipal Council to be constituted under the New Delhi Municipal Ordinance, 1994. The 1994 Act was passed by both the Houses of Parliament and received the assent of the President on 14.7.1994. As we perceive, the learned Counsel has misconstrued the legal effect of the notification relating to the Municipal Council that was constituted under the Ordinance. But that has nothing to do with the notification dated 24.5.1994 by which the President had exercised the power of issuing the notification under Article 243ZB of the Constitution of India. Notification is still valid and continues to apply, though the Ordinance has been replaced by the 1994 Act. The other ground that the Article does not confer unfettered and unbridled power on the Executive is totally sans substance and does not really merit consideration as we are disposed to think that the Constitution itself confers the powers on the President and we perceive

No. fathomable reason to come to hold that it is a notification beyond the scope of the said Article as ordinarily understood, the power flows from the constitutional mandate and authority. The Petitioner has not challenged the constitutional provision enshrined under Article 243ZB. The notification is in accord with Article 243ZB. Ergo, we repel the submission of Mr. Aggarwal, which has been so anxiously canvassed.

15. Consequently, the writ petition, being devoid of merit, stands dismissed without any order as to costs.