
(1986) 07 MAD CK 0014
In the Madras High Court
Case No : W.P No. 4837 of 1986

D. Jayaraman

APPELLANT

Vs

Govt. of Tamil Nadu and Another

RESPONDENT

Date of Decision : 21-07-1986

Acts Referred:

Constitution of India, 1950 — Article 167, 169(I), 212(I), 226

Citation : AIR 1987 Mad 215

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : D.K.P. Krishna Shetti, for the Appellant; A.G. assisted by N.R. Chandran, Addl. Govt. Pleader, for the Respondent

Judgement

1. The petitioner by challenging the constitutional legality and validity of the resolution of the Tamil Nadu Legislative Assembly. dt. 14-5-1986

abolishing the Tamil Nadu Legislative Council, seeks a declaration declaring the resolution for the abolition of ,the Tamil Nadu Legislative Council

passed by the Tamil Nadu Legislative Assembly under "Art. 169(1) of the Constitution on 14-5-1986 as unconstitutional and ultra vires the

Constitution.

2. In the affidavit filed in support of the writ petition, it is averred as follows. The "impugned resolution was passed in utter disregard of all

principles of democracy. The Legislative Council of Tamil Nadu had become an institution of great importance due to its hoary past service of

several decades to the cause of Parliamentary system o Government and invaluable contribution to the growth of laws. Its performance has alway

been such that it brought much respectability to the Legislature. Fearing that the Opposition party (D.M.K. party) is likely to capture majority of

the vacancies in the Council to be filled up by members elected from the local authorities constituencies, the unreasonable decision to abolish the

Legislative Council was taken in haste and in an undemocratic manner. In the election manifesto of the ruling party, the proposal to abolish

Legislative Council did not find a place, nor was the proposal put before the people during the general election for approval. A four line

Government resolution which stood in the name of Chief Minister was circulated on 13-5-1986 to the members of the Legislative Assembly and

the resolution itself was taken up for discussion on the very next day and it was also passed by 136 votes to 25, while the entire Congress (1)

block (60 members) and the lone G.K.N.C. member withdrew from the House before voting. The impugned resolution was brought in total

defiance of the one of the basic features of the Constitution, namely, democracy, and was passed without strictly complying with the procedural

norms laid down by Art. 169(1) of the Constitution and, therefore, the resolution is ultra vires the Constitution and void.

3. It is also contended in the affidavit that a few weeks before the moving of the impugned resolution, election was held to elect members from the

Graduates and Teachers Constituencies and barely a few days earlier, three persons were nominated by the Governor to the Council. The

Government had, therefore, no idea of abolishing the Council at that time. The decision to abolish the Council was the result of an exercise of the

arbitrary, despotic discretion governed wholly by political necessity and expediency. The power to abolish legislative Council as provided under

Art. 169(1) of the Constitution cannot be exercised arbitrarily or capriciously to destroy a legislative Council without the broad consent of the

people. Inasmuch as the Government introduced the impugned resolution abruptly on 13-5-1986 after keeping it as a closely guarded secret, and

hastily got it passed the very next day in the House, the given power has been exercised so unreasonably and in a so absolute manner that it

stultified the opposition in the House and stunned the public.

4. It is further contended in the affidavit that the impugned resolution failed to get the majority of not less than two thirds of the members of the

Assembly present and voting" as required under Art. 169(1) of the Constitution. According to the petitioner, the total number of members present

on that day was 221, and the resolution was passed only by 136 votes in its favour, 26 votes against and 61 members withdrawing themselves at

the time of voting. Therefore, there was no required 2/3rd majority. According to the petitioner, Art. 169(1) of the Constitution clearly

contemplates 2/3rd positive votes of the members "present" in favour of the resolution and the word "present" excludes only those who are

"absent" and not others. In this view of the petitioner, for the purpose of finding out 2/3rd majority "present and voting", the 61 members who

withdrew themselves at the time of voting must also be taken as present, and if so taken, there was no 2/3rd majority and, therefore, the resolution

is not in accordance with Art. 169(1) of the Constitution and hence not valid and has no legal effect.

5. Lastly, the petitioner has also raised a contention in the affidavit as follows :

Since Art. 169 is another provision relating to amendment of the Constitution, a part of the constituent power is vested with the Legislative

Assemblies of the States. The constituent power can be exercised with a specific mandate from the people, which the members of the present

Assembly did not obtain. Besides, large number of members of the Assembly, including the ruling party members, vociferously supported, even

though for a day, the unconstitutional decision of the Speaker setting aside the decision of the High Court announced on 7th April 1986, and

consequently violated their oath. Therefore, they are not competent now to exercise the constituent power confirmed on the Assembly by Art.

169(1) of the Constitution. Hence, the impugned resolution passed by the Assembly demanding abolition of the Council is devoid of any legal

effect.

6. When this petition came up for admission, notice of motion was ordered on 20-5-1986, in response to which the learned Advocate General

appeared and advanced arguments in support of the resolution in addition to raising a preliminary objection, namely, that the Legislative Assembly

has only passed the resolution and it will become a law only after the Parliament further approves the resolution, as required under Art. 169(1) of

the Constitution and, therefore, the writ petition itself is premature.

7. As the substantial point involved in this case is as to the scope and interpretation of Art. 169(1) of the Constitution and also the meaning to be

given to the words "present and voting" occurring in the said Article, and these being within the admitted jurisdiction of this court, I am not able to

agree with the learned Advocate General that the writ petition has to be dismissed on the preliminary objection raised by him.

8. Mr. K. P. Krishna Shetti, learned counsel for the petitioner, while reiterating the facts as stated in the affidavit filed in support of (he writ petition,

raised the following contentions. The first contention is that the requirement of Art. 169 had not been complied with and, therefore, the impugned

resolution is void ab initio and has no legal effect. The second contention is that the impugned resolution has been passed in utter violation of all

democratic principles. The third contention is that there is violation of the provisions of Art. 167 of the Constitution as well and on that ground also

the impugned resolution is liable to be declared as unconstitutional. The fourth contention is that no sufficient opportunity was given to the members

of the Legislative Assembly to discuss about the merits and demerits of the resolution and, therefore, the resolution is unsustainable as it suffers

from arbitrary exercise of power and is in violation of the rule of law and basic principles of democracy.

9. The contention raised in the affidavit in para 8-E set out in full earlier, has not been pressed before me by the learned counsel for the petitioner.

10. The learned counsel for the petitioner in support of his arguments, placed reliance on Rr. 2(1)(t)(y)(2) and 100 of Tamil Nadu Legislative

Assembly Rules (hereinafter called the Rules). He also relied on Arts. 124(4), 218 and 368(2) of the Constitution of India. He cited the decisions

in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, , the Bribery Cornmr. v. Ranasinghe reported in (1964) 2 All ER 785, AIR 1945

25 (Federal Court) . In re under Art. 143 of the Constitution of India reported in In the matter of: Under Article 143 of the Constitution of India, ,

and a passage at page 954 from Practice and Procedure of Parliament by M.N. Kaul and S. L. Shakdar, Volume 2.

11. Learned Advocate General in answering the contentions raised by the learned counsel for the petitioner, submitted that a fair reading of Art.

169 will show that for the purpose of finding out 2/3rd majority, only the members physically present at the time of voting alone should be taken

into account, and if so taken, the impugned resolution passed by 136 for and 25 against out of 161 present is definitely more than 2/3rd majority

and quite in accordance with the requirement of Art. 169(1) of the Constitution. He also put forward an extreme contention that even assuming that

61 persons (60 belonging to Congress (1) and one belonging to G.K.N.C.) who were present when the resolution was taken up for discussion but

withdrew themselves just before voting, must be deemed to have been present for the purpose of Art. 169, the 2/3rd majority contemplated by

Art. 169 has to be taken only from the persons who actually and positively participated in the process of voting and so far as the 61 members are

concerned, they must be deemed to have abstained from voting and, therefore, the requirement of Art. 169 has been complied with.

12. The learned Advocate General put forward yet another argument stating that the Article must be construed by giving the words occurring in the

article the ordinary, natural and grammatical meaning, and if so construed, the words "present and voting" will give the only meaning "physically

present and voting". In support of this contention, he relied on Art. 189(4) of the Constitution which directs the Speaker or Chairman, as the case

may be, to adjourn the House or to suspend the meeting when there is no quorum. According to the learned Advocate General, if a clue from this

article is to be taken, it will lead to the only conclusion that members who were physically present alone matters for the purpose of transacting the

business and voting.

13. Regarding the other contentions, the learned Advocate General, placing reliance on Art. 212 of the Constitution contended that it is not open

to the petitioner to challenge the resolution in question on the ground that there are procedural irregularities in the course of taking votes. He also

contended that the petitioner, not being a member of the Legislative Assembly, cannot say personally what happened inside the Assembly when the

resolution was taken up for discussion and passed. Likewise, according to him, the contention based on alleged violation of Art. 167 of the

Constitution is not available to the petitioner, as that cannot be a ground for challenging the resolution of the Assembly.

14. Regarding the contention that the impugned resolution was passed without giving sufficient opportunity to the members of the Legislative

Assembly for discussion, the learned Advocate General submitted that the petitioner is not competent to raise such a contention. Learned

Advocate General also submitted that the resolution cannot be Challenged by suggesting motive to the Legislature. He relied on the decision in

Sajjan Singh Vs. State of Rajasthan, , Kaushalya Devi and Others Vs. Bachittar Singh and Others, and passages from G. P. Singh's Principles of

Statutory Interpretation, pp. 55 and 63. He also placed reliance on two unreported, judgments of this court, namely, A. M. Paulraj" v. The

Speaker, Tamil Nadu Legislative Assembly, W.P. No. 7316 of 1985 and A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly,

Madras and Another, .

15. To appreciate the rival contentions,, it is necessary to set out certain provisions of the Constitution and also the Tamil Nadu Legislative

Assembly Rules (hereinafter called the Rules). Art. 169(1) of the Constitution, which is the subject matter for construction reads as follows -

Notwithstanding anything in Art. 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a council

or for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a

majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and

voting.

The other Articles on which reliance was placed by learned counsel on both sides are Arts. 124(4), 218, 368(2), 212(1), 167 and 189(4). They

are as follows-

124(i). A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each

House of Parliament supported by a majority of the total membership of that House and a majority of not less than two-thirds of the members of

the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or

incapacity.

218. The provisions of cls. (4) and (5) of Art. 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the

substitution of references to the High Court for reference to the Supreme Court.

368(2). An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and

when the Bill is passed in such House by a majority of the total membership of that House and by a majority of not less than two-thirds of the

members of that House present and voting, it shall be presented to the President who will give his assent to the Bill and thereupon the Constitution

shall stand amended in accordance with the terms of the Bill :

Provided that if such amendment seeks to make any change in -

(a) Art. 54, Art. 55, Art. 73, Art. 162 or Art. 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of State in Parliament, or

(e) the provisions of this Article, the amendments shall also require to be ratified by the Legislature of not less than one half of the States by

resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

212(l). The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

16. It shall be the duty of the Chief Minister of each State -

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and

proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit, for the consideration of the Council of Ministers any matter on which a decision has been taken by a

Minister but which has not been considered by the Council.

189(4). If at any time, during the meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of

the Speaker or Chairman, or person acting as such either to adjourn the house or to suspend the meeting until there is a quorum".

17. The relevant rules of the Legislative Assembly Rules read as follows : -

2(l)(t) "Precincts of the House" means -

(i) In the case of the members of the "Legislative Assembly, the Assembly

Chamber, Lobbies and the rooms in which the associated offices are situated, the Ministers' rooms, the Library, the Canteen and the Committee room in Fort St. George, the Committee room in the Old Legislators'

Hostel and the Legislature Library in the Government estate, Anna Salai and such other places or buildings as might be named by the Speaker

from time to time, together with verandas, and steps to these buildings and the pathways leading from the Assembly Chamber to the other

aforesaid buildings and shall be applicable while the Assembly or any of its Committees or subcommittees sit an one hour before and after such a

sitting.

(ii) In the case of strangers, the Assembly Chamber with the galleries, its verandas and steps and shall be applicable only to those to whom tickets

have been issued by the Officer for admission to the galleries; and

(iii) in the case of persons summoned by a Committee of the House for any purpose whatsoever, they shall be deemed to be within the "Precincts

of the House" so long as they are within the Committee rooms, its verandhs and its steps.

2(l)(v) "Session" means the period of time, between the first meeting of the Assembly, upon the summons of the Governor under Art. 174(1) of the

Constitution and its prorogation or dissolution under clause (2) thereof.

... ..

2(2) Words and expressions used in the Constitution and not defined in the Rules shall, unless the context otherwise requires have the meanings

assigned to them in the Constitution.

100(5) If the Speaker decides to take the votes of the House by division, he will order the division bells to be rung and after the lapse of two

minutes, he shall direct that all doors of entry shall be closed and he shall put the question for a second time in the manner stated in sub-rule (2). If

his opinion is again challenged, he shall ask the Members who are for "Aye" and those for "No" respectively to rise in their places and the names

of the voter shall be recorded.

18. Mr. Krishna Shetty, learned counsel for the petitioner, submitted that the framers of Constitution have provided special procedure wherever

the occasion required an amendment of the Constitution (vide Arts. 124(4),

169(1), 218 and 368(2) of the Constitution.). From this, the contention is that the amendment by two-thirds majority under Art. 169(1) of the Constitution has to be construed bearing in mind the purposes for which such a special majority was introduced. With that background, according to Mr. Krishna Shetti, if we look at Art. 169(1) the words "present and voting" occurring in that article will definitely mean and include all those members of the Assembly who were "present on the particular date even though some of them were not physically present at the time of voting, that is, for the purpose of two-thirds majority, all the members who were ~present earlier must be taken into account. To add strength to the above contention, he also placed reliance on R. 2(l)(t) extracted above which defines "precincts of the House".

19. The admitted facts of this case are, when the impugned resolution was taken up for discussion, 222 members were present. But when the resolution was put to vote, 61 of them withdrew themselves from the, Assembly. Out of the remaining 161, 136 voted "for the resolution and 25 against the resolution. According to the learned counsel for the petitioner, two-thirds majority in the context means two-thirds of 222 and not two thirds of 161. As the resolution was passed by only 136 members voting in favour of it which admittedly falls short of two-thirds of 222, according to him, the constitutional requirement is not complied with. The learned counsel for the petitioner also relied on a passage from Practice and Procedure of Parliament by M. N. Kaul and S. L. Shakdar, Volume 2, at page 954, which is as follows :-

A resolution may be moved by a private member or a Minister on a matter of general public interest. Through resolutions the House may declare its opinions and purposes, Resolutions may be private member's resolutions, Government resolutions or Statutory resolutions. Government resolutions are usually tabled for seeking the approval of the Lok Sabha to some treaty or agreement entered into by the Government of India, some act or policy of the Government or recommendations of some committee. Resolutions tabled by a private member or a Minister in pursuance of a provision in the Constitution or an Act of Parliament are termed statutory resolutions.

According to the learned counsel, the impugned resolution is a statutory

resolution. Further elaborating his argument, the learned counsel contended that the idea of introducing two-thirds majority in Art. 169(1) was to see that members of the opposition are also given their due recognition in matters involving amendment of the Constitution.

20. In answering the above contentions of the learned counsel for the petitioner, the learned Advocate General submitted that while construing the words of a Statute, particularly, the Constitution, the attempt must be to understand their natural, ordinary and popular sense. In support of this, he relied on a passage from G. P. Singh's Principles of Statutory Interpretation, 3rd Edn. at page 63, which is as follows : -

The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.

Applying the above golden rule of interpretation, the learned Advocate General contended that the words "present and voting" occurring in Art.

169(1) of the Constitution should be construed to mean those who were , physically present and voting". He also relied on a passage from the judgment of the Supreme Court in Sajjan Singh Vs. State of Rajasthan, , which is as follows : -

It would thus appear that the broad scheme of Art. 368 is that if Parliament proposes to amend any provision of the Constitution not enshrined in

the proviso, the procedure prescribed by the main part of the article has to be followed. The Bill introduced for the purpose of making the

amendment in question has to be passed in each House by a majority of the total membership of that House and by a majority of not less than two-

thirds of the members of that House present and voting. This requirement postulates that a Bill seeking to amend the relevant provisions of the

Constitution should receive substantial support from members of both the Houses. That is why a twofold requirement has been prescribed in that

behalf. After the Bill is passed, as aforesaid, it has to be presented to the President for his assent and when he gives his assent, the Constitution

shall stand amended in accordance with the terms of the Bill. That is the position in regard to the amendment of the Constitution of which the

proviso does not apply"".

The above passage is not much helpful to construe the words "present and voting". The learned Advocate General also advanced an extreme

contention which I have already set out, namely, that the words "present and voting" must be construed to mean only those who exercised the right

of voting either for or against, and the two-thirds of the majority must be taken only out of the members who have exercised the right of voting. In

other words, those members who were present, but abstained from voting must be left out for the purpose of finding out two-thirds majority. I am

unable to accept this extreme contention. Therefore, I reject the same. If this extreme contention is accepted, the word "present" will lose its

meaning. However, I am inclined to accept the first contention of the learned Advocate General that by a plain reading of the article, the words

"present and voting" occurring in Art. 169(1) would mean only those who were "physically present and voting". It will not include those who

withdrew from the House at the time of voting, This contention of the learned Advocate General is also supported by a reading of Art. 189(1) of

the Constitution, which I have already extracted. A perusal of R. 100(5). extracted above will also show that at the time of taking vote by division,

all doors of entry to the House will be closed and the names of the voters will be recorded. That also suggests that those who were physically

present matters and not others.

21. In view of the above discussion, I am unable to agree with the learned counsel for the petitioner that the impugned resolution is not in

compliance with the requirement of Art. 169(1) of the Constitution of India. I am also unable to accept the construction placed by the learned

counsel for the petitioner on the words "present and voting" though I agree with his reasonings for providing-2/3rds majority in Art. 169(1) of the

Constitution.

22. The second contention of the learned counsel for the petitioner that the resolution has been passed in utter violation of all democratic principles

is based on the averments in the affidavit, the substance of which I have extracted in para 2 of this order. This contention cannot be accepted for

two reasons. One is that it is fundamental that a legislation cannot be questioned by imputing motives to the Legislature. This principle equally

applies to the impugned resolution. Secondly, once the impugned resolution satisfies the requirement of Art. 169(1) of the Constitution, the same is not liable to be questioned on any other ground.

23. The third contention based on the alleged violation of the provisions of Art. 167 of the Constitution is also, in my view, not well founded as that cannot again be a ground to challenge the constitutional validity of the impugned resolution.

24. The fourth contention is also not well founded as the petitioner is not a Member of the Legislative Assembly to raise this contention, namely, that the impugned resolution was passed without giving sufficient opportunity to the Members of the Legislative Assembly to discuss about the merits and demerits of the resolution. Further, as rightly pointed out by the learned Advocate General that Art. 212(1) of the Constitution expressly states that the validity of any proceeding in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Therefore, this contention also is not sustainable. The citations given by the learned counsel for the petitioner are to overcome the preliminary objection raised by the learned Advocate General. As I have overruled the preliminary objection, it is not necessary to deal with those decisions.

25. For the foregoing reasons, I do not find any valid ground to hold that the impugned resolution is unconstitutional and ultra vires the Constitution.

Consequently, the writ petition is dismissed.

26. Petition dismissed.