

(2015) 08 KL CK 0068

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 14948 of 2015 (P) and 16493 of 2015

K. Muraleedharan and Others

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Constitution of India, 1950 — Article 243Q
Kerala Municipalities Act, 1994 — Section 4, 4(2), 4(2)(c)
Kerala Panchayat Raj Act, 1994 — Section 4(2), 4(3)

Citation : (2015) 4 KLT 38

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : C.P. Sudhakara Prasad, Senior Advocate, P. Narayanan and Nicholas Joseph, for the Appellant; Tom K. Thomas, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J—Under challenge in these writ petitions is G.O. (P) Nos. 145/2015 and 148/2015 issued by the Local Self Government Department dated 30.4.2015 by which the Municipality of Taliparamba has been divided into the municipalities of Taliparamba and Andoor.

2. The first petitioner in W.P. (C) No. 14948 of 2015 is the Vice Chairman of Taliparamba Municipality and the second petitioner in the said writ petition is the elected representative of Ward No. 23 on the said municipality which belonged to the erstwhile Andoor panchayath. The petitioner in W.P. (C) No. 16493 of 2015 is a local resident of Andoor which is now within the limits of Taliparamba municipality.

3. The petitioners are aggrieved by the action taken by the Government bifurcating the Taliparamba municipality into Taliparamba municipality and Andoor municipality in exercise of powers conferred under Section 4(2)(c) of the Kerala Municipalities Act. According to them, the said action is illegal, arbitrary

and against the provisions of the Act and Constitution and are vitiated by extraneous consideration and political motivation.

4. In W.P. (C) No. 14948 of 2015, a member of the Taliparamba Municipality Councilor got himself impleaded as additional sixth respondent. He supported the bifurcation.

5. In the counter affidavit filed by the State in both writ petitions, they have justified their stand. According to them, a committee was constituted to study the issue, guidelines were issued to the committee and after considering the report of the said committee, objections were called for and after hearing the objections, the preliminary notification was issued. According to the State, there is absolutely no illegality or impropriety in the bifurcation.

6. I have heard Mr. C.P. Sudhakara Prasad, the learned senior counsel appearing for the petitioners in W.P. (C) No. 14948 of 2015 and Mr. M. Sasindran, the learned counsel for the petitioner in W.P. (C) No. 16493 of 2015. I have also heard Sri. K.P. Dandapani, the learned Advocate General and Sri. Tom K. Thomas, the learned Special Government Pleader to AG. I have also heard Mr. Sunil Nair Palakkat, the learned counsel appearing for the party respondent in W.P. (C) No. 14948 of 2015 and Mr. Murali Purushothaman, the learned standing counsel for the Kerala State Election Commission as well as the Kerala State Delimitation Commission, who rendered proper assistance by placing various judicial pronouncements in the realm.

7. The writ petitioners have raised a contention that the Government ought to have consulted the existing municipality before effecting the bifurcation. Reliance was placed on the judgment of this Court in *Saji Joseph v. State of Kerala* [2010 (3) KLT 672], in which this Court defined the scope of the word "consultation" in Section 4(2) of the Panchayath Raj Act. It was held by this Court that for a meaningful consultation with the panchayath, they are to be told as to the reasons which prompted the government to have such proposal. It is crucial to note that the aforesaid decision was rendered in the contest of considering a case relating to the Panchayath Raj Act. Section 4(3) of the Panchayat Raj Act provides that the Government may, after consultation with the panchayath, pass such orders as they deem fit as to the disposal of any part of the property vested in the village/panchayath which has ceased to exercise jurisdiction over any village or group of villages and the discharge of the liabilities of the village panchayath relating to such property or arising from such village including all matters connected therewith or incidental thereto. However, Section 4 of the Municipality Act, does not contemplate any consultation with the local authority before exercising the power under Section 4(2) of the Act unlike in the Panchayath Raj Act, which mandates the consideration of the opinions and the suggestions of the Village Panchayath, Town Panchayath or Municipal Corporation in the process of bifurcation. The legislature has empowered the Government to change geographical pattern of the municipality without consulting the existing council of the municipality. However, if the government wants to change the

name of the municipality, a consultation with the municipality is essential. While the Panchayath Raj Act mandates the Government to have consultation with the panchayath, what is provided by the Municipality Act is only a consideration of the objections by the concerned village/panchayath.

8. The apex court in *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, AIR 1991 SC 1893 : AIR 1990 SC 261 : (1990) 68 CompCas 20 : (1989) 25 ECR 129 : (1990) 183 ITR 130 : (1989) 3 JT 57 : (1989) 2 SCALE 7 : (1989) 3 SCC 396 : (1989) 3 SCR 405 : (1989) 2 UJ 485 had set out the scope of interference by the court in a notification issued under the provisions of the Municipalities Act regarding the de-linking of the areas of the local government institution. It was observed that the court cannot lay down norms for the exercise of that power. A similar view was expressed in *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, AIR 1980 SC 882 : (1980) 2 SCC 295 : (1980) 2 SCR 1111 wherein it was observed that the power of the State Government under the Municipality Act is legislative in character. This Court in *Sreekala, K. Vs. State of Kerala and Others* relying on the decision of *State of Punjab Vs. Tehal Singh and Others*, AIR 2002 SC 533 : (2002) 5 JT 40 : (2002) 1 SCALE 18 : (2002) 2 SCC 7 : (2002) 1 SCR 27 : (2002) AIRSCW 105 : (2002) 1 Supreme 7, observed that the territorial area of a Grama Sabha and thereafter establishing a Grama Sabha for that area is an act legislative in character in the context of the provisions of the Act and it is not subjected to the rule of natural justice. There cannot be any doubt regarding the proposition that the exercise of power under Article 243Q read with Section 4 of the Kerala Municipality Act is legislative in character. A legislation can only be challenged only on the ground of legislative incompetence, violation of fundamental rights and violation of any other provisions of the Constitution.

9. Admittedly, Taliparamba Municipality is a first grade municipality. In Ext. P2 notification produced in W.P. (C) No. 14948 of 2015, it is stated that the object of the same was to provide infrastructure facility to the municipalities since population and income of the municipalities have gone up during recent years. It is stated in Ext. P2 that due to the speedy urbanization, it is not possible to give proper concentration on the development of public health and urban planning. It is further stated that regarding these matters, several municipal councils took decisions and requested to upgrade the municipalities and to create new categories for the better functioning of the municipalities. In fact, Ext. P2 was issued by the Government on the basis of the request of the municipalities to provide additional infrastructure and additional financial burden would be the sole responsibility of the municipalities. As Ext. P2 is an arrangement between the State and Municipalities, it has no effect up on Section 4(2) of the Municipalities Act.

10. The additional 7th respondent in W.P. (C) No. 14948 of 2015 has relied on Ext. R7(a), which is the true copy of the representation dated 4.2.2015 submitted by one Valsan, who is the secretary of the Yukti Sahrudaya Vedi and

Grandhalayam on the basis of which State of Kerala conducted a public hearing on 14.3.2015, as evident from Ext. R7(b). It is evident from Exts. R7(c) and R7(d) that several notices were issued to the persons who submitted representations pursuant to the first notification. It was pointed out that the present Andoor area consist of Government College of Engineering, Ayurveda Medical College, Kendriya Vidyalaya, Doordarshan Kendram, Kannur University, Arts College, Gems International School etc. It is pointed out that Taliparamba which is on the northern side of the Municipal area and the people residing on the southern side of the municipality will have to travel around 25 kms. to reach head office. Previously Taliparamba Municipality has filed a writ petition as W.P. (C) No. 16997 of 2005 before this Court challenging the de-linking of Andoor area from municipality, as evident from Ext. R7(e). In that case, the Municipal Council produced a list of industrial, commercial and non-commercial establishment in Andoor area. In that writ petition, the Taliparamba Municipal Council had submitted before this Court that Andoor area is an industrially developed area which generates income more than 1.52 crores. The true copy of the financial statement issued by the Secretary, Thaliparamba Municipality is produced as Ext. R7(g).

11. In this writ petition, it is alleged that though Payyannur Municipality is having the territorial area, income and the population which are equal or similar to the Taliparamba municipality, no decision has been taken by the government to divide Payyannur Municipality into two municipalities. In answer to the said argument it was pointed out that most of the areas in that municipality are rural area and it has not sustained the balanced growth.

12. As it is evident from the materials now placed on record that the division of the existing municipality into two municipalities encourages decentralisation of powers, which would pave way to the growth of both municipalities, this Court is of the view that none of the residents in the locality can have a grievance, on account of this bifurcation. There is no violation of the provisions of either the State or the Constitution also. Therefore, this Court is of the view that there is absolutely no ground for interference in the bifurcation now effected.

In the result, both writ petitions fail and accordingly it is dismissed.