

(2010) 11 MAD CK 0150
In the Madras High Court
Case No : Writ Petition No. 24613 of 2010

K. Sridhar Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Constitution of India, 1950 — Article 107, 108, 109, 111, 168
Representation of the People Act, 1951 — Section 15(F)
Tamil Nadu Legislative Council Act, 2010 — Section 3, 3(1), 4, 5

Citation : AIR 2011 Mad 99 : (2010) 5 LW 705

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : P. Madhavan, for the Appellant; P. Mahadevan, SPCGS for RR-1 and 2 and J. Raja Kalifulla, Govt. Pleader assisted by M. Sneha, Government Advocate for R-3, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—By this writ petition, the Petitioner seeks for issuance of a Writ of Declaration declaring the provisions of Tamil Nadu Legislative Council Act, 2010 (Central Act 16/2010) as unconstitutional and void ab-initio.

2. It appears that the Legislative Assembly of Tamil Nadu passed a resolution for creation of a Legislative Council on 12th April, 2010 and the said resolution was passed by two-thirds majority as required under Article 169(1) of the Constitution of India. The Council of States on 5th May, 2010 passed the Tamil Nadu Legislative Bill, 2010, which was passed by the Lok Sabha and got the Presidential Assent on 18th May, 2010. Thereafter, it was published in the Indian Gazette Extra-Ordinary on the same day i.e., 18th May, 2010 and was republished by the Order of the Governor of Tamil Nadu on 20th May, 2010.

3. The Petitioner's case is that the impugned Act suffers from inherent illegality inasmuch as the Act is not in consonance with the provisions laid down in Articles

168 and 169 of the Constitution of India for establishment and creations of Legislative Council. Learned Counsel appearing for the Petitioner submitted that the impugned Act does not contain the provision for amendment of the Constitution as mandated by Article 169(2) of the Constitution of India, as also for provisions supplemental and incidental to the creation of such a Council. According to the learned Counsel, in the absence of corresponding amendments to be carried out in the Parent Statutes, namely, the Representation of People Act, 1950 and the Representation of People Act, 1951, even though Sections 3(1) and 4 of the Tamil Nadu Legislative Council Act, 2010 specifically provide for the same, the Impugned Act is null and void.

4. Before examining the point raised by the Petitioner, I would like to refer the impugned legislation namely, the Tamil Nadu Legislative Council Act, 2010 (Act 16/2010) (for short "the Act"). This Act was enacted by Parliament for creation of Legislative Council for the State of Tamil Nadu and for matters supplemental, incidental and consequential thereto. The Act got the Presidential Assent on 18th May, 2010 and thereafter, it was published in the Indian Gazette Extra-Ordinary on the same day i.e., 18th May, 2010 and was republished by the Order of the Governor of Tamil Nadu on 20th May, 2010. The Act consists of only five Sections.

5. Section 3 of the Act provides that as from such date as the President may, by order appoint, there shall be a Legislative Council for the State of Tamil Nadu, and as from that date, in Sub-clause (a) of Clause (1) of Article 168, after the word "Karnataka", the words "Tamil Nadu" shall be inserted.

6. For better appreciation, Sections 3, 4 and 5 of the Act is quoted herein below:

7. As noticed above, the Act, namely, Tamil Nadu Legislative Council Act, 2010, contains 5 sections. Section 3 is the main section, whereby the Legislative Council in the State of Tamil Nadu has been created. Sections 4 and 5 make provisions for necessary amendment/insertion of the word "Tamil Nadu" and the word "Legislative Council of the State of Tamil Nadu" as required under Article 169 of the Constitution of India.

8. Section 168 of the Constitution makes provision for the constitution of Legislatures in the State and Article 169 prescribes the procedure for abolition or creation of Legislative Council in the State. For better appreciation, Articles 168 and 169 of the Constitution are quoted hereinbelow:

168. Constitution of Legislatures in States.- (1) For every State there shall be a Legislature which shall consist of the Gover, and

(a) in the States of Bihar, Maharashtra, Karnataka and Uttar Pradesh, two houses;

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where

there is only one House, it shall be known as the Legislative Assembly.

169. Abolition or creation of Legislative Councils in States.-

(1) Notwithstanding anything in article 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.

(2) Any law referred to in Clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of the Constitution for the purposes of Article 368.

9. On perusal of the aforesaid provision of Article 169, it is manifest that this Article empowers the Parliament to enact law either for abolition or creation of Legislative Council of a State. In such a State where there is no Legislative Council, the Legislative Assembly of the State, by resolution passed by a majority of a total membership of the Assembly, take a decision for the creation of Legislative Council and after such resolution is passed by the Legislative Assembly, the Parliament may, by enacting law, provide for the creation of Legislative Council. The word "present and voting" used in Article 169(1) would mean only those who are physically present and voting.

10. Article 169(2) further provides that the law that would be enacted by the Parliament shall contain such provisions for the amendment of the Constitution that may be necessary to give effect to the provisions of law and may also contain such supplemental, incidental and consequential provisions, which the Parliament while enacting the law may deem necessary.

11. From a reading of the provisions of the impugned Act, namely, the Tamil Nadu Legislative Council Act, 2010, it is clear that the mandate and the requirement of Article 169(2) has been fully taken care of. Section 4 of the Act make provisions for necessary amendment/insertion in the III Schedule of the Representation of People Act, 1950 and further insertion of the word "Tamil Nadu" in other State enactments. Section 5 also provides for insertion of the word and figure "and constituting the Legislative Council of the State of Tamil Nadu under the Tamil Nadu Legislative Council Act" u/s 15(1) of the Representation of People Act, 1951.

12. Learned Counsel appearing for the Petitioner vehemently argued that since there is no provision for amendment of the Constitution as amended by Article 169(2) of the Constitution, the impugned Act is ultra vires the Constitution, is misconceived and devoid of any substance. It is well settled that the word

"amendment" or "amend" as used in the Constitution in various places have different meanings. In some Articles, the word "amendment" in that context has a wide meaning and in some other Articles, in that context, it has a narrow meaning.

13. The Constitution Bench of the Supreme Court, while deciding the question as to the validity of the 24th, 25th and 29th amendments to the Constitution in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , discussed different Articles, including Article 169 of the Constitution of India. Their Lordships observed as under:

62. In the Constitution the word "amendment" or "amend" has been used in various places to mean different things. In some articles, the word "amendment" in the context has a wide meaning and in another context it has a narrow meaning. In Article 107, which deals with legislative procedure, Clause (2) provides that "subject to the provisions of Articles 108 and 109, a Bill shall not be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses". It is quite clear that the word "amendment" in this article has a narrow meaning. Similarly, in Article 111 of the Constitution, whereby the President is enabled to send a message requesting the Houses to consider the desirability of introducing amendments, the word "amendments" has a narrow meaning.

63. The opening of Article 4(1) reads:

4. (1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law.

Here the word "amendment" has a narrower meaning. "Law" under Articles 3 and 4 must "conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise - is not the power to override the constitutional scheme. No state can, therefore, be formed, admitted or set up by law under Article 4 by the Parliament which has no effective legislative, executive and judicial organs. (Per Shah, J. - *Mangal Singh v. Union of India*).

64. Article 169(2) reads:

Any law referred to in Clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

Here also the word "amendment" has a narrow meaning.

Further their Lordships observed as under: (para 64 page 317)

64. Any law referred to in Clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the

provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

14. In the instant Act, as noticed above, Sections 4 & 5 of the Act make provisions for necessary amendment/insertion of the word "Tamil Nadu" and the words "Legislative Council of the State of Tamil Nadu" in the parent statute as required under Article 169(2) of the Constitution of India. Since the word "amendment/insertion" has a narrow meaning, the Act cannot be declared ultra vires or unconstitutional in the absence of corresponding amendments to be carried out in the Parent Statutes, namely, the Representation of People Act, 1950 and the Representation of People Act, 1951. The grounds taken by the Petitioner in the writ petition are absolutely unfounded and they have no substance.

15. In the light of the facts of the case, and the law discussed herein above, and after giving our deep consideration in the matter, we do not find any merit in the writ petition, which is accordingly dismissed. No costs.