
(2009) 12 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 25144, 25663 and 29182 of 2008 and 26435 of 2009

Koppala Prabhavathi

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 23, 46, 46(1), 46(3), 46(4)

Citation : (2010) 1 ALD 780 : (2010) 2 ALT 323

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Venkata Ramana, in W.P. No. 25144 of 2008, M.V. Rajaram, in W.P. Nos. 25663 and 29182 of 2008 and B. Shashibhushana Rao, in W.P. No. 26435 of 2009, for the Appellant; B. Shashibhushana Rao, for Respondent Nos. 17 to 19, 21, 22 and 24 in W.P. No. 25144 of 2008, S. Nageswara Reddy, S.C. for Respondent No. 5 in W.P. No. 25144 of 2008, Polisetty Radha Krishna, S.C. for Respondent No. 4 in W.P. No. 25663 of 2008 and B. Vijaysen Reddy, in W.P. No. 25663 of 2008 and No. 7 and 9 in W.P. No. 29182 of 2008, for the Respondent

Judgement

L. Narasimha Reddy, J.—The questions, that arise for consideration in these four writ petitions, are either common or inter-related. Hence, they are disposed of through a common order.

2. For the sake of convenience, the petitioners therein are referred to as petitioners 1, 2, 3 and 4.

3. Chairpersons to the various Municipalities in the State, including those for Bheemunipatnam and Bhongir, were elected in the month of September, 2005. Notices u/s 46 of the A.P. Municipalities Act, (for short "the Act") were issued by majority of the councillors of the two Municipalities to express want of confidence in them. Necessary steps were taken, and ultimately, in the meetings held on 25.10.2008 and 10.11.2008 respectively, the motions of want of confidence were carried out successfully against them. W.P. No. 25663 of 2008 is filed by the Chairperson of the Bhongir Municipality, challenging the resolution dated

10.11.2008.

4. Sub-section (1) of Section 46 of the Act places a bar of three years against tabling of motion of no confidence against chairperson or vice-chairperson of a Municipality. Through the Act 15 of 2008, the A.P. State Legislature amended Section 46(1) of the Act, enhancing the immunity period from three years to four years. The amendment came into force from 11.11.2008.

5. Notification, as contemplated under Sub-section (6) of Section 46 of the Act, (for short "the notification") in respect of the office of the chairperson of Bhongir Municipality, was issued on 30.12.2008. W.P. No. 29182 of 2008 is filed by the Block Congress President, Bhongir Municipality, Nalgonda District. Similar notification in respect of Bheemunipatnam Municipality was issued on 20.11.2008. Chairperson of that Municipality filed W.P. No. 25144 of 2008, challenging the same. A voter of the Bheemunipatnam Municipality filed W.P. No. 26435 of 2009, with a prayer to direct the respondents therein to take necessary steps to fill the vacancy of the chairperson of the Municipality.

6. Petitioners 1 to 3 contend that the exercise of moving no confidence against the chairperson of a Municipality would be complete only with the publication of notification connoting the vacancy and paving the way for filling thereof. They plead that the amendment came into force, before notification was published in their cases, and thereby, the motion of no confidence carried out against them became inoperative in law. They also plead that the Legislature has imposed prohibition against tabling of motion of no confidence against a chairperson with an objective of ensuring stability and continuity in the office and realising that three years period is too short, it has amended Section 46 of the Act by enhancing the period of immunity to four years. They urge that the benefit of amendment must accrue to all the chairpersons who were elected in the year 2005, and there is no basis for the respondents in not extending the benefit to some of them.

7. The 4th petitioner submits that once a no confidence motion is carried out successfully, in accordance with the relevant provisions of law, the chairperson concerned ceases to hold the office and publication of notification is a purely ministerial act. He contends that the respondents ought to have taken steps to fill the vacancy.

8. Counter-affidavits are filed by the respondents. There is no serious dispute about the factual aspects i.e. tabling of motion of no confidence and carrying out the same, in accordance with law. However, the writ petitions are opposed, on the ground that the subsequent publication of notifications is only a formal act, and that the amendment through the Act 15 of 2008 does not apply to petitioners 1 and 2.

9. Sri V. Venkata Ramana, learned senior counsel for the 1st petitioner, and Sri M.V. Raja Ram, learned Counsel for petitioners 2 and 3, advanced arguments. According to them, a motion of no confidence becomes final, only when a

notification is published u/s 46(6) of the Act, and since the amendment came into force before that date, the resolutions passed against the petitioners deserve to be ignored. It is also their case that permitting the steps taken against the petitioners to remain, would lead to discrimination. According to them, all the chairpersons that were elected in the year 2005 are entitled for the same benefit, and on the sole basis that steps were initiated against some of them, few days earlier in point of time, they cannot be deprived of the benefit of amendment. Reliance is placed upon certain precedents. The learned Counsel further contended that the amendment carried out through the Act 15 of 2008 is declaratory in nature and it must be construed in such a way, as to have been in force from the beginning.

10. Sri B. Shashibushan Rao, learned Counsel for the 4th petitioner, submits that the publication of notification is only a ministerial act, and that the amendment is not declaratory in nature.

11. Learned Counsel appearing for the contesting respondents in the respective writ petitions, on the other hand, submit that once the motion of no confidence was carried out against petitioners 1 and 2, there is no way that they can continue in the office and that the consequences flowing from them cannot be stopped. They contend that the publication of notification u/s 46(6) of the Act is only a formality to declare what has already taken place and that the amendment through the Act 15 of 2008 does not in any way affect such notifications.

12. Under the Act, election of chairperson of a Municipality used to be direct, till it was amended in the year 1994. Section 23 of the Act as it stands now mandates that the chairperson and the vice-chairperson of the municipalities shall be elected by the members thereof, from among themselves. The term of the office of a member is five years and that of the chairperson and vice-chairperson is co-extensive with the same.

13. Section 46 of the Act provides for tabling of a motion of no confidence against the chairperson or vice-chairperson of a municipality. The text of the Section is a bit large, but it is necessary to extract the same. It reads:

Motion of no confidence in Chairperson/Vice-Chairperson:- (1) A motion expressing want of confidence in the Chairperson otherwise than directly elected or Vice-Chairperson may be made by giving a written notice of intention to move the motion, in such form as may be specified by the Government, signed not less than one half of the total number of members of the Council having right to vote, together with a copy of the proposed motion to the District Collector concerned in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within three (3) years of the date of assumption of office by the person against whom the motion is sought to be moved;

Provided further that if the motion is not carried by two-thirds majority as prescribed or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same person shall be made until after the expiration of one year from the date of such first meeting;

Provided also that the membership of a suspended member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) The District Collector shall, then convene a meeting for the consideration of the motion at the office of Municipal Council on the date appointed by him which shall not be later than thirty days from the date on which the notice under Sub-section (1) was delivered to him. He shall give to the members, Chairperson or Vice-Chairperson as the case may be and the Ex-Officio members, notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting of such meeting in such form as may be prescribed by the Government and such notice shall be delivered as may be specified.

Explanation:- In computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a competent Court on a petition filed against a notice under Sub-section (1) is in force shall be excluded.

(3) The District Collector or the Revenue Divisional Officer nominated by the District Collector (hereinafter referred to as presiding officer) shall preside at such meeting. The quorum for such meeting shall be two-thirds of the total number of members. If within half an hour after the time appointed for the meeting, there is no quorum for the meeting, the Presiding Officer shall adjourn the meeting to some other time on the same date and notify the same in the notice board of the Council. If there is no quorum at the adjourned time of the same day, no further meeting shall be convened for consideration of that motion and the meeting shall stand dissolved and the notice given under Sub-section (1) shall lapse.

(4) As soon as the meeting convened under this section commences, the said presiding officer shall read only the motion for the consideration of which the meeting has been convened and shall put it to vote without any debate. The voting shall be, by show of hands duly obeying the party whip given by such functionary of the recognized political party, in the manner prescribed:

Provided that a member voting under this sub-section in disobedience of the party whip shall cease to hold office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy.

(5) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall be forwarded immediately on the termination of the meeting by the said presiding officer to the District Collector. The District Collector shall forward the same along with this remarks to the Government.

(6) If the motion is carried with the support of two-thirds majority of the total number of the members including the ex-officio members as on the date of the meeting, the Government shall by notification remove the Chairperson or Vice-Chairperson as the case may be from office and the resultant vacancy shall be filled in the same manner as a casual vacancy.

Explanation I:- For the removal of doubts, it is hereby declared that for the purpose of this section the expression "total number of members" means, all the members who are entitled to vote in the election to the office concerned including the ex-officio members.

Explanation II:- For the purposes of the section, in the determination of two-thirds of the total number of members, any fraction below 0.5 shall be ignored and any fraction of 0.5 or above shall be taken as one.

14. It is evident that proviso to Sub-section (1) of Section 46 of the Act places an embargo on issuance of notice of motion before expiry of three years from the date of assumption of the office by the chairperson or the vice-chairperson. The notices, as contemplated under Sub-section (1) of Section 46 of the Act, were issued against petitioners 1 and 2 after expiry of three years of their term. They offered some resistance in the form of approaching this Court at various stages, and ultimately, the motions of no confidence were carried out against them on 10.11.2008 and 25.10.2008 respectively.

15. The A.P. State Legislature has amended Sub-section (1) of Section 46 of the Act, and in particular, the proviso by enhancing the period of immunity from three years to four years. The amendment came into force with effect from 11.11.2008. From that date onwards, a motion of no confidence against the chairperson cannot be tabled or taken up, unless the chairperson completes the term of four years. It needs, however, to be seen, as to whether the amendment would have any effect on the no confidence motions, which were successfully carried out before it came into force as in the instant cases.

16. Several stages are contemplated u/s 46 of the Act. The process commences with issuance of notice by majority of the members, followed by sending of notices by the District Collector to the members, and fixing a date for convening a meeting. This is provided for under Sub-sections (1) and (2). Sub-sections (3) and (4) deal with the manner in which the meeting is to be conducted and the consequences that are to take place, if there is no quorum. Once a motion of no confidence is carried out, District collector is placed under the obligation, under Sub-section (5), to forward the same with his remarks, to the Government. The final step in the process is the publication of notification by the Government under Sub-section (6). This will result in the removal of chairperson or vice-chairperson, and pave the way for filling up of the resultant vacancy.

17. One of the grounds urged on behalf of petitioners 1 and 2 is that the expression of want of confidence in a chairperson would become final, only with the publication of notification under Sub-section (6), and the motion of no

confidence in their cases must be ignored. They are correct at least in part. The removal of chairperson would assume finality with publication of the notification u/s 46(6) of the Act. However, it becomes difficult to accept the plea that a motion, successfully carried out, would be of no legal consequence, till notification is published. Expression of want of confidence in the chairperson is a right, which, the Act confers upon the members of the Municipal Council. The embargo contained in proviso to Sub-section (1) is a restriction of such right. Once the motion of no confidence is carried out, in accordance with the provisions of law, against chairperson or vice-chairperson, the view expressed by two-thirds of the members becomes manifest and it cannot be said that such an exercise would be of no consequence. The notification contemplated under Sub-section (6), for all practical purposes is an official formality, and nothing, but an authenticated communication of the resolution of the no confidence motion. Different consequences would have flown, had the Government, which has vested with the power to issue notification, been conferred with the power to take its own decision, on the result of the meeting communicated to it by the District Collector under Sub-section (5). The Act does not leave any scope or leverage for the Government to meddle with the resolution, much less, with the result thereof. An official communication or declaration, no doubt, has its own significance. However, the delay in issuing such communication, much less, intervention of an event in between, does not nullify the view expressed by two-thirds of the members of the council.

18. An important aspect that needs to be taken into account is that the Legislature has chosen to put a bar or embargo for a period of three years or four years as the case may be against issuance of notice under Sub-section (1) of Section 46 of the Act, and not against the publication of result of the meeting under Sub-section (6) of that provision. This clearly connotes the intention of the Legislature that the immunity granted in favour of a chairperson is only with respect to tabling of motion of no confidence. Once that stage is over, rest of the steps are formal. If there exists no legal bar for it, the delay in publication of notification would not nullify the resolution. At any rate, even where two interpretations are possible in this regard, the one, which gives effect to the clear manifestation of opinion by two-thirds of the members of the council, deserves to be chosen. The reason is that it is ultimately the democratic spirit that underlies the functioning of the Municipal Council.

19. Now, the question as to whether the Act 15 of 2008, through which the proviso to Sub-section (1) of Section 46 of the Act was amended, is prospective or retrospective in nature, needs to be considered. The first limb of argument advanced in this regard is that the Legislature cannot discriminate between the persons who are similarly situated. To be more precise, chairmen of different municipalities, elected at the same time, cannot be subjected to differential treatment. It is, no doubt, true that an element of discrimination becomes evident, when, out of the chairmen elected at the same time, some are conferred with the benefit of a longer period of immunity and others like the petitioners a

lesser period. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , the Supreme Court held that a State cannot discriminate among persons similarly situated. The principle was further elaborated in *The Special Courts Bill 1978 (2) In Re: The Special Courts Bill, 1978*, . This question would have become relevant, had the petitioners challenged the Act 15 of 2008. No such challenge is made. On the other hand, the very relief claimed by the petitioners is based on that enactment. The petitioners cannot seek the benefit under the Act on the one hand and challenge the same with reference to the date of operation, that too, without putting the same on issue. Another reason is that by the time the petitioners have suffered the detriment or the consequence of resolution, the amendment did not come into existence at all. Therefore, the plea raised in this regard cannot be accepted.

20. Placing reliance upon the judgment of the Supreme Court of India in *Sunil Kumar Rana Vs. State of Haryana and Others*, and *Zile Singh Vs. State of Haryana and Others*, , it is urged that the Act 15 of 2008 is only declaratory in nature and thereby it must be treated as retrospective. On the other hand, it is contended by the respondents and the 4th petitioner that it is remedial in nature and would operate just prospectively. In this regard, the observations of the Supreme Court in *The Central Bank of India Vs. Their Workmen*, become relevant. A Constitution Bench of the Supreme Court explained the distinction between a declaratory Act and remedial Statutes as under:

For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted".

A remedial Act, on the contrary, is not necessarily retrospective; it may be either enlarging or restraining and it takes effect prospectively, unless it has retrospective effect by express terms or necessary intendment. We are of the view that the amending Act of 1956 is not a declaratory Act, and except in the small matter of the expression "shall continue to employ" in Sub- (1), it does not purport to explain any former law or declare what the law has always been. It is an ordinary remedial piece of legislation which came into effect from 14.1.1957. For the period relating to the appeals before us, the amended section was not in force.

21. From the above, it is clear that the Act would be declaratory, when it attempts to remove doubts or to explain the meaning of the provisions in an existing legislation. Acts of this nature are treated as retrospective, irrespective of the date, on which they came into force. Where, however, the amendment or the Act provides for a remedy in a manner different from the one under the existing or previous legislation, it is treated as remedial and such legislations are

prospective, unless, a clear intention to the contrary is manifested by the Legislature itself. Act 15 of 2008 deserves to be treated as one under this category. The reason is that it has enlarged the immunity that was conferred upon a chairperson from three years to four years. This is neither a clarification nor explanation to the existing provision. It was competent for the Legislature to give retrospective effect, even to this amendment. However, it has chosen to make it enforceable from a particular date. Therefore, it cannot be made retrospective through the process of interpretation.

22. Hence, this Court does not find any basis to grant the relief in the first three writ petitions. As a result, the 4th writ petition deserves to be allowed.

23. Accordingly, writ petition Nos. 25144, 25663 and 29182 of 2008 are dismissed. Writ petition No. 26435 of 2009 is allowed, directing that respondents 1 to 3 therein shall take immediate steps to fill the vacancy that has arisen on account of carrying out of motion of no confidence against the chairperson of Bheemunipatnam Municipality i.e. 4th respondent therein. There shall be no order as to costs.