
(2014) 11 MAD CK 0360
In the Madras High Court
Case No : Writ Petition No. 10166 of 2003

L. Amudha

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Constitution of India, 1950 — Article 243C

Tamil Nadu Panchayats Act, 1994 — Section 205, 28(1), 28(2)

Citation : (2015) 1 LW 97 : (2014) 8 MLJ 707 : (2015) WritLR 23

Hon'ble Judges : Sanjay Kishan Kaul, C.J;M. Sathyanarayanan, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner has filed the present petition, styled as a Public Interest Litigation, seeking to assail the constitutional validity of Section 205 of the Tamil Nadu Panchayats Act, 1994 (hereinafter be referred to as "the said Act"), particularly sub-section 11, on the ground that it offends the doctrine of separation of powers.

2. On the 73rd amendment of the Constitution of India being carried out, Part-IX was amended. It is the say of the petitioner that, as a sequitur thereto, the Panchayats are the elected bodies representing the people and are legislative in character. Article 243C of the Constitution of India provides for composition of the Panchayat, 243D deals with reservation of seats, while 243E provides for duration of Panchayats, etc.

3. Section 205 of the said Act provides for the removal of the President and sub-section 11 reads as under:

"205. Removal of President -

(11)The Inspector may, after considering the views of the Village Panchayat in this regard, in his discretion either remove the President from office by notification with effect from a date to be specified therein or drop further action."

4. It is the say of the learned counsel for the petitioner that unreasonably a discretion is vested in the Inspector, who, despite the decision of the Panchayat, may act to the contrary in matter of removal or non-removal of the President. In this behalf, learned counsel submits that the doctrine of reading down cannot be used, a course of action followed in *The State of Tamil Nadu Vs. S. Ramasamy*, , while observing that the power under this sub-section being drastic in character should be used only in exceptional circumstances and the will of the electorate is supreme and cannot be lightly interfered with. The power, thus, has to be exercised with utmost care and caution and not in a routine or casual manner. The said judgment, in turn, relies upon a Full Bench judgment of this Court in *The District Collector and Inspector of District Panchayat and The District Development Officer Vs. Devi Parasuraman and The Manager, Central Bank of India, Marakkanam Branch*, and observed as under:

¶18. The issue regarding the manner of exercise of power under Section 205 was earlier referred to a Full Bench of this Court. The Full Bench in *The District Collector and Inspector of District Panchayat and The District Development Officer Vs. Devi Parasuraman and The Manager, Central Bank of India, Marakkanam Branch*, , considered Section 205 of the Act in extenso and observed thus:

"15. ... Therefore, under Section 205, if the Inspector being satisfied with the explanation drops the proceeding, he should record it in the proceeding. In case of unsatisfactory explanation or non-explanation, the Inspector cannot take a decision of his own, but required to forward the matter to the Tahsildar for the decision of the Village Panchayat. It is the Village Panchayat, which records reasons in its minutes of the meeting. Normally the Inspector has to act on such decision. In such case, reason being on record, for acceptance of such report no further reason required to be recorded by the Inspector. However, in case the Inspector differs with the decision of the Village Panchayat, to test the reasonableness of such decision, the Inspector is not only supposed to record the reason, but also required to follow the Rules of Natural Justice by communicating the reasons to the President by giving an opportunity to explain before coming to a conclusion."

19. In *Devi Parasuraman* [supra], the Full Bench summarised the views thus:

"In the light of the discussions made above, we summarise our views as follows:

- (i) An act of the Inspector under Section 205 is quasi-judicial in nature;
- (ii) If the Inspector is satisfied with the explanation submitted by the President under Section 205, he is required to record his satisfaction for dropping the proceeding; and
- (iii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceeding against the President, he is not only required to record the reasons for differing with the

views of the Village Panchayat, but before taking any decision to remove the President, the Inspector is also required to provide further notice to the President intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President.

. . . .

24. The ultimate order passed by the Inspector of Panchayat under Section 205 would result in Civil consequences to the affected party. In case the President was removed by the Collector in exercise of his power under Section 205 of the Act, he would be ineligible for election as President until the date on which notice of the next ordinary elections to the Village Panchayat is published, or the expiry of one year from the date specified in such notification as postponed by the order or unless the said order is set aside by the Government. Therefore, the Inspector of Panchayat was expected to consider the matter in an unbiased manner. The Inspector of Panchayat has to evaluate the entire materials, including the views expressed by the members of Panchayat in the light of the particular misconduct alleged against the President. The order should contain reasons which actually prompted the Inspector of Panchayat to take a decision one way or the other. It is all the more necessary in case proceedings were initiated suo motu . If elected members are removed from public office very casually, it would shake the confidence of the common man in the very system and the local self-Government would lose its significance.

25. The Panchayats were constituted by the Constitution [73rd Amendment Act, 1992]. Parts IX and X were inserted with a definite purpose. Parliament in its wisdom wanted to confer power to the people. The States on their part implemented the provisions contained under Parts IX and X either by amending the existing laws or by making new legislations. Therefore, any provision which seeks to take away the administration from the hands of the elected representatives should be interpreted in a strict manner."

5. In the conspectus of the aforesaid discussion, we put to learned counsel for the petitioner as to how this Court would be able to re-examine the decision of a Co-ordinate Bench of this Court, which normally would be required to be referred to a Larger Bench, if he will be able to persuade us to differ. However, in the present case, there is also a view of a Full Bench of this Court.

6. Learned counsel for the petitioner sought to rely upon the judgment in Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, , which deals with the provisions of Maharashtra Municipal councils, Nagar Panchayats and Industrial Townships Act, 1965. The factual matrix pertain to the appellant being declared as disqualified for the remaining tenure as President of the Municipal Council, decision taken after notice to the affected person. The plea, inter alia, raised was that at the time of hearing, the complainant wanted to rely upon some new ground, to which the appellant raised objections. The concerned authority had directed a new date to be fixed for hearing, but instead of the same, the

impugned order was passed without affording an opportunity of hearing to the appellant. The absence of reason was also a plea taken. The observations of the Supreme Court are that a duly elected person is entitled to hold office for the term for which he has been elected and can be removed only on proved misconduct or any other procedure established under law, like a No Confidence Motion, etc. In that context, it has been observed that an elected official of the local Government is to be put to a higher pedestal as against a Government servant and then, for his removal also, stringent procedure and standard of proof is required. He could be removed strictly in accordance with the provisions provided by the legislature for his removal. The proceedings being quasi-judicial in character, principles of natural justice are required to be followed.

7. The aforesaid judgment would be not of much assistance to the petitioner, as the procedure for removal of President prescribed under Section 205 of the said Act, *inter alia*, requires the Inspector to give a notice in writing requiring the President to offer within a specified date his explanation with respect to acts of omission or commission mentioned in the notice. If the explanation is found satisfactory, proceedings can be dropped. The procedure has, in fact, been specified and elucidated in para 9 of the judgment in *State of Tamil Nadu Vs S.Ramasamy*, case *supra*, as under :

"9. Section 205 of the Act enables the Inspector of Panchayat to initiate proceedings against the President of the Panchayat either on his own motion or on a representation in writing signed by not less than 2/3rd of the sanctioned strength of the Village Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Village Panchayat. The provision also contains detailed procedure regarding issuance of notice to the President, consideration of explanation, convening meeting for the purpose of consideration of the explanation by the Village Panchayat, the procedure for conducting meeting, consideration of the views of the Village Panchayat by the Inspector and the ultimate decision in the matter of removal of President."

8. Another judgment brought to our notice is *Usha Bharti Vs. State of U.P. and Others*, , dealing with the U.P. Kshetra Panchayat and Zila Panchayat Act, 1961. The legal requirement under Section 28(2) of that Act was that a motion expressing want of confidence in the Adhyaksha must be signed by not less than half of the total number of elected members and a notice is required to be issued informing the elected members that a meeting for consideration of motion would be held. The challenge laid was that provision of "No confidence Motion" for removing the Chairman or Adhyaksha was inconsistent with Part-IX of the Constitution and that the provisions contained in Section 28(1) of that Act was repugnant to Part-IX of the Constitution. This contention was repelled in para 19 of the judgment.

9. In fact, it was observed in para 53 that the provision for removing an elected representative such as Panchayat Adhyaksha was of fundamental importance to

ensure democratic functioning of the institution as well as to ensure transparency and accountability in the functions performed by the elected representatives.

10. In the context of Section 205 of the said Act, it may be noticed that a resolution has to be voted on, with a check-in-balance provided, whereby the Inspector may agree or disagree with it. Further, as per sub-section 12, the Government has the power to cancel any notification issued by the Inspector and pending such a decision, postponing the date specified in the notification.

11. In our view, the principle hurdle the petitioner faces is the judgment of the Division Bench of this Court in State of Tamil Nadu Vs S.Ramasamy case , supra, which, in turn, relies upon the Full Bench of this Court in District Collector, Villupuram District and others Vs Devi Parasuraman and Others" case, supra. In view of the observation of the Full Bench of this Court, judicial discipline would require us not to differ with the view of the Full Bench and we would be bound by it. To accept the contention of the petitioner would really amount to over-ruling the view of the Full Bench of this Court.

12. We, thus, dismiss the petition, in view of the judicial views already pronounced qua the challenge laid in this petition by a co-ordinate Bench of this Court in State of Tamil Nadu Vs S.Ramasamy and the Full Bench of this Court in District Collector, Villupuram District and others Vs Devi Parasuraman and Others. No costs.