

(1997) 08 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No. 3579 of 1996 connected with Writ Petition Nos. 6779, 5076, 7636 and 7637 of 1996

M. Kempanna and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Constitution of India, 1950 — Article 243Q
Karnataka Municipalities Act, 1964 — Section 3

Citation : (1997) 7 KarLJ 615

Hon'ble Judges : Chandrashekaraiah, J

Judgement

1. The petitioners in all these petitions are seeking for quashing of the notifications issued under Sections 3 and 9 of the Karnataka Municipalities Act (for short "the Act"), specifying the smaller urban area to be called City Municipal area of Krishnarajpura and Mahadevapura.

2. The Government of Karnataka by its notifications specified the smaller urban area stating that objections have been invited and objections received in time have been duly examined. It is stated in the said notifications that having regard to the population of such area, the density of population in such area and percentage of employment in non-agricultural activities as reflected in the said notifications to be called City Municipal Council area of Krishnarajpura and Mahadevapura.

3. Sri R.N. Narasimha Murthy, learned Senior Counsel appearing for the petitioners contended that the notifications issued constituting the Municipal Council of Krishnarajpura and Mahadevpura are illegal on the ground that the Governor has not applied his mind in issuing the said notifications since it is mandatory on the part of the Governor to examine, having regard to the size of the area and the municipal services being provided by the Hindustan Aircraft Sanitary Board (hereinafter referred to as "HAS Board"), the purpose of specifying the said area to be an industrial township as provided under Article

243-Q of the Constitution of India and Section 3 of the Act before issuing a notification declaring such smaller urban area to be a municipal area.

4. In reply to the said submission the learned Advocate General submitted that it is not mandatory on the part of the Governor to consider whether in respect of the area where municipal services are provided to specify such area to be an industrial township having regard to the language used in the proviso to Article 243-Q of the Constitution and Section 3 of the Act. He further, submitted that Part IX-A of the Constitution is inserted by Constitution (74th Amendment) Act, 1992. Under this part the State is required to provide popular local self-Government by constituting municipal council consisting of elected representatives.

5. The HAS Board, was constituted under Section 58-B of the Mysore Village Panchayat Act, 1926. The Constitution of the said Board consists of 8 members who shall be appointed by the Government by notification in the Gazette. The Constitution of the said Board according to the learned Advocate General is opposed to the mandate of the Constitution. He further submitted that the Mysore Village Panchayat Act, 1926, itself has been repealed by subsequent enactment and therefore it is not proper or appropriate to allow the Board to continue as it consists of bureaucrats and not elected representatives.

6. Further, it is contended that the rules under which the Board has been constituted has not imposed any obligations on any industrial establishment to provide any, municipal services to the residents of that area and therefore, the residents of that area cannot compel any industrial establishment to provide municipal services in the event such services are not provided by the industrial establishment. On these grounds, it is contended that the notifications issued under Sections 3 and 9 of the Act cannot be said to be illegal or invalid.

7. The State Government keeping in view the mandate of the Constitution under the 74th Amendment Act 1992, amended the provisions of Sections 3 and 9 of the Act.

Article 243-Q of the Constitution reads as follows:

"243-Q. Constitution of Municipalities.-(1) There shall be constituted in every State-(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a small urban area; and (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may be deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this part".

The amended Section 3 of the Act reads as follows.-

3. Specification of smaller urban area.-(1) The Governor may subject to the provisions of Section 9 and having regard to-

- (a) the population of any area;
- (b) the density of population of such area;
- (c) the revenue generated for the local administration of such area;
- (d) the percentage of employment in non-agricultural activities in such area;
- (e) the economic importance of such area; and (f) such other factors as may be prescribed; specify, by notification, such area to be a smaller urban area and such smaller urban area shall be deemed to be a municipal area:

Provided that no such area shall be so specified as a smaller urban area unless,-

- (i) the population of such area is not less than twenty thousand and not more than three lakhs;
- (ii) the density of population in such area is not less than one thousand five hundred inhabitants to one square kilometer of area;
- (iii) the revenue generated for local administration from such area from tax and non-tax sources in the year of the last preceding census is not less than rupees nine lakhs per annum or a sum calculated at the rate of rupees forty five per capita per annum, whichever is higher;
- (iv) the percentage of employment in non-agricultural activities is not less than fifty per cent of the total employment:

Provided further that the Governor having regard to the size of the area and municipal services deemed to be provided or proposed to be provided by industrial establishment in any area and such other factors as he may deem fit may by notification specify such area or part thereof to be an industrial township.

(2) The Governor may while specifying any area to be a smaller urban area in sub-section (1), may also specify such area to be a city municipal area, in case of the population of such area is not less than fifty thousand or a town municipal area, in case the population is not less than twenty thousand but less than fifty thousand.

(3) The Governor may by notification apply to the area specified as industrial

township the provisions of any section of this Act or part of any section or any rules or bye-laws in force in any municipal area subject to such restrictions or modifications, if any, as may be specified in such notification.

(4) Notwithstanding anything contained in sub-section (1), no cantonment or part thereof shall be comprised in any such municipal area.

(5) Every, notification issued under sub-section (1) shall define the limits of the smaller urban area, or as the case may be, the industrial township to which it relates".

8. Section 3 of the Act confers power on the Governor to specify by notification the area to be a smaller urban area. The first proviso to Section 3(1) of the Act imposes certain conditions. The second proviso to the above said section provides that the Governor, having regard to the size of the area and municipal services deemed to be provided or proposed to be provided by industrial establishment in any area and such other factors as he may deem fit, by notification specify such area or part thereof to be an industrial township. Under this proviso, in order to declare a particular area to be an industrial township there shall be deemed municipal services to that area or there shall be a

proposal to provide such municipal services to the said area in order to declare that area as an industrial township.

9. In the writ petition filed by Hindustan Aeronautics Limited (for short "HAL"). It is stated that certain amenities like roads, parks, water supply, sewerage and other facilities are being provided by the HAL at its own cost to the HAS Board area. It is also stated that it has established Schools, Hospital, shopping and recreation centres. The said facilities are not under any statutory obligation or a duty. In the event if HAL were to stop the above said services, the residents have no legal right to compel the HAL to provide the said facilities under any statute. The services if any rendered by the HAL are only voluntary and not under any law. Therefore, it cannot be said that the services provided by the HAL are deemed municipal services or there is any proposal under any enactment so as to provide such municipal services to the area in question. Hence, I am of the view that the non-consideration of the request of the petitioners to declare the area in question to be an industrial township as required under Article 243-Q of the Constitution and Section 3 of the Act, by the Governor vitiates the notifications.

10. The power conferred on the Governor under the proviso to Article 243-Q of the Constitution is only directory and not mandatory in view of the language used in the said Article. There it is stated that the Municipality may not be constituted in urban area having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment. The word "may" used in the context shows the power that may be exercised by the State or the Governor is only directory and not mandatory.

11. The HAS Board, was constituted under the rules framed under Section 58-B of the Mysore Village Panchayat Act, 1926. The said Act has been repealed by subsequent enactment. Further, nothing is produced before me to show that under what provision of law the Board is being continued. But some how or the other the Board is in charge of the administration of the area. As per the constitution of the Board, the Board consists of 8 members appointed by the Government by notification. The members are all officials of the State Government except two representatives of the HAL and two representatives of the rural area included in the Board. Under the 74th Amendment Act, the composition of municipalities consist of person chosen by direct election from territorial constituencies in the municipal area. Section 3(3) of the Act, provides that the Governor may by notification apply the provisions of any section of this Act or part of any section or rules or bye-laws in force to any municipal area to the area specified as Industrial Township subject to such restriction or modification if any, as may be specified in such notifications. Under this, no doubt the Governor may by notification apply any of the provisions of this act to the area specified as industrial township. No doubt the Governor may after declaring an area to be an industrial township may issue a notification providing for constitution of the industrial township by elected representatives. But it is not the case of the petitioners in these petitions that they want a popular self-Government represented by elected representatives. What they want is the present Board to be continued in place of popular local self-Government. In my opinion the request of the petitioners in all these petitions is opposed to the mandate of the Constitution.

12. It is nextly contended that the petitioners, insofar as the notification relating to Krishnarajpura Municipal Council is concerned they have filed their objections objecting to the proposed declaration of smaller urban area, but the Governor has not afforded an opportunity of hearing and therefore the notification is invalid. It is further contended that any notification issued specifying the smaller urban area involves civil consequences and therefore the villagers are entitled for hearing. The learned Advocate General appearing for the State submitted that the process of specification of smaller urban area under Section 8 of the Act is a legislative process and therefore the petitioners are not entitled for hearing on their objections. The Supreme Court in the case *Sundarjas Kanyalal Bhatija and Others v The Collector, Thane, Maharashtra and Others*, AIR 1990 SC 261, wherein it is held thus.-

"23. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with,

then, the Court could say no more. In the present case the Government did not publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs".

24. Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law".

13. The Supreme Court while dealing with the case of Sundarjas, supra, has referred to the decision in the case of Tulsipur Sugar Company Limited v Notified Area Committee, Tulsipur, AIR 1980 SC 882, wherein it is held thus.-

"The power of the State Government to make a declaration under Section 3 of the Act, is legislative in character because the application of the rest of provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act, is in the nature of a conditional legislation".

It is clear from the reading of the above said decisions, that the process of issuing notification under Section 3 of the Act is neither executive nor administrative and it is a legislative process. If that is so, as held by the Supreme Court, the rules of natural justice are not applicable to the legislative action in issuing the notification under Sections 3 and 9 of the Act and therefore the petitioners are not entitled for hearing on their objections.

14. Sri R.N. Narasimha Murthy, learned Senior Counsel submitted that even assuming that the notifications issued under Sections 3 and 9 of the Act is a legislative action, the Governor is required to consider the objections before issuing the notifications specifying the smaller urban area to be a Municipal Council.

15. The learned Government Advocate has made available the records relating to the issuance of the impugned notifications. From the records it is seen that all the objections received in respect of both the Municipal Councils were considered by the State Government and detail note on the objections was prepared and submitted to the Governor. The Governor after going through the note considering the objections approved the note and directed the issuance of notification. The Supreme Court in the case of State of Uttar Pradesh and Others v Pradhan Sangh Kshettra Samiti and Others, AIR 1995 SC 1512, has held that

the Governor cannot act without the aid and advise of the Council of Ministers and further held the Governor means the Government of the State. From these facts it is seen that the objections filed by the petitioners have been duly considered by the Governor before issuing the notifications.

16. The learned Counsel for the petitioners submitted that there is no proper publication as provided under Section 9 of the Act. The State Government in its statement of objections has stated thus:

"The Divisional Commissioner, Bangalore Division the Tahsildar of the Bangalore North and South Taluk, the Chief Executive Officer of Byappannahally and the Chief Executive Officer of HAL Sanitary Board have published the draft notification with regard to the constitution of the Municipal Council on their notice Boards as required under Section 9 of the Act". Section 9 of the Act, requires publication of draft notification in the Official Gazette, in English and Kannada and to be exhibited in conspicuous places in the said local area in Kannada. In the case on hand, the draft notifications were published in the Gazette both in English and Kannada. They were also notified in the conspicuous places such as the office of the Divisional Commissioner, Office of the Tahsildar of Bangalore North and South, the Chief Executive Officer of Byapannahally and Chief Officer of HAL Sanitary Board. Therefore, I find that there was a proper publication as required under Section 9 of the Act. Further, the petitioners cannot have any grievance regarding publications, as they have filed objections, objecting the proposed declaration specifying smaller urban area.

17. The learned Counsel for the petitioner in W.P. No. 6779 of 1996, challenging the constitution of Municipal Council in respect of Mahadevapura submitted that though the petitioners have filed objections well in time, the Governor has not considered the said objections on the ground the objections have not been filed within the stipulated time. In support of this he brought to my notice the notification issued in English, wherein it is stated that no objections have been received within the period specified above. The learned Advocate General, submitted that what has been printed in the English notification is a mistake and further submitted that in the notification issued in Kannada, it is stated that the objections received have been examined. Further, from the records, it is also seen that the objections received have been examined before issuing the notification. Therefore, I am of the view that what has been stated in the notification issued in English is only a mistake. Therefore, I find no substance in the contention that the objections though filed in time have not been considered as required under law.

18. It is contended on behalf of the petitioners that the area specified in the notification for the purpose of constituting the Municipal Council is not geographically contiguous and therefore it is not possible for the Municipal Council to effectively function as it results in causing inconvenience in the matter of providing municipal services to the residents of the area in question. In Sundar Jas case, supra, one of the contentions raised is as follows: "they

asserted that establishment of the Corporation without Ulhasnagar Municipal Area, having regard to the geographical contiguity was un-intelligible and incomprehensible". Considering the said contention, the Supreme Court has held that the Governor is the best Judge in deciding which are the areas that are to be specified under Section 3 of the Act as a smaller urban area. The Court cannot substitute its concept of smaller urban area for that of the State Government. In Pradhan Sangh's case, supra, the Supreme Court has held that it is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area should be delimited. The said decision has been considered in W.P. Nos. 40743 to 40745 of 1995, decided on 13-6-1997, by this Court. In view of these decisions, I find no substance in this contention. If at all if there is any inconvenience to the residents of the area the same can be rectified by the State Government by re-specifying the area under the Act.

19. It is in the submission of the learned Counsel for the petitioners that the State Government issued a notification dated 17-5-1996, deleting some villages from the notification issued under Sections 3 and 9 of the Act, without issuing a notification under Section 4 of the Act. Section 4 of the Act, provides for issuing notification either to include or to exclude the areas in or from the smaller urban area after consulting the Municipal Council. In the case on hand the Municipal Council is yet to be constituted. The notification dated 17-5-1996, deleting some villages is only a corrigendum since, there was a mistake in including the said villages in the notification specifying the smaller urban area, as these villages are included in the area of the Bangalore City Municipal Corporation. This corrigendum is a notification re-specifying the area by virtue of the power conferred under Section 3 of the Act. In this regard, I find nothing wrong in issuing the corrigendum re-sepcifying the smaller urban area correcting the mistake crept in issuing the notification.

20. At the time of arguments, it is brought to my notice that some portion of the HAS Board has already been declared as a part of the Bangalore City Corporation by issuing the notification under Section 3 of the Karnataka Municipal Corporations Act. the said notification was challenged by some of the petitioners in writ petitions along with others. The said petitions were dismissed confirming the notification issued by the State Government. The writ appeals filed challenging the orders passed in the writ petitions were also dismissed. This shows that the identity of the constitution of the Board as constituted earlier does not exist. When such being the case, it is not known how the petitioners can challenge the notifications which relate to the part of the remaining area of the Board. The provisions in the Municipal Corporations Act and the Karnataka Municipalities Act, in this regard are *pari materia*. This Court having upheld the validity of the notification issued under Section 3 of the Municipal Corporations Act, I find no reason to interfere with these notifications which relate to the remaining part of the HAS Board.

21. Therefore, I find no substance in any of the contentions urged on behalf of

the petitioners and hence the writ petitions stand dismissed.