

(1997) 09 KAR CK 0023

In the Karnataka High Court

Case No : Writ Appeal No's. 4598, 4599, 4837 and 4838 of 1997

M. Kempanna and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Constitution of India, 1950 — Article 243K, 243Q, 327
Karnataka Municipalities Act, 1964 — Section 3, 9

Citation : (1999) 4 KarLJ 539

Hon'ble Judges : R.P. Sethi, C.J.;S.R. Bannurmath, J

Bench : Division Bench

Advocate : Sri R.N. Narasimhamurthy for Sri N.K. Gupta and M/s. Subbanna Associates, for the Appellant; Sri S. Vijaya Shankar, Advocate General and Sri A. Nagarajappa, for the Respondent

Judgement

R.P. Sethi, C.J.—Notification dated 21-1-1996 (Annexure-A) issued u/s 3 read with Section 9 of the Karnataka Municipalities Act, 1964, was challenged in the writ petitions filed in public interest which were dismissed vide the order impugned in these appeals. Vide the aforesaid notification smaller urban areas specified in Schedule-A to be called the City Municipal Council area of Krishnarajapuram and Mahadevapura were constituted. The notification was alleged to be illegal on various grounds detailed in the writ petitions.

2. All the pleas raised by the appellants except the alleged violation of the provisions of Article 243-Q of the Constitution are covered against the appellants by a Division Bench judgment of this Court in Amalpur Gram Panchayat Vs. State of Karnataka and Others, .

3. Alleging violation of the proviso to Article 243-Q of the Constitution, it is submitted that as the Governor has not applied his mind and without having regard to the size of the area and the Municipal services being provided by an industrial establishment in the area and such other similar factors, has issued the impugned notification, the same being unconstitutional, is required to be set

aside. It is submitted that amenities like roads, parks, water supply, sewerage and other facilities were being provided in the area by the Hindustan Aeronautics Limited at its own cost to the Hindustan Aeronautics Sanitary Board area covering the areas declared to be included in the Municipal areas. It is submitted that the said Board has also established school, hospital, shopping and recreation centres. It may be noticed at this stage that the Hindustan Aeronautics Sanitary Board had been constituted under the rules framed u/s 58-B of the Mysore Village Panchayat Act, 1926 which was subsequently repealed, but the Board was continued. The Board is stated to be consisting of eight members appointed by the Government who are the officials of the State Government except two representatives of the HAL and two of the local area included in the Board.

4. Part IX-A comprising of Articles 243-P to 243-ZG, including Article 243-Q was inserted in the Constitution by the Constitution (Seventy-fourth) Amendment Act, 1992, which came into force with effect from 1-6-1993. The Constitution Seventy-third and Seventy-fourth amendments were introduced with the object of strengthening the concept of local self-government and dividing the whole country into Panchayats, Municipalities and Municipal Corporations. The provisions, apparently appear to have been incorporated in furtherance of achieving the goals set forth in the Directive Principles of State Policy, particularly Article 40 of the Constitution. The importance and significance of the local self-government in a democratic polity can neither be ignored nor left to the discretion or mercy of the Executive or any person, authority or establishment. The provisions of the Articles incorporated by the Seventy-third and Seventy-fourth amendments are required to be interpreted by keeping in mind the purpose which was intended to be achieved by such constitutional amendments.

5. Article 243-Q provides:

"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 smaller 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 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 purpose of this part".

The general principle envisaged under the Article is that Nagar Panchayats, Municipal Councils and Municipal Corporations are to be constituted in all the States. An exception has been carved out authorising the Governor/Executive to dispense with the constitution of Municipal Council or Municipal Corporation where it is deemed proper in cases where the circumstances as referred to in the proviso to sub-article (1) of Article 243-Q are found to be in existence. The exercise of power for not constituting the Municipal Council or Municipal Corporation may require the Governor to specify the reasons but no such reasons are required to be referred to in case where the Governor, in his discretion, decides to constitute a Municipal Council or Municipal Corporation with respect to an urban area. The discretion conferred upon the Executive is for non-inclusion of an area in the Municipality and not vice versa. Accepting the plea of the appellants to assign reason for inclusion of an area in the Municipal limits would defeat the very purpose for which the Seventy-fourth amendment was made by the Parliament. The facilities provided by an industrial establishment may be a ground for the State not to include an area in the Municipality, but the existence of such facilities would not deprive the inhabitants of the area to get the advantage of being a part of the Municipality or Municipal Corporation, apparently constituted in furtherance of the concept of conferring power upon the local authorities in the governance of the country. Such an interpretation would be anti-people, anti-constitutional and anti-democratic. The concept of local Government as enshrined by the Seventy-third and Seventy-fourth Amendments is referable to the old Panchayat Raj System in our country where the affairs of a local area were dealt with and managed by the people through their representatives. According to Halsbury's "Laws of England" the development of local institutions of Government can be traced back continuously to the shire, hundred, burgh, vill, tithing or township of the two centuries preceding the Norman conquest.

6. Keeping in view the concept of local self-government, the purpose for which the Seventy-third and Seventy-fourth Amendments were made in the Constitution, the Directive Principles of State Policy, and the recognised democratic set up in the country adopted by the people of India by enacting the Constitution for themselves, we are of the firm opinion that the argument of the appellants, though apparently attractive, cannot be allowed to be sustained inasmuch as its acceptance would defeat the ends of justice ultimately affecting the larger section of the Society living in the areas sought to be included within the municipalities of Krishnarajapuram and Mahadevapura. The deprivation of the inclusion might have persuaded us to examine the exercise of discretion by the Governor, but for inclusion of the areas in the Municipality, no such effort is required to be made because the inclusion of the area into a Municipality is the

rule and its exclusion is an exception.

7. There is no substance in the submission of the appellants that the impugned notifications were issued without consideration of the objections filed by the appellants and others. The consideration of the objections would also indicate that the Governor has exercised the discretion strictly in accordance with the provisions of the Constitution and had not constituted the Municipalities in a mechanical manner as urged. Upon appreciation of the record, the learned Single Judge held:

"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 U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., , has held that the Governor cannot act without the aid and advice 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 notification".

We have also seen the records and do not find any ground to disagree with the findings recorded by the learned Single Judge.

8. The constitution of the Municipal Council in respect of Mahadevapura was also challenged on the ground that as there was no geographical contiguity, the constitution of the Municipality would not serve the purpose sought to be achieved. Relying upon a judgment of the Supreme Court in Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, , the learned Single Judge rightly held that the Governor was the best Judge in deciding which areas were required to be specified u/s 3 of the Act as smaller urban areas and this Court could not substitute its finding in that behalf. In Pradhan Sangh Kshettra Samiti's case, supra, the Supreme Court held:

"...If we read Articles 243-C, 243-K and 243-O in place of. Article 327 and Section 2(kk), of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the Panchayat area nor of the constituencies in the said areas and the allotment of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994".

9. It may not be out of place to mention that some portion of the Hindustan

Aeronautics Sanitary Board has already been declared as the part of the Bangalore City Corporation by issuance of notification u/s 3 of the Karnataka Municipal Corporations Act. The writ petition and the writ appeal filed against the aforesaid notification has been admittedly dismissed. The identity of the area comprising HAS Board has been thus already disrupted.

10. We do not find any illegality or error of jurisdiction in the order of the learned Single Judge requiring our interference. The impugned notifications have been validly issued which do not infringe any constitutional provisions. The writ petitions and the writ appeals filed by the appellants are misconceived and apparently based upon wrong notions of law and the concept of democratic polity prevalent and in existence in India. The writ appeals are dismissed. No costs.