

(1986) 01 KAR CK 0001
In the Karnataka High Court
Case No : W.P. No 9061 of 1984

Narayanaswamy K. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 9

Citation : (1987) 1 KarLJ 362

Hon'ble Judges : K. A. Swamy, J

Judgement

K.A. Swami, J.-In this petition under Articles 226 and 227 of the Constitution, the petitioners have sought for a declaration that Section 9 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the "Act") is unconstitutional being violative of Articles 14 and 194 of the Constitution.

2. The petitioners are Corporators of the Corporation of the City of Bangalore.

3. Sri S.S. Padmaraj, learned Counsel appearing for the petitioners has put forth the following contentions:

(1) that Sec. 9 of the Act, falls outside the scope and ambit of Entry No. 5-List II of Schedule VII of the Constitution;

(2) that Section 9 of the Act, is violative of Article 14 of the Constitution, because in the case of Corporators, the Act prohibits them from participating in the matters in which they have pecuniary interest, whereas a member of the Legislative Assembly is permitted to participate in the proceedings of the Corporation and the Standing Committees without any such limitation;

(3) that Section 9 of the Act, amounts to conferring a privilege on a member of the Legislative Assembly, which can be conferred only as per the provisions contained in Article 194 of the Constitution; that as Sec. 9 of the Act, falls outside the purview of Article 194 of the Constitution, it is bad in law. In other words, it is contended that a member of the Legislative Assembly is not entitled to any other privilege other than those provided under Article 194 of the

Constitution;

(4) that by allowing a member of the Legislative Assembly, who is an utter stranger to the Corporation, the very concept of Local Self Government is destroyed; because it amounts to allowing a third party who is not a Corporator to participate in the proceedings of the Corporation;

(5) that Section 9 of the Act, is in conflict with Sec. 7 and sub-sec. (2) of Sec. 25 of the Act.

4. On the contrary, Sri B.J. Somayyaji, learned High Court Government Pleader, submits that Sec. 9 of the Act, is valid and it is neither opposed to either Article 14 of 194 of the Constitution; nor it is in conflict with Sections 7 and 25(2) of the Act; that an entry in the Lists of the VII Schedule of the Constitution have to be liberally construed and all the possible meaning should be given to it so as to see that the power tests in the Legislature to meet the unforeseen circumstances; that Sec. 9 of the Act, falls within the ambit of Entry No. 5 of List II of Schedule VII of the Constitution.

5. Having regard to the aforesaid contentions, the following points arise for consideration:

(1) Whether Section 9 of the Act, falls outside the purview of Entry No. 5 of List II of Schedule VII of the Constitution?

(2) Whether Section 9 of the Act, is hit by Articles 14 and 194 of the Constitution?

(3) Whether Section 9 of the Act, destroys the conception of Local Self Government?

(4) Whether Section 9 of the Act, is in conflict with Sections 7 and 25 (2) of the Act?

5. Point No. (1): Entry No. 5 of List II of Schedule VII of the Constitution reads thus:

"Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self government or village administration."

Entries in the three lists of the VII Schedule are not powers of legislation, but they are fields of legislation. They are mere legislative heads. The language of those Entries should be given widest scope of which their meaning is fairly capable because they set up a machinery of Government. Each general word should accordingly be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. The rule of widest construction, the doctrine of pith and substance, in other words the true character of the Legislation are some of the rules of interpretation which are to be applied in determining legislative competence of particular statute.

7. The contention of the petitioners is that Section 7 of the Act, provides for the constitution of the Corporation and there is no provision in Section 7 of the Act, enabling the member of the Legislative Assembly elected from the area covering the area of the Corporation, becoming a Corporator; therefore, Section 9 of the Act, which enables such member of the Legislature to participate in the proceedings of the Corporation and its Standing Committees does not fall under Entry No. 5 of List II of Schedule-VII of the Constitution. It is not possible to accept the contention. The expression, "constitution" occurring in Entry No. 5 of List II of Schedule VII of the Constitution should be given widest possible meaning. Constitution of the Corporation may be in several forms. It may consist of elected councillors; may also consist of elected as well as nominated councillors. The law may also allow certain persons who without becoming councillors, but only by reason of particular specified status enjoyed by them are conferred with the right only to participate in the proceedings of the Corporation, without any right to vote therein or hold any office in the Corporation as a Councillor. Such composition of a Corporate body is not unknown to law. In the instant case, what Section 9 of the Act, does is only to enable a member of the State Legislative Assembly representing a part or whole of the City forming part of the local area comprised in the Corporation limits, to attend the meetings of the Corporation and the Standing Committees and take part in the proceedings there at, but without any right to vote on any subject or to contest any elected post in the Corporation and the Standing Committees. He also does not become a councillor of the Corporation because as per the definition of the Council or in subclause (7) of Section 2 of the Act, is a person who is duly elected as a member of the Corporation under the Act. A member of the Legislative Assembly on the contrary is disqualified to get himself elected as a Corporator by sub-section (2) of Section 25 of the Act, and also of holding office as a councillor. Thus, it is clear that he is not made a councillor of the Corporation, but he is only permitted to participate in the proceedings of the Corporation. In the matter of constitution of Corporate bodies which are nothing but the creatures of the statute, it is open to the legislature to provide the manner and mode of constitution and composition of such corporate bodies, and the functioning of such bodies. In the instant case, the Act provides for the Constitution of the Corporation by elected Councillors for a term of five years as provided by Sections 7 and 8 of the Act. Section 9 of the Act, is not concerned with the constitution of the Corporation. It is nothing to do with the constitution of the corporation. It also does not destroy the character of the Corporate body. Therefore, it is not possible to hold that Section 9 of the Act, does not fall within the ambit of Item No. 5 of List II of Schedule VII of the Constitution inasmuch as it enables the concerned legislator to participate in the proceedings of the Corporation. It is already pointed out that a person may be allowed to participate; nevertheless; may not be allowed to vote and become a member of the body-corporate. Therefore, as Section 9 of the Act, relates to the proceedings of the Corporation and participation by certain specified persons other than Councillors in the proceedings of the Corporation and its standing committees, it

falls within the ambit of Item No. 5 of List II of Schedule VII. This Court, in *Chikkamuddu and others v State of Karnataka and others*, (reported in 1919 (2) Kar.L.J. page 421), in conformity with the established principles of interpretation of the entries in the lists of Schedule VII of the Constitution has held that widest interpretation should be given to the words contained in the Entries. Therefore, it is not possible to hold that Section 9 of the Act, falls outside the Entry. Point No. 1 is answered against the petitioners.

8.Point No. (2): This contention is based upon the assumption that the elected Corporators, and such of the members of the Legislative Assembly, who are entitled to participate in the proceedings of the Corporation are not treated alike inasmuch as such members of the Legislative Assembly, do not suffer from the same limitations from which the elected councillors suffer. Under sub-section (1) of Section 80 of the Act, a Councillor is prohibited from voting on or taking part in the discussion of any question coming up for consideration at a meeting of the Corporation or any standing committee, if the question is one in which apart from its general application to the public, he has any direct or indirect pecuniary interest by himself or his partner. It is submitted on the basis of this provision that when a member of the Legislative Assembly is entitled to participate in the proceedings of the Corporation and its Standing Committee along with the Councillors of the Corporation, he is not prohibited by the Act, to participate in the discussion of any question coming up for consideration at a meeting of the Corporation or any Standing Committee in which he is having direct or indirect pecuniary interest by himself or his partner, therefore. Section 9 of the Act, discriminates between an elected Councillor and a member of the Legislative Assembly, who is entitled to participate in the proceedings of the Corporation. A member of the Legislative Assembly is not entitled to vote in the proceedings of the Corporation and its Standing Committees, but he is only entitled to participate. He cannot also be treated in par with the councillors because it is they who constitute the Corporation and it is they who have the right to vote and make a decision of the Corporation. Therefore, it is not possible to hold that the Councillors and a member of the Legislative Assembly falling under Section 9 of the Act, fall in the same category. Therefore, it is not possible to hold that Section 9 of the Act, is discriminatory. However, when an elected councillor is prohibited even from participating in the discussion of any question which he has direct or indirect pecuniary interest by himself or his partner, it is appropriate that even a member of the Legislative Assembly, who is empowered to participate in the proceedings of the Corporation and its Standing Committees is also prohibited from participating in the discussion of any question coming up for consideration at a meeting of the Corporation or any Standing Committee in which directly or indirectly he has a pecuniary interest by himself or his partner. Mere fact that he does not have a right to vote, he cannot be placed in a more advantageous position than an elected member. He can influence the decision by participating in the proceeding. Participation of a member of the Legislative Assembly in the proceedings of the Corporation will have a definite effect on the

proceeding itself inasmuch as he may persuade the Councillors to agree to his point of view. Therefore, in public interest, it is better that the Legislature steps in, and amends Section 9 of the Act suitably or extends the provisions contained in sub-Section (1) of Section 80 of the Act, to a member of the Legislative Assembly who as per Section 9 of the Act is entitled to participate in the proceedings of the Corporation. But, it is not necessary to strike down Section 9 of the Act. Article 194 of the Constitution, deals with the powers, privileges, etc., of the House or Legislatures and of the members and committees thereof. As per Clause (3) of Article 194 of the Constitution it is open to the Legislature to define by law powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House Legislature from time to time. The Act is a law passed by the State Legislature. Therefore, the privilege conferred upon a member of the Legislative Assembly falling within the ambit of Section 9 of the Act, is well within the scope of Article 194 of the Constitution. Hence, point No. 2 is answered in the negative and against the petitioners.

9.Point No (3): It is also not possible to hold that by reason of participation by a member of Legislative Assembly falling under Section 9 of the Act representing a part or whole of the area covered by the Corporation, in the proceedings of the Corporation and its Standing Committees without a right of vote amounts to destroying the concept of local self-government. He does not become a councillor nor he has a right to vote in the proceeding or has a right to hold any office in the Corporation as a Councillor. He merely participates in the proceedings of the Corporation and its standing committees. He cannot also be held to be an utter stranger because he is also elected to the Legislative Assembly from that part of the City from which some of the Councillors are elected to the Corporation and which forms part of his Legislative Assembly Constituency. He is a member of a bigger democratic body viz., the Legislative Assembly. When a member of a Legislative Assembly is only given a right to participate in the proceedings of the Corporation and its Standing Committee and not treated as a Councillor and no right of vote is given to him; it is not possible to hold that the concept of local self-government is in any way affected by his mere participation. On the contrary sub-section (2) of Section 25 of the Act clearly prohibits a member of the Legislative Assembly from getting elected as a Councillor and from holding any office as Councillor. Therefore, the power of the Corporation and its corporate character are not in any way affected by a mere participation of a member of the Legislative Assembly. The essential ingredients of local self-government are kept in tact by the Act. Section 9 of the Act does not destroy such concept inasmuch as, the election of the Councillors, liberty to take decision and execute its developmental works in accordance with the provisions of law are not interfered with. Therefore, it is not possible to hold that Section 9 of the Act destroys the concept of local self-government. Accordingly, Point No. 3 is answered in the negative and against the petitioners.

10.Point No. (4): In view of the fact that a member of the Legislative Assembly does not become a councillor, it is also not possible to hold that Section 9 of the

Act is in conflict with Sections 7 and 25(2) of the Act. Section 9 of the Act only permits a member of Legislative Assembly to participate in the proceedings of the Corporation and its Standing Committees. That does not mean that he becomes a councillor. Therefore, sub-section (2) of Section 25 of the Act is not violated. Similarly, when once he does not become a councillor, the constitution of the Corporation is also not affected. Therefore, Section 9 of the Act is not in conflict with Sections 7 and 25(2) of the Act. Accordingly, Point No. 4 is answered in the negative and against the petitioners.

11. No other contention is urged. All the contentions urged by the petitioners fail.

12. Accordingly, the Writ Petition fails and the same is dismissed.

13. Sri. B.J. Somayyaji, learned High Court Government Pleader, is permitted to file his memo of appearance on behalf of respondent No. 1 in six weeks.

Writ petition is dismissed.