

(2023) 05 SHI CK 0139
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.8184 Of 2021

Nikhil Gupta

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 243P, 243P(e), 243Q, 243Q(2)
Cantonments Act, 2006 — Section 4(1), 10, 12, 13(2), 13(2)(c), 39, 61, 62, 64

Citation : (2023) 05 SHI CK 0139

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Amrinder Singh Rana, Balram Sharma

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following substantive reliefs:-

"i) That a writ on mandamus may kindly be issued by directing the respondent authorities to conduct the meeting of respondent No. 3 in accordance of law and take necessary action as per the provisions of cantonment Act, 2006.

ii) That the unreasonable, illegal, arbitrary and wrong Resolution passed in proceedings of meetings Annexure P-1 (Colly) may kindly be quashed and set aside in the interest of justice.

2. Respondent No. 3 Cantonment Board Subathu is governed by the Cantonments Act, 2006 (for short the 'Act') and fall under the Category-III as per Section 12 of the Act, which reads as under:-

(5) In Category III Cantonments, the Board shall consist of the following members, namely:—

- (a) the Officer Commanding the station as ex officio or, if the Central Government so directs in respect of any cantonment, such other military officer, as may be nominated in his place by the General Officer Commanding-in-Chief, the Command;
- (b) the District Magistrate or an Executive Magistrate nominated by him;
- (c) the Chief Executive Officer;
- (d) the Health Officer ex officio;
- (e) the Executive Engineer ex officio;
- (f) one military officer nominated by name by the Officer Commanding the station by order in writing;
- (g) six members elected under this Act.

3. Respondent No. 3 convened the ordinary Board meetings on 15.06.2021, 19.07.2021 and 31.08.2021, however, these meetings were without proper quorum and, therefore, the decision taken in any of these meetings is illegal, more particularly, the decision that was taken only by two members i.e. President and Member Secretary, involving larger public interest of the residents of the area i.e. Resolution No. 21 passed in the meeting dated 19.07.2021, which involves the issue relating to increase of water charges from Rs.8/- to Rs. 53.50 per 1000 liters. According to the petitioner, the decision is not only arbitrary but illegal as it has been passed without there being a proper quorum.

4. Respondent No. 3 contested the petition by filing a reply, wherein preliminary objections regarding the maintainability and that the petitioner has not approached the Court with clean hands have been raised. On merits, it has been stated that respondent No. 3-Cantonment Board Sabathu is deemed municipality under Clause (e) of Article 243 (P) of the Constitution of India for the purpose of implementing the Central Government's Schemes of social welfare, public health, hygiene, safety, water supply, sanitation, urban renewal and education as defined under Section 10 of the Act.

5. Being a deemed municipality, duties and discretionary functions of respondent No. 3- Cantonment Board Sabathu have been described under Sections 62 and 64 of the Act and for effective discharge thereof discretionary functions have been vested in the Board.

6. As per Section 39 of the Act, every Board has to meet at least once in a month to transact its business on such day as may be fixed by the President.

7. As regards the validity of proceedings conducted by the Cantonment Board, reliance is placed on Section 61 of the Act.

8. Further with respect to the justification for increase of rates of water, it has been submitted that the Cantonment Board Subathu does not have its own source of water supply and receive bulk water supply from the Military

Engineering Service for the purpose of supply to the residents/consumers of Subathu Cantonment. The said bulk supplier i.e. Military Engineering Service is charging Rs. 60.42 per 1000 liters from the Cantonment Board Subathu, while the said water is being further supplied by the Cantonment Board Subathu to the residents/consumers at a lesser rate i.e. Rs. 53.50 per 1000 litres as decided by Resolution No. 21, dated 19.07.2021.

We have heard learned counsel for the parties and have gone through the relevant provisions of the Act as also the material placed on record.

9. In order to better appreciate the controversy in question, it would be necessary to refer certain material provisions of the Act, which read as under:-

10. Cantonment Board.—

(1) For every cantonment there shall be a Cantonment Board.

(2) Every Board shall be deemed to be a municipality under clause (e) of Article 243 P of the Constitution for the purposes of—

(a) receiving grants and allocations; or

(b) implementing the Central Government schemes of social welfare, public health, hygiene, safety, water supply, sanitation, urban renewal and education.

12. Constitution of Cantonment Boards.—

(1) Cantonments shall be divided into four categories, namely:—

(iii) Category III Cantonments, in which the population exceeds two thousand five hundred, but does not exceed ten thousand; and

(5) In Category III Cantonments, the Board shall consist of the following members, namely:—

(a) the Officer Commanding the station as ex officio or, if the Central Government so directs in respect of any cantonment, such other military officer, as may be nominated in his place by the General Officer Commanding-in-Chief, the Command;

(b) the District Magistrate or an Executive Magistrate nominated by him;

(c) the Chief Executive Officer;

(d) the Health Officer ex officio;

(e) the Executive Engineer ex officio;

(f) one military officer nominated by name by the Officer Commanding the station by order in writing;

(g) six members elected under this Act.

13. Power to vary constitution of Boards in special circumstances.—

(1) Notwithstanding anything contained in section 12, if the Central Government is satisfied,—

(b) that, for the administration of the cantonment, it is desirable, to vary the constitution of the Board in any cantonment under this section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect.

(2) Upon the making of a declaration under sub-section

(1), the Board in the cantonment shall consist of the following members, namely:—

(a) the Officer Commanding the station,

(b) the Chief Executive Officer, and

(c) one member, not being a person in the service of the Government, nominated by the Central Government in consultation with the General Officer Commanding-in-Chief, the Command.

(3) The nomination of a member of a Board constituted under this section, and the vacancy in the membership thereof shall be notified by the Central Government in the Official Gazette.

(4) The term of office of a Board constituted by a declaration under subsection (1) shall not ordinarily extend beyond one year:

Provided that the Central Government may from time to time, by a like declaration, extend the term of office of such a Board by any period not exceeding one year at a time:

Provided also that the Central Government shall forthwith direct that the term of office of such a Board shall cease if, in the opinion of the Central Government, the reasons stated in the declaration whereby such Board was constituted or its term of office was extended, have ceased to exist.

(5) When the term of office of a Board constituted under this section has expired or ceased, the Board shall be replaced by the former Board which, but for the declaration under sub-section (1) or sub-section (4), would have continued to hold office, or, if the term of office of such former Board has expired, by a Board constituted under section 12.

39. Meetings.

(1) Every Board shall meet at least once in a month to transact its business on such day as may be fixed by the President and in his absence by the Vice-President, and its notice shall be given in such manner as may be provided in the regulations made by the Board under this Chapter.

(2) The President may, whenever he thinks fit, and shall, upon a requisition in

writing by not less than one-fourth of the members of the Board, convene a special meeting.

(3) Any meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further adjourned in like manner but not more than twice except in case of a public emergency.

41. Quorum

(1) The quorum necessary for the transaction of business at a meeting of the Board shall be one-half of the number of members of the Board holding the office:

61. Validity of proceedings, etc.

(1) No act or proceeding of a Board or of any committee of a Board shall be invalid by reason only of the existence of a vacancy in the Board or committee.

(2) No disqualification or defect in the election, nomination or appointment of a person acting as the President or a member of a Board or of any such committee shall vitiate any act or proceeding of the Board or committee if the majority of the persons present at the time of the act being done or the proceeding being taken were duly qualified members thereof.

(3) Any document or minutes which purport to be the record of the proceedings of a Board or any committee of a Board shall, if made and signed substantially in the manner prescribed for the making and signing of the record of such proceedings, be presumed to be a correct record of the proceedings of a duly convened meeting, held by a duly constituted Board or committee, as the case may be, whereof all the members were duly qualified.

Section 207 Supply of water from Government water-supply to the Board.

(2) Any supply of water received under sub-section (1) shall be a bulk supply, and the Board shall make such payments to the Military Engineer Services or Public Works Department for all water so received as may be agreed upon between the Board and the Military Engineer Services or Public Works Department, or, in default of such agreement, as may be determined by the Central Government to be reasonable having regard to the actual cost of supplying the water in the cantonment and the rate charge for water in any adjacent municipality:

Provided that, notwithstanding anything contained in this Act, the Board shall not charge for the supply to persons in the cantonment of water received by the Board under this section a rate calculated to produce more than the sum of the payments made to the Military Engineer Services or Public Works Department for water received and the actual cost of the supply thereof by the Board to consumers.

10. It would be noticed that as per Section 10 of the Act, every Board is deemed

to be a municipality under Clause (e) of Article 243P of the Constitution of India for the purpose of receiving grants and allocations; or implementing the Central Government schemes of social welfare, public health, hygiene, safety, water supply, sanitation, urban renewal and education. Once that be so, obviously, the voice of the people in decision making with respect to any of the aforesaid could not have been ignored.

11. As per the Commentary on the 'Constitution of India' by "Durga Dass Basu", the word "Municipality" derives its name from the Roman *municipium*, a free town possessing the right of Roman citizenship, but governed by its own laws. Such type of community was well suited to the political genius of Anglo-Saxons and towns formed on this self-governing model and protected by royal for baronical charters sprung up rapidly in medieval England. The important part played by those well-ordered and peaceful trading communities in breaking down the power of the feudal barons as well known. They helped, say historian Robertson, more than any other cause, to regulate the Government, police and arts. They still the pillars of modern civilisation.

12. In Black's Law Dictionary, it is stated thus:-

"Legally incorporated or duly authorised association of inhabitation of limited area of local governmental or other public purposes. A body politic created by the incorporation of the people of a prescribed locality invested with the subordinate powers of legislation to assist the civil government of the State and to regulate and administer local and internal affairs of the community".

13. Article 243Q reads as under:-

(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.

14. It is by now well settled that Nagar Panchayat, Municipal Council and Municipal Corporation are all bodies to be directly elected. (*Saiz Gruma Panchayat vs. State of Gujarat*, AIR 1999 SC 826)

15. On notification being issued under Article 243Q(2), a Municipality, meaning an institution of self-government as defined under Article 243P(e) comes into being. It was with a view to provide for setting up democratic institutions at grass root level by virtue of 74th Amendment to the Constitution, Part- IX(A) providing for establishment of the municipalities was incorporated in the Constitution.

16 The amendment was with the object to strengthen the system of municipal bodies in the urban area. The idea was to place the local self-government in

urban areas on a sound and effective footing.

17. Once a Cantonment is deemed to be a municipality under clause (e) of Article 243P of the Constitution for the purposes aforementioned, then there cannot be denying the fact that the cantonment is a democratic institution and, thus, it is not the view of the government officials, but the view of the members of the Cantonment, not being a person in service of the government, which should have bearing on the ultimate decision with regard to the revision of the rates of water, after all Section 13(2) of the Act speaks about the Constitution of the Board (*supra*), which essentially has to have one member, not being a person in service of the government nominated by the Central Government in consultation with the General Officer Commanding-in-Chief of the Command.

18. It is not in dispute that the Cantonment Board, Subathu had been constituted in the year, 2015 but thereafter dissolved on 10.02.2021. The meeting of the Board could not have been convened till the nomination of one Member as per Section 13(2)(c) of the Act and the Board constituted under Section 13(2) of the Act could not have taken any decision with regard to revision of rates of water in absence of the third member in terms of Section 13(2)(c) of the Act from the public.

19. In view of the aforesaid discussions and for the reasons stated above, we find merit in this petition and the same is accordingly allowed. Consequently, the resolution whereby the water rates have been revised from Rs. 8 to Rs. 53.50 per thousand litres is quashed and set aside. However, we make it absolutely clear that this order shall not prevent the respondents from revising the rates of the water, but the same shall strictly be in accordance with the provisions contained in the Cantonment Act that too by convening a proper meeting in terms of Section 13(2) of the Act.

Pending applications, if any, also stand(s) disposed of.