

(2014) 03 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 3812 of 2011

Omprakash Dewangan	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Chhattisgarh Municipal Act, 1961 — Section 355 355(1) 355(2) 355(2)(ii) 355(2)(iii)

Citation : AIR 2014 Chh 87

Hon'ble Judges : Yatindra Singh, C.J; Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Prateek Sharma, for the Appellant; J.K. Gilda, Advocate General and Shri Y.S. Thakur, D.A.G. for the State, for the Respondent

Final Decision : Disposed Off

Judgement

1. These two writ petitions challenge the validity of,

? A portion of sub-rule (2) of rule 4 {rule 4(2)} (the impugned portion) of the Chhattisgarh Municipalities (The Conduct of Business of the Mayor-in-Council/ President-in-Council and the Powers and Functions of the Authorities) Rules, 1998 (the Rules) providing that the Vice-President will be a member of President-in-Council;

? The circular dated 08.04.2005 explaining the impugned portion; and

? The show-cause notice issued to the Petitioners on 20.06.2011 and 30.08.2011 to show cause as to why action be not taken against them u/s 41A of the Chhattisgarh Municipalities Act, 1961 (the Act) for removing the Vice-Presidents as members of the President-in-Council.

THE FACTS

The State Government issued a circular dated 08.04.2005 indicating that under the Rules, the Vice-Presidents are to be included as members of the President-in-Council and as such, they should be included in the President-in-Council. They

have been included in the municipalities.

2. In the present two writ petitions initially the vice presidents were included but later on were removed. These dates are different and as such they are mentioned under separate sub-heading in the succeeding paragraphs.

Writ Petition (C)-3812 of 2011

3. This writ petition relates to Municipal Council, Birgaon. The election in this Municipal Council for the post of the President was held on 24.12.2010. Shri Omprakash Dewangan, the petitioner in this case was elected and took oath on 05.01.2011.

4. The petitioner removed the Vice President from the President-in-Council on 07.03.2011. Thereafter, a show cause notice dated 14.06.2011 was issued to the Petitioner to show cause otherwise proceedings u/s 41A of the Act would be initiated.

Writ Petition (C)-5960 of 2011

5. This writ petition relates to Nagar Panchayat, Arjunda. The election in this Nagar panchayat for the post of the President was held on 21.12.2009. Smt. Satyabhama Kesaria, the petitioner in this case was elected and took oath on 27.12.2009.

6. The petitioner removed the Vice President from the President-in-Council on 22.06.2011. Thereafter, a show cause notice dated 30.08.2011 was issued to the Petitioner to show cause otherwise proceedings u/s 41A of the Act would be initiated. Hence, this writ petition.

POINTS FOR DETERMINATION

7. We have heard counsel for the parties. The following points arise for determination in this case:

(i) Whether the impugned portion is invalid;

(ii) Whether the notice should be dropped.

1st POINT: NOTICE IS VALID

8. The rule 4 of the Rules is titled "Constitution of President-in-Council" (see Appendix-I for the same). The impugned part of rule 4(2) (the impugned-portion) is as follows:

Simultaneously the Vice-President shall also be included as one of the members.

9. The counsel for the Petitioners submits that the impugned-portion is invalid on the grounds that:

(i) It is against the intention and policy of the Act as apparent from its legislative history;

- (ii) It is in conflict with sub section (3) of section 70 {section 70(3)} of the Act;
- (iii) It is beyond the rule making power conferred upon the State Government.

1st Submission

10. The present section 70 of the Act is titled as "Constitution of President-in-Council" (see Appendix-II for the same). The existing section provides that the President-in-Council shall consist of the President and seven members, who hold office during the pleasure of the President.

11. The present section 70 of the Act was substituted by MP Act 20 of 1998. The earlier section 70 (see Appendix-III for the same) was titled as "Standing Committee". It provided that the Standing Committee shall consist of the President, Vice-President, Chairmen of the Departmental Committees, and two elected Councillors nominated by the President and only these two held office during the pleasure of the President.

12. In the present section, ex-officio person, namely Vice-President and the Chairmen of the Departmental Committees have been omitted.

13. It is because of the aforesaid changes that the counsel for the Petitioners submits that the impugned-portion is against the intention and policy of the Act.

14. A rule may not be declared invalid unless,

? It violates any provision of the Constitution (for rulings see below) Rashid Ahmed Vs. The Municipal Board, Kairana, Tahir Hussain Vs. District Board, Muzaffarnagar, ; R.M. Seshadri Vs. The District Magistrate, Tanjore and Another, Narendra Kumar and Others Vs. The Union of India (UOI) and Others, Kameshwar Prasad and Others Vs. The State of Bihar and Another, P.J. Irani Vs. The State of Madras, Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and Others, ; State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others, ; or

? It is contrary to any statute of competent legislature including the one under which it is made (for rulings see below) Secretary, Ministry of Chemicals and Fertilizers Government of India Vs. Cipla Ltd. and Others, ; Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others, State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, Sarbananda Sonowal Vs. Union of India (UOI), ; or

? List is beyond the rule making power conferred under the statute (for ruling see below) Chandrakant Krishnarao Pradhan and Another Vs. The Collector of Customs, Bombay and Others, ; Hukam Chand etc. Vs. Union of India (UOI) and Others, ; Addl. District Magistrate (Rev.) Delhi Admn. Vs. Shri Siri Ram,

15. The policy of the Act is to encourage local self-government. The policy of the constitutional amendments as well as the amendments in the Act is to give autonomy to the local self-government, to provide representation to women as

well as weaker sections of the society. There is no policy that Vice President should not be included in the President-in-Council.

16. The municipalities consist of the elected members from different wards. Generally, there are many elected members. It is for this reason that the President-in-Council, a smaller body, is constituted for better governance of the municipalities.

17. In a municipality, better governance is only possible, if all sections are represented in the President-in-Council. The Vice-President is elected by all Councillors and the President. His inclusion ensures it (for details refer to the discussion under 2nd Submission). In any case, a rule cannot be struck down merely on the ground that it is against intention of the legislature. It has to be contrary to any specific provision.

18. In our opinion, the first submission has no merit.

2nd Submission

19. Rule 4(2) of the Rules (see Appendix-I) provides that among the President-in-Council, one member will be from the women category, one from the other backward classes, and one member from scheduled caste/scheduled tribe category. This part of the rule 4(2) of the Rules is not challenged by the Petitioners.

20. The impugned-portion provides that Vice-President shall be included as one of the members in the President-in-Council. This part is challenged by the petitioners.

21. The result of rule 4(2) of the Rules is that four persons as mentioned in rule 4(2) of the Rules are required to be included in the President-in-Council. This may be three if any member has two qualifications in one; namely, the Vice President could be a women or OBC or SC/ST as well.

22. Section 70(3) of the Act provides that the members shall hold the office during the pleasure of the President and is as follows:

70. Constitution of President-in-Council.-

...

(3) The members of the President-in-Council shall hold office during the pleasure of the President.

23. The counsel for the petitioners submits that:

? The impugned-portion provides that the Vice-President will be member of the President-in-Council. This means that he cannot be removed;

? In case the Vice-President cannot be removed then he is not on the pleasure of the President;

? This is illegal and contrary to section 70(3) of the Act.

24. It is settled law that subordinate legislation fills up the details; it can supplement though not supplant the statute and in considering the vires of any statute or subordinate legislation, one should start with the presumption that it is intra vires. While interpreting them, the court should adopt a construction which makes it valid.

25. While discussing the 1st submission, we have observed that the President-in-Council was envisaged as a smaller body for better governance of the municipalities. A better governance also requires that all sections should be represented in the smaller body. It is a matter of details, how all sections can be represented in the smaller body.

26. Rule 4(2) of the Rules provides that a women, an OBC, SC/ST person should be included in the President-in-Council under the Act. This is done so that these sections are represented in the President-in-Council. So is the case with the Vice-President.

27. Section 43 of the Act is titled as "Election and term of Vice-President". It provides that the President and the elected Councillors will elect the Vice-President among the elected Councillors in the prescribed manner.

28. The Vice-President is elected by all the councillors including the President, in a way he represents all of them. President-in-Council is nominated by the President only. The Vice-President has been included in the President-in-Council so as to reflect the majority wish of the Councillors. This is matter of details. This rule is not contrary to section 70(3) of the Act.

3rd Submission

29. Section 355 of the Act is titled as "Power to make rules". Sub-section (1) of section 355 {section 355(1)} of the Act empowers the government to make rules generally for the purpose of carrying into effect the provisions of the Act. Sub-section (2) of section 355 {section 355(2)} of the Act confers specific powers to make rules in respect of the matters mentioned therein.

30. The counsel for the State has brought to our notice the clauses (ii) and (iii) of sub-section (2) of section 355 {355(2)(ii) and (iii)} of the Act and submits that the rules could be framed under the general power conferred upon the State Government u/s 355(1) as well as section 355(2)(ii) and (iii) of the Act (see Appendix-IV).

31. Section 355(2)(ii) of the Act specifically confers power to make rules relating to the conditions subject to which the President-in-Council can exercise powers of the council; whereas, section 355(2)(iii) confers power to frame rules relating to the conditions subject to which the powers of the council are to be delegated to the President or Vice-President or Chairman of the President-in-Council or other Committees.

32. In the present case, the question relates to constitution of the President-in-Council. This is not covered u/s 355(2)(ii) and (iii) of the Act. However, this does not detract the submission of the counsel for the State so far as section 355(1) of the Act is concerned.

33. Section 355(1) of the Act empowers the State Government to make rules for carrying out the effect of the Act: what should be the constitution of the President-in-Council; how all sections could be represented in it; how should it also consider and reflect majority wish of the Councillors--is carrying out the purpose of the Act. In our opinion, the rule is within the rule making power u/s 355(1) of the Act.

2nd POINT: STATE SHOULD CONSIDER

34. The counsel for the Petitioners submits that:

? The Petitioners bona fide believed that the members including the Vice-President were at their pleasure and as such the Vice-President was removed by them;

? The Petitioners have no objection in taking the Vice-Presidents back in the President-in-Council;

? The show-cause notice for taking action u/s 41A of the Act be dropped.

35. It is not necessary for us to deal with the aforesaid submissions of the counsel for the Petitioners. The Petitioners may take back the Vice-Presidents in the President-in-Council and thereafter file their reply to the show-cause notice within a period of one month from today. In case they do so, it will be open to the State Government to consider this aspect, while passing the final order.

CONCLUSIONS

36. Our Conclusions are as follows:

(a) Rule 4(2) of the Chhattisgarh Municipalities (The Conduct of Business of the Mayor-in-Council/President-in-Council and the Powers and Functions of the Authorities) Rules, 1998 is valid;

(b) It is not necessary for us to consider whether the notice should be dropped or not;

(c) The Petitioners may take back the Vice-Presidents in the President-in-Council and reply to show-cause notice within a month. Thereafter, the State Government may take decision in accordance with law.

With the aforesaid observations, the writ petitions are disposed of.

APPENDIX-I

Rule 4(2) of the Chhattisgarh Municipalities (The Conduct of Business of the Mayor-in-Council/President-in-Council and the Powers and Functions of the

Authorities) Rules, 1998 is as follows:

4. Constitution of President-in-Council.--

(1) In every municipal council and in every Nagar Panchayat, the President-in-Council shall consist of President and seven members in case of Municipal Council and President and five members in case of Nagar Panchayat.

(2) All the seven members in the Municipal Council and all the five members in Nagar Panchayat, as described in sub-rule (1), shall be taken by the President from the elected councillors of the Council, in which atleast one member from women category, atleast one member from other Backward Classes and atleast one member from Scheduled Caste or Scheduled Tribe category, each in case of Municipal Council and Nagar Panchayat shall be necessary to include. Simultaneously the Vice-President shall also be included as one of the members. All these members may remain as members of the President-in-Council during the pleasure of the President.

APPENDIX-II

Section 70 of the Chhattisgarh Municipalities Act, 1961 is as follows:

70. Constitution of President-in-Council.-

(1) There shall be a President-in-Council for every Council which shall be constituted by the President from amongst the elected Councillors within seven days from the date of election of Vice-President u/s 43.

(2) The President-in-Council shall consist of the President and seven members in case of Municipal Council and five members in case of Nagar Panchayat.

(3) The members of the President-in-Council shall hold office during the pleasure of the President.

(4) Each Council shall have such departments as may be prescribed and member of the President-in-Council shall be made incharge of such departments by the President.

(5) The President shall be the Ex-Officio Chairman of the President-in-Council and shall over the meeting of the President-in-Council, if present. In the absence of the President, the members present in the meeting shall choose one of them to preside over the meeting.

(6) Notwithstanding anything contained in this Act, the President-in-Council, Chairman and the members shall exercise such powers and perform such function, as may be prescribed.

(7) The conduct of business of the President-in-Council shall be such as may be prescribed.

(8) In case the office of the President is declared vacant under the Act, the

Councillors nominated by the Government under sub-section (2) of Section 37 to perform the duties of the President or a person who is elected for the office of the President, as the case may be, either allow the existing members of the President-in-Council to continue or appoint new members in place of them from amongst the elected Councillors.

APPENDIX-III

Prior to substitution, earlier Section 70 of the Chhattisgarh Municipalities Act, 1961 is as follows:

70. Standing Committee.--(1) The Standing Committee shall consist of--

- (a) President;
- (b) Vice President;
- (c) Chairman of the Departmental Committees, constituted u/s 71; and
- (d) Two elected Councillors nominated by the President:

Provided that the elected Councillors nominated by the President may remain in the office during the pleasure of the President.

(2) As soon as the Chairman of the Departmental Committees are elected, the constitution of Standing Committee shall be deemed to be completed.

(3) The President shall be the ex-officio Chairman of the Standing Committee and shall preside over the meetings of the Standing Committee, if present. In the absence of President, the Vice-President shall preside and if the president and Vice President, both are absent, the members present in the meeting shall choose one of them to preside over the meeting.

(4) The term of the Standing Committee shall be coterminous with the term of the Council.

(5) The date of every meeting of the Standing Committee shall be fixed by the President and in his absence, by the Vice President and if both are absent or they fail to call the meeting, the Chief Municipal Officer shall convene the meeting under intimation to the State Government.

(6) Subject to such limitations, as may be prescribed, the Standing Committee shall exercise all the powers of the Council under this Act or the rules or bye-laws made thereunder:

Provided that the Standing Committee shall not exercise such powers of the Council as are assigned to any Departmental Committee constituted u/s 71.

(7) The conduct of business of the Standing Committee shall be prescribed by the State Government.

(8) The decision in the meeting of the Standing Committee shall be taken by

majority of votes:

Provided that in case of equality of votes, the Chairman shall have a second or casting vote.

APPENDIX-IV

Sections 355(1) and (2) (ii) & (iii) of the Chhattisgarh Municipalities Act, 1961 are as follows

355. Power to make rules.-

(1) In addition to any power specially conferred by this Act, the State Government may prescribe forms and make rules generally for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

...

(ii) conditions subject to which the President in Council is to exercise the powers of the Council;

(iii) conditions subject to which the powers of the Council are to be delegated to the President or Vice-President, Chairman of the President in Council or other Committees;

HEADLINES

Rule 4(2) of the Municipalities (The Conduct of Business of the Mayor-in-Council...) Rules, 1998 is valid.