

(2008) 12 MAD CK 0184

In the Madras High Court

Case No : W.A. No. 654 of 2008 and M.P. No. 1 of 2008

P. Subbulakshmi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 243, 243E, 243Q
Representation of the People Act, 1951 — Section 123(5), 124(5)
Tamil Nadu District Municipalities Act, 1920 — Section 3B(1), 3B(3), 3CC, 3CC(1), 3P(1)
Tamil Nadu Municipal Laws (Amendment) Act, 2006 — Section 37
Tamil Nadu Panchayats Act, 1994 — Section 2, 41, 4A(1)

Citation : (2009) 1 LW 740

Hon'ble Judges : A.K. Ganguli, C.J;K. Chandru, J

Bench : Division Bench

Advocate : Hema Sampath, SC for R. Subramanian, for the Appellant; Raja Kalifulla, GP for R1 to R5, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mrs. Hema Sampath, learned Senior Counsel leading Mr. R. Subramanian, learned Counsel for the appellant and Mr. Raja Kalifulla, learned Government Pleader taking notice for the respondents and perused the records.

2. This writ appeal is directed against the order of the learned Single Judge made in W.P. No. 35921 of 2006 dated 30.7.2007 in dismissing the writ petition filed by the appellant. The petitioner in the original writ petition, sought for a prayer to declare Section 3-CC in Chapter I-B of the Tamil Nadu District Municipalities Act, 1920 as introduced by the Tamil Nadu Municipal Laws (Amendment) Act, 2006 (Tamil Nadu Act 18 of 2006), as ultra vires and unconstitutional.

3. The petitioner was an elected member of Ward No. 8 of the Courtallam Special Town Panchayat in the elections held during June 2003. As per the Tamil Nadu District Municipalities Act, 1920, the term of office of an elected person is for a

period of five years.

4. The Government of Tamil Nadu by G.O.(Ms) No. 270, Municipal Administration and Water Supply (Election) Department, dated 11.6.2004, took a decision to re-classify 568 Town Panchayats as Village Panchayats. Consequent upon the decision, a notification was issued in the Tamil Nadu Government Gazette declaring various Town Panchayats, as per the list found in Notification No. II, as "Village Panchayats" with effect from 14.6.2004. This notification was issued u/s 3-B(3)(c)(ii) of the Tamil Nadu District Municipalities Act, 1920. In the same Gazette, by a Notification No. III, Courtallam Town Panchayat was made as a Village Panchayat under the Tamil Nadu Panchayats Act, 1994.

5. By virtue of Section 4-A(1)(a) of the Tamil Nadu Panchayats Act, 1994, the elected Chairman and Members of the Town Panchayat, who were holding office immediately before constitution of such Town Panchayat, shall be deemed to be the elected President and Members of the Village Panchayat and will continue to hold office up to the date notified by the Government and if no date is notified, then up to the next general elections. By virtue of this provision, the petitioner's term as a Ward Member in Courtallam Village Panchayat continued.

6. Subsequently, the respondent State passed another statutory notification vide G.O.(Ms) No. 55, Municipal Administration and Water Supply (Election) Department, dated 14.7.2006, wherein and by which, 561 Special Village Panchayats were to be reconstituted as Town Panchayats. For this purpose, necessary amendments to the Tamil Nadu Panchayats Act and the Tamil Nadu District Municipalities Act were also made.

7. The Tamil Nadu District Municipalities Act, 1920, as amended by the Tamil Nadu Municipal Laws (Amendment) Ordinance, 2006 introduced Section 3-CC(1) (a) under Chapter 1-B in the Tamil Nadu District Municipalities Act. Section 3-CC(1)(a) of the Tamil Nadu District Municipalities Act, 1920 may be usefully extracted below:

3-CC. Special provisions relating to village panchayat constituted as town panchayat.- (1) Notwithstanding anything contained in this Act.-

(a) the president and members of a village panchayat, who are elected or deemed to have been elected and holding office as such immediately before the date of constitution of such village panchayat as town panchayat under this Act, shall be deemed to be the chairman and members of such town panchayat elected under this Act and such chairman and members shall continue to hold office up to such date as the State Government may, by notification, fix in this behalf or, in case no such date is fixed, up to the date on which their term of office would expire under the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994) and such chairman and members shall exercise all powers and perform all duties conferred on the chairman and members by or under this Act;

(b) all the employees, other than the provincialised employees of the village

panchayat immediately before its constitution as town panchayat shall be the employees of such town panchayat under this Act. The provincialised employees shall continue to serve under the town panchayat.

(2) Subject to the provisions of Sub-section (1), the provisions of this Act and the rules made thereunder shall apply to the town panchayat referred to in Sub-section (1).

8. By virtue of this amendment, a Gazette notification was issued u/s 3-P(1) of the Tamil Nadu District Municipalities Act, 1920, as amended by the Tamil Nadu Municipal Laws (Amendment) Ordinance, 2006, establishing Town Panchayat for each of the panchayat towns mentioned in the Schedule. In Serial No. 451 coming under Tirunelveli District, the name of Courtallam Town Panchayat is notified. The Tamil Nadu Municipal Laws (Amendment) Ordinance, 2006, which was replaced by Tamil Nadu Municipal Laws (Amendment) Act, 2006 (Tamil Nadu Act 18 of 2006) incorporating the amended provisions was also repealed by Section 37 of the Amendment Act.

9. Thereafter, G.O.(Ms) No. 91, Municipal Administration and Water Supply (Election) Department, dated 11.9.2006 was issued by virtue of the power conferred u/s 3-CC in the Tamil Nadu Government Gazette. The notification reads as follows:

In exercise of the powers conferred by Section 3-CC of the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), the Governor of Tamil Nadu hereby fixes the 24th October 2006 as the date upto which the Chairmen and members of the Sholingur town panchayat in Vellore District, Courtallam town panchayat in Tirunelveli District and Bhavanisagar town panchayat in Erode District shall continue to hold office as such Chairmen and members.

(Emphasis Added)

10. By the aforesaid statutory notification, the term of office of the members of the Courtallam Town Panchayat was brought to an end with effect from 24.10.2006. It is at this stage, the petitioner filed a writ petition being W.P. No. 34698 of 2006 challenging the validity of G.O.(Ms) No. 91, dated 11.9.2006. The said writ petition was dismissed as withdrawn on 21.9.2006 since it was pointed out that the notification has the backing of a legislative enactment and the notification cannot be challenged without the amendment being held to be unconstitutional. It was, thereafter, the present writ petition came to be filed challenging the vires of Section 3-CC.

11. On behalf of the respondent State, a detailed counter affidavit dated "nil" (December 2006) was filed supporting the amendment. It was brought to the notice of this Court that subsequent to the notification, an election was notified to the Courtallam Town Panchayat on 15.10.2006 and 8 ward members have been elected. On 05.11.2006, 7 out of 8 ward members have assumed office. In the first meeting held on 23.11.2006, election to the post of Chairman

was conducted and one Tmt. R. Revathi was elected as the Chairman.

12. In the order under challenge in this writ appeal, the learned Judge held that Section 3-CC of the Tamil Nadu District Municipalities Act, 1920 is a valid piece of legislation and it was within the competence of the State Legislature to pass such a law. It is also held that the appellant had not placed any material to show that there was any illegality in passing the said law. The learned Judge also agreed with the fact that there was no pick and choose policy adopted by the State. The cut-off date was fixed with a view to conduct elections to all Town Panchayats in one mainstream. It was only with a view to facilitate the conduct of elections, the three Town Panchayat Councils were dissolved.

13. Mrs. Hema Sampath, learned Senior Counsel appearing for the appellant submitted that the amendment brought by the State was in violation of Part IX of the Constitution as introduced by the Constitution (Seventy-third Amendment) Act, 1992. In terms of Article 243-E of the Constitution, the duration of a Town Panchayat is for a period of five years and, hence, the appellant's term cannot be curtailed by the State amendment. She also submitted that u/s 41 of the Tamil Nadu Panchayats Act, the State Government can dissolve a panchayat only on specified grounds and that the Constitution will prevail over the Legislation.

14. She also placed reliance upon the judgment of the Supreme Court in *The State of West Bengal Vs. Anwar Ali Sarkar*, . Drawing inspiration from that judgment, she submitted that the power granted by the amendment was likely to be abused, as was done in the present case. Under the amendment, the State has reserved its power to dissolve one set of Town Panchayat Councils and in other cases, at their whim, they can continue the office of the Town Panchayat. Therefore, she submitted that either all the Town Panchayat Councils must be dissolved or all of them must be allowed to continue and the power of pick and choose should not be allowed. It was for this purpose, she had relied upon the *Anwar Ali Sarkar's* case (cited supra) to show that the legislation is discriminatory and it discriminates one person or class of persons against others.

15. The appellant had also filed M.P. No. 1 of 2008 to raise additional grounds. In that, it was stated that apart from violation of Article 14 of the Constitution, the amended Section do not provide for guidelines and has given a blanket power to suspend any Town Panchayat on their own whims and fancies.

16. Per contra, the learned Government Pleader submitted that a power was likely to be abused, cannot be a ground to invalidate an otherwise constitutionally valid piece of legislation. At the maximum, a person can challenge an order passed under the impugned legislation. In such circumstances, the Court can go into the question whether there was an arbitrary exercise of power by the State.

17. He also placed reliance upon the judgment of the Supreme Court in *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, . The learned Government Pleader referred to the following passage found in para 40

of the said judgment:

40. We also find no merit in the contention that the first part of Section 2(t) which defines village to mean any local area recorded as a village in the revenue records of the district in which it is situate, goes counter to the provisions of Article 243(g) in that it forecloses the authority of the Governor to specify the village for the purposes of establishing a gram panchayat as envisaged by Part IX of the Constitution. The argument ignores that whereas the Constitution permits the Governor to specify village by a notification, it does not prevent the State from enacting a law for the purpose. As pointed out earlier, the notification issued by the Governor is in fact a notification issued by the State Government. An enactment of the legislature is certainly a higher form of legal instrument than a notification. What is further, the Act has received the assent of the Governor on 22-4-1994. Hence, there is not only no conflict between the provisions of Sections 2(t) of the Act and those of Article 243(g) but there is an overcompliance with the provisions of the Constitution.

(Emphasis Added)

18. In the light of the rival contentions, it has to be seen whether the order of the learned Judge is liable to be interfered with by this Court. Since reliance was placed upon Article 243-E of the Constitution, it may be usefully extracted below:

243-E. Duration of Panchayats, etc.- (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in Clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this Clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under Clause (1) had it not been so dissolved.

(Emphasis Added)

A reading of the said provision will clearly show that while the law is made by the

State Legislature constituting Panchayats, it can fix the term of office of its members and can also provide for its dissolution.

19. The constitution of a Town Panchayat is provided under Article 243-Q, which 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 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 purposes of this Part.

This would clearly show that the State has power to provide for a Town Panchayat (Nagar Panchayat) as provided therein. In terms of Article 243-Q(2) , the Governor of a State can constitute a transitional area having regard to the population of the area, density of the population and revenue and other considerations.

20. In the present case, for either constituting a Town Panchayat or a Village Panchayat or for converting a Town Panchayat into a Village Panchayat, adequate provisions have been made under the Tamil Nadu Panchayats Act, 1994 as well as under the Tamil Nadu District Municipalities Act, 1920. Section 3-B(1)(a) of the Tamil Nadu District Municipalities Act, 1920 provides for formation of a Town Panchayat, which reads as follows:

3-B. Formation of town panchayats.- (1) The Governor,-

(a) may having regard to the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he deems fit, by notification, classify and declare every local area comprising a revenue village or villages or any portion of a revenue village or contiguous portions of two or more revenue villages and

having a population estimated at not less than five thousand and an annual income of not less than one lakh of rupees as panchayat town for the purposes of this Act;

(Emphasis Added)

21. The appellant is not challenging the power of the State to constitute a Town Panchayat or converting a Town Panchayat into one of Village Panchayat. It is not as if that only in the case of the Town Panchayat in which the appellant was a Ward Member, the earlier State Government had converted it into Village Panchayat. Subsequently after the present Government assumed office, the very same Village Panchayats have been made into Town Panchayats. There is no challenge to any of those conversion process. All that the appellant in the present case challenges is only the likelihood of abuse of power by the introduction of Section 3-CC introduced by the Amendment Act.

22. The contention of the learned Senior Counsel for the appellant can be tested in the light of the pronouncement of the Supreme Court in *Pannalal Binraj Vs. Union of India (UOI)*, . It is relevant to refer to the following passage found in para 34 of the said order:

34. There is a broad distinction between discretion which has to be exercised with regard to a fundamental right guaranteed by the Constitution and some other right which is given by the statute. If the statute deals with a right which is not fundamental in character the statute can take it away but a fundamental right the statute cannot take away. Where, for example, a discretion is given in the matter of issuing licences for carrying on trade, profession or business or where restrictions are imposed on freedom of speech etc. by the imposition of censorship, the discretion must be controlled by clear rules so as to come within the category of reasonable restrictions. Discretion of that nature must be differentiated from discretion in respect of matters not involving fundamental rights such as transfers of cases. An inconvenience resulting from a change of place or venue occurs when any case is transferred from one place to another but it is not open to a party to say that a fundamental right has been infringed by such transfer. In other words, the discretion vested has to be looked at from two points of view viz. (1) does it admit of the possibility of any real and substantial discrimination, and (2) does it impinge on a fundamental right guaranteed by the Constitution? Article 14 can be invoked only when both these conditions are satisfied....

(Emphasis Added)

23. The appellant having got elected as a Ward Member, only enjoys a statutory right. There is no claim of any Fundamental Right, either pleaded or available to the appellant. In this context, it is relevant to refer to the judgment of the Supreme Court in *Javed and Others Vs. State of Haryana and Others*, , wherein the Supreme Court while dealing with an amendment made to the Haryana Panchayat Act, has upheld the amendment, by which, any person who has more

than two children was prohibited for contesting the Panchayat Elections. The following observations found in paras 22, 23, 24, 28 and 60, may be extracted below:

22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right - a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

23. Reiterating the law laid down in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and *Jagan Nath Vs. Jaswant Singh and Others*, this Court held in *Jyoti Basu and Others Vs. Debi Ghosal and Others*, :

8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation.

24. In *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, a candidate at the election made a systematic appeal to voters of a particular caste to vote for him on the basis of his caste through publishing and circulating leaflets. Sections 123(5) and 124(5) of the Representation of the People Act, 1951, were challenged as ultra vires Article 19(1)(a) of the Constitution, submitting that the provisions of the Representation of the People Act interfered with a citizen's fundamental right to freedom of speech. Repelling the contention, the Constitution Bench held that these laws do not stop a man from speaking. They merely provide conditions which must be observed if he wants to enter Parliament. The right to stand as a candidate and contest an election is not a common law right; it is a special right created by a statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by a statute. The appellants have no fundamental right to be elected and if they want to be elected they must observe the rules....

28. At the very outset we are constrained to observe that the law laid down by this Court in the decisions relied on is either being misread or read divorced of the context. The test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of

fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice - economic, social and political - cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty. Reasonableness and rationality, legally as well as philosophically, provide colour to the meaning of fundamental rights and these principles are deducible from those very decisions which have been relied on by the learned Counsel for the petitioners.

60. Looked at from any angle, the challenge to the constitutional validity of Section 175(1)(q) and Section 177(1) must fail. The right to contest an election for any office in Panchayat is neither fundamental nor a common law right. It is the creature of a statute and is obviously subject to qualifications and disqualifications enacted by legislation....

(Emphasis Added)

24. In the light of the above, it must be stated that Section 3-CC of the Tamil Nadu District Municipalities Act, 1920 is intended to provide for all types of contingencies. The appellant was originally elected as Ward Member of the Town Panchayat. Thereafter, she was allowed to continue as a member of the Village Panchayat, when it was converted by the Government vide Order in G.O.(Ms). No. 270, Municipal Administration and Water Supply (Election) Department, dated 11.6.2004. Subsequently, by the order in G.O.(Ms). No. 55, Municipal Administration and Water Supply (Election) Department, dated 14.7.2006, a re-conversion was made to make the Village Panchayat as a Town Panchayat. The appellant also continued as Ward Member of the re-converted Town Panchayat. It was only by G.O.(Ms). No. 91, Municipal Administration and Water Supply (Election) Department, dated 11.9.2006, the appellant's tenure was brought to an end with effect from 24.10.2006. Therefore, it is clear that she was a beneficiary of all these statutory notifications.

25. Though the Government has power to dissolve any panchayat, on it being converted into a Town Panchayat, in the present case, the respondent State did not do it. On the contrary, it was only when they wanted to have an election to be conducted for all Town Panchayats in one mainstream, these three surviving Town Panchayats, namely, the Courtallam, Sholingur and Bhavanisagar Town Panchayats were dissolved. For the purpose of dissolving such Town Panchayat Councils or bringing in the term of office of the members, the State had reserved powers u/s 3-CC of the Tamil Nadu District Municipalities Act and it has been purposefully utilised. There was no pick and choose method adopted by the State. It must also be stated that subsequent to the dissolution, elections have been held and new office bearers have assumed office. Even if the appellant had continued on her five year term, it would have come to a close on 30.8.2008. Therefore, there is no substance in the writ petition filed by the appellant.

26. In the light of the above, the challenge made to the impugned provision, viz., Section 3-CC of the Tamil Nadu District Municipalities Act, 1920 must necessarily

fail. The order of the learned Single Judge is perfectly valid and does not call for any interference. Hence, the writ appeal stands dismissed. However, there will be no order as to costs. M.P. No. 1 of 2008 is closed.