

(2007) 07 MAD CK 0080
In the Madras High Court
Case No : Writ Petition No. 35921 of 2006

P. Subbulakshmi	Vs	APPELLANT
State of Tamil Nadu and Others		RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Constitution of India, 1950 — Article 154, 226, 243A, 324, 329
Tamil Nadu District Municipalities Act, 1920 — Section 3(29A), 3CC, 3CC(1), 41

Citation : (2007) 3 LW 959 : (2007) 6 MLJ 919

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : Hema Sampath, for Subramanian, for the Appellant; R. Viduthalai, General assisted by K. Ilango, Spl. Govt Pleader for RR1 and 2, I. Paranthaman, Additional Govt. Pleader for R3 and R4, J. Ravindran, for R5 and Subramanian, for Abdul Wahab, for R6 to R11, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The petitioner has come forward with this writ petition praying for a Writ of Declaration to declare that Section 3CC in

Chapter IB of the Tamil Nadu District Municipalities Act, 1920 introduced by the Tamil Nadu Municipal Laws (Amendment) Act, 2006 (Act 18

of 2006) published in Tamil Nadu Government Gazzette Extraordinary No. 223 dated 01.09.2006 by the first respondent is ultravires and

unconstitutional.

2. The case of the petitioner is that she was the elected member of Ward No. 8 of the then Courtlam Special Village Panchayat and assumed

office on 30.06.2003, which should continue for five years unless sooner dissolved under law. While so, under the pretext of upgradation of the

village panchayat into town panchayat in exercise of power u/s 3CC of the Tamil

Nadu District Municipalities Act, 1920, hereinafter referred to as

the Act, the tenure of the petitioner was reduced ending with 24.10.2006, which is against law, if at all that can be done only by invoking the

powers conferred u/s 41 of the Act, that too for the reasons mentioned therein, hence, the present writ petition has been filed seeking for a

declaration to declare that Section 3CC of the Act in Chapter IA of the Act as ultra vires and unconstitutional.

3. The case of the respondents is that the first respondent issued G.O. Ms No. 55 dated 14.07.2006 in exercise of power u/s 3CC of the Act for

re-constituting 566 Special Village Panchayat, including Courtlam Special Village Panchayat as Town Panchayat, hence, the same is nothing but an

upgradation of the body from Special Village Panchayat to Town Panchayat therefore, the petitioner is not entitled to hold the full term of office

beyond the period fixed by the Government and the said upgradation cannot be equated with dissolution. The said date namely 24.10.2006 was

fixed by the Government to hold election to the Courtlam Town Panchayats along with other Panchayats in the State.

4. Mrs. Hema Sampath, learned Senior Counsel appearing for the petitioner submitted that the petitioner was elected as Member of Ward No. 8

of Courtlam Special Village Panchayat in the election held in June 2003; that the first respondent issued G.O. Ms. No. 55 dated 14.07.2006 in

exercise of the powers conferred u/s 3CC(1)(a) of the Act under the pretext of upgrading Courtlam Village Panchayat into Town Panchayat, with

the result, the tenure of five years of the council was reduced; that Section 3 CC permits the State Government to shorten the tenure of the elected

representatives of Panchayat, which is violative of Article 243E of the Constitution of India, besides that denuded the power of legislature of the

State; that the executive power of the Government contemplated under Article 154 of the Constitution of India however cannot go against the

provisions of the Constitution or any law, in this case, G.O. Ms. No. 55 was issued by the Governor in exercise of power under Article 154 of the

Constitution of India taking away the powers of the legislature, hence, it is ultravires; that even u/s 41 of the Act, the State Government could

dissolve the council, that too, only under certain circumstances stated therein; that the petitioner has filed WP No. 34698 of 2006, which was

withdrawn with liberty to challenge the Section 3CC of the Act, hence, this writ petition is maintainable and prayed for allowing of the same. In

support of her contention, the learned Senior counsel for the petitioner relied on the below mentioned decisions:

i) (A.B.R. Jnardhanan, Dalit Tiger C. Ponnusamy and 3 Ors. v. State of Tamil Nadu, rep. By its Secretary, Municipal Admn. & Water Supply

(Election) Department and Ors.) 2001 (3) Law Weekly 399 wherein a Division Bench of this Court held in Para-8 as follows:

8. Now, the question arises as to whether in the above circumstances, this Court can annul the election process or postpone the commencement of

the election process. Even though there is an extraordinary power for this Court to exercise under Article 226 of the Constitution of India, there

are some inherent limitations and more so, in Election Law. Election Law is clear on this aspect. The analogy of Articles 324 and 329 of the Indian

Constitution relating to elections to parliament and State Legislatures is equally applicable to the local bodies. Even though local bodies have been

constituted, yet it had been the experience that self-governance by the elected representatives of the local bodies was not fully followed and

instances galore where elections to the local bodies for self governance by the elected representatives were not held for years to come. There are

also instances where the bureaucracy ran the local bodies for even more than a decade by postponing the elections by successive amendments

because of majority of the respective ruling parties in the respective bodies. That has prompted the enactment of Constitution (73rd Amendment)

Act 1992, incorporating Parts IX and IX-A in the Constitution comprising of Article 243 with several Sub-Articles 243A to 243G. While Part IX

deals with Panchayats, Part IX-A deals with Municipalities. Part IX starts with Article 243 and ends with Article 243 whereas part IX-A

commences with Article 243P and ends with Article 243ZG....

ii) (S. Udayakumar v. The State of Tamil Nadu, rep. By its Secretary to Government, Law Department, Fort St. George, Chennai 9 and five Ors.)

2002 (3) CTC 705 wherein a Division Bench of this Court held in Para-29 thus:

29. ...We have scanned through all the provisions and find nowhere that any action can be taken against any of the authorities of the Municipality,

be it councillor, Deputy Mayor or Mayor individually, in the context of the

discharge of their functions as the Municipal Authorities. If that be the case, the word "Municipality" employed in Article 243U(2) includes Mayor, Deputy Mayor and every Councillor and divestment of the right of the said authorities either jointly or severally to continue in their respective offices for the assured term of 5 years by any law like the Amending Act otherwise than by Section 44-A incurs the wrath of Sub-Article (2) of Article 243U of the Constitution and thus becomes unconstitutional, void and inoperative....

The said judgments were relied on by the learned senior counsel for the petitioner to say that the analogy of Articles 324 and 329 of the Indian Constitution relating to election to parliament and state legislature is equally applicable to local bodies and other panchayats unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for first meeting and no longer.

5. Mr. Viduthalai, learned Advocate General appearing for the respondents 1 and 2 submitted that the writ petition is barred by res judicata as the petitioner has withdrawn the earlier writ petition No. 34698 of 2006, which was filed challenging the validity of G.O. Ms. No. 91 dated

11.09.2006 fixing 24th October 2006 as the date up to which the Chairman and Members of Courtlam and other two Panchayats continue to hold

office as Chairman and Members; that in and by G.O. Ms. No. 55 dated 14.07.2006, orders were issued for re-constitution of 561 Special

Grade Village Panchayat as town Panchayats; that in the Tamil Nadu Municipal Laws (Amendment) Ordinance (Tamil Nadu Ordinance 4/2000)

promulgated on 14.07.2006, later repealed by Tamil Nadu Municipal Laws (Amendment Act 2006) - Tamil Nadu Act 18 of 2006, special

provisions relating to Village Panchayats constituted as Town panchayat (Section 3CC) have been inserted in the Act; that by virtue of the said

amendment, the petitioner is entitled to hold office upto such date as the State Government fix in this behalf under the Tamil Nadu Panchayats Act,

1994, hence, the contention of the petitioner that she is entitled to hold office for the full term of five years upto 29th June 2008 is untenable; that

G.O. Ms. No. 91 dated 11.09.2006 was issued fixing 24th October 2006 as the date upto which the Chairman and Members of certain Town

Panchayats, including Courtlam Town Panchayats shall continue to hold office,

thereafter, election was conducted in which the respondents 6 to 11 were elected. The learned Advocate General brought to the notice of this Court Articles 243(E), 243(C), 243(Q), 243(U) and 243ZA(2) of the Constitution of India in support of his contention that when a Village Panchayat is upgraded as town Panchayat, the duration of the Village Panchayat comes to an end and the same type of successor of Town Panchayat takes over as a consequence of the term of the previous village panchayat coming to an end; that Article 243(E) cannot be applied to a case where entry of one description is converted into area of another description and one description of panchayat is ceased by constituting another Town panchayat of a better description; that Section 41 of the Act gives power to the State Government to dissolve the local body, which is not competent to hold or persistently make default in performing duties imposed on it by law or exceed or abuse its powers, whereas in the case on hand, the special village panchayat comes to an end pursuant to the upgradation, hence, the said Section 41 of the Act cannot be equated with the case of upgradation and prayed for dismissal of the writ petition.

6. The learned Additional Government Pleader appearing for the respondents 3 and 4 and the learned Counsel for the fifth respondent adopted the arguments advanced by the learned Advocate General for the respondents 1 and 2 and prayed for dismissal of the writ petition.

7. Mr. Subramaniam, learned Senior counsel appearing for the respondents 6 to 11 submitted that though the petitioner has challenged the entire Section 3(CC) of the Act, except Clause (a) of Sub-section (1) of Section 3(CC) no averment relating to rest of the provisions of the said section,

hence, the writ petition, on that score itself liable to be dismissed to that extent; that the writ petition is also liable to be dismissed on the ground of

constructive res judicata since the earlier writ petition filed by the petitioner in WP No. 34698 of 2006 challenging the G.O. Ms. No. 91 of dated

11.09.2006 was dismissed by this Court; that the contention of the petitioner that Section 3CC of the Act gives power to the State Government to

fix the tenure of the chairman and members of the town panchayat is unconstitutional is misconceived; that when the Special Village Panchayat was

upgraded as Town Panchayat Article 243E of the Constitution of India cannot be pressed into service; that the election to the Courtlam Town

Panchayat was over and office bearers namely respondents 6 to 11 were sworn in. In support of this contention, the learned Senior counsel for the

respondents 6 to 11 relied on the decision reported in (State of Maharashtra v. Jalgaon Municipal Council) AIR 2003 SCW 1061 wherein in Para

No. 21, the Honourable Supreme Court held thus:

21. Having heard the learned Counsel for the parties at length on this aspect, we are of the opinion that the said hiatus is an unavoidable event

which must take place in the process of conversion of a Municipal Council into a Municipal Corporation. Reliance on Article 243-U by the learned

Counsel for the respondents in this context is misconceived. The use of the expression "a Municipality" in Sub-article (3) of Article 243-U in the

context and in the setting in which it is employed suggests and means the duration of the same type of Municipality coming to an end and the same

type of successor Municipality taking over as a consequence of the term of the previous Municipality coming to an end. Article 243-U cannot be

applied to a case where the area of one description is converted into an area of another description and one description of Municipality is ceased

by constituting another Municipality of a better description. Article 243-U(3) cannot be pressed into service to base a submission on that an

election to constitute a Municipal Corporation is required to be completed before the expiry of duration of a Municipal Council.

The learned Senior counsel for the respondents 6 to 11 further submitted that the election to the Courtlam Town Panchayat was over and office

bearers namely respondents 6 to 11 was sworn in, hence, the writ petition has become infructuous.

8. At the outset, it is necessary to mention that the present writ petition has been filed after permission from this Court in the earlier writ petition,

which was dismissed as withdrawn, hence, this writ petition is maintainable and the plea of res judicata raised by the respondents is rejected.

9. The petitioner has challenged the validity of Section 3(CC) of the Act in toto. As rightly pointed out by the learned Senior counsel appearing for

the respondents 6 to 11, there is no averment or attack to Sub-sections 1 (b) and (2) of Section 3(CC) of the Act, hence, the writ petition is liable

to be dismissed to the said extent.

10. Now, let us look into the relevant provisions of the Tamil Nadu District

Municipalities Act, 1920 which are as follows:

Tamil Nadu District Municipalities Act, 1920

Section 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 upto 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).

11. The State Government, in order to reconstitute the 561 special village panchayat, including Courtlam Special Village Panchayat as Town

Panchayat under the Tamil Nadu Municipalities Act decided to amend the Tamil Nadu Act 31 of 1994 by introducing special provisions namely

Section 3(CC) which is extracted above. Entry 5 of List II empowers the State to legislate with respect to subject relating to local government,

including the constitution of such local authorities. The provisions of Section 3(CC) of the Act inserted being covered by Entry 5 of List 2 of

Schedule VII and being in pith and substance, within the legislative competence of the State Legislature. The statement of object and reasons of the

said Section 3(CC) of the Act also explain that to give effect to the decision of the Government to re-constitute the special village panchayats

covered by the Tamil Nadu Panchayats Act, 1994 as Town Panchayat under the Act. When Law is impugned as ultra vires, what is to be

ascertained is the true character of the legislation. If on such examination it is found that the legislation is in substance one, on a matter assigned to

the legislature, then it must be held to be valid in its entirety. It is the function and power of the Court to interpret an enactment and to say to which

entry an enactment relates. So long as State law not in contravention of any fundamental right, specified in Part III of the Constitution, which was

enacted by the State legislature by the distribution of powers made by the VII Schedule read with connected articles not contravening on any

mandatory provisions of the Constitution which impose limitation upon the powers of legislature, it is valid. In this context, it is necessary to look

into the decision of the Honourable Supreme Court reported in P.N. Krishna Lal and Others Vs. Govt. of Kerala and Another, , it was held thus:

9. In determining whether the impugned Act is a law with respect to a given power, the court has to consider whether the Act, in its pith and

substance is a Law on the subject in question. If the statute relates in pith and substance, a topic assigned to a particular legislature, the Act will not

be invalidated even if it incidentally trenches on topics coming within another legislative list. The fact of incidental encroachment does not affect the

vires of the law even as regards the area of encroachment. The Court has to ascertain the true nature and character of the subject of the Act or its

pith and substance to find whether the impugned Act falls within the competence of the particular legislature. Blind adherence to strict interpretation

which would lead to invalidation of the Statute, as being legislated in the forbidden sphere should be avoided, lest, all beneficial legislation would be

striffling at birth and many subject entrusted to the state legislature rendered ineffectual divesting the State legislature of its powers to deal with

particular subject of entry or topic.

Hence, this Court is of the view that Section 3 (CC) of the Act is within the competence of the State Legislature.

12. An argument was advanced by the learned senior counsel for the petitioner that Section 3(CC) of the Act is repugnant to Article 243(E) of the

Constitution of India. Now, we look into the relevant provisions of the Constitution, which runs as follows:

Constitution of India

243-E (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 (7).

(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.

13. Section 3(29-A) of the Act defines Town Panchayat, which means an institution of self-government constituted for a transitional area as

defined in Clause (2) of Article 243Q of the Constitution. Article 243Q says that a Nagar Panchayat (by whatever name called) for a transitional

area i.e., to say an area in transition from a rural area to an urban area; a municipal council for a smaller urban area; a municipal corporation for a

larger urban area constituted in accordance with the provisions of this Act. Transitional area, a smaller urban area or larger urban area means such

area as the Governor may have 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

specified by a public notification for the purpose of this part. When population, the revenue, the percentage of non-agricultural activities,

employment, the economic importance or such other facts are relevant factors for constitution of Municipality. The Government of Tamil Nadu,

taking into consideration of the said factors decided to re-constitute 561 Special Village Panchayat as Town Panchayat, including Courtlam

Special Village Panchayat into Town Panchayat. The petitioner herein has not placed any evidence to say that the said factors, which are necessary

to satisfy 243-Q not available or not considered in this case.

14. An argument was advanced by the learned Senior counsel for the petitioner that the term of five years contemplated under Article 243E of the

Constitution shall continue for five years unless sooner dissolved u/s 41 of the Act. Section 41 of the Act says that if in the opinion of the State

Government the Municipality is not competent to perform or persistently make default in performing duties imposed on it by law or exceed or

abuse its powers, by notification dissolve the municipality from a specified date. Exercise of power u/s 41 of the Act depends on subjective

satisfaction of the Government. As rightly pointed out by the learned Advocate General, Section 41 of the Act cannot be equated with the

upgradation of Village Panchayat into Town Panchayat.

15. In and by the upgradation, the old body coming to an end and same type of successor municipality takes over. Article 243E cannot be applied

to a case where an area of one description is converted into another description. Section 3(CC)(1) of the Act contemplates that notwithstanding

anything contained in this Act, the President and Members of the 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 the Town Panchayat elected under this Act and such Chairman and Members shall continue to hold the office upto

such date as the Government may by notification fix in this behalf or if no such date is fixed upto the date on which their term of office would expire

under the Tamil Nadu Panchayat Act, 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. Thus, the person like the Petitioner, holding the office immediately before the date of constitution of

such village panchayat as town panchayat under this Act deemed to exercise all power and performed all duties until by notification the State

Government fixed the tenure. In this case, the State Government of the view

that instead of appointing Government officers or Administrator deemed it fit that the elected representative of the Panchayat can continue till the new body is constituted. The State Government in exercise of power u/s 3CC(1)(a) of the Act issued G.O. Ms. No. 91 dated 11.09.2006 thereby fixed the tenure of the Chairman and Members of the Special Village Panchayat upto 24.10.2006 and permitted them to hold the office till that period, hence, this Court is of the view that the said decision is perfectly valid.

16. The reason for fixing the date of tenure of the office of the elected representatives like the petitioner is the Government have decided to hold election by issuing G.O. Ms. No. 55 dated 14.07.2006 to re-constitute 561 Special Village Panchayat as Town Panchayat and hold election to all the Town Panchayats, including the Courtlam Town Panchayat in one main stream. Thus, the reasons for fixing the said date is also validly explained.

17. In view of the discussions made above, this Court is of the view that the writ petition is devoid of merits, liable to be dismissed and accordingly it is dismissed. No costs.