

(2008) 07 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No's. 15482 and 16836 of 2006

P.R. Ramesh Murthy

APPELLANT

Vs

State of Karnataka, The Election Commission, State of
Karnataka and Bangalore Mahanagara Palike
 M.
Nagaraj Vs State of Karnataka, Under Secretary, Urban
Development Department, Government of Karnataka, Sri
Dilip Rau, Administrator Designate, Bangalore Mahanagara
Palike and Bangalore Mahanagara Palike

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Constitution of India, 1950 — Article 243A, 243U

Citation : AIR 2009 Kar 10 : (2009) 1 KarLJ 328

Hon'ble Judges : Cyriac Joseph, C.J;B.S. Patil, J

Bench : Division Bench

Advocate : H.V. Nagarajao, for the Appellant; A.N. Venugopalagowda, GA for R-1, K.N. Phanendra, for R-2 and Ashok Harnahalli, for R-3 in W.P. No. 15482/2006 and A.N. Venugopalagowda, GA for R-1 and R-2 and Ashok Harnahalli, for R-3 and R-4 in Writ Petition No. 16836/2006, for the Respondent

Judgement

B.S. Patil, J.—These writ petitions are filed as Public Interest Litigations seeking a direction to the respondents herein to announce the calendar of events to hold elections to the 3rd respondent Bangalore Mahanagara Palike forthwith and to quash the Notification issued appointing the Administrator for the Bangalore Mahanagara Palike.

2. Petitioner in W.P. No. 15482/2006 Sri P.R. Ramesh is an Ex-Councilor, He was elected to the Bangalore Mahanagara Palike as a Councilor in the elections held on 11.11.2001 for a term of 5 years which has ended on 23.11.2006. He was also elected as the Mayor of Bangalore City Corporation on 28.11.2003 and his term came to an end on 21.11.2005. As respondents 1 and 2 did not hold elections to Bangalore Mahanagara Palike, Bangalore, before the expiry of its term on 23.11.2006 after completion of five years and as no steps were taken by

respondents 1 and 2 to commence delimitation of wards and allocation of reservation to different wards in Bangalore City, apprehending indefinite postponement of the elections, the petitioner got issued a legal notice dated 25.10.2006 to respondents 1 and 2 calling upon them to initiate immediate steps for holding elections to the 3rd respondent. As no steps were taken, he has approached this Court.

3. In W.P. No. 16836/2006 Sri M. Nagaraj who is also an Ex-Councilor has challenged the Notification dated 23.11.2006 issued by the State Government appointing an Administrator for the Bangalore Mahanagara Palike. Administrator is appointed on the ground that the term of office of the existing Councillors of the Bangalore Mahanagara Palike was expiring on 23.11.2006, but election of the new Councillors were not conducted in view of the steps initiated for constitution of the Greater Bangalore City Corporation (Bruhat Bangalore Mahanagara Palike), therefore, to carry on the activities on behalf of the Bangalore Mahanagara Palike, it was necessary to appoint an Administrator till the Bruhat Bangalore Mahanagara Palike was constituted and the elected body of Councillors assumed office. According to the Notification, the Administrator was appointed to remove the difficulties and to ensure smooth functioning of the Bangalore Mahanagara Palike. The Notification refers to Section 47 of the Karnataka Municipal Corporations (Amendment) Act, 1994 and all the other Executive and inherent enabling powers vested in the State Government for exercising such a power.

4. An interim order was sought against the 1st and 2nd respondents to continue the term of office of the present Councilors, Mayor and Deputy Mayor, till fresh elections were held and the new Council took charge of the administration of the 3rd respondent. After the statement of objections were filed by respondents 1 and 2, having regard to the urgency, the request made by the petitioner seeking interim direction to continue the term of office of the Councilors, Mayor and Deputy Mayor, till fresh elections were held, was considered and rejected on 23.11.2006.

5. The stand of the State Government is that there is a proposal for reconstitution of the territorial jurisdiction of the Bangalore Mahanagara Palike which was mooted in June 2005. The Bangalore City Corporation being surrounded by 7 City Municipal Councils and one Town Municipal Council, for all practical purposes, due to urbanization of these areas, they are integrated with the Bangalore City Corporation. To provide better service and development, it was proposed to integrate 8 urban local bodies and certain areas of Gram Panchayats and enlarge the territorial boundary of Bangalore Mahanagara Palike. The said proposal was processed on the lines of similar bodies like Municipal Corporation of New Delhi, Chennai, Mumbai and Hyderabad. After necessary study and recommendation, the matter was placed before the cabinet and the cabinet in the meeting held on 05.04.2006 granted approval for constitution of Greater Bangalore Urban Local Body. This was followed by an exercise carried out for identification of areas to be merged after obtaining necessary proposals from

the Deputy Commissioner. Thereafter, a draft Notification was issued to constitute Bruhat Bangalore Mahanagara Palike on 02.11.2006 and objections were invited. On 08.11.2006, a Government Order was issued entrusting the work of delimitation of wards to N-Soft India Pvt. Ltd., to complete the delimitation of wards within a period of 4 months. Thus, the State has denied the various allegations made by the petitioner.

6. The State has also asserted that necessary steps would be taken to hold elections to the proposed Bruhat Bangalore Mahanagara Palike without any delay. It has pointed out that once the Bruhat Bangalore Mahanagara Palike was constituted, the 2nd respondent will be requested to issue the calendar of events and hold elections without any delay. The State Government filed a memo on 18.01.2007 stating that in pursuance of the notification dated 02.11.2006 proposing to constitute Bruhat Bangalore Mahanagara Palike, objections and suggestions were received and after considering the same a Notification dated 16.01.2007 was issued constituting the Bruhat Bangalore Mahanagara Palike. Another notification dated 16.01.2007 was issued appointing the Administrator to Bruhat Bangalore Mahanagara Palike.

7. The State Election Commission - respondent No. 2 in the writ petition has also filed Statement of Objections contending inter alia that though the superintendence, direction and control of the preparation of the list of voters and conduct of all elections of the Municipal Corporations is vested in the State Election Commission under Article 243-A of the Constitution of India read with Section 55 of the Karnataka Municipal Corporations Act, 1976, the State Election Commission is not the prescribed authority for undertaking the delimitation of Wards and the reservation of seats for the Bangalore Mahanagara Palike, It is also asserted that the State Election Commission has addressed several letters to the State Government to conduct elections to the Urban Local bodies. The 2nd respondent has further stated that it requires a period of two months" after completion of delimitation of Wards and reservation of Wards by the State Government for announcement of elections to the Bruhat Bangalore Mahanagara Palike. It has contended that the period of two months is required for the purpose of preparation of the electoral rolls for all the Wards of the Bangalore Mahanagara Palike after completion of the exercise of delimitation by the State Government. It is further submitted by the 2nd respondent that the electoral rolls have to be revised and prepared afresh Ward-wise based on the Assembly Electoral Rolls as on 01.01.2006 as the same would benefit a very large number of electorate. It is urged that fresh preparation of electoral rolls for Wards of Bruhat Bangalore Mahanagara Palike for the ensuing elections is very essential as the existing electoral rolls for the Bangalore Mahanagara Palike was based on the Assembly Electoral Rolls which had been prepared in the year 2001.

8. It is also submitted by the 2nd respondent that if the surrounding Local Bodies are merged with the Bangalore Mahanagara Palike and the State Government forms a larger body called "Greater Bangalore", then approximately 5000 polling

stations would be required and the population of voters would be approximately 50 lakhs and therefore it would not be possible to prepare the voters list before the delimitation of the Wards.

9. We have heard the learned Counsel for the parties and perused the materials on record.

10. Learned Counsel appearing for the petitioner has placed strong reliance on the judgment of the Constitution Bench in the case of *Kishan Singh Tomar v. Municipal Corporation of the City of Ahmedabad and Ors.* AIR 2006 SCW 6044. Considerable arguments were advanced by the learned Counsel for the petitioner pointing out that Section 47 of the Karnataka Municipal Corporations (Amendment) Act, 1994 has no application, as it does not authorise the State Government to issue a notification.

11. It is seen that reference made in the impugned Notification to Section 47 of the Karnataka Municipal Corporations (Amendment) Act, 1994 is in fact to Section 509 of the Karnataka Municipal Corporations Act, 1976, which deals with "removal of difficulties". It states that if any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, published in the Official Gazette as the occasion may require, do anything that appears to it to be necessary to remove the difficulty. It is clear from this provision that the State Government is empowered to take action to remove the difficulties that may arise in giving effect to the provisions of the Act. Section 100 of the Karnataka Municipal Corporations Act, 1976, confers power on the State Government to appoint an Administrator under three contingencies. They are,

a) where the ordinary elections to the Corporation under the Act or any proceeding consequent thereon have been stayed by an order of a competent Court or authority;

b) where the election of all the Councillors or more than two third of the Councillors has been declared void by a competent Court or authority;

c) where all the Councillors or more than two third of the Councillors have resigned.

12. It is not the case of the respondents that any of the contingencies u/s 100 exist in the instant case. It is the function of the State Government to ensure that election to the Mahanagara Palike are held well before the expiry of the term of the elected body, so as to conform to the mandate of law. When there is an express provision provided u/s 100 conferring power to appoint an Administrator under specific contingencies, the Legislative intent is very clear that it is only under those contingencies that an Administrator can be appointed. Therefore, recourse to Section 509 of the Municipal Corporations Act, 1976 which is meant for enabling the Government to remove certain difficulties which may arise in giving effect to the provisions of the Act is not justified under the present circumstances. A power of this magnitude cannot be assumed to definitely

postpone the elections and such a power cannot be read into Section 509 of the Act in the wake of the mandate contained in Article 243-U of the Constitution. As is clear from Clause (1) of Article 243-U of the Constitution of India, the duration of a Municipality, unless sooner dissolved under any law for the time being in force, shall be for 5 years from the date appointed for its first meeting and no longer. As per Clause (3) of Article 243-U an election to constitute a Municipality shall be completed, before the expiry of its duration specified in Clause (1) provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this Clause for constituting the Municipality for such period.

13. The Constitution Bench of the Apex Court in the case of *Kishansingh Tomar v. Municipal Corporation of the City of Ahmedabad and Ors.* reported in AIR 2006 8CW 6044 has dealt with the effect and purport of Article 243-U of the Constitution of India and has laid down the law in this regard in paragraphs 13, 14, 18 and 20. The law on the point is emphatically pronounced holding that it is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections are conducted before the expiry of its duration of five years, as specified in Clause (1) of Article 243-U. In paragraph 19, the Apex Court has observed as under:

It is true that Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

14. The Constitution Bench after referring to another judgment of the Constitution Bench reported in AIR 2002 SCW 4492 pertaining to Gujarat Assembly Elections, held that the State Election Commission shall not put forward any excuse based on unreasonable grounds, stating that elections could not be completed in time. It is observed in paragraph 18 that the Election Commission shall try to complete the elections before the expiry of the duration of 5 years period, as stipulated. It is observed that any revision of electoral rolls, shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the elections before the expiry of the duration of 5 years period and not yield to situations that may be created by vested interest to postpone elections from being held within the stipulated time. In paragraph 20 of the said judgment, the Court has observed as under,-

20. It is true that the man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the

process of election after consulting the State Government and other authorities, But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constitution of Municipality for such period.

15. Dealing with the purpose and intent behind Article 243-U of the Constitution, in paragraph 21 the Apex Court has held that the entire provision of the Constitution was inserted to see that there should not be any delay in the Constitution of the new Municipality every five years. In order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. The Apex Court has also pointed out that the State Election Commission being the constitutional body, the State Government shall abide by its directions.

16. In the light of the law declared by the Apex Court in the aforementioned judgment, the contentions urged by respondents 1 & 2 stating that due to merger or amalgamation of different urban local bodies and panchayats into the Mahanagara Palike to establish what is known as Bruhat Bangalore Mahanagara Palike, it had become necessary to appoint an Administrator and defer the elections, cannot be accepted as a legal and justifiable ground to postpone the elections and continue the affairs of the local body by appointing an Administrator.

17. Even if it is assumed, as is sought to be urged in the detailed statement of objections filed by the State Government, that there was no deliberate intention on the part of the Government to postpone the elections and to appoint the Administrator and that postponement of the elections was a bonafide act on the part of the State Government, the action taken cannot be justified. As the whole process of merger of the urban local bodies and some villages situated around the Mahanagara Palike was initiated way back in the year 2005 and as elections could not have been held without completing the delimitation process for the areas included in the Mahanagara Palike, it cannot be inferred that the postponement was a malafide act. However, this cannot come to the rescue of the State Government and the 2nd respondent for justifying an otherwise impermissible or illegal act, as the law on the point is interpreted and declared by the Apex Court holding that no excuse can be put forth for not completing the elections within time and before the expiry of the period of the elected body.

18. Having said so, the present realities and the developments that have taken place are also required to be looked into. Revision of electoral rolls has taken place as elections to the Legislative Assembly were conducted in the State during the month of May 2008. The State Government ought to have initiated steps to

conduct the elections to the Bruhat Bangalore Mahanagara Palike in accordance with law. Without there being any justification, the process of elections is deferred and the Administrator is continued. Such a situation cannot be permitted as it violates the provision contained under Article 243-U. Therefore in our view, it is just and necessary to direct the State Government to conduct elections to the Bruhat Bangalore Mahanagara Palike initiating steps in this regard at the earliest.

19. Hence, the Writ Petitions are partly allowed. Respondents 1 & 2 are directed to conduct elections to the Bruhat Bangalore Mahanagara Palike within a period of three months from today. The writ petitions are accordingly disposed of.