
(1992) 04 AP CK 0015

In the Andhra Pradesh High Court

Case No : W.A.M.Ps. No"s. 616, 545, 571 of 1992 and Writ Petition Mis. Petition No"s. 6117, 6272, 6002, 6003 and etc., etc. of 1992

S. Prasada Raju and others

APPELLANT

Vs

State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 23-04-1992

Acts Referred:

Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika Abhivrudhi Sameeksha Mandals Act, 1986 — Section 45, 7
Andhra Pradesh Municipalities Act, 1965 — Section 20, 20(1), 23, 23(3), 62
Constitution of India, 1950 — Article 213, 226

Citation : AIR 1992 AP 351 : (1992) 2 ALT 253

Hon'ble Judges : Subash C. Pratap, C.J;Subhashan Reddy, J

Bench : Division Bench

Advocate : S. Ramachandra Rao, M.V. Durga Prasad P. Chandrasekhar, B. Sairam Goud, I Aga Reddy, R. Radhakrishna Reddy, M.S.R. Subrahmanyam, G. Pedda Babu, C.V. Ramulu, P. Ramachandra Reddy and D. Linga Rao, for the Appellant; Advocate General of A.P., for the Respondent

Judgement

1. These miscellaneous applications "are" filed seeking interim relief of continuing the petitioners who are the elected representatives of the local authorities, be it, Municipalities, Municipal Corporations, Mandal Praja Parishads or Zilla Praja Parishads, pending election of new representatives.

2. The writ petitions came to be filed on the verge of the expiry of the term of the period for which the elections were held and in the wake of the Government's proposal to man the above said local authorities in the entire State of Andhra Pradesh through governmental officers by appointing them as Special Officers or Persons-in-charge, by whatever name called. In the main writ petitions, the prayer is to hold elections and pending the same, to continue the petitioners in offices for which they were elected in a democratic "manner". Such a provision is contained in the relevant statutes under which the petitioners were elected: The said provisions were enabling provisions empowering the

government to extend the term of the present incumbents whose term expires and that is a power to be exercised by application of mind. It may be that, extension can be refused on adverse reports and also on some other valid grounds. It is pertinent to mention that ours is a representative democracy and not a monarchical democracy. Ours is the largest democracy in the world and the very essence of democracy is to have the elected representatives at several levels, be it in discharge of sovereign functions, governance of local self governments or even the cooperative societies. In the governance of these functions, the basic concept is to have elected representatives and in fact, this is a basic feature of the Indian Constitution. The democracy has as its first article of faith, free election of representatives at intervals with a general freedom of expression. In a democratic society of ours, the people and not the Government possess absolute sovereignty. Rule of law cannot be fully realised unless legislative or local bodies are established in accordance with the will of the people. In order to maintain adequately the rule of law, the Government should adhere to the democratic representation.

3. The statutes relevant and concerning these matters do provide elections at intervals of every five years. That is a good measure in conformity to democratic norms. But, it has to be seen as to whether the same is followed in true spirit. Instances galore, where elections to local bodies were indefinitely postponed and were manned by the sub-ordinates of the executive naming them as either Special Officers or Persons-in-charge, as the case may be. It has happened in the case of Municipal Corporation of Hyderabad, when there were no elections to the said local body for the period from 1969 to 1986. Now, again it is under the spell of Special Officer who is no other than the Commissioner of Municipal Corporation itself and discharges the function of not only the Commissioner, but also the Standing Committee and its Head. There were no elections conducted to Gram Panchayats, Panchayat Sarnithis and Zilla Parishads for a period of more than five years during 1975-1981. The elections to Co-operative societies were not conducted for quite a long time and this Court had to intervene and issue directions which were ultimately complied with only during the months of January and February, 1992. Having regard to this, during the course of arguments, we had sought for a definite period within which time-frame, the elections to the local bodies in question in this batch of writ petitions can be held. The learned Advocate-General, representing the State, sought for time to obtain instructions in this regard from the State Government and had on 22-4-1992, apart from oral assurance, has produced letters addressed by the concerned Secretaries to him, one concerning Municipalities including Municipal Corporations and another, concerning the Mandal Praja Parishads and Zilla Praja Parishads, undertaking to conduct elections by the end of October, 1992 and by the end of November, 1992 respectively. We record the said undertaking and direct the Government to conduct elections to the above local bodies within the above time-frame.

4. Under S. 20(1)(a) of A.P. Municipalities Act, 1965, the term of the elected

councillors is five years and so also the term of the Chairmen of the Municipalities under S. 23(3) of the said Act. Similar is the term for the Municipal Corporations also. Proviso to sections referred to above, enable the Government to extend the term, be it Councillors or the Chairmen, for a particular period. Similar provisions are contained under Ss. 7 and 45 of the Andhra Pradesh Mandal Praja Parishads, Zilla Praja Parishads and Zilla Abhivrudhi Samiksha Mandals Act, 1986 (A.P. Act No. 31 of 1986). Even if the terms are extended, the same can be only for short tenures and beyond that, the Special Officers, whether they are the Commissioners, District Collectors or Deputy Collectors, will have to man the said local bodies until the elections are held. As such, there is a check on the period of extension of the elected representatives, even if the extension is granted, prescribing the maximum. There is also further check on the indefinite continuance of Special Officers where this extension of the elected representatives or the appointment of the Special Officers is only by way of ad hoc arrangement as a care taking authority, pending regular ordinary elections for another prescribed term. In the cases on hand, while the terms of the Chairmen of Municipalities, their councillors had expired by 31st March, 1992, the terms of Presidents of Mandal Praja Parishad and the Chairmen of the Zilla Praja Parishads expire on 24-4-1992 and 2-5-1992 respectively.

5. Two questions arise for consideration even at this stage;

(a) as to whether the said elected representatives whose term has expired in one case and whose terms are to expire shortly in the other case are entitled as of right for such extension; and

(b) as to whether the Government is perforce obliged to extend the said terms due to its inability or disability to hold elections immediately.

6. The provisions referred to above relating to extensions of the periods of expired elected representatives, are enabling in nature. The Government has to consider as to whether it is feasible and desirable to extend such terms and several factors may be taken into consideration, the main one being, misconduct of the person/persons concerned, be it financial or otherwise. But, nevertheless, the Government has got to make an exercise in this regard and arrive at a decision. Only in the case of the Municipalities and Municipal Corporations, the Government had made such an exercise and then having found the continuance of the elected representatives for the said civic bodies not desirable, did not extend their term and instead, appointed, Special Officers who had assumed their respective offices with effect from 1st April, 1992. We have scanned through the counter and the material placed for the same. We do not find any arbitrariness in the said decision taken by the Government. No partisan attitude is alleged as all the personnel, whether belonging to ruling party or otherwise, are treated alike and no discrimination is shown. Further, the Chairmen of the civic bodies alone questioned their non-extension while the Councillors did not choose to challenge the same. It is pertinent to mention that the Chairman of the Civic bodies cannot function in isolation without the existence of body of

councillors. But, in so far as the Special Officers are concerned, they will not only discharge their normal official duties, but also discharge all the functions of the Chairmen and the body of councillors.

7. The balance of convenience, thus, relating to civic bodies, or the reasons mentioned supra, lies in continuing the Special Officers who have already assumed charge pending disposal of the writ petitions or pending elections, depending upon the result of the same. In the case of Presidents of Mandal Praja Parishads and Chairmen of Zilla Praja Parishads, the situation as obtained this day, is different altogether. The Presidents of Mandals and Chairmen of Zilla Praja Parishads are singular. Mandal Praja Parishads and Zilla Praja Parishads continue to exist despite the expiry of the terms of their Presidents and Chairmen. Admittedly, the said Presidents and Chairmen are functioning as on this date. In view of the fact that the Government did not make exercise as to whether extensions are desirable or not, the balance of convenience lies in continuing the petitioners-Presidents of Mandal Praja Parishads and Chairmen of Zilla Praja Parishads (confining to the petitioners before us) for a further period of one month (thirty days) from this day and in the meanwhile, within three weeks (twenty one days) from this day, the Government shall take a decision as to whether it is desirable to extend their respective terms till the elections are conducted having regard to their conduct conforming to the norms of the said offices and other material available in that direction.

8. The matter would have ended here itself and this could have been a final order in the writ petitions, but for compounding the situation and aggravating the litigation by an unusual conduct of the Government indulging in issuance of ordinances dated 11th April, 1992 relating to civic bodies and 15th April, 1992 concerning the other local bodies, thereby purporting to delete the enabling provisions referred to supra and relating to the exercise of power extending the term of the elected representatives beyond their expiry periods. What is more intriguing is the conduct of the Government in seeking to exercise this power even during the midst of hearing of the cases on hand. Admittedly, the writ petitions in this regard were filed during the beginning of last week of March, 1992 and the interlocutory applications for continuance of petitioners in office were being dealt with and were adjourned from time to time enabling the Government to file their counter. Instead of facing the situation in a legal and fair manner and without waiting for the verdict even at the interlocutory stage, particularly, when interim directions for extension were already refused by the learned single Judge of this Court with regard to civic bodies on 1-4-1992, the Government has in a very unusual manner invoked the emergency legislative powers under Art. 213 of the Constitution of India. The matters were being heard by our Bench on 3rd April, 1992, 10th April, 1992, 13th April, 1992, 15th April, 1992, 16th April, 1992 and 22nd April, 1992 and posted to this day for passing orders on interlocutory applications.

9. On 13th April, 1992, we were presented with A.P. Ordinance No. 4 of 1992

concerning Municipalities and Hyderabad Municipal Corporation Act omitting words as employed in Ss. 20, 23 and 62A of A.P. Municipalities Act, 1965 and inserting some amendments in the provisions of Hyderabad Municipal Corporation Act, 1955 making it clear that what is applicable to Hyderabad Municipal Corporation is also applicable to the Municipal Corporations of Visakhapatnam and Vijayawada. Then on 15th April, 1992, we were presented with another ordinance, A.P. Ordinance No. 5 of 1992 relating to Mandal Praja Parishads and Zilla Praja Parishads omitting Ss. 7 and 45 of the material words under S. 76 of A.P. Act No. 31 of 1986. In effect, these amendments brought forth by the aforesaid Ordinances sought to render the Writ Petitions infructuous as the grievance of the petitioners in the Writ petitions is that they being the elected representatives and there being a provision contained under the Acts, in question here for extension of their terms, in the event of elections not being held and that such a power to consider for extension of their terms is coupled with duty. In fact, S.62A was incorporated by an Ordinance, A.P. Ordinance No. 2 of 1992 inserting the same after sub-sec. (3) of S. 62 empowering the Government to appoint Special Officers to exercise the powers, perform the duties and discharge the functions of (a) the Council (b) the Chairmen and (c) the Commissioner under the Act for a period which shall not exceed one year from the date of such appointment. This provision was incorporated enabling the Government to appoint Special Officers in case the Government takes a decision not to extend the term of the elected representatives. Though the Bill with regard to the above ordinances is stated to have been introduced in the Assembly and also passed, but the same has not transformed into an Act, as it is awaiting the assent of the Governor. This is under challenge in the writ petitions. The impugned Ordinance No. 4 of 1992 is issued further amending the said A.P. Ordinance No. 2 of 1992 deleting the words "and the term of office of the councillors is not extended" occurring U/S.62A introduced under Ordinance No. 2 of 1992. Thus, the material questions which arose for consideration by this court were; whether the elected representatives can be dispensed with after their term is over; whether extension should be given to them on the ground that the power of extension is coupled with duty as held by a Division Bench of Gujarat High Court in Special Civil Applications Nos. 583 to 588 of 1992, whether the conferment of power to appoint Special Officers for that one year after the expiry of the term in respect of the elected representatives was valid or not? Even while these vital questions were pending consideration, the above Ordinances Nos. 4 and 5 of 1992 were promulgated by the Governor at the instance of the State Government invoking emergent powers under Art. 213 of Constitution of India, stating that circumstances exist to act so emergently. It is strenuously contended by the learned counsel for the petitioners that the promulgation of these Ordinances in the midst of hearing of the cases is nothing but a fraud on the Constitution and on this Court and that it is a colourable exercise of power. under the guise of protecting the same under Art. 213 of Indian Constitution, but aimed at scuttling the judicial process of this court at the adjudicatory stage and in the midst thereof.

10. The learned Advocate-General replies that the Executive Government has got all powers to exercise legislative functions when the Assembly is in recess and that it has got legislative competence to promulgate the impugned ordinances and that inasmuch as the legislative power of the executive in the shape of ordinances is co-extensive with that of legislative power of the legislature, the said legislative acts cannot be justiciable and even the propriety cannot be a matter of debate in this Court. Several decisions have been cited on either side, but being at interlocutory stage, and that too in a Division Bench and the matters to be heard by a single Judge, recording a final finding at this interlocutory stage is not warranted. But, prima facie, we are of the opinion, that the impugned Ordinances 4 and 5 of 1992 which have been issued in the midst of argumenis before us and the consequence of which is to say that we should now stop hearing the case with regard to exercise of powers of extension and that the entire lis disappears and that no more adjudication is necessary, intrudes into the power of judicial review which is one of the essential functions of rule of law in a representative democracy. Rule of law is a dynamic concept which should be employed to safeguard and advance the will of the people. Democracy is not a play-thing of erratic majorities in legislative bodies. Any legislative or executive act beyond the prescribed limits of the Constitution is void. The judiciary is one of the important pillars of free society erected by rule of law which is designed to protect the value of human rights. This court was seized of the matter whether the legislative measures were within the authority of legislature. It is needless to mention that judicial review is a basic feature of the Indian Constitution and in the process of adjudication by way of judicial review, the impugned Ordinances 4 and 5 of 1992 were issued scuttling the judicial process and any attempts in that regard by the executive should be deprecated, as it makes in-roads into judicial powers striking at the very legislative competence and the constitutional power of the State to issue the impugned Ordinances 4 and 5 in 1992. Instances are not rare, where the Ordinances were suspended as a prima facie measure. There was no urgency for issuance of the impugned Ordinances 4 and 5 of 1992 excepting that this court was seized of the matter and the matter was under adjudicatory process. There was no other urgency excepting this. Way back in 1950, a Division Bench of High Court of Patna in Ratan Roy Vs. State of Bihar and Others, held that wherever legislation uses the word "satisfied", referring in the context of Art. 213 of Constitution, it must mean reasonably satisfied, and that it cannot import arbitrary or irrational state of thing satisfied. Held the said Bench further, that if it is found on the very face of an Ordinance that it is irrational and unreasonable piece of legislation, a Court of law would be certainly entitled to hold that the legislation is invalid. In the matter of In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, , the Supreme Court had not only stayed the operation of the Ordinance but set aside the same as constitutionally invalid. As such, we are, prima facie, satisfied that the impugned Ordinances 4 and 5 are fit to be suspended pending the disposal of the writ petitions. However, we are not suspending A. P. Ordinance 4/92 for the reason that no interim relief is granted.

11. In the circumstances, we pass the following orders:

(1) The A. P. Ordinance No. 5 of 1992 is suspended pending the disposal of the writ petitions questioning the same;

(2) the prayer for continuance of the elected representatives of the civic bodies, be it Municipality or Municipal Corporation consequent to expiry of their term is refused;

(3) the Government shall conduct elections to the Municipalities and Municipal Corporations by the end of October, 1992 and to the offices of the Mandal Praja Parishads and Zilla Praja Parishads by the end of November; 1992.

(4) The Presidents of Mandal Praja Parishads and the Chairmen of Zilla Praja Parishads shall be continued for a period of one month (thirty days) from this day; and

(5) within a period of three weeks (twenty one days) from this day, the Government shall consider the desirability of continuing the present Presidents of Mandal Praja Parishads and Chairmen of Zilla Praja Parishads until elections basing on the material available.

12. All the miscellaneous applications concerning civil bodies, Mandal Praja Parishads and Zilla Praja Parishads are disposed of accordingly. No order as to costs. All writ petitions shall be posted before a single Judge on 15-6-92 subject to part-heard cases.

13. Before parting we record our appreciation for the in-depth research and labour put in by the learned counsel Sri S. Rama-chandra Rao for the appellants-petitioners, and the learned Advocate-General Sri T. Anantha Babu for the respondents and for the invaluable assistance rendered by them to the Court in this group of matters and also for rising above the limited interest of the individual parties and advancing arguments on basic concepts relating to the rule of law, judicial review of executive and legislative action and the need to maintain intact basic structure of the Constitution.

Oral request on behalf of the State for suspension of this order for a period of fifteen days, is rejected.

Our above order will not affect the order of Status quo passed on 6th April, 1992 by Qudari, J. in WPMP No. 5880 of 1992 and under which order status quo obtaining as on the date of the said order with regard to the powers and functions of Mayor of the Vijayawada Municipal Corporation is directed to be maintained. The said WPMP to be heard and decided on its own merits and in accordance with law.

14. Order accordingly.