

(2002) 07 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 35011/01

Sarasi Kuttappan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 243K, 246, 246(3)
Kerala Panchayat Raj (Amendment) Act, 1999 — Section 157(2), 157(5), 157(5A), 162(1)
Kerala Panchayat Raj (Amendment) Act, 2000 — Section 157(2), 157(5)
Kerala Panchayat Raj Act, 1994 — Section 157, 157(1), 157(2), 157(5)

Citation : (2002) 07 KL CK 0015

Hon'ble Judges : B.N. Srikrishna, C.J;G. Sivarajan, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; Murali Purushothaman, for Respondents 2 and 4, P.C. Sasidharan, for 5th Respondent, Lal George, Govt. Pleader for 1st Respondent and James Kurian, for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, C.J.—This petition under Article 226 of the Constitution of India challenges the validity of Sub-sections (1) and (5) of Section 157 of the Kerala Panchayat Raj Act as amended by Act 13 of 2000 requiring an officer nominated by the State Election Commission to receive a copy of a resolution of motion for no confidence in the President or Vice President of a Panchayat and to preside over the meeting called to consider it.

2. Background

Section 157 of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as "the Act") deals with the subject of no confidence in President or Vice President of a Panchayat. The procedure for considering such a motion has also been provided under the section and there are no separate rules prescribed thereupon.

3. Sub-section (2) of the Act, when it was originally framed, read as under:

(2) Written notice in such form as may be prescribed of the intention to move any motion referred to in Sub-section (1) signed by such member of elected members of the Panchayat concerned as shall constitute not less than one third of the sanctioned strength of elected members of that Panchayat, together with a copy of the motion which is proposed to be moved shall be delivered in person by any of the elected members of the Panchayat signing the notice, to the officer as may be authorised by the Government in this behalf.

A copy of the no confidence motion which was proposed to be moved was required to be delivered in person by any of the elected members of the Panchayat signing the notice to the officer authorised by the Government specially in that behalf. The Government had authorised the Deputy Director of Panchayats to exercise the powers under Sub-sections (2) and (5) of Section 157 of the Act. Under Sub-section (5) of Section 157, as it stood originally, such a meeting for consideration of the proposed resolution of no confidence had to be presided over by an officer authorised by the Government, who was again the Deputy Director of Panchayats.

4. By Act 13 of 1999, Sub-section (5) of Section 157 was amended and substituted by Sub-sections (5) and (5A) with effect from 24th March, 1999. The Sub-sections as amended by 1999 Act read as under:

(5) In a meeting convened under this section-

(a) in the case of a resolution against the Vice President, the President,

(b) in the case of a resolution against the President, the Vice President, and

(c) when the President or Vice President is by reason of his absence at the place or by any other reason unable to preside over the meeting as stipulated in paragraph (a) and paragraph (b), the Chairman of Standing Committee, in the order of priority described in Sub-section (1) of Section 162, shall preside over the meeting:

Provided that in no person as provided in this section is able to preside over the meeting, such other member as may be elected from among them by the members present at the meeting shall preside over the meeting.

(5A) The officer authorised under Sub-section (2) shall take part as an observer in the meeting convened under the provisions of this section.

(English translation of the original in Malayalam. No authorised translation in English of the Act is available). This amendment empowered the President to preside over such a meeting when a no confidence motion was moved against Vice President; and the Vice President when the motion was moved against the President. Sub-section (5A) provided that the officer authorised under Sub-section (2) would take part only as an observer in the meeting convened under the provisions of this section.

5. Further amendments were made by Ordinance No. 3 of 2000 which was subsequently replaced by Act 13 of 2000. While moving the legislative bill for replacing Ordinance No. 3 of 2000, the reason stated for the amendment brought forward was that apprehensions were expressed with regard to the impartiality of an officer of the State who would preside over the meetings to consider the no confidence motion which was crucial. Hence, it was decided to entrust the power of presiding over such meetings to an officer authorised by the State Election Commissioner. Sub-sections (2) and (5) of Section 157 as amended by Act 13 of 2000 are as under:

(2) A notice in writing showing the intention to move any of the resolution mentioned in Sub-section (1) in the form that may be prescribed, and signed by such number of elected members of the Panchayat which (shall not be less than one third) of the sanctioned strength of elected members of the Panchayat concerned, accompanied by a copy of the resolution intended to be moved, shall be submitted personally by any one of the elected members to the officer who may be authorised by the State Election Commission for this purpose.

* * * * *

(5) An officer authorised by the State Election Commission shall preside over the meeting convened as provided in this section.

Sub-section (5A) was simultaneously deleted by Act 13 of 2000.

6. It is these amendments brought about by Act 13 of 2000 in Sub-sections (2) and (5) of Section 157 of the Act which are challenged in the present writ petition.

7. The learned Counsel for the Petitioner contends that Panchayats were established pursuant to the introduction of Part IX of the Constitution by 73rd (Constitution) Amendment Act, 1992 with effect from 24th April 1993. Pursuant to introduction of this Chapter in the Constitution, detailed provisions were required to be made by Acts passed by the State Legislature. Learned Counsel emphasises that Clause (1) of Article 243K of the Constitution requires that the "superintendence, direction and control of the preparation of electoral rolls, for, and the conduct of, all elections to the Panchayats" shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Sub-clause (4) of Article 243K provides that subject to the provisions of this section the Legislature of a State may by law to make provision with respect to and all matters relating to or in connection with elections to the Panchayats. The learned Counsel for the Petitioner contends that a careful reading of Article 243K would suggest that the only function which can legally be entrusted to the State Election Commission is the function contemplated by Clause (1) of Article 243K, namely of preparation of electoral rolls for and the conduct of elections to the Panchayats. He contends that the Legislature of the State is not competent to make a law to invest the State Election Commissioner's nominee with power to preside over a meeting to consider a

resolution of no confidence against President or Vice President of the Panchayat.

8. A challenge to the law made by a State can arise on the ground that there is lack of legislative competence in the State Legislature, or that the law made by the Legislature infringes a fundamental right guaranteed under Part III of the Constitution, or that it is otherwise inconsistent with the basic features of the Constitution. The only ground put forward is that there is lack of legislative competence. Legislative competence is to be determined by reference to the legislative powers of the State delineated in Article 246 of the Constitution. Article 246(3) provides that subject to Clause (1), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any matters enumerated in List II of the VII Schedule which is referred to in the Constitution as the State List.

9. Entry 5 of the State List reads as follows:

Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or Village Administration.

It is trite law that in deciding the question of legislative competence the Constitution should not be construed with a narrow or pedantic approach; it is not to be construed as a mere law, but as a machinery by which laws are made. Such interpretation should be made broadly and liberally. Constitutional entries only demarcate the legislative fields of the respective legislature and do not confer legislative power as such. See in this connection the judgment of the Supreme Court in *Indian Aluminium Company Limited and another Vs. Karnataka Electricity Board and others*, . The legislative power here is referable to Entry 5 of the State List. All that can fall under this entry, upon a broad and liberal interpretation, would legitimately be within the competence of the State Legislature, subject, however, to specific provisions in the Constitution which may limit it. One such instance could be Article 243K which requires the State while legislating on the subject of election to Panchayats to follow the mandate of Clauses (1) and (4) of the said Article. We are inclined to read Article 243K only as a restriction on the power of the State Legislature on the subject of elections to Panchayats and nothing more. On all other subjects touching local self-Government, capable of falling within Entry 5 of List II, the State Legislature is free to legislate untrammelled. Looked at from this prospective, it becomes clear that the power of the State Legislature is not derived from Article 243K, but instead, from elsewhere. Article 243K is only one aspect in which that power is restricted, that too with regard to the subject-matter of elections to the Panchayat. It is not disputed before us that consideration of no confidence motions, the meetings to be convened therefor, and the proper authority to preside over such meetings, is not related to the subject-matter of elections to the Panchayat. If that be so, the Legislature's power under Entry 5 of List II is paramount, subject to other provisions of the Constitution. We, therefore, see no

lack of legislative competence in the State Legis"ature to make the impugned amendments.

10. We have not been shown any other provision in the Constitution, or any other law, by which the State Election Commissioner is precluded from exercising the functions which he is required to exercise by reason of the amendments which are impugned. We, therefore, find no substance in the contention that the State Election Commissioner has no such power.

11. Learned Counsel for the Petitioner cited a judgment of the Supreme Court in *Deep Chand Vs. The State of Uttar Pradesh and Others*, in his support. In paragraph 26 of this judgment the Supreme Court summarised the constitutional provisions as under:

The result of the aforesaid discussion may be summarised in the following propositions: (i) whether the constitution affirmatively confers power on the legislature to make laws subjectwise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power; (ii) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution; (iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case may be;...

In our view the judgment does not support the contention of the learned Counsel for the Petitioner. In fact, this judgment reinforces the view which we take namely, that in the absence of other constitutional limitations the power of the Legislature to legislate in relation to an entry in List II is untrammelled.

In our view, there is no merit in the challenge to the constitutional validity of Sub-sections (2) and (5) of Section 157 of the Act as amended by Act 13 of 2000. The petition must fail and is hereby dismissed. No order as to costs.