

(2015) 08 KL CK 0069

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 15137 of 2015 (N), 15521, 16935 and 16940 of 2015

Sundaran Master

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Constitution of India, 1950 — Article 163, 166, 243P, 243Q, 243Q(2)
Kerala Municipalities Act, 1994 — Section 4, 4(1)

Citation : (2015) 3 KLT 952

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : P.V. Kunhikrishnan, for the Appellant; Tom K. Thomas, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J—Under challenge in these writ petitions are G.O. (P) Nos. 151, 152 and 153/2015/LSGD. dated 30.4.2015 by which three grama panchayats were upgraded to municipality and one grama panchayat was annexed to the newly constituted municipality.

2. W.P. (C) No. 15137 of 2015, 15521 of 2015 and 16490 of 2015 are against the upgradation of Mukkom, Koduvally and Mananthawady grama panchayats respectively as Mukkom Municipality, Koduvally Municipality and Mananthawady Municipality. W.P. (C) No. 16935 of 2015 is against the merging of Payyampally Grama Panchayat to newly constituted Mananthawady Municipality.

3. The case projected by the petitioners in these writ petitions is that Article 243Q(2) of the Constitution defines a smaller urban area as such area as the Governor may having regard to the population of the area, density of the population, the revenue generated in local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors that may deem fit specified by public notification for the purpose of that

part. Therefore, according to them, unless there is a public notification by the Governor declaring an area as a smaller urban area considering the conditions mentioned in Article 243Q(2), there cannot be any constitution of a municipal council for a smaller urban area.

4. In W.P. (C) No. 15137 of 2015 filed against the upgradation of Mukkom Grama Panchayat, the member of the Mukkom Grama Panchayat got himself impleaded as additional 5th respondent, who filed counter affidavit supporting the upgradation.

5. In W.P. (C) No. 15521 of 2015 which is against the upgradation of Koduvally Grama Panchayat, the 2nd respondent panchayat through its Secretary has filed a counter affidavit supporting the upgradation.

6. In all the writ petitions, State has filed counter affidavits justifying their action in issuing the impugned notifications upgrading the existing panchayats and merging Payyampally Grama Panchayat to the newly constituted municipality. It was contended that after conducting thorough study and having regard to the special circumstances which are relevant and material that the committee constituted by the Government proposed the upgradation as above and this was considered by the cabinet, after calling for objections and the notifications were issued. It was pointed out that by the upgradation of panchayats into municipalities, the residents would be able to enjoy the benefits of the following centrally sponsored schemes:

- i. Rajiv Gandhi Awas Yojana
- ii. National Urban Livelihood Mission
- iii. Integrated Housing and Slum Development Programme
- iv. SJSRY
- v. Urban 2020
- vi. KSUDP Scheme
- vii. BSUP Scheme
- viii. JNNRUM Scheme
- ix. Smart City Scheme
- x. Swath Bharath Mission Scheme
- xi. UIDSSMT

Besides the above the following State sponsored schemes are also there:

- i. Ayyankalli Urban Employment Guarantee Scheme
- ii. Scheme under Decentralised Planning

iii. Schemes for provision of Night Shelters

iv. Urban Initiative for Non-motorised conveyance facilities

v. Construction of modern slaughter houses, Gas Crematorium etc.

7. It was also stated that none of the rights of the petitioners is infringed by the formation of the local bodies and no harm is likely to be caused by the action of the Government.

8. I have heard Mr. P.V. Kunhikrishnan, the learned counsel for the petitioner in W.P. (C) No. 15137 & 15527 of 2015, Mr. C.J. Joy, the learned counsel for the petitioners in W.P. (C) No. 16935 and 16940 of 2015, Mr. K.P. Dandapani, the learned Advocate General ably assisted by Mr. Tom K. Thomas, the learned Special Government Pleader, Mr. K.M. Firoz, the learned standing counsel for the 2nd respondent in W.P. (C) No. 15521 of 2015, Mr. R. Sudhish, the learned counsel for the additional 5th respondent in W.P. (C) No. 15137 of 2015 and Mr. Murali Purushothaman, the learned Standing Counsel for the Kerala State Election Commission and the Delimitation Commission, who rendered proper assistance by placing various judicial pronouncements in the realm.

9. It was argued by the learned counsel for the petitioners that Section 4 of the Kerala Municipality Act gives power to the Government by notification in the Gazette to constitute a municipality even for the smaller urban area and Section 4(1) of the Municipality Act says that a town panchayat can be constituted for a transitional area, a municipal council for a smaller urban area and a municipal corporation for a larger urban area.

10. Placing reliance on the definition of smaller urban area under Article 243Q(2) of the Constitution it was argued that unless there is a public notification by the Governor declaring the area as a smaller urban area considering the conditions mentioned in Article, there cannot be any constitution of a municipal council for a smaller urban area. It was further argued that as per Article 163 of the Constitution, though the Council of Ministers and Chief Minister would advise the Governor and the Governor would act based on it, an exception was given which says that if as per the constitution, things are to be done by the Governor in its discretion, the same has to be done by the Governor himself. It was also argued that a reading of Article 243Q would show that discretion is given to the Governor for declaring an area as transitional area, smaller urban area or a larger urban area. Therefore, it was argued that unless there is a declaration by the Governor, the 1st respondent has no authority to constitute a municipality.

11. In answer to the above submissions, the learned Advocate General and the learned counsel for the party respondent invited my attention to the decision of the Apex Court in *State of U.P. and others v. Pradhan Singh Kshettra Samithi and others* [1995 Supp 2 SCC 305] wherein it was argued that the Governor is not exercising executive function on his own at its discretion. Therefore, the rules of business of the Government under Article 166 govern the filed in the matter of

advice rendered by the Government to the Governor, who can act only with the aid and advice of the Council of Ministers. The petitioners are wrongly relying on Article 163 of the Constitution of India and claim that there is an exception, if things are to be done by the Governor in its discretion. As already pointed out, the Governor is not exercising discretion in the matter.

12. The next point to be considered is whether the various factors were considered by the Government. In fact, as stated in the counter affidavit by the State, all aspects have been considered by the Government. Exts. R1(a) to R1(c) produced by the first respondent along with the counter would show that the matter has been elaborately considered by the Government and it was concluded after considering the objections that the upgradation is absolutely necessary. It is after this elaborate process, the impugned notifications were issued. It is here, one may be reminded of the decision of this Court in *Sreekala K. and others v. State of Kerala and others* [2010 (3) KLT 548] which following the decision in *State of Punjab Vs. Tehal Singh and Others*, AIR 2002 SC 533 : (2002) 5 JT 40 : (2002) 1 SCALE 18 : (2002) 2 SCC 7 : (2002) 1 SCR 27 : (2002) AIRSCW 105 : (2002) 1 Supreme 7 observed that the function of the Government in the matter is legislative in character and the principles of natural justice need not be followed. In any event, the notifications issued under Articles 243P and 243Q(2) of the Constitution are not expected to contain detailed reasons considering the facts and circumstances, and the objections raised in the matter. However, the notifications now produced categorically state that the objections were considered.

13. The allegation of the petitioners that if the panchayats are upgraded the same would loose the benefit of many of the schemes, is also quite unsustainable in the light of the averments in the counter affidavit filed by the respondents that there are lot of benefits if the panchayats were upgraded.

14. The exercise of powers by the Government under Article 243Q r/w. Section 4 of the Municipality Act is legislative in character. It is not an administrative or executive function. The same can be challenged only on the ground of legislative competence, violation of fundamental rights and violation of any other provisions of the Constitution. As the petitioners have failed in establishing that the impugned orders are hit by any of these grounds, this Court is of the view that the petitioners are not entitled to any of the reliefs prayed for.

In the result, the writ petitions fail and accordingly, they are dismissed.