
(1962) 03 MAD CK 0009
In the Madras High Court

S.V. Narayanaswami

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 06-03-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) ILR (Mad) 26 : (1962) 75 LW 370 : (1962) 2 MLJ 266

Hon'ble Judges : S. Ramachandra Iyer, C.J; S. Ramachandra Aiyar, C.J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, C.J.—This is an appeal against the judgment of Jagadisan, J., rejecting a petition under Article 226 of the Constitution

which prayed for the issue of a writ of prohibition with a view to restrain the Inspector of Municipal Council and Local Boards from holding a

meeting of the Thenkarai" Panchayat Union Council for the election of its Chairman. Thenkarai is a Panchayat" Development Block formed for the

purpose of National Extension Services in villages. The Services in villages. The State Government in exercise of its powers u/s 7 of the Madras

Act XXXV of 1958 declared the local area covered by the Thenkarai Block to be a Panchayat Union. Under the Act the affairs of a Panchayat

Union is to be administered by a Panchayat Union Council. By a notification, G.O. Ms. No. 2548, dated 22nd September, 1961 the Government

declared that the Thenkarai Panchayat Union Council will be constituted as and; from 2nd October, 1961. This notification was made u/s 11 (1) of

the Act. Thenkarai Block consists of 15 revenue villages and one of the villages constituting the Block is Tamaraikulam. We have now to refer to

the establishment of primary panchayats for that village. . By a notification, G.O. Ms. No. 1647 (Local Administration), dated 5th October, 1960

the Government issued instructions that for the purpose of local administration, the village of Tamaraikulam should be divided into three panchayat areas, namely, Tamaraikulam, Lakshmipuram and another village whose name was to be designated later. Sometime later, the Government appears to have thought it expedient to bifurcate Lakshmipuram into two panchayat areas, namely, Lakshmipuram and Krishnapuram. Thus the area comprised in the revenue village of Tamarikulam is to consist of four primary panchayats. The result of this and of similar notifications with respect to other villages is that although Tamaraikulam Panchayat Union Block consists of only 15 revenue villages, its primary constituents panchayat number 21. Objection was taken by certain residents as to the legality and propriety of the bifurcation of Lakshmipuram village. That matter has not yet been finally disposed of : no election could therefore take place to the panchayats in that group. Consequently it was not possible for these villages to be represented in the Panchayat Union Council which is to consist of the Presidents of the various Panchayats. The authorities, however, wanted to go ahead with the election of the Chairman of the Thenkarai Panchayat Union Council notwithstanding the fact that Tamaraikulam group of villages could not send their representatives to the Union Council. The Union Council thus does not have the sanctioned strength as the representatives from Tamaraikulam group of panchayats have not yet come in.

2. Two Presidents of Lakshmipuram village thereupon filed an application under Article 226 of the Constitution for the issue of a writ of prohibition to restrain the State Government from proceeding with the election of the Chairman and Vice-Chairman of Thenkarai Panchayat Union Council, That was fixed to take place on 25th October, 1961. Jagadisan, J., rejected the petition holding that although four out of the 21 constituent panchayats were not in a position to send their representatives to the Panchayat Union Council, it was competent for the latter to meet and transact its business. In so holding, the learned Judge followed the decision in *In Re: M.K. Ravutha Gounder*, . Feeling aggrieved by the decision, one of the petitioners before the learned Judge has filed the present appeal. ,

3. Mr. V. Thyagarajan appearing for the appellant contends that so long as the four panchayats have not sent in their representatives, the,

Panchayat Union Council cannot be said to have been duly constituted, though it might be, that such a Council can be said to have been

established by virtue of the notification issued, by the Government u/s 11 (1) of the Act. In support of this contention, learned Counsel refers to the

decision of the Court of Appeal in England reported in *Mayor & Co. of Merchants of the Staple of England v. Governor and Company of Bank of*

England (1887) L.R. 21 Q.B. 160, wherein Wills, J.", observed:

The acts of a corporation are those of the major part of the corporations, corporately assembled" By "" corporately assembled "" it is meant that

the meeting shall be one held upon notice which gives every corporator the opportunity of being present.

4. Relying on this it is contended, that as no notice could be given to the representatives of the four panchayats in Tamaraikulam group which have

not yet come into existence, there can be no valid meeting of the Union Council. : This contention, ignores the differences between the constitution

of a corporation and the method by which it transacts its affairs. In *Venkatarama Iyer v. Janab V. Hamid Sultan Maracayar* (1922) 44 M.L.J.

161, the Government had by virtue of their powers appointed only 19 persons to a Taluk Board which was to consist of 20 members. Even before

the 20th person could be appointed, the 19 members proceeded to elect the President of the Board. The election of the President was challenged

on the ground that there had been no legally constituted Board. Dealing with the contention, the learned Judges observed that it was the Local

Boards Act and the notification of the Government thereunder that constituted the Taluk Board and not the appointment of members. It was further

held that it was not necessary that every seat should be filled even at the first constitution of the Board in order to make it a legally constituted body

5. It is now necessary to consider whether under the provisions of the Madras Act XXXV of 1958 the Panchayat Union Council can be said to

have come into existence irrespective of the fact that some panchayats comprised in the Union have not been able to send in their representatives

to the Council.

6. Section 11 which relates to the constitution of the Panchayat Union Council states:

(1) A Panchayat Union Council shall be constituted for each Panchayat Union with

effect from such date as may be specified in the notification issued in that behalf by the Government.

(2) Subject to the provisions of this Act the administration of the Panchayat Union shall vest in the Panchayat Union Council but the Panchayat

Union Council shall not be entitled to exercise functions expressly assigned by or under this Act or any other law to its Chairman or the

Commissioner or to the Panchayat or any other authority : Provided that if and so long as there is no Panchayat in any part of a Panchayat Union,

the Panchayat Union Council shall exercise all the powers including the power of taxation, discharge the duties, perform the functions and be

credited with the receipts and debited with the charges of the Panchayat and the Chairman and the Commissioner Panchayat Union of the Council

shall exercise the powers, discharge the duties and perform the functions of the President and the Executive Authority respectively in such part of

the Panchayat Development Block.

(3) Every Panchayat Union Council shall be a body corporate by the name of the Panchayat Union specified in the notification issued u/s 7, shall

have perpetual succession and a common seal, and subject to any restriction or qualification imposed by or under this Act or any other law, shall

be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property movable or immovable, of

entering into contracts, and of doing all things necessary, proper or expedient for the purposes for which it is constituted.

Section 12 prescribes that:

every Panchayat and every Township Committee constituted under this Act in a Panchayat Union shall elect to the Panchayat Union Council in the

prescribed manner one person from among its members.

For the constitution of the first council, Act XVII of 1960 provides that the Presidents of the Panchayats in the Panchayat Union who on the date

specified in the notification issued under Sub-section (1) of Section 11 of Act XXXV of 1958 function as such, would be the representatives of the

concerned Panchayats in the Union Council.

7. It is clear from the provisions of Section 11 that the Panchayat Union Council is constituted by virtue of the notifications made thereunder : it

does not depend on the existence of all the members of the Council. The Proviso to Sub-section (2) recognises the absence of representatives

from constituent Panchayats and enables the Union Council to function for that area as well. Section 56 which is enacted for validating certain

proceedings of the Union Council, etc : , specifically states that no act of a Panchayat or of a Panchayat Union Council or of a committee thereof

shall be deemed to be invalid by reason of a defect in the establishment of such Panchayat or Panchayat Union Council, etc. These provisions

make it clear that the Union Council can function even if one or a few of its constituent Panchayats had not come into existence or had not sent or

was not in a position to send its representatives to the Union Council.

8. Mr. Thyagarajan, however, contends that although on the notification of the Government u/s 11(1) of the Act, a Panchayat Union Council would

become a corporation, with an independent legal existence, such corporation could not be held to have been constituted unless all the members of

the Union Council have been elected thereto. Reference is made in this connection to *Surajmal v. Pirthisingh* AIR 1957 Raj. 383. But that was a

case where under the terms of the statute, the electoral college was not complete in the absence of election of all Grama Panchayats : under the

terms of the statute, the corporation therefore did not come into existence before all its members were elected. This is clear from the following

passage in the judgment:

It is obvious that unless the election of all the panchayts in the Tehsil is completed the electoral" college is not complete and in the absence of

completion of the electoral college, the election of the : sarpanch and panchas of the Tehsil panchayat is not contemplated.

Under Section 11 of Madras Act XXXV of 1958 the establishment of the corporation is independent of the presence of its members. The strength

of the Council is provided for separately u/s 12 of the Act.

9. A corporation is not a human personality; but the law recognises it as being"" capable of enjoying legal rights and of being represented in Courts

as a legal person. Under ordinary law a human being alone has a legal personality which would enable him to possess and enjoy legal rights. A

group of persons as such would have no distinct personality apart from the individuals that constitute the group. But the Sovereign or the State can

confer a legal personality upon a group of persons, so that the group as such will get a legal existence independent of its members constituting it.

Such a group is known as a corporation. In *In Re: M.K. Ravutha Gounder*, a member of the present Bench had to consider the nature of a

corporation and of its being distinct from its members. Farnsworth in his book on "" Residence and Domicile of Corporations"" states at page 55:

Corporation aggregate had been defined as a collection of individuals united into one body under a special title having perpetual succession! under

an artificial form and invested by the State with a capacity for acting in many respects as an individual especially in relation to the taking and

granting of property, contracting obligations suing and being sued and enjoying the privileges and immunities-It is an essential element in the legal

conception of a corporation that its original Members and their successors are one : it must never be forgotten that a corporation is a legal person

distinct from its members whose liability under the English law does not extend beyond the provisions of the instrument of incorporation, e.g., a

Royal Charter, a special or general Act of Parliament.

10. Although a corporation might have a legal persona of its own, it must act only through natural persons. That act, known as a corporate act, has

got to be done in accordance with the rules prescribed for the transaction of business of the corporation, for example rules as to notice of meeting

,etc. There is, therefore, a distinction between the constitution of a corporation which depends upon the terms of the statute, and the functioning of

the same.

11. u/s 11 of Act XXXV of 1958 the corporation namely, the Panchayat Union Council must be deemed to have come into existence on the date

when the Government makes the notification u/s 11. But such a corporation can commence to function only if there are members. It is not however

necessary that all the members should be present,! If the sanctioned strength of the corporation is in existence, notice of the meeting should go to

all the members. If the sanctioned strength has not come into existence, the corporation subject to rules as to quorum, can still function. By virtue of

Section 2 of Act XVII of 1960 presidents of constituent Panchayats have been declared to be entitled to attend the meetings as members of the

Panchayat Union Council. The Panchayat Union will therefore be in a position to

perform its functions even from 2nd October, 1961. The mere fact that there were no representatives from four Panchayats cannot disentitle the Union Council from doing its corporate act with its existing members. The Thenkarai Panchayat Union Council can therefore validly proceed to elect its Chairman. We agree with Jagadisan, J., in his view that the meeting convened for the election of the Chairman of the Union Council of Thenkarai was a valid one, We dismiss this appeal with costs.