
(1996) 09 MAD CK 0007
In the Madras High Court

T.N.R. Narayanasamy

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Constitution of India, 1950 — Article 170, 230, 243, 243D, 245
Tamil Nadu Panchayats Act, 1994 — Section 1, 11, 13, 18, 20

Citation : (1997) 1 MLJ 294

Hon'ble Judges : K.A. Swami, C.J

Bench : Single Bench

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order of the learned single Judge dated 4.9.1996 rejecting W.P. No. 12469 of

1996, in which the petitioner purporting to espouse the public cause, has challenged the Constitutionality of Sees. 11, 20 and 32 of the Tamil Nadu

Panchayats Act, 1994 (hereinafter referred to as the Act) "insofar as the said provisions provide reservation on the basis of 1991 census without

preceded by a legislative delimitation order and the reservation beyond 2000 as ultra vires of Article 230 read with Articles 81, 82 and 170 of the

Constitution.

2. The Panchayats Act insofar as it relates to reservation, has been enacted pursuant to Part VIII of the Constitution read with the exclusive power

of the State under Entry 5, List II of Seventh Schedule of the Constitution. Section 1 of the Act deals with reservation of seats for Scheduled Casts

and Scheduled Tribes in Village Panchayats and it reads thus:

11(1) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in every Village Panchayat and the

number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that

village panchayat as the population of the Scheduled Castes in that village Panchayat area or of the Scheduled Tribes in that village Panchayat area

bears to the total population of that area:

Provided that for the first election for the village Panchayat to be held immediately after the commencement of this Act, the provisional population

figures of the panchayat village as published in relation to 1991 census shall be deemed to be the population of the panchayat village.

(2) Seats shall be reserved for women belonging to the Scheduled Caste and the Scheduled Tribes from among the seats reserved for the persons

belonging to the Scheduled Castes and the Scheduled Tribes which shall not be less than one third of the total number of seats reserved for the

persons belonging to Scheduled Castes and the Scheduled Tribes.

(3) Seats shall be reserved for woman in the village Panchayat and the number of seats reserved for women shall be, as nearly as may be, one third

(including the number of seats reserved for women belonging to Scheduled Castes and the Scheduled Tribes) of the total number of seats in the

Village Panchayat;

Provided that such seats reserved for women shall be allotted by rotation to different wards in such a manner as the Inspector may, by notification,

direct.

(4) The reservation of seats under Sub-sections (1) and (2) shall cease to have effect on the expiration of the period specified in Article 334 of the

Constitution.

Section 20 deals with reservation of seats for scheduled Castes and Scheduled Tribes in Panchayat Union Councils. Section 32 deals with

reservation of seats to Scheduled Castes and Scheduled Tribes in every District Panchayat.

3. The contention is that the reservation is provided to Scheduled Caste and Scheduled Tribes on the basis of the proviso to Sub-section (1) of

Section 11 and Sub-section (1) of Section 20 and so also Sub-section(1) of Section 32, providing that for the first election for the district

panchayat to be held immediately after the commencement of the Act, the provisional population figures of the district panchayat area as published

in relation to 1991 census, shall be deemed to be the population of that district panchayat area. The other contentions is that Sub-section (4) of

each one of these sections is inconsistent with Article 334 because it does not provide that the members of the scheduled castes and scheduled

tribes in the Village Panchayats, Panchayat Union councils and district Panchayats will continue beyond 2000 years until The expiration of their

period, irrespective of the fact that the reservation for scheduled castes and Scheduled Tribes ceases to be operative on the expiry of 2000 A.D.

With regard to 1991 census as the basis for reservation, the contention is based on the provisions contained in Arts.330, 170, 81, 243 and also

334 of the Constitution.

4. We may at the outset, pointed out that the provisions contained in Arts.330, 170, 81,245 and 334 of the Constitution relate to providing

reservation in the Assembly and the Parliament. They have no bearing on the reservation to be made in the village Panchayats, Panchayat Union

Councils and District Panchayats. Since the learned Senior Counsel has referred to those provisions, in fairness to him, we refer to them, as

otherwise we are the view that they are not at all relevant for the purpose of deciding the validity of Sees. 11, 2Q and Q32 of the Act.

5. Article 170 of the Constitution deals with the composition of the Legislative Assemblies. The proviso to sub-Article (2) on which reliance is

placed, provides thus:

Provided that the reference in this explanation to the last proceeding census of which the relevant figures have been published shall, until the

relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

Similarly, Article 81 relates to the composition of the House of the people. Article 330 occurring in part XVI of the Constitution, under the caption

"Special Provisions Relating to Certain Classes", provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the

People. The said Article also contains the similar proviso as is contained in Article s 81 and 170 referred to earlier. Article 334 is a general article

providing reservation of seats and special representation to cease after fifty years. The proviso to the said Article states thus:

Provided that nothing in this article shall affect any representation in the House

of the People or in the Legislative Assembly of a state until the dissolution of the then existing House or Assembly, as the case may be.

Clause (b) in the said Article limits the period of reservation on the expiration of the period of 50 years from the commencement of the constitution.

The members elected to the Assembly and the House of the people will continue until the House to which they are elected, is dissolved.

6. As far as Article 341, which is also referred to during the course of the arguments by the learned senior counsel, we may point out that the said

article empowers the President to recognise Scheduled Castes and Scheduled Tribes in relation to States or Union Territories and it further

provides that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any

caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid, a notification issued under the said clause shall not be

varied by any subsequent notification. Therefore, the said Article has no bearing on the issue relating to validity of Sees. 11, 20 and 32 of the Act.

7. One more provision of the Constitution which has to be referred to, is Article 243D which directs the States to make reservation for Scheduled

Castes and Scheduled Tribes in the Panchayats. Sub-clause (5) of Article 243D on which reliance is placed, provides that the reservation of seats

under Clauses (1) and (2) and the reservations of office of Chair persons (other than the reservation for women) under Clause (4) shall cease to

have effect on the expiration of the period specified in Article 334.

8. We have already pointed out that Arts. 330, 170, 334 and 341 referred to by the learned senior counsel for the appellant do not have any

bearing on the validity of Sees. 11, 20 and 32 of the Act. Firstly, Section 11 of the Act provides for reservation to Scheduled Castes and

Scheduled Tribes in Village panchayats. The reservation is ensured under the said provision as per Article 243D of the Constitution, which governs

the reservation of seats for Scheduled Castes and Scheduled Tribes in Village Panchayats, Panchayat Union Councils and District Panchayats,

Similarly, Sees. 20 and 32 provide for reservation in Panchayat Union Councils and District Panchayats. The reservations provided are not in any

way in conflict with the reservations directed to be made under Article 243D of the Constitution. The population figures of Scheduled Castes and

Scheduled Tribes in a Village Panchayat or Panchayat Union Council or District Panchayat made on the basis of the population as published in

1991 census and the basis for reservations of seats for Scheduled Castes/Scheduled Tribes. No doubt, in some of the Article s relating to

reservation of seats for Scheduled Castes and Scheduled Tribes in the Assembly and in the House of the People, 1971 Census has been made the

basis for the population figures of Scheduled Castes and Scheduled Tribes but that does not and cannot be held to affect the legislative power of

the State Legislature to provide 1991 Census on basis for reservation for Scheduled Castes and Scheduled Tribes because Article 243D of the

Constitution which alone governs the reservation of seats for Scheduled Castes and Scheduled Tribes in Village Panchayats, Panchayat Union

Councils and District Panchayats does not, in specific terms, state that such reservation must be on the basis of the population figures of 1971

census. It is left to the State Legislature to provide a basis for the population figures of Scheduled Castes and Scheduled Tribes for making a

reservation in Village Panchayats, Panchayat Union Councils, and District Panchayats. We do not find any incongruity or anomaly in the provisions

contained in Section 11, 20 and 32 of the Tamil Nadu Panchayats Act. It is also not possible to appreciate the contention that these sections are in

any way in conflict with the provisions contained in Articles 81, 82 and 170 of the Constitution which have nothing to do with the reservation of

seats to S.Cs/S.Ts. in the Village Panchayats, Panchayat Union, Councils and District Panchayats.

9. The next contention urged is that as the reservation comes to an end by 2000 and as Sub-Article (5) of Article 243D provides that the

reservation of seats as provided under Clauses (1) and (2) of Article 243D shall cases to have effect on the expiration of the period specified

under Article 334, in the absence of similar provisions contained in Section s 11, 20 and 32 the members of the Scheduled castes and scheduled

tribes in Village Panchayats, Panchayat Union Councils and District Panchayats could be required to vacate the seats on 2000, even though their

term would not have expired as members of Village Panchayats, Panchayat Union Councils and District Panchayats.

10. It is not possible to appreciate this contention. The Act specifically prescribes the term of a panchayat. When a person is elected as a member

of the village panchayat, he is entitled to continue until the expiry of his term. Section 13 of the Act provides that the term of office of the members

of every village panchayat, who are elected at ordinary elections, shall save as otherwise expressly provided, be five years from the date appointed

for the first meeting of such village panchayat, after ordinary election. Similarly Section 18 of the Act provides that every panchayat union council

unless sooner dissolved, shall continue for five years from the date appointed for its first meeting after each ordinary election and no longer. Sec.

29 of the Act provides for the term of office of the members of the District Panchayats. The term of office of the members elected at an ordinary

election shall commence on the date appointed for the first meeting of the district panchayat after ordinary election and it shall be for five years.

Therefore, once a member is elected to a Village Panchayat, Panchayat Union council or a District Panchayat Unless the Panchayat is dissolved

earlier to the expiry of his term, a member will continue irrespective of the fact that the reservation has come to no end in the middle of the term of

his office. That being so, the court is of the view that there is no anomaly or incongruity in the provisions contained in the Act relating to reservation

of seats to S.Cs./S.Ts. and those contained in the Constitution referred to in the course of this judgment.

11. Learned single Judge has not referred to and considered the validity of the provisions of the Act, the constitutionality of which is challenged

with reference to the provisions of the Constitution. Learned single Judge has dismissed the writ petition only on the ground of laches. We are not

in agreement with the view taken by the learned single Judge in dismissing the writ petition on the ground of laches. Whenever the constitutionality

of a provision of a statute is challenged, delay is no ground. The Court is bound to examine the validity of the enactment. Hence, on examining the

provisions contained in the Act, we are satisfied that the provisions contained in Secs. 11, 20 and 32 of the Act are perfectly valid, any they do not

suffer from any anomaly or incongruity or unconstitutionality as contended by learned senior counsel for the appellant.

12. For the reasons stated above, the writ appeal is rejected as also the C.M.P.