
(2015) 08 KL CK 0072

In the High Court Of Kerala

Case No : WPC Nos. 14218 of 2015, 14244, 14808, 16149 and 14144 of 2015

T.P. Dasan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Constitution of India, 1950 — Article 243P, 243Q, 243Q(2)
Kerala Municipalities Act, 1994 — Section 4, 4(1), 4(1)(b), 4(2), 4(2)(b)(c)
Kerala Panchayat Raj Act, 1994 — Section 4(2)

Citation : (2015) 5 KHC 610 : (2015) 3 KLJ 797

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

Bench : Single Bench

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

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J—The legality, regularity and propriety of an action of the State Government by which some of the wards of two existing Municipal Corporations of the State viz. Corporation of Kozhikode and Corporation of Thiruvananthapuram to form new Municipalities through G.O.P. No. 145/2015/LSGD dated 30.4.2015 (gazette notification No. 1054 dated 30.4.2015) and G.O.P. No. 149/2015/LSGD dated 30.4.2015 (gazette notification No. 1058 dated 30.4.2015) are under challenge in these writ petitions.

2. The first four writ petitions, i.e. WPC Nos. 14218/2015, 14244/2015, 14808/2015 and 16149/2015 are against the formation of Cheruvannur-Nallalam, Elathur and Beypur Municipalities de-linking certain wards from the Corporation of Kozhikode. The other writ petition, i.e. WPC No. 14144/2015 is against the formation of Kazhakoottam Municipality de-linking certain wards from the Corporation of Thiruvananthapuram.

3. WPC No. 14218/2015 is filed by one of the former Mayors of the Corporation of Kozhikode who is also the Secretary of former Mayor's forum, Kozhikode. The

State of Kerala, the Corporation of Kozhikode, the Kerala State Election Commission as well as Kerala State delimitation Commission figure as respondents 1 to 4 in the writ petition. WPC No. 14244/2015 is filed by one of the resident as well as Councilor of Ward No. 4 of the Corporation of Kozhikode. In that writ petition, in addition to the official respondents, a third party got impleaded as additional third respondent who was an elected member of the erstwhile Beypore Panchayat.

4. WPC No. 14808/2015 is filed by the Mayor of the Corporation of Kozhikode. The State of Kerala, Corporation of Kozhikode, State Election Commission and Delimitation Commission are respondents 1 to 4 in that writ petition. In that case also, in addition to the official respondents, third parties got themselves impleaded as additional respondents five and six.

5. WPC No. 16149/2015 is filed by two elected Councilors from Divisions 46 and 48 of the Corporation of Kozhikode.

6. WPC No. 14144/2015 is filed by the Chairman of the Works Standing Committee of the Corporation of Thiruvananthapuram who is a resident of Ward No. 4 of the Corporation of Thiruvananthapuram and the Chairman of the Welfare standing committee of the Corporation of Thiruvananthapuram. In the said petition, additional respondents 5 to 9 got themselves impleaded through separate interlocutory applications.

7. The gist of the allegations in the first four writ petitions filed against the formation of Cheruvanur, Nallalam, Beypur and Elathur Municipalities is as follows:

After conducting a detailed study by the High Level Committee constituted by the Government, the areas of former Beypur, Cheruvanur, Nallalam and Elathur Grama Panchayats were merged with Kozhikode Corporation in the year 2010. The petitioners point out that as per Section 4(1) of the Kerala Municipalities Act, a Town Panchayat is a transitional area, the Municipal Council is a smaller urban area and the Municipal Corporation is a larger urban area. According to the petitioners, the aforesaid areas were notified by the Governor as larger urban area in accordance with Article 243Q(2) of the Constitution. Once an area is notified as per the said constitutional provision, there cannot be any degradation to a smaller urban area; it is alleged. According to them, once a transitional area or a smaller urban area or a larger urban area, on its coming into existence becomes a constitutional institution cannot be abolished by an Act of the legislature without specific authorisation in that regard by the constitution. According to the petitioners, now as per the notifications impugned, the aforesaid three Panchayat areas which were merged with the Corporation of Kozhikode in 2010 degraded as small urban area and are constituted as separate Municipalities as above. According to the petitioners, law does not permit such a degradation. The petitioners further allege that when a preliminary notification was issued, detailed objection was submitted by them. However, without

considering those objections and without adverting to the same, the impugned orders were issued to constitute the new Municipalities.

In the 5th writ petition also, i.e. WPC No. 14144 of 2015 which pertains to the formation of the Kazhakoottam Municipality carving out certain wards from the existing Corporation of Thiruvananthapuram, the petitioners raise the same question of law. According to them, the areas now carved out of the limits of the Corporation of Thiruvananthapuram had achieved greater urbanisation and a steady process of development. According to the petitioners, the process now initiated through the impugned notification is on account of a local political agenda. According to them, the aforesaid areas annexed to the Corporation of Thiruvananthapuram during the year 2000-2010, after an elaborate consideration of the various facts contemplated under Article 243Q(2), such as the population and the density of the population of those areas, revenue generated for local administration as well as the percentage of employment in non-agricultural activities, the economic importance etc. The petitioners allege that the present attempt to undo the above is a sheer abuse of power and against the interest of the public and State.

8. The State has filed a very detailed counter raising identical contentions in almost all these writ petitions justifying the stand taken by them. According to the State, the formation of the above Municipalities was on account of a long standing public demand, consequent to which the Government constituted a committee as per Government order dated 10.6.2014 comprising the Director of Urban affairs, State Performance Audit Officer, Chief Town Planner and the Director of Panchayats for submitting a report regarding the feasibility of forming new Municipalities. This was followed by another order dated 27.11.2014 specifying the guidelines under which the committee has to submit a report. In the guidelines, importance was given for effective administration of Local Self Government Institutions on the basis of population, area, income etc. On the basis of the same, the committee submitted a final report on 29.12.2014. The committee was of the opinion that those areas which were added to the Corporation earlier were not getting the required developments on a time bound basis and the general public is put to several inconveniences and difficulties due to the slow pace under which the developments are reaching such areas. This report was placed before the cabinet and accordingly, it was decided to call for objections from the general public. Public notice was issued and after considering the objections, the orders impugned were passed. According to the State, there is no violation of the provisions of the Constitution or that of the Kerala Municipalities Act in passing the impugned orders.

9. The additional respondent who got impleaded in WPC No. 14244/2015 and WPC No. 14808/2015 supported the stand taken by the State. Similarly, the party respondents who got themselves impleaded in WPC No. 14144/2015 also supported the stand of the State.

10. The party respondents, who supported the action of the State, alleges that

the policy behind the declaration of the new Municipalities is to provide easy access to the administrative services of the local bodies and therefore, the action need not be interfered with.

11. The petitioner in WPC No. 14808/2015 has filed a reply affidavit controverting the allegations raised by the respondents.

12. I have heard Mr. P.V. Kunhikrishnan, the learned counsel for the petitioner in WPC No. 14218/2015, Mr. M.K. Damodaran, the learned senior counsel for the petitioner in WPC Nos. 14244 of 2015 & 14144 of 2015 ably assisted by Adv. Vijayamohanan, Mr. Sudhakaraprasad, the learned senior counsel appearing for the petitioner in WPC No. 14808 of 2015 ably assisted by T.B. Hood, Adv. Mr. K. Ramkumar, the learned senior counsel for the petitioner in WPC No. 16149 of 2015 ably assisted by Adv. S.M. Prasanth, Mr. K.P. Dandapani, the learned Advocate General ably assisted by Special Government Pleader Tom K. Thomas, Mr. N. Nandakumara Menon, the learned senior counsel appearing for the Corporation of Thiruvananthapuram, Mr. Surendranath, the learned counsel appearing for the Corporation of Kozhikode, Mr. Murali Purushothaman, the learned standing counsel for the Kerala State Election Commission and the Kerala State Delimitation Commission, Mr. Sudhi Vasudevan, Mr. K.D. Babu, Mr. Prajeesh N.P., Mr. C.P. Muhammed Nias, Mr. George Poonthottam, Mr. M.V. Rajeev, Mr. Subair Kunju and Mr. Mansoor B.H., the learned counsel appearing for the party respondents quite in extenso.

13. The question of law raised in these writ petitions is whether a rural area or a transitional area, after it transit to be a larger urban area in terms of Article 243Q(2) of the Constitution of India, be re-transited to be a smaller urban area and whether the impugned orders de-linking of certain higher urban areas from the Municipal Corporations for being treated as smaller urban area is unconstitutional and whether the impugned orders are vitiated by illegality, irregularity or impropriety.

14. As stated at the outset, the aforesaid de-linking was effected by two separate G.O.'s dated 30.4.2015, i.e. G.O.P. No. 145 and 149 issued by the Local Self Government Department. The first G.O. is only an amendment of the notification dated G.O.P. No. 86/94/LAD dated 20.4.1994 by which the smaller urban areas notified as larger urban areas by the Governor earlier. By G.O.P. No. 149/2015/LSGD separate Municipalities were constituted after carving out of several wards from Municipal Corporations of Kozhikode and Thiruvananthapuram.

15. The main allegation raised by the petitioners is that these two G.O.'s were passed without considering any objections raised by the petitioners.

16. The State per contra would contend that the formation was necessitated in view of public demand and it was implemented after a due exercise of power and after examining the various aspects through an expert committee. It is evident from the orders impugned that those orders were passed by the Government invoking powers under Section 4 of the Municipalities Act and under the

provisions of the Constitution of India. G.O.P. No. 149 would show that Section 4(1)(b) and 4(2)(b)(c) and (e) are the source of power of the Government to pass such an order. It says that the Government has decided to constitute the aforesaid Municipalities carving out certain wards from the existing corporations of Kozhikode and Thiruvananthapuram to form the new Municipalities invoking the powers under Section 4(1)(b) and 4(2)(b)(c) and (e).

17. The learned Advocate General would point out that in the report of the expert committee constituted, it was found that the area which was carved out from the Municipal Corporations were not developed and therefore, the Government felt the need of formation of separate Municipalities in the interest of general public. The learned Advocate General has submitted that the objections which were called for were considered in detail by the Government and only thereafter the decision was taken in the matter. To substantiate the contentions, the files relating to the process has been submitted which reveals that the objections were called and opportunity of hearing were given to the objectors.

18. The learned Advocate General as well as Mr. George Poonthottam, the learned counsel appearing for one of the additional respondents in WPC No. 14144/2015 challenge the locus standi of the petitioners. It was pointed out that the only person, if any, aggrieved by the impugned notification is the Municipal Corporations concerned which is a separate legal entity. It was pointed out that none of the Municipal Corporations has come up with a writ petition challenging the present action. It was contended that only at the instance of an aggrieved person which has to be demonstrated by a pleading that the impugned notifications could be challenged.

19. In answer to the said submission, Mr. Nandakumara Menon, the learned senior counsel for the Thiruvananthapuram Corporation as well as Mr. Surendranath, the learned counsel for the Corporation of Kozhikode would submit that as the Corporations have been impleaded as respondents in these writ petitions and the respondent Corporations are supporting the case of the petitioners, the mere fact that the respondent Corporations have not filed separate writ petitions will not disentitle the petitioners from getting a relief as prayed for in these writ petitions.

20. Though it was strenuously argued by Mr. George Poonthottam that no constitutional scheme envisages a collateral challenge by a respondent, I disagree with the argument as the respondent Corporations have stepped into the shoes of the petitioners by supporting the petitioners.

21. Mr. M.K. Damodaran, the learned senior counsel for one of the petitioners would argue that the power of the Government to constitute or reconstitute Municipalities and Municipal Corporations are referable from Article 243Q of the Constitution of India and Section 4 of the Kerala Municipalities Act, 1994. It was argued that it was after satisfying that the area of the former Elathur, Cheruvannur-Nallalam and Beypore Grama Panchayat were fit to be larger urban

areas, they were notified to be larger urban areas and accordingly, merged with the Kozhikode Corporation in the year 2010. Therefore, there is no reason or logic to reduce the status of that area into smaller urban area and form Municipalities as proposed in the impugned orders; so submitted the learned Senior Counsel.

22. Same argument was advanced by Mr. P.V. Kunhikrishnan, the learned counsel for the petitioner in WPC No. 14188 of 2015. Mr. C.P. Sudhakaraprasad, the learned Senior counsel for one of the petitioners would argue that the averments in the counter affidavit of the State that formation of new Municipalities in the Kozhikode District and one Municipality in Thiruvananthapuram District was a long standing public demand is incorrect. The learned senior counsel submitted that a Municipal Councilor of Kozhikode Corporation Mr. T.P. Koya Moideen made a request under the Right to Information Act, 2005 to furnish copies of the representations received to remove Beypore-Elathur and Cheruvannur-Nallalam areas from the Corporation.

23. In reply, the State Public Information Officer of Local Self Government Department has stated that only the objections received pursuant to the preliminary notifications are available with the Government. The copy so supplied was produced and marked as Ext. P15 in WPC No. 14808/2015. Therefore, it was pointed out that the statements in the counter affidavit as above are incorrect.

24. It was also argued that the stand taken by the State that the general public is put to severe inconvenience and difficulties due to the slow phase under which developments are reaching such areas is contrary to facts. It was pointed out that there are full fledged zonal offices of the Corporation with senior officers in the limits of Thiruvananthapuram and Kozhikode Corporations and any service of the Corporation can be availed through zonal offices without visiting the main offices of the Corporation.

25. It was also argued that the preliminary notification does not disclose the reasons which prompted the Government to divide existing Municipal Corporations and to form Municipal Councils. Therefore, it was pointed out that such notification without indicating the reasons would not serve any purpose as meaningful consultation would not be possible. It was also argued that even after considering the objections, the Government did not issue a speaking order dealing with the objections.

26. Mr. K. Ramkumar, the learned senior counsel for the petitioner in WPC No. 16149/2015 would argue that the Governor has already treated Beypore, Nallalam and Cheruvannur as larger urban areas to form part of Municipal Corporation areas in terms of Article 243Q read with Article 243P of the Constitution of India and there is no power enjoined by the Government of Kerala to convert such areas either as rural areas or even as small urban areas.

27. It was also argued that the consultation envisaged by the statute is not an empty formality and should be meaningful and there is no meaningful

consultation in the instant case.

28. As rightly pointed out by Mr. Nandakumara Menon, the learned senior counsel for the Thiruvananthapuram Corporation, though Section 4(2) of the Panchayat Raj Act deals with the formation of Panchayats by adding or de-linking, there is no corresponding powers under the Municipalities Act. It was pointed out that by the present exercise that some of the territorial areas of the existing Municipal Corporations would be de-linked.

29. It was pointed out by Mr. Surendranath, the learned standing counsel for the Corporation of Kozhikode that on the basis of the materials available, the Government had previously decided to link certain semi-urban areas to the aforesaid Municipal Corporations and the same has been upheld by the High Court. The said process has been undone by the present notification; so submitted the learned counsel.

30. Mr. Surendranath, the learned standing counsel for the Corporation of Kozhikode would further submit that the power to be exercised by the governor is not unguided. It was pointed out that the basic executive decision was taken in the year 2010 which was approved by this Court and the same remains in tact. It was argued that no fresh criteria would be important to interpret Article 243Q.

31. A perusal of Article 243Q will show that it is the duty of the Government to notify an area as transitional area, small urban area and larger urban area. Once the same is notified and the same stood the test of judicial review, it is not possible to degrade such an area through another notification.

32. This Court in *K.P. Raveendran and Another Vs. State of Kerala and Others*, AIR 2005 Ker 319 : (2006) 1 KLT 427 has observed that a Municipality in relation to a transitional area or a smaller urban area or a larger urban area on its coming into existence becomes a constitutional institution and cannot be abolished by an Act of the legislature without specific authorisation in this regard in the Constitution.

33. Sub-Section 2 of Section 4 of the Kerala Municipalities Act, 1994, empowers the Government to exclude any Municipal area from the operation of the Act or exclude from a Municipal area comprised therein, divide any Municipal area into two or more Municipal areas or convert a Municipal Council into a Municipal Corporation. The proposal under the impugned notification never falls under any of the categories. Clause (h) of Sub-Section (2) of Section 4 of the Municipalities Act specifically empowers the Government to convert a Municipal Council into a Municipal Corporation. There is no sanction of law for a reverse process to reduce the status of the area of the Municipal Corporation to that of a Municipal Council. The other enabling provisions under clauses (f) and (g) of Section 4(2) of the Act enables the Government to convert a Village Panchayat into a Town Panchayat or a Municipal Council or to convert a Town Panchayat into a Municipal Council also bring in the analogy that the process can be on the up ward direction only, i.e. from the lower strata to higher strata and not on the reverse. Going by the above

provision, it can be seen that the proposal under the preliminary notification as confirmed under the impugned notifications are absolutely unconstitutional and against the statutory provisions under Section 4(2) of the Kerala Municipalities Act, 1994.

34. It is crucial to note that the territorial areas now intended to be de-linked from the Municipal Corporations were annexed to these Corporations after a detailed study by the Government at various levels on the request of Corporation. There were writ petitions and writ appeals challenging the annexation, which were without any success. In effect, the proposal is to undo what has been done by the Government orders previously.

35. The impugned orders proceed on the ground that the Governor of Kerala having regard to the population of the area, the density of population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities and the economic importance was pleased to notify certain areas as smaller urban area. The above includes Panchayat area, Municipal area as well as Corporation area. There is no relevant finding as to the density of population, income generated, percentage of employment in non-agricultural activities or the economic importance. The classification of Panchayat area, Municipal area and Corporation area as smaller urban area by a common notification itself reflects the non-application of mind. The same is done only to facilitate the constitution of Municipalities by taking away the Panchayat areas, areas of existing Municipalities and of the Municipal Corporations. It cannot be said that due regard was given to the various factors such as population, density of population, income/expenditure, employment in non-agricultural activities and economic importance.

36. As observed by this Court in *K.P. Raveendran and Another Vs. State of Kerala and Others*, AIR 2005 Ker 319 : (2006) 1 KLT 427 , what is conceived or envisaged by Article 243Q is only a transition of a rural area to an urban area, be it as a smaller urban area or as a larger urban area. It does not contemplate a reverse process. The above finding squarely applies to the present case as well. It is true that in the aforesaid case, the decision was to de-link certain erstwhile rural areas annexed to the urban areas again as rural areas.

37. Here, the only difference is that the areas to be de-linked happened to be the larger urban area and by the impugned action, they will be transformed into a smaller urban area. Neither Article 243Q of the Constitution nor Sub-Section 2 of Section 4 of the Kerala Municipality Act envisages the degradation of a larger urban area into a smaller urban area. Therefore, the entire action proposed by the Government in the notification dated 25.1.2015 and confirmed by the impugned orders to exclude the areas of Corporations of Kozhikode and Thiruvananthapuram to form a separate Municipality is absolutely unconstitutional and illegal and is liable to be interfered with by this Court.

In the result, the writ petitions are allowed. G.O.P. No. 145/2015/LSGD dated

30.4.2015 (gazette notification No. 1054 dated 30.4.2015) and G.O.P. No. 149/2015/LSGD dated 30.4.2015 (gazette notification No. 1058 dated 30.4.2015) are set aside; so far they create the new Municipalities de-linking certain areas of the existing Municipal Corporations.

Before I part with this judgment, I am expressing my appreciation for the efforts taken by Mr. Murali Purushothaman, the learned standing counsel for the State Election Commission for placing the relevant pronouncements rendering the decision making process speedy.