

(2014) 11 AHC CK 0245

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 29649 of 2009, 49160 of 2013, 44659, 45120 and 55109 of 2014

Yogesh Mittal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 243Q, 243R, 243R(2)(a)(i), 243S
Uttar Pradesh Municipal Corporation Act, 1959 — Section 6, 6(1)
Uttar Pradesh Municipalities Act, 1916 — Section 9, 9(1), 9(1)(d)

Citation : (2014) 10 ADJ 76 : (2015) 3 ALJ 182 : (2015) 108 ALR 297 : (2015) 2 AWC 1416 : (2015) 126 RD 745 : (2014) 4 UPLBEC 3264

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; P.K.S. Baghel, J

Bench : Division Bench

Advocate : Atul Kumar, Ram Kaushik, Kaushalendra Nath Singh, Priyanka Midha, Chandra Shekhar Srivastav, Sudhanshu Srivastava, U.N. Sharma, Nipun Singh and Siddhartha Srivastava, Advocate for the Appellant; Pankaj Srivastava, S.D. Kautilya, R.P.S. Chauhan, Ram Pravesh Yadav and Udit Chandra, Advocate for the Respondent

Judgement

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1. In this batch of petitions, under Article 226 of the Constitution of India, there is a challenge to the constitutional validity of the proviso to Section 6(1) of the U.P. Municipal Corporation Act, 1959 (Act of 1959) and to a corresponding proviso contained in Section 9(1)(d) of the U.P. Municipalities Act, 1916 (Act of 1916). Both the provisos were introduced by the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 2005 (Act of 2005) (U.P. Act No. 8 of 2005). Part IX-A of the Constitution contains provisions with regard to Municipalities. Article 243-Q provides for the constitution of Municipalities in every State. This would comprise of a Nagar Panchayat for a transitional area, a Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. Clause (2) of Article 243-Q empowers the Governor to specify

a transitional area, a smaller urban area or a larger urban area by a notification, having regard to the population, density of population, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance or such other factors as he may deem fit.

2. Article 243-R of the Constitution provides for the composition of Municipalities in the following terms:

"243-R. Composition of Municipalities.--(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area; (iv) the Chairpersons of the Committees constituted under clause (5) of Article 243-S;

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality."

In clause (1) of Article 243-R, it has been stipulated that all seats in a Municipality have to be filled through direct election from the territorial constituencies in the Municipal area. However, this is subject to clause (2). Sub-clause (a) of clause (2) empowers the Legislature of a State to provide for the representation in a Municipality of persons having special knowledge or experience in Municipal administration; the members of the House of People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area; the members of the Council of States and the members of the Legislative Council of the State registered as electors therein; and Chairpersons of the Committees constituted under clause (5) of Article 243-S.

The proviso to clause (2) of Article 243-R, however, expressly stipulates that the persons, who are referred to in paragraph (i), shall not have the right to vote in the meetings of the Municipality.

3. In introducing Article 243-R(2)(a)(i), Parliament envisaged that representation should be extended in the Municipalities of such persons who have special

knowledge or experience in Municipal administration. At the same time, since such persons are not elected members of a legislative body, the proviso expressly stipulates that they shall have no right to vote in the meetings of the Municipality. On the other hand, the persons falling in categories specified in sub-paragraphs (ii), (iii) and (iv) of sub-clause (a) of Clause (2) of Article 243-R of the Constitution are all elected representatives of Legislative bodies and are, hence, not deprived of the right to vote in the meetings of the Municipality.

4. Section 9 of the Act of 1916 was initially substituted by U.P. Act No. 12 of 1994. Section 9(1) of the Act of 1916 provides for the composition of the Municipality. Clause (d) provides for nominated members in the following terms:

"9(1)(d). nominated members, who shall be nominated by the State Government, by notification in the Official Gazette, from amongst persons having special knowledge or experience in municipal administration and whose numbers shall in the case of-

(i) Nagar Panchayat, be not less than two and not more than three;

(ii) Municipal Council, be not less than three and not more than five."

5. Similarly, Section 6 of the Act of 1959 provides for the composition of the Corporation and sub-clause (b) of Clause (1) thereof provides for Nam Nirdishta Sadasyas or the nominated members in the following terms:

"(b) Nam Nirdishta Sadasyas who shall be nominated by the State Government by a like notification from amongst persons having special knowledge or experience in municipal administration and whose number shall not be less than five and not more than ten."

6. Both the Act of 1916 and the Act of 1959 were amended by U.P. Act No. 8 of 2005. Section 6 of the Act of 1959 was amended to incorporate the following proviso:

"2. Amendment of Section 6 of U.P. Act No. 2 of 1959.--In Section 6 of the Uttar Pradesh Municipal Corporation Act, 1959, hereinafter in this chapter referred to as the principal Act, in sub-section (1) for the first proviso the following proviso shall be substituted, namely:-

"Provided that the person referred to in clause (b) shall hold office during the pleasure of the State Government and they shall have the right to vote in the meetings of the Corporation."

7. Similarly, Section 9 of the Act of 1916 was amended in the following terms:

"4. Amendment of Section 9 of U.P. Act No. 2 of 1916.--In Section 9 of the Uttar Pradesh Municipalities Act, 1916 for the first proviso the following proviso shall be substituted, namely:-

"Provided that the persons referred to in clause (d) shall hold office during the pleasure of the State Government and they shall have the right to vote in the

meetings of the Municipalities."

Even a bare reading of the provisos would indicate that in stipulating that nominated members shall have the right to vote in meetings of the Corporation, the State Legislature has enacted provisions contrary to the proviso to Clause (2) of Article 243-R of the Constitution. The constitutional provision makes it clear beyond any doubt that nominated members from amongst persons, having special knowledge or experience in municipal administration, falling within Article 243-R(2)(a)(i), shall not have the right to vote in the meetings of the Municipality.

8. The proviso introduced in the State Legislation, being directly contrary to the constitutional provision, is clearly ultra vires. We are also of the view that in holding that a nominated member of an elected body shall hold office during the pleasure of the State Government, the State Legislature has made a serious encroachment on the fundamental principle of Local Self Government. Conferring on nominated members a right to vote and stipulating that such members shall hold office during the pleasure of the State Government, would seriously encroach on their independence and would constitute a hanging sword on every nominated member. Nothing would be more destructive of the autonomous functioning of a legislative body. On the other hand, Article 243-U(1) of the Constitution specifies the duration of a Municipality as five years, unless it is sooner dissolved under any law for the time being in force. Article 243-V of the Constitution provides for disqualifications for membership. No such provision has been made by Parliament, while enacting Part IX-A of the Constitution in the exercise of its constituent powers while amending the Constitution. For these reasons, we hold and declare that the provisos introduced by Sections 2 and 4 of the U.P. Urban Local Self Government Laws (Amendment) Act, 2005 (U.P. Act No. 8 of 2005) in Section 6(1) of the Act of 1959 and in Section 9(1)(d) of the Act of 1916 are ultra vires and unconstitutional. The petitions shall, accordingly, stand disposed of. There shall be no order as to costs.