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**P.R. Ramesh and ors. Vs. the State of Karnataka by Its Chief Secretary and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/378345](http://sooperkanoon.com/378345)**

**Court : Karnataka**

**Decided On : May-25-2005**

**Reported in : AIR2005Kant364; ILR2005KAR2526; 2005(6)KarLJ233**

**Judge : N.K. Sodhi C.J. and ;K.L. Manjunath, J.**

**Acts : [Karnataka Municipal Corporations Act, 1976](#) - Sections 7(1), 8, 10 and 10(2); Patna Municipal Corporation Act, 1951 - Sections 19(1); Model Municipal Law; [Constitution of India](#) - Article 243P, 243Q, 243R, 243R(2), 243S and 243U; Constitution (Seventy-fourth) Amendment Act, 1992**

**Appeal No. : Writ Appeal No. 3416/2004 C/w etc.**

**Appellant : P.R. Ramesh and ors.**

**Respondent : The State of Karnataka by Its Chief Secretary and ors.**

**Advocate for Def. : B.T. Parthasarathy, Adv. General and K.N. Puttegowda, AGA for R1 and R2, ;T. Krishna, Adv. for R3, ;S.V. Narasimhan, Adv. for R4 and ;Ashok Haranahalli, Adv. for R3 and R5**

**Advocate for Pet/Ap. : K.N. Bhat, Sr. Adv., ;H.V. Nagaraj Rao, ;K. Shashikiran Shetty and ;V. Lakshminaryana, Advs.**

**Disposition : Appeal dismissed**

## **Judgement :**

N.K. Sodhi, C.J.

1. Whether Sub-section (2) of Section 10 of the Karnataka Municipal Corporations Act 1976 (for short 'the Act') which provides for one year tenure of a Mayor from the date of his election contravenes any provision of part IX-A of the Constitution and is constitutionally invalid is the short question which arises for consideration in this bunch of three cases two of which are writ appeals (writ appeal No. 3005-06 and 3416 of 2004) and the third is a writ petition (writ petition No. 43155 of 2004). Learned Counsel for the parties are agreed that the decision in writ appeal No. 3416 of 2004 will govern the other cases as well since common questions of law and fact arise in all the cases. The main arguments were addressed in writ appeal No. 3416 of 2004 and therefore the facts are being taken from this case.

2. Elections to the Bangalore City Corporation (hereinafter called 'the Corporation') were held on 28.11.2001 and the appellant was elected as a Councillor. The term of office of a Councillor is for a period of 5 years which will end on 27.11.2006. The appellant was elected as the Chairperson/Mayor of the Corporation on 28.11.2003 and according to the provisions of Sub-section (2) of Section 10 of the Act he was to hold office for one year from the date of his election. His grievance is that having been elected as a Mayor on 28.11.2003 his term as such is not co-terminus with his tenure as a Councillor and that the provisions of Section 10(2) of the Act which provide for a one year tenure of a Mayor from the date of his election are constitutionally invalid and contravene the provisions of Article 243-U of the Constitution.

3. Part IX-A of the Constitution which deals with Municipalities was inserted in the Constitution by the Constitution (Seventy-fourth) Amendment Act, 1992 which came into force with effect from 1.6.1993. The term 'Municipality' has been defined in Clause (e) of Article 243-P to mean an institution of self-government constituted under Article 243-Q. Article 243-Q provides that there shall be constituted in every State, amongst others, a Municipal Corporation for a larger urban area in accordance with the provisions of this part. Article 243-R deals with the composition of Municipalities and it reads as under:

'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

Article 243-U deals with the duration of Municipalities and it provides that every Municipality, unless sooner dissolved under any law for the time being in force shall continue for five years from the date appointed for its first meeting and no longer. At this stage, it would be necessary to refer to the relevant provisions of Sections 8 and 10 of the Act which are reproduced hereunder for facility of reference.

'8. Term of office of Councillors: (1) Save as otherwise provided in this Act, the term of office of councillors.-

(i) directly elected at a general election shall be five years;

(ii) nominated by the Government under Clause (b) of Sub-section (1) of Section 7 shall, subject to the pleasure of the Government, be five years.

(2) The term of office of the Councillors shall commence on the date appointed for the first meeting of the Corporation.

(3) .....

(4) .....

(5) .....'

'10. Mayor and Deputy Mayor: (1) Subject to the provisions of Sub-section (1-A), the Corporation shall, at its first meeting after a general election of Councillors and at its first meeting in the same month in each year thereafter, elect.-

(a) one of its Councillors referred to in Clause (a) of Sub-section (1) of Section 7 to be the Mayor; and

(b) one other Councillor referred to in Clause (a) of Sub-section (1) of Section 7 to be the Deputy Mayor;

(1-A) .....

(2) The Mayor or the Deputy Mayor shall hold office for one year from the date of his election and shall, notwithstanding the expiry of the said period, continue in office till his successor is elected, provided that in the meantime he does not cease to be a Councillor.

(3) .....

(4) .....

(5) .....

(6) .....

(7).....'

A reading of the relevant provisions of Part IX-A of the Constitution would make it clear that the constitutional requirement is that a Municipal Corporation is to be constituted in every State for a larger urban area and subject to the provisions of Clause (2) of Article 243-R all the seats therein have to be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area is divided into territorial constituencies called the wards. Sub-clause (b) of Clause (2) Article 243-R leaves no room for doubt that the legislature of a State has to, by law, provide for the manner of election of the Chairperson of a Municipality. Once a Municipality has been constituted it shall continue for five years from the date of appointed for its first meeting and no longer unless, it is dissolved earlier under any law for the time being in force. The Karnataka State Legislature had enacted the Act in the year 1976 and the provisions of Section 8 thereof were amended by Act No. 35 of 1994 and those were brought in consonance with the provisions of Part IX-A of the Constitution. Section 8 of the Act as it stands after the amendment in 1994 provides that the term of office of the Councillors at a general election shall be five years which shall commence on the date of appointed for the first meeting of the Corporation. So far as the duration of the office of the Mayor or the Deputy Mayor of the Corporation is concerned, Sub-section (2) of Section 10 of the Act provides that they shall hold office for one year from the date of their election. It is, thus, clear that the duration of a Corporation shall be five years but the period for which a Mayor or a Deputy Mayor will hold office shall be one year from the date of their election as such. As already observed, Sub-clause (b) of Clause (2) of Article 243-R leaves it to the State Legislature to determine the manner in which the Chairperson of a Municipality (Corporation) has to be elected. The word 'manner' as used in Article 243-R(2)(b) would include the mode in which the election is to take place and also the duration for which the Chairperson/Mayor/Deputy Mayor shall hold office. Section 10 of the Act provides the mode in which a Mayor/Deputy Mayor shall be elected from amongst the directly Elected Councillors of the Corporation and Sub-section (2) provides the period for which they shall hold office which would be one year from the date of their election. There is thus, no inconsistency between the provisions of Sub-section (2) of Section 10 of the Act and the provisions of Part IX-A of the Constitution which deals with Municipalities.

Whether the term office of a Chairperson/Mayor should be co-terminus with that of the Corporation or for a period less than that has been left by the Constitution for the State Legislature to determine. There is no provision in Part IX-A of the Constitution which requires that the office of a Chairperson/Mayor of a Municipality (Corporation) should be co-terminus with that of the Corporation if that had been the intention then Article 243-R would not have left it to the State Legislature to provide for the manner of election of the Chairperson of a Municipality. Article 243-U has fixed the duration of the Municipalities. It could have also fixed the period for which its Chairpersons would hold office but that has not been done. We have, therefore, no hesitation in holding that the provisions of Sub-section (2) of Section 10 of the Act do not violate any provision of Part IX-A of the Constitution and that the said provisions are constitutionally valid.

4. At this stage, we may refer to the division bench judgment of the Patna High Court in Bihar Mayor Council v. The Union of India and Ors. C.W.J.C. No. 1019 of 2003 decided on 4.9.2003, cited by the learned senior Counsel for the appellant in support of his plea that the provisions of Section 10(2) of the Act providing for a one year term for the Mayor of the Corporation were constitutionally invalid. In that case also Section 19(1) of the Patna Municipal Corporation Act, 1951 provides for a one year term for the Mayor and the same was held to be constitutionally invalid by the learned Judges who observed in their judgment as under:

'The tenure of an elected representative to an institution of self-Government, the third tier of Government today, whether municipality or Panchayat has been provided by the Constitution to be five years. It is the tenure of an elected representative collectively returned to an office as a result of an election that the elected body has a tenure of five years. The pattern is the same whether it is the Parliament, the Legislatures or Institutions of self Government; all will have a tenure of five years. Can a Mayor have a lesser tenure? The [Constitution of India](#) does not seem to suggest it. The Constitution clearly shows the perspective that the tenure of an elected member to any tier of Government whether Parliament, Legislature, Municipality or Panchayat, it will be five years. The tenure of a Mayor in the spirit of the Constitution is co-terminus with the tenure of the municipality or corporation'.

And again the learned Judges concluded by observing as under:

'Thus, the Patna Municipal Corporation Act, 1951 which has given annual term to the Mayor and the Deputy Mayor is against the spirit of the Constitution and inconsistent with the scheme of local self Government after amendments were made to the [Constitution of India](#). The term of any councillor, of which a Mayor and a Deputy Mayor cannot be excluded from being members of the house which the corporation is the tenure of the councilors is co-terminus with the tenure of the municipality or the corporation. Any enactment which stipulates a lesser tenure is ultra vires to the Constitution.'

With respect to the learned Judges, we are unable to agree with their reasoning. As already observed, Part IX-A of the Constitution which deals with Municipalities provides that every Municipality shall continue for five years but it does not provide for the manner of election of its Chairperson nor does it provide for any period for which he will hold office and that has been left for the State Legislatures to provide. May be, some of the State Legislatures in other States have provided for the term of Mayor to be co-terminus with that of the Municipality but that by itself will not invalidate the provisions of Section 10(2) of the Act which has been enacted by the State Legislature of Karnataka. It is open to each State Legislature to provide a different tenure for the Mayors and since the State Legislature of Karnataka has provided for a one year tenure we find no inconsistency with the provisions of Part IX-A of the Constitution. We do not think that the Constitutional scheme requires that the term of a Mayor should be co-terminus with that of the Municipality. We therefore express our respectful dissent with the view expressed by the learned Judges of the Patna High Court in Bihar Mayor Council's case (supra).

5. Before concluding, we may also refer to another argument advanced by Shri V. Lakshminarayana, learned Counsel appearing for the petitioner in writ petition No. 43155/2004. He referred to the Model Municipal Law which was circulated by the Government of India, Ministry of Urban Development and Poverty Alleviation to all the State Governments requiring them to amend their local laws to bring them in consonance with the provisions of Part IX-A of the Constitution which, was

inserted in the year 1993. He brought to our notice the provisions of Section 27 of that specimen Municipal Law which provided as under:

'27. The term of office of the Chief Councillor and the members of the Empowered Standing Committee shall be co-terminus with the duration of the Municipality'

He strenuously urged that in view of this provision every State Legislature was required to amend its laws so as to bring them in consonance with the specimen Municipal Law which was circulated by the Government of India and therefore the provisions of Section 10(2) of the Act which are contrary to Section 27 of the model law are invalid. He further contended that Section 27 of the specimen Municipal Law as circulated clearly goes to indicate that the intention of Part IX-A was clear that the term of office of a Mayor had to be co-terminus with the duration of the Municipality and therefore Section 10(2) of the Act should be held to be invalid. The argument is being noticed only to be rejected. The specimen Municipal Law which was circulated by the Government of India was only a model Municipal Law on the basis of which the States were required to amend their respective laws. It was not mandatory for every State Legislature to adopt the same to make the term of a Mayor co-terminus with that of the Municipality. As already observed in the earlier part of the order, Sub-clause (b) of Clause 2 of Article 243-R left it to the State Legislatures to determine the manner in which the election of the Chairperson of a Municipality could be held and nowhere does part IX-A of the Constitution prescribe the tenure of the Chairperson. The model Municipal Law cannot bind the State Legislatures. It was only for their guidance so that the provisions of the Municipal Laws already existing could be brought in consonance with the provisions of Part IX-A of the Constitution. There is, thus, no merit in this contention either.

6. For the reasons recorded above we answer the question posed in the earlier part of the judgment in the negative and hold that Section 10(2) of the Act does not contravene any provision of part IX-A of the Constitution and that it is constitutionally valid. In the result, the writ appeals and the writ petition fail and the same stands dismissed with no order as to costs.

