R. Pushpam and anr. Vs. the State of Madras, Represented by the Secretary, Local Administration Department, Fort St. George, Madras and anr.

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Court : Chennai

Decided On : Oct-06-1952

Reported in : AIR1953Mad392; (1953)IMLJ88

Judge : Subba Rao, J.

Acts : Madras District Municipalities Act, 1920 - Sections 7(3), 43 and 351B; Constitution of India, 1950 - Article 226

Appeal No. : Writ Petn. No. 648 of 1952

Appellant : R. Pushpam and anr.

Respondent : The State of Madras, Represented by the Secretary, Local Administration Department, Fort St. George,

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : S. Mohan Kumaramangalam, Adv.

Judgement :
ORDER

Subba Rao, J.

1. This is an application under Article 226 of the Constitution of India for issuing a writ, of certiorari to call for the records and quash, the order dated 29-7-1952 of respondent 1, the Stale of Madras. Petitioner 1 is the Secretary of the Progressive Women's Association, Aruppukottai; petitioner 2 is a Municipal Councillor of the Aruppukottai municipality. The elections to the said Council are now in progress. Under the programme of elections issued by respondent 2, Commissioner of the Municipality, the last date to file nominations is the 6th and 8th September 1952 and the date of this polling is fixed, on 6-10-1952. The Municipality is divided into 24 wards with 33 councillors; one reserved seat for women is allotted to ward No. 2 and another to ward No. 12. The said allotment was made by the order of the Government dated 29-7-1952. The petitioners seek to get that order quashed for the reasons 'inter alia' that it is vitiated by 'mala fides' on the part of the Government and also on the ground that the Government did not comply with the provisions of the District Municipalities Act in issuing the said order.

2. The contention of the learned counsel for the petitioners that the Government did not comply with the provisions of Section 43, District Municipalities Act, may be taken up first. Section 43 reads:

'For the pus-pose of election of Councillors toa Municipal Council, the Local Governmentafter consulting the Municipal Council, may, bynotification-

(a) divide the Municipality into wards:

(b) determine the wards in which the seats, if any, reserved in Sub-section (3) of Section 7 shall set apart;

(c) declare for whom such seats are reserved'. Under Section 7(3) the Local Government may in their discretion by notification reserve seats for women and determine the number of such seats. The Government accordingly determined to give two seats for women and allotted the said reserved seats to wards 2 and 12. Under Section 43 such allotment of the reserved seats can only be made after consulting the Municipal Council. The statutory condition of consulting was conceived in public interests and expressed in clear terms. It is, therefore, the duty of this court to ensure that there is a full and fair compliance with the statutory

condition. The question, therefore, is whether the Government consulted the Municipal Council before determining the wards in which the said seats were set apart. This turns upon the construction of the words 'after consulting' in the section.

The word 'consult' is so familiar that it often eludes the grasp of easy and exact definition. In the Law Lexicon by P. Ramanatha Aiyar it is stated as follows:

'Consultations always require two persons at least; deliberations may be carried on either with a man's, self or with numbers; an individual may consult with one or many; assemblies commonly deliberate; advice and information are given and received in consultations; doubts, difficulties, and objections are stated and removed in deliberations. Those who have to co-operate must frequently consult together; those who have serious measures to decide upon must coolly deliberate'.

The word 'consult' was subject of a judicial scrutiny in -- 'Fletcher v. Minister of Town Planning', 1947 2 A11 E.R. 496. The question arose in connection with an application taken out for quashing the order made by the Minister for Town and County Planning. The Minister designated an area of land as the site of a proposed new town. It was contended that the requirements of the New Towns Act, 1946, had not been complied with in relation to the making of the order, in that there was no 'consultation' within the meaning of Section 1(1) of the Act between the Minister and the Local authorities before the making of the order designating the area of land in question as the site of the proposed new town. On the facts the learned Judge held that there was the requisite consultation; but in dealing with the question, at page 500, the learned Judge observed:

'The word 'consultation1 is one that is in general use find that is well understood. No useful purpose would, in my view, be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which the consultation must take place. The Act does not prescribe any particular form of consultation. If a complaint is made of failure to consult, it will be for the Court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held. Consultations may often be a somewhat continuous

process and the happenings at one meeting may form the background of a later one'.

It is clear from the aforesaid observations that the Court will have to scrutinise in each case whether the requisite consultation has taken place, having regard to the substance of the events. The word 'consult' implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. It is necessary that the consultation shall be directed to the essential points and to use core of the subject involved in the discussions. The consultation must enable the consuitor to consider the pros and cons of the question before coming to a decision. A person consults another to be elucidated on the subject-matter of the consultation. A consultation may be between an uninformed person and an expert or between two experts. A patient consults a doctor; a client consults his lawyer; two lawyers or two doctors may hold consultations between themselves. In either case the final decision is with the consultor, but he will not generally ignore the advice except for good reasons. So too in the case of a public authority. Many instances may be found in statutes when an authority entrusted with a duty is directed to perform the same in consultation with another authority which is qualified to give advice in respect of that duty. It is true that the final order is made and the ultimate responsibility rests with the former authority. But it will not, and cannot be, a performance of duty if no consultation is made, and even if made, is only in formal compliance with the provisions. In either case the order is not made in compliance with the provisions of the Act. Having regard to the aforesaid observations let me now consider the correspondence which ended in the order made by the Government.

On 27-6-1952, respondent 1 wrote to the Municipality intimating their proposal to divide the Aruppukottai municipality into 24 electoral wards and also to reserve two scats for women and allot the same to wards 5 and 12. The Chairman, Municipal Council, was also requested to place the above proposals at an urgent meeting of the Council within two weeks. He was also informed that any suggestions which the Municipal Council may have to make before the expiry of three weeks would

be considered by the Government. On 9-7-1952 the Municipal Council passed a resolution recommending to respondent 1 that the two seats for women be reserved in Wards 5 and 7 respectively instead of Wards 5 and 12 as suggested by the Government. The letter of the Chairman of the Municipal Council sent to the three councillors who had dissented from the proposal of the Council, a copy of which was sent to the Government, gives the reasons for preferring Ward Nos. 5 and 7 instead of 5 and 12. It reads:

'the allotment of a woman's seat to Ward 12 as now proposed would mean allotting both the woman's scats to a single community, the De-vangar community which is already the biggest single community in the Municipality resulting in the distribution of the wards on an unfair basis. Besides this legitimate claim for a woman's seat the Nadar community has a more reasonable claim to representation of the women in this town because the Nadar women are more than 75 per cent educated and under the auspices of their Ladies' Association containing more than 200 members they arc taking a leading part in all the activities in this town, which are calculated to further the interests of women educationally and socially. I consider that for this important reason also the Nadar Community deserves to have a woman's seat. The ward committee & the council took this aspect also into consideration in allotting one of the women's seats to ward No. 7.'

3. The reason given by the Municipality for suggesting a modification of the proposal made by the Government was that if the Government's proposal was carried out, the two women's estate seats would be captured by women belonging to the Devanga community and the women of the Nadar community would be deprived of their right to be represented in the Council. The Government did not accept the proposal of the Municipality but instead the two seats for women were reserved in Wards 2 and 12.

4. Relying upon the aforesaid correspondence, learned counsel for the petitioners argued generally that though the Government went through die formality of a consultation, they did not, in fact, consult the municipality. It was said that an authority consulting another should at least give reasons for the proposals so that

the other may give its considered opinion in regard to the proposals made, for any proposal unaccompanied by such reasons could not afford any opportunity to the other to advise for or against the proposal It is true that the giving of reasons by the Government would enable the Municipality to scrutinise them and offer advice or counter proposals. But I cannot say that the procedure adopted is not 'consultation' in respect of the matters referred within the meaning of the section. The Government sent their proposals. Though the Government did not disclose their mind, by giving reasons nothing prevented the Municipality from making their suggestions in respect of the allotment of the reserved seats to Wards 5 and 12. They could give reasons, as they had given in this case_, why the proposal was not conducive in the interests of the women voters and how it could be suitably modified. The Government and the Municipality had a 'consultation' in respect of the allotment of reserved seats for women of wards 5 and 12. The Government wanted to allot to wards Nos 5 and 12; the Municipality, for reasons given, suggested they should be allotted to ward Nos. 5 and 7. It is therefore, manifest that the Government consulted the Municipality in respect of ward No. 12, and though the Municipality did not agree, they allotted the reserved seat to that ward. So far as ward No. 12 is concerned, the provisions of Section 43 have been complied with. But I find it very difficult to say the same in respect of the allotment of the reserved seat to ward No. 2

Learned Government Pleader contended that the Government consulted the Municipality in respect of the division of the Municipality into wards and the allotment of he reserved seats to the different wards and it is not necessary that they should have consulted the Municipality in respect of the suitability of the allotment of a reserved seat to a particular ward. To put in other words, his argument was that a general consultation would be in compliance with the provisions of the Act and the fact that the allotment of a woman's seat to ward No. 2 was not referred to the Municipality could not invalidate the allotment. This argument, in my view, is not only contrary to the provisions of Section 43 but defeats the purpose for which the said section was enacted. Under Section 43 the consultation referred in Sub-section (1) must be read distributively. The local Government shall consult the Municipal Council for dividing the Municipality into wards and also shall consult the Municipality for determining the wards in which

the seats, if any, reserved under Sub-section (3) of Section 1 shall be set apart. If so read, the consultation also must be with reference 10 the allotment of the reserved seats to the particular wards. If the Government proposed ward No. 5 for the allotment of a reserved seat and after consulting the Municipality in respect of that proposal, allotted the same to ward No. 2, it is impossible to hold that the Government consulted the Municipality in determining the wards for allotting the reserved seats. If the Government asked the Municipality to send their proposals in respect of all the wards for allotment of reserved seats and thereafter allotted a reserved seat to a particular ward, it may perhaps be argued on which question I do not express my opinion that the Government has consulted the Municipality; but where, as in this case, the attention of the Municipality is focussed only to a particular ward and their advice in respect of that ward obtained, I find it very difficult to hold that the Government consulted the Municipality in respect of the allotment of the seat to a different ward. I, therefore, hold that the Government in contravention of the provisions of Section 43 (b) did not consult the Municipality and, in respect of ward No. 2, therefore, the said allotment is illegal.

5. Learned counsel for the petitioners then contended that the Government in allotting the reserved seats to Ward Nos. 2 and 12 were actuated by 'mala fides.' It was said that in the elections for these two wards held in 1948 the successful candidates were both from the Congress party and, therefore, the present Congress Government allotted those two reserved seats to women so that their party candidates might be elected. In my view there is not even a slender basis for this grave allegation. The fact that Congress candidates were elected in the year 1948 is not a guarantee that the candidates of the same party would be elected in the year 1952. Further, it is not the case of the petitioner in the affidavit that the Congress candidates were elected only for these two wards. Nor is it suggested that in these two wards alone they had an overwhelming majority, whereas they had lost or scraped through in other wards. Assuming that the Congress was successful in these two wards in 1948, it is impossible to hold from that fact alone that the Government allotted the reserved seats to these two wards to help their party candidates. The petitioners fail to establish 'mala- fides' in this case.

6. The learned Government Pleader raised a preliminary objection against the maintainability of the present application on the basis of Section 351 (B) Madras District Municipalities Act, which reads:

'Notwithstanding anything contained in the Civil Procedure Code, 1908, or in any other law for the time being in force, no Court shall grant any permanent or temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under this Act for the preparation or publication of electoral rolls for or for the conduct of any election.'

This section obviously cannot affect the power of the High Court to issue suitable writs under Article 226 of the Constitution of India. Under Article 245 of the Constitution, the power of the Parliament or the Legislature of a State to make laws is subject to the provisions of the Constitution. So long Art, 226 stands in the Constitution, neither the Parliament nor the Legislature of a State can make laws depriving or limiting the power of the High Court to issue writs. I therefore, hold that the provisions of Section 351-B Madras District Municipalities Act, cannot in any way affect the power of the High Court to issue writs in suitable cases. For the aforesaid reasons I hold that the order of the Government allotting the seat reserved for women to ward No. 2 is illegal and I, therefore, issue a direction restraining the respondents from holding the election in respect of the said reserved seat. Thiswill not preclude the Government from allottingthe said seat reserved for women to any of thewards after complying with the provisions of theAct. As the parties tail and succeed in part, therewill be no order as regards costs.