

S.V. Narayanaswami and anr. Vs. the State of Madras Represented by Inspector of Local Boards and Municipal Councils and ors.

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Court : Chennai

Decided On : Jan-02-1962

Reported in : (1962)2MLJ175

Appellant : S.V. Narayanaswami and anr.

Respondent : The State of Madras Represented by Inspector of Local Boards and Municipal Councils and ors.

Advocate for Pet/Ap. : Mr. K.S. Ramamurthy

Judgement :

Jagadisan, J.

1. These two Writ Petitions raise questions relating to the proper election of Chairman of Panchayat Union Council for which the answer depends upon the interpretation of the relevant provisions of Madras Acts XXXV of 1958 and XVII of 1960, hereinafter referred to as the Acts. They can conveniently be disposed of by a common judgment, but it must be mentioned that the points that arise for determination are not identically the same in both the petitions.

2. The facts giving rise to W.P. No. 1206 of 1961 are as follows. The Government of Madras issued directions by G.O. Ms. No. 1447, L.A., dated 5th October, 1960,

that in the area of the revenue village of Thamaraikulam there should be three Panchayats : (i) Thamaraikulam; (ii) Lakshmipuram and (iii) not named. On 22nd October, 1960, the Government made a modification and directed that there should be bifurcation of the Lakshmipuram Panchayat into two Panchayats, one named Lakshmipuram Panchayat, and the other named Saruthipatti. The net result was the Government decided to constitute four Panchayats in respect of that area. (1) Thamaraikulam; (2) Lakshmipuram; (3) Saruthipatti and (4) name not given. Three residents of Lakshmipuram Panchayat have filed a Writ Petition in this Court, W.P. No. 1271 of 1960 objecting to the bifurcation and division of the Lakshmipuram area into two Panchayats. These residents . have challenged the order of the Government dated 22nd October, 1960 modifying its previous order dated 5th October, 1960. The holding of elections for these two Panchayats has been stayed by orders of this Court.

3. By G.O., Ms. No. 1050, R.D. & L.A., dated 12th April, 1961 the Government declared certain local areas to be a Panchayat development block for the purpose of National Extension Service Scheme of Community Development and further declared the Panchayat Development Blocks to be Panchayats Unions. This was done by the Government in exercise of its powers under Section 7 of Madras Act XXXV of 1958. (Panchayat Union will hereinafter be referred to as the Union). One such Union so declared is Tenkarai. One of the revenue villages included in this Tenkarai Union is Thamaraikulam. In all, this Union consists of 15 revenue villages. 21 Panchayats have been constituted out of these 15 villages. By G.O. Ms. No. 2548, dated 22nd September, 1961, the Government, in exercise of its powers under Section 11 (1) of Madras Act XXXV of 1958 notified that the Council of the Tenkarai Union shall be constituted with effect on and from 2nd October, 1961. Under Madras Act XVII of 1960 a Council constituted for the first time shall consist of the Presidents of the Panchayats in the Union. A meeting for the election of the Chairman of the Tenkarai Council was duly convened to be held on 25th October, 1961, by the Revenue Divisional Officer, Usilampatti. The petitioners are residents of Lakshmipuram Panchayat. They pray for the issue of a writ of mandamus, or other appropriate writ under Article 226 of the Constitution to forbear the respondents, the State of Madras, the Divisional Panchayat Officer, Madurai and the Revenue Divisional Officer, Usilampatti, from holding the election

of the Chairman of the Tenkarai Council, till the four Panchayats in the area of the Thamaraiikulam revenue village begin to function with duly elected Presidents. Subsequent to the filing of this Writ Petition (W.P. No. 1206 of 1961) the President of the Tenkarai Panchayat has been impleaded as the 4th respondent on his own motion.

4. W.P. No. 1208 of 1961 relates to the Mailam Panchayat Union Council. This Council also came into being by an appropriate notification of the State Government under Section 11 (1) of the Act dated 22nd September, 1961 in G.O. Ms. No. 2548. The petitioner is a resident of the village of Ganapathipattu and a member of the Ganapathipattu Panchayat. The second respondent in this petition was duly elected as the President of the Ganapathipattu Panchayat at a meeting of the Panchayat held on 28th June, 1960. The petitioner filed O.P. No. 31 of 1960 on the file of the District Munsif's Court, Villupuram, under Section 19 (1) of the Madras Village Panchayats Act for a declaration that the second respondent is disqualified from functioning as the President or from being a member of the Panchayat as he is afflicted with leprosy. The learned District Munsif of Villupuram held that the second respondent is disqualified from holding office. There was a Civil Revision Petition in this Court, against the said order, but that was dismissed on 22nd September, 1961. The second respondent has therefore been held to be disentitled to continue as President of the Ganapathipattu Panchayat. It must be mentioned that this Ganapathipattu is within the local area of the Mailam Union. A meeting for the election of the Chairman of the Mailam Council having been notified to be held on 25th October, 1961, the petitioner has approached this Court for the issue of a writ of prohibition or such other appropriate writ under Article 226 of the Constitution to forbear the first respondent, Sub-Collector of Tindivanam, from holding the election of the Chairman of the Mailam Council. The petitioner's grievance is that the second respondent has still been recognised as the President of the Ganapathipattu Panchayat and that he is likely to participate in the election of the Chairman. The petitioner submits that the election of the Chairman of the Mailam Council cannot go on without the election of the President of the Ganapathipattu Panchayat. After the filing of the Writ Petition the President of the Rettanai Panchayat, one of the Panchayats in the local area of the Mailam Union Council has been impleaded as the third respondent on his own initiative. He is

opposing this writ petition.

5. The important question that has to be considered in these writ petitions is whether the incorporation of the Council under the Acts is invalid by reason of the ' non-formation ' of certain Panchayats or the ' non-existence of President of any Panchayat' within the local area of the Union. In other words is the existence of all or any of the Panchayats within the Union or the subsistence of Presidents of all the said Panchayats a basic foundation or an essential sine-qua-non of the constitutional validity of the Panchayat Union Council, referred to as Council in this Judgment? Can it be said that the Council cannot come into being, unless and until every Panchayat in the Union has been duly constituted, and every Panchayat has elected its President? In my opinion, the provisions of the Acts are transparently clear, and their plain meaning establishes that the formation of the Council is complete eo instanti a statutory declaration and notification are made by the Government. On such formation the Council comes into existence and functions proprio vigore and neither the lack of constitution of some Panchayats, nor the absence of this or that President of any Panchayat, within the area, can deprive it of its vitality and force. This conclusion of mine rests not merely upon the salient provisions of the two enactments, but also upon the general principles of law relating to the formation and constitution of corporations.

6. I shall first refer to what I may call the fundamental concepts of an incorporated body. A corporation, or a body politic as it is often called, is a legal person having a fictitious personality distinct from that of its members or individual corporators. Its rights and duties are not identical with those of the persons who form it from time to time. It may survive the last of its members. It is not ipso jure dissolved by the extinction of members. Incorporated companies and municipal corporations are the most frequent examples of a corporation aggregate. These are creations of statutes and they live and exercise their powers and functions within the framework of their founding Acts. They are abstractions in law, resulting from incorporation, which is of course quite different from their composition.

Where a corporation aggregate is created the head and members may be appointed after the creation of the corporation, but the creation of the corporation

may and should precede the founding of the institution which it will conduct. (Halsbury's Laws of England, Vol. 9, 3rd Edn., page 21).

7. I shall now briefly refer to the relevant provisions of Madras Act XXXV of 1958. Panchayat means the body constituted for the local administration of a village or town under this Act (section 2-20). Panchayat Union means any local area which is declared to be a Panchayat Union under this Act (section 2-23). Panchayat Union Council means the body constituted for the administration of a Panchayat Union under this Act (section 2-24). The Government may from time to time publish a notification of their intention to declare any local area forming a Development Block for the purpose of National Extension Service Scheme of Community Development to be a Panchayat Development Block and to constitute for every such Panchayat Development Block a Panchayat Union. Any inhabitant of a local area in respect of which any such notification has been published may submit his objection in writing to anything contained in the notification to the Government within six weeks from the publication of the notification and the Government shall take all such objections into consideration. After the expiry of six weeks from the publication of the notification and after considering the objections, if any, which have been submitted, the Government may, by notification declare the local area to be a Panchayat Development Block, declare the said Panchayat Development Block to be a Panchayat Union, and specify the name of the Panchayat Union (section 7). A Panchayat Union Council shall be constituted for each Panchayat Union with effect from such date as may be specified in this behalf by the Government by an appropriate notification. Every Panchayat Union Council shall be a body corporate by the name of the Panchayat Union specified in the Section 7 notification, and shall have perpetual succession and a common seal, shall be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property, of entering into contracts (section 11).

8. The above provisions clearly indicate that the Panchayat Union Council is not a conglomeration or federation of Panchayats. The statutory definition of an Union is that it is any local area which is declared to be so under the Act. The local area consists only of revenue villages. There may be a non-panchayat area in that local

area. The following proviso to Section 11 specifically provides that such non-panchayat area shall be governed by the Council:

Provided that if and so long as there is no Panchayat in any part of a Panchayat Union, the Panchayat Union Council shall exercise all the powers including the power of taxation, discharge the duties, perform the functions and be credited with the receipts and debited with the charges of the Panchayat, and the Chairman and the Commissioner of the Panchayat Union Council shall exercise the powers, discharge the duties and perform the functions of the President and the Executive Authority respectively in such part of the Panchayat Development Block.

Section 12 of the Act provides that every Panchayat and every Township Committee constituted under this Act in a Panchayat Union shall elect to the Panchayat Union Council in the prescribed manner one person from among its members. It also provides that amongst such members there shall be not less than three women members and not less than three members of the Scheduled Castes. A member of the State Legislative Assembly representing a constituency comprising the whole or any part of a Panchayat Development Block and any member of the State Legislative Council residing in a Panchayat Development Block shall be entitled to take part in the proceedings of the Council, but shall not be entitled to vote or to be elected as the Chairman or Vice-Chairman of the Council. But this section cannot apply to the first constitution of the Council, in view of the provisions in Madras Act XVII of 1960. Section 2 of that Act reads:

(1) Notwithstanding anything contained in the Madras Panchayats Act, 1958 (Madras Act XXXV of 1958) hereinafter referred to as the said Act), but subject to Sub-section (2):(a) a Panchayat Union Council constituted for any Panchayat Union for the first time under the said Act shall consist of the Presidents of the Panchayats in the Panchayat Union who, on the date specified in the notification issued under Sub-section (1) of Section 11 of the said Act constituting the Panchayat Union Council, are holding office as such Presidents; (b) the term of office of members of the Panchayat Union Council referred to in Clause (a) shall be such as the State Government or any officer authorised by them in this behalf may, by notification, specify; and (c) the President shall not cease to hold office as

such on his election as Chairman or Vice-Chairman of the Panchayat Union Council referred to in Clause (a).

The application of Section 12 of Madras Act XXXV of 1958 is therefore held in abeyance till the term of the first batch of members of the Council expires by efflux of the time prescribed by the Government.

9. The election of the Chairman and the Vice-Chairman is provided for under Section 36 of Madras Act XXXV of 1958.

Section 36 (1). There shall be a Chairman and a Vice-Chairman for every Panchayat Union Council.

(2) The Chairman and the Vice-Chairman shall be elected by the Panchayat Union Council from among its members in accordance with such procedure as may be prescribed. If at an election held under this sub-section, no Chairman or Vice-Chairman is elected, a fresh election shall be held for electing the Chairman or Vice-Chairman as the case may be.

10. The members of the Council constituted for the first time under the Act shall consist only of the Presidents of the Panchayats in the Panchayat Union. Every President of the Panchayat becomes an ex-officio member of the first Panchayat Union Council. The Panchayats in the Union do not constitute an integral part of the Union Council in the sense that without them there could be no valid Council. As stated already the Council is only in respect of a Panchayat Union and the Union itself relates only to a local area or a group of revenue villages whether served by Panchayats or not. In view of the plain provisions of the Acts referred to succinctly above, it is impossible to contend that the Council cannot have any statutory existence till Panchayats in the area are fully constituted/and begin to function and till Presidents are elected for each and every Panchayat. The declaration and notification by the Government under Sections 7 and 11 of the Act effectively constitute the Union Council, and this cannot be defeated by reason of wrangles delaying constitution of Panchayats, and quarrels postponing election of Presidents in the Panchayats. No doubt the Government have powers under Section 7 (4) of the Act to exclude from a Panchayat Development Block any

village or town or include in any Panchayat Development Block any area contiguous to it or cancel or modify a previous notification by making a further notification. But after a due notification by the Government under section. 11 of the Act, the setup of a Council is a fait accompli, constitutionally firm, secure and invulnerable.

11. I may now refer to a decision of this Court in *M. K. Ravutha Gounder, In re :* (1958)2MLJ414 . In that case the petitioner prayed for the issue of a writ of prohibition restraining the Regional Inspector of Municipal Councils and Local Boards, Coimbatore, from conducting the election of the office of the President of the Panchayat at Mylambadi village. The petitioner was an elector. The election of members to the Panchayat were held on 19th April, 1958, but only 12 out of the 15 seats were filled up, there having been no valid nomination in respect of the remaining three. The election authority thereupon notified that fresh election would be held for these three seats. In the meanwhile steps were taken to enable the Panchayat to function and a meeting of the 12 elected members was convened to elect a President from among them. The petitioner who was a defeated candidate in the election sought to restrain the election of the President. The contention urged on his behalf was that there can be no valid or effective constitution of the Panchayat till all the 15 members were elected, and that the Panchayat being still at the stage of formation could not function and proceed to elect a President. Ramachandra Iyer, J. (as he then was) negatived this contention. The learned Judge held that there was no prohibition in the Madras Village Panchayats Act or the Rules framed thereunder against the Panchayat commencing to function before all its members are elected, and that the absence of individual members or the existence of vacancies cannot affect the validity of its act. I am of opinion that the ratio of that decision is fully applicable to the present case.

12. Mr. K.S. Ramamurthy, learned Counsel for the petitioner, in W.P. No. 1208 of 1961, referred me to the decision of the Rajasthan High Court in *Surajmal v. Pirthi Singh* A.I.R. 1957 Raj. 383. That was a case which turned upon the language of Section 58 (2) and Rules 21 and 22 of the Rajasthan Panchayat Act of 1953. The decision of Bapna, J., makes it quite clear that Section 58 of that Act is differently worded from the provisions of the Acts which I am now construing . At page 383

the learned Judge observes:

Out of the aforesaid 14 Panchayats, election of 13 Panchayats took place, but the election of the Gram Panchayat Bassi, which was to be held on 27th February, 1955, was postponed on account of an apprehension of a breach of the peace....Under Sub-section (2) of Section 58 of the Act, the members consisting of the Sarpanchayats and Panchas of all the Panchayats in the Tehsil form the electoral college for the election of a Sarpanch and Panchas of the Tehsil Panchayat.

Again at page 384 the learned Judge observes:

It is obvious that unless the election of all the Panchayats in the Tehsil is completed, the electoral college is not complete, and in the absence of the completion of the electoral college, the election of the Sarpanch and Panchas of the Tehsil Panchayat is not contemplated.

That decision was based on the peculiar provisions of the Rajasthan Panchayat Act. It cannot have any application to the present case. There is nothing in Madras Acts XXXV of 1958 and XVII of 1960 constituting all the Panchayats or the Presidents of the Panchayats as electoral colleges.

13. Section 3 of Madras Act XVII of 1960 constituting the Presidents of the Panchayats, as members of the first Panchayat Union Council cannot be so read as to operate the postponement of the constitution of the Council itself till there are Presidents in all the Panchayats in the area. The section specifically provides that the members of the Council are the Presidents of the Panchayats in the Panchayat Union who on the date specified in the notification issued under Sub-section (1) of Section 11 of the said Act are holding office as such Presidents. There is no scope for invoking the conception of an electoral college consisting of Presidents of the Panchayats in the language of that section.

14. Mr. K.S. Ramamurthy, learned Counsel impugned the validity of Section 2 of Madras Act XVII of 1960 on the ground that it was unconstitutional being violative of the equality clause of the Constitution. The argument of the learned Counsel

was that Panchayats who had not the benefit of having elected a President have been unduly discriminated by the statute preferring the Panchayats who have elected Presidents. I have no hesitation in rejecting it as clearly untenable. The statute does not make any such discrimination at all. If a particular Panchayat suffers the misfortune of not having a duly elected President on the relevant date, that Panchayat does not get representation in the Council, but that is not due to any discrimination against that Panchayat, but due to the solid fact that the Panchayat was without a President. An expeditious formation of Council can be achieved only by granting membership to Presidents of the Panchayats, on the date of the notification under Section 11 of Act XXXV of 1958 and the failure to include future Presidents after the notification cannot be discrimination against the Panchayats, as they are not members of the Council, or the Presidents as they are not in office till after the notification.

15. These writ petitions fail and are dismissed with costs. Rule nisi is discharged.. Counsel's fee in each case Rs. 150.

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