

S. Vimala Vs. the Secretary to Government Municipal Administration and Water Supply Department,

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Court : Chennai

Decided On : Mar-07-2008

Reported in : (2008)4MLJ11

Judge : P. Jyothimani, J.

Acts : [Tamil Nadu District Municipalities Act, 1920](#) - Sections 3AA, 3B, 3BB, 3M, 3N, 3O to 3CC, 3(18A), 3(29A), 3(29AA), 4, 5, 7, 12C, 13B, 40A, 40A(2), 40B, 40A(12), 43, 68, 77AA, 77B, 77(2), 103, 304(2) and 363; Tamil Nadu District Municipalities Rules; Tamil Nadu Municipal Laws (Amendment) Act, 2006; Tamil Nadu Panchayats Act, 1994 - Sections 119, 120, 132, 133, 134, 135, 159, 160, 161, 167, 168, 169, 172, 180, 182 and 183; Water (Prevention and Control Pollution) Cess Act, 1977 - Sections 28, 28(1) and 28(3); Mines and Minerals (Regulation and Development) Act, 1957; [Constitution of India](#) - Article 243B, 243Q, 243Q(1) and 243Q(2) 243B

Appeal No. : W.P.Nos.25055, 28370, 31336 and 35442 of 2007

Appellant : S. Vimala;m. Asokan

Respondent : The Secretary to Government Municipal Administration and Water Supply Department,; the Director of T

Advocate for Def. : S. Ramasamy, Addl. Adv. General II assisted by L.S.M. Hasan Fizal, Government Adv. for Respondent Nos. 1 to 5 in W.P. No. 31336 of 2007 and for Respondent Nos. 1 and 2 in WPs. 25055 and 28370/07, M.

Advocate for Pet/Ap. : D. Pradeepkumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P. Jyothimani, J.

1. The issues involved in these cases are similar and therefore, these writ petitions are taken together.
2. W.P. Nos. 25055 and 28370 of 2007 are filed by the same person, viz., Mrs. S. Vimala, who is the Chairperson of Madambakkam Town Panchayat. Likewise, the petitioner M. Asokan has filed W.P. Nos. 31336 and 35442 of 2007.
3. The petitioner in W.P. Nos. 25055 and 28370 of 2007 was a duly elected Chairperson of Madambakkam Town Panchayat in the year 2006, by 15 Members of the Council, wherein the petitioner is also a Member. The petitioner was declared as elected Chairperson for a period of five years, since she was supported by 9 persons out of 15. G.O. Ms. No. 2048 Municipal Administration and Water Supply (TP1) Department dated 08.12.2003, impugned in W.P. No. 25055 of 2007, appending notification issued by the Governor of Tamil Nadu by virtue of the powers conferred under Section 3-M of the [Tamil Nadu District Municipalities Act, 1920](#) (in short, 'the Act') makes amendment to the Municipal Administration and Water Supply Department Notification No. II(2)/MW/1581/95 published in the Tamil Nadu Government Gazette dated 26.04.1995, under which modification is made for the expression 'Regional Director of Municipal Administration' in Sections 40-A and 40-B of the Act by substituting the words 'Assistant Director of Town Panchayat'.

4. By G.O.(D) No. 392 Municipal Administration and Water Supply (TP2) Department dated 22.08.2007, the Government issued Notification by virtue of Section 40-A(12) of the Act removing the petitioner from the post of Chairperson of Madambakkam Town Panchayat.

5. Likewise, the petitioner in W.P. No. 31336 of 2007, who belongs to Hindu Adi Dravida community was elected as a Chairman of Tiruvennainallur Town Panchayat, which is reserved for Scheduled Caste, on 25.10.2006 for a period of five years in 15 Member Council, in which the petitioner is a Member. By virtue of the powers conferred under Section 40-A(12) of the Act, the petitioner was removed from the post of Chairman of Tiruvennainallur Town Panchayat, Villupuram District. After his removal, the Election Officer, viz., the Executive Officer of the Tiruvennainallur Town Panchayat has issued an election notification on 15.11.2007, for the post of Chairman, fixing 26.11.2007 as the date of meeting of the Council, and that is challenged in W.P. No. 35442 of 2007.

6. In both matters, the petitioners concerned were sought to be removed from the post of Chairman on 'No Confidence Motion' and therefore, meeting of the Council of Madambakkam Town Panchayat was convened on 23.07.2007 by the Assistant Director of Town Panchayat, Kancheepuram District and in respect of Tiruvennainallur Town Panchayat, the meeting was convened by the Assistant Director of Town Panchayat, Cuddalore Zone on 19.07.2007.

7. In respect of petitioner in W.P. Nos. 25055 and 28370 of 2007, in Madambakkam Town Panchayat 'No Confidence Motion' was moved, in which out of 15 Members of Council, 10 have voted in favour of 'No Confidence Motion' against the petitioner and on the recommendation of the Assistant Director of Town Panchayat, Kancheepuram District, the Government issued the impugned Notification removing the petitioner therein.

8. Likewise, in respect of Tiruvennainallur Town Panchayat, on the date of meeting of the Council on 19.07.2007, when the 'No Confidence Motion' was moved, 14 Members out of 15 have voted in favour of 'No Confidence Motion' and as per the recommendation of the Assistant Director of Town Panchayat, Cuddalore Zone, the Government has issued the impugned Notification removing the petitioner and

also consequently the Election Officer has fixed the date of election for the post of Chairman.

9. The common grounds raised in both the cases are that the convening of the special meeting of the Council in both the cases by the Assistant Director of Town Panchayats is against Section 40-A(2) of the Act, which contemplates that the notice of intention to make the motion in the form fixed by the State Government, signed by not less than one half of the sanctioned strength of the Council together with the copy of the motion, shall be delivered by any two of the Councillors signing the notice in person to the Regional Director of Municipal Administration. Therefore, when the Act prescribes the Regional Director of Municipal Administration as the Authority, the 'No Confidence Motion' submitted to the Assistant Director of Town Panchayats, is against the provisions of Section 40-A of the Act.

10. It is the further case of the petitioners that the amendment effected by the Notification issued by virtue of the powers under Section 3M of the Act by substituting the words, 'Assistant Director of Town Panchayat' in the place of 'Regional Director of Municipal Administration' is not valid in law, since the same has to be done only by way of amendment to the Act by the Legislature or Ordinance and not by the executive instructions.

11. In addition to the above said legal submissions, the learned Counsel appearing for the petitioners have also submitted that the power of delegation by the State Government under Section 363 of the Act does not apply in respect of Chapters II and III, and Section 40-A being a part of Chapter III, there cannot be any delegation of power by the State Government also.

12. It is the further submission of the learned Counsel that under Section 304(2) of the Act, every rule made under Section 77(2) or 103 and every Notification issued under the Act shall, as soon as possible after it is made or issued, be placed on the table of both the Houses of State Legislature, so as to enable the Legislature to make any modification in such rule or notification and thereafter, the rule will have effect in the modified form and therefore, according to the learned Counsel for the petitioners, inasmuch as the Notification has not been placed before the

Legislature, it cannot have the legal effect.

13. It is their further submission that after Chapter I-B has been inserted by the Tamil Nadu Municipal Laws (Amendment) Act (18/2006), the Town Panchayats have also been brought within the purview of the Tamil Nadu District Municipalities Act and therefore, Town Panchayats form part of the Tamil Nadu District Municipalities Act, in which event, unless and until the amendment is effected to Section 40-A, the Assistant Director of Town Panchayat cannot have any jurisdiction to preside over the meeting and conduct elections and so on. They would also rely upon the judgements of the Supreme Court in *Union of India v. National Hydroelectric Power Corporation Ltd.* : AIR 2001 SC2512 and *The Quarry Owners Association v. State of Bihar* : AIR 2000 SC2870 .

14. On the other hand, it is the case of the respondents as per the counter affidavit that the minimum number of Councillors required under the Act have met the Assistant Director of Town Panchayat, Kancheepuram in person and presented a written notice of their intention to move 'No Confidence Motion' against the Chairman together with a copy of motion which was signed by more than half of the Members of the Council. As per G.O. Ms. No. 208 dated 08.12.2003, the Government has authorised the Assistant Director of Town Panchayat in respect of Town Panchayats to perform the functions of the Regional Director of Municipal Administration under Sections 40-A and 40-B of the Act. It was in accordance with the conferment of such power, the meeting was convened, which according to the respondents is perfectly valid. In the meeting, resolution was passed as required under law for removal of the petitioners as Chairperson and Chairman and the respective Assistant Directors of Town Panchayat have sent the copies of the minutes of the meetings to the Government and the Government has ultimately passed orders of removal of petitioners.

14(a). It is the case of the respondents that Section 3M of the Act empowers the State Government to issue Notification, etc., and it was by virtue of the said powers, the State Government has issued Notification empowering the Assistant Director of Town Panchayat and therefore, according to the respondents, there is no illegality in the impugned orders. It is the further case of the respondents that in

respect of the writ petitioner in W.P. No. 31336 of 2007, in Tiruvennainallur Town Panchayat, Villupuram District, 14 out of 15 Councillors have voted in favour of 'No Confidence Motion' against the petitioner and in respect of petitioner in W.P. No. 28370 of 2007, in Madambakkam Town Panchayat, out of 15, 10 Councillors have cast their vote in favour of 'No Confidence Motion' and after the papers were forwarded to the Government, the Government passed the impugned Notifications removing the petitioners.

14(b). Mr. S. Ramasamy, learned Additional Advocate General would submit that Section 3M of the Act only enables the State Government to borrow the provisions of the Tamil Nadu District Municipalities Act and apply the same to the Town Panchayats with such modification, addition or restriction as specified in the notification. Therefore, according to him, it is not amounting to delegation of powers. The purpose of Sections 3-M and 3-AA are only to enable the State Government to apply various provisions of the Tamil Nadu District Municipalities Act to Town Panchayats. According to him, the powers of the Regional Director of Municipal Administration under the Tamil Nadu District Municipalities Act in respect of District Municipalities created under Section 4 of the Act are different and distinct from the Town Panchayats administered by the Assistant Directors of Town Panchayat and therefore, by appointing the Assistant Directors of Town Panchayat, the functions to perform under Section 40-A of the Act are borrowed from the said Act for the purpose of Town Panchayats and it is well within the powers of the State Government and there arises no question of amendment to the Tamil Nadu District Municipalities Act, because the intention of the Government is not to empower the Assistant Directors of Town Panchayat to perform the functions in respect of the District Municipalities as per the Tamil Nadu District Municipalities Act.

14(c). It is his further contention that when the Government has issued G.O.(D)No.93 Municipal Administration and Water Supply (ELEC) Department dated 4.03.1999, by which the Assistant Director of Town Panchayat, Kancheepuram was able to perform the functions under Section 40-B of the Act, the same was challenged in W.P. No. 12667 of 2002 and this Court by order dated 23.10.2002 has set aside the said Government Order holding that Section 3-M of

the Act cannot be considered as a source of power to confer authority or delegate powers to the Assistant Director of Town Panchayat to exercise the powers of Regional Director of Municipalities under Section 40-B of the Act and also held that Section 3-M enables the State Government by Notification to apply any of the provisions of the Act with such modification, addition or restriction and it was based on the above said order, the Government passed G.O.Ms. No. 208 dated 08.12.2003 by way of Notification entrusting the powers of the Regional Director under the Act in respect of Sections 40-A and 40-B in favour of the Assistant Director of Town Panchayat in respect of Town Panchayats. Therefore, it is the submission of the learned Additional Advocate General that the functions of the Assistant Director of Town Panchayat performed by him in respect of Town Panchayat under Section 40-A of the Act are well within his jurisdiction and therefore, the same cannot be questioned. He would also submit that the judgements relied upon by the learned Counsel for the petitioners are distinguishable and not applicable to the facts of the present case. He would also rely upon the judgement of the Supreme Court in Prohibition and Excise Superintendent, Andhra Pradesh v. Toddy Tappers Co-operative Society, Marredpally : (2003)12SCC738 .

15. I have heard the learned Counsel for the petitioner and the learned Additional Advocate General for respondents and perused the entire records.

16. The [Tamil Nadu District Municipalities Act, 1920](#) was enacted to consolidate and amend the law relating to district municipalities.

16(a). Section 4 of the Act enables the Governor to create Municipalities having regard to the population of the area, the density of population therein, the revenue generated for local administration, the percentage of employment, the non-agricultural activities, the economic importance and such other factors, by way of notification and the municipal authorities are constituted as per Chapter III of the Act, which includes Council, Chairman and Executive Authority.

16(b). The term 'panchayat town' is defined under Section 3(18-A) of the Act, which means 'an area in transition from a rural area to an urban area classified as panchayat town under Section 3-P of the Act.'

16(c). Likewise, the term 'Town Panchayat' is defined under Section 3(29-A) of the Act, which means 'an institution of self-Government constituted for a transitional area as defined in Clause (2) of Article 243Q of the Constitution.'

16(d). Article 243Q of the [Constitution of India](#) prescribes constitution of municipalities, as per Part IXA. The said Articles, viz., 243Q(1) and (2) states as follows:

243Q. Constitution of Municipalities.- (1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue granted for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

16(e). Therefore, it is clear that Municipal Corporation is for the larger urban area, Municipal Council, which is like District Municipality, is for smaller urban area and Nagar Panchayat which include Town Panchayat or Nagar Panchayat for a transitional area. The transitional area or a smaller urban area or larger urban area has to be notified by the Governor based on various factors, including population, etc. That apart, Article 243B provides for constitution of Panchayats at Village,

intermediate and district levels.

17. It is significant to note that the term 'transitional area' was included in the definition clause of the [Tamil Nadu District Municipalities Act, 1920](#) in Section 3(29-AA) by the Tamil Nadu Municipal Laws (Amendment) Act 18 of 2006 to mean, 'an area in transition from a rural area to an urban area classified as transitional area under Section 3-B.'

17(a). Section 3-B enables the Governor to form Town Panchayats by necessary notifications. That is contained in Chapter 1-A of the Act, which speaks about the constitution and strength of Town Panchayats, election, reservation of seats, division into wards, term of office, preparation of electoral roll, etc.

17(b). In addition to Chapter 1-A, by the Tamil Nadu Municipal Laws (Amendment) Act 18 of 2006, Chapter 1-B was incorporated with the caption 'Town Panchayats', having Sections 3-O to 3-CC. A reading of Chapters 1-A and 1-B shows that the said Chapters speak about the substantial act of creation of Town Panchayats and various methods in consonance with the mandate of [Constitution of India](#) in Chapter IX and IX-A.

18. While making the Amendment Act 18 of 2006, Section 3-BB has been incorporated to give overriding effect to the said Chapter 1-B. Likewise, even in Chapter 1-A, Section 3-N gives overriding effect to Chapter 1-A notwithstanding anything inconsistent contained in the Tamil Nadu District Municipalities Act or in any other law. Sections 3-N and 3-BB reads thus:

Section 3-N. Chapter to override other laws.- (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law.

(2) Save as otherwise provided in Sub-section (1), the provisions of this Chapter shall be, in addition to, and not in derogation of, any other provisions of this Act.

Section 3-BB. Chapter to override other laws: (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law.

(2) Save as otherwise provided in Sub-section (1), the provisions of this Chapter shall be in addition to, and not in derogation of, any other provisions of this Act.

Therefore, it is clear that Chapter 1-A and 1-B should be treated as independent of the Tamil Nadu District Municipalities Act, 1920 and its significance is to enforce the constitutional mandate in the constitution of Town Panchayats.

19. In this regard, it is relevant to refer to Section 3-M of Chapter 1-A and Section 3-AA of Chapter 1-B, which are as follows:

Section 3-M. Application of the Act to town panchayats.- The State Government may, by notification, direct that any of the provisions of this Act and the rules made thereunder or of any other enactment for the time being in force elsewhere in the State of Tamil Nadu but not in the Panchayat town shall apply to that town panchayat to such extent and subject to such modifications, additions and restrictions as may be specified in the notification.

Section 3-AA. Application of the Act to Town Panchayats: The State Government may, by notification, direct that any of the provisions of this Act and the rules made under the Act or of any other enactment for the time being in force elsewhere in the State of Tamil Nadu but not in the panchayat town shall apply to that town panchayat to such extent and subject to such modifications, additions and restrictions as may be specified in the notification.

The said provisions which are similar, enable the State Government by notification to apply any provisions of the Tamil Nadu District Municipalities Act for the functioning of Town Panchayat, as created or formed under Chapter 1-A and Chapter 1-B of the [Tamil Nadu District Municipalities Act, 1920](#).

20. Reading together with the legislative intent of giving overriding effect to Chapter 1-A and 1-B over any other provisions of the Tamil Nadu District Municipalities Act or any other law, the provisions under the said Chapters enable the State Government by notification to apply any of the provisions of the Tamil Nadu District Municipalities Act to that of Town Panchayat which make it clear that in respect of administration of Town Panchayats, it is not the entire Tamil Nadu

District Municipalities Act as a whole which would be applied, but Chapters 1-A and 1-B in addition to any other provisions of the [Tamil Nadu District Municipalities Act, 1920](#), which may be borrowed by the Government from time to time by necessary notification, would alone be applicable in the administration of Town Panchayat.

21. In this background, it is relevant to note the previous notification issued by the State Government by G.O. Ms. No. 75 Municipal Administration and Water Supply Department dated 31.03.1995. The Government has issued the said notification by virtue of the powers conferred under Section 3-M of the [Tamil Nadu District Municipalities Act, 1920](#) extending all provisions of the Tamil Nadu District Municipalities Act except a few sections and therefore, except those provisions mentioned under the said notification, all other provisions of the Tamil Nadu District Municipalities Act are borrowed for the administration of the Town Panchayats. The said notification as issued in G.O. Ms. No. 75 dated 31.03.1995 is as follows:

NOTIFICATION

In exercise of the powers conferred by Section 3-M of the [Tamil Nadu District Municipalities Act, 1920](#) (Tamil Nadu Act V of 1920), the Governor of Tamil Nadu hereby extends to all the town panchayats in the State, the following provisions of the [Tamil Nadu District Municipalities Act, 1920](#) (Tamil Nadu Act V of 1920) and the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994), namely:

(1)(a) All sections except 'Sections 5, 7, 12C, 13B, 43, 68, 77AA and 77B of the [Tamil Nadu District Municipalities Act, 1920](#) (Tamil Nadu Act V of 1920).

(b) All Rules, Regulations and By-laws framed under the said Act except the Rules, Regulations and Bye-laws made under Sections 5, 7, 12C, 13B, 43, 68, 77AA and 77B of the said Act.

(2) Sections 119, 120, 132, 133, 134, 135, 159, 160, 161, 167, 168, 169, 172, 180, 182 and 183 of the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994).

22. It is by adopting those provisions of the [Tamil Nadu District Municipalities Act, 1920](#), including Section 40-A to be made applicable to Town Panchayats, it is not as if the Town Panchayats are upgraded as District Municipalities, which are certainly separate entities governed exclusively by the provisions of the [Tamil Nadu District Municipalities Act, 1920](#), but those provisions of the District Municipalities which are borrowed from the [Tamil Nadu District Municipalities Act, 1920](#) are made applicable for the administration of the Town Panchayat. The said enabling power is given to the State Government under Sections 3-M and 3-AA of Chapters 1-A and 1-B of the [Tamil Nadu District Municipalities Act, 1920](#). Therefore, it is clear that the functioning of District Municipalities and that of the Town Panchayats are distinct in their character and it cannot be said that the authorities who are to perform the functions in respect of District Municipalities under the [Tamil Nadu District Municipalities Act, 1920](#) alone should perform the functions in respect of administration of Town Panchayat, which is having its own administrative set up. However, in the event of the Government deciding to have the same authority who is performing functions under the Tamil Nadu District Municipalities Act in respect of Town Panchayat, it can borrow the same from the Tamil Nadu District Municipalities Act for the administration of Town Panchayats. The change of such authority cannot be straightaway effected by the Government by authorising the authority to perform the function, but it has to be done as per Sections 3-M and 3-AA of Chapters 1-A and 1-B of the [Tamil Nadu District Municipalities Act, 1920](#) by way of proper notification issued by the Governor on behalf of the State Government.

23. It was exactly the proposition of law which was decided by this Court on the earlier occasion in respect of the power regarding removal of Chairman under Section 40-B of the Act, which was borrowed for the administration of the Town Panchayat by G.O. Ms. No. 75 dated 31.03.1995. The facts of that case were that the Regional Director of Municipal Administration has to perform the functions of authority for removal of Chairman of District Municipalities, and the Government, with a view to apply the said provision to Town Panchayats, has issued G.O.(D) No. 93 Municipal Administration and Water Supply (ELEC) Department dated 04.03.1999, and straightaway conferred the powers of the Regional Director of Municipal Administration under Section 40-B to the Assistant Director of Town

Panchayats. The said Government Order was as follows:

MUNICIPAL ADMINISTRATIVE AND WATER SUPPLY (ELEC) DEPARTMENT

G.O. (D) No. 93 DATE: 4.3.1999 READ:

From the Director of Town Panchayats, D.O. Letter

RC. No. 2099/99/A1, dated 10.2.99.

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