

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-07-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 35921 of 2006

-o-

P. Subbulakshmi

.. Petitioner

Versus

1. State of Tamil Nadu  
rep. By Secretary to Government  
Law Department  
Fort St. George  
Chennai - 600 009
2. State of Tamil Nadu  
rep. By Secretary  
Municipal Administration &  
Water Supply Department (Election)  
Fort St. George  
Chennai - 600 009
3. Tamil Nadu State Election Commission  
rep. By Secretary  
6, Revathy Street  
Jawaharlal Street  
Vadapalani, Chennai
4. The Chief Election Officer  
(Panchayat)  
Chennai
5. The Executive Officer  
Courtlam Town Panchayat  
Courtlam Tirunelveli District
6. P. Ramaiah
7. R. Revathi
8. Kalyani Ammal
9. J. Mary Stella

(RR6 to 9 were impleaded as  
per Order dated 17.11.2006 made  
in MP No.2 of 2006 in WP No.  
35921 of 2006)

10. Suseela

<https://hcservices.ecourts.gov.in/hcservices/>

11. K. Madasamy



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(RR10 and 11 were impleaded as  
per Order dated 21.11.2006 made  
in MP No. 3 of 2006 in WP No.  
35921 of 2006)

.. Respondents

Petition filed under Article 226 of The Constitution of India praying  
for a Writ of Declaration as stated therein.

For Petitioner : Mrs. Hema Sampath  
Senior Advocate  
for Mr. Subramanian

For Respondent : Mr. R. Viduthalai  
Advocate General  
assisted by Mr. K. Ilango  
Special Govt Pleader for RR1 & 2  
  
Mr. I. Paranthaman  
Additional Govt. Pleader for R3 & R4  
  
Mr. J. Ravindran for R5  
  
Mr. Subramanian, Senior Advocate  
for Mr. Abdul Wahab for R6 to R11

ORDER

The petitioner has come forward with this writ petition praying for a  
Writ of Declaration to declare that Section 3CC in Chapter IB of the Tamil  
Nadu District Municipalities Act, 1920 introduced by the Tamil Nadu  
Municipal Laws (Amendment) Act, 2006 (Act 18 of 2006) published in Tamil  
Nadu Government Gazette Extraordinary No.223 dated 01.09.2006 by the  
first respondent is ultravires and unconstitutional.

2. The case of the petitioner is that she was the elected member of  
Ward No.8 of the then Courtlam Special Village Panchayat and assumed  
office on 30.06.2003, which should continue for five years unless sooner  
dissolved under law. While so, under the pretext of upgradation of the  
village panchayat into town panchayat in exercise of power under Section 3  
CC of the Tamil Nadu District Municipalities Act, 1920, hereinafter  
referred to as the Act, the tenure of the petitioner was reduced ending  
with 24.10.2006, which is against law, if at all that can be done only by  
invoking the powers conferred under Section 41 of the Act, that too for  
the reasons mentioned therein, hence, the present writ petition has been  
filed seeking for a declaration to declare that Section 3 CC of the Act in  
Chapter I A of the Act as ultra vires and unconstitutional.

3. The case of the respondents is that the first respondent issued  
G.O. Ms No.55 dated 14.07.2006 in exercise of power under Section 3 CC of  
the Act for re-constituting 566 Special Village Panchayat, including  
Courtlam Special Village Panchayat as Town Panchayat, hence, the same is  
nothing but an upgradation of the body from Special Village Panchayat to  
Town Panchayat therefore, the petitioner is not entitled to hold the full  
term of office beyond the period fixed by the Government and the said

upgradation cannot be equated with dissolution. The said date namely 24.10.2006 was fixed by the Government to hold election to the Courtlam Town Panchayats along with other Panchayats in the State.

4. Mrs. Hema Sampath, learned Senior Counsel appearing for the petitioner submitted that the petitioner was elected as Member of Ward No.8 of Courtlam Special Village Panchayat in the election held in June 2003; that the first respondent issued G.O. Ms. No.55 dated 14.07.2006 in exercise of the powers conferred under Section 3 CC (1) (a) of the Act under the pretext of upgrading Courtlam Village Panchayat into Town Panchayat, with the result, the tenure of five years of the council was reduced; that Section 3 CC permits the State Government to shorten the tenure of the elected representatives of Panchayat, which is violative of Article 243 E of the Constitution of India, besides that denuded the power of legislature of the State; that the executive power of the Government contemplated under Article 154 of the Constitution of India however cannot go against the provisions of the Constitution or any law, in this case, G.O. Ms. No.55 was issued by the Governor in exercise of power under Article 154 of the Constitution of India taking away the powers of the legislature, hence, it is ultravires; that even under Section 41 of the Act, the State Government could dissolve the council, that too, only under certain circumstances stated therein; that the petitioner has filed WP No. 34698 of 2006, which was withdrawn with liberty to challenge the Section 3 CC of the Act, hence, this writ petition is maintainable and prayed for allowing of the same. In support of her contention, the learned Senior counsel for the petitioner relied on the below mentioned decisions:-

i) (A.B.R. Jnardhanan, Dalit Tiger C. Ponnusamy and 3 others vs. State of Tamil Nadu, rep. By its Secretary, Municipal Admn. & Water Supply (Election) Department and others) 2001 (3) Law Weekly 399 wherein a Division Bench of this Court held in Para-8 as follows:-

"8. Now, the question arises as to whether in the above circumstances, this Court can annul the election process or postpone the commencement of the election process. Even though there is an extraordinary power for this Court to exercise under Article 226 of the Constitution of India, there are some inherent limitations and more so, in Election Law. Election Law is clear on this aspect. The analogy of Articles 324 and 329 of the Indian Constitution relating to elections to parliament and State Legislatures is equally applicable to the local bodies. Even though local bodies have been constituted, yet it had been the experience that self-governance by the elected representatives of the local bodies was not fully followed and instances galore where elections to the local bodies for self governance by the elected representatives were not held for years to come. There are also instances where the bureaucracy ran the local bodies for even more than a decade by postponing the elections by successive amendments because of majority of the respective ruling parties in the respective bodies. That has prompted the enactment of Constitution (73<sup>rd</sup> Amendment) Act 1992, incorporating



Parts IX and IX-A in the Constitution comprising of Article 243 with several Sub-Articles 243A to 243ZG. While Part IX deals with Panchayats, Part IX-A deals with Municipalities. Part IX starts with Article 243 and ends with Article 243O whereas part IX-A commences with Article 243P and ends with Article 243ZG....

ii) (S. Udayakumar vs. The State of Tamil Nadu, rep. By its Secretary to Government, Law Department, Fort St. George, Chennai - 9 and five others) 2002 (3) CTC 705 wherein a Division Bench of this Court held in Para-29 thus:-

"29. ....We have scanned through all the provisions and find nowhere that any action can be taken against any of the authorities of the Municipality, be it councillor, Deputy Mayor or Mayor individually, in the context of the discharge of their functions as the Municipal Authorities. If that be the case, the word 'Municipality' employed in Article 243 U (2) includes Mayor, Deputy Mayor and every Councillor and divestment of the right of the said authorities either jointly or severally to continue in their respective offices for the assured term of 5 years by any law like the Amending Act otherwise than by Section 44-A incurs the wrath of Sub-Article (2) of Article 243 U of the Constitution and thus becomes unconstitutional, void and inoperative...."

The said judgments were relied on by the learned senior counsel for the petitioner to say that the analogy of Articles 324 and 329 of the Indian Constitution relating to election to parliament and state legislature is equally applicable to local bodies and other panchayats unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for first meeting and no longer.

5. Mr. Viduthalai, learned Advocate General appearing for the respondents 1 and 2 submitted that the writ petition is barred by res judicata as the petitioner has withdrawn the earlier writ petition No.34698 of 2006, which was filed challenging the validity of G.O. Ms. No.91 dated 11.09.2006 fixing 24<sup>th</sup> October 2006 as the date up to which the Chairman and Members of Courtlam and other two Panchayats continue to hold office as Chairman and Members; that in and by G.O. Ms. No.55 dated 14.07.2006, orders were issued for re-constitution of 561 Special Grade Village Panchayat as town Panchayats; that in the Tamil Nadu Municipal Laws (Amendment) Ordinance (Tamil Nadu Ordinance 4/2000) promulgated on 14.07.2006, later repealed by Tamil nadu Municipal Laws (Amendment Act 2006) - Tamil Nadu Act 18 of 2006, special provisions relating to Village Panchayats constituted as Town panchayat (Section 3CC) have been inserted in the Act; that by virtue of the said amendment, the petitioner is entitled to hold office upto such date as the State Government fix in this behalf under the Tamil Nadu Panchayats Act, 1994, hence, the contention of the petitioner that she is entitled to hold office for the full term of five years upto 29<sup>th</sup> June 2008 is untenable; that G.O. Ms. No.91 dated

11.09.2006 was issued fixing 24<sup>th</sup> October 2006 as the date upto which the Chairman and Members of certain Town Panchayats, including Courtlam Town Panchayats shall continue to hold office, thereafter, election was conducted in which the respondents 6 to 11 were elected. The learned Advocate General brought to the notice of this Court Articles 243 (E), 243 (C), 243 (Q), 243 (U) and 243 ZA (2) of the Constitution of India in support of his contention that when a Village Panchayat is upgraded as town Panchayat, the duration of the Village Panchayat comes to an end and the same type of successor of Town Panchayat takes over as a consequence of the term of the previous village panchayat coming to an end; that Article 243 (E) cannot be applied to a case where entry of one description is converted into area of another description and one description of panchayat is ceased by constituting another Town panchayat of a better description; that Section 41 of the Act gives power to the State Government to dissolve the local body, which is not competent to hold or persistently make default in performing duties imposed on it by law or exceed or abuse its powers, whereas in the case on hand, the special village panchayat comes to an end pursuant to the upgradation, hence, the said Section 41 of the Act cannot be equated with the case of upgradation and prayed for dismissal of the writ petition.

6. The learned Additional Government Pleader appearing for the respondents 3 and 4 and the learned counsel for the fifth respondent adopted the arguments advanced by the learned Advocate General for the respondents 1 and 2 and prayed for dismissal of the writ petition.

7 Mr. Subramaniam, learned Senior counsel appearing for the respondents 6 to 11 submitted that though the petitioner has challenged the entire Section 3 (CC) of the Act, except clause (a) of sub-Section (1) of Section 3 (CC) no averment relating to rest of the provisions of the said section, hence, the writ petition, on that score itself liable to be dismissed to that extent; that the writ petition is also liable to be dismissed on the ground of constructive res judicata since the earlier writ petition filed by the petitioner in WP No. 34698 of 2006 challenging the G.O. Ms. No.91 of dated 11.09.2006 was dismissed by this Court; that the contention of the petitioner that Section 3 CC of the Act gives power to the State Government to fix the tenure of the chairman and members of the town panchayat is unconstitutional is misconceived; that when the Special Village Panchayat was upgraded as Town Panchayat Article 243 E of the Constitution of India cannot be pressed into service; that the election to the Courtlam Town Panchayat was over and office bearers namely respondents 6 to 11 were sworn in. In support of this contention, the learned Senior counsel for the respondents 6 to 11 relied on the decision reported in (State of Maharashtra v. Jalgaon Municipal Council) AIR 2003 SCW 1061 wherein in Para No.21, the Honourable Supreme Court held thus:-

"21. Having heard the learned counsel for the parties at length on this aspect, we are of the opinion that the said hiatus is an unavoidable event which must take place in the process of conversion of a Municipal Council into a Municipal Corporation. Reliance on Article 243-U by the learned counsel for the respondents in this context is misconceived. The use of

the expression "a Municipality" in sub-article (3) of Article 243-U in the context and in the setting in which it is employed suggests and means the duration of the same type of Municipality coming to an end and the same type of successor Municipality taking over as a consequence of the term of the previous Municipality coming to an end. Article 243-U cannot be applied to a case where the area of one description is converted into an area of another description and one description of Municipality is ceased by constituting another Municipality of a better description. Article 243-U(3) cannot be pressed into service to base a submission on that an election to constitute a Municipal Corporation is required to be completed before the expiry of duration of a Municipal Council."

The learned Senior counsel for the respondents 6 to 11 further submitted that the election to the Courtlam Town Panchayat was over and office bearers namely respondents 6 to 11 was sworn in, hence, the writ petition has become infructuous.

8 At the outset, it is necessary to mention that the present writ petition has been filed after permission from this court in the earlier writ petition, which was dismissed as withdrawn, hence, this writ petition is maintainable and the plea of res judicata raised by the respondents is rejected.

9. The petitioner has challenged the validity of Section 3 (CC) of the Act in toto. As rightly pointed out by the learned Senior counsel appearing for the respondents 6 to 11, there is no averment or attack to sub-sections 1 (b) and (2) of Section 3 (CC) of the Act, hence, the writ petition is liable to be dismissed to the said extent.

10. Now, let us look into the relevant provisions of the Tamil Nadu District Municipalities Act, 1920 which are as follows:-

Tamil Ndu District Municipalities Act, 1920

Section 3 (CC) - Special provisions relating to Village Panchayat constituted as Town Panchayat -

(1) - Notwithstanding anything contained in this Act -

(a) the President and members of a Village Panchayat, who are elected or deemed to have been elected and holding office as such immediately before the date of constitution of such village panchayat as town panchayat under this Act shall be deemed to be the Chairman and Members of such town panchayat elected under this Act and such chairman and members shall continue to hold office upto such date as the State Government may, by notification, fix in this behalf or, in case no such date is fixed, up to the date on which their term of office would expire under the Tamil Nadu



Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994) and such chairman and members shall exercise all powers and perform all duties conferred on the chairman and members by or under this Act;

(b) all the employees, other than the provincialised employees of the village panchayat immediately before its constitution as town panchayat shall be the employees of such town panchayat under this Act. The provincialised employees shall continue to serve under the town panchayat.

(2) Subject to the provisions of sub-section (1) the provisions of this Act and the rules made thereunder shall apply to the town panchayat referred to in sub-section (1)."

11. The State Government, in order to reconstitute the 561 special village panchayat, including Courtlam Special Village Panchayat as Town Panchayat under the Tamil Nadu Municipalities Act decided to amend the Tamil Nadu Act 31 of 1994 by introducing special provisions namely Section 3(CC) which is extracted above. Entry 5 of List II empowers the State to legislate with respect to subject relating to local government, including the constitution of such local authorities. The provisions of Section 3 (CC) of the Act inserted being covered by Entry 5 of List 2 of Schedule VII and being in pith and substance, within the legislative competence of the State Legislature. The statement of object and reasons of the said Section 3 (CC) of the Act also explain that to give effect to the decision of the Government to re-constitute the special village panchayats covered by the Tamil Nadu Panchayats Act, 1994 as Town Panchayat under the Act. When Law is impugned as ultra vires, what is to be ascertained is the true character of the legislation. If on such examination it is found that the legislation is in substance one, on a matter assigned to the legislature, then it must be held to be valid in its entirety. It is the function and power of the Court to interpret an enactment and to say to which entry an enactment relates. So long as State law not in contravention of any fundamental right, specified in Part III of the Constitution, which was enacted by the State legislature by the distribution of powers made by the VII Schedule read with connected articles not contravening on any mandatory provisions of the Constitution which impose limitation upon the powers of legislature, it is valid. In this context, it is necessary to look into the decision of the Honourable Supreme Court reported in (P.N. Krishna Lal and others vs. Government of Kerala and another) (1995) Supplementary (2) SCC 187 wherein in Para-9, it was held thus:-

9. In determining whether the impugned Act is a law with respect to a given power, the court has to consider whether the Act, in its pith and substance is a Law on the subject in question. If the statute relates in pith and substance, a topic assigned to a particular legislature, the Act will not be invalidated even if it incidentally trenches on topics coming within another legislative list. The fact of incidental encroachment does not affect the vires of the law even as regards the area of encroachment. The

Court has to ascertain the true nature and character of the subject of the Act or its pith and substance to find whether the impugned Act falls within the competence of the particular legislature. Blind adherence to strict interpretation which would lead to invalidation of the Statute, as being legislated in the forbidden sphere should be avoided, lest, all beneficial legislation would be strangled at birth and many subject entrusted to the state legislature rendered ineffectual divesting the State legislature of its powers to deal with particular subject of entry or topic."

Hence, this Court is of the view that Section 3 (CC) of the Act is within the competence of the State Legislature.

12. An argument was advanced by the learned senior counsel for the petitioner that Section 3 (CC) of the Act is repugnant to Article 243 (E) of the Constitution of India. Now, we look into the relevant provisions of the Constitution, which runs as follows:-

Constitution of India

243-E (1) Every Panchayat, 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.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (7).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution

Provided that where the remainder of the period for which the dissolved panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

13. Section 3 (29-A) of the Act defines Town Panchayat, which means an institution of self-government constituted for a transitional area as defined in clause (2) of Article 243 Q of the Constitution. Article 243 Q says that a Nagar Panchayat (by whatever name called) for a transitional area is to say an area in transition from a rural area to an urban area; a municipal council for a smaller urban area; a municipal corporation for a larger urban area constituted in accordance with the



provisions of this Act. Transitional area, a smaller urban area or 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 generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit specified by a public notification for the purpose of this part. When population, the revenue, the percentage of non-agricultural activities, employment, the economic importance or such other facts are relevant factors for constitution of Municipality. The Government of Tamil Nadu, taking into consideration of the said factors decided to re-constitute 561 Special Village Panchayat as Town Panchayat, including Courtlam Special Village Panchayat into Town Panchayat. The petitioner herein has not placed any evidence to say that the said factors, which are necessary to satisfy 243-Q not available or not considered in this case.

14. An argument was advanced by the learned Senior counsel for the petitioner that the term of five years contemplated under Article 243 E of the Constitution shall continue for five years unless sooner dissolved under Section 41 of the Act. Section 41 of the Act says that if in the opinion of the State Government the Municipality is not competent to perform or persistently make default in performing duties imposed on it by law or exceed or abuse its powers, by notification dissolve the municipality from a specified date. Exercise of power under Section 41 of the Act depends on subjective satisfaction of the Government. As rightly pointed out by the learned Advocate General, Section 41 of the Act cannot be equated with the upgradation of Village Panchayat into Town Panchayat.

15. In and by the upgradation, the old body coming to an end and same type of successor municipality takes over. Article 243 E cannot be applied to a case where an area of one description is converted into another description. Section 3 (CC) (1) of the Act contemplates that notwithstanding anything contained in this Act, the President and Members of the Village Panchayat, who are elected or deemed to have been elected and holding office as such immediately before the date of constitution of such village panchayat as town panchayat under this Act, shall be deemed to be the Chairman and Members of the Town Panchayat elected under this Act and such Chairman and Members shall continue to hold the office upto such date as the Government may by notification fix in this behalf or if no such date is fixed upto the date on which their term of office would expire under the Tamil Nadu Panchayat Act, 1994 and such Chairman and Members shall exercise all powers and perform all duties conferred on the Chairman and Members by or under this Act. Thus, the person like the Petitioner, holding the office immediately before the date of constitution of such village panchayat as town panchayat under this Act deemed to exercise all power and performed all duties until by notification the State Government fixed the tenure. In this case, the State Government of the view that instead of appointing Government officers or Administrator deemed it fit that the elected representative of the Panchayat can continue till the new body is constituted. The State Government in exercise of power under Section 3 CC (1) (a) of the Act issued G.O. Ms. No.91 dated 11.09.2006 thereby fixed the tenure of the Chairman and Members of the Special Village Panchayat upto 24.10.2006 and permitted them to hold the office till that period, hence, this Court is of the view that the said decision is perfectly valid.

16. The reason for fixing the date of tenure of the office of the elected representatives like the petitioner is the Government have decided to hold election by issuing G.O. Ms. No.55 dated 14.07.2006 to re-constitute 561 Special Village Panchayat as Town Panchayat and hold election to all the Town Panchayats, including the Courtlam Town Panchayat in one main stream. Thus, the reasons for fixing the said date is also validly explained.

17. In view of the discussions made above, this Court is of the view that the writ petition is devoid of merits, liable to be dismissed and accordingly it is dismissed. No costs.

Sd/-  
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. State of Tamil Nadu  
rep. By Secretary to Government  
Law Department  
Fort St. George  
Chennai - 600 009
2. State of Tamil Nadu  
rep. By Secretary  
Municipal Administration &  
Water Supply Department (Election)  
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4. The Chief Election Officer  
(Panchayat)  
Chennai

5. The Executive Officer  
Courtlam Town Panchayat  
Courtlam Tirunelveli District.

+ 1 CC To Mr. M.A.Abdul Wahab, Advocate SR NO.47441

+ 1 CC To Mr. R.Subramanian, Advocate SR NO.42219

+ 1 CC to the Government Pleader SR NO 47041

WP No. 35921 of 2006

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gp/17.8.



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