

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition No.26569 of 2017

Order: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri C. Nageswara Rao, learned Senior Counsel appearing on behalf of the petitioner. The relief sought for in this writ petition is for a mandamus to declare the action of the respondents, in issuing the notification dated 3.8.2017 for election to the post of Ward Members of the Kakinada Municipal Corporation without taking steps for allocating reservation to the post of Mayor after bifurcation of the State of Andhra Pradesh, and G.O. Ms. No. 94 dated 1.3.2014 issued by the combined State, as illegal, arbitrary and unilateral. A consequential direction is sought to the respondents to take further necessary steps for allocation of reservation to the post of Mayor of Kakinada Municipal Corporation by considering the Scheduled Castes representation in Kakinada Municipal Corporation.

By the impugned notification dated 3.8.2017, the State Election Commission, in the exercise of its powers under Sections 11 and 14 of the Andhra Pradesh Municipal Corporations Act, 1994 and Section 33 of the Municipal Corporations Act, 1955 called upon the registered voters, in all the Wards of Kakinada Municipal Corporation, to elect members of their respective Wards in accordance with the provisions of the said Acts. The notification stipulated the date of election as 29.8.2017, and the date of counting as 1.9.2017. By GO Ms. No. 299 dated 2.8.2017, the Government of Andhra Pradesh provided reservation of Wards in Kakinada Municipal Corporation following its earlier orders in GO Ms. No. 94 dated 1.3.2014. The post of Mayor of the Kakinada Municipal Corporation was reserved in favour of Women

(General). This, according to the petitioner, is in violation of Section 101 of the Andhra Pradesh Re-Organization Act, 2014 (hereinafter called the “2014 Act”) as the Andhra Pradesh Municipal Corporation Act, 1994 (hereinafter called “the 1994 Act”) was not adopted by the present State of Andhra Pradesh within two years from the date of bifurcation, ie, on or before 1.6.2016.

Reliance is placed by Sri C. Nageswara Rao, learned Senior Counsel appearing on behalf of the petitioner, on a Division Bench judgment of this Court in **B. Laxmaiah vs. Andhra Pradesh Administrative Tribunal, Hyderabad**¹. Learned Senior Counsel would submit that in as much as the 1994 Act, and the Rules made thereunder, have not been adopted by the residuary State of Andhra Pradesh within the two year period stipulated in Section 101 of the 2014 Act, the provisions of the 1994 Act can no longer be enforced; and consequently, until and unless an exercise is undertaken afresh to determine the number of Wards to be reserved in favour of different categories in Municipal Corporations confined to the residuary State of Andhra Pradesh, the notification issued by the State Election Commission to hold election to the post of Mayor, Kakinada Municipal Corporation, reserving the post in favour of Women (General), is illegal and is liable to be set aside.

G.O. Ms. No. 94 dated 1.3.2014 was issued by the erstwhile Government of Andhra Pradesh before bifurcation of the State on 2.6.2014. The notification relates to the number of Offices of Mayors reserved for members belonging to the Scheduled Tribes, the Scheduled Castes, the Backward Classes and Women, as specified in Schedules I and II of the said notification. This notification was issued by the erstwhile Government of Andhra Pradesh in the exercise of its powers

¹ 2015 (4) ALD 78 (DB)

under Section 14-A of the 1994 Act, and Rules 3 and 12 of the Andhra Pradesh Municipal Corporations (Reservation of Offices of Mayors in Municipal Corporations) Rules, 1995, as amended from time to time. Schedule-II of GO Ms No. 94 dated 1.3.2014 prescribes the categories to which the Office of Mayor is reserved with respect to different Municipal Corporations. Among the Municipal Corporations, wherein the post of Mayor is reserved in favour of Women (General), is the Kakinada Municipal Corporation. The State Election Commission, has, in compliance with the directions issued in GO Ms No. 94 dated 1.3.2014, reserved the Office of the Mayor of Kakinada Municipal Corporation in favour of Women (General).

If, as is now contended before us by Sri C. Nageswara Rao, learned Senior Counsel, the provisions of the 1994 Act have ceased to operate in the residuary State of Andhra Pradesh after 1.6.2016, on the ground that it has not been adopted by the Government of Andhra Pradesh within the two year period stipulated in Section 101 of the 2014 Act, then reservation to the Office of Mayor in the Kakinada Municipal Corporation, in favour of Women (General), would be illegal. It is necessary, therefore, to examine the scope and ambit of Sections 100 and 101 of the Andhra Pradesh Re-Organization Act, 2014 which read as under:

100: Territorial extent of laws:

The provisions of Part-II shall not be deemed to have affected any change in the territories to which the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Andhra Pradesh Act No.1 of 1973) and any other law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Andhra Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day.

101: Power to adapt laws:

For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modification of the

law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.”

Section 100 stipulates that the provisions of Part – II of the Andhra Pradesh Re-Organization Act, 2014 (“the 2014 Act”) shall not be deemed to be affected by any change in the territories to which the law in force, immediately before the appointed day ie, 2.6.2014, extends or applies; and the territorial references in such law to the erstwhile State of Andhra Pradesh shall, till it is otherwise provided by the Andhra Pradesh State Legislature or by other competent authority, be construed as meaning the territories within the State of Andhra Pradesh before 2.6.2014. Part-II of the 2014 Act relates to the formation of the States of Telangana and Andhra Pradesh, and the territorial divisions thereof. In the light of Section 100 of the 2014 Act bifurcation of the erstwhile State of Andhra Pradesh, into the States of Telangana and Andhra Pradesh, would have no effect on the laws in force immediately prior thereto, and would continue to apply in the residuary State of Andhra Pradesh and the State of Telangana, till otherwise provided by the Telangana State Legislature and by the Andhra Pradesh State Legislature (residuary State) or by the competent authority. Reference to the competent authority in Section 100 of the 2014 Act, is of significance, and evidently refers to the respective State Governments as is clear from Section 101 thereof. As Section 101 of the 2014 Act confers power on the State Government (Government of the residuary State of Andhra Pradesh), by order, to make such adaptations and modifications of the law (A.P. Municipal Corporations Act, 1994) whether by way of repeal or amendment as it considers necessary, the pre-existing law (the A.P. Municipal Corporations Act, 1994) would have effect, subject to the adaptations and modifications so made, till it is

altered, repealed or amended by the competent Legislature or by other competent authority (Government of A.P). The power conferred by Section 101 of the 2014 Act, on the Executive (Government of Andhra Pradesh), is to make an order adapting the pre-existing law or even to repeal it. The limitation under Section 101 is that the power thereunder should be exercised within the two year period, ie on or before 1.6.2016. If the Government of the residuary State of Andhra Pradesh so chose, it had the power to repeal the A.P. Municipal Corporations Act, 1994 on or before 1.6.2016 and not thereafter. On or after 2.6.2016, it is only the State Legislature of the residuary State of Andhra Pradesh which has the power to repeal the A.P. Municipal Corporations Act, 1994.

The contention urged before the Division Bench of this Court, in **B. Laxmaiah**¹, was that there was no provision conferring power on the Andhra Pradesh Administrative Tribunal, which was functioning before 2.6.2014, to function either for the, or both the, States of Telangana and Andhra Pradesh in view of the Andhra Pradesh Re-Organization Act, 2014. As Section 100 of the 2014 Central Act was in *pari materia* with Section 84 of the Bihar Re-Organization Act, 2000, the Division Bench relied on the judgment of the Supreme Court in **CCT vs. Swarn Rekha Cakes and Coals (P) Limited**². Paragraph-27 of the judgment of the Supreme Court, in **Swarn Rekha Cakes**², was extracted by the Division Bench in its order in **B. Laxmaiah**¹. It is useful to extract para-27 which reads thus:

“.....However, Section 84 in express terms, provides that the provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extended or applied and the territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within the existing State of Bihar before the appointed day. Section 85

² (2004) 6 SCC 689

provides that for the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority. **The language in these sections is clear and unambiguous. These sections provide that the laws which were applicable to the undivided State of Bihar would continue to apply to the new States created by the Act. The laws that operated continue to operate notwithstanding the bifurcation of the erstwhile State of Bihar and creation of the new State of Jharkhand. They continue in force until and unless altered, repealed or amended. It is not disputed before us and indeed it cannot be disputed in view of the wide definition given to "law" in Section 2(f) of the Act that the notification issued under Section 7(3)(b) of the Bihar Finance Act, 1981 is law within the meaning of Sections 84 and 85 of the Act. Thus, the notification published in the Bihar Gazette on 22 -12 -1995 bearing SO No. 478 continues to operate in the State of Jharkhand till such time as it is altered, repealed or amended. By virtue of Section 84, the territorial references in any such law (which includes the notification in question), to the State of Bihar shall be construed as meaning the territories within the existing State of Bihar before the appointed day, until otherwise provided by a competent legislature or other competent authority. A conjoint reading of both these provisions makes it abundantly clear that the territorial references in any law in force immediately before the appointed day must be construed as meaning the territories within the existing State of Bihar before the appointed day. To facilitate their application in respect of the State of Bihar or Jharkhand, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law as it may consider necessary or expedient by way of repeal or amendment. Till such law is so repealed or amended in accordance with law, it shall have effect. After their amendment or alteration, they shall have effect subject to the adaptations and modifications made.** We, therefore, find no difficulty in holding that the notification of the Government of Bihar issued under Section 7(3)(b) of the Bihar Finance Act, 1981 and published in the gazette on 22 -12 -1995 being SO No. 478 is law as defined by Section 2(f) of the Act. The said notification holds the field and applies to all the territories which comprised the undivided State of Bihar. The States of Bihar and Jharkhand have been vested with power to make such adaptations and modifications of the law as they may consider necessary or expedient. This they can do by issuance of order before the expiration of two years from the appointed day. After the adaptations and modifications of the law, the law shall have effect as so modified or adapted till such time as a competent legislature or other competent authority further alters, repeals or amends such law." (emphasis supplied)

It is thus evident that the laws, which operated in the undivided State of A.P, would continue to operate in the new States of A.P and

Telangana notwithstanding bifurcation of the erstwhile State until and unless they are altered or repealed or amended. The power to repeal a pre-existing law (law which was applicable to the undivided State) is conferred by Section 101 of the 2014 Act on the State Government with the restriction that such a power can only be exercised within the two year period from the date of bifurcation, and not thereafter. After expiration of the two year period stipulated in Section 101, the power to repeal the earlier enactment would only be available to the State Legislature of the residuary State of Andhra Pradesh, and not to the State Government under Section 101 of the 2014 Act.

The Division Bench in **B. Laxmaiah**¹ further observed:-

*“In our case, this notification was issued under Section 4 (1) & (2) of Administrative Tribunals Act, 1985 by the Central Government. **In view of the aforesaid Supreme Court pronouncement, we, without any hesitation, hold for the sake of reiteration that the effect of the notification is “law” within the meaning of Section 2 (f) of Act, 2014 and the same will continue to remain in force by virtue of Section 100 of Act, 2014 irrespective of the bifurcation of the State, consequently 1st respondent will function until and unless fresh action is taken by both newly formed States under Section 101 read with Section 100 of Act, 2014, before expiration of the period mentioned therein.....”** (emphasis supplied)*

Neither the Government of Andhra Pradesh, in the exercise of its power under Section 101 of the 2014 Act, nor the State Legislature of the residuary State of Andhra Pradesh, in exercise of its power to make laws under Articles 245 and 246 of the Constitution, have repealed the A.P. Municipal Corporations Act, 1994. The contention urged on behalf of the petitioner, by Sri C.Nageswara Rao, Learned Senior Counsel, that the A.P. Municipal Corporations Act, 1994 ceases to operate on or after 1.6.2016, in the residuary State of Andhra Pradesh, does not therefore merit acceptance. As the A.P. Municipal Corporations Act, 1994 has not been repealed, and continues to remain in force, the notification issued in exercise of the powers conferred under the said Act, or the Rules made thereunder, would also remain in force. Since the notification, issued by the erstwhile State of Andhra Pradesh on

1.3.2014, provided for reservation of the office of Mayor, Kakinada Municipal Corporation, in favour of Women (General), the action of State Election Commission in doing so cannot be held to be illegal.

The Writ Petition as filed is devoid of merits and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

13th September, 2017

pnb



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA



Writ Petition No.26569 of 2017

Date: 13.9.2017

pnb

