

**THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

WP Nos.14010, 15247, 15321, 16794, 19027, 20313,
20905, 21169, 22239, 22599, 22615, 23339, 24102,
24233, 24669, 24701, 24702, 24770, 25086, 25126,
25194, 25217, 25226, 25365, 25464, 25526, 25558,
25758, 25760, 25797, 25800, 25842, 25919, 25981,
25995, 26003, 26006, 26178, 26184, 26285, 26291,
26295, 26373, 26465, 26551, 26559, 26581, 26627,
26679, 26772, 26776, 26782, 26834, 26867, 27010,
27022, 27073, 27536, 27541, 27571, 27709, 27866,
27965, 27975, 28075, 28548, 28681, 28685, 28932,
28944, 29012, 29050, 29301, 29736, 29795, 30257,
30929, 32712, 32789, 32794, 32811, 32851, 32956,
33267, 33293, 33323, 33367, 33956, 34030, 34341,
34508, 34516, 34832, 34873, 34918, 34960, 34962,
34988, 34989, 35004, 35043, 35531, 35552, 35553,
35730, 35759, 36009, 36090, 36094, 36233, 36648,
36995, 37115, 37369, 38740, 39798, 42519, 46608,
46779, 47134, 47288, 47916 and 48159 of 2018 and W.P.
Nos.251, 959, 1013, 1293 of 2019

COMMON ORDER : (*per the Hon'ble Sri Justice A. Rajasheker Reddy*)

In all these connected writ petitions, the issue which has been raised is identical

02. In one set of petitions, lead case being WP No.14010 of 2018 and batch, the petitioners assail the State amendment contained in Act No.4 of 2018, for short, “Act 4 of 2018” brought in to Section 3 of the Telangana Municipal Corporation Act, 1994, for short, “Act 1994” by way of Section 3A. In another set of petitions, lead case being WP No.26465 of 2018 and batch, the petitioners assail the State amendment contained in Act No.4 of 2018 brought in to Sections 2 and 3 of the Telangana Municipalities Act, 1965, for short, “Act 1965” by way of Clause 42-aa in Section 2 and sub-Section 1(B) in Section 3, respectively of the Act 1965. It is worthwhile to extract the impugned amendments called in question in these petitions.

03. Section 3A of the Act 1994, reads thus:-

“3A. Notwithstanding anything contained in sub Sections (2) and (3), the areas mentioned in Column No.3 of Schedule-I of this Act shall stand included and form part of the area governed by the Municipal Corporations shown in

the corresponding entry of Column No.4 of the said schedule;

(a) where an elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act 2018, is in existence, on the date of expiry of the term of such elected body;

(b) where no elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act, 2018 is in existence, on the date of such commencement.”

04. Schedule-I appended to Section 3A of the Act 1994 provides the details as to the name of the district, areas to be included, name of the Municipal Corporation into which the areas are included, ward no. of the Municipal Corporation into which such areas are merged.

05. Clause 42-aa of Section 2 of the Act 1965, reads thus:-

“(42-aa) Notwithstanding anything contained in clause (42-a), the areas mentioned in Column No.3 of Schedule-X of this Act shall be deemed to have been constituted as the smaller urban areas as specified in the corresponding entry of Column no.4 of the said schedule:

(a) where an elected body of the Gram

Telangana Panchayat Raj Act 2018, is in existence, on the date of expiry of the term of such elected body;

(b) where no elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act, 2018 is in existence, on the date of such commencement.”

06. Sub-Section (1-B) of Section 3 of the Act 1965, reads thus:-

“(1-B) Notwithstanding anything contained in sub-Section 1-A, the areas mentioned in Column No.3 of Schedule-XI of this Act shall stand included and form part of the area governed by the municipality shown in the corresponding entry of column no.4 of the said schedule:

(a) where an elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act 2018, is in existence, on the date of expiry of the term of such elected body;

(b) where no elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act, 2018 is in existence, on the date of such commencement.”

by introduction of Section 3A of the Act 1994, the villages which are named in Schedule-I are merged with Karimnagar Municipal Corporation without there being a notification by the Governor under Section 3 (2) of the Act 1994 muchless they are de-notified under Section 3 (f) of the Panchayat Raj Act, 1994.

The villages are beyond 3 kms distance from the limits of Karimnagar Municipal Corporation which cannot be merged. The scheme of the Act 1994 is to make a publication of a larger urban area and has to pass through the test with reference 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 and such other factors as may be prescribed. That most of the villages are mostly agricultural dominated villages and there are no non-agricultural activities. That they are still

continuing as part and parcel of the respective Grampanchayats. By operation of the impugned amendment, they are just thrusting into the territorial area of Karimnagar Municipal Corporation. As per the Act 1994 there is nothing like enlargement of territorial area of a Municipal Corporation. That the impugned Act 4 of 2018 has done away with the doing of exercise of analyzing the scientific data to be collected as stipulated in the parent Act 1994, and therefore it is unconstitutional. An amendment to an existing statute must lay down the legislative policy and avoid specific enumeration of the named villages. Unless and until the villagers/areas have got the profile of a larger urban area, the question of inclusion of that area into the existing Corporation, does not arise. Since, no guidelines or parameters are laid down in the impugned amendment, it is liable to be struck

down on both grounds of lack of legislative competence and violation of Article 14 of the Constitution.

08. Likewise, the case of the petitioners in WP No.26465 of 2018 is that by virtue of the impugned amendment Gandimasaanipeta village is merged in Yellareddy Municipality without conducting any detailed study and without hearing the Gram Panchayat members who have filed their objections opposing the inclusion of the village into Municipality. That the villagers who are mainly dependent on agriculture and got benefits under the schemes of the State and the Union Governments will lose the benefits if the merger takes place. That employment guarantee scheme is a welfare scheme which guarantees employment to agricultural labourers in the village and such a scheme is not available in the Municipality. That by virtue of the impugned amendment, the substantive provisions i.e. Section 2 (42a) and Section

3(1-A) have become redundant as while Section 2 (42a) requires certain criteria to be followed for notifying a transitional area or smaller urban area, Section 3 (1-A) deals with the principles and procedure for inclusion/exclusion into the Municipality, local or part thereof in the vicinity of such Municipality. That under the guise of impugned amendment, the Government has virtually replaced the substantive provisions. That the respondents have given a go-by to the Telangana Municipalities (Inclusion or Exclusion of Areas into/from the limits of Municipalities/Nagara Panchayats) Rules, 2006, for short, “the Rules” which regulates inclusion or exclusion of areas into/from Municipalities/Nagara Panchayats, as the case may be. That the Rules provide for sufficient safeguards and lay down a detailed procedure for taking into consideration the views of the Gram Panchayat and also recommendation of the concerned authorities like

Municipal Commissioner, District Collector, Commissioner of Municipal Administration and such a procedure is by-passed when the Rules are very much in force and since the impugned amending Act 4 of 2018 does not lay down any new Rules, the Rules continue to hold the field. That the decision making process is vitiated not only for non-application of mind but also because of mala-fide exercise of power inasmuch as detailed study was not conducted and there being no criteria for inclusion of Gandimasaanipeta village into Yellareddy Municipality, the inclusion of the said village is violative of Article 14 of the Constitution and the impugned amendment is liable to be struck down.

09. Counter affidavit is filed in WP No.14010 of 2018 by the 2nd respondent wherein it is stated that the instant Gram Panchayats were merged into the limits of the existing Karimnagar Municipal Corporation,

which was already declared as *larger urban area* in the year 2005 itself, after collecting data as required under Section 2 (d) of the Act 1994. It is stated that there is no rule specifying that before merger of a Gram Panchayats into existing Municipal Corporation, such Gram Panchayats shall be declared as *larger urban area* and then merge them into the limits of the Municipal Corporation. That the Government vide GO Ms.No.300, MA & UD (Election-II) Department, dated 07-04-2005 have issued notification specifying the areas covered under erstwhile Karimnagar Municipality as *larger urban area* under Section 2 (d) of the Act 1994, the Karimnagar Municipal Corporation is deemed to have been constituted under Section 3 (1) of the Act 1994 as Municipal Corporation. Counter affidavit is filed on similar lines in WP No.26465 of 2018, which is a lead case in another batch of cases wherein it is stated that by constituting

smaller urban areas i.e. Municipalities or up-gradation of Gram Panchayat/s into Municipalities pursuant to the impugned legislation, there is no violation of the right to self governing, on the other hand better civic amenities and services are made available to the citizens and there are numerous self employment schemes and poverty alleviation programmes under the Municipal laws.

10. Heard Sri Vedula Venkataramana, Sri S. Satyam Reddy, learned senior counsels, Sri T. Venkat Raju Goud, Sri K. Pavan Kumar, Sri B. Vijayasen Reddy, learned counsel for Sri V. Venkata Mayur, Sri K. Buchi Babu, Sri Poodathu Amarender and Sri K. Upender Reddy, learned counsel appearing for the petitioners and the learned Addl. Advocate General for the respondent-State.

11. The combined argument of the learned senior counsel and other learned counsel for the petitioners

in these cases is that the amending Act 4 of 2018 cannot run counter to the basic structure of the parent Acts 1994 & Act 1965 and the amendment brought in is violative of 73rd & 74th Amendment to Constitution of India, especially Article 243Q (2) of the Constitution and lacks legislative competence. That no procedure, as envisaged in Act 1994 or Act 1965 or Rules made thereunder is followed much less the publication of the villages sought to be merged with the Municipal Corporation with specific ward numbers. That no notice was given either to the elected representatives of the respective village or the villagers since act of inclusion/exclusion of the villages into the Municipal Corporation, Municipality or creation/up-gradation into Municipality, as the case may be, affected the rights of the elected representatives of the villages as well as rights of the villagers who are members of the Gram Panchayats.

That the villages merged into Municipal Corporations and Municipalities are mostly agriculturally dominated and there are no non-agricultural activities in these villages and they are still continuing as Gram Panchayats. That the members of the villages are deprived of rural employment and the benefits of various schemes provided to the villagers who are members of the Gram Panchayats under the State and Union governments and they will lose these benefits if the merger takes place which is arbitrary and violative of Article 14 of the Constitution of India. Though the Telangana Municipalities (Inclusion or Exclusion of Areas into/from the limits of Municipalities/Nagara Panchayats) Rules, 2006, for short “the Rules” are framed in that behalf for inclusion or exclusion of the villages issued vide GO Ms.No.63, Municipal Administration & Urban Development (Elections-II) Department, dated 18-02-2006, scientific data was not

collected, except calling for proposals from the District Collectors. Decisions in ***PROF. BK CHANDRASHEKAR vs. STATE OF KARNATAKA***¹, ***RAVEENDRAN vs. STATE OF KERALA***², ***STATE OF TAMIL NADU vs. K. SHYAM SUNDER***³ & ***CHAMPA LAL vs. STATE OF RAJASTHAN***⁴ are relied on.

12. Learned Addl. Advocate General appearing for the State, on the other hand, contended that consequent upon passing of the Bill in the Legislature on 29-03-2018, it received the assent of the Governor on 30-03-2018 for merger of certain Gram Panchayats into Municipal Corporation and Municipalities and, therefore, there is no conflict of provisions of Section 2 (d) of the Act 1994 or the Rules, as the case may be, and that of Article 243-Q(2) of the Constitution, and in this case there is over compliance with the provisions

¹ AIR 1999 KARNATAKA 461

² 2006 (1) KLT 427

³ (2011

of the Constitution. As far it relates to collecting data, it is stated that the Government vide Memo No.860/Plg.II/2018, dated 19-01-2018 have informed all the District Collectors in the State that the Government desired all major Gram Panchayats with population of more than 15,000 and Gram Panchayats adjoining the existing urban local bodies (within 1 to 5 kms) shall be considered for either constitution of new urban local body or merging with the existing urban local body respectively and accordingly, all the District Collectors were asked to submit proposals of potential Gram Panchayats having urban characteristics and suitable for either constitution as new urban local body or merging them with the nearest urban local body. It is stated that proposals were submitted by the District Collectors and accordingly the Commissioner and Director of Municipal Administration vide letter Roc.No.21755/2018-H2,

dated 22-03-2018, in turn submitted the same to Government along with draft amendments to the Act 1994 to include the Gram Panchayats in question into the limits of Karimnagar Municipal Corporation. The contention of the petitioners that unless and until the villages have got the profile of the *larger urban area* or transitional area, as the case may be, they cannot be merged with the Municipal Corporation or Municipality is refuted, as nowhere in the Act 1994 such a procedure is contemplated. It is also stated that issuance of public notification by the Governor is only dispensed with by way of a *non-abstante* clause in Clause 42(aa) to Section 2 of the Act 1965, however the constitutional mandate of 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 etc.,

were scrupulously followed while the impugned legislation was brought in. In support of his contention learned Addl. Advocate General relied on the decision in **STATE OF UP vs. PRADHAN SANGH KSHETTRA SAMITI**,⁵ **STATE OF PUNJAB vs. TEHAL SINGH**⁶ & **SUNDARAJAS KANYALAL BATIJA vs. COLLECTOR, THANE MAHARASHTRA**.⁷

13. Having heard the learned senior counsels as also the learned counsels for the petitioners, learned Addl. Advocate General and on a perusal of the material brought on record, the following points emerge for consideration.

- i) *Whether the impugned amending Act 4 of 2018 violates Articles 14, 73rd and 74th Amendment to the Constitution of India & 243Q(2) of the Constitution;*
- ii) *Whether the respondent-State has legislative competence to bring in the impugned amending Act 4 of 2018;*
- iii) *Whether the impugned amending Act 4 of 2018 is against the texture of the parent Acts i.e. the*

⁵ 1995 Suppliment (2) SCC 305

