
(2008) 08 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16653 of 2008

Alusani Mohan Kumar

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 245, 245(1)
Andhra Pradesh Panchayat Raj Rules — Rule 3

Citation : AIR 2008 AP 276 : (2008) 3 APLJ 137

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : B. Vijaysen Reddy, for the Appellant; G.P. for Revenue and G. Elisha, S.C. for Mandal Parishad, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—The petitioner herein was elected as President of the Mandal Praja Parishad (for short, "the Mandal Praja Parishad"), Yellareddypet on 11.6.2006 and he assumed the office on 22.7.2006. The respondents 4 to 17 herein, who wanted to move a no confidence motion against the petitioner, gave a written notice of their intention to the 2nd respondent/Revenue Divisional Officer, on 14.7.2008. However, the 2nd respondent by order dated 17-7-2008 refused to take further steps for convening a meeting to move the no confidence motion on the ground that such motion within two years from the date of assumption of the office of the President by the writ petitioner is impermissible under the first proviso to Section 245(1) of the A.P. Panchayat Raj Act, 1994 (for short, "the Act").

2. Thereafter, respondents 4 to 17 herein submitted another notice of intention dated 23.7.2008 to move the motion of no-confidence in Form 11 of the Rules made under G.O.Ms. No. 137 dated 27.3.1997. On the basis of the same, the 2nd respondent issued the impugned notice dated 23.7.2008 convening the meeting on 8.8.2008 for consideration of the motion of no confidence.

3. The said notice dated 23.7.2008 is assailed in this writ petition on the ground that the same is barred by the second proviso to Section 245(1) of the Act, under which notice of motion against the same person cannot be made more than once during his term of office.

4. I have heard the learned Counsel for the petitioner as well as the learned Government Pleader for Panchayat Raj appearing for respondents 1 to 3 and the learned Counsel appearing for the 4th respondent.

5. For proper appreciation of the contention raised by the petitioner, Section 245(1) of the Act may be extracted hereunder:

245. Motion of No Confidence in Upasarpnach, President or Chairperson:- (1) A motion expressing want of confidence in the Upasarpnach or President or Vice-President or Chairperson or Vice-Chairperson may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed signed by not less than one-half of the total number of members of Mandal Parishad or as the case may be the Zilla Parishad and further action on such notice shall be taken in accordance with the procedure prescribed;

Provided that no notice of motion under this section shall be made within two years of the date of assumption of office by the person against whom the motion is sought to be moved;

Provided further that no such notice shall be made against the same person more than once during his term of office.

6. On a plain reading of the above provision, it is clear that the notice of intention to move the motion expressing want of confidence is to be made to the prescribed authority in writing signed by not less than 1/2 of the total members of Mandal Praja Parishad and thereupon, further action shall be taken in accordance with the procedure prescribed.

7. In the case on hand, it is not in dispute that the 2nd respondent/Revenue Divisional Officer, is the prescribed authority. The notice of intention to move the no confidence motion was given in writing by the respondents 4 to 17 on 23.7.2008 in Form II of the Rules. In pursuance thereof, the 2nd respondent issued the impugned notice in Form V convening the meeting on 8.8.2008.

8. However, admittedly, the notice of intention to move the motion dated 23.7.2008 is a second notice. As noticed above, the first notice dated 14.7.2008 was rejected by the 2nd respondent.

9. In the circumstances, the question that falls for consideration is whether the impugned notice dated 23.7.2008 issued by the 2nd respondent convening the meeting on 8.8.2008 is hit by the second proviso to Section 245(1) of the Act.

10. The very same question fell for consideration in Tiparthy Chandra Mouli Vs. Government of Andhra Pradesh and Others, . In the said case, the first notice of intention to move the motion was rejected by the competent authority on the

ground that the Rules contemplated u/s 245 of the Act were not promulgated by then. Subsequently, another notice of intention to move the motion was made by the members of the Mandal Parishad and on the basis of the same, a notice of motion of no-confidence was issued under Rule 3 of the Rules fixing the date of motion. While negating the contention of the petitioner therein that the impugned notice was hit by the second proviso to Section 245(1) of the Act, and dismissing the writ petition this Court held as under:

15. The notice of intention contemplated u/s 245 may reach its logical end or may not, depending on the facts whether the notice does comply with various stipulations made in the said Section or not. Such being the case, a defective notice of intention to move No Confidence Motion moved once would enable the incumbent of the Office to continue for the full term irrespective of the fact whether he enjoys the confidence of the Body which he is expected to enjoy under the provisions of the Act, which according to me is certainly not the intention of the Legislature. One may imagine the situation, in a given case, where the incumbent of the office at a given point of time enjoying the confidence of the Body, may himself engineer a defective notice of intention to move No Confidence Motion. Once such notice fails in view of the defect, the incumbent would continue to hold the office for the entire period notwithstanding the fact that he might lose the confidence of the Body subsequently. This would be an absurdity.

16. To my mind the intention of the Legislature, in inserting the proviso is to provide stability of the office and avoidance of frequent No Confidence Motions, which render these institutions too unstable. To see that public good is not disregarded in the conflict of rival parties.

11. The ratio laid down in the above decision, which is in conformity with the scope and object of Section 245(1) of the Act squarely applies to the instant case and consequently it cannot be held that the impugned notice dated 23.7.2008 is hit by the second proviso to Section 245(1) of the Act.

12. Since, admittedly, the earlier notice of intention dated 14.7.2008 expressing want of confidence in the writ petitioner was rejected by the 2nd respondent in the initial stage itself, and no further action on the basis of the said notice as contemplated under Rule 3 of the Rules was taken, it cannot be said that the impugned notice now issued in Form V under Rule 3 is a second attempt.

13. Hence, the contention of the writ petitioner cannot be accepted.

14. Accordingly, the writ petition, which is devoid of any merit, is hereby dismissed.

15. No costs.