
(2004) 09 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 35852 of 2004

B.M. Geetha Manjappa Gowda	Vs	APPELLANT
The State of Karnataka and Others		RESPONDENT

Date of Decision : 13-09-2004

Acts Referred:

Panchayath Raj Rules, 1994 — Rule 3, 3 (2)

Citation : (2005) 1 KCCR 53

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Aravind Kumar, for the Appellant; H.B. Narayana, High Court Government Pleader for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner claims to be the President of Bale Grama Panchayath, N.R. Pura Taluk, Chickmagalur District. Since certain members of this Panchayath vide requisition dated 9.1.2004 Annexure-B moved the Assistant Commissioner to fix a meeting for the purpose of considering a no-confidence against the Petitioner, the Assistant Commissioner issued notice dated 20.1.2004 intimating the date of meeting to be on 4.2.2004.

2. It appears, the Petitioner had challenged the said notice in Writ Petition No. 5805 of 2004 before this Court contending interalia that the notice did not allow fifteen days clear interval from the date of the notice and date of meeting.

3. It appears, notwithstanding the pendency of the writ petition, a meeting was held on the date as had been indicated in the said notice and in fact the motion was carried in terms of the resolution dated 4.2.2004 copy at Annexure-D. However, this Court as per the order dated 20.7.2004 passed in W.P. No. 5805 of 2004, that was pending before this Court, allowed the same and quashed the notice dated 20.1.2004 as well as the resolution dated 4.2.2004 holding the notice itself was defective and as such the resolution is unsustainable. It is the

case of the Petitioner that subsequent to allowing of the writ petition, the Petitioner had occasion to bring it to the notice of the authorities and in fact charge for the post of President was also handed over in favour of the Petitioner in terms of an endorsement dated 20.8.2004, copy produced at Annexure-G. It appears thereafter the Assistant Commissioner has again taken steps in terms of the notice dated 23.8.2004 indicating that a meeting of the members of the Panchayath is now called for the purpose of considering the no-confidence motion as against the President at a meeting to be held on 15.9.2004 at 11.30 a.m. at the office of the Grama Panchayath. Questioning the legality of this notice dated 23.8.2004, this writ petition is presented.

4. Sri Aravind Swamy, learned Counsel for the Petitioner, submitted that the Assistant Commissioner suo motu could not have taken any action to call for a meeting to consider the motion of no-confidence against the Petitioner, that even though the members of the Panchayath have not given any fresh requisition for the purpose of moving such no-confidence motion, the Assistant Commissioner on his own has issued a notice of this nature which is not backed by a requisition notice and as such the notice is not sustainable. It is also the submission of the learned Counsel that when once this Court quashed the notice dated 20.1.2004 under which the earlier meeting had been fixed, there is nothing else that is required to be done on the part of the Assistant Commissioner when the requisition that had been issued by the members on 9.1.2004 which had resulted in the notice dated 20.1.2004 has exhausted itself not only by the same having resulted in a motion being carried as per the resolution pursuant to such a requisition but also due to the quashing of the resolution by this Court and nothing remains thereafter for the Assistant Commissioner in the absence of any fresh requisition by the members.

5. Learned Counsel prays for quashing of the notice dated 23.8.2004. Learned Counsel also submits that in terms of the Sub-rule (2) of Rule 3, the Assistant Commissioner is required to fix a meeting for consideration of motion of no-confidence by the members of the Panchayath within 30 days from the receipt of the requisition notice and thereafter, he cannot fix such a meeting particularly if the present notice is purported to be one in pursuance of the requisition dated 9.1.2004, the same being after a lapse of more than about seven months, it is in contravention of Sub-rule (2) of Rule 3 of the Panchayath Raj Act and it is one another reason why the present notice 23.8.2004 is required to be quashed. However, Learned Counsel also fairly submitted that there was no defect in the requisition dated 9.1.2004 but perhaps it did not yield the desired result.

6. Under the provisions of the Panchayath Raj Act and the Rules framed thereunder, on 1/3rd of the members of the Panchayath giving a requisition to the Assistant Commissioner requesting him to fix the meeting for the purpose of considering the motion of no-confidence as against the President and Vice President, the Assistant Commissioner is bound to fix the meeting in accordance with the statutory provisions. The fixing of such a meeting should be in

conformity and not independent of the provisions. In fact it was precisely on the ground that such a notice fixing the meeting earlier was not in conformity, this Court found fault with such a resolution and meeting. If the Assistant Commissioner had not fixed the meeting in pursuance of the requisition within the time mandated on him, it does not mean that the requisition notice is invalidated. The requisition will have to be given effect to so long as there is no defect or illegality in the same. A mistake committed by the Assistant Commissioner in fixing the meeting by giving the requisite interval as stipulated under the statutory provisions cannot render the requisition itself nonest. A mistake be it deliberate or due to inadvertence committed by the statutory authority would not render invalid a motion made by the members acting under the provisions of a statute in order to serve the purpose and object of the enactment in the exercise of their right as representatives of the electorate.

7. In a democratic process it is a valid right given to the members and that persons holding elected posts should retain it only with the support of the number of members who are required to support the post and not otherwise. A requisition of this nature cannot be scuttled by other defective intervening circumstances. The request having not been withdrawn by the members, the Assistant Commissioner is duty bound to proceed ahead in the matter. However, the other impediment pointed out by the learned Counsel for the Petitioner is that if a period of thirty days has elapsed from the date of giving the requisition by the members, the Assistant Commissioner cannot issue a notice. If this interpretation is to be accepted, it is always easy for the Assistant Commissioner to allow the period to elapse while fixing the meeting for considering the motion of no-confidence and to render the requisition lapse. The outer limit of 30 days emphasised and stipulated by the statutory provision is to impress upon the Assistant Commissioner to act with a sense of urgency and not to avoid the function at all by being inactive for the period. Therefore, even if the Assistant Commissioner has not acted with due diligence and had not cared for issuance of a notice of this nature within the stipulated time, it cannot be interpreted or held that the Assistant Commissioner is denuded of the power and function to issue such a notice after the lapse of 30 days from the day the members have given the requisition. A look at the provisions of Rule 3 of the Panchayath Raj Rules reinforces this view. Rule 3 of the rules, reads as under:

3. Motion of no-confidence.-(1) A written notice of intention to make the motion under the proviso to Section 49 shall be in Form I signed by not less than one-third of the total number of members together with a copy of the proposed motion shall be delivered in person by any two of the members signing the notice to the Assistant Commissioner.

(2) The Assistant Commissioner shall thereafter convene a meeting for the consideration of the said motion at the office of the Gram Panchayat on the date appointed by him which shall not be later than thirty days from the date on which the notice under Sub-rule (1) was delivered to him. He shall give to the

members a notice of not less than fifteen clear days of such meeting in Form II:

Provided that where the holding of such meeting is stayed by an order of a Court, the Assistant Commissioner shall adjourn the said meeting and shall hold the adjourned meeting on the date not later than thirty days from the date on which he receives the intimation about the vacation of stay, after giving to the members, a notice of not less than fifteen clear days of such adjourned meeting.

(3) A notice in Form II shall be given to every member including the Adhyaksha and Upadhyaksha.

(a) by delivering or tendering the said notice to such member; or

(b) if such member is not found, by leaving such notice at his last known place of residence or business within the Grama Panchayat or by giving or tendering the same to some adult member or servant of his family; or

(c) by registered post; or

(d) if none of the means aforesaid be available, by affixing such notice on some conspicuous part of the house, if any, in which the member is known to have last resided or carried on business within the Grama Panchayat.

(4) The quorum for such meeting shall be two thirds of the total number of members of the Grama Pachayat. The Assistant Commissioner shall preside at such meeting.

Explanation: For determination of two third of total number of members under this sub-rule any fraction arrived at shall be construed as one.

(5) Save as otherwise provided in the Act or these rules, a meeting convened for the purpose of considering a motion under Sub-rule (2) shall not for any reason be adjourned.

(6) If there is no quorum, within one hour after the time appointed for the meeting, the meeting shall stand dissolved and the notice given under Sub-rule (1) shall lapse.

(7) As soon as the meeting convened and Sub-rule (2) commences the Assistant Commissioner shall read to the members of the Grama Panchayat, the motion for the consideration of which the meeting has been convened and shall put it to vote without any debate.

(8) The Assistant Commissioner shall not speak on the merits of the motion and he shall not be entitled to vote thereon.

(9) If the motion is carried by a majority of not less than two thirds of the total number of members of the Grama Panchayat, the Adhyaksha or Upadhyaksha, as the case may be, shall forthwith cease to function as such and the Assistant Commissioner shall, as soon as may be, notify such cessation on the notice board of the Office of the Grama Panchayat and also inform the Adhyaksha or

Upadhyaksha, as the case may be, regarding such cessation, if he is not present at the meeting.

(10) After the cessation is notified under Sub-rule (9) the Adhyaksha or Upadhyaksha as the case may be shall, immediately hand over all documents, moneys or other properties of the Grama Panchayat in his custody to the Secretary of the Grama Panchayat.

(11) The elections to the Office of Adhyaksha or Upadhyaksha shall not be held until the notification under Sub-rule (9) removing the Adhyaksha or Upadhyaksha, as the case may be, is published.

Therefore, in a situation where the notice fixing a meeting is being issued by the Assistant Commissioner is stayed by an order of the Court the period during the stay order operated has to be excluded for computing the period of 30 days within which the meeting has to be held, starting from the day of issue of requisition notice by the members. It only means that in computing the period of 30 days from the date of issue of requisition notice by the members and the day fixed by the Assistant Commissioner for the meeting, certain days may have to be excluded depending upon the exigencies and situation. It only indicates that the interval of 30 days even if had been over, still the Assistant Commissioner is enabled to either go ahead with the very notice by indicating a new date for the meeting or can issue a fresh notice fixing the date for the meeting of the members to consider the no confidence motion. In the present case, as the intervening circumstances are due to the fact that he had issued a defective notice in the sense of not allowing interval of 15 days from the date fixed for the meeting and though the Assistant Commissioner had acted promptly in fixing the meeting within the period of 30 days from the date of requisition, because of some defect pointed out in the notice in fixing the meeting it did not result in any sustainable action on the part of the members. The notice fixing the meeting and the resolution pursuant to the notice both have been quashed by this Court. It is inevitable that the Assistant Commissioner should now issue a fresh notice in accordance with law.

In the circumstances, the action taken by the Assistant Commissioner in issuing the notice dated 23.8.2004 as at Annexure-H is well within his powers and it is also his duty to do so, I am of the view that there is no scope for interference with such a notice, in the exercise of the writ jurisdiction. It is always open for the Petitioner to attend the meeting muster support in her favour rather than trying to avoid taking the members attending such a meeting by resorting to other methods time and again.

In the result, writ petition is dismissed.